**The original documents are located in Box 9, folder "Reconciliation Service - Program Terminations" of the Charles E. Goodell Papers at the Gerald R. Ford Presidential Library.**

2 C.F.R. §200.8(a)

"Whenever a returnee ceases satisfactorily to perform the reconciliation service to which he is assigned, the State Director will inform the Director of Selective Service of the pertinent facts The Director of Selective Service will forthwith report such information together with his comments thereon to the refferring authority, and shall furnish a sopy of such report to the returnee."

Executive Order 11804, § 1

"The director of the selective service "is designated and empowered, without the approval, rativ ratification or other action of the President, under shuch regulations as he may prescribe, to establish, implement, and administre the program of alternative service authorized .....

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
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| REASON FOR WITHDRAWAL | Donor restriction |
| TYPE OF MATERIAL | Memorandum |
| CREATOR'S NAME | John Barber |
| RECEIVER'S NAME | Charles Goodell |
| DESCRIPTION | Re a termination from the Reconciliation Service program |
| CREATION DATE | 05/15/1975 |
| COLLECTION/SERIES/FOLDER ID | 019300077 |
| COLLECTION TITLE | Charles Goodell Papers |
| BOX NUMBER | 9 |
| FOLDER TITLE | Reconciliation Service - Program Terminations |
| DATE WITHDRAWN | 11/20/1990 |
| WITHDRAWING ARCHIVIST | WHM |

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
Presidential Libraries Withdrawal Sheet

WITHDRAWAL ID 02008

REASON FOR WITHDRAWAL . . . . Donor restriction

TYPE OF MATERIAL . . . . . Memorandum

CREATOR'S NAME . . . . . John Barber
RECEIVER'S NAME . . . . . Mr. Craig

DESCRIPTION . . . . . re status of enrollees in the Reconciliation Service program

CREATION DATE . . . . . 05/23/1975

COLLECTION/SERIES/FOLDER ID . 019300077
COLLECTION TITLE . . . . . Charles Goodell Papers
BOX NUMBER . . . . . 9
FOLDER TITLE . . . . . Reconciliation Service - Program Terminations

DATE WITHDRAWN . . . . . 11/20/1990
WITHDRAWING ARCHIVIST . . . . WHM

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
Presidential Libraries Withdrawal Sheet

WITHDRAWAL ID 02009

REASON FOR WITHDRAWAL . . . . Donor restriction

TYPE OF MATERIAL . . . . . Memorandum

CREATOR'S NAME . . . . . John Barber
RECEIVER'S NAME . . . . . Lawrence Baskir

DESCRIPTION . . . . . re a termination from the Reconciliation Service program

CREATION DATE . . . . . 06/24/1975

COLLECTION/SERIES/FOLDER ID . 019300077
COLLECTION TITLE . . . . . Charles Goodell Papers
BOX NUMBER . . . . . 9
FOLDER TITLE . . . . . Reconciliation Service - Program Terminations

DATE WITHDRAWN . . . . . 11/20/1990
WITHDRAWING ARCHIVIST . . . . WHM

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
Presidential Libraries Withdrawal Sheet

WITHDRAWAL ID 02010

REASON FOR WITHDRAWAL . . . . Donor restriction

TYPE OF MATERIAL . . . . . Memorandum

CREATOR'S NAME . . . . . John Barber
RECEIVER'S NAME . . . . . Charles Goodell

DESCRIPTION . . . . . re a termination from the Reconciliation Service program

CREATION DATE . . . . . 07/09/1975

COLLECTION/SERIES/FOLDER ID . 019300077
COLLECTION TITLE . . . . . Charles Goodell Papers
BOX NUMBER . . . . . 9
FOLDER TITLE . . . . . Reconciliation Service - Program Terminations

DATE WITHDRAWN . . . . . 11/20/1990
WITHDRAWING ARCHIVIST . . . . WHM

August 22, 1975

CONFIDENTIAL

Mr. Peter A. Jaszi, Esq.
Institute for Studies in Justice and Social Behavior
4900 Massachusetts Ave. NW
Washington, D. C.

