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THE WHITE HOUSE

WASHINGTON

August 26, 1975

MEMORANDUM FOR: CHARLES E. GOODELL
FROM: PHILIP W. BUCHEN *P.W.B.*
SUBJECT: Your memorandum of August 15

As I read your memorandum, you interpret Section 9 of Executive Order 11803 differently from the way I think it must be interpreted. Section 9 calls for "final recommendations to the President" by a specified date which you now indicate will be no later than September 15. The only recommendations called for by the Order are those specified in Section 3. The Board's recommendations shall be "as to whether executive clemency should be granted or denied in any case [and] if clemency is recommended... the form that such clemency should take." Thus, according to the Order, once the Board makes its recommendations as to granting or denial of clemency in each case which has come before it, its work will have been completed.

You, on the other hand, appear to read the Order as requiring recommendations of how the President should deal in the future with broad problems which you may have detected as a result of the activities of the Board. This is an interpretation which I do not believe is supported in any way by the language of the Order or the President's intent, and I believe you should confine the remaining activities of the Board to completing review of the cases before you in accordance with Section 3 of the Order. By following this appropriate course, we avoid any question about preparing either a further report to the President for him to release or a confidential memorandum to him.

cc: Donald Rumsfeld



PRESIDENTIAL CLEMENCY BOARD
THE WHITE HOUSE

WASHINGTON

August 15, 1975

MEMORANDUM FOR:

PHILIP BUCHEN

FROM:

Charles E. Goodell
CHARLES E. GOODELL

SUBJECT:

Presidential Clemency Board's Final
Recommendations

Under section 9 of Executive Order 11803 ("Establishing a Clemency Board..."), the Presidential Clemency Board is charged to "submit its final recommendations to the President not later than December 31, 1976". Since the Board contemplates a completion of its caseload by September 15, we are preparing a final report to the President to be submitted by that date.

That report will describe to the President what kinds of people applied to the Board and what kinds of problems generated their offense, the procedure by which the Board reached its recommendations on clemency applications, some broad problems which we have learned about as we see patterns emerging from the cases, and some recommendations as to what the President might do to remedy those broad problems.

It is the President's prerogative, not the Board's, to release or to elect not to release all or part of the Board's final recommendations to him. On that assumption, I envision submitting those recommendations in a two-part package:

- (1) A final report written in a form appropriate for public release, in contemplation of its release by the White House very shortly after submission to the President. The Board itself will submit the report to the President, and will not publicly release anything. Although the existence of a report will obviously be known to the press, the President will retain the option of releasing it or not.
- (2) An options memorandum forwarding the Board's recommendations for action by the President. This memorandum will not be released to the public.



To avoid confusion about who will publicly release what materials at what time, we should establish procedural ground rules well before the Board's recommendations are formulated. Please let me know whether you concur on the procedure which I propose, and, if not, what alternatives you proffer.

cc.: DONALD RUMSFELD



PRESIDENTIAL CLEMENCY BOARD
THE WHITE HOUSE

WASHINGTON

August 15, 1975

MEMORANDUM FOR:

PHILIP BUCHEN

FROM:

Charles E. Goodell
CHARLES E. GOODELL

SUBJECT:

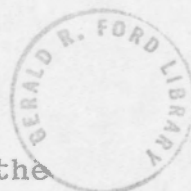
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cc.: DONALD RUMSFELD



THE WHITE HOUSE
WASHINGTON

August 15, 1975

ADMINISTRATIVELY
CONFIDENTIAL

MEMORANDUM TO: PHIL BUCHEN

FROM: RUSS ROURKE *R*

Phil, General Walt hand delivered the attached memo to me.
It describes alleged Clemency Board "discrepancies."

I am under the impression that Jay French has already received
a verbal report on this matter.

Enclosure



THE FOLLOWING IS A LIST OF
DISCREPANCIES NOTED IN THE
OPERATION OF THE PRESIDENTIAL
CLEMENCY PROGRAM AS OF THIS
DATE:

1. IN A NUMBER OF INSTANCES IT
HAS BEEN DETERMINED THAT CASES
AFTER HAVING ONCE BEEN DECIDED
AND SUPPOSEDLY DISPOSED OF BY
THE FULL BOARD OR A PANEL HAVE AGAIN
BEEN DOCKETED AND PRESENTED TO A
PANEL OR THE FULL BOARD.

2. CASES BEING PRESENTED TO THE
FULL BOARD, WHICH HAD BEEN
FLAGGED EITHER BY THE COMPUTER
FOR VARIOUS REASONS, OR PHYSICALLY
HAD NOT BEEN IDENTIFIED AS
SUCH ON THE DOCKET IN ACCORDANCE
WITH POLICY ESTABLISHED.

3. AN AUTOMATIC HOLD HAS BEEN
PLACED ON ALL CASES INVOLVING A
"NO CLEMENCY" DISPOSITIONS AND
CASES INVOLVING APPLICANTS
CURRENTLY INCARCERATED.
CASES INVOLVING OTHER DISPOSITIONS
HAD BEEN SENT TO THE WHITE HOUSE
ON A REGULAR BASIS.

4. ALL CASES DECIDED BY THE FULL BOARD PRIOR TO 8 MAY 1975 (DATE BOARD EXPANDED) ARE BEING CONSIDERED AS CASES HAVING BEEN ACCORDED PANEL HEARINGS ONLY AS SUCH SEVERAL CASES HEARD PRIOR TO THIS DATE HAVE BEEN FLAGGED AND ARE BEING HELD FOR POSSIBLE RECONSIDERATION BY THE "FULL BOARD".

(NOTE: PRIOR TO THE INCREASE IN NUMBER OF BOARD MEMBERS ON 8 MAY 1975, THE FULL BOARD MET AS A PANEL.)

IN OTHER WORDS, THOSE CASES DECIDED BY THE FULL BOARD PRIOR TO 8 MAY 1975 ARE NOT BEING ACCORDED FULL BOARD RECOGNITION.

5. AT THE PRESENT TIME, SOME 384 CASES ARE BEING HELD FOR VARIOUS REASONS. THESE ARE NOT TABLED CASES, OR CASES BEING HELD FOR FULL BOARD PRESENTATION BUT CASES ALREADY ACTED ON IN RESPECT TO FINAL DISPOSITIONS.



7. REFUSAL AND OBSTRUCTION OF
^{SOME} KEY ADMINISTRATIVE OFFICIALS
 AND PERSONNEL TO COOPERATE
 WITH PREPARATION OF THE MINORITY
 REPORT BY WITHHOLDING ESSENTIAL
 INFORMATIONAL MATERIAL TO THE
 PREPARATION THEREOF.

Paul P. Engstrom
 LDC, USAF
 (Minority Report)



Office of the White House Press Secretary

THE WHITE HOUSE

EXECUTIVE ORDER

11803

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 CONVIC-
TIONS 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 or 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 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

more



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.

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.

GERALD R. FORD



THE WHITE HOUSE,

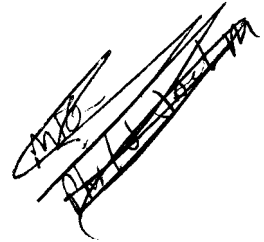
September 16, 1974.

THE WHITE HOUSE
WASHINGTON

Clemency Board

THE WHITE HOUSE
WASHINGTON

August 29, 1975



MEMORANDUM FOR:

DONALD RUMSFELD

FROM:

PHILIP W. BUCHEN



In a memorandum dated August 15 (see Tab A), Chairman Goodell notified me of the Clemency Board's intention to submit a final report to the President. In support of this intention, Chairman Goodell cited language in section 9 of Executive Order 11083, which charged the Board to "submit its final recommendations to the President". In my reply memorandum dated August 26 (see Tab B), I pointed out that the Executive Order did not require the Board to submit a final report, but rather final recommendations concerning Executive clemency. Chairman Goodell replied to my memo by telephone on August 28 citing the Federal Advisory Committee Act as a new authority for the submission of a final report to the President.

I have reviewed the Federal Advisory Committee Act (see Tab C), and Chairman Goodell is correct that an annual report is mandatory under certain circumstances which are applicable in the case of the Clemency Board.



The Act requires that the report set forth:

"a summary of its /the Board's/ activities and such related matters as would be informative to the public consistent with the policy of section 552(b) of Title 5 /the Freedom of Information Act/. " (5 U.S.C. App. I § 10(d)).

This authority to issue a report raises several concerns which are discussed below.

