The original documents are located in Box 3, folder "Final Report - Draft, Undated (2)" of the Charles E. Goodell Papers at the Gerald R. Ford Presidential Library.

Chapter IV - B: Our Civilian Applicants

Our civilian applicants were predominantly white (87%), and came from average American families. Twenty-nine per cent came from economically disadvantaged backgrounds. Over two-thirds (69%) were raised by both natural parents, most had one to three brothers and sisters, and evidence of severe family instability was rare. The proportion of blacks (11%) and Spanish-speaking person (1.3%) was about the same as found in the general population.

They grew up in cities (59%) and suburbs (19%) with disproportionately many in the West and few in the South. Born largely between 1948 and 1950, they were part of the "baby boom" which was later to face the draft during the Vietnam War. Over three-quarters (79%) had high school degrees, and 18% finished college. A very small percentage (4%) had felony convictions other than for draft offenses. In most ways, they were not unlike most young men in cities and towns across the United States.*

Two things set them apart. First, 75% opposed the war in Vietnam strongly enough to face punishment rather than fight there. Many were Jehovah's Witnesses (2%) or members of other religious sects opposed to war (6%). Second, they - unlike many of their friends and classmates - were unable or unwilling to evade the draft by exemptions and deferments or escape prosecution through dismissal and acquittal. They stayed within the system and paid a penalty for their refusal to enter the military.

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*Unless otherwise noted, all statistics about our applicants came from our own survey of approximately 500 civilin applicants.

In the discussion which follows, we trace the general experiences of our civilian applicants. We look first at their experience with the draft system. After examining the circumstances of their draft offenses, we focus on their experience in the courts and prisons. Finally, we describe the impact of their felony convictions.

Illustrating the discussion are excerpts from our case summaries. The cases described cover a broad range of fact circumstances;many of the applicants received outright pardons, some were assigned alternative service, and a few were denied clemency.* Much of the information in these summaries is based upon the applicants' own allegations, sometimes without corroboration. In the spirit of the clemency program, we usually accepted our applicant's claims at face value for the purposes of making dispositions in their cases. Our perspective was more limited than that of the local draft boards and the courts. Therefore, we urge the reader not to draw sweeping conclusions from the facts in any individual case.

With few exceptions, our statistics are based upon our sample of 472 civilian applicants - roughly one-fourth of our total number of civilian applications.**

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* See Chapters II-F and III for a discussion of how our Board applied fact circumstances to determine individual case dispositions.

**See Appendix for a description of our sampling techniques and a more detailed presentation of our findings.

Registration

Our applicants, like millions of young men, came into contact with the Selective Service System when they reached the age of 18 -- usually between 1966 and 1968. Often, it was their first direct contact with a government agency. A few (3%) of our applicants committed draft offenses by failing to register with the draft -- or failing to register on time. Ignorance or forgetfulness was no defense, but draft boards rarely issued complaints for failure to register unless an individual established a pattern of evasion.

(Case #00085) Applicant was convicted of failing to register for the draft. As a defense, he stated that he was an Italian immigrant who did not understand the English language. However, there were numerous false statements on his naturalization papers, and he was able to comply with state licensing laws as he developed several business enterprises in this country.

After registration, our applicants were required to keep their local board informed of their current address. Failure to do so was a draft offense, for which 10% of our applicants were convicted. These tended to be itinerant individuals with little education, who by background were unlikely to understand or pay due respect to their Selective Service responsibilities.

(Case #00964) Applicant's father, a chronic alcoholic, abused applicant and his mother when intoxicated. Applicant left his home to seek work, without success. Because of his unsteady employment, he was compelled to live with friends and was constantly changing addresses. His parents were unable to contact him regarding pertinent Selective Service materials. After his conviction for failing to keep his draft board informed of his address, applicant apologized for his "mental and emotional confusion," acknowledging that his failure to communicate with the local board was an "error of judgment on my part."

The local board was under no obligation to find an individual's current address, and it was our applicant's responsibility to make sure that Selective Service mail reached him.

(Case #03151) Applicant registered for the draft and subsequently moved to a new address. He reported his change of address to the local post office, but he did not notify his local board. He mistakenly thought this action fulfilled his obligation to keep his local board informed of his current address.

(Case #00822) Applicant's mother telephoned his new address to the local board. Selective Service mail still failed to reach him, and he was convicted for failure to keep his board informed of his whereabouts. The last address his mother had given was correct, but the court did not accept his defense that mail did not reach him because his name was not on the mailbox.

Alternative Service for Conscientious Objectors

Approximately one-eighth of our civilian applicants did receive CO exemptions. Rather than face induction into the military, they were assigned to 24 months of alternative service in the national interest. However, they refused to perform alternative service and were subsequently convicted of that offense.

Some individuals had difficulty in performing alternative service jobs because of the economic hardships they imposed.

(Case #10761) Applicant was ordered to perform alternative service work at a Soldier's Home for less than the minimum wage. The Soldier's Home was fifty miles away from his residence, and he had no car. Applicant claimed that it was impossible to commute to the Soldier's Home without a car, and that even if he could, he would be unable to support his wife and child on that salary. Not knowing what legal recourses were available to him, he simply did not do the work, although he was willing to perform alternative service.

Others decided that they could not continue to cooperate with the Draft System because of their opposition to the war.

(Case #00560) Applicant refused to perform alternative service as a protest against the war in Vietnam.

However, most of our applicants assigned to alternative service who refused to perform such work were Jehovah's Witnesses or members of other pacifist religions. Their religious beliefs forbade them from cooperating with the orders of any institution (like Selective Service) which they considered to be part of the war effort. They were prepared to accept an alternative service assignment ordered by a judge upon conviction for refusing to perform alternative service.

(Case #02336) Applicant, a Jehovah's Witness, refused to perform alternative service ordered by the Selective Service System, on the grounds that even this attenuated participation in the war effort would violate his

religious beliefs. He did indicate that he would be willing to perform similar services under the court's order of probation. Rather than accept this distinction, the judge sentenced the applicant to prison for failure to perform alternative service.

The Induction Order

Those who were not granted CO exemptions were reclassified 1-A after their other classifications had expired. Their induction orders may have been postponed by appeals or short-term hardship, but eventually they -- like almost two million other young men during the Vietnam War -- were ordered to report for induction. Only 4% of our applicants failed to report for their pre-induction physical examination. It was not until the date of induction, after complying with regulations to the fullest extent, that 70% of our applicants violated the Selective Service lawy. In fact, of those applicants who received orders to report for induction, nearly half (32% of all applicants) actually appeared at the induction center. When the time came to take the symbolic step forward, these applicants refused to participate further in the induction process.

Once the induction order had been issued and all postponements had been exhausted, our applicants had a continuing duty to report for induction. It was often the practice of local boards to issue several induction orders before filing a complaint with the United States Attorney, giving our applicants every opportunity to comply.

(Case #00623) Applicant was ordered to report for induction, but he instead applied for CO status. His local board refused to reopen his classification, and he was again ordered to report for induction. He again failed to report, advising his draft board after-the-fact that he had been ill. He received a third order to report, but again did not appear. Thereafter, he was convicted.

Sometimes, our applicants claimed that they never received induction orders until after Selective Service had issued complaints. However, our applicants were legally responsible to make sure that mail from their draft boards reached them.

(Case #00032) While applicant was attending an out-of-state university, his mother received some letters from his draft board. Rather than forward them to him, she returned them to the board. Her husband had recently died, and she feared losing her son to the service. Subsequently, applicant was charged with a draft offense.

(Case #00853) Having been classified 1-A, applicant informed his draft board that he was moving out of town to hold a job, giving them his new address. After reaching his new address, he found that his job was not to his liking. He then returned home, and he told his draft board that he was back not long thereafter. However, in the interim an induction order had been sent to his new address, he had not appeared on his induction date, and a complaint had been issued.

Sometimes, personal problems hindered our applicants from appearing as ordered at an induction center.

(Case #00061) Applicant failed to report to his pre-induction physical because he was hospitalized as a result of stab wounds. He was again ordered to report, but he did not appear because he was in jail. He was ordered to report for a third time, but applicant claimed he failed to report because of his heroin addiction. Therefore, he was convicted for his draft offense.

Many of our applicants claimed that the realization that they were conscientiously opposed to war came only after they received an induction notice. This notice may have acted as the catalyst which led to a late

crystallization of an applicant's beliefs.

(Case #3099) Applicant stated that "the induction order forced me for the first time to make a decision as to my views with regard to war."

However, a registrant could not request a change in status because of "late crystallization" after his induction notice was mailed, unless he experienced a change in circumstances beyond his control. In 1971, the Supreme Court held in Ehlert v. U.S. ( ) that a post-induction-notice claim for consciencious objector status did not constitute a change in circumstances beyond the applicant's control.

The Draft Offense:

To be eligible for clemency, our applicants must have committed at least one of six offenses enumerated in the Executive Order. These offenses include the failure to register (or register on time), failure to report changes in status (primarily changes in address), failure to report for pre-induction physical examination, failure to report for induction, failure to submit to induction, and failure to perform alternative service employment. The Clemency Board could not consider applications of those who had only been convicted of other violations of the Selective Service Act, such as making false statements regarding a draft classification; aiding and abetting another to refuse or evade registration or requirements of the Selective Service Act; forging, destroying or mutilating Selective Service documents such as draft cards or other official certificates; or failing to carry a draft card or carrying a false draft card. However, the vast majority of the Selective Service offenses committed during 1964 - 74 fell within the eligibility requirements for the Clemency Program. __/

As described earlier, 3% failed to register, 10% failed to keep their local boards informed of their address, 13% failed to perform alternative service as conscientious objectors, 4% failed to report for pre-induction physical exams, 38% failed to report for induction, and 32% failed to submit to induction. At the time of our typical applicant's draft violation, he was between the ages of 20 and 22, and the year was 1970 - 1972. For over 95% of these applicants, their failure to comply with the Selective Service law was their first offense.

Numerous reasons were given by our applicants for their offenses. The most frequent of their reasons was their conscientious objection to war in either general or particular form. Fifty-seven percent expressed either religious, ethical or moral objection to all war, and an additional 14% expressed specific objection to the Vietnam War. When other related reasons were considered, (such as denial of CO status), 75% of our civilian applicants claimed that they committed their

offenses for reasons related to their opposition to war. Likewise, expressions of conscience were found by the Clemency Board to be valid mitigating circumstances in 73% of our cases.

(Case #05677) Applicant had participated in anti-war demonstrations before resisting induction. He stated that he could not fight a war which he could not support. However, he does believe in the need for national defense and would have served in the war if there had been an attack on United States territory. He stated that "I know that what is happening now is wrong, so I have to take a stand and hope that it helps end it a little sooner".

(Case #16975) Applicant applied for conscientious objector status on the ground that "inasmuch as he was a Black that he could not serve in the Armed Forces of a nation whose laws and customs did not afford him the same opportunities and protection afforded to white citizens". His application was denied, and he refused induction.

By contrast, less than one out of six of all our civilian applicants were found by the Board to have committed their offenses for obviously manipulative and selfish reasons.

Other major reasons for their offenses include medical problems (6%) and family or personal problems (10%). In evaluating these reasons, we found that these problems were mitigating in nearly all of the cases in which our applicants raised them.

(Case #04069) When applicant was ordered to report for induction, his wife was undergoing numerous kidney operations, with a terminal medical prognosis. She was dependent upon him for support and care, so he failed to report for induction.

Experiences as a Fugitive:

At one time or another, our applicants faced the difficult decision whether to submit to the legal process or become a fugitive. Nearly two-thirds of our applicants immediately surrendered themselves to the authorities. Of the remaining one-third who did not immediately surrender, the vast majority never left their hometown. Of the 18% of our applicants who left their hometowns to evade the

the draft, slightly less then half (8%) ever left the United States. Most of our at-large civilian applicants remained fugitives for less than one year. Many reconsidered their initial decision to flee. About one-third surrendered, and many of the rest were apprehended only because they lived openly at home and made no efforts to avoid arrest. Over two-thirds of our at large applicants were employed full-time; most others were employed part-time, and only one out of ten was unemployed. Only a small percentage assumed false identities or took steps to hide from authorities.

Most of our fugitive applicants who chose to go abroad went to Canada. Geographical proximity was one reason why some of our applicants chose Canada, and the similarity in culture, history, and language was another. However, the major reason for the emigration of American draft resisters to Canada was the openness of their immigration laws. Some of our applicants were either denied immigrant status or deported by Canadian officials. Otherwise, they might have remained there as fugitives.

(Case #04332) After receiving his order to report for induction, applicant went to Canada. He was denied immigrant status, so he returned to the United States and applied for a hardship deferment. After a hearing, his deferment was denied. He was once again ordered to report for induction, but he instead fled to the British West Indies. He returned to Florida to make preparations to remain in the West Indies permanently, but he was apprehended.

Most of our applicants who went to Canada (6%) stayed there briefly, but some remained for years. A few severed all ties, with the apparent intention of starting a new life there.

(Case #01285) In response to Selective Service inquiries, applicant's parents notified their local board that their son was in Canada. However, they did not know his address. Applicant lived and worked in Canada for almost four years.

The only applicants for our program who remained permanently in Canada were those who fled after their conviction to escape punishment.

(Case #16975) Applicant was convicted for refusing induction, but remained free pending appeal. When his appeal failed, he fled to Canada. He remained in Canada until he applied for clemency.

Experience with the Judicial Process

Pre-trial actions. Our applicant began to face court action when his local draft board determined that sufficient evidence of a Selective Service violation existed to warrant the forwarding of his file to the United States attorney. After a complaint was filed and an indictment returned against our applicants, both the courts and the Justice Department determined whether further prosecution was warranted.

The courts dismissed many draft cases. Analysis of the number of cases and the dismissal rate during the years 1968 - 1974, reveals a continuous increase in both the number of cases and the dismissal rate (except for 1974). Through 1968, only about 25% of all cases resulted in dismissal. From 1969 through 1972, about 55% were dismissed -- and in 1973, over two-thirds were dismissed. __/

One important element influencing the dismissal rate in particular jurisdictions was the practice of forum shopping. Many defendants searched for judges with a reputation for leniency or a tendency to dismiss draft cases. As an example, the Northern District of California was known for its willingness to dismiss draft indictments on minor technicalities. Since 1970, nearly 70% of the cases tried in that court resulted in dismissal or acquittal. __/ At that time, many young men transferred their draft orders to the Oakland induction center before refusing induction, thus enabling them to try their cases in the Northern district. In 1970, its dismissal rate averaged 48.9 draft cases per 10,000 population compared to the national average of 14.1; the Central District of California closely followed with 43.1. Some of our applicants apparently "forum shopped" in California and other Western states; five percent received their convictions in the Ninth Circuits, even though their homes were elsewhere.

Jurisdictional inequities in the dismissal rate for draft offenses within the same state were common during the war era. For example, in contrast to the dismissal rate in the Northern District of California (70%), the Eastern District of California dismissed only 40% of its draft cases. Similarly, in the Eastern District of Virginia 63% of the draft cases were dismissed, versus only 35% in the Western District.

Convictions and Acquittals

After our applicants were indicted and their motions for dismissal refused, 26% pled not guilty, and they next entered the trial stage. The rest pled either guilty (68%) or nolo contendere (6%). Many of those who pled guilty had done so as part of a "plea bargain", whereby other charges against them were dismissed.

