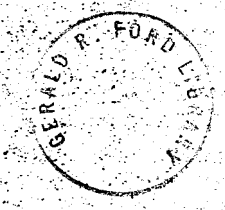
The original documents are located in Box 9, folder "Procedures and Substantive Standards - ACLU Comments" of the Charles E. Goodell Papers at the Gerald R. Ford Presidential Library.

COMMENTS OF THE AMERICAN CIVIL LIBERTIES UNION ON THE PROPOSED PRESIDENTIAL CLEMENCY BOARD PROCEDURES AND SUBSTANTIVE STANDARDS



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COMMENTS OF THE AMERICAN CIVIL LIBERTIES UNION
ON THE PROPOSED PRESIDENTIAL CLEMENCY BOARD
PROCEDURES AND SUBSTANTIVE STANDARDS

Pursuant to the Notice of Proposed Rule Making issued on November 25, 1974, submitted herewith are the comments of the American Civil Liberties Union regarding the proposed procedures and substantive, adjudicative standards to be employed by the Presidential Clemency Board as published in the Federal Register of November 26, 1974.

We commend the Board generally, for its inclusion in these regulations, of procedures permitting an applicant and his representative to appear before the Board. We hope, however, that this opportunity will, for the reasons set forth below, be changed to a hearing as a matter of right in each case, rather than as an option to be granted at the Board's discretion -- no matter how liberally such requests are intended to be granted. We are also pleased that the Board has instituted an appeal procedure, but similar objections pertain as well to the discretionary nature of the appellate hearing.

The development of formalized substantive standards, including the recognition of principled objection to military

service as a mitigating criterion is also to be commended although, as pointed out below, other defects in the substantive standards are apparent.

2 C.F.R. §201, et seq.
[Procedures]

I. §§201.8(c)

This proposed regulation fails to provide for a hearing before the Board as a matter of right either to the applicant or his counsel. Implicit in the decision to grant such a hearing only in the Board's discretion is the assumption that no Constitutional right to such a hearing is required. It is clear, however, that the Due Process Clause and its guarantee of Equal Protection does require such a hearing. The regulation must, therefore, be appropriately amended. It is to be noted from the outset that it is anomalous to acknowledge that an applicant has a right to be "represented" by counsel (2 C.F.R. §201.13) but that counsel cannot appear with him or on his behalf.

A. Adjudicative Character of the Board Function

It is apparent from the body of proposed regulations that the Board hears and determines cases, much the same as any other administrative agency performing adjudicative functions. See, e.g., West Ohio Gas Co. v. Public Utilities Company of Ohio, 294 U.S. 63, 70 (1935) ("suitable opportunity through evidence and

argument" to challenge a rate); Londoner v. City of Denver, 210 ULSL 373, 386 (1908) (tax assessment requires full and fair opportunity to be heard on objections, including oral argument and proof); Hornsby v. Allen, 326 F.2d 605, 608 (5th Cir. 1964) ("licensing consists in the determination of factual issues and the application of legal criteria to them").

The Board's processes are those of fact finding, evaluation, and determination analogous to what occurs in any administrative or quasi-judicial type hearing.

B. Constitutionally Minimum Standards of Due Process Require a Hearing as of Right

An appearance before the Presidential Clemency Board is substantially similar in all vital respects to any other adjudicative hearing by an administrative agency. On numerous occasions, the Supreme Court has declared that certain minimum due process rights are constitutionally guaranteed to "those who are brought into contest with the Government in a quasi-judicial proceeding aimed at the control of their activities." Morgan v. United States, 304 U.S. 1, 18 (1938).[1/]

1/ Since an applicant may be required to perform civilian service in order to receive his pardon, a heavy compulsion to submit to the strictures of this work exists.

Chief Justice Warren, writing for the court in Hannah v. Larche, 363 U.S. 420, 442 (1960), held:

> "...when governmental agencies adjudicate or make binding determinations which directly affect the legal rights of individuals, it is imperative that those agencies use the procedures which have traditionally been associated with the judicial process."

