

The original documents are located in Box 2, folder “Amnesty - Upgrading of Dishonorable Discharges” of the John Marsh Files at the Gerald R. Ford Presidential Library.

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NATIONAL ARCHIVES AND RECORDS SERVICE

WITHDRAWAL SHEET (PRESIDENTIAL LIBRARIES)

FORM OF DOCUMENT	CORRESPONDENTS OR TITLE	DATE	RESTRICTION
1.	<u>Goodell to Buchen, 2/6/75</u>		
1a. Profiles	Profiles of the cases of 5 individuals being considered for clemency (multi-page summaries)	Undated	C
1b. List	Receipt of Files from the Presidential Clemency Bd.	Undated	C
2.	<u>Goodell to the President, 2/24/75</u>		
2a. Profiles	Profiles of the cases of 5 individuals being considered for clemency (one page summaries) These profiles concern the same individuals as item 1a	Undated	C

FILE LOCATION
 Marsh Files
 General Subject File
 Amnesty - Upgrading of Discharges

RESTRICTION CODES

- (A) Closed by Executive Order 12356 governing access to national security information.
 (B) Closed by statute or by the agency which originated the document.
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WHM, 11/6/85

PRESIDENTIAL CLEMENCY BOARD

FEB 6 1975

THE WHITE HOUSE
WASHINGTON, D.C. 20500
February 6, 1975

MEMORANDUM FOR: PHILIP BUCHEN

FROM: CHARLES E. GOODELL
Charles E. Goodell

SUBJECT: Action on Presidential Clemency Board
Recommendation to Grant Upgraded
Discharges to Five Special Clemency Cases

PURPOSE

I believe that it is critical for the President to take action as quickly as possible on the five recommendations for upgrading discharges that the Board forwarded to the President in December.

You will recall our discussion on these cases before the President left for Vail. We agreed, as I recall, that the cases should only be presented to the President for decision out there if they were non-controversial and agreed to by the Department of Defense. At the time, I was under the misimpression that the Department of Defense was probably going to go along with a joint recommendation from the Clemency Board and DoD for immediate upgrading of these five men. Accordingly, on December 21, 1974, I directed a memorandum to the President outlining the 47 cases for clemency, plus a reference to the contingency that, with DoD approval, we would recommend the five upgradings. I included with that memorandum summaries of all the cases, including these five special cases. The President signed off on that memorandum.

A response from the Department of Defense on the matter was solicited and received on December 24. Because of the Department's opposition, no decision was made at the time. The proposal has been pending ever since and I believe it is now more than ripe for decision.

The purpose of this memorandum is to determine what further staffing you believe is required before I present the issue to the President for decision. If the amendments which the Board recommends are made in the clemency program, we will need to immediately communicate to 110,000 veterans with "bad paper" discharges the new benefits available to them. It is my strong recommendation that the issue be decided as quickly as possible so that we can get the message across through the media, and so that we can mobilize several hundred local veterans' counselling groups to help get the message out. We have already identified and been in communication with those groups, and they stand ready to help us on a crash basis if the Board's recommendations carry.



REVIEW OF THE PROPOSAL

The Board unanimously proposed that:

1. In certain extremely meritorious cases, former servicemen should receive a General Discharge (which is "under honorable conditions" in DOD's lexicon), together with veterans' benefits.
2. All former servicemen granted clemency should thereafter have their cases automatically reviewed by the appropriate military discharge review board or records correction board to determine whether the Presidential pardon warrants an upgrading, beyond a Clemency Discharge, to a General Discharge or an Honorable Discharge. This review would be made without reference to the offenses for which the individual has received Presidential forgiveness.

Let me summarize the reasons the Board believes the President should take this action:

1. The most important reason is the nature of the cases themselves. Each of the five veterans deserve better than a Clemency Discharge because of their service in combat, and the extenuating circumstances of their AWOL. In terms of simple justice, these men deserve recognition by the country of their otherwise exemplary service.
2. The Clemency Discharge is inadequate for these cases since it does not confer benefits these Vietnam veterans truly have earned.
3. In each case, the Board's recommendation was moved by General Walt, seconded by James Dougovito and James Maye, the other two veterans of Vietnam, and agreed upon unanimously by the full Board. This fact underlines the merit of each case and effectively counters any criticism that might flow from the President's action.
4. Recognition by the President of the meritorious service of these individuals will demonstrate to critics of the clemency program that it is important as well for men who served in Vietnam



combat. A program which can do justice to Vietnam veterans cannot be convincingly opposed by veterans' groups and similar centers of opposition. At the same time, it demonstrates to prospective applicants, and to critics from the other side, the benefits available from the program. Much of the press opposition focuses on the lack of substantive remedies in the program. This criticism, however inaccurate, is widespread, and can be silenced by this proposal.

5. The Department of Defense opposition may be influenced by the implicit criticism of their procedures inherent in special corrective action by the President. Of course, since the entire clemency program is special, and supplements prior courts-martial and Undesirable Discharges, there is no reason why the Services should feel themselves criticized by Presidential action. Rather, all Americans should take pride in the recognition the President will make of these veterans' services to their country. Further, the action could be ordered by the President but implemented by the Services themselves. Although this detracts from the impact of action by the President, our senior military commander, it is an acceptable approach.

6. The Department's opposition to an automatic review of all other military cases by pre-existing service procedures is only technical. Even absent action by the President, each serviceman has the right to apply to the Services after receiving clemency. This is a statutory right which cannot be affected by the clemency program. All this proposal does is, in effect, make an application to the Presidential Clemency Board serve as an application to the Service review boards. Nothing new is imposed on the Services, but what is gained is significant. Most former servicemen do not know of their discharge review opportunities, even though they all have them as a right. Those with less sophistication, or less access to counseling, lose the review right because of ignorance. The Board proposal is fully in the spirit of the President's program because it helps those most in need and least in a position to help themselves. And it does that by a simple administrative gesture.



