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MEMORANDUM FOR:

PAUL O'NEILL, DEPUTY DIRECTOR
OFFICE OF MANAGEMENT & BUDGET

FROM:

CHARLES E. GOODELL
CHAIRMAN

SUBJECT:

CLEMENCY BOARD OPERATIONS



Pursuant to your memo of July 3, requesting certain additional statistics on the operation of the Presidential Clemency Board, let me submit the following information, current as of COB July 10th:

1. Total applications logged	17,524
2. Total current caseload	16,186
3. Case summaries docketed for Board review	9,210
4. Cases completed by the Board	8,517
5. Cases forwarded to the White House for Presidential signature	652
6. Total warrants signed by the President	372

Footnotes:

¹ This number will increase only slightly as we continue to receive information perfecting applications filed before March 31.

² The difference between applications logged and the current caseload reflects the number of ineligible applications we have thusfar identified after logging.

³ The number of cases prepared by attorneys is 11,696. The difference of 2,486 represents cases awaiting typing, duplication, etc.

⁴ Some cases decided by Board Panels are held for reconsideration prior to being sent to the President for approval.

⁵ Under Board rules, each applicant has 30 days from the time of the mailing of his case summary to respond with corrections. The great bulk of cases was not decided until the beginning of the first week of June and the summaries were mailed contemporaneous with Board consideration. Approximately 1600 will be forwarded for signature late this week.

⁶ The last transmission of 280 recommendations was sent on 27 June, 1975.

The Presidential Clemency Board staff has had a management information system operating for ~~some~~ time. I regret the oversight in not sending you information of this nature in the past. Should you or your staff wish a more comprehensive analysis of the Clemency Board production, I will be glad to have them give a briefing to you.

The Clemency Board has had a docketing system in place and operating as of the time the Board began meeting on a daily basis beginning the first of June. This system has been working well and has insured that the Board has had docketed and available for consideration 1300 to 1500 cases each week. I anticipate no difficulty in the staff's continuing to have prepared the requisite number of cases each week in time for the bulk of the cases to have been reviewed by our scheduled goal of mid-August. I do anticipate, however, a small number of extremely difficult cases for which we have been unable to receive adequate records and which will necessitate fairly extensive staff investigative efforts to obtain information sufficient for Board deliberation.

The Presidential Clemency Board staff is now preparing a plan for the carry-over work that may exist after September 15. A report on this plan is being prepared for Mr. Pease and will be delivered shortly. While it is possible at this point to predict the nature of the work that will exist after September 15, the volume is subject to a number of variables which we cannot predict with any degree of assurance at this time. It will involve such variables as the number of appeals taken from Presidential decisions and Clemency Board rules, the number of late received files, as well as the Board's responsibility under the Executive Order for certifying satisfactory completion of alternative service. This latter is an especially difficult problem since the bulk of alternative service required of applicants will obviously be completed after September 15.

The Board's staff has had continuous discussions with Archives as to the nature of the requirement of disposal of the Board's records. We are still awaiting a report from them as to their requirements. With respect to records received from other agencies, we have decided not to begin sending those records back until late in August with some few exceptions, because of the possibility that we will have to refer to them once again in the intervening period.

I hope this information is helpful to you and I will continue to supply the figures on a regular basis henceforth.

LMB:jz

GOODFELL

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rules and regulations

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Title 2—Clemency CHAPTER 1—PRESIDENTIAL CLEMENCY BOARD

ADMINISTRATIVE PROCEDURES AND SUBSTANTIVE STANDARDS

The Presidential Clemency Board published its proposed administrative procedures and substantive standards on November 27, 1974 (39 FR 41351). Since that time, the Board has considered the first military cases before it, and has had the benefit of more than 40 comments on its proposed regulations. With the benefit of this additional experience and these comments, the Board publishes the final regulations setting out its procedures and standards.

It is the intent of the Board to provide notice to the public of the standards it uses to make recommendations to the President concerning individual applications for clemency. The Board also wishes to ensure equity and consistency for applicants under the President's clemency program.

Because it is a temporary organization within the White House Office, the sole function of which is to advise the President with respect to the exercise of his constitutional power of executive clemency, the Board does not consider itself formally bound by the Administrative Procedure Act. Nonetheless, within the time and resource constraints governing it, the Board wishes to adhere as closely as possible to the principles of procedural due process. The administrative procedures established in these regulations reflect this decision.

The Board may publish changes in individual sections as it deems necessary. The Board welcomes continuing comment on problems which may arise in the application of particular sections of these procedures and invites recommendations on how best these problems may be resolved.

Several dozen technical changes have been made in these regulations in response to new circumstances that were presented to the Board. Some clarify significantly the rights and procedures available to applicants. The following is an explanation of those changes which seem to the Board to be most significant:

Jurisdiction. Section 101.3 has been added in order to incorporate the criteria for determining whether or not a person is eligible for consideration by the Presidential Clemency Board. It restates the criteria established in Proclamation 4313 (Announcing a Program for the Return of Vietnam Era Draft Evaders and Military Deserters) and repeated in Executive Order 11803 (Establishing a Clemency Board * * *).

Remedies. Section 101.4 has been added to explain the remedies available from the Presidential Clemency Board. It states the authority with which the Board is vested by Executive Order 11803, issued pursuant to Proclamation 4313.

A Presidential pardon restores those federal civil rights lost as a result of a felony conviction. State law recognizes Presidential pardons as a matter of comity, usually restoring the right to vote in federal and state elections, to hold public office, and to obtain licenses for trades and professions from which convicted felons are barred under state law. Since conviction by military court-martial is treated as a felony conviction by many states, and since an Undesirable Discharge may have the same consequences as a court-martial conviction, the benefits of a pardon apply to former servicemen as well as to civilian draft evaders.

A Clemency Discharge neither entitles its recipient to veterans benefits nor bars his receiving those benefits to which he is otherwise entitled. The Veterans Administration and other agencies may extend veterans' benefits to some holders of a Clemency Discharge, but it is contemplated that most will not receive veterans benefits.

Availability of files to applicant and his representative. Section 101.7(c) clarifies which files an applicant and his representative have a right to see. At the offices of the Board, information collected by the Board independently of any other government agency is readily available to an applicant or his representative. All files obtained from other agencies are available to the extent not barred by the rules of the agency owning the file. For example, the Selective Service System file is available to him and his representative. Files from another agency are cited in a summary when they are used as the basis of statements in that summary. Reason for denial of access to any of these files is stated in writing upon request.

This subsection is in response to comments that §§ 201.5(b) and 201.6(c), read together, were either unclear or overbroad.

