The original documents are located in Box 2, folder "Clemency Law Reporter (3)" of the Charles E. Goodell Papers at the Gerald R. Ford Presidential Library.

P51 - Combat desertion
P61 - Combined AWOLs

CLEMENCY LAW REPORTER

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

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VOL.1 NUMBER TWO - JUNE 11, 1975

HIGHLIGHTS

INTRODUCTION

The Clemency Law Reporter is an unofficial document, the contents of which neither constitute nor imply the official position of the Board, but are intended as an informal guide for the exclusive use of the PCB Staff.

The Clemency Law Reporter is prepared by the PCB Planning, Management and Evaluation Staff. For information, please contact Wil Ebel or Bob Terzian. Room 901, Tel. 634-4823.

INDEX

LEGAL NOTES

The Legal Notes Section will be devoted to information of professional interest to the PCB attorney. It will include such matters as new procedural developments of common concern, and analysis of legal issues current to the PCB. Contributions of ideas and work product from the staff are especially critical to a full understanding of the law applicable to the PCB.

AMENDMENT TO CODE OF FEDERAL REGULATIONS
Title 2, Chapter I

To be published 6/13/75

Section 101.8(d), Rules and Regulations, commonly referred to as the "30day regulation", has been redrafted as follows:

> (d) An applicant's case is ready for Board consideration upon preparation of the initial case summary, and may be heard at any time after the summary is mailed to the applicant. However, the applicant may send any information which contradicts, amends, or supplements the initial case summary within thirty (30) days after the postmark date. An applicant's request for an extension of this time will be liberally construed provided the request is timely. If an applicant's case has been heard by the Board prior to the receipt of a timely submission amending, contradicting, or supplementing a case summary, the case will be presented de novo to another panel of the Board, other that that which heard the case originally if the submission contains relevant information which could have affected the disposition of the case. See para. 101.11 for rules concerning reconsideration of cases.

Presentation de novo means that the case summary brought up-to-date with the amending, contradicting, or supplementing information is presented to a completely new Board panel by the original action attorney. It cannot be over-emphasized that the provisions of the section should be construed and applied liberally.

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

June 10, 1975

MEMORANDUM FOR: PCB LEGAL STAFF

FROM: LAWRENCE M. BASKIR

SUBJECT: JURISDICTIONAL QUESTIONS

A great many jurisdictional questions have not been answered yet. The intent of this memo is to outline the obvious non-jurisdictional cases and to answer the difficult jurisdictional questions.

I. OBVIOUS NON-JURISDICTIONAL CASES

The list of such cases includes:

1. All those where an applicant received an Honorable or General Discharge;

2. All those where the applicant's last discharge was executed before August 4, 1964;

3. All those where, within the qualifying period a military applicant never committed an offense that was closely related to an AWOL offense; and

4. All those where, within the qualifying period a civilian applicant never committed an offense that was closely related to a draft evasion offense.

When you have cases where the Board clearly does not have jurisdiction, fill out the Rober Gerst, no jurisdcition, information form (a copy of this form is included as an addendum to this memo). Once your Deputy Assistant General Counsel has reviewed the information form, send it to Janel Hartle in Room 501. This way the standard, no jurisdiction, form letter can be typed by the Xerox, ETS typewriter, and the letters can go out quickly.

Where there is a possible jurisdictional question, please write up a brief description of the factual circumstances of the case, a brief explanation of the jurisdictional question, and your recommendation concerning jurisdiction. Your Deputy Assistant General Counsel should review this memo, and then it should be forwarded to Charlie Craig or Bob Standard in Room 903. Hopefully, these procedures will eliminate the jurisdiction backlog.

II. DIFFICULT JURISDICTIONAL QUESTIONS AND THEIR ANSWERS

The list that follows is meant to be an inclusive list of the areas in which difficult jurisdictional questions have arisen. If you know of other areas, please contact Charlie Craig or Bob Standard at 634-4823.

A. Draft Offenses Straddling the August 4, 1964--March 28, 1973 Qualifying Period Questions:

Example 1 -- Does the Board have jurisdiction over the applicant who failed to submit for induction on July 1, 1964, but who was not indicted until August 30, 1964?

Example 2 -- An applicant received two notices to report for induction, the first to report on a date within the qualifying period and the second to report on a data after the qualifying period. He was indicted only for his second failure to report. Does the Board have jurisdiction?

Legal Analysis: According to Executive Order 11803: "The Board will only consider the cases of Military Selective Service Act violators who were convicted of unlawfully failing (i) to register or register on time, (ii) to keep the local board informed of their current address, (iii) to report for or submit to preinduction or induction examination, (iv) to report for or submit to induction itself, or (v) to report for or submit to, or complete service under Section 6(j) of such Act." It is clear that for the Board to have jurisdiction over an applicant, his offense must have been "committed between August 4, 1964 and March 28, 1973, inclusive."

According to the Department of Justice, an applicant who commits any of the acts specifically cited in the Executive Order has a continuing obligation to perform such an act or acts on a daily basis. This continuing obligation exists until the time that the individual's conviction is final. Secondly, although, as a general rule, when an individual fails on two or more occasions to report, he is indicted only for his last failure, the individual has technically committed a criminal act with each failure.

Conclusions: Because the offense in the first example is a continuing offense, the Board has jurisdiction over the applicant's case. This means that for all draft evasion offenses listed in the Executive Order, the Board has jurisdiction if either the offense commenced or a conviction was rendered within the qualifying period. The Board also has jurisdiction with respect to the second example. Therefore, whenever an applicant violated one of the acts specified in the Executive Order and he was prosecuted subsequently for the same offense, the Board has jurisdiction.

B. The Sufficient/Necessary Rules For Mixed Discharges

Questions: Example 1 -- If an applicant has a series of AWOL's, some of which occurred within the qualifying period and some outside, is he eligible? What if the duration of the AWOL's that occurred within the qualifying period was in itself insufficient to warrant a DD or BCD (one AWOL-not more than 30 days in duration; two or more AWOL's-not more than three days in duration)?

Legal Analysis: Executive Order 11803 states: "The Board...shall consider the cases of persons who...(ii) have received punitive or undesirable discharges as a consequence of violations of Article 85, 86, or 87...that occurred between August 4, 1964, and March 28, 1973, inclusive..." It is, however, not always possible to ascertain the exact offenses for which an applicant was discharged. In an attempt to formulate simple rules to determine when the Board has jurisdiction, I consulted the Manual for Court-Martial, 1969, Table of Maximum Punishments. According to this table, an individual may receive a BCD or DD for a single AWOL offense, only if the AWOL is over 30 days in duration. If an individual has a series of AWOL's, at least two of the AWOL's have to be over three days in duration in order to receive a punitive discharge.

Conclusions: Where an applicant received a BCD, DD, or an undesirable discharge in lieu of court-martial, and it is possible that he was discharged for an AWOL, apply these sufficient/necessary guidelines:

1. The Board has jurisdiction if the AWOL offenses that commenced within the qualifying period were sufficient to support the discharge that the applicant received.

2. The Board has jurisdiction if the AWOL's that commenced within the qualifying period and each of his other offenses--considered independently--were insufficient for the discharge that the applicant received.

3. The Board does not have jurisdiction only if the AWOL's that commenced within the qualifying period were insufficient and any of his other offenses--considered independently--was sufficient for the discharge that the applicant received.

Caveat: If, under the sufficient/necessary guidelines, the Board does not have jurisdiction but the last offense before the discharge was an AWOL within the qualifying period, please forward the case to Charlie Craig or Bob Standard in Room 903. It is still undecided as to whether the Board might still take jurisdiction in the situation like number 3 where the last offense was an AWOL and the discharge was a consequence of both the AWOL and the previous offense.

C. Unfitness Discharges (e.g., for Shirking or Frequent Incidents)

Question: Does the Board have jurisdiction over the applicant who has an AWOL within the qualifying period, but who was discharged for unfitness?

Conclusion: Unfitness is an inclusive term employed when all the offenses in an applicant's record combine to cause his discharge. Therefore, whenever there is an AWOL that commenced within the qualifying period--even if it was for only one hour in duration--the Board has jurisdiction. The table of maximum punishments does not apply for unfitness cases and, therefore, the sufficient/necessary rules are inapplicable. If it appears that an AWOL offense was one of the listed offenses which resulted in the UD, it can be argued that the applicant received his discharge as a consequence of an AWOL offense.

D. Discharges under Article 90, 91, or 92 that could have been Discharges under Article 85, 86, or 87

Question: An applicant disobeyed an order to report to the Army overseas Replacement Center. He was discharged for a violation of Article 92 (i.e., disobedience of a lawful order of a superior, commissioned officer), but he could have been discharged for a violation of Article 86, section (1) (i.e., fails to go to his appointed place of duty at the time prescribed). Does the Board have jurisdiction?

Conclusion: The Executive Order declares: "The Board...shall consider the cases of persons who...(ii) have received punitive or undesirable discharges as a consequence of violations of Article 85, 86, or 87..." Therefore, my tentative conclusion is that the Board does not have jurisdiction over applicants who were discharged for violations of Article 90, 91, or 92. However, please forward all Article 90, 91, or 92 cases to Charlie Craig or Bob Standard in Room 903. If you have any arguments or recommendations, I would like to receive them.

E. Discharges for Civilian Convictions

Question: An applicant went AWOL, robbed a bank, and received an undesirable discharge for his civilian conviction. Does the Board have jurisdiction?

Conclusion: If the discharge was solely for the civilian conviction, the Board does not have jurisdiction, since the Board only has jurisdiction over applicants who were discharged as a consequence of violations of Article 85, 86, or 87 of the UCMJ.

F. Draft Evasion Offenses Not Specifically Listed in Executive Order 11803

Questions: Does the Board have jurisdiction over an applicant who has been convicted of a Section 12 or 6(j) offense which is not one of those specifically listed in the Executive Order? For example, is an applicant convicted of draft card mutilation or aiding or abetting draft evasion--Section 12 offenses--eligible for the program?

Legal Analysis: Executive Order 11803 declares: "The Board... shall examine the cases of persons who...(i) have been convicted of violating Section 12 or 6(j) of the Military Selective Service Act (50 App. USC §462), or of any rule or regulation promulgated pursuant to that section,..." However, the Executive Order states also: "The Board will only consider the cases of Military Selective Service Act violators who were convicted of unlawfully failing (i) to register or register on time, (ii) to keep the local board informed of their current address, (iii) to report for or submit to preinduction or indiction examination, (iv) to report for or submit to induction itself, or (v) to report for or submit to, or complete service under Section 6(j) of such Act." A rule of construction is that where numerous items are listed specifically, those items not included in that list are excluded.

