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3/75

Memorandum to: Larry Baskir

From: Bill Strauss

Subject: Proposed Outline for PCB Final Report

The following is a possible outline for our final report. I expect that a first draft could be completed by mid-summer, making completion possible by September 15. Conjecturing the length is difficult, but if all chapters are given the attention I would like, 150 report pages should do it.

I. Chairman's Introduction

- A. Personal view about what the program has and has not accomplished
- B. Justification for the breadth of this report (and its focus on some non-clemency issues which came to the Board's attention)

II. Overview

- A. Context of the amnesty issue; the "problem" as perceived by the President and the Board (i.e., national reconciliation)
- B. The program philosophy -- clemency, not amnesty -- earned re-entry -- case-by-case review, etc.
- C. Problems initially perceived and anticipated when the program was formed (e.g., opposition from both sides, problem of winning the trust of the draft resisters, lack of knowledge about how many people were eligible)
- D. Brief description of program, with emphasis on how it was tailored to implement the "philosophy" and deal with the problems in B and C
- E. Problems actually occurring (especially the lack of accurate information about the program and the administrative challenge of dealing with so many cases) -- and efforts taken to deal with them
- F. Summary of our evaluation (see below) of what the program did and did not accomplish
- G. Context of further decisions that might be made by the President or the Congress about any extension, alteration, or abandonment of the existing clemency program



III. Historical Perspective of the Program

- A. Precedent of amnesties and the Presidential exercise of pardoning power; impact of those actions upon beneficiaries, subsequent wars, inscriptions, etc.
- B. Analysis of AWOL and draft resistance before Vietnam, during the War, and now
- C. Brief social/statistical analysis of the Vietnam era --- what happened to which groups, why is this war different from others, how this program is as uniquely suited to that war as other amnesties have been to other wars
- D. Alternatives that might have been available to clemency recipients in the absence of this program (and still are): Dropped prosecutions, trials resulting in acquittals or sentences to perform alternative service, state laws restoring rights to convicted felons, discharge upgrades, VA benefit reviews, etc.

IV. Description of the Program

- A. Original proclamation and executive order; basic jurisdictional divisions among agencies and mandated differences among their programs
- B. Eligibility criteria for all parts of the program
- C. Application process and trends for all parts of the program, plus a description of any outreach efforts
- D. Description of applicants for all parts of the program (anecdotal and statistical); as much as possible, description of non-applicants
- E. Description of case processing for all parts of the program (with a description of the PCB large-scale processing, however it evolves)
- F. Case dispositions for all parts of the program; mitigating and aggravating factors, baseline formula, and actual numbers of case dispositions
- G. Description of the procedures and problems in the alternative service phase of the program (in as much detail as can be presented by the time the report must be finished)



- H. Follow-up --- the actual issuance of upgrades and pardons, and a description of any efforts to make clemency discharge and pardons worthwhile benefits

V. Evaluation of the Program

- A. The inherent problems of evaluating such a program; presence of intangible goals and factors, lack of necessary data, requirement of time to give a meaningful perspective, etc.
- B. Overview of the criteria (described below) which might be used to measure program performance
- C. Analysis of participation rate
- D. Evaluation of benefits to applicants, measured against benefits they might otherwise have obtained (e.g., from alternatives described in III-D)
- E. Impact upon non-applicants -- those eligible (who might face either more or less discrimination for not having applied), and those not eligible (e.g., veterans competing in the same job market, those not eligible for technical reasons whose opportunity for other benefits might have been affected through programs which this one may have pre-empted, conscientious objectors who completed their alternative service, veterans with good discharges who went AWOL, etc.
- F. Consistency and adequacy of process in all parts of the program --- measured against each other and against possible other standards
- G. Consistency and equity of case dispositions within and among different parts of the program
- H. Social impact, to the extent it can be measured or analyzed (number of news articles, opinion polls, acceptance of clemency recipients in communities, etc.)
- I. Administrative costs, direct and indirect
- J. Anticipated precedential effect (if any) of the program on future wars, conscriptions, amnesties, and other related events (discharge reviews, etc.)

