The original documents are located in Box 7, folder "Memoranda - Internal (1)" of the Charles E. Goodell Papers at the Gerald R. Ford Presidential Library.

To: CEG

From: RAK

Pursuant to a request from Lee Robinson of the Second floor, I today had Lee Beck share with a Mr. Frakes of the second floor compies of the following:

1. the Codebook for the Demographic study
2. the Program for the Demographic study
3. the System Documentation for the NASA programming.

The Board has had the Codebook for some time; the other materials only tell what the computer is doing, not the results or the uses to which the results are put.

I had a fruitful meeting with Captain Robinson today about lowereng the level of controversy bewteen the two staffs for the final report. He brought with him Mr. Frakes, who is another reservist, with the Michigan arm y National Guard, who is the head data processor ~~the~~ for the National Guard in Michigan.

I further asked M Captain Robinson for information about the addl staff that he and Genl Wals expected to arrive from outside the PCB. He promised a response by COB today, Thursday.

THE WHITE HOUSE
WASHINGTON

3:30 PM

COO:

1) The agenda is a draft. Please read, phone in changes to me, and we'll get it out with background stuff this afternoon.

2) Please advise re clemency discharge memo.

3) I'm having production problems caused by Trudy's being the only secretary outside. She has to type, answer phones, and keep a stream of visitors out of my hair. Please talk to Scott re getting Kingsley and Pat (the secretary) out of here fast.

RT

THE WHITE HOUSE
WASHINGTON

Senator:

Should we
— send this out as is,
or
— retype under my
name to the Board
(or your name), or
— neither?

It responds especially
to Bob Finch's question.

K.

Dear General Walt:

It is my view that the Presidential Clemency Board should spend the first day of our meeting next week discussing major policy issues that will enable us to begin disposing of cases. I have, therefore, asked the Defense Department to postpone its briefing of the Board until Tuesday.

We hope to have the personnel files and records of the 103 individuals who ~~are~~ were in federal prisons and the 195 individuals who were in military stockades at the time of the President's proclamation. This will be our first priority. At last report the military had released 155 men on furlough, and the Bureau of Prisons had released 84 prisoners pending review by the Clemency Board.

Since we are going to be dealing with detailed personnel records, our ~~two-day meeting~~ will be closed to the public and to the press.

I shall open the meeting Monday with a discussion of our proposed two-day agenda so that the Board can make any changes it wishes. Depending on our progress on Monday, we may schedule a press briefing Tuesday morning.

It is my suggestion that we schedule a fifteem minute coffee break mid-morning and mid-afternoon of each day. In addition we will leave about 30 minutes after lunch for Board

members to take a walk or whatever else they desire. Please count on the Board meetings starting promptly at 9 a.m. and extending until 6 p.m. each day.

I am enclosing some material which you may wish to look over before the meeting. Enclosed are:

You will note that the first item is a list of possible issues for the Board to confront in our meeting. It is by no means exhaustive, but I thought it might be helpful in giving you some idea of the agenda for the two-day meeting.

I look forward to seeing you next week and working with you on this matter which is of such critical importance to our nation.

With sincere regard, I am

Very truly yours,

PRESIDENTIAL CLEMENCY BOARD
APPLICATION

~~The undersigned does~~ I hereby apply to the Presidential Clemency Board for consideration.

I. Civilian Draft Resister

Applicant _____
Name: Last First Middle

Social Security No. _____ Date of Birth _____

Place of Birth _____

Mailing Address _____
No. Street City State Zip

Phone _____

II. ~~Military Applicant~~ (IF YOU WERE COURT MARTIALED OR DISCHARGED FROM THE MILITARY SERVICE PLEASE COMPLETE THE FOLLOWING)

Branch of Service _____

Military Service No. (if applicable) _____
(if same as Social Security No. so indicate)

Year Entered Military Service _____ Date of Discharge _____

Type of Discharge _____ How Discharge Awarded: (check one)

Court Martial ( ) Admin. Discharge Board ( ) Own Request to avoid trial ( )

Offenses on which Discharge Based _____
(Describe specifically and as accurately as possible. Include dates of offenses & conviction and type of court or non-judicial punishment.)

III. Selective Service Applicant

Applicant was convicted of _____
(Describe as specifically as possible, including dates of offense and conviction.)

SIGNATURE

Location of Federal District Court where convicted._____

Location of Prison where confined._____

Any alternate service performed on probation._____

IV.

In addition to your official record, which the Board will obtain and consider, you have the right to submit additional material to the Board which may affect its consideration of your case, including, but not limited to, a written statement, and character references.

Such additional materials:

( ) are attached. ( ) will be forwarded by the applicant within 21 days.
( ) I do not desire to submit additional material to the Board.

Date_____ Signature of Applicant_____

Mail to: The Presidential Clemency Board
Room 460
Old Executive Office Building
Washington, D.C. 20500

INSTRUCTIONS FOR APPLICATION FOR CLEMENCY

PRESIDENTIAL CLEMENCY BOARD

I The following persons may be eligible for clemency:

1) All persons who have been convicted of draft evasion offenses, such as failure to register or register on time; failure to keep the local board informed of current address; failure to report for or submit to pre-induction or induction examination; failure to report for or submit to or complete service, during the period from August 4, 1964 to March 28, 1973.

2) All persons who have received undesirable, bad conduct, or dishonorable discharges for desertion, absence without leave, or missing movement, and for offenses directly related thereto, between August 4, 1964 to March 28, 1973.

If you believe you fit the above categories, but are not certain of your status, make application to the Board. Your case will be reviewed and you will be considered.

II The Board will obtain your official files, and will consider any additional information you may wish to submit, as described in the application form.

III Each person who believes he is eligible should apply regardless of the present status of his case on appeal.

IV It is believed that the application form is self-explanatory. If you have any questions please contact your attorney or call or write the Presidential Clemency Board, Old Executive Office Building, Washington, D.C. 20500. (202) 456-6476.

V This application should be completed and mailed to the Board no later than midnight, January 31, 1975.

CEG: 5:00 PM

Bob Horn and Jay have had some [redacted] words over phone, triggered by Jay's telling Bob that Phil Buchen has signed a memo to you on 3 points, all ~~xxi~~ generated by General Walt. The points are--

Total list time Reviewed this No explanation Illustrative

1. Buchen is worried about the Board's having brought some cases up a second time* before a different panel (panel-shopping), and wants those cases separated out by name in the warrants. Our last 3 packages have been returned by Jay for this purpose, and

2. in order to separate out by name all felony cases. General Walt has a letter, which he has given Jay, allegedly from you or a staff member, soliciting applications from 2 Federal penitentiaries in June.

6000 Unpunished Murders!

3. He is also asking that all late application cases be segregated out in the warrants. Jay believes there are many.

There apparently was a letter to penitentiaries sent out by either Larry or Gretchen in June; Bob is getting a copy now. Precisely what that letter says--whether it was actually solicitation of applications--~~xis~~ is in doubt. Jay has the text, however, and at least he is not in doubt.

The Buchen memo, notwithstanding Jay's claim to Bob, has not yet been received by Marilyn. She was trying to get a copy.

In order to try to avoid this series of problems before it becomes formalized on paper, I have called Buchen's secretary, asked her whether he actually has signed the memo yet, and asked her to intercept it prior to signing if he has not--in order to make it possible for the two of you to talk first on these points, if you so choose. Her impression is that it is on his desk, with signing imminent. He has people in his office now, but when they leave, she will put a hold on it until you call Buchen or I call her back.

You may want to think about calling Buchen immediately after the Board breaks, or perhaps even before that. Although Eva is willing, I am not sure that she can stop the memo--and it is much better handled informally, by speaking to the erroneous facts on all 3 points, rather than formally after a memo has been signed off on. You would be a pity if he signs off and leaves the office before you break.

R.

* Jay wants to know which case board members referred from the panels to the board, which cases the computer system referred back and which referrals resulted from forum shopping RHR

27 cases found earlier

10 original pardons
(8 more sought)

6 AG to Pardon

5 ~~AG to AG~~ ?

6 ~~12 to~~ Change in AG

---

about ~~50~~ Attys ignorance

5 New info

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

Senator,

I peeved at you for always asking me if the applicant has a prior felony conviction. I know you think that I would have failed to make the board members cognizant of that fact on one of my cases at Camp David, but the felony conviction was mentioned in the summary and I was addressing your question about the instant felony convictions in the case.

I'd appreciate it if you demonstrate a kinder judgment to me at the time of presentation.

Thanks,

Lyman Goon

Memo: DO CGG
Fm: LMG
Re: Double Panel Submissions

Based on our "verification" procedure, we have identified 39 cases submitted to two panels. Of the total, 14 originally received pardons. In seven cases, the second result was also a pardon; 6 others received 3 months, and the last, 9 months. One of these 14 has been forwarded to the Pres. Asst. All are listed by their original decisions.

Of the remaining 25, 15 resulted in a less severe recommendation the second time, in 3 of them, the

difference was more than 3 mos change. A total of 7 of the cases resulted in pardons at the second panel.

Of the 25, three cases received the same disposition the second time, and 3 others a more severe disposition.

In ~~two~~ one case, the first panel result in not granted, and we can not tell whether or not the case was decided, or whether it was tabled for more information. In another case, the second panel tabled the case, and in a third, it was referred to the full Board because of a split decision.

Of ~~all~~ the three cases not receiving a grant on the first submission, the sent to the Pres reconsideration, in two of them was the original decision. In only one case was the second result (from 6 months to 3 months) sent to the Present. This was case # 7021, which was a flagged case.

We have thus far investigated 29 of the 40 double-decisions. Nine resulted from the receipt of new information subsequent to the first hearing. Nine others were presented by a new attorney unaware of the first presentation. In 4 others, the same attorney re-presented the case, but the first

decision was a pardon. Is why 2
cases did the same observer report
the case without any apparent
explanation, the original decision not
being a pardon.

Lenser

Case #	1st Rec	2d Rec	Remarks
9125	7AS	4 MOS	Info
7021	6	3	Flag
1074	3	P	
3593	3	P	
1904	9	P.	
6137	3	P	
5959	6	3	
6254	6	P.	
4200	6	P..	
12294	3	P	
10232	6	3	
14712	9	6	
6595	4	3	Info
4006	6	3	
7573	9	6	Info

1904 Presented w/o info. 1st time. Sent to Full Bd

6254 New info

10232 Same atty - no explanation

10263 Same atty, new info.

10396 Same atty, new info

14712 Same atty, new info.

3593 2 attys, poor summary. Flagged by computer on 1st result (AS w/o Atty).

7744 Two attys in ignorance.

6906 Same atty, new info, worse result.

9125 Two attys, new info.

10182	Two attys, ignorance, both P
3456	Two attys, ignorance, P then 9th S.
6595	4th S, letter of failure, 3rd S.
1757	Two attys, ignorance, both P
V 332	Same atty, both P
4867	2 attys, 4th same result, no info.
16658	2 attys, succeeding days, same 3rd S.
4006	Atty gone to another, didn't know of panel hearing.
7573	1st decision apparently lenient for more info.
654	Same day, but split. Panel came to result.
1446	Same atty, 2 days. Originally 8th S.
6682	1st by substitute. Local Atty unaware.
12294	Same atty, no explanation.
15124	New info on failure.
963	No info on 1st decision. Atty aware.
772	New info.
11200	1st decision P. Atty aware.
265	Same.
~~350~~	
1074	1st decision 3rd S. 2d P. No explanation. Case already sent to Pres before 2d decision.

Rue or Sand

~~3456~~	#	
664	6	6
772	6	9
661.2	3	9
15124	6	W/C
10253	3	3
13086	9	9
~~Sand~~		
4867	3	3 x (5/8")
		#

I agree with Mr. Olzinski we thought we would send Ref A periodic reports but the Final Report will do as well. I will handle it you like.

PRESIDENTIAL CLEMENCY BOARD
MEMORANDUM

Larry - CEO would like to discuss/W

TO: SENATOR GOODELL cc: Larry Baskir

FROM: Nia Nickolas

SUBJECT: Professor William Anthony of Texas A&M
Concerning Information he requires for
the book he is writing on the Clemency Program

On Tuesday, August 20th, Professor Anthony expects to be in Washington,D.C.

During his earlier visit here, he had chatted with Larry Baskir and indicates to me that Larry had consented to forward to him weekly reports of the Board's decisions. He has been calling from Texas regularly both to Larry's office and to me concerning this type of background information. It would seem to me that these decisions are still a private matter and not for distribution to the outside -- however, that is yours and Larry's decision.

He would like to have an interview with you Senator -- and if Larry is back -- with Larry also.

I have been trying to channel all this information thru the Press Office simply to be sure we have some record of what is being given to him.

