

Inside Lincoln's Clemency Decision Making

*P.S. Ruckman, Jr.
David Kincaid*

Northern Illinois University

While much has been written about Abraham Lincoln's exercise of clemency, we find little systematic analysis of the actual clemency decision making process under the administration of our nation's sixteenth president. We also find a skewed emphasis in the literature on military pardons and amnesty provisions. In this study, we briefly review this problematic literature and, in a distinct departure, we systematically examine the 331 clemency warrants Lincoln issued to individuals convicted in civil courts. We believe these documents are among the richest sources of indisputably accurate information with respect to Lincoln's decision making processes. In our examination of the distribution of warrants among the states and territorial regions, we find considerable evidence Lincoln employed the pardoning power in a strategic manner. War-related offenses are a distinct feature of the warrants, but the majority of offenses are related to counterfeiting, postal violations, theft/burglary/larceny and murder/manslaughter. Our examination of the rationales provided in clemency warrants reveals an impressive effort on the part of Lincoln to provide explicit justifications for each decision and an unprecedented willingness to extend clemency upon recommendation of both prominent individuals and mass publics.

The exercise of executive clemency has been a major source of controversy in few presidential administrations. Occasionally, however, exercise of the President's constitutional power to "grant pardons and reprieves for offenses against the United States"¹ has evoked both gratitude and consternation among the citizenry and public officials with ramifications reaching far beyond the individual recipients of executive clemency. The clemency actions of Abraham Lincoln are perhaps the classic case in point. In this paper, we briefly review the literature on Lincoln and clemency powers and, in the process, attempt to extract generalizations with respect to Lincoln's decision making. We then examine a routinely ignored aspect of Lincoln's clemency policy, the three hundred and thirty-one warrants Lincoln issued to individuals convicted in civil courts. We believe our research fills a critical gap by providing an interesting, systematic and reliable 'inside' approach to this interesting topic.

The records of the Attorney General and the commentary of Lincoln's contemporaries suggest Lincoln readily utilized the pardoning power. Lincoln, furthermore, gained a reputation for being moved by appeals for mercy with his magnanimous approach to clemency requests. It is further evident Lincoln occasionally granted clemency (and amnesty) with an eye toward certain political ends, or as a component of an overall military strategy. As with any dimension of Lincoln scholarship, sifting fact from the fiction can be a formidable task. Apocryphal tales abound of pardons issued minutes before hangings (Stevens 1867, 42-3), and convicted youths fighting and dying valiantly after receiving a pardon from the Commander-in-Chief (Holland 1866, 431-2). Many such stories are facially dubious and have little corroborating evidence (Barton 1925, 249-53; Dorris 1953b, 5). The clemency policy of the Lincoln administration was, however, clearly highlighted by his recognition of the strategic potential of the clemency powers, his wartime amnesty policy, and the Minnesota Sioux Conflict.

Clemency as a Military "Strategy"

Lincoln is widely acclaimed to have recognized the strategic potential of clemency during a time of war. He pardoned a considerable number of Union soldiers in a conscious effort to boost the morale of Northern fighting forces. At the same time, Lincoln pardoned citizens from rebellious states in an attempt to regain their loyalty and trust. Indeed, Lincoln was widely admired among Union troops because of the perception that he took a genuine interest in their well-being. This perception was, of course, reinforced with each pardon of a military offender (Holland 1866, 431; Wiley 1950, 106). Wiley (1950) reports that of all the sentences of death imposed on Union soldiers for sleeping on post that crossed Lincoln's desk for his signature, none received his approval (106).²

Lincoln's general policy with respect to military offenders is, however, somewhat difficult to accurately evaluate. Consider the case of Private William Scott of Vermont. George T. Stevens, in 1867, wrote that Private Scott had fallen asleep while on guard duty in the fall of 1861. Scott was court-martialed and sentenced to death. The private was taken to the place of execution and a firing squad stood waiting for an order. Instead of an order to fire, a pardon was read that had been issued by Lincoln. Stevens maintains this was the first military death-sentence case in which executive clemency was extended by Lincoln, and claims Lincoln brought the pardon to the camp himself to make sure that the pardon was received in time to halt the execution (42-43). Barton (1925), however, notes the Private Scott story came from L.E. Chittendon and "[t]here is no evidence that Lincoln ever knew of the case" (250-252).³

Lincoln was nonetheless perceived as sympathetic to the plight of the common soldier. Estimates of the number of deserters range well over 100,000 (Barton 1925, 256) and one of the most commonly accepted anecdotes in the literature reflects Lincoln's sympathy for deserters: "They are the cases that you call by that long title cowardice in the face of the enemy, but I call them, for

short, my 'leg cases.' But I put it you, and I leave it for you to decide for yourself: If Almighty God gives a man a cowardly pair of legs how can he help their running away with him?"⁴ In 1864, Lincoln ordered the War Department to commute the death sentences of deserters to confinement until the end of the war and to allow commanding generals to reinstate convicted deserters if it was thought that they would be of use to the service (Basler VII, 1953, 208). Sixty-two deserters who were to be executed were spared in a single act in May 1864 (Wiley 1971, 216).