And, in Greene v. McElroy, 360 U.S. 474, 497 (1959), it was stated:

> "This Court has been zealous to protect these rights from erosion... not only in criminal cases... but also in all types of cases where administrative and regulatory actions were under scrutiny."

It was pointed out in Hannah v. Larche, supra, that the well-known distinction in administrative law between administrative agencies acting in a rule-making or investigative capacity, and agencies performing an adjudicatory function, had specific due process consequences. Consequently, the Court ruled that certain due process rights were not available in the investigatory and fact-finding proceedings of the Civil Rights Commission, since such rights were not customarily available "when Governmental action does not partake of an adjudication." 363 U.S. 442.[2/] The court elaborately discussed the differences between the two kinds of proceedings and explained that the traditional

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2/ The right to appear in person before the Commission was nevertheless recognized by the Commission. Id. at 431.

safeguards of due process which were held requisite in Morgan v. United States, 304 U.S. 1, 18 (1938); Greene v. McElroy, supra; and Joint Anti-Facist Refugee Committee v. McGrath, 341 U.S. 123 (1951), were all because "the government agency involved in each was found by the Court to have made determinations in the nature of adjudications affecting legal rights." Hannah v. Larche, 363 U.S. at 451.

It could hardly be contested that a person applying to the Presidential Clemency Board is involved in a "proceeding aimed at the control of [his] activities." Morgan v. United States, supra. See footnote 1/, supra. It is, likewise, indisputable that the Board makes "binding determinations which directly affect the legal rights of individuals." Hannah v. Larche, supra.

That an administrative agency, for all its uncircumscribed rule-making or investigatory power, cannot adjudicate personal rights without providing the essentials of a fair hearing is virtually a first principle of administrative law. This principle has been applied in a large variety of administrative proceedings by the Federal courts. See, e.g., Wisconsin v. Constantineau, 400 U.S. 433 (1971) (public listings of alleged alcoholics); Goldberg v. Kelly, 397 U.S. 254 (1970) (termination of welfare benefits); Londoner v. City of Denver, 210 U.S. 373 (1908) (tax assessment);

Goldsmith v. United States Board of Tax Appeals, 270 U.S. 117 (1926) (license rights); United States v. Abilene & So. Ry., 265 U.S. 274 (1924) (public utility rates); Gonzalez v. Freeman, 334 F.2d 570 (D.C. Cir. 1964) (debarment of Commodity Credit contractor); Kwong Hai Chew v. Colding, 344 U.S. 590 (1953) (deportation of alien)[3/]; Escalera v. New York City Housing Authority, 425 F.2d 853 (2d Cir.), cert. denied 400 U.S. 853 (1970) (termination of public housing tenancy and imposition of additional rent charges); Parker v. Lester, 227 F.2d 708, 716 (9th Cir. 1955) (termination of merchant seaman's employment: "When it is proposed to take from a citizen through administrative proceedings some right which he otherwise would have, it has always been held that the constitutional requirement is that he shall be afforded notice and an opportunity to be heard.").

More to the point, however, are cases such as Morrisey v. Brewer, 408 U.S. 471 (1972) and Gagnon v. Scarpelli, 411 U.S. 778 (1973). Morrisey v. Brewer held that a constitutional right to a hearing inured in parole revocation proceedings. Gagnon extended the Morrisey holding to probation revocation proceedings. Both cases relied in part on the rationale enunciated

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3/ "...not even Congress may expel him without allowing him a fair opportunity to be heard." 344 U.S. at 598.

in Goldberg v. Kelly, supra.[4] The bases for the holdings in Morrisey and Gagnon are peculiarly applicable here, first because of the Court's disavowal of any recognition that the revocation of parole is part of a criminal proceeding ("...in Morrisey v. Brewer... we held that the revocation of parole is not a part of a criminal prosecution." Gagnon, supra at 781) and second, because of its recognition in Gagnon that, "... a probationer can no longer be denied due process, in reliance on the dictum in Escoe v. Zerbst, 295 U.S. 490, 492 (1935) that probation is an act of grace." 411 U.S. at 782 n.4.