Actually, I feel it is best to wait until the Final Report comes out and then decide what we want him to have -- since a book on the Clemency Program would be a lasting and historical snapshot of what we have done and should be dealt with as correctly and factually as possibly.

Please advise what your thoughts are and if you agree.

Thank you.

P.S. He had also talked with Lee Beck and Bill Strauss who both indicated he could have their computer print-out information and statistical data. Do you agree?

TEXAS A&M UNIVERSITY
COLLEGE OF LIBERAL ARTS
COLLEGE STATION, TEXAS 77843

Department of
POLITICAL SCIENCE

Mr Counselor Baskir, and Clemency Board members.....et al.

It would be of great interest to obtain the views on the following questions;

1. What is the organizational "lashup" to/at the "White House?

2 Sequence of event leading up to the Presidents initial decision?

3 The relationship of Clemency decision with the Nixon Pardon -if any?

4 What sort of information was presented to President Ford during decision process?

5 What roles did the DOD; Selective Service; and The Justice Dep artment have in the decision making?

6 What do various organizations think should be done now?

7 How is/was the administrative processing handled by; The White House Exec branch; The Clemency board; The Military; The Department of justice, and the Selective Service Bureau?

8 Were any public opinion polls taken on the Clemency issue; Before initial decision/ after initial decision?

9 Is there any evidence of dissatisfaction by the Presidential Clemency Board on the administration of the Program by DOD; Selective Service; Dept of Justice, and any other?

10 What are the considered views of knowledgeable people about revisions in stand-by selective service laws to ease problems in future wars?

11 How did administrators put out the word to deserters/evaders about the Presidents Clemency Program offer?

12 What private groups have become involved in this Program; pro groups? con groups? In what manner did they help or hinder the program operation, administration, processing and reviews?

13 Is the issue solved for the near-term; for the long term??

(14 What is the operational procesing, policy, and functions that are carried out by the offcie in the over-all administration of the Presidents Clemency Program...what documents and data are available for research data.)

To be asked of all groups but
Senator Boudell has left request
to president to remove disposition

Senator,

This is all I have on PCB.
Jules re 555. I've heard that it
went up and we lost; I sort of
expected that. I'll call you tomorrow.

Lee

686-3803

RECOMMENDATIONS ON PROBLEMS RELATED TO BAD DISCHARGES

I. Tim Craig's recommendations.

1. Legislate the regionalization of Discharge Review Boards in all services, and require that Vietnam Veteran enlisted persons be on each board.
2. Amend the definition of "Veteran" so that a disabled veteran with a bad discharge becomes eligible for V.A. medical benefits.
3. Review automatically each of the 500,000 Vietnam era "bad paper" discharges. Either keep PCB in existence to do that or have the President require the services to do it.
4. Designate one person on the White House staff to have full-time responsibility for veterans' affairs.
5. Get a commitment from the NAB and other business organizations to communicate to employers that holders of a Clemency Discharge should not be discriminated against.
6. Request Roudebush, or have the President direct Roudebush, that the V.A. be generous in construing holders of Clemency Discharges to be eligible for veterans benefits.
7. Remove the 10-year delimiting date on use of educational benefits.
8. Organizationally shift the Veterans Employment Service (VES), in accordance with Thurmond bill, so that the Director of the VES reports directly to the Secretary of Labor.
9. Continue the VCIP program in HEW after it runs out next year. Full funding ($300 per capita).
10. Restore GI education benefits, which have been ended by an Executive Order marking the legal end of the Vietnam-era.
11. Set up a meeting between the President and heads of Vietnam Veterans organizations to talk about Vietnam Veteran problems.

II. Jim Maye's recommendations:

1. In summary, Mr. Mayeproposes that apparently mentally restricted individuals be given an enlistment contract for a year or less with an option to re-enlist. If the person cannot perform satisfactorily because of his mental restriction, he would receive an administrative honorable discharge. Staff personnel should receive special training on working with such inductees (our Category 4 people).

III. Recommendations of Admiral James Wilson, (Chief of Naval Education and Training, and former Commander of Naval Forces in Vietnam)

1. Change the curriculum in all military services' basic training to incorporate an orientation on the legal remedies (hardship discharge, compassionate reassignment, etc.) available to a recruit with family hardship or mental stress, and to include information on the resources available to help that recruit.
2. Employ voluntary agencies on every military base to help young recruits with family hardship or emotional problems. Red Cross people, for instance, would--unlike the first sergeant, the military chaplain or the JAG officer--be perceived by the recruit in trouble as outside the chain of command, and therefore possible trustworthy sources of help in stress. There is precedent for this, since the Red Cross and other voluntary agencies already help base commanders to verify alledged recruit family problems on some bases.

IV. General Consensus of Veterans Service Organization Staff, and Capitol Hill Veterans Committee Staffs

1. Direct automatic review by the military of all bad discharges.
2. Create a direct link between the VES and the Secretary of Labor.
3. Educate sergeants and platoon and company level officers on the legal remedies and the counseling resources available to help kids with sudden family problems or sudden mental stress.
4. Through OMB, or through the Federal Regional Council direct the VA, HEW, and the Labor Department (DOL) to cross-train their local and regional people so that each office knows the benefits available to veterans in each other office. For instance, every VA local person ought to be aware--and most seem not to be--that HEW-funded vocational rehabilitation programs and DOL-funded on-the-job-training programs are preferentially available to veterans. A GAO study published last month shows that there are tens of thousands of OJT slots which have been developed by the VA and are not filled because local Employment Service people have no contact with their VA counterparts.
5. Notify all veterans with "bad paper" of the upgrading options legally available to them.

IV. 6. Establish national VA standards as to which types of UD offenses make a person ineligible for benefits and which do not. Currently, the VA turns down 98% of the requests for benefits by holders of UD's on the basis of standards no more specific than "moral turpitude."

7. Consder folding General Discharge and UD's into one, neutral, "Certificate of Discharge." (Endorsed by the Chairman of the House Armed Services Committee and nearly a hundred of his colleagues.) Alternatively, bring procedural due process into the administrative discharge system.

8. Per the Steiger-Bennett bill, restrict the release of information by the services, to other agencies and to employers, about veterans with bad discharges.

9. Require the services to adhere to their own regulations by refering a physically and mentally apparently disabled individual to a "medical board", and then to a Physical Evaluation Board, when he displays erratic behavior. If those regulations were adhered to, allegedly a number of Vietnam Veterans would have received a medical discharge disability rather than "bad paper", and would be eligible for "disability retirement" benefits.

10. Require the VA, HEW, DOL, and HUD to implement far greater out-reach for veterans eligible for benefits administered by those agencies. For instance, use public assistance and unemployment compensation offices and mailings to get the word out.

11. Ensure that the President gets briefed by the Vietnam Veterans organizations on the problems of the Vietnam veterans.

12. Revise the services' basic training in order to ensure that recruits understand why it is that they may be fighting in a war, and what their objectives are in defending the country. The hypothesis is that there would have been far less battlefield stress in Vietnam, and far fewer AWOLs and desertions, if the war had had some psychological meaning to the people fighting.

13. Issue a Presidential Bicenntenial Statement praising the sacrifices of Vietnam Veterans and proposing several new remedies to assist them.

14. Re-examine the services' selection-out procedure for recruits who display mental problems during basic training and who ask for discharges.

15. Direct the military to re-examine whether JAG officers and chaplains are too susceptible to command influence to be sympathetic to a recruit who claims a hardship, at a time when the commander is under pressure to send large numbers of troops into the field.

IV. 16. Direct DOD to re-examine trade-offs between calling up the reserves in a Vietnam-type situation and sending draftees into the field.

17. Direct the Department of Defense to establish an automatic discharge review mechanism so that all bad discharges are reviewed after a specified period of time (5 years?) after issuance.

18. Direct DOL to evaluate the utility of its Examplary Rehabilitation Certificate, and of the need for a three-year waiting period after discharge before eligibility for it.

Recommendations For Future
Military Enlistment Program

One of the most pronounced problems uncovered by the work of the Presidential Clemency Board is the inordinate number of less than honorable discharges given to men with a significantly defecient intellecutial capacity. Various Defense Department statistics indicate that men with such mental deficienties, classified as categories IV or V, were inducted at a rate of 12% to 18% annually. The rate of category IV and V personnel processed through the Presidential Clemency Program shall surly exceed twice the Defense Department annual rate of induction.

The philosophy set forth by the military in permitting men of limited mental capacity to serve in the Armed Services is not without merit. Many persons who are handicapped by organic mental limitations or for emotional or social environmental reasons are functional retarded, preform very well in highly structured and well supervised positions that can be offered by the armed services. Unfortunately only superficial research and preperation was conducted before instilating a program to induct or to allow the enlistment of men will limited mental capacity. One such program and the most popular being "Project 100,000".

The Defense Department utilizes the Armed Services Qualification Test designed to determine both mental Achievement And educational achivement of persons entering the military service. This particular test has a recognized weakness in attempting to measure intellectual levels outside the normal range or to accuratly determine the mental capacity of persons with very limited or very highly educated background. In other words the person with less

than a eighth grade education or with limited mental resourceses will not have an accurate indication of his capacity indicated in his test profile. The AFQT is a very useful tool in determining the general classification of military applicants but upon the indication of a possible mental limitation futher testing ~~a~~ and evaluation should be made by a qualified psychologist, From this evaluation can be developed an accurate profile of the individual ~~which can~~ TO be utilized ~~to determine~~ in determining the applicants eligibility for military service, possible military occupation status, and assist staff personnel work with the applicant in his tour of service.

A second weakness of The most recent Defense Department Program ~~for~~ of military service ~~of~~ For persons with restricted mental capacity was not making provisions for handling those accept the ones unable, but unable to function ~~satisfactorily~~. For the retarded individual accepted into military service, the level of expection of his performance was the same as all other inductees. no new paragraph.

Fortunatly most were able to perform to the minimal requirements and still ~~allow~~ These distinquished themselves and the military. For those who could not function to the minimal standards the only resource was to give them an administrative discharge. Because of their poor performance combined with their inability to cope with discipline and follow orders the usual form of administrative discharge ~~was~~ WAS under less than honorable conditions. The results of the lack of preparation to deal administratively with those retarded individuals who are obviously a greater risk for failure ~~is~~ WAS A discharge that scare the recipients and further handicap him in civilian life. In order to prevent this injustice a special category of discharge should be instituted for the

mentally handicapped man who fails to perform as required. It should be under honorable conditions so as not to prejudice his military record. Eligibility for such a discharge should be noted in his permenant file from the day of induction, and to be determined by a qualified psychologist under the supervision of appropriate administrative personnel.

Third, many times recruiting offices enlist men with limited mental abilities to excessively long tours of service ~~will not~~ with no regard ~~to the~~ As to the individuals potential to fulfill such an enlistment. Many enlistees become disenchanted when they fail to accomplish goals elaborated by ~~anxious~~ over recruiters. A better method to evaluate ~~individuals with~~ an individual's ability with mental restrictions, ~~ability~~ to serve in the military would be to limit his initial enlistment contact to a period not to exceed one year. This would allow him to complie basic and advance training schools and become acclimated to military routine. Upon successful completion of the first year of service he then exercises the option of second enlistment. If he cannot perform to the satisfaction of the military se service his contract would not be renewed and he would receive a honorable discharge and have completed his obligation to his country.

Finally it is highly recommended that staff personnel receive orientation as to how to work with persons who for varied reasons have marked restrictions in mental abilities. The results of such training will be a higher level of performance from the described individuals.

In summary the recommended changes are as follows:

1: More intensive evaluation of mental capabilities of persons suspected to be mentally retarded.

2: The formulation of an administrative discharge non prejudicial to the applicant who because of his limited abilities fails to perform satisfactorily.

3: A first enlistment period of no more than one year.

4: A basic orientation course to staff personnel that may work with the new inductees.

The cost of such administrative change would be mininal. ~~Compared~~ Further results would be ~~to the~~ increased efficient of personnel acceptable for military service, ~~through~~ fewer lost man hours, and greater retention of qualified men for a second tour of service. ~~the cost then becomes even less a factor.~~ But of greater importance is the contribution to the general public to be made by the military's recognition and appropriate training of these men who limitations may restrict but need not destroy their capability to contribute to the good of all..

James D. Mayo

MEMORANDUM

From: J. Schulz Sept. 25, 1974

To: R. Tropp

Re: Questions for Mr. Goodell regarding handling of unconvicted draft evaders by the Dep't of Justice (DOJ)

The following questions are designed to establish that a large but indeterminate number of registrants reasonably believe that they violated §12 of the selective service act, while in fact they did not; and that the DOJ's current program does not adequately screen such men from unwarranted participation in "earned" reentry. All but one of the questions are for the Attorney General; the exception is no. 10, which might be addressed both to Mr. Saxbe and to Mr. Pepitone.