Conclusion: Reinforcing the rule of construction cited above is the phrase "the Board will only consider" (emphasis added), making it clear that the intent was to make the list of offenses in the Executive Order an inclusive--not an illustrative--list. Therefore, for the Board to have jurisdiction, the draft evader must have been convicted of one or the offenses listed specifically in the Executive Order.

G. Suspended Discharges

Question: Does the PCB have jurisdiction over an applicant who went AWOL, was court-martialed, received a reduction and partial forfeiture, and instead of being discharged was restored to active duty with a probation period?

Legal Analysis: Section 2 of the Executive Order limits jurisdiction to military absentees who "have received punitive or undesirable discharges as a consequence of violations of Articles 85, 86, or 87 of the Uniform Code of Military Justice (10 U.S.C. 885, 886, 887), that occurred between August 4, 1964 and March 28, 1973, inclusive, or are serving sentences of confinement for such violations." Consequently, in order to be eligible for the PCB's program, an applicant must have received a UD or a punitive discharge, or be serving a sentence of confinement for the violations listed above.

Conclusion: The PCB does not have jurisdiction over an applicant who has not received a punitive or undesirable discharge as a consequence of violations of Article 85, 86, or 87 of the UCMJ. However, the PCB does have jurisdiction if the applicant will receive a punitive or undesirable discharge after sentence of such offenses is completed.

H. Aliens and Americans who Left the United States

Question: Should the PCB process applications from individuals who will be ineligible for our program if they are precluded from re-entering the United States under 8 U.S.C. 1182(a)(22) or other law?

Answer: From a policy standpoint it has been decided that the PCB will process applications from applicants who will be ineligible for our Program if they are precluded from re-entering the United States under 8 U.S.C. 1182(a)(22) or other law. Case summaries should be prepared and presented to the Board. However, the action attorney should attach a note to the case summary indicating that the applicant is possibly ineligible for our program because of 8 U.S.C. 1182(a)(22) or other law. After the Board hears the applicant's case, it will send its recommendation to the President with a memorandum about the possibility of excludability under 8 U.S.C. (a)(22).

For a thorough analysis of excludability under 8 U.S.C. 1182(a)(22), see the Article in this issue of the Clemency Law Reporter. The following conclusions appear in that analysis.

1. Applicants who have never held American citizenship

   (a) Non-immigrant status aliens: PCB has jurisdiction.
   (b) Immigrant status aliens: If the government fails to prove that they left the United States to avoid or evade military service, PCB has jurisdiction.

2. Present and former American citizens who remained outside of the United States to evade military service

   (a) If they did not renounce voluntarily American citizenship or become voluntarily naturalized citizens of another country, PCB has jurisdiction.

   (b) Even if expatriated, if the United States government fails to prove that the applicant remained outside of the States to avoid or evade military service, PCB has jurisdiction.

   (c) If expatriated and if the government proves that the applicant remained outside of the United States to evade or avoid military service, PCB does not have jurisdiction.

I have adopted this approach because excludability is a judicial or administrative determination, based on facts, law, and intent, which the PCB should not presume to decide.

I. "Two Bites of the Apple"

Question: Example 1 -- Will the Board consider the case of the military absentee who was AWOL when the Presidential Clemency Program was announced, turned himself into DOD, received an undesirable discharge, and, then, to take advantage of the Board's three month baseline for those with undesirable discharges, applied to the Board before the application deadline?

Example 2 -- Will the Board consider the case of the draft evader who declined to participate in DOJ's segment of the clemency program, stood trial for his draft evasion offense, was convicted, and then applied to the Board before the application deadline?

Conclusions: The Board will consider the applications that are within example 2 but not those that are within example 1.

Concerning example 1, the clear intent of the President when he established the Program was for three, non-overlapping areas of responsibility. Therefore, once an individual has received clemency from one of the other two segments of the Presidential Clemency Program, the Board will not consider his case.

Concerning example 2, the Board will accept the applications, because, prior to applying to the Board, these applicants had not received clemency. Like all individuals, these applicants have a right to their day in court. Having lost in court, these applicants still have a right to receive clemency. There were no instances of persons returning to the DOD program who refused clemency and demanded trial by court-martial. However, had anyone done this and been convicted, his case also would have been considered by the Board.

J. DOD and DOJ Eligibles Who Mistakenly Applied to the Board

Factual Situation: Approximately thirty individuals mistakenly applied to the Board who are eligible either for the DOD or DOJ segment of the program. Because these individuals applied to the Board prior to the application deadline, our practice has been to inform the appropriate agency of the time the application reached us, and ask that they process it. If you run across such a case, please contact Charlie Craig.

10 June 1975

PROCEDURE FOR RESOLVING UNANSWERED LEGAL QUESTIONS

All unanswered legal questions, particularly jurisdictional questions (e.g., the eligibility of applicants who have become citizens of another country, immigrants who fled the United States when faced with induction, applicants with a series of AWOL's some of which commenced outside of the qualifying period) should be forwarded to the Legal Analysis Staff. These questions should be forwarded in writing, noting the case number, to either Charlie Craig or Bob Standard, Room 903.

These two persons will work with Larry Baskir, General Counsel, to resolve the questions and disseminate the answers to all members of the staff. This process will avoid the need of action attorneys to contact Larry Baskir directly, and will result in a more efficient system to keep everyone informed.

NO JURISDICTION FORM LETTER REQUEST
(See instructions below)

1. CASE NUMBER _____

2. APPLICANT'S NAME: Mr.___ Mrs.___ Ms.___ _____

3. APPLICANT's ADDRESS: Street _____

Apt. # (if any) _____

City, State, zip _____

4. FILES REVIEWED BY ACTION ATTORNEY:
___ Military Record
___ Presentence Report
___ Selective Service File

5. A review of your (Military Record/Presentence Report/Selective Service File) indicates that _____
_____
_____.

6. ACTION ATTORNEY _____
TEAM LEADER _____
ATTORNEY PHONE _____
DATE _____

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HOW TO USE THIS FORM

-Become familiar with the guidelines for handling jurisdictional questions. (See Vol. 2, Clemency Law Reporter).

-Completion of this form causes a no-jurisdiction letter to be dispatched. (A sample no-jurisdiction letter is attached).

-TO SEND A NO-JURISDICTION LETTER, fill in each item on the face of this Request in accordance with the following instructions. The numbers of the items correspond to the numbers of the instructions.

1. Enter the Case Number.
2. Enter the applicant's name.
3. Enter the applicant's mailing address.
4. Enter a check mark indicating the files used in processing the case.
5. (Optional). You may enter here a brief statement addressing the basis for the no-jurisdiction determination.
6. Enter name of attorney handling the case, team leader, action attorney phone number, and date of request.

-ACTION ATTORNEY WILL FORWARD THIS REQUEST TO TEAM LEADER WITH CASE FILE

2

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

June 9, 1975

In Reply
Refer to:
84736-MJU-M

John Doe
13754 North Easy Street
New York, New York 17465

Dear Mr. Doe:

Your application to the Presidential Clemency Board has been reviewed by an attorney on our staff, and pursuant to our regulations, we have concluded that the Board does not have jurisdiction over your case.

The Presidential Clemency Board was created for the purpose of examining the cases of certain civilians convicted of violations of the Selective Service Act, and military personnel who received Dishonorable, Bad Conduct or Undesirable Discharges as a result of violations of sections of the Uniform Code of Military Justice pertaining to desertions, absence without leave, and missing a troop movement. The Clemency Program covers individuals charged with offenses that occurred between August 4, 1964 and March 28, 1973.

A review of your Selective Service File indicates that your case is not within the jurisdiction of the Presidential Clemency Board. Destruction of Selective Service Records is not a qualifying offense.

In the event you have additional information that you believe would establish your eligibility for consideration by the Presidential Clemency Board, you should immediately write to the Presidential Clemency Board, Attn: General Counsel, The White House, Washington, D.C. 20500.

Your letter should clearly state your reasons for believing the Board does have jurisdiction over your case. Please refer to your case number, cited above, when writing the Board. If we do not hear from you within 30 days of the date of this letter, no further action will be taken on your behalf by the Board.

I regret that the Presidential Clemency Board could not be of further assistance to you.

Sincerely,

Charles E. Goodell
Chairman

Enclosures

NOTICE TO APPLICANTS DETERMINED INELIGIBLE FOR CONSIDERATION BY

PRESIDENTIAL CLEMENCY BOARD

Although you apparently do not qualify for consideration by the Presidential Clemency Board, there are other remedies that may be available to you.

If you have a civilian conviction, you may wish to contact:

The Pardon Attorney U.S. Department of Justice Washington, D.C. 20530	or	The Attorney General of the State in which you were convicted.

If you wish to request a review of your discharge or separation from the Armed Forces of the United States, you may contact:

ARMY	CO USARCPAC 9700 Page Blvd St. Louis, Mo. 63132
NAVY AND MARINE CORPS	Navy Discharge Review Board Navy Department, Arlington Annex Room G711 Washington, D.C. 20370
COAST GUARD	Commandant (CBD) U.S. Coast Guard Headquarters Washington, D.C. 20591
AIR FORCE	National Personnel Records Center, GSA (Military Personnel Records) 9700 Page Blvd St Louis, Mo. 63132

If discharged by reason of sentence of General Court Martial, use DD Form 149; otherwise make application on DD Form 293.

You may also wish to apply to the U.S. Department of Labor, Manpower Administration to obtain an Exemplary Rehabilitation Certificate:

U.S. Department of Labor
Manpower Administration
U.S. Employment Service (METR)
Washington, D.C. 20210

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

June 10, 1975

AN ANALYSIS OF JURISDICTIONAL QUESTIONS CONCERNING ALIENS AND AMERICANS WHO LEFT AND REMAINED OUTSIDE THE UNITED STATES TO EVADE MILITARY SERVICE

To simplify the jurisdictional questions concerning applicants who left the United States to evade military service, it is necessary to categorize these applicants. The first distinction must be made between (1) applicants who have never held American citizenship and (2) present and former American citizens who left the United States and remained outside the country to evade military service.

I. Applicants who have never held American citizenship

Executive Order 11803 states: "...the Board will not consider the cases of individuals who are precluded from re-entering the United States under 8 U.S.C. §1182 (a)(22) or other law." Section 1182 (a)(22) of title 8 U.S.C. provides that the following will be excluded from admission into the United States: "Aliens who are ineligible to citizenship, except aliens seeking to enter as nonimmigrants; or persons who have departed from or who have remained outside the United States to avoid or evade training or service in the Armed Forces in time or war or a period declared by the President to be a national emergency, except aliens who were at the time of such departure non-immigrant aliens and who seek to reenter the United States as nonimmigrants."

The group of applicants who have never held American citizenship is divided, therefore, into two sub-categories: (1) immigrant aliens and (2) nonimmigrant aliens. Nonimmigrant aliens (i.e., those who were admitted on visitors' or other temporary visas) are not prohibited from reentry and, therefore, the Board has jurisdiction over these cases.