7. The further review of these cases by the military boards without regard to the pardoned AWOL is a natural consequence of the President's grant of clemency. Since the offense has been pardoned, it is only logical that any review of the original discharge (whether automatic or not) be made without regard to that now-forgiven act. Further, it is certain that this issue would be raised in a court test of discharge review procedures if the boards were to disregard the impact of a prior Presidential pardon. The courts might well rule that failing to give effect to the pardon is a denial of due process because it makes the pardon an empty act. There is no reason to take the risk of such a decision, with its unforeseen consequences, when simple fairness dictates the result now.

8. The question of benefits after the military review is not necessarily an issue now. First, many persons would not be eligible for benefits either because of other aspects of their service record or insufficient creditable service time. We estimate this figure to be about 50% of the cases before the Board. Second, the Board by no means recommends that all persons eventually receiving discharges under honorable conditions after review should receive veterans' benefits. It is well within the power of the President to order that no discharges upgraded by the review boards by reason of a pardon should receive veterans' benefits. This would be consistent with the Proclamation. Alternatively, he could leave the decision on benefits to the Service boards or the Veterans Administration on a case-by-case basis.

DEFENSE DEPARTMENT VIEW

These proposals were informally discussed with Defense General Counsel, Martin Hoffmann, before being forwarded to the President at Christmas. The official Defense position is that it opposes these recommendations. In its December 24 memorandum, the Department, through Army Secretary Callaway, stated three objections. First, that the five cases recommended by the Board did not justify such



action on the merits; second, that the Clemency Proclamation does not provide for such dispositions; and third, that the recommendations are inconsistent with the manner in which the military now handles similar cases at Fort Harrison.

Attached to this memo is a review by the Board staff of the factual issues raised by the Department in the five cases. In every instance, the memo raises insignificant factual discrepancies which were considered by the Board. In each case, as moved by General Walt, the Board understood the facts as presented by the Department and nonetheless unanimously recommended upgrading.

I believe that the argument that the President cannot upgrade the discharges in these cases because the Proclamation does not specifically authorize such action does not require an extended comment. It is obvious that the Proclamation does not provide for upgrading, and for the simple reason that no one anticipated cases with these special characteristics would be involved. It was because of their unusual nature that we consulted with the Defense Department. Although the Proclamation may be silent, there is no question that the President has the power to take this action and the Board unanimously believes that he will be persuaded to do so by the facts in the cases.

The last objection is that these cases do not warrant upgrading because it is inconsistent with the way the military treats similar cases. First, I believe that the cases speak for themselves. Further, I am informed that while the operation at Fort Harrison has not ordered upgraded discharges, in a number of meritorious cases former AWOLs and deserters were diverted from the clemency program at Fort Benjamin Harrison, and instead have been given General Discharges or Honorable Discharges through military processing at other bases. The fact that the Services have themselves awarded upgrades is an additional reason why these Board recommendations should be approved.

FURTHER STAFF WORK

Since the Department has expressed itself already, it is my belief that it is not likely to modify its position. Of course, I would welcome discussions with Marty Hoffman and yourself and any other appropriate persons to see if agreement can be reached. However, this should



be done as quickly as possible. There is little more than three weeks remaining before the new deadline expires. Even if the matter is ready for Presidential action by early next week, there will still be only two weeks left before the end of the month--only two weeks for us to mobilize the veterans' counselling grass-roots groups and to communicate through the media. This is precious little time for the decision to have an impact on the program.

cc:

John Marsh

Enclosure

ATTACHMENT I - December 21, 1974 PCB Memo
ATTACHMENT II - December 24, 1974 Reply from DOD
w/PCB Case Summaries
ATTACHMENT III- December 24, 1974 PCB Memo





PRESIDENTIAL CLEMENCY BOARD
THE WHITE HOUSE

WASHINGTON
December 21, 1974

MEMORANDUM FOR THE PRESIDENT

FROM: CHARLES E. GOODELL

SUBJECT: First Recommendations for Clemency: Persons
Convicted of Military Offenses; Further
Recommendations for Selective Service Cases

Summary of Recommendations

On behalf of the Presidential Clemency Board, I am pleased to submit to you a second group of recommendations for executive clemency for persons convicted of draft-evasion by federal civilian courts, and for persons convicted by courts-martial of Articles 85, 86, or 87 of the Uniform Code of Military Justice.

Attached to this memorandum as Exhibit 1 is a list showing the distribution of recommendations for the civilian and military cases.

Additional cases will be forwarded to you in the Tuesday pouch, along with the necessary formal documents and suggested language for a statement, should you wish to make one.

As was your procedure when you reviewed the initial collection of recommendations, I suggest that you set aside only cases in which you have questions or which you wish to discuss with me further.

Discussion of Proposed Military Dispositions

There are two matters with respect to the military cases which should be brought to your attention. First, in five instances the Board, upon motion of those members with Vietnam service, unanimously recommends that instead of a Clemency Discharge, you order either a General Discharge or an Honorable Discharge.

The Board has in its review of military cases, found that some individuals performed well and faithfully their military duties prior to their offense. Many served courageously in Vietnam. Some were



awarded decorations for valor in combat. Often they suffered severe psychological injuries from their experiences, and these led to the commission of the military offenses for which they were discharged under other than honorable circumstances.

Because the Clemency Discharge does not adequately reflect the prior faithful service of these individuals, and does not confer entitlement to the benefits which that prior service otherwise earns, the Board believes that further action is required in these cases.

We recommend that pursuant to your authority as Commander-in-Chief and consistent with existing statutory authority, you should order the immediate issuance of an Honorable Discharge or General Discharge in these special cases. The issuance of such discharges will result in the removal of such impediments to benefits that may accompany the issuance of a Clemency Discharge. Such further action is not precluded by the terms of the Proclamation and is entirely consistent with the spirit of your act. The Board has consulted with representatives of the Department of Defense and there is complete agreement that you have the authority, both constitutionally as Commander-in-Chief, and statutorily under Title 10 of the U.S. Code, to order such discharges.

