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TRUMAN



FEDERAL REGISTER



VOLUME 11

NUMBER 250

Washington, Wednesday, December 25, 1946

The President

EXECUTIVE ORDER 9814

ESTABLISHING AN AMNESTY BOARD TO REVIEW CONVICTIONS OF PERSONS UNDER THE SELECTIVE TRAINING AND SERVICE ACT OF 1940 AND TO MAKE RECOMMENDATIONS FOR EXECUTIVE CLEMENCY WITH RESPECT THERE TO

By virtue of the authority vested in me as President of the United States by section 2 of Article II of the Constitution of the United States, which provides that "The President shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment," and in the interest of the internal management of the Government, it is ordered as follows:

1. There is hereby established a board of three members, which shall be known as the President's Amnesty Board. The members of the Board shall be appointed by the President, who shall also designate its chairman.

2. The Board, under such regulations as it may prescribe, shall examine and consider the cases of all persons convicted of violation of the Selective Training and Service Act of 1940, as amended (50 U. S. C. App. 301 ff.), or of any rule or regulation prescribed under or pursuant to that Act, or convicted of a conspiracy to violate that Act or any rule or regulation prescribed under or pursuant thereto. In any case in which it deems it desirable to do so, the Board shall make a report to the Attorney General which shall include its findings and its recommendations as to whether Executive clemency should be granted or denied, and, in any case in which it recommends that Executive clemency be granted, its recommendations with respect to the form that such clemency should take. The Attorney General shall report the findings and recommendations of the Board to the President, with such further recommendations as he may desire to make.

3. The members of the Board shall serve without compensation, but shall be entitled to necessary expenses incurred in the performance of their duties under this order.

All executive departments and agencies of the Federal Government are authorized and directed to cooperate with the Board in its work, and to furnish the Board all appropriate information and assistance.

The Board shall cease to exist, unless otherwise provided by further Executive order, upon the submission of its final recommendations to the President by the Attorney General.

HARRY S. TRUMAN

THE WHITE HOUSE, December 23, 1946.

[F. R. Doc. 46-21944; Filed, Dec. 23, 1946; 3:17 p. m.]

Regulations

TITLE 6—AGRICULTURAL CREDIT

Chapter I—Farm Credit Administration, Department of Agriculture

Subchapter D—Federal Intermediate Credit Banks

PART 40—GENERAL

PART 41—INTEREST AND DISCOUNT RATES

ORGANIZATION AND FUNCTIONS

Whereas, the substance of § 40.101 of Title 6 of the Code of Federal Regulations, relating to the functions of the Federal intermediate credit banks, has been incorporated in § 40.2 of Title 6, and the substance of § 40.102 of Title 6, relating to the supervision of the Federal intermediate credit banks by the Intermediate Credit Commissioner, has been incorporated in §§ 2.1 and 2.2 of Title 6; and whereas, Part 41 of Title 6 of the Code of Federal Regulations is now entitled "Organization and Internal Affairs," while the organization of the Federal intermediate credit banks is described in Part 40, § 40.1 of Title 6 thereof and not in Part 41:

Sections 40.101 and 40.102 of Title 6 of the Code of Federal Regulations are hereby rescinded.

The title of Part 41 of Title 6 of the Code of Federal Regulations is hereby

(Continued on next page)

CONT

THE PRE

EXECUTIVE ORDER:

Amnesty Board to review convictions of persons under Selective Training and Service Act; recommendations for executive clemency thereto; establish

REGULATIONS

AGRICULTURE, DEPARTMENT OF: also Farm Credit Administration.

Milk handling in Council Bluffs area; rules.

Rice; set aside requirements and restrictions on and milling of (20)

FARM CREDIT ADMINISTRATION: Federal intermediate credit banks; organization and functions.

General: Interest and discount rates.

FEDERAL POWER COMMISSION: Consolidated Gas hearing.

FEDERAL SAVINGS AND LOAN CORPORATION: Insurance of accounts; commissions; rules.

HOUSING EXPEDITORS: Delegations of functions; directives to production Administration. Nails, housing. Soil pipe, cast.

INTERSTATE COMMERCE COMMISSION: Car service; suspension of murrage rules. Commodities, unloading. Orleans, La.

SECURITIES AND EXCHANGE COMMISSION:

Hearings, etc.: American Telegraph and Telephone Engineers Public. Hudson River

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DRAFT LAW VIOLATORS—PARDON

terms, conditions, and qualifications set forth in that schedule and in parts I, II, or III of that agreement, to all articles of the kinds provided for in the said descriptions, except that no such rate shall be applied to a particular article by virtue of this proclamation if, when the article is entered, or withdrawn from warehouse, for consumption,—

(I) The rate represents a concession identified in the list set forth in the 5th recital of this proclamation,

(II) The rate is specified in item 720(a), item 745, item 806(b), or the first item 1529(a) in part I of schedule XX of said general agreement as set forth in the document annexed to this proclamation,¹⁹ or

(III) More favorable customs treatment is prescribed for the article by a statute, proclamation, or executive order then in effect;

(b) The rates of duty specified in the 9th recital of this proclamation shall be applied respectively to the articles described in the column at the left of such rates as though the said rates, descriptions, and related paragraph numbers appeared in part I of schedule XX of said general agreement; and

(c) Nothing in this proclamation shall be construed as authorizing the application of any rate of duty or import tax computed on the basis of the provisions of article I of the said general agreement, except such rates as may hereafter be proclaimed pursuant to the provisions of section 350, Tariff Act of 1930, as amended;

AND I do further proclaim that, on and after January 1, 1948, the effectiveness of said proviso to subdivision (J) of section 304(a) (3) of the Tariff Act of 1930, as amended, shall be suspended, except with respect to bundles of red-cedar shingles.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the United States of America to be affixed.

