The original documents are located in Box 2, folder "Amnesty - Presidential Clemency Board Final Report" of the John Marsh Files at the Gerald R. Ford Presidential Library.

Clemency Board AUG 29 1975

THE WHITE HOUSE

WASHINGTON

August 29, 1975

MEMORANDUM FOR: DONALD RUMSFELD

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

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.

PRESIDENTIAL CLEMENCY BOARD
THE WHITE HOUSE

WASHINGTON

August 15, 1975

MEMORANDUM FOR: PHILIP BUCHEN

FROM: 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

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

APPENDIX I

FEDERAL ADVISORY COMMITTEE ACT

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

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

§ 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

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.

(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;

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 is 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 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.

§ 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 meetings 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

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

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

clemency

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

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

THE WHITE HOUSE

WASHINGTON

September 15, 1975

MEMORANDUM TO: JACK MARSH

FROM: RUSS ROURKE R

Jack, this entire Clemency Board matter got rather confused on Monday. The Minority report that you saw on Saturday was rejected by Phil Buchen. Two grounds:

a) He had not as yet received the Majority report.

b) The Minority report contained recommendations and several other items that, in Buchen's view, were inappropriate.

Col. Benson took the report back with instructions to redo it. This process will take approximately ten days to two weeks.

I spoke with Don Rumsfeld about the substance of my recent discussions with General Walt concerning the possible harm that might be done to the President in the event he were to SAT or do anything that would be construed as an endorsement of the Board's actions. Don indicated that the President was not aware of this situation when he signed off on the Board's request for a meeting with him and a Rose Garden reception for the entire staff. For that reason, I was going to send a memo to the President, wherein I would address the aforementioned cautions. This afternoon, however, I had an opportunity to discuss this entire situation with Paul O'Neill. Paul tells me that last week, he personally gave the President a verbal report on all of the General Walt cautions. In OMB's "talking points" for tomorrow's PCB events, Paul will also make sure that this ground is completely covered.

In view of the above, any further input by me personally would appear to be both duplicitous and possibly confusing.

plane

THE WHITE HOUSE

WASHINGTON

September 12, 1975

JACK, (attached

Gen. Walt advises me that he will have a copy of his "minority" report to you Saturday morning. He hopes you will have an opportunity to review his report.

RUSS R

A

SUMMARY EVALUATION

OF

THE PRESIDENTIAL CLEMENCY BOARD'S OPERATIONS

Submitted by
A Minority of the Board
September 15, 1975

No. 1

INDEX

SECTION I

Purpose 1

SECTION II

Composition of the Board. 1

SECTION III

Staffing. 2

SECTION IV

Applicants. 3

SECTION V

Board Functions 5

SECTION VI

Changes in Board Policy 6

SECTION VII

Credibility of Board's Decisions. 8

SECTION VIII

Conclusion. 9

SECTION IX

Recommendations 10

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, inturn, 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.

The first significant move on the part of the Chairman and his Executive Staff, in our opinion, was to introduce the word "pardon" into the Clemency decision on each applicant's case although the word "pardon" never appeared once in the President's Executive Order or Proclamation. The Chairman and Executive Staff argued that "pardon" and "clemency" were synonymous terms and they won the argument, by claiming the tacit approval from the White House, over the strenuous objection of some of the Board Members. Eventually in the Board decisions and in the letters going to the applicant after the Board action, the words "clemency" and "pardon" were no longer used as synonymous terms but were separated and used in the terms of "a pardon" and a "Clemency Discharge". We quote from a letter dated July 16, 1975, written to an applicant and signed by Chairman Goodell, "...The President has signed a master warrant granting you a full, free Unconditional Pardon and a Clemency Discharge to replace your less than honorable discharge." We believe this is quite a different connotation and meaning than was initially argued by the Chairman and Executive Staff last October. Further, a person who has been convicted of a felony (a crime punishable by imprisonment for more than one year) may legally purchase a firearm from a licensed firearms dealer if the person convicted of said felony has received an unconditional Presidential Pardon. The Presidential Pardon, however, only applies to Federal offenses.

