The original documents are located in Box 5, folder "Final Report - Draft, 10/28/75 (4)" of the Charles E. Goodell Papers at the Gerald R. Ford Presidential Library.

TODAY'S DATE 10/29/75 1514 03 lstl11e 222-001

CUSTOMER a2220 OPERATOR 001 PCB 222-001

Chapter 6 001 Chapter 6

DATE STORED 10/29/75 1514 w

WIDTH 060 DEPTH 64

----t---t----t----t----------t

pj

PRINT POSITION 07 LINE 03

A. Overview

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

Notwithstanding the size and intensity of this effort, we believe that our applicants should receive an accounting of why they may have had to wait as long as six months for their clemency offers to be announced by the President. Were it not for the many thousands of cases and the time-consuming procedures we chose to follow, the waiting time would have been much less. Because applicants were not present during the Clemency Board process, we demanded high standards of fairness to protect their rights and interests. Many efforts were made, nonetheless, to compensate for the time-consuming nature of the process.

Partly because of these demands Clemency Board provided an example of crisis or "adaptive" management.[1] The account of our experiences in this chapter may be useful to managers of comparable organizations. Heretofore, few Federal enterprises have had as tangible a mission and as clear a deadline as our own. Most Federal agencies operate on a much less goal and production-oriented basis. This crisis management may become more commonplace as government recognizes that it may be useful formula for providing solutions to temporary problems. Reasonable solutions to temporary problems can perhaps best be accomplished in a brief spurt of energy -- without the need to create expensive, undying federal bureaucracies.

Management experts frequently claim that government would perform better if it would pattern its management techniques more after those of private enterprise.[2] To do this, a government agency must ideally have the ability to: (1) set clear goals whose achievement can be monitored as a measure of performance; (2) identify staff and other resources needs quickly and accurately, obtain them promptly, and apply them flexibly; and (3) reduce in size as soon as staff is no longer needed. The Clemency Board was fortunate to have some of these abilities in abundance, and others to a lesser degree. Not all may have been used to

full advantage, but the President's deadline could not have been met without them.

In this chapter, we describe our management experiences during the twelve months of our operation. During that year, the Board generated 21,500 applications, made 14,514 case recommendations to the President, determined that almost 6000 applicants were not eligible for the program and referred 1,000 cases with incomplete files to the Justice Department for further action. Extending from September 16, 1974 to September 15, 1975, the year was split into five distinct phases:

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

2. January through March: **public information phase,** with the Board and staff concentrating on informing the American public about our eligibility criteria.

3. April and May: **expansion phase,** as the staff grew by a factor of ten to accommodate mid-summer case production requirements.

4. June and July: **peak (Case) production phase,** with our staff producing cases and the Board making decisions at a rate of over one thousand cases per week.

5. August and September: **contraction phase,** with the completion of "clean-up" production tasks while the staff was reduced and eventually disbanded.

B. Management Experiences

September Through December: Policy Formulation Phase

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

We began with a staff of thirty, half of whom were attorneys "detailed" from permanent Executive Agencies[3]. The staff quickly developed procedures for implementing Board policy in the handling of applications and the presentation of cases to the Board. That process was time-consuming because of the emphasis on high standards of quality. Nevertheless, it was rather informal, well-suited to a small staff with a moderate workload.

During this first period, the Board spent the most time developing rules and testing our ability to apply them. We

found, among other things, that using our aggravating and mitigating factors simply as informal guides was not enough; a basic regression analysis carried out by the staff showed that some clearly inconsistent case dispositions resulted from that practice. We then decided to apply the baseline formula and aggravating/mitigating factors very explicitly. After every case, we determined not only the actual disposition, but also the factors which were applicable in each decision. Based on these new rules, the Board reconsidered the first few cases, with significantly different results. Partly because of the use of these rules, the Board was usually able to reach a consensus, despite the diversity of viewpoints.

The management structure was likewise informal, as one might expect from a very small, very new organization. Almost everyone on the staff had some case production responsibility -- either processing applicants, writing case summaries, or sitting in Board sessions as panel counsels. Each case received individual attention from the senior staff. Aside from its review of casework quality, the senior staff concentrated less on management than on substantive policy issues at this time. Regulations had to be drafted, and the Board required regular briefings on major questions of policy and procedures.

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

We were able to achieve something of a balance in our operations: the eight to ten case attorneys could each produce roughly one case per day, and the Board was able to decide about 30 cases per day. With the Board meeting two or three days every two weeks, cases were processed at a steady rate of about 150 per month. With an estimated final workload of not much over 1,000 cases, we expected to be finished by Spring. In such an informal organization, there was no need to set comprehensive goals, implement information systems, or monitor case inventories at different stages of the process. In many ways, Clemency Board operations resembled those of a moderate-sized law firm.

The primary management goal in the early months was to have the staff present enough cases to the Board so that a reasonable number of case recommendations to the President by late November. The purpose was to give the President the opportunity to announce case dispositions quickly, in order to alert prospective applicants about what they were likely

to receive from the President's program to help them decide whether to apply. Around Thanksgiving, the President signed warrants for the Clemency Board's first 45 civilian cases. In late December, he approved the Board's first military recommendations.

We expected that the Presidential announcement of case dispositions would stimulate more applications, but it did not. We also expected that around Christmas many eligible persons would sense the approaching deadline and apply. That, too, did not happen. By the end of the calendar year, applications had been received from only 850 persons, less than one percent of those estimated to be eligible. The Board had already decided over one-fourth of those cases, and we expected to be finished by April.

B. January Through March: Public Information Phase

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

The Clemency Board was not particularly well-equipped to run a public information campaign: the public information staff numbered only three, and funds for travel and information materials were quite limited. Lacking staff and dollar resources, we relied on others to mail letters to our applicants and to send tapes to radio and television stations. The Board was fortunate to receive many services, and much "air" time, for free. At the same time, we were faced with the difficulty of combating misinformation about the program, put out by the ACLU and other pro-amnesty groups. The ACLU, for example, both aired ads which encouraged people not to apply to the program and later refused to provide legal aid to applicants. This was a particularly trying and discouraging problem.

We were also handicapped by not having a clemency "hotline" enabling the staff to accept anonymous, toll-free telephone inquiries; instead, our limited budget required the staff to refuse collect calls. Efforts to return collect calls were often hampered by the reluctance of callers--or telephone operators--to give call-back numbers.

Almost everyone on the Board and staff participated in the public information campaign. The Board cancelled half of all scheduled meetings through January, February, and March to allow Board members to spend time spreading the eligibility message in major cities across the country. The

staff, by this time numbering nearly fifty, planned future public information activities while stuffing endless stacks of envelopes. By late January, we began to see the effect of our campaign, receiving thousands of letters and phone calls from applicants who had just learned of their eligibility. For weeks at a time, our case attorneys set aside their casework to handle the phones and respond to letters.

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

It immediately became evident that the late April target date for completing our work had become unrealistic. However, during January and February, accurate estimates could not be made of the Board's final workload, because of the increasing volume of applications. There were always boxes of uncounted mail and drawers full of telephone inquiries from applicants whose eligibility could not be determined. We never were sure when, or whether, the application rate would peak. Until early March, we could only speculate as to how long the President would allow us to accept applications. As shown in Table 1 below, workload estimates were never more than a few thousand cases more than the applications we had in hand at the time. Many applications postmarked by March 31 could not be counted or logged until late April.

TABLE 27 - Workload Projections Over Time

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

It was not until February that we acknowledged that we either had to grow in size or streamline the process to make all case recommendations to the President our work done in a reasonable time. In hindsight, it was only in late March that we came to realize the full dimensions of the task. Even then, there was little sense of crisis about looming production problems. When the senior staff was not busy directing the last weeks of the public information campaign, it had to focus on the day-to-day needs of our administrative staff. Long-range planning was a lesser priority.

By late March, the staff had grown to almost 100, but only 500 cases had been processed through the Board. Based upon existing staff and procedures, projections showed that the Board would finish the caseload no sooner than 1978. The President had set a deadline of September 15, 1975,

however, giving the Clemency Board a total life-span of exactly one year. We agreed to the necessity of this deadline because of our concern that applicants not have to wait more than a few months to have their cases decided. To meet this goal without jeopardizing his policy of careful, individual attention to each case, we were authorized to double the Board to eighteen and expand the staff size dramatically. The President expressly rejected the option of adopting more summary procedures which would have required a smaller staff.

April and May: Expansion Phase

By early April, we had a reasonably accurate workload projection, the promise of a six-fold increase in staff size, and a September 15 deadline. The expanded staff had to be working at full speed by mid-May to finish on time. In less than six weeks, the senior staff had to develop a management planning capability, implement a new management structure, and assimilate hundreds of new personnel. In the midst of all this, everyone had to move to larger quarters across town.

