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The Departments of Justice and Defense, the Selective Service System, and the Presidential Clemency Board have the responsibilities for carrying out the Clemency Program for the return of Vietnam era draft evaders and military deserters. Findings/Conclusions: Out of an estimated 113,000 to 300,000 who were eligible, about 21,700 have participated with 13,750 assigned to alternate service, 6,052 receiving pardons, 911 denied clemency, and 100 cases pending. The Department of Justice dismissed cases not subject to prosecution, and assigned alternate service according to U.S. attorneys' assessments of social and economic circumstances. DOD used the military board of officers to determine the amount of alternative service for alleged deserters according to prescribed military criteria, generally excluding social and economic circumstances. At Selective Service, 2 years after the program began, 74% of those assigned alternate service had not shown up or had been dropped, 15% were in alternate service jobs or waiting for placement, and about 11% had completed alternate service. (HTW)

00609

# *REPORT TO THE CONGRESS*



*BY THE COMPTROLLER GENERAL  
OF THE UNITED STATES*

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## The Clemency Program Of 1974

This report describes the role and responsibilities of the Department of Justice, Department of Defense, and the Selective Service System in carrying out the Clemency Program of 1974 for the return of Vietnam era draft evaders and military deserters. The report also describes how each agency administered its responsibilities and observes that while several thousands elected to accept this opportunity to resolve their status, under provisions of the proclamation, many thousands did not.



COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON, D.C. 20548

B-183498

To the President of the Senate and the  
Speaker of the House of Representatives

In this report we have described the administration of the President's Clemency Program as carried out by the Department of Defense, Department of Justice, and the Selective Service System.

We made our review pursuant to the Budget and Accounting Act, 1921 (31 U.S.C. 53) and the Accounting and Auditing Act of 1950 (31 U.S.C. 67).

We are sending copies of this report to the President of the United States; the Director, Office of Management and Budget; the Secretary of Defense; the Secretaries of the Army, Navy, and Air Force; the Attorney General of the United States; and the Director, Selective Service System.

A handwritten signature in cursive script, reading "Luther B. Stant".

Comptroller General  
of the United States

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D I G E S T

The Vietnam era covered 8-1/2 years--from August 4, 1964, through March 28, 1973.

On September 16, 1974, the President issued a proclamation stating that "the status of thousands of our countrymen--convicted, charged, investigated, or still sought for violation of the Military Selective Service Act or of the Uniform Code of Military Justice--remains unresolved."

The proclamation offered these U.S. citizens an "opportunity to earn return to their country upon their agreement to a period of alternative service in the national interest, together with an acknowledgement of their allegiance to the country and its constitution." The Presidential Clemency Board, the Department of Justice, Department of Defense, and the Selective Service System were charged with responsibilities for the program.

So began the clemency program which terminated March 31, 1975.

Estimates of those eligible to participate in the clemency program have ranged from 113,000 to 300,000 or more. (See p. 4.) About 21,700 individuals participated as follows:

Assigned to alternate service	13,750
Received pardon	6,052
Denied clemency	911
Pending cases (not determined as of Feb. 9, 1976)	<u>1,000</u>
	<u>21,713</u> (See p. 5.)

This report examines the administration of the program by the:

--Department of Justice for alleged draft evaders. (See ch. 3.)

--Department of Defense for alleged military deserters. (See ch. 4.)

--Selective Service System for alternate service. (See ch. 5.)

Within Justice:

--The number of months of alternate service assigned to alleged draft evaders depended on the U.S. attorneys' assessment of mitigating social and economic circumstances. (See p. 11.)

In Defense:

--The military board of officers who determined the amount of alternate service for alleged deserters adhered to a prescribed set of military criteria, generally excluding social and economic circumstances, which yielded consistent results. (See p. 29.)

At Selective Service:

--Two years after the program began, 74 percent of those assigned alternate service either had never showed up or had been dropped; 15 percent were in alternate service jobs or waiting for placement; and about 11 percent had completed alternate service. (See p. 42.)

Defense and Selective Service commented on GAO's preliminary report. (See p. 3.) Both said that GAO should have discussed the operations of the Presidential Clemency Board. GAO was not able to gain access to the Board's records but has included the Board's summary report and minority views as appendixes to its report. Defense also said that the program should not be judged purely in statistical terms. GAO agreed but pointed out that statistics were used where quantification was descriptive of the events or activities they reported on. (See p. 31 and p. 46.)

## CHAPTER 1

### INTRODUCTION

#### THE PRESIDENT'S PROCLAMATION

On September 16, 1974, the President announced " A program for the return of Vietnam era draft evaders and military deserters." Included in his proclamation were the following paragraphs.

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

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

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

"Desertion in time of war is a major, serious offense, failure to respond to the country's call for duty is also a serious offense. Reconciliation among our people does not require that these acts be condoned. Yet, reconciliation calls for an act of mercy to bind the Nation's wounds and heal the scars of the divisiveness." 1/

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1/Full text of the proclamation is appendix I.



The Department of Defense, the Department of Justice, the Presidential Clemency Board, and the Selective Service System were charged with responsibilities for the program.

Two Executive orders (see app. II) accompanied the President's proclamation. The first established "The Presidential Clemency Board," and the second designated the Selective Service System to administer a program of "alternate service."

When the program was proclaimed and implementing activities became operative, we recognized the importance of providing an independent factual record of subsequent events. The program has nearly run its course and we are reporting some additional information and insight which might otherwise be lost.

### SCOPE

This report deals exclusively with programs and activities of the Department of Justice, the Department of Defense, and the Selective Service System. The Presidential Clemency Board has not been inadvertently omitted. A review of its program and activities was not possible because of a legal question concerning access to necessary records. Nevertheless, the executive summary of the Board's final report and the minority report are included as appendixes III and IV. This is not to be construed as our endorsement or concurrence with either of those reports.

To obtain the information for this report we interviewed and obtained data and opinions from many officials associated with the administration of the clemency program including:

- The Department of Defense.
- The Joint Clemency Processing Center.
- The Joint Alternate Service Board.
- The Department of Justice Headquarters.
- U.S. Attorney District Offices in eastern, western, and southern New York, New Jersey, northern and central California, southern Florida, and Massachusetts.
- Selective Service System Headquarters.

--Selective System offices in Ohio, Tennessee, Florida, Michigan, California, Illinois, Texas, New York City, New York State and North Carolina.

We also considered it essential to obtain information directly from those program participants who had dropped out of the alternate service program. A questionnaire was developed to elicit their views. It was designed to obtain (1) background data, (2) information on their employment status, and (3) reasons for quitting or refusing alternate service jobs. That questionnaire was mailed with the cooperation of the Selective Service and the responses to GAO were completely anonymous. Also the Selective Service at our request prepared data sheets on the alternate service activities of each participant active in the alternate service programs as of September 1, 1975. The data sheets did not disclose the identity of the participant.

Background information and data included in this report were also obtained from sources listed in appendix VI.

#### AGENCY COMMENTS

An opportunity to formally comment on our preliminary report was provided through the Office of the Counsel to the President to the Department of Justice, Department of Defense, and the Selective Service System. The Department of Defense and the Selective Service System responded and their comments are included or discussed, as appropriate, in the following chapters dealing with their respective activities.

## CHAPTER 2

### DEFINITION AND ORGANIZATION OF

#### THE CLEMENCY PROGRAM

##### DEFINITION

The President's Proclamation of September 16, 1974, "Announcing a Program for the Return of Vietnam Era Draft Evaders and Military Deserters," set in motion the clemency program. Under this program persons convicted, charged, investigated, or still sought for violations of the Military Selective Service Act or for unauthorized absences under the Uniform Code of Military Justice committed during the Vietnam era (Aug. 4, 1964, through March 28, 1973) were offered conditional clemency.

This program was the first since the Civil War to offer clemency to

--draft evaders prior to court action and completion of the judicial process and

--servicemen who allegedly deserted during a period of armed conflict.

The general stipulation of earned return through performance of a prescribed period of alternate service was a condition of final clemency. Alternate service was to be performed to "promote the national health, safety, or interest." The amount of alternate service time would not exceed 24 months and could be less depending upon consideration of individual mitigating circumstances.

Estimates of the total number of persons eligible to participate in the program have ranged from about 113,000 1/ to over 300,000 or more. 2/ There does not appear to us any way to resolve the difference in these estimates because, among other reasons, if individuals never registered for the draft and they were never discovered, they never became part of the statistics. However, we can

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1/Presidential Clemency Board Report to the President

2/Testimony before Subcommittees of the Senate and House Committees on the Judiciary

state with reasonable certainty that about 21,700 individuals actually participated in some elements of the program.

Assigned alternate service	13,750
Received pardons	6,052
Denied clemency	911
Pending cases (as of Feb. 9, 1976)	1,000
	<u>21,713</u>

The program provided the basic option to those who were eligible of whether to participate at all. For those who wanted to participate, the following were offered:

- Unconvicted draft evaders could complete a specified period of alternate service and thereby be relieved of possible prosecution or punishment for their offenses.
- Convicted draft evaders could be offered, depending upon individual circumstances, unconditional Presidential pardons or Presidential pardons conditioned upon completion of a prescribed period of alternate service.
- Service members classified by the military departments as deserters, but not convicted, could request immediate undesirable discharges, receive prescribed periods of alternate service, and upon the completion of alternate service obtain a new type of discharge--a clemency discharge. 1/
- Ex-service members with punitive discharges or undesirable discharges resulting from unauthorized absences could be offered, depending upon individual circumstances, unconditional Presidential pardons and clemency discharges, or Presidential pardons and clemency discharges conditioned upon completion of prescribed periods of alternate service. 1/

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1/No entitlement to benefits under Public Law 85-857 administered by the Veteran's Administration.

## ORGANIZATION

The President assigned responsibility for the Clemency Program to the following executive departments:

- Department of Justice for those parts of the program that pertained to unconvicted draft evaders.
- Department of Defense for those parts of the program that pertained to servicemen classified as deserters but not convicted.
- Selective Service System for establishment, implementation, and administration of the program for alternate service.

Completing the organizational framework for the program, the President established the Presidential Clemency Board to make clemency recommendations to him for convicted draft evaders and ex-servicemen holding punitive and undesirable discharges.

The President assigned the administration of three parts of the clemency program to existing Government agencies with previous responsibility for the types of cases involved and prior experience in handling programs similar to those outlined in the Presidential Proclamation. Those agencies accommodated the program within their own ways of operating. Since only general guidance was issued to lower echelons within each of the larger bureaucracies, substantial tolerances were allowed for individual interpretation of the intent of what was to be accomplished.

Within just a few days of the President's Proclamation, the organization for implementation of its provisions became operative and began to process cases. The process was initially scheduled to terminate on January 31, 1975. On January 30, 1975, the President extended the deadline to March 1, 1975. On February 28, 1975, the President extended the program again--this time until March 31, 1975. Official entrance into the program was stopped on that date.

## CHAPTER 3

### ADMINISTRATION BY THE

### DEPARTMENT OF JUSTICE

#### UNCONVICTED DRAFT EVADERS

At the outset of the program or shortly thereafter, the Department of Justice had on file 6,238 cases of alleged draft law violation. The definition of an alleged draft evader is:

An individual who allegedly unlawfully failed under the Military Selective Service Act or any rule or regulation promulgated thereunder, to register or register on time, to keep the local board informed of his address, to report for or submit to preinduction or induction examination, to report for or submit to induction itself, or to report for or submit to, or complete alternate service as a conscientious objector.

#### FILES CLEARED AND CASES DISMISSED

At the outset of the program it was unclear whether individuals not in jeopardy of prosecution because of insufficient evidence would be allowed to participate in the clemency program. On October 31, 1974, the Attorney General announced that "No individual will be required to perform alternate service if (the) Department does not believe the evidence against him is sufficient to justify draft evasion prosecution." On November 18, 1974, the Attorney General directed U.S. attorneys to review their files of unconvicted evaders eligible for the clemency program and dismiss indictments or terminate investigations in those instances when the cases lacked prosecutive merit.

In response to the Attorney General's direction, the U.S. attorneys and their staffs reviewed cases against alleged draft law violators. Department of Justice records show that 1,717 of 6,238 cases under indictment or investigation were dismissed or investigations were terminated.

Department of Justice statistics show a variation in the percent of cases dismissed or declined by various

U.S. attorney offices. For example, the Massachusetts office eliminated only 6 of the original 196 cases in its inventory while the Northern California office dismissed or declined 286 of its 315 cases. Six other offices eliminated more than half of the cases in their original caseload. Thirty-five offices, most with small caseloads, did not eliminate any cases.

We examined the declined and/or dismissed cases at eight offices, including Massachusetts and northern California. Figures for Massachusetts included only indictments and therefore were not comparable to other offices which included both indictments and cases under investigation. The Department of Justice figures for the northern California office showed 29 cases remaining after review. We were told by the Assistant U.S. Attorney in the northern California office who handled most of the draft cases, that there were 62 cases in the office inventory including 26 individuals enrolled in the clemency program.

We examined 1,170 case records in eight districts where U.S. Attorneys had reviewed and dismissed indictments or declined prosecution of alleged draft evaders. Numerous specific reasons were cited for dismissing or declining prosecution. The most common were:

- lack of evidence showing willful violation of the draft laws,
- subsequent compliance with the draft laws allegedly violated,
- Selective Service procedural or administrative errors,
- insufficient evidence, and
- intervening case law.

#### THE FINAL LIST

During hearings by the Senate Judiciary Committee's Subcommittee on Administrative Practice and Procedure on December 19, 1974, the subcommittee Chairman requested the Department of Justice to submit a final listing of all draft evaders the U.S. attorneys believed to be subject to prosecution. The intent of the list was to

provide persons unsure of their eligibility a means of inquiring about their status without fear of self-incrimination.

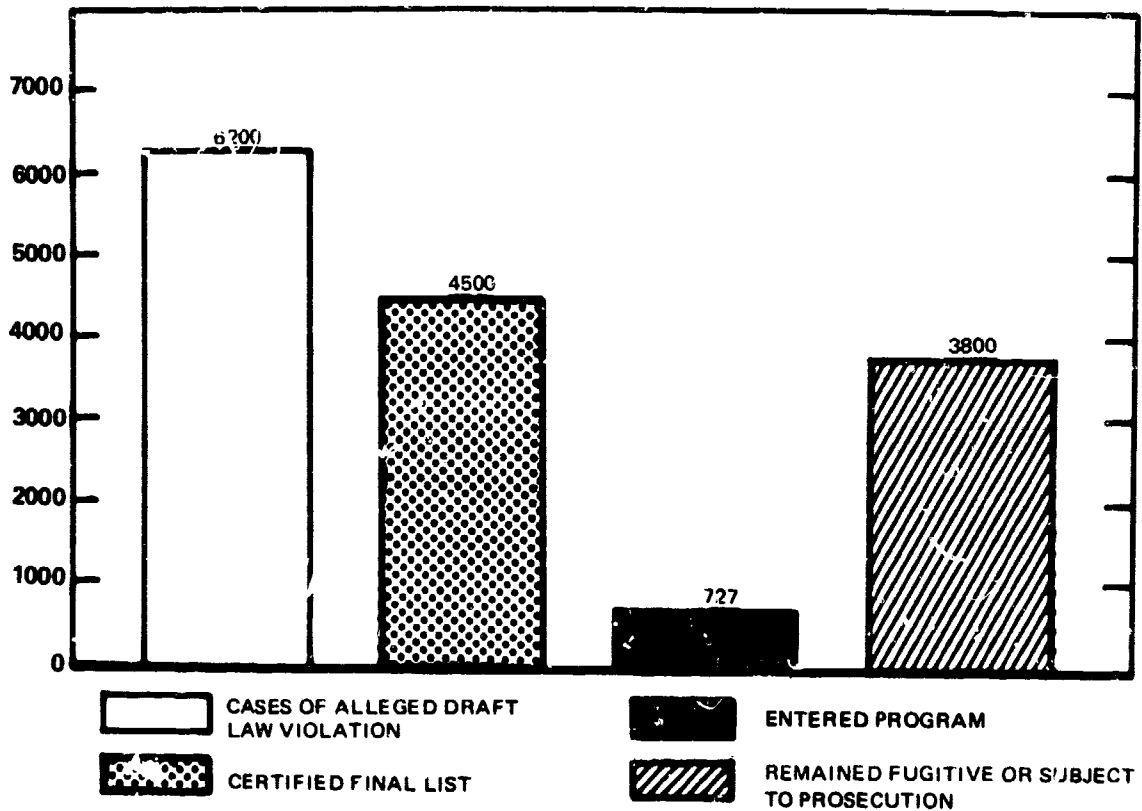
Five weeks later and more than 4 months after the program started, the Department of Justice furnished the subcommittee the names of about 4,500 individuals believed to be prosecutable for draft law violation and eligible for participation in the clemency program. The Attorney General certified the finality of that list stipulating that it did not cover late registrants or nonregistrants. The same list was also made available to various non-Government counseling services.