The sympathetic nature of Lincoln was also perceived and criticized by a host of military leaders. Lincoln assented to very few death sentences imposed by military courts, and those only after he had examined the facts and determined that the sentence was appropriate (Chittendon 1893, 406). Colonel Theodore Lyman explained the lack of military discipline as the result of "the uncertainty of the death penalty through the false merciful policy of the President (Luthin 1960, 403). Reports of Lincoln's numerous acts of clemency were widely circulated in the army (Luthin 1960, 106) and General Tyler went so far as to blame the rout of his troops by the vastly undermanned Bragg on Lincoln's pardoning of deserters (Barton 1925, 255-6). General Butler telegraphed Lincoln requesting that the President not "interfere" with the courts martial of the army (Current 1958, 166). General Sherman found a way to deal with the President's disposition. When someone inquired from the General how he was able to execute court-martialed offenders without Lincoln interposing a pardon, he replied, "I shot them first" (Current 1958, 169).⁵

In sum, Lincoln's overall clemency policy is somewhat distorted by legendary accounts of military offenders. His utilization of clemency was, however, considerably influenced by a military strategy which aimed to encourage Union troops to fight and citizens of the rebellious states to return to the fold. John P. Usher, Secretary of Interior under Lincoln, felt Lincoln's "great effort" was "to find some excuse, some palliation for offenses charged" striving "at all times to relieve the

citizens on both sides of the inconveniences and hardships resulting from war" (Luthin 1960, 405).

Wartime Amnesty Policy

A second salient feature of clemency policy during the Lincoln administration is the December 8, 1863, issuance of a "Declaration of Amnesty and Reconstruction." Lincoln issued the Proclamation on the same day as his annual message to Congress outlining his plan for dealing with the rebellious South. Congress had indicated its conditional approval for the President to engage in such a measure by its act of July 17, 1862, stating the President had the ability "to extend to persons who may have participated in the existing Rebellion in any State or part thereof, pardon and amnesty, with such exceptions and at such time and on such conditions as he may deem expedient for the public welfare" (McCarthy 1966, 24). According to Lincoln's plan, if at least ten percent of the number of voters in the 1860 Presidential election in a rebellious state took an oath and constructed a republican government for the state, they could receive recognition and protection under the Guarantee Clause of Article IV, section 4 (Basler VII, 50, 55).

The issue of clemency was directly addressed in the Proclamation by its pronouncement that those involved in the rebellion (excluding those such as Confederate officers and agents) may receive a full pardon and restoration of rights by taking an oath to support the Constitution, the union, and all federal laws and presidential proclamations on the subject of slavery (VII, 54-55). Anticipating criticism, Lincoln contended that "nothing is attempted beyond what is amply justified by the Constitution" (VII, 50). He further argued the noncompulsory nature of the plan and the broad scope of executive power encompassed within the constitutional grant of authority to pardon reinforced the validity of the proposal. Lincoln noted:

True, the form of an oath is given, but no man is coerced to take it. The man is only promised a pardon in case he voluntarily takes the oath. The Constitution authorizes the Executive to grant or withhold the pardon at his own absolute discretion; and this

includes the power to grant on terms, as is fully established by judicial and other authorities (VII, 50).

Lincoln further emphasized that avoiding rigidity in the process of reconstruction would be integral in his approach to the hornets' nest of complex constitutional and tactical concerns.

Saying that, on certain terms, certain classes will be pardoned, with rights restored, it is not said that other classes, or other terms, will never be included. Saying that reconstruction will be accepted if presented in a specified way, it is not said it will never be accepted in any other way (VII, 52).

Lincoln's flexibility in seeking the restoration of national authority, however, left a number of unanswered questions concerning the proper scope and administration of the provisions of the amnesty Proclamation. Ambiguity in the wording of the original December 8 Proclamation, prompted Lincoln to issue the "Proclamation About Amnesty" on March 26, 1864 (Basler VII, 269-70). In the second Proclamation, Lincoln specified that those individuals under civil or military custody or confinement were not covered under the provisions of the original plan (VII, 269). Additionally, Lincoln indicated commissioned federal and state-authorized civil and military officers could administer the oath and gave directions concerning transmittal of oath-related records (VII, 270).

The Proclamation is the subject of conflicting reports as to the manner in which it was received by public officials, particularly those in Congress. Neely (1993) suggests both radicals and conservatives viewed the proposal favorably (179) and Barrett (1903) echoes similar sentiments (224). McCarthy (1966), on the other hand, notes the Proclamation was initially greeted with "universal favor," but was shortly followed by various congressional aiming to challenge or supplant (224). Issac Arnold, who served in Congress at the time the Proclamation was issued, similarly notes "[t]here was a wide difference of opinion among the friends of the President in regard to the Amnesty Proclamation" as "many thought the terms much too favorable to the rebels" (1971, 471).

The reaction of the partisan press was likewise mixed, though less moderate. The *Richmond Examiner* rebuked Lincoln's "utterly infamous terms" and his "audacity to declare that in some of the Confederate States the elements of reconstruction were ready for action" (Mitgang 1989, 364). The Democratic *New York Daily News* lamented Lincoln's proclamation as "treachery" that stripped the people of their constitutional liberties (369-71), usurped legislative authority, and was dictatorial and arbitrary in its terms for restoration of Southern states to the Union (379-80). The *News* claimed further that Lincoln wished to see the seceded states returned to the Union fold with the hope of gaining their votes for his upcoming reelection bid (380). The charge of election politics was also made in a weekly publication, the *Spirit of the Times*, which asserted Lincoln was "granting pardons to military rebels ... in order that they may come within our lines and electioneer to carry out his personal purposes" (Sandburg II, 1939, 643). In contrast, the *New York Tribune* described the plan as eminently reasonable and wondered why anyone would doubt its provisions were fair to the South: "How can any one who means to be loyal at all, object to these conditions? ... We proffer them equality with ourselves. Should not that suffice and content them?" (Mitgang 1989, 364-5).