If the Board submits a public report to the President, the Federal Advisory Committee Act requires that

Within one year after a Presidential advisory committee has submitted a public report to the President, the President or his delegate shall make a report to the Congress stating either his proposals for action or his reasons for inaction, with respect to the recommendations contained in the report. (5 U.S.C. App. I § 6 (b))

Informally, I understand that one of the Board's recommendations may be that the President alter appropriate regulations to permit medical benefits for wounded Vietnam veterans who are ineligible for such benefits because they have been discharged from the armed forces with dishonorable or bad conduct discharges ordered by Special or General Courts-martial. I do not know how many or the nature of other recommendations which the Board might make in its report. However, the President (or his delegate) would have to explain to the Congress, no later than September 15, 1976, what action has been taken, or give reasons for inaction.



Further, I have been informed that approximately four groups intend to prepare minority reports to the report from Chairman Goodell. These minority reports are being prepared by more conservative and more liberal members of the Board, and these reports will contain recommendations. Of course, they will be made public, although it is unclear whether the President would have to report to the Congress or minority recommendations.

In his August 15 memorandum, Chairman Goodell indicated that in addition to a final report, the Board would also submit an options memorandum to the President containing other recommendations for the President's action. I believe such an options memorandum might be interpreted as avoiding the Federal Advisory Committee Act's requirement that the final report be made public. It is possible that a requester under the Freedom of Information Act could be successful in Federal Court in obtaining disclosure of the options memo on such grounds. If such a court order were obtained, the President would be called upon to report his actions to Congress on these recommendations within one year.

RECOMMENDATION

It is my opinion, with which the acting OMB General Counsel concurs, that the Presidential Clemency Board must issue a final public report briefly summarizing the Board's activities. OMB has set aside \$5,000 to publish such a report and that amount is adequate.



However, the law does not require that the report contain final recommendations on other related matters of public interest, and I would advise against the Board making such recommendations in a public report or an options memo. I know of no reason why Chairman Goodell and other members of the Board could not discuss recommendations which the Board considered during its tenure with the President or his staff after the Board has issued a report and has been legally terminated on September 15.

Your advice would be appreciated on how best to avoid these problem areas.

cc: Jack Marsh



TAB
A

PRESIDENTIAL CLEMENCY BOARD
THE WHITE HOUSE

WASHINGTON
August 15, 1975

MEMORANDUM FOR:

PHILIP BUCHEN

FROM:

Charles E. Goodell
CHARLES E. GOODELL

SUBJECT:

Presidential Clemency Board's Final
Recommendations

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cc.: DONALD RUMSFELD



TAB
B

B

THE WHITE HOUSE
WASHINGTON

August 26, 1975

MEMORANDUM FOR: CHARLES E. GOODELL
FROM: PHILIP W. BUCHEN *P.W.B.*
SUBJECT: Your memorandum of August 15

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cc: Donald Rumsfeld



TAB
C



APPENDIX I

FEDERAL ADVISORY COMMITTEE ACT

Pub.L. 92-463, Oct. 6, 1972, 86 Stat. 770.

- | Sec. | Sec. |
|---|--|
| 1. Short title. | 9. Establishment and purpose of advisory committees; publication in Federal Register; charter: filing, contents, copy. |
| 2. Findings and purpose. | 10. Advisory committee procedures; meetings; notice, publication in Federal Register; regulations; minutes; certification; annual report; Federal officer or employee, attendance. |
| 3. Definitions. | 11. Availability of transcripts; "agency proceeding". |
| 4. Applicability; restrictions. | 12. Fiscal and administrative provisions; recordkeeping; audit; agency support services. |
| 5. Responsibilities of Congressional committees; review; guidelines. | 13. Responsibilities of Library of Congress; reports and background papers; depository. |
| 6. Responsibilities of the President; report to Congress; annual report to Congress; exclusion. | 14. Termination of advisory committees; renewal; continuation. |
| 7. Responsibilities of the Director, Office of Management and Budget; Committee Management Secretariat; establishment; review; recommendations to President and Congress; agency cooperation; performance guidelines; uniform pay guidelines; travel expenses; expense recommendations. | 15. Effective date. |
| 8. Responsibilities of agency heads; Advisory Committee Management Control Officer, designation. | |

§ 1. Short title

This Act may be cited as the "Federal Advisory Committee Act".

§ 2. Findings and purpose

(a) The Congress finds that there are numerous committees, boards, commissions, councils, and similar groups which have been established to advise officers and agencies in the executive branch of the Federal Government and that they are frequently a useful and beneficial means of furnishing expert advice, ideas, and diverse opinions to the Federal Government.

(b) The Congress further finds and declares that—

(1) the need for many existing advisory committees has not been adequately reviewed;

(2) new advisory committees should be established only when they are determined to be essential and their number should be kept to the minimum necessary;

(3) advisory committees should be terminated when they are no longer carrying out the purposes for which they were established;

(4) standards and uniform procedures should govern the establishment, operation, administration, and duration of advisory committees;

(5) the Congress and the public should be kept informed with respect to the number, purpose, membership, activities, and cost of advisory committees; and

(6) the function of advisory committees should be advisory only, and that all matters under their consideration should be determined, in accordance with law, by the official, agency, or officer involved.

EXECUTIVE ORDER NO. 11686

Ex.Ord.No.11686, Oct. 7, 1972, 37 F.R. 21421, set out as a note under this section, which related to committee management, was superseded by Ex.Ord.No. 11769, Feb. 21, 1974, 39 F.R. 7125, set out as a note under this section.

EXECUTIVE ORDER NO. 11769

Feb. 21, 1974, 39 F.R. 7125

COMMITTEE MANAGEMENT

By virtue of the authority vested in me as President of the United States by the Constitution and statutes of the United States, including the Federal Advisory

TITLE 5—APPENDIX I

Committee Act, 5 U.S.C.App. I (1972 Supp.) (hereinafter referred to as the "act") [this Appendix], and 3 U.S.C. 301, [section 301 of Title 3, The President], it is ordered as follows:

Section 1. The heads of all executive departments and agencies shall take appropriate action to assure their ability to comply with the provisions of the act.

Sec. 2. The Administrator of General Services shall prepare for the consideration of the President the annual report to the Congress required by section 6(c) of the act [Section 6(c) of this Appendix].

Sec. 3. The Director of the Office of Management and Budget shall:

(1) perform, or designate, from time to time, other officers of the Federal Government to perform, without the approval, ratification, or other action of the President, the functions vested in the President by the act;

(2) prescribe administrative guidelines and management controls for advisory committees covered by the act.

Sec. 4. Executive Order No. 11686 of October 7, 1972 is hereby superseded.

RICHARD NIXON

§ 3. Definitions.

For the purpose of this Act—

(1) The term "Director" means the Director of the Office of Management and Budget.

(2) The term "advisory committee" means any committee, board, commission, council, conference, panel, task force, or other similar group, or any subcommittee or other subgroup thereof (hereafter in this paragraph referred to as "committee"), which is—

- (A) established by statute or reorganization plan, or
- (B) established or utilized by the President, or
- (C) established or utilized by one or more agencies,

in the interest of obtaining advice or recommendations for the President or one or more agencies or officers of the Federal Government, except that such term excludes (i) the Advisory Commission on Intergovernmental Relations, (ii) the Commission on Government Procurement, and (iii) any committee which is composed wholly of full-time officers or employees of the Federal Government.

(3) The term "agency" has the same meaning as in section 551 (1) of Title 5.

(4) The term "Presidential advisory committee" means an advisory committee which advises the President.

§ 4. Applicability; restrictions

(a) The provisions of this Act or of any rule, order, or regulation promulgated under this Act shall apply to each advisory committee except to the extent that any Act of Congress establishing any such advisory committee specifically provides otherwise.

(b) Nothing in this Act shall be construed to apply to any advisory committee established or utilized by—

- (1) the Central Intelligence Agency; or
- (2) the Federal Reserve System.

(c) Nothing in this Act shall be construed to apply to any local civic group whose primary function is that of rendering a public service with respect to a Federal program, or any State or local committee, council, board, commission, or similar group established to advise or make recommendations to State or local officials or agencies.

§ 5. Responsibilities of Congressional committees; review; guidelines

(a) In the exercise of its legislative review function, each standing committee of the Senate and the House of Representatives shall make a continuing review of the activities of each advisory committee under its jurisdiction to determine whether such advisory committee should be abolished or merged with any other advisory committee, whether the responsibilities of such advisory committee should be revised, and whether such advisory committee performs a necessary function not already being performed. Each such standing committee shall take appropriate action to obtain the enactment of legislation necessary to carry out the purpose of this subsection.