Completed case summary. The completed case summary consists of the initial case summary, amendments as described in the §§ 101.8 (c) and (e), and the materials submitted by the applicant and his representative as described in § 101.8(b). Where, in the opinion of the Board, there is a conflict of fact, false statement, or omission material to the Board's consideration of an aggravating or mitigating circumstance,

as specified in §§ 102.3 and 102.4, the case is tabled. The action attorney is instructed to obtain additional facts.

This is in response to comments from the private bar.

Hearing before the Board. Subsection 101.9(c) provides for a personal appearance as a matter of right if an applicant can show that an oral presentation is necessary to the Board's understanding of a mitigating circumstance or an aggravating circumstance which applies to his case. The Board has provided a right to personal appearance in response to several comments.

Reconsideration. Subsection 101.11(h) has been amended in order to add standards which must be met if the Board is to consider an applicant's petition for reconsideration. In the proposed regulations, consideration of such petition by the Board was a matter of discretion. This amendment limits the circumstances under which reconsideration will be granted, but provides that when an applicant shows that any of those circumstances are present, reconsideration will be granted as a matter of right.

Transmittal to other agencies of Presidential decisions. Section 101.12 provides that grants of immediate pardon by the President are transmitted formally to other government agencies, as appropriate. Pending completion of the alternative service requirement, grants of conditional clemency are communicated to another federal agency only to the extent this information is necessary for the agency to perform its functions under the clemency program or for other necessary action respecting the applicant. Upon completion of alternative service, notification of the pardon is forwarded to all appropriate agencies. Denials of clemency by the President are held confidential by the Board.

The intent of this section, adopted here in response to several comments is that a person who applies for clemency should not be prejudiced in his pursuit of other remedies through the military services' discharge review processes or elsewhere.

Other remedies available to applicant. Section 101.15(b) requires that Board staff inform both applicants to the Board and persons who inquire about the clemency program, but are clearly not under the Board's jurisdiction, of the remedies available to them under military discharge review processes and through the judiciary. Applicants to the Board or to one of the other agencies administering part of the clemency program may pursue such other remedies simultaneously or subsequently to, or instead of their remedies under the clemency program. The Board's staff informs them of their other options.

Aggravating and mitigating circumstances. Sections 102.3 and 102.4 contain new aggravating and mitigating circumstances which the Board deems material to its decisions.

The Board notes that it has seen a number of cases of persons who behaved with valor during combat, but then committed AWOL offenses because of mental stress caused by combat. The Board calls attention to this mitigating circumstance as one which it considers particularly important in some cases.

A number of comments from the private bar have suggested that the Board should add as a mitigating circumstance "evidence that an applicant would probably have obtained a Selective Service status or military discharge or reassignment beneficial to him, but failed to apply due to lack of knowledge or confusion." Mitigating circumstances #1, 8, and 9, in conjunction, are adequate to meet this problem.

Calculation of length of alternative service. Subsection 102.5(c) has been added in order to make clear the Board's decision that the initial baseline period of alternative service for applicants with Undesirable Discharges is three (3) months.

Eligibility of clemency recipients for military discharge review remedies. The Presidential Clemency Board notes, although the matter is not one for inclusion in its regulations, that it has received numerous comments which assume that a recipient of executive clemency under the President's clemency program is ineligible for consideration under the military services' discharge review processes.

This is incorrect. Any applicant to the Board for executive clemency may also seek review of his discharge through one of the military services' discharge review boards or boards for the correction of military records. Applying to the Board does not exclude a former serviceman from the jurisdiction of the military services' boards, nor does it preclude the remedies which are available from those boards.

The Presidential Clemency Board notes that a veteran who receives a Clemency Discharge through the Board may subsequently seek, according to the Department of Defense, an upgrading of that discharge through the military services' normal discharge review processes.

This chapter will become effective immediately.

Issued in Washington, D.C. on March 18, 1975.

CHARLES E. GOODELL,
Chairman, Presidential Clemency Board, The White House.

1. Part 101 is added to read as follows:

PART 101—ADMINISTRATIVE PROCEDURES

Sec.	
101.1	Purpose and scope.
101.2	General definitions.
101.3	Jurisdiction.
101.4	Remedies.
101.5	Initial filing.
101.6	Application form.

Sec.	
101.7	Assignment of Action Attorney and case number, and determination of jurisdiction.
101.8	Initial case summary.
101.9	Consideration before the Board.
101.10	Recommendations to the President.
101.11	Reconsideration.
101.12	Transmittal to other agencies of clemency decisions.
101.13	Confidentiality of communications.
101.14	Representation before the Board.
101.15	Requests for information about the Clemency Program.
101.16	Postponement of Board consideration and of the start of alternative service.

Appendix A: Application kit.

Appendix B: Proclamation 4313.

Appendix C: Executive Order 11803.

AUTHORITY: Executive Order 11803, 39 FR 33297, as amended.

§ 101.1 Purpose and scope.

This part establishes the procedures of the Presidential Clemency Board. Certain other matters are also treated, such as the assistance to be given to individuals requesting determinations of jurisdiction, or requesting information respecting those parts of the Presidential Clemency Program which are administered by the Department of Defense and the Department of Justice under Presidential Proclamation 4313 (39 FR 33293).

§ 101.2 General definitions.

"Action attorney" means an attorney on the staff of the Board who is assigned an applicant's case.

"Applicant" means an individual who invokes the jurisdiction of the Board, and who has submitted an initial filing.

"Board" means the Presidential Clemency Board as created by Executive Order 11803 (39 FR 33297) or any duly authorized panel of that Board.

§ 101.3 Jurisdiction.

Jurisdiction lies with the Board with respect to a particular person if such person applies to the Board not later than March 31, 1975 and:

(a) He has been convicted for failure under the Military Selective Service Act (50 App. U.S.C. 462) or any rule or regulation promulgated thereunder to register or register on time, to keep the local board informed of his current address, to report for or submit to preinduction or induction examination, to report for or submit to induction itself, or to report for or submit to, or complete (alternative) service under section 6(j) of the Act for offenses committed during the period from August 4, 1964 to March 28, 1973, inclusive; or

(b) He has received a punitive or undesirable discharge as a consequence of offenses under Article 85 (desertion), 86 (AWOL), or 87 (missing movement) of the Uniform Code of Military Justice (10 U.S.C. 885, 886, 887) that occurred between August 4, 1964 and March 28, 1973, inclusive, or is serving a sentence of confinement for such violation.

(c) Jurisdiction will not lie with respect to an individual precluded from re-entering the United States under 8 U.S.C. 1182(a) (22) or other law.

§ 101.4 Remedies.

(a) The Board is empowered only to make recommendations to the President on clemency applications. The Board has no final authority of its own. The Board may recommend to the President that he take one or more of the following actions:

(1) Grant an unconditional pardon without a requirement of alternative service;

(2) Grant an unconditional pardon upon the satisfactory completion of a specified period of alternative service not to exceed 24 months;

(3) Grant a clemency discharge in substitution for a Dishonorable, Bad Conduct, or Undesirable Discharge;

(4) Commute the sentence; or

(5) Deny clemency.