Henry Petersen

Q1: Assistant Attorney General/this spring informed a congressional committee that between 1963 and 1974 the Selective Service System (SSS) reported a total of 206,775 delinquent draft registrants to the Justice Department for prosecution under §12. How many of these were in fact prosecuted? A: 19,271. [Tell him if necessary.]

Q2: Why were over 90% of these men not prosecuted? A: [He will probably answer that many agreed to submit to induction in exchange for dismissal of charges, and that the others' violations were "not willful."]

Q3: Can you give us a rough breakdown of these dispositions? What fraction, approximately, submitted to induction, and whatfraction were found not to be willful offenders? A: _____.

Were there any other reasons for non-prosection? A: [He may admit that some cases were worthless due to faulty SSS processing; if so, use his answer later (Q7 &8).]

Q4: The Administrative Office of the U.S. Courts reported this spring that the conviction rate in selective service cases, which has lagged well below 50% for several years, dropped in fiscal 1973 to a new low of 28%. This is rather striking given the fact that you chose to prosecute one-tenth of the cases, and that the conviction rate in federal court is usually on the order of 90%. To what do you attribute your low rate of success? A: [Saxbe will probably attribute it to the same factors he used to explain his non-prosecutions.]

Q5: Again, break down the totals, please. Agreement to accept induction? _____. Non-willful violations? _____. SSS errors?_____.

Q6: What exactly do you mean by non-willful violations [or whatever term he has used]? A:_____

[There is no good answer. In criminal law generally, one is presumed to intend one's acts; in S.S. law, there is no requirement of specific intent, and until this year registrants were conclusively presumed (under 32 CFR §1641.2) to have received any notice mailed to them by their local boards. Pressure Saxbe on this, then.]

Q7: Is it not the law that induction (or other) orders issued by S.S. local boards may be invalidated by procedural errors and arbitrary decisions of those boards. A: Yes.

Q8: So, in fact, is it not the case that your refusals to prosecute and the courts' dismissals of prosecutions, both of which you attributed to non-willful violations, were in fact due to selective service errors which made it impossible to convict the men in question? A:_____.

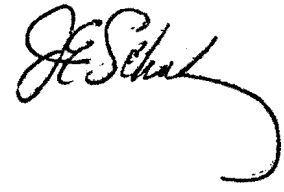
Q9: In FY 1974, the conviction rate in S.S. cases was 33%. Again, why so low? A: [Same as above, or _____.] [If Saxbe claims dismissals were due to acceptance of induction or enlistment, you've got him, since there were no inductions and DOD refused to let draft evaders enlist. In any event, you can perhaps force him to concede, retroactively, that only 5% (28-33) of the dismissals in prior years were given for agreements to submit to inductions.]

Q10: [For Pepitone, too] What was done to inform those you decided not to prosecute and those whose indictments were dismissed of this fact? A:_____. [It seems little has been done, if anything].

Q11: So there may be some 190,000-odd young men who are in fact innocent but don't know it. How will you screen them from participating, in ignorance, in the earned return program? [A: They can ask if prosecution is intended, according to the DOJ prosecutive policy.]

Q12: Are U.S. Atty's aware of this policy? A: Yes. Are registrants? Should this matter not receive full publicity and since to decide whether or not the S.S. law was violated is quite complicated, should you not establish some public adversary mechanism and supply defense counsel to evaluate these cases? Should you not at least publicize the list of the 4350 men currently under indictment and, since probably

only about 1/3 of these are in fact guilty, should you not take steps to dispose of such cases, even of those of absent defendants, along the lines of U.S. v. Lockwood, currently pending before Judge Weinstein in Brooklyn? [This week, I have learned, D.O.J. has refused to supply the list of inducted S.S. "violators" to both the National Council of Churches and Senator Hart. On Sept. 20, Judge Weinstein denied a government motion to vacate his order appointing Prof. Louis Lusky as special magistrate to review files of 25 indicted but absent registrants. In his opinion, he observed (pp.7-8) that the White House fact sheet reads the term "unconvicted draft evaders" more narrowly than the D.O.J. prosecutive policy, which is cited and quoted there.]



3.

Memo to:: Larry Baskir
Rick Tropp

December 2, 1974

From: Bill Strauss

Subject: PCB Research Requirements

The small number of clemency applications indicates that the program has not yet reached many eligible persons for whom it presumably was intended. In the case of the PCB's own prospective applicants, this may be attributable to a widespread unawareness of eligibility standards. It may also be due to a misunderstanding about how an applicant has nothing to lose by applying. For the clemency program as a whole, the problem may be that the needs or circumstances of some categories of possible applicants are inadequately considered.

Right now, one could conjecture about what could be done to deal with these problems. Eligibility announcements could be mailed to persons on lists provided by DOD and DOJ, for example. A new baseline approach, possibly with additional mitigating factors, could be applied to unconvicted draft resisters. However, we know so little about the problem that we cannot be sure that our responses would work, and we have nothing with which to substantiate the need for any deadline extensions or liberalized terms. With data in hand, even if imperfect, we can have both a justification for not acting sooner (if we need one) and a basis for taking appropriate action at a chosen time.

I suggest that we undertake three research efforts -- two to provide the basis for new policy actions and one to evaluate actions after-the-fact.

(1) Of special importance to the PCB itself would be data explaining how many prospective PCB applicants understand their eligibility for the program, the fact that they have nothing to lose by applying, the criteria being applied in clemency decisions, the outcome of the first announced dispositions, and the benefits which executive clemency can bring to them. Certain categories of prospective applicants may know less than others, and the best way to reach them may not be a general mailing. It is likely that those with less education know less about the program; if so, the documentation of that fact could help us extend the deadline for applications. We also need to learn what one or two pieces of information to stress in any public information effort. We might also learn which other public and private agencies are best suited to help in any such effort.

This would require a survey of prospective applicants, probably through in-person interviews. Probably 300 - 500 interviews would be sufficient, supplemented by discussions

with community spokesmen and experts on the subject who might help us interpret our results. The interviews should be conducted in eight or ten sites across the country. My best guess for a cost is about $25,000, which would pay for a contractor to assemble and analyze the data without a formal report (which might cost another $10,000). The cost could be reduced by conducting telephone rather than in-person interviews, but this would produce less reliable data and might cause suspicions among interviewees. If a contractor could begin work shortly, we should have at least preliminary results before the January 31 deadline.

(2) We need cross-sectional data to learn what kinds of people the overall clemency program is and is not reaching. The data we have already from PCB applicants is more than sufficient, but we need comparable data about DOD and DOJ applicants -- and especially from eligible persons who have so far not applied. We should probe every factor which would either reflect an inequity (race, education, socio-economic background, ability of one's family to visit), a possible mitigating characteristic (years in exile, number of dependents, years in military service, Vietnam combat experience, and perhaps evidence of sincerity), or any other characteristic which might account for a failure to apply for clemency (age, marital status, job status, and citizenship status). If we can identify any major differences between applicants and non-applicants, we might learn more about how the clemency program could be tailored to reach more of the latter.

The problem is finding the data; I cannot see how we can learn about Canadian non-applicants without the help of exile organizations, for example. The data itself is of a simple, yes/no nature and can be obtained via telephone interviews better than the subjective data needed for the first research proposal. Again, 300 - 500 interviews should be sufficient for a wide-ranging inquiry (not counting data extracted from applicants' files). The number could be smaller if the data search were focused to include only convicted-and-released draft resisters, Canadian exiles, or any other discrete group. Before we contact anyone about doing the interviews, we should learn what data is available. I suggest we do this ourselves; $2000 in travel and miscellaneous funds should be enough. Once we learn what research can be done and obtain the cooperation of those who must help us identify non-applicants, another $15,000 should be sufficient for a contractor to assemble and analyze the raw data (again without a report). If we are to learn anything before the January 31 deadline, we should begin looking for data at the soonest possible moment.

If we are to look at persons other than convicted draft resisters and punished military absentees (as I think we should), we might consider a cooperative research enterprise with DOD and DOJ. They would soon be aware of our research in any event, and they would be correct in interpreting it as a PCB effort to second-guess their dispositions.

(3) A less urgent research need is an ongoing evaluation of the impact of PCB actions. We should monitor the alternate service program, through data obtained with Selective Service's help, to learn how the applicants are finding jobs, what the jobs are, what they pay, and how many clemency recipients change jobs or quit the program. We should track the progress of individuals who have received pardons or clemency discharges to learn what the benefits of clemency can be to an individual (in the short-run, at least). We might also try to gauge the views of applicants and eligible non-applicants about the fairness of our procedures, criteria, and dispositions. Our findings from these evaluations would enable us to reassess the clemency program within the next few months, and they might substantiate any actions we might take to improve the status of veterans with clemency discharges. While much of what we might learn would come too late for remedy, it still would be useful for us (and perhaps, via a formal report, the public) to learn what went right and what went wrong.

This evaluation would be so closely attuned to our actual policies that it should not be done by contract, but it may be helpful to hire individual consultants to conduct special assignments. Instead, we should seek the detail of an imaginative evaluation professional in the human resources field. That one person, with a consultant budget of no more than $5,000, should get the job done. There probably would be little to evaluate until another month or two has passed, however.

These research efforts would be in addition to our ongoing assessment of the consistency and pattern of PCB dispositions -- a task which requires much less staff time and no money, assuming computer time is at our disposal.

My dollar estimates for the three are $47,000 without reports and $67,000 with reports. These figures are quite conservative, but I have a hunch that we can convince contractors to work at an unusually rapid pace for less money than they ordinarily would receive. Some might perceive it as an exciting, high prestige assignment, and they would recognize our inability to pay more if we do in fact raise the funds from private sources.

Recommendations:

(a) We should immediately obtain $2,000 to do preliminary work on the cross-sectional research effort. We should contact exile groups and others who might help us find data, and I should plan on spending several days out of town in the search.

(b) We should begin looking for the needed $45,000+ while approaching contractors to see if my estimates are realistic.

(c) We should develop a working relationship with the policy planning staffs of DOD and DOJ. We shall need at least their cooperation (and maybe their active participation) in all three research efforts.

(d) We should locate a willing evaluation specialist in HUD, HEW, DOL, or elsewhere for a 90 - 120 day detail beginning January 1st for the impact evaluation effort.

(e) We should continue our ongoing assessment of PCB dispositions without any additional resources.

* * *

Research Agenda 11/28/74

1. Demographic Characteristics of prospective applicants: age, educational background, SES. What media do they watch/listen to/read? Does DoD have this info? Psychologists such as Lifton, or others who have written about military returnees or about military justice? (Job for Harry Scarr? Ford Foundation contract?)

2. Survey research: What do prospective applicants think about the clemency program? What percentage of them, defined by what characteristics, are really "potential applicants", versus those who fall into the ostensible universe described by the Proclamation but who in reality will never apply? What do we have to do to get them to apply?

3. Statistics on related offenses: If the parameters of the Proclamation were to be broadened in scope so as to incorporate all civilian offenses related to conscientious opposition to the war, and to incorporate further all military offenses (including those subject to administrative discharge) so related, specifically which offenses would we be including which are not now included? What would the program's (the Board's?) potential universe of applicants then become? What demographic breakouts?)

4. Clemency discharge: What do we want to do either to maximize the utility of the clemency discharge or to replace it? How to go about doing that?

5. Employment and other reintegration for all recipients of clemency: What to do, through which Departments/agencies and how, to maximize employment and reintegration among those to whom the President proffers clemency? Which steps require that we do the same for all, or certain classes of, veterans? What about sealing of criminal records? /J.R.?/

What should be added in order to maximize the Board's fulfillment of the Proclamation's objectives?

December 7, 1974

MEMO FOR: CHARLES E. GOODELL

FROM: LARRY BASKIR

SUBJECT: Clemency for Military Cases

→ Summary (insert)

Background

The Proclamation and the Executive Order do not define the nature of the clemency to be offered civilians. It has been confirmed by the President that a full pardon is the nature of the clemency he contemplated, and that is now the PCB's practice.

The Proclamation and Executive Order are not any more precise when addressing the nature of the clemency available in military cases. It states only that a Clemency Discharge may be offered, and that a Clemency Discharge confers no automatic rights to Veterans Administration benefits. The Proclamation and Executive Order do not state that a Clemency Discharge is the exclusive remedy for PCB military cases.

In our discussions with the Department of Defense, other government agencies, and outside sources, it is clear that a Clemency Discharge at best may confer little on its recipient. Most probably it is no better than the Undesirable Discharge, the Bad Conduct Discharge, or the Dishonorable Discharge it replaces. If the PCB may offer only a Clemency Discharge, the Presidential Clemency Program has little or no meaning for the Board's military cases. Further, it places former military personnel, many of whom actually served honorably in Vietnam combat or had other long creditable service, in a worse position than those convicted of Selective Service violations. In comparison with the remedies available to the Department of Justice's unconvicted draft evaders, the injustice is even more glaring.