DONE at the City of Washington this sixteenth day of December, in the year of our Lord nineteen hundred and forty-seven and of the Independence of the United States of America the one hundred and seventy-second.

HARRY S. TRUMAN

By the President:

ROBERT A. LOVETT,

Acting Secretary of State.

No. 2762

12-F. R. 8731

GRANTING PARDON TO CERTAIN PERSONS CONVICTED OF VIOLATING THE SELECTIVE TRAINING AND SERVICE ACT OF 1940 AS AMENDED

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

WHEREAS by Executive Order No. 9814 of December 23, 1946,²⁰ there was established the President's Amnesty Board, the functions and duties of which were set out in paragraph 2 of the said Executive order as follows:

"The Board, under such regulations as it may prescribe, shall examine and consider the cases of all persons convicted of violation of the Selective Training and Service Act of 1940, as amended (50 U. S. C. App. 201ff.), or of any rule or regulation prescribed under or pursuant to that Act, or convicted of a conspiracy to violate that Act or any rule or regulation prescribed under or pursuant thereto. In any case in which it deems it desirable to do so, the Board shall make a report to the Attorney General which shall include its findings and its recommendations as to whether Executive clemency should be granted or denied, and, in any case

¹⁹ See footnote 12.

²⁰ U.S. Code Cong. Service 1946, p. 1882.

PROCLAMATIONS

in which it recommends that Executive clemency be granted, its recommendations with respect to the form that such clemency should take. The Attorney General shall report the findings and recommendations of the Board to the President, with such further recommendations as he may desire to make."

and
WHEREAS the Board, after considering all cases coming within the scope of paragraph 2 of the said Executive order, has made a report to the Attorney General, which includes the findings of the Board and its recommendation that Executive clemency be granted in certain of such cases; and

WHEREAS the Attorney General has submitted such report to me with his approval of the recommendation made by the Board with respect to Executive clemency; and

WHEREAS upon consideration of the report and recommendation of the Board and the recommendation of the Attorney General, it appears that certain persons convicted of violating the Selective Training and Service Act of 1940²¹ as amended ought to have restored to them the political, civil, and other rights of which they were deprived by reason of such conviction and which may not be restored to them unless they are pardoned:

NOW, THEREFORE, I, HARRY S. TRUMAN, President of the United States of America, under and by virtue of the authority vested in me by Article II of the Constitution of the United States, do hereby grant a full pardon to those persons convicted of violating the Selective Training and Service Act of 1940 as amended whose names are included in the list of names attached hereto [List Omitted] and hereby made a part of this proclamation.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the United States of America to be affixed.

DONE at the City of Washington this 23rd day of December in the year of our Lord nineteen hundred and forty-seven, and of the Independence of the United States of America the one hundred and seventy-second.

HARRY S. TRUMAN

By the President:

ROBERT A. LOVETT, Acting Secretary of State.

No. 2763

12 F. R. 8866

TERMINATION OF TRADE AGREEMENT PROCLAMATIONS

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

WHEREAS (1), pursuant to the authority conferred by section 350 (a) of the Tariff Act of 1930, as amended by the act of June 12, 1934 entitled "AN ACT To amend the Tariff Act of 1930" (48 Stat. 943 and 944, ch. 474)²² the President of the United States of America entered into the following trade agreements:

(a) With the Belgo-Luxemburg Economic Union on February 27, 1935 (49 Stat. (pt. 2) 3681 to 3716), which trade agreement was proclaimed by the President on April 1, 1935 (49 Stat. (pt. 2) 3680 to 3717).

(b) With the Government of the French Republic on May 6, 1936 (53 Stat. (pt. 3) 2237 to 2290), which trade agreement was proclaimed by the President on May 16, 1936 (53 Stat. (pt. 3) 2236 to 2291), and

(c) With Her Majesty the Queen of the Netherlands on December 26, 1935 (50 Stat. (pt. 2) 1505 to 1557), which trade agreement was pro-

²¹ 50 U.S.C.A. Appendix, § 391 et seq.
²² 49 U.S.C.A. § 1351.

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For Truman Dec 1947



REPORT OF THE PRESIDENT'S AMNESTY BOARD

The President's Amnesty Board, established by Executive Order of December 23, 1946, to review convictions under the Selective Training and Service Act of 1940, as amended, and to make recommendations for Executive Clemency, has completed its task and submits this, its first and final report.

Before adopting any general policies, the Board heard representatives of interested parties and groups. It heard representatives of historic peace churches, of the Federal Council of Churches of Christ in America, leaders of the Watchtower Bible and Tract Society (whose followers are known as Jehovah's Witnesses), officials of the United States Army and Navy, and the National Headquarters of Selective Service, representatives of citizens' groups, veterans' organizations, and pacifist organizations. Some of the violators themselves, formerly inmates of penal institutions, appeared, either in person or by representatives, and were heard.