(b) In unusual circumstances and as authorized by Executive Order 11803, the Board may make other recommendations as to the form that clemency should take. This shall only be done in order to give full effect to the intent and purposes of the Presidential Clemency program.

§ 101.5 Initial filing.

(a) In order to comply with the requirements of Executive Order 11803, as amended, an individual must make an initial filing to the Board not later than March 31, 1975. The Board considers sufficient as an initial filing any written communication postmarked not later than March 31, 1975, and received by the Board, the Department of Justice, the Department of Defense, the Department of Transportation, or the Selective Service System. In the communication an individual or his representative must request consideration of the individual's case or raise questions which evidence a serious interest in applying for the program. Oral applications made not later than March 31, 1975 are considered sufficient if reduced to writing, and postmarked not later than May 31, 1975.

(b) If an initial filing is made by a representative, the case is not considered by the Board unless and until the applicant submits a written confirmation of his clemency application. This confirmation by the applicant may be sent either directly or through a representative, but it must be mailed not later than May 31, 1975. A statement by an attorney that he is acting on behalf of an applicant is sufficient. Applications by a representative on behalf of an applicant may be considered by the Board where good cause is shown why the applicant is unable to apply.

§ 101.6 Application form.

(a) Upon receipt of an initial filing, a member of the Board's staff makes a determination of probable jurisdiction. Persons who are clearly beyond the Board's jurisdiction are so notified in writing. A person who questions this determination should promptly write the General Counsel, Presidential Clemency Board, The White House, Washington, D.C. 20500, stating his reasons for questioning the determination. The General Counsel of the Board makes the final determination of probable jurisdiction and

so notifies the applicant or his representative in writing stating the reasons why. In doubtful cases, a final determination of jurisdiction is made by the Board.

(b) A person who has been notified that jurisdiction does not lie in his case is considered as having made a timely filing if the final determination is that the Board has jurisdiction over his case.

(c) A person who is within the jurisdiction of the Board is sent an application form, information about the Presidential clemency program, instructions for the preparation of the application form, a statement describing the Board's procedures and method of determining cases, and a list of volunteer counseling services.

(d) The person is urged to return the completed application form to the Board as soon as possible. Completed application forms must be postmarked within sixty (60) days of the time they were mailed by the Board, in order to qualify for the Board's consideration as a matter of right.

§ 101.7 Assignment of Action Attorney, case number, and determination of jurisdiction.

(a) Upon receipt by the Board of the completed application form or of information sufficient for the Board to request the records and files specified in paragraph (b) of this section, the applicant's case is reviewed for preliminary determination of the Board's jurisdiction. If it appears that the Board has jurisdiction over the case, a file is opened and a case number assigned. The Board will then request from all appropriate government agencies the relevant records and files pertaining to the applicant's case.

(b) In normal circumstances, the relevant records and files for civilian cases are the applicant's files from the Bureau of Prisons and information that he has sent to the Board. For military cases, they will include the applicant's military personnel records, military clemency folder, record of court martial, if any, and information that the applicant has sent to the Board. Applicants and their representatives have the right to request that the Board consider other pertinent files. The Board will attempt to comply with these requests.

(c) At the offices of the Board, information collected by the Board independently of any other agency is readily available to an applicant or his representative. All files obtained from other agencies are available to the extent not barred by the rules of the agency owning the file. Files from another agency are cited in a summary when they are used as the basis of statements in that summary. Reason for denial of access to any of these files is stated in writing upon request.

(d) Where the initial filing contains adequate information, the Board staff may assign a case number and request records, and files prior to receipt of the completed application form.

(e) If the Action Attorney determines that the Board does not have jurisdiction

in a particular case, he promptly notifies the applicant or his representative in writing, stating the reasons for such a determination.

(f) An applicant or his representative who questions this adverse determination of jurisdiction should write the General Counsel of the Board in accordance with the provisions of § 101.6(a).

§ 101.8 Initial case summary.

(a) Upon receipt of the necessary records and files, the Action Attorney prepares an initial case summary of the applicant's case. The files, records, and any additional sources used in preparing the initial case summary are listed. No other material is used. The initial case summary includes the name and business telephone number of the Action Attorney who may be contacted by the applicant or his representative.

(b) The initial case summary is sent by certified mail to the applicant or his representative. The summary is accompanied by an instruction sheet describing the method by which the summary was prepared and by a copy of the guidelines used by the Board for the determination of cases. Applicants are encouraged to review the initial case summary for accuracy and completeness and advised of their right to submit additional sworn or unsworn material. Additional material may be submitted in any length. Nothing over three (3) single-spaced, typewritten, letter-sized pages in length is read verbatim to the Board. Where necessary, therefore, an applicant should summarize his additional material to comply with this verbatim presentation requirement. If this is not done, the Action Attorney does so.

(c) At any time before Board consideration of his case, an applicant may submit evidence of inaccurate, incomplete, or misleading information in the complete Board file or other files. This information is incorporated in applicant's Board file.

(d) An applicant's case is ready for final consideration by the Board not sooner than thirty (30) days after the initial case summary is mailed to the applicant. Material which amends or supplements the applicant's initial case summary must be postmarked within this thirty (30) day period to ensure that it is considered. An applicant's request that this thirty (30) day period be extended is liberally granted by the Action Attorney, if the request is received prior to Board action and is reasonable.

(e) Upon receipt of the applicant's response to the initial summary, the Action Attorney notes all such amendments, supplements, or corrections on the initial summary submitted by the applicant or his representative. All such amendments are attached to the initial case summary with notation by the Action Attorney of any discrepancies of fact which in his opinion remain unresolved. The complete case summary consists of the initial summary, amendments as described in paragraph (c) and this section, and the materials submitted by the applicant and his representative as described in paragraph (b) of this section.

(f) Where, in the opinion of the Board, there is a conflict of fact, false statement, or omission material to the Board's consideration of an aggravating or mitigating circumstance, as specified in §§ 102.3 and 102.4, the case is tabled. The Action Attorney is then instructed to obtain additional facts.

§ 101.9 Consideration before the Board.

(a) At a regularly scheduled meeting of the Board, an applicant's case is considered. The Board may provide by rule, however, that cases will be initially considered by panels of not less than three Board members. Any case may be brought before a majority of the full Board for consideration at the request of a panel member. Panel recommendations will be considered and approved by a majority of the full Board.

(b) The Action Attorney presents to the Board a brief statement of the completed case summary and, as provided in § 101.8(b), the material submitted by the applicant.

