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A. Introduction

Chance and circumstance had much to do with the sacrifices faced by each individual during the Vietnam War. Only 9% of all draft-age men served in Vietnam. War and conscription are, by nature, selective. In a sense, Clemency Board applicants were victims of misfortune as much as they were guilty of willful offenses. Most other young Americans did not have to face the same choices. Less than 2% ever faced charges for draft or desertion offenses, and only 0.4%--less than one out of two hundred--were convicted or still remain charged with these offenses. By contrast, 60% of all draft-age men were never called upon to serve their country.[1] For this reason alone, applicants to the President's clemency program deserve the compassion of their countrymen.

As we decided cases, we came to understand better the kinds of people who had applied for clemency. By the time we had reviewed all cases, each of us had read approximately 3,000 case summaries for our respective Board panels. From these case summaries, we learned what applicants' family backgrounds were like, what experiences they had with the draft and the military, why they committed their offenses, and what punishments they endured.

Many applicants fell into common categories: the civilian conscientious war resister who was denied his application for conscientious objector (CO) status and faced trial and punishment was a matter of principle; the Jehovah's Witness who, although granted a CO exemption, went to jail because his religious convictions prohibited him from accepting an alternative service assignment from Selective Service; the Vietnam veteran who went AWOL because of his difficulties in adjusting to post-combat garrison duty; the young serviceman, away from home for the first time, who could not adjust to military life; the serviceman with his family on welfare who went AWOL to find a better-paying job to support them.

We also had more extreme cases: the civilian who dodged and manipulated the system not for conscientious reasons, but simply to avoid fulfillment of any kind of obligation of national service--or the soldier who deserted his post under fire.

In this chapter, we describe civilian and military applicants to the Clemency Board. Who were they? What did they do? Why did they do it? Excerpts from actual cases tell much of the story, supplemented by the results of a comprehensive survey we conducted from the case summaries of almost 1,500 applicants. (See Appendix C.0 In our conclusion, we try to identify who did not apply, why they did not, and what happens to them next.

The excerpts from our case summaries illustrate a broad range of fact situations. Many of the applicants were recommended for outright pardons, others for conditional clemency with alternative service, and a few were denied clemency. (See Chapter V.) Information in these excerpts is based upon the applicants' own allegations, sometimes without corroboration. In the spirit of the clemency program, if we were unable to verify applicants' claims, we usually accepted their allegations at face value when making dispositions in their cases. Our perspective was more limited than that of draft boards, judges, commanding officers, and court-martial judges. Therefore, these excerpts must be interpreted with some caution.

With few exceptions, the statistics are based upon our sample of 472 civilian applicants and 1,009 military applicants -- roughly 25% and 7% of the total number of our eligible civilian and military applicants, respectively. (See Appendix C.)

As we describe the circumstances and experiences of the applicants, we are doing so only from the perspective of the 14,500 cases we decided. These were individuals whom the military, the draft system, and the judiciary had to judge on the basis of more information and different standards than we did. Our mission was clemency; theirs was the enforcement of federal law and military discipline.

The applicants' allegations -- and the Board's recommendations for clemency -- should not be used to infer any improper actions on the part of draft boards, courts, or the military. These agencies did their duty during the Vietnam era, as set forth by the President, the Congress, and the Supreme Court. It was not our intent to undermine the effectiveness of those institutions in carrying out their legitimate functions in peace and war.

B. Civilian Applicants

In other ways, the civilian applicants were not unlike most young men of their age throughout the United States. Born largely between 1948 and 1950, they were part of the "baby boom" which was later to face the draft during the Vietnam War. They grew up in cities (59%) and suburbs (19%) with disproportionately many in the West and few in the South.

They were predominantly white (87%) and came from average American families. Twenty-nine percent came from economically disadvantaged backgrounds. Over two-thirds (69%) were raised by both natural parents, and evidence of severe family instability was rare. The proportion of blacks (11%) and Spanish-speaking persons (1.3%) was about the same as found in the general population. Over three-quarters (79%) had high school diplomas, and 18% had finished college. A very small percentage (4%) had felony convictions other than for draft offenses.

Two things set our civilian applicants apart. First, 75% opposed the war in Vietnam strongly enough to face punishment rather than be inducted. Many were Jehovah's Witnesses (21%) or members of other religious sects opposed to war (6%). Second, they - unlike many of their friends and classmates - were unable or unwilling to evade the draft by exemptions and deferments or escape prosecution through dismissal and acquittal. They stayed within the system and paid a penalty for their refusal to enter the military.

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

With few exceptions, our statistics are based upon our sample of 472 civilian applicants - roughly one-fourth of our total number of civilian applications. (See Appendix C.)

Selective Service Registration

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

(Case 3-1) Applicant was convicted of failing to register for the draft. As a defense, he stated that he was an Italian immigrant who did not understand the English language. However, there were numerous false statements on his naturalization papers and he was able to comply with state licensing laws as he developed several business enterprises in this country.

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

(Case 3-2) Applicant's father, a chronic alcoholic, abused applicant and his mother when intoxicated. Applicant left his home to seek work, without success. Because of his unsteady employment, he was compelled to live with friends and was constantly changing his address. His parents were unable to contact him regarding pertinent Selective Service materials. After his conviction for failing to keep his draft board informed of his address, applicant apologized for his "mental and emotional confusion," acknowledging that his failure to communicate with the local board was an "error of judgment on my part."

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

(Case 3-3) Applicant registered for the draft and subsequently moved to a new address. He reported his change of address to the local post office, but he did not notify his local board. He mistakenly thought this action fulfilled his obligation to keep his local board informed of his current address.

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

Selective Service Classification

Immediately after civilian applicants registered with the local board, they were given Selective Service classifications. There were a number of different kinds of deferments and exemptions for which they applied to their local boards. Many of the forty-four percent who attended college received student deferments. Some applied for hardship deferments, occupational deferments, physical or mental exemptions, or ministerial exemptions (particularly the twenty-one percent who were Jehovah's Witnesses). The greatest number applied for conscientious objector exemptions. Some applied for numerous deferments and exemptions, with draft boards offering procedural rights even for claims that were obviously dilatory.

(Case 3-4) Applicant had a student deferment from 1965 to 1969. He lost his deferment in 1969, apparently because of his slow progress in school (he did not graduate until 1973). His two appeals to keep his student deferment were denied. After passing his draft physical and having a third appeal denied, he applied for a conscientious objector exemption. This was denied, and his appeal was denied after a personal appearance before his state's Selective Service Director. After losing another appeal to his local board, he was ordered to report for induction. One day after his reporting date, he applied for a hardship postponement because of his wife's pregnancy. He was granted a nine-month postponement. He then requested to perform civilian work in lieu of military service, but to no avail. After his wife gave birth, he fled to Canada with her and the child. He returned to the United States a year later, and was arrested.

Very few of our applicants hired attorneys to help them submit classification requests and appeals. Others relied on the advice of local draft clerks. Others turned to friends, family, and draft-resistance organizations. However, it was the responsibility of our applicants to make themselves aware of the legal rights available to them.

(Case 3-5) Applicant made no attempt to seek a personal appearance before the local board or appeal its decision, on the basis of advice given by the clerk that the board routinely denied such claims made by persons like himself.

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

(Case 3-6) Applicant initially failed to fill out a form to request conscientious objector

status because the religious orientation of the form led him to believe he would not qualify. After Welsh,[2] he believed he might qualify under the expanded "moral and ethical" criteria, so he requested another form. When his local board sent him a form identical to the first one, he again failed to complete it believing that he could not adequately express his beliefs on a form designed for members of organized religions.

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

(Case 3-7) Applicant failed to apply for conscientious objector status because he mistakenly believed that the Supreme Court had ruled that a prerequisite for this classification was an orthodox religious belief in a supreme being.

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

(Case 3-8) Applicant claimed that he was given no reasons for the denial of his claim for conscientious objector status. As a result, he said that he was unaware of how or where to appeal his case to a higher level.

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

(Case 3-9) Applicant, a Jehovah's Witness, was unaware of the time limitations on filing notices of appeal. He continued to gather evidence for his appeal, but it was ultimately denied on the procedural grounds of his failure to make timely application for appeal.

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

(Case 3-10) Applicant failed to appeal his local board's denial of his conscientious objector claim, which he claimed was done without giving any reasons for the denial. Although this trial judge indicated that the local board's action was improper, he nevertheless approved a conviction because applicant had failed to exhaust his

administrative remedies by appealing his local board's decision.

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

(Case 3-11) Applicant's local board decided to give him another hearing after he accumulated additional evidence to support his claim for reclassification. Despite this rehearing, his local board found the evidence insufficient to merit a reopening of his case. Without a formal reopening, applicant could not appeal his board's findings upon rehearing.

Many applicants exercised a variety of procedural rights in their requests for all types of deferments and exemptions. Some of their claims appeared to be contorted efforts to avoid induction.

(Case 3-12) Applicant claimed that his wife, who had been under psychiatric care, began to suffer hallucinations when he received his induction notice. He requested a hardship deferment, with two psychiatrists claiming that he should not be separated from his "borderline psychotic" wife. This request was denied. Applicant later tried to get a physical exemption by having braces fitted on his teeth. However, he instead was convicted of conspiring to avoid induction. (His dentist also faced charges, but fled to Mexico to escape trial. The dentist applied to the Clemency Board for clemency, but we did not have jurisdiction over his case.)

(Case 3-13) Applicant instructed his draft board that he had a weak back and weak knees. The physician who examined his refused to verify this. Applicant then forged the physician's name and returned the document to his draft board.

Other claims appeared to have more merit, but were nonetheless denied by local boards. The local boards had the benefit of the full record in these cases, and had to weigh them against claims made by other registrants.

(Case 3-14) Applicant's father was deceased, and his mother was disabled and suffered from sickle cell anemia. His request for a hardship deferment was denied. Also, applicant claimed that he suffered from a back injury. This allegation was

supported by civilian doctors, but denied by military doctors.