A small management analysis staff was quickly formed. A need was recognized to set both short-term and long-term goals and to have information for measuring goal achievement. Allowing a one-month margin of error (and basing projections on a high estimate of 20,000 cases), weekly production goals were set for the key aspects of the case-writing process. These goals started at about 1200 cases per week and peaked at 1600 cases.

A management information system, focusing on those same aspects for which goals had been set, was implemented to replace overloaded reporting systems. In this system, information on individual case production was funneled from the lowest level of the staff to the highest, becoming increasingly aggregated. This data was assembled with information from different production stages to produce a flow-type picture of operations. The information system was implemented, monitored, and revised by the management analysis staff responsible for interpreting the findings. Senior staff and team leaders alike were able to use this information to gauge organizational and individual goal accomplishment. (See Appendix F.)

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

The staff effort to review and modify our case production process was boosted by an Inter-Agency Task Force

sent by the White House to review our resource needs. The senior staff, including most analysts, were lawyers, and the Task Force members were skilled, high-level managers. The two weeks of their visit gave our operations a greater management orientation. Indeed, those two weeks were the ones in which the staff really mobilized and started achieving our once hypothetical goals. We were able to do this without applying any short-cuts which would have adversely affected the fair process our applicants deserved. Our interaction with the Task Force gave us the much needed confidence that our planning and organizational decisions were valid.

It was into this new management situation that our new case attorneys arrived, unprepared. Through a Cabinet-level request by the President, and with assistance from the Office of Management and Budget, two "taps" for professional and clerical personnel were made of permanent executive agencies. Since the Clemency Board had no personnel slots through which to hire preferred people, employees had to be borrowed from other agencies. In addition, over 100 summer legal interns were referred or detailed to us by other agencies. Agencies were requested to detail employees for a minimum of 90 days, making the promise that these employees would not be hindered in seeking promotions or other career opportunities because of their temporary assignments to the Presidential Clemency Board.

The first tap was made in early April, and the second in early May, but, in each case, most personnel came three to four weeks later. It was not until late June that the early-May tap for clerical personnel was filled. At the time, there was concern about the slowness with which the staff could be expanded. In hindsight, greater management and morale problems might well have arisen if new staff had arrived in bigger bunches.

The quality of the new staff was good. Indeed, it was better than anyone expected, given the lack of any chance to screen them initially. We had feared that many agencies would send their unproductive people. This seldom occurred, in fact, and then primarily on an individual basis. What we got instead were adaptable "shock troops," ready for new responsibilities and new experiences. Many would not have come unless they were of a mood to enjoy a crisis atmosphere. More experienced, perhaps more professionally capable, but less flexible detailees would not have performed as well. We could not have met our deadline without a staff willing to cooperate with young, relatively untested managers, and without a staff able to tolerate working conditions quite unlike those of their detailing agencies. On the other hand, a disproportionate percentage our lower grade detailed clerical and administrative personnel were poorly trained and unenthusiastic. Absenteeism among this group was high, and average production low. There were exceptions, of course, and those who served as executive secretaries and in other specialized capacities proved to be at least as diligent and as professional in their work as the best case attorneys.

Team assignments were made after day-long training sessions. A training manual was prepared which provided information on the Clemency program in general, and on the procedures for writing cases in particular. Certain operational memoranda were included in the manual, but they rapidly became obsolete as experience forced the evolution of the process. The training process was meant to be primarily an overview both of the legal process and of our general mission. We anticipated that the team leaders, and their slowly emerging internal team structures, would provide the continuing training necessary to fully integrate new personnel. This was successfully accomplished in some cases and scarcely attempted in others, reflecting different managerial styles.

To absorb this new staff, the line management structure had to expand dramatically. In early April, the decision had been made to keep the basic elements of the our case dispositions procedures: narrative case summaries, quality control, case attorney presentations to the Board, and the presence of experienced panel counsels during Board deliberations. Line managers had to be experienced in these procedures.

The only persons with sufficient experience to be line managers were the original eight case attorneys. The first new attorneys detailed to the Board were randomly assigned to them. As more lawyers reported, the teams were expanded and then subdivided, with the more capable earlier attorneys becoming supervisors of sub-teams. When the process was completed, new staff attorneys were asked to supervise teams of six to eight other new staff with only slightly less tenure. Experienced attorneys, who before had largely just prepared cases, were now each the supervisors of 40 professional and 20 clerical staff. The two formerly middle-level managers who had supervised the original 8 to 10 attorneys were by this time jointly responsible for a mini-agency of almost 500 people. Our organizational structure had become more formally pyramidal.

Almost all of our team leaders were young and in supervisory positions for the first time in their careers. Because of differing abilities to adapt to new situations, and because of the "detailing" method of staff recruitment, GS-13's sometimes found themselves reporting to GS-11's. Skill was recognized as being more important than tenure or previous position.

With this increase in size came an increase in the diversity and complexity of tasks and roles. The senior staff, including the two primary line managers, eight team leaders in charge of case writing and quality control teams, and other planning, management, and administrative managers numbered, at the peak, some twenty-five people. In addition, each of the eight teams divided into sub-teams, under the direction of emerging sub-team leaders. The optimal span of control -- the number of persons that any one supervisor was able to manage -- was found to be approximately six, with one sub-team leader serving as a principal deputy. The more successful teams also selected

one of their clerical personnel to generally supervise the operations of the support personnel.

A careful review was made of every step taken by a case attorney as he prepared each case summary. Based upon these findings and an application of "learning curve" theory a target case attorney learning curve was set: two cases the first week, four the second week, six the third, and eight every week thereafter. Instead of the target 2-4-6-8 learning curve, (and the 2-5-7-10 learning curve which the Inter-Agency Task Force thought possible), the actual learning curve was 2-3-5-6. Summer legal interns were found to have a better learning curve and higher production peak than detailed government attorneys, perhaps because of different job motivation. Learning curve calculations were made for each case attorney team, with surprising differences in the results. The two most productive teams had learning curves of 3-3-7-10 and 2-3-8-8, while the three least productive teams were all unable to produce more than three cases per week per attorney. The worst learning curve was 1-3-3-3. (See Appendix F.) The most productive teams also did work better of quality than the least productive teams. Staff assignments were made randomly, and working conditions were identical. Therefore, differences in productivity were attributed to the management styles of the team leaders.

Our best managers turned out to be the more aggressive individuals. Those who were better case attorneys tended also to be better managers, but, as with the staff in general, prior experience and civil service status did not seem to related directly to management success. The more productive managers had set a heavy pace for themselves in their earlier work on the staff, and that same pace was apparently picked up by their own staffs. They had set high goals for new case attorneys -- usually ten or twelve cases per week -- and spent most of their time with those who were new or having trouble. On other teams, a laissez-faire attitude contributed directly tc low production. Most of the better managers quickly appointed enough deputies to maintain the six to eight person span cf control, and they selected one of their clerical personnel to supervise the operations of the support personnel. They also delegated responsibilities liberally. The less productive managers delegated much less and had an insufficient number of deputies to maintain the optimum six to eight person span of control. As a consequence, they often found themselves unable to command or control all facets of their operations adequately; nor were they always able to respond fully to the demands of the top staff. As a result, they became uniformly overworked during peak periods.

In retrospect, the senior staff should have intervened with some team leaders to ensure that all were adopting the successful techniques that others had employed. At the time however, a conscious decision was made to set goals and hold team leaders responsible for meeting them, offering them help but not dictating their management decisions. Likewise, at first, we relied too much on the initiative of the Team Leaders and did not take adequate steps to ensure that all attorneys were informed of Board policy. This was a problem because policy and procedural changes were

implemented rapidly, often without prior notice. Thus, they were frequently met with reluctance on the part of the staff, which had once been informal and collegial. Because of this prior informality, many early procedures and rules were maintained and amended orally. Initially, we did not have any formal directive system.

Table 28 below compares each team on the basis of a number of performance factors. Good results in one area were clearly related to good results in others. Notwithstanding the shortcomings imposed upon them by their lack of experience as "crisis" managers, these team leaders generally performed adequately. About half of their number performed very well, adapting to the physical and emotional pressures of our operation with alacrity. Indeed, all of the team leaders met, in time, the minimum production goals that were set as a condition of remaining in positions of authority. Likewise, all met the standards of quality necessary to maintain a fair legal process.

Many of the new case attorneys were startled by the emphasis on production. Despite some grumbling from government attorneys not comfortable with casework quotas, the entire staff responded well to the notion of team and individual goals. The senior staff held weekly production meetings with the eight team leaders, reviewing productivity changes and identifying team production problems. The team leaders were told how their teams ranked, and management principles were shared. The production meetings kept the good teams good and made the poorer teams better, but the middle teams' production levels remained unchanged. Production finally rose to the 1,200 per week levels necessary to meet the President's deadline.

