The original documents are located in Box 5, folder "Final Report - Draft, 8/29/75 (11)" of the Charles E. Goodell Papers at the Gerald R. Ford Presidential Library.

V

V. MANAGING THE CLEMENCY BOARD

CHAPTER V
Managing the Clemency Board

In following a case-by-case approach, we elected to give each applicant's case a substantial amount of staff and Board attention. To prepare a single case properly took much effort. To prepare 15,000 cases properly took a large and dedicated staff, a great amount of management effort, and significant time.

Despite the size of this effort, we believe that our applicants should receive an accounting of why they usually had to wait six months for their clemency offers to be announced by the President. Were it not for the many thousands of cases, and the time-consuming procedures we chose to follow, the waiting time would have been much less. Because our applicants were not present during our process, we demanded high standards of fairness, accuracy, and consistency to protect their rights and interest.* We did our best, nonetheless, to compensate for the time-consuming nature of our process.

What we gained from this process was experience in crisis or "adaptive" management--experience which we think may help managers of comparable organizations. Heretofore, few Federal enterprises have had as tangible a mission and as clear a deadline as our own-most Federal agencies operate on a much different basis. This "crisis" management may become more commonplace as it becomes more widely recognized that unending government involvement is not always the right formula for

solutions to temporary problems. Through crisis management, reasonable solutions to temporary problems can be accomplished in a brief spurt of energy--without the need to create expensive, undying bureaucracies.

Management experts often claim that government could work better if it would pattern itself more after private enterprise.2/ To do this, a government agency must often have the ability to do the following: (1) To spring into action immediately upon request, with little or no time for advance planning; (2) to set clear goals whose achievement can be monitored as a measure of performance; (3) to identify staff and other resource needs quickly and accurately, obtain them promptly, and apply them flexibly; and (4) to reduce in size as soon as staff is no longer needed. We were fortunate to have these abilities, and we expect that other crisis enterprises would also. We are not sure that we used them to full advantage, but we could not have met the President's deadline without them.

In this chapter, we described our management experiences during our twelve months of operations. During that year, we generated 21,000 applications, 3/ recommended 15,500 case dispositions to the President, and referred 500 cases with incomplete files to the Justice Department for further action. Extending from

*See Chapter _____.

September 16, 1974, to September 15, the year was split into five distinct phases:

(1) September through December -- our policy formulation phase, during which very few applications were received, with our Board concentrating on developing policies and procedures.

(2) January through March -- our Public Information Phase, with our Board and staff concentrating on informing the American people about our eligibility criteria.

(3) April and May -- our expansion phase, as we grew by a factor of ten to accomodate our mid-summer case production requirements.

(4) June and July -- our peak case production phase, with our staff producing cases and our Board deciding them at a rate of over one thousand cases per week.

(5) August and September -- our contraction phase, as we finished our "clean-up" production tasks while reducing (and eventually disbanding) our staff.

1. September through December -- Our policy formulation phase

In the early days of our mission, we had little idea of what lay ahead. Our nine-member Board concentrated on resolving key policy issues: Setting the baseline formula, determining aggravating and mitigating factors, and recommending categories of case dispositions to the President.

3/ 5,000 applicants were found to be ineligible for the President's Program. See Chapter _____.

Initially, we had a staff of thirty , approximately one-half of whom were attorneys, detailed from permanent Executive Agencies. The staff quickly developed a process for handling applications and presenting cases to the Board. That process was time-consuming, yet high standards of quality were strongly emphasized. It was also rather informal, well-suited to a small staff with a moderate workload. During this period, we were developing our rules and testing our ability to apply them. We learned that using our aggravating and mitigating factors just as informal guides was not enough; some clearly inconsistent case dispositions resulted from that practice. Therefore, we decided to apply our baseline formula and aggravating/mitigating factors very explicitly. After every case, we determined not only the actual disposition , but also the factors which were applicable. Based upon our new rules, we reconsidered our first few cases, with significantly different results. The Board was usually able to reach a consensus, despite the diversity of our respective background.

Our management structure was very informal, as one might expect from a small, new organization. Almost everyone on the staff had some case production responsibility -- either processing applicants, writing case summaries, or sitting with the Board as panel counsels. Each case received individual attention from our senior staff. Aside from its review of casework quality, the senior staff concentrated much

less on mangement than on substantive policy issues. Regulations had to be drafted, and our Board needed substantive help with major questions of policy and procedure.

During those early months, we developed the basic elements of the case production process which we followed throughout the year, with surprisingly few modifications. Our administrative staff developed a procedure for processing applications. Our case summary evolved into a format which we found useful--and which resisted change--throughout the year. We introduced a quality control staff into the system in December, to review case summaries and assure the accuracy and impartiality of case attorney's work. The presentation of cases before the Board was done in much the same manner as it would later occur; each case however, received about 15 minutes of Board time -- something which would prove impossible during our peak production phase.

We achieved something of a balance in our operations: Our 8 - 10 case attorneys could each produce roughly a case a day, and our Board could decide about 30 cases per day. With the Board meeting two or three days every two weeks, we processed cases at the steady rate of about 150 per month. With an estimated final workload of not much over 1,000 cases, we expected to be finished by spring. In such an informal organization, we saw no need to set goals, implement informaion systems, or monitor case inventories at different stages of our process. In many ways, we resembled a moderate-sized law firm.

Our primary management goal in those early months was to submit a reasonable number of case recommendations to the President by late November. Our purpose was to give the President the opportunity to announce case dispositions quickly, in order to alert prospective applicants about what they were likely to receive from the President's program. Around Thanksgiving, the President signed warrants for the first 45 cases.

We expected that the Presidential announcement of case dispositions would stimulate more applications. It did not. We also expected that around Christmas time, many eligible persons would sense the approaching deadline and apply. That, too, did not happen. By the year's end, we had received application from only 850 persons, less than 1% of those eligible. Our Board had already decided over one-fourth of those cases, and we expected to be finished by April.

2. January through March -- our public information phase

As the Board heard the first few hundred cases, we began to realize the limited educational background of many of our applicants. Through informal surveys and other means we developed some doubts about the extent to which the American public -- and especially our prospective applicants -- understood our eligibility criteria. By mid-December, the need for public information campaign was apparent. Plans were laid and materials were readied. By the second week in January both the Board and the staff concentrated on spreading the word about our eligibility criteria during the next three months.*

We were not particularly well-equipped to run such a campaign; our public information staff numbered only three, and our funds for travel and information materials were quite limited. Lacking staff and dollar resources; we relied on others to mail letters to our applicants, send tapes to radio and television stations, and so forth.

Almost everyone on the Board and staff participated in the public information campaign. The Board cancelled half of its scheduled meetings throughout January, February, and March to allow some of us to spend time spreading our eligibility message in major cities across the country. Our staff, now numbering about fifty, planned future public information activities while endlessly stuffing envelopes.

By late January, thousands of letters and phone calls were received from applicants who had just learned of their eligibility. For

weeks at a time, our staff attorneys set aside their casework to man the phones and respond to the letters.

Because of this, and despite our slowly enlarging staff, case production fell to less than 100 per month. Our administrative staff fell days behind in its efforts to count and log new applications. Much of the administrative work had to be done by volunteers. In fact, these non-professional volunteers had to be relied upon to read mail from applicants and determine their eligibility.**

We realized that our late April target date for completing our work had become unrealistic. However, during January and February we could never make accurate estimates of what our final workload would be. We always had boxes full of uncounted mail and drawers full of telephone inquiries from persons whose eligibility we could not determine. We never were sure when -- or whether -- our application rate would peak. Until early March, we could only speculate about how long the President would allow us to accept applications. As shown in the table below, our workload estimates were never more than a few thousand cases more than the applications we had in hand at the time:

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*See chapter _____ for a description of our public information campaign.

*Many of these eligibility determinations later proved to be inaccurate. At the time, we only had staff attorneys review letters from applicants considered ineligible by the volunteers. Of the 18,000 presumably eligible cases logged in by the end of our application period, 2,000 were later found to be ineligible.

DATE	APPLICATIONS COUNTED	WORKLOAD ESTIMATE
January 1	850	1,000 - 1,500
February 1	4,000	5,000 - 6,000
March 1	10,000	12,000 - 14,000
April	15,000	16,000 - 18,000
April 15	18,000	18,000 - 20,000

It was not until February that we acknowledged that we either had to grow in size or streamline our process to get our work done in a reasonable time. In hindsight, it was not until mid-March that we came to realize the true dimensions of our task. Even then, there was little sense of crisis about our looming production problems. When top staff was not busy directing the last weeks of our public information campaign, it had to focus on the day-to-day needs of our severly-strained administrative staff. There seemed to be little time for long-range planning.

By late March, our staff had grown to almost 100, but only 500 cases had been processed through the Board. Based upon staff and procedures, one projections went that we would finish our workload no sooner than 1978. However, we recommended to the President that he set a deadline of September 15, 1974 (giving us a total life-span of exactly one year) and that he authorize the doubling of our Board and the expansion of our staff to approximately 600.

** Many applications postmarked by March 31 were not counted until mid-April.

3. April and May -- our expansion phase

By early April, we had a reasonably accurate workload projection, a promise of a six-fold increase in staff size, and a September deadline. We had to be working at full speed by mid-May to finish on time. Within six weeks, we had to develop a management planning capability, implement a new management structure, and assimiliate hundreds of new personnel. In the midst of all this, we had to move our quarters across town.

A management analysis staff was quickly formed. We recognized our need to set both short-term and long-term goals and to have information to enable us to measure goal achievement and timely completion of our effort. Giving ourselves a one-month margin of error (and basing our projections on a high estimate of 20,000 cases), we set weekly production goals starting at about 1,200 cases -- peaking at 1,600 cases -- for the key aspects of our case-writing process. A new management information system, focusing on those same key aspects for which we set goals, was implemented to replace our by then very overloaded reporting systems.

The management analysis staff also identified ways to improve the efficiency of our production process. Individual staff analysts were assigned to monitor each of the process. They developed intraphase information systems, productivity aids, and inventory control mechanisms.* Our process was very flexible, and our line staff was responsive to suggestions. This was our one chance to make fundamental process revisions; once our staff stopped expanding, it became more resistant to change.

Our efforts to review and modify our case production process were boosted by an Inter-Agency Task Force sent by OMB to review our resource needs. Our top staff (including most of our staff analysts) were lawyers,

*See Appendix_____for a description of the analytical tools were were applied.

and the Task Force members were high-level managers. Our two weeks together gave us a greater management orientation; indeed, those two weeks were the ones in which we mobilized our staff and started achieving our once hypothetical goals. However, we were reluctant to apply and shortcuts which would affect the fair process our applicants deserved.

Our new planning capability arose at the same time we were expanding our line management structure. In early April, we decided that we would keep the basic elements of our case disposition procedures: Narrative case summaries, quality control, case attorney presentations to the Board, and the presence of experienced panel counsels during Board deliverations. Therefore, the only persons experienced enough to be line managers were our original eight case attorneys. Most had never managed before, yet each would soon be responsible for a staff of sixty. They also had to designate a number of newly-hired duputies who would have immediate responsibility for teams of 6-8 case attorneys.

The scenario was this: Brand new staff attorneys were asked to supervise small teams of other brand new staff. Experienced attorneys who before had largely just prepared cases were now each the supervisors of 40 professional and 20 clerical staff. Two formerly middle-level managers now were responsible for a mini-agency of almost 500 people. The General Counsel,* his Deputy, the Executive Secretary, and their aides -- all lawyers -- had to assume the roles of exsutive-level managers.

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*Our General Counsel was Staff Director.

All of our senior staff were in their twenties and thirties, and because of differing abilities to adapt to new situations, GS-13's sometimes found themselves reporting to GS-11's.

It was into this new management swirl that our new case attorneys came. At the requestof the President, and with help from OMB, two "taps" for professional and clerical personnel were made of permanent executive agencies. Since we had no "slots" through which to hire our own preferred people, we had to borrow ("detailed") employees from other agencies. In addition, we put to work over 100 summer legal interns hired and referred by other agencies. One tap was made in early April and the other in early May -- but, in each case, most personnel came three to four weeks later. It was not until late June that our early-May tap for clerical personnel was filled. At the time, we were concerned about the slowness with which we were able to expand; in hindsight, we might have faced greater management and morale problems if we had gotten new staff in bigger bunches.

A training manual was prepared which provide information concerning the Clemency Program in general, and the procedures for writing cases in particular. Certain operational memoranda were included in the manual, but they rapidly became obsolete as experience forced the evolution of the process. Our earliest mistake in the communications area occurred at this stage:

Changes were implemented rapidly and met with reluctance on the part of our staff, which had once been informal and collegial. Because of our prior informality, many of our early procedures and rules were maintained

and amended orally. Had we to do it again, we would probably implement some sort of formal directive system.

Training sessions, lasting a day, were instituted upon arrival of personnel. Team assignments were made after these sessions.

The training process was meant to be primarily an overview both of the legal process and of our general mission. It was anticipated that the team leaders, and their slowly emerging internal team structures, would provide the continuing training necessary to fully integrate new personnel. This was successfully accomplished in some cases and scarcely attempted in others, reflecting different managerial styles.

When the process of building and training attorney teams had been completed, our organizational structure had become more formally pyramidal. With our increase in size came an increase in the diversity and complexity of tasks and roles. The senior staff, including the two primary line managers, eight team leaders in charge of case writing teams, one team leader in charge of all Quality Control attorneys and other planning, management, and administrative managers numbered, at the peak, some twenty-five people. In addition, each of the eight teams divided into sub-teams, under the direction of emerging assistant team leaders. The optimal span of control -- the number of persons that any one supervisor was able to manage -- was found to be approximately six, one serving as a principal deputy. The more successful teams also selected one of their clerical personnel to generally supervise the operations of the support personnel.

The slowest part of the development of the managerial structure proved to be the development of internal team structure. Some team leaders were slow to promote assistants, to delegate authority and responsibility. The senior staff felt that team leaders rarely utilized assistants fully. As a result, the team leaders were uniformly overworked during peak periods.

and could not adequately command or control all facets of their operations, nor respond fully to the demands of the senior staff. Notwithstanding the shortcomings imposed upon them by their lack of experience as managers of large staffs engaged in a crisis task, these managers generally performed adequately, and in about half of their number performed very well, adapting to the physical and emotional pressures of our operation with alacrity.

Our attorney staff was, on the whole, dedicated and competent, with many persons showing exceptional professionalism. On the other hand, we found that many of our lower grade detailed clerical and administrative personnel were poorly trained and unenthusiastic. Absenteeism among this group was high, and production low. However, those who served as executive secretaries proved to be as diligent and as professional in their work as our best attorneys.

