The original documents are located in Box 5, folder "Final Report - Draft, 10/2-7/75 (3)" of the Charles E. Goodell Papers at the Gerald R. Ford Presidential Library.

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IV-D Conclusion

An estimated 113,000 persons could have applied for clemency. Only 22,300 did apply. Who were the 90,000 who did not? Why did they fail to apply? What happens to them now?

Who Were They?

The following table identifies nonapplicants in a very general sense:

Clemency Program	Type of Applicants	Percentage of Nonapplicants	Total Number of Nonapplicants
PCB	Military-UD	87%	56,600
PCB	Military-BCD/DD	78%	19,400
PCB	Convicted Civilians	77%	6,700
DOD	Military absentees	47%	3,800
DOJ	Fugutive civilians	84%	3,800
	Total----------	80%	90,400

We know little more about their characteristics than what this table shows. Discharged servicement with Undesirable Discharges were the least likely to apply, in terms of percentage and total numbers. This is probably attributable to the fact that we mailed application materials to eligible persons with punitive (BCD/DD) discharges, but were unable to do so for those with Undesirable Discharges.

The Department of Defense had access to the military records of its eligible nonapplicants. Using these records, it could make comparisons between its applicants and nonapplicants. In most ways, they were alike -- family background, AFQT score education, type of offense, circumstances of offense, and so forth. Only a few clear differences could be found. Nonapplicants committed their offenses earlier in the War, they were older, and they were more likely to be married. This implies that many may not have applied because their lives are settled, with their discharges more a matter of past than present concern.

If the Department of Defense findings are correct -- in other words, if nonapplicants are not very different from applicants -- we can make some estimate as to how many draft resisters of deserters ever were Canadian exiles. In our program, 2% of our military applicants and 6% of our civilian applicants had at one time been Canadian exiles. In the Defense program, 2% had been Canadian exiles. Most of the Department of Justice applicants had been Canadian exiles, but no real data exists. Even assuming that all of the Justice applicants had been exiled, this indicates that only about 7,000 persons eligible for clemency had ever been Canadian exiles. This amounts to only 5% of all eligible individuals. However, there may have been thousands more

who fled to avoid the draft, but for whom no indictments were ever issued.

At present, we estimate that about 4,000 persons are still Canadian exiles; most are those who declined to apply to the Department of Justice program. It is unlikely that many of them misunderstood their eligibility for clemency.

Throughout the Vietnam Era, there never had been any tally -- even a partial tally -- of the number of war-induced exiles. Some estimates were made, but they were based upon very imperfect counting methods. For example, figures of up to 100,000 were derived from the numbers of files on American emigrants at aid centers. Many emigrants were not draft resisters or deserters, and many had files at more than one center.

Why did they Fail to Apply?

We can identify five reasons why eligible persons did not apply for clemency. We have listed them below in order of the significance we attribute to each of them.

Misunderstanding about eligibility criteria. Despite our public information campaign, many eligible persons may never have realized that they could apply for clemency.

Misunderstanding about the offerings of the program. Many prospective applicants may have been concerned about the usefulness of a Clemency Discharge. Others may not have known about the Presidential pardons given to all applicants to our Board -- or they may not have realized that our applicants were asked to perform an average of only three months of alternative service.

Settled status. Others may not have cared about the kind of discharge they had, or they may have been concerned that their application would have made their discharge public knowledge.

Inability or unwillingness to perform alternative service. Some individuals might have feared that if they quit their jobs to perform alternative service, they would not get them back later. Many fugitives in Canada had jobs and homes there, with children in school, so they might have seen two years of alternative service as more of a disruption than they were willing to bear.

General distrust of government. Unfortunately, some may not have applied because they were afraid that, somehow, they would only get in trouble by surfacing and applying for clemency. Some might have been unsuccessful in pursuing other appeals, despairing of any hope that a new appeal would be of any help.

Opposition to the program. Some might have felt, for reasons of conscience, that only unconditional amnesty would be an acceptable basis for them to make peace with the government.

What Happens to Them Now?

Civilians convicted of draft offenses and former servicemen discharged for AWOL offenses will have to live with the stigma of a bad record. They still have the same opportunities for appeal that existed before the President's program -- principally through the United States Pardon Attorney and the military Discharge Review Boards -- but their prospects for relief are, realistically, remote.

Military absentees still in fugitive status can surrender themselves to civilian or military authorities. They still face the possibility of court-martial, but it is possible

that many will quickly receive Undesirable Discharges and be sent home.

Fugitive draft offenders can first inquire to learn whether they are on the Department of Justice's list of 4522 indictments. If they are not, they are free from any further threat of prosecution. If their names are on that list, they can surrender to the United States Attorney in the district where they committed their draft offense. They will then stand trial for their offenses. Although there have been exceptions, convicted draft offenders have been recently sentenced to 24 months of alternative service and no imprisonment. But they still have a felony conviction, involving a stigma and a loss of civil rights.