The Board was expanded to eighteen members in late April. Like the staff, we had to accustom ourselves to a much faster pace of work. If anything, the pressure on the Board was greater: The number of case attorneys expanded from ten to 300, while we only doubled in size. In March, the nine-member Board had begun to make case dispositions sitting in panels of three or four. To preserve the balance of the decision-making process, we tried to make each panel representative of the range of backgrounds and perspectives of the full Board. We were also concerned that our decisions and collective policy-making procedures remain consistent. Thus, we instituted the rule that any Board member could refer any case, for any reason, to the full Board for a decision or for policy guidance. We were satisfied with the quality of the dispositions, but no panel had by that time decided more than 50 cases in a single day. We had to double that rate. By the end of May, our new members had familiarized themselves with the full range of our cases, and most panels were exceeding 100 cases per day. With three panels meeting four days each week, our Board output began matching, and sometimes surpassing, staff output of 1,200 per week.

As Board panels increased their decision-making pace, more emphasis was placed on Board preparation, and less on actual staff presentation. Board panel members carefully

read all cases prior to panel sessions. Case attorneys' oral presentations were limited to presentation of new evidence and elaboration of confusing passages in the case summaries. At first, newly-arrived sub-team leaders sat as panel counsels. They were not initially well-versed in Board policy, so they were unable to play the panel counsel's intended role of assuring that our rules were scrupulously followed. As a result of these factors, different panels began applying variations of the rules, and our dispositions gradually became more disputed. Many Board members began referring cases to the full Board because of policy disagreements. Full Board referrals averaged about three percent of all cases for the life of the Board.

We could not slow down the pace, nor could we meet the President's deadline by having so many cases heard by the Full Board. Instead, we took the following steps: (1) we held more frequent Full Board meetings to discuss and define our policies; (2) we created two new aggravating factors, a "pardon" rule, and a "no clemency" rule to clarify as Board policy what a number of panels were inclined to do with or without any rules; (3) we created an internal Clemency Law Reporter as a means of issuing Board policy directives, enabling explicit definitions of Board rules and precedents to be distributed to the Board and staff; (4) our senior staff held workshops to instruct panel counsels in Board policy, in which they gradually became more proficient; and, (5) at the instruction of the Chairman, our staff implemented a computer-aided consistency audit of Board-panel dispositions. Thereafter, our case disposition procedures worked much more smoothly. Each panel staff heard over 100 cases per day, without referring as many to the full Board. There were, of course, variations in case hearing speed, both by panel and by day, sometimes because cases differed and sometimes because policy problems arose in one panel but not in another. Usually, panels heard between 75 and 125 cases. The overall hearing rate is shown, in conjunction with the pardon rate, in Figure D.

June and July: Peak Production Phase

By early June, the estimated total caseload was still over 18,000. Case attorneys had prepared only 4,000 case summaries, and the Board had heard fewer than 3,000 cases. That pace had to be maintained from the last week of May through to the end of the summer.

Based upon production levels that the staff was not confident could be met at each stage of the process, weekly and monthly goals were continually revised. However, each week still involved too many uncertainties to permit significant long-range planning.

The senior staff's need to respond quickly to production problems led to a revision of the management information system. Line staff were asked to concentrate on accurate reporting of production tallies and inventory counts at a few key stages of the process. Time-consuming attorney productivity analysis was no longer done. Rather than look

just at the case attorney production, attention was now focused on other key production points and on maintaining a smooth and stable process flow.

One point, for example, which had been ignored previously was the file room. By June, it was running out of new cases to give our case attorneys. Without enough work to do, production goals became meaningless. Case attorneys were concerned that they would not have enough work to keep busy for the rest of the summer. The summer legal interns were so productive that it was never again to be pssible to give case attorneys more work than they could finish. Through greater management attention, the immediate file problems was solved -- but the whole management emphasis changed as a result.

This irregular file availability resulted in uneven lumps of cases in different parts of our process. The attention of the senior staff shifted from its focus on case production goals to a focus on guiding these lumpy inventories through the process. The management analysis staff developed a "pipeline" inventory count to identify production log jams on a weekly basis. (See Appendix F.) This pipeline analysis replaced productivity analysis as the basis for production meetings for the remainder of the program.

Case flows from point to point were closely monitored, and an expanded number of aides to the senior staff began to trouble-shoot in problem areas. Each pipeline "snapshot" required at least one and sometimes two days of staff time to collect and analyze data making the information somewhat old before it could be applied. Occasionally, daily updates had to be made before any corrective actions could be taken. Often the perception of an inventory problem did not occur quickly enough to allow a response before another problem arose to take its place.

The most serious inventory control problem of the summer related to the docketing of cases for the Board. During June, case attorneys continued to produce case summaries at the rate of 1,200 per week, but the Board panels were deciding cases at the rate of 1,400 per week. Eventually, the docketing staff was left with no case inventory, and Board members were receiving case summaries too close to scheduled panel meetings to allow them to be read first.

What had created this problem was a previously unmanaged interface among all parts of our production process at the docketing stage. To solve this problem, a manager was assigned to the new responsibility of coordinating the Board hearing, or production "output," segment of our process.

New docketing procedures were developed, with cases batched in "docket blocks" according to fixed Board panel schedules. To solve the immediate problem, the Board heard very few cases during the Fourth of July holiday week. Thereafter, the docketing inventory was more carefully controlled, but squeezing the production system in order to get enough cases to fill the docket almost became a regular weekly event. Some trade-offs in the process were

inescapable. To save some attorney time, for example, Board members read all panel cases -- as many as 125 per day -- before sitting in panels. Consequently, case production had to precede case docketing by enough time to allow the building of entire weekly dockets. As a result, Board members could receive case summaries far enough in advance of the panel sessions to enable them to be read.

To solve this and other pipeline problems, the senior staff had to be flexible in its assignment of personnel. In particular, our clerical and administrative staffs had to be ready to undertake new tasks at short notice. By July, individual production teams (consisting of a sub-team leader and the six to eight case attorneys under his/her supervision) began to be assigned to either special production or administrative problems.

This slack in casework once again became a problem -- one which this time could not be resolved. Our earlier policy of discouraging staff vacations until August (to insure that the workload would be finished on time) began to backfire. Some case attorneys were idle. Others resented the "pressure-on, pressure-off" style of management which was the unavoidable consequence of the emphasis on inventory control rather than on simple production levels. Still others resisted reassignment to administrative tasks. The 100-plus summer legal interns, in particular, resisted the notion of doing non-legal work. Absenteeism became a problem, but it was one which we failed to recognize adequately until late in July.

There was little that the senior staff could do to provide case attorneys and other staff with incentives and rewards for good work. Only the detailing agencies could grant promotions and quality step increases. Performance bonuses, although possible, were hard to arrange. No funds were available to improve working conditions, which were satisfactory but less comfortable than most staff were used to at their agencies. Staff contact with the Board was usually limited to very brief case presentations. The one major source of motivation was the understanding, common to all staff, that the President's Clemency Program was helping its applicants.

Throughout June and July, the Board panels heard cases as quickly as they were docketed. Clear policies had been set, and all rules were followed. Case dispositions became relatively steady from panel to panel and from week to week. Case referrals to the Full Board continued, but at a slower rate. A special upgrade panel was created to make unnecessary the referral to the full Board of cases involving recommendations for veterans benefits. This upgrade referral rate came to be roughly three percent of the total.

Other than fatigue, the major problem confronting our Board members during this phase was the fallout from the July dip in staff morale over the slack in casework. A few case attorneys broke from the standing rule of impartiality and began to advocate an applicant's case in the manner of an adversary attorney representing a client. This could not

be allowed, but we took steps to address the problem, in recognition of the concern for the applicants exhibited by these case attorneys. First, case attorneys were given the opportunity to "flag" cases which they believed were decided inconsistently with previous decisions. These cases were then audited for consistency by the legal analysis staff, just as they reviewed cases flagged by the computer, and finally referred to the Chairman for potential referral to the Full Board at his own discretion. Second, the Clemency Law Reporter became an in-house professional journal, providing a forum through which case attorneys could bring policy questions to the attention of the top staff and Board.

F. August and September: Contraction Phase

As we entered August, the September 15th deadline began to appear reachable. There were two reasons for this: first, the case production level had been high throughout June, lagging in July only because of the lack of new assignable cases.

Total case summary production exceeded 12,000 by the first of August. Second, the final caseload estimate fell below 16,000. In May, our estimate had been 20,000 cases. What had happened, a bit at a time, was this: first, of the 20,000 cases logged in by the volunteer letter-openers during the hectic days of March and April, 2,300 were found to have been ineligible. In addition, almost 2,000 would-be applicants had given us little more than their name and address on their application forms, despite our repeated efforts to get more information, so files could not be ordered to enable their cases to be prepared. Third, about 500 military cases files had been lost by other agencies or were otherwise unavailable, making it impossible for the Clemency Board to review those cases.

