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a. Letters	<p>1. <u>French to Rourke, 7/28/75</u></p> <p>Letters to six individuals re their pardons</p>	7/16/75	C

FILE LOCATION

Marsh Files
 General Subject File
 Amnesty - Presidential Clemency Board: General

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WHM, 11/6/85

THE WHITE HOUSE
WASHINGTON
PRESIDENTIAL CLEMENCY BOARD

October 4, 1974

76

MEMORANDUM

TO: Presidential Clemency Board

FROM: Richard Tropp *RT*
Special Counsel

SUBJECT: Guidelines on Categorization of Cases and on
Application of Mitigating and Aggravating Factors

I. Why establish guidelines at all? Why not just evolve substantive rules as the Board proceeds to consider individual cases?

- * Need for public certainty on how the Board will treat applicants, in order to maximize number of people who seek clemency. The longer there is ambiguity about what criteria the Board will apply in disposition of applications, the longer are potential applicants likely to delay their petition or to ignore the clemency program altogether.
- * Need to maximize public perception of fairness of the program, among potential critics as well as potential applicants.
- * Desirability of ensuring equity in the way similarly situated applicants are treated. Desirability of preempting legal claims of unequal protection.
- * Law of procedural due process suggests necessity for notice to applicant of basis on which he will be judged.
- * Necessity to ensure consistency with which large staff will treat potentially high percentage of cases which may never rise to consideration by the Board, and to ensure that staff dispositions follow policy articulated by the Board.



- * Establishment of substantive rules now need not preempt later addition of new categories, and new mitigating or aggravating factors, as hard cases fall between the cracks of the initial guidelines and come up to the Board for decision.

II. What are the remedies available to the Board?

The Board has two decisions to make with respect to any case:

Journal 8-11

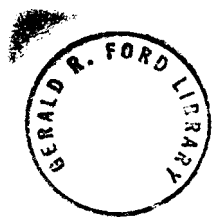
--Should the applicant perform alternative service and, if so, how much?

--Should clemency take the form of

- (1) commutation of sentence, or
- (2) pardon (civilian) or clemency discharge (military), or
- (3) both.

There are, then, conceptually at least seven possible remedies available to the Board:

- (1) unconditional commutation of sentence
- (2) commutation conditioned upon completion of alternative service
- (3) unconditional pardon or clemency discharge
- (4) pardon or clemency discharge conditioned upon completion of alternative service
- (5) unconditional commutation and unconditional pardon/clemency discharge
- (6) commutation and pardon/clemency discharge both conditioned upon completion of alternative service
- (7) unconditional commutation of sentence, with provision that completion of specified amount of alternative service will lead to pardon or clemency discharge.



Although not within the scope of remedies provided the Board by the Proclamation and the Executive Order, two further options legally are available to the Board for clemency directed at military applicants:

- (8) recommendation of upgrading of discharge to a service's discharge review board, and transmission to it of a Board record of fact-finding upon which such recommendation is based
- (9) recommendation of upgrading of discharge directly to the President, based upon a Board record of fact-finding.

One can imagine two contexts within which the Board might choose to exercise option 8 or 9:

- consensus among Board members that the practical effect of a clemency discharge is equal to or worse than that of an undesirable discharge, and that a clemency discharge really is not "clemency" at all within the President's intent; or
- a finding that an undesirable or punitive discharge was improperly imposed in a particular case, or that mitigating factors were insufficiently considered in a particular case, with the consequence that the individual involved "deserves" a discharge superior to a clemency discharge.

The Board is empowered by the Executive Order establishing it to provide clemency to individuals discharged from the military after conviction of one of the specified offenses, and to individuals convicted, not discharged, and under confinement. The Board is not, however, empowered to provide clemency to convicted but non-confined servicemen who were not discharged or who chose to remain within the service, whether or not those individuals had previously served a sentence under confinement. The anomaly, then, is that this latter class of servicemen may be burdened with records more damaging than those of individuals eligible for clemency, even though the behavior of members of this latter class may have been superior to that of individuals who were discharged.



If the Board should decide to address this seeming inequity, it may choose another option not within the scope of remedies explicitly provided to it:

- (10) recommendation to the services, to the Secretary of Defense, or to the President that the records of convicted servicemen who remain within the military be modified in exactly the same way as they would be if those servicemen were granted a clemency discharge to replace an undesirable or punitive discharge.

III. A threshold jurisdictional question: Will the Board take applications from those not yet convicted, in order to establish its jurisdiction over them once they are convicted or discharged?

The Board is empowered, by section 2 of its establishing Executive Order, to take jurisdiction of the cases of those who

--have been convicted of violation of the specified sections of law, or have received a punitive or undesirable discharge consequent upon violation of the specified articles of the Uniform Code of Military Justice, with respect to acts committed between August 4, 1964 and March 28, 1973, and

--have applied for Executive clemency prior to January 31, 1975.

It is specified that the acts of violation of law must have taken place between particular dates, and that the application must be in by a particular date, but it is not specified that a conviction or discharge must have transpired either between particular dates or before a particular date.

Depending upon one's interpretation of the expressions "have been convicted" and "have received punitive or undesirable discharges", then, it is possible that the Board will have within its jurisdiction the class of all persons who committed the specified violations of law between 8/4/64 and 3/28/73, but who were not convicted as of September 16-- including those not yet convicted--provided that those unconvicted or nondischarged persons submit applications for clemency prior to January 31.



It is possible that anyone who is now a non-convicted fugitive draft evader or a nondischarged deserter may choose to file an application for clemency before January 31 prior to his conviction or discharge, in order to ensure that the Board will have jurisdiction over his clemency plea even if his conviction or discharge occurs after January 31. That individual, currently within the jurisdiction of the Justice Department or of the Defense Department under the Proclamation, may seek to thereby remove himself from such jurisdiction and to guarantee, instead, that his plea for clemency will be heard by this Board.

Should the Board decide to take jurisdiction over such applications, it will be in a strong position to affect the manner in which Justice and Defense make their decisions on imposition and length of alternative service. If the Board's conception of clemency comes to differ markedly from that of either Justice or Defense, it may want to exercise this lever in order to permit currently non-convicted and non-discharged supplicants an alternative forum for their pleas, and in order to moderate the decisions of one or both of the Departments.

On the other hand, the Board's taking of jurisdiction over such applications would clearly permit a forum-shopping process which may undermine the role that was contemplated by the Proclamation for the two Departments in the clemency program.

Whether the Board's instinct now is that it probably will or probably will not want to interpret its jurisdiction to include timely applications submitted by individuals not convicted or discharged prior to September 16, there are arguments for making the decision either way sooner rather than later:

- If the Board will want to take such jurisdiction, then quick public articulation of that position will maximize the number of potential applicants for clemency whose decision will be affected by the Board's position, and will maximize the Board's leverage over the way that Justice and Defense conduct their share of the clemency program. The two Departments will be equally antagonized whether the decision is made now or later.



--If the Board will not want to take such jurisdiction, then it is best to articulate that position before an application of someone convicted or discharged after September 16 is submitted. Once an application is submitted, the Board will appear ungenerous in denying the supplicant relief by refusing to take jurisdiction; there are bound to be news stories about the extent to which the Board intends to be "clement". If the decision not to take jurisdiction, over that class of cases is made now, it can be articulated in the form of an interpretation of the words "have been" and "have received" in the Executive Order, and that interpretation can be issued as one sentence in a several-page set of substantive guidelines.

IV. What are possible alternative categories within which the Board may choose to treat individuals equally, subject to the application of mitigating and aggravating factors?

A. Categorization by Sentence Status

- (1) Given suspended sentence or discharged from military without sentence
- (2) Sentenced to probation
- (3) Sentenced to incarceration or judicially-imposed alternative service--absconded before or during imprisonment
- (4) Sentenced to incarceration or judicially-imposed alternative service--currently serving
- (5) Sentenced to incarceration--out on parole
- (6) Sentenced to incarceration--sentence completed

Possible rules which the Board may choose to apply to these categories are:

- (i) No applicant shall be required by the Board, as a condition of his receipt of clemency, to perform alternative service for a period exceeding the length of sentence which has been imposed by a judge.