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FEDERAL ADVISORY COMMITTEE ACT

(b) In considering legislation establishing, or authorizing the establishment of any advisory committee, each standing committee of the Senate and of the House of Representatives shall determine, and report such determination to the Senate or to the House of Representatives, as the case may be, whether the functions of the proposed advisory committee are being or could be performed by one or more agencies or by an advisory committee already in existence, or by enlarging the mandate of an existing advisory committee. Any such legislation shall—

(1) contain a clearly defined purpose for the advisory committee;

(2) require the membership of the advisory committee to be fairly balanced in terms of the points of view represented and the functions to be performed by the advisory committee;

(3) contain appropriate provisions to assure that the advice and recommendations of the advisory committee will not be inappropriately influenced by the appointing authority or by any special interest, but will instead be the result of the advisory committee's independent judgment;

(4) contain provisions dealing with authorization of appropriations, the date for submission of reports (if any), the duration of the advisory committee, and the publication of reports and other materials, to the extent that the standing committee determines the provisions of section 10 of this Act to be inadequate; and

(5) contain provisions which will assure that the advisory committee will have adequate staff (either supplied by an agency or employed by it), will be provided adequate quarters, and will have funds available to meet its other necessary expenses.

(c) To the extent they are applicable, the guidelines set out in subsection (b) of this section shall be followed by the President, agency heads, or other Federal officials in creating an advisory committee.

§ 6. Responsibilities of the President; report to Congress; annual report to Congress; exclusion

(a) The President may delegate responsibility for evaluating and taking action, where appropriate, with respect to all public recommendations made to him by Presidential advisory committees.

(b) Within one year after a Presidential advisory committee has submitted a public report to the President, the President or his delegate shall make a report to the Congress stating either his proposals for action or his reasons for inaction, with respect to the recommendations contained in the public report.

(c) The President shall, not later than March 31 of each calendar year (after the year in which this Act is enacted), make an annual report to the Congress on the activities, status, and changes in the composition of advisory committees in existence during the preceding calendar year. The report shall contain the name of every advisory committee, the date of and authority for its creation, its termination date or the date it is to make a report, its functions, a reference to the reports it has submitted, a statement of whether it is an ad hoc or continuing body, the dates of its meetings, the names and occupations of its current members, and the total estimated annual cost to the United States to fund, service, supply, and maintain such committee. Such report shall include a list of those advisory committees abolished by the President, and in the case of advisory committees established by statute, a list of those advisory committees which the President recommends be abolished together with his reasons therefor. The President shall exclude from this report any information which, in his judgment, should be withheld for reasons of national security, and he shall include in such report a statement that such information is excluded.

§ 7. Responsibilities of the Director, Office of Management and Budget; Committee Management Secretariat, establishment; review

TITLE 5—APPENDIX I

recommendations to President and Congress; agency cooperation; performance guidelines; uniform pay guidelines; travel expenses; expense recommendations

(a) The Director shall establish and maintain within the Office of Management and Budget a Committee Management Secretariat, which shall be responsible for all matters relating to advisory committees.

(b) The Director shall, immediately after October 6, 1972, institute a comprehensive review of the activities and responsibilities of each advisory committee to determine—

- (1) whether such committee is carrying out its purpose;
- (2) whether, consistent with the provisions of applicable statutes, the responsibilities assigned to it should be revised;
- (3) whether it should be merged with other advisory committees; or
- (4) whether it should be abolished.

The Director may from time to time request such information as he deems necessary to carry out his functions under this subsection. Upon the completion of the Director's review he shall make recommendations to the President and to either the agency head or the Congress with respect to action he believes should be taken. Thereafter, the Director shall carry out a similar review annually. Agency heads shall cooperate with the Director in making the reviews required by this subsection.

(c) The Director shall prescribe administrative guidelines and management controls applicable to advisory committees, and, to the maximum extent feasible, provide advice, assistance, and guidance to advisory committees to improve their performance. In carrying out his functions under this subsection, the Director shall consider the recommendations of each agency head with respect to means of improving the performance of advisory committees whose duties are related to such agency.

(d) (1) The Director, after study and consultation with the Civil Service Commission, shall establish guidelines with respect to uniform fair rates of pay for comparable services of members, staffs, and consultants of advisory committees in a manner which gives appropriate recognition to the responsibilities and qualifications required and other relevant factors. Such regulations shall provide that—

(A) no member of any advisory committee or of the staff of any advisory committee shall receive compensation at a rate in excess of the rate specified for GS-18 of the General Schedule under section 5332 of Title 5; and

(B) such members, while engaged in the performance of their duties away from their homes or regular places of business, may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of Title 5, for persons employed intermittently in the Government service.

(2) Nothing in this subsection shall prevent—

(A) an individual who (without regard to his service with an advisory committee) is a full-time employee of the United States, or

(B) an individual who immediately before his service with an advisory committee was such an employee,

from receiving compensation at the rate at which he otherwise would be compensated (or was compensated) as a full-time employee of the United States.

(e) The Director shall include in budget recommendations a summary of the amounts he deems necessary for the expenses of advisory committees, including the expenses for publication of reports where appropriate.

§ 8. Responsibilities of agency heads; Advisory Committee Management Control Officer, designation

(a) Each agency head shall establish uniform administrative guidelines and management controls for advisory committees established by that

agency, which section 7 and information on the committee within

(b) The Director shall designate an

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§ 9. Establishment in Federal Register

(a) No advertisement is—

- (1) agency in
- (2) connection by law.

(b) Unless directive, advisory actions. Determinations with respect to makes recommendations of the Federal

(c) No advisory committee case of Presidential agency to which committees of legislative jurisdiction following information

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A copy of any summary.

FEDERAL ADVISORY COMMITTEE ACT

agency, which shall be consistent with directives of the Director under section 7 and section 10. Each agency shall maintain systematic information on the nature, functions, and operations of each advisory committee within its jurisdiction.

(b) The head of each agency which has an advisory committee shall designate an Advisory Committee Management Officer who shall—

(1) exercise control and supervision over the establishment, procedures, and accomplishments of advisory committees established by that agency;

(2) assemble and maintain the reports, records, and other papers of any such committee during its existence; and

(3) carry out, on behalf of that agency, the provisions of section 552 of Title 5, with respect to such reports, records, and other papers.

§ 9. Establishment and purpose of advisory committees; publication in Federal Register; charter: filing, contents, copy

(a) No advisory committee shall be established unless such establishment is—

(1) specifically authorized by statute or by the President; or

(2) determined as a matter of formal record, by the head of the agency involved after consultation with the Director, with timely notice published in the Federal Register, to be in the public interest in connection with the performance of duties imposed on that agency by law.

(b) Unless otherwise specifically provided by statute or Presidential directive, advisory committees shall be utilized solely for advisory functions. Determinations of action to be taken and policy to be expressed with respect to matters upon which an advisory committee reports or makes recommendations shall be made solely by the President or an officer of the Federal Government.

(c) No advisory committee shall meet or take any action until an advisory committee charter has been filed with (1) the Director, in the case of Presidential advisory committees, or (2) with the head of the agency to whom any advisory committee reports and with the standing committees of the Senate and of the House of Representatives having legislative jurisdiction of such agency. Such charter shall contain the following information:

(A) the committee's official designation;

(B) the committee's objectives and the scope of its activity;

(C) the period of time necessary for the committee to carry out its purposes;

(D) the agency or official to whom the committee reports;

(E) the agency responsible for providing the necessary support for the committee;

(F) a description of the duties for which the committee is responsible, and, if such duties are not solely advisory, a specification of the authority for such functions;

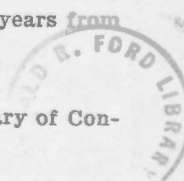
(G) the estimated annual operating costs in dollars and man-years for such committee;

(H) the estimated number and frequency of committee meetings;

(I) the committee's termination date, if less than two years from the date of the committee's establishment; and

(J) the date the charter is filed.

A copy of any such charter shall also be furnished to the Library of Congress.



TITLE 5—APPENDIX I

§ 10. Advisory committee procedures; meetings; notice, publication in Federal Register; regulations; minutes; certification; annual report; Federal officer or employee, attendance

(a) (1) Each advisory committee meeting shall be open to the public.

(2) Except when the President determines otherwise for reasons of national security, timely notice of each such meeting shall be published in the Federal Register, and the Director shall prescribe regulations to provide for other types of public notice to insure that all interested persons are notified of such meeting prior thereto.

(3) Interested persons shall be permitted to attend, appear before, or file statements with any advisory committee, subject to such reasonable rules or regulations as the Director may prescribe.

(b) Subject to section 552 of Title 5, the records, reports, transcripts, minutes, appendixes, working papers, drafts, studies, agenda, or other documents which were made available to or prepared for or by each advisory committee shall be available for public inspection and copying at a single location in the offices of the advisory committee or the agency to which the advisory committee reports until the advisory committee ceases to exist.