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Chapter V: Managing the Clemency Board

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

Notwithstanding the size and intensity 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 in order to protect their rights and interests. We did our best, nonetheless, to compensate for the time-consuming nature of our process.

What we and our staff gained from this process was experience in crisis or "adaptive"1/ management--experience which we think may be useful to 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, less goal and production oriented, basis. This "crisis" management may become more commonplace as it becomes more widely recognized that unending government involvement may not always be the right formula for providing solutions to temporary problems. Through this "adaptive," 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 frequently claim that government could work its management approaches better if it would pattern its management techniques more after those of private enterprise.2/ To do this, a government agency must ideally have the ability to: (1) Set clear goals whose achievement can be monitored as a measure of performance; (2) Identify staff and other resources needs quickly and accurately, obtain them promptly, and apply them flexibly; and (3) Reduce in size as soon as staff is nc lcnger needed. We were fortunate to have some of these abilities in abundance, and others to a lesser degree. 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 describe our management experiences during the twelve months of our operation. During that year, we generated 21,000 applications,3/ recommended 15,500 case dispositions to the President, and referred 1,000 cases with incomplete files to the Justice Department for further action. Extending from September 16, 1974 to September 15, 1975, this year was split (with the advantage of hindsight) into five distinct phases:

1. September through December: Policy formulation phase, during which very few applications were received, with the Board concentraing on the development of policies and procedures.

2. January through March: Public Information Phase, with the Board and staff concentrating on informing the American people about PCB eligibility criteria.

3. April and May: Expansion Phase, as the staff grew by a factor of ten to accomodate mid-summer case production requirements.

4. June and July: Peak (Case) Production Phase, with our staff producing cases and the Board deciding them at a rate of over one thousand cases per week.

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

September through December: Policy Formulation Phase

In our first weeks, we had little idea of the magnitude of the task that lay ahead. It was clear, however, that our nine-member Board had to first concentrate on resolving key policy issues: Setting the baseline formula, determining aggravating and mitigating factors, and recommending categories of case dispositions to the President.

We began with a staff of thirty, half of whom were attorneys "detailed"4/ from permanent Executive Agencies. The staff quickly developed procedures for implementing Board policy in the handling of applications and the presentation of cases to the Board. That process was time-consuming, because of the emphasis on high standards of quality. Nevertheless, it was rather informal, well-suited to a small staff with a moderate workload.

During this first period, we spent a good deal of time developing rules and testing our ability to apply them. We learned, among other things, that using our aggravating and

mitigating factors just as informal guides was not enough; a simple regression analysis carried out by the staff showed that some clearly inconsistent case dispositions resulted from that practice. We then decided to apply our formula and aggravating/mitigating factors were explicitly. After every case, we determined not only the actual disposition, but also the factors which were applicable in each decision. Based on 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 backgrounds.

Our management structure likewise was very informal, as one might expect from a very small, very 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 less on management than on substantive policy issues. Regulations had to be drafted, and we asked for staff briefings on major questions of policy and procedures.

During those early months, we develcped the basic elements of the case production process which the staff followed throughout the year with surprisingly few modifications. Our administrative staff developed a procedure for processing applications. The case summary evolved into a format which we found useful and which did not change throughout the year. A Quality Control function was introduced into the system in December as our preparation staff began to grow to review case summaries and assure the accuracy and impartiality of the 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 were able to achieve something of a balance in our operations: Our 8 to 10 case attorneys could each produce roughly one case per day, and we were able to decide about 30 cases per day. With the Board meeting two or three days every two weeks, we processed cases at a 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 information systems, or monitor case inventories at different stages of our process. In many

ways, our operation and staff resembled that of moderate-sized law firm.

The primary management goal in those early months was to have the staff present enough cases when we met so we could submit a reasonable number of case recommendations to the President by late November. Our purpose in this 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 before the January 31 deadline. Around Thanksgiving, the President signed warrants for the first 45 civilian cases. In late December, he approved our first ____ militayr recommendations.

We expected that the Presidential annouuncement of case dispositions would stimulate more applications, but 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 year's end, we had received applications from only 850 persons, less than 1% of those that we had estimated to be eligible. We had already decided over one-fourth of those cases, and we expected to be finished by April.

January through March: Public Information Phase

As the Board heard the first few hundred cases, we each began to realize the limited educational background of many of our applicants. Through informal surveys and contacts with potential applicants, we developed strong doubts about the extent to which the American public--and especially our prospective applicants -- understood the President's program. By mid-December, the need to counter widespread confusion about the program was apparent. Plans were laid and instructional booklets and other materials were readied. Beginning the second week in January, both the Board and the staff concentrated on means of spreading the word about our eligibility criteria over the next three months.5/

We were not particularly well-equipped to run a public information 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. We were fortunate to receive many services, and often, "air" time, free as a public service. At the same time, we were faced with the difficulty of combating misinformation about the program, put out by the ACLU and

other groups. The ACLU went so far as to air ads which encouraged people not to apply to our program. This was a particularly trying and discouraging problem.