(ii) Length of alternative service imposed will be measured against the base of

--sentence imposed by a judge, minus time served in the military, reduced pursuant to findings of mitigating factors in individual cases,

or

--a specified time period (18 months, or 24 months, or 12 months), reduced pursuant to findings of mitigating factors in individual cases,

or

--zero, absent findings of aggravating factors in individual cases.

(iii) The "base" against which length of alternative service shall be measured will be reduced by

--one day less alternative service for every day of an incarceration sentence already completed,

and

--one day less of alternative service for every day of honorable military service already rendered.

Alternatively, the Board may decide that a day of incarceration, or a day in military service (particularly combat), or both, are more onerous than a day of alternative service, and that 2 days--or 4 days, or a week-- of alternative service shall be subtracted from the base for every day spent incarcerated, or in the military, or in combat.

(iv) No applicant shall be worse off, with respect to time commitment or to quality of discharge, under the clemency program than a similarly situated person would have been prior to September 16.



Thus if the typical military treatment of a particular type of deserter prior to the Proclamation was to simply give him an undesirable discharge, then perhaps he should not now be required to render any alternative service as a condition of receiving a clemency discharge.

Assuming the adoption of rules (i) and (iv), measurement of length of alternative service against the base of sentence imposed by a judge (not 18 months, or 0 months, or any other specified period), and a one-for-one trade-off between days of alternative service and days of incarceration sentence already completed and honorable military service already rendered, the disposition of the 6 categories listed by sentence status would be:

Categories 1, 2, 5, + 6: no alternative service as condition of commutation or pardon.

Categories 3 and 4: alternative service not exceeding the length of sentence, minus sentence time already served and time in honorable military service already rendered, provided that, in the case of a military applicant, length of alternative service may be further reduced in order to equalize his treatment with what it would have been prior to September 16.

So far, our categorization enables us to proceed completely on the basis of a tiny portion of an applicant's file, with no need for fact-finding as to motivation or any other variable. If indeed the Board adopts categorization on the basis of sentence status, the large majority of cases will fall within categories 1, 2, 5, and 6, and disposition of those cases will not require either extensive examination of files or a personal appearance. Disposition of all cases within those four categories will be immediate.

B. Categorization by Fairness of Prior Judicial or Military Administrative Disposition

Assuming that most applications will be decided entirely upon the basis of sentence status, there still remain those cases within sentence categories 3 and 4: those who have been sentenced to incarceration or to judicially-imposed alternative service and who either absconded before or during service of sentence or are currently serving out an uncompleted sentence.



The Board will want to treat applicants with similar sentence statuses differently, depending upon the Board's perception of the fairness and propriety of prior judicial or military administrative disposition. The Board may wish to provide unconditional clemency, notwithstanding sentence status, to the following categories of applicants:

Draft Evaders

- (1) In Welsh v. United States (1970), the Supreme Court held that applicants for conscientious objector status need no longer show that they believe in a Supreme Being, but rather that philosophical opposition to war--as long as it is opposition to all wars, and not just to a particular one deemed unjust--is sufficient to justify a claim of conscientious objection. Because the Court's decision was prospective in application and not at all retrospective, those who would have met the Welsh standard prior to 1970 were denied redress. The Board may wish to consider blanket unconditional commutation and pardons to all applicants who had unsuccessfully claimed C. O. status prior to Welsh, and whose record clearly shows that they would have met the C. O. criteria had they applied after Welsh.
- (2) More broadly, the Board may wish to tender unconditional clemency to all applicants who can show now that they met the Welsh standard prior to their induction or draft evasion, even though no record exists of their having claimed C. O. status. There will be some cases of people who knew that they did not qualify for a C. O. prior to Welsh because they did not believe in a Supreme Being, and therefore did not bother to apply and to establish a record, but who would have been eligible for a C. O. after Welsh.
- (3) Those who were punitively reclassified for civilian antiwar activities, and pursuant to that punitive reclassification illegally inducted. Gutknecht v. United States (1969) prospectively barred punitive reclassifications and punitive inductions, but--like Welsh--did not reach the problems of those who had been punitively reclassified and inducted prior to the Court's decision.



- (4) Those who were improperly denied claims for exemption as a C. O. , other exemption, or deferment, by reason of procedural failure on the part of their Selective Service Board or of a state or national director of Selective Service. Denial of a claim may have been procedurally defective by reason of Selective Service's failure to provide reasons for denial, of failure to advise applicants of their administrative appellate rights, or for a host of other reasons.
- (5) Those who can establish that they were given incorrect advice respecting Selective Service regulations by Selective Service employees and relied on such advice as the basis for what would later be labeled their act of draft evasion.

Deserters

- (6) Those who were improperly denied claims for C. O. status while in the military, by reason of substantive or procedural failure, including their reliance with respect to their C. O. claim upon incomplete, misleading, or incorrect advice given by chaplains, military legal counsellors, or other military employees. Also those who can establish that their failure to apply for a C. O. was based upon reliance upon such advice.
- (7) Those who deserted subsequently to, and because of, an order reasonably believed to be unlawful.
- (8) Those who deserted subsequently to, and because of, punitive, inequitable, or otherwise improper behavior on the part of a superior officer, including racial or ethnic provocation or discrimination, and including punitive treatment by reason of their opposition to the Vietnam War.
- (9) In-service conscientious objectors whose records disclose a claim that their military assignment was in violation of military regulations for C. O. s or that their treatment by their commander otherwise violated religious rights protected for in-service C. O. s under military law.



- (10) Those whose desertion was prompted by family hardship, where a request for hardship discharge, compassionate reassignment, or emergency leave was improperly denied or hindered.
- (11) Those whose desertion was prompted by family hardship, and who would have applied for hardship discharge, compassionate reassignment, or emergency leave but for their reliance upon incomplete, misleading, or incorrect advice given by military chaplains, legal counsellors, or other military employees. Also those who would have applied for hardship discharge or compassionate reassignment but for demonstrable ignorance at the time of their right to apply and of the procedure for application.
- (12) Those whose absence or desertion was caused by incarceration by a U. S. or foreign court.

The rationale for provision of unconditional clemency--including pardon and, to the extent possible, expungement of record--to applicants who fall within these categories is that they never should have received a bad record in the first place. These categories are not based upon considerations of generosity, but rather of equity. Applicants within these categories may be conceived as deserving the redress of clemency, not as being the recipients of an act of grace based upon a finding of mitigating factors.

Administratively, applications within most of these categories will require fact-finding based upon careful examination of the whole file, and some of the categories require reliance upon additional information not in the file. Categories 1, 9, 10, and 12 should, however, be susceptible of decision upon the basis of quick scrutiny of the file, and many cases within categories 4 and 6 will also be susceptible to such speedy disposition.

C. Subcategorization by Mitigating Factors

Having made available unconditional clemency to most potential applicants on the basis of their sentence status, and having screened out from alternative service many of the rest on the basis that their prior judicial or military administrative disposition was unfair or improper, the Board is left with an indeterminate minority of potential applicants who will presumably be required to render some alternative service as a condition of receipt of clemency.



Even within this category of applicants, the Board may want to grant unconditional clemency, or a reduced period of alternative service, upon a finding of presence of one or more of the following mitigating factors:

Draft Evaders and Deserters

- (1) Those who applied for conscientious objector status and, although that claim was properly denied and they do not fit under the Welsh retroactive category, have established a record of their sincere religious or philosophical objection to engaging in combat in Indochina. In particular, those who violated Selective Service law after having received and rejected a Selective Service deferment on the ground that they were entitled to C. O. status instead of the deferment received.
- (2) Those who have failed to establish such a record, but can now show that their draft evasion or desertion was in whole or in substantial part motivated by religious or philosophical opposition to their engaging in combat in Indochina.
- (3) Those who can show that their employment since conviction or discharge has been to the public benefit.

Deserters

- (4) Those who were on their second or subsequent tour of service in Indochina.
- (5) Those who deserted while in the war zone, but not in combat.
- (6) Those who had been in military service for more than two years.
- (7) Those who had seen combat for more than a specified continuous period, or whose unit's combat losses were high, and thereby presumptively were under unusual mental stress.
- (8) Those wounded in combat.