During May and June, our management analysis staff carefully monitored attorney case summary production, through the use of a simplified management information system. In this information system, information on individual case production was funneled from the lowest level of the staff to the highest, becoming increasingly aggregated. This data was assembled with information from different production stages to produce a flow-type picture of our operations. The information system was implemented, monitored, and revised by the analytical staff responsible for interpreting the findings. Senior staff and team leaders alike were able to use this information to gauge both organizational and individual accomplishment of goals.

A careful review was made of every step taken by a case attorney as he prepared each case summary. Based upon these findings and an application of "learning curve" theory, a target case attorney "learning curve" was set: Two cases the first week, four the second week, six the third, and eight every week thereafter. Instead of our target 2-4-6-8, (and the 2-5-7-10 which the

Inter-Agency Task Force thought possible), our actual learning curve was 2-3-5-6. Summer legal interns were found to have a better learning curve and a higher production peak than detailed government attorneys. Learning curve calculations were made for each forty-person case attorney "team" with surprising differences in the results. The two most productive teams had learning curves of 2-6-10-12 and 2-6-8-8, while the three least productive teams were all unable to produce more than three cases per week per attorney. The worst learning curve was 1-2-2-2. Surprisingly, we also found that the most productive teams also did work of better quality than the least productive teams. Staff assignments were made randomly, and working conditions were identical. Therefore, we attributed the differences in productivity to the management styles of the team leaders.

Our best managers turned out to be the more aggressive individuals. They had set a heavy pace for themselves in their earlier work on our staff, and that same pace was apparently picked up by their new staffs. They had set high goals for new case attorneys -- usually ten or twelve cases per week -- and spent most of their time with those who were new or having trouble. On some teams a laissez-faire attitude contributed directly to low production. Most of the better managers quickly appointed enough deputies to keep the span of control at 6-8 persons per supervisor, and they began delegating responsibilities liberally. The less productive managers delegated much less and had an insufficient number of deputies. Those who were better case attorneys tended also to be better managers, but prior experience and civil service status did not seem to matter. Figure D compares each team on the basis of a number of performance factors. As one can see, leadership in one case tended to lead to good results in others.

Many of our new case attorneys were startled by our emphasis on production. Despite some disenchantment from government attorneys not comfortable with

casework quotas, the entire staff respond well to the notion of team and individual goals. Our top staff held weekly production meetings with the eight team leaders, reviewing productivity changes and identifying team production problems. The team leaders were told how their teams ranked, and management principles were shared. The production meetings kept the good teams good and made the bad teams acceptable, but the middle teams' production levels remained unchanged. By plan or by coincidence, production rose to the 1,200 per week levels we knew we had to maintain to meet the President's deadline.

The quality of our new staff was good--indeed, better than we expected, given that we had no chance to screen them initially. We had feared that many agencies would send us their unproductive people. Very few did. What we got instead were adaptable "shock troops," ready for new responsibilities and new experiences. Indeed, most would not have come unless they were of a mood to enjoy a crisis atmosphere. More experienced, more professionally capable, but less flexible detailees would not have performed as well. We could not have met our deadline without a staff willing to cooperate with young, inexperienced managers -- and able to tolerate some very difficult working conditions.

Our Board was expanded to eighteen members in late April.* Like the staff, we had to accustom ourselves to a much faster pace of work. If anything, the pressure on us was greater: Our number of case attorneys expanded from 10 to 300, while we only doubled in size. In March, the nine-member Board had begun to make case dispositions in panels of three. We were satisfied with the quality of the dispositions, but no panel had by that time decided more than 50 cases in a single day. We had to double that rate.

*Ten new members were added, one of whom filled vacancy left by the resignation of Board member Robert Finch.

This was impossible during the first several weeks, while our new members were familiarizing themselves with our range of cases. Nonetheless, most panels exceeded 100 cases per day by the end of May. With three panels meeting four days each week,* our Board output began matching -- and sometimes exceeding -- staff output of 1200 per week.

As our Board panels increased their decision-making pace, we were only able to spend three or four minutes per case. This left little time for case attorneys to make oral presentations. Usually, those presentations focused on mitigating evidence. Also, we had inexperienced deputy team leaders sitting as panel counsel during many of our sessions. They were not well-versed in Board policy, so they were unable to play the panel counsel's presumed role of assuring that we followed our rules scrupulously. As a result of these factors, different panels began applying different rules -- and our dispositions gradually became more ~~severe~~ disparate. Many Board members began referring cases to our Full Board because of disagreements over our policies.

We could not slow down our pace, nor could we meet our deadline by having so many cases heard by the Full Board. Instead, we took the following steps: (1) We held more frequent Full Board meeting to discuss and define our policies; (2) we created two new aggravating factors, a pardon rule,** and a no clemency rule*** to clarify as Board policy what a number of panels were inclined to do with or without any rules: (3) copies of the newly-created Clemency Law Reporter were distributed to the Board and staff, with explicit definitions of Board rules and precedents; (4) our top staff held workshops to instruct panel counsels in Board policy; and (5) at the

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*The fifth day was set aside for reading case summaries.
**The pardon rule was that civilian cases in which the applicant had conscientious reasons for his offense would receive an immediate pardon, in the absence of serious aggravating circumstances.
***the "no clemency" rule was that any applicant who had been convicted of a violent felony would be denied clemency, in the absence of significant mitigating circumstances.

instruction of the Chairman, our staff implemented a computer-aided review of Board panel dispositions.* Thereafter, our case disposition procedures worked much more smoothly. We still heard over 100 cases per day, with referring so many to the Full Board.

4. June and July -- our peak production phase

By early june, our estimated total caseload was still over 18,000. Our case attorneys had prepared only 4,000 case summaries, and our Board had heard less than 3,000 cases. We had to maintain our pace of the last week of May throughout the summer.

Based upon the production levels which our staff was not confident that we could meet at each stage of our process, we revised our weekly and monthly goals. Our top staff considered but rejected the idea of preparing an explicit work plan for the remainder of the program. Had a work plan been prepared for June during May, it would alfready have been outdated. Each week involved too many uncertainties we thought, to permit long-range planning.

Our need to respond quickly to production problems led to a revision on our management information system. "Need to know" was culled from "nice to know" as our staff concentrated on accurate reporting of production tallies and inventory counts at a few key stages of the process. Time-consuming productivity analysis was no longer done. Rather than look just at the case attorney production point, attention was now focused on other key production points and the smoothness of our work flow.

One point which had been ignored previously was our file room. By June, it was running out of new cases to give our case attorneys. Without enough work to do, production goals were meaningless. Our staff morale started to flag, as rumors spread that case attorneys would not have enough work to keep

*See Appendix___for a description of our computer-aided review of Board dispositions.

busy for the rest of the summer. The summer legal interns were so productive that it was never again to be possible to give case attorneys more work than they could finish. Through greater management attention, the immediate file problem was solved -- but our whole management emphasis changed as a result.

Instead of focusing on case production goals, our top staff concentrated on steering clumps of existing cases through the process. The management analysis staff developed a "pipeline" inventory count to identify production log jams on a weekly basis.* Pipeline analysis replaced productivity analysis as the basis for production meetings throughout the rest of the summer.

Case flows from point to point were closely monitored, and an expanded number of aides to top staff began to trouble-shoot in problem areas. Unfortunately, each pipeline "snapshot" required at least one and usually two days of staff time to collect and analyze data, making the information old before it could be applied. Occasionally, daily updates had to be made before any corrective actions could be taken.

The most serious inventory control problem of the summer related to the docketing of cases for the Board. During June, the case attorneys continued to produce case summaries at the rate of 1,200 per week -- but the Board panels were deciding cases at the rate of 1,500 per week. Eventually, the docketing staff was left with no case inventory, and Board members were receiving case summaries too soon before scheduled panel meetings to allow them to be read first.

What had created this problem was a previously-unmanaged interface among all parts of our production process at the docketing stage. To solve this problem, one manager was assigned to a newly-created Board Interface Unit.

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*See Appendix___for a description of our pipeline analysis.

New docketing procedures were developed, with cases batched in "docket blocks" according to fixed Board panel schedules.** To solve the immediate problem, the Board heard very few cases during the Fourth of July holiday week. Thereafter, our docketing inventory was carefully controlled.

To solve this and other pipeline problems, we had to be flexible in our use of personnel. In particular, our clerical and administrative staffs had to be ready to do new tasks at short notice. By July, individual production teams (consisting of an assistant team leader and the 6-8 case attorneys supervise by him) began to be assigned to special production or administrative problems.

Staff morale began to be a problem -- one which never could be solved. The pressure on case attorneys to write case summaries began to ease. Our earlier policy of discouraging staff vacations until August (to insure that the workload would be finished on time) began to backfire. Some case attorneys were idle. Others resented the "pressure-on, pressure-off" style of management which was the unavoidable consequence of our emphasis on inventory control rather than on simple production levels. Still others resisted reassignment to administrative tasks. Our 100+ summer legal interns, in particular, resisted the notion of doing non-legal work. Absenteeism was becoming a problem, but one which we failed to reconize adequately until late in July.

There was little that the top staff could do to provide case attorneys and other staff with incentives and rewards for good work. Only the detailing agencies could grant promotions and quality step increases. Performance bonuses, although possible, were hard to arrange. No funds were available to improve working conditions, which were tolerable but less comfortable than most staff had enjoyed at their agencies. Staff contact with our Board was usually limited

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*See Appendix___for a description of our case docketing procedures.

to very brief case presentations. The one major source of motivation was the understanding, common to all our staff, that the President's Clemency Program was helping people.

Throughout June and July, our Board heard cases as quickly as they could be docketed. Clear policies had been set, and all rules were being followed. Case dispositions were steady from panel to panel and from week to week. Case referrals to the Full Board continued, but at a slower rate. A five-member special upgrade panel was created to make unnecessary the referral to the full Board of cases involving recommendations for veterans benefits.

Other than fatigue, the major problem confronting our Board members was the fall-out from the July dip in staff morale. Many case attorneys broke from the standing fule of impartiality and began advocating an applicant's case in the manner of an adversary attorney representing a client. This could not be allowed, but two other actions were taken: First, case attorneys were given the opportunity to "flag" cases which they believed were decided too harshly ~~incorrectly~~; these cases were then reviewed by the legal analysis staff (just as they reviewed cases flagged by the computer) and referred to our Chairman. Second, the Clemency Law Reporter became an in-house professional journal, providing a forum for case attorneys to bring policy questions to the attention of the top staff and Board.

5. August and September -- Our Contraction Phase

As we entered August, our September 15th deadline began to appear reachable. Two factors had contributed to this. Our production levels had been high throughout June, and had eased in July only because of the lack of new assignable cases. Total case summary production exceeded 12,000 by the first of August. At the same time, our final caseload estimate fell below 16,000. In May, our estimate had been 20,000 cases. What had happened, a bit at a time, was this: First, we discovered that 2,000 clearly ineligible cases had been logged in by our volunteer letter-openers during the hectic days of March and April. Second, almost 2,000 would-be applicants had given us little more than their name and address on their application forms (despite our letters), so we could not order files to have their cases prepared. Third, some 500 case files had been lost by the military or were otherwise unavailable,* making it impossible for our Board to review those cases.

In some ways, we were almost finished; in other ways, we had hardly begun. Many of the 3,000 + cases we had left were our hardest ones, many of them requiring time-consuming inquiries to obtain needed information. We also had roughly 500 cases which were "lost" from our audit process, never showing up in our weekly pipeline count until the last week of panel hearings. Also, by the first of August, we had still sent less than 1,000 case recommendations to the President. We had to solve these problems, write our final report, close up our agency, and plan a carry-over operation in the Department of Justice. June vacations, once postponed until August, now were sent for October.

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*These cases were later referred to our carry-over unit in the Department of Justice.

Not all of our remaining cases were "hard;" we still needed two weeks of normal case attorney production. To spur last-minute production, all case attorneys were advised that cases not submitted to quality control by mid-August would be referred to the Department of Justice carry-over unit. Rather than lose the chance to present their cases, attorneys completed their case summaries on time. To complete the "hard" cases, a special team responsible to top-level staff separated them into categories of possible and impossible. Later, case attorney production teams were assigned to write summaries on all cases (including impossible ones) based upon the information available at the time. These became "purple docket" cases, set aside from all others and heard by a special Board panel. Many were decided, but several hundred had to be referred to the carry-over unit for further action.

The "lost" cases had not been included in pipeline inventory counts either because they were in transit, held by an absent employee, or just plain lost. In late July, a month-long search for "lost" cases was begun. Because of the speed with which case files and other materials had to be circulated for production deadlines to be met, a system-wide logging procedure was needed to allow every case file to be traced to one source. Without it, the entire attorney staff had to engage in a one-day physical search of our two buildings at our firstdeadline for the completion of cases. The staff had to account for every one of our 18,000+ logged cases, with case files changing hands all the while. Eventually, our 500 "lost" cases were reduced to around 50, which were assigned with the "hard" cases to the Department of Justice carry-over unit.

Forwarding cases to the President was our last major management problem. This was an aspect of our operations to which we had previously

given little attention, but which loomed as an almost impossible job. Contributing to the delays in forwarding cases to the President had been the "30-day rule"* and the two-week turnaround time for the computer-aided review of case dispositions. By late August, we had to prepare master warrants involving over 3,000 cases per week -- a very staff-intensive job. To do this, we assigned all case attorneys not responsible for "hard" cases or working on other special task forces. With this awkwardly large and often unwilling staff of almost 100 case attorneys, our administrative staff was able to forward the bulk of the case recommendations to the President on September 15. Some procedures were simplified -- but we really attempted to solve this problem more by phalanx then finesse.

Our staff size, over 600 through most of June and July, gradually shrank to 400 during August. Approximately 50 detailed attorneys were returned to their agencies around the first of August as our caseload diminished. Our 100+ summer interns went back to school, a few at a time, through Labor Day. A few others had their details expire, but were not replaced. As our deadline grew near, final-stage production problems could be solved better by large doses of staff than by careful management planning. Therefore, we were reluctant to phase down in staff size any more quickly than we did.

August and September also witnessed the preparation of our Final Report -- and of plans for the carry-over unit in the Department of Justice. In that carry-over unit, about 120 persons (mostly administrative staff) would work until November 1. Records had to sent to the archives,

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*Applicants had 30 days to respond to their case summaries before any case recommendations became final and could be forwarded to the President. See Chapter_____.

final paperwork had to be completed, and applicants had to be allowed 30 days to appeal their case dispositions. Otherwise, the work of the staff was done.

Our Board panels heard all their cases by the end of August, with one panel day in mid-September for loose-end and tabled cases. The Full Board agenda had accumulated throughout the summer -- the one case inventory which was not controlled -- and the Board had to work without rest through the latter part of August and September to complete its docket. In mid-August, the full Board began to hear cases referred by the Chairman as having been flagged by the staff as statistically inconsistent through both computerized and personal reviews. The Board also began to review requests for rehearing from action attorneys at this time, but the two types of review overlapped almost 80%. In most cases, the rehearing resulted in a case disposition more in line with perceived Board precedent.