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, by this time numbering nearly fifty, planned future public information activities while stuffing endless piles of envelopes. By late January, we began to see the effect of our campaign, receiving thousands of letters and phone calls 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 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 dedicated, but nonprofessional volunteers had to be relied

upon to read mail from applicants and determine their eligibility.6/

It shortly became evident that the late April target date for completing our work had become unrealisitc. However, during January and February we were unable, because of increasing volume, to make accurate estimates of what our final workload would be. There were always boxes of uncounted mail and drawers full of telephone inquiries from persons whose eligibility we could nct determine. We never were sure when -- or whether -- our application rate would peak. Until early March, we could only speculate as to how long the President would allow us to accept applications. As shown in Table 1 below, our workload estimates were never more than a few thousand cases more than the applications we had in hand at the time.7/

TABLE I - Workload Projections Over Time

DATE	APPLICATIONS COUNTED	WORKLOAD ESTIMATED
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 - 10,000

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 full dimensions of our task. Even then, there was little sense of crisis about our looming production problems. When our top staff was not busy directing the last weeks of the public information campaign, it had to focus on the day-to-day needs of our severely-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 current staff and procedures, our projections showed that we would finish the workload no sooner than 1978. However, the President had already set a deadline of September 15, 1974 (giving us a total life-span of exactly one year). To meet this goal, without jeopardizing his policy of careful, individual attention to each case, he authorized the doubling of the Board and the expansion of our staff to approximately 600. The President expressly refuted any

suggestions that we adopt more summary procedures and thereby use less staff.

April and May: Expansion Phase

By early April, we had a reasonably accurate workload projection, the promise of a six-fold increase in staff size, and a September 15 deadline. We had to be working at full speed by mid-May to finish on time. In less than 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 to larger quarters across town.

A small 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), weekly production goals were set, 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 had set goals, was implemented to replace our by then very overloaded reporting systems. In this 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 differnet 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.

The management analysis staff also identified ways to improve the efficiency of our production process. Individual staff analysts were assigned to monitor each segment of the process. They developed intraphase information systems, productivity aids, and inventory control mechanisms.8/ Our process was very flexible, and our line staff was responsible to suggestions. This was our one chance to make fundamental process revisions; once our staff stopped expanding, it would become more resistant to change.

Our efforts to review and modify our case production process was 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, and the Task Force members were skilled, 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 short-cuts which would affect the fair process our applicants deserved. The Task Force gave us the much needed confidence that our planning and organizational decisions were valid.

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

have immediate responsibility for teams of 6-8 case attorneys.

We introduced our new organizational set-up this way: Our eight original action attorneys, now team leaders, were allocated the first new attorneys detailed to the Board. As more lawyers reported, the teams expanded, and then subdivided with the more capable earlier attorneys becoming supervisors of sub-teams. When the process was completed, new staff attorneys were asked to supervise small teams of other new staff with only slightly less tenure. Our experienced attorneys, who before had largely just prepared cases, were now each the supervisors of 40 professional and 20 clerical staff. The two formerly middle-level managers who had supervised the original 8 to 10 attorneys were not jointly responsible for a mini-agency of almost 500 people. The General Counsel,9/ his Deputy, the Executive Secretary, and their aides -- all lawyers -- had to assume the roles of executive - level managers.

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

It was into this new management swirl that our new case attorneys were tossed, unprepared. At the request of 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 ("detail") employees from other agencies. In addition, we put to work over 100 summer legal interns hired and referred or detailed by other agencies. The first tap was made in early April, and the second 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 well have faced greater management and morale problems if we had gotten new staff in bigger bunches.

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, relatively untested managers -- and able to tolerate some exceptionally trying working conditions.

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: Both policy and procedural changes, were implemented rapidly, often without prior notice. Thus, they were frequently met with reluctance on the part of our staff, which had once been informal and collegial. Because of this previous 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. We anticipated that the team leaders, and their slowly emerging internal team structures, would provide the continuing training necessary to fully integrage new personnel. This was successfully accomplished in some cases and scarcely attempted in others, reflecting different managerial styles. We later found that we had relied too much on the Team Leaders and did not take adequate steps to ensure that all attorneys were informed of Board Policy until much later.

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. Here again, we found in retrospect that we should have intervened with some Team Leaders to ensure that all were adopting the successful techniques that others had employed. At the time however, we made a conscious decision to set goals and hold our team leaders responsible for meeting them, offering them help but not dictating their management decisions.