Their recommendations varied from that of a general amnesty to all violators regardless of the circumstances, to a refusal of amnesty to anyone. To grant a general amnesty would have restored full civil status to a large number of men who neither were, nor claimed to be, religious conscientious objectors.

In perhaps one-half of the cases considered, the files reflected a prior record of one or more serious criminal offenses. The Board would have failed in its duty to society and to the memory of the men who fought and died to protect it, had amnesty been recommended in these cases. Nor could the Board have justified its existence, had a policy been adopted of refusing pardon to all.

(OVER)

15,805 cases examined

-2-

In establishing policies, therefore, we were called upon to reconcile divergencies, and to adopt a course which would, on the one hand, be humane and in accordance with the traditions of the United States, and yet, on the other hand, would uphold the spirit of the law.

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Examination of a large number of cases at the outset convinced us that to do justice to each individual as well as to the Nation, it would be necessary to review each case upon its merits with the view of recommending individual pardons, and that no group should be granted amnesty as such.

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Adequate review of the 15,805 cases brought to our attention would have been impossible had it not been for the cooperation of Government departments and agencies, such as the Office of the Attorney General, the Federal Bureau of Investigation, the Bureau of Prisons, the Criminal Division of the Department of Justice, the United States Probation Officers, the Administrative Office of the United States Courts, United States Attorneys throughout the country, the Armed Forces of the United States and the Headquarters of Selective Service. The records of these offices were made available, and those in charge furnished requested information.

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The information derived from all sources was briefed by a corps of trained reviewers. It included such essential data as family history, school and work records, prior criminal record, if any, religious affiliations and practices, Selective Service history, nature and circumstances of offenses, punishment imposed, time actually served in confinement, custodial records, probation reports, and conduct in society after release. In addition, the Board had in most instances psychiatric reports and one or more voluntary statements by the offender concerning the circumstances of the offense.

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When the Board organized in January 1946, about 1200 of the 15,805 violators of Selective Service were in penal institutions. The number diminished daily. At the present time there are 626 in custody; 550 of these have been committed since the constitution of this Board. The work of the Board was directed chiefly to examining the propriety of recommending restoration of civil rights to those who have been returned to their homes.

In analyzing the cases we found that they fell into classes, but that in each class there were exceptional cases which took the offender out of the class and entitled him to special consideration. The main divisions into which the cases fell were (1) those of violation due to a wilful intent to evade service, and (2) those resulting from beliefs derived from religious training or other convictions.

At least two-thirds of the cases considered were those of wilful violation, not based on religious scruples. These varied greatly in the light of all the relevant facts disclosed in each case. It became necessary to consider not only the circumstances leading up to the offense, but the subject's background, education, and environment. In some instances what appeared a wilful violation was in fact due to ignorance, illiteracy, honest misunderstanding or carelessness not rising to the level of criminal negligence. In other cases the record showed a desire to remedy the fault by enlistment in the Armed Forces.

Many of the wilful violators were men with criminal records; men whose records included murder, rape, burglary, larceny, robbery, larceny of Government property, fraudulent enlistment, conspiracy to rob, arson, violations of the narcotics law, violations of the immigration laws, counterfeiting, desertion from the United States Armed Forces, embezzlement, breaking and

(OVER)

entering, bigamy, drinking benzedrine to deceive medical examiners, felonious assault, violations of National Motor Vehicle Theft Act, extortion, blackmail, impersonation, insurance frauds, bribery, black market operations and other offenses of equally serious nature; men who were seeking to escape detention for crimes committed; fugitives from justice; wife deserters; and others who had ulterior motives for escaping the draft. Those who for these or similar reasons exhibited a deliberate evasion of the law, indicating no respect for law or the civil rights to which they might have been restored, are not, in judgment, deserving of a restoration of their civil rights, and we have not recommended them for pardon.

Among the violators, quite a number are new mental cases. We have made no attempt to deal with them, since most of them remain in mental institutions with little or no chance of recovery. Until they recover mental health their loss of civil rights imposes no undue burden.

The Board has made no recommendation respecting another class of violators. These are the men who qualify for automatic pardon pursuant to Presidential Proclamation No. 2676, dated December 24, 1945. They are the violators who, after conviction, volunteered for service in the Armed Forces prior to December 24, 1945, and received honorable discharges following one year or more of duty. Most of those who, prior to the last-mentioned date and subsequent to that date, entered the Army and received honorable discharges with less than a year of service have been recommended for pardon. These have brought themselves within the equity of the President's Proclamation, No. 2676.

The second main class of violators consists of those who refused to comply with the law because of their religious training, or their religious,

political or sociological beliefs. We have classified them, generally, as conscientious objectors. It is of interest that less than six per cent of those convicted of violating the Act asserted conscientious conviction as the basis of their action. This percentage excludes Jehovah's Witnesses, whose cases are dealt with hereafter. Although the percentage was small, these cases presented difficult problems.

The Selective Service Boards faced a very difficult task in administering the provisions concerning religious conscientious objection. Generally speaking, they construed the exemption liberally. Naturally, however, Boards in different localities differed somewhat in their application of the exemption. In recommending pardons, we have been conscious of hardships resulting from the factor of error.