Thus, it is not Constitutionally permissible for the Presidential Clemency Board to deny hearings either on the theory that the clemency procedures are not part of a previous criminal proceeding[5] or that a Presidential pardon is an act of grace and may be administered with unfettered discretion.

4/ At least three courts have previously noted the analogy between conditional pardons and parole and probation. See Fleenor v. Hammond, 116 F.2d 982, 986 (6th Cir. 1941); Clifton v. Beto, 298 F.Supp. 1384 (S.D. Tex. 1968); Hoffa v. Saxbe, 378 F.Supp. 1221, 1236-1237 n.54 (D.D.C. 1974).

5/ Cf. also, In re Gault, 387 U.S. 1 (1967). It follows, of course, that if the Presidential Clemency Board determines that its functions are adjunct to a criminal prosecution so that, for example, a civilian furloughee might be returned to prison if he declines to accept the Board's proposed offer, a fortiori under Morrisey and Gagnon he must be afforded a hearing.

Finally, in the absence of any formal, published criterion, how is the Board even to decide who is to receive a hearing and who is not? How is an applicant or his counsel to know how to frame his case in the first instance so as to insure that he will be one of those applicants who will receive a hearing? Will not the unequal grants of hearings place two appealing applicants in different postures with respect to the burden of proof each must later shoulder under the appeal procedures contained in §§201.10? These questions, obviously unconsidered by the Board, leave open substantial possibilities of administrative abuse rising to the level of serious equal protection problems. See generally, Bolling v. Sharpe, 347 U.S. 497 (1953).

II. §§201.8(d)

We are also dismayed that under this regulation, the reasons given by the Board to the President in support of its recommendations are not made available to the applicant or his counsel for inspection and comment thereon, prior to the President receiving them. We believe that under both the Due Process Clause and the Administrative Procedure Act (to which the Board is subject) such reasons must be served upon the applicant.

A. Due Process

Enlightened courts have now recognized that Morrisey v. Brewer's application of Fifth Amendment

due process standards to parole proceedings also compel similar requirements in parole application proceedings:

> "The rudiments of procedural due process are not observed unless the administrative body details the reasons for its findings. See Goldberg v. Kelly, 397 U.S. 254 (1970); In Re Gault, 387 U.S. 1 (1967); Davis, Administrative Law, §16.12 at 585 (1970 Supp.)
>
> We are persuaded, as was the New Jersey Supreme Court in Monks v. New Jersey State Parole Board, 58 N.J. 238, 277 A.2d 193, 197 (1971), that "[t]he need for fairness is as urgent in the parole process as elsewhere in the law and... the furnishing of reasons for denial would be the much fairer course ... ." The need for a statement of reasons or findings not only insures a responsible and just determination by the agency, but also affords a proper basis for effective judicial review. The New Jersey decision is consistent with the recent expansion by the United States Supreme Court of due process guarantees with respect to parole revocation proceedings. Morrissey v. Brewer, 408 U.S. 471, 92 S.Ct. 2593, 33 L.Ed. 2d 484 (1972). An analogous trend may be found in the selective service reclassification cases decided in this Circuit. See, e.g., United States v. Neamand, 452 F.2d 25, 26, 30 (3d Cir. 1971); United States v. Hershey, 451 F.2d 1007, 1008 (3d Cir. 1971); Scott v. Commanding Officer, 431 F.2d 1132, 1137 (3d Cir. 1970). Moreover, the furnishing of reasons will have a positive effect on the goal of rehabilitation. See President's Commission on Law Enforcement and Administration of Justice, Task Force Report; Corrections, at 64 (1967); Davis, Discretionary Justice, at 131 (1969). Furthermore, the requirement that the Board give its reasons for denial of parole does not cast an undue burden upon the administrative body."