In some ways, the work was almost finished: in other ways, it had hardly begun. Many of the remaining 3,000-plus cases were the hardest ones, many requiring time-consuming inquiries to obtain needed information. We also roughly 500 cases remained "lost" in the system, never showing up in the weekly pipeline count until late in August. By the first of August, we had still sent fewer than 1,000 case recommendations to the President. The Board and staff had to solve these problems, write a report to the President, close down operations, and plan a carry-over operation in the Department of Justice. June vacations, once postponed until August, now were set for October.

Not all of the remaining cases were "hard;" Two weeks of normal case attorney production were still necessary. To spur last-minute production, case attorneys were advised that cases not submitted to quality control by mid-August would be referred to the Department of Justice carry-over-unit. At the risk of losing the chance to present their cases, most attorneys completed their case summaries on time. A special team responsible to top-level staff separated "hard" cases into two categories--those which

might be written, and those which were clearly impossible because of the lack of information. Later, case attorney production teams were assigned to write summaries on all cases based upon the information available at the time. These cases were set aside from all others and heard by a special Board panel. Of the 750 cases on this special docket, 250 were found to be ineligible, and another several hundred had to be referred to the carry-over unit for further action.

The "lost" cases had not been included in pipeline inventory counts either because they were in transit, held by an absent employee, or misplaced. In late July, a month-long search for "lost" cases was begun. Because of the speed with which case files and other materials had to be circulated for production deadlines to be met, the regular case-logging system was inadequate: a system-wide logging procedure was needed to allow every case file to be traced to one source. To implement it, the entire attorney staff had to engage in a one-day physical search of both Clemency Board buildings at the first deadline for the completion of cases. The staff had to account for every one of our 18,000-plus logged cases, despite the fact that case files were changing hands all the while. Eventually, the 500 "lost" cases were reduced to around 50, which were assigned with the "hard" cases to the Department of Justice carry-over unit.

Forwarding cases to the President was the last major management problem. This was an aspect of operations to which little attention had previously been given, but which loomed as an almost impossible job. Contributing to the delays in forwarding cases to the President had been the "30-day rule" and the two to three week turnaround time for the computer-aided consistancy audit of case dispositions. By late August, master warrants had to be prepared for over 3,000 cases per week -- a very staff-intensive job. All case attorneys not responsible for "hard" cases or working on other special task forces were assigned to this task. Some procedures were simplified, but this problem was solved more by phalanx than finesse. With this awkwardly large staff of almost 100 reassigned case attorneys, the administrative staff was able to forward about 6,500 case recommendations to the President by September 15. Eight thousand remained to be forwarded by the carry-over staff.

The staff size, over 600 through most of June and July, gradually shrank to 350 during August. Approximately 50 detailed attorneys were returned to their agencies around the first of August as our caseload diminished. The 100-plus summer interns went back to school, a few at a time, through Labor Day. Others had their details expire, and were not replaced. As the deadline neared, final-stage production problems could be solved better by large doses of staff than by careful management planning. Therefore, the senior staff was reluctant to phase down our staff any more quickly than was done.

August and September also witnessed the preparation of plans for the carry-over unit in the Department of Justice. That carry-over unit was planned to start at about 150

persons, and to work in decreasing numbers until the first of November. Records had to be archived, final paperwork had to be completed, and applicants had to be allowed 30 days to appeal their case dispositions once announced by the President. Research and writing for the Board's report to the President was still in process. Otherwise, the work of the staff was done.

September 15 was not just the mission deadline, but also the last day of the Clemency Board's existence. Intense work was expected of individuals who faced serious uncertainty about their personal career directions after that date. Many detailed employees did not want to return to their agencies, and about 40 persons were filling temporary positions which would not exist after September 15. The carry-over staff in the Department of Justice was able to absorb some of these people, but many employees filling temporary positions who had been detailed from other agencies faced the threat of immediate unemployment until the last working day before the deadline. The level of staff anxiety was understandably high.

Board panels heard almost all their cases by the end of August, with one panel day in mid-September for 650 previously tabled cases. The full Board agenda had accumulated throughout the summer. The Board had to work without rest through the latter part of August and September to complete the docket. In late August, the full Board began to hear cases referred by the Chairman after having been flagged by the staff through computer-aided and attorney-initiated consistency audits. In most cases, the rehearing resulted in case recommendations more in line with perceived Board precedent. The computer "flagged" almost nine percent of all cases as being statistically inconsistent. Since the range of factors that the computer could consider was limited, and because it was unable to discern the degree to which an aggravating/mitigating factor was relevant, the computer flagging was purposely over inclusive. Staff review of flagged cases reduced the total to four percent. After his own review, the Chairman referred less than one percent of all case dispositions back to the full Board.

On September 15, the Clemency Board was terminated by Executive Order, and all remaining tasks were turned over to a carry-over staff of persons reporting to the Department of Justice. The Pardon Attorney then assumed full responsibility for these tasks, and the carry-over "Clemency Office" was managed directly by his aides. Approximately 8000 cases remained to be forwarded to the White House for Presidential signature; 900 remained as "hard," virtually unwriteable cases; and cases subsequently appealed by applicants were to be reviewed by the Pardon Attorney. Not a single case remained that had not received least some initial Board recommendation.

C. Analysis

On September 15, 1975, the Board disbanded with its mission complete. We met the deadline -- to the day -- which the President had set back in March. During our twelve months, we sifted through 21,500 aplications, sorted out 6,000 which were incomplete or ineligible, disposed of 14,514 cases, and referred the remaining 900 "hard" cases, with late-arriving or partial files, to the carry-over program in the Department of Justice. We did this at a total direct cost of $270,000; including the cost of detailed staff and overhead, the cost of Clemency Board operations was roughly $5,625,000. This amounts to some $264 per applicant, or $385 per case recommendation. (See Appendix H.)

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

Emphasis on Production

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

Workload estimates barely preceded actual application data because of our inability to project either how successful our public information campaign would be or how long the clemency program would last. Even more significantly, our weekly production requirements lagged three to seven months behind workload estimates. Figure 2 notes the key lags in the production process. The lags resulted partly from reaction time, partly from understaffing, partly from regulatory "notice" standards we set for ourselves, and partly from inventory backlogs. It is clear from Figure 2 that we mobilized for our mission just in time, and that the September 15 deadline probably would not have been met had the original 20,000 caseload projection proven accurate.

Our weekly production requirements were set on the basis of available staff. As shown in Figure 3, the staff grew by a factor of six between mid-March and late May, enabling new professional and clerical employees to be focused on case summary preparation tasks. By mid-August, case summary preparation tasks had ended, so staff began to be applied flexibly to new production requirements. Attorney and clerical "teams" were reassigned to other professional or administrative functions. This flexibility came at some cost, however; it affected staff morale, hindering the

ability to perform administrative functions necessary before recommendations could be forwarded to the President.

Likewise, weekly production requirements hinged upon case inventories at the key points in the production process. Many tasks had sharp phasing-up or phasing-down periods which contributed to the lumpiness of the production pipeline. Figure 4 shows monthly production levels for five key production points. In every case, the sharp rise or fall of one point's production figures sent reverberations through the system. This was particularly true in the case of production dips. Indeed, after the availability of new files began to slack in early June, the characteristics, and spirit, of staff operations changed. The process would have been much easier to manage had there been time to smooth every production function shown in Figure 4.

Throughout the spring and summer, there was concern about the quality of case summaries presented to the Board. Similarly, Board members were concerned about the fairness and consistency of case dispositions made at a much faster rate than before, by panels of shifting compositions. As shown in Figure 5, the Board's case disposition patterns differed from phase to phase. In the early phases, we were developing policies and procedures, so our approach to cases often changed from meeting to meeting. The pardon rate for civilian and military cases fluctuated. Starting in late January, the civilian pardon rate began a steady increase, and the military pardon rate a steady decrease. Once we began deciding cases in panels at the rate of 100 cases per panel-day, case dispositions remained quite consistent. The consistency of case dispositions from May through September, during which period 95% of our cases were decided, was especially pleasing. We were aided in achieving this consistency partly by our procedures, partly by the publication of policy precedents, and partly by the professional quality of the case summaries prepared by the staff.

Crisis Management Characteristics

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

Ten factors, taken in combination, presented the need and opportunity for crisis management. None of the ten was essential to create such a situation. Had we possessed six or seven, our operations probably still would have had a crisis character. However, with only two or three, the Clemency Board would have been much more like a typical government agency.