RE: Proposal for an Independent Research Project with the American University.

Dear Peter,

In light of our discussion on the above date, I feel it appropriate to make a formal proposal to conduct research in the application of the Morrissey - Gagnon procedures in probation and parole termination to the Selective Service System's termination of the reconciliation service which many pardonees must perform to validate the grant of a Presidential Pardon under the Proclamation of September 16, 1974 and subsequent Executive Order 11803. I regret the need to restrict this letter to a confidential basis, but certain information herein is not available to the public and will not be for some time in the future. Thus, we must exercise some executive privilege.

The Presidential Clemency Program has three parts: (1) the Department of Defense may grant a Clemency Discharge to a formerly AWOL member of the armed forces upon his surrender to military control and agreement to perform, generally, two years of reconciliation service; (2) the Department of Justice operated in the classic pre-trial diversion mode with the same requirements for unconvicted draft evaders, and (3) the Presidential Clemency Board is reviewing applications for pardons from persons who have been convicted of draft evasion or AWOL offenses and recommends to the President the exercise of the pardoning powers, either conditional upon a period of alternative service or free and unconditional. Potentially 138,900 persons were eligible for the three programs. Unfortunately, only 25,000 applied. Through these governmental procedures, some 11,500 persons will be required to perform reconciliation service through the

under the auspices of the Selective Service System. These first of these applicants were handled by the Department of Defense program. Some 3,000 persons have registered with the Selective Service for reconciliation service, but have had difficulty in ascertaining appropriate jobs due, theoreticly, to the economy. However, internal indications are that the Selective Service is terminating applicants incorrectly. These indications included a PCB case, the internal staff reply to which is enclosed.

The issue is whether the Selective Service is obligated to Morrissey - Gagnon type requirements in terminative administrative procedures related to reconciliation service.

A number of views of this issue can be taken. First, the President has delegated the authority to recommend pardons and their termination to the various agencies, but the powers must remain with the President. In this view, the issue seems the most difficult. Second, however, if the President has delegated full power to Selective Service, termination could be at their will. Cf. Hoffa v. Saxbe, 378 F. Supp. 1221 (D.C.D.C., 1974). But Cf. Fleenor v. Hammond, 116 F.2d 983 (6th Cir., 1941). A third view is that the loss of the pardon is so egregious that such due process requirements are a natural analogy. A fourth view is that parole and probation are based in the pardon powers originally and the requirement may be applicable based on history. Still further, a six prong view might be developed including all of the above and material on the diversionary nature of the Justice Department program and the work from the Alternatives Project, and the contractual nature of the Department of Defense program in plea bargaining. E. G. the Undesirable Discharge in lieu of Court Martial is a plea bargain and the responsibilities of both parties are much greater in the Clemency Program since the duties and benefits are both higher.

These views, and their validity or lack thereof, need to be fully researched in order to determine what rights the applicant has at termination by Selective Service. Unfortunately, the PCB is not the proper arena for the research, and if it were, we would not have time to do an adequate job of it. Therefore, I am proposed to pursue the work myself and would like to ask your assistance and affiliation to A. U. in order

maximize the utility of the project personally, academically, and for the applicants who may suffer the terminations of Selective Service.

For that purpose, I would like to further discuss this matter with you at your earliest convenience.

Sincerely,

Leland E. Beck
Special Assistant for Planning and Policy Analysis

cc: Lawrence M. Baskir
General Counsel, PCB

enclosure.