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

In the early months of the Board's deliberations a real effort was made to maintain the "meaningfulness" and "value" of the Clemency Discharge. For such offenses as AWOL from combat, refusal to go to combat, multiple and long AWOLs, civil convictions for felony; the Board would normally vote "no clemency". However, and in sharp contrast, during the latter months of the Board's operation and after the more amnesty-oriented eighteen-member Goodell-influenced Board came into being, clemency was voted in cases involving multiple AWOLs (8) from the battle field; multiple refusals to go into combat; multiple (as high as ten AWOLs) and long (seven years) AWOLs, civilian felony convictions (rape, murder, manslaughter, grand larceny, armed robbery, aggravated assault). Also, a man given an Undesirable or even Punitive Discharge for a few days or even hours of AWOL (which, according to the Board General Counsel's ruling, qualified him for the Clemency Board Program) was recommended for a pardon and clemency discharge, by a bare majority vote, even though the official offense charged might include aggravated assault, disrespect to officer or NCO, striking an officer or NCO, wrongful appropriation of personal or government property, etc. This again was a turnabout from the policy set by the nine-member Board. Another questionable move, condoned by the Chairman, was to make drug addiction a mitigating factor on behalf of the applicant and drug use a possible qualification for mitigation. The Board, on the other hand, was instructed not to consider the use of drugs as an aggravating factor even though such use was unlawful. This change from the nine-member Board policy again was strenuously objected to by the constantly "out-voted" minority.

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

(1) Denying them clerical help or staff assistants.

(2) Asking the Board to act after the fact in matters having to do with policy changes.

(3) Denying them access to staff memorandums concerning matters of interest to the Board, including Board periodic reports.

(4) Keeping the Board on unduly heavy schedule (seven days a week) and swamping them with applicant cases to be read and presented, (and represented), making it next to impossible for Board members to monitor Board results. This whole process seemed to us to be something more than accidental.

In addition, a three-part post-audit review was established. First, there was the standard review, which applied to all no-clemency cases and all cases which were given over 12 months alternative service; second, there was a review of attorney-flagged cases which the Action Attorney felt the Board members had decided unfairly; and third, there was computerized review which, by use of quantitative guidelines weeded out cases which had the harsher decisions. The post-audit team reviewed cases and made its recommendation to the General Counsel with an explanation for recommending reconsideration. Practically no cases were found which were repanelled for a more harsh decision. The General Counsel then forwarded the cases to the Chairman, with his recommendation. Further, many cases were panel-shopped without going through the post-audit procedure and without the second or subsequent panel or Board being informed of the previous decision.

SECTION VII

CREDIBILITY OF BOARD'S DECISIONS

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

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

SECTION 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.

SECTION IX

RECOMMENDATIONS

(1) We respectfully and strongly recommend that the Attorney General adhere to a fair and unbiased approach in reviewing the findings and recommendations of the PCB on those cases transferred to him under paragraph 2 of the Executive Order so that the meaning and value of the Clemency Discharge will be restored to its original meaning as intended by the President.

(2) Great caution should be exercised if Executive Clemency is to be granted to those persons convicted of felonies in civilian courts, and who possess less than honorable discharges from the military. In such a case, the prestige of the President is resting on the presumption that such felons will be law-abiding citizens in the future. The Board members are not penologists and do not possess the ability to scientifically and objectively predict which convicted felons can safely be pardoned with only minimal risk that their future activities might embarrass the President. Therefore, it is recommended that the President should seek the opinion of the Pardon Attorney before determining whether or not a convicted felon making application to the Board should receive the prestige and benefits of a Presidential Pardon. Such expert determination should be made on an individual case-by-case basis.

(3) We recommend that the Attorney General review the processing procedures which apply to the submission of recommendations to the President and the subsequent notification of the President's action to the applicant and that these procedures be restructured and arranged in a more orderly manner thereby expediting the process and at the same time, saving thousands of man hours and considerable expense.