To reenter the United States, such a person simply has to comply with all the formalities (e.g., obtaining a visa from the State Department). On the other hand, immigrant aliens (i.e., those who were admitted for permanent residency) are often in a worse position. If the government can prove that they left the United States to avoid or evade military service, they cannot be readmitted and, therefore, the Board does not have jurisdiction. It may not even matter that the individual was ineligible for the draft at the time he left the United States (Matter of U.D. 2 IN 417 (A.G. 1946).

II. Present and Former American Citizens who left the United States to evade Military Service

In the past decade, the trend by the courts has been to minimize the reasons for which American citizenship is lost. For example, the court in Afroyim V. Rusk, 387 US 253 (1967) rejected the idea that "Congress has any general power, express or implied, to take away an American citizen's citizenship without his assent," except through procedures complying with the Fourteenth Amendment.

It appears now that to lose citizenship, an individual must voluntarily relinquish or renounce his American citizenship or obtain voluntarily naturalization in a foreign country. Examples of actions sufficient for loss of American citizenship are: (1) executing an Oath of Renunciation of American citizenship, (2) executing an affidavit of expatriation before a United States vice consul abroad (King v. Rogers, 463 F2d 1188 (CA 9, 1972), or (3) becoming voluntarily a Canadian citizen by naturalization (INS letter of February 1, 1975). Some of the actions that are insufficient for loss of American citizenship are: (1) voting in a foreign election (Afroyim v. Rusk, supra), (2) desertion from the military service in time of war or national emergency (Trop v. Dulles, 356 US 86 (1958)), (3) conscription of a dual national into the military service of a country with which the United States is at war (Nishikawa v. Dulles, 356 US 129 (1958)), or (4) obtaining landed immigrant status in Canada (INS letter of February 1, 1975).

When dealing with cases of present or former American citizens who left the United States and remained outside of the country to evade military service, differentiate between: (1) those who did not lose American citizenship and (2) those who did. For the American who did not lose his citizenship, (i.e., did not voluntarily renounce his American citizenship nor voluntarily obtain naturalization in a foreign country) the jurisdictional question is an easy one. Even if he left and remained outside of the country with the express purpose of evading military service, he can reenter the United States, and, therefore, the Board has jurisdiction over his case. It is when loss of American citizenship is in question, that controversy arises.

To resolve the controversy, the first questions that must be answered are: "Was the renunciation of American citizenship voluntary," and "Was naturalization in the foreign country voluntary?" If the answers to both of these questions are no, the applicant is not precluded from reentry under 8 U.S.C. § 1182 (a)(22), and because he has not effectively renounced his United States citizenship, the Board has jurisdiction.

If the answer to at least one of these questions is yes, the applicant is an alien. Then a second question must be answered: "After he became an alien did the applicant remain outside the United States to evade military service?" If the answer to this question is in the negative, the applicant is not barred from reentry, nor the Board from jurisdiction. The applicant should be told that he has to obtain a visa from the State Department before he may reenter. If the answer to the question is in the affirmative, the applicant is precluded from reentry into the United States, and the Board does not have jurisdiction. With respect to evidentiary problems, it is necessary to evaluate the particular individual's own assertions as well as other facts. It has been held that an alien's own testimony as to his motivation for remaining outside of the United States is not conclusive when there is other conduct or evidence to refute his testimony (Holy v. Del Guecio, 259 F2d 84 (9th IN Cir. 1958)).

When the answer to any of the three questions listed above is in doubt, the burden of proof probably rests with the United States government. Certainly with the questions of voluntary renunciation and the intent of the individual who remained outside of the country, the burden rests on the government (Nishikawa v. Dulles, supra and Holz v. Del Guecio, 259 Fi2d 84 (9th In Cir. 1959), respectively). With the question of voluntary naturalization, the burden once rested with the individual, but this is no longer certain (because the constitutionality of most of 8 U.S.C. § 1481 is in question).

Therefore:

I. Applicants who have never held American citizenship
   A. Nonimmigrant aliens: PCB has jurisdiction
   B. Immigrant aliens: If the government fails to prove that they left the United States to avoid or evade military service, PCB has jurisdiction.

II. Present and former American citizens who left the United States and remained outside this country to evade military service
   A. If they did not voluntarily renounce American citizenship or voluntarily become a naturalized citizen of another country, PCB has jurisdiction.
   B. Even if expatriated, if the United States government fails to prove that the applicant remained outside of the States to avoid or evade military service, PCB has jurisdiction.
   C. If expatriated and if the government proves that the applicant remained outside of the United States to evade or avoid military service, PCB does not have jurisdiction.

Board Policy: Where, except for the reentry question, it is certain that the Board has jurisdiction, the Board will consider the case. With an explanation of the reentry question attached, the recommendation of the Board will be sent to the President. Then, if the President wishes, he may ask the Immigration and Naturalization Service to conduct a full hearing.

It would be improper if, simply because of the reentry question, the Board did not consider an applicant's case. The deciding of this question requires a fair hearing with the full panoply of due process rights. This burden is not to be considered lightly, and the Board should not and cannot relieve the Immigration and Naturalization Service of this responsibility.

Charles S. Craig & Robert Standard

POLICY NOTES

The Clemency Law Reporter will include a Policy Notes Section that will highlight items of current interest. You can help us by calling our attention to articles dealing with clemency that appear in newspapers and periodicals and that you find relevant to the PCB Staff effort.

We would be pleased to consider any staff-submitted manuscript (not over 1,000 words, please) for possible publication in the Clemency Law Reporter. Send to Wil Ebel or Bob Terzian. Room 901, Tel, 634-4823.

BASIC COMBAT TRAINING AND ADVANCED INDIVIDUAL TRAINING FOR ARMY RECRUITS

A substantial number of soldiers establish a pattern of AWOL while in Basic Combat Training (BCT). Several, in fact, are discharged shortly after their entrance on active duty because of AWOL committed during the first few months of military service. For this reason, it is helpful to have a clear, chronological picture of this initial period of training during the Vietnam era.

Upon enlistment or induction--before a person ever goes to an Army post--he becomes a member of a component of the Army. The Active Army consisted of two components. The Army of the United States (AUS) is that component made up of draftees. The Regular Army (RA) is that component comprised of enlistees. Soldiers of all components, including Reserve and National Guard, were trained together in Basic and Advanced training. The terminology "enlisted for the draft" is applied to 2-year RAs and, for all practical purposes, an RA soldier who enlisted for 2 years is the same as an AUS. An RA soldier who enlisted for 3 or 4 years had the option of enlisting for a specific training. Such soldiers were guaranteed, before enlistment, that they would be given particular Military Occupational Specialty (MOS) training. AUS and 2-year RA soldiers could not choose specific training.

The soldier begins his military service at a place called the Reception Station (USARECSTA). While there, for 5-7 days, the soldier is fitted for uniforms, receives his identification card and tags, fills out numerous forms, takes more medical and mental tests, and is interviewed. This interview is crucial for AUS and 2-year RA soldiers because a recommendation will be made as to what AIT training they should receive. These recommendations are based on the needs of the Army, the individual's background, his aptitude scores and his GT and AFQT scores. The GT and AFQT tests, like many tests, allow certain sociological factors to effect the results.

Upon completion of processing at the Reception Station, the soldier is transferred to a BCT company. Basic Training is eight weeks long. During this period the recruit must make the adjustment from citizen to soldier.

There are many adjustments the recruit has to make in his new environment. Individuals with little or no sense of self-discipline and respect for authority could easily find themselves at odds with their superiors during Basic Training. The Military system demands certain changes of the individual. For instance, a soldier who goes to see his commanding officer about a personal problem, without first seeing his drill sergeant, will receive a lecture on the chain of command. For his entire time in Basic, the soldier is under the constant and immediate supervision of his drill sergeant.

Drill sergeants are, in a word, professionals; most of them are combat experienced. A soldier requesting to go on sick call might find his drill sergeant less than sympathetic. But the drill sergeant has his own way of looking out for a trainee who might very well be Vietnam-bound. The drill sergeant remembers that soldiers in Vietnam suffering from malaria sometimes were in combat for days before they could be hospitalized and treated for malaria.

During the third week of Basic, the recruit begins weapons training. This may be the soldiers first realization that the Army's job is basically to destroy the enemy. A few cases of genuine pacifism will invariably emerge at this stage. During the last two weeks of Basic, AUS and 2-year RA soldiers will find out what AIT training they will receive. For some, the news that they will be trained as infantrymen, obviously increasing their chances for combat, is enough to encourage AWOL.

There are two instances which may prolong a soldier's Basic. First, if a soldier misses a portion of his training (sickness, emergency leave, etc.), upon his return to duty he will be assigned to another training company. This is called a "re-cycle," and places the individual at the approximate stage of training as his original unit was when he left. The other instance is the case of a soldier who fails his final tests. If a soldier fails his Physical Combat Proficiency Test (PCPT) or his military skill proficiency test, he is sent to a Special Training Company (STC). Physical training in STC is very intense and soldiers are kept there until they pass the test. The AWOL rate is slightly higher in STC than in the normal BCT company.

At the end of BCT, the soldiers go to AIT. AIT is several weeks long, depending on the MOS. AIT is often conducted at a post other than the BCT post. There is usually no leave authorized between BCT and AIT. During the late 60s, married soldiers were permitted to live off post with their families while in AIT. The atmosphere of AIT is much more relaxed compared to BCT, and AIT companies enjoy very low AWOL rates.

At the end of AIT, soldiers receive word on their first assignment. Almost all of them will be allowed to take leave before reporting for this duty. Those going overseas will be given at least 30 days' leave if they so desire. It was not uncommon to have soldiers go home on leave after AIT and fail to report for their next assignment, especially if they were ordered to report to the Overseas Replacement Station (USAOSPREPLSTA) in Oakland, for shipment to Vietnam.

K. Allen
5 June 1975

ARMY ABBREVIATIONS

ABN - Air Borne. (Paratroopers) To become airborne, a soldier must volunteer for training; very tough physically. A paratrooper badge is normally awarded.

ACS - Army Community Services. An agency of the Army specializing in social work services for members of the military and their families.

ADC - Active Duty Commitment. Used in orders, usually the length of the soldiers enlistment.

Adjutant - The personnel officer of a unit: does not have to be an AGC officer.

AER - Army Emerging Relief. An agency of the Army that gives financial assistance to members of the military and their families.

AGC - Adjutant General Corps. The personnel management bunch of the Army, not to be confused with JAGC, the legal branch. Often called "AG".

AGTP - Adjutant General Transfer Point. Often called "transfer point," it is the office responsible for processing soldiers off active duty.