Of the 21,400 draft law violators who stood trial during the Vietnam era, 12,700 were acquitted. Assuming that all those acquitted pled not guilty, and assuming (by extrapolation) that 2300 (26%) of convicted draft offenders pled not guilty, it appears that an individual stood an 85% chance of acquittal if he pled not guilty. However, none of our applicants were among the 12,700 fortunate persons who were acquitted of draft charges.

Changing Supreme Court standards occurring after the offense but before trial often led to these acquittals. Of special importance was the 1970 Welsh case which broadened the conscientious objector exemption criteria to include ethical and moral objection to war.

Some of our applicants may have been convicted because of the apparent poor quality of their legal counsel.

(Case #03618) Applicant joined the National Guard and was released from the extended active duty eight months later. While in the National Guard reserves thereafter, he was referred to Selective Service for induction for failure to perform his reserve duties satisfactorily. He obeyed an order to report for induction, but claimed that he negotiated an agreement to settle his National Guard misunderstandings at the induction center. He pled not guilty of refusing to submit to induction, and he was convicted.

Apparently, his trial attorney failed to call several important defense witnesses who had been present at the induction center. Applicant's present attorney believes that his trial attorney represented him inadequately. After conviction but before execution of his sentence, applicant completed his National Guard service and received a discharge under honorable conditions.

Frequently, applicants were given the opportunity to enlist or submit to induction during their trials, as a means of escaping conviction. Sometimes, applicants claimed that they were caught in a "Catch 22" situation in which they could neither be inducted nor escape conviction for failing to be inducted.

(Case #04322) Ordered to report for induction, applicant refused to appear at the induction center. While charges were pending against him, he was informed that he could seek an in-service CO classification after entering the military. With this knowledge, he agreed to submit to induction, and the court gave him a 30-day continuance. He did seek induction, but ironically, he could not be inducted because he failed to pass his physical due to a hernia condition. When his continuance expired, he was convicted of failure to report for induction.

However, others were convicted despite every possible attempt by authorities to deal fairly and leniently with them.

(Case #00739) An order to report for induction was mailed to applicant's parents, but he failed to report. Over one year later, applicant's attorney contacted the United States Attorney and indicated that applicant had severe psychiatric and other medical problems which would make him fail his pre-induction physical. In response, the United States Attorney offered applicant an opportunity to apply for enlistment and be disqualified. However, applicant could not be found, and a grand jury subsequently issued an indictment.

Our typical applicant was convicted at the age of 23, nearly two years after his initial offense. Less than one out of ten of our applicants appealed the conviction.

An analysis of conviction rates for draft offenses shows clear jurisdictional discrepancies. For instance, the Southern states had the highest propensity for conviction, with the Eastern states and California having the lowest. In 1972, there were 27 draft cases tried in Connecticut, with only one resulting in conviction.

In the Northern District of Alabama during the same period, 16 draft cases resulted in 12 convictions. These different convictions rates apparently occurred because of wide differences in attitude toward the draft violators. Regardless of the explanation, it is clear that these differences in treatment encouraged wide scale forum shopping by our applicants.

The conviction rate itself varied considerably during the war era. In 1968, the conviction rate for violators of the Selective Service Act was 66%; by 1974, the conviction rate was cut in half to 33%. Apparently, as time went by, prosecutors, judges and juries had less inclination to convict draft-law violators.

The Sentence

Only about one-third of our civilian applicants ever went to prison. The remainder were sentenced to probation and, usually, alternative service. A majority of our applicants -- 56% -- performed alternative service. Typically, they performed 24 or 36 months of alternative service, but some completed as much as 60 months. The jobs they performed were similar to those filled by conscientious objectors. However, they had to fulfill other conditions of probation.

(Case #3384) As a condition of probation, applicant worked full-time for good-will industries and a non-profit organization which provided jobs for disabled veterans. He received only a token salary.

(Case #1929) Applicant worked for three years for a local emergency housing committee as a condition of probation. Although he worked full-time, he did so as a volunteer.

A few (6%) failed to comply with the terms of their probation, often by refusing to do alternative service work. Some fled and remained fugitives until they applied for clemency.

(Case #14271) Convicted for a draft offense, applicant was sentenced to three years probation, with the condition that he perform civilian work in the national interest. About one year later, his sentence was revoked for a parole violation (absconding from supervision). He was again sentenced to three years probation, doing alternative service work. He did not seek such work and left town. A bench warrant was issued for his arrest. Applicant, still a fugitive, now resides in Canada.

Some were required, as a condition of probation, to enlist in military service. They suffered a felony conviction, served full enlistments in the military, and sometimes remained on probation after discharge. Curiously, one percent of our civilian applicants became Vietnam veterans.

(Case #04085) Applicant refused induction because of his moral beliefs. He was sentenced to three years imprisonment, suspended on the condition that he enlist in the military. Applicant

did enlist, serving a full tour of duty. He served as a noncombatant in Vietnam, earning a Bronze Star. Awarded an Honorable Discharge, he still had one year of probation to complete before his sentence was served.

Of our applicants sentenced to imprisonment, most served less than one year. Only 13% of our applicants spent more than one year in prison, and less than 1% were incarcerated for more than two years.

The sentencing provisions of the Military Selective Service Act of 1967 provided for jail terms ranging from zero to 5 years, giving judges almost unlimited sentencing discretion. The sentencing dispositions of the courts were inconsistent and widely varying, dependent to a great extent upon year of conviction, geography, race, and religion. In 1968, 74% of all convicted draft offenders were sentenced to prison, their average sentence was 37 months, and 13% received the maximum 5-year sentence. By 1974, only 22% were sentenced to prison, their average sentence was just 15 months, and no one received the maximum. Geographic variations were almost as striking: In 1968, almost one-third of those convicted in the southern-states 5th Circuit received the maximum 5-year prison sentence, contrasting with only 5% receiving the maximum in the eastern-states 2nd Circuit. During the early years of draft offense trials in 1968, of 33 convicted Selective Service violators in Oregon, 18 were put on probation, and only one was given a sentence over 3 years. In Southern Texas, of 16 violators, none were put on probation, 15 out of 16 received at least 3 years of 14 received the maximum 5-year sentence. 21/

Other sentencing variations occurred on the basis of race. In 1972, the average sentence for all incarcerated Selective Service violators was

34 months, while for blacks and other minorities the average sentence was 45 months. This disparity decreased to a difference of slightly more than two months in 1974. While we did not perceive such a disparity as a general rule, some cases appeared to involve racial questions.

(Case #01457) Applicant belongs to the Black Muslim faith, whose religious principles prohibited him from submitting to induction. He has been actively involved in civil rights and other social movements in his region of the country. He was convicted for his draft offense and sentenced to 5 years imprisonment. Applicant stated that his case was tried with extreme prejudice. He spent 25 months in prison before being paroled.

Some religious inequities may also have occurred. For the years 1966 through 1969, incarcerated Jehovah's Witness received sentences averaging about 1 month longer than the average Selective Service violator . During this same period, religious objectors other than Jehovah's Witnesses received average sentences about 6 months shorter than the average violator.

Although a variety of sentencing procedures were available, the majority of convicted Selective Service violators were sentenced under normal adult procedures. If the offender were sentenced to jail, two types of sentence were available: (1) a sentence of definite time during which he might be paroled after serving 1/3 of his term; or (2) an indeterminate sentence during which parole eligibility might be determined by a judge on the Board of Parole at a date before but not after 1/3 of the sentence had expired. Under the Youth Correction Act, the convicted defendant might be unconditionally discharged before the end of the period of probation or commitment. This discharge automatically operated to set aside the conviction. Because commitments and probations under the Youth Corrections Act were indeterminate, the period of supervision might have lasted as long as six years. Bureau of

prison statistics indicate, however, that the Youth Corrections Act was used as a sentencing procedure only in 10% of all violation cases. When it was applied, the six year maximum period of supervision was imposed in almost all cases.

Prison Experiences

One-third of our applicants received prison sentences and served time in Federal prison. Most served their time well, often as model prisoners.

(Case #10961) Applicant served eighteen months in Federal prison. His prison report indicated that he did good work as a cook and had "a very good attitude." The report noted no adjustment difficulties, no healthy problems, and no complaints.

However, some of our applicants experienced greater difficulty in adapting to prison life.

(Case #08067) Applicant, a Hare Krishna, was sentenced to a two-year prison term for a draft offense. Because of his religious convictions and dietary limitations, life in prison became intolerable for him. He escaped from Federal prison, surrendering three years later.

Although very rare, isolated instances of harsh treatment were claimed to have occurred.

(Case #1210) Applicant was arrested in Arizona and extradited to the Canal Zone for trial (the location of his local board). Prior to trial, he was confined for four months in an unairconditioned four by six foot cell in a hot jungle. Some evidence exists that the applicant was denied the full opportunity to post reasonable bail. At his trial the applicant was convicted and sentenced to an additional two months confinement. By the time of his release, the applicant's mental and physical health substantially deteriorated and he was confined in a mental hospital for several months. The applicant is still a subject of great concern.

Some could not escape the effects of their prison experience even after their release.

(Case #0059) Applicant became addicted to herion while serving the prison sentence for his draft conviction. Unable to legitimately support his habit after he was released, he turned to criminal activities. He was later convicted of robbery, and returned to prison.

The parole grant rates for Selective Service violators, like all other prisoners, was determined categorically: it depended primarily on the nature

of their offense and not on individualized aspects of their personal history or their imprisonment. It was the policy of many parole boards that draft violators serve a minimum of two years for parity with military duty, but most Selective Service violators were released after their initial people application. Jehovah's Witnesses received first releases in nearly all instances. The majority of those serving prison sentences over one year were released on parole, whereas the great majority of those with prison sentences less than one year served until their normal expiration date. Most Selective Service violators were granted parole after serving approximately half their prison sentences. This is higher than the national average for all crimes, including rape and kidnapping. However, in each year from 1965 to 1974, Selective Service violators were granted parole more often than other federal criminals.

Consequences of The Felony Conviction

A felony conviction had many grave reminfications for our applicants. The overwhelming majority of states construe a draft offense as a felony, denying our applicants the right to vote -- or, occasionally, just suspending it during confinement. Some of the consequences of felony conviction are less well known. In some states, for example, a felon lacks the capacity to sue, although he or his representative may be sued; he may be unable to execute judically enforceable instruments or to serve as a court appointed judiciary; he may be prohibited from participation in the judicial process as a witness or a juror. A lesser known consequences of a felony conviction might be that he may even lose certain domestic rights, such as his right to exercise parental responsibility. For example, six states permit the adoption of an ex- convict's children without his consent.

The principal disability arising from a felony conviction is usually its effect upon employment opportunities. This effect is widespread among wide-spread among employers. Often, this job discrimination is discrimination is reinforced by statue. States license close to 4,000 occupations, with close to half requiring "good moral character" as a condition

to receiving the license; therefore, convicted felons are often barred from such occupations as accountant, architect, dry cleaner, and barber.—/

Case #1256) Applicant, a third year law student, was told he could not be admitted to the bar because of his draft conviction.

Even more severe restrictions exist in the public employment section.

Case #2448 Applicant graduated from college, but was unable to find work comparable to his education because of his draft conviction. He qualified for a job with the Post Office but was than informed that his draft conviction rendered him ineligible.

Case #1277 Applicant qualified for a teaching position, but the local board of education refused to hire him on the basis of his draft conviction. The Board later reversed its position at the urging of applicant's attorney and the local federal judge.

Despite this, our civilian applicants generally fared reasonable well in the job market. Over three out of four applicants were employed either full time (70%) or part time (7%) when they applied for clemency. Only 2% of our civilian applicants were unemployed at the time of their application. The remainder of our applicants had returned to school (14%), were presently incarcerated (2%), or were furloughed by prison officials pending disposition of their cases by our Board (5%). Almost half (45%) had married, and many (20%) had children on other dependents.

Our Civilian Applicants

During the Vietnam Era, there were approximately 28,600,000 men of draft-eligible age. About forty percent -- 11,500,000 -- served in the Armed Forces either before or during the Vietnam War.

The rest, 17,100,000 men, never served in the military. Of those, 12,250,000 either never registered for the draft, built deferment, on deferment, had high lottery numbers, or were otherwise passed over by induction calls. Another 4,650,000 were given other kinds of permanent draft exemption, usually because of mental or physical deficiencies; 145,000 of these exemptions were for conscientious objection to war. 1/

The Selective Service System issued 209,000 complaints regarding individual draft offenses, usually for failure to report for induction or a pre-induction physical exam. Almost 90% (173,700) of the complaints never resulted in indictments. Some registrants agreed to enter military service as soon as their complaint was issued; others never had charges brought against them despite their continued refusal to join the service. Apparently, no records exist to show how many were in each of the two categories. 2/

Only 25,300 Selective Service complaints resulted in grand jury indictments. Of those indicted, 4,522 remained fugitives until the start of the clemency program. The remaining 20,800 stood trial.

Most (12,100) were acquitted; 8,700 were convicted. Only 4,900 ever went to jail. [3] Thus, about 13,000 civilians either were convicted of draft offenses or were still facing draft charges when the President announced his clemency program. [4] For every one of them, 12,000 others escaped military service by other means.

In the discussion which follows, we trace the general experiences of our civilian applicants. With few exceptions, our statistics are based upon our sample of 472 civilian applicants to our program. Illustrating the discussion are excerpts of our own case summaries. It should be kept in mind that much of the information in these summaries are based upon the applicants' own allegations, sometimes without corroboration. In sequence, we look at the following;

1. Background
2. Experience with Selective Service
   - A. Registration
   - B. Classification
   - C. Alternative Service for COs
   - D. The induction order
3. The draft offense
4. Experiences as a fugitive
5. Experience with the Judicial System
   - A. Dismissals
   - B. Convictions and Acquittals
   - C. Sentence
6. Prison Experience
7. Impact of felony conviction

Background 6/

Our civilian applicants were predominantly white (87%), and came from average American families. Only 29% came from economically disadvantaged families. Over two-thirds (69%) were raised by both natural parents, most had one to three brothers and sisters, and evidence of severe family instability was rare. The proportion of Blacks (11%) and Spanish-speaking persons (1.3%) was about the same as found in the general population.

They grew up in cities (59%) and suburbs (19%), with disproportionately many in the West and few in the South. Born largely between 1948 and 1950, they were part of the "baby boom" which was later to face the draft during the Vietnam War. Over three-quarters (79%) had high-school degrees, yet only 18% ever finished college. Only a very small percentage (4%) ever had felony convictions other than for draft offenses. In most ways, they were not unlike young men in cities and towns across the United States.*

Two things set them apart. First, over 80% opposed the war in Vietnam strongly enough to face punishment rather than fight there. Many were Jehovah's Witnesses (20%) or members of other religious sects opposed to war (67%). Second, they -- unlike many of their friends and classmates -- were unable or unwilling to evade the

* Unless otherwise noted, all statistics about our applicants came from our own survey of approximately 500 civilian applicants.

draft by exemptions and deferments or escape prosecution through dismissal and acquittal. They were unique in that they chose to stay within the system and pay a penalty for their conscientions opposition to the war.

Registration

Our applicants, like millions of young men, came into contact with the Selective Service System when they reached the age of 18 -- usually between 1966 and 1968. Often, it was their first direct contact with a government agency. A few (3%) of our applicants committed draft offenses by failing to register with the draft -- or failing to register on time. Ignorance or forgetfulness was no defense, but draft boards rarely issued complaints for failure to register unless an individual established a pattern of evasion.

(Case #00085) Applicant was convicted of failing to register for the draft. As a defense, he stated that he was an Italian immigrant who did not understand the English language. However, there were numerous false statements on his naturalization papers, and he was able to comply with state licensing laws as he developed several business enterprises in this country.