(c) Detailed minutes of each meeting of each advisory committee shall be kept and shall contain a record of the persons present, a complete and accurate description of matters discussed and conclusions reached, and copies of all reports received, issued, or approved by the advisory committee. The accuracy of all minutes shall be certified to by the chairman of the advisory committee.

(d) Subsections (a) (1) and (a) (3) of this section shall not apply to any advisory committee meeting which the President, or the head of the agency to which the advisory committee reports, determines is concerned with matters listed in section 552(b) of Title 5. Any such determination shall be in writing and shall contain the reasons for such determination. If such a determination is made, the advisory committee shall issue a report at least annually setting forth a summary of its activities and such related matters as would be informative to the public consistent with the policy of section 552(b) of Title 5.

(e) There shall be designated an officer or employee of the Federal Government to chair or attend each meeting of each advisory committee. The officer or employee so designated is authorized, whenever he determines it to be in the public interest, to adjourn any such meeting. No advisory committee shall conduct any meeting in the absence of that officer or employee.

(f) Advisory committees shall not hold any meetings except at the call of, or with the advance approval of, a designated officer or employee of the Federal Government, and in the case of advisory committees (other than Presidential advisory committees), with an agenda approved by such officer or employee.

Notes of Decisions

Burden of proof 6
Construction with other laws 1
Exchange of information 5
Injunction 7
Meetings within section 3
Public participation 4
Purpose 2

1. Construction with other laws
Subsection (d) of this section, providing that a meeting may be closed when it is determined by agency head that such meeting will involve matters listed in Freedom of Information Act, section 552 of this title, did not apply so as to permit exclusion of public from all meet-

ings of advisory committees serving cost of living council. *Nader v. Dunlop*, D.C. D.C.1973, 370 F.Supp. 177.

2. Purpose
Subsection (d) of this section, providing that a meeting may be closed when it is determined by agency head that such meeting will involve matters listed in section 552 of this title, was not intended to include all deliberative conversations of committee meetings. *Nader v. Dunlop*, D.C.D.C.1973, 370 F.Supp. 177.

3. Meetings within section
At a minimum a relatively detailed analysis of bases for closing various portions of meetings of advisory committees serving cost of living council must be

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provided. *Nader v. D*
370 F.Supp. 177.

Where Defense Adv Women in the Services siders called on because to offer views and con within agency, meeting did not involve "inter tra-agency" affairs an quired to be open. *G D.C.D.C.1973, 366 F.Sup*

4. Public participation
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5. Exchange of inform
For purposes of th change of information

§ 11. Availability

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(b) As used in th as defined in section

References in Text.
this Act, referred to meaning effective up

§ 12. Fiscal an agency support serv

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(b) Each agency for each advisory c establishing authori mittee reports to m sible for support se advisory committees ices Administration

§ 13. Responsib ground papers; dep

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§ 14. Terminat

(a) (1) Each adv tive date of this Act two-year period follo

(A) in the ca ident or an offi mittee is renew tion prior to the

FEDERAL ADVISORY COMMITTEE ACT

provided. *Nader v. Dunlop*, D.C.D.C.1973, 370 F.Supp. 177.

Where Defense Advisory Committee on Women in the Services was group of outsiders called on because of their expertise to offer views and comments unavailable within agency, meeting of such committee did not involve "inter-agency" nor "intra-agency" affairs and meeting was required to be open. *Gates v. Schlesinger*, D.C.D.C.1973, 366 F.Supp. 797.

4. Public participation

While plaintiffs were entitled to have meeting of Defense Advisory Committee on Women in the Services conducted so as to be open to public, there was no right of public participation in advisory committee. *Gates v. Schlesinger*, D.C.D.C.1973, 366 F.Supp. 797.

5. Exchange of information

For purposes of this Appendix, exchange of information does not make ad-

visory committee "part of" its government agency. *Gates v. Schlesinger* D.C. D.C.1973, 366 F.Supp. 797.

6. Burden of proof

This section does not contain same express provision as Freedom of Information Act, section 552 of this title, which places burden of proof on agency to sustain its action, but underlying policy considerations are identical and burden of proof should be comparable. *Nader v. Dunlop*, D.C.D.C.1973, 370 F.Supp. 177.

7. Injunction

Exemption relating to interagency or intra-agency memorandum or letters did not apply so as to permit meeting of Defense Advisory Committee on Women in the Services to be closed, and court would issue preliminary injunction requiring such meeting to be open to the public. *Gates v. Schlesinger*, D.C.D.C. 1973, 366 F.Supp. 797.

§ 11. Availability of transcripts; "agency proceeding"

(a) Except where prohibited by contractual agreements entered into prior to the effective date of this Act, agencies and advisory committees shall make available to any person, at actual cost of duplication, copies of transcripts of agency proceedings or advisory committee meetings.

(b) As used in this section "agency proceeding" means any proceeding as defined in section 551(12) of Title 5.

References in Text. Effective date of ninety days following enactment of Pub. L. 92-463 on Oct. 6, 1972, see section 15 of meaning effective upon expiration of Pub.L. 92-463.

§ 12. Fiscal and administrative provisions; recordkeeping; audit; agency support services

(a) Each agency shall keep records as will fully disclose the disposition of any funds which may be at the disposal of its advisory committees and the nature and extent of their activities. The General Services Administration, or such other agency as the President may designate, shall maintain financial records with respect to Presidential advisory committees. The Comptroller General of the United States, or any of his authorized representatives, shall have access, for the purpose of audit and examination, to any such records.

(b) Each agency shall be responsible for providing support services for each advisory committee established by or reporting to it unless the establishing authority provides otherwise. Where any such advisory committee reports to more than one agency, only one agency shall be responsible for support services at any one time. In the case of Presidential advisory committees, such services may be provided by the General Services Administration.

§ 13. Responsibilities of Library of Congress; reports and background papers; depository

Subject to section 552 of Title 5, the Director shall provide for the filing with the Library of Congress of at least eight copies of each report made by every advisory committee and, where appropriate, background papers prepared by consultants. The Librarian of Congress shall establish a depository for such reports and papers where they shall be available to public inspection and use.

§ 14. Termination of advisory committees; renewal; continuation

(a) (1) Each advisory committee which is in existence on the effective date of this Act shall terminate not later than the expiration of the two-year period following such effective date unless—

(A) in the case of an advisory committee established by the President or an officer of the Federal Government, such advisory committee is renewed by the President or that officer by appropriate action prior to the expiration of such two-year period; or

TITLE 5—APPENDIX I

(B) in the case of an advisory committee established by an Act of Congress, its duration is otherwise provided for by law.

(2) Each advisory committee established after such effective date shall terminate not later than the expiration of the two-year period beginning on the date of its establishment unless—

(A) in the case of an advisory committee established by the President or an officer of the Federal Government such advisory committee is renewed by the President or such officer by appropriate action prior to the end of such period; or

(B) in the case of an advisory committee established by an Act of Congress, its duration is otherwise provided for by law.

(b) (1) Upon the renewal of any advisory committee, such advisory committee shall file a charter in accordance with section 9(c).

(2) Any advisory committee established by an Act of Congress shall file a charter in accordance with such section upon the expiration of each successive two-year period following the date of enactment of the Act establishing such advisory committee.

(3) No advisory committee required under this subsection to file a charter shall take any action (other than preparation and filing of such charter) prior to the date on which such charter is filed.

(c) Any advisory committee which is renewed by the President or any officer of the Federal Government may be continued only for successive two-year periods by appropriate action taken by the President or such officer prior to the date on which such advisory committee would otherwise terminate.

References in Text. Effective date of ninety days following enactment of Pub. this Act, referred to in subsec. (a) (1), as L. 92-463 on Oct. 6, 1972, see section 15 of meaning effective upon expiration of Pub.L. 92-463.

§ 15. Effective date

Except as provided in section 7(b), this Act shall become effective upon the expiration of ninety days following October 6, 1972.



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Wednesday 9/17/75

11:15 Col. Benson will be delivering a memo to you in about half an hour.

Attached [I have ~~not~~ given a copy to Jerry.]

He said he and Col. Dickman would be available to assist the White House staff in processing these cases before they are passed on to the President -- they can help in the review of the White House. The information they have available would be extremely helpful to assure certain things don't slip. They would be available to work over here and believe they could ^{be} very valuable. They have been doing almost nothing. They have copies of the Board's decisions, etc., which would be helpful.

Gen. Walt also suggested this.