Many of the Selective Service Boards did not consider membership in an historic peace church as a condition to exemption of those asserting religious conscientious objection to military service. Nor have our recommendations of pardons been so strictly limited. We have recommended individuals who were members of no sect or religious group, if the subject's record and all the circumstances indicated that he was motivated by a sincere religious belief. We have found some violators who acted upon an essentially religious belief, but were unable properly to present their claims for exemption. We have recommended them for pardon.

We found that some who sought exemption as conscientious objectors were not such within the purview of the Act. These were men who asserted no religious training or belief but founded their objections on intellectual, political, or sociological convictions resulting from the individual's reasoning and personal economic or political philosophy. We have not felt justified

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in recommending those who thus have set themselves up as wiser
competent than society to determine their duty to come to the d
Nation.

Some of those who asserted conscientious objections w
have been moved in fact by fear, the desire to evade military s
the wish to remain as long as possible in highly paid employment

Under the law, a man who received a IV-E classificati
conscientious objector, instead of being inducted into the Arme
assigned to a Civilian Public Service Camp. The National Head
Selective Service estimates that about 12,000 men received this
tion, entered camps and performed the duties assigned them. Ce
conscientious objectors refused to go to such camps on being aw
classification, or, after arriving at the camps, refused to comp
regulations and violated the rules of the camps in various ways
against what they thought unconstitutional or unfair administr
camps. Some deserted the camps for similar reasons. ^{clude the} We may co
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good faith. But they refused to submit to the provisions of the
Service Act, and were convicted for their intentional violation
There was a method to test the legality of their detention in th
few of them resorted to that method. Where other circumstances
have recommended them for pardon. But most of them simply ass
superiority to the law and determined to follow their own wish
law. We think that this attitude should not be condoned, and w
from recommending such persons for favorable consideration, unl
extenuating circumstances.

Closely analogous to conscientious objectors, and yet not within the fair interpretation of the phrase, were a smaller, though not inconsequential number of American citizens of Japanese ancestry who were removed in the early stages of the war, under military authority, from their homes in defense coastal areas and placed in war relocation centers. Although we recognize the urgent necessities of military defense, we fully appreciate the nature of their feelings and their reactions to orders from local Selective Service Boards. Prior to their removal from their homes they had been law-abiding and loyal citizens. They deeply resented classification as undesirable. Most of them remained loyal to the United States and indicated a desire to remain in this country and to fight in its defense, provided their rights of citizenship were recognized. For these we have recommended pardons, in the belief that they will justify our confidence in their loyalty.

Some 4,300 cases were those of Jehovah's Witnesses, whose difficulties arose over their insistence that each of them should be accorded a ministerial status and consequent complete exemption from military service, or Civilian Public Service Camp duty. The organization of the sect is dissimilar to that of the ordinary denomination. It is difficult to find a standard by which to classify a member of the sect as a minister in the usual meaning of that term. It is interesting to note that no representations were made to Congress when the Selective Service Act was under consideration with respect to the ministerial status of the members of this group. Some time after the Selective Service Act became law, and after many had been accorded the conscientious objector status, the leaders of the sect asserted that all of its members were ministers. Many Selective Service Boards classified Jehovah's Witnesses as conscientious objectors, and consequently assigned them to

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Civilian Public Service Camps. A few at first accepted this classification after the policy of claiming ministerial status had been adopted, they changed their claims and they and other members of the sect insisted upon complete exemption as ministers. The Headquarters of the Selective Service, after some consideration, ruled that those who devoted practically their entire time to "witnessing", should be classified as ministers. The Watchtower Society maintains lists available to Selective Service. It is claimed that these lists were complete. The Selective Service Boards' problem was a difficult one. We have found that the action of the Boards was not wholly consistent in attributing ministerial status to Jehovah's Witnesses, and we have endeavored to correct any discrepancy by recommending pardons to those we think should have been classified.

The sect has many classes of persons who appear to be awarded the official titles by its headquarters, such as company servants, company publishers, advertising servants, etc. In the case of almost all these persons the member is employed full time in a gainful occupation in the secular world. He "witnesses", as it is said, by distributing leaflets, playing phonographs, calling at houses, selling literature, conducting meetings, etc., in his spare time, and on Sundays and holidays. He may devote a number of hours per month to these activities, but he is in no sense a "minister" as the phrase is commonly understood. We have not recommended for pardon any of these secular workers who have witnessed in their spare or non-working time. Many of them perhaps would have been granted classifications other than I-A had they applied for them. They persistently refused to accept any classification except that of IV-D, representing ministerial, and, therefore, complete exemption. Many of their offenses embraced refusal to register, refusal to submit to physical

classification, examination, and refusal to report for induction. They went to jail because of these refusals. Many, however, were awarded a IV-E classification as conscientious objectors, notwithstanding their protestation that they did not want it. These, when ordered to report to Civilian Public Service Camps, refused to do so and suffered conviction and imprisonment rather than comply. While few of these offenders had theretofore been violators of the law, we cannot condone their Selective Service offenses, nor recommend them for pardons. To do so would be to sanction an assertion by a citizen that he is above the law; that he makes his own law; and that he refused to yield his opinion to that of organized society on the question of his country's need for service.

