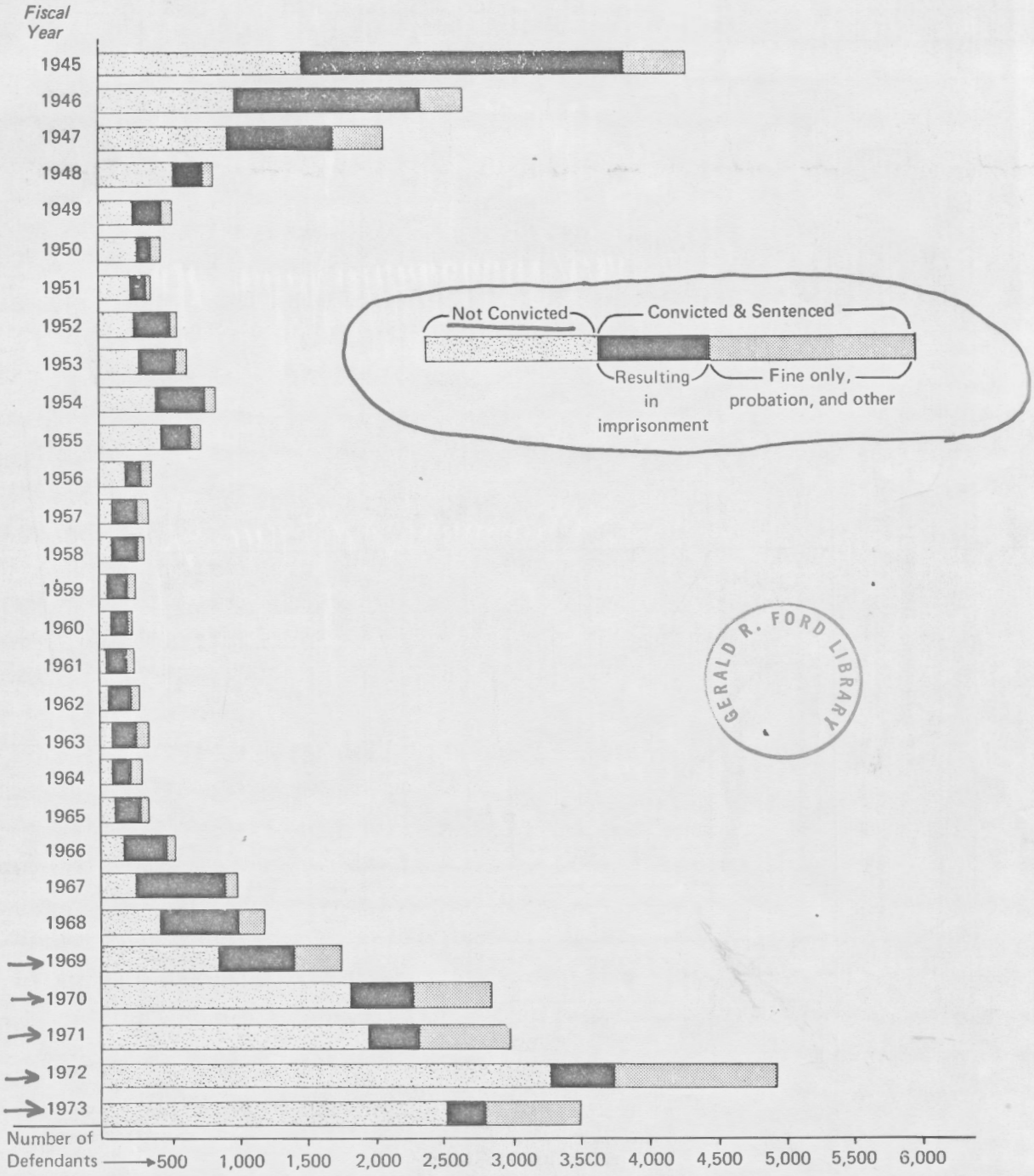
The original documents are located in Box 8, folder "Memoranda - Justice Department" of the Charles E. Goodell Papers at the Gerald R. Ford Presidential Library.

UNITED STATES DISTRICT COURTS*

DISPOSITION OF DEFENDANTS CHARGED WITH VIOLATION OF SELECTIVE SERVICE ACTS

Fiscal Years 1945 through 1973



*Excludes District of Columbia, Canal Zone, Guam and the Virgin Islands.

CHART F

Figure 32

United States District Courts*

Disposition of Defendants Charged with Violation of Selective Service Acts
Showing Type of Sentence for Fiscal Years 1945 through 1973

Fiscal year	Total defendants	Not convicted				Convicted and Sentenced				Type of Sentence							
				Acquitted by				Convicted by		Imprisonment[1]							
		Total	Dismissed	Court	Jury	Total	Plea of guilty or nolo contendere	Court	Jury	Total	1 year and 1 day and under	Over 1 year 1 day to 3 years	3-5 years	5 years and over	Probation	Fine and other	Average sentence of imprisonment (in mos.)
1945....	4,287	1,449	1,399	25	25	2,838	1,823	319	696	2,368	438	775	744	411	453	17	31.9
1946....	2,651	999	953	26	20	1,652	1,130	222	300	1,339	547	501	244	47	301	12	20.6
1947....	2,074	937	908	18	11	1,137	898	178	61	775	394	317	61	3	245	117	14.3
1948....	833	529	511	7	11	304	264	11	29	212	133	69	9	1	84	8	14.1
1949....	506	214	202	3	9	292	263	20	9	213	134	62	17	-	73	6	14.6
1950....	449	274	272	1	1	175	156	6	13	109	78	24	6	1	65	1	13.4
1951....	368	212	202	6	4	156	105	24	27	123	35	37	29	22	32	1	29.6
1952....	561	248	222	16	10	313	160	97	56	272	58	77	97	40	39	2	30.5
1953....	630	285	236	39	10	345	185	129	31	280	61	101	84	34	64	1	29.3
1954....	822	398	278	116	4	424	194	185	45	356	78	137	126	15	64	4	26.4
1955....	719	430	367	57	6	289	157	106	26	217	54	105	47	11	70	2	24.8
1956....	371	185	167	16	2	186	109	67	10	123	35	50	35	3	61	2	24.0
1957....	357	95	75	17	3	262	183	70	9	194	60	85	41	8	68	-	23.7
1958....	325	96	66	26	4	229	154	66	9	190	66	81	42	1	36	3	21.6
1959....	258	56	44	11	1	202	159	39	4	152	46	63	39	4	49	1	23.2
1960....	239	73	65	7	1	166	131	31	4	126	47	48	28	3	37	3	21.5
1961....	244	45	37	8	-	199	160	33	6	141	45	59	35	2	57	1	22.6
1962....	274	49	46	2	1	225	182	31	12	164	58	75	28	3	60	1	21.6
1963....	338	73	66	7	-	265	212	46	7	189	79	65	36	9	74	2	21.5
1964....	276	70	63	6	1	206	161	32	13	146	46	77	22	1	59	1	20.8
1965....	341	99	88	8	3	242	197	28	17	189	64	90	30	5	52	1	21.0
1966....	516	145	132	11	2	371	265	74	32	301	61	128	95	17	64	6	26.4
1967....	996	248	224	22	2	748	538	141	69	666	47	270	291	58	78	4	32.1
1968....	1,192	408	353	49	6	784	520	196	68	580	44	131	301	104	202	2	37.3
1969....	1,744	844	747	88	9	900	511	252	137	544	40	155	261	88	350	6	36.3
1970....	2,833	1,806	1,570	222	14	1,027	570	321	136	450	53	144	208	45	572	5	33.3
1971....	2,973	1,937	1,701	217	19	1,036	590	350	96	377	79	140	129	29	650	9	29.1
1972....	4,906	3,264	2,937	294	33	1,642	934	578	130	458	199	120	123	16	1,178	6	22.0
1973....	3,495	2,518	2,338	137	43	977	631	253	93	260	146	66	41	7	707	10	17.5

[1]Includes sentences of more than 6 months which are to be followed by a term of probation (mixed sentences).
Includes split sentences where a defendant receives a sentence on a one-count indictment of 6 months or less in a jail type institution, followed by a term of probation, 18 U.S.C. 3651. Included in these figures are mixed sentences involving confinement for 6 months or less on one count, to be followed by a term of probation on one or more other counts.