(Case 3-15) Applicant's parents were divorced when he was 16, with his father committed to a mental institution. Applicant dropped out of school to support his mother. A psychiatrist found applicant to suffer from claustrophobia, which would lead to severe depression or paranoid psychosis if he entered the military. However, he did not receive a psychiatric exemption.

The classification of greatest concern to most civilian applicants was the conscientious objector exemption. Almost half (44%) took some initiative to obtain a "CO" exemption.

Twelve percent of our applicants were granted CO status, 17% applied but were denied, and the remaining 15% never actually completed a CO application.

Of the fifty-six percent of the civilian applicants who took no initiative to obtain CO status, roughly half (25%) committed their draft offenses for reasons unrelated to their opposition to war. Others may not have filed for a CO exemption because they were unaware of the availability of the exemption, knew that current (pre-Welsh) CO criteria excluded them, or simply refused to cooperate with the draft system.

(Case 3-16) Applicant, a Jehovah's Witness, had his claim for a ministerial exemption denied. Since he made no claim for conscientious objector status, he was classified 1-A and ordered to report for induction. (He complied with his draft order, but he later went AWOL and received an Undesirable Discharge.)

(Case 3-17) Applicant did not submit a CO application because it was his understanding that current (pre-Welsh) CO rules required that he be associated with a widely recognized pacifist religion. His refusal to participate in war stemmed from his personal beliefs and general religious feelings.

(Case 3-18) Applicant, a Jehovah's Witness, refused to file for CO status because he felt that by so doing he would be compromising his religious principles, since he would be required by his draft board to perform alternative service work.

Usually, those who took some initiative but failed to follow through with their CO application were pessimistic about their chances for success.

(Case 3-19) Applicant filed a CO claim in 1969, after he received his order to report for

induction. His draft board postponed his induction date and offered him a hearing. However, applicant did not come to his hearing and advised his draft board that he no longer desired CO status. He stated at trial that he decided not to apply for a CO exemption because the law excluded political, sociological, or philosophical views from the religious training and beliefs necessary for CO status at the time.

Some did not pursue a CO exemption because of their inability to qualify under pre-Welsh rules. Occasionally, applicants claimed that they had been discouraged from applying.

(Case 3-20) In reply to applicant's request for a CO application form, his local board included a note stating that a CO classification was given only to members of pacifist-oriented religions. Accordingly, he did not bother to return the form.

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

(Case 3-21) Applicant wished to apply for CO status, but his form was submitted late and was not accepted by his local board. His lawyer had lost his application form in the process of redecorating an office.

(Case 3-22) Applicant applied for CO status after his student deferment had expired. He did hospital work to support his beliefs, but he failed to comply with time requirements for status changes under the Selective Service Act. Consequently, his local board refused to consider his CO application.

In the midst of the Vietnam War, the substantive law regarding conscientious objectors changed dramatically, profoundly affecting the ability of many applicants to submit CO claims with any reasonable chance of success. In June 1970, the Supreme Court clarified conscientious objection in Welsh v. United States, stating that this exemption should be extended to those whose conscientious objection stemmed from a secular belief. Section 6(j) was held to exempt from military service those persons whose consciences, spurred by deeply held moral, ethical or religious beliefs, would give them no rest or peace if they allowed themselves to become a part of an instrument of war.[3] In the later case of Clay v. U.S., the court stated the three requirements for CO classification as: (1) It must be opposition to war in any form; (2) the basis of opposition to war must be moral, ethical, or religious; and (3) the beliefs must be sincere.[4]

Why then did so few civilian applicants seek CO status? Twenty-three percent claimed that they committed their offense primarily because of ethical or moral opposition to all war -- and thirty-three percent said they committed their offense at least partly because of such ethical or moral feelings. Of these ethical or moral objectors, only eleven percent took any initiative to obtain a CO exemption, eight percent filing for CO status. Only 0.2% were successful.

Ninety percent registered prior to Welsh, so their first information about the CO exemption was that it applied primarily, if not exclusively, to members of pacifist religions. Many passed through the Selective Service System before the middle of 1970, when Welsh was announced. Fifty-three percent of our applicants who applied for a CO exemption did so before Welsh, and thirty-five percent committed their draft offense before the decision. However, only thirteen percent were actually convicted of their offense before Welsh. Many of these individuals could have raised Welsh defenses at trial, but most (74%) pled guilty to their charges.

Three explanations are the most persuasive in explaining why more of our applicants did not apply for, qualify for, a CO exemption. First, a great many apparently did not understand what Selective Service rules were or what defenses could be raised at trial.

(Case 3-23) Applicant failed to submit a CO application after allegedly being told by his local board that only members of certain religious sects were eligible. This occurred after the Welsh decision.

Second, many others objected not to war in general, but to the Vietnam War alone. These "specific war" objectors could not qualify for CO exemptions even under the post-Welsh guidelines.

(Case 3-24) Applicant's claim for conscientious objector status was denied by his local board because he objected only to the Vietnam War, rather than all wars. than on moral or ethical grounds.

Third, some applicants claimed that they were denied CO status because their local boards applied pre-Welsh rules to their post-Welsh CO claims. Of the civilian applicants who raised post-Welsh "moral and ethical" CO claims, only ten percent were successful. By contrast, CO applicants who claimed to be members of pacifist religions enjoyed a fifty-six percent success rate before and after Welsh. Many of the moral and ethnical objectors may have failed to meet the post-Welsh requirement of sincere beliefs. Local boards made their determinations on the basis of the record available to them.

(Case 3-25) Applicant's request for conscientious objector status was denied, partially on

the basis that he had no particular religious training or experience to establish opposition to war. This determination was made after Welsh ruled that such formal religious training was not a prerequisite to conscientious objector status.

It did not appear that the CO application form significantly discouraged CO applications; twenty-eight percent of those with college degrees applied for CO status, versus nineteen percent of these with less education. The less-educated applicants were successful in fifty-three percent of their CO claims, while those with college degrees were successful in only fourteen percent of their CO claims. This may be attributable to the fact that those with less education more often based their claims on religious grounds,

Alternative Service for Conscientious Objectors

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

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

(Case 3-26) Applicant was ordered to perform alternative service work at a soldier's home for less than the minimum wage. The Soldier's Home was fifty miles away from his residence, and he had no car. Applicant claimed that it was impossible to commute there without a car, and that even if he could, he would be unable to support his wife and child on that salary. Not knowing what legal recourses were available to him, he simply did not do the work, although he was willing to perform some other form of alternative service.

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

(Case 3-27) Applicant refused to perform alternative service as a protest against the war in Vietnam.

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

prepared to accept an alternative service assignment ordered by a judge upon conviction for refusing to perform alternative service. Many judges sent them to jail, instead.

(Case 3-28) Applicant, a Jehovah's Witness, refused to perform alternative service ordered by the Selective Service System, on the grounds that even this attenuated participation in the war effort would violate his religious beliefs. He did indicate that the would be willing to perform similar services under a court order of probation. Rather than comply with his request, the judge sentenced the applicant to prison for failure to perform alternative service.

Induction Orders

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

Once the induction order had been issued and all postponements had been exhausted, applicants had a continuing duty to report for induction. It was sometimes the practice of local boards to give individuals several opportunities to comply by issuing more than one induction orders before filing a complaint with the United States Attorney.

(Case 3-29) Applicant was ordered to report for induction, but he instead applied for CO status. His local board refused to reopen his classification, and he was again ordered to report for induction. He again failed to report, advising his draft board after-the-fact that he had been ill. He received a third order to report, but again did not appear. Thereafter, he was convicted.

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

(Case 3-30) While applicant was attending an out-of-state university, his mother received some letters from his draft board. Rather than forward them to him, she returned them to the board. Her husband had recently died, and she feared losing her son to the service. Subsequently, applicant was charged with a draft offense.

(Case 3-31) Having been classified 1-A, applicant informed his draft board that he was moving out of town to hold a job, giving the Board his new address. He soon found that his job was not to his liking. He then returned home, and not long thereafter he told his draft board that he was back. However, in the interim an induction order had been sent to his new address, he had not appeared on his induction date, and a complaint had been issued.

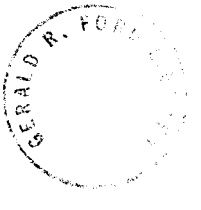
Sometimes, personal problems hindered applicants from appearing as ordered at an induction center.

(Case 3-32) Applicant failed to report to his pre-induction physical because he was hospitalized as a result of stab wounds. He was again ordered to report, but he did not appear because he was in jail. He was ordered to report for a third time, but applicant claimed he failed to report because of his heroin addiction. Therefore, he was convicted for his draft offense.

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

(Case 3-33) Applicant stated that "the induction order forced me for the first time to make a decision as to my views with regard to war."

However, a registrant could not request a change in status because of "late crystallization" after his induction notice was mailed, unless he experienced a change in circumstances beyond his control. In 1971, the Supreme Court held in Ehlert v. U.S.[5] that a post-induction-notice claim for conscienious objector status did not constitute a change in circumstances beyond the applicant's control.



Draft Offenses

To be eligible for clemency, civilian applicants must have committed at least one of six offenses enumerated in the Executive Order (See Chapter 2.B). As described

earlier, three percent failed to register, ten percent failed to keep their local boards informed of their address, thirteen percent failed to perform alternative service as conscientious objectors, four percent failed to report for pre-induction physical exams, thirty-eight percent failed to report for induction, and thirty-two percent failed to submit to induction. At the time of most applicants' draft violations, they were between the ages of 20 and 22, and the year was 1970 - 1972. For over ninety-five percent of these applicants, their failure to comply with the Selective Service law was their first offense.