In summary we may state that there were 15,805 Selective Service violation cases considered. In this total there were approximately 10,000 wilful violators, 4,300 Jehovah's Witnesses, 1,000 religious conscientious objectors and 500 other types. Of this total 618 were granted Presidential pardons because of a year or more service with honorable discharges from the Armed Forces. An additional approximate 900 entered the Armed Forces and may become eligible for pardon upon the completion of their service. When the Board was created there were 1,200 offenders in custody. Since that date an additional 550 have been institutionalized. At the present time there are 626 in confinement, only 76 of whom were in custody on January 6, 1947.

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TABULATION

| | | |
|---|-----------------------------------|------|
| Convictions under Selective Service Act considered | | 15,8 |
| Wilful Violators (Non-conscientious Objectors) | approximately 10,000 | |
| Jehovah's Witnesses | approximately 4,300 | |
| Conscientious Objectors | approximately 1,000 | |
| Other Types of Violators | approximately 500 | |
| Those who have received Presidential pardons under Presidential Proclamation 2676 dated December 24, 1945 | approximately 618 | |
| Those who entered the Armed Forces and may receive pardons | approximately <u>900</u> 1,518 | |
| Recommended by this Board | <u>1,523</u> | |
| Total recommended for pardon and who may earn pardon through service in the Armed Forces | 3,041 | |

The Board recommends that Executive clemency be extended to the 1,523 individuals whose names appear on the attached list, attested as to its correctness by the Executive Secretary of the Board, and that each person named receive a pardon for his violation of the Selective Training and Service Act of 1940, as amended.

Owen J. Roberts, Chairman

Willis Smith

James F. O'Neil

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February 29, 1972

TO: Senator Edward M. Kennedy

FROM: Chief Counsel, Subcommittee on Administrative
Practice and Procedure
Senate Committee on the Judiciary

President Truman's post-World War II Amnesty Board



Background Information

For mainly nonpolitical cases, in two respects the general appeal of amnesty after World War II may actually have been greater than today. First, a review of the Amnesty Board files makes it appear that unintentional technical violations of the Selective Service rules and laws were punished by criminal conviction and prison terms much more often than I have the impression they are today. Second, the Seeger and Welsh cases were far in the future, so the definition of a conscientious objector was somewhat narrower than it is today; many persons who are not conventionally religious can now get CO status-- though they must still, of course, after last year's Gillette and Negre decision, object to war in general.

For political cases, of course, the situation is vastly different because of the widespread strong feeling against the Vietnam War.

One other background item is that the Amnesty Board was not President Truman's first action in the field: about a year before he established the Board and about two years before his amnesty grant, he proclaimed a pardon for all those who had from 1941 to 1945 been convicted of violating a federal (civilian) criminal law but subsequently served at least a year in the armed forces and were honorably discharged, with the pardon applying also to those still in at the time of the proclamation who later got honorable discharges. This action eliminated a fair number of cases from those the Board had to consider seriously.

The Amnesty Board

Pursuant to the President's constitutional power of pardon, President Truman in late 1946 established the Amnesty Board, which existed for just under one year. It consisted of former Justice Owen Roberts as chairman, with Willis Smith (subsequently Senator from North Carolina?) and James O'Neil, our witness, as members.

The Board was to examine all convictions under the 1940 Selective Service law and make recommendations for executive clemency; the order setting up the Board established no particular standards. The Board reviewed 15,805 cases (I reckon that means about 60 per working day if you spread it over a year evenly; I found no working memoranda on procedure, but dates on case files were widely spread out), noted about 1518 already pardoned or eligible for pardon under the 1945 proclamation, and recommended 1523 pardons. The President endorsed that recommendation, and the men were pardoned.

Criteria Mentioned in the Board's Report

1) No amnesty in cases involving prior serious crimes (about 1/2 of all cases). My impression from the files is that this was not followed 100%.

2) Rectifying nonuniformity among local board treatments of conscientious objector claims. The Board said it was not trying to be strict but to look for "essentially religious belief" behind objections.

3) Denial of amnesty in nonreligious--intellectual, political, social, etc.--objection cases, because these persons "set themselves up as wiser and more competent than society to determine their duty to come to the defense of the Nation." The files, and the case summaries in the Appendix, indicate that the Board often deviated from this rule when it found extenuating circumstances.

4) No consideration for those who had acted out of apparent fear or desire simply to keep a good civilian job.

5) No favorable consideration, absent extenuating circumstances, for those who received conscientious objector status but refused to perform required noncombat or civilian duty.

6) Favorable consideration for relocated Japanese-origin citizens. There appears to have been something of a movement among interned Japanese to say they would not serve unless they were restored their full rights as citizens.

7) Distinction among Jehovah's Witnesses based on whether they appeared to be doing full-time ministerial work or not. The Witnesses all waived CO status and all claimed ministerial exemptions.

Limitations Flowing From the Board's Jurisdiction

Since the Board was considering only cases involving convictions under the Selective Service laws, it did not at all get into three types of cases we might be interested in:

1) Deserters. (N. B. " Deserters got no consideration from the 1945 pardon either, since it was limited to violators of federal civilian laws.)

2) Expatriates. I discovered a few cases of people who had spent some time in Mexico, but they were being considered only because they had been convicted after returning.

3) Domestic fugitives not yet convicted.

Nature of Most Cases Considered

Of the 15,805 cases considered, fully 14,300 were either technical violators of greater or lesser severity--from determined, selfishly motivated draft dodgers and serious criminals down to those who forgot to tell their board of a change of address (10,000 in all)--or Jehovah's Witnesses (4,300). There were about 1,000 CO's and 500 others.