PRESIDENTIAL CLEMENCY BOARD

THE WHITE HOUSE

WASHINGTON, D.C. 20500

September 12, 1975

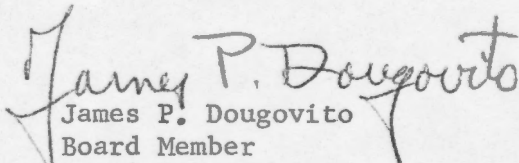
The President
The White House
Washington, D.C. 20500

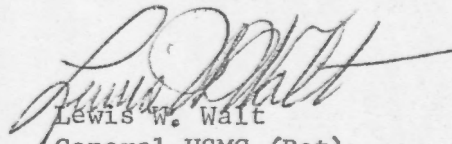
Dear Mr. President:

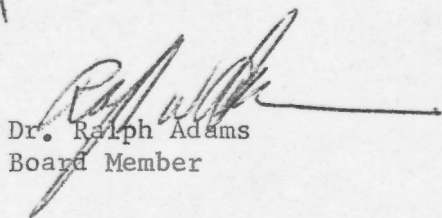
In accordance with your Executive Order, the Presidential Clemency Board is terminated on September 15, 1975. We, a minority of the Board, are enclosing a brief summary of our evaluation of the Clemency Board Program.

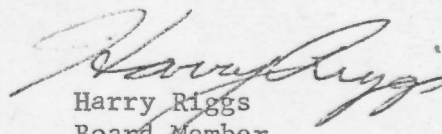
We were honored to be members of your Clemency Board and we deeply regret that we were not able to keep the Board on more of a "middle of the road" course. As a result, we are deeply concerned that if you approve some of the recommendations of the majority of the Board, both the Presidential Pardon and the Clemency Discharge will be degraded in the eyes of the American public.

Respectfully,


James P. Dougovito
Board Member


Lewis W. Walt
General USMC (Ret)
Board Member


Dr. Ralph Adams
Board Member


Harry Riggs
Board Member



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 I

PURPOSE

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 II

COMPOSITION 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 occasions, 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 the 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

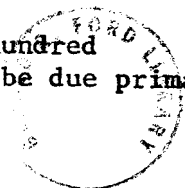
APPLICANTS

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

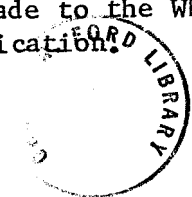


to a lack of proper publicity and understanding of the program. In January, 1975, the members of the Board initiated a nationwide publicity program which resulted in several thousand new applications. Further, the Chairman, without the knowledge of the Board, wrote letters to all major penal institutions 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 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 Goodell 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 handicapped 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.

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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 out-voting the more conservative aligned middle-of-the-road minority.



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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.

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SECTION VIII

CONCLUSION

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 mal-administration 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.



THE WHITE HOUSE
WASHINGTON
September 23, 1975

Clemency Board

MEMORANDUM FOR: THE PRESIDENT

FROM: PHILIP BUCHEN *P.W.B.*

Attached are originals of the following:

- (1). A letter to you signed by General Walt and three other Clemency Board members to which is attached their "Summary Evaluation of the Clemency Board's Operations," and
- (2). A letter hand-delivered by Robert Carter and John Kauffmann on behalf of themselves and the majority of the other members of the Clemency Board.

The second letter is the reaction of a majority of the members to the complaints about the Board's operations by the four Board members. A copy of the minority summary evaluation was delivered by the authors to the Veterans of Foreign Wars which has made the contents public.

Attachments

cc: Don Rumsfeld (w/encls.)
Jack Marsh (w/encls.)



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PRESIDENTIAL CLEMENCY BOARD

THE WHITE HOUSE
WASHINGTON, D.C. 20500

September 12, 1975

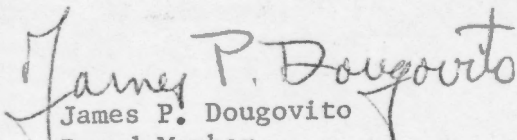
The President
The White House
Washington, D.C. 20500

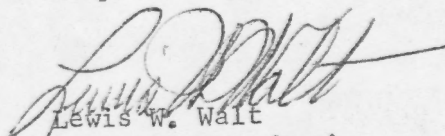
Dear Mr. President:

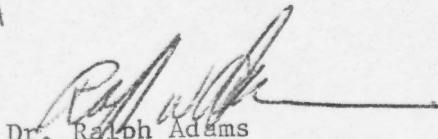
In accordance with your Executive Order, the Presidential Clemency Board is terminated on September 15, 1975. We, a minority of the Board, are enclosing a brief summary of our evaluation of the Clemency Board Program.

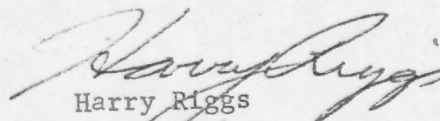
We were honored to be members of your Clemency Board and we deeply regret that we were not able to keep the Board on more of a "middle of the road" course. As a result, we are deeply concerned that if you approve some of the recommendations of the majority of the Board, both the Presidential Pardon and the Clemency Discharge will be degraded in the eyes of the American public.

Respectfully,


James P. Dougovito
Board Member



Lewis W. Walt
General USMC (Ret)
Board Member


Dr. Ralph Adams
Board Member


Harry Riggs
Board Member



A
SUMMARY EVALUATION
OF
THE PRESIDENTIAL CLEMENCY BOARD'S OPERATIONS



Submitted by
A Minority of the Board
September 15, 1975

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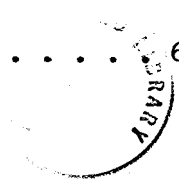
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SECTION I

PURPOSE

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 II

COMPOSITION 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 occasions, 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 the 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

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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 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 Goodell 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 handicapped 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 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.

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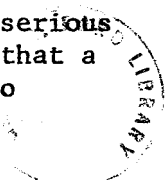
It appears that the Chairman and his Executive Staff have misinterpreted, circumvented and violated at least the spirit of the Executive Order of 16 September 1974, and Proclamation #4313. This questionable action has been initiated, it appears, to increase the number of "eligible" applicants, to liberalize 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.

PRESIDENTIAL CLEMENCY BOARD

THE WHITE HOUSE
WASHINGTON, D.C. 20500

September 22, 1975

The President
The White House
Washington, D. C. 20500

Dear Mr. President:

We are concerned that a public airing of the understandable differences of opinion among the eighteen members of the Board will do unnecessary damage to the success your program has had in healing the divisions in our country. We are especially disturbed at the unwarranted attacks that have been leveled at the Chairman, the Board, and the executive staff.

On behalf of the undersigned members, we wish to commend you in your choice of Charles E. Goodell as our Chairman. Overwhelmingly, the majority of those you appointed support your choice. He was an extremely competent, dedicated, ethical, and tireless leader.

The Guidelines and procedures established by Chairman Goodell and The Board assured each applicant a democratic hearing with just and due process. The Board recommended to you clemency only for the qualifying military and draft evasion offenses of a given applicant in accordance with our charter.

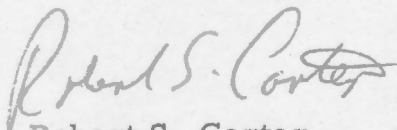
Chairman Goodell and the Board carried out the intent of your program both with healing compassion and within the legal parameters you set. He, in turn, directed a highly professional and competent staff that exhibited the highest moral and ethical values and judgment. The Chairman did an excellent job in mediating extremely opposite views and proved to be a moderating force. We wish the minority members of the Board had given to us and the Chairman the opportunity to see their report before it was released to the public.

We feel the clemency program initiated by a courageous President has contributed toward healing the wounds of Vietnam. We are honored to have been asked by you to serve with Chairman Goodell in this important task.

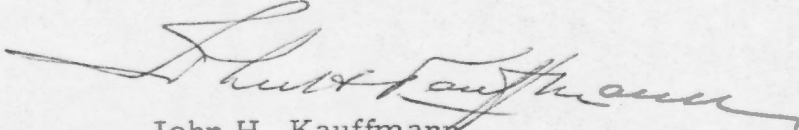


Although we did not have the opportunity to obtain the signatures of all the people listed below, each has been contacted, and all of them personally subscribe to the contents of this letter.

Sincerely,



Robert S. Carter



John H. Kauffmann

Timothy L. Craig

James A. Maye

John Everhard

E. Frederic Morrow

W. Antoinette Ford

Lewis B. Puller

Rev. Theodore M. Hesburgh

Aida Casanas O'Connor

Vernon E. Jordan

Joan Vinson

Rev. Francis J. Lally



HYDEMAN, MASON & GOODELL

1225 NINETEENTH STREET, N. W.

WASHINGTON, D. C. 20036

ARTHUR K. MASON
LEE M. HYDEMAN
HAROLD E. MESIROW
JOHN M. BURZIO
JAMES T. LLOYD
JAMES H. HELLER
CHARLES E. GOODELL

OF COUNSEL

ALGER B. CHAPMAN
ALEXANDER M. LANKLER

October 21, 1975

TELEPHONE
202 659-3650

CABLE ADDRESS
HASTEN

Mr. Philip W. Buchen
Counsel to the President
The White House
Washington, D.C.

