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**PRESIDENTIAL CLEMENCY BOARD  
THE WHITE HOUSE  
WASHINGTON**

**Statement of**

**Charles E. Goodell  
Chairman  
Presidential Clemency Board**

**Before the**

**Subcommittee on Administrative  
Practices & Procedures  
U.S. Senate Judiciary Committee**

**Wednesday, December 18, 1974**



Mr. Chairman, members of the Subcommittee, my name is Charles E. Goodell. I am an attorney in private practice in Washington, and I am Chairman of President Ford's Presidential Clemency Board, which is a part of the White House Office.

I am grateful to the Subcommittee for this opportunity to describe to you and to the American public the operations of the Presidential Clemency Board. The program suffers from insufficient public awareness and from confusion among potential applicants. These hearings will broaden understanding of what the program is about and, in doing so, will be of service to those young people who must soon decide whether or not to participate in the program.

With the Subcommittee's consent, I would like to submit the entire statement for the record, read its highlights, and then will answer your questions.

At the outset, let me share with you several observations about the program, some of which I have come to appreciate only after becoming immersed in it.

- The Clemency Board has been continually impressed with the depth of feeling that the President has about this program, and with the personal attention that he gives to it. He was personally involved in the rewriting of the



initial proposals, and devoted a considerable amount of time to that. At the Board's first meeting, he met with us in the Cabinet room for a lengthy discussion of his hopes for the clemency program. He met with us in the Cabinet room again for the signing of the first pardons and conditional clemencies under the Board's part of the program. He has spoken with me several times to give guidance to the Board about how it should treat applicants coming to it.

In August, in his first days in office, the President replaced two of the portraits in the Cabinet room with portraits of Presidents Truman and Lincoln. He told his staff then that he particularly admired those Presidents because they were the ones who took substantial political risks in granting clemency in order to reunite the country in times of bitterness and strife.

The President cares deeply about this program, asks about its progress frequently, participates in shaping it even now. Its goals are critical to his vision of what this country should be.

- The members of the Presidential Clemency Board have been impressed also by the degree to which the applicants

coming before us do not fit the stereotypes we had assumed.

Many of the draft and military law violations which we have examined were not at all consciously and directly related to opposition to the Vietnam War. For the most part, we have seen applicants with wives who were about to leave them, whose fathers had died leaving a family without any means of support, or whose mother, wife or child had become acutely ill. Personal problems overwhelmed them and led to violations of the law.

We have many applicants who are not from educated and middle-class backgrounds, certainly not with college educations. Rather, they are generally unsophisticated, inarticulate people who were unable to pursue their remedies properly within the legal system. Had they been able to do so, many of these applicants would have received hardship deferments or conscientious objection deferments, or compassionate reassignments or hardship discharges in the military. They just did not know how to proceed.

We have seen some cases in which there has been genuine conscientious objection to killing. For the most part, however, even these people tend to be ones who did



not understand how to pursue their rights properly through the Selective Service system. They are predominantly Jehovah's Witnesses, Muslims, and a few others who have clear religious or ethical beliefs which are evident to the Board from the letters which they write to us, from their probation records, and from other files pre-dating even their conviction.

Our applicants have often proven to be the unfortunate orphans of an administrative system in which success was determined by being educated, clever, articulate, and sophisticated. Those who believed deeply but couldn't express their feelings adequately wound up with conviction records and sometimes jail sentences. The glib and sophisticated, whether sincere or not, got a better shake.

The applications which the Presidential Clemency Board has received indicate to us with overwhelming force that the image which we have had of the typical Vietnam-era draft "evader" is simply wrong.

We have been surprised and impressed, finally, by the extraordinary public support which the President's clemency program has received.

Without great fanfare, many employers, church groups, veterans' groups, and lawyers' groups have written and called to us and asked "What can we do to help?" The church groups and the veterans' groups, in particular have established counselling programs for potential applicants to the various parts of the clemency program. Numerous employers have offered opportunities for alternate service under the program. Other organizations which are not in total agreement with the clemency program have united on the local level in one common goal - helping the human beings involved with the major personal decisions which they have to face if they are to come home to the President's program.

Nearly everyone who could potentially help these young people has said "We may not entirely agree with the way that the program was set up, but the important thing is to help these boys who are thinking about coming back to us. Let's concentrate on them, not on our differences with each other."

We have learned that people in this country really do want to have a reconciliation which will bring former draft evaders and deserters back into full integration in


the community. We have been humbled and touched by the stream of offers of help from people in all parts of the country.

Let me now describe to you what the Clemency Board's jurisdiction is, what remedies we offer to prospective applicants, what administrative procedures we have established, and what substantive criteria we apply in weighing applications for clemency.

#### JURISDICTION

The Presidential Clemency Board was created by Executive Order on September 16, 1974 to implement part of President Ford's Proclamation on clemency issued that same day. The Board, organizationally within the White House, is composed of 9 part-time members. Each member is in private employment and is compensated by the Federal Government only for time spent on Board business.