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 interes were found to have a better learning curve and higher production peak than "detailed" government attorneys, perhaps because of different job motivation. 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 3-3-7-10 and 2-3-8-8, while the three least productive teams were all unable to produce more than three cases per week per attorney. The worst learning curve was 1-3-3-3. We also found that the most productive teams also did work 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, delegating responsibilities liberally. The less productive managers delegated much less and had an insufficient number of deputies; as a consequence, they often found themselves unable to command or control all facets of their operations adequately; nor were they always able to respond fully to

the demands of the senior staff. As a result, they became uniformly overworked during peak periods. Those who were better case attorneys tended also to be better managers, but prior experience and civil service status did not seem to matter. Table 2 below compares each team on the basis of a number of performance factors. As one can see, good results in one area were related to good results in others. Notwithstanding the shortcomings imposed upon them by their lack of experience as "crisis" managers, these managers generally performed adequately. About half of their number performed very well, adapting to the physical and emotional pressures of our operation with alacrity. All of the team leaders met, in time, the minimum production goals that we set as a condition of remaining in positions of authority.

Many of our new case attorneys were startled by our emphasis on production. Despite some grumbling from government attorneys not comfortable with casework quotas, the entire staff responded 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 kep the good teams good and made the poorer teams better, 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. 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 and in other specialized capacities proved to be as diligent and as professional in their work as our best attorneys. While we could and did reorganize professionals to make up for weaknesses in our production, we had no alternative but to do the best with the inadequate numbers and low production of our support staff.

Our Board was expanded to eighteen members in late April.10/ Like the staff, we had to accuston 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 had to shift to Panels in order to maintain our approach. To preserve the balance of the decision-making process, we tried to make each panel representative of the range of backgrounds and perspectives of the Full Board. We were also concerned that our decisions and

collective policy-making procedures remain consistent. Thus, we instituted the rule that any Board member could refer any case, for any reason, to the Full Board for decision or policy guidance. 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. This was impossible during the first several weeks, while our new members familiarized themselves with the full range of our cases. Nonetheless, most panels exceeded 100 cases per day by the end of May. With three panels meeting four days each week,11/ our Board output began matching -- and sometimes exceeding -- staff output of 1,200 per week.

As our Board panels increased their decision-making pace, we put more emphasis on Board preparation, and relied less on actual staff presentation. We therefore reduced our attorneys oral presentations. Usually, those presentations focused on new evidence, and elaboration of confusing passages in the summaries. At first, we had relatively inexperienced deputy team leaders sitting as panel cousel during many of our sessions. They were not initially, well-versed in Board policy, so they were unable to play the panel counsel's intended 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 disputed. Many Board members began referring cases to the Full Board because of disagreements over our policies. (Full Board referrals averaged about 3% of all cases for the life of the Board.)

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 meetings to discuss and define our policies; (2) we created two new aggravating factors, a "pardon" rule.12/ and a "no clemency" rule 13/ 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 they gradually became more proficient and (5) at the instruction of the chairman, our staff implemented a computer-aided review of Board panel dispositions.14/ Thereafter, our case disposition procedures worked much more smoothly. Each panel staff heard over 100 cases per day, without referring as many to the Full Board. (There were, of course, variations in hearing speed, both by panel, and by day, sometimes because

cases were particularly "hard" or "easy," and sometimes because contentious policy problems arose in one panel but not in another. Usually, panels heard between 75 and 125 cases. The overall hearing rate is shown, with case disposition, in Figure D).

June and July: 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 the Board had heard fewer than 3,000 cases. We had to maintain our pace from the last week of May through to the end of the summer.

Based upon production levels that 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 already have been outdated. Each week involved too many uncertainities to permit significant long-range planning.

Our need to respond quickly to production problems led to a revision on our management information system. Our staff

began concentraing on accurate reporting of production tallies and inventory counts at a few key stages of the process. Time-consuming attorney 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 on maintaining a smooth and stable 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. Staff morale started tc flag as it became possible that case attorneys would not have enough work to keep busy for the rest of the summer. The summer legal interns were so productive that it was never again to be pssible to give case attorneys more work than they could finish. Through greater management attention, the immediate file problems was solved -- but our whole management emphasis changed as a result.

Instead of focusing on case production goals our top staff concentrated on steering the clumps -- which had developed because of irregular file availability -of existing cases through the process. The management analysis staff developed a "pipeline" inventory count to identify

production log jams on a weekly basis15/. Pipeline analysis replaced productivity analysis as the basis for production meetings throughout the remainder of this phase.

Case flows from point to point were closely monitored, and an expanded number of aides to our 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 somewhat old before it could be applied. Occasionally, daily updates had to be made before any corrective actions could be taken. Often our perception of a problem did not occur quickly enough for us to respond before another problem arose to take its place. This was because we never developed an adequate inventory to stay ahead of the Board hearing rate.

The most serious inventory control problem of the summer related to the docketing of cases for the Board, and the dynamic production/hearing tension mentioned earlier. During June, case attorneys continued to product case summaries at the rate of 1,200 per week, but the Board panels were deciding cases at the rate of 1,400 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.

New docketing procedures were developed, with cases batched in "docket blocks" according to fixed Board panel schedules.16/ 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, but the staff never did get ahead of the Board. Squeezing the production system in order to get enough cases to fill the docket almost became a regular weekly event. Some trade offs in the process were inexcapable. In order to save some attorney time, for example, we read all of our cases -- as many as 125 per day -- before sitting in panels. Consequently, case production had to lead case hearing by enough time to allow the building of entire weekly dockets so that we could receive the cases enough in advance of our hearing them that they could be read.