First, an external catalyst precipitated the crisis situation. The applications were the catalyzing event. Although we did have some influence over the rate of applications (through our public information campaign), we had no direct control over them. Once an application had been received, the Board was obliged to consider it. This resulted in a lack of direct control over workload, inability to estimate it with a high degree of accuracy, and hindrance of efforts to make long-range management plans.

Second, by February, a perception of a crisis situation, accompanied by a need to estimate workload and resource requirements. The character of the Clemency Board process hisfted from one with legal orientation to one with a management orientation. Immediately, bolder strategies were applied to cope with this new challenge, often by questioning earlier legal procedures and management approaches. Planning efforts were limited, however, by the realization that the time lags between the catalyzing event and the perception of crisis, and between that perception and the first serious production efforts, could never be recovered. Despite this new sense of urgency, it was four months before the first surge in applications (the catalyzing event) resulted in the first surge in case summary production.

Third, a mission deadline of September 15 was set by the President in March as soon as he learned of the dimensions of our task. This deadline imposed upon us a direct measure of accountability upon Board operations. Regardless of our other accomplishments, the Board would have failed the President had we not met the deadline. The deadline immediately crystallized long-term plans to the extent that we total workload could be estimated, clarifying our production and staff resource requirements. We could then begin short-term management planning, fixing weekly goals and implementing performance monitoring systems. Without a clear deadline, short-term planning could not have been

easily justified to our line staff. They might then have taken it less seriously, making it less effective.

Fourth, the deadline resulted in a compressed time period for our operations. Through March, the staff had prepared and our Board had decided only 500 cases. This rate had to be increased by a factor of thirty. On one hand, this made management and production processes immediately adaptable. Staff-level management was needed, implemented, and given "clout" within a few short weeks. A new management information system was fully implemented in a period of a few days. Line managers, suddenly accountable for production goals that many believed impossible, were responsive to staff management input and accepted the need for rapid system adjustments. On the other hand, this compression made the process particularly vulnerable to administrative error, internally and externally created, uncontrollable perturbations, and management mistakes. The inescapable speed-up of routine administrative processes resulted in lost files and other errors, the correction of which required much staff time and management attention from July through September. File delivery delays by other agencies, or Board rule changes based upon policy considerations, sent immediate shock waves through the system. As shown above in Figure 4, production functions were very steep; a charting of perturbations and management problems would likewise show that they quickly came and quickly vanished. Even short-term management errors were significant. Lost production could not be recouped right before the deadline.

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

Sixth, the Clemency Board began with a lack of a staff resource base. The staff had to grow quickly from 100 to 600, two-thirds of whom were professionals. We had little control over the quality of our new staff, in large part because they were detailed from other agencies. However, even if we had enjoyed discretion over every staffing decision, the time problem was so severe that we probably could not have been any more selective. Therefore, this lack of staff-input quality control with a process for staff-output quality control. This lack of a staff resource base also required a reliance on line managers without supervisory experience. Most performed very well, others less well -- and the senior staff was not inclined to make more than a very small number of changes in management personnel. This crisis-trained cadre of line managers did have one important advantage: they were very flexible as a group, much more willing to try creative approaches than more experienced managers might have been.

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

Eighth, the clemency mission had **programmatic priority** within the government. This was a visible program, with an ability to quickly draw attention to heeds and problems. In return, the Board's weekly progress was carefully monitored by the Office of Management and Budget and the White House. The fact that this was a White House operation contributed to staff morale and performance at all levels.

Ninth, the Clemency Board had an **institutional deadline** of September 15, the same date as the mission deadline. The fact that our Board operations had to dissolve simultaneously with the completion of our mission posed a number of serious problems. The lack of permanent staff with long-term relationships contributed to production problems. While detailed staff generally enjoyed their experience with the program, they understandably felt less of a career commitment with the Clemency Board than with their agencies. Often, there was little that could be done to make them responsive to Board policies or management needs. The arsenal of rewards and penalties was very limited. The senior staff could not offer promotions, nor could it threaten personnel actions. The last month of Board operations were hindered by this upcoming termination date. Once lost, institutional momentum could not be recovered. Some of our most difficult administrative work during a period of staff shrinkage and anxiety. People who faced a serious risk of unemployment after September 15 were asked to work at a faster pace so that the deadline could be met. Were the Clemency Board to have enjoyed greater institutional continuity after that mission deadline, this phase-down period might have been more productive.

Tenth, the Board was attempting to solve a **bounded problem** which did not require a permanent institution to cope with it. Aside from the need to set monthly production goals through September 15, we did not have to conduct long-term planning. Because of the pressures of time, a narrow focus had to be applied to our problem. Despite some evidence that our lack of personal contact with applicants was undermining the effectiveness of the Clemency Board program, we had neither the time nor the staff resources to direct sufficient staff attention to the problem. Likewise,

we are unable to follow through on our desire to monitor our applicants' performance of alternative service. Combined with the institutional deadline, the boundedness of our problem prevented the Board from performing any but the most cursory impact evaluation of the clemency program.

These ten attributes posed a special mix of management problems and opportunities. Although we met our September 15 deadline and were successful by the most tangible measure of accountability, there were some problems that were not overcome and opportunities that were never fully exercised -- such as the problem of communications between top staff, line managers, and case attorneys, the level of administrative error in internal and external paper flow, and the inability to complete the last administrative tasks by September 15, requiring a six-week carry-over in the Department of Justice. These difficulties are, nonetheless, small in comparison to the magnitude of the task accomplished.

On balance, the crisis management process of the Clemency Board worked very well. High levels of production were maintained for four crucial months. The necessary management control was implemented to minimize inventories and move cases through the system. As requested by the President, the Board finished the its decision-making task on time. Above all, we take special pride in the quality and uniqueness of the legal process by which our case recommendations were made. We attribute these accomplishments to the unusual energy, creativity, and sense of responsibility which a crisis atmosphere gave to Clemency Board operations.

END OF DOCUMENT Chapter 6

LINES PRINTED 01217

PAGES 0024

****

****

****

****

****

****

****

****

****

****

CUSTOMER a2220 OPERATOR 001 222 001 Chapter 6

TODAY'S DATE 10/28/75 1714 01 lstl11e 222-002

CUSTOMER a2220 OPERATOR 002 PCB ETI 1rmp 222-002

Chapter 7 001 an historical perspective

3

DATE STORED 10/28/75 1713 w

WIDTH 060 DEPTH 64

----t---t----t----t----------t

pj

PRINT POSITION 07 LINE 03

A. Executive Clemency in American History

To place the issue of executive clemency in its proper perspective, one must take note of the manner in which Presidents Washington, Lincoln, Truman, and Ford applied their powers of executive clemency in dealing with persons charged with, or convicted of, war-related offenses.

Past acts of executive clemency have become a part of our political heritage. In Appendix G, we trace the history of executive clemency from English history through the post-Vietnam era. Lessons can be learned from studying past clemency actions, but a not of caution is in order. Each post-war clemency has been a unique response fashioned to the circumstances of each historical period. The war resisters of the Vietnam Era are not in the same category as Southerners who were defeated on the battlefield or Jehovah's Witnesses who failed to serve during World War II. The adoption of a Lincoln program or a Truman program to resolve a present-day problem would have been no more appropriate than fashioning a program with total disregard for these precedents. President Ford's clemency program is not unmindful of programs initiated by his predecessors, yet it is distinctly tailored to the Vietnam era.

Much of the interest and concern over executive clemency stems from a fear that leniency toward draft AWOL Offenders and might undermine America's future ability to mobilize and maintain a strong military force. The moral dilemma surrounding personal participation in war will always be with us, but it seems unlikely that the prospect of a clemency program modeled after president Ford's would lead anyone to evade the draft desert the military during a future war whose military and political context might be very different from that of the Vietnam era. No one can point out any great harm ever suffered by the military as a result of past acts of executive clemency. However, the negative consequences of a universal and unconditional amnesty remain unknown inasmuch as no President has ever proclaimed a truly universal and unconditional amnesty. Australia proclaimed such an amnesty after ending its involvement in the Vietnam War, but its long-term impact is still uncertain. (See Appendix G, part 5.)

War and conscription have caused dissension among Americans throughout our history. From our earliest days as a nation, Presidents have acted strongly to protect national interests through military action. But they also have exercised their clemency powers to forge reconciliation by offering political outcasts and offenders an opportunity to regain the full benefits of citizenship.

