**The original documents are located in Box 8, folder "Panel Counsel Meetings" of the Charles E. Goodell Papers at the Gerald R. Ford Presidential Library.**

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

June 16, 1975

MEMORANDUM TO: Larry Baskir

FROM: Bill Strauss BS

SUBJECT: Panel Counsel Meetings of June 13

COPIES TO: Panel Counsels (Distribution C)

As you know, the PM & E staff held a series of six meetings with Panel Counsels on Friday, June 13. The meetings were well-attended and were quite useful in identifying policy discrepancies between the Clemency Law Reporter's language and the apparent policy of Board panels and action attorneys. The number of discrepancies was fairly large, perhaps to be expected insofar as these were our first meetings of this kind. (This reinforces our need for weekly meetings to keep communication lines open between Panel Counsels and ourselves.)

The following issues were raised -- and, if at all possible, you or the Board should clarify what is our policy on them:

* AGGRAVATING FACTOR #1: There was considerable disagreement about what the term "felony conviction" does or should mean. Does a one-year suspended sentence apply? Does a six-month jail term for an offense which could have had a longer sentence apply? We need a firm rule for cases in which it is not clear whether the crime has in fact been designated as a felony under state law.

AGGRAVATING FACTOR #2: No issues.

AGGRAVATING FACTOR #3: No issues.

* AGGRAVATING FACTOR #4: Not included in the Clemency Law Reporter language, but articulated by PM & E staff, was the test that this factor applies only if there is some evidence of (a) cowardice or (b) some risk of immediate danger to other troops. However, some members of the Board have been applying this factor in all cases where applicants went AWOL from anywhere else in Vietnam but Saigon -- or even while on home leave (or R&R) from Vietnam.

AGGRAVATING FACTOR #5: Should we omit the language "in circumstances where a reasonable inference may be drawn that the offense had been committed for selfish and manipulative reasons?" The Board may not be applying the rule in this manner, with the simple absence of evidence sufficient of itself to bring about this factor. However, except in extraordinary cases (e.g., very thin files), the absence of any explanation or circumstantial mitigating evidence tends to create a reasonable inference that the offense was indeed for selfish and manipulative reasons. It is my understanding that the Board may not apply this rule in thin (or absent) file cases.

AGGRAVATING FACTOR #6: Does this factor apply to a Jehovah's Witness who refuses to accept draft-board-ordered alternative service for non-religious (e.g., financial) reasons?

AGGRAVATING FACTOR #7: Does this factor apply just to civilian cases? In at least one instance, the Board has applied it to a military case. If it is to be so applied, should a suspended sentence in the military be equated with probated sentences and parole in the civilian context? If a suspended sentence is vacated in the military because of some misconduct on the part of the soldier, the Board has considered the vacation the same as a revocation of probation or parole and checked this factor. Frequently, in the military, when a suspended sentence is vacated, the soldier, is sent back to confinement, and in addition he must face a new court martial on the charges that caused the suspension to be vacated. The result is that the Board now checks this factor--and also checks aggravating factor #1 for an additional adult conviction.

AGGRAVATING FACTOR #8: Do unpunished AWOLs count in assessing multiple AWOLs? If the general rule is no, what about UD-unfitness cases where the discharge was the disciplinary response to the AWOL offenses? What if the UD had been based on both punished and unpunished AWOL offenses? What the UD had been based at least in part on non-qualifying AWOL offenses? Also, action attorneys now must describe the form of punishment for each AWOL offense--listing summary court martials and non-judicial punishments. This is prejudicial and does not bear on any aggravating factor and so might be excluded from our summary format. However, changing our summary format would be painful. Should action attorneys continue to mention summary court martials for AWOL offenses--or should they simply note that it was a " punished AWOL offense."

AGGRAVATING FACTOR #9: Again, do unpunished or non-qualifying AWOLs count in tabulating the length of AWOL offenses? (We probably should apply the same rule for both aggravating #8 and #9.) Also, does the Board apply this factor to the last qualifying AWOL offense, to the longest qualifying AWOL offense, or to a cumulation of all qualifying AWOL offenses. Different Board panels seem to be applying the rule differently.

—Do not count previous AWOLs for wh he's been punished.

AGGRAVATING FACTOR #10: Does "overseas assignment" include Alaska and Hawaii?

AGGRAVATING FACTOR #11: There was considerable confusion about this factor. This factor was originally established to report a non-absence offense which contributed, along with an absence offense, to a discharge. So far, it has been applied by action attorneys only in UD-Chapter 10 cases. It has been applied by the Board panels in some UD-Unfitness cases, however. Should it apply in UD-Unfitness cases? If so, should this factor apply if the non-absence offenses resulted only in a general or special court martial -- or should it apply if any punishment resulted? Does it apply if no punishment (other than the UD-Unfitness discharge) resulted? Finally, do we apply this factor when an applicant receives a BCD or a DD for charges which include both absence and non-absence offenses? It appears that the Board panels have in fact done so.

AGGRAVATING FACTOR #12: Does the Board apply the same rule as in mitigating factor #11 -- that only the last qualifying offense counts? Also, the Board does in fact consider simple apprehension to be sufficient to bring about this factor. The language in the Clemency Law Reporter indicated that some evidence of willful evasion of authorities is also needed, but the Board has yet to apply this rule.