AIT - Advanced Individual Training. Specialized military skill training which occurs after Basic Training.

ALOC - Allocation; used in travel orders.

APO - Army Post Office - Mailing Address for Overseas Commands.

AR - Army Regulation. Regulations are numbered.

ASAP - As Soon As Possible. Used in Army correspondence.

ATP - Advanced Training Program. MOS Training at a higher level within your present MOS.

AUS - Army of the United States. That component of the Army consisting of draftees.

BASD - Basic Active Service Date. This figure is adjusted to reflect AWOL and bad time, and should never be used to establish the actual date of entry into the service. That information should come from DD 214 item 10c for draftees and 17c for enlistees.

BDE - Brigade.

BN - Battalion.

BCT - Basic Combat Training, or "basic training". The first 8 weeks of initial military training.

BPED - Basic Pay Entry Date. Used to compute longevity pay. Should never be used to ascertain date of entry into service.

CASUAL - (used in Item 38, DA Form 20) a status during which the soldier performs no regular duty but is usually changing from one duty or location to another. "Casual" also refers to the travel and leave time normally incident to a change of duty stations.

CBR - Chemical, Biological, Radiological. Refers to a training course in chemical biological and radiological warefare.

CBT EN - Combat Engineer

CDY - Used in item 38, DA 20. Change of Duty. Any time a person changes duty, even if he does not change his unit, conduct and efficiency ratings should be given.

CHD - Correctional Holding Detachment-Confinement. If a soldier receives a sentence of confinement over 60 days, he is transferred from his old company to the CHD.

CO - Company or Commander, or Commanding Officer.

CONUS - Continental United States. The mainland; does not include Hawaii or Alaska.

CR - Used in Item 36, DA 20. Change of Rating. Anytime a person's supervisor (who rates the soldier) leaves, he should render a conduct and efficiency rating.

CTF - Correctional Training Facility. (Located at F. Riley, Kansas) Confinement. Soldiers who have received sentences but are though amendable to rehabilitation for further military service after confinement are sent to CTF. CTF recently redesignated. Retraining Brigade (RTB).

DBT - Days Bad Time. Bad time includes time spent AWOL and in confinement. When counting AWOL time in days, include the date soldier left but omit the day of return. Count every-day in computing confinement.

DDALV - Days Delay Leave Enroute. Shows how many days leave a soldier may take while enroute between duty stations. He must however, report on his "reporting date"; used in travel orders.

DEROS - Date of Entry, Return from Overseas Service.

DFR - Dropped from the Rolls. A status which is given to a soldier after he has been AWOL for a period of time designated by regulation, not to exceed 30 days.

DOD NACC - Department of Defense National Agency Check.

DOR - Date of Rank. Date on which you received your current rank.

Excess Leave - A leave status during which the soldier is not paid and does not accure pay or leave. Often given to people who are pending discharge, to let them go home while their discharge is being processed.

EDCSA - Enter Date Change Strength Accountability. Used in orders, a personnel accounting item.

ENTNAC - Entrance National Agency Check. A security check made on everyone entering active duty.

ETS - Expected Termination of Service. The date on which enlistment is normally completed. "Bad time" (such as confinement) causes this date to be pushed back and is often called an "adjusted ETS."

GCM - General Court-Martial

Extra Duty - A form of Punishment. Soldier performs additional duties after normal working hours, often given along with a restriction.

FA - Field Artillery.

First Sergent - Senior NCO in a company, Chief Administrator.

GED - General Equivalency Diploma. A certification of a functional high school education.

HOR - Home of Record. Official designation of soldiers' civilian address at time of entry into service.

IAW - In Accordance With - Used in Army Correspondence.

4

IMF - Information.

LOD Investigation - Line of Duty Investigation. Conducted to determine if injury to person or property resulted from authorized duty activity. If so, certain medical benefits, or disability, may be authorized.

LV - Leave.

MOS - Military Occupational Speciality. Every soldier has one, called his Primary MOS, or PMOS. SMOS-Secondary MOS, AMOS-Additional MOS.

MO OS - Months of Overseas Service on Current Tour. Used in travel orders.

Morning Report - A daily report showing changes in a unit's strength or change in status of each of the unit's members, e.g., change from "present" status to "AWOL" status, or "rtn (return from) AWOL". It is not unusual to see a man entered as AWOL on a morning report dated much later than the time he went AWOL. This is because his commander wants to be sure he is AWOL before putting it on the "MR". In such instances, the effective date of AWOL is always listed as the day absence began, not the date they put it on the morning report. Morning reports, or "extracts" of morning reports, are used as evidence at Court-Martials.

MPRJ - Military Personnel Records Jacket, or "201" File". This is the document we use in military cases.

NLT - No Later Than. Used in Army Correspondence.

O/A - On or About. Used in AWOL charges.

PCF - Personnel Control Facility, also USAPCF. A place where soldiers are maintained after their return from AWOL pending judicial or administrative action. PCF's often allow soldiers to go home on weekends, depending on how well-behaved they are. PCF is not confinement.

PCS - Permanent Change of Station. A transfer from one post to another.

Pioneer - A beginner combat engineer.

PLT - Platoon.

RA - Regular Army. That component of the Army consisting of people who enlisted. Initial enlistments, during the period we are concerned with, were for 2,3, or 4 years. If a soldier enlisted for 2 years he normally could not select the type of MOS training he would receive in AIT. He was taking his chances, he would usually be trained as a clerk or an infantryman. Such soldiers are often referred to as "RA, unasigned". A 3 or 4 year enlistment entitled the soldier to select his MOS training. Check item 13 on DA Form 20 to see if a 3 or 4 year RA enlisted for a particular MOS training school, called "school option".

Red Cross - American Red Cross. During the Vietnam era, the Red Cross served as the agency that verified emergency situations at home so that soldiers could be authorized leave, called "emergency leave".

Reenlistment or RE-UP Reenlistment. The soldier is given an "Honorable Discharge" for the sole purpose of reenlisting within 24 hours. Upon reenlistment, soldiers of the Vietnam era could have a guaranteed duty assignment for not less than one year, MOS schooling, or a cash bonus, called VRB, Variable Reenlistment Bonus.

Restriction - A form of punishment. Soldier not allowed to leave certain designated area. A soldier on restriction will be permitted to go to his place of duty, but when he is not on duty he must return to the area of restriction. Restriction may be to the limits of the post, camp or station, or to a smaller area such as the company or batallion area, or to the barracks. It may be accompanied by a requirement the soldier sign in every hour he is not on duty until night bed check.

RFAD - Release from Active Duty. At the end of enlistment a soldier is normally RFAD and not discharged. He is then put in a Reserve status. The soldiers we deal with are all discharged signaling a complete end to military service.

RTB - Retraining Brigade (Ft. Riley, Kansas) see CTF.

SE and E - Training course in survial and escape.

SMO - "So Much As" Used in orders.

SO - Special Orders - Used for normal personnel transactions.

SPCO - Special Court-Martial Orders.

SPD - Special Processing Detachment. Old Terminology for a Personnel Control Facility (CPF)

SPH - Statement of Personal History (DA 348). SPH compl 28 June 66: SPH completed 28 June 66.

SQD - Squad.

UPO - Unit Personnel Officer.

USAOSREPLSTA - United States Army Overseas Replacement Station. The station in Oakland California processes people for points in the Far East and the station at Ft. Dix processes people for assignment to Europe. If you fail to report to these centers you may be charged with "missing movement."

USARECSTA - United States Army Reception Station where soldiers are "inprocessed" to the Army and assigned to basic training units.

USAREUR - United States Army Europe.

USARPAC - United States Army Pacific (Vietnam)

XO - Executive Officer. Assistant to the CO.

COMMON MOS NUMBERS

11B20-Infantry rifleman
11C20-Infantry Mortarman
11E20-Tanker
12A10-Pioneer (an apprentice combat engineer)
12B20-Combat engineer
13A10-Artilleryman
71B10-Clerk
71A10-Clerk
57A10-Duty soldier- This MOS is used to describe people without special skills.

Ken Allen
5 June 1975

LETTER TO CLEMENCY LAW REPORTER June 6, 1975

It has come to the attention of several staff attorneys that the treatment of a summary court-martial as an "Other Adult Conviction" (aggravating factor #1) may be unjust in view of the fact that non-judicial punishments (NJP) and civilian misdemeanors are not considered as "Other Adult Convictions". It is suggested that a summary court-martial conviction is much more similar to an NJP or a civilian misdemeanor than it is to a civilian felony or general court-martial for the following reasons:

The Uniform Code of Military Justice (UCMJ) defines the function of a summary court-martial as being to exercise justice promptly for relatively minor offenses under a simple form of procedure. (Manual for Courts-Martial (MCM), para. 79.)

The maximum punishment that may be meted out by a summary court martial is relatively minor: " A summary court martial may not adjudge as punishment a punitive discharge, confinement for more than one (1) month, hard labor without confinement for more than 45 days, restriction for more than two (2) months, or forfeitures in excess of two thirds of one month's pay." (MCM para. 16b)

In special and general courts-martial an impartial trier-of-fact and sentencer is required whereas in an NJP the commanding officer may impose disciplinary punishments for minor offenses upon personnel in his command. In a summary court martial, if the convening authority or the summary court officer is the accuser in a case it will not invalidate the trial. (MCM para. 5c)

In special and general courts-martial the accused has a constitutional right to counsel, whereas in an NJP and in a summary court martial in which no confinement is awarded, there is no constitutional right to counsel.

Special and general courts-martial may grant confinement to hard labor to military personnel of any grade or rank, whereas summary courts-martial may not grant confinement to hard labor to personnel of grade E-4 and above. Similarly, confinement to hard labor may not be granted as a non-judicial punishment.

Therefore, the treatment of a summary court-martial as an "Other Adult Conviction" in aggravating factor #1 permits the Board to increase the baseline for a conviction which is equivalent to a misdemeanor conviction.

Gary F. Grafel
Don W. Moore
(Hickman Team)

AT A FULL BOARD MEETING JUNE 7, 1975, THE PCB DETERMINED THAT NEITHER A SUMMARY COURT MARTIAL NOR A CIVILIAN MISDEMEANOR WILL BE CONSIDERED AS AGGRAVATING FACTOR #1.