President Washington acted decisively to put down the Whiskey Rebellion. Urged on by Hamilton and others, he was determined to establish the power and authority of the newly constituted Federal government. Many poverty-stricken farmers in Western Pennsylvania refused to pay a new Federal tax imposed on whiskey, rebelling when 75 of them received summonses to appear in Federal court. Several hundred rioters burned a Revenue Inspector's home. With the courts unable to enforce the laws, and with the insurrectionists ignoring a Presidential proclamation demanding adherence to the laws, Washington called on the military to quash the

rebellion. The troops faced no armed opposition, and very few insurrectionists were taken into custody. Washington subsequently pardoned all offenders except two leaders who were under indictment for treason. These two were later pardoned by Washington after they had been convicted. (See Appendix G, Part 2.)

The Civil War clemency actions of Presidents Lincolln and Johnson arose in response to a new situation in American history -- the first use of significant numbers of conscripts by the U.S. Army. Draft evasion and desertion were commonplace throughout the war. The exodus to Canada by draft-liable men grew to such proportions that the borders had to be closed to them. About 88,000 deserted from the Union Army in 1864 alone. Lincoln frequently intervened to commute death sentences for desertion, partly because of his inclination for mercy, but also to further his military and political aims. Amnesty for Union deserters was predicated on their rejoining their regiments and thus being available to fight the rebels. Lincoln's early amnesty offers to supporters of the Confederacy were surely intended to undermine Jefferson Davis' army and suppress the rebellion (see Appendix G, Part 3).

Johnson's post-war clemency was designed to dispense the grace and favor of the government to secessionist followers, but Confederate leaders were not to be treated lightly. Johnson's actions were highly political. In addition to his struggle against impeachment, he continually wrestled with Congress over his program of Reconstruction. Congress unsuccessfully attempted to deprive President Johnson of his power to proclaim a general amnesty, apparently desiring to reserve such powers for itself. Nevertheless, the President issued four amnesty proclamations for rebels before the close of his administration. President Johnson's last two proclamations were very generous, offering clemency even for the offense of treason. Civil War clemency was gradually extended to more and more individuals, but it was not until 1898 that the political disability imposed by the Fourteenth Amendment was removed for all surviving Confederates. (See Appendix G, Part 3.)

President Truman took great pride in his military service, and he had little sympathy for those who refused to wear the uniform. His high regard for the serviceman was

demonstrated by his Christmas 1945 pardon of several thousand ex-convicts who served in the military during World War II. Truman's Amnesty Board was restricted to reviewing approximately 15,000 Selective Service violations. Only three prisoners secured release from confinement as a result of Amnesty Board recommendations. The other 1,520 receiving Presidential pardons had already completed their prison sentences. During the 1952 Christmas season, Truman restored citizenship rights to approximately 9,000 peacetime deserters, but no pardon, remission, or mitigation of sentence was involved. At the same time, Truman restored civil rights for Korean War veterans who had received civil court convictions prior to their service in the Korean War. (See Appendix G, Part 4).

To put President Ford's program in perspective, we summarize below the ways in which Washington, Lincoln, Johnson, and Truman adhered to or departed from the six principles of President Ford's clemency program.

B. Historical Comparisons

The Need for a Program

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

The acts of clemency associated with the Civil War were proclaimed both during the war and following the war. Some were primarily a means of reuniting the nation, while others served more military and political aims. As the war ended, Lincoln and Johnson both recognized the need for a program

that would not treat the South as a conquered nation, but as a part of a reunited America. Clemency was to be a basis for reconstruction. Individual rights had to be restored before States could again become a part of that Union.

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

President Ford's program was comparable to, but not quite the equivalent of Johnson's clemencies in terms of responsiveness to a clearly felt need. While the Vietnam conflict did not separate States from the Union, it did foster comparable a divisiveness among the public. President Ford's program was proclaimed sooner after the war's end than Truman's, but less swiftly than Washington's or Johnson's. However, like Johnson, President Ford announced his clemency program exactly six weeks after assuming his office.

A Limited, Not Universal, Program

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

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

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

President Ford's program was more universal than either Johnson's or Truman's in that it did not specifically, consciously exclude major categories of offenders. However, it did not affect as many people as Johnson's program. The 113,300 eligible persons and 21,725 applicants to President Ford's program made it the second largest in American history.

Clemency, Not Amnesty

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

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

President Truman's Amnesty Board, despite its name, gave no grants of amnesty. The Board was charged with making

recommendations for Executive Clemency and it did so by recommending individual pardons.

President Ford specifically rejected amnesty, calling instead for a clemency program offering official forgiveness and a partial restoration of status. Like Washington and Truman, his principal offering was a Presidential pardon. Like Washington and Johnson, he offered to drop pending prosecutions. Unlike Lincoln, he did not required AWOL soldiers to return to military duty.

Conditional, Not Unconditional, Clemency

President Washington conditioned his offer of pardon by requiring that the Pennsylvanians involved in the Whiskey Rebellion subscribe to "assurances of submission to the laws." Refusal or neglect to subscribe such an assurance rescinded the benefits of a pardon.

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

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

Unlike Washington and Lincoln, President Ford did not attach any condition restraining clemency recipients' future conduct. Instead, he attached a condition of alternative service as a means of demonstrating one's commitment to national service. Like Washington and Lincoln, he required some clemency recipients to sign an oath reaffirming their allegance.

A Program of Definite, Not Indefinite, Length

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

Civil War amnesties were a series of individual actions, rather than a carefully constructed program of executive clemency. They began with Lincoln's War Department Executive Order of 1862 and extended through 1898, when the political disability imposed by the Fourteenth Amendment was removed. In 1864, Lincoln seemed to predict that his offer of clemency would not go on indefinitely: "...the door has been, for a full year open to all.... But the time may come--probably will come-- when public duty shall demand that it be closed...."

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

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

A Case-by-Case, Not Blanket, Approach

Only about twenty persons were apprehended as Whiskey Rebellionists, so Washington followed a blanket approach in granting them pardons. Lincoln stated to Congress that "no voluntary application has been denied." Lincoln's 1862 Executive Order called for case-by-case review in that the Secretary of War was given discretionary power to keep in custody persons "whose release at the present moment may be incompatible with the public safety." Lincoln's February

1864 decree provided "that the sentences of all deserters who have been condemned by Court Martial to death, and that have not been otherwise acted upon by me, be mitigated to imprisonment during the war." However, this was administered on a case-by-case basis, with general officers having court martial authority given the power to release imprisoned deserters and return them to duty.

Johnson's clemency offers were made and applied quite generally. When repentant Confederates came forward to take the oath of amnesty, individual records were kept. There is no clear record as to the number of former Confederates obliged under the Fourteenth Amendment to request full restoration of citizenship, but the Forty-first Congress passed on approximately twenty thousand names.

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

Like Lincoln, President Ford gave the military a major role in the resolution of cases involving deserters. Like Truman, he appointed a Clemency Board to hear all cases of punished offenders. However, this Board denied clemency in only six percent of its cases, contrasting sharply with the Truman Board's denial of clemency to ninety percent of its cases.

C. Precedential Impact of the President's Program

An analysis of the history of executive clemency shows that different wars have produced different post-war grants of clemency. To a large extent, the Presidential policies have reflected the need for national reconciliation during the post-war periods. When there was little such need, there was little or no clemency offered. When the need was

considerable --such as when Lincoln was making plans to reunite the section during the late stages of the Civil War--the grants of executive clemency were considerable. We expect that President Ford's clemency program will be viewed in much the same manner as the Civil War Amnesty programs have been.

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

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

END OF DOCUMENT Chapter 7

LINES PRINTED 00388

PAGES 0011

****

****

****

****

****

****

****

****

****

****

CUSTOMER a2220 OPERATOR 002 222 002 Chapter 7

TODAY'S DATE 10/28/75 1703 01 lstl11e 222-001

CUSTOMER a2220 OPERATOR 001 PCB 222-001

Chapter 8 001 Chapter 8

DATE STORED 10/28/75 1702 w 3

WIDTH 060 DEPTH 64

----t---t----t----t----------t

pj

PRINT POSITION 07 LINE 03

Inescapably, we must ask whether the Presidential Clemency Board did in fact carry out the President's mandate of achieving a national reconciliation. We have described what we and other agencies have done to implement the six principles of the President's program. (See Chapters 1 and 2.) On the whole, we are confident that the program reflected the spirit of the Presidential Proclamation which created it.

A. The Need for a Program

As requested by the President, a program was implemented dealing directly with the issue of reconciliation for draft resisters and military deserters. The public need for a Presidential response to this issue, very clearly felt just one year ago, now no longer exists. The President's clemency program is not the answer that many would have chosen, but it has been widely accepted as a legitimate solution to a difficult problem. A recent survey of public opinion conducted by the Gallup organization in August 1975 discovered that 47% of the American people approve of a program of conditional clemency. The others who offered opinions were divided almost equally between the 24% who thought he was too generous and the 18% who thought he was not generous enough. Contrast this with a Gallup poll in September 1974, which found that only 19% favored a program of conditional clemency, with 37% favoring unconditional amnesty and 36% no program at all. (See Appendix H.)