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 undertake new tasks at short notice. By July, individual production teams (consisting of an assistant team leader and the 6 to 8 case attorneys supervised by the ATL) began to be assigned to special production of administrative problems.

Staff morale once again became a problem -- one which never could be resolved completely. 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, resited the notion of doing non-legal work. Absenteeism became a problem, but it was one which we failed to recognize 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 for the most part tolerable but less comfortable than most staff had enjoyed at their agencies. Staff contract with our Board was usually limited to very brief case presentations. The one major source of motivation was the understanding common to all of our staff, that the President's Clemency Program was helping people.

Throughout June and July, the Board panels heard cases as quickly as they were docketed. Clear policies had been set, and all rules were followed. Case dispositions became relatively 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. (The "Upgrade" referral rate was roughly 3% of the total."

Other than fatigue, the major problem confronting our Board Members during this phase was the fall-out from the July dip in staff morale. Some case attorneys broke from the standing rule of impartiality and began to advocate an

applicant's case in the manner of an adversary attorney representing a client. This could not be allowed, but we took steps to address the problem in recognition of the concern for our applicants that was thus clearly exhibited by our attorney staff. First, case attorneys were given the opportunity to "flag" cases which they believed were decided seemingly inconsistent with previous decisions; these cases were then reviewed by the legal analysis staff (just as they reviewed cases flagged by the computer) and referred to our Chairman (in his capacity as a Board Member) for potential referral to the Full Board. Second, the Clemency Law Reporter became an in-house professional journal, providing a forum for case attorneys to being policy questions to the attention of the top staff and Board.

August and September: Contraction Phase

As we entered August, our September 15th deadline began to appear reachable. There were two reasons for this: Our production level 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 1,600. In May, our estimated had been 20,000 cases. What had happened, a bit at a time, was this: First, we discovered that of the 20,000 cases logged in by our volunteer letter-openers during the hectic days of March and April, 2,300 were clearly ineligible. Second, almost 2,000 would-be applicants had given us little more than their name and address and on their application forms, despite our repeated efforts to get more information, so we could not order files to have their cases prepared. Third, some 500 military cases files had been lost, destroyed by fire, 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 rougly 500 cases which were "lost" from our audit process, never showing up in our weekly pipeline count until the last week of panel hearings. By the first of August, we had still sent fewer than 1,000 case recommendations to the President. We had to solve these problems, write our final report, close up our mini-agency, and plan a carry-over operation in the Department of Justice. June vactions, once postponed until August, now were set for October.

Not all of our remaining cases were "hard," we still needed two weeks of normal case attorney production. To spur last-minute production, 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. At the risk of losing the chance to present their cases, attorneys were asked to complete their case summaries on time. To complete the "hard" cases, a special team responsible to top-level staff separated them into two categories--those which might possibly be written, and thos which were clearly impossible because of the lack of information. 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. Of the 750 "Purple Docket" cases decided, 250 were found to be ineligible, and another several hundred had to be referred to the carry-over unit for further action.

The "lost" cases had not been included in pipeline inventory courts 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 were 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 first deadline 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"17/ and the two to three 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. Some procedures were simplified -- but we really attempted to solve this problem more by phalanx than finesse. With this awkwardly large and often unwilling staff of almost 100

reassigned case attorneys, our administrative staff was able to forward the bulk of the case recommendations - (10,500) to the President on September 15. Another 5,000 remained for the post-September 15 organization.

Our staff size, over 600 through most of June and July, gradually shrank to 350 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, and were not replaced. As our deadline neared, final-stage production problems could be solved better by large does 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. That carry-over unit was planned to start at about 150 persons, to work in decreasing numbers until November 1. Records had to be sent to the Archives, 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 staff efforts of the last several weeks were complicated by the fact tht September 15 was not just our mission deadline, but also our last day as an agency. Intense work was expected of individuals who faced serious uncertainty about their personal career directions after that date. Many detailed employees did not want to return to their agencies, and about 40 persons were filling "temproary" positions which would not exist after September 15. The carry-over staff in the Department of Justice was able to absorb some of these people, but most faced the threat of immediate unemployment until the last working day before our deadline. The level of staff anxiety was understandably high. This seriously affected staff performance during our last two weeks -- and, unfortunately, it was beyond our control.

Our Board panels heard almost all their cases by the end of August, with one panel day in mid-September for 650 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 it docket. In late August, the Full Board began to hear cases refereed 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 reharing from action attorneys at this time, but the two types of review overlapped by almost 80%. In most cases, the rehearing resulted in a case disposition more in line with perceived Board precedent. The computer "flagged" almost 9% of all cases as being statistically inconsistent. Since the range of factors that the computer could consider was limited, and because it was unable to discern th degree to which an aggravating/mitigating factor was relevant, the computer flagging was purposely set to be inclusive of many very consistent decisions. Thus, the staff review of each case so flagged was able to reduce the total to 4%. The Chairman referred almost half (or 1-2% of the total) back to the full Board.