The Minnesota Sioux Conflict

After being driven off of their land, and months of fraudulent dealings on the part of agents of the government, four Minnesota Santee Sioux killed five white settlers in August 1862 (Brown 1970, 40-2). War broke out between the Sioux and whites in Minnesota and Lincoln appointed General John Pope to head the military forces in the area. The war had come to an end in early October and over 1,000 Indians were held as prisoners (Nichols 1978, 94). General Henry Sibley, a former Minnesota governor who had been involved in highly questionable trade and claims deals with the Indians, subjected the Sioux to hasty military trials and, one month later, Lincoln was

notified by General Pope that death sentences were to be carried out on 303 of the convicted Santees. Pope expressed his view that Lincoln was certain to approve the convictions and thus permit the executions: "The Sioux prisoners will be executed unless the President forbids it, which I am sure he will not do" (Brown 1970, 58). Lincoln, however, telegraphed Pope requesting him to mail "the full and complete record of these convictions" in order to be evaluated before the executions were to take place (Basler V, 1953, 493).

In his December 1 message to Congress, Lincoln noted the "extreme ferocities" of the Sioux uprising (V, 1953, 525). Also on December 1, Lincoln wrote Judge Advocate General Joseph Holt seeking Holt's opinion on what should be done with the condemned Sioux, asking "whether if I should conclude to execute only a part of them, I must myself designate which, or could I leave the designation to some officer on the ground" (V, 1953, 537-8). Holt's answer was that Lincoln would have to decide the matter on his own, but that "[i]n view of the large amount of human life involved," perhaps the Attorney General should investigate "for the purpose of more satisfactorily determining the question of their [the convictions'] regularity" (V, 1953, 538).

Finally, on December 6, Lincoln wrote Sibley ordering that 39 of the 303 condemned Santees be executed (V, 1953, 542-43). One of the remaining 39 was pardoned, and on December 26, 1862, 38 Sioux Indians were hung (VI, 1953, 7). At least one Sioux who had not been approved for execution by Lincoln was nevertheless hung, apparently being included by mistake (Brown 1970, 60; Nichols 1978, 117). Nichols notes that the hanging of the Sioux was "the largest official mass execution in American history in which guilt of the executed cannot be positively determined" (1978, 117).

Lincoln's decision was still yet another clemency act for which he was roundly criticized. A number of Minnesota residents and political figures, including Minnesota Governor Alexander

Ramsey and Senator Morton Wilkinson, expressed outrage with the pardons after having pressured Lincoln to approve the execution of all the convicted Indians (Nichols 1978, 109-13). Responding to a resolution from the U.S. Senate inquiring into his actions in regard to "the late Indian barbarities," Lincoln stated that his primary concern was ensuring that those guilty of rape were to be executed, followed by those who "have participated in *massacres*, as distinguished from participation in *battles*" (Basler V, 1953, 550-1, emphasis in original). After the 1864 election, Governor Ramsey opined that while the President had carried the State, had Lincoln not pardoned the Sioux, he would have received more votes than he did, to which Lincoln replied, "I could not afford to hang men for votes" (Nichols 1978, 118).

THE CLEMENCY PROCESS UNDER LINCOLN

From 1854 until 1884, the Attorney General recorded data on clemency cases and, under Lincoln, warrants were co-signed by the Secretary of State William Seward. On occasion, W. Hunter served as "Acting Secretary of State."⁶ Our review of the literature on clemency policy in the Lincoln administration revealed little with respect to the actual decision making process that could be described as 'systematic.' The literature abounds with criticisms of Lincoln's general policies and specific decisions and interesting tales of the characteristics and methods of petitioners. Edmund Stedman, pardon clerk, noted his boss (Attorney Bates) "soon discovered [the] most important duty was to keep all but the most deserving cases from coming before the kind Mr. Lincoln at all; since there was nothing harder for him to do than to put aside a prisoner's application and he could not resist it when it was urged by a pleading wife and a weeping child" (Dorris 1953b, 9).

The literature does, however, provide a few clues as to the factors which may have had

considerable influence in Lincoln's decision making. Barton (1925), for example, suggests Lincoln pardoned some guilty soldiers simply because they were young (255) and Dorris (1953b) agrees "a youthful prisoner was almost always certain to find favor in Lincoln's sight (5). Indeed, Lincoln informed General Meade that he was "unwilling for any boy under eighteen to be shot" (Sandburg III, 476).

While Barton (1925) holds Lincoln was not easily moved in cases where the man condemned was a man of intelligence and influence (268), the literature generally holds the social status of clemency petitioners and/or their supporters was a major influence in Lincoln's clemency decision making (Luthin 1960, 403; Wiley 1950, 216-7). Lincoln, for example, pardoned Samuel B. Davis of Delaware, a distant relative of Jefferson Davis (Current 1958, 168) and extended clemency to the son of George D. Prentice, editor of the *Louisville Journal* (Dorris 1953a, 80-1). When Alexander Stephens (Vice-President of the Confederacy and Lincoln's former fellow legislator in the U.S. House of Representatives from 1847-49) informed Lincoln that his nephew was held in a northern prison, Lincoln paroled the nephew (Luthin 1960, 404-5). Lincoln also considered releasing Edwin C. Claybrook of the 9th Virginia's Cavalry and a young man named Linder, son of an Illinois friend of the President, as a New Year's gift to their relatives (Dorris 1953b).