The Proclamation covers three major categories of persons. First, there are those who are presently absent without authority from a military service, but who have not been convicted of an offense or discharged. They must return to their military service, which processes them and issues them an Undesirable Discharge. At the completion of alternate service of up to 24 months, they are issued a Clemency Discharge to replace the Undesirable Discharge.





Secondly, unconvicted persons who have violated the Selective Service laws must return to a U.S. Attorney. Through a process very similar to plea-bargaining or pre-trial diversion, they are offered up to 24 months alternate service. Upon satisfactory completion, charges are dropped.

The Presidential Clemency Board's jurisdiction is entirely different. We recommend clemency for persons who have already been convicted for or have admitted an offense, whether civilian or military; and who have already received punishment. The Board has jurisdiction over civilian draft evasion offenses, and over military unauthorized absence, desertion and missing movement offenses. Our jurisdiction over military personnel extends both to those court-martialed and to those administratively discharged. We recommend to the President how he should exercise his discretion under Article II, Section 2 of the Constitution.

WHAT REMEDIES DOES THE BOARD OFFER TO APPLICANTS?

The Board has received more than 800 written applications, of which 150 have already become ripe for decision under the administrative procedures we have established. Eighteen have been referred to the President thus far, all civilian cases; others have been decided by the Board and will be forwarded to the President in the next several days.

To the civilian applicant for clemency, the Board can offer, on behalf of the President, executive clemency in the form of a full pardon. Each form of executive clemency may be offered unconditionally, or conditioned upon a specified period of alternate service.

When the President accepted the unanimous recommendation of the Board that clemency be granted to the initial 18 civilian cases, he granted 8 full and unconditional pardons effective immediately, and 10 conditional clemencies which will become full and unconditional pardons upon completion of the specified alternate service. Of those who received conditional clemencies, the lengths of alternative service were: 3 months of alternate service for 3 applicants, 6 months for 5 applicants, 10 months for 1 applicant, and 12 months for 1 applicant.

While we cannot reveal the Board's recommendations prior to the President's decision on them, I can tell you that the distribution of 32 other recommendations which are shortly to go to the President on civilian cases is roughly similar to the distribution in the first 18 cases.

A pardon restores to an applicant his Federal civil rights. Just as importantly, it is the custom in most states to remove most civil disabilities, as well as licensing restrictions which prevent ex-convicts from working in a variety of occupations. Without a

pardon, the typical ex-offender cannot work in any professional occupation or, in many states, as an ambulance attendant, a watchmaker, a tourist camp operator, a garbage collector, a barber or beautician, a practical nurse, or a plumber.

Since most states honor Federal pardons as a matter of comity, although they are not required to do so as a matter of law, the real effect of a pardon is to make the ex-offender employable again.

The military applicant for clemency comes to us worse off than the civilian applicant. Not only does he frequently have a Federal felony conviction for violation of military law, but he also has the stigma and the employment problems attached to a "bad paper" discharge.

To the former military applicant, we offer a full pardon, plus an upgrading of his discharge to at least a Clemency Discharge, either unconditionally or conditioned upon a specified period of alternate service.

Some of the military applicants have wounds from service in Vietnam, decorations for valor, and multiple tours of honorable military service. They went AWOL after this honorable service, and received bad discharges. Some of them even went AWOL or deserted after they had volunteered for second and third tours of duty in Vietnam.

The Board has decided that in such special cases, we will recommend to the President that he immediately upgrade their punitive or undesirable discharges to a General Discharge or, in exceptional cases, to an Honorable Discharge.

The cases which we request the President to upgrade immediately will be the unusual ones, the ones in which justice unambiguously demands immediate corrective action. We will recommend pardons and clemency discharges in many more cases, however. In all of those other cases, we will recommend that the President direct the military discharge review boards or other appropriate military tribunal to review the cases anew in order to determine whether there should be further upgrading of discharges beyond a Clemency Discharge. And we will recommend that that de novo review be conducted without reference to the offense for which a pardon has been granted--as if that AWOL or desertion offense were not in the record.



We have received a firm indication from the Department of Defense that it is amenable to the procedures which we propose for upgrading discharges.

ADMINISTRATIVE PROCEDURES OF THE BOARD

Let me now turn to the Board's procedures, a copy of which is attached to my statement. We have sent copies for comment to every Member of Congress, to veterans' and civil liberties groups, to anti-war organizations, to every State and major local bar association and to a number of private attorneys. I am pleased to say that for the most part, the proposed rulemaking appears to have been well-received. Suggestions and criticisms will be reflected in a final rulemaking which we will issue in a few days.

It took some time to develop these regulations. In part this is explained by the fact that the Presidential Clemency Board has no precise historical model to follow and no clear precedents in assisting the President in what is a unique Executive function. We also wished to become very familiar with the types of cases before us prior to issuing any rules. Even now we find new aspects in the cases which require further elaboration of our rules.

Let me describe briefly how the Board operates.