The Full Board workload also consisted of 650 cases referred by Board members: A special Board Upgrade Panel reviewed 360 cases referred for potential upgrades and VA benefits. Of these, ___ were unanimously recommended to the President. Of the total of cases heard by the Full Board, ___% or ___ were "flagged," and ___% were recommended to the President for upgrade. ___ cases were judged unwrittable in their current state and referred to the carry-over unit. All 15,800 cases received some kind of Board recommendation.

On September 15, the Clemency Board was terminated by Executive Order and, all remaining tasks were turned over to a carry-over staff of persons set up in the Department of Jutice. ___ cases remained to be forwarded to the White House for Presidential signature; ___ remained as "hard," virtually unwrittable cases; a projected 3% or 475 cases were to be reviewed by the Attorney General under appeal; some ___ awaited the end of the 30-day reconsideration deadline, of which an estimated ___ might required rehearing; not a single case remained cut of 15,800 that had not received least some initial disposition by the Board.

Conclusion

On September 15, 1975, the Board disbanded with its mission complete. We met the deadline -- to the day -- which the President had set back in March. During cur twelve months, we sifted through 21,500 aplications, sorted out 6,000 which were incomplete or ineligible, disposed of 14,600 cases, and referred the remaining 900 cases (with late-arriving or partial files) to the carry-over program in the Department of Justice. We did this at a total direct cost of $270,000; including the cost of our detailed staff and our overhead brings this figure up to $5,625,000. This amounts to roughly $264 per applicant, or $385 per case disposition.

We were able to acomplish our mission both because of our emphasis on production and because of our crisis management characteristics. The impact of both factors is much clearer after-the-fact that it was during our process.

1. Emphasis on Production

Our production emphasis had four major points of focus: (1) updating estimates of total workload and weekly production requirements; (2) applying staff resources flexibly according to current production priorities; (3) monitoring "pipeline" inventories at key production points; and (4) maintaining the quality of our production output -- in other words, making sure that our case dispositions were fair and consistent.

Our workload estimates barely preceded our actual application data because of our inability to project either how successful our public information campaign would be or how long the program would last. Even more significantly, our weekly production requirements lagged three to seven months behind our workload estimates. Figure A notes the key lags in our production process. The lags resulted partly from reaction time, partly from understaffing, partly from regulatory "notice" standards we set for ourselves, and

partly from inventory backlogs. It is clear from Figure A that we mobilized for our mission just in time, and that we would not have met our deadline had our original 21,000 case workload projection proven accurate.

We set our weekly production requirements on the basis of available staff. As shown in Figure B, our staff grew by a factor of six between mid-March and late May, enabling us to focus new professional and clerical employees on case summary preparation tasks. By mid-August, our case summary preparation tasks had ended, so we began applying our staff flexibly to new production requirements. Attorney and clerical "teams" were reassigned to other professional or administrative functions. This flexibility came at some cost, however, it affected our staff morale, hindering our ability to perform administrative functions necessary before recommendations could be forwarded to the President.

Likewise, our weekly production requirements hinged upon case inventories at the key points in our production process. Many tasks had sharp phasing-up or phasing-down periods which contributed to the "lumpiness" of our production pipeline. Figure C shows monthly production levels for five key production points. In every case, the sharp rise or fall of one point's production figures sent

reverberations through our system. This was particularly true in the case of production dips. Indeed, after the availability of new files began to slack in early June, the characteristics -- and spirit -- of our operations changed. Our process would have been much easier to manage had we had the time to smooth every production function shown in Figure C.

Throughout the spring and summer, we had been concerned about the quality of case summaries presented to the Board. Similarly, Board Members were concerned about the fairness and consistency of case dispositions made at a much faster rate than before by panels of shifting compositions. As shown in Figure D, the Board's 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. Our "pardon rate" for civilian and military cases fluctuated. Starting in late January, our civilian pardon rate began a steady increase -- and our military pardon rate a steady decrease. Once we began deciding cases in panels at the rate of 100 cases per panel-day, our case dispositions remained quite consistent. We were quite pleased with the consistency of our case dispositions from May through September -- during which period 95% of our cases were decided. We were aided

in achieving this consistency partly by our procedures, partly by our publication of policy precedents, and partly by the professional quality of the case summaries prepared by the staff. We are confident that our emphasis of production did not interfere with the quality of our case dispositions.

Crisis Management Characteristics

Both at the time and now, it has been clear to us that we were managing a "crisis" program. This posed special problems, but created unique opportunities. From a public administration standpoint, we were able to accomplish a large mission on time with a standard of quality which we found more than acceptable. Back in March, we had been very skeptical of our ability to do this without a staff considerably larger than the one with which we were eventually provided. What made us a "crisis" organization -- and how did those attributes affect our operations?