Members of Congress frequently supported clemency requests (Luthin 1960, 403-4; Sandburg 1939 III, 505).⁷ Congressman Kellogg of New York even made such an appeal at midnight, breaking through guards and reaching the room where the President lay in bed. Kellogg informed Lincoln the petitioner (who was to be shot at sunrise) was "an old neighbor" and he couldn't "allow him to be shot!" According to Sandburg, Lincoln reportedly stayed in bed, listened quietly to the pleas of the man he had known many years, then slowly replied: "Well, I don't believe shooting him will do him any good. Give me that pen" (III, 477). Pennsylvania congressman

Thaddeus Stevens once visited the White House with a woman from his district seeking a pardon for her son who was condemned to die for sleeping at his post. Ironically, Stevens was among those denouncing the President for being too free with pardons. Lincoln reportedly asked, "now, Thad, what would you do in this case if you happened to be president?" (Current 1958, 165).⁸

Several commentators take the view that the personal pleadings of a wife or mother were difficult for Lincoln to refuse. Attorney General Edward Bates declared Lincoln deficient "in the element of will" and "unfit to be trusted with the pardoning power" as "in nine cases out of ten" the tears of a woman "if nothing else" were "sure to prevail" (Current 1958, 169). Barton (1925) sarcastically notes, "if there were no places in Washington where they rented widow's clothes and attractive babies to women who wanted to make appeals to the president, an abundant supply was obtainable and was used persistently" (255; see also Barton's comments at 249). Dorris (1953b) suggests Lincoln indicated an awareness of his "susceptibility to women" by complaining that Congress took the "responsibility" for the sentences of deserters and "left all the women to howl all about" him (9).

Finally, the literature reports an abundance of idiosyncratic stories which admit of no generalization. Consider the following reported by Current (1958, at 166-7):

During the winter of 1963-4, Representative Daniel W. Vorrhees of Indiana visited the White House with two Indiana Senators, a fellow congressman and a Mr. and Mrs. Mullitt. The latter's father, a southern born preacher in his seventies, had been convicted of conspiring in Tennessee to procure ammunition and quinine for the enemy. He was to be shot within forty eight hours ... suddenly he [Lincoln] asked her father's name and she told him. "Why, he preached in Springfield years ago didn't he?" Yes, he had. "Well, this is wonderful!" Lincoln said. "I knew this man well; I have heard him preach; he was a tall, angular man like I am and I have been mistaken for him on the streets. Did you say he was to be shot day after tomorrow? No, no! There will be no shooting nor hanging in this case.

LINCOLN'S CLEMENCY WARRANTS

In order to assess the validity of the literature's generalizations concerning Lincoln's decision making in a new context, we systematically examined the 331 warrants Lincoln issued to offenders convicted by the civil courts. The warrants are deposited in the National Archives (Microfilm Set T967) and are referred to in the literature (Dorris 1953b; Neely 1982). We are, however, unaware of any systematic analysis of their content. In order to provide the proper context for the analysis, we first note (1) the number, and types, of clemency actions taken by Lincoln (2) the distribution of warrants by state and (3) the offenses addressed in each warrant. We then provide an 'inside' look at Lincoln's decision making with an examination of the rationales offered by the President for each decision.

A summary of the data with respect to the issuance of warrants across the administrations of Lincoln and the number of individuals to whom clemency was extended is as follows:

Term (Year of Term)	Number of Warrants	Number of Individuals
1 (1)	69	80
1 (2)	73	76
1 (3)	94	98
1 (4)	89	111
2 (1)	6	6

While it may be tempting to attribute the apparent increase in clemency activity throughout the administration to the escalation of hostilities between the states, similar patterns (within terms) have been noted both in an examination of the clemency policies of our nation's first four presidents (Ruckman 1994b) and analyses of clemency policy from 1900 to 1993 (Ruckman 1994a; Ruckman, *forthcoming*). The number of warrants actually drops in the last year of Lincoln's first term, but the number of individuals affected by warrants continued to increase (from 98, in the third year, to 111).

In an attempt to place these numbers in perspective, Neely (1982) notes Lincoln refused clemency in 81 cases⁹ and (apparently referencing Dorris 1953b, at 2-3) notes Lincoln's 300 pardons

for "non-military" offenses exceed the 141 issued by James Buchanan's and 175 issued by Franklin Pierce (60).¹⁰ It is not clear, however, how Neely (or Dorris) categorized "military" and "non-military" offenses, and whether a distinction between the various types of clemency actions has been made in such figures.¹¹ Thus, we categorized the types of clemency actions taken by Lincoln. In the circumstance of multiple actions in a single warrant (e.g. "pardon and remission of fine"), we counted each action separately. The distribution Lincoln's civil warrants is as follows:

Type of Clemency	Number of Warrants
Pardons	324
Conditional Pardons	9
Remissions Fine	21
Remission/Commutation of Sentence	6
Respite	6
Release/Discharge from Custody	4
Release from Any Penalty	1

Next, we determined the extent to which Lincoln's clemency warrants were distributed throughout the states and territorial areas. We were unable to identify the origin of 3 cases.¹² Among the warrants we could identify with certainty, we found the States and territorial regions with the highest concentration of warrants as follows:

State / Territory	Warrants	State / Territory	Warrants
District of Columbia	101	Massachusetts	12
New York	42	Tennessee	12
Kentucky	41	Virginia	11
Missouri	33	Michigan	11
Pennsylvania	15	Illinois	11
Ohio	12	Florida	9

A large number of warrants (101) address cases in the District of Columbia.¹³ Many of these cases involve violations which would not appear federal in nature (see further discussion below). Excluding the District of Columbia, New York and Kentucky stand out as the states receiving the

largest number of clemency warrants. Dorris (1953a) suggests North Carolina was "the favored state" for the administration of Andrew Johnson. Our data support his additional notion that Kentuckians "undoubtedly enjoyed a choice place" in Lincoln's "affections" (85) and that he [Lincoln] "may have also been especially merciful when [confederate petitioners] were from his native state" (80-1).