- (9) Those who had received decorations for unusual courage and performance in combat.
- (10) Those who had applied prior to desertion for hardship discharge, compassionate reassignment, or emergency leave by reason of family hardship, although there is nothing in the record indicating that the claim was improperly denied.
- (11) Those whose desertion was prompted by family hardship, including death, receipt of a "Dear John" letter, and perception of need to assist family in economic distress, whether or not desertion was preceded by application for a hardship discharge, compassionate reassignment, or emergency leave.
- (12) Those for whom evidence exists that desertion was associated with acute mental or physical illness or distress.
- (13) Those who can show that they lacked sufficient mental capacity to appreciate that they were violating the law, or that they were erroneously convinced by others that they were not violating the law. IQ under 75 shall constitute presumption of lack of sufficient mental capacity.
- (14) Those who deserted subsequently to, and because of, racial or ethnic provocation or discrimination by their peers or by civilians in the surrounding environment.
- (15) Those who were initially inducted under Project 100,000 after failure to meet the intellectual, emotional or other standards for induction, and who therefore were accepted by the military services with foreknowledge that they were especially poor risks.

D. Subcategorization by Aggravating Factors

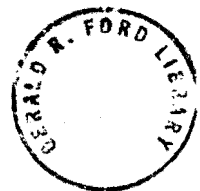
Assuming that an applicant is otherwise eligible for unconditional clemency or for clemency conditioned upon limited alternative service, the Board may want to deny clemency altogether, or to impose the maximum period of alternative service, upon a finding of presence of one or more of the following aggravating factors:



- (1) Applicant has made a false statement to the Board.
- (2) Applicant has used force collaterally to his desertion, AWOL, or mis-ship.
- (3) Applicant has deserted from his unit during combat, with consequent peril to other members of his unit.

V. Conclusion: What Are the Decisions Which the Board Has to Make?

- (1) Will the Board establish substantive guidelines, or proceed to disposition of cases without them?
- (2) Will the Board choose to exercise all of the remedies available to it? If not all, which ones?
- (3) Will the Board take applications from those not yet convicted, in order to establish jurisdiction over them once they are convicted or discharged?
- (4) Will the Board initially examine cases categorized by sentence status, or under another criterion?
- (5) If initial categorization will be by sentence status, what will be the rules on the basis of which length of alternative service is decided?
 - (a) Will the Board adopt the rule that no applicant shall be required to perform alternative service for a period exceeding the length of sentence which has been imposed by a judge?
 - (b) Will the Board measure length of alternative service against the base of length of sentence imposed by a judge, or against a specified time period which is the same for all applicants?
 - (c) Will a requirement of alternative service be reduced by one day or more for each day of an incarceration sentence already completed?



- (d) Will a requirement of alternative service be reduced by one day or more for each day of honorable military service already rendered? For each day in combat?
- (e) Will the Board adopt the rule that no applicant will be worse off, with respect to time commitment or to quality of discharge, under the clemency program than a similarly situated person would have been prior to September 16?
- (6) Will the Board provide unconditional clemency to several categories of applicants who have been subject to unfair or procedurally or substantively improper prior judicial or military administrative disposition?
- (7) Which mitigating factors will the Board choose to take notice of? Upon a finding of presence of one or more mitigating factors, will the Board grant unconditional clemency or a reduced period of alternative service? Will mitigating factors be additive?
- (8) Which aggravating factors will the Board choose to take notice of? Will a finding of presence of one or more of them bar a grant of clemency, or will it lead to increase in the period of alternative service required? Will aggravating factors be additive?



PRESIDENTIAL CLEMENCY BOARD
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For immediate release

Release #1-74
October 25, 1974

PRESIDENTIAL CLEMENCY BOARD REVIEWS CASES

Washington, D. C. The Presidential Clemency Board met on
October 23rd and 24th and reviewed 60 cases of individuals furloughed
from federal prisons.

Tentative decisions were made on each of the cases. Within this group,
the Board has received indications of interest in pursuing the Clemency
Program but has deferred final action to allow each individual an opportunity
to submit a personal statement concerning his case.

Beyond this, the Board has received approximately 560 applications from
people interested in the Clemency Program and is forwarding to them
appropriate information kits.

(more)



Regarding military cases, the Clemency Board has just begun to receive records it believes are necessary for the preparation of case files.

The Presidential Clemency Board convenes again on Wednesday, October 30th. At that time the Members hope to be able to make some definitive judgments on the cases reviewed this week, based on the detailed information they expect to receive. The meeting will take place at 9:00 AM in Room 459 of the Old Executive Office Building, Washington, D. C.



JAN 27 1975

PRESIDENTIAL CLEMENCY BOARD
THE WHITE HOUSE
WASHINGTON
January 27, 1975

M

MEMORANDUM FOR JOHN O. MARSH

SUBJECT: Attached Information Memorandum
For the President

Attached for your information is a copy of the memorandum I have submitted to the President concerning the impact of the Presidential Clemency Board's public information campaign.

C.E.G. m.m.
Charles E. Goodell
Chairman

Attachment



PRESIDENTIAL CLEMENCY BOARD

THE WHITE HOUSE

WASHINGTON

INFORMATION

January 27, 1975

MEMORANDUM FOR THE PRESIDENT

FROM: CHARLES E. GOODELL

SUBJECT: The Impact of the Presidential Clemency Board's
Public Information CampaignRecent Developments in Board Applications

The number of Presidential Clemency Board Applications has risen sharply since our public information campaign began on January 6. In less than three weeks, our total number of civilian and military applications has more than tripled. If our current application rate continues through the end of January, our final total will be over five times the January 7 total. In fact, our application rate is rising daily, so the final total may be even higher.

	<u>Civilian applicants</u>	<u>Military applicants</u>	<u>Total</u>
through January 7:	317	636	953
through January 27:	978	1949	2927
projected through the current deadline:	1500	3500	5000

This surge is particularly striking when one considers how much the Board's application rate had tapered off in late December and early January. In the two weeks before January 7, we received only 11 applications; in the two weeks thereafter, we received 1217. We are now receiving applications at the bi-weekly rate of 2500. The Board's previous high for a two-week period was about 160 in early November. This two-hundredfold increase in the rate of applications is illustrated in the attached bar chart. Similarly, while we once had just 5 or 10 inquiries daily, we received almost 500 letters and telephone inquiries during each of the last several days. The change has been that sudden and dramatic.



Factors Contributing to the Increased Rate of Applications

While the upcoming January 31 deadline may be one factor contributing to the Board's surge in applications, I am convinced that our public information campaign is the decisive factor. Since January 6, we have done the following:

- (1) We have mailed over 7,000 application kits to convicted draft offenders. The low number of undelivered envelopes indicates that as many as 6,000 kits have been delivered.
- (2) We have distributed public service announcements and live copy to 2500 television and radio stations.
- (3) We have circulated approximately 27,000 notices to post offices, community action agencies, prisons, employment service agencies, unemployment insurance offices, probation officers, Action agencies, and veterans' counselors.
- (4) During the past week, five Board members made personal appearances in 15 cities, attracting substantial coverage from the local media.

I have four reasons for my conviction that the Board's public information campaign stimulated these applications. First, the Board's total number of applications increased by a dramatic 207% from January 7 through January 27. During the same period, Department of Defense's applications have grown to 3800 and Department of Justice's to 285. This increase began immediately following the commencement of the Board's public information effort.

Second, from a survey of a recent day's telephone inquiries, we discovered that over 90% of our eligible callers did not realize that they could apply for clemency until after our public information campaign had begun. Likewise, 90% learned of their eligibility only after hearing or reading about our criteria in the media or on a notice we distributed to a local agency.



Third, we have undertaken efforts to reach target groups of eligible persons, and each has drawn an immediate response. Our direct mailings to civilians doubled our total civilian applications within about a week -- a few days before our first major increase in military applications. Similarly, we have received a major response from our other mailings.

Fourth, as other Board members and I met the public and the press last week, we encountered surprise when we explained that convicted draft-offenders and ex-servicemen with bad discharges can apply for clemency. The general impression, even among well-informed people, is that the program is aimed only at draft-evaders and deserters in exile. When the Board's jurisdiction is explained, the entire clemency program is better received.

Conclusions

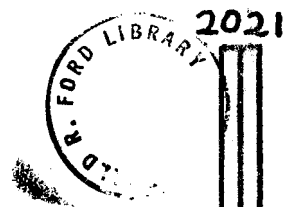
The tripling of applications in twenty days is clearly attributable to the impact of our public information campaign. We expect a total of 5000 by January 31, and there is every reason to believe we can reach a total of 10-20,000 in the next six months.