United States ex rel. Harrison v. Pace, 357 F.Supp. 354, 356-357 (E.D. Pa. 1973).[6/] See also, Johnson v. Heggie, 362 F.Supp. 851 (D. Col. 1973); Childs v. Board of Parole, 14 Crim. L. Rep. 2135 (D.D.C. 1973); United States ex rel. Johnson v. Board of Parole, 363 F.Supp. 416 (E.D.N.Y. 1973). Cf., Freeman v. Schoen, 370 F.Supp. 1144 (D. Minn. 1974).

Additional due process concepts counsel such a rule. As the eminent jurist Marvin Frankel has observed:

> "The duty to give an account of the decision is to promote thought by the decider, to compel him to cover the relevant points, to make him show that these necessities have been served." Criminal Sentences 40-41 (Hill and Wang, New York 1973).

B. Access to Reasons and a Meaningful Appeal Under Board Regulation 210.10

The failure of Regulation 201.8(d) to provide for access to the Board's reasons for its denial of the applicant's requested disposition also renders nugatory much of the applicant's appeal rights under §201.10. Cf. also §201.5(b).

.....

6/ As with the question of hearings, discussed supra, the rejection of the statement of reasons requirement cannot be founded upon a "right-privilege" dichotomy. Gagnon v. Scarpelli, supra at 411 U.S. 782 n.4.

In Gonzalez v. United States, 348 U.S. 407 (1955), the Supreme Court, in a closely related context, recognized that the failure of the Selective Service System to supply a registrant with a copy of the Department of Justice's recommendation to his appeal board regarding his claim for a conscientious objector deferment, unconstitutionally deprived him of an opportunity to rebut any adverse evidence contained therein. The Court, relying on its two prior decisions in Simmons v. United States, 348 U.S. 397 (1955) and United States v. Nugent, 346 U.S. 1 (1953), held that:

> The right to file a statement... includes the right to file a meaningful statement... with awareness of the... arguments to be countered. 348 U.S. at 415.

Similarly, Judge Weinstein, in his highly cited opinion in United States v. St. Clair, 293 F.Supp. 387, 345 (E.D.N.Y. 1968) observed that:

> "In permitting an appeal from the decisions of a local board, the regulations governing the selective service system provide that the registrant may specify claimed errors. 32 C.F.R. §1626.12 [compare clemency board regulation 201.10]. The opportunity to rebut allegedly incorrect conclusions... is essential to a meaningful appeal... Where no facts or inferences upon which the local board's conclusion is based are stated, effective rebuttal is impossible. No advocate can persuasively assert grounds for reversal when the bases for the decision below are unknown. The right of appeal from an administrative decision, guaranteed by the regulation was, in effect, denied."

How incongruous that a board promulgated under the authority of a proclamation which stated that the nation was in need of an act of mercy, would be given license to operate under lesser standards of due process than those imposed by Federal courts upon the very agency whose abuses, in large measure, caused the state of affairs for which a Presidential proclamation of clemency was eventually needed to remedy.

C. The Presidential Clemency Board is Subject to Administrative Procedure Act Jurisdiction and therefore the Reasons Underlying the Board's Recommendation Must Be Divulged

The Administrative Procedure Act (APA) applies to each "agency" which means "each authority of the Government of the United States." 5 U.S.C. §551(1). The President created the Clemency Board. There is no language in the congressionally enacted APA exempting the Clemency Board from its provisions nor could such an exception be carved out by an executive order. "Exemptions from the... Administrative Procedure Act are not lightly to be presumed." Marcello v. Bonds, 349 U.S. 302, 310 (1955); Brownell v. Tom We Shung, 352 U.S. 150, 185 (1956). 5 U.S.C. §555(e) provides as follows:

> "Prompt notice shall be given of the denial in whole or in part of a written application,

(cont.)