K. Comparison of the program with prior amnesties, to the extent that is a suitable measure for evaluating its performance

L. The bottom line, if there can be any

VI. The Broader Context of the Program

A. Circumstances in which other issues have risen to the attention of the Board (case dispositions, letters, travels across country, etc.)

B. Military issues of concern to the Board

1.. Personnel practices -- enlistment, procedures for in-service COs or hardship discharges, readjustment policies for Vietnam veterans, etc.

2. The military justice system -- UD process, equity of punishment, spin numbers, etc.

3. Discharge review procedures -- criteria, process (e.g., absence of regional boards), appeals, availability of counsel, etc.

C. Civilian justice issues of concern to the Board

1. The equity of the Vietnam era draft and its penalties

2. Adequacy of legal advice for persons facing or refusing induction, especially those with low incomes

3. Alternative service performed by conscientious objectors, especially as compared with the service done by clemency recipients

4. Apparent lack of prosecution of all cases of draft resistance, and lack of enforcement of military desertion police bulletins about people who stayed right at home while AWOL

VII. Conclusion: Further Clemency Options

A. Possible catalytic effect of this program -- especially on the private sector, but perhaps also on the public sector

B. Identification and appraisal of options to extend, alter, or abandon this clemency program

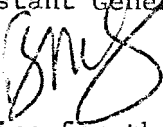
C. Recommendations (if any)



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

July 6, 1975

Memorandum to: Senator Goodell
Larry Baskir
Rick Tropp
Bob Knisely
Bob Horn
Gretchen Handwerker
Ray Mitchell
John Foote
Assistant General Counsels

From: Bill Strauss 

Subject: Draft Outline for the PCB Final Report



Attached is the draft outline for our final report. We need your comments as soon as possible to assure that our work is on target; shortly, we also shall need your comments on Lee Beck's demographic analysis format, which will be a major contributing factor to our report.

If you have any comments, please contact myself or the individuals responsible for the appropriate chapters. Bob Standard and Wil Ebel are working on Chapter III, Bob Terzian and Lee Beck on Chapter IV, Mike Remington and Charlie Craig on Chapter V, Rob Quartel on Chapter VI, and myself on Chapter VII. Chapters II (Executive Summary) and VIII (Conclusions and Recommendations) will be prepared later.

In our report, we shall be including discussions of the DOJ and DOD programs where they either shed light on our own policies or procedures or are pertinent to the overall character of the President's clemency program.

DRAFT OUTLINE FOR
PRESIDENTIAL CLEMENCY BOARD FINAL REPORT

- I. CHAIRMAN'S INTRODUCTION
- II. EXECUTIVE SUMMARY
- III. THE SOCIAL, HISTORICAL, AND LEGAL CONTEXT OF CLEMENCY
 - A. The Era
 - 1. Unsettling Period
 - 2. Casualties
 - 3. Unresolved Problems Facing a New Presidency
 - B. The War in Vietnam
 - 1. Impact on Nation
 - 2. Impact on those who served or otherwise sacrificed
 - 3. Impact on those who did not serve
 - 4. The need for reconciliation
 - a. The mood of the country
 - b. The basic objectives of a clemency program
 - C. Historical Perspective
 - 1. What is "clemency"?
 - 2. What is its constitutional basis?
 - a. Anglo-American heritage
 - b. Attitude of the Founding Fathers
 - c. Constitutionally-Mandated Clemency Powers
 - 3. What is its Historical Basis?
 - a. Whiskey rebellion
 - b. War of 1812
 - c. Civil War
 - d. Early 20th Century
 - e. World War II and Korean War
 - f. Recent developments in the exercise of Executive Clemency



4. What is the recent International Perspective?

- a. Australia
- b. France

D. Legal Parameters of the President's Executive Clemency Powers

1. Pardon Powers

- a. Scope
- b. Discretion
- c. Conditions

2. Other Powers of Executive Clemency

- a. Authority to Uphold and Enforce Laws
- b. Authority as Commander-in-Chief

E. Tailoring a Clemency Program to the Needs of an Era

- 1. Broad historical precedents and legal options
- 2. Constraint Qua Objective: Developing a program which the greatest number of people would accept as reasonable and fair as a means of reconciling the Nation.