A Pardon

It is clear that the President may grant a pardon for military convictions. It is also clear that a pardon goes to the act, and not only to the criminal sanction that was or could have been imposed for the offense. Thus the President may certainly grant pardons for AWOL's and desertions, whether followed by administrative sanctions (Undesirable Discharge) or courts-martial (Bad Conduct Discharge or Dishonorable Discharge).

It is also clear that the Presidential intent is to grant pardons to the civilian coming before the PCB. It is no less implicit--and not precluded by the Proclamation or Executive Order--that they be granted in military cases.

To ensure that military cases are treated fully equally with civilian cases, therefore, a pardon should be the normal consequence of clemency for military cases as well as for civilians. And, as for civilian convictions, the pardon does not suggest that the original governmental action was in any way improper. In civilian cases, the PCB first determines whether clemency should be granted. Having done this, it distinguishes between especially worthy cases and others by determining the amount of alternative service required to earn the pardon. This should be the same approach in military cases.

Military Discharges

The armed services not only punish unauthorized absences by trial, conviction and sentence, but also characterize the type of service by the nature of the discharge adjudged. This means that military cases come to the PCB with two disabilities--an offense and conviction, and an adverse discharge. This discharge precludes veterans' benefits and severely impairs the opportunities available in later civilian life. Therefore, grant of clemency must not only address the offense by giving a pardon, but should also address the nature of the discharge that that offense warranted. A pardon does not by itself change or affect an adverse discharge. Similarly, a Clemency Discharge is not a significant improvement in the individual's circumstances. Therefore, the grant of clemency should enable the individual to improve his discharge paper beyond the Clemency Discharge which the PCB will normally recommend.

The PCB does not wish to intrude upon the decisions made by the Department of Defense or other government agencies as to who should

receive up-graded discharges or veterans' benefits. Therefore, in most cases, it would not be advisable for the PCB itself to recommend more than a Clemency Discharge. However, the armed services regularly review Bad Conduct Discharges, Dishonorable Discharges, and Undesirable Discharges through a number of methods. These include the Discharge Review Boards and Boards for the Correction of Military Records and direct clemency action through the service Secretaries.

Because the grant of a Presidential pardon for an unauthorized absence is a substantial change in the circumstances that led to the issuance of the Undesirable Discharge, Bad Conduct Discharge, or Dishonorable Discharge, it is entirely proper that the appropriate military bodies review the cases to determine whether an up-graded discharge is warranged. It would be appropriate, therefore, if each clemency recommended by the PCB and approved by the President were to be forwarded automatically to the armed services for review as to possible up-grading.

The Unique Cases

In our review of the first 80 military cases, it is apparent that there are some cases in which further action is required. Some absences followed long and distinguished service in combat. Others may have been provoked by a combination of circumstances beyond the individual's control. There may even be a rare case of an injustice warranting immediate correction.

For these extremely unusual cases, the transmittal of the discharge to the armed forces for possible up-grading is inadequate. It will be an empty act, first, because it is a self-evident case for up-grading. Second, there is no reason why the President should not exercise his own clemency powers and Commander-in-Chief powers to effect the up-grade himself. For these rare cases, the PCB would recommend that the President order an up-grade of the bad discharge beyond the Clemency Discharge to a General Discharge or Honorable Discharge, as warranted.

Alternative Service

The foregoing discussion does not consider the requirement of alternative service. In each case, however, the grant of clemency would of course be conditional on the satisfactory completion of the period of Alternative Service, if any, which the Board determines necessary to earn the clemency it has recommended.

THE WHITE HOUSE

WASHINGTON

12/9/74

TO: SENATOR GOODELL

FROM: RICK TROPP

See especially page 19.

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THE GRAVITY OF ADMINISTRATIVE DISCHARGES: A LEGAL AND EMPIRICAL EVALUATION*

By Major Bradley K. Jones**

The consequences of the general and undesirable discharges are frequently little considered by their recipients. Similarly they are little understood by the JAG officers asked to "counsel" the recipients. The author examines the consequences of the administrative discharge from the standpoint of governmental benefits lost and civilian opportunities prejudiced. A survey of employers, unions, colleges, and professional examiners reveals some of the difficulties facing the serviceman discharged under other than honorable conditions.

I. INTRODUCTION

> There can be no doubt that [an undesirable] discharge . . . is punitive in nature, since it stigmatizes the serviceman's reputation, impedes his ability to gain employment and is in life, if not in law, prima facie evidence against the serviceman's character, patriotism or loyalty.[1]

This federal district court statement aptly describes the present view of military administrative discharges thought to be held by most Americans. The undersirable discharge is the object of great concern and has evoked increasing Congressional interest in changing the procedural framework under which it is administered.

This article will attempt to determine whether the administrative discharges, although not designated punitive actions at law, do, in reality, have pragmatic consequences equally or more deleterious than punitive discharges. The legal background and consequences of administrative discharges will be discussed first

*This article was adapted from a thesis presented to The Judge Advocate General's School, US Army, Charlottesville, Virginia, while the author was a member of the Twentieth Advanced Course. The opinions and conclusions presented herein are those of the author and do not necessarily represent the views of The Judge Advocate General's School or any other governmental agency.

**JAGC, US Army; Office of the Staff Judge Advocate, XVIII Airborne Corps, Fort Bragg, North Carolina; B.S., 1963, United States Military Academy; J.D., 1971, William and Mary College.

[1] *Stapp* v. *Resor*, 314 F. Supp. 475, 478 (S.D.N.Y. 1970).

to present the factual background of the present stigma argument. Empirical data will then be used to test and evaulate the stigma argument. It should be noted that punitive discharges are discussed only for purposes of comparison, since this article deals primarily with administrative discharges and their pragmatic effects.

II. THE LAW OF ADMINISTRATIVE DISCHARGES

A. *HISTORY AND PRACTICE*

With broad enabling authority granted by Congress as the basis, the power to discharge enlisted men has been almost totally left to the discretion of the Secretaries of the Military Services.[2] Therefore, the law of administrative discharges is embodied largely in regulations published by the appropriate Secretary or his agents and is enforced by the sanctions delineated therein.[3] The Secretarys' discretionary power is limited only by the Department of Defense directive prescribing uniform minimum guidelines for the several armed services.[4]

Administrative discharges were originally characterized as honorable and without honor, whereas the only punitive discharge was labeled dishonorable. The "unclassified" discharge was added in 1913, becoming the third administrative discharge, but it and the without honor discharge were supplanted in 1916 by the "blue" discharge. In 1947, the blue discharge was split into the general and undesirable discharges as a result of the Veteran's Administration pressure for an increase in the definitive classifications of discharges to insure more categories of eligibility for benefits among discharged servicemen.[5] The general discharge was under honorable conditions whereas the undesirable was termed as under conditions other than honorable. Thus,

[2] *See* 10 U.S.C. § 1169 (1970); Universal Military Training & Service Act § 4(b), 50 U.S.C. App. § 454(b) (1970). For parallel discussion, *see* Lane, *Evidence and the Administrative Discharge Board*, 55 MIL L. REV. 95–100 (1972).

[3] The current Army regulatory provisions are found in Army Reg. No. 635–200 (15 Jul. 1966), Army Reg. No. 635–206 (15 Jul. 1966), and Army Reg. No. 635–212 (15 Jul. 1966). Special provisions concerning conscientious objectors are found in Army Reg. No. 635–20 (31 Jul. 1970).

[4] Dep't of Defense Directive No. 1332.14 (Dec. 20, 1965).

[5] U.S. CODE CONG., AND ADMIN. NEWS, 2643 (1967); *Hearings on Constitutional Rights of Military Personnel Before the Subcomm. on Constitutional Rights of the Senate Comm. on the Judiciary*, 87th Cong., 2d Sess. 108 (1962) (testimony of Alfred B. Fitt, Deputy Under Secretary of the Army [hereinafter cited as *1962 Hearings*] Offer, *Administrative Discharges—What It's All About*, 25 ARMY DIGEST No. 9, p. 5 (1970).

today there are three administrative discharges and two punitive discharges in the following order: honorable, general, undesirable, bad conduct, and dishonorable.[6]

The administrative discharge system in the Army is implemented with the honorable discharge used as the measuring parameter. This discharge is awarded when there has been proper military behavior including proficient performance of duty.[7] When a serviceman's in-service record seems undeserving of an honorable discharge, one of the two remaining administrative discharges, the general or the undesirable, may be awarded if his behavior and duty performance are sufficiently below the standards for an honorable discharge so as to warrant one of these lesser discharges. The four categories of grounds for these discharges are unsuitability, unfitness, misconduct, and request for discharge for the good of the service. Discharge by reason of unsuitability will normally result in the issuance of a general discharge when the serviceman is unsuitable for further military service because of inaptitude, character and behavior disorders, apathy, defective attitudes, inability to expend effort constructively, enuresis, alcoholism, in-service homosexuality, and financial irresponsibility.[8] Discharge by reason of unfitness will normally result in the award of an undesirable discharge when a serviceman's military service record in his current period of service includes one or more of the following: frequent involvements of a discreditable nature with civil or military authorities; sexual perversion to include lewd and lascivious acts, homosexual acts, and sodomy; drug abuse; established pattern for shirking; established pattern showing dishonorable failure to pay just debts; dishonorable failure to support dependents; and unsanitary habits.[9] Discharge by reason of misconduct will normally result in an undesirable discharge when one or more of the following conditions exist: conviction by civil authorities of an offense for which the maximum penalty is confinement in excess of one year or of an offense involving moral turpitude, procurement of a fraudulent enlistment or induction, and prolonged unauthorized absence of one year or more.[10] Discharge by reason of a request for discharge for the good of the service will normally result in an undesirable dis-

[6] Army Reg. No. 635–200, para. 1-5 (15 Jul. 1966).

[7] DOD Dir., *supra* note 4, para VI-A.

[8] *Id.* para VII-G; Army Reg. 635-212, *supra* note 3, para 8b.

[9] DOD Dir., *supra* note 4, para VII-I; Army Reg. 635-212, *supra* note 3, para 6a.

[10] DOD Dir., *supra* note 4, para VII-J; Army Reg. 635-206, *supra* note 3.

charge where a serviceman's conduct rendered him triable b court-martial under circumstances which could lead to a punitiv discharge.[11] After studying the grounds within each of the cat gories, it should be noticed that unsuitability is a word of ar concerning matters and problems which are beyond the service man's control whereas unfitness and misconduct are words o art for acts which are voluntarily performed. Additionally, al though the customary discharge awarded for each of the cate gories is as mentioned above, the convening authority has the power to upgrade any of the discharges to a more favorable classification when the particular circumstances in a given case warrant such action.[12]

All the armed services utilize the four categories of grounds for administrative discharges aforementioned. All have nearly identical guidelines[13] in their individual regulations for issuing these discharges.[14] There are, however, some minor deviations from the Army system in procedure and grounds for issuance. The Coast Guard, Marine Corps, and Navy have one additional unfitness ground, "for other good and sufficient reasons," [15] whereas the Air Force has three additional grounds for unfitness: habits and traits of character tending towards antisocial immoral trends, conviction by a court-martial with sentence of confinement greater than six months, and established unauthorized absence of less than one year but court-martial is deemed inadvisable.[16] Another difference is in the interpretation of what constitutes a conviction by a civil court for determining misconduct sufficient for discharge. The Coast Guard, Marine Corps, and Navy do not spell out what offenses involve moral turpitude,[17] whereas the Air Force and Army have narrowed moral turpitude to include only offenses involving narcotics violation

[11] DOD Dir., *supra* note 4, para VII-K; Army Reg. 635-200, *supra* note 3, Ch. 10; JAGA 1969/3538, 25 Mar. 1969.

[12] Army Reg. 635-200, *supra* note 3, para 10-3; Army Reg. 635-206, *supra* note 3, para 3g; Army Reg. 635-212, *supra* note 3; Air Force Reg. Nos. 39-10 & 39-12; Coast Guard Reg. Nos. 12-B-6; 12-B-10, 12-B-12, 12-B-13, 12-B-15; Marine Corps Sep. Man. 6012 & 6016-6019; Navy BuPersMan 3420180, 3420220, 3420240, 3840080, 3850120, 3850220, 3850300, 3860140; Dougherty & Lynch, *The Administrative Discharge: Military Justice?*, 33 GEO. WASH. L. REV. 498, 501 (1964).

[13] DOD Dir., *supra* note 4. The specific requirements of the Directive, of course, control.

[14] Coast Guard Reg. No. 12-B-12; Marine Corps Sep. Man. 6017; Navy BuPersMan 3420220.