N. B. : It should therefore be recognized that opening the question of amnesty may get us into considering huge numbers of messy little cases of people who, say, just registered late. Nothing necessarily wrong with that, but we should be aware of it.

Main Types of Cases and Policy in 1947 with Implications for Present

The following is based exclusively on my survey of the investigation files and represents an effort to summarize the treatment given to the several categories which the Amnesty Board considered. (The files, incidentally, consist mainly of one-page summaries of cases prepared by the Board's staff of reviewers.) I then try to comment briefly on the relation of the policy adopted in 1947 to present consideration of amnesty.

Conscientious Objectors

There were many categories of conscientious objectors, and their treatment varied widely from one category to another.

Religious general COs with properly presented claims. Many people seem to have been inexplicably denied CO status by unsympathetic local boards and to have been subsequently convicted. The Board seems to have tried to iron out disparities on a basis then considered lenient. My impression is that local boards are somewhat less nasty today, but that there is still plenty of variance. The variance that exists probably gets reduced by the courts more than it did during the war as people fight convictions. Still, what remains strikes me as likely being ample to justify consideration of amnesty even for those who generally don't like the idea, and we might be able to use the argument (with the double edge that it's both obviously right and has been done before) as an entering wedge with the unsympathetic, and perhaps as a way to get established a board with vague jurisdiction which it might interpret broadly.

Religious general COs with some procedural problem. Many CO's didn't follow all the rules and would, for example, refuse to have anything to do with the System at all and therefore not register, or refuse alternate service, or start alternate service and quit. The Board seems to have had a mild presumption against these types, especially the latter two, but was willing to grant amnesty in some cases if there were mitigating circumstances or the person impressed the reviewer with his exceptional sincerity. I think we convict most of these people today, and since their appeal is somewhat less than the previous category the precedent value is helpful.

Religious selective CO's. For all practical purposes, there were none in the files I read. One case of a Catholic wasn't clear whether the objection was general or selective, and amnesty was denied. Such people would be numerous today, especially Catholic "just war" theory objectors, and are one of the very most appealing groups even after the Supreme Court decisions last year in Gillette and Negre. There is, at any rate, no really strong precedent against them, though the Board almost certainly wouldn't have liked them if it had had to face the question. Better not ask O'Neil anything about these -- you'd probably get a lecture on how you can't pick your war.

"Nonreligious" general CO's -- within Seeger-Welsh criteria.

These men had little luck from draft boards, courts, and the Amnesty Board. The Board showed some give if there were extenuating circumstances. Most of these people, provided they were willing to register and present a CO claim today, would get proper CO treatment under the Seeger-Welsh broadening of the definition of "religious." There should be relatively few cases of such people as candidates for amnesty today.

Nonreligious COs. Since the Seeger-Welsh line had not been drawn back then, these people got the same treatment as the immediately preceding category -- generally unsympathetic, especially if the objection appeared "political;" but the more the objection appeared general and close to "religious," the more the Board seemed to be willing to bend. Many of these people are getting convicted or leaving the country today, and like the religious selective CO's they constitute one of the largest and most appealing groups for amnesty today. There is, however, a fairly strong and square precedent against them in the Board's practice, somewhat attenuated by their willingness to bend in appealing cases. If you ask O'Neil any questions at all in this area, perhaps a good line would be to press him on why they waffled as much as they did and whether that doesn't indicate the case here is stronger than people often think it is.

Expatriates

None were considered, except a very few who had left temporarily had been prosecuted on return. They were not considered as a special category -- they fit in elsewhere, as "wilful violators" or COs. Consideration of expatriates not convicted and still outside the country was outside the Board's jurisdiction. There are no precedents here for one of your biggest problems today, the expatriates -- SSS violators and deserters -- who cannot return because of citizenship problems or must at least face prosecution.

Deserters

Not as such in the Board's jurisdiction, though desertion from service after entering it subsequent to conviction would have been an unfavorable circumstance. The Senator might be interested in teeing off a little on the limitation in Taft's bill because of how it discriminates in favor of middle-class intellectuals who know their minds before they get drafted, as opposed to the lower-class people who find out the military doesn't agree with them once they're in. Consistent with his stand against the volunteer army.

"Wilful Violators"

This was the Board's catchall category for those who didn't seem to have a reason like conscientious objection. They were treated pretty much on a case-by-case basis, with a search made for mitigating or aggravating circumstances. (See Appendix I for list of miscellaneous factors.) My impression is that in minor cases we're much less likely to see prosecutions

today. If there is to be another amnesty, I suppose these should get the same kind of selective consideration because many are rather blatant draft-evaders. I think it would be wise to consider this before saying anything which could sound like a blanket call for amnesty.

Japanese Internees

The Board really sympathized with these men and let nearly all of them off, even including one who had tried (but failed) to renounce U.S. citizenship so he could go fight for Japan. I found no cases of resident Japanese aliens --all were American citizens of Japanese origin and nearly all refused to be drafted because their rights as citizens were being denied. The only denial of amnesty I found was of a resident of Hawaii, where I think there was no internment. I don't really think there's any group today to which the Japanese analogy can fairly be applied, unless we make the major extension implicit behind much pro-amnesty argument that all refusers should be treated as the Japanese were out of respect for their strong views --as the Board put it, "we fully appreciate the nature of their feelings" and "we have recommended pardons, in the belief that (the Japanese-Americans) will justify our confidence in their loyalty."