IV. THE PERSONAL CONTEXT OF CLEMENCY

A. Introduction

- 1. Impact of Vietnam Era on all draft-age men, but particularly on those who resisted or deserted --- with an analysis of 29,000,000-man "Pipeline"
- 2. What were these potentially eligible people like?
 - a. Outline of Demographic analysis
 - 1. Methodology
 - a. constructed sample of 1500 cases, including
 - a. an over-sample of civilian cases



- b. Official documents
- c. Summary condensation
- 2. Caveats
 - a. Inconsistencies on science or record
 - b. Inability to compare applicants with eligible non-applicants
- b. Distinction between civilian and military applicants
 - 1. Procedural distinctions
 - 2. Data availability distinctions
 - 3. PCB/DOJ + PCB-m/DOD comparability
- B. The Civilian in Need of Clemency
 - 1. Definition
 - 2. Who were they --- and how do they compare with the overall pool of draft-eligible men?
 - a. Background characteristics of PCB eligibles
 - 1. Year of birth
 - 2. Race
 - 3. Family characteristics
 - 4. Place of residence
 - 5. Religion
 - 6. Education
 - 7. I.Q.
 - 8. Marital status
 - 9. Employment status
 - 10. Criminal record
 - b. Differences between PCB eligibles and all draft-eligible men



3. What was their offense -- and why did they do it?
 - a. Offense
 - b. Reasons for offense
 - c. Activities while at large
 - d. Surrender/apprehension
 4. What was their judicial proceeding and punishment?
 - a. Plea
 - b. Proceedings (e.g., dismissals)
 - c. Sentences
 - d. Time actually served in prison
 - e. Probation and parole
 5. What has been the impact of their experience?
 - a. Felony conviction record
 - b. Intangible effects of draft resistance and imprisonment
- C. The Serviceman in Need of Clemency
1. Overview of the Vietnam era's effect on the military
 2. Overview of the Vietnam era's effect on individual soldiers
 3. Description of the soldier applicant
 - a. Background characteristics



1. Year of birth
 2. Race
 3. Family characteristics
 4. Place of residence
 5. Religion
 6. Education
 7. I.Q.
 8. Marital status
 9. Employment status
 10. Criminal record
- b. Vietnam-era recruit
1. Recruitment standards
 - a. induction
 - b. draft-induced enlistment
 - c. judicially-induced enlistment
 - d. special exemptions (Project 100,000)
 2. Basic training, AIT, the AFQT, and MOS
 - a. The training of persons who had been exempted from usual recruitment standards
 - b. Assignment to specialties
 3. Hardship and CO applications
 - a. changes in law
 - b. types of allegations in support of hardship
 - c. the new "special war" objector
- C. The problem of AWOL
1. Incidence and types
 2. Reasons for AWOL



3. Activities while AWOL
4. Apprehension/surrender
- d. Nature and impact of military justice
 1. NJP
 2. Judicial process
 - a. Chapter 10 discharges
 - b. Court-Martials
 3. Administrative separation (Chapter 13)
 4. Impact of bad discharges
 - a. The widespread denial of benefits (including medical benefits) to those with Vietnam combat service
 - b. Economic and social impact of bad discharges
 - c. Discharge appeal procedures
4. The post-war adjustment - new personnel practices, policies and goals

V. THE PRESIDENTIAL CLEMENCY PROGRAM

- A. The Presidential philosophy behind the Program
 1. Clemency, not amnesty: Reconciling past differences and healing some wounds -- but not forgetting all that has taken place.
 - a. Those convicted of their offenses will not have their records expunged.
 - b. In addition, for former military personnel, clemency does not mean full discharge upgrades, nor does it necessarily mean Veterans Administration benefits.