NOTE: Excludes District of Columbia, Canal Zone, Guam and Virgin Islands. Statistics reflect defendants charged with violations of the Selective Training and Service Act of 1940, Title 50, U.S.C., App. 301-318 and the Universal Military Training and Service Act of 1948, Title 50, U.S.C., App., 451-470.

* 1974 2070 1384 1286 71 27 686 535 109 42

PRESENTATION BY LAURENCE H. SILBERMAN,
DEPUTY ATTORNEY GENERAL

I. Distribution of Fact Sheets explaining the President's Clemency Program. 3-4 minute statement.

II. Policy Problems

A. Should the Clemency Board promulgate regulations to govern its determinations as to whether clemency should be recommended or should it proceed on a case-by-case basis?

B. Should the Clemency Board promulgate regulations that specifically credit prison time against any possible alternate service that is recommended?

C. Who might be considered for alternate service? Only those presently incarcerated or on furlough? Those who only received probation?

D. Should the Clemency Board sit in panels?

E. What should the Clemency Board standards for recommending clemency?

III. Draft evaders incarcerated or on furlough.

A. Total number 103

B. Number on furlough 84

C. Number incarcerated 19

D. Charges in addition to draft evasion against incarcerated draft evaders.

IV. Convicted draft evaders eligible to apply to the Clemency Board.

A. Number

B. Length and type of sentence served.

This information will be supplied shortly by the Administrative Office of the United States Courts.

V. Results of the Department of Justice draft evader program to date.

VI. Questions

September 25, 1974

PROGRAM FOR THE RETURN OF VIETNAM ERA DRAFT EVADERS AND MILITARY DESERTERS

The President has today issued a Proclamation and Executive Orders establishing a program of clemency for draft evaders and military deserters to commence immediately. This program has been formulated to permit these individuals to return to American society without risking criminal prosecution or incarceration for qualifying offenses if they acknowledge their allegiance to the United States and satisfactorily serve a period of alternate civilian service.

The program is designed to conciliate divergent elements of American society which were polarized by the protracted period of conscription necessary to sustain United States activities in Vietnam. Thus, only those who were delinquent with respect to required military service between the date of the Tonkin Gulf Resolution (August 4, 1964) and the date of withdrawal of United States forces from Vietnam (March 28, 1973) will be eligible. Further, only the offenses of draft evasion and prolonged unauthorized absence from military service (referred to hereinafter as desertion) are covered by the program.

Essential features of the program are outlined below.

1. Number of Draft Evaders. There are approximately 15,500 draft evaders potentially eligible. Of these some 8,700 have been convicted of draft evasion. Approximately 4,350 are under indictment at the present time, of whom some 4,060 are listed as fugitives. An estimated 3,000 of these are in Canada. A further 2,250 individuals are under investigation with no pending indictments. It is estimated that approximately 130 persons are still serving prison sentences for draft evasion.

2. Number of Military Deserters. Desertion, for the purposes of this program, refers to the status of those members of the armed forces who absented themselves from military service without authorization for thirty days or more. During the Vietnam era it is estimated that there were some 500,000 incidents of desertion as so defined. Of this 500,000 a number were charged with offenses other than desertion at the time they absented themselves. These other offenses are not within the purview of the clemency program for deserters. Approximately 12,500 of the deserters are still at large of whom about 1,500 are in Canada. Some 660 deserters are at present serving sentences to confinement or are awaiting trial under the Uniform Code of Military Justice.

3. Unconvicted Evader. Draft evaders will report to the U.S. Attorney for the district in which they allegedly committed their offense.

Draft evaders participating in this program will acknowledge their allegiance to the United States by agreeing with the United States Attorney to perform alternate service under the auspices of the Director of Selective Service.

The duration of alternate service will be 24 months, but may be reduced for mitigating factors as determined by the Attorney General.

The Director of Selective Service will have the responsibility to find alternate service jobs for those who report. Upon satisfactory completion of the alternate service, the Director will issue a certificate of satisfactory completion to the individual and U.S. Attorney, who will either move to dismiss the indictment if one is outstanding, or agree not to press possible charges in cases where an indictment has not been returned.

If the draft evader fails to perform the agreed term of alternate service, the U.S. Attorney will be free to, and in normal circumstances will, resume prosecution of the case as provided in the terms of the agreement.

Aliens who fled the country to evade the draft will be ineligible to participate in the program.

4. Unconvicted Military Absentees. Military absentees who have no other pending charges may elect to participate in the program. Military deserters may seek instructions by writing to:

(a). ARMY - U.S. Army Deserter Information Point, Fort Benjamin Harrison, Indiana 46216

(b). NAVY - Chief of Naval Personnel, (Pers 83), Department of the Navy, Washington, D.C. 20370

(c). AIR FORCE - U.S. Air Force Deserter Information Point, (AFMDC/DPMAK) Randolph Air Force Base, Texas 78148

(d). MARINE CORPS - Headquarters, U.S. Marine Corps, (MC) Washington, D.C. 20380

Those who make such an election will be required to execute a reaffirmation of allegiance and pledge to perform a period of alternate civilian service. Those against whom other charges under the Uniform Code of Military Justice are pending will not be eligible to participate in the program until these other charges are disposed of in accordance with the law. Participants in the program will be separated with an undesirable discharge. Although these discharges will not be coded on their face in any manner, the Veterans Administration will be advised that the recipients were discharged for willful and persistent unauthorized absence. They will thus not be eligible for any benefits provided by the Veterans Administration.

The length of required alternate civilian service will be determined by the parent Services for each individual on a case-by-case basis. The length of service will be 24 months, but may be reduced for military service already completed or for other mitigating factors as determined by the parent Service. After being discharged each individual will be referred to the Director of Selective Service for assignment to prescribed work. Upon certification that this work has been satisfactorily completed, the individual may submit the certification to his former Service. The Service will then issue a special new type of discharge -- a Clemency Discharge -- which will be substituted for the previously awarded undesirable discharge. However, the Clemency Discharge shall not bestow entitlement to benefits administered by the Veterans Administration.

5. Alternate Civilian Service. Determining factors in selecting suitable alternate service jobs will be:

(a) National Health, Safety or Interest.

(b) Noninterference with the competitive labor market. The applicant cannot be assigned to a job for which there are more numerous qualified applicants than jobs available.

(c) Compensation. The compensation will provide a standard of living to the applicant reasonably comparable to the standard of living the same man would enjoy if he were entering the military service.

(d) Skill and talent utilization. Where possible, an applicant may utilize his special skills.

In prescribing the length of alternate service in individual cases, the Attorney General, the Military Department, or the Clemency Board shall take into account such honorable service as an individual may have rendered prior to his absence, penalties already paid under the law, and such other mitigating factors as may be appropriate to seek equity among participants in the program.

6. No Grace Period. There will not be a grace period for those outside the country to return and negotiate for clemency with the option of again fleeing the jurisdiction. All those eligible for the program and who have no additional criminal charges outstanding who re-enter the United States will have fifteen days to report to the appropriate authority from the date of their re-entry. However, this fifteen day period shall not extend the final date of reporting of January 31, 1975 as set forth in the Proclamation.

7. Inquiries. Telephone inquiries may be made to the following authorities:

Evaders:	**Department of Justice:**	**(202) 739-4281**
Military Absentees:	**U.S. Navy:**	**(202) 694-2007** **(202) 694-1936**
	U.S. Marine Corps:	**(703) 694-8926**
	U.S. Army:	**(317) 542-2722** **(317) 542-2791** **(317) 542-2482**
	U.S. Air Force:	**(512) 652-4104**
	U.S. Coast Guard:	**(202) 426-1830**

FACT SHEET

PRESIDENTIAL CLEMENCY BOARD

The President has today established by Executive Order a nine member Presidential Clemency Board. The Board will review the records of two kinds of applicants. First, those who have been convicted of a draft evasion offense committed between August 4, 1964 and March 28, 1973, inclusive. Second, those who received a punitive or undesirable discharge from the armed forces because of a military absentee offense committed during the Vietnam era or are serving sentences of confinement for such violations. The Board will recommend clemency to the President on a case-by-case basis. In the absence of aggravating factors, the Clemency Board would be expected to recommend clemency.

When appropriate, the Board could recommend clemency conditioned upon the performance of some alternate service. In the case of a military absentee, the Board could also recommend that a clemency discharge be substituted for a punitive or undesirable discharge.

The Board has been instructed to give priority consideration to individuals currently confined. The President has also asked that their confinement be suspended as soon as possible, pending the Board's review.