(4) While we do not anticipate the need for a Clemency-type program in the forseeable future, in the event such a need arises, we recommend that it be administered by the Attorney General's Office for the Selective Service Violator and by the Review Boards of the Department of Defense for the military offenders. We recommend that the General Counsel for such a program be appointed from the staff which assisted in the preparation of the Executive Order to insure proper interpretation and implementation of the terms and spirit of the Executive Order. We

believe the applications could be acted upon more efficiently and fairly than could be accomplished by a bias staff and politically-oriented Board such as the PCB.

James P. Dougovito
Board Member

Lewis W. Walt
General USMC (Ret)
Board Member

Dr. Ralph Adams
Board Member

Harry Riggs
Board Member

Clemency

January 9, 1976

Dear Ms. Raszick:

Pursuant to your conversation today with my secretary, Mrs. Connie Banford, I am enclosing a copy of the "Report to the President on the Presidential Clemency Board".

With every good wish, I remain,

Sincerely,

Russell A. Rourke
Deputy to Presidential
Counsellor, John O. Marsh, Jr.

Ms. Annadele Raszick:
Committee on Public Works
and Transportation
310 Congressional Hotel
300 New Jersey Avenue, S. E.
Washington, D. C. 20515
cb

JAN 1976

January 13, 1976

Russ:

As you probably know, Mr. Goodell is planning a news conference Thursday morning in the National Press Building. It is in reference to the final report. I don't think this press conference should go at this time. There are too many things that could embarrass the President.

The final report has many holes in it and these will be aired at the news conference by groups I know will be there. One thing will be brought up by Veterans groups is Mr. Baskir's affiliation with Senator Ervin's investigation into Army spying on civilians. There is an article in a law review written by Mr. Baskir on this.

As you know, many things can be brought out that will not make the President look good. I say the press conference should be killed. Of course you know more about this than I do.

I am also enclosing a copy of a memorandum on "Clemency Discharges Over Veterans Benefits" which was sent to Mr. Goodell in January 1975.

Bill

Colonel Dickman

Enclosure

to Barry Roth 1/14
Dur. rpt valv.

ASSISTANT SECRETARY OF DEFENSE
WASHINGTON, D. C. 20301

MANPOWER AND
RESERVE AFFAIRS
(Military Personnel Policy)

24 JAN 1975

MEMORANDUM FOR ASSISTANT SECRETARIES OF THE
MILITARY DEPARTMENTS (M&RA)

SUBJECT: Presidential Clemency Program

Enclosed is a copy of the General Counsel's memorandum of 13 January 1975 to the Chairman, Presidential Clemency Board, in which it is stated that the Military Departments, acting through their Discharge Review Boards or Boards for Correction of Military Records, will not conduct a sua sponte review of Clemency Discharges issued pursuant to recommendations of the Presidential Clemency Board.

It was also stated, however, that each individual being issued a Clemency Discharge, pursuant to Presidential Clemency Board recommendations, would be advised of the availability of review under 10 U. S. C. §§ 1552 and 1553 and would be provided the appropriate application forms.

It is requested that procedures for effecting this be established in each military department.

John G. Finneran
Vice Admiral, USN
Deputy Assistant Secretary of Defense

Russ

00355

Appeared in ASA (M&RA)
Reading File 1/24

18 JAN 1975

MEMORANDUM FOR: Chairman, Presidential Clemency Board

THROUGH: Mr. Thomas Latimer

THROUGH: M/G Richard Lawson
Military Assistant to the President

SUBJECT: Review of Clemency Discharges by Military Department Discharge Review Boards and Boards for Correction of Military (Naval) Records

You asked whether the Military Departments, acting through either their respective Discharge Review Boards or Boards for Correction of Military Records, would review, sua sponte, those cases in which former military members, through recommendation of the Presidential Clemency Board, have had their discharges upgraded to a Clemency Discharge. The purpose of such a sua sponte review would be to determine if further upgrading of the discharge would be warranted. You further suggested that such a review should be conducted without reference to the offense which led to his punitive or undesirable discharge, which, it appears, is intended to be the subject of a Presidential pardon.