After registration, our applicants were required to keep their local board informed of their current address. Failure to do so was a draft offense, for which 10% of our applicants were convicted. These tended to be itinerant individuals with little education, who by background were unlikely to understand or pay due respect to their Selective Service responsibilities.

(Case # 00964) Applicant's father, a chronic alcoholic, abused applicant and his mother when intoxicated. Applicant left his home to seek work, without success. Because of his unsteady employment, he was compelled to live with friends and was constantly changing addresses. His parents were unable to contact him regarding pertinent Selective Service materials. After his conviction for failing to keep his draft board informed of his address, applicant apologized for his "mental and emotional confusion," acknowledging that his failure to communicate with the local board was an "error of judgement on my part."

The local board was under no obligation to find an individual's current address, and it was his responsibility to make sure that Selective Service mail reached him.

(Case # 03151) Applicant registered for the draft and subsequently moved to a new address. He reported his change of address to the local post office, but he did not notify his local board. He mistakenly thought this action fulfilled his obligation to keep his local board informed of his current address.

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Classification

Immediately after our applicants registered with the local board, they were given Selective Service classifications. There were a number of different kinds of deferments and exemptions for which our applicants applied to their local boards. Many of the 44% of our applicants who attended college received student deferments. Some applied for hardship deferments, occupational deferments, physical or mental exemptions, or ministerial exemptions (particularly the 21% of our applicants who were Jehovah's Witnesses). The greatest number applied for conscientious objector exemptions. Some applied for numerous deferments and exemptions, with draft boards showing great patience in approving legitimate claims and offering full procedural rights even for claims that were obviously dilatory.

(Case #04550) Applicant had a student deferment from 1965 to 1969. He lost his deferment in 1969, apparently because of his slow progress in school (he did not graduate until 1973). his two appeals to keep his student deferment were denied. After passing his draft physical and having a third appeal denied, he applied for a conscientious objector exemption. This was denied, and his appeal was denied after a personal appearance before his state's draft board director. After losing another appeal to his local board, he was ordered to report for induction. One day after his reporting date, he applied for a hardship postponement because of his wife's pregnancy. He was granted a nine-month postponement. He then requested to perform civilian work in lieu of military service, but to no avail. After his wife gave birth, he fled to Canada with her and the child. He returned to the United States a year later, and was arrested.

Many of our applicants hired attorneys to help them submit classification requests and appeals. Others relied on the advice of local draft clerks, who gave the best advice they could.

(Case #02290) Applicant made no attempt to seek a personal appearance before the local board or appeal their decision, on the basis of advice given by the clerk that the board routinely denied such claims made by persons like himself.

Some applicants tried to interpret Selective Service forms without help from either legal counsel or draft board clerks, at times preventing them from filing legitimate claims.

(Case #00537) Applicant initially failed to fill out a form to request conscientious objector status because the religious orientation of the form led him to believe he would not qualify. After Welsh, he believed he might qualify under the expanded "moral and ethical" criteria, so he requested another form. When his local board sent him a form identical to the first one, he again failed to complete it, believing that he could not adequately express his beliefs on a form designed for members of organized religious.

Others relied only on their personal knowledge of Selective Service rules, without even making inquiry.

(Case #03548) Applicant failed to apply for conscientious objector status because he mistakenly believed that the Supreme Court had ruled that a prerequisite for this classification was an orthodox religious belief in a supreme being.

Some of our applicants' requests for deferments or exemptions were granted; others were denied. In case of denial, an individual could appeal his local board's decision to the state appeals board. A few of our applicants claimed that local board procedures made appeals difficult.

(Case #00596) Applicant claimed that he was given no reasons for the denial of his claim for conscientious objector status. Consequently, he said that he was unaware of how or where to appeal his case to a higher level.

Others lost their appeal rights because of their failure to file appeal papers within the time limits established by law.

(Case #02317) Applicant, a Jehovah's Witness, was unaware of the time limitations on filing notices of appeal. He continued to gather evidence for his appeal, but it was ultimately denied on the procedural grounds of his failure to make timely application for appeal.

If our applicant failed to appeal his local board's denial of his request for reclassification, he might have been unable to raise a successful defense at trial.

(Case #04296) Applicant failed to appeal his local board's denial of his conscientious objector claim, which he claimed was done without giving any reasons for the denial. Although his trial judge indicated that the local board's action was improper, he nevertheless approved a conviction because applicant had failed to exhaust his administrative remedies by appealing his local board's decision.

Even if our applicant had been unsuccessful in his initial request for reclassification -- whether or not he appealed his local board's decision -- he could request a rehearing at any time prior to receiving his induction notice. If a registrant could submit a prima facie case for reclassification, his local board had to reopen his case. When this happened, he regained his full appeal rights.

(Case #02317) Applicant's local board decided to give him another hearing after he accumulated additional evidence to support his claim for reclassification. Despite this rehearing, his local board found the evidence insufficient to merit a reopening of his case. Without a formal reopening, applicant could not appeal his board's findings upon rehearing.

Our applicants applied these procedural rights in their requests for all types of deferments and exemptions. Some of their claims appeared to be contorted efforts to avoid induction.

(Case #01121) Applicant claimed that his wife, who had been under psychiatric care, began to suffer hallucinations when he received his induction notice. He requested a hardship deferment, with two psychiatrists claiming that he should not be separated from his "borderline psychotic" wife. This request was denied. Applicant later tried to get a physical exemption by having braces fitted on his teeth. However, he instead was convicted of conspiring to avoid induction. (His dentist also faced charges, but fled to Mexico to escape trial. He applied to our Board for clemency, but we did not have jurisdiction over his case.)

(Case #01068) Applicant instructed his draft board that he had a weak back and weak knees. The physician who examined him refused to verify this. Applicant then forged the physician's name and returned the document to his draft board.

Other claims appeared to have more merit, but were nonetheless denied by local boards.

(Case #10792) Applicant's father was deceased, and his mother was disabled and suffered from sickle cell anemia. His request for a hardship deferment was denied. Also, applicant claimed that he suffered from a back injury. This allegation was supported by civilian doctors, but denied by military doctors.

(Case #11758) Applicant's parents were divorced when he was 16, with his father committed to a mental institution. Applicant dropped out of school to support his mother. A psychiatrist found applicant to suffer from claustrophobia, which would led to severe depression or paranoid psychosis if he entered the military. However, he did not receive a psychiatric exemption.

The classification of greatest concern to most of our civilian applicants was the conscientious objector exemption. We have evidence that almost half (44%) took some initiative to obtain a "CO" exemption, and the true proportion may have been even higher. Twelve percent of our applicants were granted CO status, 17% applied but were denied, and the remaining 15% never actually completed a CO application.

Of the roughly half of our applicants who took no initiative to obtain CO status, many never thought of themselves as conscientious objectors. One-quarter of our applicants committed their draft offense for reasons unrelated to their opposition to war. Others did not consider filing for a CO exemption because they were unaware of the availability of the exemption, knew that current (pre-Welsh) CO criteria excluded them, or simply refused to cooperate with the draft system.

(Case #10768) Applicant, a Jehovah's Witness, had his claim for a ministerial exemption denied. Since he made no claim for conscientious objector status, he was classified 1-A and ordered to report for induction. (He complied with his draft order, but he later went AWOL and received an Undesirable Discharge.)

(Case #01213) Applicant did not submit a CO application because it was his understanding that current (pre-Welsh) CO rules required that he be associated with a widely recognized pacifist religion. His refusal to participate in war stemmed from his personal beliefs and general religious feelings.

(Case #03506) Applicant, a Jehovah's Witness, refused to file for CO status because he felt that by so doing he would be compromising his religious principles, since he would be required by his draft board to perform alternative service work.

Usually, those who took some initiative but failed to follow through with their CO application were pessimistic about their chances for success. Some did not pursue a CO exemption because of their inability to qualify under pre-Welsh rules. Occasionally, applicants claimed that their draft boards discouraged them from applying.

(Case #00803) Applicant filed a CO claim in 1969, after he received his order to report for induction. His draft board postponed his induction date and offered him a hearing. However, applicant did not come to his hearing and advised his draft board that he no longer desired CO status. He stated at trial that he decided not to apply for a CO exemption because the law excluded political, sociological, or philosophical views from the "religious training and beliefs" necessary for CO status at the time.

(Case #00803) In reply to applicant's request for a CO application form, his local board included a note stating that a CO classification was given only to members of pacifist-oriented religions. Accordingly, he did not bother to return the form.

Some of our applicants failed to submit their CO applications on time, because of inadvertence or lack of knowledge about filing requirements.

(Case #12828) Applicant wished to apply for CO status, but his form was submitted late and was not accepted by his local board. His lawyer had lost his application form in the process of redecorating his office.

(Case #00014) Applicant applied for CO status after his student deferment had expired. He did hospital work to support his beliefs, but he failed to comply with time requirements for status changes under the Selective Service Act. Consequently, his local board refused to consider his CO application.

In the midst of the Vietnam War, the substantive law regarding conscientious objectors changed dramatically, profoundly affecting the ability of a great number of our applicants to submit C.O. claims with any reasonable chance of success. In June 1970 the Supreme Court clarified conscientious objection in Welsh v. United States, supra, stating that this exemption should be extended to cover those whose conscientious objection stemmed from a secular belief. Section 6(j) was held to exempt from military service those persons who consciences, spurred by deeply held moral, ethical or religious beliefs, would give them no rest or peace if they allowed themselves to become a part of an instrument or war. In the later case of Clay v. U.S. ( ), the court stated the three requirements for CO classification as: (1) It must be opposition to war in any form; (2) the basis of opposition to war must be moral, ethical, or religious; and (3) the beliefs must be sincere.

Why, then, did so few of our applicants apply for CO status? Twenty-three percent of our applicants committed their offense primarily because of ethical or moral opposition to all war -- and 33% committed their offense at least partly

because of such ethical or moral feelings. However, only 11% took any initiative to obtain a CO exemption, and 8% filed for CO status. Only 0.2% were successful.

Ninety percent of our applicants registered prior to Welsh, so their first information about the CO exemption was that it applied primarily, if not exclusively, to members of pacifist religions. Many of our applicants passed through the Selective Service System before the middle of 1970, when Welsh was announced. Fifty-three percent of our applicants who applied for a CO exemption did so before Welsh, and 35% committed their draft offense before the decision. However, only 13% were actually convicted of their offense before Welsh. Many of these individuals could have raised Welsh defenses at trial, but twice that proportion (26%) pled guilty to their charges.

Two explanations are the most persuasive in explaining why more of our applicants did not apply for (or qualify for) a CO exemption. A great many apparently did not understand what Selective Service rules were or what defenses could be raised at trial. Many others objected not to war in general, but to the Vietnam War alone. These "specific war" objectors could not qualify for a CO exemption even under the post-Welsh guidelines.

(Case #02320) Applicant failed to submit a CO application after allegedly being told by his local board that only members of certain religious sects were eligible. This occurred after the Welsh decision.

(Case #02338) Applicant's claim for conscientious objector status was denied by his local board because he objected only to the Vietnam War, rather than all wars.

Another possible explanation may be the complexity of the CO application form. The CO form asked about the philosophical nature of the applicant's beliefs, their relationship to his religion, and their relationship to the manner in which he conducted his life. Our better-educated applicants were more likely than our less-educated applicants to have submitted CO applications;

28% of those with college degrees applied for CO status, versus 19% of those with less education. (However, it should be noted that our less-educated applicants were successful in 53% of their CO claims, while those with college degrees were successful in only 14% of their CO claims. This may be attributable to the fact that those with less education more often based their claims on religious, rather than moral or ethical, grounds.)

Finally, some of our applicants claimed that they were denied CO status because their local boards applied pre-Welsh rules to their post-Welsh CO claims. Of our civilian applicants who raised post-Welsh "moral and ethical" CO claims, only 10% were successful. By contrast, CO applicants who claimed to be members of pacifist religions enjoyed a 56% success rate before and after Welsh.

(Case #01373) Applicant's request for conscientious objector status was denied, partially on the basis that he had no particular religious training or experience to establish opposition to war. This determination was made after Welsh ruled that such formal religious training was not a prerequisite to conscientious objector status.

Alternative Service for Conscientious Objectors

Approximately one-eighth of our civilian applicants did receive CO exemptions. Rather than face induction into the military, they were assigned to 24 months of alternative service in the national interest. However, they refused to perform alternative service and were subsequently convicted of that offense.

Some individuals had difficulty in performing alternative service jobs because of the economic hardships they imposed.

(Case #10761) Applicant was ordered to perform alternative service work at a Soldier's Home for less than the minimum wage. The Soldier's Home was fifty miles away from his residence, and he had no car. Applicant claimed that it was impossible to commute to the Soldier's Home without a car, and that even if he could, he would be unable to support his wife and child on that salary. Not knowing what legal recourses were available to him, he simply did not do the work, although he was willing to perform alternative service.

Others decided that they could not, on good conscience, continue to cooperate with the Selective Service System because of their opposition to the war.

(Case #00560) Applicant refused to perform alternative service as a protest against the war in Vietnam.

However, most of our applicants assigned to alternative service who refused to perform such work were Jehovah's Witnesses or members of other pacifist religions. Their religious beliefs forbade them from cooperating with the orders of any institution (like Selective Service) which was part of the war effort. They were prepared to accept an alternative service assignment ordered by a judge upon

conviction for refusing to perform alternative service.

(Case #02336) Applicant, a Jehovah's Witness, refused to perform alternative service ordered by the Selective Service System, on the grounds that even this attenuated participation in the war effort would violate his religious beliefs. He did indicate that he would be willing to perform similar services under the court's order of probation. Rather than accept this distinction, the judge sentenced the applicant to prison for failure to perform alternative service.

The Induction Order

Those who were not granted CO exemptions were reclassified 1-A after their other classifications had expired. Their induction orders may have been postponed by appeals or short-term hardship, but eventually they -- like almost two million other young men during the Vietnam War -- were ordered to report for induction. Only 4% of our applicants failed to report for their pre-induction physical examination. It was not until the date of induction, after complying with regulations to the fullest extent, that 70% of our applicants violated the Selective Service law. In fact, of those applicants who received orders to report for induction, nearly half (32% of all applicants) actually appeared at the induction center. When the time came to take the symbolic step forward, these applicants found that their conscience would not allow them to participate further in the induction process.

Once the induction order had been issued and all postponements had been exhausted, our applicants had a continuing duty to report

for induction. It was often the practice of local boards to issue several induction orders before filing a complaint with the United States Attotney.

(Case #00623) Applicant was ordered to report for induction, but he instead applied for CO status. His local board refused to reopen his classification, and he was again ordered to report for induction. He again failed to report, advising his draft board after-the-fact that he had been ill. He received a third order to report, but again did not appear. Thereafter, he was convicted.

Sometimes, our applicants claimed that they never received induction orders until after Selective Service had issued complaints.

(Case #00032) While applicant was attending an out-of-state university, his mother received some letters from his draft board. Rather than forware them to him, se returned them to the board. Her husband had recently died, and she feared losing her son to the service. Subsequently, applicant was charged with a draft offense.

(Case #00853) Having been classified 1-A, applicant informed his draft board that he was moving out of town to hold a job, giving them his new address. After reaching his new address, he found that his job was not to his liking. He then returned home, and he told his draft board that he was back not long thereafter. However, in the interim an induction order had been sent to his new address, he had not appeared on his induction date, and a complaint had been issued.