Numerous reasons were given by civilian applicants for their offenses. The most frequent of their reasons was their conscientious objection to war in either general or particular form. Fifty-seven percent expressed either religious, ethical or moral objection to all war, and an additional fourteen percent expressed specific objection to the Vietnam War. When other related reasons were considered (such as denial of CO status), seventy-five percent of the civilian applicants claimed that they committed their offenses for reasons related to their opposition to war. Likewise, expressions of conscience were found by the Clemency Board to be valid mitigating circumstances in seventy-three percent of our cases.

(Case 3-34) Applicant had participated in anti-war demonstrations before refusing induction. He stated that he could not fight a war which he could not support. However, he does believe in the need for national defense and would have served in the war if there had been an attack on United States territory. He stated that "I know that what is happening now is wrong, so I have to take a stand and hope that it helps end it a little sooner."

(Case 3-35) Applicant applied for conscientious objector status on the ground that because he was black he could not serve in the Armed Forces of "a nation whose laws and customs did not afford (him) the same opportunities and protection afforded to white citizens." His application was denied, and he refused induction.

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

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

(Case 3-36) When applicant was ordered to report for induction, his wife was undergoing numerous kidney operations, with a terminal medical prognosis. She was

dependent upon him for support and care, so he failed to report for induction.

Experiences as Fugitives

At one time or another, all civilian applicants faced the difficult decision whether to submit to the legal process or become fugitives. Nearly two-thirds immediately surrendered themselves to the authorities. Of the remaining one-third who did not immediately surrender, the vast majority never left their hometowns. Of the eighteen percent who did leave their hometowns to evade the draft, slightly less than half (8%) ever left the United States. Most at-large civilian applicants remained fugitives for less than one year. Many reconsidered their initial decision to flee. About one-third surrendered, and many of the rest were apprehended only because they lived openly at home and made no efforts to avoid arrest. Over two-thirds of our at-large applicants were employed full-time; most others were employed part-time, and only one out of ten was unemployed. Very few assumed false identities or took steps to hide from authorities.

Most fugitive applicants who chose to go abroad went to Canada. Geographical proximity culture, history, and language were two reasons why they chose Canada. However, the major reason for the emigration of American draft resisters to Canada was the openness of their immigration laws.[6] Some of our applicants were either denied immigrant status or deported by Canadian officials. Otherwise they might have remained there as fugitives.

(Case 3-37) After receiving his order to report for induction, applicant went to Canada. He was denied immigrant status, so he returned to the United States and applied for a hardship deferment. After a hearing, his deferment was denied. He was once again ordered to report for induction, but he instead fled to the British West Indies. He returned to Florida to make preparations to remain in the West Indies permanently, but he was apprehended.

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

(Case 3-38) In response to Selective Service inquiries, applicant's parents notified the local board that their son was in Canada. However, they did not know his address. Applicant lived and worked in Canada for almost four years.

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

(Case 3-39) Applicant was convicted for refusing induction, but remained free pending appeal. When his appeal failed, he fled to Canada. He remained in Canada until he applied for Clemency.

Pre-Trial Actions

Civilian applicants began to face court action when their local draft boards determined that sufficient evidence of Selective Service violations existed to warrant the forwarding of their files to United States Attorneys. After complaints were issued and indictments or information returned against them, the litigation fell within the jurisdiction of the Federal district courts.

The courts dismissed many draft cases. From 1968 through 1973, the number of cases and the dismissal rate continuously increased. Through 1968, only about twenty-five percent of all cases resulted in dismissal. From 1969 through 1972, about fifty-five percent were dismissed -- and in 1973, over two-thirds were dismissed.[6]

One important element influencing the dismissal rate in particular jurisdictions was the practice of forum shopping. Many defendants searched for judges with a reputation for leniency or a tendency to dismiss draft cases. As an example, in the Northern District of California since 1970, nearly 70% of the cases tried in that court resulted in dismissal or acquittal.[7] At that time, many young men transferred their draft orders to the Oakland induction center before refusing induction, thus enabling them to try their cases in the Northern district. In 1970, its dismissal rate averaged 48.9 draft cases per 10,000 population, closely followed by the Central District of California with 43.1. The national average was 14.1. Some Clemency Board applicants apparently "forum shopped" in California and other Western states; five percent received their convictions in the Ninth Circuit, even though their homes were elsewere.

Jurisdictional inequities in the dismissal rate for draft offenses within the same state were common during the war era. For example, in contrast to the dismissal rate in the Northern District of California (70%), the Eastern District of California dismissed only 40% of its draft cases. Similarly, in the Eastern District of Virginia 63% of the draft cases were dismissed, versus 35% in the Western District.[8]

Convictions and Acquittals

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

Of the 21,400 draft law violators who stood trial during the Vietnam era, 12,700 were acquitted.[9] Assuming that all those acquitted pled not guilty, and assuming, by extrapolation, that 2,300 (26%) of convicted draft offenders pled not guilty, it appears that an individual stood an eighty-five percent chance of acquittal if he pled not guilty. However, no Clemency Board applicant was among the 12,700 who were acquitted of draft charges.

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

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

(Case 3-40) Applicant joined the National Guard and was released from active duty training eight months later. While in the National Guard reserves thereafter, he was referred to Selective Service for induction for failure to perform his reserve duties satisfactorily. He obeyed an order to report for induction, but claimed that he negotiated an agreement to settle his National Guard misunderstandings at the induction center. He pled not guilty of refusing to submit to induction, and he was convicted. Apparently, his trial attorney failed to call several important defense witnesses who had been present at the induction center. Applicant's present attorney believes that his trial attorney represented him inadequately. After conviction but before execution of his sentence, applicant completed his National Guard service and received a discharge under honorable conditions.

On occasion, applicants were given the opportunity to enlist or submit to induction up to the time of trial, as a means of escaping conviction. Some applicants later claimed that they were caught in "Catch-22" situations in which they could neither be inducted nor escape conviction for failing to be inducted.

(Case 3-41) Ordered to report for induction, applicant refused to appear at the induction center. While charges were pending against him, he was informed that he could seek an in-service CO classification after entering the military. With this knowledge, he agreed to submit to induction, and the court gave him a 30-day continuance. He did seek induction, but ironically, he could not be inducted because he failed to pass his physical due to a hernia condition. When his continuance expired,

he was convicted of failure to report for induction.

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

(Case 3-42) An order to report for induction was mailed to applicant's parents, but he failed to report. Over one year later, applicant's attorney contacted the United States Attorney and indicated that applicant had severe psychiatric and other medical problems which could make him fail his pre-induction physical. In response, the United States Attorney offered applicant an opportunity to apply for enlistment and be disqualified. However, applicant could not be found, and a grand jury subsequently issued an indictment.

Typically, applicants were convicted around the age of 23, nearly two years after their initial offenses. Less than one out of ten, appealed their convictions.

An analysis of conviction rates for draft offenses shows clear jurisdictional discrepancies. For instance, the Southern States had the highest propensity for conviction, with the Eastern states and California having the lowest. In 1972, there were twenty-seven draft cases tried in Connecticut, with only one resulting in conviction. In the Northern District of Alabama during the same period, sixteen draft cases resulted in twelve convictions. These different conviction rates apparently occurred because of wide differences in attitude toward the draft violators. These differences in treatment may have encouraged form shopping by our applicants.[10]

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

Sentences

Only about one-third of the civilian applicants ever went to prison. The remainder were sentenced to probation and, usually, alternative service. A majority applicants (56%) performed alternative service. Typically, they performed twenty-four or thirty-six months of alternative service, but a few served as many as five years. Some applicants performed their alternative service on a part-time basis. The jobs they performed for similar to those filled by conscientious objectors. However, they had to fulfill other conditions of probation.

(Case 3-43) As a condition of probation, applicant worked full-time for Good-Will Industries

and a non-profit organization which provided jobs for disabled veterans. He received only a token salary.

(Case 3-44) Applicant worked for three years for a local emergency housing committee as a condition of probation. He worked full-time as a volunteer.

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

(Case 3-45) Convicted for a draft offense, applicant was sentenced to three years probation, with the condition that he perform civilian work in the national interest. About one year later, his sentence was revoked for a parole violation (absconding from supervision). He was again sentenced to three years probation, doing alternative service work. He did not seek such work and left town. A bench warrant was issued for his arrest. Applicant, still a fugitive, now resides in Canada.

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

(Case 3-46) Applicant refused induction because of his moral beliefs. He was sentenced to three years imprisonment, suspended on the condition that he enlist in the military. Applicant did enlist, serving a full tour of duty. He served as a noncombatant in Vietnam, earning a Bronze Star. Awarded an Honorable Discharge, he still had one year of probation to complete before his sentence was served.

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

The sentencing provisions of the Military Selective Service Act of 1967 provided for jail terms ranging from zero to five years, giving judges almost unlimited sentencing discretion. The sentencing dispositions of the courts were inconsistent and widely varying, dependent to a great extent upon year of conviction, geography, race, and religion. In 1968, seventy-four percent of all convicted draft offenders were sentenced to prison, their average sentence was thirty-seven months, and thirteen percent received the maximum five-year sentence. By 1974, only twenty-two percent were sentenced to prison, their average sentence was just fifteen months, and no one received the

maximum. Geographic variations were almost as striking, In 1968, almost one-third of those convicted in the southern-states Fifth Circuit received the maximum five-year prison sentence, but only 5% received the maximum in the eastern-states Second Circuit. During the early years of draft offense trails in 1968, of thirty-three convicted Selective Service violators in Oregon, eighteen were put on probation, and only one was given a sentence over three years. In Southern Texas, of sixteen violators, none were put on probation, fifteen out of sixteen received at least three years, and fourteen received the maximum five-year sentence.[11]

Other sentencing variations occurred on the basis of race. In 1972, the average sentence for all incarcerated Selective Service violators was thirty-four months, while for blacks and other minorities the average sentence was forty-five months. This disparity decreased to a difference of slightly more than two months in 1974.[12] While we did not perceive such a disparity as a general rule, some cases appeared to involve racial questions.