> petition, or other request of an interested person made in connection with any agency proceeding. Except in affirming a prior denial or when the denial is self-explanatory, the notice shall be accompanied by a brief statement of the grounds for denial."

The provisions of §555(e) apply to a "written application, petition or other request of an interested person made in connection with any agency proceeding." To be considered for clemency, a person must make a written application. 2 C.F.R. §§201.3, 201.4.

Just as the APA applies to parole release hearings held by the United States Board of Parole, United States v. King, 492 F.2d 1337 (7th Cir. 1974); Pickus v. Board of Parole, ___ F.2d ___, 16 Crim. L. Rep. 2080 (D.C. Cir. 1974); Sobell v. Reed, 327 F.Supp. 1294, 1301-1302 (S.D.N.Y. 1971), so too, in the absence of any statutory exemption, it applies to the Presidential Clemency Board. See also, Davis, Administrative Law Treatise 376 (1970 Supp.); Davis, Discretionary Justice: A Preliminary Inquiry 129 (1969). It follows that in accordance with the Act, these reasons must be divulged.

III. §§201.12

The final sentence of this proposed regulation states that "...information which reveals the existence of a

violation of law (other than an offense subject to the Presidential Clemency Program) will of necessity be forwarded to the appropriate authorities."

While such an acknowledgment in the context of any "clemency" program is, at best, unseemly, it also places upon the Board substantial constitutional obligations. See, Mathis v. United States, 391 U.S. 1 (1968); United States v. Dickerson, 413 F.2d 1111 (7th Cir. 1969); United States v. Casias, 306 F.Supp. 166 (D. Colo. 1969); United States v. Turzynski, 268 F.Supp. 847 (N.D. Ill. 1967). Specifically, under these cases, the Board bares an obligation under Miranda v. Arizona, 384 U.S. 436 (1969) to warn each applicant, at the time his application is solicited and certainly after it is received, of the provisions of regulation §201.12.

Whatever public claims the Board has heretofore been able to make with respect to the non-adversarial nature of its proceedings, the Board cannot now make them in good faith in light of regulation 201.12.

In both Dickerson and Casias, supra, non-criminal administrative proceedings (one involving tax audits and one involving a selective service local board appearance) resulted in statements being obtained from an applicant and thereafter forwarded to prosecutive authorities. These statements later resulted in the commencement of criminal

proceedings against the individuals. Relying on the decisions in Mathis and Miranda, the courts ordered suppression of the elicited, incriminating statements on the ground that the agencies, even in the context of an allegedly non-adversarial administrative proceeding, had failed to give appropriate warnings to the persons to whom the inquiry was directed. Accord, United States v. Turzynski, supra.

We assume that if the Board intends to retain regulation 201.12, appropriate amendments to the Board's initial mailings and application forms will be made incorporating the appropriate constitutional warnings in accordance with the aforecited opinions.

2 C.F.R. §202, et seq.
[Substantive Standards]

We first note the absence of definitions of the remedies offered by the Presidential Clemency Board.

We urge that the substantive standards explicitly state that the "executive clemency" to be recommended by the Board, whether or not it is contingent upon the performance of alternate service, is a full and complete pardon.

We urge that the substantive standards explicitly state that the military discharge to be recommended for former (or present) military personnel subject to the Board's mandate be an Honorable Discharge, given pursuant to the Presidential Clemency Program. (The discharge may be coded accordingly in

the confidential military records, but not on the papers issued to the veteran.) Since the Presidential Proclamation establishing the Clemency Program specifically disqualifies persons given discharges pursuant to the Clemency Program from receiving veteran's benefits, we recognize that issue to be beyond the scope of administrative rule-making.

IV. 2 C.F.R. §202.3(a). Aggravating Circumstances

(1) Prior adult criminal convictions.