Sometimes, personal problems hindered one of our applicants from appearing as ordered at his induction center.

(Case #00061) Applicant failed to report to his pre-induction physical because he was hospitalized as a result of stab wounds. He was again ordered to report, but he did not appear because he was in jail. He was ordered to report for a third time, but applicant claimed he failed to report because of his heroin addiction. Thereafter, he was convicted for his draft offense.

For many of our applicants, the realization that they were conscientiously opposed to war came only after they received an induction notice. This notice often acted as the catalyst which led to an introspective examination of the applicant's convictions, and a crystallizationof his beliefs.

(Case #3099) Applicant stated that "the induction order forced me for the first time to make a decision as to my views with regard to war."

However, a registrant coult not request a change in status because of "late crystallization" after his induction notice was mailed, unless he experienced a change in circumstances beyond his control. In 1971, the Supreme Court held in Ehlert v. U.S ( ) that a post-induction-notice claim for conscienceious objector status did not constitute a change in circumstances beyond the applicant's control. Those applicants were left to press their claims in the military after induction.

Chapter IV - B: Our Civilian Applicants

Our civilian applicants were predominantly white (87%), and came from average American families. Twenty-nine per cent came from economically disadvantaged backgrounds. Over two-thirds (69%) were raised by both natural parents, most had one to three brothers and sisters, and evidence of severe family instability was rare. The proportion of blacks (11%) and Spanish-speaking person (1.3%) was about the same as found in the general population.

They grew up in cities (59%) and suburbs (19%) with disproportionately many in the West and few in the South. Born largely between 1948 and 1950, they were part of the "baby boom" which was later to face the draft during the Vietnam War. Over three-quarters (79%) had high school degrees, and 18% finished college. A very small percentage (4%) had felony convictions other than for draft offenses. In most ways, they were not unlike most young men in cities and towns across the United States.*

Two things set them apart. First, 75% opposed the war in Vietnam strongly enough to face punishment rather than fight there. Many were Jehovah's Witnesses (2%) or members of other religious sects opposed to war (6%). Second, they - unlike many of their friends and classmates - were unable or unwilling to evade the draft by exemptions and deferments or escape prosecution through dismissal and acquittal. They stayed within the system and paid a penalty for their refusal to enter the military.

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In the discussion which follows, we trace the general experiences of our civilian applicants. We look first at their experience with the draft system. After examining the circumstances of their draft offenses, we focus on their experience in the courts and prisons. Finally, we describe the impact of their felony convictions.

Illustrating the discussion are excerpts from our case summaries. The cases described cover a broad range of fact circumstances; many of the applicants received outright pardons, some were assigned alternative service, and a few were denied clemency.* Much of the information in these summaries is based upon the applicants' own allegations, sometimes without corroboration. In the spirit of the clemency program, we usually accepted our applicants' claims at face value for the purposes of making dispositions in their cases, although normally there was at best circumstantial corroboration of such claims. Our perspective was more limited than that of the local draft boards and the courts. Therefore, we urge the reader not to draw sweeping conclusions from the facts in any individual case.

With few exceptions, our statistics are based upon our sample of 472 civilian applicants - roughly one-fourth of our total number of civilian applications.**

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* See Chapters II-F and III for a discussion of how our Board applied fact circumstances to determine individual case dispositions.

**See Appendix for a description of our sampling techniques and a more detailed presentation of our findings.

Registration

Our applicants, like millions of young men, came into contact with the Selective Service System when they reached the age of 18 -- usually between 1966 and 1968. Often, it was their first direct contact with a government agency. A few (3%) of our applicants committed draft offenses by failing to register with the draft -- or failing to register on time. Ignorance or forgetfulness was no defense, but draft boards rarely issued complaints for failure to register unless an individual established a pattern of evasion.

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crystallization of an applicant's beliefs.

(Case #3099) Applicant stated that "the induction order forced me for the first time to make a decision as to my views with regard to war."

However, a registrant could not request a change in status because of "late crystallization" after his induction notice was mailed, unless he experienced a change in circumstances beyond his control. In 1971, the Supreme Court held in Ehlert v. U.S. ( ) that a post-induction-notice claim for consciencious objector status did not constitute a change in circumstances beyond the applicant's control.

The Draft Offense:

To be eligible for clemency, our applicants must have committed at least one of six offenses enumerated in the Executive Order. These offenses include the failure to register (or register on time), failure to report changes in status (primarily changes in address), failure to report for pre-induction physical examination, failure to report for induction, failure to submit to induction, and failure to perform alternative service employment. The Clemency Board could not consider applications of those who had only been convicted of other violations of the Selective Service Act, such as making false statements regarding a draft classification; aiding and abetting another to refuse or evade registration or requirements of the Selective Service Act; forging, destroying or mutilating Selective Service documents such as draft cards or other official certificates; or failing to carry a draft card or carrying a false draft card. However, the vast majority of the Selective Service offenses committed during 1964 - 74 fell within the eligibility requirements for the Clemency Program. __/

As described earlier, 3% failed to register, 10% failed to keep their local boards informed of their address, 13% failed to perform alternative service as conscientious objectors, 4% failed to report for pre-induction physical exams, 38% failed to report for induction, and 32% failed to submit to induction. At the time of our typical applicant's draft violation, he was between the ages of 20 and 22, and the year was 1970 - 1972. For over 95% of these applicants, their failure to comply with the Selective Service law was their first offense.

Numerous reasons were given by our applicants for their offenses. The most frequent of their reasons was their conscientious objection to war in either general or particular form. Fifty-seven percent expressed either religious, ethical or moral objection to all war, and an additional 14% expressed specific objection to the Vietnam War. When other related reasons were considered, (such as denial of CO status), 75% of our civilian applicants claimed that they committed their

offenses for reasons related to their opposition to war. Likewise, expressions of conscience were found by the Clemency Board to be valid mitigating circumstances in 73% of our cases.

(Case #05677) Applicant had participated in anti-war demonstrations before resisting induction. He stated that he could not fight a war which he could not support. However, he does believe in the need for national defense and would have served in the war if there had been an attack on United States territory. He stated that "I know that what is happening now is wrong, so I have to take a stand and hope that it helps end it a little sooner".

(Case #16975) Applicant applied for conscientious objector status on the ground that "inasmuch as he was a Black that he could not serve in the Armed Forces of a nation whose laws and customs did not afford him the same opportunities and protection afforded to white citizens". His application was denied, and he refused induction.

By contrast, less than one out of six of all our civilian applicants were found by the Board to have committed their offenses for obviously manipulative and selfish reasons.

Other major reasons for their offenses include medical problems (6%) and family or personal problems (10%). In evaluating these reasons, we found that these problems were mitigating in nearly all of the cases in which our applicants raised them.

(Case #04069) When applicant was ordered to report for induction, his wife was undergoing numerous kidney operations, with a terminal medical prognosis. She was dependent upon him for support and care, so he failed to report for induction.

Experiences as a Fugitive:

At one time or another, our applicants faced the difficult decision whether to submit to the legal process or become a fugitive. Nearly two-thirds of our applicants immediately surrendered themselves to the authorities. Of the remaining one-third who did not immediately surrender, the vast majority never left their hometown. Of the 18% of our applicants who left their hometowns to evade the

the draft, slightly less then half (8%) ever left the United States. Most of our at-large civilian applicants remained fugitives for less than one year. Many reconsidered their initial decision to flee. About one-third surrendered, and many of the rest were apprehended only because they lived openly at home and made no efforts to avoid arrest. Over two-thirds of our at large applicants were employed full-time; most others were employed part-time, and only one out of ten was unemployed. Only a small percentage assumed false identities or took steps to hide from authorities.

Most of our fugitive applicants who chose to go abroad went to Canada. Geographical proximity was one reason why some of our applicants chose Canada, and the similarity in culture, history, and language was another. However, the major reason for the emigration of American draft resisters to Canada was the openness of their immigration laws. Some of our applicants were either denied immigrant status or deported by Canadian officials. Otherwise, they might have remained there as fugitives.

(Case #04332) After receiving his order to report for induction, applicant went to Canada. He was denied immigrant status, so he returned to the United States and applied for a hardship deferment. After a hearing, his deferment was denied. He was once again ordered to report for induction, but he instead fled to the British West Indies. He returned to Florida to make preparations to remain in the West Indies permanently, but he was apprehended.

Most of our applicants who went to Canada (6%) stayed there briefly, but some remained for years. A few severed all ties, with the apparent intention of starting a new life there.

(Case #01285) In response to Selective Service inquiries, applicant's parents notified their local board that their son was in Canada. However, they did not know his address. Applicant lived and worked in Canada for almost four years.

The only applicants for our program who remained permanently in Canada were those who fled after their conviction to escape punishment.

(Case #16975) Applicant was convicted for refusing induction, but remained free pending appeal. When his appeal failed, he fled to Canada. He remained in Canada until he applied for clemency.

Experience with the Judicial Process

Pre-trial actions. Our applicant began to face court action when his local draft board determined that sufficient evidence of a Selective Service violation existed to warrant the forwarding of his file to the United States attorney. After a complaint was filed and an indictment returned against our applicants, both the courts and the Justice Department determined whether further prosecution was warranted.

The courts dismissed many draft cases. Analysis of the number of cases and the dismissal rate during the years 1968 - 1974, reveals a continuous increase in both the number of cases and the dismissal rate (except for 1974). Through 1968, only about 25% of all cases resulted in dismissal. From 1969 through 1972, about 55% were dismissed -- and in 1973, over two-thirds were dismissed. __/

One important element influencing the dismissal rate in particular jurisdictions was the practice of forum shopping. Many defendants searched for judges with a reputation for leniency or a tendency to dismiss draft cases. As an example, the Northern District of California was known for its willingness to dismiss draft indictments on minor technicalities. Since 1970, nearly 70% of the cases tried in that court resulted in dismissal or acquittal. __/ At that time, many young men transferred their draft orders to the Oakland induction center before refusing induction, thus enabling them to try their cases in the Northern district. In 1970, its dismissal rate averaged 48.9 draft cases per 10,000 population compared to the national average of 14.1; the Central District of California closely followed with 43.1. Some of our applicants apparently "forum shopped" in California and other Western states; five percent received their convictions in the Ninth Circuits, even though their homes were elsewhere.

Jurisdictional inequities in the dismissal rate for draft offenses within the same state were common during the war era. For example, in contrast to the dismissal rate in the Northern District of California (70%), the Eastern District of California dismissed only 40% of its draft cases. Similarly, in the Eastern District of Virginia 63% of the draft cases were dismissed, versus only 35% in the Western District.

Convictions and Acquittals

After our applicants were indicted and their motions for dismissal refused, 26% pled not guilty, and they next entered the trial stage. The rest pled either guilty (68%) or nolo contendere (6%). Many of those who pled guilty had done so as part of a "plea bargain", whereby other charges against them were dismissed.

Of the 21,400 draft law violators who stood trial during the Vietnam era, 12,700 were acquitted. Assuming that all those acquitted pled not guilty, and assuming (by extrapolation) that 2300 (26%) of convicted draft offenders pled not guilty, it appears that an individual stood an 85% chance of acquittal if he pled not guilty. However, none of our applicants were among the 12,700 fortunate persons who were acquitted of draft charges.

Changing Supreme Court standards occurring after the offense but before trial often led to these acquittals. Of special importance was the 1970 Welsh case which broadened the conscientious objector exemption criteria to include ethical and moral objection to war.

Some of our applicants may have been convicted because of the apparent poor quality of their legal counsel.

(Case #03618) Applicant joined the National Guard and was released from the extended active duty eight months later. While in the National Guard reserves thereafter, he was referred to Selective Service for induction for failure to perform his reserve duties satisfactorily. He obeyed an order to report for induction, but claimed that he negotiated an agreement to settle his National Guard misunderstandings at the induction center. He pled not guilty of refusing to submit to induction, and he was convicted.

Apparently, his trial attorney failed to call several important defense witnesses who had been present at the induction center. Applicant's present attorney believes that his trial attorney represented him inadequately. After conviction but before execution of his sentence, applicant completed his National Guard service and received a discharge under honorable conditions.

Frequently, applicants were given the opportunity to enlist or submit to induction during their trials, as a means of escaping conviction. Sometimes, applicants claimed that they were caught in a "Catch 22" situation in which they could neither be inducted nor escape conviction for failing to be inducted.

(Case #04322) Ordered to report for induction, applicant refused to appear at the induction center. While charges were pending against him, he was informed that he could seek an in-service CO classification after entering the military. With this knowledge, he agreed to submit to induction, and the court gave him a 30-day continuance. He did seek induction, but ironically, he could not be inducted because he failed to pass his physical due to a hernia condition. When his continuance expired, he was convicted of failure to report for induction.

However, others were convicted despite every possible attempt by authorities to deal fairly and leniently with them.

(Case #00739) An order to report for induction was mailed to applicant's parents, but he failed to report. Over one year later, applicant's attorney contacted the United States Attorney and indicated that applicant had severe psychiatric and other medical problems which would make him fail his pre-induction physical. In response, the United States Attorney offered applicant an opportunity to apply for enlistment and be disqualified. However, applicant could not be found, and a grand jury subsequently issued an indictment.

Our typical applicant was convicted at the age of 23, nearly two years after his initial offense. Less than one out of ten of our applicants appealed the conviction.

An analysis of conviction rates for draft offenses shows clear jurisdictional discrepancies. For instance, the Southern states had the highest propensity for conviction, with the Eastern states and California having the lowest. In 1972, there were 27 draft cases tried in Connecticut, with only one resulting in conviction.

In the Northern District of Alabama during the same period, 16 draft cases resulted in 12 convictions. These different convictions rates apparently occurred because of wide differences in attitude toward the draft violators. Regardless of the explanation, it is clear that these differences in treatment encouraged wide scale forum shopping by our applicants.

The conviction rate itself varied considerably during the war era. In 1968, the conviction rate for violators of the Selective Service Act was 66%; by 1974, the conviction rate was cut in half to 33%. Apparently, as time went by, prosecutors, judges and juries had less inclination to convict draft-law violators.

The Sentence

Only about one-third of our civilian applicants ever went to prison. The remainder were sentenced to probation and, usually, alternative service. A majority of our applicants -- 56% -- performed alternative service. Typically, they performed 24 or 36 months of alternative service, but some completed as much as 60 months. The jobs they performed were similar to those filled by conscientious objectors. However, they had to fulfill other conditions of probation.

(Case #3384) As a condition of probation, applicant worked full-time for good-will industries and a non-profit organization which provided jobs for disabled veterans. He received only a token salary.

(Case #1929) Applicant worked for three years for a local emergency housing committee as a condition of probation. Although he worked full-time, he did so as a volunteer.

A few (6%) failed to comply with the terms of their probation, often by refusing to do alternative service work. Some fled and remained fugitives until they applied for clemency.

(Case #14271) Convicted for a draft offense, applicant was sentenced to three years probation, with the condition that he perform civilian work in the national interest. About one year later, his sentence was revoked for a parole violation (absconding from supervision). He was again sentenced to three years probation, doing alternative service work. He did not seek such work and left town. A bench warrant was issued for his arrest. Applicant, still a fugitive, now resides in Canada.

Some were required, as a condition of probation, to enlist in military service. They suffered a felony conviction, served full enlistments in the military, and sometimes remained on probation after discharge. Curiously, one percent of our civilian applicants became Vietnam veterans.