Upon considerable reflection following our conversation, sua sponte review of discharges issued following recommendations by the Presidential Clemency Board does not appear to have been envisioned as a part of the President's Clemency Program, and does not appear appropriate based on the operation of the pardon itself.

While the pardon does serve to eliminate certain prospective effects of conviction, it does not operate to change existing or accomplished facts, to change the other-than-honorable nature of an individual's military discharge, or to eliminate the circumstances which underlay it.

Also, since veterans' benefits were not intended to be changed by reason of the clemency program, it would not appear appropriate to suggest, as a sua sponte review would imply, that more relief would be forthcoming than the President presented in his program.

Any former military member who feels that his discharge does not accurately reflect the quality of his military service, or who feels that an error or injustice was done in his case, has available the procedures for review provided by sections 1552 and 1553 of title 10, United States Code. This includes those former members who, through the procedures of the Presidential Clemency Program, receive a Clemency Discharge. All returning absentees who are processed under the Department of Defense portion of the Clemency Program are advised of the availability of these procedures. This advice is also appropriate to those who receive a Clemency Discharge based on recommendations of the Presidential Clemency Board. The Department of Defense will be pleased to provide this advice, together with appropriate application forms, as a part of the package transmitting the Clemency Discharge to these individuals.

Signed Martin R. Hoffmann

Martin R. Hoffmann

A

SUMMARY EVALUATION

OF

THE PRESIDENTIAL CLEMENCY BOARD'S OPERATIONS

Submitted by
A Minority of the Board
September 15, 1975

No. 9

INDEX

SECTION I

Purpose 1

SECTION II

Composition of the Board. 1

SECTION III

Staffing. 2

SECTION IV

Applicants. 3

SECTION V

Board Functions 5

SECTION VI

Changes in Board Policy 6

SECTION VII

Credibility of Board's Decisions. 8

SECTION VIII

Conclusion. 9

SECTION IX

Recommendations 10

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, inturn, 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 backl 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 submitte to the President for action.

SECTION VI

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

The first significant move on the part of the Chairman and his Executive Staff, in our opinion, was to introduce the word "pardon" into the Clemency decision on each applicant's case although the word "pardon" never appeared once in the President's Executive Order or Proclamation. The Chairman and Executive Staff argued that "pardon" and "clemency" were synonymous terms and they won the argument, by claiming the tacit approval from the White House, over the strenuous objection of some of the Board Members. Eventually in the Board decisions and in the letters going to the applicant after the Board action, the words "clemency" and "pardon" were no longer used as synonymous terms but were separated and used in the terms of "a pardon" and a "Clemency Discharge". We quote from a letter dated July 16, 1975, written to an applicant and signed by Chairman Goodell, "...The President has signed a master warrant granting you a full, free Unconditional Pardon and a Clemency Discharge to replace your less than honorable discharge." We believe this is quite a different connotation and meaning than was initially argued by the Chairman and Executive Staff last October. Further, a person who has been convicted of a felony (a crime punishable by imprisonment for more than one year) may legally purchase a firearm from a licensed firearms dealer if the person convicted of said felony has received an unconditional Presidential Pardon. The Presidential Pardon, however, only applies to Federal offenses.

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

In the early months of the Board's deliberations a real effort was made to maintain the "meaningfulness" and "value" of the Clemency Discharge. For such offenses as AWOL from combat, refusal to go to combat, multiple and long AWOLs, civil convictions for felony; the Board would normally vote "no clemency". However, and in sharp contrast, during the latter months of the Board's operation and after the more amnesty-oriented eighteen-member Goodell-influenced Board came into being, clemency was voted in cases involving multiple AWOLs (8) from the battle field; multiple refusals to go into combat; multiple (as high as ten AWOLs) and long (seven years) AWOLs, civilian felony convictions (rape, murder, manslaughter, grand larceny, armed robbery, aggravated assault). Also, a man given an Undesirable or even Punitive Discharge for a few days or even hours of AWOL (which, according to the Board General Counsel's ruling, qualified him for the Clemency Board Program) was recommended for a pardon and clemency discharge, by a bare majority vote, even though the official offense charged might include aggravated assault, disrespect to officer or NCO, striking an officer or NCO, wrongful appropriation of personal or government property, etc. This again was a turnabout from the policy set by the nine-member Board. Another questionable move, condoned by the Chairman, was to make drug addiction a mitigating factor on behalf of the applicant and drug use a possible qualification for mitigation. The Board, on the other hand, was instructed not to consider the use of drugs as an aggravating factor even though such use was unlawful. This change from the nine-member Board policy again was strenuously objected to by the constantly "out-voted" minority.