The Board will consider the cases only of persons who apply before January 31, 1975. It is expected to complete its work not later than December 31, 1976.

FACT SHEET

PROCEDURES TO BE FOLLOWED

UNCONVICTED DRAFT EVADER AND MILITARY ABSENTEE

DRAFT EVADER	MILITARY ABSENTEE (including Coast Guard)
rt to United States Attorney e offense was committed	Report as prescribed by the military department concerned or for members of the Coast Guard report to the Secretary of Transportation
nowledge allegiance to the ted States by agreeing with the ted States Attorney to perform months alternate service or less sed on mitigating circumstances	Oath of Allegiance to United States
	Agree with the concerned Military Department to perform 24 months alternate service or less based upon mitigating circumstances
rform alternate service under e auspices of the Director of lective Service	Upon request, Military Department forgoes prosecution, and issues undesirable discharge
rector of Selective Service sues certificate of satis- ctory completion of alter- te service	Perform alternate service under the auspices of the Director of Selective Service
ceipt by United States Attorney a certificate of satisfactory mpletion of alternate service	Director of Selective Service issues certificate of satisfactory completion of alternate service
smissal of indictment or opping of charges	Receipt of a certificate of satisfactory completion of alternate service by the concerned Military Department
	Clemency discharge substituted for undesirable discharge

CONVICTED DRAFT EVADER AND MILITARY ABSENTEE

DRAFT EVADER	MILITARY ABSENTEE (including Coast Guard)
ly to Clemency Board	Apply to Clemency Board
emency Board may recommend emency to the President	Clemency Board may recommend clemency to the President, including substitution of a clemency discharge for a punitive or undesirable discharge
emency Board may condition commendation of clemency on riod of alternate service	Clemency Board may condition recommendation of clemency on period of alternate service
esident may grant clemency	President may grant clemency, including substitution of a clemency discharge for a punitive or undesirable discharge

EMBARGOED FOR RELEASE
UNTIL 11:30 A.M.

SEPTEMBER 16, 1974

OFFICE OF THE WHITE HOUSE PRESS SECRETARY

THE WHITE HOUSE

PRESS CONFERENCE
OF
LAURENCE H. SILBERMAN
DEPUTY ATTORNEY GENERAL, DEPARTMENT OF JUSTICE
MARTIN R. HOFFMANN
GENERAL COUNSEL, DEPARTMENT OF DEFENSE
AND
BYRON V. PEPITONE
DIRECTOR, SELECTIVE SERVICE

THE BRIEFING ROOM

10:32 A.M. EDT

MR. HUSHEN: As you know, the President had a bipartisan leadership meeting at 9:00 this morning. It just broke up a few minutes ago, so they met for approximately 90 minutes.

Attending, in addition to the Congressional leaders, were the Chairman and ranking Republican Members of the House and Senate Judiciary Committee, the House and Senate Armed Services Committee, and the House and Senate Veterans' Affairs Committee.

The subject matter, as you also know, is the conditional amnesty proposal that the President will be signing shortly.

In order to help you understand some of the complexities of this program, we have three individuals here to brief you today who helped shape it.

They are Laurence H. Silberman, Deputy Attorney General, Department of Justice; Martin R. Hoffmann, General Counsel to the Defense Department, and Byron V. Pepitone, Director of the Selective Service.

In the meeting this morning there was a lot of give and take, a lot of communication, and I think the President would describe it as a full and frank discussion of the program.

Just before the meeting broke up, the President gave those attending the names of the nine members on the Clemency Board. I have them here now, but I think the best thing to do, rather than run through them, I will Xerox them and have them available at the conclusion of the briefing.

MORE

OVER)

As you know, everything is embargoed, including this session, until the President signs the Proclamation.

Q Jack, one question about the briefing. If the briefing is still going on when the President signs the Proclamation --

MR. HUSHEN: The briefing will end when we are ready to sign the Proclamation.

Q Will it resume later?

MR. HUSHEN: If there are some specific questions, we will try to take them for you, but we don't plan to have it.

Let me quickly run through the names of the nine people. These are in alphabetical order. I will just give you the names. We do have biographical stuff here, too.

Dr. Ralph Adams, James Dougovita, Robert Finch, Charles Goodell, Father Theodore Hesburg, Vernon Jordan, James Maye, Mrs. Aida Casanas O'Connor, and General Lewis W. Walt.

The President described the Board as broad-gauged.

Gentlemen, this is Mr. Silberman, Mr. Hoffmann, and Mr. Pepitone.

MR. SILBERMAN: Gentlemen, you have the fact sheets, and we are available to answer questions, should you have any.

Q Who are the people described as being precluded under certain sections of the U.S. Code?

MR. SILBERMAN: Specifically that refers to individuals who were precluded entry into this country under the Immigration and Naturalization Act. That generally refers to aliens who left the country to avoid the draft, and by law we could not afford the benefits of this program to them.

Q What are some of the mitigating circumstances that would cut the term of alternative service?

MR. SILBERMAN: Well, we would look at a number of factors, both sides of the program. First of all would be the question of extreme hardship to the family as measured at the present.

Secondly, the question of willfulness of the violation. The draft laws of course are complex, and if an individual would show that he was legitimately in some respects confused, that would be taken into account.

Also, we would take into account what happened to that individual subsequent to his alleged violation.

Q And would there be any minimum alternative service?

MR. SILBERMAN: There is no stated minimum.

Q What happens to a draft evader who has been neither convicted or who has not received a punitive or undesirable discharge, or are there such draft evaders?

MR. SILBERMAN: I think you have the two categories mixed there. A draft evader wouldn't have received any kind of discharge. That would apply to someone who has gone into the military.

Q Does a draft evader have to be convicted?

MR. SILBERMAN: The difference with respect to the operation of the program is as follows: If a draft evader is under investigation for violation of a crime or has been indicted, he would come -- assuming that he accepts the offer the President made -- he would come to the U.S. Attorney and would sign an agreement which would constitute a waiver of his rights to speedy trial to perform alternate service under the auspices of the Director of the Selective Service.

In the event he completes that service, acceptably and satisfactorily, then his case would not be prosecuted.

With respect, on the other hand, to the draft evader who has already been convicted -- and there are some 8,700 in that category -- his recourse would be to the Clemency Boards to seek a recommendation for Presidential pardon.

Q Is there going to be a discretion on the part of the United States attorneys around the country in handling these cases, or will these be handled under the direct supervision of the Attorney General?

MR. SILBERMAN: I suppose the answer to that question is both. There will be central guidelines which will be issued from Washington, as there always is with respect to the prosecution of any matter charged to the U.S. attorneys, a good deal of consulation with Washington, but by the same token they have a measure of discretion.

Q Don't they, as a matter of course, turn this case immediately over to the Selective Service? The fellow comes in, says that he wants clemency, he signs the paper, agrees to alternative service, and then he gets sent to the Selective Service.

The U.S. attorney has nothing to do with selecting the alternative service, does he?

MR. SILBERMAN: The U.S. attorney performs the function under the direction of the Attorney General of setting the term of alternate service and considering whether there are mitigating factors just as we have just discussed.

The selection of the type of alternate service will be done by the Director of the Selective Service and his people.

Q Mr. Silberman, on page 3 of this first release where you speak of the Presidential Clemency Board and Section (ii) here where you say those who have received a punitive discharge from the service, the armed forces, this August 4, 1964 to 1973, are you talking there about the men who were in Vietnam in the war who got bad discharges?

MR. SILBERMAN: Let me defer to Marty Hoffmann, the General Counsel of the Defense Department, to answer your question.

MR. HOFFMANN: The answer is it includes all deserters during the period from the Tonkin Gulf Resolution until March 28, 1973, whether or not Vietnam-related.

Q Well, you say those who have received a punitive or undesirable discharge from service from the armed forces during that time?

MR. HOFFMANN: That is correct.

Q Are you talking about these men who served in Vietnam who got bad discharges in Vietnam?

MR. HOFFMAN: If the bad discharge was by reason of an offense that is categorized as desertion, i.e., being gone from the service for more than 30 days, the answer is yes.

Q Who received dishonorable discharges?

MR. HOFFMANN: Yes, that is correct. We are only speaking about offenses of absence arising out of periods of absence from the armed forces.

Q Then you go ahead and you say, "However, if any clemency discharge is recommended, such discharge shall not restore benefits."

Aren't you committing the man there? You are making the sentence there before you have even heard whether there were mitigating circumstances or anything?