We believe that criminal offenses unrelated to the acts which are subject to the clemency program should not be considered for any purpose whatever by the Board. A prior adult, criminal conviction has presumably been resolved in accordance with the law, and the applicant will have paid his penalty. Society has done with him on that score. The prior conviction cannot be subject to clemency; but neither should it become the occasion for double punishment of the clemency applicant, who now would pay once more for an offense for which punishment had already been executed.

(2) False statement by applicant to the Presidential Clemency Board.

We believe that this "aggravating circumstance" needs to be limited to material misstatements to the Board. We believe that it needs to be made clear who is the judge of the falsity of a material statement. Cf. Bronston v. United States, 409 U.S. 352 (1973).

We urge that the rules explicitly guarantee the applicant an opportunity to rebut the charge of a false material statement.

(3) Use of force by applicant collaterally to AWOL, desertion, missing movement, or civilian draft evasion offense.

This standard is objectionable: (a) There is, in all candor, something perverse and absurd about the United States Government, in the context of the Vietnam War, proposing to punish the violence of the war refusers. (b) If the use of force caused serious injury to persons, or damage to property, it would presumably have given rise to separate criminal proceedings. Cf. Bradley v. Laird, 315 F.Supp. 544 (D. Kan. 1970) aff'd, 449 F.2d 898 (10th Cir. 1971). The Presidential Clemency Board should not be a combined super-prosecutor and super-judge. (c) The relatedness of the "use of force," the proportionality of the force to the impulse to resist the war and to the circumstances of the resistance, should be held in mitigation of the conduct. If the use of force was collateral to acts being given clemency, this ought to temper the Board's judgment of the aggravating nature of the matter. It is only unrelated, quasi-criminal, use of force that might be more reasonably held against an applicant.

(5) Evidence that the applicant committed the offense for obviously manipulative and selfish reasons.

The intent here is benign, but the test misunderstands the nature of the war and people's response to it. Refusal to participate in the Vietnam War, however manipulative and selfish it may appear in a given case, is a quintessential example of Adam Smith's dictum that "private vices are public virtues." It is a tragic irony that a governmental body, established by the heir of the Kennedy, Johnson and Nixon administrations who prosecuted the Vietnam War with unparallelled manipulativeness, should now judge solitary citizens, holding no public responsibility or power, who wanted to pursue their own lives untrammeled by governmental intervention caused by a war that the American people increasingly rejected as a gigantic mistake. The selfish pursuit of one's own life is precisely what the Constitution safeguards against the unlawful interference by government. The government is not authorized to punish selfishness except where it interferes harmfully with other people.

(6) Prior refusal to fulfill alternate service.

Such prior refusal may be the result of an applicant's conscientious non-cooperation with the draft and the war. The Clemency Board should re-phrase the standard to meet the problem of conscientious non-cooperation with alternate service.

(7) Prior violation of probation or parole requirements.

Such prior violations of probation or parole have legal sanctions sufficient in themselves. Treating such violations as "aggravating circumstances" subjects the applicant to double jeopardy and double punishment. See comment on 2 C.F.R. §202.3(a), supra.

V. 2 C.F.R. §202.4(b). Mitigating Circumstances

(7) Substantial evidence of personal or procedural unfairness in treatment of applicant by Selective Service System or by a military service.

It is the duty of the government to treat those subject to its jurisdiction with fairness. Where there is "substantial evidence of personal or procedural unfairness," such evidence should be held in exculpation, not merely in mitigation of the applicant's offense. Applicants falling in this category may, in fact, have a claim under 28 U.S.C. §2255 to have their convictions set aside.

(8) Denial of conscientious objector status, of other claim for Selective Service exemption or deferment, or of a claim for hardship discharge, compassionate reassignment, emergency leave, or other remedy available under military law, on procedural, technical, or improper grounds, or on grounds which have subsequently been held unlawful by the judiciary.

(cont.)

From our comments on subparagraph (7), supra, it follows a fortiori that wrongful denial of such an application should serve as a totally exculpating factor, not as a mitigating one.