[15] Air Force Reg. No. 39-12.

[16] Coast Guard Reg. No. 12-B-13, Marine Corps Sep. Man. 6018; Navy BuPersMan 3420240 & 3860140.

or sexual perversion.[18] Generally, all services consider convictions to attach at the termination of the trial even though an appeal is pending. However, the Air Force holds any administrative discharge procedure in abeyance until the appeal is finally reviewed. If the appeal results in the sentence being set aside, then no discharge procedure is initiated. The Army starts the discharge procedure immediately but no discharge is issued until the appeal is finally denied or the serviceman has waived his right to await final review.[19] Finally, the Air Force and Army prohibit the issuance of a discharge less favorable than that recommended by an administrative board whereas the Coast Guard, Marine Corps, and Navy permit the reviewing authority to change the board's recommendation to the detriment of the serviceman.[20]

B. *REVIEW AND REMEDIES*

The administrative discharge appellate system consists of local convening authority review and two administrative review boards. The local judge advocate normally reviews the legal sufficiency of the findings and recommended disposition of the board of officers.[21] Reversible error is rarely found and the convening authority customarily issues a discharge in accordance with the board's recommendation.

Subsequent to the discharge, the individual, now a civilian, has the right to have his case reviewed by the Army Discharge Review Board (ADRB).[22] If the ADRB denies the request for change and issuance of a new discharge, the individual may petition the Army Board for Correction of Military Records (ABCMR).[23] The scope of inquiry of the ADRB is limited to determining whether the type of discharge received was equitably and properly given under the specific facts presented. It does not review all the merits or the facts of each individual's career. The ABCMR provides review of service records in order to

[18] Army Reg. No. 635-206 para 3g; Air Force Reg. No. 39-12.

[19] *Id.*; Dougherty & Lynch, *supra* note 13, at 504; Lerner, *Effect of Character of Discharge and Length of Service on Eligibility To Veteran's Benefits*, 13 MIL. L. REV. 121, 133 (1961).

[20] Dougherty & Lynch, *supra* note 13, at 515.

[21] Review by a Judge Advocate is required prior to the issuance of an undesirable discharge under Army Reg. No. 635-212, para 19a (15 Jul. 1966).

[22] Army Reg. No. 15-180 (9 Feb. 1965).

[23] Army Reg. No. 15-185 (8 Jan. 1962). There is no right to a hearing at the ABCMR, in fact petitions are often denied for failure to state a cause for relief or for failure to exhaust other administrative remedies. *See* AR 15-185, para 8.

correct errors or remove an injustice and thus has a broader scope of review and remedial power than does the ADRB.

Several problem areas in the review system exist. Most noteworthy is the time perspective and attitude within which administrative discharge appeals occur. The review occurs post-discharge at a time when the individual is a civilian. Thus, he no longer has free military counsel provided for his appeal as he would in the case of a punitive discharge. Additionally, unlike punitive discharges, there is virtually no review after approval and prior to execution of discharge. Thus, the petitioner is challenging a *fait accompli*.

An inadequate solution to the lack of counsel problem is offered by the American Legion, American Red Cross, Disabled American Veterans, and Veterans of Foreign Wars, who provide free advocates for the petitioner before the ADRB and ABCMR.[24] The counsel provided by these organizations are very experienced in practicing before these boards but are not legally qualified counsel. They will accept all cases, however, and advocate them throughout the approximately one year period needed for complete appellate review. However, the individual's hopes should not be set high. Since the inception of the ADRB in 1944, there have been 94,700 cases considered, but only 8,900 changed to honorable and 5,960 changed to general discharges. Thus, the 14,860 changes indicate that the individual has a 15.7% chance of upgrading his discharge.[25]

An inadequate alternative to the military appellate system would be for the individual to bring suit directly before the United States Court of Claims or a federal district court. These courts will review the discharge solely to determine whether the requirements of due process have been fulfilled and will not peer into the merits of the discharge decision. Thus, the individual must present a justiciable violation of individual rights tantamount to a denial of due process or establish that the service agency involved did not follow its own regulations.[26] Obviously, this avenue is rarely utilized because of the prohibitive expense.

[24] Telephone interview with Mr. Campbell, American Red Cross Counsel, in Washington, D.C., 29 Dec. 1971.

[25] Engelhardt, *Many Learn—Too Late*, ARMY DIGEST p. 66 (May 1969); Comment, *Little Chance of Getting Undesirable Discharge Reversed*, ARMY DIGEST p. 2 (June 1971); Telephone interview with Col. Richard F. Seibert, Chief Counsel Army Council of Review Boards, in Washington, D.C., 5 Jan. 1972.

[26] *Beard* v. *Stahr*, 370 US 41 (1962); *Harmon* v. *Brucker*, 355 U.S. 579 (1958); *Roberts* v. *Vance*, 343 F. 2d 236 (D.C. Cir. 1964).

Other partial remedies exist, but are merely laudatory in nature and do not alter the discharge. The Department of Labor, upon individual request and documentation, will issue an Exemplary Rehabilitation Certificate [27] to aid discharged servicemen in combating the effects of a less than honorable discharge. The certificate, issued by the Secretary of Labor, is a remedy for that express purpose, but in no way alters the less than honorable discharge received. The certificate states that the individual has been rehabilitated as an exemplary citizen as judged by his performance during the preceding three year period and that he is entitled to special job counseling and job placement services. To obtain the certificate, the individual must have been an exemplary citizen for a minimum of three years subsequent to discharge and complete an application with recommendations from the chief law enforcement agency in his community, present and past employers, and five character references. He accrues no benefits from the certificate except those to which he was already entitled when he received his discharge.[28] The inadequacy of the certificate is illustrated by the fact that since 1966, there have been 3,500 requests for the application, only 566 returned completed, and of those, only 460 certificates actually issued.[29] The program seems to be unpublicized, unknown, and of doubtful help.

C. PROPOSALS FOR CHANGE

Criticism of administrative discharge procedures seemed to snowball after Chief Judge Robert E. Quinn of the Court of Military Appeals stated that he was aware of occasions on which the administrative discharge was being used by the services to circumvent the judicial safeguards of the *Uniform Code of Military Justice*.[30] The fallout ignited Congressional investigation of the administrative discharge system during the 1962 military justice hearings [31] and the introduction of legislation by Senator

[27] 29 U.S.C. §§ 601-607 (1970).

[28] 29 U.S.C. § 604 (1970).

[29] Engelhardt, *Many Learn—Too Late*, ARMY DIGEST p. 66, 67 (May 1969).

[30] *United States* v. *Phipps*, 12 U.S.C.M.A. 14, 30 C.M.R. 14 (1960). Judge Quinn stated:

> I am also aware of circumstances tending to indicate that the undesirable discharge has been used as a substitute for a court-martial, even in deprivation of an accused's rights under the Uniform Code of Military Justice. However, the remedy for this troublesome situation rests in the hands of Congress.

Id., at 16. Judge Quinn reiterated his opinion during his testimony at the Senate committee hearings in 1962. *1962 Hearings* 179.

[31] *1962 Hearings* 2.

Sam J. Ervin (D–NC).[32] The Secretary of Defense was swayed by the criticism and issued a new directive which increased the rights of servicemen in discharge proceedings and enlarged previously skimpy procedural guidelines.[33] Additional Congressional hearings dealing with the rights of servicemen were held in 1966 [34] and gave birth to a new, more detailed bill offered by Senator Ervin the next year.[35]

Such Congressional activity stirred considerable discussion of the administrative discharge system [36] and the American Bar Association's Special Committee on Military Justice issued recommendations for minimum standards in 1968.[37] These recommendations later formed the substance of legislation submitted by Representative Charles E. Bennett (D–Fla).[38] The bill and ABA recommendations are general in purview and place few limitations on the particular service Secretary's discretion.[39] In 1971 a more drastic Ervin bill [40] was introduced, followed shortly by a stronger Bennett bill [41] which incorporated some of the provisions of the previously introduced Ervin bill. The Bennett bill has Department of Defense backing and in fact, is that Department's substitute bill.[42]

These bills are intended to increase the rights of servicemen to ensure due process at administrative discharge proceedings. Normally, a serviceman may not be less than honorably discharged except upon the recommendation of a board of officers. However, the decisional procedures of the board are administrative in nature and most of the safeguards found in criminal judicial proceedings are lacking. Respondents are generally entitled to the following rights: a hearing, notice, statement of allegations, names of adverse witnesses, presence of available witnesses, counsel, and cross-examination of witnesses present.[43] On the other hand, practically anything is admissible as evidence and there are no rights of mandatory attendance of witnesses or in-hearing confrontation and cross-examination. The Bennett and Ervin bills attempt to cure these particular problems of the present system by an overhaul which results in additional rights for the servicemen. The Ervin bill would prohibit issuance of an undesirable discharge unless the serviceman is represented by legally trained counsel at the proceeding. Also, a serviceman would be entitled to the right of confrontation and cross-examination of witnesses while the administrative board would have concomitant subpoena powers over witnesses.[44] In contrast, the first Bennett bill added little to the current Department of Defense Directive except to grant subpoena power to the board of officers and require board decisions to be based on a preponderance of the evidence.[45] The new Bennett bill [46] would allow an undesirable discharge to be given a serviceman without board action for: 1) AWOL for one year or more; 2) conviction by a civil court for an offense which under the UCMJ carries confinement in excess of one year, and 3) an aggregate of three separate courts-martial or civilian convictions within a

[32] Senator Ervin's proposals for legislative changes in the discharge system were contained in several of the eighteen bills he introduced concerning military justice. S.2002–19, 88th Cong., 1st Sess. (1963).

[33] *Compare* Department of Defense Directive 1332.14 (Dec. 20, 1965) *with* Department of Defense Directive 1332.14 (Jan. 14, 1959) The new directive made representation by lawyer-counsel mandatory, with several exceptions, whereas the previous regulation was very permissive as to this requirement. The sections of board procedures, former jeopardy, and review action were greatly expanded with increased limitations placed on commanders.

[34] *Joint Hearings on S.745 (and other bills) Before the Subcomm. on Constitutional Rights of the Senate Comm. on the Judiciary and the Special Subcomm. of the Senate Comm. on Armed Services*, 89th Cong., 2d Sess. (1966) [hereinafter cited as *1966 Hearings*].

[35] S.2009, 90th Cong., 1st Sess. (1967); reintroduced as S.1266, 91st Cong., 1st Sess. (1969); reintroduced as S.2247, 92d Cong., 1st Sess. (1971). Senator Ervin's bill proposes a new chapter to Title 10, United States Code, containing twenty-six sections and covering twenty-seven pages. The bill would establish an entire statutory discharge system from jurisdiction through final review, with little discretion vested in the Secretary.

[36] *See* Lynch, *The Administrative Discharge: Changes Needed?* 22 MAINE L. REV. 141 (1970); Everett, *Military Administrative Discharges—The Pendulum Swings*, 1966 DUKE L. J. 41; Dougherty and Lynch, *Administrative Discharges: Military Justice?*, 33 GEO. WASH. L. REV. 498 (1964).

[37] *Report of the Special Committee on Military Justice*, 93 A.B.A. REP. 577 (1968). The recommendations included the power to issue process, greater discovery rights, and findings based on a preponderance of the evidence.

[38] H.R. 19697, 90th Cong., 2d Sess. (1968), reintroduced as H.R. 523, 92d Cong., 1st Sess. (1971).

[39] The Bennett bill proposes to amend 10 U.S.C. § 1161 alone, and covers only three pages. The bill follows the ABA committee's philosophy that the detailed provisions in Senator Ervin's bill would improperly invade the service secretaries' administrative discretion and that only policy guidance is needed. 93 A.B.A. REP. 577, 580 (1968).

[40] S.2247, 92d Cong., 1st Sess. (1971).

[41] H.R. 10422, 92d Cong., 1st Sess. (1971).

[42] Dep't of Defense Substitute Bill, *Hearings on H.R. 523 (H.R. 10422) Before the Subcomm. to Limit the Separation of Members of the Armed Forces Under Conditions Other Than Honorable of the House Comm. on Armed Services*, 92d Cong., 1st Sess., at 5846–8 (1971) [hereinafter cited as *1971 Hearings*]; H.R. 10422, *1971 Hearings* 6034–7.

[43] Army Reg. 15–6 para 8, *supra* note 31; Army Regs. 635–200, 206, 212, *supra* note 3.

[44] S.2247, 92d Cong., 1st Sess. (1971).

[45] H.R. 10422, 92d Cong., 1st Sess. (1971).