Our success so far has demonstrated the extent to which eligible persons never before realized that they qualify under your program. However, it is unlikely that we can spread this information to more than a small fraction of eligible persons by January 31. Much remains to be done. For example, Department of Defense can begin in February to send application kits to ex-servicemen whose service records indicate that they are probably eligible to apply. Many other actions can and should be taken to inform potential applicants. It would be unfortunate if our final tally of applications were small only because most people never knew they could apply.



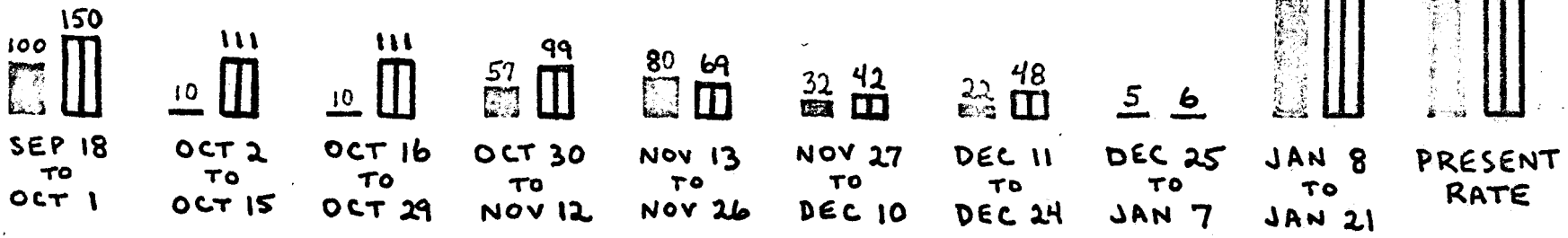
CHANGING PCB APPLICATION RATES

(FOR TWO-WEEK PERIODS FROM SEPTEMBER TO THE PRESENT)



KEY:  - NUMBER OF NEW CIVILIAN APPLICATIONS
 - NUMBER OF NEW MILITARY APPLICATIONS

(EACH NUMBER IS THE TOTAL FOR THE TWO-WEEK PERIOD NOTED)



THE WHITE HOUSE

WASHINGTON

February 25, 1975

MEMORANDUM FOR: THE PRESIDENT

FROM: JACK MARSH

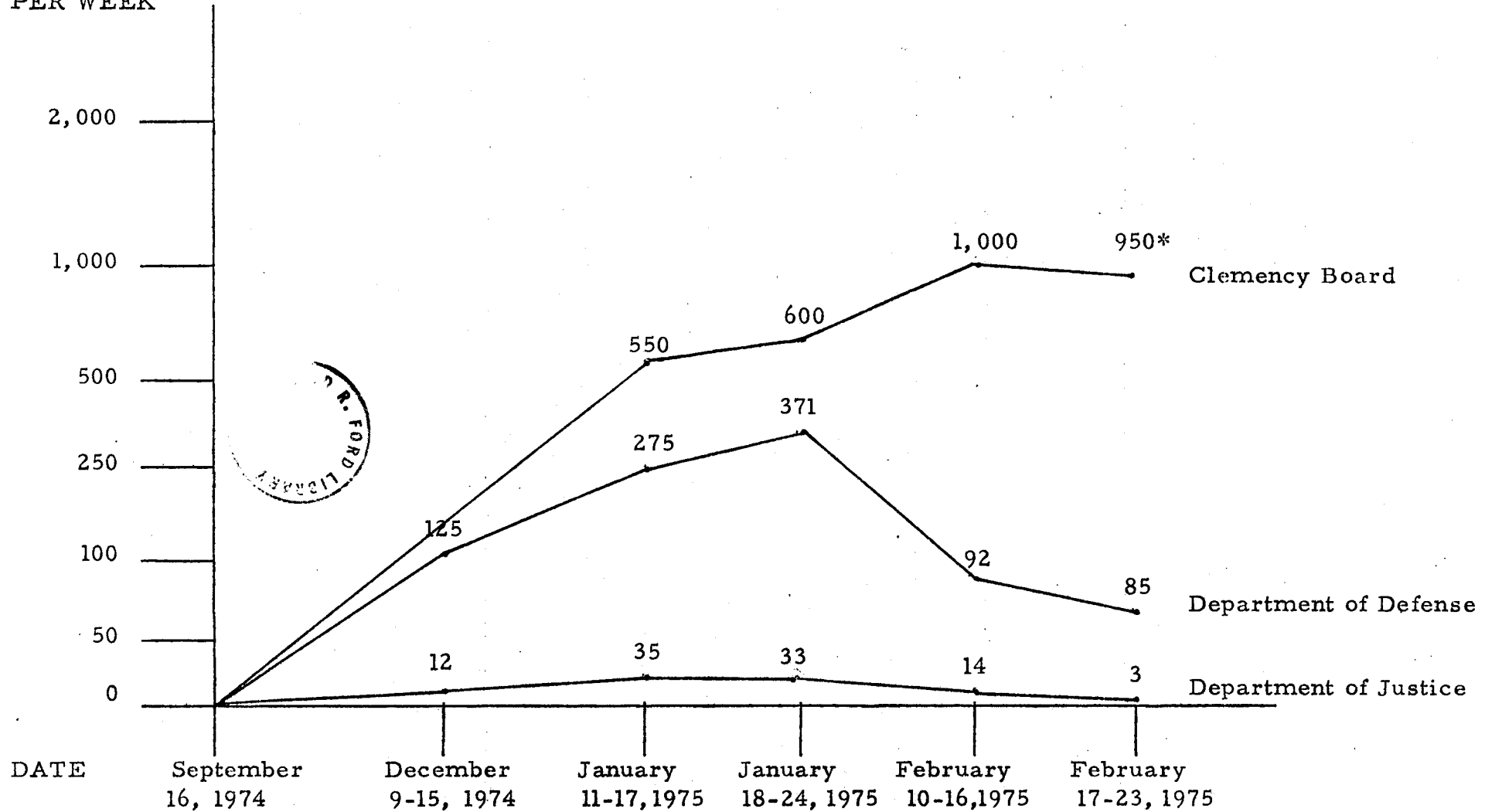
SUBJECT: STATISTICS FOR RECONCILIATION PROGRAM

The attached chart is submitted to you in accordance with your request at the meeting with Chairman Goodell.



STATISTICS
 RECONCILIATION PROGRAM
 RATE OF RETURNEES PER WEEK

NUMBER OF
 APPLICANTS
 PER WEEK



*(1,000 estimated applications in unopened mail)



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TO: DICK RENEY / S. DIEGO

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SPECIAL INSTRUCTIONS:



To Dick Cheney

From - Jack MARSH

FINAL STATISTICS ON CLEMENCY PROGRAM

	<u>Applications Received</u>	<u>Total Possible</u>	<u>Percent % Total</u>
Presidential Clemency Board	17,500*	130,000	13%
Department of Defense	5,376	10,500	50%
Department of Justice	<u>635</u>	<u>4,500</u>	13%
Total	23,511	145,000	16%

* The Presidential Clemency Board is still counting applications.

To: Dick Cheney

From: Jack Marsh

Question

Now that your Clemency Program has ended, will you tell us how you measure its success?

Answer

I believe the program was successful because it served the very purpose for which it was initiated. That purpose was to offer an avenue of return for those who had violated the law and wished to clear their records and rejoin their families openly.

Through the Departments of Defense and Justice, and the Presidential Clemency Board, this offer was made to about 145,000 persons. Of that total number, more than 23,500 persons (about 16%) have made application, and I understand that the Clemency Board is still opening mail. Therefore that figure will increase.

(4) 4/3/75



April 21, 1975

MEMORANDUM FOR: PAUL O'NEILL

FROM: JACK MARSH

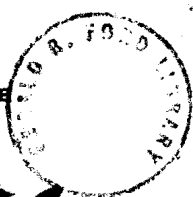
Where do we stand on the Clemency Board? Do
you feel this is on track now?

Thanks.

JOM/dl



THE WHITE HOUSE
WASHINGTON



1. Jay suggested attached be relayed to Gen. Walt on phone. (bottom line... pardon and clemency can be used together).
2. Minority report will be called to TT's attention.