(Case 3-47) Applicant belongs to the Black Muslim faith, whose religion principles prohibited him from submitting to induction. He has been actively involved in civil rights and other social movements in his region of the country. He was convicted for his draft offense and sentenced to 5 years imprisonment. Applicant stated that his case was tried with extreme prejudice. He spent 25 months in prison before being paroled.

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

Although a variety of sentencing procedures were available, the majority of convicted Selective Service violators were sentenced under normal adult procedures. If the offender were sentenced to jail, two types of sentence were available: (1) a sentence of definite time during which he might be paroled after serving one-third of his term; or (2) an indeterminant sentence during which parole eligibility might be determined by a judge on the Board of Parole at a date before but not after one-third of the sentence had expired. Offenders sentenced under the Federal Youth Correction Act, could be unconditionally discharged before the end of the period of probation or commitment. This discharge automatically operated to set aside the conviction. Additionally, because commitments and probations under the Youth Corrections Act were indeterminate, the period of supervision might have lasted as as long as six years.[13] Bureau of Prison statistics indicate, however, that the Youth Corrections Act was used as a sentencing procedure only in 10% of all violation

cases. When it was applied, the six year maximum period of supervision was imposed in almost all cases.[14]

Prison Experiences

One-third of the civilian applicants received prison sentences and served time in Federal prison. Most served their time without great difficulty.

(Case 3-48) Applicant served eighteen months in Federal prison. His prison report indicated that he did good work as a cook and had "a very good attitude." The report noted no adjustment difficulties, no healthy problems, and no complaints.

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

(Case 3-49) Applicant, a member of Hare Krishna, was sentenced to a two-year prison term for a draft offense. Because of his religious convictions and dietary limitations, life in prison became intolerable for him. He escaped from Federal prison, surrendering three years later.

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

(Case 3-50) Applicant was arrested in Arizona and extradited to the Canal Zone for trial (the location of his local board). Prior to trial, he was confined for four months in four by six foot cell in a hot jungle. Some evidence exists that he was denied the full opportunity to post reasonable bail. At his trial, applicant was convicted and sentenced to an additional two months confinement. By the time of his release, his mental and physical health substantially deteriorated. He was then confined in a mental hospital for several months. His mental health is still a subject of concern.

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

(Case 3-51) Applicant became addicted to heroin while serving the prison sentence for his draft conviction. Unable to legitimately support his habit after he was released, he turned to criminal activities. He was later convicted of robbery and returned to prison.

Parole grants for Selective Service violators was determined primarily by the nature of their offense. It was the policy of many parole boards that draft violators serve

a minimum of two years for parity with military duty, but most Selective Service violators were released after their initial parole applications. Jehovah's Witnesses received first releases in nearly all instances. Most Selective Service violators were granted parole after serving approximately half their prison sentences, but many with prison sentences less than one year served until their expiration dates. In each year from 1965 to 1974, Selective Service violators were granted parole more often than other Federal criminals.[15]

Consequences of Felony Convictions

A felony conviction had many grave ramifications for civilian applicants. The overwhelming majority of states construe a draft offense as a felony, denying applicants the right to vote -- or, occasionally, just suspending it during confinement. Felony convictions carry other serious legal consequences. (See Chapter 2-C.)

The principal disability arising from a felony conviction is its effect upon employment opportunities. Often, this job discrimination is reinforced by statute. States license many occupations, often requiring good moral character" often barred from such occupations as attorney, accountant, architect, dry cleaner, and barber.

(Case 3-52) Applicant, a third year law student, was told he could not be admitted to the bar because of his draft conviction.

Even more severe restrictions exist in the public employment sector.

(Case 3-53) Applicant graduated from college, but was unable to find work because of his draft conviction. He qualified for a job with the Post Office but was then informed that his draft conviction rendered him ineligible.

(Case 3-54) Applicant qualified for a teaching position, but the local board of education refused to hire him on the basis of his draft conviction. The board later reversed its position at the urging of applicant's attorney and the local Federal judge.

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

C. Military Applicants

Despite the popular belief that Clemency Board applicants were mostly war resisters, the vast proportion of our military applicants were not articulate, well-educated opponents of the war; less than one percent had applied for a conscientious objector draft classification before entering the military. Less than five percent attributed their offenses to opposition to the Vietnam War. Their average IQ (98) was very close to the national average. Nonetheless, over three-quarters dropped out of high school before joining the service, and less than one-half of one percent graduated from college. They were raised in small towns or on farms (40%). Generally, they came from disadvantaged environments. Many grew up in a broken homes (60%), struggling to cope with low incomes (57%). A disproportionate percentage were black (21%) or Spanish-speaking (3.5%). A few (0.1%) were women.

In the discussion which follows, we trace the general experiences of military applicants. We look first at the circumstances of their induction or enlistment and their early experiences in the military. We then describe how 27% of them served in Vietnam, many with distinction. After considering the circumstances of their AWOL offenses, we look at their experiences with the military justice system. Finally, we describe the impact of their bad discharges. Almost two-thirds were in the Army, much of our discussion about military procedures (especially the military justice system) pertains to the Army; the procedures of the other services were not greatly different from those of the Army.

Induction or Enlistment in the Military

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

Their reasons for enlistment ranged from draft pressure to the desire to learn a trade, to the simple absence of anything else to do. Others saw the military as an opportunity to become more mature[21].

(Case 3-55) Applicant enlisted after high school because he did not want to go to college or be inducted into the Army.

(Case 3-56) Applicant enlisted to obtain specialized training to become a microwave technician.

(Case 3-57) Applicant enlisted at age 17 because he wanted "a place to eat" and a "roof over (his) head."

(Case 3-58) Applicant enlisted because he was getting into trouble all the time and felt that service life might "settle (him) down."

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

(Case 3-59) Applicant enlisted at age 17 for motor maintenance training, but instead was trained as a cook. This action caused him disappointment and frustration. His grandmother contended that he was misled by the recruiter.

Before the Vietnam War, the military generally did not accept persons for enlistment or induction if they had Category IV (below the 30th percentile) scores on their Armed Forces Qualifying Tests for intelligence (AFQT)[22]; some who scored between the 15th and 30th percentiles were brought into the service under special programs.[23] In August 1966, Secretary of Defense Robert McNamara announced Project 100,000 to use the training establishment of the Armed Forces to help certain young men become more productive citizens upon return to civilian life. Project 100,000 extended the opportunity and obligation of military service to marginally qualified persons by reducing mental and physical standards governing eligibility. Persons scoring as low as the 10th percentile on AFQT tests became eligible for military service. During its first year, 40,000 soldiers entered the military under this program. For two years thereafter, it lived up to its name by enabling 100,000 marginally qualified soldiers to join the service each year.[24]

Military studies have indicated that the opportunity for technical training was the principal motivation for the enlistment of Category IV soldiers. However, over half enlisted at least partly because of draft pressure. Other reasons for enlistment were to travel, obtain time to find out what to do with one's life, serve one's country, and enjoy educational benefits after leaving the service.[25] Some learned marketable skills, and 13% of our applicants received a high school equivalency certificate while in the service.

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

(Case 3-60) Applicant had an AFQT of 11 and a GT (IQ score) of 61 at enlistment. He successfully completed basic training, but went AWOL shortly thereafter.

(Case 3-61) Applicant had an 8th grade education, an AFQT of 11, and a GT of 62. Coming from a broken home, he was enthusiastic about his induction into the Army, believing that he would gain technical training and financial security. His lack of physical ability and difficulties in reading and writing caused him to fail basic training. He was in basic training for nine months before he was sent to Advanced Individual Training (AIT) as a tank driver. He continued to have learning problems in advanced training. According to applicant, this problem was compounded by the ridicule of other soldiers upon their discovery that he had required several months to complete basic training.

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

The Category IV applicants tended to be from disadvantaged backgrounds. Compared to other applicants, they were predominantly Black or Spanish-speaking (42% of Category IV versus 18% of all other applicants) and grew up in cities (55% versus 44%). Their families struggled with low incomes (72% versus 49%), and they dropped out of high school (75% versus 56%). The quality of their military service was about the same as that of our other applicants: they did not have significantly more punishments for non-AWOL offenses (53% versus 52%) or non-AWOL charges pending at time of discharge (13% versus 12%). Despite this, a greater percentage received administrative Undesirable Discharges (68% versus 57%).

Of course, we saw only the Category IV soldiers who did not succeed in service. The experiences of Clemency Board 4,000-plus Category IV applicants do not reflect the performance of all Category IV soldiers, including the quarter-million men brought into the service by Project 100,000. Many of our Category IV applicants served well before committing their qualifying AWOL offenses.

(Case 3-62) Applicant, a Black male from a family of 12 children, dropped out of high school before his induction into the Army. His GT was 114 and his AFQT was 18 (Category IV). Applicant spent 6 years on active duty, including service as a military policeman in Korea. Following a three month stint in Germany, he served an 8 month tour in Vietnam as an assistant platoon leader. On a second tour in Vietnam, where he served as a squad leader and chief of an armored car section, he earned the Bronze Star for Heroism. He departed AWOL while on leave from his second tour in Vietnam.

Early Experiences in the Military

Military applicants' first encounter with the military was in basic training.[26] It was during these first weeks that they had to learn the regimen and routine of military life. For many, this was their first experience away from home and the first time they faced such intense personal responsibilities.

Although the applicants' general emotional problems--homesickness and the trauma of separation or a different life-style--were no different from those which other young men have always faced upon entering the service, some did not adjust well to the demands placed on them:

(Case 3-63) Applicant went on aimless wanderings prior to advanced training. He finally lost control of himself and knocked out 20 windows in the barracks with his bare hands, suffering numerous wounds.

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

(Case 3-64) Applicant, of Spanish heritage, was subjected to physical and verbal abuse during boot camp. He recalls being called "chili bean" and "Mexican chili." His ineptness in boot camp also led to ridicule. He wept at his court martial when he recalled his early experiences that led to his AWOL.