[46] *Id.*

three year period. Additionally, no undesirable discharges could be awarded unless the respondent were defended by a legally qualified attorney and the board of officers would have subpoena powers over witnesses. Board decisions would be based upon the preponderance of the evidence rule and a Department of Army review board would be established to enable respondents to appeal an adverse officers board decision prior to his discharge into civilian status. Thus, the new Bennett bill provides, in moderation, many of the proposed safeguards of the more drastic Ervin bill.

III. THE PUNITIVE ASPECTS OF THE ADMINISTRATIVE DISCHARGE

Spurring the various proposals for new administrative discharge legislation is the belief that any less than honorable discharge [47] may substantially hinder the post-service life of its recipient. Clearly the military itself promotes this belief.[48] Scholarly comment,[49] testimony before leglislative bodies [50] and court opinions [51] also mention a stigma attaching to administrative discharge recipients. The exact nature and extent of the stigma, however, are rarely discussed. Often hearsay substitutes for legal knowledge, and personal experience suffices in view of the lack of empirical data.

A. *GOVERNMENT BENEFITS LOST*

The tangible detriment to the administratively discharged serviceman involves his eligibility for the multitude of post-service benefits provided by federal and state agencies.

[47] The term "less than honorable discharge" is used to denominate the general, undesirable, bad conduct, and dishonorable discharges. The term "administrative discharge" is used to refer to the general and undesirable discharges.

[48] Army Reg. 635-206, fig. 1 (15 Jul. 1966); Army Reg. 635-212, fig. 1 (15 Jul. 1966). A soldier being discharged from the Army is advised that an undesirable discharge results in the loss of many or all veteran's benefits and causes substantial prejudice in civilian life. *See* Lynch, *The Administrative Discharge: Changes Needed?*, 22 MAINE L. REV. 3 (1970).

[49] *See generally* Dougherty & Lynch, *supra* note 13; Susskind, *Military Administrative Discharge Boards: The Right to Confrontation and Cross-Examination*, 44 MICH. STATE BAR J. 25 (1965); Creech, *Congress Looks to the Serviceman's Rights*, 49 ABAJ 1070 (1963); Bednar, *Discharge and Dismissal as Punishment in the Armed Forces*, 16 MIL. L. REV. 1 (1962); Metsch, *Stigmatic Military Discharges*, 57 A.B.A.J. 1068 (1971).

[50] *See* footnotes 64-71 *infra*.

[51] *See* text and cases cited at footnotes 72-76 *infra*.

The greatest economic impact of the undesirable discharge in causing lost government benefits is in the area administered by the Veterans Administration (VA). Confusion exists in the public mind as to which discharges bar the ex-serviceman from which benefits. A good deal of this riddle can be solved when it is understood that only "veterans" are eligible to receive VA benefits and a "veteran" is defined as "a person who served in the active military, naval, or air service, and who was discharged or released therefrom *under conditions other than dishonorable.*" [52] Thus, a veteran, in VA terminology, may receive a discharge worse than honorable but better than the dishonorable and still qualify for VA benefits. Congress obviously intended to make the maximum number of servicemen eligible without including incorrigibles when it defined veteran in such broad terms. The question is then reached as to where the general and undesirable discharges fall. The very terms of the general discharge, under honorable conditions, and the statutory language qualify the recipient for all federal benefits, whether administered by the VA or other federal agency. It is the undesirable discharge which creates the difficulty. The determination of who is a veteran qualifying for benefits in the case of the undesirable discharge is an administrative determination within the discretionary power of the Veterans Administrator pursuant to the guidelines established by statute and agency regulations.[53] The Administrator's determination is final and conclusive without being subject to review by other agencies or the courts.[54] He has authority to promulgate regulations controlling the nature and extent of evidentiary proof necessary before the VA Board and to establish the procedures for collecting and furnishing this evidence to the Board to aid it in reaching its decision.[55] Examples of benefits which hang on the discretion of the VA Board are the payment of dependency and indemnity compensation, Servicemen's Group Life Insurance, educational assistance under the GI Bill, home and other loans, and funeral and burial expenses.

Guidelines utilized for the exercise of VA discretion are fairly broad, but they specifically deny certain grounds for the issuance of an undesirable discharge from qualifying as other than dishonorable. A discharge received for any of the following

[52] 38 U.S.C. § 101 (2) (1970) (emphasis added).
[53] 38 C.F.R. § 3.12 (1971).
[54] 38 U.S.C. § 211a (1970).
[55] 38 U.S.C. § 210c (1970).

reasons is considered to have been issued under dishonorable conditions:

1. acceptance of undesirable discharge in lieu of a general court-martial,
2. mutiny or spying,
3. conviction of an offense involving moral turpitude (felony)
4. willful and persistent misconduct (This includes a discharge under other than honorable conditions, if it is issued because of willful and persistent misconduct. A minor offense discharge will not be considered willful and persistent if the individual's service was otherwise honest, faithful, and meritorious.), and
5. homosexual acts.[56]

Additionally, a discharged serviceman who was a conscientious objector who refused to perform military duty, wear a uniform, comply with lawful orders of military authorities, or who was a deserter, is totally barred from receiving any VA benefits regardless of the type discharge received.[57]

Certain benefits administered by the military services are denied the recipient of an undesirable discharge. These include payment for accrued leave, transportation of dependents and household goods, and burial in a national cemetery. Similarly, benefits administered by other federal agencies such as the five point veteran federal civil service preference and reemployment rights which assure restoration to a job if application for reemployment is made within 90 days subsequent to discharge are lost. If a serviceman is improperly awarded an other than honorable discharge which is later upgraded by a review board, he can claim back pay to a maximum of $10,000 by entering the Court of Claims. However, he has lost a property right to any back pay in excess of the court's jurisdictional limit.[58]

There are no statutory bars precluding the employment of administratively discharged individuals for Federal Government jobs. However, in the case of the undesirable discharge and the absence of any extenuating circumstances, the individual may not be accepted until the lapse of one year subsequent to his discharge. Further, he is subject to appropriate investigation to ensure that the grounds for the discharge do not raise a serious

[56] 38 C.F.R. § 3.12*d* (1971).
[57] 38 C.F.R. § 3.12*c* (1&4) (1971).
[58] 28 U.S.C. § 1491 (1970); Veira, *Extraordinary Relief of Punitive and Administrative Discharges from The Armed Forces*, 7 DUQ. L. REV. 384 (1968–69).

question as to fitness for employment such as criminal convictions or immorality.[59] Thus, the administrative discharge would rarely be the sole basis for inability to acquire federal employment; inability to acquire a security clearance is a contributing factor. Additionally, federal agencies look askance at the hiring of individuals discharged from other federal agencies. The inability to obtain a security clearance also creates employment difficulties with private firms performing under Federal Government contracts. There are no statutory bars nor mandatory contract clauses which preclude the employment of administratively discharged individuals by the prime or sub-contractors.[60] Again, however, the inability to obtain a security clearance creates the same effect as with federal employment.

State veterans benefits may also be denied. For example, in New York a general discharge bars the individual from receiving state veteran benefits similar to those he is simultaneously eligible for under federal law since a prerequisite for the state benefits is an honorable discharge.[61] Also, if state law interprets a "conviction" to include an undesirable discharge, the individual would lose additional benefits and property rights as well as acquire damaging civil disabilities.[62] Thus, it is arguable that an undesirable discharge might result in the same lost rights, under state statute, as would a criminal conviction.[63]

B. *CIVILIAN COMMUNITY EFFECTS*

While an undesirably discharged serviceman may never care to use VA benefits or take a job requiring a security clearance, he will almost certainly be wanting to work or go to school

[59] F.P.M. 731–7 (Inst. 85, 27 Jan. 1967), para 3–3a; F.P.M. Supp. 337–72.
[60] 32 C.F.R. parts 1–39 (ASPR) (1971). *See* "clauses" in part 7 therein.
[61] *Schustack* v. *Herren*, 234 F. 2d 134 (2d Cir. 1956).
[62] Special Project—*The Collateral Consequences of a Criminal Conviction: Civil Disabilities*, 23 VAND. L. REV. 929 (1970). Examples are disfranchisement, loss of right to hold public office, and loss of employment, judicial, domestic, and property rights.
[63] A profitable followup study might examine the policies of state employment boards and state licensing agencies regarding less than honorable discharges. The Virginia Employment Commission indicated that its policy is to ignore discharge classifications and provide its employment services to all individuals. Interview with Virginia Employment Commission, Charlottesville, Virginia, 28 December 1971. A similar check with the Virginia Alcoholic Beverage Control Board indicated that an administrative discharge in no way tainted an ex-serviceman's application for a liquor sales license. Virginia prohibits the issuance of the license when the applicant has been convicted of a felony involving moral turpitude. Interview with Local Director, Virginia Alcoholic Beverage Control Board, Charlottesville, Virginia, 28 December 1971.

somewhere. In this area the effects of the administrative discharge may be most serious and are least known.

The consensus of opinion among witnesses at various Congressional hearings, which have produced many outspoken critics of the severity of administrative discharges, has been that a stigma does attach.[64] However, their opinions have never been verified by an empirical study or other collected data. Major General Kenneth J. Hodson testified that he had no evidence to refute the stigma allegation.[65] In testimony concerning the undesirable discharge, former Chief Judge Quinn of the Court of Military Appeals testified:

> I think, generally speaking, Mr. Chairman, it is worse than a bad conduct discharge, as far as its implications are concerned, and the results are also quite severe. You cannot get a job in a bank, or in a trust company or for the government . . . or any of the places where there is any confidential requirement. They will not give work to a man with an undesirable discharge. It is a very severe penalty.[66]

Chief Judge Quinn's rationale for this statement is that while people may overlook one act of bad conduct, they are not so prone to overlook undesirability.[67] In a similar vein, Congressman Clyde Doyle stated that the results of a quick poll of industry indicated that a man with an undesirable discharge would generally not be granted an interview,[68] and in discussing why an undesirable discharge creates a life stigma, he stated:

> I think it is, because with the ordinary person you will say a man is an undesirable citizen in civilian life, that is a life stigma. He is an undesirable. You don't want to have anything to do with him. You don't go into detail to find out what makes him undesirable. You think he may be a thief, he may be a homosexual, he may not be supporting his children, his family, in the minds of some people, but he is undesirable, you don't want him around. . . .[69] It is a liability and a heavy one.

The Congressional hearings are replete with similar criticism by witnesses.[70] Thus, there are many who believe that an undesirable discharge is tantamount to or even worse than a punitive bad conduct discharge. Similar, but less severe stigma has been said to attach to the general discharge.[71]

Many civilian courts have felt that any discharge other than honorable carries with it some degree of stigma and deprivations.[72]

> [A]ny discharge characterized as less than honorable will result in serious injury. It not only means the loss of numerous benefits in both the federal and state systems, but it also results in an unmistakable social stigma which greatly limits the opportunities for both public and private civilian employment.[73]

Since most soldiers are discharged from the service with honorable discharges, an undesirable discharge places great stigma on the ex-serviceman.[74] Some courts have been more forceful in clearly stating that undesirable discharges carry the same stigma as punitive discharges.[75]

[64] *1962 Hearings* 5, 315–28, 335–36 (testimony of Senator Kenneth Keating (R–NH), Representative Clyde Doyle (D–Cal), and Charles H. Mayer). In the Senate report it was stated that the subcommittee had received letters from many ex-servicemen who accepted undesirable discharges without a full understanding of the stigma and the difficulty it created in obtaining employment. *Subcommittee on Constitutional Rights of the Senate Comm. on the Judiciary*, 88th Cong., 1st Sess., *Summary Report of Hearings on Constitutional Rights of Military Personnel Pursuant to S. Res. 58* 2 (1963); *1971 Hearings* 5825–5938.

[65] *1966 Hearings* 381 (testimony of Brigadier General Kenneth J. Hodson, Assistant Judge Advocate General). General Hodson was appointed The Judge Advocate General of the Army later that year and promoted to Major General. At subsequent hearings, he testified that the undesirable discharge tags a man and has an adverse effect upon gaining civilian employment. *1971 Hearings* 5916.

[66] *1962 Hearings* 188.

[67] *Id.* Not many people outside the military realize that the bad conduct discharge is the result of a criminal conviction. The natural tendency is to suppose that a man found undesirable by the military is also undesirable for civilian society, while bad conduct is only a one-time mistake. *1962 Hearings* 328 (testimony of Representative Clyde Doyle (D–Cal)).

[68] *1962 Hearings* 315 (testimony of Representative Clyde Doyle (D–Cal)).

[69] *Id.* at 328.

[70] *1962 Hearings* 15–18, 334–64 (BCD and undesirable discharges produce very similar stigma and hardships); 1966 Hearings 834–35 (undesirable discharge is a flagrant act of character assassination); *1966 Hearings* 335 (undesirable discharge carries with it the suspicion of homosexuality); *1971 Hearings* 5825, 5900 (BCD is better than an undesirable discharge since the undesirable cannot be explained away—testimony of Representative Charles E. Bennett); *id.* at 5856 (Bennett—an undesirable discharge carries the connotation of being penal in nature); *1971 Hearings* 5855.