(Case #04085) Applicant refused induction because of his moral beliefs. He was sentenced to three years imprisonment, suspended on the condition that he enlist in the military. Applicant

did enlist, serving a full tour of duty. He served as a noncombatant in Vietnam, earning a Bronze Star. Awarded an Honorable Discharge, he still had one year of probation to complete before his sentence was served.

Of our applicants sentenced to imprisonment, most served less than one year. Only 13% of our applicants spent more than one year in prison, and less than 1% were incarcerated for more than two years.

The sentencing provisions of the Military Selective Service Act of 1967 provided for jail terms ranging from zero to 5 years, giving judges almost unlimited sentencing discretion. The sentencing dispositions of the courts were inconsistent and widely varying, dependent to a great extent upon year of conviction, geography, race, and religion. In 1968, 74% of all convicted draft offenders were sentenced to prison, their average sentence was 37 months, and 13% received the maximum 5-year sentence. By 1974, only 22% were sentenced to prison, their average sentence was just 15 months, and no one received the maximum. Geographic variations were almost as striking: In 1968, almost one-third of those convicted in the southern-states 5th Circuit received the maximum 5-year prison sentence, contrasting with only 5% receiving the maximum in the eastern-states 2nd Circuit. During the early years of draft offense trials in 1968, of 33 convicted Selective Service violators in Oregon, 18 were put on probation, and only one was given a sentence over 3 years. In Southern Texas, of 16 violators, none were put on probation, 15 out of 16 received at least 3 years of 14 received the maximum 5-year sentence. 21/

Other sentencing variations occurred on the basis of race. In 1972, the average sentence for all incarcerated Selective Service violators was

34 months, while for blacks and other minorities the average sentence was 45 months. This disparity decreased to a difference of slightly more than two months in 1974. While we did not perceive such a disparity as a general rule, some cases appeared to involve racial questions.

(Case #01457) Applicant belongs to the Black Muslim faith, whose religious principles prohibited him from submitting to induction. He has been actively involved in civil rights and other social movements in his region of the country. He was convicted for his draft offense and sentenced to 5 years imprisonment. Applicant stated that his case was tried with extreme prejudice. He spent 25 months in prison before being paroled.

Some religious inequities may also have occurred. For the years 1966 through 1969, incarcerated Jehovah's Witness received sentences averaging about 1 month longer than the average Selective Service violator . During this same period, religious objectors other than Jehovah's Witnesses received average sentences about 6 months shorter than the average violator.

Although a variety of sentencing procedures were available, the majority of convicted Selective Service violators were sentenced under normal adult procedures. If the offender were sentenced to jail, two types of sentence were available: (1) a sentence of definite time during which he might be paroled after serving 1/3 of his term; or (2) an indeterminate sentence during which parole eligibility might be determined by a judge on the Board of Parole at a date before but not after 1/3 of the sentence had expired. Under the Youth Correction Act, the convicted defendant might be unconditionally discharged before the end of the period of probation or commitment. This discharge automatically operated to set aside the conviction. Because commitments and probations under the Youth Corrections Act were indeterminate, the period of supervision might have lasted as long as six years. Bureau of

prison statistics indicate, however, that the Youth Corrections Act was used as a sentencing procedure only in 10% of all violation cases. When it was applied, the six year maximum period of supervision was imposed in almost all cases.

Prison Experiences

One-third of our applicants received prison sentences and served time in Federal prison. Most served their time well, often as model prisoners.

(Case #10961) Applicant served eighteen months in Federal prison. His prison report indicated that he did good work as a cook and had "a very good attitude." The report noted no adjustment difficulties, no healthy problems, and no complaints.

However, some of our applicants experienced greater difficulty in adapting to prison life.

(Case #08067) Applicant, a Hare Krishna, was sentenced to a two-year prison term for a draft offense. Because of his religious convictions and dietary limitations, life in prison became intolerable for him. He escaped from Federal prison, surrendering three years later.

Although very rare, isolated instances of harsh treatment were claimed to have occurred.

(Case #1210) Applicant was arrested in Arizona and extradited to the Canal Zone for trial (the location of his local board). Prior to trial, he was confined for four months in an unairconditioned four by six foot cell in a hot jungle. Some evidence exists that the applicant was denied the full opportunity to post reasonable bail. At his trial the applicant was convicted and sentenced to an additional two months confinement. By the time of his release, the applicant's mental and physical health substantially deteriorated and he was confined in a mental hospital for several months. The applicant is still a subject of great concern.

Some could not escape the effects of their prison experience even after their release.

(Case #0059) Applicant became addicted to herion while serving the prison sentence for his draft conviction. Unable to legitimately support his habit after he was released, he turned to criminal activities. He was later convicted of robbery, and returned to prison.

The parole grant rates for Selective Service violators, like all other prisoners, was determined categorically: it depended primarily on the nature

or their offense and not on individualized aspects of their personal history or their imprisonment. It was the policy of many parole boards that draft violators serve a minimum of two years for parity with military duty, but most Selective Service violators were released after their initial people application. Jehovah's Witnesses received first releases in nearly all instances. The majority of those serving prison sentences over one year were released on parole, whereas the great majority of those with prison sentences less than one year served until their normal expiration date. Most Selective Service violators were granted parole after serving approximately half their prison sentences. This is higher than the national average for all crimes, including rape and kidnapping. However, in each year from 1965 to 1974, Selective Service violators were granted parole more often than other federal criminals.

Consequences of The Felony Conviction

A felony conviction had many grave reminfications for our applicants. The overwhelming majority of states construe a draft offense as a felony, denying our applicants the right to vote -- or, occasionally, just suspending it during confinement. Some of the consequences of felony conviction are less well known. In some states, for example, a felon lacks the capacity to sue, although he or his representative may be sued; he may be unable to execute judically enforceable instruments or to serve as a court appointed judiciary; he may be prohibited from participation in the judicial process as a witness or a juror. A lesser known consequences of a felony conviction might be that he may even lose certain domestic rights, such as his right to exercise parental responsibility. For example, six states permit the adoption of an ex- convict's children without his consent.

The principal disability arising from a felony conviction is usually its effect upon employment opportunities. This effect is widespread among wide-spread among employers. Often, this job discrimination is discrimination is reinforced by statue. States license close to 4,000 occupations, with close to half requiring "good moral character" as a condition

to receiving the license; therefore, convicted felons are often barred from such occupations as accountant, architect, dry cleaner, and barber.—/

Case #1256) Applicant, a third year law student, was told he could not be admitted to the bar because of his draft conviction.

Even more severe restrictions exist in the public employment section.

Case #2448 Applicant graduated from college, but was unable to find work comparable to his education because of his draft conviction. He qualified for a job with the Post Office but was than informed that his draft conviction rendered him incligible.

Case #1277 Applicant qualified for a teaching position, but the local board of education refused to hire him on the basis of his draft conviction. The Board later reversed its position at the urging of applicant's attorney and the local federal judge.

Despite this, our civilian applicants generally fared reasonable well in the job market. Over three out of four applicants were employed either full time (70%) or part time (7%) when they applied for clemency. Only 2% of our civilian applicants were unemployed at the time of their application. The remainder of our applicants had returned to school (14%), were presently incarcerated (2%), or were furloughed by prison officials pending disposition of their cases by our Board (5%). Almost half (45%) had married, and many (20%) had children on other dependents.

CHAPTER IV-C: Our Military Applicants

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Despite the popular belief that our applicants were war resisters, the vast proportion of our military applicants were not articulate, well-educated opponents of the war; almost none of them (0.27%) had applied for a conscientious objector draft classification before entering the military. Less than 5% of our applicants attributed their offenses to opposition to the War. Their average IQ was very close to the national average. Nonetheless, over three-quarters dropped out of high school before joining the service, while less than one-half of one per cent graduated from college. They were raised in small towns or on farms (40%). Generally, they came from disadvantaged environments. Many (60%) grew up in a broken home struggling to cope with a low income (57%). A disproportionate percentage were black (21%) or Spanish-speaking (3.5%).

In the discussion which follows, we trace the general experiences of our military applicants. We look first at the circumstances of their induction or enlistment and their early experiences in the military. We then describe how 27% of them served in Vietnam, many with distinction. After considering the circumstances of their AWOL offenses, we look at their experiences with the military justice system. Finally, we describe the impact of their bad discharges.

Illustrating the discussion are excerpts from our case summaries. The cases described cover a broad range of fact circumstances; many of the applicants received outright pardons, some were assigned alternative service, and a few were denied clemency.* Much of the information in

*See Chapters II-F and III for a discussion of how our Board applied fact circumstances to determine individual case dispositions.

these summaries is based upon the applicants' own allegations, sometimes without corroboration. In the spirit of the clemency program, we usually accepted our applicants' claims at face value for the purposes of making dispositions in their cases. Our perspective was more limited than that of their commanding officers and court-martial judges. Therefore, we urge the reader not to draw sweeping conclusions from the facts in any individual case.

With few exceptions, our statistics are based upon our sample of 1009 military applicants - roughly 7% of our total number of military applications.*

Induction or Enlistment in the Military

Our applicants began their military careers at an early age. Almost one-third enlisted at age 17, and over three-quarters were in uniform by their 20th birthday. Most (84%) enlisted rather than be drafted. Our applicants represented the Army (63%), the Marines (23%), and to a lesser degree, the Navy (12%) and the Air Force (3%).

The reasons for enlistment varied from draft pressure to the desire to learn a trade, to the simple absence of anything else to do. Others saw the military as an opportunity to become more mature.**

*See Appendix for a description of our sampling techniques and a more detailed presentation of our findings.

**Johnston, Jerome and Jerald Bachman, Youth in Transition Study, Young Men Look at Military Service: A Preliminary Report, Vol V (Institute for Social Research, University of Michigan, 1971), pp 60-61; Hearings Before the Special Subcommittee on Recruiting and Retention of Military Personnel of the Committee on Armed Services, House of Representatives, 92nd Congress, p. 8089; Harold, Wool, The Military Specialist, Skilled. Manpower for the Armed Forces (Baltimore: The Johns Hopkins Press, 1968) pp. 110-113, (Dr. Wool was an Assistant Secretary of Defense for Manpower. Cortright, David, Soldiers in Revolt, (New York: Anchor Press/Deubliday, 1975) pp. 191-194

(Case #00148) Applicant enlisted after high school because he did not want to go to college or be inducted into the Army.

(Case #02483) Applicant enlisted to obtain specialized training to become a microwave technician.

(Case #00179) Applicant enlisted at age 17 because he wanted a place to eat and a roof over his head.

(Case #00664) Applicant enlisted because he was getting into trouble all the time and felt that service life might settle him down.

As the Vietnam war expanded, America's military manpower needs increased. Many recruiters were helpful to our applicants by arranging entry into the preferred military occupational speciality and geographic area of assignment. However, some of our applicants claimed, without corroboration that their unauthorized absences were justified by the services' failure to assign them to the positions they themselves wanted.

(Case #00356) Applicant enlisted at age 17 for motor maintenance training, but instead was trained as a cook. This action caused him disappointment and frustration. His grandmother contended that he was misled by the recruiter.

Before the Vietnam War, the military generally had not accepted persons for enlistment or induction if they had Category IV scores on their AFQT * tests; some who scored between the 15th and 30th percentiles were brought into the service under special projects.** [illegible]

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*/ The Armed Forces Qualification Test (AFQT) was the basic test for mental qualification for service in the military administered at the Armed Forces Entrance and Examination Stations (AFEES). Scores on the AFQT result in classifying personnel into five broad mental groups:

Mental Group I	Percentile Score
I	93 -- 100
II	65 -- 92
III	31 -- 64
IV	10 -- 30
V	9 -- and below

See Harold Wool, supra, pp 66-68, also 50 App USCA 454a, 1968.

**/ See Harold Wool, Former Deputy Secretary for Manpower and Reserve Affairs, Supra at p. 180-184. One Project was the Special Training Enlistment Plan (STEP) of 1964

In August, 1966, Secretary of Defense, Robert McNamara announced Project 100,000 to use the training establishment of the Armed Forces to help certain young men become more productive citizens when they return to civilian life. Project 100,000 extended the opportunity and obligation of military service to marginally qualified persons by reducing mental and medical standards governing eligibility. Persons scoring as low as the 10th percentile became eligible for active service. During its first year, 40,000 soldiers entered the military under this program. For two years, thereafter, it lived up to its name by enabling 100,000 marginally qualified soldiers to join the service each year.

Military studies have indicated that the opportunity for technical training was the principal motivation for the enlistment of Category IV soldiers. However, over half enlisted at least partly because of the draft pressure. Other reasons for enlistment were to travel, obtain time to find out what to do with one's life, serve one's country, and enjoy educational benefits after leaving the service.** / Some did learn marketable skills: 13% of our applicants received a high school equivalency certificate while in the service.

Almost one-third of our applicants (32%) were allowed to join the military despite pre-enlistment AFQT scores at or below the 30th percentile.

(Case #00847) Applicant had an AFQT of 11 and a GT (IQ score) of 61 at enlistment. He successfully completed basic training, but went AWOL shortly thereafter.

(Case #0229) Applicant had an 8th grade education, an AFQT of 11, and a GT of 62. From a broken home, he was enthusiastic about his induction into the Army, believing that he would have financial security and would receive technical training. His lack of physical ability and difficulties in reading and writing caused him to fail basic training. He was in Basic Training for nine months before he was sent to AIT as a tank driver. He continued to have learning problems in advanced training. According to applicant, this problem was compounded by the ridicule of his peers who discovered that he required several months to complete basic training.

__/ Paul Starr, James Henry, Raymond Bonner, The Discarded Army: Veterans After Vietnam, (New York: Charterhouse 1973) pp. 188-193; Harold Wool, supra at 182; Project One Hundred Thousand, haracteristics and Performance of "New Standards Men", Office of Secretary of Defense, Assistant Secretary Defense for Manpower and Reserve Affairs, December 1969

**/ Aaron Katz& Milton R. Goldsamt, Assessment of Attitudes and Motivation of Category IV Marginal Personnel: Demographic Characteristics, Attitudes and Personal Adjustment During Recruit Training. Naval Research and Development Laboratory, Wash., D.C. 1970. See also Harold Wool, Supra. pp 108-113;

Not All of our Category IV applicants joined the service because of Project 100,000. Some had other test scores qualifying them for enlistment under the earlier standards. Nonetheless, we suspect that many of our applicants would never have been in the service were it not for Project 100,000.

Out Category IV applicants tended to be from disadvantaged circumstances. Compared to our other applicants, they were predominantly Black or Spanish-speaking (42% vs. 18%) * and grew up in cities (55% vs. 44%). Their families struggled with low incomes (72% vs 49%), and they dropped out of high school (75% vs. 56%). The quality of their military service was about the same as that of our other applicants; they had no more punishments for non-AWOL offenses (53% vs. 52%) or non-AWOL charges pending at time of discharge (13% vs. 12%). Despite this, a greater percentage received administrative Undesirable Discharges (68% vs. 57%).

Of course, we saw only the Category IV soldiers who did not succeed in service. The experiences of our 4,000+ Category IV applicants are not necessarily a fair reflection of the quarter-million men brought into the service by Project 100,000. Many of our Category IV applicants served well before committing their qualifying AWOL offenses.

(Case #5144) Applicant, a Black male from a family of 12 children completed 11 years of school before his induction into the Army. His GT was 114 and his AFQT was 18 (Category IV). Applicant spent 6 years on active duty, including service as a military policeman in Korea. Following a three month stint in Germany, he served an 8 month tour in Vietnam as an assistant platoon leader. On a second tour in Vietnam, where he served as a squad leader and chief of an armored car section, he earned the Bronze Star for heroism. He departed AWOL while on leave from his second tour in Vietnam.