JUL 30 1975

THE WHITE HOUSE

WASHINGTON

July 28, 1975

TO: RUSS ROURKE

THROUGH: PHILIP BUCHEN

FROM: JAY FRENCH

T.W.B.

Jay

This is in response to your note to Phil Buchen concerning General Walt's inquiry of July 23. General Walt specifically inquired whether (a) it is "legal" for the President to indicate that he will give a pardon and clemency discharge at some future point in time, and whether (b) it is proper to use the word "clemency" to refer to action taken by the President on the Board's recommendations.

With respect to inquiry (a), there is a mandatory and time consuming review procedure by higher military authority of each conviction under the U.C.M.J. In several cases, the Presidential Clemency Board completed its review of applications before military authorities had completed review of the convictions. Therefore, letters similar to the one attached were sent to these applicants so that they might begin alternate service immediately. The letters were intended to assure these persons that the President would implement the Board's recommendations if military authorities upheld the convictions. Since the President has the authority to grant "reprieves and pardons", it follows that he can agree to grant relief (clemency) at a future time.

With respect to inquiry (b), the word "clemency" is a generic term describing specific forms of relief which the President may grant under Article II, Section 2, Clause 1 of the Constitution to those who commit Federal offenses. Thus, to grant a "pardon" is to grant



"clemency". However, these words are not interchangeable since merely to indicate that "clemency" has been granted is not sufficiently descriptive to indicate whether relief is in the form of a "pardon" or "commutation of sentence (reprieve.)" Based on the foregoing discussion, it is proper to use the word "clemency" as the Chairman has in his letter to Tyrone Graves. Therein, Chairman Goodell indicates that the Board has recommended Graves for "conditional clemency" the particular form of which will be a "pardon and clemency discharge."

I hope this response clears up any misunderstanding with respect to these inquiries from General Walt. However, please do not hesitate to contact me further if we can be of further assistance.



July 24, 1975

MEMORANDUM TO:

PHIL BUCHEN

FROM:

RUSS ROURKE

Phil, the attached is the item to which I made reference in our conversation. In General Walt's own words he wants to know whether "it is legal to indicate the prospective receipt of both a pardon and clemency discharge."

As I indicated to you, General Walt was under the impression that, as a result of a previous discussion, the words "clemency" and "pardon" were synonymous, but he cannot understand the use of both words in the attached letters.

For General Walt's purposes, the situation would appear to require a legal interpretation with appropriate guidance.

Many thanks.

RAR:rs

Enclosures



7/23

Russ —

These are the letters I spoke
of yesterday — If "pardon"
and "Clemency" are synonymous
as argued last fall — why
use both terms? — Thanks
for your interest — Low



Clemency

August 15, 1975

ADMINISTRATIVELY
CONFIDENTIAL

MEMORANDUM TO: PHIL BUCHEN
FROM: RUSS ROURKE

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

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

Enclosure : Copy of memo of 8/13/75 to Gen. Walt from
Karl P. Essigmann (sp.)

RAR:rs



August 15, 1975

ADMINISTRATIVELY
CONFIDENTIAL

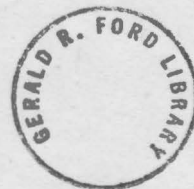
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a verbal report on this matter.

Enclosure : Copy of memo of 8/13/75 to Gen. Walt from
Karl P. Essigmann (sp.)

RAR:rs



THE WHITE HOUSE
WASHINGTON

Jack -

Attached is a copy of
Hon. Walt's current
headache w/ the
Clemency Board.



Russ

R - this 90

Did Phil ?

to Bucher
M

MEMO TO GEN. WALT.
13 AUG 75 1200 Hrs

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

1. IN A NUMBER OF INSTANCES IT
HAS BEEN DETERMINED THAT CASES
AFTER HAVING ONCE BEEN DECIDED
AND SUPPOSEDLY DISPOSED OF BY
THE FULL BOARD OR A PANEL HAVE AGAIN
BEEN DOCKETED AND PRESENTED TO A
PANEL OR THE FULL BOARD.
2. CASES BEING PRESENTED TO THE
FULL BOARD, WHICH HAD BEEN
FLAGGED EITHER BY THE COMPUTER
FOR VARIOUS REASONS, OR PHYSICALLY,
HAD NOT BEEN IDENTIFIED AS
SUCH ON THE DOCKET IN ACCORDANCE
WITH POLICY ESTABLISHED.
3. AN AUTOMATIC HOLD HAS BEEN
PLACED ON ALL CASES INVOLVING A
"NO CLEMENCY" DISPOSITIONS AND
CASES INVOLVING APPLICANTS
CURRENTLY INCARCERATED.
CASES INVOLVING OTHER DISPOSITIONS
HAD BEEN SENT TO THE WHITE HOUSE
ON A REGULAR BASIS.



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

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

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

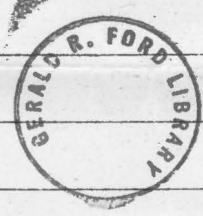
5. AT THE PRESENT TIME, SOME 384 CASES ARE BEING HELD FOR VARIOUS REASONS. THESE ARE NOT TABLED CASES, ^{AWAITING FURTHER INFO} OR CASES BEING HELD FOR FULL BOARD PRESENTATION, BUT CASES ALREADY ACTED ON IN RESPECT TO FINAL DISPOSITIONS.

6. ASSUMING JURISDICTION IN SITUATIONS NOT COVERED BY THE PRESIDENT'S EXECUTIVE ORDER. (SEE ^{NOTE 6} ATTACHED)



7. REFUSAL AND RELUCTANCE OF
SOME
KEY ADMINISTRATIVE CLEMENCY
BOARD PERSONNEL TO COOPERATE
WITH PREPARERS OF THE MINORITY
REPORT BY WITHHOLDING ESSENTIAL
INFORMATION MATERIAL TO THE
PREPARATION THEREOF.

Karl O. Fugmann
LTC, USAF
(MINORITY REPORT)



SEP 11 1975

due ASAP

MEMORANDUM

THE WHITE HOUSE
WASHINGTON

HIGH PRIORITY

September 10, 1975

MEMORANDUM FOR:

JAMES CONNOR
PHILIP BUCHEN
ROBERT HARTMANN
MAX FRIEDERSDORF
→ JOHN MARSH

FROM:

WARREN RUSTAND *WR*

SUBJECT:

Recognition of The Clemency Board
as it Finishes its Work on September 15

We are tentatively proposing this for Monday, September 15.

Do you concur with the proposal?



September 8, 1975

MEMORANDUM FOR: JIM LYNN
FROM: JACK MARSH
SUBJECT: Clemency Board

In reviewing the Executive Order winding up the Clemency Board, I wanted to tell you what a great job you and all of those associated with you at OMB did on this program.

The tremendous help that was forthcoming from OMB last Spring, when you moved into that operation to provide the necessary back-up and administrative know-how to get things moving, accounts in large measure for being able to bring about the planned termination of the Clemency Board.

Paul O'Neill gave us his usual fine help and I would be grateful if you would thank him.

JOM/dl



Clemency Board

September 11, 1975

MEMORANDUM FOR: JACK MARSH
FROM: RUSS ROURKE

For obvious reasons, I seriously question the wisdom of the proposed reception and meeting referred to in Tropp's memo to Nicholson. As I understand it, the Board is nowhere near completing its work. In view of the controversy that is rampant within the Board itself, I think any such reception would be a farce. It may be appropriate for the President to meet with a small representative group from the Board to receive their general comments concerning the Board's final action and report, and for the President to render any appropriate response. I will check with Jay French and advise you of his own personal recommendations in this regard.

Bear in mind that General Walt still plans to go ahead with his press conference on Friday, September 12. He departs for an extended trip to Korea on September 14.

RAR/dl



THE WHITE HOUSE
WASHINGTON

September 11, 1975

M

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FROM: RUSS ROURKE R

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~~Bear in mind that General Walt still plans to go ahead with his press conference on Friday, September 12.~~ He departs for an extended trip to Korea on September 14.

No press conference by Gen. Walt.