(Case 3-65) Applicant's version of his various problems is that he could no longer get along in the Marine Corps. Other Marines picked on him because he was Puerto Rican, and wouldn't permit him to speak Spanish to other Puerto Ricans. When he resisted, they tried to "get (him) into trouble."

(Case 3-66) Applicant was a high school graduate with a Category I AFQT score and GT (IQ test) score of 145. She complained that other soldiers harrassed her without cause and accused her of homosexuality. She went AWOL to avoid the pressure.

Incidents of AWOL during basic training usually resulted in minor forms of punishment. Typically, a new recruit would receive a nonjudicial punishment resulting in restriction, loss of pay, or extra duty. Seven percent of the military our applicants were discharged because of an AWOL commencing during basic training.

Following basic training, those in the Army transferred to another unit for advanced or on-the-job training. Altogether, ten percent were discharged for an AWOL begun during advanced training. Individual transfers resulted in

breaking up units and, frequently, the ending of personal friendships. The AWOL rate tended to be higher for soldiers in transit to new assignments.[27] Some underwent training in jobs which they found unsatisfying, and others were given details which made no use of their newly-learned skills. A few applicants thought the service owed them an obligation to meet their preferences; when the military used them in other necessary functions, they went AWOL.

(Case 3-67) Applicant enlisted in the Army for a term of three years, specifying a job preference for electronics. The recruiter informed him that the electronics field was full, but that if he accepted assignment to the medical corps he could change his job after commencement of active duty. Once on active duty, applicant was informed that his Military Occupational Speciality (MOS) could not be changed. He claimed that he was unsuccessful in obtaining the help of his platoon sergeant, company commander, and chaplain, so he went AWOL.

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

(Case 3-68) Applicant found himself pulling details and mowing grass rather than working in his military occupational specialty. He then went AWOL and did not return for over three years.

After several months in the military, others were still having difficulty adjusting to the many demands of military life. Some had difficulty reconciling themselves to a daily routine which had to be followed, superiors who had to be treated with respect, and orders which had to be obeyed. Over half (53%) were punished for one or more military offenses. Only three percent were also punished for military offenses comparable to civilian crimes such as theft or vandalism.

(Case 3-69) Applicant had difficulty adjusting to the regimentation of Army life. While he was in the service, he felt that he needed to have freedom of action at all times. He would not take guidance from anyone, was repeatedly disrespectful, and disobeyed numerous orders. His course of conduct resulted in his receiving three nonjudicial punishments and three Special Court-Martials.

Altogether, a majority (52%) of military applicants were discharged for AWOL offenses occurring during stateside duty, other than training, which did not follow a Vietnam tour.

Requests for Leave, Reassignment, or Discharge

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

(Case 3-70) During his 4-1/2 months of creditable service, applicant was absent without official leave on five occasions. He was motivated in each instance by his concern for his grandmother who was living alone and whom he believed needed his care and support.

The military had remedies for soldiers with these problems. They could request leave, reassignment, and, in extreme cases, discharge due to a hardship. Unit officers, chaplains, attorneys of the Judge Advocate General's Corps, and Red Cross workers were available to render assistance within their means. Despite the help they received, some applicants did not come back when their personal problems were resolved.

(Case 3-71) Applicant requested, and was granted, an emergency leave due to his mother's death. Applicant did not return from leave. He was apprehended one year and eight months later.

The Department of Defense discovered that 58% of its clemency applicants sought help from at least one military source before going AWOL. However, only 45% approached their commanding officer, and fewer yet approached an officer above the company level.[28] Many Clemency Board applicants never tried to solve their problems through military channels. Others indicated that, before going AWOL, they tried some of these channels but failed to obtain the desired relief.

(Case 3-72) Applicant's wife was pregnant, in financial difficulties, and facing eviction. She suffered from an emotional disorder and nervous problems. Applicant's oldest child was asthmatic and an epileptic, having seizures that sometimes resulted in unconsciousness. Applicant's request for a transfer and a hardship discharge which were denied. He then went AWOL.

Requests for leave were matters within a commanding officer's discretion. However, leave was earned at the rate of 30 days per calendar year, and individuals often used leave substantially in excess of the amount they had earned. Commanding officers could not normally authorize advance leave in excess of 30 days, so a soldier who had used up his advance leave had to go AWOL to solve his problems. This

was especially true if the enormity of the problem made one period of leave insufficient.

(Case 3-73) While applicant was home on leave to get married, a hurricane flooded his mother-in-law's house, in which he and his wife were staying. His belongings and almost the entire property were lost. He requested and was granted a 21-day leave extension, which he spent trying to repair the house. However, the house remained in an unliveable condition, and his wife began to suffer from a serious nervous condition. Applicant went AWOL for four days to ease the situation. He returned voluntarily and requested a Hardship Discharge or a six-month emergency leave, both of which were denied. He then went AWOL.

Of military applicants who requested leave or reassignment, roughly 15% had their request approved. Slightly over one percent were granted leave or reassignment to help them solve the problem which later led to their AWOL. By contrast, nine percent had their leave or reassignment requests turned down. Their requests were evaluated on the basis of information available to commanding officers, who had to weigh the soldier's personal needs against the needs of the military.

The Hardship Discharge offered a permanent solution to the conflict between a soldier's problem and his military obligations. To get a Hardship Discharge, he had to submit a request in writing to his commanding officer, explaining and documenting the nature of his problem and how only a discharge would help him solve it. The Red Cross was often asked for assistance in substantiating the request. Some did not have the patience to proceed through channels.

(Case 3-74) Applicant states that his father, who had suffered for three years from cancer, committed suicide by hanging. His family's resources and morale had been severely strained by the father's illness and death. Applicant spent a period of time on emergency leave to take care of funeral arrangements and other matters. At the time, his mother was paralyzed in one arm and unable to work. Applicant sought a hardship discharge, but after three weeks of waiting, his inquiries into the status of the application revealed that the paperwork had been lost. Applicant then went AWOL.

The soldier who was conscientiously opposed to war could apply for in-service conscientious objector status. Very few of our applicants did: only one percent took any initiative to obtain this in-service status, and only one-half of one percent made a formal application. However, the Clemency Board found five percent to have committed their

offenses for conscientious reasons. Some applicants alleged that they were unaware of what they had to do to get such status, probably as a result of their misunderstanding of military regulations.

(Case 3-75) From the time of his arrival at his Navy Base, applicant consulted with medical, legal, and other officers on how to obtain a discharge for conscientious objection. He was told that the initiative for such a discharge would have to be taken by the Navy, and that he would first have to demonstrate that he was a conscientious objector. He then went AWOL to prove his beliefs. Following his court-martial conviction for that brief AWOL, he requested a discharge as a conscientious objector. His request was denied.

Military applicants could have submitted two types of conscientious objector applications. One resulted in reassignment to a noncombatant activity, while the other provided for a discharge under honorable conditions. Each type involved separate but similar procedures. Understandably, military procedures put the burden of proof on the applicant. He was required to submit statements on six separate questions concerning the origin, nature, and implications of his conscientious objection. Military regulations required that the applicant "conspicuously demonstrate the consistency and depth of his beliefs.[29]" Some of our applicants did not persuade authorities of their conscientious objector beliefs.

(Case 3-76) For a year-and-a-half after he was drafted, applicant tried to obtain CO status, because he did not believe in killing human beings. He talked to his Captain and the Red Cross, neither of whom found his aversion to taking human life to be persuasive. The applicant is minimally articulate, but states that even if someone was trying to kill him, he could not kill in return. When he had exhausted his application for CO status and was scheduled for Vietnam, he went AWOL.

After submitting an application for conscientious objector status, a soldier was interviewed by a chaplain and a military psychiatrist. The chaplain commented on the sincerity and depth of the applicant's belief, and the psychiatrist evaluated him for mental disorders. Some of our applicants claimed they were victims of irregularities, and they went AWOL rather than seek remedies within channels.

(Case 3-77) Three years after enlisting in the Navy, applicant made several attempts to be recognized as a conscientious objector. He spoke with chaplains, legal officers, doctors, and a psychiatrist. He told the psychiatrist of his opposition to the war

in Vietnam and of his heavy drug use. Applicant claimed that the psychiatrist threw his records in his face and told him to get out of his office. He went AWOL after his experience with the psychiatrist.

The conscientious objector's next step was to present his case before a hearing officer, who in turn made a recommendation through the chain of command. The final authority rested either with the General Court-Martial Convening Authority or with the administrative affairs office in the appropriate service department headquarters.

Assignment to Vietnam

During the height of the Vietnam War, many of our applicants were ordered to Vietnam, usually about six months after entering the service. About one-third (34%) of our applicants volunteered or received orders for Vietnam. Most complied with the orders, but many did not. Seven percent were discharged because they went AWOL when assigned to Vietnam.

(Case 3-78) Applicant received orders to report to Vietnam. While on leave before he had to report, he requested help from his Congressman so that he would not be sent overseas. He also applied for an extension of his departure date on the grounds that his wife was eight months pregnant and that he was an alien. His request was denied, and he went AWOL.

The other 27% did go to Vietnam, often on assignment to combat units. Once there, very few went AWOL. Roughly one in eight (three percent of all military applicants) went on extended AWOL while in Vietnam. Typically, AWOLs in Vietnam resulted from personal problems, often of a medical nature.

(Case 3-79) Applicant was assigned to an infantry unit in Vietnam. During his combat service, he sustained an injury which caused his vision to blur in one eye. His vision steadily worsened, and he was referred to an evacuation hospital in DaNang for testing. An eye doctor's assistant told him that the doctor was fully booked and that he would have to report back to his unit and come back to the hospital in a couple of weeks. Frustrated by this rejection and fearful of his inability to function in an infantry unit, applicant went AWOL.

Only about one percent of the military applicants went AWOL from a combat zone, and very few of those cases involved demonstrable cowardice. We estimate that only about one-

tenth of one percent of our applicants actually deserted under fire.