CONCLUSIONS

In a sense, our perception of the clear split among the five phases of the Clemency Board operation comes from hindsight. While we anticipated the last two management-intensive phases -- for example, we had carefully devised close down dates for case-writing and panel and board hearings -- we often had to deal with problems on an ad hoc basis. Our management techniques were developed in response to those problems.

We were fortunate in this enterprise to have had a particularly adaptable staff resource base. The utilization of this resource base, perhaps more than any other characteristic, epitomized the "crisis" management aspect of our work. Not only did the size of the staff undergo major changes, swinging from 100 to 600 people in six weeks, but the distribution of staff resources shifted radically as we moved from one phase to another. The beginning of the production-intensive phase IV saw eight teams, totaling 280 attorneys and interns, engaged in the case-writing process, 40 attorneys in line supervisor roles, and 23 in quality control. By mid-August, this had ended. Basic team or sub-team units worked as problem-oriented task forces on staff-intensive problems such as finishing correspondence, awaiting case files, writing information packets for carry-over handling of clemency recipients, and writing "hard" cases. Another group of 100 or so had joined the

regular administrative personnel in preparing the Presidential packets. Figure A illustrates these personnel shifts.

This flexible resource response was vital, in every way, to the completion of the program. We had anticipated shifting workloads from the earliest planning stages. Figure B shows our changing projections of workload and the eventual overlapping of the major aspects of our production process. The chart shows the relationship between our declining caseload estimates and our actual production accomplishments. What we did not expect, and what later charts show, was the sharp phasing and the degree to which the misdirection of a single resource could contribute to backlogs and "lumps" in an otherwise smooth production process. Figure C is drawn from our weekly pipeline analyses through August 19, and from other reporting figures thereafter. It shows this peaking of critical production phases and the delays between perceiving and resolving problems. Had the curves been entirely parallel, operations would have probably been smoother than they really were. For example, the irregular "file" curve--the one which shows the entry of military files into our production system, contributed directly to the irregular "production" curve. While we had planned for steadily increasing production, peaking at 1600 cases per week, by early June our production caught up with the entry of files into the system. Case attorneys, who had been asked to produce nearly 1600 cases per week, were unable to obtain enough files to accompany the level of production.

Our rate of production, in other words, was limited by our input of raw materials. This had two results: Lowered morale, because of the drive for ever higher production which was thereby made nearly impossible, and a lengthened production (or case-writing) time. Instead of finishing a predicted 20,000 cases by August 15, we completed the real, lower complement of 15,500 cases on September 1, two weeks later.

Our flexible resource use created significant personnel conflicts, high anxiety below the management level, and severe strains on the morale of staff shifted from one part of the organization to another. One of our major failures here was in communicating the "whys" along with the "wherefores" down to the staff level. Much of the breakdown in communications came at both the primary and secondary line supervisor levels. While senior management and top line supervisors felt approximately the same level of anxiety or concern at any given time, this concern was often not communicated down past the next level. In order to circumvent this problem--and the inexperience of our own line managers--we would have benefitted from some sort of general "gripe" session with the senior staff two or three times a week. This would have brought the entire staff into the decision-making process on at least a psychological level. We should also have admonished line supervisors to provide explicit written communication to supplement word-of-mouth.

Maintaining staff morale was very important in this sort of unpredictable, push-and-pull production operation. It was also the one task that we found to be almost unsolvable once we had recognized it. We

had started with a small staff with fewer than 40 people, with a very high feeling of camaraderie and esprit-de-corps, partly because everyone could see others, even at the top management levels, taking part in every sort of function. It took us a long time to recognize that others, coming in to this organization as it expanded, might not get that feeling. For example, what started out on May 1 to be an exciting chance to perform a real legal service as a government lawyer may have ended, on September 15, with the same person filing or checking the spelling on some 5000 warrants to the President. Even lawyers were needed for the administrative tasks. As we neared the end of the program, absenteeism from fatigue and lowered morale became a real problem, especially among low-level clerical help. Our only remedy, in a world of imperfect supervision, would have been daily monitoring of time and attendance. It was a function that we failed to perceive as necessary simple because of our inexperience with this peculiar type of situation.

Our Board operations were also affected by the different pressures of the five phases of our year's work. As shown in Figure D, our case disposition patterns were different from phase to phase. In the early phases, we were developing policies and procedures, so our approach to cases often changed from meeting to meeting. Hence, the pardon rates for civilian and military cases fluctuated considerably. As the Board began to meet in panels (and particularly after it expanded to eighteen members), the pardon rate increased at first. However, it soon began

began a several-week-long declining trend, as case dispositions began to be made on a 100-case-per-day basis. Once we became more accustomed to our new docketing and case disposition procedures, the pardon rate levelled off. Case dispositions varied little during the peak months of July and August. By late August, fatigue was beginning to affect Board members personally, but it apparently did not affect our case dispositions.