The distribution of warrants in the States and territories also reflects the importance of the bitter sectional rivalry and Lincoln's strategic use of clemency. Individuals in the four 'border' states (Missouri, Kentucky, Tennessee, and Virginia) alone account for 97 warrants. Almost one in every three warrants signed by Lincoln - and 38 percent of the population of warrants issued outside the District of Columbia - were assigned to individuals in these states. The strategy of the President is stated quite clearly in a clemency warrant directed to John Winter, John Fitzhugh, and Franklin D. Graham (Missourians convicted of "overt acts of treason against the government" in "the rebellion"):

"the president most earnestly desires the re-establishment of good principles and the restoration of peace, order, and law, by the mildest means possible and is anxious to afford to all who have been seduced and led astray by evil consuls a safe and easy opportunity to return to their duty as faithful and loyal citizens."¹⁴

In Table 1, we report the offenses most frequently addressed in Lincoln's clemency warrants. Counterfeiting¹⁵ and postal crimes¹⁶ account for 107 violations alone. Here, however, the effects of the war between the states on clemency policy are even more evident

Table 1 - about here

A sizeable number of offenses are clearly war-related : conspiracy (22), treason (17), rebellion (12), holding an office in the confederacy (9), serving with the rebels (4), violating the national forces act (3). Many other violations related to the war and/or the conduct of soldiers appear in Lincoln's clemency warrants but were not repeated (e.g., giving liquor to a soldier, purchasing a pistol from a

soldier). While the majority of the violations for rape (5), assault and battery (23), theft, burglary, and larceny (39) originate in the District of Columbia, a sizeable number of the thirty-five murder and manslaughter cases originated in the various territorial regions.

Finally, we examined the rationale offered by Lincoln in each warrant for the extension of clemency. Humbert's 1941 study suggests "the motives which prompt the executive in the exercise of the pardoning power are a topic of the greatest importance in clemency" (124). Thus, he took note of thirty-eight "principle" and fifty-six "less frequent" explanations cited in the clemency statements issued from 1885 to 1931 (Tables V and VI inserted at 124).¹⁷ Like Humbert, we assumed "fair results [are] perhaps obtained by listing all the reasons presented in each recommendation" (125). Thus, each justification was coded as a different rationale unless the words or phrases used in warrants were identical. The result of this process was the identification of 238 separate rationales for the extension of clemency. The range of explicit justifications offered by Lincoln is quite remarkable, especially in comparison to that of the warrants issued by Washington, Adams, Jefferson and Madison. The Nation's first four presidents offered little explanation for their decisions and often relied on vague phrases, such as "for reasons me thereunto moving," or "for diverse and other good causes" (Ruckman 1994b).

On the other hand, the range of explanations in Lincoln's warrants is not unlike that found in Humbert's examination of clemency from 1860 to 1936. Lincoln pardoned individuals for serving in the military, for having a spouse in the military, for having sons in the military or for merely being "anxious" to serve in the military. Those who enlisted early, or were wounded, or rose through the ranks, or performed "perilous, important duties" were rewarded. One man was pardoned for being a "notable" recruiter. Lincoln forgave on the grounds of ignorance, provocation, inadvertence, aggravating circumstances, mitigating circumstances, acquiescence, entrapment and malicious

prosecution. Pardons were given to those who were - previous to the commission of the crime - loyal, those who were "anxious" to be loyal, those who had taken an oath of loyalty, and those who were willing to take such an oath. The "remarkably good humored disposition" of one petitioner was a plus, and the promise of a former employer to re-hire another petitioner was also helpful. Among those justifications appearing with greater frequency were:

Justification -----	Frequency -----
good conduct during confinement	101
petitioner repented, was penitent	61
good character before commission of offense	40
youth	37
petitioner took an oath of loyalty	29
reference to wife, mother, widow	20
first offense	20
poor, declining health	20
reference to family, children	18
old age	15
confessed guilt or pleaded guilty	14

First, our categorization of rationales confirms the literature's perception that youth was an important consideration in Lincoln's decision making. Although warrants do not report whether individuals personally approached the President or whether those who did approach the President were male or female, the wives, mothers and widows of petitioners are referenced in 20 instances. Families and children are referenced in an additional 18 instances. If combined, such explanations would take the fourth position in the list.

The warrants of Lincoln place a decided emphasis on the recommendations and advice of other individuals, especially those officials close to the prosecution of the offense. While the advice of prison and penitentiary officials¹⁸ is cited in 44 instances, the recommendations of judges and justices¹⁹ are referenced 73 times. The views of U.S. Attorneys and District Attorneys are consulted in 78 instances.²⁰ In sharp contrast, the 358 warrants signed by our nation's first four presidents

reference the recommendations of judges in only 10 instances (Ruckman 1994b).

An even more interesting feature of Lincoln's warrants, however, is the wide *range* of individuals cited. Wives, "near relatives," friends and neighbors influenced the President's decision making, but so did members of the U.S. Senate (15 warrants) and House of Representatives (14 warrants),²¹ governors (12 warrants), former governors (2 warrants), state legislators (5 warrants), mayors (5 warrants), former mayors (2 warrants), aldermen (2 warrants), and city council members (2 warrants).