Pursuant to discussions with representatives of the Department of Defense, the records of these cases have been temporarily returned to the appropriate service Secretaries for their review under existing military procedures. I have been informed that the Department will be able to advise me prior to the time of your anticipated action whether it concurs in the Board's recommendations and, if so, whether in each case you should order either a General or an Honorable Discharge. Summaries of these five cases have been included with this memorandum for your preliminary review.

Each of the military recommendations pertain to persons who were in military custody at the time of the announcement of your clemency Proclamation on September 16. Pursuant to your direction, they were then released. However, in each instance they remain under the jurisdiction of their appropriate military service until the completion of all avenues of review of their convictions and of the less than honorable discharges ordered in their cases. This review is not yet complete and in some instances may continue as long as until mid-1975. It is possible, although highly unlikely, that some of these convictions will be reversed or that the punitive discharges will not be executed.



In order not to foreclose procedural rights of these individuals which may possibly result in a disposition more favorable than a pardon and a Clemency Discharge, the Board recommends that you announce your grant of clemency now, but make it contingent upon the completion of available military review, the ultimate approval of the conviction, and the execution of the less than honorable discharge. The Uniform Code of Military Justice, in Article 74, authorizes the Secretaries of the military departments to upgrade or set aside unexecuted punitive discharges as an act of clemency. When presented with similar circumstances, the Secretaries also make their acts in mitigation contingent upon the final results of the courts-martial review. The Board believes that its recommended approach best accomplishes your desire to act promptly in the disposition of military cases, while not precluding the rights of review available to those individuals under military law.

Timing of Your Announcement

I recommend that you announce your decisions in this second collection of cases during Christmas week. This will serve to highlight your decisions and to bring further attention to the program. Prompt action is also desirable because of the imminent end of the application period on January 31, 1975. Persons eligible for the Board's jurisdiction have already been convicted of their military or civilian offenses and are under no further threat or jeopardy if they apply to the Board. To the contrary, they stand to gain substantial legal and practical benefits if they apply. Nonetheless, the Board is convinced that the low level of participation thus far in its program is due to the lack of knowledge and to the substantial confusion on the part of those eligible. The Board has begun steps to remedy this situation to the extent within its capabilities. An announcement by you during Christmas week will further help to explain the program and focus needed attention on it.

The Contents of Your Christmas Announcement

I recommend that your announcement stress, among other matters, the general nature of the military cases you are awarding General and Honorable Discharges. This will give further credence to the value of the program for former military personnel. Because of the appealing nature of these cases it will also serve to ease the doubts of those who have expressed concern over the advisability of granting clemency to persons who left military service in time of national need. Finally, and perhaps most important, your special recognition of service-



men who served with valor in Vietnam will be another and much needed expression of national gratitude to all those who served in this controversial, misunderstood and painful war.

Decision on Board's Recommendations

1. We recommend after your examination of the cases, that you sign the grants of clemency in the civilian cases (Tab A).

Approve _____ Disapprove _____

2. We recommend that you approve and sign the grants of clemency in the military cases involving Clemency Discharges (Tab B).

Approve _____ Disapprove _____

3. We recommend that you announce your action during Christmas week.

Approve _____ Disapprove _____

Enclosures:

Exhibit 1

Tab A

Tab B



ATTACHMENT II

GERALD R. FORD LIBRARY

This form marks the file location of item number 1a
listed on the pink Withdrawal Sheet found at the front of this folder.

THE WHITE HOUSE

WASHINGTON

August 30, 1974

MEETING ON LENIENCY

Saturday, August 31, 1974

8:30 a.m. (45 minutes)

The Cabinet Room

From: Ken Cole 

I. PURPOSE

To receive and discuss the recommendations of Saxbe and Schlesinger on leniency for draft evaders and military deserters.

II. BACKGROUND, PARTICIPANTS & PRESS PLAN

A. Background: You asked Saxbe and Schlesinger to present to you their unvarnished views before September 1st. Their report is briefly analyzed at Tab A and attached in full at Tab B. The participants realize this is a discussion session and do not expect a final decision. You may wish to conclude the meeting by saying you want to think about their recommendations over the weekend.

B. Participants: List attached.

C. Press Plan: Announced event. Press photo.

III. SUGGESTED QUESTIONS:

1. What was the process of development in each of your Departments in reaching these recommendations?
2. What Congressional action, if any, will be required to implement the recommendations? What Congressional reaction is anticipated to the proposals?
3. What would be the effect of these recommendations upon our Nation's future ability to raise an Army in time of war?



LIST OF PARTICIPANTS

Department of Defense

Secretary James Schlesinger
General Counsel Martin Hoffman

Department of Justice

Attorney General William Saxbe
Deputy Attorney General Laurence Silberman

White House Staff

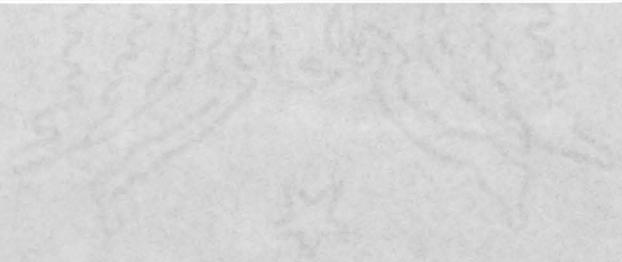
Phillip Buchen
Robert Hartmann
John Marsh

Domestic Council Staff

James Cavanaugh
Geoff Shepard







1864



PRESIDENTIAL CLEMENCY BOARD

THE WHITE HOUSE
WASHINGTON, D.C. 20500

7:30 p.m.
Friday
December 20, 1974

Admiral John G. Finneran
Deputy Assistant Secretary Defense,
Military Personnel Policy
The Pentagon
Washington, D.C. 20301

Attention: Captain Miller

Dear Dusty:

Barring any modifications that might come from Senator Goodell's conversation with Marty Hoffman, I think we ought to proceed on the basis that you outlined in our telephone discussion late this afternoon. I have attached the files of the five people the Presidential Clemency Board unanimously recommends that the President upgrade to a discharge under honorable conditions. You will refer them to the appropriate persons or boards for Departmental review. Since our time scale is short, and we are planning for a Presidential decision as early as Christmas eve day, I hope you will be able to get us back your recommendations the same day, as you said could be done. The recommendation ought to indicate whether the discharge should be General or fully Honorable since the Board believes that is best decided by Defense.