2. A limited, not universal, program: The jurisdictional limits.
 - a. Civilians: the list of Section 12 and 6(j) offenses listed in the Executive Order and the Proclamation.
 - b. Present and former military personnel: violations of Article 85, 86, or 87.
 - c. Violations must have "occurred" (DOD "commenced") between August 4, 1964 and March 28, 1973, inclusive.
 3. A program of definite, not indefinite, length: setting an application deadline.
 4. A case-by-case, not blanket, approach: considering each case on its own merits.
 - a. The creation of a Presidential Clemency Board
 - b. Delegation of authority to a DOD Joint Clemency Processing Center and to U.S. Attorneys
- B. The creation of the Program: Three organizations with distinct areas of responsibility.
1. Military Selective Service Act violators who have never been adjudged guilty of their draft offense are within the jurisdiction of DoJ.
 2. Current military absentees are within the jurisdiction of DoD.
 3. The PCB has jurisdiction over draft violators who have been convicted and former military personnel who have received punitive or undesirable discharges for their absentee offenses.



- a. Appointment of Chairman and first nine Board members.
 1. Letter from President to PCB
 2. Transcript of what President said during his first meeting with the PCB. His first signing of pardons/warrants, and his Press Conferences.
 - b. Reflecting the Presidential intent to heal the Nation's wounds, a good cross section of persons and points of view is represented on the Board.
- C. The Implementation of the President's Program
1. Clemency, not Amnesty:
 - a. Upon successful completion of alternative service, a DOJ applicant would never be prosecuted for his draft violation.
 - b. Upon turning himself in to the Secretary of the relevant military branch, a DOD applicant would receive an undesirable discharge. Upon successful completion of alternative service, a DOD applicant receives a Clemency Discharge but no pardon and, probably, no Veterans Administration benefits.
 - c. Pursuant to Executive Order 11803, wherein it is stated: "...the Board shall also recommend the form that such clemency should take....,"

the PCB recommended to the President that for PCB recipients "clemency" means pardons. This is in addition to commutation of sentence and, where applicable, Clemency Discharges.

1. What a pardon confers and means to Clemency Recipients
 2. Why pardons are given to those with undesirable discharges
2. A Limited, not Universal Program: Jurisdictional Issues
- a. Clear cases of jurisdiction
 - b. Clear cases of non-jurisdiction
 1. Those with General or Honorable Discharges.
 2. Those whose last discharge was executed before August 4, 1964
 3. Those where, within the qualifying period, a military applicant never committed an offense that was closely related to an AWOL offense
 4. Those where, within the qualifying period, a civilian applicant never committed an offense that was closely related to a draft evasion offense
 - c. Difficult jurisdictional questions
 1. Offenses that straddled the August 4, 1964 or

March 28, 1973 qualifying dates.

2. Unfitness Discharge
 3. Discharges under Article 90, 91, or 92 that could have been discharges under Article 85, 86, or 87
 4. Discharges for civil convictions
 5. Suspended discharges that are later executed
 6. Persons who apply to more than one Clemency Program
 7. Persons who mistakenly apply to the wrong Clemency Program
 8. Applicants who fail to perfect their applications
3. A program of Definite, not Indefinite Length:
The Application Deadline
- a. Early application trends
 - b. Outreach efforts
 1. Direct contact with eligibles
 2. Contact with counselors in touch with eligibles
 3. Public Service Campaigns
4. A Case-By-Case, not Blanket, Approach
- a. Publication of Regulations to satisfy requirements of notice and to insure fairness.
 - (1) Solicitation of other views concerning the



decision making process, although neither solicitation of other views nor publication of regulations was required

2. Subsequent amending of Regulations
- b. Information used in making case dispositions
1. Official documents
 2. Correspondence from applicant
 3. Ex parte conversations with applicant
- c. Fairness to the applicant
1. Openness of the process
 - a. files
 - b. proceedings
 2. Confidentiality of case materials
 - a. Treatment of files
 - b. Publication of case dispositions
 3. Right to assistance by counsel
 4. Case preparation
 - a. Reliance on written case summary
 - b. The control of discretion and mistakes in the case summary by having internal quality control review
 - c. Communication of case summary to the applicant
 5. Presentation to decision-makers