The Department of Justice estimated that no more than 100 individuals were relieved of prosecution because their names were erroneously omitted from the final list of eligibles. For example, one assistant U.S. attorney told us that he deliberately omitted two cases from the list of eligibles because at the time he was preparing the list one individual had expressed his intention to complete a clemency agreement and the other expressed his intention to go to trial. When the final list was published, exclusive of those names, the two individuals' indictments were dismissed. In another instance a page of names was inadvertently excluded during compilation and duplication of the list submitted by one of the U.S. attorney's offices. That resulted in 22 individuals being excluded from the certified final list.

The certified final list of eligible participants consisted of about 4,500 of an original total of more than 6,200. There were only about 727 individuals who finally did enter the President's program to earn clemency and at least 3,800 remained fugitives or subject to prosecution.

The situation is graphically portrayed on the next page.





### WHAT THE PARTICIPANTS WERE LIKE

From data available to us on the majority of these participants at the time they entered the program we found that:

- Ages ranged from 19 to 34 with the majority between 22 and 26;
- 23 percent of the participants had not completed high school;
- 29 percent were high school graduates;
- 33 percent had attended some college;
- 15 percent had at a minimum a college degree;

- Approximately 43 percent were married;
- 60 percent were unemployed; and
- Alleged violations covered the entire range of eligible offenses, with many individuals not identified to the Department of Justice before the beginning of the program being charged with late registration.

#### PHYSICALLY ENTERING THE PROGRAM

The cases of program applicants were processed by the Department of Justice's U.S. attorneys who first determined whether the applicants were eligible and then prescribed a period of alternate service.

Entering the clemency program required appearance before a U.S. attorney. At that point the usual procedure was to relieve eligible individuals from fugitive status and release them on their own recognizance with the understanding that they would return at a later date with counsel to execute agreements to perform alternate service. After they signed agreements the participants were allowed a number of days specified in their agreements to report to their States Selective Service Offices. During such periods of alternate service the Department of Justice deferred further prosecution.

#### THE ALTERNATE SERVICE DETERMINATION PROCESS

U.S. attorneys were guided in their administration of the program by policy statements from the Attorney General. This guidance was in the form of a basic document, Prosecutive Policy With Respect to Certain Persons Alleged to Have Violated Section 12 of the Military Selective Service Act (50 App. USC 462) Pursuant to the President's Proclamation, and followup telegrams with specific guidance. The basic instructions included the following guidance for assessing mitigating circumstances and prescribing the length of alternate service assigned.

"IV. The length of alternate service shall normally be 24 months, but the United States Attorney may reduce the term in light of the following circumstances:

- (1) whether the applicant, at the time he committed the acts allegedly constituting a violation of section 12 of the Military Selective Service Act, was erroneously convinced by himself or by others that he was not violating the law;
- (2) whether the applicant's immediate family is in desperate need of his personal presence for which no other substitute could be found, and such need was not of his own creation;
- (3) whether the applicant lacked sufficient mental capacity to appreciate the gravity of his actions; and
- (4) such other similar circumstances."

At the outset of the clemency program each U.S. attorney was directed to obtain Department of Justice approval before completing alternate service agreements. After a series of cases was received by the Department of Justice, a summary was distributed to each U.S. attorney for his guidance. That summary is quoted in its entirety below, except that the names of the U.S. attorneys and their districts have been deleted.

"Representative profiles on individuals whose term of service was mitigated from the 24-months

I. 24 Months

As indicated in our teletype to all United States Attorneys, 21 of the initial 26 agreements concluded involved evaders who were single, in their early or mid-20s and had no dependents, or financial problems.

II. 15-18 Months

a. Four of initial 26 agreements concluded involved individuals who were married, had dependents, and if required to serve the 24-month period, would undergo along with their dependents irreversible financial disasters.

b. In one case in the (district deleted), the individual was single, and appeared to be easily led. He was an alleged "Jesus Freak" and marijuana smoker. The fact that he had a generally weak character led (name deleted) to believe that 18 months service would be sufficient.

c. In one case from the (district deleted), the individual was single, had pleaded guilty to the offense in May 1973, but had not been sentenced when the President announced the Clemency Program, (name deleted) offered the defendant an opportunity to enter the Clemency Program, and agreed to permit him to withdraw plea, if he signed up. The defendant agreed, the plea was withdrawn and case is in a continued status. Since the individual had been sweating out his sentence for over a year, (name deleted) decided that 15 months service would be sufficient.

### III. 12 Months

a. Of initial 26 agreements, one was for 12 months. As you recall the individual had been in pre-trial confinement for 3 months because he could not raise bail. It was determined that three months pre-trial confinement should equal 12 months of alternate service.

b. In another case from the (district deleted), the individual had pleaded guilty in May 1973, and was awaiting sentence when the proclamation was announced. Since the individual had entered into a program which was directed towards the national welfare on his own, in hopes of getting a light sentence, (name deleted) considered this fact in permitting the individual to withdraw his plea, continue case and enter into an agreement for 12 months.

### IV. 10 Months

a. The (district deleted) case where the Assistant believed the facts were extremely close. However, the reasons given for mitigating the term of service to 10 months was (sic) because the evader was married, had two children, hoped to become a (name of city deleted) policeman, and in fact stated to the Assistant that he would have returned and entered the Army 3 years ago in lieu of trial if he had received the letter which the United States Attorney had sent him offering this opportunity.

### V. 6 Months

a. A case from the (district deleted) where the individual appeared to be a C. O. but had never established a prima facie case before his local board and never appealed its denial, (name deleted) said at the time he entered the agreement the defendant had become a full-fledged Mennoite. (sic)

b. This agreement which emanated out of the (district deleted), is one of (name deleted) cases (district deleted.) Accordingly (sic) to (name deleted), the case was close and the individual may still back out of agreement. It is a case which under our Clemency guidelines has mitigating factors."

We attempted to evaluate how consistently the U.S. attorneys applied criteria for assigning alternate service. To do so we reviewed 389 cases or about 54 percent of the total number of participants. Eight separate U.S. attorneys' offices handled these cases. Our evaluation was hampered because verbatim records of the proceedings were not required by the Department of Justice and not kept by the U.S. attorneys. In most of the cases we reviewed, the rationale for assigning less than the maximum of 24 months alternate service, including consideration of mitigating circumstances, was not precisely recorded. In cases where such notations did exist or where we could determine an apparent reason for the reduction we were able to discern that they involved U.S. attorneys' opinions about

- degree of willfulness to violate the law,
- potentially severe economic hardship in performing alternate service,
- personal circumstances involving mental and physical health, and
- prior work already performed in the public interest.

Based on discussions with the staffs at those eight offices and our review of the 389 available records, we found differing views resulted in differing applications of the criteria. For example:

- The U.S. attorney who advised us that all participants he processed were assigned 24 months. Although he had received the guidance shown above, he told us that he interpreted the length of alternate service to be 24 months with possible subsequent reduction for mitigating circumstances. A total of 92 persons was processed for clemency in that district. Each person was assigned 24 months alternate service. As of March 1, 1976, the length of alternate service had not been reduced for any of the participants.

- The Assistant U.S. attorney who stated that the most frequent reason he used to reduce the period of alternate service was hardship and, in his judgment, any man who was supporting a wife and family may have a degree of hardship in doing alternate service. Cases of individuals processed by some other offices received no reduction in the period of alternate service even though they were married.
- The U.S. attorney who said he believed the President intended true clemency and did not believe that the program meant to give the maximum period of alternate service to all participants. We noted that the participants processed in his district averaged lower periods of alternate service than any of the seven other districts we reviewed.
- The Assistant U.S. attorney who advised us that he assigned no one less than 12 months alternate service. His stated rationale was that he would have declined to prosecute the cases of those who, in his opinion, did not deserve 12 months or more alternate service.

The results of these differing views expressed in terms of alternate service periods follow:

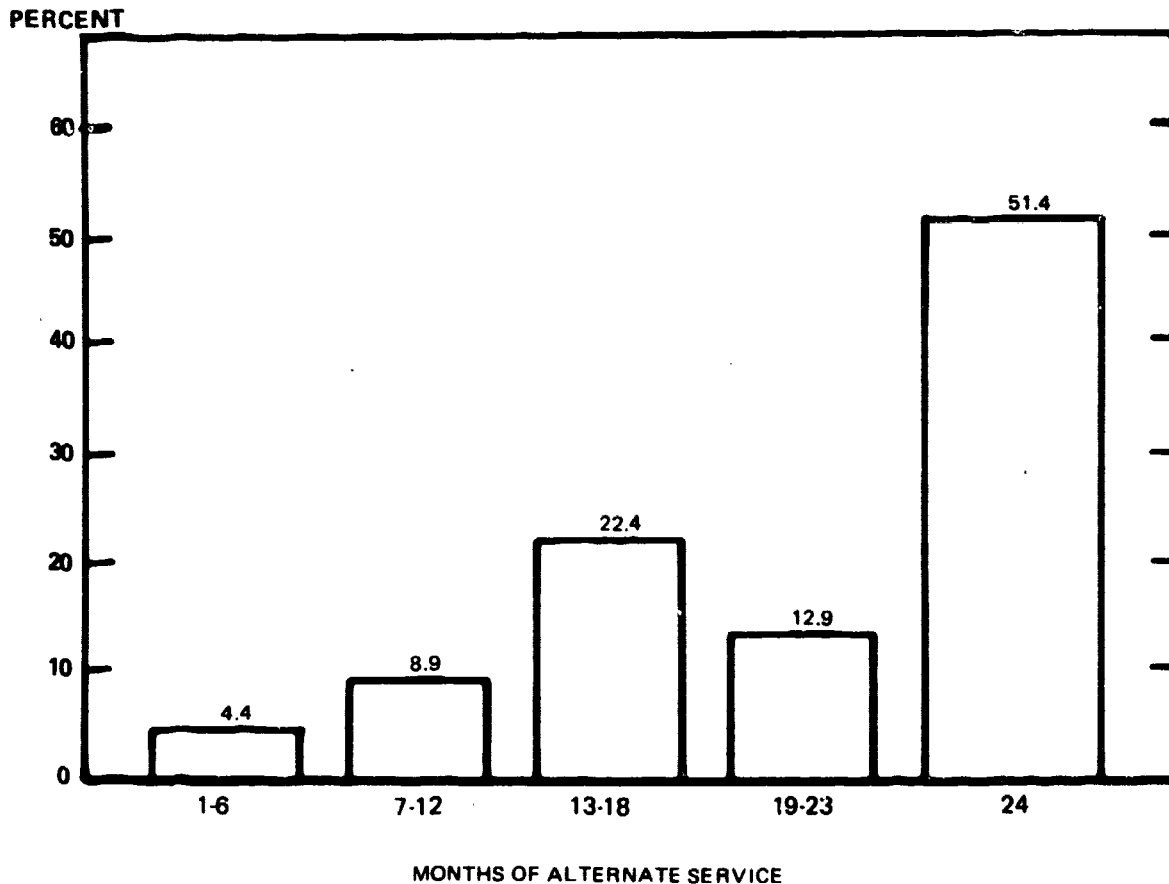
<u>Judicial district</u>	<u>Cases reviewed by GAO</u>	<u>Average period of alternate service (Months)</u>	<u>Assigned the maximum alternate service period</u>	
			<u>Number</u>	<u>Percent</u>
Eastern New York	34	11.7	2	6
Western New York	31	17.0	8	26
New Jersey	22	19.3	7	32
Massachusetts	50	17.0	12	24
Central California	105	19.0	22	21
Southern New York	88	24.0	88	100
Southern Florida	33	23.8	30	91
Northern California	26	22.4	22	85

The periods of alternate service assigned to participants by offices not included in our review also varied.

Statistics compiled by Department of Justice headquarters on 711 participants show the average period of alternate service as 19.8 months. Summarized below is data tabulated to show the range of alternate service.

<u>Months of alternate service assigned (months)</u>	<u>Participants</u>
1 to 6	31
7 to 12	63
13 to 18	159
19 to 23	92
24	366
	<u>711</u>

The same distribution is graphically presented below in percent terms.



## INCOMPLETED ALTERNATE SERVICE

As of September 1, 1975, the Selective Service notified the Department of Justice that 33 of its program participants were considered noncooperative by the Selective Service and were terminated from the program. As of March 1, 1976, 1 of these 33 individuals had been tried and found guilty and 7 had been relieved of further prosecution for their draft offenses for various reasons. The Department of Justice gave us the following statistics on the remaining 25.

<u>Status</u>	<u>Number</u>
Indicted case where defendant is believed to be a fugitive--bench warrant has been issued	14
Indicted case awaiting trial	2
Indicted case being reviewed pending further action	1
Indicted case--U.S. attorney has written defense counsel and is waiting for a response	2
Unindicted case being reviewed for presentment to a grand jury	3
Unindicted case referred to the FBI for investigation	1
Unindicted case--U.S. attorney has written defense counsel and is waiting for a response	1
Unindicted case where the U.S. attorney agreed to give the participant "One last chance" to fulfill his agreement	<u>1</u>
	<u>25</u>

It was not possible, based on information available in March 1976, to predict the ultimate disposition of the cases of all individuals who have not or may not complete their alternate service.



## CHAPTER 4

### ADMINISTRATION BY THE

### DEPARTMENT OF DEFENSE

#### UNCONVICTED DESERTERS

A deserter, as defined in this program, is a member of the Armed Forces classified as such by his service because of unauthorized absence. Three articles of the Uniform Code of Military Justice pertain to the categories of individuals within that definition. They are:

- Article 85 which covers service members who go or remain absent from assigned duty with the intent to remain away permanently.
- Article 86 which covers service members who are absent from an assigned place of duty at a time when prescribed to be there.
- Article 87 which covers service members who miss the movement of a ship, airplane, or unit with which they are required to move.

The Department of Defense estimated that about 10,000 servicemen were eligible for the program when the President issued his proclamation; over half ultimately participated. Of the 10,000 about 9,500 were fugitives and about 600 were under military control awaiting disposition of their cases. The distribution of eligibles and participants in military service was:

<u>Military service</u>	<u>Number eligible</u>	<u>Percent</u>	<u>Number of participants</u>	<u>Percent</u>
Army	7,827	77	4,266	77
Navy	625	6	205	4
Marine Corps	1,508	15	987	18
Air Force	<u>155</u>	<u>2</u>	<u>46</u>	<u>1</u>
Total	<u>10,115</u>	<u>100</u>	<u>5,504</u>	<u>100</u>

Although the above total (10,115) seems to be a precise number, we found it virtually impossible to verify its accuracy. This situation resulted partly from a very complex series of screenings for eligibles in an enormous number of records, numerous data refinements, and the condition of records available to the military services themselves. Regardless, about half of the estimated number of eligibles did report to the military services for consideration of their cases. Some clarification of this situation is provided in the brief of the Army Research Institute Research Problem Review 76-6 (app. V.)

#### WHAT THE PARTICIPANTS WERE LIKE

The average age of these participants at the time they entered the military service was 19. On the average these participants became alleged deserters at the age of 21. At the time of processing through the clemency center the average age of these alleged deserters was approximately 25. This indicates that on the average 4 years passed between the time the participants allegedly deserted or absented themselves and the time they entered the program.

Many of these participants' military service careers tended to be short since 71 percent served 18 months or less. The majority of these participants (64 percent) were not high school graduates, 26 percent were, 8 percent had some college, and 2 percent had graduated from college.

Approximately 60 percent of the participants in the program were married. The number of dependents was largely unknown.