PRESIDENTIAL CLEMENCY BOARD

THE WHITE HOUSE
WASHINGTON, D.C. 20500
September 8, 1975

MEMORANDUM FOR: WILLIAM NICHOLSON

FROM: RICHARD TROPP
Special Counsel

SUBJECT: Scheduling Proposal: Presidential Reception
for Presidential Clemency Board

As I mentioned in our conversation earlier today, the Presidential Clemency Board will complete its work and go out of existence on September 15. By that date, it will have processed 15,500 cases and 5,000 ineligible applications.

On behalf of the Board and its Chairman, I request that two meetings be scheduled to mark the completion of the case resolution phase of the President's clemency program:

- (i) A reception for the Board and the senior staff (26 people), or alternatively perhaps a ceremonial meeting in the Cabinet Room or the Oval Office, and
- (ii) A brief meeting with the whole Clemency Board staff (approximately 400), perhaps in the East Room. This meeting might take place immediately upon the adjournment of the reception.

Simultaneously with these gatherings, the President may want to release a statement marking the end of the clemency program, and

- noting the recent Gallup Poll and other surveys, and congratulating the American people on their overwhelming (85% of those surveyed) acceptance back into their communities of those who have earned re-entry under his clemency program,
- thanking the Board for having worked day and night for the last 3 1/2 months in order to meet his target for caseload completion,



- noting that exactly one year ago he created a temporary program and a new government organization within his Office to administer it, and that the organization is breaking precedent by getting its job done and going out of existence within the deadline which he set for it, and
- affirming that, with the Board's work completed, the clemency/amnesty issue is now a dead letter and a part of history. This particular wound of the Vietnam war is, to the extent that it ever humanly can be, healed.

We will prepare a draft statement.

September 16, the day after the Board's completion of its work, is the most appropriate date for the reception and the meeting with the staff. The next three days of that week are second choice.



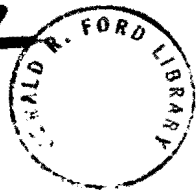
E HOUSE
WASHINGTON

M

12 Sept

Jack -

Jim Conner
advises me that,
although the TT will
meet w/ a representative
group from the Board,
there will probably
be no statement
by the TT. That



THE WHITE HOUSE
WASHINGTON

would be just fine.

Russ



SEP 12 1975

Clemency Board

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

September 11, 1975

MEMORANDUM FOR: Donald Rumsfeld
FROM: *Charles E. Goodell*
Charles E. Goodell, Chairman

SUBJECT: Statement for the President to Issue upon the Expiration
of the Presidential Clemency Board.

Attached is my proposed statement for the President to issue
on Monday in connection with the Presidential Clemency Board's
completion of its work.

cc: Philip W. Buchen
John O Marsh
Ronald Nessen
James Connor



Draft Statement for the President

I am today signing an Executive Order terminating the Presidential Clemency Board, which has completed its consideration of all applications for clemency made to it. The Board has worked day and night for the past 5 months in order to meet the target of September 15 which I set for it, and it has made recommendations to me on approximately 15,500 cases. 5,000 applications to it proved to be from people ineligible for consideration under the Proclamation which established the clemency program.

One year ago tomorrow, I established the Presidential Clemency Board as a temporary organization within the White House, in order to carefully consider on a case-by-case basis whether applicants to it ought to be granted clemency, and on what terms. As I had intended, the Board gave careful attention to each individual case, and did not simply recommend blanket amnesty for whole categories of applicants.

The Board considered its cases under a set of regulations which guaranteed scrupulous fairness and due process for each applicant. At the same time, in its overall pattern of decisions, the Board has ensured that the decisions of the military justice system were respected and that military discipline has been maintained. Constantly, in thinking about every application it faced, the Board remembered the sacrifices made by our veterans who went into combat in Vietnam, who died, and who suffered grievous wounds for their country.

I am proud that the Board is breaking governmental precedent by getting its job done and going out of existence within the deadline set for it.

It seems to me critical that the American people understand that although there are cases of clemency which have been granted to those who conscientiously opposed the war in Vietnam, most of the clemency cases have turned out to have nothing to do with opposition to the war. By and large, they involve family hardship cases and cases in which former servicemen fought well in Vietnam, and then cracked under the strain after they had completed their duty in the combat zone. They were generally unsophisticated, uneducated, inarticulate people who just did not know the proper channels when they ran into dying parents, sick children, deserting spouses, or just plain emotional problems.



These are not at all the kind of people whom, we, as a nation, pictured as the stereotype draft evader or deserter. These are, rather, unfortunates who have shown that they are willing to fulfill their obligation to their country by doing alternative service, and whom we should accept back into their communities. Where they are former servicemen with a Clemency Discharge, I hope that neighbors and employers will treat them as ordinary people who have earned their re-entry into their community, who have earned the privilege of being treated just the same as anyone else.

I ask the business community, particularly the small businessmen and the manufacturers who will employ most of these people, for their help in this.

I am gratified to note that the recent Gallup Poll shows, consistently with other surveys, that 85% of the American people will welcome back into their communities those who have earned re-entry under the clemency program. I am especially pleased to note that veterans in general, and Vietnam veterans in particular, have overwhelmingly indicated that they intend to accept clemency recipients back.

It is this generous reaction of the American people, and particularly of those most intimately acquainted with the Vietnam war, which will make the clemency program a success in healing the divisions generated by the war, and in consigning the clemency/amnesty issue to the pages of history.





EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

SEP 12 1975

(10)

MEMORANDUM FOR: JIM CANNON
DICK CHENEY
PAUL THEIS
JACK MARSH ✓
RON NESSEN

FROM: PAUL H. O'NEILL

Attached is a draft fact sheet/Q&A package regarding termination of the Clemency Board.

These materials have been checked for factual accuracy and cleared by DOD, DOJ, Selective Service, Clemency Board, and OMB.

Your views on substance and tone are necessary additions. I propose that Paul Theis circulate through his normal process in order to get this into final form.

Attachments:



September 15, 1975

Office of the White House Press Secretary

THE WHITE HOUSE

FACT SHEET

PRESIDENTIAL CLEMENCY BOARD TRANSITION

The President has today issued Executive Order terminating the Presidential Clemency Board operations and delegating residual administrative responsibilities to the Department of Justice and the Selective Service.

Background

On September 16, 1974, the President issued a proclamation and Executive Orders establishing a program of clemency for draft evaders and military deserters to commence immediately. The program for the return of Vietnam-era draft evaders and military deserters was formulated to permit these individuals to return to American society without risk of criminal prosecution or incarceration for qualifying offenses if they acknowledge their allegiance to the United States and agree to serve a period of alternate civilian service, when required as a condition of clemency.

The Presidential Clemency Board was comprised of eighteen private citizens designated by the President with former Senator Charles E. Goodell as Chairman. The Board reviewed the records of two kinds of applicants. First, those convicted of a draft evasion offense committed between the date of the Tonkin Gulf Resolution (August 4, 1964) and the date of withdrawal of United States troops (March 28, 1973). Second, those who received a punitive or undesirable discharge from the armed forces because of a military absentee offense committed during the Vietnam era or were serving sentences of confinement for such violations. The Board was empowered to make recommendations to the President on a case-by-case basis either granting or denying clemency. In the absence of aggravating factors, the Clemency Board was expected to recommend clemency.

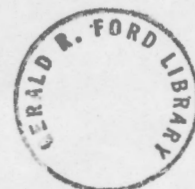
When appropriate, the Board could recommend clemency conditioned upon the performance of some alternate service, to be performed under the auspices of the Director of the Selective Service.

In the case of a military deserter, the Board could also recommend that a clemency discharge be substituted for a punitive or undesirable discharge. The Clemency Board's recommendations to the President took the form of a pardon, or a clemency discharge with and without conditions of alternate service requirements.

Military deserters and draft evaders who had not been discharged or convicted did not apply to the Presidential Clemency Board but reported to their military department or the Department of Justice. There they were relieved of punishment contingent upon taking an oath of allegiance and fulfillment of alternate service requirements.

The deadline for all applicants to apply for clemency was originally set for January 31, 1975, but was extended to March 31, 1975, to respond to the heavy volume of applications received after the original date.

(more)



(OVER)

The Clemency Board was charged to complete its reviews and recommendations to the President by September 15, 1975 on those applications received by the March 31, 1975 deadline.