Supreme Court Justice Samuel Nelson and former president Franklin Pierce are conspicuous as supporters of clemency petitions,²² but the presence of Major General William T. Sherman and Andrew Johnson as supporters of petitions is particularly surprising. Sherman was, again, among those most critical of Lincoln's clemency decision making. In an 1864 letter to the Judge Advocate-General, Sherman suggested 40 or 50 executions would "save a thousand lives" and announced his intention "to execute a good many spies and guerrillas ... without bothering the President." Sherman noted "it is very hard for the President to hang spies" and "too many" escape "in the time consumed by trial, review and remission" (Dorris 1953b, 9). In the same year, however, Sherman supported the warrant of Augustus R. Wright of Georgia (a member of the confederate congress and colonel in the army of the rebel states).²³ Vice President Johnson, always considered to be on the side of those viewing Lincoln as all too lenient, supported the separate warrants of John H. Craigmiles (convicted of "taking part in the existing rebellion") and James M. Campbell (convicted of holding civil office in the confederacy).²⁴

The Lincoln warrants also display what appears to be an unprecedented degree of public influence. The 358 clemency warrants issued by our nation's first four presidents cite "the plea of respectable citizens" in only four instances, but the warrants of Lincoln cite the plea of jurors 38

times. Lincoln's warrants also employ the following phrases:

Phrase -----	Frequency -----
well known persons	1
respectable persons	4
other high respectable citizens	24
a number of high respectable citizens	20
honorable citizens	48
large number of high respectable citizens	96

It impossible to know exactly how many individuals are involved in warrants involving such general language, but some warrants are more specific. Fifty "respectable citizens" from the territory of Nebraska, for example, supported the warrant of James Corrigan (convicted of manslaughter).²⁵ "Many hundred respectable citizens at large" joined the Senators, Representatives and state legislators from Minnesota, as well as the governor, in supporting the warrant of Luther Preston (convicted of stealing from the mails). The warrant of John H. Murphy (convicted of manslaughter) mentions jurors, aldermen, city councilmen, the register and collector and "nearly one thousand citizens of the District of Columbia."²⁶ Joseph S. Hewins (convicted of mail robbery) received support from a postmaster, the president of a railroad company, a sheriff, a collector, many "well known persons" of "undoubted veracity" and "over eleven hundred" citizens and acquaintances in Massachusetts.²⁷ The warrant of Daniel Loudersmith (convicted of forging applications for pensions) was supported by a "large majority" of the members of the Pennsylvania state legislature and "several thousand citizens."²⁸

Lincoln's extensive effort to provide numerous and explicit explanations for clemency decisions and his willingness to exercise the power upon the advice of individuals and mass public suggest he may well deserve credit for having utilized one of the most unilateral and imperial of executive powers in the most democratic manner. The apparently unprecedented degree of public

participation in the clemency decision making process was undoubtedly the product of numerous factors, but we suspect Lincoln thrived on the hope that each request that he granted further educated a portion of the public as to the necessity of a clemency power in the justice system. Thus, while Lincoln's overall clemency policy was the object of sharp public criticism, it was also a means whereby he could enjoy the opportunity to win the respect, and perhaps the support, of citizenry.

CONCLUSION

Our review of the literature reveals the clemency policy of the Lincoln administration was highlighted by military strategy, the Proclamation of Amnesty and Reconstruction, and the Minnesota Sioux Conflict. Lincoln utilized pardons to boost morale among Northern fighting forces, as well as to encourage desertion among border-state troops. He attempted to ground his amnesty policy in the pardoning power, demonstrating flexibility and deference to Congress in his approach to reconstruction. While Lincoln spared 260 Santee Sioux from the hangman's noose, the execution of 39 others received his approval. The literature, however, reveals little in the way of systematic knowledge of the actual decision making process under Lincoln. Anecdotal evidence suggests he was sympathetic to those of high social status and petitioners who were young. There is further evidence that women and Congressmen were successful advocates for clemency action.

Our examination of warrants issued to offenders convicted by the civil courts, reveals Lincoln utilized a relatively wide variety of clemency actions, and strategically employed clemency powers in the border states. The data add further evidence to the notion that Lincoln was sympathetic toward petitioners from Kentucky. Unlike our Nation's first four presidents, Lincoln was generally careful to provide numerous explicit justifications for each clemency decision. As a result, our analysis of the rationales in clemency warrants provides further evidence youth was an important factor in Lincoln's clemency decision making, "good conduct" and a penitent disposition

appear to have been of primary importance. Thus, Lincoln's warrants frequently reference the opinions of prison officials, judges and district attorneys.

We find particularly interesting Lincoln's frequent reference to a wide variety of national, state and local public officials. In combination with frequent references to groups of citizens, the warrants issued by Lincoln reveal a clemency process that is - again, quite unlike that of the first four presidents - remarkably public in nature. This feature might have been a natural reaction to the intense criticism of the President's clemency policy. Finally, our analysis reveals even the most rigorous critics of Lincoln were willing to petition the President when, in their view, clemency was deserved. Thus, the embattled President suffered the abuses of his critics, while instructing them in the occasional wisdom of mercy.

The authors wish to emphasize the importance on further research on the exercise of clemency. As noted above, it is difficult to assess the form and impact of Lincoln's clemency decisions without intelligent points of reference. The clemency decisions of presidents before and after Lincoln have, however, been generally ignored by political scientists. As the authors are about to complete the construction of a data set of clemency decisions from 1789 to 1933, a more broad, comparative examination of Lincoln's clemency decisions will soon be possible.