Reasons given for desertion by Army participants were generally unassociated with the war. Approximately 50 percent stated they had left because of personal, family, or financial problems--the same reasons given by most deserters during the last two wars. Eighty-eight percent of all the Army participants claimed that they remained in the United States throughout their absence.

#### ORGANIZATION FOR ADMINISTRATION OF THE PROGRAM

##### Joint Clemency Processing Center

The President's proclamation assigned responsibility for the program to each of the military service Secretaries: The Secretary of Defense was to establish guidelines. The Joint

Clemency Processing Center was initially established at Camp Atterbury, Indiana. In mid-October 1974 the Center was relocated to Fort Benjamin Harrison, Indiana, with facilities to house, feed, and conduct the proceedings for applicants from all services.

### Joint Alternate Service Board

To conduct the proceedings for determining alternate service, the service Secretaries established the Joint Alternate Service Board at Fort Benjamin Harrison. The Board was composed of four officers--three colonels, and a Navy captain and six alternates of equal rank. Criteria for selection to the Board required that the member be (1) a War College graduate, (2) combat experienced, (3) a Vietnam veteran, and (4) available for assignment on short notice. The Air Force and Marine Corps members were additionally required to have personnel management experience.

The primary role of the Board was to evaluate each participant's case and to prescribe the period of alternate service. To form such judgments, the Board was guided by criteria promulgated by the Secretary of Defense.

### PHYSICALLY ENTERING THE PROGRAM

To enter the program, eligible alleged deserters had to return to military control. Each military service established a clemency information contact point where potential participants could inquire in person, by telephone, or mail as to their eligibility. Following such inquiries the military services sent personal letters to eligibles advising them of the nature of the program, processing procedures, assignment of alternate service, and their right to legal counsel. These letters also directed those wishing to participate to return to the nearest military activity or to Fort Benjamin Harrison for processing. If they reported to a military facility other than Fort Benjamin Harrison they were provided transportation to the Joint Clemency Processing Center at Fort Benjamin Harrison with the understanding that the Government was to be reimbursed for transportation costs.

In mid-December 1974, about 6 weeks before the originally scheduled end of the program, the services mailed over 7,500 letters to next of kin of known alleged military deserters. These letters advised the next of kin about the alleged deserters' eligibility and procedures for participation in

the program. About 4,500 of these letters were delivered; the balance was returned as undeliverable.

On September 20, 1974, the first 14 participants arrived at Fort Benjamin Harrison. They, and future arrivals in their turn, were assigned living quarters and began a processing cycle which included legal briefings, physical and psychological examinations, finance office checks, and similar administrative steps. As part of the processing cycle, available personnel records were assembled and prepared for the Joint Alternate Service Board's deliberations. The majority of the participants completed the processing cycle within 24 hours.

#### BEGINNING THE PROGRAM PROCESS-- THE RIGHT TO LEGAL COUNSEL

On September 17, 1974, the Secretary of Defense issued a memorandum implementing the program. Among other matters, the Secretary specified that each participant in the program should be "\* \* \* afforded an opportunity to consult counsel."

Each of the services established a process for legal counsel which included an initial session, either before or after participants arrived at the Processing Center, and a final session after the participants' alternate service period was determined by the Board.

Navy, Marine Corps, and Air Force participants were generally given individual, initial legal counsel. Their attorneys had all of their clients' available service records and were able to discuss merits of the service's case against their client, possible available defenses, and extenuating factors that could influence the outcome of a military court martial. The attorneys then gave professional judgments on the probable outcome of their cases should a court martial be elected rather than entrance into the program.

Initial Army legal counseling was provided in group sessions. Sometimes the groups had from 30 to 40 participants. The Army reported that this "\* \* \* placed restrictions which led to either inattention or a lack of responsiveness on the part of the absentee (participants)." In mid-October, after about 25 percent of the participants had been processed, the Army limited the group legal counseling to 15 participants.

The legal counseling provided for Army participants was characterized in the "After Action Report" prepared by the U.S. Army Administration Center, Fort Benjamin Harrison, Indiana, as follows:

"The enlisted absentees filed into the Legal Section and were divided into groups of 10 to 15. Once seated the doors were closed and the attorney and his clients were the only ones present. The initial legal briefing was an information briefing; a group session was permissible per LOI (Letter of instructions). However, individuals were offered the opportunity for one-on-one counseling and, if requested, an individual session was immediately arranged. All officers received individual initial briefings. The absentees were advised not to discuss their personal matters with anyone except their lawyers. The consequences of an Undesirable Discharge were fully explained to the absentees as well as the legal implications of all aspects of the program. The appeal system available for discharge was also explained. Additionally, each absentee was advised that he was entitled to consult a civilian attorney of his choice. Although not permitted in group counseling session, civilian attorneys could be present during individual counseling. Initial legal counseling took approximately two hours."

Official Army personnel records were not available for use during the initial group legal briefing. Specific cases involving participants in the group were not discussed. Precise data on the number of participants either requesting individual military legal counsel and a review of their records or those with civilian attorneys was not available. Based on review of a random selection of 226 cases we estimate that no more than 14 percent of the Army's 4,255 enlisted participants may have received individual legal counsel and a legal records review before the Joint Alternate Service Board considered their cases.

After mid-December each participants was required to sign a form documenting his refusal or acceptance of a review of his records by a defense lawyer. This form, which was included in each file, is shown below:

ELECTIONS OF MILITARY RIGHTS

DATE \_\_\_\_\_

I fully understand that I have the opportunity for military counsel to inspect my military records to see if any irregularities, inconsistencies or information that may be beneficial to my case exist or which may act as either a defense or in mitigation to any administrative or judicial actions which may be pursued at any time.

Having been advised by military counsel, I (do) (do not) desire that my military records be checked.

I hereby authorize my military counsel \_\_\_\_\_ to inspect any copy my military records, to include personnel, medical, and finance.

This authorization expires \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Signature

\_\_\_\_\_  
\_\_\_\_\_

NAME (Printed)

\_\_\_\_\_  
\_\_\_\_\_

SSAN

\_\_\_\_\_  
\_\_\_\_\_

Control Number

Legal counsel for applicants was also a requirement after the Board determined the period of alternate service. At that point all participants were individually counseled by Army attorneys. They were then advised of the (1) options, (2) consequences of accepting undesirable discharges, and (3) commitment to perform alternate service as a condition of earning the clemency discharge. During this process the advising attorney generally did not have the individual's records, but was provided a summary form. (See p. 31.)

The Army could not force participants to take advantage of available individual legal counseling. This position is supported by the recent Supreme Court decision in Faretta v. California, 422 U.S. 806 (1975), which held that a defendant in a state criminal trial had a constitutional right to proceed without counsel when he voluntarily and intelligently elected to do so. In Faretta, the court indicated that the defendant, who had a high school education and a general understanding of the ground rules to be used by the trial court but no understanding of the rules of evidence, could "knowingly and voluntarily" forego the benefits of counsel. A determination that any participant was incapable of making a "knowing" waiver of benefits of individual legal counsel is a delicate and difficult judgment.

We did not attempt to make the above judgment on any of the individual cases we reviewed. Instead, we reviewed Army statistical data which we believe might provide insight into this complex and subjective issue. The data showed that

--64 percent of the Army group who went through the process had not graduated from high school and

--39 percent of the Army group was classified in the 30th percentile or lower (category IV and V) on the Armed Forces Qualification Test. 1/

No claim is made per se that the above facts are conclusive evidence that there were groups of individuals lacking the capacity to make a knowing decision to waiver individual legal counsel. Equally, we cannot rule out the possibility that there were individuals in the non-high school graduate and/or mental category IV-V who did lack the requisite capacity to understand without legal assistance the many subtleties and intricacies of the Uniform Code of Military Justice, defenses to alleged violations, and possible extenuating circumstances.

The Chief of the Army Legal Counseling Section at the Joint Clemency Processing Center told us:

--an individual's chances of receiving a discharge under honorable conditions because of administrative or procedural error were remote unless he was represented by military or civilian counsel.

--many Army participants in the clemency program probably could have fared better had they requested individual military legal counsel or civilian counsel, and

--many participants did not take advantage of individual legal counsel because they did not want to spend the additional time inherent in a review of their records by the attorneys.

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1/The Armed Forces Qualification Test is the basic test for mental qualification for service in the military administered at the Armed Forces Entrance and Examination Stations. Scores on the Qualification Test result in classifications into five mental groups:

<u>Mental group</u>	<u>Percentile score</u>
I	93 to 100
II	65 to 92
III	31 to 64
IV	10 to 30
V	9 and below



## THE ALTERNATE SERVICE DETERMINATION PROCESS

The Secretary of Defense established the criteria to be used by the Joint Alternate Service Board in prescribing periods of alternate service. Starting with a given maximum period of 24 months, the Board could adjust the period downward after considering

- (1) length of satisfactory service completed prior to absence,
- (2) length of service in Southeast Asia in hostile fire zone,
- (3) awards and decorations received,
- (4) wounds incurred in combat,
- (5) nature of employment during the period of absence, and
- (6) such additional guidelines as experience indicated appropriate and which are promulgated by future memorandum.

No further guidance beyond the criteria above was issued by the Secretary. The Board set up its own internal procedures and operated autonomously.

The records of each participant were reviewed by personnel clerks (some files contained little paper while others were quite voluminous). The clerks prepared a single page form, duplicated on the following page, which summarized in precise order the criteria prescribed by the Secretary of Defense for consideration in reducing the period of alternate service.

JOINT ALTERNATE SERVICE BOARD

This is to certify that the Joint Alternate Service Board established by PRES PROC No. 4313 has reviewed the official records of the below listed individual. By a majority vote of the members, it was determined that this individual will be required to serve \_\_\_ months of alternate service.

-----  
Signature

NAME: \_\_\_\_\_  
RANK/GRADE/RATE SERVICE

SOCIAL SECURITY NUMBER: \_\_\_\_\_

DATE OF ABSENCE: \_\_\_\_\_  
FROM TO

DATE OF ENLISTMENT OR INDUCTION \_\_\_\_\_

TOTAL SATISFACTORY SERVICE PRIOR TO DATE OF ABSENCE \_\_\_\_\_

LENGTH OF SERVICE IN SEA UNDER HOSTILE FIRE CONDITIONS: \_\_\_\_\_

DECORATIONS, MEDALS, CITATIONS AND CAMPAIGN RIBBONS AWARDED:  
\_\_\_\_\_  
\_\_\_\_\_

WOUNDS INCURRED: \_\_\_\_\_

EMPLOYMENT AND CONDUCT DURING PERIOD OF UA: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

DESERTER: \_\_\_\_\_ AWOL: \_\_\_\_\_ MISSING MOVE \_\_\_\_\_ LAST DUTY ASSIGNMENT \_\_\_\_\_

REMARKS: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Next, the entire file and summary, along with a statement prepared by the participant and duplicated below, was provided to the Board for review and prescription of a period of alternate service.

STATEMENT TO BOARD FOR ALTERNATE SERVICE

I, \_\_\_\_\_, Social Security

Number, \_\_\_\_\_, submit the following matters to the alternate service board for consideration in their determination of the number of months of alternate service that I must serve. I voluntarily submit this statement with full knowledge and understanding that I am not obligated to make this statement or complete any part of this form. The information submitted in this statement is true and correct to the best of my knowledge.

1. REASON FOR ABSENCE FROM MILITARY SERVICE:
  
2. EMPLOYMENT DURING ABSENCE FROM MILITARY SERVICE:
  
3. OTHER MATTERS I WANT THE BOARD TO CONSIDER:

\_\_\_\_\_  
Signature

WITNESS, \_\_\_\_\_  
Captain, JAGC

DATE RMC: \_\_\_\_\_

Discharge Date: \_\_\_\_\_

CURRENT MAILING ADDRESS:

\_\_\_\_\_  
Street, Route

\_\_\_\_\_  
City, State, ZIP CODE

## THE BOARD'S CASE LOAD

Board members told us that time spent on individual cases varied substantially; there was no statistical norm or fixed time allotted for a case. The Board reported that they were in session up to 16 hours on some days. On 3 days the Board used its alternate members and convened as two Boards to handle the large caseloads.

On September 26, 1974, the Board reviewed the records and determined the period of alternate service for 186 participants. Even if the Board was in session 16 hours that day the average time available for deliberation by each Board member would have been about 5 minutes a case. On January 28, 1975, the Board reviewed the records and determined the period of alternate service for 135 cases. Again, if the Board would have been in session 16 hours the average time available for deliberation by each Board member would have been 7 minutes a case.

On 34 other occasions the Board averaged about 72 alternate service determinations a day. If, on these occasions, the Board would have been in session 16 hours each day the overall average time available for deliberation by each Board member would have been 13 minutes a case.

## HOW THE BOARD DETERMINED THE PERIOD OF ALTERNATE SERVICE

Using the Secretary of Defense criteria as guidelines, a set of records assembled into a file, a single page cover sheet summarizing the file, and generally a single page statement from the applicant, the Board proceeded to determine individual periods of alternate service.

In our interviews with three primary and two alternate Board members, we were told that no precise weight was given to any particular mitigating factor and that each Board member reviewed the files, evaluated all factors, and reached an independent conclusion on the period of alternate service to be assigned. Three Board members told us that, as a rule of thumb, the time spent in Vietnam was deducted month for month from the maximum 24 months of alternate service. If the participant had been wounded in Vietnam and evacuated before completing a 12-month tour he was generally credited for a full tour and his alternate service reduced by 12 months. One year of service time in non-Vietnam duty was equated to a reduction of

2 to 5 months, depending on the quality of service. Time in Vietnam beyond 12 months was credited about the same as other military service--2 to 5 months for each year.

We were also told that the nature of employment during absence was considered in very few cases and only when it was of the same type as alternate service.

In addition, two Board members told us that they considered the factors surrounding the participant's absence but that it was a subjective determination. Economic hardship or family circumstances were not considered in the determination. Board members told us that time spent in confinement or custody awaiting trial in connection with unauthorized absence was not considered as a mitigating factor to reduce the period of alternate service. About 600 participants were in military custody when the program began.

The following reasons for the participant's alleged desertion were cited in the Board's report to the service Secretaries.

- Personal hardship caused by death, illness, or disability in the deserter's immediate family.
- Financial problems arising from problems associated with military pay and support allotments for dependents.
- Immaturity and inability of alleged deserters to adjust to military life.
- Failure of leaders to help alleged deserters solve problems within military channels.
- Fear of punishment following short periods of AWOL.
- Fear of war.
- Conscientious objection to killing or taking human life.
- Political opposition to the Vietnam war.
- Problems associated with the use of alcohol and drugs.
- Medical problems.