- a. Composition of decision-making panel
- b. Opportunity for personal appearance
by the applicant or his representative
- c. Non-adversary procedure
 1. staff input
 2. Presentation and use of case
materials
- d. Evidentiary questions
 1. Privilege against self-incrimination
 2. Patient-physician, husband-wife
privileges
 3. Hearsay evidence rule
 4. Evidence of similar actions or
crimes
6. Findings of decision-makers and communication
of decision
7. Administrative review of decision
 - a. By decision-makers themselves
 - b. By staff
8. Presidential action
9. Opportunity to appeal
10. Sealing records of Qualifying offenses
 - a. Impact of pardons
 - b. Relationship of the Federal Youth



Corrections Act.

d. Decision-making criteria

1. Procedures by which criteria are established
2. The use of established criteria as Policy Precedents
3. Calculation of Baseline period of alternative service.
4. Aggravating and Mitigating Circumstances

a. Civilian applicants

1. Background and character.

a. Aggravating Factors: 1, 2, 6, 7

b. Mitigating Factors: 1, 2, 3, 4,

2. Criminal record

a. Aggravating Factors: 1, 7

3. Reasons for Offense

a. Aggravating Factors: 5

b. Mitigating Factors: 8, 9, 10.

4. Circumstances of Offense

a. Aggravating Factors: 12

b. Mitigating Factor: 11

b. Military Applicants

1. Background and character

a. Aggravating Factors: 1, 2, 7

b. Mitigating Factor: 1, 2, 3, 4.

2. Criminal Record

a. Aggravating Factors: 1, 7.

3. Service Record

a. Aggravating Factors: 1, 7, 8,
9, 11.

b. Mitigating Factors: 5, 6, 7, 8,
13, 14, 15, 16.

4. Reasons for offense

a. Aggravating Factors: 5, 10

b. Mitigating Factors: 8, 9, 10,
12

5. Circumstances of offense

a. Aggravating Factors: 3, 4, 8,
9, 10, 12

b. Mitigating Factors: 11

5. Conditional, not Unconditional Amnesty:

Alternative Service

a. Definition of Acceptable Alternative Service

b. Assignment of Clemency Recipients to Alternative
Service

c. Administration of the Alternative Service Program

VI. Managing A Clemency Program

A. Introduction-Special Attributes of the PCB

1. Emphasis on Production
 2. Crisis Management Atmosphere
 3. Persistent Focus on Presenting a Fair Legal Process
- B. Government as A Production Unit
1. The Usual Context of Government vs. Private Enterprise
 - a. Fixed vs. flexible short-term resources
 - b. Intangible vs. tangible short-term goals
 - c. Unquantifiable vs. quantifiable indices of performance
 2. The PCB as a typical Production Unit in Government
 - a. Characteristics
 1. Flexible resources
 2. tangible short-term goals
 3. quantifiable indices of performance
 - b. Impact on operations
 1. Management analysis can be more effective
 2. Resources can be applied interchangeably
 3. Line managers can be held accountable in the short-run
- C. Crisis Management Planning
1. Identifying the problem

- a. objectives
 - b. constraints
2. Setting systems goals
- a. Reaction time
 - b. Obtaining resources
 - c. achieving peak production and systems output
3. Developing necessary resources
- a. Management requirements
 - 1. Developing a line management cadre
 - 2. Developing a planning capability
 - b. Personnel Requirements
 - 1. Identifying Requirements
 - 2. Absorbing new personnel
 - a. Hiring
 - b. Training
 - c. Learning curve
 - 3. Structuring incentives
 - 4. Maintaining task assignment flexibility
 - c. Support requirements
 - 1. Budget
 - 2. Personnel services
 - 3. Physical plant and overhead items