Table 1

**Offenses Addressed in Lincoln's Clemency Warrants
(Civil Court Violations)**

Counterfeiting	57
Postal Violations	50
Theft/Burglary/Larceny	39
Murder/Manslaughter	35
Assault/Battery	23
Conspiracy	22
Treason	17
Violation Revenue Laws	14
Forgery	13
Rebellion	12
Mutiny	10
Held Confederate Office	9
Arson	8
Fraud	6
Perjury	6
Recognizance Violations	6
Slave Trade Violations	5
Embezzlement	5
Rape	5
Served with Rebels	4
Violating Nat.Forces Act	3
Forfeiture	2
Resisting an Officer	2
Resisting a Vessel Pilot	2

References

- Arnold, Issac N. 1971. *The History of Abraham Lincoln and the Overthrow of Slavery*. Book for Libraries Press: Freeport, NY.
- Barrett, Joseph H. 1903. *Abraham Lincoln and His Presidency*. D. Appleton and Company: New York.
- Barton, William E. 1925. *The Life of Abraham Lincoln*. The Bobbs Merrill Company: Indianapolis.
- Basler, Roy P., ed. 1953. *The Collected Works of Abraham Lincoln*. Rutgers University Press: New Brunswick.
- Brown, Dee. 1970. *Bury My Heart at Wounded Knee: An Indian History of the American West*. Bantam Books: New York.
- Chittendon, L.E. 1893. *Personal Reminiscences: Including Lincoln and Others 1840-1890*. Richmond, Croscup and Company: New York.
- Current, Richard N. 1958. *The Lincoln Nobody Knows*. Hill and Wang: New York.
- Dorris, Jonathan Truman. 1953a. *Pardon and Amnesty under Lincoln and Johnson*. Greenwood Press: Westport, Connecticut.
- Dorris, Jonathan Truman. 1953b. "President Lincoln's Clemency." *Lincoln Herald*, LV: 2-12.
- Holland, J.G. 1866. *The Life of Abraham Lincoln*. Gurdon Bill: Springfield, MA.
- Humbert, W.H. 1941. *The Pardoning Power*. Washington, DC: American Council on Public Affairs.
- Johnson, William J. 1913. *Abraham Lincoln The Christian*. The Abington Press: Cincinnati.
- Kobil, Daniel. 1991. "The Quality of Mercy Strained: Wrestling the Pardoning Power from the King." *Texas Law Review*, 69: 569-641.
- Luthin, Reinhard H. 1960. *The Real Abraham Lincoln: A Complete One Volume History of His Life and Times*. Englewood Cliffs: Prentice Hall, Inc.
- McCarthy, Charles H. 1966. *Lincoln's Plan of Reconstruction*. AMS Press Inc: New York.
- Mitgang, Herbert, ed. 1989. *Abraham Lincoln: A Press Portrait*. University of Georgia Press: Athens, GA.
- Neely, Mark E., Jr. 1982. *The Lincoln Encyclopedia*. McGraw-Hill Book Company: New York.
- Neely, Mark E., Jr. 1993. *The Last Best Hope of Earth: Abraham Lincoln and the Promise of America*. Harvard University Press: Cambridge, MA.
- Nichols, David A. 1978. *Lincoln and the Indians: Civil War Policy and Politics*. University of Missouri Press: Columbia, MO.
- Ruckman, P.S., Jr. 1994a. "Executive Clemency in the United States, 1900-1993: An Empirical Analysis," paper presented at the annual meeting of the American Political Science Association, New York, NY.
- Ruckman, P.S., Jr. 1994b. "Policy as an Indicator of "Original Understanding": Executive Clemency in the Early Republic (1789-1817)," paper presented at the annual Meeting of the Southern Political Science Association, Atlanta, GA.
- Ruckman, P.S., Jr. N.D. "Executive Clemency in the United States: Origins Development and Analysis (1900-1993)," *forthcoming*.
- Sandburg, Carl. 1939. *Abraham Lincoln*. Harcourt, Brace and Company: New York.

Stevens, George T. 1867. *Three Years in the Sixth Corps*. D. Van Nostrand, Publishers:
New York.

Wiley, Bell Irvin. 1950. "Billy Yank and Abraham Lincoln." in *The Abraham Lincoln Quarterly*, 6:
103-20.

Wiley, Bell Irvin. 1972. "The Life of Billy Yank: The Common Soldier of the Union."
Doubleday and Company, Inc.: Garden City.