(c) The Board grants a personal appearance to an applicant and his representative if they can show in a written statement that such an appearance is necessary to the Board's understanding of the applicant's case. The Board considers each request for an oral presentation at a regular meeting and informs the applicant and his representative whether or not his request has been granted.

(d) Any oral presentation granted by the Board shall not exceed a reasonable period of time. Neither applicant nor his representative may be present when the Board begins deliberations, but should remain available for further consultation immediately thereafter.

(e) After due deliberation the Board decides upon its recommendation to the President listing the factors it considered in making its recommendation.

§ 101.10 Recommendations to the President.

(a) At appropriate intervals, the Chairman of the Board submits to the President certain master warrants listing the names of applicants recommended for executive clemency and a list of the names of applicants considered by the Board but not recommended for clemency. The Chairman will also submit such terms and conditions for executive clemency, if any, that have been recommended in each case by the Board.

(b) Following action by the President, the Board sends notice of such action in writing to all applicants whose names were submitted to the President. Each applicant is sent a list of the mitigating and aggravating circumstances decided by the Board to be applicable in his case.

§ 101.11 Reconsideration.

(a) An applicant may ask the Board for reconsideration of his case. Petitions for reconsideration, including any supplementary material, must be postmarked within thirty (30) days of Board mailing specified in § 101.10(b).

(b) At a regularly scheduled Board meeting, a majority of the Board being present, it will reconsider the applicant's case if the applicant's petition shows one or more of the following:

(1) New fact, material to the disposition of his case, which the Board had not previously considered, provided that the applicant explains to the Board's satisfaction why such facts were not submitted earlier. New facts are, for purposes of this section, considered material only if they relate to presence or absence of an aggravating circumstance under § 102.3 or of a mitigating circumstance under § 102.4, or to calculation of length of alternative service under § 102.5.

(2) Factual error, in the complete case summary or other document considered by the Board that was material to the Board's disposition of his case and detrimental to him; or

(3) Procedural error that was material to the Board's disposition of his case and detrimental to him.

(c) The Board may at its discretion permit an applicant or his representative a reasonable period of time to present before the Board an oral statement. The provisions of § 101.9 apply to any request for a personal appearance.

(d) After due deliberation, the Board may:

(1) Leave unchanged its original recommendation;

(2) Where executive clemency was not granted, recommended to the President that he grant it in accordance with such terms and conditions as may be appropriate;

(3) Where executive clemency was granted, recommend to the President that he diminish the length of alternative service on which the grant of clemency has been conditioned or immediately grant a full and unconditional pardon.

(e) Applicants requesting reconsideration are so notified in writing of the Board's decision, together with the reasons.

§ 101.12 Transmittal to other agencies of clemency decisions.

(a) The Chairman of the Board may forward for further action to the Secretaries of the Army, Navy, and Air Force, the Secretary of Transportation, the Director of the Selective Service System, and the Attorney General, as appropriate, only such information about the President's decision as is necessary in the Board's judgment for the agency to perform its functions under the President's clemency program or for other necessary action respecting the applicant.

(b) A decision by the President to deny executive clemency to a person who has fully discharged his obligations under the law for his offense is not transmitted by the Board to any other agency of the United States Government or to any other person, public or private, except the applicant or his representative.

§ 101.13 Confidentiality of communications.

(a) In order to have his case considered by the Board, an applicant need

submit only information sufficient for a determination of jurisdiction and for the retrieval of necessary official records and files. The application form requires the applicant's name, date of birth, selective service number, military branch and service number, if applicable, information concerning the draft evasion offense or absence-related military offense, and the disposition thereof, and the mailing address and telephone number of either the applicant or his representative.

(b) The Board takes all steps in its power to protect the privacy of applicants and potential applicants to the Presidential clemency program. No personal information concerning an applicant or potential applicant is released by the Board unless disclosure is necessary for the proper functioning of the Board (e.g., to the Selective Service System so that alternative service may be performed) or unless required by law.

(1) Information which reveals commission of a serious crime, unrelated to any offense subject to the jurisdiction of the Presidential clemency program is forwarded to the appropriate authorities.

(2) As required by law, the name (but only the name) of a recipient of clemency is released to the public.

(c) All personal information obtained by the Board in the course of reviewing an applicant's case, except information obtained from other agencies, is sealed by the Board. This happens when the applicant has received his pardon from the President or when the Board's operations terminate, whichever is earlier.

(d) Upon announcement of the President's disposition of a case, the Board may publish a summary of that case after the removal of all information likely to identify the individual.

§ 101.14 Representation before the Board.

(a) Although an applicant may bring his case before the Board without a representative, each applicant is advised of his right to representation and encouraged to seek counsel experienced in military or selective service law. A representative need not be an attorney, although legal counsel is recommended to applicants. The Board staff advises applicants of those private sources which are available to provide counseling.

§ 101.15 Requests for information about the Clemency Program.

(a) Upon receipt by the Board of a request for information from an individual clearly not within the jurisdiction of the Board, the Board's staff attempts to determine his eligibility for any other part of the Presidential clemency program. If requested, the Board attorney preserves the confidentiality of the individual's location.

(b) A member of the Board's staff also informs any individual of other remedies available to him, including those from the Departments of Justice and Defense and through judicial processes.

§ 101.16 Postponement of Board consideration and of the start of alternative service.

(a) An applicant may request that the Board defer consideration of his case for a reasonable period of time. Such deferments are liberally granted provided that they do not result in an undue disruption of the Board's operations or delay the final termination of the Board's operations.

(b) An applicant who has been granted executive clemency conditioned upon a period of alternative service may ask for the postponement of the beginning of his period of alternative service for a reasonable period of time. The reasons for which a postponement may be granted include personal hardship and conflicting obligations. The Board makes every effort, consistent with its own authority and that of the Selective Service System to accommodate postponement requests.

2. Part 102 is added to read as follows:

PART 102—SUBSTANTIVE STANDARDS

Sec.

102.1 Purpose and scope.

102.2 Board recommendations.

102.4 Mitigating circumstances.

102.5 Calculation of length of alternative service.

AUTHORITY: Executive Order 11603, 39 FR 83297, as amended.

§ 102.1 Purpose and scope.

This section contains the standards which the Board employs in deciding whether or not to recommend that the President grant executive clemency, whether or not clemency should be conditioned upon satisfactory completion of a period of alternative service, and, if so, what the length of this alternative service is.

§ 102.2 Board recommendations.

In each case the Board decides first whether or not it will recommend to the President that the applicant be granted executive clemency. In reaching this decision, the Board considers the aggravating circumstances in § 102.3 and the mitigating circumstances in § 102.4.

§ 102.3 Aggravating circumstances.