AMERICAN AMNESTIES

AMNESTY UNDER WASHINGTON AND ADAMS

The first Presidential pardon in American history covered individuals in western Pennsylvania who were at odds with the Federal government over payment of taxes. President Washington viewed the Whiskey Rebellion as a "contest whether a small portion of the United States shall dictate the whole Union." By a proclamation published 25 September 1794, Washington promised to treat "with the most liberal good faith" those offenders who would henceforth obey the law. His follow-up proclamation of 10 July 1795 extended pardon to those insurrectionists who had followed the terms of his earlier proclamation.1/

In 1799 Pennsylvania was again the scene of insurrection. The laws pertaining to the valuation of houses and land precipitated the insurrection which became serious enought to require troop intervention. President Adams, by his Proclamation of 21 May 1800, pardoned all insurrectionists except those then under indictment or standing convicted. Adams stated that future prosecutions were unnecessary since "peace, order, and submission to the laws of the United States were restored,...the ignorant, misguided and misinformed counties (having) returned to a proper sense of their duty." 2/

THOMAS JEFFERSON

Although Washington pardoned participants in the Whiskey Rebellion and Adams issued pardons to certain Pennsylvania insurrectionists, Thomas Jefferson was the first US President to grant a pardon to military deserters. On 15 October 1807 Jefferson offered deserters full pardon in exchange for their surrender to the military and return to duty. Twelve days after signing the proclamation, in the Seventh Annual Message of the President to the Senate and the House of Representatives, Jefferson cited circumstances which "seriously threatened the peace of our country."3/ Thus, it may be conjectured that Jefferson offered the pardons as a means of building up the size of the Army in a time of national peril.

MADISON AMNESTIES DESERTERS AND PIRATES

During his tenure as President, Madison issued amnesty proclamations on four occasions: 7 February 1812, 8 October 1812, 17 June 1814, and 6 February 1815. The first three were granted with the understanding that the deserters had "become sensible of their offense and desirous of returning to duty."4/ To receive pardon, deserters were required to surrender at a military post. These three pardons may have been intended to return deserters to duty so that they could participate in the war with Great Britain.

Madison's 1815 Proclamation is unique with respect to the class of offenders pardoned -- it is specifically addressed to Jean Lafitte's pirates:

> "...provided, that every person claiming full benefit of this pardon in order to entitle himself thereto shall produce a certificate in writing from the governor of the State of Louisiana stating that such person has aided in the defense of New Orleans and the adjacent country during the invasion thereof as aforesaid."5/

While most amnesties have dealt with war dissenters, Madison amnestied pirates who came to the aid of their country. Lafitte's men had spurned a cash offer by the British, choosing instead to join with General Jackson at the Battle of New Orleans.

AMNESTY UNDER JACKSON

Probably the most liberal amnesty granted to military deserters in American history was the amnesty extended by President Andrew Jackson in 1830. Jackson, acting through Secretary of War Eaton, declared the amnesty after Congress had repealed the law imposing the death penalty for peacetime desertion. War Department General Order Number 29, issued 12 June 1830, provided that deserters under sentence of death and all deserters remaining unapprehended were to be discharged from the service and barred from future enlistment. Personnel who were under arrest for desertion were to be returned to duty. An excerpt from the General Order suggests that forgiveness, compassion, and generosity were not the most compelling motives underlying the grant of amnesty to deserters not then under military control:

> "It is desirable and highly important that the ranks of the Army should be composed of respectable, not degraded, materials. Those who can be so lost to the obligations of a soldier as to abandon a country which morally they are bound to defend, and which solemnly they have sworn to serve, are unworthy, and should be confided in no more."6/

President Jackson's attitude toward the unapprehended deserters does not appear to meet the generally accepted definition of amnesty--that is, forgetfulness of the offense.

CIVIL WAR AMNESTIES

While there were several amnesties issued during and after the Civil War, they were restrictive in nature. Confederate leaders remained unamnestied until 1898, having been barred by the Fourteenth Amendment from holding military or civil office. Although never brought to trial,

Jefferson Davis was imprisoned at Fortress Monroe from 10 May 1865 to 13 May 1876. He was still barred from holding office at the time of his death in 1889.7/

During the confusion prevailing during the early stages of the war, a great many persons were detained as political prisoners by the Union. President Lincoln, acting through Secretary of War Stanton, issued the first Civil War amnesty on 14 February 1862, releasing these individuals provided that they agreed to take an oath of allegiance.8/

The Confiscation Act of 17 July 1862 contained a section authorizing the President to amnesty persons "who may have participated in the existing rebellion."9/ Such authority, of course, was superfluous inasmuch as Lincoln already possessed such powers by Constitutional fiat. By Presidential Proclamation of 10 March 1863, Lincoln allowed deserters to return to their military units without punishment save forfeiture of pay and allowances for the period of their absence.10/

In December 1863 Lincoln offered pardon to certain individuals who had participated in the Rebellion. Such individuals could be pardoned only by subscribing to the following oath of allegiance:

> "I, do solemnly swear, in the presence of Almighty God, that I will henceforth faithfully support, protect, and defend the Constitution of the United States and Union of the States thereunder...."11/

This Proclamation was clarified on 26 March 1864 with the announcement that certain persons (mainly prisoners of war) were not eligible for amnesty.

A War Department General Order issued in February 1864 established conditions under which Confederate deserters could be amnestied. An oath of allegiance was again made a prerequisite to the grant of amnesty. General Grant permitted deserters to proceed to their homes and remain exempt from military service if they took the required oath and if their homes were within Federal lines.12/

Lincoln acted again by Presidential Proclamation on 11 March 1865, offering pardon to all Union deserters who returned to military duty within 60 days and who served a period of time equal to their enlistment. This pardon may not have been the result of Presidential initiative; more likely it was a response to a law passed by the Congress taking citizenship away from deserters and requiring that the President issue a proclamation offering pardon subject to terms similar to those contained in the 1865 Presidential Proclamation.

On 29 May 1865, shortly after his elevation to the Presidency, Johnson published the first of his series of amnesties. It applied to persons who had participated in the Rebellion, and an oath of allegiance was required. Of the 14 classes of persons declared ineligible for amnesty, one is of special interest:

> "...all persons who have been or are absentees from the United States for the purpose of aiding the Rebellion."13/

A promise of conditional amnesty was extended by the War Department on 3 July 1866 to Union Army deserters, provided they surrendered before 15 August 1866.14/

Although the Civil War ended in the spring of 1866, it was 7 September 1867 before Johnson announced a further amnesty. Once again, an oath of allegiance was a precondition. While Johnson's first amnesty excepted 14 classes of persons from eligibility, few were excluded under the 1867 Proclamation. Principal exclusions were high officials of the Confederacy, persons in confinement or on bail, and individuals involved in the assassination of President Lincoln.15/

Shortly after the conclusion of his impeachment trial, Johnson discussed a further amnesty with his Cabinet. The idea of a universal amnesty for all rebels was seriously considered but finally rejected. Jefferson Davis and others indicted for treason or felony were excluded from the amnesty announced 4 July 1868. A political motive can be perceived in this amnesty, since it was issued on the opening day of the Democratic National Convention.16/

On Christmas Day 1868, Johnson extended

> "...to all and to every person who, directly or indirectly, participated in the late insurrection or rebellion a full pardon and amnesty for the offense of treason against the United States or of adhering to their enemies during the late civil war...."17/

With respect to draft dodgers, no action was taken granting them amnesty.

By legislation in 1896, Congress enabled former Confederate military officers to seek commissions in the US Armed Forces. In June 1898 President McKinley signed the final amnesty bill for Confederates. This bill, no doubt prompted by the war with Spain, repealed the bar imposed by Section 3 of the Fourteenth Amendment.

TWENTIETH-CENTURY AMNESTIES

The first US amnesty of the twentieth century was President Theodore Roosevelt's amnesty of the Philippine Insurrectionists. At an Independence Day gathering in Pennsylvania in 1902, Roosevelt announced that he had on that day issued a "proclamation of peace and amnesty."[18]

No general amnesty followed World War I, World War II, or the Korean War. On 15 December 1923, President Coolidge commuted the sentences of all prisoners who had been convicted for opposing the government and the Selective Service during World War I. The pardons were rooted in a recommendation submitted to the President by a committee appointed by President Harding before his death in August 1923.

A few months later, on 5 March 1924, President Coolidge, acting upon the advice of his service secretaries, restored citizenship rights to approximately 100 military deserters. However, this action did not cover military personnel who deserted prior to the World War I Armistice, nor did it remit or commute court-martial sentences. Only those who deserted after 11 November 1918 and before 17 November 1921 benefited by the Proclamation.[19]

In a 23 December 1933 proclamation affecting only those who had served prison terms for violating the Draft and Espionage Acts, President Franklin D. Roosevelt restored civil rights to about 1,500 war resisters. There was no reduction of prison terms since all those affected by Roosevelt's "Christmas Amnesty Proclamation" had already completed their sentences. Those who had fled the United States to avoid the draft remained outside the pale of amnesty since persons who had evaded indictments or sentences were not within the purview of the Proclamation.[20]

Several thousand former convicts were the beneficiaries of a Christmas Eve Proclamation issued by President Truman in 1945. The President restored citizenship rights to ex-convicts who had served at least one year in the military after 28 July 1941 and were subsequently awarded honorable discharges. Included in this amnesty were over 2,000 Federal prisoners who had been paroled for induction into the Army during World War II.[21]

Although President Truman established an Amnesty Board in 1946, the Board confined itself to recommending individuals by name for pardon. The Board, headed by former Justice Owen J. Roberts, reviewed the cases of 15,805 individuals who had been convicted of violation of the Selective Service Act. The Board recommended pardon for less than 10 percent of that number.

> "Most of those who benefited by the proclamation were religious conscientious objectors. Others were Japanese Nisei, draft evaders who subsequently served honorably in the armed forces, and others who proved that their evasion was due to ignorance."[22]

A partial remission of prison sentences was involved in only three cases; the remaining 1520 pardoned had already completed their terms.[23]

America's next amnesty came in the midst of the Korean War. On 24 December 1952 as he began to prepare to vacate the White House, President Truman restored civil rights to all persons convicted of having deserted between 15 August 1945 and 25 June 1950. No pardon, remission, or mitigation of sentence was involved; the sole effect of Truman's action was to restore citizenship. An estimated 8,904 deserters were covered by the amnesty. In his Christmas Message the next day, Truman also announced the restoration of civil rights to Korean War veterans who had been convicted by civilian courts prior to their military service. The McCarran Immigration Act also became effective on that date and Truman's motive for restoring citizenship to this group of offenders may well have been to preclude deportation of veterans who had been naturalized citizens prior to their convictions.[24]

The Clemency Program initiated by President Ford's issuance of Proclamation 4313 and Executive Orders 11803-4 is the first Presidential or Congressional action in this field since the 1952 Christmas announcements.