Early Experiences in the Military

Our applicant's first encounter with the military was in basic training.** It was during these first weeks that our applicants had to learn the regimen and routine of military life. For many, this was their first experience away from home and the first time they faced such intense personal responsibilities.

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* The first figure is the percentage of the Category IV soldiers, and the second refers to all other soldiers.

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Homesickness and emotional trauma found expression ranging from commonplace complaints and tears to more unusual conduct. Their difficulties were no different from those other young men have always faced upon entering the service. Some of our applicants did not adjust well to the demands placed on them.

(Case #02483) Applicant went on aimless wanderings prior to advanced training. He finally lost control of himself and knocked out 20 windows in the barracks with his bare hands, resulting in numerous wounds to himself.

Social and cultural differences among recruits posed problems for others who did not get along well in the close quarters of the barracks environment.

(Case #0309) During boot camp, applicant, of Spanish heritage, was subjected to physical and verbal abuse. He recalls being called "chili bean" and "Mexican chili". His ineptness also made him the butt of his boot camp unit. He wept at his trial when he recalled his early experiences that led to his AWOL.

(Case #10125) Applicant's version of his various problems is that he could no longer get along in the Marine Corps. Other Marines picked on him because he was Puerto Rican, and wouldn't permit him to speak Spanish to other Puerto Ricans, and finally they tried to get him into trouble when he refused to let them "push" him around.

(Case #11704) Applicant was a high school graduate with a Category I AFQT score and GT (IQ test) score of 145. She complained that other soldiers harrassed her without cause and accused her of homosexuality. She departed AWOL to avoid the pressure.

Incidents of AWOL during basic training usually resulted in minor forms of punishment. Typically, a new recruit would receive a non-judical punishment resulting in restriction, loss of pay, or extra duty. Seven percent of our applicants were discharged because of an AWOL commencing during basic training. Following basic training, they transferred to another unit for advanced or on-the-job training. Altogether, 10% of our applicants were discharged for an AWOL begun during advanced training. Individual transfers resulted in breaking up units and frequently intense personal friendships. The AWOL rate tended to be higher for soldiers "in transit" to new assignments. */

*/ M.L. McCubbin , Leadership and Situational Factors Related to AWOL: A Research Report, Ft. Riley, Kansas: U.S. Army Correctional Training Facility, 1971; T.S. Hartnagel, "Absence Without Leave: A Study of the Military Offender Journal of Political and Military Sociology, Vol. 2 pp. 205-220, 1974; see also The Prediction of AWOL, Military Skills and Leadership Potential, Human Resource Research Organization, Technical Report 73-1, 1973

Some of our applicants were trained in jobs which they found unsatisfying, and others were given details which made no use of their newly-earned skill. Some of our applicants thought the service owed them an obligation to meet their preferences. When the military used them in other necessary functions, they went AWOL.

(Case #0649) Applicant enlisted in the Army for a term of three years, specifying a job preference for electronics. The recruiter informed him that the electronics field was full, but that if he accepted assignment to the medical corps he could change his job after entry onto active duty. Once on active duty, applicant was informed that his MOS could not be changed. He claimed that he was unsuccessful in obtaining the help of his platoon sergeant, company commander, and chaplain, so he left AWOL.

Military life, especially for those of low rank, required the performance of temporary duties for which no training was required, such as kitchen patrol and area cleanups. Some of our applicants spurned these responsibilities and went AWOL.

(Case #9488) Applicant found himself pulling details and mowing grass rather than working in his military occupational speciality. He then went home and did not return for over three years.

After several months in military life, others were still having difficulty adjusting to the many demands of military life. A majority (52%) of our applicants were discharged for AWOL offenses occurring during stateside duty other than during training. As in civilian employment, a daily routine had to be followed, superiors had to be treated with respect, and orders had to be obeyed. The civilian's or service-member's failure to comply with these expectations could result in his being fired, with attendant loss of pay, promotion and status, or transfer. But the serviceman also violated military custom or law which could lead to disciplinary action. Altogether, over half (53%) of our applicants were punished for one or more military offenses in addition to AWOL which would not have been criminal offenses in civilian life. Only 3% were also punished for military offenses comparable to civilian crimes (such as theft or vandalism).

(Case #14392) Applicant had difficulty adjusting to the regimentation of Army life. While he was in the service, he felt that he needed to have freedom of action at all times. He would not take guidance from anyone, was repeatedly disrespectful, and disobeyed numerous orders. His course of conduct resulted in his receiving three non-judicial punishments and three Special Court-Martials.

Requests for Leave, Reassignment, or Discharge

Most of our applicants complained of personal or family problems during their military careers. Parents died, wives had miscarriages, children had illnesses, houses were repossessed, families went on welfare, and engagements were broken.

(Case #3289) During his 4 months and 19 days of creditable service, applicant was absent without official leave on five occasions. He was motivated in each instance by his concern for his grandmother who was now living alone and whom he believed needed his care and support.

The military had remedies for soldiers with these problems. They could request leave, reassignment (compassionate, or normal change of duty station), and, in extreme cases, discharge due to a hardship. Unit officers, chaplains, attorneys of the Judge Advocate General's Corps, and Red Cross workers were

there to render assistance within their means. Despite the help they received, some applicants did not come back when their personal problems were resolved.

(Case #9491) Applicant requested, and was granted, an emergency leave due to his mothers death. Applicant did not return from leave. He was apprehended one year and 8 months later.

The Department of Defense discovered that 58% of its clemency applicants did seek help from at least one military source before going AWOL. However, only 45% approached their commanding officer, and fewer yet approached an officer above the company level.* Many of our applicants never tried to solve their problems through military channels. Other applicants indicated that they tried some of these channels but failed to obtain the desired relief. They then took matters into their own hands.

(Case #1244) Applicant's wife was pregnant, in financial difficulties and being evicted; she suffered from an emotional disorder and nervous problems; his oldest child was asthmatic and an epileptic, having seizures that sometimes resulted in unconsciousness. Applicant requested transfer and a hardship discharge which were denied.

Request for leave were matters within the Commanding Officer's discretion. However, leave is earned at the rate of 30 days per calendar year, and individuals often used leave substantially in excess of the amount they had earned. Commanding Officers

* /P.B. Bell & T.J. Houston, The Vietnam Era Deserter; Characteristics of Unconvicted Army Deserters Participating in the Presidential Clemency Program, U.S. Army Research Institute for the Behavioral and Social Sciences, pp. 27-29, 1975.

could not normally authorize "advance leave" in excess of 30 days, so a soldier who had used up his advance leave would have to go AWOL to solve his problems. This was especially true if the enormity of the problem made one period of leave insufficient for the applicant's purpose, resulting in their going AWOL.

(Case #01336) While applicant was home on leave to get married, a hurricane flooded his mother-in-law's house, in which he and his newly wed wife were staying. Almost the entire property and his belongings were lost. He requested and was granted a 21-day leave extension, which he spent trying to repair the house. However, the house remained in an unliveable condition, and his wife began to suffer from a serious nervous condition. Applicant went AWOL for four days to ease the situation. He returned voluntarily and requested a Hardship Discharge or a six-month emergency leave, both of which were denied. He then went AWOL.

Of our applicants who requested leave or reassignment, roughly 15% had their request approved. A total of 1.3% of our applicants were granted leave or reassignment to help them solve the problem which led to their AWOL. By contrast, 8.6% had their leave or reassignment requests turned down. These requests were evaluated on the basis of first-hand information available to commanding officers, who had to weigh the soldier's personal needs against the needs of the military.

The Hardship Discharge offered a more lasting solution to the conflict between a soldier's problem and his military obligations, without the stigma of most other administrative

separations. To get a Hardship Discharge, he had to submit a request in writing to his commanding officer, explaining the nature of his problem and how a discharge would help him solve it. The Red Cross was often asked for assistance in documenting the request. Higher headquarters was required to review the request and had the power to make final decisions, as required by service regulations. Our applicants often did not have the patience to proceed through proper channels.

(Case #0269) Applicant states that his father, who had suffered for three years from cancer, committed suicide by hanging. His family's resources and morale had been severely strained by the father's illness and death. Applicant spent a period of time on emergency leave to take care of funeral arrangements and other matters. At the time, his mother was paralyzed in one arm and unable to work. Applicant sought a hardship discharge, but after three weeks of waiting, his inquiries into the status of the application revealed that the paperwork had been lost. Applicant then departed AWOL.

The soldier who was conscientiously opposed to war could apply for in-service conscientious objector status. Very few of our applicants did: Only 1.1% took any initiative to obtain this in-service status, and only 0.5% made a formal application. However, our Board found 4.6% of our applicants to have committed their offenses for conscientious reasons. Some of our applicants alleged that they were unaware of what they had to do to get such status, probably as a result of their misinterpretations of the rules.

(Case #8129) From the time of his arrival at his Navy Base, applicant consulted with medical, legal, and other officers on how to obtain a discharge for conscientious objection. He was told that the initiative for such a discharge would have to be taken by the Navy, so he would have to demonstrate that he was a conscientious objector. He then went AWOL to prove his beliefs. Following his conviction for that brief AWOL, he requested a discharge as a conscientious objector. His request was denied.

There are two types of conscientious objector applications. One resulted in reassignment to a non-combatant activity, while the other provided for a discharge under honorable conditions. Each type involved separate but similar procedures. Understandably, procedures put the burden of proof on the applicant. He was required to submit statements on six separate questions concerning the origin, nature, and implications of his conscientious objection. The applicant had to "conspicuously demonstrate the consistency and depth of his beliefs." __/ Some of our applicants did not persuade authorities of their CO beliefs.

(Case #10402) For a year-and-a-half after he was drafted, applicant tried to obtain conscientious objector status, because he did not believe in killing human beings. He is minimally articulate, but stated that even if someone was trying to kill him, he could not kill in return. He talked to his Captain and the Red Cross, neither of whom found his aversion to taking human life to be persuasive. When his application was denied and he was scheduled for Vietnam, he went AWOL.

After submitting his application, the soldier was interviewed by a chaplain and a military psychiatrist. The Chaplain had to comment on the sincerity and depth of the applicant's belief, and the psychiatrist evaluated him for mental disorders. Some claimed they were victims of irregularities and they went AWOL rather than seeking remedies within channels.

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* /Department of Defense Directive 1300.6 (20 August, 1971).

(Case #0472) Three years after enlisting in the Navy, applicant made several attempts to be recognized as a conscientious objector. He spoke with chaplains, legal officers, doctors, and a psychiatrist. He told the psychiatrist of his opposition to the war in Vietnam and of his heavy drug use. Applicant claimed that the psychiatrist threw his records in his face and told him to get out of his office. He went AWOL after his experience with the psychiatrist.

The conscientious objector's next step was to present his case before a hearing officer, who in turn made a recommendation through the chain of command on his request. The final authority rested either with the general Court-Martial convening authority or with the administrative affairs office in the appropriate Service Department Headquarters.

Assignment to Vietnam

During the height of the Vietnam War, our applicants were ordered to Vietnam about six months after entering the service. Just over half (51%) of our applicants volunteered or received orders for Vietnam. Most complied with the orders, but many did not. Twenty-four percent of our applicants were discharged because they went AWOL when assigned to Vietnam.

(Case # 03584) Applicant received orders to report to Vietnam. While on leave before he had to report, he requested help from his Congressman so that he would not be sent overseas. He also applied for an extension of his departure date on the grounds that his wife was 8 months pregnant and that he was an alien. His request was denied, and he went AWOL.

The other 27% did go to Vietnam. Once there, our applicants were less likely to desert. Roughly one in eight (3.4% of our applicants) went on extended AWOL while in Vietnam, and one-third of those went AWOL from non-combat situations. In many cases, their reasons related to personal problems, often of a medical nature.

(Case #00423) Applicant was assigned to an infantry unit in Vietnam. During his combat service, he sustained an injury which caused his vision to blur in one eye. His vision steadily worsened, and he was referred to an evacuation hospital in DaNang for testing. A doctor's assistant told him that the eye doctor

(#00423) cont'd was fully booked and that he would have to report back to his unit and come back to the hospital in a couple of weeks. Frustrated by this rejection and fearful of his inability to function in an infantry unit, applicant went AWOL.

Many of our applicants who were sent to Vietnam were assigned to combat units. Some (1.2%) actually deserted while serving in a combat assignment.

(Case #3304) Applicant would not go into the field with his unit because he felt the new C.O. of his company was incompetent. He was getting nervous about going out on an operation in which the probability of enemy contact was high. (His company was subsequently dropped onto a hill where they engaged the enemy in combat). He asked to remain in the rear but his request was denied. Consequently, he left the company area because, in the words of his chaplain, "the threat of death caused him to exercise his right of self preservation." Applicant was apprehended while traveling on a truck away from his unit without any of his combat gear.

Once a soldier arrived in Vietnam, he was less likely to go AWOL. However, he was permitted to return to the U.S. on emergency leave when appropriate. Also, he was offered several days of "R&R" (Rest and Relaxation) at a location removed from combat zones, and frequently outside of Vietnam. It was on these sojourns outside of Vietnam that some of our applicants departed AWOL.

(Case # 4366) Applicant was granted emergency leave from Vietnam due to his father's impending death. Applicant failed to return from the leave.

Many of our applicants served with distinction in Vietnam. They fought hard and well, often displaying true heroism in the service of their country. Of our applicants who served in Vietnam, one in eight was wounded in action.

(Case # 2065) While in medic in Vietnam, applicant (an American Indian) received the Bronze Star for heroism because of his actions during a night sweep operation. When his platoon come under intense evening fire, he moved through a mine field under a hail of fire to aid his wounded comrades. While in Vietnam, he was made Squad Leader of nine men, seven of whom (including himself) were wounded in action. In addition to his Bronze Star, he received the Army Commendation Medal with Valor Device, the Vietnam Service Medal with devices, the Vietnam Campaign Medal, and the Combat Medic's Badge.

Others experienced severe psychological trauma from their combat experiences; some applicants turned to drugs to help them cope.

(Case #00188) During his combat tour in Vietnam, applicant's platoon leader, with whom he shared a brotherly relationship, was killed while awakening applicant to start his duty. He was mistaken for Viet Cong and shot by one of his own men. This event was extremely traumatic to the applicant, who experienced nightmares. In an attempt to cope with this experience, he turned to the use of heroin. After becoming an addict, he went AWOL.

Still other applicants indicated that combat experience was a source of personal fulfillment.

(Case #0423) Applicant, who was drafted, was pleased by his assignment to Vietnam of his confidence in his training and membership in a cohesive, elite unit.

Our applicants who served in Vietnam, almost half had volunteered either for Vietnam service, for Combat action, or for an extended Vietnam tour. They enjoyed the close comradeship of combat situations and felt a sense of accomplishment from doing a difficult job well. Some applicants went AWOL because of their inability to extend their tour in Vietnam.

(Case # 8232) While in Vietnam, applicant tried to extend his tour but his request was never answered. He was told much later that he would have to wait until he returned stateside. After he did, he was told that he could not return, so he went AWOL. He had derived satisfaction from his work in Vietnam because he was respected, and he found the atmosphere close and friendly.

By contrast, combat experience for some applicants produced a sense of uneasiness about the cause for which they were fighting.

(Case #03697) Applicant was successfully pursuing his military career until he served in Cambodia assisting the Khmer Armed Forces. He began to experience internal conflicts over the legality and morality of Army operations in Cambodia. This reinforced his feelings and resulted in disillusionment.