We are confident that the President's program has helped enable Americans to put their war-engendered differences aside and live as friends and neighbors once again. The August 1975 Gallup poll found that the overwhelming majority of Americans -- 87% -- are now willing to accept clemency recipients as at least equal members of their communities. We are strongly convinced that an unconditional amnesty would have achieved much less of a reconciliation among persons who had strong differences of opinion during the Vietnam War. In fact, such a policy might well have exacerbated those differences.

The discussion of clemency or amnesty in the public forum has abated with surprising swiftness since the announcement of the program. It once was the constant

subject of Congressional debate, newspaper editorials, and opinion polls. After the program started, discussion focused more on the details of the program than on the broader question of clemency versus amnesty. Today, the issue is virtually dormant. Whether this reflects positive acceptance, quiet acquiescence, or disinterest on the part of the public is a question which we cannot answer.

Part of the reasons for the diminished public interest in clemency may have been the low profile maintained by the other agencies and ourselves. We do wonder whether more public exposure might have led to an even greater acceptance of the program. We believed, at first, that the same public which had shown such keen interest in the amnesty issue beforehand would be reasonably well informed about what was in the President's offer of clemency. From January through March, we tried to focus more public interest on the program. As we traveled throughout the country to speak with local media and counseling organizations, we were amazed by the misconceptions we found. It was indeed the rare person who already knew of the eligibility of former servicemen with bad discharges because of desertion offenses -- who constituted 90,000 of the 113,300 persons covered by the President's program. We also found that many people who originally had been critics of the program came away from our meetings with their views greatly modified, once their misconceptions had been corrected. Everyone was astonished to learn that there were three times as many applicants who were Vietnam veterans as there were Candian-exile applicants in the overall clemency program. Unfortunately, we suspect that a majority of Americans still misunderstand what the program offered, who was eligible, and what the typical clemency applicant was like.

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

Finally, the President's clemency program was by no means a denigration of the sacrifices of those who served honorably or lost loved ones in the Vietnam conflict. We are particularly concerned about the employment opportunities of the 2,500,000 veterans who served in Vietnam and the feelings of the estimated 250,000 parents, wives, brothers, sisters, and children of soldiers who lost their lives in Vietnam. These are individuals deserving of our utmost respect. We trust that the President's clemency program did them no harm; we are equally confident that a program of unconditional amnesty would have led many of these people to believe, in good conscience, that their sacrifices had been downgraded.

B. A Limited, Not Universal, Program

On balance, we consider the scope of the President's program to have been generous. Rather than require a test of sincere opposition to the Vietnam War, which would have been unfair to people less able to articulate their views, the program was primarily designed to include those whose offenses which may have involved opposition to the war or the military. Only five percent of the military applicants to the Clemency Board program went AWOL out of opposition to the war, demonstrating the significance of not conditioning eligibility on a test of conscience. However, some categories of individuals remained ineligible despite the obvious relationship between their offenses and their opposition to the war. The clearest example of this was the serviceman who refused to obey an order to go to Vietnam. In his case, the military could have discharged him either for missing movement, qualifying him for clemency, or for disobeying orders, not qualifying him for clemency.

C. Clemency, Not Amnesty

While it was never intended that the President's clemency program offer reparations or even a total restoration of status for all its applicants, it was intended that the program be "clement" and offer something of value to its applicants. At the same time, persons who did not apply for or receive clemency were not to be penalized or left in even more disadvantaged circumstances.

1. Impact on Persons Receiving Clemency

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

Applicants to the Defense program were benefitted primarily insofar as they immediately ended their fugitive status and avoided the risk of facing a court-martial and possible imprisonment. Forty-six particularly meritorious applicants received immediate upgrades with full entitlement to veteran's benefits, and two were restored to military service. The others immediately received Undesirable

Discharges. If they complete alternative service, they receive Clemency Discharges to replace the Undesirable Discharges given them when they enrolled. program. Although they can be held accountable for failure to complete alternative service, they are unlikely to be prosecuted for such a failure. For such prosecutions to succeed, it must be shown that they did not intend to do alternative service at the time they enrolled in the program -- an element which is difficult to prove.

Very few of the applicants to the Presidential Clemency Board were fugitives, the rare exception being the civilian who fled to avoid punishment after his conviction. As a result, the major benefit of the other two programs, putting an end to fugitive status, is of no consequence to our applicants. They had all been punished by civilian or military authorities. They owed no further obligations, but still suffered from the consequences of their draft convictions, Court-Martial convictions, or bad discharges.

The major offering of the Presidential Clemency Board was a Presidential pardon, the highest constitutional act which the President could have performed on behalf of applicants to the Board. Still, a pardon results in no more than a partial restoration of an applicant's records and rights, blotting out neither the fact nor the record of his conviction. No records are sealed. The benefits of a pardon lie in its restoration of the right to vote, hold office, hold trade licenses, and enjoy other rights lost or impaired by a felony conviction. Employment opportunities are apparently enhanced by a pardon, according to a recent survey of employer attitudes. This survey found that 41% of national and local employers would discriminate against a convicted draft offender who performed alternative service and a received a pardon, versus 75% who would discriminate against him if he did not receive clemency. Local employers would discriminate against him much more than national employers. (See Appendix H.)

A military applicant to the Clemency Board received a pardon as well as a Clemency Discharge. If he had any felony court-martial conviction, the pardon restores the same rights to him as to a civilian applicant with a Federal draft offense conviction. If he never had a felony court-martial conviction -- for example, if he received an Undesirable Discharge -- he never lost any civil rights. The pardon neither restored rights nor immunized him from further prosecution, since he already enjoyed such an immunity by reason of his discharge. However, a pardon indicates official forgiveness of the AWOL offenses which led to a bad discharge. It could have an impact on military discharge review boards, courts, and other agencies which overwise must take note of a bad military record. A Presidential pardon is a well-established act of official forgiveness which has wide acceptance by Government agencies and the general public.

By contrast, a Clemency Discharge is a new type of status. It is unclear how it will be regarded by potential employers and the public. Critics of the President's program contend that a Clemency Discharge is at best worth

nothing, since it is not a discharge under honorable conditions and confers no veterans benefits. They further contend that it may be harmful, since it stigmatizes individuals as having committed military absence offenses. However, it appears that a Clemency Discharge will have a significantly favorable impact on employment opportunities. A recent survey found that employers view Clemency Discharges as almost the equivalent of General Discharges. If a job applicant earned a Clemency Discharge through alternative service, the percentage of employers who would discriminate against him (40%) is about the same as if he had a General Discharge (39%), and much less than if he had a Undesirable Discharge (75%). The percentage of employers who would refuse to consider hiring him (6%) is not much larger than if he had a General Discharge (5%) and much less than if he had an Undesirable Discharge (34%). National employers would discriminate against Clemency Discharges less often than local employers. (See Appendix H.)

According to the same survey, the reasons why some employers discriminated against clemency recipients were the unfairness of giving them jobs when so many veterans with Honorable Discharges are unemployed, and the likelihood of their untrustworthiness and undependability. The reasons given for not discriminating against them are their satisfaction of national service obligations through alternative service, and the lack of any relationship between absence offenses and potential performance on the job.

This study cannot be considered conclusive evidence of the worth of a Clemency Discharge, but it does indicate that there may be a reservoir of generosity and good will towards those who sought and earned clemency.

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

Beyond this, we are concerned that many of our applicants will not understand what they have received from the Clemency program. Staff conversations with applicants indicate that there are many applicants who do not understand our telegrams and letters describing their grants of clemency. Without face-to-face counseling, it is possible that many of them will never know what to write on employment application forms about their discharges. Many others may not realize that they can still apply to discharge review boards or boards for the correction of military records for discharge upgrades, or to the Veterans Administration for veterans' benefits.

Impact on Persons Not Receiving Clemency

It was a consistent principle of the President's Clemency Program that no one be coerced into applying for clemency or made worse off as a result of not having applied. To do otherwise would be neither clement nor fair. For this reason, we are concerned about the impact of the clemency program on those who did not apply, did not complete alternative service, or were denied clemency.

The clemency program may have stimulated a greater public tolerance for everyone who committed draft or AWOL offenses during the Vietnam era. If so, those who did not receive clemency could benefit from the goodwill extended to those who did. We expect that this will be the case. Of course, the reverse may be true: individuals who could have applied for clemency but failed to do so out of choice or ignorance might face greater public disrespect than ever before. If an individual were eligible for but did not receive clemency, it is an unfortunate possibility that adjudicative or administrative bodies will take adverse notice of that fact. For example, a military discharge review board might look with particular skepticism at upgrade appeals from those who might have applied for clemency, but did not. The Veterans Administration may do the same for former servicemen appealing for veterans benefits despite bad discharges. Sentencing judges, law enforcement officials, licensing bodies, credit agencies, and others may likewise look askance at an eligible person's failure to receive clemency. Such actions would be directly contrary to the spirit of the President's program. With about 90,000 of the estimated 113,000 eligible persons not having applied for clemency, these possibly adverse impacts are of great significance.