-- Wil Ebel
3 June 1975

NOTES

1. James D. Richardson, ed., Compilation of the Messages and Papers of the Presidents, 1789-1897 (Washington: GPO, 1907), I, 161-62, 181.
2. Ibid., pp. 289-92, 303, 304.
3. Ibid., p. 425.
4. Ibid., pp. 512, 514, 543.
5. Ibid., p. 559.
6. War Department General Order No. 29, 12 June 1830.
7. Jonathan T. Dorris, Pardon and Amnesty under Lincoln and Johnson (Chapel Hill: Univ. of N. C. Press, 1953), p. 387.
8. Ibid., pp. 9-11.
9. Ibid., pp. 6-7.
10. Richardson, VI, 163.
11. Dorris, p. 34.
12. Ibid., p. 63.
13. Ibid., pp. 111-12, 117.
14. John C. Etridge, Amnesty: A Brief Historical Overview, Congressional Reference Service (Washington: GPO, 1972), p. 13.
15. Richardson, VI, 547-49.
16. Dorris, pp. 352-55.
17. Richardson, VI, 708.
18. US, President, A Compilation of the Messages and Speeches of Theodore Roosevelt, 1901-1905, ed. Alfred H. Lewis (Washington: Bureau of National Literature and Art, 1906), Supplemental Volume, 45-51.
19. "Grants Amnesty to 100 Deserters," New York Times, 6 March 1924, p. 3.
20. "Roosevelt Proclamation Restores to Citizenship 1,500 Wartime Violators," New York Times, 25 December 1933, p. 1.
21. "Truman Pardons Ex-convicts Who Served with Merit in War,", New York Times, 25 December 1945, p. 1.
22. Anthony Leviero, "President Grants Pardons to 1,523 Who Escape Draft," New York Times, 24 December 1947, p. 1.
23. Ibid.
24. "Truman Yule Plea," New York Times, 25 December 1952, p. 1.

LIBRARY NOTES

The Planning, Management and Evaluation Staff is building a PCB Library. The library will be housed in Room 901 (turn left as you leave the elevators). The PCB Library will serve three purposes:

-Reference library for the Professional Staff

-Research material for PCB's final report to the President

-Historical data to be archived.

All staff is invited to read these materials, but we do ask that you not remove or borrow any items from the library.

RECENT ACQUISITIONS OF THE PCB LIBRARY

Center for Study of Responsive Law. Troubled Peace--an Epilogue to Vietnam by Paul Starr with Jim Henry and Ray Bonner. (Of special interest in this Nader Report is Chapter 6: "Bad Discharges: The Wrong Way Out).

Jones, Bradley K., Maj., "The Gravity of Administrative Discharges: A Legal and Empirical Evaluation", Military Law Review, Vol. 59, (Winter 1973).

United States Code Annotated.

U. S. Congress. Senate. Committee on the Judiciary. Selective Service System Procedures and Administrative Possibilities for Amnesty. Hearings before a Subcommittee on Administrative Practice and Procedure. 92d Congress, 2d sess. (A comprehensive study. Hundreds of pages of testimony and appendices representing a cross section of pro-and anti-amnesty opinion and bias.)

U.S. Congress. House of Representatives. Committee on the Judiciary. Amnesty. 93d Congress, 2d sess. (Articles, testimony, statements, much material submitted for the record).

Walt, Lewis W., General, USMC, "Strange War, Strange Strategy". New York: Funk & Wagnalls, 1970

POLICY PRECEDENTS

The Policy Precedents Section of the Clemency Law Reporter will include periodic updates of the Kodak-Lohff analysis of the Board's application of aggravating and mitigating factors. You should keep these materials in a loose-leaf binder to permit insertion of new or revised textual analysis.

No attempt is made to identify which were the controlling facts directly affecting any particular case disposition; nor is it noted whether the Board marked any factor as "weak" or "strong." Facts which led to findings of other aggravating or mitigating factors (and which may have had the greatest effect upon the Board's ultimate disposition) have not been included in the summary extracts. Therefore, it is not possible to use the extracts to account for any particular case disposition by the Board.

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

June 9, 1975

Memorandum to: All Professional Staff

From: Larry Baskir, General Counsel

Subject: Staff Precedent Determinations

Thus far, the Board has not requested that the staff identify Board precedents applicable to cases before it for decision. In the future, it may make such a request. Before it makes any such request, however, we must be confident that our analysis of case precedent is professional enough to be a useful, impartial guide for them in their decision-making process.

Precedent analysis has its objective and subjective elements. Of course, it must begin with a thorough understanding of the policy precedent discussion (the "Kodak-Lohff" paper) in the first issue of the Clemency Law Reporter, as amended in subsequent issues. The next and even more difficult subjective stage is to identify how a case is similar to (or different from) cases already decided which received, say, a pardon -- or six months alternative service.

An entirely subjective approach, whereby the Action Attorney says "the Board has decided similar cases thus-and-so, and I think it will decide this case the same way," will probably prove inadequate for several reasons. First, few Action Attorneys have much knowledge of prior Board decisions. Second, the decision as to what case is similar to which other cases is not a simple one. Third, the temptation will always be great to ask the question "if I were a Board panel member, how would I vote on this case?" (This temptation must be resisted, for sure.)

For these reasons, it is useful to apply an objective standard as a rule-of-thumb in identifying how the Board translates aggravating or mitigating factors into case dispositions. One rule-of-thumb formula which Bill Strauss developed last fall has proven remarkably consistent with Board dispositions to date. His formula comes close

(within 3 months of alternative service) to actual Board dispositions in an overwhelming majority of cases. It does have important limitations: It does not use all aggravating and mitigating factors, and it considers only to a limited extent whether the Board finds any particular factor to be weak or strong.

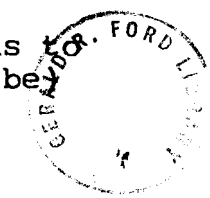
With your own experience and judgment as a guide, I suggest that you apply the Strauss formula to your cases. Use it only as a starting point, though; if factors are unusually strong or weak (or if unmeasured factors appear significant), make whatever "bottom line" adjustment you consider necessary.

Specifically, I would like Action Attorneys and Panel Counsels to do the following:

(1) Action Attorneys should continue filling out their factor worksheets on the basis of Board precedent (using the Kodak-Lohff paper, as amended, as a clear guide).

(2) Action Attorneys should identify the case disposition precedent, using the Strauss formula as a starting-point -- and using their own judgment to modify the result, where necessary.

(3) Panel Counsels should be alerted as to the "bottom line" case precedent (e.g., pardon, 3 months alternative service) for every case on their dockets. While sitting as panel counsels, they should be assertive in making sure that the Board follows its own rules and does not deviate significantly from prior practices. While it is acceptable (and encouraged) practice to note to the Board members when a case disposition differs markedly with previously-decided cases, it is <u>not</u> appropriate either to make specific recommendations to the Board (about what a correct disposition would be) or to suggest that the Board itself apply a purely objective formula in reaching its decisions.



(4) Panel Counsels and Action Attorneys should keep some sort of scorecard of how well their case precedents are working as predictions of actual dispositions. Certainly, if the Board asks us to formalize this process, we shall have to modify the Strauss formula (if necessary) and develop guidelines for subjective departures from that formula. Your help would be needed.

(5) Our legal analysis staff will be holding weekly meetings with Panel Counsels to identify new developments (or case illustrations) of Board precedents. The active involvement of Panel Counsels -- and their Action Attorney staffs -- is necessary to keep all of us aware of refinements in Board policy.

(6) If attorneys and Panel Counsels are not doing so already, they should begin to flag dispositions which trouble them to Charlie Graham of our administrative staff. He will assure that the disposition is not sent to the President, pending review by our legal staff and myself. (You should complete the appropriate form and attach a copy of the summary when flagging a case to Charlie.)

* * *

The Strauss formula:

CIVILIAN CASES

After you have filled out your factor worksheet, calculate a score on the basis of the following factors:

-1 for aggravating #1
-1 for aggravating #5
+2 for mitigating #2
+2 for mitigating #4
+2 for mitigating #8, #9, #10, or any combination of these factors (i.e., only +2 even if all three are marked)

If any mitigating factor is questionable or weak, mark +1 instead of +2. Ignore all questionable or weak aggravating factors. You could then use the scores as a rule-of-thumb for your "bottom line" precedent, as shown below:

+3 to +6 -- pardon, no alternative service (AS)
0 to +2 -- baseline period of AS (usually 3 months)
-1 -- increase baseline AS period by 3 months
-2 -- increase baseline AS period by 6 months, or no clemency

MILITARY CASES

After you have filled out your factor worksheet, calculate a score on the basis of the following factors:

-1 for aggravating #1
-1 for aggravating #5
-1 for aggravating #8
+2 for mitigating #2
+2 for mitigating #14
+2 for mitigating #5, #16, or both #5 and #16
+2 for mitigating #12, #13, #14, or any combination of these factors (i.e., only +2 even if all three are marked)

If any mitigating factor is questionable or weak, mark +1 instead of +2. Ignore all questionable or weak aggravating factors. You could then use the scores as a rule-of-thumb for your bottom line precedent, as shown below:

+5 to +8 -- pardon, no alternative service, with a recommendation for an upgraded discharge and veterans benefits
+2 to +4 -- pardon, no alternative service (AS)
0 to +1 -- baseline period of AS (usually 3 months)
-1 -- increase baseline AS period by 3 months
-2 -- increase baseline AS period by 6 months
-3 -- increase baseline AS period by 9 months, or no clemency

* * *

Remember that it is declared Board policy in civilian and military cases to:

(1) Grant immediate pardons to those with religion--based opposition to war (e.g., Jehovah's Witnesses, Quakers, or Muslims), in the absence of compelling aggravating factors,

(2) Grant immediate pardons to conscientious objectors (i.e., those with mitigating #10), in the absence of any aggravating factors, and

(3) Deny clemency to those with serious civilian felony convictions (i.e., those with a strong aggravating #1), at the Board's discretion.

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

June 10, 1975

Memorandum to: All Professional Staff

From: Lawrence M. Baskir

Subject: Updated Policy Precedent Analysis

In the pages that follow, the Board's revised list of aggravating factors is presented. All policy changes made by the Board through its Saturday, June 7, meeting are included. In addition, the case "squibs" have been updated to reflect as accurately as possible the Board's policy to date.

I suggest that you replace the aggravating factor pages in your earlier policy precedent materials (in the first issue of the Reporter) with these pages. Other additions are likely to be made in the future, as the Board further develops or refines its policies -- so you may receive other loose-leaf additions in upcoming issues of the Reporter.

Our legal analysis staff is now focusing on the Board's mitigating factors, and an updated analysis is planned for the next issue.

6/10/75

Aggravating Factors: 1.

Other Adult Convictions - This factor indicates any felony conviction, Special or General court-Martial conviction for any offense, either prior to or subsequent to the qualifying offense. Non-judicial punishments, arrests, acquittals, misdemeanors, youthful offender convictions, set-asides, juvenile convictions, or pre-trial confinements, are not applicable. A juvenile is aged 18 years or younger, unless State law provides otherwise. Use a one year sentence as a measure of a felony conviction for civilian, but not military offenses.