Our Vietnam Veteran applicants frequently articulated severe readjustment problems upon returning to the United States. This "combat fatigue" or "Vietnam syndrome" was partly the result of the incessant stress of life in combat. Our Board found that 6.4% of our applicants suffered from mental stress caused by combat.

(Case # 2892) After returning from two years in Vietnam, applicant felt that he was on the brink of a nervous breakdown. He told his commander that he was going home and could be located there, if desired. He then went AWOL from his duty station.

Two-fifths of our Vietnam veteran applicants (11% of all military applicants)

claimed to have experienced severe personal problems as a result of their tour of duty. These problems were psychological, medical, legal, financial, or familial. One-third of their psychological and medical problems were permanent disabilities of some kind. They ofter complained that they had sought help, received none, and departed AWOL as a consequence.

(Case # 2065) (This is a continuation of the case of the American Indian who received a Bronz Star for heroism). After applicant's return to the United States from Vietnam, he asked his commanding officer for permission to see a chaplain and a psychiatrist. He claimed that he was denied these rights, so he decided to see his own doctor. He was given a psychological examination and was referred to a VA hospital. After a month of care, he was transferred back to camp. He again sought psychiatric care, but could find none. Later, he was admitted to an Army hospital. One examining psychiatrist noted that he needed prompt and fairly intensive short-term psychiatric care avert fourther complications of his was experience. His many offenses of AWOL were due to the fact that he felt a need for psychiatric treatment but was not receiving it.

Our Vietnam veteran applicants frequently complained that upon return to stateside duty, they encountered a training Army and the routine of peacetime duty lacking the satisfaction of the more demanding combat environment. Some adjustment problems may have resulted from their injuries.

(Case #08349) After his return from Vietnam, applicant was frustrated over his inability to perform his occupational speciality as a light vehicle driver due to his injuries. His work was limited to details and other menial and irregular activity that led him to feel "like the walls were closing in on me." He then went AWOL.

Unfortunately, other soldiers who had never seen combat experience were sometimes unfriendly to our applicants who had, adding to the combat veteran's readjustment problems.

(Case # 8145) While in Vietnam, applicant saw much combat action and received numerous decorations. He was an infantryman and armor crewman who served as a squad and team leader. He participated in six combat campaigns, completed two tours in Vietnam, and received the Bronze Stars for heroism. In one battle, he was wounded -- and all his fellow soldiers were killed. His highest rank was staff sergeant (E-6). Upon his return from Vietnam, he went AWOL because

of harassment from fellow servicemen that he was only a "rice paddy NCO" who would not have had his rank if not for the war.

Veterans of other wars usually came home as national heroes. The Vietnam veteran, however, was sometimes greeted coolly. Some of our applicants were disappointed by the unfriendly reception they were given by their friends and neighbors. Many Vietnam veterans, deeply committed to the cause for which they had been fighting were unprepared to return home to an America in the midst of controversy over the war.

(Case #) Applicant received a Bronze Star and Purple Heart in Vietnam. He wrote the following in his application for clemency: "While in Vietnam, I didn't notice much mental strain, but it was an entirely different story when I returned. I got depressed very easily, was very moody, and felt as if no one really cared that I served their country for them. And this was very hard to cope with, mainly because while I was in Vietnam I gave it 100%. I saw enough action for this life and possibly two or three more. I hope that someone understands what I was going through when I returned."

(Case # 8145) On his return from combat in Vietnam, applicant found it difficult to readjust to stateside duty. He was shocked by the civilian population's reaction to the war and got the feeling he had been "wasting his time."

AWOL Offenses:

By going AWOL, our applicants committed at least one of three specific military offenses: AWOL (Article 85, UCMJ), Desertion (Article 86, UCMJ), and Missing Movement (Article 87, UCMJ). Of the three, desertion was the most serious offense. To commit desertion, our applicants had to be convicted of departing with the intent to avoid hazardous duty or shirking important service (the most serious form of desertion), or departing with the intent to permanently remain away. Though the military service administratively classified most of our applicants as deserters, usually because they were gone for periods of excess of 30 days, only 9.2% of our applicants were convicted of the offense of desertion. Desertion convictions were infrequent because of the difficulty in proving intent.

A soldier could be convicted of missing movement when he failed to accompany his unit aboard a ship or aircraft for transport to a new position. Only 0.9% of our applicants were convicted of missing movement.

The majority of our applicants - 90% - were convicted of AWOL. AWOL was the easiest form of authorized absence to prove, where the evidence did not establish the intent element of desertion, a military court could still return a finding of AWOL.

Our military applicants went AWOL from different assignments, for different reasons, and under a variety of circumstances. As described earlier, 7% left from basic training, 10% from advanced individual training, 52% from other stateside duty, 24% because of assignment to Vietnam, 3.4% from Vietnam, and 1.3% from Vietnam leave. The remaining 2.3% went AWOL from overseas assignments in countries other than Vietnam.

As a criminal offense, AWOL is peculiar to the military. If a student leaves his school, he might be expelled. If an employee leaves his job, he might be fired and suffer from a loss of income. But if a serviceman leaves his post, he might not only be fired, but also criminally convicted, fined, and imprisoned. These extra sanctions are necessary -- especially in wartime -- to maintain the level of military discipline vital to a well-functioning Armed Forces. Desertion in time of Congressionally-declared war carries a possible death penalty, and most of the offenses committed by our applicants could have brought them long periods of confinement. Such swift, certain, and severe penalties are necessary to deter military misconduct, It is fundamental to military discipline, and literally a matter of life and death in the face of enemy fire.

In light of this, why did all of our applicants go AWOL? Why did an estimated 500,000 soldiers go AWOL during the Vietnam War? Almost 4,000 of our applicants were Vietnam combat veterans, yet they risked -- and lost -- many privileges and veterans benefits as a result of their offenses.

Though the general public has frequently assumed that many unauthorized absences during the Vietnam era were motivated by conscientious opposition to the war. and this was a factor motivating this program, only 4.6% of our military applicants went AWOL primarily because of an articulated opposition to the war.*

(Case #03285) Applicant decided he could not conscientiously remain in the Army and went to Canada where he worked in a civilian hospital. Prior to his discharge, applicant stated: "In being part of the Army, I am filled with guilt. That guilt comes from the death we bring. I am as guilty as the man who shoots the civilian in his village. My being part of the Army makes me just as guilty of war crimes as the offender."

*By coincidence, this 4.6% figure corresponds to the 4.6% of all cases in which our Board identified conscientious reasons (mitigating factor #10). It is very close to the 3.6% finding of an earlier AWOL study. ( ).

An additional 1.3% went AWOL to avoid serving combat, while another 9.7% left because they did not like the military. In rare cases, either may have implied an unarticulated opposition to the war. Thus, slightly more than 4.6% of our applicant's offenses may have fit a broad definition of conscientious objection.

(Case #1902) Applicant left high school at age 16 due to poor grades and disinterest. He was inducted, but after one week of Basic Combat Training, he left AWOL. Though he was not discharged until two years later, he only accumulated 18 days of creditable service.

A small but significant 1.8% of our applicants went AWOL because of post-combat psychological problems.

(Case #8887) Applicant received a Bad Conduct Discharge for an AWOL between 16 March and 28 November 1970. This AWOL was terminated by surrender in California. Applicant went AWOL because he was "disturbed and confused" upon returning from Vietnam. He described himself as "really weird, enjoying killing and stuff like that", and as being "restless". During the AWOL, he was totally committed to Christ and the Ministry.

In some instances, an applicant's actions seemed beyond his reasonable control.

(Case #05233) Applicant participated in 17 combat operations in Vietnam. He was medically evacuated because of malaria and an acute drug induced brain syndrome. He commenced his AWOL offenses shortly after he was released from the hospital. Since his discharge, applicant has either been institutionalized or under constant psychiatric supervision.

Approximately thirteen per cent of our applicants left the military because of denied requests for hardship leave, broken promises for occupational assignments and improper enlistment practices, or other actions by their superiors which they might not have liked.

(Case #0751) Applicant enlisted for the specific purpose of learning aircraft maintenance, but instead was ordered to Artillery school. When he talked with his commanding officer about this, he was told that the Army needed him more as a fighting man. He later went AWOL.

(Case #4793) Applicant, a Marine Sergeant (E-5) with almost ten years of creditable service, requested an extension of his tour in Okinawa to permit him time to complete immigration paperwork for his Japanese wife and child. Several requests were denied. Upon return to the United States, he again requested time in the form of leave. He was unable to obtain leave for five months, until it was granted after he sought help from a Senator. Applicant relates that his First Sergeant warned him, before he left on leave, that "he was going to make it as hard for him as he could" when he returned, because he had sought the assistance of a senator.

Some may have committed their offenses because of their basic unfitness for military service at the time of their enlistment.

(Case #14813) Applicant has a category IV AFQT score. He went AWOL because he was apparently unaware of or did not understand the Army drug abuse program. The corrections officer at the civilian prison where he is incarcerated believes that applicant's retardation, while borderline, makes it impossible for him to obey rules and regulations.

Sixteen percent committed their offenses because of personal reasons -- usually medical or psychological problems. Half of their problems were related to alcohol or drugs.

(Case #01371) Applicant started drinking at age 13 and was an excessive user of alcohol. Awaiting court-martial for one AWOL offense, applicant escaped but voluntarily returned shortly thereafter. He claimed that his escape was partly the result of his intoxication from liquor smuggled in by another detainee. A psychiatrist described him as emotionally unstable, unfit for military service.

The bulk of our military applicants--41%--committed their offenses because of family problems. Sometimes these problems were severe; sometimes not.

(Case #00191) Applicant commenced his absence from a leave status because of his father's failing health and his mother's poor economic prospects. He had applied twice for hardship discharges before his offense. While applicant was AWOL his father died of a stroke. His mother was left with a pension of $22 a month; she was a polio victim and unable to work.

(Case #11835) Applicant indicated he went AWOL from leave which had been granted so he could see his wife and newborn child.

Finally, twelve percent of our sample of applicants went AWOL for reasons of immaturity, boredom, or just plain selfishness. These tended to be people who could not--or would not-- adjust to military life.

(Case #14392) As a youth, applicant experienced numerous conflicts with his parents and ran away from home on several occasions. He joined the Army because there was nothing else to do in the rural community in which he was raised. Applicant had difficulty adjusting to the regimentaion of Army life, and he went AWOL four times.

Some of our applicants offered bizarre excuses for their offenses.

(Case #16332) Applicant states he was traveling across the Vietnamese countryside with a sergeant, when he and the sergeant were captured by the Viet Cong. He claimed that he was a POW for two months before he finally escaped and returned 30 pounds lighter and in rags to his unit. His unit commander did not believe his story, and his defense counsel advised him to plead guilty at his trial.

Our typical applicant went AWOL three times; over four-fifths went AWOL more than once. They tended to be 19 or 20 when they committed their first offense, and 20 or 21 when they committed their last offense.

Our applicants' first offense usually occurred between 1968-1970, and their last between 1969-71. Typically, their last AWOL was their longest, lasting seven months. One-fourth (25%) were AWOL for three months or less, and 27% were AWOL for over one year. Only 3% were AWOL for more than four years.

(Case #243) Applicant's military records reflect a series of unauthorized absences, the longest amounting to five years and five months, with only one month's creditable service.

At the time of their last AWOL, they had typically accumulated 14 months of creditable military service time; 81% had six months or more of creditable service, enough to qualify them for Veterans benefits. Only 1.1% used any force to effect their escape from the military.

Over three-quarters (76%) either returned to military control immediately or settled in their home towns under their own names. Most carried on life just as they had before they joined the service. Another 13% settled openly in the United States, and 6% settled in the foreign country where they had been assigned (often Germany). Only 5% became fugitives: 2% in Canada, 2% in other foreign countries (often Sweden), and 1% in the United States.

(Case #00847) Applicant went back to his old job after going AWOL. He never changed his name or tried to conceal his identity.

While AWOL, most of our applicants (81%) were employed full-time. Only 8% were unemployed. Often they were working in jobs where they would have been fired, lost their union membership, or had their trade license revoked if their AWOL status had been known.

(Case #00230) During his AWOL, applicant found employment as a tile and carpet installer. He became a union member in that trade.

(Case #08145) During his AWOL period, applicant worked as a carpenter to support his sister's family. Later, he worked as a security guard.

Slightly over half (52%) of our applicants were arrested for their last AWOL offenses. Some efforts were made to apprehend AWOL soldiers, but those efforts were startlingly ineffective.*

* Normally, an AWOL offender's commanding officer sent a letter to his address of record within ten days of his absence. He also completed a form, "Deserter Wanted by the Armed Forces," which went to the military police, the FBI, and eventually the police in the soldier's home of record.

Either the local police never received bulletins about AWOL offenders, or they were unwilling to arrest them. We had countless applicants who lived openly at home for years until they surrendered or were apprehended by accident (for example, through a routine police check after running a red light). In some cases an applicant's family was not even notified of his AWOL status.

(Case #03697) Applicant had a duty assignment at a military office in Germany. He experienced a great deal of tension, frustration, and restlessness, culminating in a feeling one day that he "couldn't face" going to work. He remained at his off-post home during his AWOL. His office made no effort to contact his wife during the entire period of his AWOL. He drank heavily, became anxiety-ridden, and concealed his AWOL status from his wife by feigning to go to work each morning. He was eventually apprehended when his wife, concerned over his strange behavior, called his office to ask his co-workers if they knew what was wrong with him. They had not seen him in months.

7. Experience with the Military Justice System

Upon returning to military control, our applicants had to face some form of discipline. Some (14%) faced other charges in addition to AWOL or desertion. In all cases, their last AWOL offenses factored in their discharge under other than honorable conditions. Hundreds of thousands of other AWOL offenders were more fortunate. They received more lenient treatment and later were discharged under honorable conditions. About twenty-two percent of our applicants had records reflecting at least one period of unauthorized absence with no record of punishment.

Most of our Army applicants who were AWOL for over thirty days were processed, upon their return to military control, through a Personnel Control Facility (PCF) formerly known as Special Processing Detachments. Life at these minimum - security facilities was not always easy for our applicants.

(Case #08349) Applicant voluntarily surrendered himself to an Army post near his home town. He found conditions in the personnel control facility intolerable due to the absence of regular work, the prevalence of crime, and the continued lack of regular pay. He went AWOL again one week later.

While in the PCF, our applicants were processed for administrative or court-martial action. Also, it was here that the decision was made, in appropriate cases, to place returning offenders in more secure pre-trial confinement. At the outset, they were briefed by a JAG officer (a military attorney) who advised them generally what disciplinary actions to expect. They were told about their opportunity to request a discharge in lieu of court-martial.

Some first offenders were quickly re-integrated into military life. Others faced more uncertainty about their fates. They had to decide, in most instances, whether to proceed to a trial or accept an administrative

discharge. The decision to go to trial usually carried the risks of conviction, a period of confinement, and perhaps a punitive dishcarge. On the other hand, a court-martial did not always lead to discharge: A convicted soldier might be returned to active duty and given an opportunity to serve his enlistment (which would be extended by the time he was AWOL and in confinement). Even if a punitive discharge had been adjudged, a return to duty was frequently permitted if an individual demonstrated rehabilitative potential while confined. If no further problems developed, he would receive a discharge under honorable conditions, with entitlement to veterans' benefits. In fact, over half (54%) of the earlier AWOL courts-martial faced by our applicants resulted in their return to their units. However, our applicants were unable to make the most of their second chance.