The two recommendations will then be referred to the President for his ultimate decision.

I talked to Assistant Secretary William Brehm last evening, and alerted him to this procedure.

Best Regards,

Lawrence M. Baskir
General Counsel



GERALD R. FORD LIBRARY

This form marks the file location of item number 16
listed on the pink Withdrawal Sheet found at the front of this folder.

ATTACHMENT III

PRESIDENTIAL CLEMENCY BOARD
THE WHITE HOUSE

WASHINGTON
December 24, 1974

MEMORANDUM FOR THE PRESIDENT

FROM: CHARLES E. GOODELL

SUBJECT: Announcement of Grants of Clemency
During Christmas

In my memorandum to you of December 21st, I proposed that you make additional grants of clemency to 19 civilians and 34 servicemen. I was informed yesterday that you had approved that proposal.

We will have the formal documents, concurred in by the Department of Defense and the Office of the White House Counsel, sent to you this afternoon. I recommend that you sign them on Christmas Day, and that you issue at that time a brief statement which will also come to you this afternoon. That statement is being worked on by my staff and your editorial staff right now.

Representatives of the Office of General Counsel of the Department of Defense have advised us that they oppose your directing a discharge under honorable conditions for any of the 5 individuals for whom the Board has unanimously recommended such a discharge. The Department bases its position on the fact that such action will not be consistent with the treatment of comparable cases which they are processing at Fort Benjamin Harrison.

I am also informed by representatives of the Department, however, that in those cases which the military itself believes should receive better than the Clemency Discharge, it has diverted the processing from the clemency program at Fort Harrison into other procedures at other bases so that those individuals can receive at least a General Discharge. Although the military's part of the clemency program under the Proclamation does not provide for an upgrading beyond the Clemency Discharge, they also have separated out particularly deserving cases for different treatment with a better outcome.



I should emphasize that all 5 of these actions were moved by General Walt and approved unanimously by the Clemency Board. I am not concerned at this point by bureaucratic amenities. I believe that it is imperative that you take dramatic action which will carry a message to the American people and to those potential applicants out there who don't understand that this program really offers them significant benefits. We can argue within the government for months about conforming decisions in the various clemency programs, but you have only one opportunity to announce dramatic actions of clemency in the Christmas Season of 1974.

I must advise you that I met with Phil Buchen prior to your departure for Colorado and his departure for Michigan. He strongly advised that you not be required, under circumstances of non-concurrence by the Defense Department on the five cases, to make this kind of decision until after your return from Colorado. Normally I would agree with and abide by Phil's judgment on this matter. In this instance, however, I believe that normal bureaucratic procedures would delay your decision beyond the time when you can most effectively make the announcement. Christmas is the time to do it. I, therefore, believe that this matter should be presented to you for decision now.

Separately from the question of whether these 5 individuals should receive discharges under honorable conditions, I should advise you that the Department of Defense has indicated that it prefers to order through its normal procedures any discharge more advantageous than a Clemency Discharge, rather than your directing that such a discharge be granted. This procedural point is separate from the substantive question of whether the upgraded discharge should be given. You may therefore choose not to make the decision at this time but to allow the services discretion on whether to order them or not. I disagree with this course of action.

Recommendation:

I recommend that you direct that these 5 exceptional cases have their discharges upgraded to discharges under honorable conditions, that



you publicly describe these five cases in your statement, and that you direct the upgrading yourself, now.

Approve _____ Disapprove _____

I enclose with this Memorandum, a formal transmittal letter from the Board.



THE WHITE HOUSE
WASHINGTON

12 Feb - French will
set up a meeting w/
Don, Marty Hoffman and
Jay prior to overall
get together w/ Goodell -

Margaret - 0X5-3341

Hoffman - this
after

3-6

Fri afternoon
5:00 Fri

Martin



Tell
Marty -

THE WHITE HOUSE
WASHINGTON

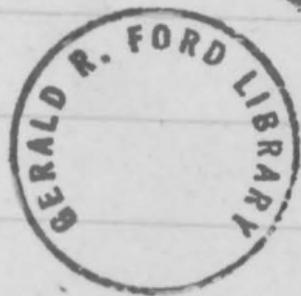


R - ^{he will put the} ^{writing of} ^{Marty} ^{3/13/54} ^{off} ^{French}
- ^{review}

I'm of the view
that Phil B. ^{all across} ^{this} ^{should}
get Marty H. ^{opened Goodell} over
and go over this
entire matter be-
fore deciding. Early
this week. JH

Jack -

Jay French is preparing
a memo for Phil Bucher in
response to the attached!



R.

FEB 7 1975

PRESIDENTIAL CLEMENCY BOARD
THE WHITE HOUSE

WASHINGTON

February 7, 1975

FEB 7 1975

M

NOTE FOR: JACK MARSH

This memorandum from three members of the Clemency Board was written by them in the earnest hope it would have some impact on the issue.

The Board joins them unanimously.