MR. HOFFMANN: In no case would the upgrading of a discharge of itself entitle an individual to veterans' benefits that he was not already entitled to.

Q I can see in plenty of cases in some of these discharges you might hear the evidence there before this board and you might find there were many of them given when they shouldn't have been given.

MR. HOFFMANN: This, of course, does not disturb the processing that goes on ordinarily with the service boards of review, boards for discharge review, and of course, an individual could come in under the provisions of law as pertains to those Boards and get a review unrelated to the President's program.

Q But you are saying absolutely before you even hear the evidence you are not going to let him have any relief.

MR. HOFFMANN: With respect to the President's program dealing with absence offenses, that is correct.

Q Will you find jobs that will not be competitive with the civilian job markets, and who will supervise the employment for the returnees?

MR. SILBERMAN: Let me turn that over to Byron Pepitone, the Director of the Selective Service.

MR. PEPITONE: The type of job that we have in mind is the type of job that is currently being performed by people who do two years of alternate service as a consequence of having been classified a conscientious objector.

In July of 1972, for instance, there were about 13,000 people working at these jobs, all of which under the existing program are not in competition with the labor market.

We are talking about jobs with activities and installations which operate for the general public welfare and in behalf of national health and safety.

Q Could you give us some examples of that?

MR. PEPITONE: Yes, I was about to. Forty-one percent, just by way of example, of the people we employed at the time we were at maximum employment, were working in general hospitals and the nature of their duties ran from attendants to counsellors, to people working in the mess, and the general lower scale of jobs which the hospitals and the institutions, such as homes for the aged and children have difficulty in filling.

Q How much is this program going to cost the Government? Do you have any idea?

MR. SILBERMAN: Probably less than a couple of million dollars.

Q What is the standard of pay for those who are serving or will the jobs vary?

MR. PEPITONE: The jobs will vary as they do today. They vary on the basis of the ability that the individual has to offer to the employer. But generally speaking, they are at the lower range of the wage level.

Q You mentioned 41 percent.

MR. SILBERMAN: The gentleman down here has a question.

Q What about a man who has served his time in prison for draft evasion and has been discharged as having fulfilled his obligation to the Department of Justice?

MR. SILBERMAN: Discharged from prison?

Q Yes, he has served his time.

MR. SILBERMAN: He could seek a recommendation for clemency from the Clemency Board.

Q Does he still have to perform alternate service for two years despite the fact that he may have paid his two years alternative service in a penitentiary?

MR. SILBERMAN: In the hypothetical you gave, it is extremely unlikely. It is possible, however, that an individual may have just been sentenced in which case the Clemency Board might well recommend some period of alternate service.

Q Is it likely that any of these young men will be coming back without serving any time in alternative service? Will they come back with no onus at all?

MR. SILBERMAN: It is not contemplated.

Q On your answer a moment ago you said that the time in prison would be considered. In this it seems to say the time served in the military service would be considered on a month-to-month basis against alternate service. Would that also be true of prison time?

MR. SILBERMAN: Again we are talking about two different categories. With respect to any individual who has been convicted of either the civil criminal process or the military process. his recourse would be to seek a recommendation for clemency from the Clemency Board.

Q Mr. Silberman, is it correct to read this that the evader does not take an oath but that the deserter does take an oath?

MR. SILBERMAN: It is correct to read this as indicating that the deserter takes an oath, and I can let Marty Hoffmann describe that.

The evader signs an agreement with the U.S. attorney, which agreement will state specifically that he acknowledges his allegiance to the United States and its Constitution as part of his agreement to serve alternate service.

Q Mr. Silberman, what proportion of the draft evaders do you contemplate will serve less than 24 months of alternate service and, specifically, when will these general guidelines be publicized, given the fact that the President's spokesmen have said previously that they wouldn't present a situation in which draft evaders would be coming back completely uncertain about what they face?

It appears on the surface that they could serve anywhere from a couple of months to 24 months, and they just don't know what they are going to serve.

MR. SILBERMAN: Let me answer the question by saying in this fashion, any draft evader would come back with the expectation that he may well be required to serve 24 months. That, in effect, is the President's offer.

Now, if there are some mitigating factors, he will have to present himself to the U.S. attorney and express those. But in terms of fairness, those individuals perceive a 24-month obligation.

Q What proportion of the draft evaders do you contemplate will serve less than 24?

MR. SILBERMAN: I don't think I could possibly answer that question.

Q Mr. Silberman, does the Government take a responsibility here for providing the jobs, too, so that there will be plenty of jobs for everyone?

MR. SILBERMAN: No, we don't think that will be a problem, as Mr. Pepitone stated a moment ago. In the administering of the conscientious objectors' programs, there were sufficient jobs to fill that need. Now that program has tailed off considerably and, indeed, this fits from an Administrative point of view quite nicely.

Q What happens to the deserter and the evader prior to August 4, 1964?

MR. SILBERMAN: They are not covered by this program.

Q Gentlemen, why was this program not announced last Tuesday?

MR. SILBERMAN: I suppose you would have to ask the President that.

Q Was it ready last Tuesday?

MR. SILBERMAN: No, it was not ready last Tuesday. We have been working on a number of perplexing details under the President's direction.

Q One follow-up question. Was there any connection between the delay in the announcement of the program and the reaction of the President's pardon of Mr. Nixon?

MR. SILBERMAN: I am wholly unaware of any such connection.

Q What is to insure uniform treatment of draft evaders by the various U.S. attorneys?

MR. SILBERMAN: Both the supervision of the Justice Department plus the guidelines which we will issue. Indeed it would be very -- since individuals can present different fact situations -- it would be impossible to construct a program where there would be absolute uniformity. But as I indicated before in my response to the question over here, that the individual who is a fugitive, who may be abroad, should perceive the program as a 24-month obligation.

Q I still don't understand this job business. We have 41 percent working in hospitals. Where would the other 59 percent work, and who is going to find them jobs, and who is going to pay for it?

MR. PEPITONE: Let's try to wrap it up in a complete statement. Many of the young people have found their own jobs in the past but where they have not, the Federal Government has found jobs for them, but with employers other than the Federal Government.

The employer pays the salary. I can give you an example of some of the other types of jobs. We have had them working for Goodwill Industries, St. Vincent de Paul, the Ecology Corps in California doing forestry work, and this type of thing.

And there is a whole wide range of percentages and statistics of which I would talk to you later if you wish.

Q Mr. Pepitone, do you have some opinion from the analysis from the Labor Department that reassures you that there are jobs for them? The employment situation has changed since 1972.

MR. PEPITONE: The interesting thing about that is that the people who currently hold these jobs are terminating their service. The conscientious objector program is ending, and as Mr. Silberman said, most of these people have a continuing requirement for the talents these people presently deliver. There do not seem to be people knocking at the door for these type jobs.

Q So, you would expect most to be working in hospitals, is that right?

MR. PEPITONE: Almost half, I would think, yes.

Q You say that a person can find his own job?

MR. PEPITONE: We are going to permit him the opportunity to find it. However, that job stands subject to the approval of the system in keeping with guidelines, part of which are mentioned in the fact sheet.

Q Do you think that many employers are going to give these men jobs?

MR. PEPITONE: They give them to conscientious objectors and are glad to have them.

Q How many conscientious objectors were there who will be stepping out of this labor market?

MR. PEPITONE: Approximately 4000 moving out right about now. Last December there were about 9000 employed and a little over two years ago there were over 13,000.

Q If the boys from Vietnam who have bad discharges can't get jobs now, I don't see how in the world you expect private employers to give these fellows jobs.

MR. PEPITONE: I have a hunch we are talking about different kinds of jobs. I am talking about low-paying jobs, that many people don't seek.

Q They don't get any jobs.

Q Do you have a figure on how much they are paid as an average?

MR. SILBERMAN: I would say they are running at the low end of the minimum wage, but it does depend upon the skill they offer. You have some jobs, for instance, with some of the religuous organizations, where people do clerical and menial type tasks where they get $50 to $100 a month and room and board. Now, I am talking about some of the church groups and those things.

Q Is the Government going to urge private employers to give these people jobs?

MR. SILBERMAN: Yes. As a matter of fact, we are going to help find their jobs for them, as we do for the conscientious objectors.

Q Mr. Pepitone, is there a list of these people, a grand list of all these people who are involved in that available somewhere? Will you make it public, the names of all the people?

MR. PEPITONE: The employers?

Q No, no, the draft evaders, the deserters --

MR. PEPITONE: I will have to turn that over to my colleagues.