[71] *1962 Hearings* at 328, 330–41 (a general discharge carries an implied stigma in the eyes of prospective employers since the overwhelming number of discharges are honorable); *1971 Hearings* 6000 (testimony of Karpatkin, ACLU General Counsel—the public equates anything other than honorable with undesirable).

[72] *Beard* v. *Stahr*, 370 U.S. 41 (1962), J. Douglas dissent at 42–45; *Nelson* v. *Miller*, 373 F. 2d 474 (3d Cir. 1967); *Van Bourg* v. *Nitze*, 388 F. 2d 557 (D.C. Cir. 1967); *Bland* v. *Connally*, 293 F. 2d 852 (D.C. Cir. 1961); *Ungleaby* v. *Zimny*, 250 F. Supp. 714, 716 (N.D. Cal. 1965); *Conn* v. *United States*, 376 F. 2d 878, 881 (Ct. Cl. 1967); *Sofranoff* v. *United States*, 165 Ct. Cl. 470 (1964); *Murray* v. *United States*, 154 Ct. Cl. 185 (1961); *Clackum* v. *United States*, 148 Ct. Cl. 404 (1960); *Stapp* v. *Resor*, 314 F. Supp. 475, 478 (S.D.N.Y. 1970).

[73] *Bland* v. *Connally*, 293 F. 2d 852 (D.C. Cir. 1961).

[74] *Id.* at 858.

[75] *Van Bourg* v. *Nitze*, 388 F 2d 557 (D.C. Cir. 1967); *Stapp* v. *Resor*, 314 F. Supp. 475, 478 (S.D.N.Y. 1970); *Glidden* v. *United States*, 185 Ct. Cl. 515 (1966).

In contrast, some courts have disagreed with the claims of severity concerning the general discharge, stating that it is not severe nor punitive in nature.[76] These courts maintain there is no connotation of dishonor in a general discharge, that it does not deprive service personnel of any of the inherent rights provided by honorable discharges, and that there certainly is a lesser stigma attached to a general discharge.

IV. AN EMPIRICAL VIEW OF THE STIGMA

A. *SURVEY OBJECTIVES*

Much of the commentary regarding the effect of the administrative discharge is based on sheer speculation.[77] To remedy this defect, a survey was conducted of employers, educators and professional licensing authorities to determine their understanding of and reaction to various forms of less than honorable discharge.[78] The survey sought answers to the following questions: 1) To what extent is there awareness of the distinctions between the various types of discharges? 2) Is a man's discharge characterization considered in a hiring or acceptance decision? 3) If so, what investigation of the discharge is made and to what extent do the various types of less than honorable discharges disqualify or retard the serviceman?

B. *THE TECHNIQUE*

One thousand subjects were selected from each of six regions within the United States.[79] The actual selection of subjects was

[76] *McCurdy* v. *Zuckert*, 359 F. 2d 491 (5th Cir. 1966); *Ives* v. *Franke*, 271 F. 2d 469 (D.C. Cir. 1959); *Grant* v. *United States*, 162 Ct. Cl. 600 (1963).

[77] One exception is a survey of the Amarillo, Texas, area completed by Leonard J. Hippchen in 1962 which attempts to establish the impact that other than honorable discharges have on nine business classifications of both large and medium size firms. Hippchen's efforts seem to be directed towards ascertaining which job types were most available to these individuals. He used the term, dishonorable as synonymous with other than honorable since it was his assumption that civilian employers would be unable to differentiate and were only cognizant of dishonorable vis-a-vis honorable. Therefore, his results are less than discriminating when it comes to analyzing the relative position of administrative discharges vis-a-vis punitive discharge. Hippchen, *Employer Attitudes Toward Hiring Dishonorably Discharged Servicemen*, THE MILITARY PRISON, p. 170 (1970).

[78] A copy of the questionnaire appears as appendix A. The "Yes-No" format was utilized to encourage ease of answering for the respondents and ease of compilation for the author. Respondents were promised anonymity in their responses.

[79] The regional divisions were (1) Northeast (Connecticut, Delaware, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, and Vermont); (2) Southeast (Alabama, District of Columbia, Florida, Georgia, Kentucky, Maryland, Mississippi, South Carolina, North Carolina, Tennessee, Virginia, and West Virginia); (3) North Central (Illinois, Indiana, Iowa, Michigan, Minnesota, Nebraska, North Dakota, Ohio, South Dakota, and Wisconsin); (4) South Central (Arkansas, Colorado, Kansas, Louisiana, Missouri, New Mexico, Oklahoma, and Texas); (5) Northwest (Alaska, Idaho, Montana, Oregon, Washington, and Wyoming); (6) Southwest (Arizona, California, Hawaii, Nevada, and Utah). The number of respondents per region was proportionately established by overall population to equalize a nationwide representation of responses and to insure a more accurate depiction of the attitudes within a particular region. There was a conscious effort made to select respondents such as the automobile manufacturers in Detroit who had the greatest probability of being an employment target of the discharged individual and would thus exert a more realistic influence on the survey.

made from national directories. Various types of businesses, large and small, were selected to ensure that a cross-section of typical employers were represented. Large businesses were separately defined as having annual income of over $1,000,000. Unions were selected so as to gain representation for blue collar trades. Medical and bar examiners were canvassed to cover professional employment. Large (over 5,000 students) and small colleges were selected to measure any educational difficulties that discharged servicemen encounter.

Each of these seven types of activities, representing a cross-section of American employment, were canvassed in each of six regions. The two business categories were further broken down into large (over 250,000 population) and small cities so the impact of both business and city size could be measured. Thus, there were six possible combinations of each activity being evaluated except in the two business categories which had twelve. The number of questionnaires sent to each activity was determined by the probable impact that activity would exert upon the serviceman. Thus, traditional businesses received 600 of the total 1,000 surveys. Large colleges, small colleges, and unions received 100 questionnaires each with the remainder going to the professional examiners. Of the 1,000 questionnaires sent, 547 were returned in usable form and in time to be analyzed.[80]

[80] The survey seemed valid based upon the 60% response and the appropriateness of answers. Nearly all questions were answered with logic and a degree of understanding. This could be judged since subsequent questions were generally dependent upon the response to previous questions.

There were several survey limitations worth noting. First, it was impossible to tabulate each region by activity; that is, to indicate what activity within the region had the most impact on the overall regional percentage. Region-by-activity samples would have been too small for meaningful survey purposes. Second, the data for the unions is probably of limited value due to the 25% response received, a figure far lower than any other return rate. Also, the questionnaire was sent to national or intermediate union headquarters who may have had little to do with union employment policies. A valuable future study might contact local union hiring halls. Finally, the

To determine the significance of the variables of activity, region, and city size, the "chi square" method was used. In brief summary, this statistical technique expresses the likelihood that a tested variable (here activity, region, or city size) rather than mere chance was responsible for differing results.[81]

A measured confidence level (C.L.) equal to or greater than 95% would indicate that the tested variable was significant in influencing the responses. A C.L. below 95% would tend to indicate no influence or a limited influence was exerted by the tested variable. Although the C.L. is not an absolute indication that the tested variable was the controlling factor which others were dependent on, it does add credence to the suggestion that a tested variable is the controlling factor in the responses.

C. *RESULTS*

Considered as a whole [82] the results showed considerable knowledge of military discharge practices, significant use of the discharge as an employment or admission qualification and a rather sophisticated distinction among the less than honorable discharges. Virtually all respondents (98%) indicated a familiarity with court-martial discharge powers. Eighty percent indicated a general awareness of the existence of other than dishonorable and honorable discharges. Sixty percent specifically knew of the existence of the administrative general or undesirable discharge.

Approximately two-thirds (65.6%) of all respondents did make inquiry as to an ex-serviceman's discharge. The majority of those inquiring (60.1%) simply accepted the man's word as to the character of discharge. One-third required a showing of the discharge certificate and only six percent made inquiry to the appropriate armed service.

A less than honorable discharge obviously hampered an ex-serviceman's employment or acceptance prospects. The majority of respondents admitted that their policies were "influenced" by any type of discharge other than honorable. A smaller percentage, ranging as high as one-third for dishonorable discharges, *automatically disqualified* such applicants. The majority of respondents not automatically disqualifying an applicant did look behind the discharge and based their hiring or acceptance decision on the particular facts of the case. Only about one respondent in ten indicated that a hired or accepted ex-serviceman would be placed on probation or given a lower level position because of the character of his discharge.

Significant distinctions arise according to the type of discharge awarded.[83] The respondents discriminated against the discharged serviceman according to the severity of the discharge. For example, while 77% were influenced by a dishonorable discharge and 75% by a BCD, only 69% were influenced by an undesirable discharge and 51% by a general discharge. Similarly, 34% automatically rejected the dishonorably discharged applicant; 27% the BCD recipient; 20% the undesirably discharged; and 8% the generally discharged. The results rebut the contention that the civilian world does not distinguish between types of less than honorable discharges and the contrary pronouncement that the judicial bad conduct discharge is less stigmatizing than the administratively issued undesirable discharge. The results further indicate that the general discharge under honorable conditions cannot be equated with the honorable discharge. While it is per se disqualifying in eight per cent of the cases overall, that figure rises to about twelve percent when only the business categories are examined. Further, in half of all cases the general discharge will "influence" employment or acceptance decisions. Even though the Government is willing to credit the generally discharged serviceman with the full benefits of "honorable" service, a considerable part of the civilian world is not willing to accord him such treatment.

Examination of the data according to type, region, and city size revealed several interesting patterns. The C.L. for activity was significant for all critical questions (see appendix B) indicating that activity may be a controlling factor for any difficulties the individual encounters. A number of factors stood out. College officials showed a greater awareness of the administrative discharge system than did the businesses. Conversely, businesses were more likely to inquire into the serviceman's discharge, more likely to be influenced by it, and much more likely to automatically reject than the colleges. Within the two groups size worked in different ways. Big businesses were more likely to inquire, be in-

survey did not adequately cover cities under 10,000 population nor one-man stores in larger cities. Again, further study could provide additional valuable data.

[81] The "Chi Square" computer program was selected from among several choices since it performed the greatest number of operations desired at the lowest cost, yet with great efficiency in producing usable, intelligent data. The decision to run three chi square programs was based on the author's pre-survey hypothesis that activity, region, and city size might all be critical variables in determining the reaction to less than honorable discharges

[82] The overall results may be obtained from the Total column of the Activity Survey, appendix B.

[83] A summary of these results appears in appendix C.

fluenced by, and disqualify than small businesses. Big colleges, however, were less likely to inquire, be influenced by, and disqualify than their smaller counterparts. Despite minor discrepancies all types of respondents followed the general pattern of discriminating with increasing severity from general to undesirable to bad conduct to dishonorable discharge.

Not surprisingly the bar and medical examiners were markedly more interested in the character of an applicant's discharge. Nearly three-quarters made some inquiry and then either required a look at the discharge certificate or verification from the armed forces. Over seventy percent stated that even a general discharge "influenced" their licensure decision. The more severe discharge classifications influenced decisions in between eighty and eighty-six percent of all cases. These figures were substantially ahead of the other categories. However, it is noteworthy that while the professional examiners were influenced by discharges they nonetheless had the lowest automatic rejection average. Apparently, the examiners had the investigative resources and desire to look behind discharge characterizations and avoid snap judgments. By contrast small businesses were least likely to look into the facts in the individual's case.

The C.L. for region was significant in only two of twenty-three questions. Since these involved the little used probationary or lower starting level criteria it appears safe to conclude that a surprising regional homogeneity exists. Based on these questions and these regional breakdowns, conclusions about regional pro or anti military feeling are not justified.

Considered by city size the majority of responses (15 of 23) showed a statistically significant confidence level. Generally, however, the variances were not large. Small city respondents were more likely to automatically disqualify applicants or to employ a probationary or lower level criterion than their larger counterparts. Large city respondents were slightly more likely to look behind the discharge certificate prior to making an acceptability decision.

V. CONCLUSIONS

When the stigma argument is dissected, it is seen to consist of two elements, statutory and attitudinal stigma. The statutory stigma is generally under the control of Congress and the Veterans Administration. The amount of stigma is a function of the bars these bodies place on veterans benefits and employment opportunity. Congress can alter the degree of actual harmfulness by changing the statutory denials of benefits. Thus, military procedures do not create the onerous overtones of administrative discharges and should not be the subject of such criticism.