(10) Voluntary submission to authorities by applicant.

Many war resisters disbelieved in the legitimacy of the government's war policies and therefore, disbelieved in the legitimacy of the government's power to punish those who refused to participate in the war. They did not intend to be imprisoned martyrs, nor were their political commitments attuned to "bearing moral witness" (in the style of the 1960's civil disobedience). Avoiding arrest and prosecution was, for them, not a selfish and self-protective act, but a moral-political gesture as well, precisely as the conduct of a member of the French underground might have been during World War II. The failure to submit to authorities voluntarily, therefore, should not be held against applicants, and this standard for mitigation by implication would weigh against applicants who were apprehended.

VI. 2 C.F.R. §202.5. Calculation of Length of Alternative Service

This section gives no standards for the calculation of alternate service periods for veterans with less-than-honorable discharges which were issued administratively.

Since that is numerically the largest class by far of persons qualifying for Board consideration, this omission is a serious fault.

(2), (3), (4) That starting point will be reduced by three times the amount of prison time served. ...etc.

This calculus necessarily makes the Board function as a body that metes out compensatory punishment. Where an applicant had a liberal court and received a brief or probationary sentence, the Board will now see to it that the judge's decency and the applicant's good fortune are undone by the Board's calculations. Since we can only agree that prison time served should be a mitigating factor, we cannot suggest a way out of this dilemma except to indicate that this paradox is inherent in a punitive clemency system such as this.

(5) The remainder of those three subtractions will be the "baseline period of alternative service" applicable to a particular case before the Board, provided that the baseline period of alternative service shall not exceed a judge's sentence to imprisonment in any case, and provided further that the baseline period of alternative service shall be, notwithstanding the remainder of the calculation above, not less than a minimum of three (3) months.

(cont.)

This regulation fails to take into account the provisions of 18 U.S.C. §§4161[7/] and 4162[8/] which provide for statutorily mandated computation of non-discretionary "good time."

7/ §4161. Computation generally

Each prisoner convicted of an offense against the United States and confined in a penal or correctional institution for a definite term other than for life, whose record of conduct shows that he has faithfully observed all the rules and has not been subjected to punishment, shall be entitled to a deduction from the term of his sentence beginning with the day on which the sentence commences to run, as follows:

Five days for each month, if the sentence is not less than six months and not more than one year.

Six days for each month, if the sentence is not more than one year and less than three years.

Seven days for each month, if the sentence is not less than three years and less than five years.

Eight days for each month, if the sentence is not less than five years and less than ten years.

Ten days for each month, if the sentence is ten years or more.

When two or more consecutive sentences are to be served, the aggregate of the several sentences shall be the basis upon which the deduction shall be computed. As amended Sept. 14, 1959, Pub.L. 86-259, 73 Stat. 546.

8/ §4162. Industrial good time

A prisoner may, in the discretion of the Attorney General, be allowed a deduction from his sentence of not to exceed three days for each month of actual employment in an industry of camp for the first year or any part thereof, and not to exceed five days for each month of any succeeding year or part thereof.

In the discretion of the Attorney General such allowance may also be made to a prisoner performing exceptionally meritorious service or performing duties of outstanding importance in connection with institutional operations.

Such allowance shall be in addition to commutation of time for good conduct, and under the same terms and conditions and without regard to length of sentence.

The second clause of this regulation should therefore be amended to read:

> "...provided that the baseline period of alternate service shall exceed neither a judge's sentence to imprisonment nor the actual time which would be served under such sentence as provided in 18 U.S.C. §§4161 and 4162..."

In addition, the establishment of a minimum three month baseline should be eliminated since, in reality, it will, with the state of the economy, be impossible for anyone to secure employment for a period of ninety days. The only possible equitable way to retain the three month baseline formula would be to add a provision giving credit for bona fide time spent by a clemency applicant looking for work.