1. Other Adult Convictions

(No. 1825) Applicant pleaded guilty to a Federal Charge that he violated the Dyer Act, in that he transported a stolen motor vehicle across a state line.

(No. 1286) The applicant was arrested for possession of barbiturates, after which he jumped bond and assumed his wife's maiden name. He was extradited and subsequently was convicted for failure to keep his local board notified of his current address, and was placed on 2 years probation. He was also convicted of the old state charge and served a 6 month sentence.

(No. 1371) Applicant was tried by Special Court-Martial. Following this he escaped but voluntarily returned. His current sentence was meted out at the subsequent Special Court-Martial trial.

(No. 2722) Applicant (after discharge in lieu of court-martial) is presently incarcerated in a minimum security installation in Tennessee for grant larceny.

(No. 2368) After receiving his U.D. applicant was convicted by civilian authorities of Arson in the first Degree and was sentenced to six months to three years in the State Penitentiary.

6/ 10/75

Aggravating Factors: 2

False Statement by Applicant to the Presidential Clemency Board - This factor indicates any willful misrepresentation of a material fact by an applicant in his applicant form, letters, or other communications to the Board. A material fact is one which could affect a Board determination of baseline, aggravating factors, or mitigating factors. Mere conflicts are not cited unless there is evidence of an intent to mislead.

(No. 388) In his letter the applicant reports serving in Vietnam and also reports thzt he was confined one and half years in the stockade without trial . There is nothing in his military file to reflect these facts except an apparently erroneous DD 214 entry.

(No. 368) The applicant wrote the PCB and indicated that he had a clean record with no prior court martials; however, his military personnel file indicates one prior court martial and one Article 15 for AWOL offenses.

6/ 10/75

Aggravating Factors: 3.

Use of Force by Applicant Collaterally to AWOL, Desertion, on Missing Movement or Civilian Draft Evasion Offense - This factor indicates the use of physical force by an applicant to aid in the commencement or continuation of his offense. The use of force not directly related to a qualifying AWOL or draft offense is not relevant.

Use of Force by Applicant Collaterally to AWOL, Desertion, on Missing Movement or Civilian Draft Evasion Offense

(No. 3752) Applicant escaped from confinement, damaging military property in the process. He was apprehended shortly thereafter.

6/ 10/75

Aggravating Factors: 4

Desertion During Combat or Leaving Combat Zone - This factor indicates that an applicant went AWOL from his unit either during actual enemy attack or before any reasonably anticipated enemy attack. An applicant's reasons for his qualifying offense do not affect the applicability of this factor.

Desertion During Combat or Leaving Combat Zone

(No. 7163) On 21 January 1971 the applicant commenced the first of three instant episodes of AWOL while still in Vietnam. This absence was terminated by his surrender to military authorities in California on 6 March 1971.

(No. 5554) Applicant was reported AWOL from his unit in Vietnam on 19 August 1968. Given as reasons for his offense was his father's pending stomach operation.

(No. 2378) Applicant related that after spending a month on a fire support base, his unit was hit by friendly artillery; that his best friend had been killed by friendly fire and that several others were injured. It is at this point that his AWOL problems began.

6/ 10/75

Aggravating Factors: 5.

Evidence that Applicant Committed Offense for Obviously Manipulative and Selfish Reasons - This factor has been applied in a wide range of factual situations. Along with Mitigating #10, it is the most difficult factor to assess and apply. This factor indicates that an applicant committed his qualifying offense for reasons other than conscientious opposition to war, family hardship, or some other reasonable justification. Typically, an applicant to whom this factor applies committed his offense because of personal convenience or whim. This factor can also be present if an applicant goes AWOL to solve a family problem, then fails to return for an unreasonable period of time after the problem is solved. For the factor to apply in full force, there must be reliable evidence demonstrating selfish purposes for the offense.

However, a weak factor #5 may be applied in the absence of any evidence as to the reason for a qualifying offense, in circumstances where a reasonable inference may be drawn that the offense had been committed for selfish and manipulative reasons. This weak #5 is entirely a matter of Board discretion (and should not be marked by the staff).

5. Evidence that Applicant Committed Offense for Obviously Manipulative Selfish Reasons.

(No. 29.) Applicant's parents reared their children in the Moorish faith. The Muslim faith was the basis of the applicant's refusal to be inducted. Following high school, applicant became associated with a group of other Muslims, who because of their delinquent ways, were known as Outlaw Muslims. While a part of this group, he participated in a bank robbery.

(No. 1200) Upon return from overseas, applicant requested leave to marry his girlfriend, who was pregnant. Since leave was refused, he felt his only recourse was to leave without permission.

(No. 241) A few days before applicant was due to report to an Army Overseas Replacement Station, his wife threatened to commit suicide unless he promised not to report, as she was positive he was going to Vietnam and would be killed. Applicant subsequently divorced his first wife but did not then return to military control because he had debts he wanted to pay before returning.

(No. 612) Applicant stated that he went AWOL for approximately three months knowing that after that period of time he could come back and request a discharge.

(No. 417) Applicant testified at his court-martial that, before being inducted, he had requested a delay due to his mother's poor mental health and financial condition. He was subsequently inducted. While in basic training applicant applied for a hardship discharge; however, it was turned down because of insufficient documentation. Shortly thereafter, applicant's mother was hospitalized because of a car accident, and he went home on emergency leave. At the end of his leave, applicant did not return to his base because his mother was bedridden and there was no one to take care of her and provide for his younger brothers and sisters. He remained at home for a year and a half and worked under an alias. He stated that he held his obligation to his family higher than his obligation to his country. Applicant has numerous AWOLs in his record.

After returning from his AWOL, he was ordered to another base to complete his disrupted military training. He went AWOL again, never appearing at his new station.

(No. 344) Applicant went UA the first time "just for something to do", he left the second time because he "got involved with a woman." The third and fourth times he went UA were to go home and support his family as he was in a no-pay status with the Marine Corps.

(No. 206) Circumstances of offense. According to testimony the applicant met his wife, a Danish citizen, shortly after arriving in Germany. She became pregnant and he attempted to obtain permission to marry her. When he was unsuccessful he went AWOL on 14 Oct 66. After turning himself in, he was returned to Germany and placed in pretrial confinement. Shortly thereafter, he escaped and went to Sweden, where he applied for asylum. While in Sweden, he had numerous arrests on thefts and narcotic charges, received a sentence of 10 months imprisonment, and was deported back to the U.S.

(No. 243) Applicant began his first AWOL shortly after his being drafted. He had a history of repeated AWOLs. There is little to explain the repeated AWOLs but that he did not want to be in the Army.

(No. 122) On or about 16 Nov 70 he went UA and did not return to Marine Corps control until 29 Nov 73, when he was apprehended by the FBI. He asserted at the trial that he orginally went UA because a man from a rental car agency with whom he had dealt told him to pay the money he owed or he (the rental agent) would "make sure I go to the brig." He used an alias in all activities.

(No. 161) On 18 Sept 69 he went AWOL for over four and one-half years. He stated that he did not have any concrete reason for going AWOL.

(No. 173) Applicant escaped from the stockade by fleeing a police detail. At the time of his escape he was serving a sentence adjudged by a special court for previous AWOL.

(No. 98) On 13 Jan 71, applicant was ordered to report for military induction. On 26 May 71 he requested postponement claiming hardship dependency. After several requests for postponement having been denied, applicant filed to complete processing for induction. He surrendered to the FBI on 29 Jan 73. He insisted throughout his trial that he did not wilfully evade

Bad example

refused?

induction, that he simply failed to conform with Selective Service procedures. He cited numerous family problems as distractions: his father's illness, his mother's unemployment, his sister's drug addiction, and the fact that his immediate family is economically deprived.

(No. 1036) Applicant admits that he never gave much thought to his feelings about war until he received his induction notice. He was given the opportunity to serve as a non-combatant, but admits that he procrastinated until he was no longer eligible.

(No. 1285) In response to Selective Service inquiries, the applicant's parents notified the Board that their son was in Canada and they did not know where. From about July 1969 until May 1973 the applicant apparently lived and worked in Canada.

(No. 1560) Applicant's explanation for AWOL is that he thought he was being unjustly selected for an overseas assignment. The file does not contain information either supporting or denying this feeling.

(No. 1902) Applicant stated that he went AWOL because he does not like the Army.

6/10/75

Aggravating Factors: 6.

Prior Refusal to Fulfill Alternative Service - This factor indicates that an applicant has been granted Conscientious Objector status or, in the case of non-conscientious objector, has been ordered by a court to perform alternative service as a condition of probation, and therafter failed to satisfy the requirements of his assigned alternative service. This factor applies to members of Jehovah's Witness, Muslim, Quaker, or other religious sects (who cannot abide by Selective Service orders to perform alternative service) only when they refuse to complete alternative service subsequent to a judicial order.

6/10/75

(No. 92) Applicant received 2 years probation for a Selective Service violation with the condition that he work 4 hours per week at Public Works. He failed to comply.

(No. 55) Applicant was classified 1-O in 1966 and was ordered to report to his local board for instructions on how to proceed to an alternative service job. He failed to appear at the local board and was convicted in 1973 on a guilty plea to failure to report for alternative service.

(No. 779) Applicant was classfified I-O because of his religious beliefs as a Jehovah's Witness. When offered alternative civil employment, he engaged in dilatory tactics and made token appearances on the job.

(No. 560) Applicant was classified 1-A and ordered to report for induction. He reported but failed to submit and was sentenced to 3 years in the custody of the Attorney General, execution suspended, with 5 years probation, 2 years of which were to be in work of national importance. After working for one year at a Pennsylvania hospital, the applicant resigned his job and notified the sentencing judge that he, in good conscience, could no longer cooperate and requested revocation of his probation. The judge, therefore, revoked probation and gave the applicant a one year jail sentence. He was released after serving 10 months in prison.

(No.1027) The applicant's probation officer indicates that his performance of alternative service was "rather poor".

6/10/75

Aggravating Factors: 7.

Violation of Probation or Parole - If an applicant violated the probation or parole to which he was sentenced for his qualifying offense, this factor applies. The violation should be serious enough to have caused the revocation of that probation or parole.

7. Violation of Probation or Parole

(No. 10) Applicant pled guilty to a Selective Service violation, and was placed on three years probation on 30 December 1970. This probation was subsequently revoked for among other items, failure to comply with the specific terms of his probation "to make a bonda fide effort to enlist, and if that failed, to perform alternate service under supervision for three years."

(No. 1600) Shortly after being placed on probation, applicant was returned to Court due to his failure to perform the ordered work. Probation was reinstated and extended three years from that date. Applicant has complied with the conditions of probation. He was discharged from probation prior to the expiration of the maximum period and his conviction was set aside pursuant to the Youth Correction Act.