4. Managing the Process
 - a. Information as a Management tool
 1. Management information system
 2. Pipeline analysis
 3. Productivity Analysis
 4. Information feedback
 - b. Developing a work plan
 - c. Exercise of management authority
 1. Inventory control
 2. Resource control
 - d. Perturbations
 1. Controllables
 2. Uncontrollables
5. Evaluating System Performance
 - a. Evaluating Goal Achievement
 1. Redefining Goals
 2. Measuring output
 - b. Evaluating Accomplishment of program objectives
 1. Setting criteria
 2. obtaining data
 3. providing a public record
6. Phasing down
 - a. Reappraisal of resource needs
 - b. Utilizing resource flexibility
 - c. Reducing resources

- D. Preservation of a Fair Legal Process in a Crisis Management Unit
 - 1. Maintaining Casework quality in spite of time
 - a. identifying production and quality constraints
 - b. choosing a methodology
 - c. setting and fulfilling production requirements
 - 2. Assuring consistency of case dispositions
 - a. risks of speeding up case disposition procedures
 - b. assuring consistency in case dispositions
 - 1. establishing dispositions precedent
 - 2. applying and enforcing precedent
 - 3. Maintaining the legitimacy of the process
 - a. enforcing board policy decisions with the staff
 - b. keeping promises to applicants
 - c. maintaining the openness of the process

VII. What Did the Program Accomplish?

- A. How successful was the program in carrying out the mandate of the Presidential Proclamation?
- B. What were its goals?
 - 1. To reconcile the nation
 - 2. To provide benefits to applicants
 - 3. To offer a free choice to eligible individuals (i.e., do no harm to those who do not apply or are denied clemency).

4. To avoid harm to those who served or sacrificed
5. To prevent impairment of future ability to enforce conscription or military discipline

C. What were its accomplishments?

1. Reconciling the nation

a. Re-integrating; clemency recipients into society

1. Tangible economic benefits

2. intangible social benefits

b. Healing the wounds of the Vietnam era by im-

plementing a program which is justifiable,

acceptable, and fair

1. justifiability

2. Acceptability

a. legitimacy

b. acceptance by eligible persons

c. acceptance by concerned interest groups

d. acceptance by the public at large

3. Fairness

a. fairness of process

b. equitability of case dispositions

2. Benefits of applicants

a. universe of eligible individuals

1. scope of benefits

2. "drawing the line" on jurisdiction--equity
problems



- b. application rate
 - 1. comparability to other government programs
 - 2. special characteristics
- c. Benefits from remedies
 - 1. tangible
 - a. rights restored
 - b. job and other economic opportunities obtained
 - 2. intangible
 - a. applicants' perceptions of themselves
 - b. applicants' perceptions of the government
- d. disbenefits from remedies
 - 1. uncertainty while waiting for one's case disposition to be announced
 - 2. obligation of alternative service
 - 3. possible stigma of a clemency discharge
- 3. Impacts upon eligible nonapplicants or those denied clemency
 - a. benefits--more favorable public view of everyone who committed draft or AWOL offenses during the Vietnam era
 - b. disbenefits
 - 1. hindrance of efforts to obtain other remedies (e.g., discharge appeals through normal channels)
 - 2. possible public stigma
 - 3. possible impact on self-perception of those denied clemency

4. Impacts upon those who served or sacrificed
 - a. tangible (jobs)
 - b. intangible
5. Precedential impact

D. What Were its Costs?

1. Direct costs
 - a. budget items
 - b. non-budget items
 1. personnel
 2. overhead items
2. Indirect costs
 - a. costs imposed on other agencies
 - b. costs of dispersing benefits to applicants

VIII. Conclusions and Recommendations

- A. Summary of program accomplishments and costs
- B. Comparison of this program to other post-war exercises of Executive Clemency in American History
- C. Recommendations

IX. Appendices

- A. Regulations
- B. Policy Precedents
- C. Tables and Miscellaneous Corroborative materials
- D. Notes