MR. SILBERMAN: With respect to the evaders, we do have a list of the individuals who fall under the various categories; that is to say, there are about 8700 that have already been convicted, and that is a matter of court record, and there are another approximately 4300 who have been indicted, and that is also a matter of court record. There are about 2500 who are under investigation, and we certainly would not make that list available.

Q Mr. Silberman, will the Justice Department keep statistics here in Washington on the types of dispositions of these cases to assure uniformity of treatment.

MR. SILBERMAN: We shall try to keep statistics in that respect, and there will be a reporting system. The fact is that, as with every other matter that is introduced to the U.S. attorneys, there is some measure of discretion that is appropriate.

Q On that point --

MR. SILBERMAN: Yes, Mr. Lisagor?

Q -- is there a provision whereby an evader might appeal to the Justice Department or the U.S. attorneys judgment in the country?

MR. SILBERMAN: Not a formal mechanism, nor is there with respect to any other matters that the U.S. attorneys are charged with handling. On the other hand, there are cases that do come up to the Justice Department. Incidentally, in that respect, there is a question of procedure.

The evader will be permitted to make a presentation and will be entitled to the right to counsel should he wish it when you come in and talk to the U.S. attorney.

Q Do you have any idea --

MR. SILBERMAN: I am sorry, she had another part of the question.

Marty, do you want to answer?

Q What about the list of deserters? Surely you will make that available, too?

MR. SILBERMAN: I imagine that will be handled pursuant to the present procedures that obtain in the Pentagon.

Q What do you mean by that?

MR. SILBERMAN: I don't know what those are.

Q In other words, you are going to give us a list of the evaders and not the deserters?

MR. SILBERMAN: I am sure that to the extent those lists are made available as a matter of routine, they would be made available in this case.

Q That doesn't answer the question at all. We have a very peculiar situation here now that is not routine.

MR. SILBERMAN: Well, I can check that for you ma'am.

Q Mr. Hoffmann, there are now as I understand it, 12,500 deserters still at large. Is that correct?

MR. HOFFMANN: That is correct.

Q What percentage of that group faces charges for other crimes besides desertion?

MR. HOFFMANN: The current estimate is about 20 percent.

Q What was the question?

MR. HOFFMANN: The question was, of the 12,500 fugitive deserters -- that is the number you will find in your fact sheet -- how many have other charges pending against them other than an absence offense, and my answer was about 20 percent is our estimate.

Q Mr. Hoffmann, on that point, the 500,000 figure for the deserters -- now, is what you are saying that only action out of 500,000 is pending against 12,500?

MR. HOFFMANN: I don't know. There were a total of 500,000 instances where individuals were absent from their military post for over 30 days. There are presently 12,500 fugitives. Those are people who took off and have not come back, and have not been apprehended.

Q Is that the only people we are really talking about as far as the deserters go?

MR. HOFFMANN: No. We are talking about the fugitive deserters, which is 12,500, and the Clemency Board, you will see in your fact sheet and the Executive Order has jurisdiction over those who have committed and have been court-martialed and discharged for similar offenses, they will review those records and make decisions in those cases equivalent to those the services will be making in the case of the fugitives.

Q I have two questions, please. One, if the man does not fulfill what he has pledged that he would do under that statement, is he subject to a new liability or merely the original charges against him?

I will have a second question along that same line.

MR. SILBERMAN: All right. We will keep you in touch.

With respect to the draft evader who signs an agreement with the U.S. attorney to perform alternate service, if that individual breaks the agreement, he is subject to prosecution on the underlying charge of draft evasion.

Q No other charge?

MR. SILBERMAN: Assuming he commits no other crime.

Q Now the second question, supposing he comes over here and talks to the Attorney General, the attorney, and does not want to go into the agreement. Is he going to be arrested and charged or be allowed to go back where he came from?

MR. SILBERMAN: Let me answer it this way: We are not affording him an opportunity to come back with immunity to bargain over that matter. Once he submits himself to the jurisdiction of the Federal criminal process, he will, of course, be bound to the impact of that submission.

Indeed, however, we are making some effort to make sure that individuals who cross our borders will be given 15 days' period from the time they cross the border when they will not be served with warrants of arrest to get to the appropriate U.S. attorney's office.

Q I have a question for Mr. Pepitone, another question about those jobs.

I still don't know, I haven't thoroughly read this, but I have glanced through it, and I still don't know what types of jobs and who determines what types of jobs a person can get to perform his alternate service.

What is to prevent a man from coming back and becoming Vice President of his father's company?

MR. PEPITONE: As I said earlier, the determination of the job and its acceptability will match the guidelines and the handout, and will be subject to the rules established under the Selective Service System. His job must be approved.

Q By who?

MR. PEPITONE: By me.

Q Can any of the Action programs be applied, or are they all ruled out?

MR. PEPITONE: By and large the people we are talking about don't fit the Action programs. We tried the Action programs with the conscientious objectors who were working alternate service and the participation was absolutely minimal.

Q Does the United States attorney refer the evader to his local draft board?

MR. PEPITONE: Negative. He refers him to the State Director of Selective Service in the State of the man's residence.

Q Can you go over for us here when the Clemency Board actually steps in and who decides how long the term of service? Is it the Federal District Attorney that decides that?

MR. SILBERMAN: Well, we are talking again about two different categories, Bob. The U.S. attorney does set the term of alternate service for the individual who is under investigation or under indictment, but not the individual who has already been convicted. His case goes directly, as an exercise of the President's pardon power, to the Clemency Board, which makes recommendations.

In certain circumstances, the Clemency Board might well, as a condition of a recommendation of a pardon or clemency, require some measure of alternate service, but it is not as important on that part of the program as it is with respect to the draft evader prior to conviction or, indeed, as Mr. Hoffmann can explain, the deserter part of it.

Q Sir, let me just follow this up. Suppose that he doesn't agree with what the District Attorney says, he thinks that is not a fair term. Does he then appeal to the Clemency Board?

MR. SILBERMAN: No. What we are dealing with on the prosecutorial side is a question of prosecutorial discretion, and indeed we have analogies to this with respect to pre-trial diversion programs which we have in operation in some parts of the country in which the States have done a great deal of pioneering. When an individual comes into the Federal criminal process and the U.S. attorney makes a judgment that it would not serve the interest of justice to have him prosecuted and incarcerated, he signs a similar type of agreement to perform something or take training in the community.

In the event that he finishes that acceptably, the U.S. attorney has the discretion to not prosecute the individual.

Q Aren't you asking these men to take a bigger chance by coming back under this program than as a practical matter they take by facing conviction in court, in view of the sentences that are being handed down now?

MR. SILBERMAN: I think your question doesn't touch on what seems to me, as Deputy A torney General, is the most important aspect of it. One, an individual who comes back under this program can be guaranteed, if he is agreeable to performing alternate service, one, that he will not have a conviction--and that is terribly important--a felony conviction; and, secondly, that he won't be incarcerated.

Q How about the criminal records of those who have already been convicted? Will that conviction be expunged from the records?

MR. SILBERMAN: In the event that the Clemency Board recommends to the President a pardon and then the President accepts the recommendation and grants a pardon, as a matter of Federal law that conviction is eraced.

Q Are these interviews with the District Attorney in public? I mean, are they public, and can the press cover them? Is it a public proceeding like a trial?

MR. SILBERMAN: No, it isn't really in the nature of a trial and I have some doubts whether it would be appropriate to throw it open to press coverage any more than the normal discussion between a U.S. attorney and a putative defendant are subject to public scrutiny.

Q Will all the records be public records, however? All the records in the matter?

MR. SILBERMAN: The dispositions, the agreements will be public.

Q How does this compare with past programs after World War II and Korea and so forth?

MR. SILBERMAN: I think the answer to that is -- and we have studied it very thoroughly, the defense in particular has studied it -- after various wars in this country's history, there have been different techniques and different arrangements utilized.

It is very hard to find a common thread, except for the fact there is often after most wars an attempt on the part of the President to focus attention to a reconciliation process.

Q Is there any barrier here to someone making an arrangement with a relative or a friend to have some kind of a plush job?

MR. SILBERMAN: Yes, I think there is a barrier. It would have to be --

Q What would the barrier be?

MR. SILBERMAN: It would have to be approved by the Director of the Selective Service and, again, as he has said on several occasions, he has a solid practical precedent under which he has operated, and that is the treatment of the conscientious objector.