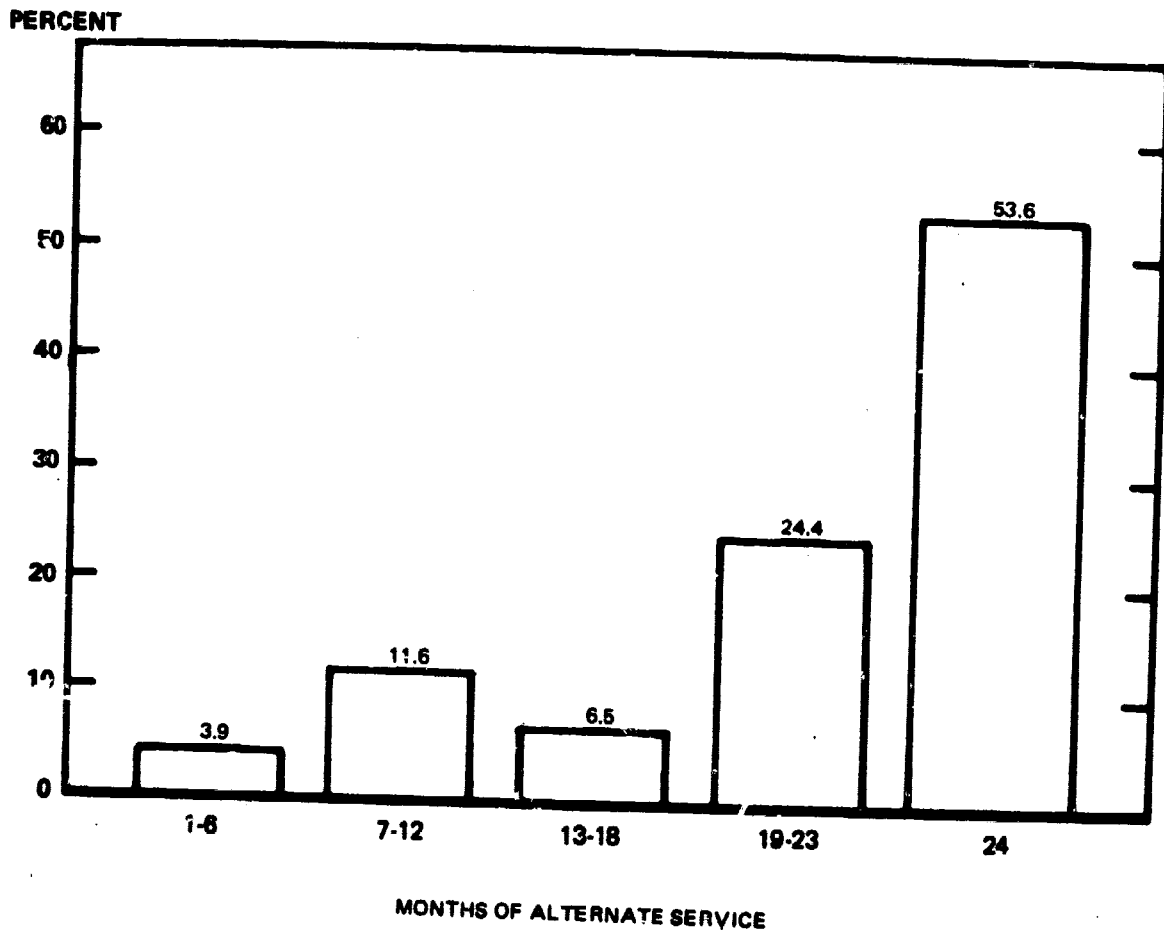
- Problem associated with the Selective Service System.
- Perceived unkept promises following enlistment or reenlistment.
- Perceived make-work tasks assigned to alleged deserter after returning from Vietnam with short periods of obligated service to go.

THE RESULTS

Alternate service assigned to program participants varied from 1 month to the 24 months maximum. Statistics compiled by the Joint Alternate Service Board on 5,479 program participants show the average period of alternate service as 20.5 months. Summarized below is additional data tabulated to show the range of alternate service.

<u>Months of alternate service assigned</u>	<u>Participants</u>
1 to 6	215
7 to 12	634
13 to 18	358
19 to 23	1,334
24	2,936
	<u>5,479</u>

The same distribution is graphically presented below in percent terms.



We discussed with various Board members how they reduced periods of alternate service in considering the prescribed criteria. Based on those discussions we applied to 226 randomly selected cases an arithmetic rule-of-thumb test in which we used precise amounts of time reduction in alternate service related to prescribed criteria. These were:

--A reduction of 2 months from the maximum for each year of military service exclusive of Vietnam service.

- A reduction of 1 month from the maximum for each month of service in Vietnam up to 12 months and a reduction of 2 months for each year beyond 12 months.
- A reduction of 12 months for a full Vietnam tour if the individual was evacuated from Vietnam due to wounds.

The results of this arithmetic rule-of-thumb test support our understanding of how the Board conducted its deliberations and used the prescribed set of criteria issued by the Secretary of Defense. In 92 percent of the cases our results were within 2 months of the alternate service period assigned by the Board.

SOME POTENTIALLY ELIGIBLE ARMY  
MEMBERS CHOSE ANOTHER ROUTE

As of March 31, 1975, 2,086 eligible individuals were processed by 12 designated Army personnel control facilities in the United States. Of that number

- 1,238 accepted the clemency program and were transferred to Fort Benjamin Harrison for processing,
- 7 were returned to military duty,
- 31 elected to walk out without resolving their cases,
- 38 had cases which required further deliberation, and
- 772 requested and were given undesirable discharges which resolved their fugitive status.

It is important to note that military regulations permit individuals charged with certain offense, including absence without leave, to request an administrative discharge for the good of the service instead of standing trial. Upon approval of such requests they are then, in fact, discharged. We were told by Air Force, Navy, and Marine Corps officials that they did not provide this option to individuals processed at their respective control facilities.



## AGENCY COMMENTS

The Department of Defense stated that this report provides incomplete insight into the operations of the clemency program because of omission of discussion about the operations of the Presidential Clemency Board which processed substantial numbers of program eligibles. The reason we did not discuss these matters is stated in the introduction to this report (See p. 2). Discussion and analysis of information external to our audit without verifying its accuracy would not, in our opinion, be appropriate or serve the informational purpose of this report. Subsequent discussion of our observations of the alternate service program includes program participants processed by the Presidential Clemency Board.

DCD states that there is an "unspoken premise" in the report that the program should be measured solely in quantitative terms and that positive numerical goals were not the principal objective of the program. Further, the program was deliberately designed as a voluntary program. According to DCD, to judge the program purely in statistical terms tends to provide "\* \* \* a distorted and misleading view."

We do not agree that the report contains an unspoken premise. It uses statistics where they are descriptive of activities or events requiring quantification. We agree that numerical goals were not the principal objective of the program. We have stated in the report that the program provided the basic option to those who were eligible of whether to participate at all and about half of the estimated number of eligibles did report for consideration of their cases.

We agree that the program should not be judged in purely statistical terms.

## CHAPTER 5

### THE ALTERNATE SERVICE PROGRAM

#### ALTERNATE SERVICE REQUIREMENT

Clemency for about 14,000 of the individuals who entered the program was conditioned on the performance of alternate service for an assigned period of time. The Presidential Proclamation stipulated that "\* \* \* alternate service shall promote the national health, safety or interest." The alternate service called for in the Proclamation was similar to the type described in section 6(j) of the Military Selective Service Act which prescribes that persons who are conscientiously opposed to participation in military service will, in lieu of induction, perform civilian work contributing to the maintenance of national health, safety, or interest.

#### DIFFERENT CONSEQUENCES FOR NOT COMPLETING ALTERNATE SERVICE

Alternate service was voluntary. It was the individual's responsibility to fulfill his commitment and a system to help him do so was provided. The consequences for not doing so have legal implications for some and none for others. For example:

- Alleged deserters who went through the Joint Alternate Service Board process were given undesirable discharges which ended their fugitive status. For them there were no legal consequences for failure to complete alternate service.
- Alleged draft evaders processed by the Department of Justice had their prosecution deferred contingent upon completion of alternate service. For them failure to do so carried with it the legal consequence of possible prosecution for alleged draft offenses.
- Ex-servicemembers and convicted evaders processed by the Presidential Clemency Board faced no legal consequences for failure to complete alternate service.

## DIFFERENT OUTCOMES AFTER COMPLETING ALTERNATE SERVICE

The value of completing alternate service is a judgment to be made by the individual. Technically, the outcome was that:

- Alleged deserters who successfully completed their alternate service had their undesirable discharges replaced by clemency discharges.
- Alleged evaders who successfully completed their alternate service had the threat of prosecution dropped and avoided the possibility of imprisonment and the stigma of a felony conviction.
- Convicted evaders who completed their alternate service received Presidential pardons which relieved any continuing impairment of Federal civil rights and in most states restored rights lost by their felony convictions. Pardons do not expunge or seal the records of their convictions.
- Ex-service members who completed alternate service received clemency discharges and Presidential pardons.

An additional outcome for those successfully completing the program, as expressed by the Department of Defense, was the " \* \* \* intangible, highly individualized, and unquantifiable satisfaction of fulfilling their obligations to their country."

## ADMINISTRATION OF ALTERNATE SERVICE

Concurrent with the President's Proclamation of September 16, 1974, Executive Order 11804 designated the Director of Selective Service to administer the alternate service program for all clemency program participants.

At the outset of the program, the Selective Service System had more than 650 offices as a network for administering the program. State Directors were assigned responsibility for day-to-day supervision of alternate service and were responsible for assisting in placing participants in acceptable jobs.

Selective Service planning contemplated that starting in October 1, 1976, the regular Selective Service System would employ no more than 100 full-time employees. However, recognizing the requirement to continue supervision of the alternate service program, the budget request for fiscal year 1977 included \$800,000 for salaries for additional personnel. Selective Service advised us that for nearly a year after October 1, 1976, substantial numbers of alternate service participants should still be in the program.

#### CRITERIA FOR ALTERNATE SERVICE JOBS

The Presidential Proclamation and Selective Service regulations established criteria for acceptable jobs. Each State Director was responsible for applying these criteria in his State.

In general, Federal, State, local government, or non-profit organizations were considered eligible employers by Selective Service. Selective Service regulations define eligible employer as:

- The Government, a State, territory, or possession of the United States or a political subdivision, or the District of Columbia.
- An organization, association, or corporation which is primarily engaged either in a charitable activity conducted for the benefit of the general public or in carrying out a program for the improvement of the public health or welfare including educational and scientific activities in support thereof. The activity or program should be a nonprofit one and not primarily for the benefit of the member of such organizations, associations, or corporations and it should not increase the membership thereof.

In addition, Selective Service regulations require that specific jobs offered by employers must meet the following criteria.

- National health, safety, or interest--The job must promote the national health, safety, or interest.
- Noninterference with the competitive labor market--The participant cannot be assigned to a job for which there are more numerous qualified applicants who are not participants than positions available.

--Compensation--The compensation will provide a standard of living to the participant reasonably comparable to the standard of living he would have enjoyed had he gone into military service. This criteria can be waived by the State Director under certain conditions.

--Skill and talent utilization--Where possible, the participant will be permitted to utilize his special skills.

### TYPES OF EMPLOYERS AND JOBS

As of September 1, 1975, about a year after the clemency program started functioning, over 1,800 participants were working in alternate service jobs. 1/ Below is data furnished by Selective Service.

<u>Employers</u>	<u>Number of participants employed</u>	
Federal (note a)	63	
State	246	
Local government	<u>635</u>	
Total		944
Nonprofit organizations		855
For profit organizations		57
Total		<u>1,856</u>

(a) Included in the number of Federal employees are 28 individuals paid under the Comprehensive Employment and Training Act administered by the Department of Labor. An additional 435 individuals included in other categories in the Selective Service data are also working in the Act's funded positions.

### Government jobs

The jobs held by participants working for government agencies varied widely. Some examples are:

#### Federal

--crop inspector, Department of Agriculture;

--laborer, Forestry aide;

1/By early February 1976, this number had reached more than 3,400.

--draftsman, Veterans Administration; and

--secretary, Army recruiting

### State

--gardener

--highway workers,

--stock room clerk, and

--park worker

### Local

--janitor,

--watchman - receptionist,

--street cleaner, and

--laborer, city golf course

### Nonprofit organization jobs

The jobs held by participants working for nonprofit organizations also varied widely; however, about 44 percent were employed by health related organizations in jobs such as

--child care worker for emotionally disturbed children,

--laundry and kitchen help,

--technicians,

--nurses aids,

--orderlies,

--clerical workers, and

--janitors

Some examples of other jobs in nonprofit organizations are

--truck drivers, Goodwill industries and Salvation Army;

- organist and music teacher;
- counselor for drug abuse prevention; and
- minister

Profitmaking organization jobs

Based on a strict interpretation of Selective Service regulations, profitmaking organizations were not eligible employers for alternate service. Nevertheless, Selective Service data indicated that 57 participants were employed in jobs approved by Selective Service even though the employers were profitmaking firms. These included:

<u>Type business</u>	<u>Number of participants employed</u>
Hospitals and nursing homes	24
Agriculture	10
Construction	8
Ambulance services	3
Other	12

The participants working with profitmaking organizations were in jobs approved by Selective Service offices in 15 States. The jobs performed included

- orderlies, kitchen workers, and maintenance workers with hospitals and nursing homes operated for profit;
- equipment operators and other farm workers;
- equipment operators with paving contractors doing road work;
- tree trimmer with a utility company; and
- construction laborer with a private firm building a hospital.

Volunteer jobs

There were 100 participants in 22 States performing alternate service as volunteers with governmental agencies and nonprofit organizations.

Selective Service's operational instructions at the outset of the clemency program neither encouraged nor prohibited volunteer work. In October 1975, the instructions were changed to specify that full-time volunteer work was acceptable as alternate service. Those instructions also provided that participants assigned 6 months' or less alternate service could work part time, at least 20 hours a week, as volunteers when they agreed to extend their total alternate service period proportionately. This permitted a participant with 3 months alternate service, for example, to work part time as a volunteer for 6 months and earn clemency.

Volunteer work by participants included a wide range of jobs such as:

Clerical office work	Public relations
Volunteer firemen	Chemical analyst
Counselors	Recreation worker
Theatrical technician	Assistant manager of Little League baseball club
Refugee work/social service	Librarian
Assistant teacher of the Tibetan language	Red Cross volunteer
Spanish interpreter	Radio programmer
Park worker	Research assistant at a university
Security guard	Cafeteria/store worker at a religious organization
Civil Defense volunteer	Assistant to Athletic Director with religious organization
Police patrolman	College coaching assistant

#### PROGRAM PARTICIPATION

By September 2, 1975, approximately a year after the program started, Selective Service statistics showed that 7,272 eligibles had been referred to Selective Service offices. In July 1976 the last eligibles referred by the Office of the Pardon Attorney increased the total number referred to 13,272. The statistics for September 20, 1976, 2 years after the program began, continue to show total referrals as 13,272. Here is what happened to them.



	<u>As of Sept. 2, 1975</u>		<u>As of Sept. 20, 1976</u>	
	<u>Number</u>	<u>Percent</u>	<u>Number</u>	<u>Percent</u>
Never reported to Selected Service Office	1,862	25.6	4,806	36.2
Dropped from the program without completing alternate service	2,165	24.8	5,082	38.3
In or awaiting alternate service jobs	3,147	43.3	2,009	15.1
Completed alternate service requirements	<u>98</u>	<u>1.3</u>	<u>1,375</u>	<u>10.4</u>
	7,272	100.0	13,272 <sup>a/</sup>	100.0

a/Source: Selective Service System data as of October 29, 1976. Varies with compilations derived from reports of the Presidents Clemency Board, Department of Justice, and Department of Defense which totaled about 13,750.

#### WHY THEY DROPPED OUT

When the statistics for the first year of the program became available, we tried to determine:

--why about 1,900 eligible participants never reported to Selective Service offices for alternate service and

--why about 2,200 participants already had been dropped from the program without completing their alternate service.

Virtually no feasible means existed to directly determine why individuals never showed up at Selective Service offices after taking time and expending effort to complete the initial entrance requirements. We know that the majority were unconvicted deserters who had already been relieved of their fugitive status after reporting to Fort Benjamin Harrison and receiving undesirable discharges.

We were able to gain some insight into why individuals who had actually reported to Selective Service for alternate service jobs did not complete their alternate service. A questionnaire was mailed to almost 2,600 participants who had reported for alternate service but who had dropped out and were terminated from the program before completion. Responses were received from about 22 percent of the addresses.

A variety of reasons for quitting or refusing acceptable alternate service jobs were offered. Low pay was most frequently cited with many responses including supplementary information. For example the respondent:

--With 4 dependents who claimed he was earning \$175 a week when he entered the clemency program. His wife was expecting a child and he is buying a house and car. He claimed the job which would have been acceptable to Selective Service paid \$2 an hour and was 35 miles away from his home.

--Who claimed he was earning \$140 a week when he entered the clemency program and that with a family of eight he could not accept a lower paying alternate service job.

--Who claimed that he would go \$300 a month in debt for each of the 23 months he was supposed to serve.

At 9 of the 10 State or city Selective Service Headquarters visited, officials reinforced the indication that low pay was a major reason for participants refusing to work in alternate service jobs. Selective Service officials at five of those headquarters expressed the opinion that participants could receive more money from welfare or unemployment compensation than from most available alternate service jobs.

Thirty-seven percent of those indicating reasons for quitting or refusing acceptable jobs cited distance to the job. This reason appeared to involve two problems. One was the relocation sometimes necessary for participants to take jobs acceptable to Selective Service. The relocation was necessary for individuals living in areas where employment simply was not available. The other problem was commuting distance to work. For example, the respondent who claimed that

- the Selective Service expected him to move 360 miles from his home to work in an acceptable job,
- the job offer he received was 150 miles from home,
- his only job referrals were to hospitals 20 and 40 miles from his home, and
- he was fired from an acceptable job because it was 20 miles from his home and he lacked transportation to get there.