(a) Presence of any of the aggravating circumstances listed below may either disqualify an individual for executive clemency or cause the Board to recommend to the President a period of alternative service exceeding the applicant's "baseline period of alternative service," as determined under § 102.5.

(b) Aggravating circumstances of which the Board takes notice are:

- (1) Other adult criminal convictions;
- (2) False statement by applicant to the Presidential Clemency Board;
- (3) Use of force by applicant collaterally to AWOL, desertion, or missing movement or civilian draft evasion offense;
- (4) Desertion during combat;
- (5) Evidence that applicant committed offense for obviously manipulative and selfish reasons;

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(6) Prior refusal to fulfill court ordered alternative service;

(7) Violation of probation or parole;

(8) Multiple AWOL/UA offenses; and

(9) AWOL/UA of extended length.

(c) Whenever an additional aggravating circumstance not listed is considered by the Board in the discussion of a particular case, and is material to the disposition of that case, the Board postpones final decision of the case and immediately informs the applicant and his representative of their opportunity to submit evidence material to the additional circumstance.

§ 102.4 Mitigating circumstances.

(a) Presence of any of the mitigating circumstances listed below or of any other appropriate mitigating circumstance is considered as cause for recommending that the President grant executive clemency to an applicant, and as cause for reducing the applicant's alternative service below the baseline period, as determined under § 102.5.

(b) Mitigating circumstances of which the Board takes notice are:

(1) Lack of sufficient education or ability to understand obligations or remedies available under the law;

(2) Personal and family problems either at the time of offense or if applicant were to perform alternative service;

(3) Mental or physical condition;

(4) Employment and other activities of service to the public;

(5) Service-connected disability, wounds in combat or decorations for valor in combat;

(6) Period of creditable military service;

(7) Tours of service in the war zone;

(8) Substantial evidence of personal or procedural unfairness;

(9) Denial of conscientious objector status, of other claim for Selective Service exemption or deferment, or of a claim for hardship discharge, compassionate reassignment, emergency leave, or other remedy available under military law, on procedural, technical, or improper grounds, or on grounds which have subsequently been held unlawful by the judiciary;

(10) Evidence that an applicant acted for conscientious, not manipulative or selfish reasons;

(11) Voluntary submission to authorities by applicant;

(12) Behavior which reflects mental stress caused by combat;

(13) Volunteering for combat, or extension of service while in combat;

(14) Above average military conduct and proficiency; and

(15) Personal decorations for valor.

(c) An applicant may bring to the Board's attention any other factor which he believes should be considered.

§ 102.5 Calculation of length of alternative service.

(a) Having reached a decision to recommend that the President grant executive clemency to a particular applicant, the Board will then decide whether or

not clemency should be conditioned upon a specified period of alternative service and, if so, what length that period should be:

(1) The starting point for calculation of length of alternative service will be 24 months.

(2) The starting point will be reduced by three times the amount of prison time served.

(3) The starting point will be further reduced by the amount of prior alternative service performed, provided that the prescribed period of alternative service has been satisfactorily completed or is being satisfactorily performed.

(4) The starting point will be further reduced by the amount of time served on probation or parole, provided that the prescribed period has been satisfactorily completed or is being satisfactorily performed.

(5) Subject to paragraphs (b) and (c) of this section, the baseline period of alternative service will be the remainder of these four subtractions or final sentence to imprisonment, whichever is less.

(b) In no case will the baseline period of alternative service be less than three (3) months.

(c) For applicants who have received an Undesirable Discharge from a military service, the baseline period of alternative service shall be three (3) months.

(d) The Board may consider mitigating circumstances as cause for recommending clemency upon satisfactory completion of a period of alternative service that is less than an applicant's baseline period of alternative service, or for recommending an immediate pardon.

(e) In cases in which aggravating circumstances are present and are not, in the Board's judgment, balanced by mitigating circumstances, the Board may consider such aggravating circumstances as cause for recommending clemency upon satisfactory completion of a period of alternative service exceeding, by three (3), six (6), or nine (9) additional months, the applicant's baseline period of alternative service. In extraordinary cases, as an alternative to denying clemency, the Board may increase the baseline period to a maximum of not more than 24 months.

PART 201—[REVOKED]

3. Part 201 is revoked.

PART 202—[REVOKED]

4. Part 202 is revoked.

[FR Doc.75-7484 Filed 3-20-75;8:45 am]

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

May 15, 1975

MEMORANDUM FOR ALL STAFF PCB
FROM DARLENE BANKS, KEY OPERATOR CB
SUBJECT XEORXING

The purpose of this memo is to set forth the guidelines on the the use of the xerox machines located in Room 605-A.

There are two machines located on the six floor in the above room. I (Darlene Banks) will be the "key operator" for both machines. The first machines will be for everyone in the PCB Program and the second is for large projects only (100 or more copies) which I will do myself.

The hours the xerox machine's being used is 9:00 a.m. to 5:30 p.m., and no one is to use the machine before 9:00 a.m.

Anyone working late and think that they will be needing me to do some xeroxing or need the machine please notify me before 5:30 p.m.

Everyone's cooperation in this matter will be greatly appreicated.

PRESIDENTIAL CLEMENCY BOARD

THE WHITE HOUSE

WASHINGTON, D.C. 20500

May 20, 1975



MEMORANDUM FOR:

ALL HANDS

FROM:

J. M. B. m.m.
LAWRENCE M. BASKIR

SUBJECT:

Reorganization of PCB Staff Channels

As most everyone knows, the PCB was examined closely last week by a team of experts selected from throughout the Executive Branch. The team was chosen by the Deputy Director of OMB at the direct request of the President.

I'm sure you've all felt some of the fall-out from this review. It will no doubt result in some amount of discomfort as we change our operation to respond to their suggestions. I hope the unsettling time will be short, and the result will be better work, done in a more organized fashion, and at a consistently high quality in line with our obligations to the President and to the individuals whose lives we are affecting.

As always, I rely on the staff not only to respond conscientiously to requirements, but also to assist me and the Chairman and the rest of the Board with ideas, criticisms, and suggestions. I hope that we will not sacrifice the collegial, informal and personal qualities that have been such a large element in our successes thus far. It is important not only that we finish by September 15, but that we can take pride in the quality of our accomplishment. The staff has performed above all reasonable demands the past few weeks and I thank you all for this. If the performance and enthusiasm is maintained for the next 4 months, I am confident about the results.

One important requirement is that we clarify organizational responsibilities throughout the staff. I have asked Bob Knisely, the Deputy General Counsel, to take responsibility for all aspects of the legal production and presentation of cases. Action Attorneys will report through their assistant team leaders and team leaders to John Foote and Ray Mitchell, who in turn will be responsible to Bob.