Q Mr. Silberman, you passed over very quickly the mitigating circumstances that would be taken into account when setting the term of alternate service. Particularly, could you elaborate and perhaps give us some examples of the second one, which is degree of willfulness, and third, which was very unclear to me, what happened subsequently to the alleged offense?

MR. SILBERMAN: What happened, subsequently to the alleged offense?

Q Yes; that is, the mitigating factors?

MR. SILBERMAN: Oh, yes, I am sorry. The U.S. attorney would see how that individual has conducted himself subsequent to the offense. It may well be, for instance, that even as a fugitive in this country he has performed in a public service fashion.

I don't want to mention any names, but we do have an example that naturally would be something that could be taken into account. The degree of willfulness is something that the criminal justice system always looks at in terms of recommendations of sentences, et cetera, to judges.

Q I know a deserter who works in a hospital in Toronto who has been working there for four years. Would that be taken into account?

MR. SILBERMAN: Let me turn that over to Marty Hoffmann. I don't think it should be precluded.

MR. HOFFMANN: Yes, I think it would be taken generally into account, yes. But again, one would have to realize that he was serving other than the United States and again, the degree of willfulness and the degree of his resolution to come back and submit himself to process here in the United States, I think in the overall would be the most operative aspect of it.

Q Sir, what do you do about the man who is coming for clemency who doesn't have any money to travel and he wants to bring witnesses and evidence and he doesn't have any money. Does the United States provide that?

MR. SILBERMAN: What individuals are you referring to?

Q Say they want to come before the Clemency Board and they want to come there but don't have the money to travel and they don't have any money for witnesses.

MR. SILBERMAN: Well, the Clemency Board will have to establish its own regulations, but the spirit of the program is such that I think they would be differential to those kinds of concerns. They may well divide themselves up into panels of three.

It is conceivable that they would -- and I don't mean to speak for them, because you would have to ask them as they are appointed -- it is even conceivable that they may hold some proceedings other than in Washington.

Q You see the reasons I ask this is because now these men who come to these boards over at the Defense Department, they don't get travel pay, and money for witnesses, these men who come in to get their discharges upgraded all the time.

MR. SILBERMAN: I think you are talking about two different groups.

Q No, I am not. I am talking about citizens of the United States, the same thing. One man is coming before your Clemency Board and one is going before the board out here in Rosslyn. This man out in Rosslyn doesn't get any money for travel or witnesses. Are you going to let this man over here get some?

MR. SILBERMAN: Just for people from Texas we will pay their way here.

Q Now, don't be funny, Mr. Silberman. Come one, let's answer this.

MR. SILBERMAN: I can't answer it, Mrs. McClendon, because I don't know what the Clemency Board's regulations will be.

Q Isn't anybody telling them what they will be on that?

MR. SILBERMAN: No, sir, no one is telling them. They will be an independent body that will operate under the authority of the President and make recommendations to the President.

Q Mr. Silberman, could you tell me what is to prevent inequalities in the U.S. attorneys from giving alternate services, one attorney in one district giving 12 months and another attorney in another district giving 24? Is there set guidelines?

MR. SILBERMAN: There are guidelines, but it could be particularly appropriate for a U.S. attorney to treat everybody in the same district two individuals differently, depending on the facts which justify mitigation.

Q That is true, but what is to prevent two equal cases and two U.S. attorneys treating them differently in separate districts.

MR. SILBERMAN: We shall try as we can to avoid that, just as we do with respect to the entire criminal justice system.

Q Could you elaborate on the powers of the Clemency Board in point two here? There are a number of articles on the Uniform Code of Military Justice.

MR. SILBERMAN: Point two of which document?

Q It is the Proclamation.

MR. HOFFMANN: I think you are referring to Articles 85, 86 and 87, is that correct?

Q Yes, could you elaborate on that?

MR. HOFFMANN: These are the standard absence offenses under the Code of Military Justice. They included desertion, absence without official leave and missing movement, which is missing a movement of your unit.

Q What is the nature of the oath that they will be required to sign when the deserters return?

MR. HOFFMAN: The nature of the oath that we have suggested and the President has agreed to is basically a reaffirmation of allegiance. Well, I can read to you the proposal:

"I" so and so "do hereby solemnly reaffirm my allegiance to the United States of America, I will support protect and defend the Constitution of the United States against all enemies foreign and domestic, and will hereafter bear true faith and allegiance to the same. I take this obligation freely and without any mental reservation or purpose of evasion, so help me God."

Q How many people do you think will give themselves up?

MR. HOFFMAN: There is no way we can --

Q What is the maximum?

MR. HOFFMANN: The maximum would be the maximum number of fugitive deserters that would come in under the President's program.

Q How many is that?

MR. HOFFMAN: The maximum number of fugitives is in your fact sheet. That is 12,500.

Q How about draft evaders?

MR. HUSHEN: We have to put an end to this right now because the President expects to sign that Proclamation. He will read the statement first, which he will be distributing here shortly, and at the appropriate point he will be signing it. My guess would be about 11:22, approximately. You can tell because the sound will be piped in here.

Q Will it be on the internal mult, Jack?

MR. HUSHEN: Yes, it will be.

Q Do you have a list of the members yet?

MR. HUSHEN: We are running that off right now.

THE PRESS: Thank you, gentlemen.

END (AT 11:10 A.M. EDT)

ASSISTANT ATTORNEY GENERAL
CRIMINAL DIVISION

DO NOT RELEASE

Department of Justice

Washington 20530

SEPT. 23, 1974

TO ALL UNITED STATES ATTORNEYS

SELECTIVE SERVICE CASES

Prosecutive Policy With Respect to Persons Who Fail to Register Timely Under the Provisions of the Military Selective Service Act

It has come to my attention that the Department's prosecution policy dealing with late registrants which was set forth in my letter of April 27, 1973, has been interpreted by some United States Attorneys to mean that every late registrant must be indicted without regard to the presence of evidence in the file indicating that the offense resulted from willful, knowing conduct, or gross indifference. Since such an interpretation does not accurately reflect the Department's policy, I believe it is desirable to restate the guidelines governing the policy regarding individuals who refuse to register or who fail to register within the prescribed time period.

As a result of discussions between this Department and the General Counsel, Selective Service System, procedures have been initiated by Selective Service whereby the files of all delinquent registrants will be reviewed by the General Counsel's office prior to their referral to United States Attorneys. It is believed that this screening process, will obviate any situation whereby United States Attorneys' offices will be inundated with the referral of cases in which there exists nothing more than technical violations and otherwise are devoid of prosecutive potential. The General Counsel's pre-referral screening process has been designed to forward only those files to United States Attorneys where there is some evidence of willful, knowing, or deliberate misconduct, or in its absence, that the unexplained period of the delinquency was of an unconscionable duration.

Although I am certain that this screening process will alleviate to a great degree the burden that might otherwise face United States Attorneys; by the same token, it is expected that those cases which are referred will receive expeditious processing as well as a most thorough prosecutive review. Moreover, United States Attorneys are cautioned that the pre-referral screening does not relieve them of making the final prosecutive determination in a particular case.

While the President recently expressed his intention to consider a grant of conditional amnesty for pre-July, 1973 draft law violators, until a definite policy is established, the following guidelines are provided for your assistance:

Failure or Refusals to Register Prior to July 1, 1973

When a file reveals that a delinquent's obligation to register occurred prior to July 1, 1973, and the individual has failed to meet the obligation or complied only after the draft ended, he should be considered for indictment, absent compelling reasons to excuse his delinquency. All individuals who refused to register prior to July 1, 1973, should be indicted.

Failures or Refusals to Register Subsequent to July 1, 1973

All cases involving deliberate refusals to register occurring subsequent to July 1, 1973, should be considered for prosecution, absent compelling reasons which may mitigate the offense. Thus, it may be appropriate to forego prosecution in a case where the refusal was neither open and notorious, nor of a prolonged duration, and while under preliminary investigation the delinquent demonstrates contriteness and registers. On the other hand, if the individual's late refusal was open and notorious and calculated to induce others to flount the draft law, serious consideration should be given to indictment despite eventual compliance.

Late registration cases normally will not be considered for prosecution, unless the period of the delinquency is prolonged, i.e., one year or more and unexplained. If in the judgment of the United States Attorney the circumstances may warrant prosecution, an FBI investigation should be requested to determine if the prolonged delinquency was the result of the delinquent's misunderstanding of his obligation to register, or the result of knowing omission or willful neglect. Thus, if an investigation reveals the likelihood of the delinquent's claim that he did not timely register because he believed that he had no obligation to do so after July 1, 1973, prosecution usually would not be warranted. However, if the investigation reveals that the delinquent knew or should have known of his obligation, either directly by notice from his draft board or as a matter of general knowledge within his circle of friends and acquaintances, a willful neglect could be presumed and, absent a plausible explanation from the delinquent, prosecution should be considered.