First, when we receive a communication expressing interest by or on behalf of a possible applicant in any part of the President's program, we mail out an instruction kit. This kit describes the program, the Board's procedures, and other aspects of the Board's operations. If the individual is not under the Board's jurisdiction, but falls within the jurisdiction of the Department of Justice or the Department of Defense, we tell him how to pursue his case with them. If he is not under the jurisdiction of any part of the clemency program, we try to suggest other avenues for the relief he seeks.

Once the necessary information is obtained from an applicant, and his files are obtained from Justice or the military services, a Board attorney prepares a summary of the files. The instructions to Board attorneys have been submitted to you. We have an elaborate internal procedure to ensure that the summaries are properly prepared.

This summary is then mailed to the applicant along with the preparation instructions. The applicant is encouraged to review the preparation instructions. The applicant is encouraged to review the summary, submit any additions or corrections, and to send the Board anything he believes the Board should consider when it reviews the case.

Once this process is completed, the case is presented to the Board together with the material the applicant has sent in.



After the Board examines the case and makes a recommendation, the President reviews that recommendation and issues his decision on clemency. Under the Board's rules, an applicant then has 30 days after the President's action to ask for reconsideration if he feels dissatisfied with the decision. He next passes to the jurisdiction of the Selective Service for the performance of any required alternate service service.

Once the service is satisfactorily completed, the Board confirms that the clemency has been earned, and a pardon is issued.

#### THE SUBSTANTIVE CRITERIA FOR EVALUATING APPLICATIONS

The President's Proclamation contemplates a case-by-case evaluation of applications to the Board, rather than a blanket treatment of whole classes of people. We have carefully drawn our substantive standards so that they are a tool to assist the Board in weighing each case on its merits. The standards help us to separate out cases which should be treated differently, and to treat with consistency and equity those which are similarly situated.

We give special weight to time already spent in prison, and to alternate service and probation or parole already satisfactorily completed under judicial order in deciding appropriate lengths of alternate service.

Equity compels us to consider factors beyond simply time spent in prison. For this reason, for example, Jehovah's Witnesses who have

served a little time in prison, but whose violations of law were motivated by deeply held religious beliefs, typically have been offered outright pardons, or have been asked to serve minimal amounts of time where aggravating circumstances have existed in particular cases. On the other hand, persons who acted from no apparent sincerely held ethical or religious convictions about the war have received clemency contingent upon longer lengths of alternate service, even when those persons may have served more time in prison.

The Board has been diligent in creating procedural and substantive rules which can be readily understood by a layman who gives them a careful reading, as well as by a lawyer or other counsellor who has not specialized in Selective Service or military law. We have tried to use simple and clear language, and we have tried to bring the greatest practical degree of due process to a procedure which is, constitutionally, inherently discretionary on the part of the President.

#### PROTECTIONS OF APPLICANTS

Anyone calling or writing in to the Presidential Clemency Board is guaranteed that his name, address, telephone number, and any other information which he gives us will be held in the strictest confidence, unless he has committed a serious non-draft-related or non-AWOL-related



criminal offense such as homicide. The Justice Department has agreed that with this exception, we may keep our own records completely sealed to other agencies.

Since most evaders and deserters within our jurisdiction apparently do not read the New York Times or watch Walter Cronkite frequently, we have taken pains to communicate to them that they are eligible for the President's program. We are mailing information about the program to the last addresses of each person convicted of draft evasion and eligible for Board consideration, thanks to the very fine cooperation of the Federal Probation Service and the Administrative Office of the U.S. Courts. Assuming that such addresses are available from the Department of Defense and the Coast Guard, we will do a mailing to over 114,000 convicted AWOLs and deserters as well.

Everyone who applies or inquires to the Board is advised of the advantages of legal assistance. We give to any person who needs counsel the names of organizations which provide volunteer services.

The American Legion, the Los Angeles County Bar, the New York County Bar, the American Bar Association and the Harvard Military Justice Committee have either offered their services as volunteer representatives or expressed a strong interest in doing so. But with the application period over half-completed, many potential applicants are undecided on how to proceed. I would like to see every

one of the 800 who have already applied put in touch with a volunteer attorney. I cannot hide my disappointment that a number of legal organizations have declined to help because of political or philosophical differences with the program. I urge them to put aside these differences in favor of the needs of the applicants.

This is a particularly serious problem because, as I mentioned earlier, many persons eligible for the program, both civilian and military, are not highly sophisticated, well-educated individuals who opposed the war for articulate, well-thought through reasons. Typically, we have a man who found his family ill, or in dire financial straits, or who had domestic problems. Often we find veterans with good and faithful service, often in combat, scarred psychologically by their war experiences and unable to adjust to garrison duty back home. Many of these veterans went AWOL only after being refused a request to return to combat.

We have prepared thumb-nail sketches of the cases the Board has considered. I just want to read a few representative cases:

Let me close with a final comment about the program.

President Ford has acted in the tradition of Presidents Truman, Wilson, Lincoln, and Washington. I hope that this hearing today will help make more Americans aware of the deep historical roots of clemency and of the country's need for it now. Perhaps, if it serves that purpose, our being here today will make it just a little bit easier for those who do come back to integrate themselves fully, with dignity and with pride, as Americans and as members of their community again.