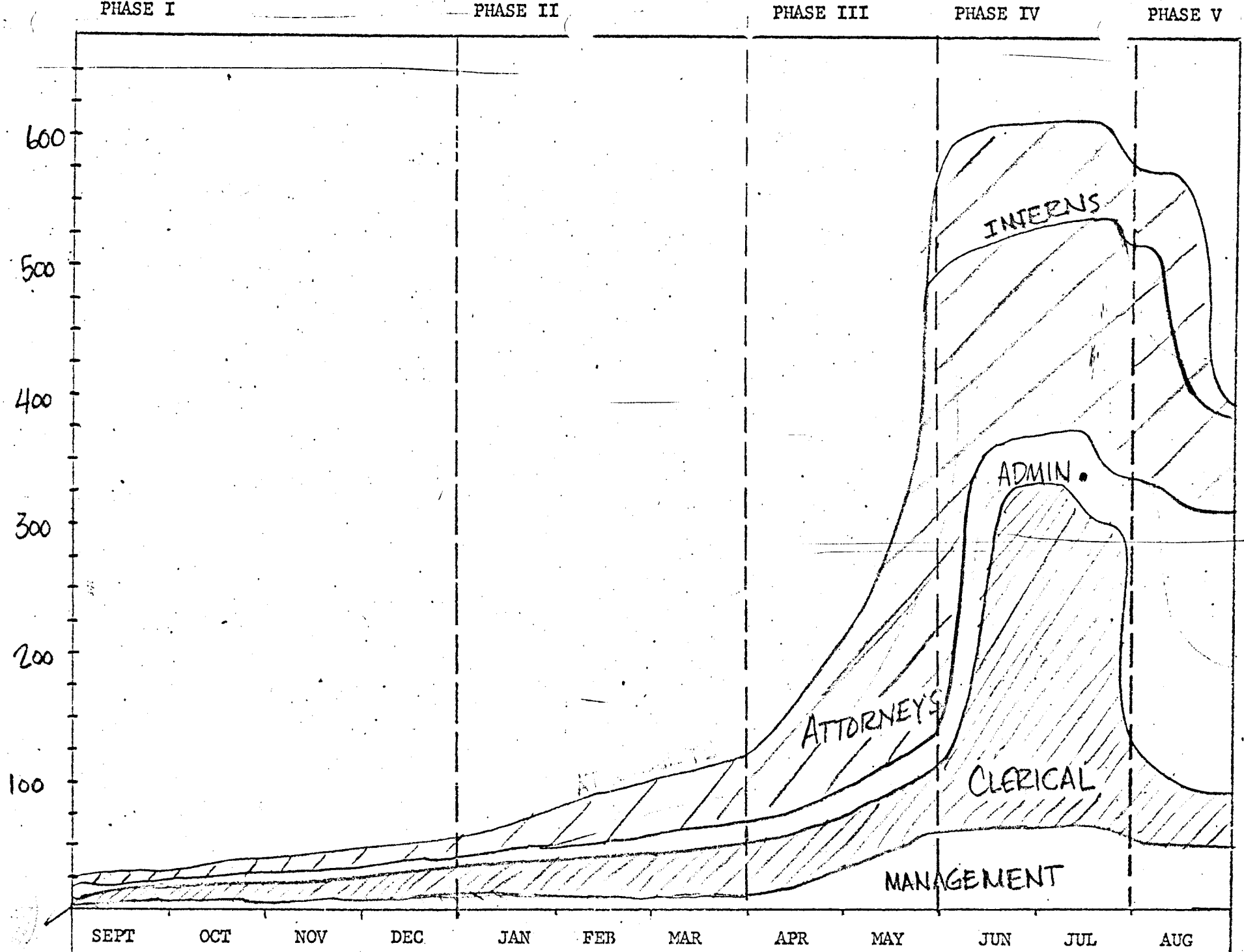

FIG. A - PERSONNEL DISTRIBUTION

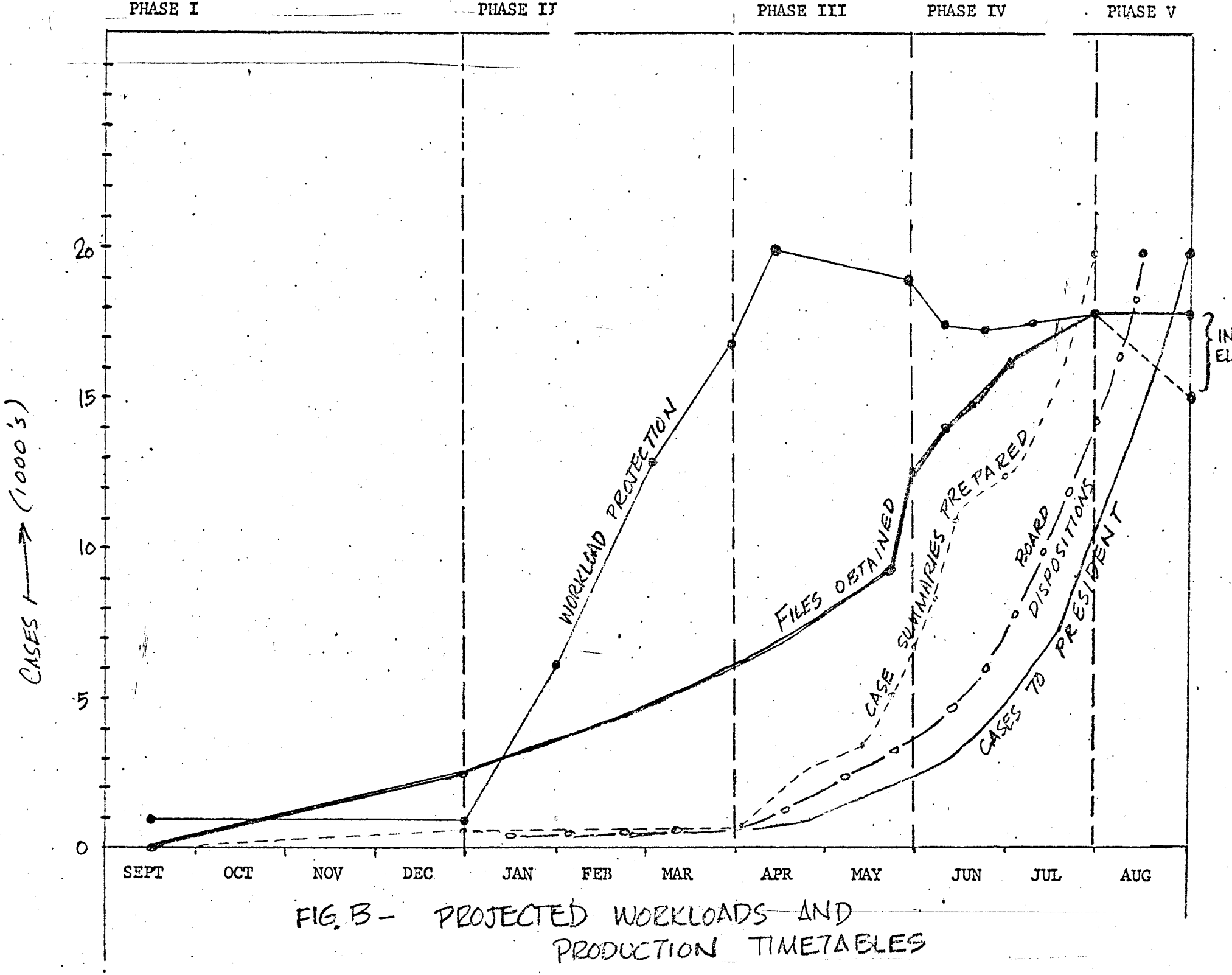

FIG. B – PROJECTED WORKLOADS AND PRODUCTION TIMETABLES

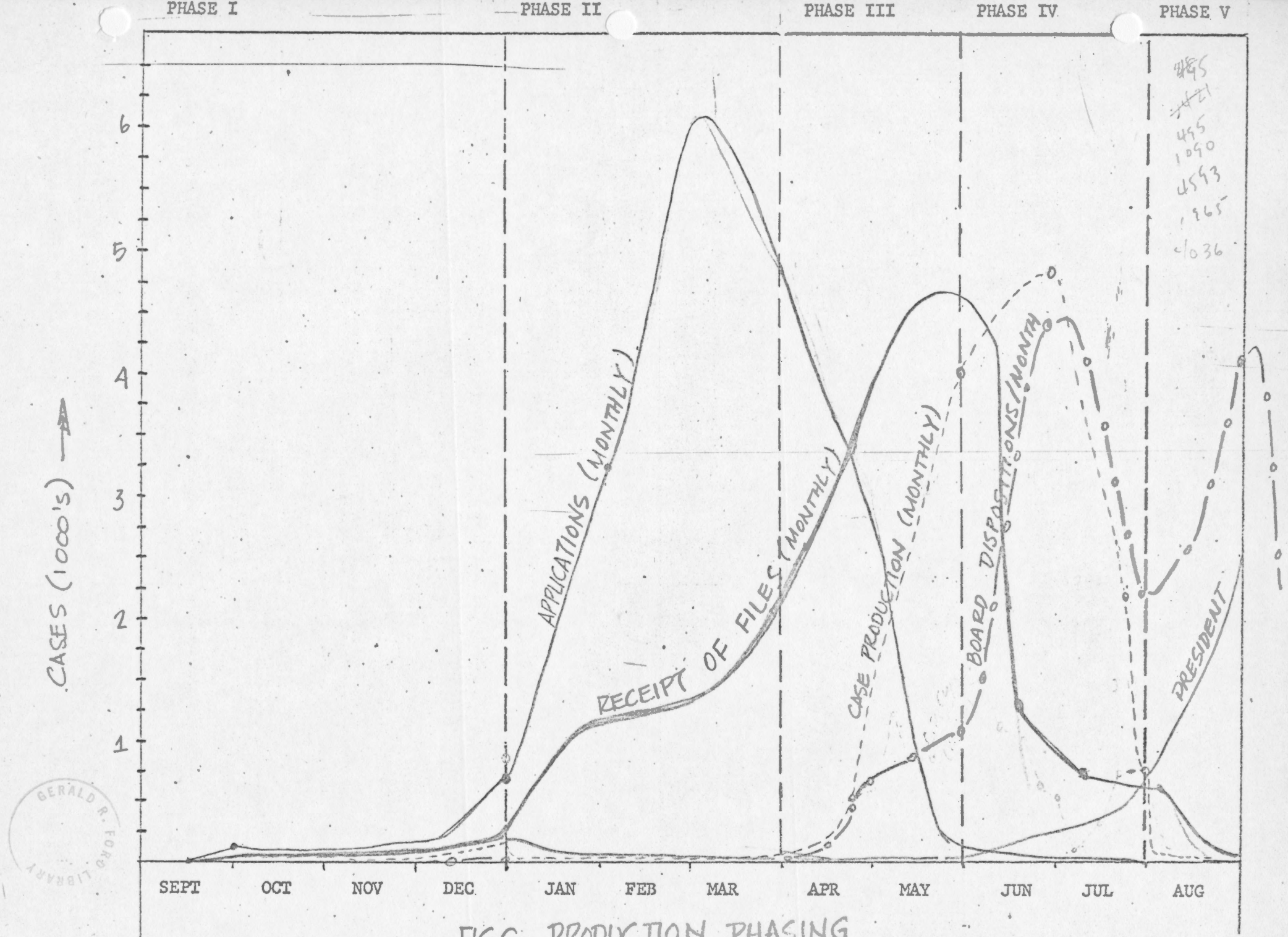

FIG.C - PRODUCTION PHASING

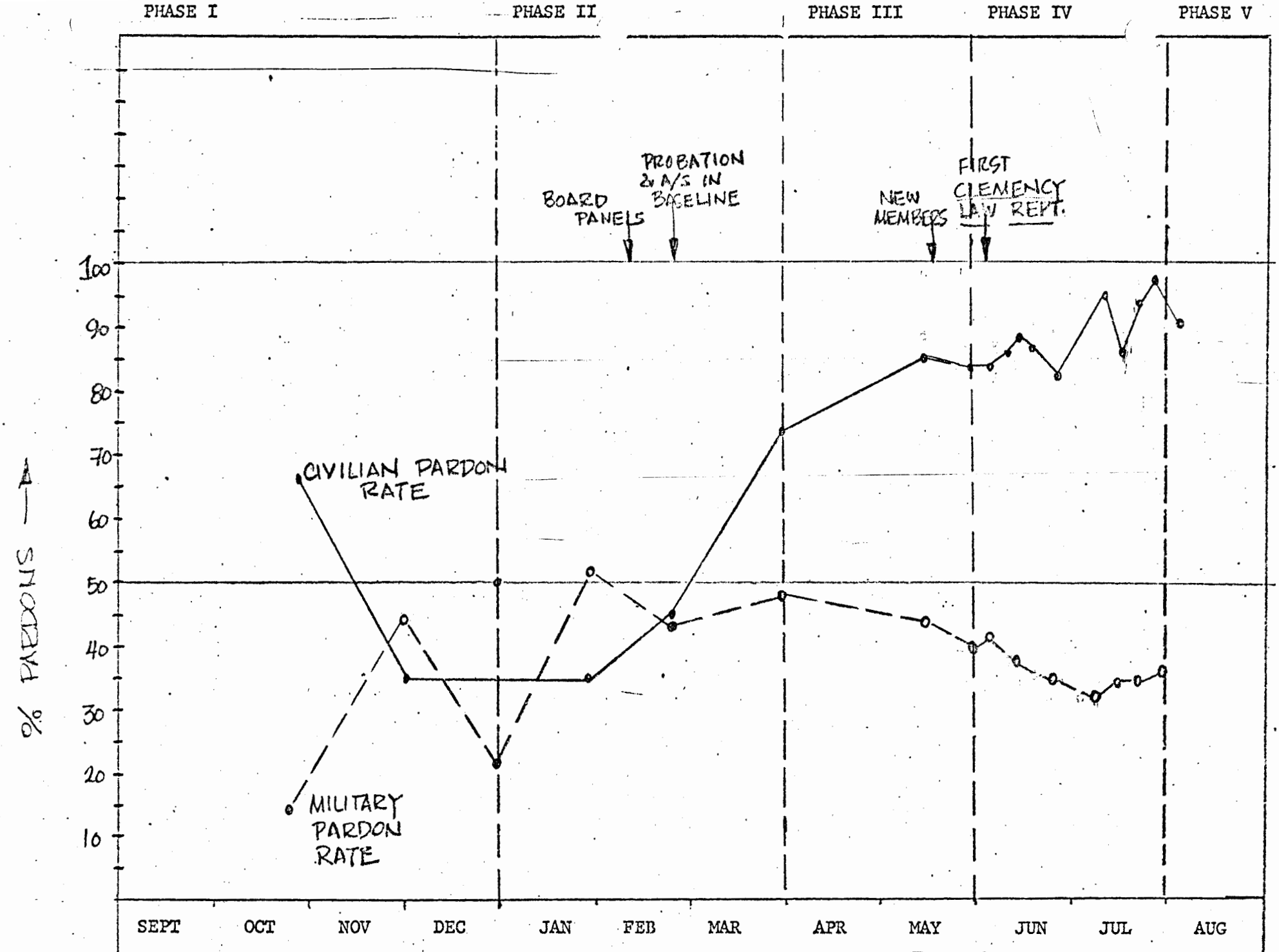

FIG. D – BOARD PARDON RATE

VII

VI. AN HISTORICAL PERSPECTIVE

CHAPTER VI: AN HISTORICAL PERSPECTIVE

A survey of American History provides a fuller appreciation of the destiny and responsibility of the American people. To place the issue of Executive Clemency in its proper perspective, one must leaf through the pages of history and take note of the manner in which Washington, Lincoln, Truman and Ford applied their powers of Executive Clemency in dealing with persons charged with, or convicted of, war-related offenses.*

Past acts of Executive Clemency have become a part of our political heritage. Close scrutiny of previous Chief Executives' uses of clemency powers in dealing with war-related offenses will disclose particulars that have often been ignored by both opponents and proponents of clemency. Advocates at either end of the spectrum--those espousing "no clemency" and those urging "universal and unconditional amnesty might temper their pleas if they would study all previous Presidential actions rather than merely citing the one instance that is supportive of their own position. Lessons can be learned from studying past individual actions, but the uniqueness of historical moments must be remembered. This uniqueness precluded adoption of a Lincoln program or a Truman program to resolve a present-day dilemna. The resisters of the Vietnam Era are not in the same category as Southerners who were defeated on the battlefield, nor are they in the same category as those who failed to serve during World War II.

Past Presidential grants of Executive Clemency have each been tailored to fit a particular situation. They differ from one another in significant way. President Ford's clemency program is not unmindful of programs initiated by his predecessors, yet it is distinctly tailored to the Vietnam Era.

Much of the interest and concern over Executive Clemency stems from a fear

*In Appendix, we trace the history of Executive Clemency from English history through the Post-Vietnam Era, including a description of the Australian Clemency Program.

that leniency towards draft-evaders and military deserters might undermine the Nation's future ability to mobilize and maintain a strong military force. The moral dilemma surrounding war and participation in war will always be with us, but it seems unlikely that the prospect of a limited and conditional amnesty at some uncertain future date would lead anyone to break the law by evading the draft or deserting the military. No one can point out any great harm ever suffered by the military as a result of past acts of Executive clemency. However, the negative consequences--if any --of a universal and unconditional amnesty remain unknown inasmuch as no President has ever proclaimed a truly universal and unconditional amnesty.

A review of American history demonstrates that war and conscription have often caused dissension among our people. It also reveals the many instances in which Presidents have used their Constitutional powers to forge reconciliation by offering certain outcasts and offenders an opportunity to regain the full benefits of citizenship.

Washington acted decisively to put down the Whiskey Rebellion. Urged on by Hamilton and others, he was determined to establish the power and authority of the newly constituted Federal government. After finding the courts unable to enforce the laws, and after issuing a Presidential proclamation demanding that the insurrectionists obey the laws, Washington then called on the military to quell the rebellion. Subsequently he pardoned all offenders except two leaders who were under indictment. They were later pardoned after conviction.

The clemency actions of Lincoln and Johnson during and after the Civil War are important because the Civil War involved the first use of significant numbers of conscripts by the US Army. Draft evasion and desertion were commonplace throughout the war. Lincoln's many personal interventions to commute death sentences that had been meted out for desertion displayed his personal eagerness to temper justice

with mercy. Nevertheless, his acts of clemency were primarily a method of carrying out military and political aims. Amnesty for Union deserters was predicated on their rejoining their regiments and thus being available to fight the rebels. Lincoln's early amnesty offers to supporters of the Confederacy were surely intended to undermine Jefferson Davis' army and suppress the rebellion. Johnson's post-war clemency was designed to dispense the grace and favor of the government to secessionist followers, but Confederate leaders were not to be treated lightly. Johnson's actions were highly political; in addition to his struggle against impeachment, he was continually wrestling with Congress over his program of Reconstruction.

Truman took great pride in his military service, and he held little sympathy for those who refused to wear the uniform. His high regard for the serviceman was demonstrated by his Christmas 1945 pardon of several thousand ex-convicts who served the military. Truman's Amnesty Board was restricted to reviewing only Selective Service violations. Only three prisoners secured release from confinement as a result of Amnesty Board recommendations. The other 1,520 receiving Presidential pardon had already completed their prison sentences. At Christmas-time in 1952, Truman restored citizenship rights to approximately 9,000 peace-time deserters but no pardon, remission, or mitigation of sentence was involved. At the same time, Truman restored civil rights for Korean War veterans who had received civil court convictions prior to their service in the Korean War.

To put President Ford's program in perspective, in the rest of this chapter we summarize the ways in which Washington, Lincoln, Johnson, and Truman adhered to or departed from the six principles of President Ford's Clemency Program. These principles, described elsewhere in this report, are the following: (1) The Need for a Program; (2) Clemency, Not Amnesty; (3) A Limited, Not Universal, Program;

(4) A Program of Definite, not Indefinite, Length; (5) A Case-by-Case, not Blanket, Approach; (6) Conditional, not Unconditional, Clemency.

The Need for a Program

President Washington's use of the Presidential pardoning power is attributed to his personal inclination to act with "moderation and tenderness". The Whiskey Rebellion consisted primarily of fiery speeches against unjust taxation; there had been little gunfire. Consequently, the Whiskey Rebellion was not of such magnitude as to require a Presidential program of reconciliation in its aftermath. Although the Jeffersonians condemned the Federalists for using military forces instead of juries to uphold the laws, Congress praised Washington for his firm action.

Some of the clemency acts associated with the Civil War were proclaimed both during the war and throughout President Johnson's term following the war. They were primarily a means of reuniting the nation; others served more narrow military and political aims. As the war ended, Lincoln and Johnson both recognized the need for a program that would not treat the South as a conquered nation, but as a part of a reunited America. Amnesty was to be a basis for reconstruction, individual rights had to be restored before States could again become a part of that Union.

Between 1945 and 1952, President Truman issued four Proclamations of Executive clemency; each covered a different class of individuals. His program for civilian draft offenders was announced over two years after the end of World War II. Although there was a certain amount of pro-amnesty agitation during this period, the issue did not spark a major public debate and there was no need for a program of reconciliation in the sense that such programs were needed following the Civil War and the Vietnam War.

President Ford's program was comparable to, but not quite the equivalent of Johnson's Civil War clemencies in terms of responsiveness to a clearly felt need. While the Vietnam conflict did not separate States from the Union, it did foster a divisiveness of such magnitude among the population that the Chief Executive was obliged to initiate a clemency program to heal America's wounds. His program was proclaimed sooner after the war's end than Truman's, but less swiftly than Washington's or Johnson's. However, like Johnson President Ford announced his clemency program exactly six weeks after assuming his office.

Clemency, Not Amnesty

The Whiskey Rebellionists were recipients of clemency, not amnesty. Amnesty for acts of treason would have been unthinkable for a new nation still in the process of establishing the authority of the Federal government. Clemency for former insurrectionists who now expressed a readiness to obey the laws seemed the proper course. In his December 1795 address to Congress, Washington commented on his leniency towards the insurrectionists: "The misled have abandoned their errors." "These circumstances have induced me to pardon generally the offenders here referred to, and to extend forgiveness to those who had been adjudged to capital punishment."

The numerous Civil War "amnesties" did not conform to the dictionary meaning of the word. The entreaties to Union Army deserters were not acts of oblivion; they were acts of leniency, and they were intended to entice soldiers to return to their regiments. The early offers to Secessionists were in reality appeals to abandon the Confederate cause; thus was the cloak of amnesty used to weaken the Confederacy. For Confederates there was no blotting out of the crime, the oath that was required implied repentance.

Truman's Amnesty Board, despite its name, gave no grants of amnesty. The ard was charged with making recommendations for Executive clemency and it did so by recommending individual pardons.

President Ford specifically rejected amnesty, calling instead for a clemency program with the objective of "making future penalties fit the seriousness of each individual's offense and of mitigating punishment already meted out in a spirit of equity".

A Limited, not Universal, Program

Washington limited his clemency program by placing exclusions in his Proclamations. Few persons actually benefited from his action, since only a handful had been indicted and only two were adjudged guilty of treason.

Neither Lincoln nor Johnson ever issued a universal amnesty; there were many persons excluded from their programs. Johnson's first proclamation declared 14 classes of persons ineligible for amnesty. Johnson is known to have seriously considered proclaiming a universal amnesty just prior to the 1868 Democratic National Convention, but only for political reasons. Johnson's "universal" amnesty of Christmas 1868 was universal in the sense that it applied to all rebels; inasmuch as it did not remove disabilities from those who had been convicted of draft evasion or desertion from the Union Forces, it was not universal in application.

Each of Truman's Proclamations was limited, not universal, in scope. In rejecting a universal program Truman's Amnesty Board reported "to grant a general amnesty would have restored full civil status to a large number of men who neither were, nor claimed to be, religious objectors."

President Ford's program was more universal than either Johnson's or Truman's in that it did not specifically, consciously exclude major categories of offenders. (This exclusion was made not by Truman, but by his Amnesty Board.)

However, it did not affect as many people as Johnson's program. The 125,000 eligible persons and 22,500 applicants to President Ford's program made it the second largest in our nation's history.

A Program of Definite, not Indefinite Length

The Whiskey Excise Law was amended in June, 1795 and soon thereafter the Federal tax collectors were being challenged by the Pennsylvania farmers. Although Washington issued three Proclamations concerning the Whiskey Rebellion, only the last of them carried his offer of pardon. This third Proclamation was published in July, 1795, so the issue was settled within about a year from its inception.

Civil War amnesty did not amount to a "program". Rather, Civil War amnesty began with Lincoln's War Department Executive Order of 1862, extended through 1898 when the political disability imposed by the Fourteenth Amendment was removed.