We preceive ten factors which, taken in combination, presented the need and opportunity for crisis management. None of the ten was essential to create such a situation. Had we possessed six or seven, our operations probably still would have had a crisis character. However, had we

possessed only two or three, we would have been much more like a typical government agency.

First, an external catalyst precipitated the crisis situation. Our applications were the catalyzing event. Although we did have some influence over the rate of applications (through our public information campaign), we had no direct control over them. Once we received an application, we were obligated to consider it. This meant that we did not have direct control over our workload, were unable to estimate it accurately, and were thereby hindered in our efforts to make long-range management plans.

Second, by February, we had a perception of a crisis situation. We suddenly recognized our need to estimate workload and resource requirements. The character of our process shifted from a legal orientation to a management orientation. Immediately, we began to apply bolder strategies to cope with our new challenge, often by questioning our earlier legal procedures and management approaches. Our planning efforts were limited, however, by the realization that the time lags between the catalyzing event and our perception of crisis -- and between that perception and our first serious production efforts -could never be recovered. Despite our new sense of urgency, it

was four months before our first surge in applications (the catalyzing event) resulted in our first surge in case summary production.

Third, we had a mission deadline of September 15, set by the President in March as soon as he learned of the dimensions of our task. This deadline imposed upon us a direct measure of accountability. Regardless of our other accomplishments, we would have failed the President had we not met the deadline. The deadline immediately crystallized our long-term plans (to the extent that we could estimate total workload), clarifying our month production and staff resource requirements. We could then begin short-term management planning, fixing weekly goals and implementing performance monitoring systems. Without a clear deadline, we would have had difficulty justifying short-term planning to our line staff. They then might have taken it less seriously, making it less effective.

Fourth, our deadline resulted in a compressed time period for our operations. Through March, our staff had prepared and our Board had decided only 500 cases. We had to increase that rate by a factor of thirty. On one hand, this made our management and production processes immediately adaptable. Staff-level management was needed, implemented,

and given "clout" within a few short weeks. A new management information system could be fully implemented in a period of a few days. Line managers, suddenly accountable for production goals that many believed impossible, were responsive to staff management input and accepted the need for rapid system adjustments. On the other hand, this compression made our process very vulnerable to administrative error, uncontrollable perturbations, and management mistakes. The inescapable speed-up of routine administrative processes resulted in lost files and other administrative errors, whose correction required much staff time and management attention from July through September and into the carry-over program. File delivery delays by other agencies -- or Board rule changes based upon policy (rather than management) considerations -- sent immediate shock waves through our system. As shown in Figure C earlier, our production functions were very steep, both up and down; a charting of our perturbations and management problems would likewise show that they quickly came and quickly vanished. Even short-term management errors were significant. Lost production could not be recouped at the end of our year. Indeed, our inability to complete administrative action on all Board case dispositions by September 15, resulted from management mistakes committed two months earlier.

Fifth, we had specific, measurable goals. Our clear goal was to process almost 15,000 cases by September 15. Board policies and procedures had already been set, and we had a production quality control unit in place, so we could focus our management attention on the accomplishment of numerical goals. These goals were easily suboptimized, with line managers and case attorneys all specifically accountable for meeting their own goals. Therefore, it was easy for us to tailor a management information system around specific goal achievement. This goal accountability also enabled us to spot production problems quickly.

Sixth, we began with a lack of a staff resource base. We had to grow quickly from a staff of 100 to a staff of 600, two-thirds of whom were professionals. We had little control over the quality of our new staff, in large part because they were detailed by other agencies. However, even if we had enjoyed discretion over every staffing decision, our time problem was so severe that we probably could not have been any more selective. Therefore, we had to compensate for our lack of staff input quality control with a process for staff output quality control. Our lack of a staff resource base also required us to rely on line managers without directly comparable experience. Most performed very well, but others less well -- and we were not

inclined to make more than a very small number of changes in management personnel. Our crisis-trained cadre of line managers did have one important advantage: They were very flexible at a group, much more willing to try creative approaches than more experienced managers might have been.

Seventh, we enjoyed a short-term access to resources, making possible our rapid phase-up of production levels. However, the speed with which we acquired new staff had clear disadvantages. Task assignments had to be made correctly at the start. Although we could move individuals (or teams) to new functions later, the additional training time and morale problems proved costly. Our highest production levels almost always came from those who stayed in the same function. Likewise, the sudden arrival of hundreds of new staff required the immediate appointment of new professionals as low-level line managers. Unlike our mid-level managers, they had no prior contact with the senior staff. As a result, communication between the senior staff and low-level line managers was a problem for the life of our program. Finally, the rapid staff bulge put immediate pressure on the rest of our system, especially on our file retrieval and docketing process. We had equipped ourselves in advance to deal with these pressures.

Eighth, we recognized that our clemency mission had programmatic priority within the government. Ours was a visible program, and we enjoyed the ability to draw attention to our needs and problems quickly. In return, our weekly progress was carefully monitored by OMB and the White House. The fact that we were a White House operation contributed to staff morale and performance at all levels.