The attitudinal stigma, the subject of the empirical survey, is personal in nature and is a creation of our society. The survey establishes that some stigma does attach from receipt of an administrative discharge, but not to the extent of being tantamount to the consequences of punitive discharges as some Congressional leaders, judges, and literary critics seem to believe. In fact, the civilian population understands and distinguishes between the various discharges fairly well, contrary to Congressional presumption. Thus, it seems that insufficient credit has been given the civilian population in Congressional assessment of the severity of administrative discharges. Certainly, general or undesirable discharge is something with which to be reckoned by its recipient, but is is not as severe as it is often presumed to be and does not reach the stigma level of a punitive discharge.

This study does not answer the questions: 1) Should the military continue the practice of characterizing discharges? and 2) If so, are further procedural reforms needed to assure that such characterizations are factual and fair? Much additional legislative and administrative study is needed to provide the answers to these questions. If nothing else, however, this study of discharge consequences emphasizes the fact that many popular notions regarding the administrative discharge have no basis in fact. In adopting new laws and regulations, it is hoped that hard facts and not fine rhetoric will serve as the guideposts.

APPENDIX A

QUESTIONNAIRE ON THE PRACTICAL EFFECTS OF THE LESS THAN HONORABLE DISCHARGE

1. Prior to this inquiry, were you aware that there existed types of less than honorable discharges other than the Dishonorable Discharge?
YES NO

2. Were you aware that a soldier could receive a General or Undesirable Discharge as the result of an administrative separation?
YES NO

3. Were you aware that a soldier could receive a Bad Conduct or Dishonorable Discharge as the result of a court-martial conviction?
YES NO

4. Prior to accepting a former serviceman into your organization, do you inquire into the type of discharge he received? YES NO

In any inquiry you might make, do you:

5. Accept the man's word as to his discharge? YES NO

6. Require him to show his discharge certificate? YES NO

7. Make an inquiry to the armed service concerned? YES NO

Are your personnel, admission, or licensing policies influenced by any of the following less than honorable discharges:

8. General Discharge?
YES NO

9. Undesirable Discharge?
YES NO

10. Bad Conduct Discharge?
YES NO

11. Dishonorable Discharge?
YES NO

Do you automatically reject the application of any person who has received one of the following less than honorable discharges:

12. General Discharge?
YES NO

13. Undesirable Discharge?
YES NO

14. Bad Conduct Discharge?
YES NO

15. Dishonorable Discharge?
YES NO

Do you look behind the discharge certificate to determine the grounds (e.g., homosexuality, alcoholism, misconduct, etc.) for the discharge and make your decision as to the applicant's acceptability based upon those findings when he has received any of the following discharges:

16. General Discharge?
YES NO

17. Undesirable Discharge?
YES NO

18. Bad Conduct Discharge?
YES NO

19. Dishonorable Discharge?
YES NO

Do you place on probationary status or in a lower level position than he otherwise would have been given an accepted applicant who received any of the following discharges:

20. General Discharge?
YES NO

21. Undesirable Discharge?
YES NO

22. Bad Conduct Discharge?
YES NO

23. Dishonorable Discharge?
YES NO

APPENDIX B

FREQUENCY BY ACTIVITY SAMPLE (IN PERCENT)

Ques. No.	Big Business	Small Business	Big Colleges	Small Colleges	Union	Bar Examiners	Medical Examiners	Total	Chi Sq. C.L.*	Type Significant
1	81.8	78.9	88.4	73.5	95.8	82.9	75.8	81.1	87	no
2	55.9	51.4	81.2	61.8	62.5	74.3	69.7	61.0	99.9	yes
3	99.4	96.5	97.1	98.5	100	97.1	97.0	98.0	39	no
4	79.4	62.0	40.6	61.8	50	74.3	72.7	65.6	100	yes
5	67.1	70.4	58.0	55.9	54.2	28.6	30.3	60.1	100	yes
6	28.2	24.6	29.0	44.1	37.5	51.4	57.6	33.1	99.9	yes
7	5.9	2.8	0	5.[illegible]	0	20	18.2	5.7	100	yes
8	54.1	44.4	34.8	54.4	50.0	71.4	72.7	51.2	99.9	yes
9	77.6	64.1	49.3	72.1	50	82.9	81.8	69.1	100	yes
10	84.1	69.7	55.1	77.9	66.7	85.7	81.8	75.0	100	yes
11	87.1	73.2	56.5	79.4	66.7	85.7	84.8	77.4	100	yes
12	11.8	12.7	1.4	2.9	8.3	0	3.0	8.1	99.7	yes
13	31.2	28.2	4.3	8.8	8.3	2.9	12.1	20.1	100	yes
14	42.9	34.5	5.8	10.3	20.8	5.7	15.2	26.8	100	yes
15	61.8	47.2	11.6	8.8	25.0	8.6	15.2	33.8	100	yes
16	49.4	37.3	24.8	52.9	45.8	71.4	72.7	47.5	100	yes
17	43.5	33.1	44.9	63.2	45.8	80.0	69.7	47.5	100	yes
18	40.0	32.4	49.3	69.1	37.5	80.0	66.7	47.0	100	yes
19	34.7	27.5	44.9	69.1	37.5	77.1	69.7	43.4	100	yes

*C.L.—Confidence level

Ques. No.	Big Business	Small Business	Big Colleges	Small Colleges	Union	Bar Examiners	Medical Examiners	Total	Chi Sq C.L.*	Type Significant
20	14.7	13.4	8.7	5.9	4.2	8.6	18.2	11.8	100	yes
21	11.2	10.6	15.9	8.8	4.2	8.6	18.2	11.3	100	yes
22	8.8	10.6	14.5	11.8	12.5	8.6	15.2	10.9	100	yes
23	6.5	8.5	11.6	11.8	12.5	5.7	15.2	9.1	100	yes

*C.L.—Confidence level

APPENDIX C

COMPARISON OF DISCHARGE EFFECTS BY TYPES OF DISCHARGE*

A. Discharge Inquiries (questions 4–7):

Inquire into Discharge	*Accept word*	*Look at Discharge*	*Write armed forces*
65.6%	51.8%	46.8%	8.6%

B. Acceptance Policies (questions 8–23):

Policy Influenced by	*Reject Automatically*	*Look Behind*	*Probation*
I. General 51.2%	15.1%	77.1%	17.9%
II. Undesirable 69.1%	28.8%	66.7%	15.6%
III. BCD 75.0%	35.4%	62.2%	14.4%
IV. Dishonorable 77.4%	43.3%	56.3%	11.6%

*Percentages on left of vertical line are total affirmative responses of which those on the right are a portion.

NOTE: Senator Goodell

On 1/14, Bill Strauss and I reviewed the held cases. These we agree should be reconsidered by the Board.

LMB 1/14/73

cc: Bob Horn
Gretchen
Ray Mitchell
CEG
Rick

Held Cases
Reconsider

127 Base 3, Result 6. A#5, but evidence contrary

161 Result 13. Maye wants reconsidered

174 Base 6, Result 12

178 Base 5, Result 8. Juvenile offenses

195 Base 4, Result 10. A#5 lacking

213 Base 7, Result 7. No aggravating, some mitigating. Should lower.

239 Base 7, Result 10.

243 No clemency, no aggravating, only long AWOL

244 Base 5, result 8. No aggravating

249 Base 4, no clemency

258 Base 6, result 6. Long service, only long AWOL. Lower?

260 Base 6, result 12. Only long AWOL

028 Base 6, result 12. No A or M factors

046 No clemency. One prior offense, low sentence. Some drug involvements.

048 Commutation only.

Special to President

041 Pardon. Trepantation case.

More Reconsider

107 Base 12, result 12. No facts for A#5, evidence of VN opposition. Chaney

108 Base 12, result 18. A#5, but family problems. Chaney

212 Base 4, result 7. Long AWOL, M1, 2, 14

237 Base 5, result 5. Long AWOL only. M 1, 2, 14

245 Base 5, result 8. Long AWOL. M 2, 3

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

May 14, 1975

MEMORANDUM FOR: CHARLES E. GOODELL

FROM: LAWRENCE M. BASKIR LMB

SUBJECT: UNRESOLVED ISSUES TO TAKE UP WITH BUCHEN

I. Upgrade

The Board has recommended twenty-one (21) upgrade cases to date, not counting four (4) panel recommendations which were not acted upon by the full Board at the last meeting. The tacit arrangement that now exists is that the Defense Department wishes to wait a period of time to find out how many cases overall we will have. Counting the panel recommendations of the last meeting, 6 percent of military cases we have reviewed have resulted in an upgrade recommendation.

II. Pardons for Undesirable Discharges

My memo to you, and the attachments and our discussions should be enough for you in your meeting.

III. Effect of Clemency on Future Discharge Review

2. We proposed that any individual going to a Discharge Review Board or Board for the Correction of Military Records having received a Pardon from the President would be treated as follows:

(a) He would not have to make a separate, special application to these boards. The application to the Clemency Board would be considered the functional equivalent of the application to the military; (b) Any review would be taken without regard to the acts for which the President has issued a Pardon.

The tacit position of the Department appears to be that they will provide forms for application to us to send to the individual but will not accept an automatic application approach. They have not truly responded to our argument on the kind of review we are asking for clemency discharge.

IV. Nature of Clemency Discharge

The Proclamation and the President's evident intent is that the Clemency Discharge be a truly neutral discharge, neither less-than-honorable nor "under honorable conditions". The actual certificate used by Defense states that it is a Clemency Discharge given "under clemency conditions" or some similar phraseology. However, the Department has made it quite clear that they consider the Clemency Discharge to be a discharge under other than honorable conditions (the functional equivalent of an Undesirable Discharge), not only for the pruposes of continuing to preclude veterans benefits (the President's desire), but also as a public connotation and an official description within the government.

It is not easy to suggest a quick remedy for the Department's actions since this is essentially an internal DOD characterization. I suggest that the remedy is a directive from the President or Buchen reminding (instructing) the Department to preserve the true neutrality of a Clemency Discharge in all their administrative processing.

We have not raised with the President our desire that the Clemency Discharge be characterized as a "General Discharge under honorable conditions for the convenience of the government" but without entitlement to veterans benefits. This would be a step beyond the President's neutrality just as the DOD's characterization is a step below.

There are two other issues which are still outstanding which you should keep in mind:

(1) Justice, Defense Department, and the Board have not resolved the formal language that the warrants in military cases will take. I believe our form to be perfectly adequate in law and in style and that they are only nitpicking, but we have not yet joined the issue with them.

(2) Case #41 has not yet been decided.

May 16, 1975

MEMORANDUM

TO: CEG

FROM: Gretchen

As of 2 p.m. Friday, 600 case summaries have been distributed as follows:

1) 200 cases (50 cases each) for panels W, X, Y, Z, were mailed to Board members prior to the meeting on May 8 with Board members on May 14, and each have received his or her cases.

100 2) 50 cases were mailed to panel D on May 15; and and additional 50 were either hand carried or put on airplanes on May 16.

100 3) 50 cases were mailed to Panel E on May 13. An additional 25 cases were mailed on May 15. An additional 25 cases were hand delivered or put on airplanes on May 16.

100 4) 50 cases were mailed to Panel E on May 13. An additional 50 were hand delivered or put on airplanes on May 16.

100 5) 75 cases were mailed on May 15. An additional 25 cases were hand delivered or put on airplanes on May 16.

An additional 25 cases each for Panels D, E, F & G will be ready for mailing tonight. or (Total 100)

Another 25 cases will ready for mailing Sunday or Monday. We will, however, check further with Board members before sending these out. (Total 100)

Your 125 cases are on your desk at 2033 M Street.

cc: L. Baskir

5/20

Senator Goodell -

50 more case summaries have been sent or delivered to each Board member as follows:

Goodell, Walt, Craig, Lally, Puller, Maye and Verhard by hand. 7

Ford by special delivery. 1

Adams to airline checkin to be picked up before boarding plane tomorrow. Same for Dougovito (though different airport).

Riggs and O'Connor delivered to/their Washington hotel be delivered to tomorrow (per their request) for reading Wed. evening.

Hesburgh, Vinson and Morrow all traveling and summaries being held here for their arrival at various times on Thursday (again per their request, we spoke with all but Joan.)

Finch and Jordan not attending.

Panel breakdown is as follows:

W,X, Y and Z
50 summaries in Board members hand prior to 5/8.

D,E, F and G
100 summaries received by Board members on or prio to 5/19.
50 summaries delivered (though not necessarily received) 5/20.

Hope this is clearer than the last memo!

GMH

P.S. We presently have on hand an additional 50 summaries for each of 4 panels which can be distributed to Board members on Thurs. or Fri. in preparation for June meetings. (and there may well be more spackets ready for distribution before Board decamps this week). BUT, we need to know which Board members are going to be assigned to which panels before packets are distributed. Are you working on this? Or is Larry? And will we know before you've queried the Board on Thrusday as to their June availability?

Will not Know before 5/22/76

GMH