Selective Service officials in five offices cited distance to the job was a major factor in participants dropping out. For example, in one State we were advised that participants in some rural parts of that State could not possibly obtain alternate service jobs without relocating because of high unemployment rates.

Other reasons, less frequently cited by respondents to our questionnaire were:

- Did not like that kind of work.
- Job was below ability.
- Did not get along with supervisors or fellow workers.

Several State Selective Service officials told us that other factors hindering placements for alternate service jobs, included

- lack of employable skills (five offices),
- poor physical appearance of participants to the extent that it impedes employability (six offices),
- high unemployment rates (five offices),
- personal problems of the participants (four offices),
- poor attitudes toward alternate service (four offices),
- poor attitudes toward work (three offices), and
- criminal records of participants (two offices).

Opinions as to satisfaction with Selective Service efforts to help find alternate service jobs were also solicited in our questionnaire. The question and answers follow:

Question

"How satisfied are you with Selective Service efforts to help you find an Alternate Service job?"

Answers

Very satisfied	13%	Somewhat dissatisfied	22%
Somewhat satisfied	15%	Very dissatisfied	50%

WHO GOT OUT AND WHO STAYED IN

As of September 1, 1975, about 57 percent of the alleged deserters failed to complete their alternate service and had been terminated from the program. These deserters had been granted an undesirable discharge. In comparison, only 5 percent of the alleged draft evaders participating in the alternate service program failed to complete it, and were terminated as of September 1, 1975. The alleged draft evaders who failed to complete alternate service were subject to resumed prosecution for their alleged offenses.

A comparison of the data we obtained on those who were active in the program with data from our questionnaire is statistically shown on the following page:

	<u>Dropouts</u> <u>(percentages)</u>	<u>Participants</u>
Employed at entry into program	72	37
Weekly salary of those employed at entrance into program:		
More than \$150	66	46
Less than \$150	34	54
Number of jobs referred to by Selective Service		
None	16	10
one to three	61	68
four or more	23	22
Age:		
Under 25 years	29	31
25 years to 30 years	64	63
Over 30 years	7	6
Education:		
Non-high school graduate	58	45
High school graduate	25	34
Post high school education	17	21
Marital status:		
Single, divorced, or separated	38	43
Married	62	57
Dependents:		
two or less	43	49
three or more	57	51
Months of alternate service to be performed:		
24 months	54	50
18 to 23 months	25	25
1 to 17 months	21	25

## AGENCY COMMENTS

The Director of Selective Service provided important updated statistics which have been incorporated where appropriate in this report. No other comments were offered about the specific matters concerning the Selective Service System activities discussed in this chapter.

A further comment was offered that this report lacks presentation and analysis of the policy, regulations, problems and statistics of the Presidential Clemency Board and "\* \* \* therefore leaves too much of the program to the imagination of the reader." The view is offered that the data contained in the Presidential Clemency Board's executive summary and minority report (app. III and IV) be analyzed in the context of the entire program and incorporated in this report, thereby "\* \* \* becoming supportive of the conclusions."

The reason we did not audit the activities and results of the Presidential Clemency Board is explained in the introduction to this report (See p. 2.) Analyzing information external to our audit without verifying its accuracy would not, in our opinion, be appropriate or serve the informational purpose of this report. This report therefore confines itself to the responsibilities and processes of the agencies involved in the program which we were able to audit or observe.

## CHAPTER 6

### SUMMARY

The Vietnam era encompassed the 8 1/2 year period from August 4, 1964, through March 28, 1973. The era ended without resolving the status of thousands of Americans who remained convicted, charged, investigated, or still sought for draft law violations of offenses related to unauthorized absences during military service.

On September 16, 1974, the President issued his proclamation announcing the program which among other matters, stated:

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

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

In this report we have discussed that there were thousands whose status was unresolved at the time of the proclamation. We have also discussed that several thousands elected to take the opportunity to resolve their status under the provisions of the proclamation while many thousands did not.

This report also describes the roles and responsibilities of the Department of Justice, Department of Defense, and Selective Service System in carrying out the program. It describes the processes used by each of those agencies and the outcomes.

The program has nearly run its course. This report is therefore intended to add to the historical record some additional information that may be useful in future considerations.



## PRESIDENTIAL DOCUMENTS

## TITLE 3--The President

## PROCLAMATION 4313

Announcing a Program for the

Return of Vietnam Era Draft

Evaders and Military Deserters

By the President of the United States of America

## A Proclamation

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

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

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

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

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

FEDERAL REGISTER, VOL. 39, NO. 181--TUESDAY, SEPTEMBER 17, 1974

## THE PRESIDENT

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

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

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

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

(iii) satisfactorily completes such service.

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

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

FEDERAL REGISTER, VOL. 39, NO. 181--TUESDAY, SEPTEMBER, 17, 1974

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

2. Military Deserters--A member of the armed forces who has been administratively classified as a deserter by reason of unauthorized absence and whose absence commenced during the period from August 4, 1964 to March 28, 1973, inclusive, will be relieved of prosecution and punishment under Articles 85, 86 and 87 of the Uniform Code of Military Justice for such absence and for offenses directly related thereto if before January 31, 1975 he takes an oath of allegiance to the United States and executes an agreement with the Secretary of the Military Department from which he absented himself or for members of the Coast Guard, with the Secretary of Transportation, pledging to fulfill a period of alternate service under the auspices of the Director of Selective Service. The alternate service shall promote the national health, safety, or interest.

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

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

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

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

FEDERAL REGISTER, VOL. 39, NO. 181--TUESDAY, SEPTEMBER 17, 1974

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

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

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

/S/ Gerald R. Ford

[FR Doc.74-21742 Filed 9-16-74;12:47 pm]

## EXECUTIVE ORDER

11803  
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ESTABLISHING A CLEMENCY BOARD TO REVIEW CERTAIN CONVICTIONS OF PERSONS UNDER SECTION 12 OR 6(j) OF THE MILITARY SELECTIVE SERVICE ACT AND CERTAIN DISCHARGES ISSUED BECAUSE OF, AND CERTAIN CONVICTIONS FOR, VIOLATIONS OF ARTICLE 85, 86 OR 87 OF THE UNIFORM CODE OF MILITARY JUSTICE AND TO MAKE RECOMMENDATIONS FOR EXECUTIVE CLEMENCY WITH RESPECT THERETO

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

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

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

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

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

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

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

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

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

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

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



THE WHITE HOUSE,

September 16, 1974.

## EXECUTIVE ORDER

11804  
-----DELEGATION OF CERTAIN FUNCTIONS VESTED IN THE  
PRESIDENT TO THE DIRECTOR OF SELECTIVE SERVICE

By virtue of the authority vested in me as President of the United States, pursuant to my powers under Article II, Sections 1, 2 and 3 of the Constitution, and under Section 301 of Title 3 of the United States Code, it is hereby ordered as follows:

Section 1. The Director of Selective Service is designated and empowered, without the approval, ratification or other action of the President, under such regulations as he may prescribe, to establish, implement, and administer the program of alternate service authorized in the Proclamation announcing a program for the return of Vietnam era draft evaders and military deserters.

Sec. 2. Departments and agencies in the Executive branch shall, upon the request of the Director of Selective Service, cooperate and assist in the implementation or administration of the Director's duties under this Order, to the extent permitted by law.



THE WHITE HOUSE,

September 16, 1974.



## EXECUTIVE SUMMARY

### I. Introduction

In the years before President Ford assumed office, public opinion was sharply divided over what government policy should be toward those who had committed Vietnam-era draft violations and military absence offenses. Many believed that these actions could not be forgiven in light of the sacrifices endured by others during the war. Yet many citizens believed that only unconditional amnesty was appropriate for offenders who had acted in good conscience to oppose a war they believed wrong and wasteful.

Something had to be done to bring Americans together again. The rancor that had divided the country during the Vietnam War still sapped its spirit and strength. The national interest required that Americans put aside their strong personal feelings. Six weeks after taking office, President Ford announced a program of clemency, offering forgiveness and reconciliation to Vietnam-era draft and military absence offenders.

### 2. The President's Clemency Program

In his Proclamation of September 16, 1974, President Ford created a program of conditional clemency for roughly 13,000 civilians and 100,000 servicemen who had committed draft or military absence offenses between the adoption of the Gulf of Tonkin Resolution (August 4, 1964) and the day the last American combatant left Vietnam (March 28, 1973). He authorized the Departments of Justice and Defense, respectively, to review applications from the 4,522 draft offenders and the 10,115 undischarged servicemen still at large. He created the Presidential Clemency Board to consider applications from the 8,700 convicted and punished draft offenders and the estimated 90,000 servicemen given bad discharges for absence offenses. He gave all eligible persons 4-1/2 months (later extended to 6-1/2 months) to apply. He promised that their cases would be reviewed individually. He further indicated that applicants would be asked to earn clemency where appropriate by performing up to

24 months of alternative service in the national interest, under the supervision of the Selective Service System.

Under the Justice Department program, unconvicted draft offenders would have their prosecutions dropped, enabling them to avoid imprisonment and the stigma of felony convictions. Under the Defense Department program, fugitive servicemen were offered immediate Undesirable Discharges as permanent ends to their fugitive status, similarly enabling them to avoid imprisonment and the stigma of Bad Conduct or Dishonorable Discharges. They were also offered the chance to earn a Clemency Discharge. Under the Clemency Board program, convicted draft offenders were offered full and unconditional Presidential pardons for their draft offenses. Former servicemen who had received bad discharges were offered Clemency Discharges and full Presidential pardons for their absence offenses.

By granting pardons to convicted or discharged offenders, President Ford was exercising the most potent constitutional form of executive clemency available to him. The Presidential pardon connotes official forgiveness for designated draft or military offenses, restoring all Federal civil rights lost as a result of those specific offenses. Likewise, a full and unconditional pardon indicates that government agencies should disregard all pardoned offenses in any subsequent actions they take involving clemency recipients.

By directing that the military services upgrade bad discharges, substituting Clemency Discharges in their place, the President wanted to insure equal employment opportunities for those who received clemency. As a "neutral" discharge, the Clemency Discharge appears to be working: a recent survey of large national employers and local (Pennsylvania) employers found that they view it as almost identical to a General Discharge under honorable conditions and much better than an Undesirable Discharge under other-than-honorable conditions.

A Clemency Discharge does not confer veterans' benefits, but it leaves an individual with the same appeal rights that were available to him before. Indeed, the receipt of a Presidential pardon and a Clemency Discharge should improve an individual's chances for a further discharge upgrade.

Altogether, 21,729 eligible persons applied for clemency.

TABLE 1: PERSONS ELIGIBLE FOR THE  
PRESIDENT'S CLEMENCY PROGRAM

<u>Agency</u>	<u>Applicants</u>	<u>Number Eligible</u>	<u>Number Applying</u>	<u>Percent Applying</u>
Defense	Fugitive AWOL offenders	10,115	5,555	55%
Justice	Unconvicted draft offenders	4,522	706	16%
P.C.B.	Discharged AWOL offenders	90,000	13,589	15%
P.C.B.	Convicted draft offenders	8,700	1,879	22%
<b>TOTAL</b>		<b>113,337</b>	<b>21,729</b>	<b>19%</b>

Through the first week in January, the Clemency Board had received only 850 applications, with the initial January 31 deadline just a few weeks away. At that time, the public did not realize that the program included not only fugitives but also punished offenders--including servicemen who had served in Vietnam. Very few people realized that the President's program included the following sort of individual:

(Case 1)                      While a medic in Vietnam, this military applicant (an American Indian) received the Bronze Star for heroism because of his actions during a night sweep operation. When his platoon came under intense enemy fire, he moved through a minefield under a hail of fire to aid his wounded comrades. While in Vietnam, he was made Squad Leader of nine men, seven of whom (including himself) were wounded in action. After returning to the United States, he experienced post-combat psychiatric problems. He went AWOL several times to seek psychiatric treatment. He received a bad discharge for his absences.

Because of this widespread public misunderstanding, we began public service announcements on thousands of radio and television stations, held meetings and press conferences at over two dozen cities, met with thousands of veterans' counselors throughout the country, and circulated bulletins to agencies in direct contact with eligible persons--such as Veterans' Administration offices, employment offices, post offices, and prisons. Given a limited information budget of \$24,000, the results were dramatic. During the rest of January, we received over 4,000 new applications. Because of this response, the President extended the application deadline another month. We received 6,000 in February and, after a final extension, another 10,000 before the March 31st final deadline--for a total of about 21,500, of whom 15,468 turned out to be eligible. This increase in applications was directly attributable to our public

information campaign. By asking applicants when they learned they were eligible, we discovered that over 95% did not realize they could apply until after the January 8 start of the campaign; ninety percent applied within days or even hours of their discovery that they were eligible. The Departments of Defense and Justice did not experience a similar increase in applications, because it was already widely understood that fugitive draft and military absence (AWOL) offenders could apply for clemency.

Despite our efforts, public understanding of the program has not changed appreciably. An August 1975 Gallup Poll found that only 15% of the American people understood that convicted draft offenders and discharged AWOL offenders could also apply for clemency. Virtually the same percentage -- 16% -- of eligible persons in those categories actually did apply. We are convinced that most of the remainder still do not know that they were eligible for the program. Others may not have applied because their lives are settled, with their draft offense convictions or bad discharges of no present consequence to them. We believe that relatively few failed to apply to the Clemency Board because of their opposition to the President's program.

The press and the public were, and indeed still are, preoccupied with anti-war fugitives who fled to Canada. However, we found that only six percent of our civilian applicants and two percent of our military applicants had ever gone to Canada. Virtually all of them subsequently returned to the United States long before they applied for clemency. Of the 15,468 Clemency Board applicants, less than 400 (3%) ever went to Canada. This stands in marked contrast to the 3,700 (24%) who were Vietnam veterans. In recent years, many estimates have been made of the number of fugitive draft and AWOL offenders in Canada, usually on the basis of very limited data. Based on our own data and our understanding of applicants to the Justice and Defense programs, we estimate that a maximum of 7,000 persons eligible for clemency were ever Canadian exiles. We further estimate that only 4,000 (less than 5%) of the 91,500 who were eligible but did not apply for clemency are still in Canada, contrary to the usual public impression.

What happens next to those who did not apply? The 8,300 who are still fugitives can surrender to authorities. While they are likely to receive a bad discharge or felony conviction, they will end their fugitive status and will probably not be sentenced to imprisonment. The 91,500 who have already been punished can apply to the Pardon Attorney in the Department of Justice or to the appropriate military discharge review boards, avenues of relief which are not related to the President's clemency program and which are not affected by the program's end.

Chance and circumstance had much to do with the sacrifices faced by each individual during the Vietnam War. Conscription is, by nature, selective. Only nine percent of all draft-age men served in Vietnam. Less than two percent ever faced charges for draft or desertion offenses, and only 0.4%--less than one out of two hundred--were convicted or remained charged with these offenses at the start of the clemency program.

Many Clemency Board applicants fell into common categories: the civilian war resister who had his application for conscientious objector (CO) status denied and who stood trial rather than leave the country; the Jehovah's Witness who was granted a CO exemption but went to jail because his religious convictions prohibited him from accepting an alternative service assignment from Selective Service; the Vietnam veteran who went AWOL because of his difficulties in adjusting to post-combat garrison duty; the serviceman with a low aptitude score who could not adjust to military life; the serviceman who went AWOL to find a better paying job to get his family off welfare.

The civilian applicants were not unlike most young men of their age. They grew up in stable middle-class families. Eleven percent were black, and 1.3% were Spanish-speaking. Over three-quarters graduated from high school, and their average IQ was 111. Roughly one in four was a Jehovah's Witness or member of another religious sect opposed to war. Almost half applied for conscientious objector exemptions, which were usually denied. The typical draft offense was failure to report for or submit to induction. Three-quarters committed their offenses because of their opposition to war in general or the Vietnam War in particular. For 96%, it was their only felony offense, committed at an average age of 21.

Most civilian applicants surrendered immediately, and most who were ever fugitives lived openly at home. Only six percent ever sought exile in Canada. After indictment, most pled guilty. Two-thirds were sentenced to probation, usually on the condition that they perform alternative service. The other one-third went to prison, usually for periods of less than one year. Less than one percent served prison terms of two years or longer, but some were in prison for as long as five years.