We were the only one of the three clemency programs which recommended that the President deny clemency to some of its applicants. In making those recommendations, we did not intend to leave those individuals in a worse position than before they applied. We did not announce the names of those denied clemency, and we are concerned that the confidentiality of those individuals not be infringed upon by anyone else. We are equally concerned about the confidentiality of those who fail to complete their alternative service.

D. Conditional, Not Unconditional, Clemency

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

evaluated in terms of its reinforcement of those rights and responsibilities.

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

We believe that when a citizen breaks a law he considers unjust, it is his responsibilities to accept the designated punishment for his offense. Likewise, it is the responsibility of his government either to punish him or to change its laws. With respect to draft or military offenses, after an unpopular war has ended it is the government's further responsibility to temper its punishment with compassion and mercy. However, official forgiveness for an individual's failure to serve his country in time of war does not discharge him from his outstanding obligation of national service. Only in circumstances where an individual's punishment could be construed as a fulfillment of his obligations of national service do we believe that anyone can be officially forgiven without performing alternative service in the national interest.

Likewise, we consider it fair for the President to have conditioned his grants of clemency upon good faith applications from eligible persons. Executive clemency means more when it is an offer, not just a peremptory gift. The President, speaking for the American people, offered reconciliation. That reconciliation must be mutual.

However, we believe that the conditions must have been reasonable for the program to have been fair. This means two things: first, applicants must have had a reasonable opportunity to fulfill the condition of application. They must have recognized their opportunity and obligation to apply. As described later in this chapter, we have some doubts about whether many of our non-applicants did recognize such an opportunity.

Second, applicants must have had a reasonable opportunity to fulfill the condition of alternative service. Understandably, the fulfillment of one's obligation of service should involve some personal sacrifices, but it need not entail hardship. The cause of national reconciliation is hardly served if an individual quits his job to do alternative service for three months, cannot regain his job afterwards, and has to go on welfare as a result.

Our applicants were typically assigned to three to six months of alternative service. We assigned such short periods in recognition that our applicants' of national service obligations had already been partially fulfilled, and we were asking only for a nominal period of service. According to Selective Service, full-time alternative service jobs of such short duration are hard to find. Also, some of our applicants are relucant to risk losing their current jobs through such a brief interruption. Over half of our applicants have wives, children, or others dependent

upon them for financial support. In performing alternative service, many may complete their alternative service periods without doing any work because of their inability and Selective Service's inability to find appropriate work. Similarly, we are concerned that many others may be terminated from the program because of economic necessities, despite their interest in performing alternative service.

We never intended that three or six months of alternative service should impose serious hardships on our applicants. For this reason, we have recommended to Selective Service that those who have been assigned to short periods of alternative service be able to complete their obligation through 16 hours per week of volunteer work. As far as the Clemency Board is concerned, three to six months of volunteer weekend work at a Boy's Club, Church, or Museum is a satisfactory fulfillment of alternative service. By recommending short periods of alternative service, it was not our intent to deny pardons to those individuals. If a sizeable proportion fail to complete alternative service, an important part of the Clemency mission will have failed.

E. A Program of Definite, Not Indefinite, Length

The Clemency program was at first scheduled to accept applications for 4-1/2 months. Because of a surge in our applications, two one month extensions were granted by the President. The advantage of ending the program was to put the issue of clemency behind us as quickly as possible, so that we might also put the war behind us as quickly as possible. Also, there was a one-year limit on funds which could be spent on the program.

Out of an estimated 113,300 persons eligible for clemency, 21,729 actually applied to the three separate programs. This 19% application rate seems disappointing at first glance; however, for a program which accepted applications for only six months, that percentage is unusually large. To our knowledge, there has been no other federal program which has drawn such a rapid response during its first six months. For example, The Department of Health, Education, and Welfare's Supplemental Income Security (SIS) program offering cash grants for low-income ederly persons, received applications from only nine percent of its eligible target group during its first six months, and it took a full year for the program to match the clemency program's figure of 18%. This was true despite SIS's well-financed promotional campaign. Given the short time span and limited resources of our outreach efforts, we consider our application rate to be rather high. Unfortunately, we can take little solace from that fact. The SIS program is still accepting applications, but the Clemency program is not.

We believed, at first, that those eligible for clemency would be well-educated, well-informed, and alert to a communications "pipeline" among themselves which would carry

the news about the program. We also believed that veterans' counselors would correctly advise former servicemen with bad discharges about their eligibility for the program. Both of these assumptions were wrong. A late December survey of twelve persons eligible for clemency showed that all twelve knew about the program but not one of them knew he could apply.

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

The application period was surely sufficient for those who knew from the start what the program offered them. They had ample time to make up their minds about applying. It is our firm belief that the small percentage of applications to the Presidential Clemency Board was attributable to the lack of public awareness of our eligibility criteria. The rising monthly tallies of new Board applications -- roughly 800 through December, 4,000 in January, 6,000 in February, 10,000 in March -- indicates that even more applications would have been received had our program continued. Informal telephone polls conducted by our staff found that even as late as March, 90% of our applicants had only learned of their eligibility within the past few days. Usually, their application had been prompted their reading a news article or seeing a television announcement.

The degree to which the American public still misunderstands the President's program was illustrated by the August 1975 Gallup poll. A substantial 72% of the American public had heard of the clemency program, and 43% thought that it was for fugitive draft evaders and deserters in Canada and other countries. However, very few (15%) understood that convicted draft offenders and discharged AWOL offenders could apply to the Clemency Board. Only 14% thought that a Vietnam veteran discharged for a later AWOL could apply for clemency. (See Appendix H.) The percentage of the public which understood our eligibility criteria corresponded almost exactly with the percentage of our eligible persons who applied by the March 31 deadline.

We are convinced that many eligible persons did not apply because, even by the end of March, they still did not know they could apply. As the Gallup poll indicated, many may still not know that the program was for them.

F. A Case-By-Case, Not Blanket, Approach

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

Questions of process arise primarily in any clemency/amnesty program which follows a case-by-case approach. Any blanket amnesty program would raise

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

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

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

On balance, the case-by-case approach offered us a means for making the right kind of clemency recommendation for each of our applicants. Without it, we might have been less generous with Vietnam veterans and persons who committed their offenses because of conscientious opposition to war. Likewise, we might have been more generous with those whose offenses resulted from irresponsibility, selfishness, or cowardice. This would have had the effect of demeaning the President's constitutional pardoning powers.

Blanket amnesty would have treated all cases alike. This would have been fundamentally unfair to our applicants, and unfair to the American people. Consider the following two cases:

(Case 8-1) Applicant did not go AWOL until after returning from two tours of duty in Vietnam, when his beliefs concerning the war changed. He came to believe that the U.S. was wrong in getting involved in the war and that he "was wrong in killing people in Vietnam." He had over three years' creditable service, with 14 excellent conduct and efficiency ratings.

He re-enlisted to serve his second tour within three months of ending his first. He served as an infantryman in Vietnam, was wounded, and received the Bronze Star for Valor.

(Case 8-2) Applicant met his wife, a Danish citizen, shortly after arriving in Germany on a military assignment. She became pregnant, and he he attempted to obtain permission to marry her. When he was unsuccesful, he went AWOL. After turning himself in, he was returned to Germany and placed in pretrial confinement. Shortly thereafter, he escaped and went to Sweden, where he applied for asylum. While in Sweden, he had numerous arrests for theft and narcotics charges, received a sentence of 10 months imprisonment, and was deported to the U.S.

Were the President to have granted a pardon to the second applicant, he would have cheapened the pardon granted to the first -- whose friends and employers would have been more reluctant to acknowledge that he had earned his pardon. Likewise, the American people might have assumed that, since all applicants would have been treated alike, all applicants would have been alike. Many of the hard feelings generated during the Vietnam War resulted from such blanket judgments. By fostering such an attitude, blanket amnesty might have perpetuated -- and not healed -- the wounds of an era.

Charles E. Goodell, Chairman
Robert S. Carter
Timothy Lee Craig
John A. Everhard
W. Antoinette Ford
Theodore M. Hesburgh
Vernon E. Jordan

John Hay Kauffmann
Francis J. Lally
James A. Maye
E. Frederick Morrow
Aida Casanas O'Connor
Lewis B. Puller
Joan Vinson

END OF DOCUMENT Chapter 8

LINES PRINTED 00613

PAGES 0013

****

****

****

****

****

****

****

****

****

****