Accomplishments of the Board

The record of the Presidential Clemency Board reflects a successful completion of the Board's responsibilities within the deadline date of September 15, 1975.

- The Board received approximately 21,500 applications and requests for clemency.
- Of these applicants, approximately 5,000 did not qualify for the program.
- The remaining approximately 15,500 cases have all been reviewed by the Board and recommendations made for Presidential consideration.
- Approximately six percent of the total cases reviewed by the Board resulted in recommendations for denial of the applicant's request for clemency.
- Of the total, roughly 43 percent of the cases were recommended for clemency conditional on fulfillment of alternate service for an average of six months.
- The remaining 51 percent of the cases were recommended for pardons.

Effects of Program

Expedient action by the Board has enabled thousands of persons convicted of draft evasion or desertion to return to the mainstream of American society. Many thousands who were recommended for clemency can choose to fulfill alternate service requirements and cause less than honorable discharges to be converted to clemency discharges, while working in areas that contribute, belatedly, to the betterment of their community and the country. The maximum length of alternate service is two years. In prescribing the length of alternate service in individual cases, honorable service rendered prior to desertion, penalties already paid under law for the offense, and other mitigating factors were taken into account to ensure equity of treatment among those participating in the program. The Director of Selective Service has the responsibility to find or approve alternate service jobs for those who agree to the conditional provisions and report for assignment.

Determining factors in selecting suitable jobs are:

- Contributes to national health, safety or interest;
- Non-interference with the competitive labor market;
- Compensation is comparable to that received by another employee utilizing the same skills and occupying the same position;
- Utilizes any applicant's special skills, where possible.

Follow-Up Activities Related to Presidential Clemency Board Activities

Any applications for executive clemency, as to which the Presidential Clemency Board has not taken final action shall be transferred, together with the files related thereto, to the Attorney General.

(more)



The Attorney General, with respect to the applications and related files transferred to him by Section 2 of this Order, shall take all actions appropriate or necessary to complete the clemency process and shall expeditiously report to the President his findings and recommendations as to whether executive clemency should be granted or denied in any case. In performing his responsibilities under this Order, the Attorney General shall apply the relevant criteria and comply with the appropriate and applicable instructions and procedures established by Executive Order No. 11803 of September 16, 1974, as amended, Proclamation No. 4313 of September 16, 1974, as amended, Executive Order No. 11804 of September 16, 1974, and, to the extent that he deems appropriate, the regulations of the Presidential Clemency Board and the Selective Service System issued pursuant to the foregoing Executive Orders.

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PRESIDENTIAL CLEMENCY BOARD TRANSITION

QUESTIONS AND ANSWERS

- Q. Exactly what does the Executive Order do?
- A. The Executive Order terminates the Clemency Board operations and delegates authority for carryover functions of the Presidential Clemency Board after September 15 to the Department of Justice.
- Q. Will the Clemency Board meet after September 15?
- A. No. The Board has completed all actions on cases available for its review and has completed its final report to the President.
- Q. Were files used by the Presidential Clemency Board made available to other agencies such as the Federal Bureau of Investigation?
- A. No. The policy of the Presidential Clemency Board was that no records under any circumstances were to be released to any other Federal agency or other inquirers. I understand that inadvertently one record was released to the Federal Bureau of Investigation.
- Q. Were files of the Federal Bureau of Investigation or other intelligence agencies made available to the Presidential Clemency Board?
- A. Yes. The Presidential Clemency Board was assisted in performing its functions by the Federal Bureau of Investigation, various police departments in obtaining necessary information to properly review applications for clemency.
- Q. What security measures were taken to protect applicant's files from unauthorized use?
- A. Normal security measures were taken to protect the confidentiality of applicant's files and records.
- Q. If a person does not fulfill his alternate service requirements, is he subject to a new liability or merely the original charge against him?
- A. Those persons who have received pardons conditioned upon the performance of alternate service and who fail to fulfill their alternate service requirements will not be subject to any new liability or to the underlying charge against them. With respect to the military deserter who signs with the Secretary of the Department of the Armed Forces in which he served and thereby receives an undesirable discharge, if that individual breaks the agreement, he is not subject to prosecution on the underlying charge. On the other hand, the unindicted draft evader who signs an agreement with the U.S. Attorney and who breaks the agreement is subject to prosecution on the underlying charge.
- Q. I understand that in some cases in which clemency was granted included persons presently serving jail terms. Is that so?
- A. Offenses other than draft evasion and desertion were not within the jurisdiction of the Clemency Board. In determining the merits of each application, aggravating factors such as conviction for other offenses committed prior or subsequent to the offense of evasion or desertion were taken into account by the Board. Clemency Board recommendations apply only to the offense of desertion or draft evasion.



- How many draft evaders were there?
- A. There were 15,500 draft evaders potentially eligible under the Presidential Clemency Board program. An indeterminate number of military deserters were eligible.
- Q. The statement is made that 43 percent of the applicants to the Clemency Board were required to complete alternate service as a condition to clemency. Where are these jobs to be found when the unemployment rate of honorably discharged veterans is so high?
- A. The Director of the Selective Service is responsible for assigning applicants to suitable jobs. Most will be placed in the type of job for which it is normally difficult to find applicants such as in service jobs in hospitals, charitable organizations, etc. Generally, these jobs are in the lower range of pay. Many will be permitted to work in volunteer services in addition to their regular employment if necessary to support families.
- Q. What would the President's reaction be to a congressional action to provide amnesty to all deserters and draft evaders who did not take advantage of the clemency program by the deadline date?
- A. The President is committed to the concept of justice on the side of leniency and mercy, but he has also promised to work within the existing system of military and civilian law and the precedents set by his predecessors who faced similar post-war situations, among them Abraham Lincoln and Harry S. Truman. He would be opposed to total amnesty.
- Q. What did it cost to process the approximately 21,500 cases reviewed by the Clemency Board?
- A. The budget provided for the Board was \$521,000 plus legal and clerical staff from various other Federal agencies.
- Q. What type of people applied for the program?
- A. Most of those offenders who applied for clemency consisted of persons classified as low income, from rural areas, having a low educational level and had mitigating factors such as family hardships during his service.
- Q. How many of the total applicants actually served in Vietnam?
- A. Twenty-four percent of the total applications received served some period of time in Vietnam. As a matter of fact, many of these individuals received decorations while in Vietnam.
- Q. As of Sept. 15 how many cases have been heard by the Board.
- A. The Board has reviewed all 15,500 cases. Of the 15,500 approximately 900 are "Hard Cases". These are cases where information related to applicants has not yet been available or has been found not to exist. These 900 cases will be transferred to the Department of Justice who will continue to search for the necessary information to prepare a case.
- Q. How many cases have been forwarded to the White House for signature, and how many have actually been signed.
- A. Approximately 6981 cases have been forwarded for signature. Of the 6,981, 2,402 have been signed.



THE WHITE HOUSE

WASHINGTON

September 13, 1975

MEMORANDUM FOR: RUSS ROURKE

FROM: JACK MARSH 

You may want to get a copy of the memo from General Walt into the President's Reading File before he does the event.



7

M

THE WHITE HOUSE
WASHINGTON
September 12, 1975

ADMINISTRATIVELY CONFIDENTIAL

MEMORANDUM TO: PHIL BUCHEN
JACK MARSH ✓
JIM CONNOR
DICK CHENEY

FROM: RUSS ROURKE R

General Walt called me again this morning to make one final comment with regard to the wrap-up of the Clemency Board.

He has agreed to cancel the press conference he had scheduled for today and to reject the invitation he had to be a guest on "Meet the Press". He has, however, met with a number of veterans organizations and newspaper and magazine reporters concerning what he feels are the "excesses" of the Board. In brief, it is General Walt's view that the majority of the Board is committed to a program of general amnesty and that the actions of the Board, thus far, have been an effective precursor to that end.

In the best interests of the President, General Walt simply suggests that the President do nothing and say nothing that would be interpreted as an endorsement of the actions taken by the Board. Walt is convinced that a number of reporters, having been briefed by him and others, are prepared to pounce on the Board, once its final report is made public. If the President endorses the actions of the Board, they will turn on him with equal vigor.

General Walt is interested in seeing to it that the President does not place himself in a vulnerable position.