At the time of their applications for clemency, almost all were either working full-time or in school. Only two percent were unemployed, with another two percent in prison for unrelated felony offenses. Approximately 100 were still imprisoned for their draft offenses when the President announced his clemency program. They were released upon the condition that they apply for clemency.

Unlike the civilian applicants, the vast majority of military applicants were not articulate, well-educated, or motivated explicitly by opposition to the war. Almost none had applied for a conscientious objector exemption before

entering the service, and less than five percent committed their AWOL offenses because of opposition to the war. Most grew up in broken homes, with parents struggling to cope with low incomes. Roughly one in five were black, and 3.5% were Spanish-speaking. Despite an average IQ of 98, over three-quarters dropped out of high school before entering military service at the age of 17 or 18. Almost one in three were tested at below the 30th percentile of intelligence (Category IV on the Armed Forces Qualifying Test), making them only marginally qualified for military service.

Most military applicants enlisted rather than be drafted, usually joining the Army or the Marines. Slightly over one-third were ordered to Vietnam. Seven percent failed to report. The other 27% did serve in Vietnam, with half either volunteering for a Vietnam assignment, volunteering for a combat mission, or re-enlisting while in Vietnam. Of Vietnam veteran applicants, almost one in four suffered from mental stress caused by combat, and two in five have experienced severe personal problems as a result of their Vietnam tours. Two percent of all military applicants returned from Vietnam with disabling injuries. Very few went AWOL in Vietnam; only four percent of all applicants went AWOL from apparent combat situations.

AWOL offenses usually occurred after training and in stateside bases. Over half of all military applicants committed their offenses because of serious personal or family problems. Other common reasons for AWOL offenses included resentment of some action by a superior or a general dislike of military service. Typically, applicants went AWOL two or three times. Most returned to their home towns, where they lived openly. Only two percent of the military applicants ever sought exile in Canada. Almost half surrendered voluntarily after their last AWOL offenses. At the time of their last AWOLs, they were typically 20 or 21 years old and had accumulated 14 months of creditable military service.

Upon their return to military control, about 15% were given administrative Undesirable Discharges for Unfitness. The other 85% faced court-martial charges, roughly half accepting an Undesirable Discharge in lieu of court-martial. This was a particularly frequent practice among applicants discharged after 1970. The remaining 40% stood General or Special Court-Martial, were convicted, and received Bad Conduct or Dishonorable Discharges. All court-martialed applicants spent at least some time in confinement, with their sentences averaging five months in length. About 170 were still confined when the clemency program started, and they were released upon application to the Clemency Board.

The bad discharges have seriously affected the current employment status of military applicants. Seventeen percent were unemployed at the time of their clemency applications, whereas only eight percent were unemployed during their last AWOL offenses. Another seven percent were incarcerated for civilian felony offenses at the time the program started. Twelve percent had been convicted for at least one civilian felony offense sometime in their lives.

#### 4. Procedural and Substantive Rules

The Clemency Board was the only new entity created by President Ford for the special purpose of reviewing the cases of clemency applicants. Originally, the President named nine members to the Board, designating former U.S. Senator Charles E. Goodell as the Chairman. After the great increase in applications, the President expanded the Board to 18 members. Both the original Board and the expanded Board were representative of a cross-section of views on the Vietnam War and on the issue of clemency. The Board consisted of 13 veterans of military service, three women, and two priests. The Board included five Vietnam veterans, two of whom were severely disabled in combat. Another member has a husband who still is listed as missing in action. Our policies and case dispositions reflected a synthesis of the different backgrounds and experiences of all Board members.

The Board worked hard throughout the year to fulfill the President's requirement that we give each case individual attention before his September 15 deadline. The consensus was remarkable, given the wide range of views represented on the Board. What we sought to maintain was a reasoned, middle ground. The President's goal of national reconciliation found expression in the spirit of compromise and accommodation that guided us.

To assure the fairness and consistency of our case dispositions, we developed a case-by-case review procedure consistent with the President's goal of clemency. Because this was a program of clemency, not law enforcement, we unanimously decided not to seek the assistance of the FBI in preparing our cases. We limited our file acquisition to the official military or court records. To preserve the spirit of reconciliation, we promised strict confidentiality to all who applied to the Board. For each case, staff attorneys prepared narrative summaries which were carefully checked for accuracy. Each applicant was sent his summary and encouraged to identify errors and provide additional information. Staff attorneys presented cases in oral hearings before panels consisting of three or four Board members who had read the summaries in advance. The attorneys' supervisors were present as panel counsels to assure staff objectivity. They also served as legal advisors to ensure that Board policy precedents were applied correctly. Every Board member had the right to refer any case to the full Board. This right was exercised in only about 700 (5%) of our cases. The Chairman referred additional cases to the full Board, having had the assistance of a computer-aided review which flagged case dispositions for being either too harsh or too lenient.

Case dispositions varied little from week to week, especially after our basic policy decisions had been made. During our first six months, we decided 500 cases, recommending outright pardons (without alternative service) for 46% of all cases, denial of clemency for three percent, and conditional clemency with alternative service for the remainder. During our latter six months, we decided 14,000

more cases, recommending outright pardons for 44%, denial of clemency for six percent, and alternative service for the remainder.

Contributing to the fairness and consistency of our process were the clear rules we established and published for deciding cases. Our alternative service "baseline" formula took account of the fact that all of our applicants had been punished for their offenses. We started with 24 months, deducting three months for every one month spent in confinement, and deducting one month for every month spent in satisfactory performance of probation or court-ordered alternative service. In cases where military officials and Federal judges had adjudged short sentences, we reduced the baseline figure to match the sentence actually given. Our minimum baseline was three months, and almost 98% of our applicants had baselines of six months or less.

To determine whether an applicant deserved clemency--and, if so, whether his assigned period of alternative service should be different from his baseline--we applied 28 specific aggravating and mitigating factors. As with our baseline formula, we developed our list of factors by consensus. We were especially concerned about the reasons for an applicant's offense and the circumstances that had prompted it. Likewise, we considered his overall record as a serviceman and as a member of his community. Almost all of our designated factors were established very early. Only two totally new aggravating factors were established by the expanded Board, although all factors were continually clarified as new fact situations arose. Each factor was codified, with illustrative case precedents, through publication of five issues of an in-house policy precedent journal called the Clemency Law Reporter.

Our final list of aggravating factors consisted of the following:

1. Other adult convictions;
2. False statement to the Clemency Board;
3. Use of physical force in committing offense;
4. AWOL in Vietnam;
5. Selfish motivation for offense;
6. Failure to do alternative service;
7. Violation of probation or parole;
8. Multiple AWOL offenses;
9. Extended AWOL offense;
10. Missed overseas movement;
11. Non-AWOL offenses contributing to discharge for unfitness; and
12. Apprehension by authorities.



Our final list of mitigating factors consisted of the following:

1. Inability to understand obligations or remedies;
2. Personal or family problems;
3. Mental or physical condition;
4. Public service employment;
5. Service-connected disability;
6. Extended creditable military service;
7. Vietnam service;
8. Procedural unfairness;
9. Questionable denial of conscientious objector status;
10. Conscientious motivation for offense;
11. Voluntary submission to authorities;
12. Mental stress from combat;
13. Combat volunteer;
14. Above average military performance ratings;
15. Decorations for Valor; and
16. Wounds in Combat.

## 5. Case Dispositions

We did not apply each factor with equal weight. For example, conscientious motivation or serious personal or family problems often led to outright pardon recommendations. The following two cases are typical:

(Case 2) This civilian applicant had participated in anti-war demonstrations before refusing induction. He stated that he could not fight a war which he could not support. However, he does believe in the need for national defense and would have served in the war if there had been an attack on United States territory. He stated that "I know that what is happening now is wrong, so I have to take a stand and hope that it helps end it a little sooner."

(Case 3) This military applicant's wife was pregnant, in financial difficulties, and faced with eviction; she suffered from an emotional disorder and nervous problems; their oldest child was asthmatic and epileptic, having seizures that sometimes resulted in unconsciousness. Applicant requested transfer and a hardship discharge, both of which were denied.

Creditable Vietnam service was also a highly mitigating factor, usually resulting in an outright pardon. In particularly meritorious cases, we recommended that the military immediately upgrade the applicant's discharge to one under honorable conditions, with full entitlement to veterans' benefits. We were particularly concerned about the eligibility of wounded or disabled veterans for medical

benefits. We made upgrade recommendations in about eighty cases, of which the following two are typical:

(Case 4)

This 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 United States 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 5)

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

On the other hand, some aggravating factors were considered very grave, generally leading to "no clemency" recommendations. There were a few applicants who clearly went AWOL from combat situations.

(Case 6)

This military applicant would not go into the field with his unit, because he felt that the new commanding officer of his company was incompetent. He was getting nervous about going out on an operation; there is evidence that everyone believed that there was a good likelihood of enemy contact. He asked to remain in the rear, but his request was denied. Consequently, he left the company area because, in the words of his chaplain, "the threat of death caused him to exercise his right to self-preservation." His company was subsequently dropped onto a hill, where it engaged the enemy in combat. Applicant was apprehended while traveling on a truck away from his unit without any of his combat gear.

We recommended that the President deny clemency in the above case, but other cases of AWOL in Vietnam involved

strong mitigating factors. Often, combat wounds or the psychological effects of combat led to AWOL offenses. For example, we recommended an outright pardon in the following case:

(Case 7) Applicant was assigned to an infantry unit in Vietnam. During his combat service, he sustained an injury which caused his vision to blur in one eye. His vision steadily worsened, and he was referred to an evacuation hospital in DaNang for testing. An eye doctor's assistant told him that the doctor was fully booked and that he would have to report back to his unit and come back to the hospital in a couple of weeks. Frustrated by this rejection and fearful of his inability to function in an infantry unit, applicant went AWOL.

Applicants who had been convicted of felony offenses involving serious bodily harm were generally denied clemency, as in the following case:

(Case 8) This civilian applicant had three other felony convictions in addition to his draft offense. In 1970, he received a one-year sentence for sale of drugs. In 1971, he received one year of imprisonment and two years of probation for possession of stolen property. In 1972, he was convicted of failure to notify his local board of his address. He was sentenced to three years' imprisonment, but his sentence was suspended and he was put on probation. In 1974, he was convicted of assault, abduction, and rape, for which he received a 20-year sentence.

Perhaps our most difficult and disputed cases involved applicants who had been convicted of unrelated civilian felony offenses, but who had strong mitigating factors applicable to their cases. Some Board members argued that this was a program of clemency for Vietnam-related offenses, requiring the Board to disregard other, unrelated convictions. Others argued that granting clemency to convicted felons would cheapen all other clemency grants. The majority of the Board took the middle view--that a felony conviction would be viewed as a highly aggravating factor, but each case could be decided on its total facts, in accordance with the President's policy of case-by-case review. Even so, 42% of the applicants with other convictions were denied clemency because of the serious nature of their offenses or because of the absence of strong mitigating factors.

Less serious felony convictions did not overshadow an applicant's Vietnam service or other mitigating facts:

(Case 9) This applicant volunteered for the Special Forces after his first year in the Army.

He re-enlisted to effect a transfer to Vietnam, where he served as a parachute rigger and earned excellent conduct and proficiency ratings. Altogether, he served for 18 months in Vietnam and over three years in the Army, with two Honorable Discharges for re-enlistment purposes. His AWOL offenses totalled 29 days, did not occur until after his return from Vietnam, and were attributed to his problems with alcohol. After his Undesirable Discharge in lieu of court-martial, he was convicted of stealing a television set and served six months in prison. He was recently paroled.

In a few cases, a clear connection existed between an applicant's Vietnam service and his civilian conviction:

(Case 10) This military applicant served eight months in Vietnam as a supply specialist before his reassignment back to the United States. His conduct and proficiency scores had been uniformly excellent during his Vietnam service. However, while in Vietnam he became addicted to heroin. He could not break his habit after returning stateside, and he began a series of seven AWOL offenses as he "got into the local drug scene." Eventually, he "ran out of money" and "had a real bad habit," so he "tried to break into a store with another guy that was strung out." He was arrested, convicted for burglary, and given an Undesirable Discharge for AWOL while on bail.

Others rehabilitated themselves after their offenses, indicating their desire to be productive and law-abiding members of their communities:

(Case 11) Shortly after receiving a Bad Conduct Discharge from the Navy for his AWOL offenses, this military applicant was convicted for transporting stolen checks across state lines. He was sentenced to a ten-year term, but was paroled after one year and four months. During his confinement, he underwent psychiatric care. Since his parole, he has re-married and has recently established a successful subcontracting business. Currently, he is working with young people in his community in connection with church groups, trying to provide guidance for them. His parole officer stated that applicant had straightened out and is a responsible member of the community.

In each of the above three cases, the Clemency Board recommended that the President grant outright pardons for

the absence of offenses. Obviously, we had no jurisdiction to recommend clemency for the unrelated convictions.

Our case disposition tallies are listed below. Civilian applicants received a greater proportion of outright pardons because they involved a higher frequency of conscientious reasons for the offense and a much lower frequency of other criminal convictions.

TABLE 2. CLEMENCY BOARD RECOMMENDATIONS: CIVILIAN CASES

	<u>Number</u>	<u>Percent</u>
Outright pardon	1432	82%
Alternative Service:		
3 months	140	8%
4-6 months	91	5%
7+ months	68	4%
No Clemency	<u>26</u>	<u>1%</u>
TOTAL:	1757	100%

TABLE 3: CLEMENCY BOARD RECOMMENDATIONS: MILITARY CASES

	<u>Number</u>	<u>Percent</u>
Outright pardon	4620	36%
Alternative Service:		
3 months	2555	20%
4-6 months	2941	23%
7+ months	1756	14%
No Clemency	<u>885</u>	<u>7%</u>
TOTAL:	12,757	100%

## 6. Management Process

During the first months of the Board's existence, we experienced little difficulty in organizing our work and reviewing our small number of cases. However, after the late winter flood of applications, we were faced with a seemingly impossible task. Through mid-April, the original nine-member Board had heard 500 cases. To meet the President's deadline of September 15, we had to experience a 40-fold increase in our case disposition rate. We met that deadline--to the day--with the Board deciding every one of the 14,514 cases for which we had enough information. After September 15, 1975, about 1,000 additional cases with partial or recently-arriving files were referred to the Department of Justice for action in accordance with Board precedents.

Meeting the President's deadline would have been impossible without a competent and dedicated staff. We and our staff emerged from this process with an experience in crisis management which we think may be useful to managers

of comparable entities in the future. The senior staff developed solutions to management problems which enabled us to act upon over a thousand cases per week. At the same time, we maintained high standards of quality and integrity in our legal process. All policy decisions were made by the Board and implemented by the staff. Having to manage an organization which mushroomed from 100 to 600 employees during a six-week period, it is remarkable that our process involved as little confusion as it did.

## 7. Historical Perspective

To place the President's clemency program in its proper perspective, one must take note of the manner in which Presidents Washington, Lincoln, and Truman applied their powers of executive clemency in dealing with persons who had committed war-related offenses. President Ford's program compares favorably with other President's clemency actions, when consideration is given to the nature of the benefits offered, the conditions attached, the number of individuals benefitted, and the speed with which the program followed the war. Yet the President's program did not break precedent in any fundamental way. The only new features of President Ford's program were the condition of alternative service and the use of a neutral Clemency Discharge.

## 8. Conclusions

We are proud of what the President has accomplished in his clemency program. He implemented his program courageously, in the face of criticism both from those who thought he did too much and from those who thought he did too little.

When the program started, a Gallup Poll found that only 19% of those polled approved of a conditional clemency program. The overwhelming majority preferred either unconditional amnesty or no program of any kind. By contrast, an August 1975 Gallup Poll found that a majority of those expressing an opinion are now in favor of conditional clemency, with a minority equally split on the opposite ends of the issue. The same poll found that almost nine out of ten people would accept a clemency recipient as at least an equal member of their community. Likewise, a survey of employer attitudes has discovered that a Clemency Discharge and Presidential pardon would have real value when a clemency recipient applies for a job. The clemency program is in fact accomplishing the President's objective of reconciling Americans.