Dear Phil:

Enclosed is a copy of my letter to the Director of Selective Service stating the recommendations of the Presidential Clemency Board with reference to alternative service. I also enclose a copy of the Minority Report in which four members disagree with our recommendations.

I should say that the 14 member majority of the Board felt very deeply about this issue. Mr. Kauffmann and Mr. Carter feel so strongly that they requested the opportunity to join me in meeting with you on the issue. It is our feeling that because a great number of our applicants must serve only three months that they fall into a somewhat different category. We do not wish individuals to quit their jobs and have their families possibly go on welfare in order to do three months alternative service.

It is my understanding that you wish to bring this issue to a head through a meeting with Byron Pepitone, the three PCB representatives and yourself. I think that is an excellent idea, particularly since the issue must be resolved quickly if any decision is to be effective.

With warm regard, I am

Sincerely,

Charlie

CHARLES E. GOODELL

CEG/gk
Enclosures



August 20, 1975

Dear Mr. Pepitone:

This is in response to your request at our earlier meeting that the Presidential Clemency Board forward to you any recommendations we have to deal with the special problem of short term alternative service. You had indicated that you had already notified OMB there was no way you could provide three-month full-time jobs to any large number of people in the present job market. I understand that you may have revised your assessment in that regard, but the Clemency Board has discussed at some length what was the Board's intention for performance of alternative service. Obviously, this is a matter within the jurisdiction of the Selective Service System and the Board offers these suggestions in the hopes they will be helpful to you.

The Board officially recommends three courses of action. The first two recommendations are unanimous. The third recommendation was adopted by the Board with four dissenting votes. I am attaching hereto the minority report of the four dissenting members. Our recommendations are as follows:

First, a PCB referral with a full-time job should be encouraged to retain that job and do part-time alternative service without pay.

Secondly, all PCB referrals should be permitted the option of performing fewer hours per week and extending their work over a longer period of time. For example, three months of alternative service could be fulfilled by stretching shorter hours worked per week over six months or a year.

Thirdly, to fulfill his alternative service requirement, a PCB referral be given the choice of working either forty hours per week with pay or sixteen hours per week without pay. He would have this choice regardless of his other employment or lack thereof.



The majority of the Board strongly believes that referrals should be given the option of performing either an average of sixteen hours per week alternative service without pay or forty hours per week alternative service with pay. We feel that such a policy is in accord with the wishes of the President and at the same time assists you in your difficult task of placing approximately eight thousand individuals whom we shall refer to you for alternative service. Permitting part-time alternative service would assure that jobs are not taken from veterans and others in the competitive labor market. It would also help to maximize the number of clemency recipients who could successfully perform alternative service and, therefore, earn their clemency. By allowing conditional clemency recipients to keep their present employment, it would minimize the likelihood of their families becoming financial burdens to the public.

In coming to this conclusion we consulted with probation officers who indicated that the courts generally accept sixteen hours per week as satisfactory alternative service when alternative service is required as a part of the court sentence. The majority of the Board believes that a man who works evenings or Saturdays and Sundays without pay in charitable activities or for governmental agencies should be deemed to have satisfied our requirement if he works sixteen hours per week.

Although it is my personal view that the President would agree that sixteen hours without pay should be the equivalent of forty hours per week with pay, I have never discussed the issue with the President, and I can understand that you may feel such a policy is in conflict with your directive from the President. If that is the case, I believe we should seriously consider presenting this issue to the President. I would obviously also present the minority views of our four dissenting members.

Whatever your decision with respect to recommendation number three, I should emphasize that the Clemency Board unanimously feels every effort should be made to avoid requiring that an individual relinquish a job which he presently holds. For obvious reasons this is particularly true of individuals required by the Clemency Board to do alternative service of six months or less.



These recommendations to you, in response to your invitation, are in hopes that they will be helpful in carrying the clemency program to a successful conclusion. We fully recognize that the nature of alternative service to be performed is the responsibility of the Selective Service System. I would be delighted to discuss our recommendations further with you at your convenience.

With kind regard, I am

Sincerely,

Charles E. Goodell
Chairman

Mr. Byron V. Pepitone
Director
Selective Service System
1724 F Street, NW
Washington, D.C. 20435



PRESIDENTIAL CLEMENCY BOARD
THE WHITE HOUSE
WASHINGTON, D.C. 20500

TO: Byron V. Pepitone
Director
Selective Service System

cc: Senator C.E. Goodell

FROM: General Lewis W. Walt
Dr. Ralph Adams
Mr. James P. Dougovito
Colonel Harry Riggs

DATE: August 1, 1975

SUBJECT: Minority Report of the Presidential Clemency Board
on Alternate Service to be performed by applicants
to the Presidential Clemency Board

The above named Members of the Presidential Clemency Board unanimously agree that:

- A) A month's alternate service as determined by the PCB, to be accomplished by the applicant, is based on a minimum of a forty-hour week. That is to say that; a three month's alternate service assignment would be for a minimum working period of four hundred and eighty (480) hours.
- B) The President wants a crisp, unwatered-down, effective and creditable program of service to the public, accomplished by the applicant in order to EARN his way back to a normal position in our society.
- C) The administration of the alternate service program is entirely the business and responsibility of the Director of Selective Service.
- D) That a volunteer program for the applicants to perform volunteer work, without pay, in their Community, could be an effective way of accommodating those applicants who have less than twelve months alternate service to perform. However, there should not be any cut in the number of hours they would be required to work. They would benefit by being able to perform the service at a time of convenience to their schedule so that they still could work at a regular job for livelihood. They would also benefit in that the volunteer work could be done in their Community so that travel would not be a problem. Furthermore, volunteer work in their Community, to earn their Pardon, would be good public relations for them and for the President's Clemency Program.

Lewis W. Walt
James P. Dougovito
Harry Riggs

THE WHITE HOUSE

WASHINGTON

October 28, 1975

MEMORANDUM FOR: PHILIP W. BUCHEN
FROM: JAY T. FRENCH
SUBJECT: Presidential Clemency Board

You asked for my comments on the attached memorandum to Charles Goodell from Neil Broder.

The Defense Department has not agreed to upgrade the discharges of those who were recommended for honorable and general discharges by the Presidential Clemency Board. Captain Boywid did tell Neil Broder unofficially that if the White House Counsel referred this list of names to the Secretary and recommended further upgrading that probably the Secretary would direct such action. But it was made clear to me that such action would be predicated on the President's Commander-in-Chief authority which you would be invoking in the President's behalf.

It is my personal opinion that you should refer the list to Secretary Schlesinger and recommend the issuance of the upgraded discharges, if the President agrees. However, I believe we should confirm ahead of time that the Secretary will take such action.

If you agree, I will contact Bob Andrews in the DOD General Counsel's office to make appropriate arrangements. He is most familiar with these matters.

If you disagree, your alternative is simply to refer the list of names to the Secretary of Defense without comment. The Secretary will probably refer the names to the appropriate Military Department Discharge Review Boards for routine handling.



United States Department of Justice

Office of the Pardon Attorney

Washington, D.C. 20530

October 17, 1975

MEMORANDUM

TO: Charles E. Goodell

FROM: H. Neil Broder *H. Neil Broder*
Acting Assistant Pardon Attorney
(Clemency Matters)

SUBJECT: Transmittal of Presidential Clemency Board
Recommendations for Upgrading of Discharges
and Veterans' Benefits

An agreement has been reached in principle between H. Neil Broder, Acting Assistant Pardon Attorney (Clemency Matters) and the Department of Defense through Captain E. T. Boywid, JAGC, USN, Office of the Assistant Secretary of Defense, Manpower and Reserve Affairs (Military Personnel Policy), to effectuate the select recommendations of the Presidential Clemency Board to upgrade less than honorable discharges to honorable discharges with entitlement to full veterans' benefits. Additionally, the agreement contemplates that for those cases for which no upgrade recommendation was made, they will be forwarded with special commendation to the appropriate service Discharge Review Boards. The open question with respect to this agreement concerns the method of transmittal.

Captain Boywid suggests, and I concur, that it would be most appropriate, and in all probability insure a likelihood of favorable action by the respective military departments, if the Office of the White House Counsel would issue a letter recommendation forwarding and commending the Board's select recommendations to the Defense Department - either to the Secretary of Defense or directly to the Secretary of the respective military department. Since an agreement in principle has been reached there appears to be no political liability for the White House to offer this assistance.