Charles Goodell

Charles E. Goodell
Chairman

Enclosure



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

February 6, 1975

MEMORANDUM FOR THE PRESIDENT

FROM: LEWIS W. WALT
JAMES DOUGOVITO
JAMES MAYE



In reference to those cases of Vietnam veterans, being recommended by the Presidential Clemency Board for upgrading to a general discharge with veterans' benefits, we, as active participants of the Vietnam War and as Members of the Presidential Clemency Board, would like to express our views.

We are in favor of the upgrading for the following reasons:

- (1) These men served our Country well in Vietnam, some of them distinguished themselves on the battlefield and suffered wounds in combat.
- (2) Upon their return home, they were confronted by an anti-war - anti-military atmosphere in which they were not recognized as heros but as individuals who had committed crimes. Their service to our Country was not appreciated.
- (3) It is always difficult for a man to adjust when he returns home from war. The general attitude of our American public made this adjustment even more difficult for these young Americans, and peer pressure forced them to do things which under normal conditions they would not have done.

We earnestly believe that an act of compassion and an expression of appreciation for their combat service in Vietnam is justified.

Mr. President, it may be helpful to you to know that each of us has spoken of these cases at various meetings with veterans and press groups around the Country. We outlined the cases and stated our recommendations. In every case, the response was very favorable. In view of the aforementioned facts, we recommend, in these specific cases, a Presidential Pardon, an upgrading to a general discharge, and the granting of appropriate veterans' benefits.

Lewis W. Walt
James P. Dougovito
James R. T. [unclear]

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

February 6, 1975

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JAMES DOUGOVITO
JAMES MAYE

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Lewis W. Walt
James P. Dougovito
James Q. Maye



February 12, 1975

FEB 14 1975

MEMORANDUM FOR:

CHAIRMAN GOODELL

FROM:

PHILIP BUCHEN

After a careful review of the Presidential Clemency Board's Memorandum of February 6, 1975, I would like to offer the following comments and alternate suggestions.

General Comments

The effect of these recommendations is to

1. significantly alter and expand the scope of the program to provide for honorable discharges,
2. encourage those who favor unconditional amnesty, veterans benefits, honorable discharges, and additional extensions of the application deadline,
3. make the President appear as if he is enticing applicants for the earned return program.

Specific Comments and Suggestions

The first recommendation could be given effect without enlarging the scope of the program by allowing recommendations for honorable discharges. This could be accomplished by the President forwarding a request to the Secretary of Defense that further consideration and review be given to those five cases in light of the Board's comments. The Board could convey its comments by a separate letter which could accompany recommendations for pardon and a Clemency Discharge. By this course, the earned reentry program would not be amended and the comments of the Board would be given thorough review and consideration.



The second recommendation involves the consideration of several matters.

My first concern is whether any review of the Clemency Discharge is proper unless it has been permitted by the President. Specifically, is the Clemency Discharge such an integral part of the President's act of clemency that no extra presidential review is proper unless the President has permitted it? Although there is no clear answer to this issue, it is my opinion that the President could avoid any invasion of his constitutional authority by either directing automatic review (as the Board suggests) or permitting review upon application by the serviceman.

Second, automatic review of all of the Board's cases by the military department review boards is undesirable because these boards already have a backlog of cases and such a directive would only cause greater congestion. Also, automatic review would create a significant inequity within the earned reentry program because no automatic review is contemplated for those servicemen who were processed by the Department of Defense.

Third, regardless of whether automatic review is directed or merely permitted, it is my understanding that a pardon does not expunge the record of a serviceman's offenses. Therefore the military department review boards are not precluded from considering the full record. In your memorandum, you indicated that the review boards were precluded from considering these offenses.

Because of these considerations, I suggest an alternate approach to automatic review.

First, I propose that the President notify the Secretary of Defense that the issuance of a Clemency Discharge under the earned reentry program shall not preclude review by the military department records review boards.

Second, I recommend that the appropriate military department should inform each serviceman at the time he is issued a Clemency Discharge of his right to apply for further review to these boards. Each serviceman should be provided forms to facilitate such application.

Finally, I recommend that we meet with Jack Marsh as soon as possible to discuss these matters.



Draft

THE WHITE HOUSE
WASHINGTON
February 20, 1975

MEMORANDUM FOR:

THE PRESIDENT

FROM:

PHILIP W. BUCHEN
JACK O. MARSH, JR.

The Presidential Clemency Board urges you to expand the scope of the program to allow for honorable discharges.¹ Specifically they recommend that you direct

- (1) the issuance of honorable discharges in five exceptional military cases (possibly several hundred more such recommendations could follow when all of the cases have been finally screened), and
- (2) the discharge review boards of each military department² to automatically review each case processed by the Board, without considering the offenses for which they are pardoned, to determine if an honorable discharge is appropriate.

We propose that you adopt a somewhat different course of action ~~designed to do justice in these meritorious cases yet not alter the basic program, to the program~~ *which will not alter the program* and which would do justice in these meritorious cases.

- (1) a. Allow the Board to accompany its recommendation for Executive clemency in these five cases with a letter setting forth the reasons which make these cases meritorious. *most lenient recommendation*
- b. Issue a pardon and Clemency Discharge (which is the ~~maximum~~ allowed under the program) and refer these five cases to the Secretary of Defense requesting a further review of these cases in light of the Board's letter. This further consideration would include a review of all offenses of record, including those for which the individual was pardoned.



¹ The words "honorable discharge" refer to both an Honorable and General Discharge which are given for honorable service.

² Each military department has two existing statutory discharge review boards which have authority to review military records and upgrade discharges.

(2) Sign and forward the attached letter (see Tab A) to the Secretary of Defense which permits review of all the Clemency Board's recommendations (in military cases) by existing military department review boards. This further consideration would include a review of all offenses of record. This letter also establishes the mechanism for issuance of Clemency Discharges.

routine

including those for which the individual was pardoned.