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

(1) Denying them clerical help or staff assistants.

(2) Asking the Board to act after the fact in matters having to do with policy changes.

(3) Denying them access to staff memorandums concerning matters of interest to the Board, including Board periodic reports.

(4) Keeping the Board on unduly heavy schedule (seven days a week) and swamping them with applicant cases to be read and presented, (and represented), making it next to impossible for Board members to monitor Board results. This whole process seemed to us to be something more than accidental.

In addition, a three-part post-audit review was established. First, there was the standard review, which applied to all no-clemency cases and all cases which were given over 12 months alternative service; second, there was a review of attorney-flagged cases which the Action Attorney felt the Board members had decided unfairly; and third, there was computerized review which, by use of quantitative guidelines weeded out cases which had the harsher decisions. The post-audit team reviewed cases and made its recommendation to the General Counsel with an explanation for recommending reconsideration. Practically no cases were found which were repanelled for a more harsh decision. The General Counsel then forwarded the cases to the Chairman, with his recommendation. Further, many cases were panel-shopped without going through the post-audit procedure and without the second or subsequent panel or Board being informed of the previous decision.

SECTION VII

CREDIBILITY OF BOARD'S DECISIONS

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

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

SECTION 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.

SECTION IX

RECOMMENDATIONS

(1) We respectfully and strongly recommend that the Attorney General adhere to a fair and unbiased approach in reviewing the findings and recommendations of the PCB on those cases transferred to him under paragraph 2 of the Executive Order so that the meaning and value of the Clemency Discharge will be restored to its original meaning as intended by the President.

(2) Great caution should be exercised if Executive Clemency is to be granted to those persons convicted of felonies in civilian courts, and who possess less-than honorable discharges from the military. In such a case, the prestige of the President is resting on the presumption that such felons will be law-abiding citizens in the future. The Board members are not penologists and do not possess the ability to scientifically and objectively predict which convicted felons can safely be pardoned with only minimal risk that their future activities might embarrass the President. Therefore, it is recommended that the President should seek the opinion of the Pardon Attorney before determining whether or not a convicted felon making application to the Board should receive the prestige and benefits of a Presidential Pardon. Such expert determination should be made on an individual case-by-case basis.

(3) We recommend that the Attorney General review the processing procedures which apply to the submission of recommendations to the President and the subsequent notification of the President's action to the applicant and that these procedures be restructured and arranged in a more orderly manner thereby expediting the process and at the same time, saving thousands of man hours and considerable expense.

(4) While we do not anticipate the need for a Clemency-type program in the forseeable future, in the event such a need arises, we recommend that it be administered by the Attorney General's Office for the Selective Service Violator and by the Review Boards of the Department of Defense for the military offenders. We recommend that the General Counsel for such a program be appointed from the staff which assisted in the preparation of the Executive Order to insure proper interpretation and implementation of the terms and spirit of the Executive Order. We

believe the applications could be acted upon more efficiently and fairly than could be accomplished by a bias staff and politically-oriented Board such as the PCB.

James P. Dougovito
Board Member

Lewis W. Walt
General USMC (Ret)
Board Member

Dr. Ralph Adams
Board Member

Harry Riggs
Board Member

THE WHITE HOUSE
WASHINGTON

Jack —

I hope and pray the attacked will now die a natural death —

R.

SEP 24 1975

THE WHITE HOUSE

WASHINGTON

September 23, 1975

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.)

Attachment 1

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

INDEX

SECTION I

Purpose 1

SECTION II

Composition of the Board. 1

SECTION III

Staffing. 2

SECTION IV

Applicants. 3

SECTION V

Board Functions 5

SECTION VI

Changes in Board Policy 6

SECTION VII

Credibility of Board's Decisions. 8

SECTION VIII

Conclusion. 9

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, inturn, 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.