Truman's Amnesty Board completed its work within one year. Truman's other Proclamations were one-time actions and did not entail establishment of "programs."

Like Truman's program for draft evaders, President Ford's clemency program lasted for only one year. Unlike Truman,s however, he combined all of his initiatives in a single proclamation and a single program. By contrast, Washington and Johnson implemented their clemency programs gradually, through a series of proclamations.

A Case-by-Case, not Blanket Approach

Only about twenty persons were apprehended as Whiskey Rebillionists, so Washington followed a blanket approach in granting them pardons. Lincoln, in a 1864 Message to Congress acknowledged his willingness to grant clemency, stating that "no voluntary application has been denied". Despite his lenient policy, his actions would seem best classified as case-by-case. Lincoln's 1862 Executive Order

called for case-by-case review in that the Secretary of War was given discretionary power to keep in custody persons "whose release at the present moment may be incompatible with the public safety." There is no clear record as to the number of former Confederates obliged under the Fourteenth Amendment to request full restoration of citizenship, but the Forty-first Congress passed on approximately twenty thousand names.

When repentant Confederates came forward to take the oath of amnesty, a record was to be made and the original forwarded to the Secretary of State. A blanket approach to the deserter problem would be Lincoln's February 1864 decree "that the sentences of all deserters who have been condemned by Court Martial to death, and that have not been otherwise acted upon by me, be mitigated to imprisonment during the war". This blanket commutation of sentence also offered case-by-case clemency in that general officers with court martial authority were given the power to release imprisoned deserters and return them to duty. By contrast, Johnson's clemency offers were made and applied more generally.

The 1945 pardon of ex-convicts who subsequently served honorably in the Armed Forces was a blanket clemency in that it extended to all persons in a carefully defined category. The same may be said of Truman's 1952 Proclamations. Truman's Amnesty Board, however, determined that a blanket approach would not be a proper way of handling clemency for Selective Service violators. The Board recommendations were based on a case-by-case review.

Like Truman, President Ford appointed a Clemency Board to hear all cases of punished offenders. However, this Board denied clemency in only 5% of its cases--contrasting sharply with the Truman Board's denial of clemency to 80% of its cases.

Like Lincoln, he gave the military a major role in the resolution of cases involving deserters.

Conditional, not Unconditional, Clemency

Washington conditioned his offer of pardon by requiring that the Pennsylvanians involved in the Whiskey Rebellion subscribe to "assurances of submission to the laws". Refusal or neglect to subscribe such assurance apparently barred one from the benefits of pardon.

Civil War amnesties were conditional in nature. Union Army deserters were required to return to their regiments; Confederates were required to take an oath that amounted to public repentance. Political prisoners released by War Department Executive Order #1 of 1862 were required to subscribe to "a parole engaging them to render no aid or comfort to the enemies".

There were no conditions attached to any of Truman's four Proclamations of Executive clemency. Because the qualifications for coverage under the Truman clemencies were so carefully prescribed, no future conditions were seen as necessary.

President's Ford's program was the only one to apply a condition of Alternative Service to most of his grants of clemency. Unlike Washington and Lincoln, he did not attach any condition restraining clemency recipients' future conduct. Instead, he attached a condition of Alternative Service as a means of demonstrating one's commitment to national service. Like Washington and Lincoln, he required some clemency recipients to sign a loyalty oath.

Conclusion: The Precedential Impact of the President's Program

An analysis of the history of executive clemency shows that different wars have produced different post-war grants of clemency. To a large extent, the Presidential policies have reflected the need for national reconciliation during

the post-war period. When there was little such need, there was little or no clemency offered. When the need was considerable--such as when Washington was trying to build a nation at the time of the Whiskey Rebellion, or when Lincoln was making plans to reunite it during the late stages of the Civil War--the grants of executive clemency were considerable. We expect that President Ford's clemency program will be viewed in much the same manner as Washington's and Lincoln's programs have been.

We believe that this clemency program is the most generous ever offered, when equal consideration is given to the nature of benefits offered, the conditions attached, the number of individuals benefited, and the speed with which the program followed the war.

We believe that this clemency program is the most generous ever offered, when equal consideration is given to the nature of benefits offered, the conditions attached, the number of individuals benefited, and the speed with which the program followed the war. However, if each factor is taken separately, the President's program does not break precedent in any fundamental way. Washington's pardon of Whiskey Rebellionists was a speedier action, but it affected only a very small number of people. Lincoln's Civil War amnesties for deserters were more clement, but he set more stringent conditions. Johnson's amnesties for Southern Secessionists benefited more individuals, but 30 years passed before their full rights were restored. The Truman amnesty of draft evaders imposed no conditions, but it denied clemency to 80% of its cases.

President Ford only established one new precedent: The condition of alternative service. Had he announced universal, unconditional amnesty, his program would have been much more of a break from precedent. While historians might still have viewed it as a tailored response to a distinguishable war, its impact upon a future generation of draftees and combat troops would be much harder to predict. These were risks well worth avoiding.

VII

VII. CONCLUSIONS AND RECOMMENDATIONS

CHAPTER VII: CONCLUSIONS

The President's Clemncy Program was, very broadly speaking, an effort to heal some of the wounds of the Vietnam era. The Presidential Proclamation gave a clear mandate to our Board and to the Departments of Defense and Justice to achieve that objective.

Inescapably, we must ask whether the clemency program did in fact carry out the President's mandate. How successfully did we implement the spirit of each of the President's six principles:

(1) The need for a program

(2) Clemency, Not Amnesty

(3) A Limited, not universal, program

(4) A program of definite, not indefinite length

(5) A case-by-case, not blanket, approach

(6) Conditional, not Unconditional clemency

Earlier in this report, we have described what we and other agencies have done to implement these six principles. On the whole, we are confident that the program had reflected the spirit of the Presidential Proclamation which created it.

E. The Need for a Program

As requested by the President, the designated agencies did develop a program which dealt directly with the issue of reconciliation for draft resisters and military deserters. Therefore, the public need for a Presidential response to this issue, very clearly felt just one year ago, now no longer exists. The President's Clemency Program is not the answer that many would have chosen, but it has been widely accepted as a compromise. A recent survey of public opinion conducted by the Gallup Organizationin August, 1974, discovered that ___% of the American people approve of President Ford's Clemency program. (The others who offered opinions were almost equally divided between the ___% who thought he was too

generous and the ___% who thought he was not generous enough).* We are confident that the President's program has helped enable all Americans to put their war-engendered differences aside and live as friends and neighbors once again. The same Gallup Poll found that the overwhelming manority of Americans -- __% -- are now willing to accept clemency recipients into their communities on at least equal terms. We are strongly convinced that an unconditional amnesty would have achieved much less of a reconciliation among persons who had strong differences of opinion during the Vietnam War. In fact, such a policy might have exacerbated those differences.

The discussion of clemency or amnesty in the public forum has abated with surprising swiftness since the announcement of the program. It once was the constant subject of Congressional debate, newspaper editorials, and opinion polls. After the program started,discussion focused more on the details of the program than on the broader question of clemency versus amnesty. Today, the issue is virtually dormant. Whether this reflects positive acceptance, quiet acquiescence, or disinterest on the part of the public is a question which we cannot answer.

Part of the reasons for the diminished public interest in clemency may have been the low profile maintained by the other agencies and ourselves. We do wonder whether a higher profile might have led to an even greater public acceptance of the program. We believed, at first, that the same public which had shown such keen interest in the amnesty issue beforehand would be reasonably well informed about what was in the President's offer of clemency. During the late winter

* Contrast this with a Gallup/Newsweek poll in ____, which found that only ____% favored a program of conditional clemency, with ____% favoring unconditional amnesty and _____% no program at all. The complete results of the recent Gallup Poll are included in Appendix ____.

weeks we tried to focus more public interest on the program. As we traveled throughout the country to speak with local media and counseling organizations, we were boggled by the misconceptions we found. It was indeed the rare person who already knew of the eligibility of former servicemen with bad discharges because of desertion offenses--who constituted 100,000 of the 125,000 persons covered by the President's program. We also found that many people who originally had been critics of the program came away from our meetings as supporters, once their misconceptions had been corrected. Everyone was astonished to learn that, in the overall clemency program, there were three times as many applicants who were Vietnam veterns as there were Canadian exiles. Unfortunately, we suspect that a majority of Americans still misunderstand what the program offered, who was eligible, and what the typical clemency applicant was like.

On balance, we consider the program's very low profile from September through January to have been a mistake. We believe that the program could have been very popular with the American public. It also could have reached more eligible persons. Despite this, the need for a program has been satisfied and the American people seem reasonably content with the program which evolved. Along the way, some of the wounds of the Vietnam Era may well have been healed.

Finally, the President's clemency program was not--and should not be interpreted as--a denigration of the sacrifices of those who served honorably or lost loved ones in the Vietnam conflict. We are particularly concerned about the employment opportunities of the 2,500,000 veterans who served in Vietnam and feelings of the estimated 250,000 parents, wives, brothers, sisters, and children of soldiers who lost their lives in Vietnam. These are individuals deserving of our utmost respect. We are confident that the President's clemency program did them no harm; we are equally confident that a program of unconditional amnesty would have led many of these people to believe, in good conscience, that their sacrificies had been downgraded.

Clemency, Not Amnesty

While it was never intended that the clemency program offer reparations or even a total restoration of status for all its applicants, it was intended that the program be "clement" and offer something of value to its applicants. Did applicants in fact receive anything of value?

Beyond question, applicants to the Department of Justice program received something of value. They are the only clemency recipients who will emerge with a clean record; once they complete their alternative service, their prosecutions will be dropped. Thus, their draft offenses should not affect their future opportunities to find jobs, housing and so forth. However, their clean record comes at some risk. If a fugitive draft resister returned from Caneda and enrolled in the Justice program, he must complete his alternative service. If he does not, he could be subject to immediate prosecution for his draft offense and would not be allowed to return to Canada if he so chose.

Applicants to the Defense program were benfited primarily insofar as they immediately ended their fugitive status and avoided the risk of facing a court-martial and possible imprisonment. They immediately received Undesirable Discharges. (If he was one of 42 particularly meritorious cases, he received full entitlement to Veteran's Benefits). Although he can be held accountable for failure to complete alternative service, he is unlikely to be prosecuted for such a failure. For such a prosecution to succeed, it must be shown that he did not intend to do alternative service at the time he enrolled in the program--a subjective piece of evidence which is difficult to prove. If he does complete alternative service, he receives a clemency discharge to replace the undesirable discharge given him when he enrolled in the Defense program.

Critics of the President's program contend that a clemency discharge is at best worth nothing, since it is not a discharge under honorable conditions; and confers no veterans benefits. They further contend that it may be harmful, since it

stigmatizes individuals as having committed AWOL or desertion offenses. /

The major offering of the Presidential Clemency Board was a Presidential Pardon, the highest symbolic Constitutional Act which the President could do on behalf of any of our applicants. Still, pardons result in no more than a partial restoration of an applicant's records and rights, blotting out neither the fact nor the record of conviction. Under present practice, no records are sealed. The benefits of a pardon lie in its restoration of the right to vote, hold office, hold trade licenses, and enjoy other rights described earlier. In Dr. Pearman's survey of employer attitudes, he found that 41% of national and local employers would discriminate against a convicted draft offender who performed alternative service and received a pardon, versus 75% who would discriminate against him if he did not receive clemency. / Only 12% would refuse to consider hiring a former draft offender who earned his pardon, whereas 37% would refuse to hire him otherwise. / Local employers would discriminate against him much more than national employers.

In a recent survey of about 100 national and local (Pennsylvania) employers, Dr. William Pearman found that employers view Clemency Discharges as almost the equivalent of General Discharges. / If a job applicant with a Clemency Discharge earned it through alternative service, the percentage of employers who would discriminate against him (40%) is about the same as if he had a General Discharge (39%), and much less than if he had an Undesirable Discharge (75%). / The percentage of employers who would refuse to consider hiring him (6%) is not much larger than if he had a General Discharge (5%), and much less than if he had an Undesirable Discharge (34%).

The reasons why some employers discriminated against clemency recipients were the unfairness of giving him a job when so many veterans with Honorable Discharges are unemployed, and the likelihood of his untrustworthiness and undependability.

/ There is no truth to the further allegation that a clemency discharge disqualifies an individual from ever receiving veterans' benefits; it simply does not alone bestow benefits. Whatever appeal rights one had with an Undesirable or Bad Conduct Discharge, one still has with a Clemency Discharge.)

(continued on next page)

The reasons why some employers discriminated against clemency recipients were the unfairness of giving him a job when so many veterans with Honorable Discharges are unemployed, and the likelihood of his untrustworthiness and undependability. The reasons given for not discriminating against them are his satisfaction of his national service obligation through alternative service, and the lack of any relationship between his desertion offenses and his potential performance on the job. National employers would discriminate against Clemency Discharges less often than local employers.

This study cannot be considered conclusive evidence of the worth of a Clemency Discharge, but it does indicate that there may be a reservoir of generosity and good will towards those who sought and earned clemency. If this is true, then applicants to the Defense program do receive something of value for performing alternative service. Still, their greatest benefit from applying for clemency is the end they put to their fugitive status and to their chances of going to jail for their AWOL offenses.

Almost none of the applicants to the Presidential Clemency Board were fugitives, the rate exception being the civilian who fled to avoid punishment after his conviction. As a result, the major benefit of the other two programs--putting an end to one's fugitive status--if of no consequence to our typical applicant. He had already settled his score with civilian or military authorities. He owed no further obligations, but still suffered from the consequences of his civilian conviction, Court-Martial conviction, or Bad Discharge.

_/ The percentage who would discriminate against if he did no alternative service would be 57%.

_/ The percentage who would refuse to consider hiring him if he did no alternative service would be 16%.

_/ Dr. Pearman's Study is presented in full in Appendix____. His findings on discrimination against Undesirable and General Discharges are corroborated by two other surveys on the subject. See_____.

_/ The percentage who would discriminate him if he did no alternative service is 47%.

_/ The percentage who would refuse to consider hiring him if he did no alternative service is 18%.

A military applicant to the PCB receives a pardon as well as a Clemency Discharge. If he had any felony Court-Martial conviction, the pardon restores the same rights to him as to a civilian applicant with a Federal draft offense conviction. If he never had a felony Court-Martial conviction (for example, if he received an administrative discharge), the pardon neither restores rights nor immunizes him from further prosecution, since he already enjoys such an immunity by reasons of his discharge. The usefulness of the pardon is limited to its possible impact on military discharge review boards, courts, and other agencies which otherwise would be obligated to take note of his prior Court-Martial conviction and bad military record. Whether a Clemency Discharge plus a Presidential Pardon means more to employers than a Clemency Discharge standing alone is unclear; it is possible, perhaps even likely, that it adds nothing in tangible terms--except where trade license restrictions are involved.