Failures to register should be treated in the same manner as late registrations. Normally, failures to register would not be prosecuted unless the period of the delinquency is prolonged and unexplained, and after an FBI investigation which should include an interview of the delinquent, he persists in his refusal to register. Prosecution would not be warranted in a case where the investigation reveals that the delinquency was probably the outgrowth of the individual's ignorance of his duty, and subsequent to the initiation of the investigation, he demonstrates contriteness and registers.

HENRY E. PETERSEN
Assistant Attorney General

PROSECUTIVE POLICY WITH RESPECT TO CERTAIN PERSONS ALLEGED TO HAVE VIOLATED SECTION 12 OF THE MILITARY SELECTIVE SERVICE ACT (50 APP. U.S.C. 462) PURSUANT TO THE PRESIDENT'S PROCLAMATION

I. This directive applies to all persons eligible to participate in the alternate service clemency program as provided in the President's Proclamation announcing a program for the return of Vietnam era draft evaders and military deserters. However, this directive is inapplicable to any person who has fled the country and is prevented from re-entry by virtue of 8 U.S.C. 1182 (a)(22) or other law. This directive alters the present Departmental policy to effectuate the President's declared policy of clemency to draft evaders and resisters.

II. Each eligible violator of Section 12 of the Military Selective Service Act who is willing to perform alternate service as an indication of his allegiance to the United States should report to the United States Attorney for the district in which he violated or is alleged to have violated the Act.

III. Any person presently under indictment or investigation who presents himself to the United States Attorney before January 31, 1975, and agrees to perform a period of alternate service, under the auspices of the Director of Selective Service, as an acknowledgement of his allegiance to the United States, will not be prosecuted if he satisfactorily performs such service. If no agreement is reached, the alleged violator may be prosecuted for the Section 12 violation.

IV. The length of alternate service shall normally be 24 months, but the United States Attorney may reduce the term in light of the following circumstances:

(1) whether the applicant, at the time he committed the acts allegedly constituting a violation of Section 12 of the Military Selective Service Act, was erroneously convinced by himself or by others that he was not violating the law;

(2) whether the applicant's immediate family is in desperate need of his personal presence for which no other substitute could be found, and such need was not of his own creation;

(3) whether the applicant lacked sufficient mental capacity to appreciate the gravity of his actions; and

(4) such other similar circumstances.

V. In the determination by the United States Attorney of the length of service as provided in IV, an applicant shall be permitted to:

(1) have counsel present;

(2) present written information on his behalf;

(3) make an oral presentation; and

(4) have counsel make an oral presentation.

An applicant shall not have access to investigatory records in the possession of the United States Attorney except as provided by 32 C.F.R. 1602.31. The United States Attorney shall make his decision on the basis of all relevant information. No verbatim record of the proceedings shall be required.

VI. If the alleged violator fails to complete the period of alternate service to which he has agreed, the United States Attorney may proceed to prosecute the case.

VII. If the United States Attorney receives a certificate from the Director of Selective Service indicating that an alleged violator has satisfactorily completed his period of alternate service, then he will either move the court to dismiss the Section 12 indictment against the violator with prejudice, or terminate any Section 12 investigation of the alleged violator, whichever is appropriate.

VIII. If an alleged Section 12 violator is apprehended before January 31, 1975, the violator will be treated as if he voluntarily presented himself to the United States Attorney as provided in II, if the violator so desires.

IX. Upon request of any individual who thinks he may be under investigation for violating Section 12 of the Military Selective Service Act, the United States Attorney shall promptly review that individual's case file, if any exists, and in any event inform the individual whether or not Section 12 charges against him will be pursued if he does not report as provided in II.

X. An individual who is neither under indictment nor investigation for an offense covered by this directive but who reports as provided in II and admits to such an offense

will be subject to prosecution unless he makes an agreement as provided in III.

XI. The United States Attorney may delegate any function under this directive to an Assistant United States Attorney.

Assistant Attorney General
Criminal Division

Department of Justice
Washington 20530

February 13, 1974

Memo No. 795

TO ALL UNITED STATES ATTORNEYS

Prosecutive Policy Regarding Selective Service Law Violators

When the authority to induct expired on July 1, 1973, the Department of Defense had under reconsideration at our request a change in its policy which would have permitted the enlistment of indicted Draft Law delinquents provided their violations were not aggravated. Moreover, pending a final determination by the Department of Defense in this matter, United States Attorneys were instructed on June 28, 1973, that they should implement procedures whereby prior to initiating any prosecutive action against unindicted delinquents, these individuals would be advised by letter of the fact that prosecutive action was contemplated and they were being offered one last opportunity to purge their violation by active duty enlistment in the Armed Forces.

Recently, the Department of Defense has advised this Department that it has concluded not to change its policy with regard to the enlistment of indicted Draft Law violators; and at least one military service, the United States Army, has issued directions to its recruiters which appear to preclude the enlistment of unindicted delinquents. The United States Army's new enlistment policy appears to be based upon its desire to avoid an influx of disciplinary and morale problems which, it is claimed, such delinquents have caused after being enlisted.

In view of these recent developments, and until the Department of Defense and the military services change their policy with regard to the enlistment of Draft Law delinquents, the following policies will govern the prosecution of Draft Law violators:

Distribution: USA-3; F-1(CM only); H-5(CM only)

Indicted Delinquents

Delinquents who are under indictment for failure to be inducted may not seek to avoid prosecution for their delinquency by enlistment in the active Armed Forces. Therefore, United States Attorneys are urged to implement procedures to prosecute all indicted delinquents without regard to their belated desire to enlist in lieu of prosecution.

Unindicted Delinquents

The procedure whereby United States Attorneys were instructed to contact by letter and offer delinquents an opportunity to enlist in lieu of further prosecutive action, as outlined in the Department's letter of June 28, 1973, is terminated. Until there is further clarification by the Department of Defense pertaining to the enlistment eligibility of these violators, they will not be offered an opportunity by the United States Attorneys to enlist. Therefore, as in the case of indicted draft delinquents, United States Attorneys are urged to proceed in processing to indictment and trial, those delinquents whose selective service files contain no irregularities. In the event a delinquent, who is otherwise a person of good moral character, made on his own initiative a good faith effort to enlist prior to indictment and has been refused by the military, you may, (in the absence of aggravating circumstances attending his violation), take such facts into consideration in determining whether the violation presents a suitable basis for prosecution.

Registration of Aliens

The Department's April 27, 1973 letter to all United States Attorneys stated, on page two, paragraph five:

> "An alien past the age of twenty-five is not subject to induction but is subject to registration until the twenty-sixth anniversary of his date of birth. Where such an alien is

reported for prosecution for having failed to register and he is past the age of 26, an effort should be made to induce him voluntarily to submit to registration. If he refuses, criminal prosecution should be initiated prior to the expiration of the Statute of Limitations at his thirty-first birthday."

Some confusion has arisen regarding the second sentence of the above quoted policy. Therefore, that sentence should be disregarded and the following guideline used instead:

Where an alien has failed to register within six months following the date of his entry, and he has not yet reached age 26, an effort should be made to induce him to register voluntarily. If he refuses to register, prosecution should be initiated. If the alien reached age 26 soon after the last day on which he was required to register under 32 C.F.R. §1611.1(b)(3), he should not be induced to register since no person age 26 or older is required to register under Selective Service Regulations and Selective Service Local Boards will not register such persons. Under these circumstances prosecution should not be initiated.

Henry E. Petersen

HENRY E. PETERSEN
Assistant Attorney General

Assistant Attorney General
Criminal Division

Department of Justice
Washington 20530

June 4, 1973

TO ALL UNITED STATES ATTORNEYS

SELECTIVE SERVICE CASES

In connection with the cancellation of all draft calls by the Department of Defense in January 1973, and the expiration of the authority to induct under the provisions of the Military Selective Service Act on July 1, 1973 (except for registrants who may previously have been deferred under the provisions of 50 U.S.C. App. §456) United States Attorneys already have experienced and will continue to experience a decrease in the number of draft violations reported to them by Selective Service. In conjunction with this decrease in reported violations, it was expected that all United States Attorneys would take advantage of this opportunity to reduce existing backlogs of pending matters and cases. However, since January and especially since the Vietnam cease fire, the selective service prosecutive activity has diminished and existing backlogs have increased in many judicial districts.