The first significant move on the part of the Chairman and his Executive Staff, in our opinion, was to introduce the word "pardon" into the Clemency decision on each applicant's case although the word "pardon" never appeared once in the President's Executive Order or Proclamation. The Chairman and Executive Staff argued that "pardon" and "clemency" were synonymous terms and they won the argument, by claiming the tacit approval from the White House, over the strenuous objection of some of the Board Members. Eventually in the Board decisions and in the letters going to the applicant after the Board action, the words "clemency" and "pardon" were no longer used as synonymous terms but were separated and used in the terms of "a pardon" and a "Clemency Discharge". We quote from a letter dated July 16, 1975, written to an applicant and signed by Chairman Goodell, "...The President has signed a master warrant granting you a full, free Unconditional Pardon and a Clemency Discharge to replace your less than honorable discharge." We believe this is quite a different connotation and meaning than was initially argued by the Chairman and Executive Staff last October. Further, a person who has been convicted of a felony (a crime punishable by imprisonment for more than one year) may legally purchase a firearm from a licensed firearms dealer if the person convicted of said felony has received an unconditional Presidential Pardon. The Presidential Pardon, however, only applies to Federal offenses.

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

In the early months of the Board's deliberations a real effort was made to maintain the "meaningfulness" and "value" of the Clemency Discharge. For such offenses as AWOL from combat, refusal to go to combat, multiple and long AWOLs, civil convictions for felony; the Board would normally vote "no clemency". However, and in sharp contrast, during the latter months of the Board's operation and after the more amnesty-oriented eighteen-member Goodell-influenced Board came into being, clemency was voted in cases involving multiple AWOLs (8) from the battle field; multiple refusals to go into combat; multiple (as high as ten AWOLs) and long (seven years) AWOLs, civilian felony convictions (rape, murder, manslaughter, grand larceny, armed robbery, aggravated assault). Also, a man given an Undesirable or even Punitive Discharge for a few days or even hours of AWOL (which, according to the Board General Counsel's ruling, qualified him for the Clemency Board Program) was recommended for a pardon and clemency discharge, by a bare majority vote, even though the official offense charged might include aggravated assault, disrespect to officer or NCO, striking an officer or NCO, wrongful appropriation of personal or government property, etc. This again was a turnabout from the policy set by the nine-member Board. Another questionable move, condoned by the Chairman, was to make drug addiction a mitigating factor on behalf of the applicant and drug use a possible qualification for mitigation. The Board, on the other hand, was instructed not to consider the use of drugs as an aggravating factor even though such use was unlawful. This change from the nine-member Board policy again was strenuously objected to by the constantly "out-voted" minority.

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

(1) Denying them clerical help or staff assistants.

(2) Asking the Board to act after the fact in matters having to do with policy changes.

(3) Denying them access to staff memorandums concerning matters of interest to the Board, including Board periodic reports.

(4) Keeping the Board on unduly heavy schedule (seven days a week) and swamping them with applicant cases to be read and presented, (and represented), making it next to impossible for Board members to monitor Board results. This whole process seemed to us to be something more than accidental.

In addition, a three-part post-audit review was established. First, there was the standard review, which applied to all no-clemency cases and all cases which were given over 12 months alternative service; second, there was a review of attorney-flagged cases which the Action Attorney felt the Board members had decided unfairly; and third, there was computerized review which, by use of quantitative guidelines weeded out cases which had the harsher decisions. The post-audit team reviewed cases and made its recommendation to the General Counsel with an explanation for recommending reconsideration. Practically no cases were found which were repanelled for a more harsh decision. The General Counsel then forwarded the cases to the Chairman, with his recommendation. Further, many cases were panel-shopped without going through the post-audit procedure and without the second or subsequent panel or Board being informed of the previous decision.

SECTION VII

CREDIBILITY OF BOARD'S DECISIONS

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

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

SECTION 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.

Attachment 2

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