Notes

-
1. Article II, Section 2.
 2. Dorris (1953b) suggests Lincoln had a tendency to be less lenient with officers convicted of transgressions (11).
 3. Holland (1866) provides an additional anecdote (apparently fictitious) in which "a personal friend of the President" reported that Lincoln pardoned a youthful soldier who had been sentenced to death for sleeping while serving sentinel duty. This "friend" recounted that Lincoln explained his pardon with the comment, "I could not think of going into eternity with the blood of the poor young man on my skirts" (431).
 4. Comment to Judge Advocate General Joseph Holt (Current 1958, 166).
 5. Lincoln, nonetheless, often acted upon the recommendations of military officers or the judge advocate general in deciding whether to pardon or commute the sentence so soldiers sentenced to death. The literature indicates the cases in which he authorized the execution of soldiers convicted by a court martial typically involved matters "not strictly military", e.g., arson and rape (Wiley 1950, 106).
 6. Today, the clemency process is housed in the Office of the Pardon Attorney (created by a federal statute, 26 Stat. 946) which is within the Department of Justice.
 7. The case of John Y. Beall is probably the most prominent example of Lincoln refusing to comply with the wishes of members of congressional members. Eighty-five members of the House and 6 members of the Senate supported clemency for Beall, who lead a band capturing vessels on the Great Lakes and attempted to release prisoners from Johnson's Island (Dorris 1953a, 77-8; Sandburg IV, 132). Current (1958) notes Beall "aroused a tremendous amount of sympathy" in the North as well as the South (171) and the salience of the case is evident in the fact that, later, Lincoln's assassination was commonly linked to his refusal to grant Beall clemency (Barton 1925, 262-3; Dorris 1953a, 78-9).
 8. At least one case may have been affected by larger political concerns. Barton (1925) links the case of Louis A. Welton with electoral politics. Welton secured the support of Senator Morgan of New York, H. J. Raymond of the *New York Times* and Thurlow Weed, but Lincoln firmly believed Welton was justly accused. The appeal came at a time when Lincoln could not afford to lose any of his political support; and, according to Barton, "there were not in the country three men for whose support just then he cared more than for these three. New York seemed at the time practically certain to vote against Lincoln and these three men had mighty influence in New York. Lincoln did not want to lose any strength which he had in so important a state" (268). Lincoln, craftily, found personal peace by requiring Weed and Raymond to sign their names to their request on the same piece of paper on which Lincoln stated his beliefs as to why clemency should not be granted (Barton 1925, 268-9).
 9. Dorris (1953b) notes these cases include 20 cases of counterfeiting, 16 for larceny, 7 for

manslaughter, 3 for serving on a slave ship and 1 for treason (3).

10. Dorris concludes "it should be also noted that a large portion of the Union scarcely came within the scope of [Lincoln's] pardoning power. His clemency was, therefore, was confined to a much smaller area and population than were the pardons of Pierce and Buchanan." Moreover, continues Dorris, it might be added that apparently President Johnson granted as many pardons to common offenders as Lincoln. Hence, "when all the circumstances are considered, Lincoln was not much more lenient to common offenders than Pierce, Buchanan, and Johnson" (3).

11. Kobil (1991) notes a *pardon* "provides the most sweeping remission of the consequences that normally attend violation of the law." It may be granted either before or after conviction and is normally used "to restore the reputation and civil rights of an individual who has completed her designated punishment and demonstrated rehabilitation by leading an exemplary life upon release." A *commutation*, on the other hand, is a more limited form of clemency which is "the substitution of a milder punishment for the one imposed by the court." A commutation "in no way relieves the offender of most of the legal consequences of an offense" and is often granted "to shorten the offender's sentence to time already served or to make him/her immediately eligible for parole." The clemency power also embraces "*remissions* of fines and forfeitures" (575-8).

12. The state is simply not mentioned in the warrant for Miller A. Wright (November 11, 1864). The second and third warrants involves grand larceny in an unnamed territory (Robert P. Lombard - April 12, 1865) and a prisoner from Baltimore who was transferred to New York from the District of Columbia (Henry Williams - February 11, 1863).

13. The distribution of warrants among the remaining states and territorial regions is as follows: Indiana (8), Arkansas (7), Maryland and New Jersey (5), Delaware and Minnesota (4), Colorado, Iowa, and Wisconsin (3), California, Louisiana, Maine, Nebraska and Nevada (2), Connecticut, Georgia, Kansas, Mississippi, North Carolina, Oregon, Rhode Island, Vermont, and West Virginia (1).

14. Dated August 22, 1861.

15. Violations include: counterfeiting, making counterfeit money, assisting in making counterfeit money, passing counterfeit money, and possessing counterfeit money.

16. Violations include: opening letters, stealing letters, stealing letters with money, stealing letters with articles of value, stealing letters from a post office, stealing from a post office, robbing a post office, taking letters from the mail, stealing letters from the mail, aiding in destroying letters stolen from the mail, stealing from the mail, mail robbery, and attempted mail robbery

17. The range of factors cited, from mental infirmity of judges to the desire to save a farmer's crops, is remarkable. Presidents have granted clemency as a result of a petitioner's "poverty" or "friendless condition." They have also been moved by a petitioner's "respectable" family or "favorable home condition." Pardons have been extended on both the basis of "youth" and "old

age," and issued to those who are "sincerely penitent" or have engaged in "good conduct" and are "reformed." Clemency has even been granted to "encourage reformation" in individuals and "good conduct among other prisoners."

18. including wardens, deputy wardens, superintendents, clerks, directors, boards of inspectors, chaplains, moral instructors, matrons, and guards.

19. including the associate and chief justices of a District State Supreme Court, associate and chief justices of the Supreme Court of the District of Columbia, and a Justice of the United States Supreme Court.

20. Interestingly, the views of Marshals and U.S. Marshals are mentioned in only 4 and 9 instances respectively.

21. In 6 instances, "members of Congress" are cited. The warrant of William Boyd (October 3, 1861) was supported by 54 members of Congress.

22. Nelson supported a warrant issued February 23, 1864 for George Hamilton (convicted of embezzling money from the United States mail). Pierce supported the February 11, 1862 warrant of Virgil McCormick (convicted of forging pension papers)

23. Dated November 5, 1864.

24. Dated January 18, 1865 and March x, 1865. Both petitioners were from the state of Tennessee.

25. Dated July 24, 1862.

26. Dated September 26, 1861.

27. Dated February 2, 1863.

28. Dated February 29, 1862.