However, we realize that most of our applicants were interested in more tangible benefits--especially veterans benefits. While we do not suggest that most of our applicants should have rejected these benefits, some of them were combat veterans. Others had injuries or disabilities resulting from their military service. It is not yet clear whether clemency recipients will be dealt with clemency by agencies which review their subsequent appeals for discharge upgrades or veterans benefits.

Beyond this, we are concerned that many of our applicants will not understand what they have received from the clemency program. Staff conversations with applicants indicate that there are many applicants who do not understand our telegrams and letters describing their grants of clemency.

Without face-to-face counseling, it is possible that many of them will never know what to write on employment application forms about their discharge. Many others may not realize that they can still apply to Discharge Review Boards for a discharge upgrade or to the Veternas Administration for veterans benefits.

Impact on Persons Not Receiving Clemency

It was a consistent principle of the President's Clemency Program that no one be coerced into applying for clemency--or made worse off as a result of having applied. To do otherwise would be neither clement nor fair. For this reason, we are concerned about the impacts of the clemency program on those who did not apply, did not complete alternative service, or were denied clemency. The Clemency Program may have stimulated a greater public tolerance for everyone who committed draft or AWOL offenses during the Vietnam era.

If so, those who did not receive clemency could benefit from the goodwill extended to those who did. We expect that this will be the case.

Of course, the reverse may be true: Individuals who could have applied for clemency but failed to do so (out of choice or ignorance) might face greater public disrespect than ever before. If an individual was eligible for but did not receive clemency, it is possible that adjudicative or administrative bodies will take adverse notice of that fact when dealing with that individual. For example, a military Discharge Review Board might look with particular skepticism at an upgrade appeal of a person who might have applied for clemency, but did not. The Veterans Administration may do the same for former servicemen appealing for Veteran's benetis despite their bad discharges. Sentencing judges, law enforce-

ment officials, licensing bodies, credit agencies, and others may likewise look askance at an eligible person's failure to receive clemency. With over 100,000 of the estimated 125,000 eligible persons not having applied for clemency, these possibly adverse impacts are of greater significance.

We are the only clemency granting agency who denied clemency to some of our applicants (about 5%--or 800 cases). In making those case dispositions, we did not intend to leave those individuals in a worse position than before they applied. It is possible that those to whom we denied clemency--or who fail to complete alternative service--may be worse off than before they applied. Being denied clemency may be a personal embarrassment and, perhaps a stigma. We did not announce the names of those denied clemency, and we are concerned that the confidentiality of those individuals not be infringed upon by anyone else. We are equally concerned about the confidentiality of those who fail to complete their alternative service.

· A Limited, Not Universal, Program

On balance, we consider the scope of the program to have been quite generous. Rather than require a test of sincere opposition to the Vietnam War (which would have been unfair to people less able to articulate their views), the program was designed to include anyone whose offense may have involved opposition to the war or the military. Sixteen percent of the military applicants to our program and 81% of the applicants to the DOD program went AWOL out of opposition to the war or the military, demonstrating the generosity of the program in defining eligibility. However, some categories of individuals remained ineligible despite the obvious relationship between their offenses and thier opposition to the war. The clearest example of this was the serviceman who refused to obey an order to go to Vietnam. In his case, the military could have discharged him either for missing movement (qualifying him for clemency) or for disobeying orders (not qualifying him for clemency).

A Program of Definite, Not Indefinite, Length

The Clemency program was at first scheduled to accept applications for 4½ months. Because of a surge in our applications, two one month extensions were granted by the President. His apparent purpose of ending the program was to put the issue of clemency behind us as quickly as possible, or that we might also put the War behind us as quickly as possible.

Out of an estimated 123,000 persons eligible for clemency, only 22,500 actually applied to the three separate programs. This 18% application rate seems disappointing at first glance; however, for a program which accepted applications for only six months, that percentage is unusually large. To our knowledge, there has been no other Federal program which has drawn such a rapid response during its first six months. For example, HEW's Supplemental Income Security program, offering case grants for low-income elderly persons, received applications from only 9% of its eligible target group during its first six months, and it took a full year for the program to match the clemency program's figure of 18%. This was true despite SIS's well-financed promotional campaign. Given the short time span and limited resources of our outreach efforts, we consider our application rate to be rather high.

Unfortunately, we can take little solace from that fact. The SIS program is still accepting applications, but we are not.

We believed, at first, that those eligible for clemency would be well-educated well-informed, and alert to a communications "pipeline" among themselves which would carry the news about the program. We also believed that veterans counselors would correctly advise former servicement with bad discharges about their eligibility for the program. Both of these assumptions were wrong. A late December survey of twelve persons eligible for clemency showed that not one of them knew he could apply. In early January, the mother of a Vietnam Veteran with a bad

discharge because of AWOL contacted General Lewis Walt of our Board to ask if the local Veterans Administration office had been correct when it told her that her son was not eligible for clemency.

Our Public Information campaign did not begin until mid-January, yet it stimulated a five-fold increase in applications before the month ended -- and over a twenty-fold increase before the second deadline extension expired at the end of March.

The application period was surely sufficient for those who knew from the start what the program offered them. They had ample time to make up their minds about applying. We suspect (but we cannot be sure) that virtually all of those eligible for the Department of Justice had such a sufficient period. However, it is our understanding that the number of applicants to the Department of Defense program was less than it might have been because of widespread misunderstandings about the fairness and decency of the procedures followed by the Clemency Processing Center at Fort Benjamin Harrison. Likewise, it is our firm belief that the small percentage of applications to the Presidential Clemency Board is attributable to the lack of public awareness of our eligibility criteria. The rising monthly tallies of new Board applications (800 through December, 4000 in January, 6000 in February, 10,000 in March) indicates that even more applications would have been received had our program (and Public Information campaign) continued. Informal Telephone Polls conducted by our Staff found that even as late as March, 90% of our applicants had only learned of their eligibility within the past few days. Usually a news article or television announcement had been responsible for their application.

The degree to which the American public still misunderstands the President's program was illustrated by the recent Gallup poll. A substantial ___% of the American public had heard of the clemency program; ___% realized that it included fugitive draft resisters, and ___% knew that it was for fugitive deserters.

However, very few -- ___% and ___%, respectively -- understood that convicted draft offenders and discharged AWOL offenders could apply. Only ___% thought that a Vietnam Veteran discharged for a later AWOL could apply for clemency. It is worth noting that the percentage of the public which understood our eligibility criteria corresponded almost exactly with the percentage of our eligible persons who applied by the March 31, deadline.

It is our firm conviction that many eligible persons did not apply because, even by the end of March they still did not know they could apply. As the Gallup poll indicated, they probably still do not know that the program was for them.*

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* The Gallup Poll discovered that a slight majority of Americans (___% versus ___%) do not favor a reopening of the President's program. However, the widespread misunderstanding about our eligibility criteria requires that a different perspective be taken of these results. In effect, ___% favor giving eligible persons a second chance to apply. We expect that a much greater percentage would favor giving uninformed eligible persons a first chance to make up their minds about applying.

A case-by-Case, Not Blanket, Approach

Despite the wholly discretionary character of any grants of executive clemency, our program must be judged in terms of the fairness of our rules and the consistency with which we followed them. To be worthy of the respect and confidence of all citizens, we must have observed the basic principles of a fair legal process.

Questions of process arise primarily in any clemency/Amensty program which follows a case-by-case approach.

Any blanket amnesty program would raise relatively few, if any, due process issues. The proper context for any discussion, therefore, is whether the President's program satisfactorily dealt with this extra burden. Absolute --- not comparative -- standards apply. Administrative requirements cannot be used as a justification for any short-cuts of due process.

At the Presidential Clemency Board, we have made every effort to apply fair rules and follow them with consistency. We occasionally had to modify our rules in mid-course, sometimes before corresponding changes could be made in our regulations. However, this was only done when it appeared that the rights and interests of our applicants would not be affected. The procedures which we imposed upon ourselves--quality control of casework, codification of policy precedents, the 30-day period for applicants to comment on their case summaries, and post audit of case dispositions--often--added time and administrative difficulty to our process, but we considered them essential to maintain the quality of our work. The seriousness with which we took our responsibilities was exemplified by our publication of an in-house professional journal, the Clemency Law Reporter. Our Board and staff of over 300 attorneys maintained a continuousdialogue about how our procedures were or were not consistent with due process; when changes were felt necessary, they were made. Ours was not a perfect process--it certainly was too time-consuming to suit us--but it was a reasonable one, carried out in good faith.

We consider our baseline formula, mitigating factors, and aggravating factors to have been fairly developed and fairly applied. Uniformly, they were developed through a clear process of Board consensus about what was relevant about the backgrounds of our applicants. Through the publication of policy precedents in the Clemency Law Reporter, we internally codified our policies. We applied them as consistently as could be expected, given the fact that all but a few hundred of our cases were decided in three-person Board panels.

Of the other two parts of the programs, we were particularly pleased with the fair and humane process which the Defense Department implemented at its Fort Harrison Clemency Processing Center. Unlike ourselves, the Defense Program had clemency applicants personally at hand during the case disposition process. Independent observers and applicants alike have spoken high praise of the procedures followed at Fort Harrison. Like ours, it was not a perfect process-lacking any opportunity for personal appearans or appeals, for example-but it was a reasonable one, carried out in good faith.

Conditional, Not Unconditional Clemency

The qualities of mercy and forgiveness inherent in the President's program should not be interpreted as an admission that those who broke the law were correct. By creating the program, the President never intended to imply that the laws were wrong or that the clemency applicants were right. We believe that rights and responsibilities or citizenship are central to the theme of any meaningful clemency or amnesty program and any such program must be evaluated in terms of its reinforcement of those rights and responsibilities.

We realize that there is not now and may never be a national consensus on what a citizen's responsibilities are during time of war--especially if that citizen cannot support the war on religious or ethical grounds. We can only take a position on the subject in the same manner as any citizen (or group of citizens) might. We represent a cross-section of backgrounds, views, and personal interests,

however, so our own consensus on this point may be of some interest.

We believe that when a citizen breaks a law he considers unjust, it is his responsibility to accept the designated punishment for his offense. Likewise, it is the responsibility of his government either to punish him or to change its laws, to prevent others from believing that they too can break laws without sanction. Once the preventive (or deterrent) impact of punishment is no longer important--in other words, once the unpopular war has ended--it is the government's further responsibility to temper its punishment with compassion and mercy. However, official forgiveness for an individual's failure to serve his country in time of war does not discharge him from his outstanding obligation of national service. Only in circumstances where an individual's punishment could be construed as a fulfillment of his obligations of national service do we believe that anyone can be officially "forgiven" without performing alternative service in the national interest.

Likewise, we consider it fair for the President to have conditioned his grants of clemency upon a good faith application from an eligible person. Executive clemency means more when it is an offer, not just a preemptory gift. The President, speaking for the American people, offered reconciliation. That reconciliation must be mutual. If the 100,000 non-applicants were to have knowingly accepted his offer, this President--and, indeed, this country--would owe them nothing more. Our only concern about those who did not apply is that many have failed to realize in time that they were eligible.

VIII

A

TOTALLY EMBARGOED
UNTIL 11:30 A.M., EDT

September 16, 1974

Office of the White House Press Secretary

THE WHITE HOUSE

ANNOUNCING A PROGRAM FOR THE RETURN OF
VIETNAM ERA DRAFT EVADERS AND MILITARY DESERTERS

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BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

The United States withdrew the last of its forces from the Republic of Vietnam on March 28, 1973.

In the period of its involvement in armed hostilities in Southeast Asia, the United States suffered great losses. Millions served their country, thousands died in combat, thousands more were wounded, others are still listed as missing in action.

Over a year after the last American combatant had left Vietnam, the status of thousands of our countrymen -- convicted, charged, investigated or still sought for violations of the Military Selective Service Act or of the Uniform Code of Military Justice -- remains unresolved.

In furtherance of our national commitment to justice and mercy these young Americans should have the chance to contribute a share to the rebuilding of peace among ourselves and with all nations. They should be allowed the opportunity to earn return to their country, their communities, and their families, upon their agreement to a period of alternate service in the national interest, together with an acknowledgement of their allegiance to the country and its Constitution.

Desertion in time of war is a major, serious offense; failure to respond to the country's call for duty is also a serious offense. Reconciliation among our people does not require that these acts be condoned. Yet, reconciliation calls for an act of mercy to bind the Nation's wounds and to heal the scars of divisiveness.

NOW, THEREFORE, I, Gerald R. Ford, President of the United States, pursuant to my powers under Article II, Sections 1, 2 and 3 of the Constitution, do hereby proclaim a program to commence immediately to afford reconciliation to Vietnam era draft evaders and military deserters upon the following terms and conditions:

1. Draft Evaders - An individual who allegedly unlawfully failed under the Military Selective Service Act or any rule or regulation promulgated thereunder, to register or register on time, to keep the local board informed of his current address, to report for or submit to preinduction or induction examination, to report for or submit to induction itself, or to report for or submit to, or complete service under Section 6(j) of such Act during the period from August 4, 1964 to March 28, 1973, inclusive, and who has not been adjudged guilty in a trial for such offense, will be relieved of prosecution and punishment for such offense if he:

(i) presents himself to a United States Attorney before January 31, 1975,

(ii) executes an agreement acknowledging his allegiance to the United States and pledging to fulfill a period of alternate service under the auspices of the Director of Selective Service, and

(iii) satisfactorily completes such service.

The alternate service shall promote the national health, safety, or interest. No draft evader will be given the privilege of completing a period of alternate service by service in the Armed Forces.

However, this program will not apply to an individual who is precluded from re-entering the United States under 8 U.S.C. 1182(a)(22) or other law. Additionally, if individuals eligible for this program have other criminal charges outstanding, their participation in the program may be conditioned upon, or postponed until after, final disposition of the other charges has been reached in accordance with law.

The period of service shall be twenty-four months, which may be reduced by the Attorney General because of mitigating circumstances.

2. Military Deserters - A member of the armed forces who has been administratively classified as a deserter by reason of unauthorized absence and whose absence commenced during the period from August 4, 1964 to March 28, 1973, inclusive, will be relieved of prosecution and punishment

under Articles 85, 86 and 87 of the Uniform Code of Military Justice for such absence and for offenses directly related thereto if before January 31, 1975 he takes an oath of allegiance to the United States and executes an agreement with the Secretary of the Military Department from which he absented himself or for members of the Coast Guard, with the Secretary of Transportation, pledging to fulfill a period of alternate service under the auspices of the Director of Selective Service. The alternate service shall promote the national health, safety, or interest.

The period of service shall be twenty-four months, which may be reduced by the Secretary of the appropriate Military Department, or Secretary of Transportation for members of the Coast Guard, because of mitigating circumstances.