While we are confident that history will regard this program as a success, much of the work remains unfinished. As of September 1975, only a very small percentage of our

applicants have as yet been required to contact Selective Service to begin performing alternative service. Of the 52% of our applicants who received conditional clemency, three-quarters were assigned six months or less of alternative service. We hope that most will complete this assignment and receive clemency. The responsibility for implementing the alternative service portion of the program in a fair and flexible manner, fully in accord with the clemency spirit of the President's program, rests with the Selective Service System. The Chairman of the Clemency Board, on behalf of a majority of the Board, recommended to Selective Service that individuals in the Clemency Board program be able to fulfill their alternative service by performing unpaid work in the national interest for 16 hours per week for the designated period--three or six months in most cases. Selective Service has implemented part of this recommendation, allowing alternative service to be completed through 20 hours per week of unpaid work. This part-time work must be stretched out to as long as twice the designated three or six month period.

We are pleased that the United States Pardon Attorney, entrusted with the carry-over responsibility for our program, has applied the policies and spirit of the Clemency Board. Likewise, we hope that other government agencies which will later come in contact with clemency recipients--especially the Veterans Administration and the discharge review boards of the Armed Forces--will deal with them as clemently as their responsibilities permit.

In conclusion, we consider ourselves to have been partners in a mission of national reconciliation, wisely conceived by the President. A less generous program would have left old wounds festering; blanket, unconditional amnesty would have opened new wounds. We are confident that the President's clemency program provides the cornerstone for national reconciliation at the end of a turbulent and divisive era. We are proud to have played a role in that undertaking.

A  
SUMMARY EVALUATION  
OF  
THE PRESIDENTIAL CLEMENCY BOARD'S OPERATIONS

Submitted by  
A Minority of the Board  
September 15, 1975



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SECTION IPURPOSE

The purpose of this report is to reflect the views of a minority of the members of the PCB concerning the composition, staffing, policies and credibility of the operations and decisions of the PCB.

We have reviewed the first draft of the final report of the PCB, including subsequent revised sections of that draft, and it contains numerous misleading statements, is non-factual in many areas, and contains whole chapters that are entirely irrelevant to the duties and functions of the Board. The proposed report can best be characterized as a report written by the staff, and reflecting their very biased pro-amnesty views, views which are often directly contrary to the views of many Board members and, perhaps, the majority of the American public. This Staff-Management-authored report is not in keeping with the mission and the objectives of the Board as set forth in the President's Executive Order and Proclamation. We, as the concerned minority, desire to disassociate ourselves from the Board Report.

SECTION IICOMPOSITION OF THE BOARD

The original nine-member Board appointed by the President represented a fair balance among liberal, middle-of-the-road and conservative views. This group in its early meetings established and adopted policies and guidelines by which decisions of the Board would be determined in accordance with the President's Executive Order and Proclamation. However, many of these policies were changed when the membership of the Board was increased to eighteen members in May 1975. By his own admission, the Chairman had a fairly free hand in picking the new Board members and he included two members from his staff. The new Board members were not given an orientation on Board policies and guidelines. This led to much confusion. Initially, it was difficult for the new Board members to make sound decisions, due to lack of knowledge of Board operation. The Chairman gave guidance which, on occasion, seemed not to be strictly in accordance with previous Board policy and decisions. At this point, the Board as a whole became a more amnesty-oriented, Goodell-influenced group, with Goodell, in turn, seemingly under the influence of the General Counsel and his somewhat

biased anti-Vietnam War staff. From this point on, the Board became, in effect, a captive of the Chairman and the Staff, and policy decisions were made by the Chairman and the General Counsel which influenced Board actions and results without the realization of Board members.

An example of the continual effort of the Board's Executive Staff to distort the President's Program was a written proposal by a senior staff member to "create some doubt in the minds of people" about the meaning of a Clemency Discharge. In making such a proposal, the Staff member suggested, in a memorandum, that "one way to generate such ambiguity" would be to invite Honorably Discharged Veterans to request clemency discharges "as an expression of their opposition to the Vietnam War."

The idea of using the Presidential Clemency Board as a vehicle to incite great numbers of Honorably Discharged veterans to "express their opposition to the Vietnam War" would be a gross dis-service to the President.

### SECTION III

#### STAFFING

Since the PCB was only a temporary organization, it was determined by the President, through OMB, that no funds would be made available to hire a permanent staff. Rather, all administrative and operational personnel would be detailed "on loan" from other agencies. In the beginning, DOD offered its facilities and professional trained personnel to prepare the case summaries, but this offer was rejected by the Board's General Counsel. We feel that this assistance would have been a real asset to the Board effort in that the summaries would have been objective and factual. It was turned down on the grounds that the General Counsel felt the briefs must be prepared by lawyers. The result was that attorneys were detailed from other agencies to work with the General Counsel and his associates in the preparation of applicant cases. Due to the number of cases to be presented within a very short time period, the legal staff was augmented by approximately two hundred law students acting as legal interns during their summer vacation. However, approximately ninety percent of the cases were military and these young men and women, even though eager and dedicated, were generally biased against the military and the Vietnam War and had practically no experience in or with the military. The work they did in preparing the case summaries was, as a result, often

amateurish, biased, and many times incomplete. In reality, the young staff attorneys themselves, were of the same influence and were generally without the benefit of any experience with the Military Forces, which compounded the problem. Also, these young "case writers" were instructed by some senior staff members to present the case "in the best light". Consequently, many of the resulting summaries were an inaccurate presentation of facts on which Board members had to make their decisions.

The administrative staff consisted of personnel on loan from other agencies. It appeared that the majority of those who occupied top level management positions with the PCB had little or no prior experience in an administrative capacity. Over-staffing, lack of organization, lack of personnel discipline and improper utilization of personnel assets was evident throughout. Management built up the staff to a peak of over six hundred professional and administrative personnel. This appeared to be considerably more than was necessary to get the job done if proper organization and supervision had been practiced. For example, on 1 July, at the peak of the six hundred plus staff, it was stated by a senior member that OMB believed that less than half of the secretaries were being used effectively in the production process. Even with this surplus of secretaries, only one was assigned to all of the eighteen Board members. Regular working hours were not established nor observed - employees seemed to come and go at their convenience. On a week-day mid-afternoon in July (the Board's busiest month), the Personnel Director made a head-count and over one hundred sixty employees could not be accounted for.

On two different occasions in March and May, OMB sent in a management team to survey the operations of the PCB. In both instances, they recommended that a top-flight administrator be obtained to oversee the administrative functions of the PCB, and both times, the management of PCB refused to accept this recommendation of the OMB. These are only a few examples of the maladministration which, in our opinion, has jeopardized and plagued the management of the Clemency Board since the beginning. This resulted in many instances of mismanagement, low morale and lack of control.

#### SECTION IV

##### APPLICANTS

The PCB was established to review the records of individuals within the following categories:

(1) Those who had been convicted of one or more draft evasion offenses: failure to register or to register on time, to keep the local board informed of current address, to report for or submit to pre-induction examination, to report for or submit to induction itself, to report for or submit to, or complete service under Section 6(j) of the Military Selective Service Act,

(2) Those who have received a punitive or undesirable discharge from service in the armed forces for having violated Article 85, 86 or 87 of the Uniform Code of Military Justice between August 4, 1964, and March 28, 1973, or are serving sentences of confinement for such violations.

In the first four months of the program, only some eight hundred individuals made application to the PCB. This appeared to be due primarily to a lack of proper publicity and understanding of the program. In January, 1975, the members of the Board initiated a nationwide publicity program which resulted in several thousand new applications. Further, the Chairman, without the knowledge of the Board, wrote letters to all major penal institutions of the United States, advising them that inmates who met the eligibility criteria should apply. This penitentiary mail produced over two thousand applications, on which the Board has taken action and, in the majority of cases, recommended pardons. In contrast with this is the fact that President Truman's Amnesty Board refused clemency for all persons having a prior criminal record of one or more serious offenses, stating "The Board would have failed in its duty to society and to the memory of the men who fought and died to protect it, had amnesty been recommended in these cases."

By the end of March, approximately 18,000 applications had been received. In about ninety percent of the military cases, there was no evidence of conscientious objection or other objection to the Vietnam War. Approximately fifty-eight percent of the military cases were involved in other offenses in addition to AWOL or desertion. The most common reasons given for going AWOL were family and financial problems. The vast majority, eighty-four percent, were volunteer enlistees.

The most common offense of the typical violator of the Selective Service Act was failure to report for or submit to induction. Only forty-five percent had made any attempt to claim conscientious objection before being ordered for induction or civilian service. The Selective Service violator possessed a much higher educational level than that of the military applicant.

The Rules and Regulations section 101.5(a) provides that the Board would consider as an initial filing any written communication post-marked not later than March 31, 1975, and received by the Board, the Department of Justice, the Department of Defense, the Department of Transportation, or the Selective Service System. Oral applications made out not later than March 31, 1975, were considered sufficient if reduced to writing, and post-marked not later than May 31, 1975. These rules were later amended on July 14, 1975, over strenuous objections by some Board members, to read "A 'timely' application was defined as an inquiry made to a responsible U.S. Government official or agency, in writing or orally, prior to the deadline for applications, provided that the request for consideration was received within a reasonable time after the initial contact. However, in several instances, the Board by a bare majority vote chose to accept as timely, applications which did not fulfill the requirements stated above. The Board, again in one highly publicized case, accepted an unverified phone call, not completed by a written application, as sufficient to give it jurisdiction. In the same case, jurisdiction having been accepted, recommendation was made to the White House, again despite the lack of a formal, written application.

On June 4, 1975, well after the delimiting date set by the White House, the PCB Staff was corresponding with the College Coordinator at U.S. Penitentiary, Leavenworth, Kansas and sending him sending 75 kits "for use by potential applicants currently incarcerated" in that institution extending the time for submission of applications to June 15, 1975, clearly in violation of the President's order, making May 31, 1975, the final deadline, when preceded by an oral application made not later than March 31, 1975.

## SECTION V

### BOARD FUNCTIONING

During the first five months the PCB functioned as a Full Board with five members in attendance considered a quorum. However, in March, as the number of cases to be acted on increased, the Board was divided into panels of three or more members and each panel acted independently on cases. Unanimous decisions by the panels were considered final. Split decisions could be referred to the Full Board by any panel member. Policy and guidelines were generally determined by the Full Board. However, in some instances they were determined by the Chairman and his Executive

Staff without referring the matter to or getting the approval of the Full Board. For example, the "Rules and Regulations of the Clemency Board" signed by Chairman Goodeil on March 18, 1975, and submitted to the Federal Register were never formally submitted to the Board for comment or approval. The majority of the Board members did not know of the existence of such "Rules and Regulations" until they were given a copy in May 1975. The Board members were hampered by not being allowed staff or secretarial assistance. The voluminous case briefs and other material put out by the staff made it impossible for Board members to keep track of what was going on without assistance of this type. Requests for secretarial and staff assistance were made on several occasions by Board members but they were told that the staff was short-handed. The eighteen Board members were finally allotted a total of one secretary to answer the phone, take messages, type correspondence and maintain files for them.

The administrative functions of the PCB appear to have been accomplished on a crisis-to-crisis basis rather than by normal and acceptable organization and planning. For example,

(1) From the beginning, the processing of applications was so bogged down in complicated procedures that records could not be ordered on a timely manner which, in turn, resulted in a severe shortage of cases during the month of May to be assigned to action attorneys, thereby causing serious delays in the Board's work.

(2) Due to a lack of organization and planning, by February, a backlog of cases which had been acted on by the Board, began to build up and by September it had built up to over ten thousand cases still to be submitted to the President for action.

## SECTION VI

### CHANGES IN BOARD POLICY AND DEVIATION FROM THE SPIRIT AND INTENT OF THE EXECUTIVE ORDER AND PRESIDENT'S PROCLAMATION.

The first significant move on the part of the Chairman and his Executive Staff, in our opinion, was to introduce the word "pardon" into the Clemency decision on each applicant's case although the word "pardon" never appeared once in the President's Executive Order or Proclamation. The Chairman and Executive Staff argued that "pardon" and "clemency"

were synonymous terms and they won the argument, by claiming the tacit approval from the White House, over the strenuous objection of some of the Board members. Eventually in the Board decisions and in the letters going to the applicant after the Board action, the words "clemency" and "pardon" were no longer used as synonymous terms but were separated and used in the terms of "a pardon" and a "Clemency Discharge". We quote from a letter dated July 16, 1975, written to an applicant and signed by Chairman Goodell, "...The President has signed a master warrant granting you a full, free Unconditional Pardon and a Clemency Discharge to replace your less than honorable discharge." We believe this is quite a different connotation and meaning than was initially argued by the Chairman and Executive Staff last October. Further, a person who has been convicted of a felony (a crime punishable by imprisonment for more than one year) may legally purchase a firearm from a licensed firearms dealer if the person convicted of said felony had received an unconditional Presidential Pardon. The Presidential Pardon, however, only applies to Federal offenses.

The unilateral revision of the President's program from a middle-of-the-road clemency program into an amnesty-oriented program was effected primarily by expansion of the original nine-member Board into an eighteen-member Board. Some of the new members did not have the maturity, experience and broad spectrum of views which characterized the original Board and which we believe represents the cross section of the general public. The more liberal eighteen-member board then proceeded many times unknowingly and under the influence of the Chairman, to alter previously adopted rules and regulations by constantly outvoting the more conservative aligned middle-of-the-road minority.

In the early months of the Board's deliberations a real effort was made to maintain the "meaningfulness" and "value" of the Clemency Discharge. For such offenses as AWOL from combat, refusal to go combat, multiple and long AWOLs, civil convictions for felony; the Board would normally vote "no clemency". However, and in sharp contrast, during the latter months of the Board's operation and after the more amnesty-oriented eighteen-member Goodell-influenced Board came into being, clemency was voted in cases involving multiple AWOLs (8) from the battle field, multiple refusals to go into combat; multiple (as high as ten AWOLs) and long (seven years) AWOLs, civilian felony convictions (rape, murder, manslaughter, grand larceny, armed robbery,



aggravated assault). Also, a man given an Undesirable or even Punitive Discharge for a few days or even hours of AWOL (which, according to the Board General Counsel's ruling, qualified him for the Clemency Board Program) was recommended for a pardon and clemency discharge, by a bare majority vote, even though the official offense charged might include aggravated assault, disrespect to officer or NCO, striking an officer or NCO, wrongful appropriation of personal or government property, etc. This again was a turnabout from the policy set by the nine member Board. Another questionable move, condoned by the Chairman, was to make drug addiction a mitigating factor on behalf of the applicant and drug use a possible qualification for mitigation. The Board, on the other hand, was instructed not to consider the use of drugs as an aggravating factor even though such use was unlawful. This change from the nine-member Board policy again was strenuously objected to by the constantly "out-voted" minority.

As a result of the policy changes by the eighteen-member Board, the next move by the Chairman and his Executive Staff was to recycle numerous of the "tough decision" (No Clemency) cases of the original nine-member Board and later panels, either to a more amnesty motivated panel or to the Full Board to gain a more favorable decision on behalf of the applicant. The above moves on the part of the Chairman and his Executive Staff, tended to circumvent the spirit of the President's Proclamation and Executive Order. These moves were accomplished by various means. The Board members were kept uninformed by:

- (1) Denying them clerical help or staff assistants.
- (2) Asking the Board to act after the fact in matters having to do with policy changes.
- (3) Denying them access to staff memorandums concerning matters of interest to the Board. including Board periodic reports.
- (4) Keeping the Board on unduly heavy schedule (seven days a week) and swamping them with applicant cases to be read and presented, (and represented), making it next to impossible for Board members to monitor Board results. This whole process seemed to us to be something more than accidental.

In addition, a three-part post-audit review was established. First, there was the standard review, which applied to all non-clemency cases and all cases which were given over 12 months

alternative service; second, there was a review of attorney-flagged cases which the Action Attorney felt the Board members had decided unfairly; and third, there was computerized review which, by use of quantitative guidelines weeded out cases which had the harsher decisions. The post-audit team reviewed cases and made its recommendation to the General Counsel with an explanation for recommending reconsideration. Practically no cases were found which were repanelled for a more harsh decision. The General Counsel then forwarded the cases to the Chairman, with his recommendation. Further, many cases were panel-shopped without going through the post-audit procedure and without the second or subsequent panel or Board being informed of the previous decision.