(Case 3-80) Applicant would not go into the field with his unit, because he felt the new commanding officer of his company was incompetent. Applicant was nervous about going out on an operation in which the probability of enemy contact was high. (His company was subsequently dropped onto a hill where it engaged the enemy in combat.) He asked to remain in the rear, but his request was denied. Consequently, he left the company area because, in the words of his chaplain, "the threat of death caused him to exercise his right of self preservation." Applicant was apprehended while traveling on a truck away from his unit without any of his combat gear.

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

(Case 3-81) Applicant was granted emergency leave from Vietnam due to his father's impending death. Applicant failed to return from the leave.

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

(Case 3-82) While a medic in Vietnam, applicant (an American Indian) received the Bronze Star for Heroism because of his actions during a night sweep operation. When his platoon came under intense enemy fire, he moved through a minefield under a hail of fire to aid his wounded comrades. While in Vietnam, he was made Squad Leader of nine men, seven of whom (including himself) were wounded in action. In addition to his Bronze Star, he received the Army Commendation Medal with Valor Device, the Vietnam Service Medal with devices, the Vietnam Campaign Medal, and the Combat Medic's Badge.

Others experienced severe psychological trauma as a result of their combat experiences; some applicants turned to drugs.

(Case 3-83) During his combat tour in Vietnam, applicant's platoon leader, with whom he

shared a brotherly relationship, was killed while awakening applicant to start his guard duty. He was mistaken for a Viet Cong and shot by one of his own men. This event was extremely traumatic to applicant, who subsequently experienced nightmares. In an attempt to cope with this experience, he turned to the use of heroin. After becoming an addict, he went AWOL. During his AWOL, he overcame his drug addition only to become an alcoholic. After obtaining help and curing his alcoholism, he turned himself in.

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

(Case 3-84) Applicant, who was drafted, was pleased by his assignment to Vietnam. He was proud of his training and membership in a cohesive, elite unit.

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

(Case 3-85) While in Vietnam, applicant tried to extend his tour, but his request was never answered. He was told much later that he would have to wait until he returned stateside. After he did, he was told that he could not return, so he went AWOL. He had derived satisfaction from his work in Vietnam because he was respected and found the atmosphere close and friendly.

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

(Case 3-86) Applicant was successfully pursuing his military career until he served in Cambodia assisting the Khmer Armed Forces. He began to question the legality and morality of Army operations in Cambodia. This resulted in disillusionment and led to his AWOL offense.

Our Vietnam veteran applicants frequently experienced severe readjustment problems upon returning to the United States. Almost all of them (23% of all military applicants) went AWOL after returning from their Vietnam tour of duty. This "combat fatigue" or "post-Vietnam syndrome" was partly the result of the incessant stress of life in combat. The Clemency Board found that six percent of all military applicants suffered from mental stress caused by combat.

(Case 3-87) After returning from two years in Vietnam, applicant felt that he was on the brink of a nervous breakdown. He went AWOL from his duty station, telling his commander that he was going home and could be located there, if desired.

Two-fifths of the Vietnam veteran applicants (11% of all military applicants) claimed to have experienced severe personal problems as a result of their tour of duty. These problems were psychological, medical, legal, financial, or familial in nature. One-third of their psychological and medical problems were permanent disabilities of some kind. They often complained that they had sought help, received none, and went AWOL as a consequence.

(Case 3-88) (This is a continuation of the case of the American Indian who received a Bronze Star for Heroism). After applicant's return to the United States from Vietnam, he asked his commanding officer for permission to see a chaplain and a psychiatrist. He claimed that he was denied these rights, so he decided to see his own doctor. He was given a psychological examination and was referred to a Veterans Administration hospital. After a month of care, he was transferred back to camp. He again sought psychiatric care, but could find none. Later, he was admitted to an Army hospital. One examining psychiatrist noted that he needed prompt and fairly intensive short-term psychiatric care to avert further psychological complications from his war experience. His many offenses of AWOL were due to the fact that he felt a need for psychiatric treatment but was not receiving it.

Our Vietnam veteran applicants frequently complained that they had difficulty adjusting to the routine of stateside duty which contrasted sharply with the more demanding combat environment. Some adjustment problems may have resulted from their injuries.

(Case 3-89) After his return from Vietnam, applicant was frustrated over his inability to perform his occupational specialty as a light vehicle driver due to his injuries. His work was limited to details and other menial and irregular activity. He began to feel "like the walls were closing in on (him)," so he went AWOL.

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

(Case 3-90) While in Vietnam, applicant saw much combat action and received numerous decorations. He was an infantryman and

armor crewman who served as a squad and team leader. He participated in six combat campaigns, completed two tours in Vietnam, and received the Bronze Star for heroism. In one battle, he was wounded -- and all of his fellow soldiers were killed. His highest rank was staff sergeant. Upon his return from Vietnam, he went AWOL because of harassment from fellow servicemen that he was only a "rice paddy NCO" who would not have earned his rank if not for the war.

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

(Case 3-91) Applicant received a Bronze Star and Purple Heart in Vietnam. He wrote the following in his application for clemency: "While in Vietnam, I didn't notice much mental strain, but it was an entirely different story when I returned. I got depressed very easily, was very moody, and felt as if no one really cared that I served their country for them. And this was very hard to cope with, mainly because while I was in Vietnam I gave it 100%. I saw enough action for this life and possibly two or three more. I hope that someone understands what I was going through when I returned."

(Case 3-92) On his return from combat in Vietnam, applicant found it difficult to readjust to stateside duty. He was shocked by the civilian population's reaction to the war and got the feeling he had been wasting his time.

AWOL Offenses

By going AWOL, our military applicants committed at least one of three specific military offenses: Desertion, AWOL, and Missing Movement. (See Chapter 2-B.) Of the three, desertion was the most serious offense. To commit desertion, a soldier had to be convicted of shirking important service (the most serious form of desertion), departing with the intent to avoid hazardous duty, or departing with the intent to remain away permanently. Though the military service administratively classified most of our applicants as deserters, usually because they were gone for periods of excess of 30 days, only nine percent were convicted of the offense of desertion. Desertion

convictions were infrequent because of the difficulty in proving intent.

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

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

Military applicants went AWOL from different assignments, for different reasons, and under a variety of circumstances. As described earlier, seven percent left from basic training, ten percent from advanced individual training, seven percent because of assignment to Vietnam, three percent from Vietnam, and one percent from Vietnam leave, two percent went AWOL from overseas assignments in countries other than Vietnam, 23% from post-Vietnam stateside duty, and 52% from other stateside duty.

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

In light of this, why did all of the military applicants go AWOL? Almost 4,000 were Vietnam combat veterans, yet they risked -- and lost -- many privileges and veterans benefits as a result of their offenses.

Though the general public has frequently assumed that many unauthorized absences during the Vietnam era were motivated by conscientious opposition to the war, less than five percent of the military applicants went AWOL primarily because of an articulated opposition to the war.[30]

(Case 3-93) Applicant decided he could not conscientiously remain in the Army, and he went to Canada where he worked in a civilian hospital. Prior to his discharge, applicant stated: "In being part of the Army, I am filled with guilt. That guilt comes from the death we bring, the tremendous ecological damage we do, the destruction of nations, the uprooting of whole families, plus the millions of dollars wasted each year on scrapped

projects and absue of supplies. I am as guilty as the man who shoots the civilian in his village. My being part of the Army makes me as guilty of war crimes as the offender."

An additional two percent went AWOL to avoid serving in combat, and ten percent left because they did not like the military. In some cases, these reasons may have implied an unarticulated opposition to the war. Thus, anywhere from five percent to 17% of the military applicants offenses may have fit a very broad definition of opposition to the war or the military. However, few of the additional 12% offered any evidence of conscientious objection to war.

(Case 3-94) Applicant left high school at age 16 due to poor grades and disinterest. He was inducted, but after one week of basic combat training, he went AWOL. Though he was not discharged until two years later, he only accumulated 18 days of creditable service.

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

(Case 3-95) Applicant went AWOL because he was "disturbed and confused" upon returning from Vietnam. He described himself as "restless" and "really weird, enjoying killing and stuff life that." During his AWOL, he states that he was totally committed to Christ and the Ministry.

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

(Case 3-96) Applicant participated in seventeen combat operations in Vietnam. He was medically evacuated because of malaria and an acute drug-induced brain syndrome. He commenced his AWOL offenses shortly after he was released from the hospital. Since his discharge, applicant has either been institutionalized or under constant psychiatric supervision.

Approximately 13% of the military applicants left the military because of denied requests for hardship leave, broken promises for occupational assignments and improper enlistment practices, or other actions by their superiors which they did not like.

(Case 3-97) Applicant enlisted for the specific purpose of learning aircraft maintenance, but instead was ordered to artillery school. When he talked with his commanding officer about this, he was told that the Army needed him more as a fighting man. He later went AWOL.

(Case 3-98) Applicant, a Marine Corps Sergeant with almost ten years of creditable military service, several times requested an extension of his tour in Okinawa to permit him time to complete immigration paperwork for his Japanese wife and child. His requests were denied. Upon return to the United States, he requested leave for the same purpose. He was unable to obtain leave for five months; it was finally granted after he sought help from a Senator. Applicant relates that his superior officer warned him, before he went on leave, that "he was going to make it as hard for him as he could" when he returned, because he had sought the assistance of a Senator.

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

(Case 3-99) Applicant had a Category IV AFQT score. He went AWOL because he was apparently unaware of the existence of the Army drug abuse program. The corrections officer at the civilian prison where he is incarcerated believes that applicant's retardation, while borderline, makes it impossible for him to obey rules and regulations.

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

(Case 3-100) Applicant started drinking at age 13 and was an excessive user of alcohol. Awaiting court-martial for one AWOL offense, he escaped but soon returned voluntarily. He claimed that his escape was partly the result of his intoxication from liquor smuggled in by another detainee. A psychiatrist described him as emotionally unstable and unfit for military service.