Jack Marsh

THE WHITE HOUSE
WASHINGTON

February 24, 1975

MEETING WITH CHARLES E. GOODELL

Monday, February 24, 1975

3:30 p. m. (30 minutes)

The Oval Office

I. PURPOSE

- A. To discuss the following recommendations of the Clemency Board:
- (a) That you allow the Board to recommend honorable discharges in meritorious cases.
 - (b) That you extend the application deadline for the Board only.
 - (c) That you give your pardon (in military cases only) an effect which will wipe out these absence offenses on the record; therefore, upon further review of these cases by Defense review boards, these cases will have to be given honorable discharges.
- B. To discuss whether the Board should finish consideration of cases by the end of FY '75 (avoiding congressional appropriations). The Board could finish by this time if it alters its procedure for considering cases and if it is detailed about 35 more staff.

II. PARTICIPANTS & PRESS PLAN

A. Participants: Charles E. Goodell
John O. Marsh, Jr.
Jay T. French

B. Press Plan: None.



III. TALKING POINTS

- A. (a) The Board's first recommendation highlights an interesting problem: should you treat differently those servicemen who served willingly in Vietnam, returned home and then went AWOL from those who went AWOL in order not to go to Vietnam.

Any solution to this problem, however, should come from the Defense Department. They have existing service record review boards that can handle these problems.

If you adopt this recommendation you will not solve the problem for a serviceman who willingly served in Vietnam, returned home and violated some other provision of the U.C.M.J. This would be too gross an inequity.

- (b) A further extension of the application date is not warranted, even for the Board alone. It's time to rely on existing clemency mechanisms at the Department of Justice, as well as other forms of discretion available to Defense and Justice.
- (c) If a former serviceman, whose case is processed by the Clemency Board, can thereafter apply to a Military Department review board and use his pardon to have his Clemency Discharge upgraded to an honorable discharge, doesn't this circumvent the purpose of giving a Clemency Discharge?

It would be more consistent with the reconciliation program to say the pardon shall not prevent a further review of the serviceman's record by these Defense review boards, and that the full record (including the offenses for which the serviceman was just pardoned) shall be considered by these boards.

- B. Can the Clemency Board conclude consideration of its cases (about 9,500) by the close of Fiscal Year 1975 if it substantially changes its procedures?



THE WHITE HOUSE

WASHINGTON

February 24, 1975

MEMORANDUM FOR: JOHN O. MARSH, JR.
FROM: JAY T. FRENCH
SUBJECT: Recommendations of Presidential
Clemency Board

ISSUE A - Recommendation that the Board be permitted to recommend the issuance of honorable discharges in meritorious cases.

1. (a) The problem that the Board wants to have expanded authority to correct is a larger and different problem than that problem which the Board and the program were designed to correct.
- (b) Each Military Department has existing civilian and military records review boards which are capable of rectifying any wrongs in these cases.
- (c) This action is a significant departure from the program.
- (d) Counsel takes no position on the merits but points out that the Secretary of the Army does not believe these cases are meritorious.
2. (a) White House Counsel and Justice believe that the Executive Order establishing the Clemency Board would have to be amended. See Section 3 of the Executive Order.
- (b) Justice points out that such authority was considered and rejected by those who drafted the original documents of the program.



3. (a) The Board wants to publicize the fact of this expanded authority, if you concur. We believe this is unwise politically.
- (b) Also, these five (5) cases were selected from the first 60 cases. It is estimated, by the Board, that it may deal with 6,000 military cases; therefore 500 cases would ultimately be given honorable discharges. This is a significant broadening of the Board's authority.
- (c) If honorable discharges are issued under the program, the recipients will be able to obtain veterans benefits. Publication of this fact will be misunderstood by the public. Also, it will appear that you are enticing applicants.
- (d) Another extension may be required merely to allow time for the board to inform servicemen of this new authority.

ISSUE B - Extension of the Clemency Board's Application Date

1. The first extension really aided the Clemency Board because there was no great increase in Defense's or Justice's applications after the first extension. Another extension, however, is simply not necessary for the Board. It began its information campaign in mid January and we believe by March 1st that ample time has been allowed.
2. Existing clemency avenues remain available at the Department of Justice after the program concludes.



ISSUE C - What legal effect should be given to the pardon for the purpose of further review of cases by the Defense Department review boards.

1. (a) The White House Counsel agrees with the Clemency Board that further review of military cases, which have been processed by the Board, should be permitted by existing review boards at Defense.
- (b) However, these review boards should consider the entire record of the serviceman. If the pardon "wipes out" the offenses of unauthorized absence, then the boards at Defense will have to upgrade the Clemency Discharge (which you have just given) to an honorable discharge which will allow veterans benefits in about 30% of the cases.
- (c) The Board's request is that you permit "boot strapping" by which 30% of those servicemen who apply to the Board use your pardon to get the Clemency Discharge changed to an honorable one. This defeats the purpose of your program.



THE WHITE HOUSE
WASHINGTON

February 24, 1975

MEETING WITH CHARLES E. GOODELL

Monday, February 24, 1975

3:30 p. m. (30 minutes)

The Oval Office

I. PURPOSE

- A. To discuss the following recommendations of the Clemency Board:
- (a) That you allow the Board to recommend honorable discharges in meritorious cases.
 - (b) That you extend the application deadline for the Board only.
 - (c) That you give your pardon (in military cases only) an effect which will wipe out these absence offenses on the record; therefore, upon further review of these cases by Defense review boards, these cases will have to be given honorable discharges.
- B. To discuss whether the Board should finish consideration of cases by the end of FY '75 (avoiding congressional appropriations). The Board could finish by this time if it alters its procedure for considering cases and if it is detailed about 35 more staff.

II. PARTICIPANTS & PRESS PLAN

- A. Participants: Charles E. Goodell
John O. Marsh, Jr.
Jay T. French
- B. Press Plan: None.