Ninth, we were faced with an institutional deadline of September 15, the date of our mission deadline. The fact that our Board and agency had to dissolve on the same day that our mission had to be complete posed a number of serious problems. Our lack of permanent staff with long-term relationships contributed to morale and production problems. While our detailed staff generally enjoyed their experience with the program, they understandbly felt less of a career commitment with us than with their agencies. Often, there was little that we could do to make them responsive to Board policies or management needs. Our arsenal of rewards and penalties was very limited. We could not offer promotions, nor could we threaten personnel actions. The last month of our operations were seriously hindered by our upcoming termination date. Once lost, institutional momentum could not be recovered. We had to do some of our most difficult administrative work during a

period of staff shrinkage, low morale, and anxiety. People who faced a serious risk of unemployment after our deadline were asked to work at a faster pasce so that our deadline could be met. Were we to have enjoyed greater institutional continuity after that mission deadline, our phase-down period would have been more productive.

Tenth, we were attempting to solve a bounded problem which did not require a permanent institution to cope with it. Aside from our early need to set monthly production goals through September 15, we did not have to conduct long-term planning. Because of the pressures of time, we had to apply a narrow focus to our problem. Despite scme evidence that our lack of personal contact with applicants was undermining the effectivenss of our program, we were unable to direct sufficient staff attention to the problem. Likewise, we are unable to follow through on our desire to monitor our applicant's performance of alternative service. Combined with our institutional deadline, the boundedness of our problem prevented us from performing or supervising any but the most cursory impact evaluation of the clemency program.

These ten attributes posed a special mix of management problems and opportunities. Although we met our September 15 deadline and were successful by our most tangible measure

of accountability, we recognize that there were some problems that we could not overcome and opportunities of which we could not take full advantage. We regret not having solved better the problem of communication among senior management staff, line managers, and case attorneys. We regret the high level of administrative error in our internal and external paper flow. We particularly regret our not having completed all administrative tasks by September 15, requiring a six-week carry-over unit in the Department of Justice.

However, much went well. We maintained high levels of production for four crucial months. We exercised the necessary management control to minimize inventories and move cases through our system. As requested by the President, our Board finished its task on time. Above all, we take pride in the quality of the legal process by which our case dispositions were made. Just as our disappointments can be explained by our special problems of crisis management, so too must we attribute our accomplishments to the unusual energy, creativity, and sense of responsibility which a crisis atmosphere gave to our agency.

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Charter 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.1/

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 an 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 cf programs initiated by his predecessors, yet is is distinctly tailored to the Vietnam Era.

Much of the interest and concern over Executive Clemency stems from a fear that leniency towards draft-evaders and military deserts might undermine the Nation's future ability to mobilize and maintain a strong military force. The moral dilemma surrounding war and participatcn in war will always be with us, but it seems unlikely that the prospect of a limited and conditional amnesty at scme 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 Americab 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 U.S. 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 perscnal 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 deserts 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 sucessionist 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 Christman 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 has 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, it 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 Amensty; (3) A Limited, Not Universal, Program; (4) A Program of Definite, Not Indefinite, Length; (5) A Case-by-Case, not Blanket, Approach; and (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 reconcilatien 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 nationa; others served more narrow military and political aims. As the war ended, Lincoln and Johnson both recognized the need fcr 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 beccme 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 sparate States from the Union, it did foster a divisiveness of such magnitude smong 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 Jchnson'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 whc had been adjudged to capital punishment."

The numerous Civil War "amnesties" did nct conform to the dictionary meaninq of the word. the entreaties to Union Army deserts were not acts of oblivicn; they were acts of leniency, and they were intended to entice soliders 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 cime, the oath that was required implied repentance.

Truman's Amnesty Board, despite its name, gave no grants of amnesty. The Board 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 cf each individual's offense and of mitigating punishment already meted out in a spirit of equity."

A Limited, Not Universal, Program

Washington limited this 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 onl for political reasons. Johnson's "Universal" amnesty of Christman 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 categgories cf 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 22,5000 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 thereafrer 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 Linccln'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 cf "prcgrams."

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 Apprcach

Only about twenty persons were apprehended as Whiskey Rebellionists, 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 "nc voluntary application has been denied." Despite his lenient pclicy, 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 obligated 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 honorable 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 deserts.

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 of the

qualifications for coverage under the Truamn clemencies were so carefully prescribed, no future conditions were seen as necessary.

President Ford's program was the only one to apply for a condition of Alternative Service to most of his grants of clemency. Unlike Washington and Lincoln, he did not attached any condition restraining clemency recipients' future conduct. Instead, he attached a condition of Alternative Service as a means of demonstrating one's commitment to naticnal 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 differnt 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. If each factor is taken separately, the Presidents' 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 laternative 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 general of draftees and combat troops would be much harder to predict. These were risks well worth avoiding.

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