PROPOSED OUTLINE

I. Introduction: the Reasons for, and purpose of, the work

II. The Pardon Power

A. Brief Historical Context

B. The Law of Pardoning

C. The Current Context

1. Executive Order 11803

2. The Three Programs

a. Department of Justice

b. Department of Defense

c. The Presidential Clemency Board

3. The Alternative Service Administrator: Selective Service

III. The Termination of Parole and Probation: Morrissey - Gagnon

A. The Historical Roots of Parole and Probation in the Pardons

B. The Law of Termination

C. Extension to other Areas: e. g. Diversion

IV. Is the Selective Service Required to Meet Morrissey - Gagnon Type Procedures in Terminative Actions of Alternative Service Conditions of a Pardon or other simeilar benefit?

V. Conclusion

# 74-2095

Pope v. Chew, 17 CrL 2408 (4th Cir., 8/4/75).



## REVOCATION OF CONDITIONAL PARDON REQUIRES MORRISSEY-TYPE HEARING

*Hearing required even though pardon, by its terms, lapsed with plaintiff's post-release conviction.*

Observing that due process mandates a hearing before parole or probation is revoked, the U.S. Court of Appeals for the Fourth Circuit holds that the same rule applies in favor of an individual facing revocation of a conditional gubernatorial pardon. The court perceives no difference between the liberty interests of such an individual and those of the parolees and probationers involved in Morrissey v. Brewer, 408 U.S. 471, 11 CrL 3324; and Gagnon v. Scarpelli, 411 U.S. 778, 13 CrL 3081. Accordingly, the Virginia Parole Board must hold a hearing before deciding whether to recommend the revocation of a pardon granted in 1962 to a murder defendant convicted in 1936.

Counsel for the Virginia officials, defendants in this 28 USC 1983 civil rights suit, pointed out that the terms of the pardon made revocation mandatory upon conviction of a crime. The plaintiff having been convicted of a drug offense in 1973, counsel argued, there is nothing left for adjudication. Revocation was also supposedly mandatory upon violation of a set of specified conditions, the court replies; yet the Parole Board knew of at least two instances in which the plaintiff committed such violations but took no action. Further, it is clear that the current governor had and exercised discretion in this case, despite the mandatory language of the pardon. Finally, nothing in Morrissey requires the conclusion that a simple allegation of a conviction will support a revocation. Therefore the plaintiff must be given the opportunity to present to the Parole Board mitigating factors that might influence the governor in his favor. (Pope v. Chew, 8/4/75)

*Digest of Opinion:* Convicted of murder in 1936, plaintiff Pope was released on a pardon in 1962. The pardon specified that the plaintiff must conduct himself as a "good, law-abiding citizen" and be placed under the Parole Board's supervision. The pardon further specified that if Pope violated any conditions of a parole agreement or the Commonwealth's penal laws, the pardon "shall be null and void."

In 1973, the Parole Board recommended to Governor Holton that Pope's pardon be revoked. The Board's letter recounted that Pope "had a number of conflicts with his parole officers" during the five years he was under the Probation and Parole Board's supervision. The letter further told of two instances in 1963 in which Pope operated motor vehicles and left the community — both violations of the parole conditions. Finally, the Board noted that Pope was sentenced to three years imprisonment after a drug conviction.

[*Text*]: On August 2, 1973, Governor Holton responded to the Board's letter. "I have thoroughly reviewed your report and have confirmed that Mr. Pope has been afforded every possible consideration by the State. However, it appears that he has not taken advantage of these opportunities. I am, therefore, directing his conditional pardon * * * be revoked immediately." Pope was accorded no notice or opportunity to be heard either before the Parole Board's recommendation or before Governor Holton's revocation of his pardon. * * *

The Supreme Court has held that procedural due process must be afforded in parole revocations, Morrissey v. Brewer, and in probation revocations, Gagnon v. Scarpelli * * *. Cf. also Wolff v. McDonnell, 418 U.S. 539, 15 CrL 3304 (1974). Pope asks us to hold that it must also be afforded in pardon revocations. The Commonwealth has not suggested, and we have been unable to imagine, how the liberty interests of one who is free on conditional pardon differ from one who is free on parole or probation. See Morrissey, at 482; Gagnon, at 782 & n.3, 4. Surely no one would argue that an executive could revoke any pardon whimsically. The due process clause applies to revocations of conditional pardons.