III. TALKING POINTS

- A. (a) The Board's first recommendation highlights an interesting problem: should you treat differently those servicemen who served willingly in Vietnam, returned home and then went AWOL from those who went AWOL in order not to go to Vietnam.

Any solution to this problem, however, should come from the Defense Department. They have existing service record review boards that can handle these problems.

If you adopt this recommendation you will not solve the problem for a serviceman who willingly served in Vietnam, returned home and violated some other provision of the U.C.M.J. This would be too gross an inequity.

- (b) A further extension of the application date is not warranted, even for the Board alone. It's time to rely on existing clemency mechanisms at the Department of Justice, as well as other forms of discretion available to Defense and Justice.
- (c) If a former serviceman, whose case is processed by the Clemency Board, can thereafter apply to a Military Department review board and use his pardon to have his Clemency Discharge upgraded to an honorable discharge, doesn't this circumvent the purpose of giving a Clemency Discharge?

It would be more consistent with the reconciliation program to say the pardon shall not prevent a further review of the serviceman's record by these Defense review boards, and that the full record (including the offenses for which the serviceman was just pardoned) shall be considered by these boards.

- B. Can the Clemency Board conclude consideration of its cases (about 9,500) by the close of Fiscal Year 1975 if it substantially changes its procedures?



PRESIDENTIAL CLEMENCY BOARD
THE WHITE HOUSE

WASHINGTON
February 24, 1975

ACTION

MEMORANDUM FOR THE PRESIDENT

FROM: CHARLES E. GOODELL

SUBJECT: Three Decisions on Your Clemency Program

This memorandum forwards, on behalf of a unanimous Presidential Clemency Board, three recommendations for decision by you. Each issue has been discussed with Jack Marsh, Martin Hoffmann, and representatives of the Justice Department and of the White House Counsel's office in a meeting last Thursday afternoon. The questions for decision, your options, and the positions of the parties involved are presented below.

- I. Should you issue military discharges "under honorable conditions," upon recommendation by the Presidential Clemency Board, to ex-servicemen whom the Board believes to be particularly meritorious?

BACKGROUND

The Clemency Board has, in its review of applications before it, discovered that some of the veterans seeking upgrading of bad discharges had meritorious Vietnam combat experience. The Board recommends that you order General Discharges for these cases.

Since your Counsel believes that such an order requires amendment of the Executive Order which created the Board, the Board further recommends that you direct that the Executive Order be amended to specify that the Board may, in exceptional cases, recommend that you order a discharge "under honorable conditions."

DISCUSSION

Jack Marsh, Martin Hoffmann, and I agree that you have a political decision to make: If you choose to follow the Clemency Board's recommendation, should you openly and publicly grant better than



Clemency Discharges to particularly meritorious cases, or should the Department of Defense upgrade these discharges quietly through its normal processes?

In the Thursday meeting, the Defense Department--while maintaining its official opposition to the Board's recommendation on the grounds that such upgrading would be inconsistent with the Department's treatment of clemency applicants--stated that your upgrading of these discharges would cause no problem of precedent. The Department has itself granted 33 such upgradings in cases under its jurisdiction, by removing those particularly meritorious cases from normal clemency processing at Fort Benjamin Harrison and sending them to other military bases for upgraded discharge processing.

The Board believes that you should order the recommended upgradings, and do so publicly, because of the merits of the cases themselves and because of the political impact which will follow. Each of the five veterans whose cases we have commended to you have served gallantly in combat in Vietnam, and have clearly extenuating circumstances for their AWOL. Taken as a whole, their records support the grant of an upgraded discharge.

General Walt and Jim Maye have discussed these cases with veterans and with representatives of the various veterans groups. They have received an unofficial, but unanimous, impression of support from the veterans' groups leaders, although those leaders feel that they cannot publicly reverse their opposition to the clemency program as a whole.

The Vietnam veterans on the Board felt so strongly about these cases that they asked to write a separate memorandum to you. That memorandum, which eloquently expresses their views, is attached.

The most important reason for you to make this decision, and to do so openly, is because equity clearly suggests that these particular cases, and exceptional ones like them which the Board may discover in the future, deserve veterans benefits and public recognition of their service to the country. Your emphasizing that that is your feeling will increase the growing public awareness that there is much more to your clemency program than people returning from Canada--indeed, that the program has critical value for Vietnam veterans. Veterans around the country, as they begin to understand the Presidential Clemency Board's part of the



program have been increasingly sympathetic to it. Your public announcement will further increase public understanding of the program.

OPTIONS

- (a) Issue discharges "under honorable conditions" for the five cases recommended by the Board, amend the Executive Order in order to explicitly grant the Board authority to make such recommendations in the future, and announce to the public your action in the five cases.
- (b) Direct the Department of Defense to issue quietly the five upgraded discharges, do not amend the Executive Order, and make no public announcement.
- (c) Do not upgrade these five discharges to "under honorable conditions."

DECISION: (a) _____ (b) _____ (c) _____

II. Should you direct the Department of Defense that its discharge review boards not consider pardoned AWOL offenses as part of a serviceman's record if he has received clemency from you upon recommendation by the Presidential Clemency Board?

BACKGROUND

Each military department has a discharge review board to which all veterans have the right to apply for review and upgrading of their discharges. A veteran retains this right after he has received clemency under your clemency program upon recommendation of the Board-- he may still apply to have his Clemency Discharge upgraded to a General or an Honorable Discharge. The question is whether, when he applies to the military review board, that board should treat the offense which you have pardoned as if the offense were not in the file at all.



DISCUSSION

The Clemency Board feels, as a matter of equity, that the offense pardoned should no longer be considered by the military discharge review board. The Defense Department and the Counsel's office oppose the Board's recommendation. At Thursday's meeting, the Justice Department representative indicated that as a matter of law that probably has to be done even absent any action by you. We feel, therefore, that what we are asking you to do is to make explicit, in the perception of the military review boards and of potential clemency applicants, what the law already probably requires if you are silent on the question.