However, if a member of the armed forces has additional outstanding charges pending against him under the Uniform Code of Military Justice, his eligibility to participate in this program may be conditioned upon, or postponed until after, final disposition of the additional charges has been reached in accordance with law.

Each member of the armed forces who elects to seek relief through this program will receive an undesirable discharge. Thereafter, upon satisfactory completion of a period of alternate service prescribed by the Military Department or Department of Transportation, such individual will be entitled to receive, in lieu of his undesirable discharge, a clemency discharge in recognition of his fulfillment of the requirements of the program. Such clemency discharge shall not bestow entitlement to benefits administered by the Veterans Administration.

Procedures of the Military Departments implementing this Proclamation will be in accordance with guidelines established by the Secretary of Defense, present Military Department regulations notwithstanding.

3. Presidential Clemency Board - By Executive Order I have this date established a Presidential Clemency Board which will review the records of individuals within the following categories: (i) those who have been convicted of draft evasion offenses as described above, (ii) those who have received a punitive or undesirable discharge from service in the armed forces for having violated Article 85, 86, or 87 of the Uniform Code of Military Justice between August 4, 1964 and March 28, 1973, or are serving sentences of confinement for such violations. Where appropriate, the Board may recommend that clemency be conditioned upon completion of a period of alternate service. However, if any clemency discharge is recommended, such discharge shall not bestow entitlement to benefits administered by the Veterans Administration.

4. Alternate Service - In prescribing the length of alternate service in individual cases, the Attorney General, the Secretary of the appropriate Department, or the Clemency Board shall take into account such honorable service as an individual may have rendered prior to his absence, penalties already paid under law, and such other mitigating factors as may be appropriate to seek equity among those who participate in this program.

IN WITNESS WHEREOF, I have hereunto set my hand this sixteenth day of September in the year of our Lord nineteen hundred seventy-four, and of the Independence of the United States of America the one hundred and ninety-ninth.

GERALD R. FORD

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TOTALLY EMBARGOED
UNTIL 11:30 A.M., EDT

SEPTEMBER 16, 1974

Office of the White House Press Secretary

THE WHITE HOUSE

EXECUTIVE ORDER

ESTABLISHING A CLEMENCY BOARD TO REVIEW CERTAIN CONVICTIONS OF PERSONS UNDER SECTION 12 OR 6(j) OF THE MILITARY SELECTIVE SERVICE ACT AND CERTAIN DISCHARGES ISSUED BECAUSE OF, AND CERTAIN CONVICTIONS FOR, VIOLATIONS OF ARTICLE 85, 86 or 87 OF THE UNIFORM CODE OF MILITARY JUSTICE AND TO MAKE RECOMMENDATIONS FOR EXECUTIVE CLEMENCY WITH RESPECT THERETO

By virtue of the authority vested in me as President of the United States by Section 2 of Article II of the Constitution of the United States, and in the interest of the internal management of the Government, it is ordered as follows:

Section 1. There is hereby established in the Executive Office of the President a board of 9 members, which shall be known as the Presidential Clemency Board. The members of the Board shall be appointed by the President, who shall also designate its Chairman.

Sec. 2. The Board, under such regulations as it may prescribe, shall examine the cases of persons who apply for Executive clemency prior to January 31, 1975, and who (i) have been convicted of violating Section 12 or 6(j) of the Military Selective Service Act (50 App. U.S.C. §462), or of any rule or regulation promulgated pursuant to that section, for acts committed between August 4, 1964 and March 28, 1973, inclusive, or (ii) have received punitive or undesirable discharges as a consequence of violations of Article 85, 86 or 87 of the Uniform Code of Military Justice (10 U.S.C. §§ 885, 886, 887) that occurred between August 4, 1964 and March 28, 1973, inclusive, or are serving sentences of confinement for such violations. The Board will only consider the cases of Military Selective Service Act violators who were convicted or unlawfully failing (i) to register or register on time, (ii) to keep the local board informed of their current address, (iii) to report for or submit to preinduction or induction examination, (iv) to report for

or submit to induction itself, or (v) to report for or submit to, or complete service under Section 6(j) of such Act. However, the Board will not consider the cases of individuals who are precluded from re-entering the United States under 8 U.S.C. 1182(a)(22) or other law.

Sec. 3. The Board shall report to the President its findings and recommendations as to whether Executive clemency should be granted or denied in any case. If clemency is recommended, the Board shall also recommend the form that such clemency should take, including clemency conditioned upon a period of alternate service in the national interest. In the case of an individual discharged from the armed forces with a punitive or undesirable discharge, the Board may recommend to the President that a clemency discharge be substituted for a punitive or undesirable discharge. Determination of any period of alternate service shall be in accord with the Proclamation announcing a program for the return of Vietnam era draft evaders and military deserters.

Sec. 4. The Board shall give priority consideration to those applicants who are presently confined and have been convicted only of an offense set forth in section 2 of this order, and who have no outstanding criminal charges.

Sec. 5. Each member of the Board, except any member who then receives other compensation from the United States, may receive compensation for each day he or she is engaged upon the work of the Board at not to exceed the daily rate now or hereafter prescribed by law for persons and positions in GS-18, as authorized by law (5 U.S.C. 3109), and may also receive travel expenses, including per diem in lieu of subsistence, as authorized by law (5 U.S.C. 5703) for persons in the government service employed intermittently.

Sec. 6. Necessary expenses of the Board may be paid from the Unanticipated Personnel Needs Fund of the President or from such other funds as may be available.

Sec. 7. Necessary administrative services and support may be provided the Board by the General Services Administration on a reimbursable basis.

Sec. 8. All departments and agencies in the Executive branch are authorized and directed to cooperate with the Board in its work, and to furnish the Board all appropriate information and assistance, to the extent permitted by law.

Sec. 9. The Board shall submit its final recommendations to the President not later than December 31, 1976, at which time it shall cease to exist.

GERALD R. FORD

THE WHITE HOUSE,

September 16, 1974.

GSA DC 75.10765

TOTALLY EMBARGOED
UNTIL 11:30 A.M., EDT

SEPTEMBER 16, 1974

Office of the White House Press Secretary

THE WHITE HOUSE

FACT SHEET

PRESIDENTIAL CLEMENCY BOARD

The President has today established by Executive Order a nine member Presidential Clemency Board. The Board will review the records of two kinds of applicants. First, those who have been convicted of a draft evasion offense committed between August 4, 1964 and March 28, 1973, inclusive. Second, those who received a punitive or undesirable discharge from the armed forces because of a military absentee offense committed during the Vietnam era or are serving sentences of confinement for such violations. The Board will recommend clemency to the President on a case-by-case basis. In the absence of aggravating factors, the Clemency Board would be expected to recommend clemency.

When appropriate, the Board could recommend clemency conditioned upon the performance of some alternate service. In the case of a military absentee, the Board could also recommend that a clemency discharge be substituted for a punitive or undesirable discharge.

The Board has been instructed to give priority consideration to individuals currently confined. The President has also asked that their confinement be suspended as soon as possible, pending the Board's review.

The Board will consider the cases only of persons who apply before January 31, 1975. It is expected to complete its work not later than December 31, 1976.

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I-D

TOTALLY EMBARGOED
UNTIL 11:30 A.M., EDT

SEPTEMBER 16, 1974

Office of the White House Press Secretary

THE WHITE HOUSE

FACT SHEET

PROCEDURES TO BE FOLLOWED

UNCONVICTED DRAFT EVADER AND MILITARY ABSENTEE

DRAFT EVADER	MILITARY ABSENTEE (including Coast Guard)
Report to United States Attorney where offense was committed	Report as prescribed by the military department concerned or for members of the Coast Guard report to the Secretary of Transportation
Acknowledge allegiance to the United States by agreeing with the United States Attorney to perform 24 months alternate service or less based on mitigating circumstances	Oath of Allegiance to United States
	Agree with the concerned Military Department to perform 24 months alternate service or less based upon mitigating circumstances
Perform alternate service under the auspices of the Director of Selective Service	Upon request, Military Department forgoes prosecution, and issues undesirable discharge
Director of Selective Service issues certificate of satisfactory completion of alternate service	Perform alternate service under the auspices of the Director of Selective Service

DRAFT EVADER	MILITARY ABSENTEE (including Coast Guard)
Receipt by United States Attorney of a certificate of satisfactory completion of alternate service	Director of Selective Servic issues certificate of satis-factory completion of alter-nate service
Dismissal of indictment or dropping of charges	Receipt of a certificate of satisfactory completion of alternate service by the concerned Military Departme
	Clemency discharge substitut for undesirable discharge
Apply to Clemency Board	Apply to Clemency Board
Clemency Board may recommend clemency to the President	Clemency Board may recommend clemency to the President, including substitution of a clemency discharge for a punitive or undesirable discharge
Clemency Board may condition recommendation of clemency on period of alternate service	Clemency Board may condition recommendation of clemency on period of alternate service
President may grant clemency	President may grant clemency, including substitution of a clemency discharge for a punitive or undesirable discharge

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I-E

rules and regulations

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

Title 2—Clemency

CHAPTER I—PRESIDENTIAL CLEMENCY BOARD

ADMINISTRATIVE PROCEDURES AND SUBSTANTIVE STANDARDS

The Presidential Clemency Board published its proposed administrative procedures and substantive standards on November 27, 1974 (39 FR 41351). Since that time, the Board has considered the first military cases before it, and has had the benefit of more than 40 comments on its proposed regulations. With the benefit of this additional experience and these comments, the Board publishes the final regulations setting out its procedures and standards.

It is the intent of the Board to provide notice to the public of the standards it uses to make recommendations to the President concerning individual applications for clemency. The Board also wishes to ensure equity and consistency for applicants under the President's clemency program.

Because it is a temporary organization within the White House Office, the sole function of which is to advise the President with respect to the exercise of his constitutional power of executive clemency, the Board does not consider itself formally bound by the Administrative Procedure Act. Nonetheless, within the time and resource constraints governing it, the Board wishes to adhere as closely as possible to the principles of procedural due process. The administrative procedures established in these regulations reflect this decision.

The Board may publish changes in individual sections as it deems necessary. The Board welcomes continuing comment on problems which may arise in the application of particular sections of these procedures and invites recommendations on how best these problems may be resolved.

Several dozen technical changes have been made in these regulations in response to new circumstances that were presented to the Board. Some clarify significantly the rights and procedures available to applicants. The following is an explanation of those changes which seem to the Board to be most significant:

Jurisdiction. Section 101.3 has been added in order to incorporate the criteria for determining whether or not a person is eligible for consideration by the Presidential Clemency Board. It restates the criteria established in Proclamation 4313 (Announcing a Program for the Return of Vietnam Era Draft Evaders and Military Deserters) and repeated in Executive Order 11803 (Establishing a Clemency Board * * *).

Remedies. Section 101.4 has been added to explain the remedies available from the Presidential Clemency Board. It states the authority with which the Board is vested by Executive Order 11803, issued pursuant to Proclamation 4313.

A Presidential pardon restores those federal civil rights lost as a result of a felony conviction. State law recognizes Presidential pardons as a matter of comity, usually restoring the right to vote in federal and state elections, to hold public office, and to obtain licenses for trades and professions from which convicted felons are barred under state law. Since conviction by military court-martial is treated as a felony conviction by many states, and since an Undesirable Discharge may have the same consequences as a court-martial conviction, the benefits of a pardon apply to former servicemen as well as to civilian draft evaders.

A Clemency Discharge neither entitles its recipient to veterans benefits nor bars his receiving those benefits to which he is otherwise entitled. The Veterans Administration and other agencies may extend veterans' benefits to some holders of a Clemency Discharge, but it is contemplated that most will not receive veterans benefits.

Availability of files to applicant and his representative. Section 101.7(c) clarifies which files an applicant and his representative have a right to see. At the offices of the Board, information collected by the Board independently of any other government agency is readily available to an applicant or his representative. All files obtained from other agencies are available to the extent not barred by the rules of the agency owning the file. For example, the Selective Service System file is available to him and his representative. Files from another agency are cited in a summary when they are used as the basis of statements in that summary. Reason for denial of access to any of these files is stated in writing upon request.

This subsection is in response to comments that §§ 201.5(b) and 201.6(c), read together, were either unclear or overbroad.

Completed case summary. The completed case summary consists of the initial case summary, amendments as described in the §§ 101.8 (c) and (e), and the materials submitted by the applicant and his representative as described in § 101.8(b). Where, in the opinion of the Board, there is a conflict of fact, false statement, or omission material to the Board's consideration of an aggravating or mitigating circumstance, as specified in §§ 102.3 and 102.4, the case is tabled. The action attorney is instructed to obtain additional facts.

This is in response to comments from the private bar.

Hearing before the Board. Subsection 101.9(c) provides for a personal appearance as a matter of right if an applicant can show that an oral presentation is necessary to the Board's understanding of a mitigating circumstance or an aggravating circumstance which applies to his case. The Board has provided a right to personal appearance in response to several comments.

Reconsideration. Subsection 101.11(b) has been amended in order to add standards which must be met if the Board is to consider an applicant's petition for reconsideration. In the proposed regulations, consideration of such petition by the Board was a matter of discretion. This amendment limits the circumstances under which reconsideration will be granted, but provides that when an applicant shows that any of those circumstances are present, reconsideration will be granted as a matter of right.

Transmittal to other agencies of Presidential decisions. Section 101.12 provides that grants of immediate pardon by the President are transmitted formally to other government agencies, as appropriate. Pending completion of the alternative service requirement, grants of conditional clemency are communicated to another federal agency only to the extent this information is necessary for the agency to perform its functions under the clemency program or for other necessary action respecting the applicant. Upon completion of alternative service, notification of the pardon is forwarded to all appropriate agencies. Denials of clemency by the President are held confidential by the Board.

The intent of this section, adopted here in response to several comments is that a person who applies for clemency should not be prejudiced in his pursuit of other remedies through the military services' discharge review processes or elsewhere.

Other remedies available to applicant. Section 101.15(b) requires that Board staff inform both applicants to the Board and persons who inquire about the clemency program, but are clearly not under the Board's jurisdiction, of the remedies available to them under military discharge review processes and through the judiciary. Applicants to the Board or to one of the other agencies administering part of the clemency program may pursue such other remedies simultaneously or subsequently to, or instead of their remedies under the clemency program. The Board's staff informs them of their other options.

Aggravating and mitigating circumstances. Sections 102.3 and 102.4 contain new aggravating and mitigating circumstances which the Board deems material to its decisions.

The Board notes that it has seen a number of cases of persons who behaved with valor during combat, but then committed AWOL offenses because of mental stress caused by combat. The Board calls attention to this mitigating circumstance as one which it considers particularly important in some cases.

A number of comments from the private bar have suggested that the Board should add as a mitigating circumstance "evidence that an applicant would probably have obtained a Selective Service status or military discharge or reassignment beneficial to him, but failed to apply due to lack of knowledge or confusion." Mitigating circumstances #1, 8, and 9, in conjunction, are adequate to meet this problem.