October 17, 1975

- 2 -

Charles E. Goodell

Indeed, it would be an open and public expression of the commitment to bind the nation's wounds in a total spirit of reconciliation. Furthermore, the selected individuals represent a class of individuals who have served their country honorably and well both in the combat zone and at home. As for the remaining applicants who did not receive recommendations for upgrade, a letter memorandum specially commending these cases to the appropriate Discharge Review Boards would be sufficient.

I trust that this memorandum will be satisfactory for your purposes. Please contact me if further information is needed.

I sincerely thank you for your assistance.



11

HYDEMAN, MASON & GOODELL

1225 NINETEENTH STREET, N.W.
WASHINGTON, D. C. 20036

ARTHUR K. MASON
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HAROLD E. MESIROW
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JAMES T. LLOYD
JAMES H. HELLER
CHARLES E. GOODELL

OF COUNSEL

ALGER B. CHAPMAN
ALEXANDER M. LANKLER

*Copy sent
to Jay!*

TELEPHONE
202 659-3650

CABLE ADDRESS
HASTEN

October 21, 1975

Mr. Philip W. Buchen
Counsel to the President
The White House
Washington, D.C.

Dear Phil:

Enclosed is a copy of the memorandum I discussed with you
this morning, which I believe is self-explanatory.

With warm regards, I am

Sincerely,

Charlie

CHARLES E. GOODELL

CEG/gk

Enclosure



United States Department of Justice

Office of the Pardon Attorney

Washington, D.C. 20530

October 17, 1975

MEMORANDUM

TO: Charles E. Goodell

FROM: H. Neil Broder *H. Neil Broder*
Acting Assistant Pardon Attorney
(Clemency Matters)

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Charles E. Goodell

- 2 -

October 17, 1975

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I trust that this memorandum will be satisfactory for your purposes. Please contact me if further information is needed.

I sincerely thank you for your assistance.



Friday 10/31/75

2:45 Charles Goodell would appreciate a call.

659-3650

Wanted you to know it didn't concern clemency.



Thursday 10/30/75

5:00 Jay said the thing Goodell wanted to meet with Selective Service on were three points -- two of which Selective Service has already implemented -- so he thought that would abort the meeting.

Jay said he sent you a couple of pieces of paper concerning this.


He will go ahead and set the meeting if you'd like.



THE WHITE HOUSE

WASHINGTON

October 28, 1975

MEMORANDUM FOR: PHILIP W. BUCHEN
FROM: JAY T. FRENCH 
SUBJECT: Presidential Clemency Board

You inquired about the legality of Selective Service implementing the three suggestions made by Chairman Goodell in his August 20 letter to Byron Pepitone.

Selective Service already has implemented the first two suggestions and rejected the third one. Selective Service rejected the third suggestion because it was inequitable, not because it was illegal under the President's Executive Order and Proclamation.

The Director of Selective Service said that Charlie Goodell doesn't know these suggestions were adopted.



August 20, 1975

Dear Mr. Pepitone:

This is in response to your request at our earlier meeting that the Presidential Clemency Board forward to you any recommendations we have to deal with the special problem of short term alternative service. You had indicated that you had already notified OMB there was no way you could provide three-month full-time jobs to any large number of people in the present job market. I understand that you may have revised your assessment in that regard, but the Clemency Board has discussed at some length what was the Board's intention for performance of alternative service. Obviously, this is a matter within the jurisdiction of the Selective Service System and the Board offers these suggestions in the hopes they will be helpful to you.

The Board officially recommends three courses of action. The first two recommendations are unanimous. The third recommendation was adopted by the Board with four dissenting votes. I am attaching hereto the minority report of the four dissenting members. Our recommendations are as follows:

First, a PCB referral with a full-time job should be encouraged to retain that job and do part-time alternative service without pay.

Secondly, all PCB referrals should be permitted the option of performing fewer hours per week and extending their work over a longer period of time. For example, three months of alternative service could be fulfilled by stretching shorter hours worked per week over six months or a year.

Thirdly, to fulfill his alternative service requirement, a PCB referral be given the choice of working either forty hours per week with pay or sixteen hours per week without pay. He would have this choice regardless of his other employment or lack thereof.

The majority of the Board strongly believes that referrals should be given the option of performing either an average of sixteen hours per week alternative service without pay or forty hours per week alternative service with pay. We feel that such a policy is in accord with the wishes of the President and at the same time assists you in your difficult task of placing approximately eight thousand individuals whom we shall refer to you for alternative service. Permitting part-time alternative service would assure that jobs are not taken from veterans and others in the competitive labor market. It would also help to maximize the number of clemency recipients who could successfully perform alternative service and, therefore, earn their clemency. By allowing conditional clemency recipients to keep their present employment, it would minimize the likelihood of their families becoming financial burdens to the public.

In coming to this conclusion we consulted with probation officers who indicated that the courts generally accept sixteen hours per week as satisfactory alternative service when alternative service is required as a part of the court sentence. The majority of the Board believes that a man who works evenings or Saturdays and Sundays without pay in charitable activities or for governmental agencies should be deemed to have satisfied our requirement if he works sixteen hours per week.

Although it is my personal view that the President would agree that sixteen hours without pay should be the equivalent of forty hours per week with pay, I have never discussed the issue with the President, and I can understand that you may feel such a policy is in conflict with your directive from the President. If that is the case, I believe we should seriously consider presenting this issue to the President. I would obviously also present the minority views of our four dissenting members.

Whatever your decision with respect to recommendation number three, I should emphasize that the Clemency Board unanimously feels every effort should be made to avoid requiring that an individual relinquish a job which he presently holds. For obvious reasons this is particularly true of individuals required by the Clemency Board to do alternative service of six months or less.



These recommendations to you, in response to your invitation, are in hopes that they will be helpful in carrying the clonency program to a successful conclusion. We fully recognize that the nature of alternative service to be performed is the responsibility of the Selective Service System. I would be delighted to discuss our recommendations further with you at your convenience.

With kind regard, I am

Sincerely,

Charles E. Goodell
Chairman

Mr. Byron V. Pepitone
Director
Selective Service System
1724 F Street, NW
Washington, D.C. 20435



THE WHITE HOUSE
WASHINGTON

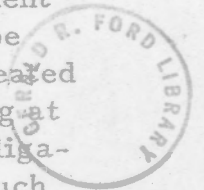
November 7, 1975

Dear Charlie:

Thank you for providing me with a copy of your letter to Byron Pepitone dated August 20 in which you set forth the Clemency Board's recommendations for handling referrals to Selective Service who are required to perform short terms of alternate service.

The Director of Selective Service has assured me that he shares the Board's concern and interest in these cases. Indeed, after considering these recommendations, Mr. Pepitone issued instructions that referrals with three to six months of alternate service should be permitted to keep their regular employment by working twenty hours a week at their alternate service jobs. This new procedure satisfies the first and second recommendations contained in your August 20 letter. Mr. Pepitone did not implement the Board's third recommendation, that sixteen hours would be the equivalent of a forty-hour week, because he felt that it created too great an inequity between persons who are already working at full-time alternate service jobs or who have fulfilled their obligations and those who would be permitted to take advantage of such a change in the rules.

I appreciate the principal concern underlying the Board's recommendations to insure that large numbers of referrals with short terms of service find employment. However, to date, only 542 referrals from the Clemency Board have enrolled at Selective Service and it has been reasonably successful in locating alternate service jobs. I think we now should give the Director of Selective

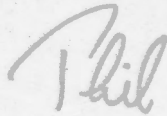


November 7, 1975

Page Two

Service an opportunity to evaluate the effectiveness of the Board's recommendations as larger numbers of referrals report for alternate service.

Sincerely,



Philip W. Buchen
Counsel to the President

Charles Goodell, Esquire
Room 601
1225 - 19th Street, N. W.
Washington, D. C. 20036



THE WHITE HOUSE

WASHINGTON

November 7, 1975

MEMORANDUM FOR:

PHILIP W. BUCHEN

FROM:

JAY T. FRENCH

You requested a report from Selective Service about the status of the alternate service program in order to assist you in preparing a letter to Charlie Goodell. Enclosed is that report from Byron Pepitone (Tab A). To save you time, I took the liberty of drafting a letter to Charlie which might serve the purpose you intended (Tab B).