(No. 1023) Applicant was convicted of failure to report for induction and sentenced to 5 years probation. Following conviction and while on probation, applicant was arrested and pleaded guilty to state felony charges. Applicant's federal probation was revoked following his state conviction.

(No. 1671) In early 1974 applicant moved to Arizona without the knowledge of the Michigan probation authorities.

(No. 139) Applicant received a BCD and 6 months confinement for an AWOL offense but the sentence was suspended for 6 months, after which time unless soon vacated it was to be remitted. When applicant realized his sentence would return him to active duty, he went AWOL again and the suspension was vacated.

6/10/75

Aggravating Factors: 8.

Multiple AWOL/UA Offenses - This factor indicates that an applicant went AWOL more than once. Mere allegations are not sufficient. There must have been an Article 15 or court-martial determination. If there is a prior AWOL Summary or Spec. Court Martial conviction, both #8 and #1 are marked in aggravation.

6/10/75

Aggravating Factors: 9

last one only.

AWOL/UA of Extended Length - This factor indicates the combined length of qualifying AWOL offenses. It does not apply if an applicant had been AWOL for a total of 2 months or less. It is "weak" if the AWOLs total 2-6 months, and applies in full force if the AWOL is over 6 months. Action Attorneys should not attempt to assess whether it is a "weak" or"strong" 9, but should simply indicate the length of the AWOL(s).

6/ 10/75

Aggravating Factors: 10.

Failure to Report for Overseas Assignment - This factor is applied where the applicant has been ordered to report for military duty outside the United States (Vietnam or elsewhere) and goes AWOL before reporting to the Overseas assignment.

6/10/75

(No. 1807) One day before applicant was scheduled to be sent overseas, his destination not being clear on the record, he went AWOL.

(NO. 3328) Applicant went AWOL when he failed to report to Overseas Replacement Station for assignment to Vietnam.

(No. 3584) During advanced training, applicant decided that he did not want to kill anyone, and he applied for a C.O. status which was refused. Later, orders came to report to Vietnam. While on leave, before this assignment was to begin, the applicant requested help from his Congressman so that he would not be sent overseas. He also applied for an extension of his departure date on the grounds that his wife was 8 months pregnant and that he was an alien. His request was denied and, consequently, applicant went AWOL.

(NO. 507) After entering the Army, applicant requested removal from the Officer Candidate School list, stating that he was opposed to killing and did not believe in the Vietnam war. Shortly thereafter, he formally applied for a conscientious objector separation from the service. He failed to report to a west coast personnel center for movement to Vietnam.

6/10/75

Aggravating Factor: 11

Other Offenses Contributing to Discharge - This factor applies when an applicant has special or general court martial convictions which contributed (along with his qualifying offense) to his discharge. Non-judicial punishments and summary court martial convictions are not applicable. Aggravating factor #11 never applies unless aggravating factor #1 (other adult convictions) also applies.

6/10/75

Aggravating Factor: 12

Apprehension by Authorities (Tentative) - This factor applies if an applicant evades authorities throughout the duration of his offense, with his arrest coming against his will. The simple fact of arrest (rather than surrender) is not alone sufficient to bring about this factor; some additional evidence of intent to evade authorities is necessary. For example, the factor does not apply in the case of any applicant who lived openly in his home community under his own name, because of the lack of any intent to evade authorities. In the absence of sufficient information, neither Aggravating #13 nor Mitigating #11 (surrender) applies.

EXCERPTS FROM MINUTES OF LAST WEEK'S BOARD MEETINGS

5 June 1975

Justice Department The Justice Department has raised again the question of whether a person with an Undesirable Discharge is eligible for a pardon; in September, 1974, the Presidential Clemency Board recommended, and the President concurred that such a Pardon is possible. The matter will go again to the President for final decision.

Drug Addiction Senator Goodell stated that drug addiction will be considered neither aggravating nor a mitigating factor. However, psychological and physcial problems that have developed as a result of drug addiction acquired during military service will be considered mitigating.

or who led to drug addiction

Court Ordered Alternative Service Panel members are to ignore court-ordered alternative service when deciding on the length of alternative service an applicant should do, a panel has recommended completion of court-ordered alternative service, a specific termination date should be provided.

Attorney Role General Walt raised the question of attorneys acting as advocates for the applicants. He stated that attorneys have said they were instructed to present the applicant in the best possible light. It was agreed that attorneys should be as objective as possible and not advocates but, as professionals, they would attempt to provide the Board with as much information as possible.

Case Review Procedure In order to speed the handling of cases, the panels should review the aggravating and mitigating factors before coming to a decision, unless the decision is clearly a pardon. In this way, the focus is on the factors and not on bargaining over the decision. There should be consideration of whether the factor is strong or weak, because it can make a difference. The agravating and mitigating factors are qualitative things and the nature of the situation is important. Decisions on how much alternative service will be required should not rest solely on a comparison of the number of aggravating factors on one side and the number of mitigating on the other. The weight placed on each of the factors is critical.

The ensuing points were raised during discussion of the various cases on the Docket. The reading of cases began after the Chairman complimented the Panel/Board members on the expeditious handling of cases this week.

Discussion of Aggravating #1, "Other criminal Convictions". A decision was made by the Board to drop Summary Court Martial as an Aggravating factor #1. Summary Court Martials for AWOLs shall be marked only under Aggravating #8 because a summary court is not considered serious by the military. Additionally, misdemeanors by civilians are not to be marked as Aggravating #1.

Extended AWOLs: Continued Discussion from previous Full Board meeting.

a. Factor #9 will remain, but times revised to be

i) do not mark less than 2 months aggravating,

ii) always mark the length of the AWOL,

iii) 2-6 months, of AWOL, mark weak,

iv) over six months mark without qualification.

Apprehension: This was suggested as a new aggravating factor #12 to indicate that person had not voluntarily submitted himself. Board agreed and used this factor in afternoon sessions of the same date. However, account should be taken of whether the person made attempts to contact authorities, whether he went home and did not change his name, etc. A demonstrable effort to submit should be considered mitigating, under mitigating factor #11.

Jurisdiction: Mr. Baskir presented discussion concerning PCB jurisdiction in cases where more than AWOL was involved. It was decided:

a. If the applicant could have been discharged for AWOL alone, the PCB does have jurisdiction

b. If the applicant could not have been discharged for AWOL alone, nor for the other offense; but he was discharged, the PCB does have jurisdiction.

c. If he could not have been discharged for the AWOL, but could have been discharged for the other offense alone, the PCB does not have jurisdiction.

The PCB General Counsel together with the Chairman will make recommendations to the Board concerning whether particular cases are within the Board's jurisdiction. The recommendations will be based on information gleaned from the militarys' list of maximum punishments.

Guidelines re Other Serious Criminal Convictions: Mr. Baskir presented the discussion regarding the language on the seriousness of convictions describing several categories of felonies. Because of language of the Law and variations in definition by State, Federal and Local authorities, and because of differing interpretations by Judges and dispostions by Juries, Mr. Baskir was unable to offer clear guidelines to the PCB concerning which felonies should be considered serious enough to disqualify a person for clemency.

a. Mr. Everhard suggested case by case disposition.

b. Mr. Riggs reminded the PCB of their mutual concern about embarrassing the President by offering clemency to applicants who have committed heinous crimes.

c. Generally it was decided that those who committed heinous crimes endangering another human being and ~~repugn~~ant crimes will not receive clemency.

d. Mr. Baskir will instruct attorneys to get as much information as possible concerning the offenses an applicant committed prior to presentation to Panels and the Board.

Contacting Incarcerated applicants: The problem of getting direct contact with incarcerated persons was raised and the point made that talking to the applicant was crucial. Attorneys were instructed to use White House authority when needed to deal with prison authorities in order to obtain information from or about incarcerated applicants.

Aggravating #5, Manipulative and Selfish Reasons: A lengthly debate followed from the Chairman's suggestion that no expression from the applicant regarding his reasons for AWOL should be marked a weak aggravating factor # 5. Mr. Goodell conceded that it was a debatable point even if the applicant was given an opportunity to speak and did not.

a. Mr. Baskir raised the question of violation of individual rights because a person is not required to testify againist himself and has a right to silence under the 5th Amendment of the Constitution.

b. Mr. Kauffmann supported Mr. Goodell stating that the PCB is not dealing with justice but with clemency.

c. Mr. Maye also concurred with Mr. Goodell since the cases before the PCB have been declared guilty already and are not presumptive guilt.

The PCB is offering clemency after conviction and is not a trial. Mr. Baskir suggested that the wording of Aggravating #5 be altered to clarify "evidence" and "obvious".
Board voted not to alter wording but to accept Mr. Goodell's original proposal that a weak Aggravating # 5 be marked if no reason for the AWOL is offered by applicant and it is not in the record. The Board voted 5 to 5 with respect to the proposal and left the decision to the Chairman who decided in favor of the proposal.

AWOL Markings:

Unpunished AWOL offenses should be marked as aggravating and should be computed as part of the total AWOL time counted.

DD 214:

Because the DD 214 is often unclear, attorneys are instructed to look beyond the document in the files to determine the accurate period of creditable service.

Possible contradiction in Aggravating #s 1 and 11:

The question of mixed discharge for unfitness including AWOL was raised. Chairman decided that #11 Aggravating will be marked for non-related factors included in an Undesirable Discharge.

7 June 1975

Mitigating Factor # 10, Acted for Conscientious Reasons:

The Chariman noted that, through the end of May in 170 cases where no aggravating were marked and #10 mitigating was marked,

7

all but 5 applicants received Pardons. He urged the members to be consistent in this matter. However, when aggravating factors are marked along with #10 mitigating, the decision is certainly expected to vary. The usual outcome where no aggravating appear and #s 4,10,11 are marked mitigating, a Pardon ensues.

V.A. Benefit Cases: The Chairman said that 58 cases of upgrades were scheduled for the Full Board before this weeks meetings and that when such cases are sent to the Full Board, the Panel recommendation should be unanimous. Because of the time involved in discussing these cases before the Full Board, it was suggested that a special Panel might be convened to resolve these issues. The Board concurred in that procedure if it becomes necessary.

The entire matter of V.A. benefits has not yet been resolved by the President and discussions with the Defense Department are inconclusive. General Walt wants "clean and strong" cases only to be presented so that they will not be jeopardized by weaker ones. Messrs Maye, Puller, Craig, Riggs and Walt will try to develop a "persuasive approach" to their colleagues in various service organizations. Mr. Goodell urged that the word be spread that such upgrades will be limited and fair, not at all wholesale.

Cases Involving Officers: Mrs. Ford raised the question of how officer cases are being treated. The members agreed that they will be handled in the same way as enlisted personnel with no special preferences given. The same applies to Staff Sergeants and other senior NCOs.