Jehovah's Witnesses

After a short period of confusion at the beginning of the war, all Witnesses waived CO application and demanded exemption as ministers. Most were denied by the draft boards and the courts. The Amnesty Board tried to pick out those who were essentially serving as ministers by working full time at it, and pardoned them only. I don't know if the Witnesses still make the same demand or how the draft boards and courts treat them. I should hope things have changed, but if they haven't then I suppose the old policy still makes sense on amnesty.

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Miscellaneous comments

The whole Amnesty Board precedent is very tricky--it's helpful in arguing there should be some amnesty, but not particularly useful in arguing for general amnesty. The latter problem might be gotten around somewhat by pointing out how much there were general decisions for categories, especially the Japanese-Americans, and suggesting that because of the nature of affairs now we might want to make general favorable decisions in important categories, still reserving the possibility of case-by-case decision where appropriate.

There is a very uncomfortable problem lurking here for many lawyers and civil libertarians. Insofar as amnesty is based on the theory that it is deserved because refusers and deserters and expatriates were right before a lot of the rest of us were, you get into the problem of rewarding or punishing people because of their political beliefs. The Supreme Court has struck down punishment for belief in many contexts. Many refusers in prior wars were doubtless very sincere--are they, and future refusers in some popular war, to be denied amnesty for equally deeply held beliefs with little or no distinction beyond the fact that the majority thinks their ideas are wrong?

Possible Questions for O'Neil

Operations

Generally, how did the members of the Board go about considering the individual cases?

How much time did you average on each?

Was there a great deal of difference in the time you spent on some hard cases as compared to others?

What were the kinds of factors that would generally make you override the recommendation of a reviewer?

Did you operate by majority vote, or by trying hard to reach a unanimous consensus on each case, or how?

Did you treat differently the cases in which you were overruling reviewers' recommendations?

Was there a systematic effort to go through and make sure that there were not serious disparities in decisions?

Did you start out deciding on general policies for categories of violators, or did the policies grow out of consideration of individual cases?

(If it's the first in answer to the preceding question) Well, doesn't that indicate we'd still be following the spirit of your precedent if we made some general policy decisions about important categories of violators now?

Specific areas

Why did you deny nearly all the Black Muslim cases?

Why did you grant nearly all the Japanese-American internee cases?

(DANGEROUS QUESTION) Would you agree that it would be possible, and understandable (even if you don't agree with him) for an American youth today to feel as strongly and as unselfishly that he should not fight in Viet Nam, as did many Japanese-American internees whom you pardoned about accepting induction into the United States forces?

How was it that your Board departed so often from its rule of no amnesty for political objectors? (See Appendix 2 for list of amnesty grants to such people.)

General Questions

Without regard to which individuals or categories should receive amnesty, do you think there should be some system to

grant amnesty to at least some violators from the Vietnam War?

Based on your experience, is there anything you would have done differently on the Amnesty Board in 1947, or policies from then you would not follow if there were a similar operation now?

Appendix I --

Listing of Factors Which Apparently Weighed in Favor of or Against Amnesty

The following is simply a list of factors present in the reviewers' summaries which appear to have influenced the reviewers to recommend for or against amnesty. Many of the summaries contain no recommendation.

Factors Apparently Favoring Amnesty:

Unfortunate home background
Miscellaneous excuses and mitigating factors as sickness at time
of required registration
Good conduct in confinement
Ignorance of Selective Service laws and regulations
Illiteracy
Willingness to serve in the Armed Forces (this seemed to count
in favor even if a person was rejected for service)
Eligibility for exemptions which were not claimed
Sincerity
Status as a Japanese evacuee
Apparent unintentional nature of the violation
Triviality of the offense
Good record in service
Sincere religious objection not recognized by a local draft board,
or inadequately recognized
Importance of granting of amnesty to the individual's life and pro-
fessional career (for instance, if having the conviction permanently
on his record could prevent the person from ever practicing the
profession for which he was trained)

Factors Apparently Opposing Amnesty:

Membership in the Nation of Islam (every single Black Muslim case
that I came across was denied)
A conventional criminal record
Non-religious objection to the Selective Service System or the war
Presenting a claim to be a minister in Jehovah's Witnesses but not
spending full time in religious work
Lack of mitigating circumstances
General insincerity
Mental illness
Poor conduct in prison
Apparent desire to be a martyr
Sexual promiscuity
Being a Puerto Rican nationalist

Race was very frequently mentioned in the summaries, but there was no apparent strong pattern of differentiation based on racial factors. If anything, there may have been slightly greater indulgence shown to poor and uneducated Negroes.

Appendix II--Unusual Cases

The following are not representative summaries taken from the reviewers' files. They are, rather, cases of either grants or denials of amnesty which struck me as unusual in some important ways.

Cases in Which Amnesty Was Granted:

These are nearly all cases of non-religious conscientious objectors, since most other cases were fairly routine and uninteresting grants of amnesty which would not be particularly relevant to consideration of political amnesty today.