The Commonwealth, however, argues that no hearing is required in this particular case. The Court in Morrissey, after holding that a hearing must be afforded in parole revocations, stated that "obviously a parolee cannot relitigate issues determined against him in other forums, as in the situation presented when the revocation is based on conviction of another crime." 408 U.S. at 490. The Commonwealth points out that the pardon stated on its face that "this pardon shall be null and void" upon Pope's conviction of another crime, and that the Parole Board's letter to Governor Holton stated that Pope had recently been convicted and sentenced for drug dealing. Thus, according to the Commonwealth, the pardon was by its own terms nullified by the conviction, and since Morrissey contemplates no relitigation of a conviction there was nothing to hold a hearing about.

This argument fails on two counts. Its first fallacy is its jump from the quoted language of Morrissey to the assumption that a bald allegation of a conviction, like that in the Parole Board letter, will support a revocation. Fairly read, the passage from Morrissey says no more than that proof of a conviction introduced at a revocation hearing, precludes any attempt to prove that the crime was not committed. [408 U.S. at 490] The record contains no indication that Governor Holton was furnished official records to verify the accusation of the Parole Board. That all indications in the record confirm the fact of Pope's conviction is irrelevant, for it is the basis on which the Governor acted that counts.

The Commonwealth's argument also ignores that revocation of the pardon was in fact treated as a matter of discretion — despite the automatic language contained in the pardon document. The Parole Board's letter set out, in addition to Pope's 1973 criminal conviction, at least two instances in which he violated Parole Board conditions while under its supervision. Although violations of those conditions were by the terms of the pardon also violations of a condition of the pardon, and although the pardon stated that it "shall be null and void" upon violation of a condition, it is undeniable that Pope's pardon was not revoked in those two instances. Moreover, the Parole Board's recounting of Pope's entire post-pardon history — including the numerous alleged arrests, without convictions, contained in the post-sentence report — coupled with Governor Holton's statements that he had "thoroughly reviewed" the Board's report and that Pope had "been afforded every possible consideration by the State," support an inference that Governor Holton did not automatically revoke on Pope's drug conviction, but instead exercised discretion. Because it is clear that the Governor had and exercised discretion, Morrissey affords Pope the right to present at a hearing mitigating factors, if any, that might influence the Governor not to revoke his pardon. He is entitled to speak — to plead for further tolerance. 408 U.S. at 488.

We hold, therefore, that the fourteenth amendment required a hearing, conforming to the requirements set out in Morrissey and Gagnon, 411 U.S. at 783-91, before Pope's conditional pardon could be revoked. We do not mean that the Governor must himself conduct hearings. It will suffice that the hearing be before the Parole Board prior to its recommendation to the Governor. A transcript of the hearing should accompany any recommendation of revocation, and the pardonee or his counsel should be allowed to submit a written rebuttal to the recommendation. [*End Text*] —Craven, J.

(Pope v. Chew; CA 4, 8/4/75)

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REASON FOR WITHDRAWAL . . . . Donor restriction

TYPE OF MATERIAL . . . . . Memorandum

CREATOR'S NAME . . . . . John Barber
RECEIVER'S NAME . . . . . Charles Goodell

DESCRIPTION . . . . . re a termination from the Reconciliation Service program

CREATION DATE . . . . . 08/27/1975

COLLECTION/SERIES/FOLDER ID . 019300077
COLLECTION TITLE . . . . . Charles Goodell Papers
BOX NUMBER . . . . . 9
FOLDER TITLE . . . . . Reconciliation Service - Program Terminations