The bulk of the military applicants (41%) committed their offenses because of family problems. Sometimes these problems were severe, and sometimes not.

(Case 3-101) Applicant commenced his absence from a leave status because of his father's failing health and his mother's poor economic prospects. He had applied twice for hardship discharges before his offense. While applicant was AWOL his father died of a stroke. His mother was left with a pension of $22 a month. In

addition, she was a polio victim and unable to work.

(Case 3-102) Applicant had been granted leave so he could be with his wife and newborn child, but he remained home in AWOL status.

Finally, 12% of our sample of applicants went AWOL for reasons of immaturity, boredom, or just plain selfishness. These tended to be people who could not, or would not, adjust to military life.

(Case 3-103) As a youth, applicant experienced numerous conflicts with his parents and ran away from home on several occasions. He joined the Army because there was "nothing else to do" in the rural community in which he was raised. Applicant had difficulty adjusting to the regimentation of Army life, and he went AWOL four times.

Some applicants offered bizarre excuses for their offenses.

(Case 3-104) Applicant states he was traveling across the Vietnamese countryside with another soldier, when they were captured by the Viet Cong. He claimed that he was a prisoner-of-war for two months before he finally escaped and returned, 30 pounds lighter and in rags, to his unit. His unit commander did not believe his story, and his defense counsel advised him to plead guilty to AWOL at his court-martial.

Military applicants typically went AWOL three times. Over four-fifths went AWOL more than once. They were around nineteen or twenty when they committed their first offenses, and twenty or twenty-one when they committed their last offenses. Their first offense usually occurred around 1968-1970, and their last around 1969-71. Typically, their last AWOLs were their longest, lasting seven months. One-fourth (25%) were AWOL for three months or less, and 27% were AWOL for over one year. Only three percent were AWOL for more than four years.

(Case 3-105) Applicant's military records reflect a series of unauthorized absences, the longest amounting to five years and five months, with only one month's creditable service.

At the time of their last AWOL, military applicants had typically accumulated fourteen months of creditable military service time; 81% had six months or more of creditable service, enough to qualify them for veterans benefits. Only one percent used any force to effect their escape from the military.

Experiences as Fugitives

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

(Case 3-106) Applicant went back to his old job after going AWOL. He never changed his name or tried to conceal his identity.

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

(Case 3-107) During his AWOL, applicant found employment as a tile and carpet installer. He became a union member in that trade.

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

Slightly over half (52%) of the military applicants were arrested for their last AWOL offenses. Some efforts were made to apprehend AWOL soldiers, but those efforts were startlingly ineffective. Normally, an AWOL offender's commanding officer sent a letter to his address of record within ten days of his absence. In addition, he would complete a form, "Deserter Wanted by the Armed Forces," which went to the military police, the Federal Bureau of Investigation, and, eventually, to the police in the jurisdiction of the soldier's home of record.

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

(Case 3-108) Applicant had a duty assignment at a military office in Germany. He experienced a great deal of tension, frustration, and restlessness, culminating in a feeling one day that he "couldn't face" going to work. He remained at his off-post home during his AWOL. His office made no effort to contact his wife during the entire period of his AWOL. He drank heavily, became anxiety-ridden, and

concealed his AWOL status from his wife by feigning to go to work each morning. He was eventually apprehended when his wife, concerned over his strange behavior, called his office to ask his co-workers if they knew what was wrong with him. They had not seen him in months.

Return to Military Control

Upon returning to military control, military applicants had to face some form of disciplinary action. Some (14%) faced other charges in addition to AWOL or desertion. In all cases, their last AWOL offenses resulted in their discharge under other than honorable conditions. Other AWOL offenders were more fortunate. They received more lenient treatment and later were discharged under honorable conditions. About 22% of our applicants had records reflecting at least one period of unauthorized absence with no record of punishment.

Upon their return to military control, most of our Army applicants in the Army who were AWOL for over thirty days were processed through a Personnel Control Facility. Life at these minimum-security facilities was not always easy for them.

(Case 3-109) Applicant voluntarily surrendered at an Army post near his home town. He found conditions in the Personnel Control Facility intolerable due to the absence of regular work, the prevalence of crime, and the continued lack of regular pay. He went AWOL again one week later.

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

Administrative Discharges

Some first offenders were quickly re-integrated into military life. Others faced more uncertainty about their fates. They had to decide, in most instances, whether to proceed to trial or accept an administrative discharge. The decision to go to trial usually carried the risks of conviction, a period of confinement, and perhaps a punitive discharge. On the other hand, a court-martial did not always lead to discharge: a convicted soldier might be returned to active duty, thereby given an opportunity to complete his enlistment (extended by the amount of time he

was AWOL and in confinement). Even if a punitive discharge had been adjudged, a return to duty was frequently permitted if an individual demonstrated rehabilitative potential while confined. In fact, over half (54%) of the first courts-martial for AWOL faced by our applicants resulted in their return to their units. They would have received a discharge under honorable conditions, with entitlement to veterans' benefits, if no further problems had developed. However, they were unable to make the most of their second chances.

(Case 3-110) Applicant was convicted for four periods of AWOL totaling one year and two months. He had an exemplary record for valor in Vietnam. The convening authority suspended the punitive discharge adjudged by his court-martial. The discharge was reimposed, however, after he failed to return from leave granted him following his court-martial.

Our applicants' decisions to accept administrative discharges in lieu of trial amounted to a waiver of trial, a virtual admissions of guilt, and discharges under less than honorable conditions. However, the administrative process was speedier, permitting rapid return home to solve personal problems. It also involved no risk of imprisonment and no Federal criminal conviction. However, it did impose a stigmatized discharge. Recipients of administrative discharges also los an opportunity to defend charges against them. Thus, the choices between administrative discharge and court-martial was very difficult.[31]

If our applicant had established what his commander felt was a pattern of misconduct, the commander might decide that he was no longer fit for active duty. This usually resulted in an Undesirable Discharge for Unfitness.[32]

(Case 3-111) Applicant was discharged for unfitness due to repeated AWOL, frequent use of drugs, habitual shirking, and the inability to conform to acceptable standards of conduct.

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

The choice between a discharge for unsuitability (usually a General Discharge) and a discharge for unfitness (usually an Undesirable Discharge) affected an AWOL offender's reputation and eligibility for veterans' benefits for the rest of his life. The decision was based upon a serviceman's whole record. The rule-of-thumb often applied was that an Unsuitable discharge went to a soldier "who would if he could, but he can't"--in other words, to someone with a psychological problem or lack of mental ability. An Unfitness Discharge went to a soldier with more than an attitude problem, "who could if he would, but he won't." However, each military base set its own criteria for Administrative Discharges.

(Case 3-112) Applicant was under consideration for an unsuitability discharge. A military psychiatrist indicated that he suffered from a character and behavior disorder characterized by "impulsive, escape-type behavior" and "unresolved emotional needs marked by evasion of responsibility." Because of this diagnosis of a severe character and behavior disorder, he expected a General Discharge. Shortly before his discharge, a racial disruption occurred in his company, in which applicant took no part. This disruption led to the rescission of a lenient discharge policy at his military base, and applicant was given an Undesirable Discharge for Unfitness.

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

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

(Case 3-113) Applicant was AWOL twice, for a total absence of almost one year and two months. He applied twice for a discharge in lieu of court-martial for his AWOLs, but both requests were denied.

Some applicants returned from their AWOLs with the expectation that they would receive "Good-of-the-Service" discharges, freeing them from further military responsibilities.

(Case 3-114) Applicant wrote that he "looked around" for ways to deal with his personal pressures and finally decided to go AWOL. After three months living in a commune, he returned with the expectation he would be discharged. He received a discharge in lieu of court-martial.

A few indicated that they went AWOL specifically to qualify for an Undesirable Discharge in lieu of court-martial.

(Case 3-115) After his third AWOL, applicant requested a "Good-of-the-Service" discharge in lieu of court-martial. It was denied, and he then went AWOL three more times. He told an interviewing officer after his sixth AWOL that he had gone AWOL in order to qualify for a discharge in lieu of court-martial.

AWOL offenders who qualified for a discharge in lieu of court-martial rarely chose to face trial. The desire was often strong to leave the Personnel Control Facility or get out of pre-trial confinement. If a soldier was granted a discharge in lieu of court-martial, he was usually allowed to leave confinement within one week after his application. One to two months later, he was given his discharge. Occasionally, our applicants claimed that they went home expecting to receive a General Discharge, only to get an Undesirable Discharge. While it was a permissible practice in the Army prior to 1973 for an accused to condition his request for discharge in lieu of trial upon his being granted a General Discharge under honorable conditions, this was rarely granted. In order to speed the discharge application, many soldiers requested discharge, acknowledged that they might be given an Undesirable Discharge, but requested that they be furnished a General Discharge in a separate statement. This may account for the misunderstanding by some applicants as to the discharge they would receive.

(Case 3-116) Applicant's last AWOL ended in a 30-day pre-discharge confinement, during which he refused to accept a nonjudicial punishment for his offense. He alleged that his sergeant told him that if he did not sign, he would be unable to see anyone about his problem. He further alleged that he was promised nothing more severe than a General Discharge, so he signed the papers. Later, he discovered that he was given an Undesirable Discharge. He appealed his discharge before the Army Discharge Review Board, but he was unsuccessful.

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

Table 5 and Table 6 describe the relative effects of "year of discharge" and "length of last AWOL" on the type of discharge received by our applicants.

TABLE 5: TYPE OF DISCHARGE VERSUS YEAR OF DISCHARGE

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

TABLE 6: TYPE OF DISCHARGE VERSUS LENGTH OF AWOL

	0-6 months	7-12 months	Over 12 months
UD - In lieu of court-martial:	50%	45%	36%
UD - Unfitness:	21%	10%	7%
Punitive Discharge via court-martial:	29%	45%	57%

Over half (51%) of the AFQT Category IV applicants received discharges in lieu of court-martial compared to 44% of our Category II and III applicants and only 32% of our Category I applicants. Blacks were about as likely as whites to receive discharges in lieu of court-martial (46% versus 44%), but Spanish-speaking soldiers were much more likely to receive them (66%).