(Case #11835) Applicant was convicted of 4 periods of AWOL totaling one year and two months. He had an exemplary record for valor in Vietnam. The convening authority suspended the punitive discharge adjudged by his court-martial. The discharge was reimposed, however, after he failed to return from leave granted him following his trial.

Our applicants decision to accept an administrative discharge in lieu of trial amounted to a waiver of trial, a virtual admission of guilt, and a discharge under less than honorable conditions. However, the administrative process was speedier, permitting rapid return home to solve personal problems. It also involved no risk of imprisonment. However, although he was aveiding a Federal criminal conviction, he did acquire a stigmatic discharge. He also lost his opportunity to defend charges against him. Thus, the choices for our applicants were very difficult.

If our applicant had established what his commander felt was a pattern of misconduct, the commander might decide that he was no longer fit for active duty.

(Case No. 4072) Applicant was discharged for unfitness due to frequent use of drugs, habitual shirking and repeated AWOL and demonstrated inability to conform to acceptable standards of conduct.

The commander would then notify the soldier of his intention to discharge the soldier, who could choose to fight the action by demanding a Board of officers, or waive his right to such a Board. If he asked for the Board, the convening authority would then detail at least three officers to hear the evidence, as presented by the government, and as rebutted by the respondent and his assigned military defense counsel. The Board was then authorized to determine whether the soldier was either unfit or unsuitable for further military duty, if they believed he should be discharged. (They could also recommend his retention in the Service). If they found the soldier unsuitable, the normal recommendation would be discharge under honorable conditions. A discharge under honorable conditions was also possible if unfitness were found, but the usual result in such a case was to recommend an undesirable discharge. Once the Board made its recommendations, the convening authority had to make a final decision.

The choice between a discharge for unsuitability (usually a General Discharge) and a discharge for unfitness (usually an Undesirable Discharge) affected an AWOL offender's reputation and eligibility for veterans' benefits for the rest of his life. The decision was based upon a serviceman's whole record.*

* The rule-of-thumb often applied is that an Unsuitability Discharge went to a soldier "who would if he could, but he can't" -- in other words, to someone with a psychological problem or inaptitude. An Unfitness Discharge went to a soldier with more of an attitude problem, "who could if he would, but he won't."

(Case #8328) Applicant was under consideration for an unsuitability discharge. A military psychiatrist indicated that he suffered from a character and behavior disorder characterized by "impulsive, escape-type behavior" and "unresolved emotional needs marked by evasion of responsibility". Because of this diagnosis of a severe character and behavior disorder, he expected a General Discharge. Shortly before his discharge, a racial disruption occurred in his company, in which applicant took no part. This disruption led to the rescission of a lenient discharge policy and applicant was given an Undesirable Discharge for Unfitness.

The more common administrative procedure, accounting for the discharge of 45% of our applicants, was the "For the Good of the Service" discharge, given in lieu of court martial,* which was granted only at the request of a soldier facing trial for an offense for which a punitive discharge could be adjudged. Until recently, it did not require an admission of guilt -- but it did require that the AWOL offender waive his right to court-martial and acknowledge his willingness to accept the disabilities of a discharge under other than honorable conditions (e.g., Undesirable Discharge). Unlike our applicants, a few AWOL offenders received General Discharges through "Good of the Service" proceedings, because their overall needs were satisfactory.

Our applicants did not have a right to a discharge in lieu of court-martial; they could only make a request. To qualify, the AWOL for which the applicant was facing trial had to range between 30 days and a year and a half, depending on the standards set by the convening authority where the applicant returned to military control.

(Case #0664) Applicant was absent without leave twice for a total of almost one year and two months. He applied twice for a discharge in lieu of court-martial for his AWOL's but both requests were denied.

Occasionally, our applicants indicated that they went AWOL specifically to qualify for a "Chapter 10" discharge.

*This is commonly called the "Chapter 10" discharge within the Army, referring to AR 635-200 Chapter 10.

(Case #15528) After his third AWOL, applicant requested a discharge in lieu of court-martial, which was denied. He then went AWOL three more times. He told an interviewing officer after his 6th AWOL that he had gone AWOL in order to qualify for a Chapter 10 discharge.

AWOL offenders who qualified for a discharge in lieu of trial rarely chose to face a court-martial. The desire was often strong to leave PCF or get out of pre-trial confinement. If a soldier was granted a Chapter 10 discharge, he was usually allowed to leave the PCF or confinement within one week after his application. One to two months later, he was given his discharge. Occasionally, our applicants claimed that they went home expecting to receive a General Discharge, only to get an Undesirable Discharge.

While it was a permissible practice in the Army prior to 1973 for an accused to condition his request for discharge in lieu of trial upon his being granted a General Discharge under honorable conditions, this was rarely granted. In order to speed the discharge application, many soldiers requested discharge, acknowledged that they might be given a UD, but requested that they be furnished a General Discharge in a separate statement. This may account for some misunderstanding by many applicants as to the discharge they would receive.

(Case #04977) Applicant's last AWOL ended in a 30-day pre-discharge confinement, where he refused to sign a Article 15. He alleged that his First Sergeant told him that if he did not sign, he would be unable to see anyone about his problem. He further alleged that he was promised nothing more severe than a General Discharge, so he signed the papers. Instead he was given an Undesirable Discharge. Later, he appealed his discharge before the Army Discharge Review Board, but he was unsuccessful.

Our applicants who received discharges in lieu of trial generally were those whose last AWOL ended between 1971 and 1973. The likelihood of receiving a discharge was greater if their AWOL had been no more than one year in length.

(Case #612) Applicant wrote that he looked around for ways to deal with his personal pressures and finally decided to go AWOL. After three months living in a "hippie commune" he returned with the expectation he would be discharged. He obtained a discharge in lieu of court-martial.

The following two tables relate the effects of year of discharge and length of last AWOL on the type of punishment which our applicants received.

YEAR OF DISCHARGE

	1966	1967	1968	1969	1970	1971	1972	1973
UD - in lieu of trial	3%	1%	11%	37%	34%	67%	62%	56%
UD - Unfitness	26%	25%	27%	19%	10%	12%	6%	12%
Punitive Discharge (court-martial)	71%	74%	62%	54%	56%	21%	32%	32%

LENGTH OF AWOL

	0-6 months	7-12 Months	Over 12 Months
UD - Discharge in Lieu of trial	50%	45%	36%
UD - Unfitness	21%	10%	7%
Punitive Discharge (Court Martial)	29%	45%	57%

It is worth noting that 51% of our AFQT Category IV applicants received discharges in lieu of trial compared to 44% of our Category II and III applicants and only 32% of our Category I applicants. Blacks were about equally as likely as whites to receive Chapter 10 discharges (46% versus 44%), but Spanish-speaking soldiers were much more likely to receive them (66%).

Some of our applicants requested -- or the military insisted -- that they face court-martial for their offenses. In a court-martial, they had greater opportunity to deny or explain all charges brought against them, with benefit of counsel and with full advance knowledge of the prosecution's case. They also faced the threat of a punitive discharge and imprisonment. An accused soldier enjoyed at least as many rights at trial as an accused civilian. Usually, his court-martial took place very promptly, limiting pre-trial delays (and therefore, confinement or residence at the PCF) to two or three months at most.

There were three forms of court-martial. The Summary Court-Martial consisted of a hearing officer (Summary court officer) who called witnesses for the prosecution and defense, rendered a verdict, and adjudged sentence. The summary court adjudged no sentence greater then confinement at hard labor for one month (and then only if the accused was in pay grade E-4 and below), hard labor without confinement for 45 days, reduction to the lowest enlisted pay grade,* and forfeiture of two-thirds of one month's pay. After 197_, no confinement could be adjudged unless the accused were represented by counsel, as a consequence of the ruling by the Supreme Court in Argisinger v. United States. No transcript of the trial was kept, and there was no judicial review. However, a summary court never sat in judgment without the express consent of the accused, who could refuse the court and leave to the convening authority the decision whether to refer the charges to a higher court. Altogether, 16% of our applicants faced a summary court-martial at least once.

*Soldiers in grade E-5 and above could be reduced only to the next inferior pay grade. Argisinger v. United States ____U.S. (197_.

The 54% of our applicants who faced a Special Court were tried by a court of officers unless they specifically requested that at least one-third of the court be enlisted members, usually of high rank. After 1969, a military judge normally presided over the trial, and the accused was entitled to request that the military judge alone hear the case and adjudge sentence. In the absence of a military judge, the President of the court of members the senior member presided over the trial.

The Special Court could adjudge no sentence greater than confinement at hard labor for six months, two-thirds forfeiture of pay for six months, reduction to grade E-1, and a Bad Conduct Discharge. Of our applicants tried by a Special Court, 50% received a Bad Conduct Discharge. The other half were returned to their unit.

The 13% of our applicants who were tried by a General Court-Martial faced a possible sentence of up to 5 years imprisonment, a Dishonorable Discharge, and total forfeiture of pay and allowances.
Of our applicants tried by a General Court, 99% were ordered discharged, almost all (85%) with a Bad Conduct Discharge.

The General Court was similiar in composition and procedure to the Special Court. Our applicants facing Special or General were entitled to free JAG defense counsel after 1969. The service detailed defense counsel to them, and permitted them any counsel requested by name, provided the attorney was "reasonably available." They also could secure a civilian attorney, but at their own expense. The rules of evidence were followed and a verbatim record of trial was required if punitive discharge was adjudged.

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* In the Army, a Bad Conduct Discharge was adjudged only where the convening authority expressly authorized the Special Court to adjudge a punitive discharge.

Altogether, 40% of our applicants stood Special or General court-martial for their last AWOL offense.* Of those, about 16% pled "not guilty." All were convicted, and all but a few received punitive discharges. They were further sentenced to pay forfeitures, reduction-in-rank, and imprisonment for typically seven months. Their sentences were often reduced through the automatic review of the Court of Military Review. Our court-martialed applicants' final sentences averaged five months, with only 3% having to serve more than one year in prison.

Our applicants who were punitively discharged had their cases reviewed for errors of law by a JAG officer responsible to the court-martial convening authority. They were further reviewed for errors of fact or law by a Court of Military Review (previously known as Boards of Review) and occasionally by the Court of Military Appeals.

Few of our applicants voiced objection to the fairness of their trials, but some complaints were heard.

(Case #00423) Applicant, a Vietnam veteran, sustained some sort of eye injury (probably in Vietnam) which caused his retina to become detached. He is now nearly blind in one eye. At trial, his counsel attempted to introduce the testimony of his attending ophthalmologist to prove that he absented himself to obtain medical treatment, not to desert. The military judge refused to admit the ophthalmologist's testimony, in the absence of independent evidence of its relevancy. His decision was upheld on appeal.

Sentences under 30 days were usually served at the post stockade. Convicted but undischarged AWOL offenders sentenced to more than one month of imprisonment were transferred to the Army Retraining Brigade at Fort Riley, Kansas. Efforts were made to rehabilitate the offender and enable him to

complete his military service successfully. However, many were habitual offenders. For others, military life became even more difficult after confinement.

(Case #356) As the result of a two-month AWOL, applicant was convicted by a summary court-martial and sentenced to confinement. After his release and return to his former unit, he was constantly harassed, ridiculed, and assigned to demeaning work. He found this intolerable and he went AWOL again.

Those who were pending punitive discharges and had received sentences of over 30 days were sent to the Disciplinary Barracks at Fort Leavenworth, Kansas. Approximately 170 of our applicants were still serving their terms when the President's Clemency Program was announced. They were all released upon their application for clemency.

Effects of the Bad Discharge

All of our applicants had one experience in common: They all received bad discharges. Sixteen percent received Undesirable Discharges for Unfitness, and 45% received Undesirable Discharges in lieu of court-martial.* Those who faced court-martial and received punitive discharges received Bad Conduct Discharges (38%) or Dishonorable Discharges (2%). In some states, a court-martial conviction, particularly if it led to a discharge or confinement over one year, incurs the same legal disabilities as a felony conviction in the civilian courts. Thus, some of our applicants lost their voting and property rights and the opportunity to obtain certain licenses by virtue of their punitive discharge.*

Civilian courts have taken judicial notice of the less-than-honorable discharge, calling them "punitive in nature, since it stigmatizes a serviceman's reputation, impedes his ability to gain employment and is in life, if not in law, prima facie evidence against a serviceman's character patroitism or loyalty.*

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*Before applicants could submit to any proceeding which might result in undesirable discharge, each was warned as follows:

> "I understand that I may expect to encounter substantial prejudice in civilian life in the event a general discharge under honorable conditions is issued me. I further understand that as a result of the issuance of an undesirable discharge under conditions other than honorable, I may be ineligible for many or all benefits as a veteran under both federal and state laws and that I may expect to encounter substantial prejudice in civilian life."

** Stap v Resor, 314 F. Supp.___; accord Sofranoff v. U.S.,;165 Ct. Cl. 470, 478 (1964), Glidden v. U.S., 185 Ct. Cl. 515 (1968); Bland v. Connally, 293 F. 2d. 858 (___Cir 1961)

What was more important to our applicants was the effect of discharge on their ability to get veteran's benefits and obtain a job. Most of our applicants were 20 - 22 when they received their less than honorable discharges. Many were looking for their first full time civilian job. Some were caught in a downward spiral: They could not afford to train themselves for a skilled job without veterans' benefits. Employers would not hire them for other jobs because of their discharge. They then could not receive unemployment compensation.

(Case #08062) Applicant was unable to go to Accountant's School without benefit of the GI Bill -- from whose benefits he was barred. Finally he found employment as a truck driver for small trucking firms and is now earning $70 per week. He could have earned more with the larger trucking companies but they refused to hire him because of his discharge.

(Case #08232) Applicant, a Vietnam veteran, was unable to find work for his first month after discharge because everyone insisted upon knowing his discharge. He finally found work as a painter but was laid off five months later. Because of his discharge he was denied unemployment benefits.

A number of studies have shown that employers discriminate against former servicemen who do not hold Honorable Discharges. About 40% discriminate against General Discharges, 60% against Undesirable Discharges and 70% against Bad Conduct or Dishonorable Discharges. Many employers will not even consider an application from anyone with less than an Honorable Discharge.

The injury caused by the discharge under other than Honorable Conditions is particularly acute in the case of our applicants who served more than enough time to have earned veterans' benefits, and who obtained Honorable Discharges for the purpose of re-enlisting, but who received bad discharges in their last period of enlistment . In most cases, their bad discharges lost them the veterans' benefits they had previously earned. Thirteen percent of our applicants had more than three years of creditable service, and 4% had more than 5 years.

(Case #04793) Applicant enlisted in the Marine Corps in 1961 and received his first Honorable Discharge four months later, when he reenlisted for four years. He received his second Honorable Discharge in 1965, and he again re-enlisted. He received a third Honorable Discharge in 1968 and again re-enlisted. He had good proficiency and conduct ratings (4.5), and he had attained the rank of Sergeant E-5. He went AWOL for 4½ months in 1970 before receiving a Bad Conduct Discharge in 1971. His total creditable service was 9 years, 10 months, and 15 days.

Of our applicants whose current employment status we know, 6% are in school, 17% are unemployed, 4% are working part-time, and the rest (73%) are working full time. Two in five of those working full-time are in low-skilled jobs.

Unfortunately, many of our applicants also turned to crime. At the time of their application, 12% of our military applicants had been convicted of civilian felony offenses--half of whom had committed violent crimes. At least 7% of our applicants were incarcerated for civilian offenses at the time they had applied for clemency.