You may, of course, decide that your pardon should provide that the pardoned offense explicitly should be considered in the military review process. We feel that it is that position--and not the Board's recommendation--which would be a significant change in the program as you created it. We note, moreover, that you have already granted 28 irrevocable unconditional pardons.

There is certainly no danger of this procedure opening the floodgates and resulting in most Clemency Discharges being upgraded further, since the military itself will implement the discharge review process, and is by no means disposed to grant upgrades in large numbers.

If military review boards do not give full effect to your pardon, there inevitably will be lawsuits on this issue during 1976. We believe it preferable to avoid judicial consideration of this issue, much less adverse judicial decision, next year.

OPTIONS

- (a) Direct that military discharge review boards no consider AWOL offenses pardoned under your clemency program as part of the serviceman's record.
- (b) Remain silent on the issue.
- (c) Require that the military review boards consider such pardoned offenses as part of the record.

DECISION: (a) _____ (b) _____ (c) _____



III. Should you extend the Presidential Clemency Board's application deadline for two months?

BACKGROUND

Since the Board began its information program, its applications have risen from 850 in early January to 8,000 by mid-February. The surge in applications has continued unabated after January 31, at a constant rate of nearly 1,500 per week. Board members traveling the country, the reaction of the media, and the letters we receive all make it unquestionably clear that the public is just now learning that exiled draft evaders and deserters are not the only people eligible for clemency. Until this week, many veterans' groups did not even realize that Vietnam veterans with later AWOL discharges could apply.

The Board recommends that you extend its phase of the program an additional two months, and the Departments of Justice and Defense recommend that their phases of the program not be extended.

DISCUSSION

Pursuant to your order, the Department of Defense mailed over 20,000 notices to eligible veterans about a week ago. Many responses from this notice will not come in until after the March 1 deadline. Defense has indicated that they cannot reach the other 90,000 eligible veterans by mail, and we therefore need increased time to get the word to them through local media and grass-roots veterans counseling groups.

Should you approve the Board's recommendation on upgraded discharges in exceptionally meritorious cases, you should allow time for the media to make this decision known to potential applicants before the program ends. Moreover, the several hundred grass-roots veterans' counseling groups have indicated that they will help spread the word on your decision if they have the time. Veterans with meritorious Vietnam service should have the opportunity to respond to the decision you make.

Terminating the program and announcing the upgradings thereafter, without giving Vietnam veterans a chance to accept your offer of clemency, will be subject to serious criticism from the public and from veterans groups.

Whatever your decision on deadline extension, it should be announced before March 1.



OPTIONS

- (a) Extend the application deadline for two months for the Clemency Board only.
- (b) Extend the application deadline for all phases of the program.
- (c) Announce that there will be no extension beyond March 1, 1975.

DECISION: (a) _____ (b) _____ (c) _____

Attachment



PRESIDENTIAL CLEMENCY BOARD

THE WHITE HOUSE
WASHINGTON, D.C. 20500

February 6, 1975

MEMORANDUM FOR THE PRESIDENT

FROM: LEWIS W. WALT
JAMES DOUGOVITO
JAMES MAYE

In reference to those cases of Vietnam veterans, being recommended by the Presidential Clemency Board for upgrading to a general discharge with veterans' benefits, we, as active participants of the Vietnam War and as Members of the Presidential Clemency Board, would like to express our views.

We are in favor of the upgrading for the following reasons:

- (1) These men served our Country well in Vietnam, some of them distinguished themselves on the battlefield and suffered wounds in combat.
- (2) Upon their return home, they were confronted by an anti-war - anti-military atmosphere in which they were not recognized as heroes but as individuals who had committed crimes. Their service to our Country was not appreciated.
- (3) It is always difficult for a man to adjust when he returns home from war. The general attitude of our American public made this adjustment even more difficult for these young Americans, and peer pressure forced them to do things which under normal conditions they would not have done.

We earnestly believe that an act of compassion and an expression of appreciation for their combat service in Vietnam is justified.

Mr. President, it may be helpful to you to know that each of us has spoken of these cases at various meetings with veterans and press groups around the Country. We outlined the cases and stated our recommendations. In every case, the response was very favorable. In view of the aforementioned facts, we recommend, in these specific cases, a Presidential Pardon, an upgrading to a general discharge, and the granting of appropriate veterans' benefits.

Lewis W. Walt
James P. Dougovito
James Q. Maye



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listed on the pink Withdrawal Sheet found at the front of this folder.

March 20, 1975

MEMORANDUM FOR: PHIL BUCHEN

FROM: JACK MARSH

You will recall the matter that Charlie Goodell brought to our attention involving special Presidential consideration for certain veterans clemency cases where the veteran had a distinguished combat record in Vietnam. Goodell and the Board want the President to award general discharges under honorable conditions.

This matter has become quite aggravated in the last week or so and allied with Charlie, as a strong supporter, is General Lou Walt. Goodell and Walt both want an audience with the President to address this particular problem. General Walt is particularly strong in his view on this question.

The problem is occurring at the Department of Defense where it seems they are digging in their heels to resist the recommendations of the Clemency Board. The Clemency Board recognizes that the matter should be handled at Defense rather than through the President, but it seems they are at loggerheads and want specific guidance from the President to Defense addressing this special case.

It is felt that if you were to give a call to Marty Hoffman this might be sufficient to get them to change their view.

Jay French has followed this matter closely and can give you additional information.

JOM/dl

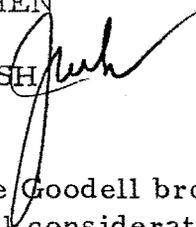


THE WHITE HOUSE

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