DATE WITHDRAWN . . . . . 11/20/1990
WITHDRAWING ARCHIVIST . . . . WHM

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
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REASON FOR WITHDRAWAL . . . . Donor restriction

TYPE OF MATERIAL . . . . . Memorandum

CREATOR'S NAME . . . . . John Barber
RECEIVER'S NAME . . . . . Charles Goodell

DESCRIPTION . . . . . re a termination from the Reconciliation Service program

CREATION DATE . . . . . 08/27/1975

COLLECTION/SERIES/FOLDER ID . 019300077
COLLECTION TITLE . . . . . Charles Goodell Papers
BOX NUMBER . . . . . 9
FOLDER TITLE . . . . . Reconciliation Service - Program Terminations

DATE WITHDRAWN . . . . . 11/20/1990
WITHDRAWING ARCHIVIST . . . . WHM

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
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REASON FOR WITHDRAWAL . . . . Donor restriction

TYPE OF MATERIAL . . . . . Memorandum

CREATOR'S NAME . . . . . John Barber
RECEIVER'S NAME . . . . . Charles Goodell

DESCRIPTION . . . . . re a termination from the Reconciliation Service program

CREATION DATE . . . . . 08/28/1975

COLLECTION/SERIES/FOLDER ID . 019300077
COLLECTION TITLE . . . . . Charles Goodell Papers
BOX NUMBER . . . . . 9
FOLDER TITLE . . . . . Reconciliation Service - Program Terminations

DATE WITHDRAWN . . . . . 11/20/1990
WITHDRAWING ARCHIVIST . . . . WHM

23 September 1975

MEMO TO: Neil Broder

FROM: Bob Terzian

SUBJECT: Case No. 851



Applicant completed three weeks of a six week alternative service detail arranged by the Missouri Selective Service, and is scheduled to perform the remainder of his service in Kansas City. He is a resident of Southwest Missouri, and claims that he can get to Kansas City with the funds provided by the SS, but he will not be able to support himself the first week he is threre without an advance of a portion of his pay. Mr. McCain, who placed a call to me to inquire if we could make financial assistance available, indicates that the detail is with the Goodwill Industries, and that he will not make an inquiry of them to determine their willingness to advance a portion of the first week's pay. Mr. McCain indicates he traveled 185 miles from Jefferson City to talk with our applicant to work things aut, and that he intends to leave an order with appli cant to report to Kansas City on Monday 29 Sept. and if applicant fails to report he will be terminated.

Applicant contacted the Selective Service upon receipt of his notice of pardon and requested that they find him an alternative service position. He states that the selective service office advised him that unless he could find his own job they would find him employment in Kansas City, Mo., soene 250 miles away.

Applicant eventually located a job in a city twelve miles away, but the job lasted only three weeks. He was then scheduled to transfer to a Corps of Engineers slot for two weeks in a town thirty miles distant. Applicant states that he did not attend this second opportunity because he had no way to get there -- and he did not have suffieient money to acquire transportation. He states that it is out of the way of local traffic and that he could not even hitch there. Prior to his acceptance of his first job, the Selective Service had located a job in Springfield Mo., sixty miles from his home, but when he applied for the job he was not hired. Applicant indicates that he could have commuted to Springfield because the road is frequently travelled.

Applicant indicates that he had never been to Kansas City, and it sounds as if he is from a pretty rural area in Mo.. He has a common law wife and a child, is currently unemployed, and waits near a service station with a tractor trailor awaiting work. The job in Kansas City will pay $2.10 per hour; the problem is obtaining living expenses for the first period he works prior to being paid.

I suggest we coordinate with National Selective Service. Even though the local office has made obvious steps to help this young man, the tone of voice I heard leads me to conclude that they do not think highly of the applicant's excuse, or of their responsibility to help this(and others like him) man to find his opportunity. It seems that a simple phone call to the Goodwill Industries where he is to be employed would be the easiest solution to the problem. The question is whether we or Selective Service should call.