Similarly, Gretchen Handwerger, the PCB Chief Administrative Officer, will direct the administrative side of the operations, with budget, personnel, building services, files, record-keeping and the like under her responsibility.

Both Bob and Gretchen will report to me, and I will ask all others to clear matters with them so that they can be brought to my attention in an organized and coherent fashion.

I hope this will clarify some questions. If there are others, I hope each of you will see that they come to the attention of the proper person.

Thank you!

5/21/75

TO: Paul O'Neill

FROM: Charles Goodell

**The appendix referred to in the
memo will be forwarded under
separate cover this afternoon.**

Second, although we obviously are making every effort to adopt the suggestions of the team, I am concerned that these projections may not be valid. The Survey team's calculations are based on assumptions which are untested by experience, and which may prove over-optimistic. My judgment that we need the additional complement of 100 interns is based on our experience to date with attorney production. This includes uncertainties in the assumption of the staff's production in June under very different circumstances from the past, the difficult personal circumstances under which our attorneys are working, and the very real worry many of them have about the harmful effects of this detail on their career opportunities in their home agency.

In view of the fact that meeting the President's goal is the most important element in our calculations, the 100 additional interns should not be a major matter in dispute. The additional interns will provide the margin of insurance for the PCB. Should the Survey team's calculations prove to be incorrect, our options in mid-June will be seriously limited. On the other hand, if additional interns prove to be unnecessary, they will enable the Board to return less productive, full-time attorneys at about the GS 12 level to their agencies.

I want to express to you in the strongest terms my conviction that we cannot afford to cut things so close and unnecessarily risk additional problems.

PRESIDENTIAL CLEMENCY BOARD

THE WHITE HOUSE

WASHINGTON, D.C. 20500

June 6, 1975

MEMORANDUM

TO : Distribution List E

FROM : Robert A. Knisely
Deputy General Counsel

SUBJECT: Workload

There is an ugly rumor floating around that we are almost out of cases and therefore almost out of work. As of May 30, 1975, there were about 9,400 records which had not been assigned. It is even more significant that President Ford had only been sent a total of 373 cases. (see attached pipeline chart) While the 9,400 figure may be a few thousand too high, it is quite obvious that until we have sent more than 2% of our caseload to the White House, we are hardly over the hump.

In the event that we do get ahead of schedule, detailees will go back to their agencies long before the first summer intern hits the street. It only makes sense: interns are less expensive. No one will be released from the Board's staff unless and until there has been a lot of discussion and everyone's free choice has been exercised to the point of exhaustion.

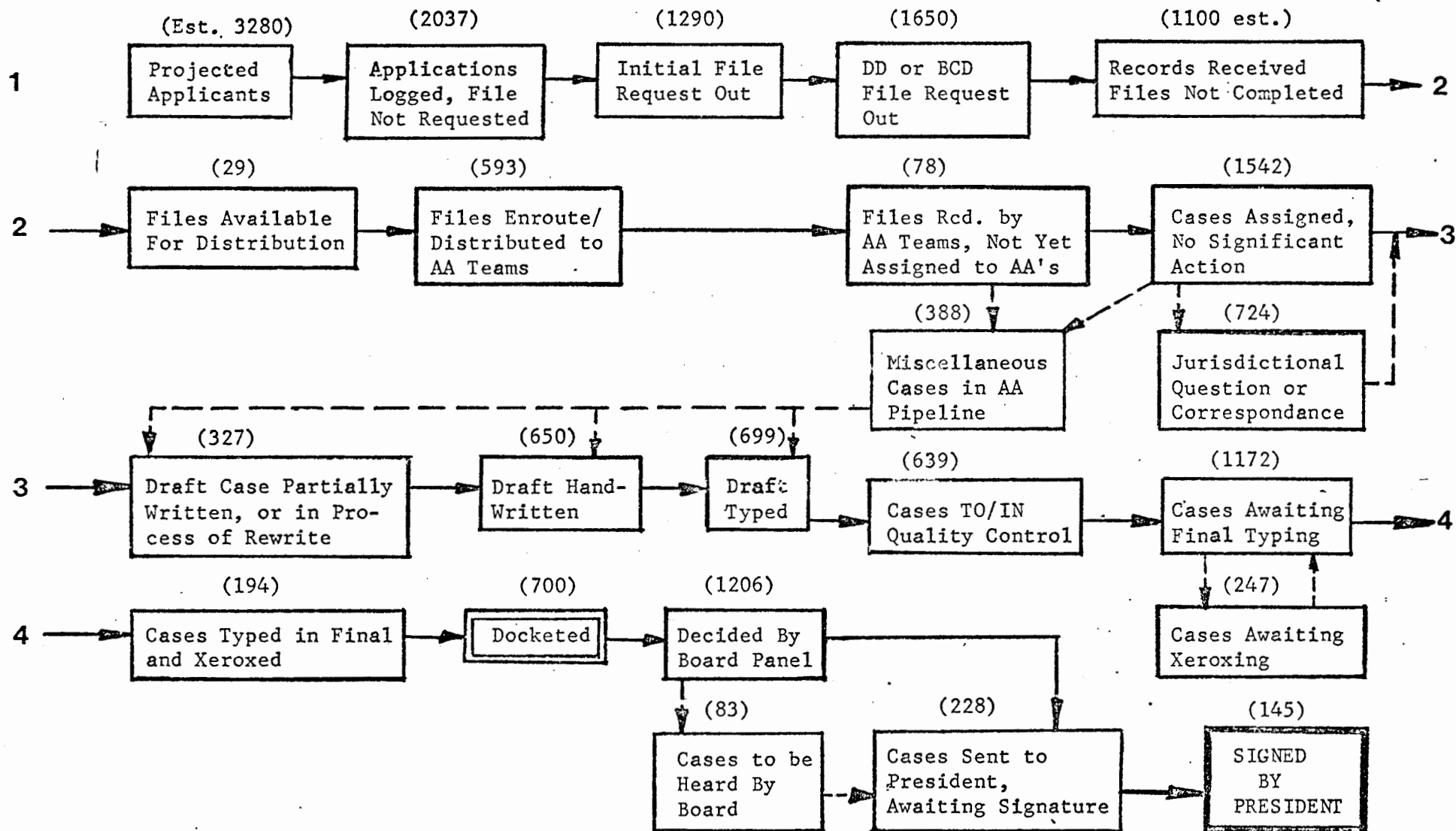
Please worry for a few more weeks about the unhappy consequences of our not finishing by mid September, before getting uptight about the unhappy consequences of finishing long before mid-September.

A more detailed explanation of where we stand will follow soon.