Trials By Court-Martial

Frequently, the military insisted that AWOL offenders face court-martial for their offenses. Less often, the offenders themselves applicants themselves made such a request. In a court-martial, they had greater opportunity to deny or explain all charges brought against them, with benefit of counsel and with full advance knowledge of the prosecution's case. They also faced the threat of punitive

discharge and imprisonment. An accused soldier enjoyed at least as many rights at trial as an accused civilian. Usually, his court-martials took place very promptly, with pre-trial delays (and confinement or residence at the Personnel Control Facility) limited to two or three months at most.

There were three forms of court-martial. The Summary Court-Martial consisted of a hearing officer who called witnesses for the prosecution and defense, rendered a verdict, and adjudged sentence. The Summary Court adjudged no sentence greater than confinement at hard labor for one month, hard labor without confinement for 45 days, reduction to the lowest enlisted pay grade, and forfeiture of two-thirds of one month's pay. After 1971, no confinement could be adjudged unless the accused were represented by counsel.[33] No transcript of the trial was kept, and there was no judicial review. However, a Summary Court-Martial was never convened without the express consent of the accused, who could refuse the court and leave to the convening authority the decision whether to refer the charges to a higher court. Altogether, 16% of our applicants faced a Summary Court-Martial at least once.

The 54% of our applicants who faced a Special Court-Martial were tried by a court of officers, unless the accused specifically requested that at least one-third of the court be from enlisted ranks. After 1969, a military judge normally presided over the trial, and the accused was entitled to request that the military judge alone hear the case and adjudge sentence. In the absence of a military judge, the senior member of the court of officers (the President of the Court) presided over the trial. The Special Court could adjudge no sentence greater than confinement at hard labor for six months, two-thirds forfeiture of pay for six months, reduction to the lowest enlisted pay grade, and a Bad Conduct Discharge. Of our applicants tried by a Special Court, 50% received a Bad Conduct Discharge. The other half were returned to their units.

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

After 1969, AWOL offenders facing Special or General Court-Martial were entitled to free military defense counsel, who could be requested by name. They also could secure a civilian attorney, but at their own expense. Official military rules of evidence were followed and a verbatim record of trial was required if punitive discharge was adjudged. Those who were punitively discharged had their cases reviewed for errors of law by a military attorney responsible to the court-martial convening authority. They were further reviewed for errors of fact or law by a Court of Military Review, Boards of Review,

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

(Case 3-117) Applicant, a Vietnam veteran, sustained an eye injury (probably in Vietnam) which caused his retina to become detached. He is now nearly blind in one eye. At his trial, his counsel attempted to introduce the testimony of his attending ophthalmologist to prove that he absented himself to obtain medical treatment, not to desert. The military judge refused to admit the ophthalmologist's testimony in the absence of independent evidence of its relevancy. The Judge's decision was upheld on appeal.

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

Prison Experiences

Sentences under 30 days were usually served at the post stockade. Convicted but undischarged AWOL offenders sentenced to more than one month of imprisonment were transferred to such correctional facilities as the Army Retraining Brigade. Efforts were made to rehabilitate offenders and enable them to complete his military service successfully. However, many were habitual offenders. For others, military life became even more difficult after confinement.

(Case 3-118) As the result of a two-month AWOL, applicant was convicted by a summary court-martial and sentenced to confinement. After his release and return to his former unit, he was constantly harassed, ridiculed, and assigned to demeaning work. He found this intolerable, and he went AWOL again.

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

Consequences of the Bad Discharge

All military applicants had one experience in common: they all received bad discharges. Sixteen percent received Undesirable Discharges for Unfitness, and 45% received Undesirable Discharges in lieu of court-martial. Those who faced court-martial and were sentenced to punitive discharges received Bad Conduct Discharges (38%) or Dishonorable Discharges (2%). In some states, a court-martial conviction, particularly if it led to a discharge or confinement over one year, incurs the same legal disabilities as a felony conviction in the civilian courts. Thus, some of our applicants lost their voting and property rights and the opportunity to obtain certain licenses by virtue of their punitive discharge.[34]

Civilian courts have taken judicial notice of the less-than-honorable discharge, calling it "punitive in nature, since it stigmatizes a serviceman's reputation, impedes his ability to gain employment and is in life, if not in law, prima facie evidence against a serviceman's character, patriotism, or loyalty."[30]

What was more important to military applicants was the effect of a bad discharge on their ability to qualify for veterans' benefits. Former servicemen with less than honorable discharges are denied such veterans' benefits as educational assistance, hospital and home health care, pensions to widow and children, medical and dental care, prosthetic devices, burial benefits, preference in purchasing defense housing, and home, farm, and business loans.

Perhaps the most important benefits lost are those affecting employment opportunities, such as vocational rehabilitation, Federal civil service preference, veterans' re-employment benefits, and unemployment insurance benefits. Most of our applicants were twenty to twenty-two years old when they received their discharges. Many were looking for their first full-time civilian job. Some were caught in a downward spiral: they could not afford to train themselves for a skilled job without veterans' benefits; employers would not hire them for other jobs because of their discharge; they then could not receive unemployment compensation because of their discharge.

(Case 3-119) Applicant was unable to go to accountant's school without benefit of the GI Bill. Finally, he found employment as a truck driver for small trucking firms enabling him to earn $70 per week. He could have earned more with the larger trucking companies, but they refused to hire him because of his discharge.

(Case 3-120) Applicant, a Vietnam veteran, was unable to find work for his first month after discharge because everyone insisted upon knowing his discharge. He finally found work as a painter but was laid off five

months later. Because of his discharge he was denied unemployment benefits.

A number of studies have shown that employers discriminate against former servicement who do not hold Honorable Discharges. About 40% discriminate against General Discharges, 60% against Undesirable Discharges and 70% against Bad Conduct or Dishonorable Discharges. Many employers will not even consider an application from anyone with less than an Honorable Discharge.[36]

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

(Case 3-121) Applicant enlisted in the Marine Corps in 1961 and received his first Honorable Discharge four months later, when he re-enlisted for four years. He received his second Honorable Discharge in 1965, and he again re-enlisted. He received a third Honorable Discharge in 1968 and again re-enlisted. He had good proficiency and conduct ratings (4.5), and he had attained the rank of Sergeant E-5. He went AWOL for 4-1/2 months in 1970 before receiving a Bad Conduct Discharge in 1971. His total creditable service was 9 years, 10 months, and 15 days.

Unfortunately, many military applicants had turned to crime. At the time of their application, 12% of the military applicants had been convicted of civilian felony offenses. Seven percent were incarcerated for civilian offenses at the time they had applied for clemency. Sometimes, their civilian offenses resulted from their military experiences--a drug habit developed in Vietnam, for example.

(Case 3-122) Applicant served eight months in Vietnam as a supply specialist before his reassignment back to the United States. His conduct and proficiency scores had been uniformly excellent during his Vietnam service. However, while in Vietnam he became addicted to heroin. He could not break his habit after returning stateside, and he began a series of seven AWOL offenses as he "got into the local drug scene." Eventually, he "ran out of money" and "had a real bad habit," so he "tried to break into a store with another guy that was strung out." He was arrested, convicted for burglary, and given an

Undesirable Discharge for AWOL while on bail.

Of military applicants who are not incarcerated and whose current employment status is known, six percent are in school, 17% are unemployed, four percent are working part-time, and the rest (73%) are working full time. Two-fifths of those working full-time are in low-skilled jobs.

D. Non-Applicants

An estimated 113,300 persons could have applied for clemency. Only 21,800 did apply. Who were the 91,500 who did not? Why did they fail to apply? What happens to them next?

Who Were They?

The following table identifies nonapplicants in a very general sense:

TABLE : CHARACTERISTICS OF NON-APPLICANTS

Clemency Program	Type of Applicants	Percentage of Nonapplicants	Total Number of Nonapplicants
PCB	Military-UD	87%	57,000
PCB	Military-BCD/DD	78%	19,400
PCB	Convicted Civilians	78%	6,800
DOD	Fugitive Servicemen	47%	4,500
DOJ	Fugitive civilians	84%	3,800
	Total----------	81%	91,500

We know little more about their characteristics than what this table shows. Discharged servicemen 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 Bad Conduct or Dishonorable Discharges discharges, but were unable to do so for those with Undesirable Discharges. (See Chapter 2-E.)

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

eligible nonapplicants. In most ways, they were alike -- family background, AFQT score, education, type of offense, and circumstances of offense. 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. Many of the Department of Justice applicants may have been Canadian exiles, but no official data exists. Extrapolating from this data, it appears that, at most, 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 fugitives in Canada. 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.[37] 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 seven 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.

1. Unawareness of eligibility criteria. Despite our public information campaign, many eligible persons may never have realized that they could apply for clemency. Had we begun our public information campaign earlier, or if the program had been of longer duration, it is likely that even more would have applied.

2. Settled status. Others may not have cared about the kind of discharge they had, or they may have succeeded in other endeavors since their convictions or discharges. They may have wanted to avoid the risk that their employers neighbors, or even families might find out about their past.

3. 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 clemency recipients who applied 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.

4. Opposition to the Program by Interest Groups. Interest groups on both sides of the clemency amnesty issue were not cooperative in making accurate information available to prospective applicants. Our media efforts were impaired by demands for equal time by pro-amnesty groups. Some of the latter discouraged eligible persons from applying.

5. 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.

6. Personal 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.

7. 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.

What Happens to Them Next?

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, unless they never registered for the draft. 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 probably 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. Nonetheless, they will still have a felony conviction, involving a stigma and a loss of civil rights.

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