For the above reasons, it is suggested that no statement be released by the President, or in his behalf, at the conclusion of the Board's work. Secondly, General Walt advises against the scheduling of any reception for the members of the Board and the detailees who worked with the Board.

He agreed that a meeting with the President for a small representative group from the Board was a practical, if not unavoidable, necessity.



R- Advise P/B 9/17/75 ✓

THE WHITE HOUSE
WASHINGTON
September 15, 1975

ADMINISTRATIVELY CONFIDENTIAL

MEMORANDUM FOR: JACK MARSH
FROM: RUSS ROURKE R
FROM: Rick Tropp -- Pageboy

In answer to your inquiry, Bill Gulley advises me that a pageboy was not issued to Rick Tropp. He must have borrowed someone else's pageboy or he could have been utilizing a pageboy that was in the possession of someone else with whom Tropp was visiting.

FYI: The PCB staff have reported the loss of three portable tape recorders.

ADMINISTRATIVELY CONFIDENTIAL

September 15, 1975

ADMINISTRATIVELY CONFIDENTIAL

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FROM: RUSS ROURKE
FROM: Rick Tropp -- Pageboy

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RAR/dl



ADMINISTRATIVELY CONFIDENTIAL

15 September 1975

MEMORANDUM

TO: Chairman Charles Goodell

FROM: General Walt
Mr. Dougovito

SUBJECT: Upgrade Cases, Recommendation
Concerning

To date there have been 25 cases tentatively recommended for upgrade. There are still over 200 cases which have not been considered and due to the Board's termination date of 15 September 1975, they cannot be considered. It was the consensus of the Full Board and the strong position of the Department of Defense that all the upgrade cases should be considered at one time. We also believe that each case must have a careful final check to make sure that all facts presented in the brief are accurate and that the applicant is not now in trouble with the law. We, therefore, are definitely opposed to approving only the 25 cases which have been tentatively acted on by the Upgrade Panel.

We recommend that the upgrade program of the Clemency Board be abandoned and that the 25 tentatively above cases and the 207 cases not yet acted on by the Upgrade Panel be turned over to the Review Boards of the Defense Department for special consideration. We are still firm in our belief that there are many deserving applicants in this group who should be given the veteran's benefits.

Louis W. Walt
Board Member

James F. Dougovito
Board Member



September 15, 1975

MEMORANDUM TO: DICK KEISER
FROM: RUSS ROURKE

I received a call today from retired General Lou Walt concerning a conversation he had in the last several days with a Dr. Joel Dolsey. Gen. Walt advises me that Dr. Dolsey is a consultant, employed by the federal government at Aberdeen, Maryland. Dolsey is a surgeon and an expert in the field of ballistics. He indicated to Gen. Walt that his laboratory is currently working on a new light-weight abdominal protective device. I am aware that the Secret Service is currently reviewing all proposals of this nature, and, if you have not already done so, you might contact Dr. Dolsey in order to get a full briefing on ~~the~~ current research activities.

cc: JMarsh ✓

RAR:Cb



THE WHITE HOUSE
WASHINGTON

September 18, 1975

R ✓
Discuss

ADMINISTRATIVELY CONFIDENTIAL

MEMORANDUM TO: JACK MARSH
FROM: RUSS ROURKE *R*

Jack, because of our previously expressed interest in the actions of the Clemency Board personnel, Bill Gulley called to advise me of some difficulties that were encountered in connection with the 2 1/2 day Camp David "retreat" for Clemency Board staff. Gulley reports that they stole towels, ash trays and the Presidential seal off of the President's golf cart. They used up more than \$400 worth of shells shooting skeet, and, despite a request not to use the clay tennis courts (which were wet due to a recent rain), they did so, resulting in a requirement for somewhat extensive repair work on the courts.

FYI, Gulley is giving Don Rumsfeld a memo on the above.

ADMINISTRATIVELY CONFIDENTIAL

THE WHITE HOUSE
WASHINGTON

September 29, 1975

Jack Marsh

Call
The letter to Charles Goodell has been rewritten at your request. Please let us know if you approve this version.

OK
M
Jim Connor



September 25, 1975

Dear Charlie:

It is a special pleasure for me to thank you for your dedicated service as Chairman of the Presidential Clemency Board.

This Administration, your country and several thousand young Americans are indebted to you for your unselfish efforts as Board Chairman. By your skillful and sensitive attention to the personal problems of these young people, you have made a valuable contribution to the Nation.

I deeply appreciate the ties of friendship which we have enjoyed through the years and your willingness to accept this special task. You have earned the gratitude of your fellow citizens and my personal thanks for all that you have done.

Warmest personal regards,

**The Honorable Charles Goodell
2823 Q Street, N. W.
Washington, D. C. 20010**



PAT/cf

Demery

October 7, 1975

MEMORANDUM TO: JAY FRENCH
FROM: RUSS ROURKE

Jay, the attached memo from Col. Benson is self-explanatory.
I would appreciate any reaction you might have to his comments.

Many thanks.

RAR:cb



THE WHITE HOUSE

WASHINGTON

September 2, 1975

MEMORANDUM FOR THE HONORABLE EDWARD H. LEVI
Attorney General
Department of Justice

FROM: CHARLES E. GOODELL
Chairman
Presidential Clemency Board

SUBJECT: Transfer of Residual Presidential Clemency
Board Functions to the Department of Justice

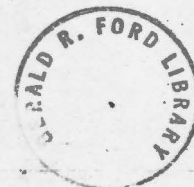
Since it is supported by the Unanticipated Personnel Needs Fund of the White House Office, the Presidential Clemency Board (PCB) is statutorily barred from entering into new obligations after September 15, one year from the date of its creation. The President has directed that the Board complete the disposition of clemency applications by September 15, and the Board will meet that target. We will have processed 15,500 cases and 5,000 ineligible applications.

Although the Board will have completed case disposition by September 15, several residual functions remain. Our staffs and that of OMB have agreed that those functions should be transferred to the Department of Justice. A number of open questions with respect to the transition remain, however, and you and I need to reach a resolution of those questions.

I. Exercise of Residual Discretion in Reconsideration
Cases Triggered by Presentation of New Facts

Under the PCB regulations, an applicant has the right to petition for reconsideration of his case for thirty days after Board disposition, should the applicant present new facts material to the disposition of his application and not previously available to the Board. The Board's recommendations are not forwarded to the President until after that thirty-day period has run.

An applicant also is granted, by the regulations, entitlement to reconsideration within thirty days after the President's decision on his case, provided that the applicant presents new material facts not previously available for good cause.



Those two reconsideration periods will not have run by September 15, and the administrative processing of applications will therefore not be complete.

If it would be helpful to you, the Board has indicated its willingness to meet, as unpaid consultants to you, to resolve reconsideration petitions. Such a meeting probably would be for one day, and could take place immediately prior to November 1. If the Board members themselves resolve these residual cases, the President will be assured that decisions are made with maximum consistency with prior cases.

II. Certification of Completion of Alternative Service

The critical remaining exercise of discretion after September 15 will relate to cases in which a local Selective Service board rules that an applicant either has not completed the prescribed period of alternative service, or did not make a good faith effort to find an alternative service job, and in which the applicant alleges either that he did indeed complete the period or did make a good faith effort. The question presented then is whether, notwithstanding that Selective Service alleges failure to complete alternative service for no good cause, the conditions attached to the President's grant of conditional clemency will be considered by the Department to have been met.

This is much more than a ministerial function. The Department must elect either to certify or not to certify the applicant as deserving of the pardon which the President has granted him conditionally. The Board has faced several such cases already.

The Board is very concerned that this exercise of discretion be informed by careful attention to each individual case in which a conflict arises between the applicant and his local board, and that the officials who make the discretionary decisions on your behalf have the organizational strength and resources to override the determination of a local board if the facts of a particular case warrant that.

We would feel most reassured on this point if you chose to place this residual discretionary authority--and the appropriate staff to work on such cases--in the Immediate Office of the Attorney General, rather than in the Office of the Pardon Attorney. I expect that the number of such cases will be small, and that the exercise of this function can be organizationally divorced from completion of the residual administrative tasks if you choose to house those in the Office of the Pardon Attorney.



10/1/75

OCT 2 1975

Reuss -

This is the
memo I mentioned to
you.

Section II is another
attempt at total
amnesty and should be
stopped.

Col. Benson