Attachment



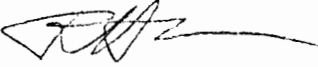
CASES IN PCB PIPELINE AS OF 30 MAY 1975



Doodell

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

June 9, 1975

MEMORANDUM FOR: DISTRIBUTION LIST B
FROM: BOB HORN 
SUBJECT: AUDIT TRAIL OF PCB ACTIVITIES

Until fairly recently, my office was able to obtain copies of all internal information and memoranda which related to Presidential Clemency Board activities. This was being done so that we would have a regular and systematic record of Board activities. After we moved to the "M" Street location, we stopped getting copies of many of these documents. I would appreciate your sending me copies of all your important memos. Even if there is some question as to the significance of a given piece of paper, please sent it along and let me decide whether or not to include it in our files.



600DELL

PRESIDENTIAL CLEMENCY BOARD

THE WHITE HOUSE
WASHINGTON, D.C. 20500
June 12, 1975

MEMORANDUM TO: Distribution List B
FROM : Gretchen Handwerker *Gretchen Handwerker*
SUBJECT : Time and Attendance and Overtime

Since we have grown to over 600 employees, our previous way of keeping time and attendance no longer works. Starting with the week of June 15 - 21 each executive secretary must keep the time and attendance on all employees of the group in the manner described below.

Although most professionals who are permanent employees of their home agencies should still call in their own time, the PCB personnel office needs to have their time recorded in case their agency needs some back-up documentation.

When recording leave or overtime if it is part of a day, you must show from what-to-what time (see example 1 attached). The Request for Authorization of overtime work sheet has to be typed, signed and only one name to a sheet as these go to the employee's agency. (See example 2)

The Time and Attendance and Overtime sheets must be verified and signed by the supervisor and turned in to Jill Marshall, Room 501-F by 12 noon every Thursday. You will have to project the overtime hours for the week-end on the sheets also. If there are any adjustments, just record them on the following week's sheets.

These forms are available in the 2nd floor supply room, M Street building, or you may make your own copies.

Attachments



DATE 6/5/75

[illegible]

EXAMPLE 1.

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

REQUEST FOR & AUTHORIZATION
OF OVERTIME WORK

EMPLOYEE'S NAME	SOCIAL SECURITY NUMBER	Authorized overtime		
		est. no. of hrs,		Dates
Sharon Jackson			2	6/3/75
			2	6/5/75
			8	6/7/75
APPROVED BY JOHN DOE	TITLE TEAM LEADER	DATE 6/5/75		

REQUEST FOR & AUTHORIZATION
OF OVERTIME WORK

[illegible]



EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

JUN 13 1975

Mr. Charles E. Goodell
Chairman
Presidential Clemency Board
2033 M Street, N. W.
Washington, D. C. 20036



Dear Mr. Goodell:


We appreciate the heavy workload of the Board and its staff, particularly since the recent acceleration and expansion of activities. However, those activities have also created a need for the Board to take three actions, which have been discussed with your staff, to assure continued compliance with the Federal Advisory Committee Act. Those actions are:

1. Request a determination by the Director of OMB that the next set of meetings scheduled by the Board shall not be open to the public. Such a determination has been made for the meetings scheduled through June 28, 1975. If meetings are scheduled beginning June 30, 1975, and running through July, the determination should be requested at once, to assure that it can be processed, and the 15 day prior notice of the meetings can be published in the Federal Register as required by the Act and OMB Circular No. A-63.
2. OMB is now reviewing a proposed determination naming a number of the Board's staff as alternate "designated Federal employees," to serve on the subgroups of the Board. Implicit in such a determination is that those employees of the Board understand their authority and responsibilities under the Federal Advisory Committee Act, and act accordingly. We need your assurance that steps are being, or have been, taken to inform them of this authority and responsibility.

3. The charter of the Presidential Clemency Board should be revised to reflect the present structure, changed termination date, etc.

To assure compliance with the Act it is important that we hear from you as soon as possible.

Sincerely,

A handwritten signature in dark ink, appearing to read "F. Oaxaca", with a long horizontal flourish extending to the right.

Fernando Oaxaca
Associate Director for
Management and Operations

Goodell

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

June 25, 1975

MEMORANDUM TO : ALL BOARD MEMBERS
FROM : ROBERT J. HORN
EXECUTIVE SECRETARY 
SUBJECT : End of Fiscal Year

This is a follow-up to our discussion at the Board Meeting today. I expect that by now new Board Members have received the tax forms that I mentioned.

I would appreciate their filling them out and returning them to the person sitting at the desk in the Board Room, no later than 2 p.m. today.

Secondly, I would like to remind all the Board Members who haven't done so already, to submit their salary, per diem, and travel vouchers for last week, also by 2 o'clock today, and to submit the same information for this week, projecting through Monday of next week, no later than 12 noon tomorrow, June 26.

I realize that this will be an imposition on some of you; however, I would appreciate your giving me this information as quickly as possible, because we are trying to close out the fiscal year. Thank you for your understanding.



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

June 25, 1975

MEMORANDUM TO : ALL BOARD MEMBERS
FROM : ROBERT J. HORN
EXECUTIVE SECRETARY 
SUBJECT : End of Fiscal Year

This is a follow-up to our discussion at the Board Meeting today. I expect that by now new Board Members have received the tax forms that I mentioned.

I would appreciate their filling them out and returning them to the person sitting at the desk in the Board Room, no later than 2 p.m. today.

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I realize that this will be an imposition on some of you; however, I would appreciate your giving me this information as quickly as possible, because we are trying to close out the fiscal year. Thank you for your understanding.



GOODSELL

July 16, 1975

MEMORANDUM

TO: Distribution List *RJH*

FROM: Robert J. Horn, Executive Secretary

SUBJECT: Incurring Financial Obligations on Behalf of
the PCB.

I am writing this memorandum at OMB's suggestion. As many of you are aware, during the last fiscal year the money allocated to the PCB was inadequate to meet its operating needs. Extraordinary action was taken by OMB in order to avoid a deficiency situation as of June 30, 1975. I therefore request that no one incur financial obligations on behalf of the PCB without my explicit written authorization.

To date we have received authorization for very limited funds for FY 1976, and it therefore behooves each of us to keep very strict controls on our expenses. Your full cooperation is essential to the operation of PCB. With this cooperation we can expect to overcome any inconveniences that might result from the limited finances available to the Board.

Thank you.





7/16

Evelyn -

Then any letters come through
for CEG's signature which are
letters of recommendation, commendation,
etc., would you be sure they
have Charlie Mott's initials on them
to indicate that there's been some
coordination with personnel. (It's trying
to be sure that everyone "gets a letter
of some sort — generally done on
the typewriter machine and ranging
from lukewarm to hotly enthusiastic
— but we also want to be sure
that people don't get two from
CEG — one handled by Mott and
the other by God knows who.)
GMB

* or almost everyone: if it's better to leave everything
unaid we'll consider doing that

THE WHITE HOUSE

WASHINGTON

Evelyn:

This was opened by Rick yesterday
and I believe he informed Senator
Goodell.