## SECTION VII

### CREDIBILITY OF BOARD'S DECISIONS

The Presidential Clemency Board program announced by the President was a very good and workable program but, due to improper administration, it has failed to accomplish the President's goal. Throughout the year of the Board's existence there seemed to be a determined effort by the Chairman and his Executive Staff to turn the Presidentially mandated clemency program into an amnesty-oriented operation.

In reliance upon an Executive Proclamation designed to "...bind the Nation's wounds and to heal the seas of de-viseness", it appeared the Chairman and the Staff sought to expand the Board's jurisdiction over every situation possible. As a result, jurisdiction was taken over applicants whose discharges were obviously not precipitated in the main by AWOL/Desertion type offenses. A Pardon and Clemency Discharge were also granted applicants who had multiple civil felony convictions both during their military service and after their discharge from the Armed Services or in the civilian cases, after their conviction for trait resistance. The end result is that the public will have a distorted perception of the Clemency Discharge. The Clemency Discharge is likely to be associated with criminality. It will be degraded and will not achieve the intended employer acceptability. Through the apparent ill-considered and misguided recommendations of the majority of the Board, the Clemency Discharge may be so degraded and discredited that it will no longer be meaningful as an instrument of Clemency for the deserving recipient.

SECTION VIIICONCLUSION

We believe that the original concept and plan as conceived and announced by the President was a good, sound, workable plan, but the President's objectives have not been attained because of the misdirection and maladministration of the plan. We feel deeply obligated and honor bound to appraise the President of these facts.

It appears that the Chairman and his Executive Staff have misinterpreted, circumvented and violated at least the spirit of the Executive Order of 16 September 1974, and Proclamation #4313. This questionable action has been initiated, it appears, to increase the number of "eligible" applicants, to liberalize the decisions of the majority of the Board in order to gain more favorable decision for the applicants, and to set a liberal precedent relative to Executive pardons closely associated with felonious crimes. A move which could degrade the true meaning of a Presidential pardon. The actions, in our opinion, are not only unethical, but they may also border on illegality, and could greatly discredit the President's Clemency Program in the eyes of the American public.

In short, we have lost confidence in the Board results, which under Chairman Goodell's direction are being recommended to the President. We feel that the limited capability of the already hard-pressed White House staff to monitor and screen these recommendations, is inadequate to insure that the President will approve only recommendations which meet his high standards. This problem is further aggravated by a backlog of some ten thousand cases which may soon be dumped on the White House Staff in a short period of time.

We believe that the recent steps the President has taken to terminate the Clemency Board activity on September 15, 1975, and to place the Program under the auspices of the Attorney General - more specifically - under the direction of the Pardon Attorney of the Department of Justice, is a very sound move. It is our hope that the Pardon Attorney will take a close and conscientious look at the Clemency Board recommendations, so as to insure that the value of the Clemency Discharge is restored to its original respected level, and only those applicants who deserve the discharge are awarded it.

We, as a minority of the Presidential Clemency Board, do not believe that:

Any man who has two or more convictions (civilian or military) of serious crimes on his record, should be given clemency. We do not believe that a man who deserted his comrades on the battle field in Vietnam or who refused to go to Vietnam when he was so ordered, should be given clemency.

We believe, as did the Truman Board, that when the majority of the Board recommends clemency in such cases, it has failed in its duty to society, and to the memory of those men who fought and died to protect it. We also feel that it has been negligent in carrying out its responsibility and has not fulfilled its obligation to protect the integrity of the Presidency.

James P. Dougovito  
Board Member

Lewis W. Walt  
General USMC (Ret)  
Board Member

Dr. Ralph Adams  
Board Member

Harry Riggs  
Board Member

**THE VIETNAM ERA DESERTER: CHARACTERISTICS OF UNCONVICED ARMY DESERTERS  
PARTICIPATING IN THE PRESIDENTIAL CLEMENCY PROGRAM**

**BRIEF**

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**Requirement:**

To describe the typical Army participant in order to learn more about Army deserters and the nature of desertion during the Vietnam period, using the records of the enlisted Army participants in the Presidential Clemency Program.

**Procedure:**

The characteristics and experiences of those who participated in the Program were compared with other relevant groups. The sources of data included the Enlisted Record Center pre-desertion records, Program records, and interviews with the men by Army mental health staff. Tables present the percentages of that part of the participant sample with a given characteristic (e.g., percentage of participants entering the Army at age 17, 18, 19, 20, 21, 22 or 23, or 24 and older) for a variety of descriptive categories at the time the men entered the service, the time of last absence, during absence, and during the Program. A distinction is made between participants who had been apprehended and those who entered the program voluntarily, for better comparison with previous research on deserters. Participant data were also contrasted with available data on known deserters who did not participate in the Program and on several small samples of anti-war protesters.

**Findings:**

Demographic characteristics of the enlisted men who participated in the Presidential Program resembled those of other deserters. Compared to their contemporaries, they were less educated, scored lower on the AFQT, and they were less likely to be white or from the North Central region of the country. They were more likely to be volunteers and under 20 when enlisted.

Their service careers tended to be short; most (75%) served two years or less, few (19%) saw service in Vietnam, and fewer yet (12%) deserted from combat. Many (44%) had been previously AWOL. Occupational shifts and reduced rank also pointed to histories of trouble in the service among these men.

Their reasons for leaving were generally unassociated with the war. Most (50%) stated that they had left because of personal/family/or financial problems (the same reason given by most deserters during the last two wars as well). Only 14% of the men mentioned Vietnam as in any way responsible for their decision to leave the Army.

Most (88%) of the participants remained in the United States throughout their absence. Those who remained in the United States were much less likely to have left the Army because of anti-war reasons (9% versus 36%).

A comparison was also made between those who participated and those who did not. The groups were remarkably similar. Those differences which were detected could most easily be explained by assuming that non-participation was mainly a function of not having heard about the Program. This interpretation is also supported by a Gallup Poll in August of 1975 which showed that only 72% of the public had ever heard of the Program despite the extensive publicity it received. Furthermore, among those who had heard of the Program, only 17% realized that fugitives living in this country (the bulk of the men) were eligible for the Program.

#### Utilization of Findings:

The finding that 25% of the participants were not in the deserter apprehension system has led to changes in the system. Data from the report were also used in DOD preparations for defense against suits challenging the manner of processing men through the DOD portion of the Program. Suggestions for reducing desertion arising from this research are being considered. An abstract of this report was incorporated into the DOD After Action Report on the Program.

ADDITIONAL INFORMATION SOURCES

Presidential Clemency Board Report to the President - 1975

Department of Defense Implementation of Presidential Proclamation 4313

Presidential Clemency Program

After Action Report prepared by the Office of the Deputy Chief of Staff for Personnel, Department of the Army (as Department of Defense Executive Agent) - October 1975

Department of Defense Implementation of Presidential Proclamation 4313

President's Clemency Program

After Action Report prepared by Headquarters, U.S. Army Administration Center, Fort Benjamin Harrison, Indiana - June 19, 1975

Report to the Service Secretaries by the Joint Alternate Service Board in Support of Presidential Proclamation 4313. - April 11, 1975

Research Problem Review 76-6

The Vietnam Era Deserter: Characteristics of Unconvicted Army Deserters

Participating in the Presidential Clemency Program. U.S. Army Research Institute for the Behavioral and Social Sciences. July 1976

The Presidential Clemency Program

Hearings before the Subcommittee on Courts, Civil Liberties, and the Administration of Justice of the Committee on the Judiciary, House of Representatives. Ninety Fourth Congress. First Session on the Presidential Clemency Program and Related Legislation - April 14, 17, 18, 1975.

Clemency Program Practices and Procedures

Hearings before the Subcommittee on Administrative Practice and Procedure of the Committee on the Judiciary.

United States Senate.

Ninety Third Congress

Second Session on Review of Agency Practices and Procedures in the Administration of the Presidential Clemency Program - December 18 and 19, 1974

**Amnesty**

Hearings before the Subcommittee on Courts, Civil Liberties, and the Administration of Justice of the Committee on the Judiciary, House of Representatives  
Ninety Third Congress.  
Second Session Relating to Amnesty - March 8, 11, and 13, 1974.

**Congressional Reference Service:**

Amnesty: A Brief Historical Overview  
U B 340 USD - September 27, 1974  
Clemency: The President's Program, Problems  
Issue Brief Number IB 74132 - October 31, 1974  
, and updates.





MANPOWER AND  
RESERVE AFFAIRS

ASSISTANT SECRETARY OF DEFENSE  
WASHINGTON, D. C. 20301

13 OCT 1978

Honorable Elmer R. Staats  
Comptroller General of the United States  
Washington, D. C. 20548

Dear Mr. Staats:

The Department of Defense appreciates the opportunity to comment on the Comptroller General's Draft Report on the Clemency Program of 1977. For the past several months the Department of Defense staff has been working with GAO representatives to develop and correlate relevant information about the Program in an effort to provide a better public understanding of the numerous and complex issues involved. As a result of these discussions, the GAO Report, in its revised form, is a decided improvement over earlier drafts.

The Comptroller General's Report to the Congress provides some insight into the operations of the Clemency Program, albeit an incomplete one because of the omission of any discussion as to the operations of the President's Clemency Board. For example, the Presidential Clemency Board was responsible for 86% of the eligibles, and processed 71% of the participants. Consequently, the Report provides only a very limited basis for judging whether the Program achieved its stated purpose. (See GAO comments, p. 34.)

In the succeeding paragraphs, the Department of Defense offers additional observations relating to the operations of the Program as they relate to the Military Departments. Hopefully, these will prove constructive in judging whether the Clemency Program has served its purpose.

There is an unspoken premise in the Report that the Clemency Program should be measured solely in quantitative terms, i.e., how many eligible persons elected to participate in the Program as compared with the total number of eligible persons. To the contrary, positive numerical goals were not the principal objective of the Program. The President's stated objective was to offer the opportunity for each individual affected to make his own choice as to whether he or she would accept the President's



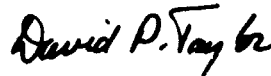
offer of reconciliation. The Program was deliberately designed as a voluntary program. Members in a deserter's status were not required to take part in the Program, nor were members then serving in confinement. Likewise, those who had already received a military discharge for deserter-related offenses were under no compulsion to come forward. Additionally, there were a sizeable number who did not participate, simply because they never became acquainted with the opportunities available to them. Consequently, to judge the Clemency Program purely in statistical terms tends to provide a distorted and misleading view. (See GAO comments, p. 34.)

What is important is that more than half of the military members who were in a fugitive status at the beginning of the Program did return to military control, and did elect to take part in the Program. Additionally, some 600 military members then confined in prison for deserter offenses were released from confinement for the purpose of entering the Program. Consequently, the Program did reach large numbers of those who were then in prison or who were, previous to the President's Proclamation, unwilling to surrender themselves to the military authorities. (See GAO comments, p. 34.)

If the goal of the Program had been to obtain 100% participation, changes in the benefits and requirements levels would obviously be required. In turn, this would call for a reconsideration of the equities between those who served and those who deserted or evaded, and how any changes would induce greater participation. These fundamental questions were not addressed. The Report also offers no suggested means of recruiting those who had already returned to civilian life, how to notify deserters whose whereabouts were unknown, and how to measure the costs of changing or extending the Program.

Viewed from a Department of Defense perspective, the Clemency Program offered the opportunity for those charged with or convicted of desertion to return to the mainstream of society. In turn, it represented a challenge to the Military Services to respond to the President's Proclamation in a fair and responsible manner. Despite the potential conflicts involved, even the Department's severest critics concluded that the Department's administration of the Program was both responsive to the President's mandate, and sensitive to the needs of those who returned. The GAO Report, with some slight reservations, bears this out.

Sincerely,



David P. Taylor  
Assistant Secretary of Defense  
(Manpower & Reserve Affairs).



OFFICE OF THE DIRECTOR

NATIONAL HEADQUARTERS  
SELECTIVE SERVICE SYSTEM

7th FLOOR  
600 E STREET, N.W.  
WASHINGTON, D. C. 20006

ADDRESS REPLY TO  
THE DIRECTOR OF SELECTIVE SERVICE

October 29, 1976

Dear Mr. Senate.

A draft copy of the proposed report to the Congress, "The Clemency Program of 1974," has been reviewed, and I wish to submit my brief comments for your consideration and to update the statistics concerning persons participating in the alternate service work portions of the program over which I exercise control per Executive Order 11627.

To me, this report of the Clemency Program lacks the required presentation and analysis of the policy, regulations, problems and statistics of the Presidential Clemency Board and therefore leaves too much of the program to the imagination of the reader. In my view, to make the report meaningful the data contained in Appendix III, entitled "The Presidential Clemency Board's Executive Summary," and that in Appendix IV, the minority report, should be analyzed in the context of the entire program and incorporated in the body of the published report, thereby becoming supportive of the conclusions. Presenting this critical data in the appendices to the report does not satisfy the need to include the material within a truly meaningful presentation of this important program. (See GAO comments, p. 47.)

Since the report portrays only a portion of the program, I recommend for your consideration that the document not be published until final and complete data from all segments can be incorporated in the basic report. (See GAO comments, p. 47.)

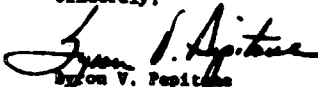
- GAO note:
1. The deleted comments pertain to using later statistics than appeared in the draft report. The suggested statistics have been included on p. 42.
  2. The deleted comment pertains to a statement omitted on the final report as suggested.

INSURE FREEDOM'S FUTURE--AND YOUR OWN--BUY UNITED STATES SAVINGS BONDS

The Honorable Elmer B. Staats  
Page Two  
October 29, 1976

I offer these updated statistics and the recommendations as to content of the report in the interest of providing the Congress a more balanced assessment of the program.

Sincerely,

  
Byron V. Pepitone  
Director

Attachment:

GAO note: Statistical data included in final report.

The Honorable Elmer B. Staats

Comptroller General of the United States

PRINCIPAL OFFICIALS  
RESPONSIBLE FOR ADMINISTERING  
ACTIVITIES DISCUSSED IN THIS REPORT

	<u>Tenure of office</u>	
	<u>From</u>	<u>To</u>
<u>DEPARTMENT OF DEFENSE</u>		
Secretary of Defense:		
Donald H. Rumsfeld	Nov. 1975	Present
James R. Schlesinger	July 1973	Nov. 1975
Deputy Secretary of Defense:		
William P. Clements	Jan. 1973	Present
Assistant Secretary of Defense:		
(Manpower and Reserve Affairs)		
David P. Taylor	July 1976	Present
John F. Ahearne (acting)	Mar. 1976	July 1976
William K. Brehm	Sept. 1973	Mar. 1976
<u>DEPARTMENT OF THE ARMY</u>		
Secretary of the Army:		
Martin R. Hoffman	Aug. 1975	Present
Norman R. Augustine (acting)	July 1975	Aug. 1975
Howard H. Callaway	May 1973	July 1975
<u>DEPARTMENT OF THE NAVY</u>		
Secretary of the Navy:		
J. William Middendorf II	Apr. 1974	Present
Commandant of the Marine Corps:		
Gen. Lewis B. Wilson	July 1975	Present
Gen. Robert E. Cushman, Jr.	Jan. 1972	June 1975
<u>DEPARTMENT OF THE AIR FORCE</u>		
Secretary of the Air Force:		
Thomas C. Reed	Jan. 1976	Present
James W. Plummer (acting)	Nov. 1975	Jan. 1976
John L. McLucas	May 1973	Nov. 1975

DEPARTMENT OF JUSTICE

## Attorney General:

Edward H. Levi

Laurence H. Silberman (acting)

William B. Saxbe

Feb. 1975	Present
Feb. 1975	Feb. 1975
Jan. 1974	Feb. 1975

## Assistant Attorney General

For Criminal Division:

Richard L. Thornburgh

John C. Keeney

Henry E. Petersen

June 1975	Present
Jan. 1975	July 1975
Jan. 1972	Dec. 1974

SELECTIVE SERVICE SYSTEM

## National Director:

Byron V. Pepitone

Apr. 1973	Present
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