Calculation of length of alternative service. Subsection 102.5(c) has been added in order to make clear the Board's decision that the initial baseline period of alternative service for applicants with Undesirable Discharges is three (3) months.

Eligibility of clemency recipients for military discharge review remedies. The Presidential Clemency Board notes, although the matter is not one for inclusion in its regulations, that it has received numerous comments which assume that a recipient of executive clemency under the President's clemency program is ineligible for consideration under the military services' discharge review processes.

This is incorrect. Any applicant to the Board for executive clemency may also seek review of his discharge through one of the military services' discharge review boards or boards for the correction of military records. Applying to the Board does not exclude a former serviceman from the jurisdiction of the military services' boards, nor does it preclude the remedies which are available from those boards.

The Presidential Clemency Board notes that a veteran who receives a Clemency Discharge through the Board may subsequently seek, according to the Department of Defense, an upgrading of that discharge through the military services' normal discharge review processes.

This chapter will become effective immediately.

Issued in Washington, D.C. on March 18, 1975.

CHARLES E. GOODELL,
Chairman, Presidential Clemency Board, The White House.

1. Part 101 is added to read as follows:

PART 101—ADMINISTRATIVE PROCEDURES

Sec.

AUTHORITY: Executive Order 11803, 39 FR 33297, as amended.

§ 101.1 Purpose and scope.

This part establishes the procedures of the Presidential Clemency Board. Certain other matters are also treated, such as the assistance to be given to individuals requesting determinations of jurisdiction, or requesting information respecting those parts of the Presidential Clemency Program which are administered by the Department of Defense and the Department of Justice under Presidential Proclamation 4313 (39 FR 33293).

§ 101.2 General definitions.

"Action attorney" means an attorney on the staff of the Board who is assigned an applicant's case.

"Applicant" means an individual who invokes the jurisdiction of the Board, and who has submitted an initial filing.

"Board" means the Presidential Clemency Board as created by Executive Order 11803 (39 FR 33297) or any duly authorized panel of that Board.

§ 101.3 Jurisdiction.

Jurisdiction lies with the Board with respect to a particular person if such person applies to the Board not later than March 31, 1975 and:

(a) He has been convicted for failure under the Military Selective Service Act (50 App. U.S.C. 462) or any rule or regulation promulgated thereunder to register or register on time, to keep the local board informed of his current address, to report for or submit to preinduction or induction examination, to report for or submit to induction itself, or to report for or submit to, or complete (alternative) service under section 6(j) of the Act for offenses committed during the period from August 4, 1964 to March 28, 1973, inclusive; or

(b) He has received a punitive or undesirable discharge as a consequence of offenses under Article 85 (desertion), 86 (AWOL), or 87 (missing movement) of the Uniform Code of Military Justice (10 U.S.C. 885, 886, 887) that occurred between August 4, 1964 and March 28, 1973, inclusive, or is serving a sentence of confinement for such violation.

(c) Jurisdiction will not lie with respect to an individual precluded from re-entering the United States under 8 U.S.C. 1182(a)(22) or other law.

§ 101.4 Remedies.

(a) The Board is empowered only to make recommendations to the President on clemency applications. The Board has no final authority of its own. The Board may recommend to the President that he take one or more of the following actions:

(1) Grant an unconditional pardon without a requirement of alternative service;

(2) Grant an unconditional pardon upon the satisfactory completion of a specified period of alternative service not to exceed 24 months;

(3) Grant a clemency discharge in substitution for a Dishonorable, Bad Conduct, or Undesirable Discharge;

(4) Commute the sentence; or

(5) Deny clemency.

(b) In unusual circumstances and as authorized by Executive Order 11803, the Board may make other recommendations as to the form that clemency should take. This shall only be done in order to give full effect to the intent and purposes of the Presidential Clemency program.

§ 101.5 Initial filing.

(a) In order to comply with the requirements of Executive Order, 11803, as amended, an individual must make an initial filing to the Board not later than March 31, 1975. The Board considers sufficient as an initial filing any written communication postmarked not later than March 31, 1975, and received by the Board, the Department of Justice, the Department of Defense, the Department of Transportation, or the Selectiv Service System. In the communication an individual or his representative must request consideration of the individual's case or raise questions which evidence a serious interest in applying for the program. Oral applications made not later than March 31, 1975 are considered sufficient if reduced to writing, and postmarked not later than May 31, 1975.

(b) If an initial filing is made by a representative, the case is not considered by the Board unless and until the applicant submits a written confirmation of his clemency application. This confirmation by the applicant may be sent either directly or through a representative, but it must be mailed not later than May 31, 1975. A statement by an attorney that he is acting on behalf of an applicant is sufficient. Applications by a representative on behalf of an applicant may be considered by the Board where good cause is shown why the applicant is unable to apply.

§ 101.6 Application form.

(a) Upon receipt of an initial filing, a member of the Board's staff makes a determination of probable jurisdiction. Persons who are clearly beyond the Board's jurisdiction are so notified in writing. A person who questions this determination should promptly write the General Counsel, Presidential Clemency Board, The White House, Washington, D.C. 20500, stating his reasons for questioning the determination. The Genera Counsel of the Board makes the final de termination of probable jurisdiction and

so notifies the applicant or his representative in writing stating the reasons why. In doubtful cases, a final determination of jurisdiction is made by the Board.

(b) A person who has been notified that jurisdiction does not lie in his case is considered as having made a timely filing if the final determination is that the Board has jurisdiction over his case.

(c) A person who is within the jurisdiction of the Board is sent an application form, information about the Presidential clemency program, instructions for the preparation of the application form, a statement describing the Board's procedures and method of determining cases, and a list of volunteer counseling services.

(d) The person is urged to return the completed application form to the Board as soon as possible. Completed application forms must be postmarked within sixty (60) days of the time they were mailed by the Board, in order to qualify for the Board's consideration as a matter of right.

§ 101.7 Assignment of Action Attorney, case number, and determination of jurisdiction.

(a) Upon receipt by the Board of the completed application form or of information sufficient for the Board to request the records and files specified in paragraph (b) of this section, the applicant's case is reviewed for preliminary determination of the Board's jurisdiction. If it appears that the Board has jurisdiction over the case, a file is opened and a case number assigned. The Board will then request from all appropriate government agencies the relevant records and files pertaining to the applicant's case.

(b) In normal circumstances, the relevant records and files for civilian cases are the applicant's files from the Bureau of Prisons and information that he has sent to the Board. For military cases, they will include the applicant's military personnel records, military clemency folder, record of court martial, if any, and information that the applicant has sent to the Board. Applicants and their representatives have the right to request that the Board consider other pertinent files. The Board will attempt to comply with these requests.

(c) At the offices of the Board, information collected by the Board independently of any other agency is readily available to an applicant or his representative. All files obtained from other agencies are available to the extent not barred by the rules of the agency owning the file. Files from another agency are cited in a summary when they are used as the basis of statements in that summary. Reason for denial of access to any of these files is stated in writing upon request.

(d) Where the initial filing contains adequate information, the Board staff may assign a case number and request records and files prior to receipt of the completed application form.

(e) If the Action Attorney determines that the Board does not have jurisdiction in a particular case, he promptly notifies the applicant or his representative in writing, stating the reasons for such a determination.

(f) An applicant or his representative who questions this adverse determination of jurisdiction should write the General Counsel of the Board in accordance with the provisions of § 101.6(a).

§ 101.8 Initial case summary.

(a) Upon receipt of the necessary records and files, the Action Attorney prepares an initial case summary of the applicant's case. The files, records, and any additional sources used in preparing the initial case summary are listed. No other material is used. The initial case summary includes the name and business telephone number of the Action Attorney who may be contacted by the applicant or his representative.

(b) The initial case summary is sent by certified mail to the applicant or his representative. The summary is accompanied by an instruction sheet describing the method by which the summary was prepared and by a copy of the guidelines used by the Board for the determination of cases. Applicants are encouraged to review the initial case summary for accuracy and completeness and advised of their right to submit additional sworn or unsworn material. Additional material may be submitted in any length. Nothing over three (3) single-spaced, typewritten, letter-sized pages in length is read verbatim to the Board. Where necessary, therefore, an applicant should summarize his additional material to comply with this verbatim presentation requirement. If this is not done, the Action Attorney does so.

(c) At any time before Board consideration of his case, an applicant may submit evidence of inaccurate, incomplete, or misleading information in the complete Board file or other files. This information is incorporated in applicant's Board file.

(d) An applicant's case is ready for final consideration by the Board not sooner than thirty (30) days after the initial case summary is mailed to the applicant. Material which amends or supplements the applicant's initial case summary must be postmarked within this thirty (30) day period to ensure that it is considered. An applicant's request that this thirty (30) day period be extended is liberally granted by the Action Attorney, if the request is received prior to Board action and is reasonable.

(e) Upon receipt of the applicant's response to the initial summary, the Action Attorney notes all such amendments, supplements, or corrections on the initial summary submitted by the applicant or his representative. All such amendments are attached to the initial case summary with notation by the Action Attorney of any discrepancies of fact which in his opinion remain unresolved. The complete case summary consists of the initial summary, amendments as described in paragraph (c) and this section, and the materials submitted by the applicant and his representative as described in paragraph (b) of this section.

(f) Where, in the opinion of the Board, there is a conflict of fact, false statement, or omission material to the Board's consideration of an aggravating or mitigating circumstance, as specified in §§ 102.3 and 102.4, the case is tabled. The Action Attorney is then instructed to obtain additional facts.

§ 101.9 Consideration before the Board.

(a) At a regularly scheduled meeting of the Board, an applicant's case is considered. The Board may provide by rule, however, that cases will be initially considered by panels of not less than three Board members. Any case may be brought before a majority of the full Board for consideration at the request of a panel member. Panel recommendations will be considered and approved by a majority of the full Board.

(b) The Action Attorney presents to the Board a brief statement of the completed case summary and, as provided in § 101.8(b), the material submitted by the applicant.

(c) The Board grants a personal appearance to an applicant and his representative if they can show in a written statement that such an appearance is necessary to the Board's understanding of the applicant's case. The Board considers each request for an oral presentation at a regular meeting and informs the applicant and his representative whether or not his request has been granted.

(d) Any oral presentation granted by the Board shall not exceed a reasonable period of time. Neither applicant nor his representative may be present when the Board begins deliberations, but should remain available for further consultation immediately thereafter.

(e) After due deliberation the Board decides upon its recommendation to the President listing the factors it considered in making its recommendation.

§ 101.10 Recommendations to the President.

(a) At appropriate intervals, the Chairman of the Board submits to the President certain master warrants listing the names of applicants recommended for executive clemency and a list of the names of applicants considered by the Board but not recommended for clemency. The Chairman will also submit such terms and conditions for executive clemency, if any, that have been recommended in each case by the Board.

(b) Following action by the President, the Board sends notice of such action in writing to all applicants whose names were submitted to the President. Each applicant is sent a list of the mitigating and aggravating circumstances decided by the Board to be applicable in his case.

§ 101.11 Reconsideration.

(a) An applicant may ask the Board for reconsideration of his case. Petitions for reconsideration, including any supplementary material, must be postmarked within thirty (30) days of Board mailing specified in § 101.10(b).

(6) Prior refusal to fulfill court ordered alternative service;
(7) Violation of probation or parole;
(8) Multiple AWOL/UA offenses; and
(9) AWOL/UA of extended length.

(c) Whenever an additional aggravating circumstance not listed is considered by the Board in the discussion of a particular case, and is material to the disposition of that case, the Board postpones final decision of the case and immediately informs the applicant and his representative of their opportunity to submit evidence material to the additional circumstance.

§ 102.4 Mitigating circumstances.

(a) Presence of any of the mitigating circumstances listed below or of any other appropriate mitigating circumstance is considered as cause for recommending that the President grant executive clemency to an applicant, and as cause for reducing the applicant's alternative service below the baseline period, as determined under § 102.5.

(b) Mitigating circumstances of which the Board takes notice are:

(1) Lack of sufficient education or ability to understand obligations or remedies available under the law;
(2) Personal and family problems either at the time of offense or if applicant were to perform alternative service;
(3) Mental or physical condition;
(4) Employment and other activities of service to the public;
(5) Service-connected disability, wounds in combat or decorations for valor in combat;
(6) Period of creditable military service;
(7) Tours of service in the war zone;
(8) Substantial evidence of personal or procedural unfairness;
(9) Denial of conscientious objector status, of other claim for Selective Service exemption or deferment, or of a claim for hardship discharge, compassionate reassignment, emergency leave, or other remedy available under military law, on procedural, technical, or improper grounds, or on grounds which have subsequently been held unlawful by the judiciary;
(10) Evidence that an applicant acted for conscientious, not manipulative or selfish reasons;
(11) Voluntary submission to authorities by applicant;
(12) Behavior which reflects mental stress caused by combat;
(13) Volunteering for combat, or extension of service while in combat;
(14) Above average military conduct and proficiency; and
(15) Personal decorations for valor.

(c) An applicant may bring to the Board's attention any other factor which he believes should be considered.

§ 102.5 Calculation of length of alternative service.

(a) Having reached a decision to recommend that the President grant executive clemency to a particular applicant, the Board will then decide whether or not clemency should be conditioned upon a specified period of alternative service and, if so, what length that period should be:

(1) The starting point for calculation of length of alternative service will be 24 months.

(2) The starting point will be reduced by three times the amount of prison time served.

(3) The starting point will be further reduced by the amount of prior alternative service performed, provided that the prescribed period of alternative service has been satisfactorily completed or is being satisfactorily performed.

(4) The starting point will be further reduced by the amount of time served on probation or parole, provided that the prescribed period has been satisfactorily completed or is being satisfactorily performed.

(5) Subject to paragraphs (b) and (c) of this section, the baseline period of alternative service will be the remainder of these four subtractions or final sentence to imprisonment, whichever is less.

(b) In no case will the baseline period of alternative service be less than three (3) months.

(c) For applicants who have received an Undesirable Discharge from a military service, the baseline period of alternative service shall be three (3) months.

(d) The Board may consider mitigating circumstances as cause for recommending clemency upon satisfactory completion of a period of alternative service that is less than an applicant's baseline period of alternative service, or for recommending an immediate pardon.

(e) In cases in which aggravating circumstances are present and are not, in the Board's judgment, balanced by mitigating circumstances, the Board may consider such aggravating circumstances as cause for recommending clemency upon satisfactory completion of a period of alternative service exceeding, by three (3), six (6), or nine (9) additional months, the applicant's baseline period of alternative service. In extraordinary cases, as an alternative to denying clemency, the Board may increase the baseline period to a maximum of not more than 24 months.

PART 201—[REVOKED]

3. Part 201 is revoked.

PART 202—[REVOKED]

4. Part 202 is revoked.

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