1. One "intellectual objector" who received amnesty had served in the peacetime American Army and had received an honorable discharge "with excellent character." He had been, in the years just before American entry into the Second World War, engaged in much anti-war work for mainly Catholic and Quaker groups, and perhaps also some secular ones such as the War Resisters League and Peace House. (I'm not sure whether these two groups are secular or religious.) This person sought and was denied conscientious objector status, and he then refused to report for induction. There was very little in his case history on whether or not he had any religious background. Some of the comments about him which seem to have influenced the decision in favor granting him amnesty were "fine character" and "sincere in his conscientious objections."

2. One "intellectual objector" had been convicted for failure to register. He was amnestied with his case history presenting the following facts: He was an older person, therefore probably not subject to draft but simply required to register, and was aged 33 when he was convicted. He had said that he was a conscientious objector, but he was a member of no religious training. He said he had failed to register for fear of being forced to kill. He said that he would have been willing to serve in non-combat status, but that he not known how to go about getting it. The reviewer of this man's file made no recommendation for or against amnesty.

3. One person who received amnesty after having failed to register for Selective Service was described as a sincere objector who was a religious fanatic though not a member of any sect. After being paroled from his sentence he worked at a hospital. In several similar cases, amnesty was not granted.

4. A man described as an "intellectual objector" was amnestied following conviction and serving time for failure to report for his physical examination. This man was an agnostic but was viewed by the reviewer as a sincere intellectual conscientious objector and was also over-age for the draft when he refused to report. During his parole he had driven an ambulance in Europe for the American Field Service under hazardous conditions.

5. One person who received amnesty after having been convicted for failure to register, serving time, and serving out his parole appears to have been pardoned primarily because of an extremely favorable view taken of his moral character. Some of the descriptions of him were "very favorable reports" while on parole; "very religious"; "exceptional degree of intellectual honesty"; "well-conditioned in Quaker philosophy". The reviewer commented that there was in his record no implication of insincerity, equivocation, or mental reservation.

6. Another "intellectual objector" received amnesty after having been convicted for failure to report for induction. He had claimed but been denied conscientious objector status. He came from a rural area, of a family with a tradition of being very strong individualistic non-religious freethinkers who are very well regarded in their area. Members of this family would study the Bible but subscribed to no particular faith. The registrant decided that when he received his induction notice that he was more important on the farm than he might have been in the service.

7. One man was described as a "non-conscientious objector" and was convicted for failure to report for his physical examination. He received amnesty on the following set of facts: He had sought but not received conscientious objector status. Within a few days after his conviction he showed up for a physical examination (he had been put on probation when convicted, with the condition that the probation would end upon his induction into the service), but at this physical examination he was found physically unfit. He then served out his probation period satisfactorily.

8. Two unusual cases, one of them described as a "sociological objector", received amnesty because they were either whole-blooded or half-blooded Indians, the half blood being half Indian and half black, but were classified by their draft boards as Negro. Since there were then separate units, these men refused induction as Negroes, but made it clear they would have been willing to accept induction as Indians and at least one of the two tried to several times enlist as an Indian. Amnesty was granted in both these cases.

General Comments. The above cases of non-religious objectors (case 5 was, however, a religious objector) who received amnesty were found by going through probably no more than 10% of the files of all those who received amnesty. It thus seems likely that perhaps 50 to 100 men who were then regarded as ineligible for conscientious objector status nonetheless received amnesty. The amnesty board policy, however, was not to grant amnesty in cases of intellectual or political objectors without extenuating circumstances. Practically all the above cases show considerable extenuating circumstances, and the summaries that follow including cases of intellectual objectors denied amnesty will usually be in some contrast by their absence of such circumstances.

Case Histories In Which Amnesty Was Denied:

1. One poor fellow was convicted three separate times, in late 1941, early 1942, and early 1944, for failure to report for induction (the first two times) and for failure to report for his physical examination (the last time). After each conviction he served approximately nine months in federal prison and was then charged again after failing to comply with a Selective Service requirement. The man had no religious background so his claim for conscientious objector status was denied. He was a person of good reputation and said he had no objection to wars in defense of the American homeland. The reviewer noted that the man had very strong anti-British and pro-German views.

2. Another political case was that of a man who failed to register. He was described in the summary as having formerly been an "ardent communist" who had become disillusioned with Communism and the Soviet Union while fighting on the loyalist side in the Spanish Civil War. He now felt that he could not let himself fight on the same side of a war with Russia.

3. All cases of Puerto Rican nationalists who failed to comply with Selective Service laws because of their beliefs were denied among those which I saw. One sample case was that of a case of a man who said he would fight for the Allied side in a war if Puerto Rico were freed from American colonial rule but, since Puerto Rico was under American domination, refused to report for induction.

4. In one case a man seemed generally unqualified to receive amnesty but the reviewer also thought it was relevant to add to the man's summary that his family had been "a source of disturbance in its community because of the socialistic and communistic views which the various members express."

5. One typical case of a man who was denied amnesty was a man who objected to the war as not being a defensive one and therefore refused to report for induction. This was about all there was in the way of relevant facts in his file.

6. A last case was described as "sociological objector (custodial problem)". He was convicted for failure to report for his physical examination. The various items in his summary included: A listing of many memberships in activist political groups; "absolutist and a pacifist"; "admittedly is a homosexual"; and his objection was "definitely not based on religious grounds." (Underscoring in original.) It was also mentioned that the man had violated his parole but was not sent back to jail since no point was seen in making him serve out the rest of his sentence. Finally, he had constantly agitated in jail.