M

Marilyn M.

7/18

Per Rick's request, I have made
a copy of the enclosed and sent
it to Bob Knisely.



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

JUL 17 1975

MEMORANDUM FOR CHARLES GOODELL

Subject: Phase-out of the Presidential Clemency Board

I am in receipt of a copy of a memorandum from Robert Knisely, Deputy General Counsel, concerning PCB carryover work plan.

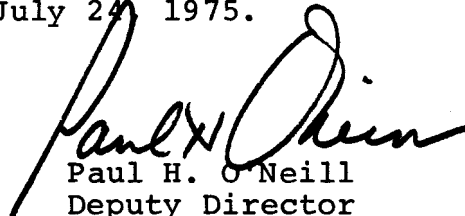
The plan, as currently presented, indicates that the PCB will have problems meeting the September 15 deadline.

I would appreciate receiving a substantially modified version of the above which would include the following information:

- ° Clear listing of all tasks that remain to be done as of this date.
- ° Detailed work plan describing how these tasks will be accomplished by September 15, 1975.
- ° Strategy for the delegation of tasks that will remain beyond September 15, 1975, to other Federal agencies, e.g., DOD, DOJ, GSA, and Selective Service.
- ° Strategy for completion of administrative tasks such as budgetary matters, return of furniture, etc. GSA can provide assistance.

In addition to the above, it would be useful for you to provide me with information concerning a plan for possible delegation of the Alternative Service issue to the pardoning attorney. This could be worked out by PCB and Selective Service staff. I would also appreciate knowing specifically how you intend to handle the "hard cases." I understand that there are between 2,000 to 3,000 of these. What is your current planning figure concerning these cases, and how many do you think will exist on September 15? It appears to me that some reasonable deadline should be set for the resolution of these cases.

I would appreciate your cooperation in seeing that I am provided this information by July 24, 1975.


Paul H. O'Neill
Deputy Director

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

August 6, 1975

MEMORANDUM FOR:

ALL STAFF MEMBERS

FROM:

RLB for
LAWRENCE M. BASKIR

SUBJECT:

CONFIDENTIALITY POLICY

The PCB has promised those who contact us that their communication and identification will remain entirely confidential and that the information which they give to us will be used ONLY by the PCB and ONLY for Clemency purposes.

If officials, such as the police or the FBI, ask you for any identifying information about a person who has contacted us, explain that the request must be made in writing to Lawrence M. Baskir as General Counsel of the PCB. You should then write a memo to alert me that such a request for identification is forthcoming. No addresses or other information shall be released without written approval from the General Counsel.

In your efforts to contact applicants for information with which to write a case summary, you must use extreme caution when dealing with any person outside the PCB.

This policy is in keeping with the assurances which were made to the public regarding any and all applications to the clemency program.



ROUTING AND TRANSMITTAL SLIP		ACTION
1 TO (Name, office symbol or location) <i>Sen. Goodell</i>	INITIALS	CIRCULATE
	DATE	COORDINATION
2	INITIALS	FILE
	DATE	INFORMATION
3	INITIALS	NOTE AND RETURN
	DATE	PER CON - VERSATION
4	INITIALS	SEE ME
	DATE	SIGNATURE
REMARKS		
<p>Do NOT use this form as a RECORD of approvals, concurrences, disapprovals, clearances, and similar actions.</p>		
FROM (Name, office symbol or location) <i>Hutchins</i>	DATE <i>9/3/75</i>	PHONE <i>254-6901</i>

OPTIONAL FORM 41

AUGUST 1967

GSA FPMR (41CFR) 100-11.206

GPO : 1972 O - 479-987

5041-101

PRESIDENTIAL CLEMENCY BOARD

THE WHITE HOUSE

WASHINGTON, D.C. 20500

September 2, 1975

TO: General Walt
FROM: Gretchen M. Handgerger *GMB*
SUBJECT: The Opening of Mail



After talking with you this afternoon, I tried to find out why mail addressed to you (and others) has been opened before routing during the past few days rather than sent to you directly and unopened as it has been previously.

Charles Graham, who was Acting Administrator in my absence, tells me that Steve Sturgill, the PCB "mailman" was sick on Thursday and Friday (August 28 and 29) and that in his absence the mail was opened and sorted by a variety of helpers, all pulled from other jobs on a short-term basis in an effort not to let the incoming mail pile up. It is my understanding that this mail was handled in assembly line fashion, with the first person in the line slitting open all envelopes, the second person pulling out the letters and stapling the envelopes to them, the third person date stamping the letters, the fourth person sorting them into action piles, etc. The second person in this assembly line (the person pulling out the letters and stapling the envelopes to them) was also first checking the envelopes for mail that should be pulled out for direct routing (e.g. mail addressed to Board Members, etc.) and when she discovered mail which had been opened which shouldn't have been, she resealed the letters by stapling the envelopes and putting them in the mail routing bin. It seems clear to me that this initial sorting should have been done before the envelopes were slit but I can fully understand the circumstances in which substitute help, improvising their own system, proceeded inappropriately.

The instructions normally followed in opening the mail are as follows:

1. Mail addressed to Senator Goodell or Larry Baskir (unless marked "personal") is opened in the mailroom.
2. Mail addressed to case attorneys (unless marked "personal") is sent to a small group of attorneys on Chuck Hilbert's team which handles it in conjunction with the case attorney to whom it's addressed if he's still at the PCB.
3. ALL OTHER MAIL is routed directly, without opening, to the person to whom it is addressed. If the addressee wishes to have it handled routinely he returns it to me or Carolyn Swanson, head of the correspondence unit.

These procedures have been in effect for as long as I have been at the Clemency Board. If Ron Hoile led you to believe that other directives are in effect concerning the opening and handling of mail, he was in error. I am sure that mistakes have been made but I am equally sure that, on the whole, the system has worked pretty well. As you said, this is the first time you have received mail that had been opened.

I am most concerned about Col. Dickman's check and have asked Charlie Graham to follow up on this. I have also queried the people who were handling mail in Steve's absence. They say they saw no such check - but then they probably wouldn't have since they were not removing the contents from their envelopes. We are also checking to be sure that the check did not fall out of the envelope and is now lying around somewhere in the mail sort area.

I am extremely sorry that your mail - and that of other Board members, Col. Dickman, Col. Bensen, and indeed probably everyone else at the PCB who received mail on last Thursday and Friday - was opened, but I can assure you that it was done inadvertently rather than intentionally.

cc: Senator Goodell ✓	Ron Hoile
Col. Dickman	Major Buck
Col. Benson	
Charles Graham	
Steve Sturgill	