Attachments





OFFICE OF THE DIRECTOR

NATIONAL HEADQUARTERS
SELECTIVE SERVICE SYSTEM

1724 F STREET NW.
WASHINGTON, D. C. 20435



ADDRESS REPLY TO
THE DIRECTOR OF SELECTIVE SERVICE

November 5, 1975

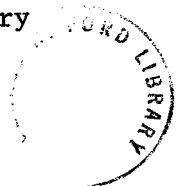
MEMORANDUM FOR MR. PHILIP BUCHEN

SUBJECT: Assignment of Clemency Board Enrollees to Alternate Service

Since December 1974, when the first applicants for clemency were enrolled in alternate service, there has not been any great problem of assigning Presidential Clemency Board enrollees to alternate service -- principally because they have been so few in number. There were only 24 enrollees in alternate service, from the Presidential Clemency Board, on June 30, 1975, and there are only 542 today. Over 360 of these have been enrolled in the last two months.

Several months ago when Chairman Goodell expressed concern that enrollees from the Presidential Clemency Board might not be provided the opportunity to complete their assigned alternate service to earn their Presidential pardon or pardon and clemency discharge, the matter was thoroughly considered. On July 7, 1975, I met with Mr. Goodell to discuss this problem. We focused on the potentially large number of enrollees from the Presidential Clemency Board with only three to six months of alternate service to perform. Our discussion aired the problems of providing a means for a high number of enrollees with an obligation of six months or less to perform their service without jeopardizing their regular jobs for such a short period of time. Mr. Goodell made several suggestions, including the use of less than full-time work as satisfactory performance. I asked Mr. Goodell to make recommendations to me on this subject, and he agreed to do so. Mr. Goodell's recommendation arrived at my office on August 25, 1975.

It has never been our policy to force enrollees to sacrifice good-paying jobs for alternate service jobs when some other solution to such a problem existed. Notwithstanding this fact, I have been constantly mindful of the President's feeling, which he expressed early in the program, that returnees should earn their way back. Our effort has been to follow the President's desires and apply them to the realistic situations, on a case-by-case basis as we saw them. We have encouraged enrollees to keep their jobs and work off their obligation in secondary jobs since the program began. Many sincere enrollees have done so.



Memorandum for Mr. Buchen

Page Two

November 5, 1975

It was apparent from the time we learned that many of the Clemency Board enrollees would have short-term obligations that some special provisions for them to complete their alternate service without leaving their regular jobs might be necessary. Mr. Goodell's recommendations assisted in the establishment of the modified requirements for satisfactory alternate service now available to short-term obligors from the Presidential Clemency Board.

On September 19, 1975 I advised the State Directors of Selective Service that short-term alternate service could be completed on an equivalent-time basis, i.e., an enrollee who had a full-time regular job and was sincere in his desire to perform his alternate service could complete his alternate service obligation by working on a 20 hours per week basis on an approvable job either compensated or as a volunteer. This enabled them to earn their Presidential clemency while keeping their regular jobs, although it did extend the period they have to serve for the work to be considered the equivalent of full time.

In my view, this change of instructions regarding the performance of alternate service should accommodate those enrollees who have short-term obligations and should satisfy the first two recommendations of Mr. Goodell's August 20 letter.

I have not adopted Mr. Goodell's third recommendation, i.e., a token period of voluntary service of as little as 16 hours per week equated to 40 hours of paid service. It is my belief, in fairness to all participants, that an hour of service is the same whether it is volunteer or paid work. To make an exception such as Mr. Goodell recommends I believe would be unfair to the many enrollees who are now working at full-time jobs to complete their service or who have already fulfilled their obligation by working full time. Such liberalization, in my view, could cause further criticism of the President's program as well as being unfair to those participating under the present procedures.

I believe that our present instructions, which provide for certain enrollees to complete their obligations over an extended period of time while performing alternate service on an equivalent-time basis, will make it possible for all sincere enrollees with short-term obligations to earn their return as the President intended without jeopardizing their regular jobs, their families' well-being, or the President's program.



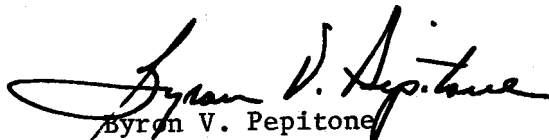
Memorandum for Mr. Buchen
Page Three
November 5, 1975

There are more Presidential Clemency Board enrollees who have already completed their obligation today than were enrolled at the end of May. Nearly 200 of the remaining Presidential Clemency Board enrollees are at work. Considering that 360 of the total of 542 who have enrolled have done so in the last 60 days, I believe the employment rate is excellent.

A percentage of enrollees do drop out of the program after enrollment when they realize, after learning more details of the program, that they will not receive veterans' benefits and other benefits which they mistakenly thought they would receive at the time of application. This drop-out rate to date is not disturbing when we consider, from experience, that less than 45% of those advised of the President's grant of conditional clemency enroll in the first place.

I believe that the provisions we have made for Presidential Clemency Board enrollees to perform alternate service will enable all those who are interested in performing it to do so without jeopardizing their regular jobs. At the same time, they will be earning their way back into society as the President intended. Notwithstanding this, we should be aware that there are those enrollees who are not interested in performing alternate service, either full time or part time, whether presently employed or not. There is little which can be done for those not willing to participate, since this is a decision the individual enrollee makes.

I hope this provides you with the information you desire. If you need any additional information, I will be pleased to furnish it.


Byron V. Pepitone
Director

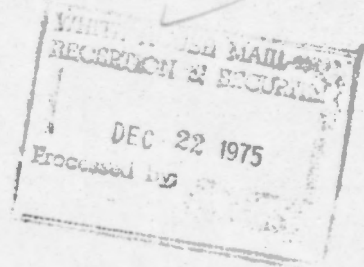


HYDEMAN, MASON & GOODELL
1225 NINETEENTH STREET, N. W.
WASHINGTON, D. C. 20036

ARTHUR K. MASON
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MEMORANDUM

TO: President Gerald R. Ford
FROM: *Charles E. Goodell*
Charles E. Goodell
SUBJECT: Final Report of Presidential Clemency Board
DATE: December 18, 1975

I am pleased to submit to you today the final report of the Presidential Clemency Board, together with the formal transmittal from me, as Chairman, on behalf of the Board. The report contains a short executive summary, eight descriptive chapters, and appendices. It contains no recommendations. The report was signed by the following fourteen Board members: Charles E. Goodell, Robert S. Carter, Timothy Lee Craig, John A. Everhard, W. Antoinette Ford, Father Theodore M. Hesburgh, Vernon E. Jordan, John Hoy Kauffmann, Reverend Monsignor Francis J. Lally, James A. Maye, E. Frederick Morrow, Aida Casanas O'Connor, Lewis B. Puller, Jr., and Joan Vinson.

Dr. Ralph Adams, Mr. James P. Dougovito, Mr. Harry Riggs, and General Lewis W. Walt did not sign this report, nor did they submit to the Board any dissenting views.

We are embargoing the report until January 6th. On that date, our current plan is to distribute 3,000 complimentary copies, and an additional 2,000 copies will be placed on public sale by the Superintendent of Documents.

I recommend that the report be released with a short public statement describing the purposes and accomplishments of your Clemency Program. I believe that this program has been one in which you and your Administration can take just pride.

I appreciate the assistance which members of your Executive Office have given in the late stages of preparing this report.

cc: Paul O'Neill

Enclosure



HYDEMAN, MASON & GOODELL

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TELEPHONE
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CABLE ADDRESS
HASTEN

January 6, 1976

The Honorable Gerald R. Ford
The White House
Washington, D. C. 20500

Dear Mr. President:

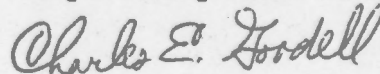
I am pleased to transmit herewith the Report of the Presidential Clemency Board, representing the observations and conclusions of the Board. This submission is made pursuant to Section 10(d) of the Federal Advisory Committee Act (5 USC App I) and pursuant to Section 9 of Executive Order 11803, dated September 16, 1974.

This Report contains an extensive description and analysis of the Clemency Board's activities during the year of our existence. We have described our work at length because we believe that you, the Congress, and the American people deserve as complete an accounting as possible of how we carried out our responsibilities under your Clemency Program. Although the report does not contain any formal recommendations, it chronicles and describes the issues the Board faced in implementing your program of earned re-entry for those who failed to comply with military or Selective Service requirements during the Vietnam period.

Compassion and forgiveness are part of the highest traditions of America. Your policy of post-Vietnam reconciliation has served the important purpose of helping restore unity, while respecting diversity of opinion. It did so without impairing respect for law, or the ability of the nation to meet future crises. Through your program, thousands of young Americans now have the opportunity to become more useful and productive citizens.

We believe the country is far stronger as a result of your Clemency Program, and each of us is grateful for the opportunity that you gave us to serve in this important effort.

Respectfully submitted,



Charles E. Goodell
Chairman