We wish to remind at this time all United States Attorneys that it is the Department's policy to prosecute vigorously to conclusion all pending reported selective service violations. United States Attorneys should set July 1, 1973, the termination date of the induction authority as the target date for clearing up their backlogs of these cases, since after that date delinquents who may have experienced a change of heart and whose violations are not attended by aggravating circumstances, will no longer be able to take advantage of the Department's long standing policy which has permitted induction in lieu of prosecution.

Unless United States Attorneys process violations to indictment and trial with celerity, the possibility exists that the courts will be less prone to follow the congressional mandate contained in 50 U.S.C. App. §462 to the effect that precedence will be given to the docketing, trial and appeal of selective service cases.

In the event that any United States Attorney believes that he will require temporary assistance in reducing existing backlogs by June 30, 1973, it is suggested that contact be made with Mr. Edward S. Szukelewicz, Chief, Selective Service Unit, telephone number 202-739-4521.

HENRY E. PETERSEN
Assistant Attorney General

ASSISTANT ATTORNEY GENERAL
CRIMINAL DIVISION

Department of Justice
Washington 20530

April 27, 1973

TO ALL UNITED STATES ATTORNEYS

SELECTIVE SERVICE CASES

Prosecutive Policy With Respect to Persons Who Fail to Register Timely Under the Provisions of the Military Selective Service Act

The authority to induct men for training and service in the Armed Forces under the Provisions of the Military Selective Service Act expires on July 1, 1973, except that men who have been deferred under the provisions of Section 6 (50 U.S.C. App. 456) may continue to be inducted after the basis for their deferment ceases to exist. However, in January the Department of Defense cancelled all draft calls and initiated plans for an all volunteer armed forces so that, in effect, the induction processing has terminated for all intents and purposes.

Although the induction authority will not exist after July 1, 1973, the registration requirements of the Act will continue in effect indefinitely, and the Selective Service System will continue to report for consideration of prosecution of men who have failed to register and those who registered more than 30 days following the eighteenth anniversary of their date of birth. The following prosecutive guidelines are furnished for use in determining whether criminal prosecution of non-registrants and/or late registrants is warranted.

An individual subject to the registration provisions of the Act who has not registered, and more than thirty (30) days have passed since the final date fixed for his registration, should be indicted absent compelling reasons to justify his failure to register.

Individuals who are reported as having registered late, i.e., more than thirty (30) days after the final date fixed for their registration should be processed as follows:

(a) Where the individual's age group was assigned a Random Sequence Number in either the 1969, 1970, or 1971 lottery drawing prior to the date of his registration, and that number was higher than the ultimate "cut-off" number for draft calls, so that he was not processed for induction, criminal prosecution should be initiated.

(b) Where the Random Sequence Number assigned his age group was lower than the ultimate "cut-off" number and he registered before that number was reached so that he was available for possible induction processing, prosecution may be declined.

(c) Prosecution may also be declined as to an individual subject to either the 1969, 1970, or 1971 lottery drawing who registered late but prior to the assignment of a Random Sequence Number to his age group.

Actual levies on the Selective Service System for manpower by the Department of Defense ended in December 1972. The 1972 lottery was, and subsequent years' lotteries will be, in effect, standby lotteries since none of the men will be subject to induction calls. Criminal prosecution in the future should, therefore, be considered against any individual in any age group who registers more than thirty (30) days after the final date set for his registration.

An alien past the age of 25 is not subject to induction but is subject to registration until the twenty-sixth anniversary of his date of birth. Where such an alien is reported for prosecution for having failed to register and he is past the age of 26, an effort should be made to induce him voluntarily to submit to registration. If he refuses, criminal prosecution should be initiated prior to the expiration of the statute of limitations at his thirty-first birthday.

PROSECUTION OF RETURNING FUGITIVES

With respect to the dismissal of indictments against fugitive defendants on grounds that valid defenses exist to the charges, it continues to be our policy that as long as the defendants continue in a fugitive status the United States Attorney will be justified in declining to review the files to

determine whether, as a result of changes in case law subsequent to the return of indictments against such defendants, valid defenses to the charges may exist. However, where the United States Attorney gains actual knowledge of the existence of a valid legal or factual defense he is not precluded from dismissing the indictment, even though the defendant is currently a fugitive and does not appear personally before the Court.

In recent months, we have had an increasing number of inquiries from United States Attorneys and the public regarding the Department's policy concerning Military Selective Service Act violators who are in fugitive status. It has been and continues to be the Department's policy to allow a defendant, in the absence of aggravating circumstances, to remove this delinquency under the Military Selective Service Act by submitting to the induction process and to authorize a dismissal of his indictment upon successful completion of induction. However, this policy terminates after July 1 with the expiration of the general induction authority provided for in § 17(c) of the Military Selective Service Act. Therefore, until July 2 upon receiving an inquiry from a fugitive defendant, his parents, or his attorney, your staff should advise that although no guarantees can be given by the Government that the fugitive will be permitted to submit to induction the fugitive should be advised that if he desires to return he must first submit himself to the jurisdiction of the court, an action which will normally result in his being arrested. Bail would, of course, be up to the court.

Should the defendant at this point offer to submit to induction and is accepted for duty, the indictment will be dismissed. If, however, the defendant submits to induction and fails to qualify for mental, physical, or moral reasons, then the United States Attorney will have to evaluate the dismissal in light of the circumstances at the time. If prolonged absence has contributed to the defendant's failure to qualify, consideration should be given to prosecution. Consideration should also be given to prosecuting in those cases involving aggravating circumstances of the type described in the Internal Security Division letter of May 10, 1972 to all United States Attorneys.

After July 1, unless the Department of Defense provides for a form of enlistment in lieu of induction, prosecution should be pursued against all indicted violators of the Military Selective Service Act when their cases have prosecutive merit.

Henry E. Petersen

HENRY E. PETERSEN
Assistant Attorney General

DEPARTMENT OF JUSTICE

Washington, D.C. 20530

February 14, 1973

Memo No. 774 Rev.

TO: All United States Attorneys

SUBJECT: Armed Forces Enlistment as an Alternative to Federal Prosecution.

Present regulations of the Armed Services prohibit the enlistment or induction of an individual against whom criminal or juvenile charges are pending or against whom the charges have been dismissed to facilitate the individual's enlistment or induction. This policy is based, in part, on the premise that the individual who enlists or volunteers for induction under such conditions is not properly motivated to become an effective member of the Armed Forces.

Determination as to whether prosecution should be instituted or pending criminal charges dismissed in any case should be made on the basis of whether the public interest would thereby best be served and without reference to possible military service on the part of the subject. The Armed Forces are not to be regarded as correctional institutions and United States Attorneys are urged to give full cooperation to the Department of Defense in the latter's efforts to ensure a highly motivated all-volunteer Armed Force and to bolster public confidence in military service as a thoroughly respectable and honorable profession.

There may be exceptional cases in which imminent military service, together with other factors, may be considered in deciding to decline prosecution if the offense is trivial or insubstantial, the offender is generally of good character, has no record or habits of anti-social behavior and does not require rehabilitation

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Internal Crim. Div.

through existing criminal institutional methods and failure to prosecute will not seriously impair observance of the law in question or respect for law generally. In no case, however, should the United States Attorney be a party to, or encourage, an agreement respecting criminal prosecution in exchange for enlistment or induction into the Armed Services.

HENRY E. PETERSEN
Assistant Attorney General

ASSISTANT ATTORNEY GENERAL
INTERNAL SECURITY DIVISION

Department of Justice
Washington

May 10, 1972

TO ALL UNITED STATES ATTORNEYS

1. Coordination with Selective Service Regional Attorneys

In order to expedite the resolution of litigation matters which may require coordination and consultation with Selective Service, United States Attorneys should contact the Selective Service Regional Counsel covering their judicial district, rather than the State Director. A Directory of the Regional Counsel for their respective areas of responsibility and their addresses and telephone numbers is attached. In the event the Regional Counsel is unavailable or unable to provide the necessary assistance, the office of the General Counsel, National Headquarters, Selective Service System, Washington, D.C. may be consulted. In such situations inquiries involving TRIAL litigation should be directed to:

Mr. Harry G. Charles
Chief, Trial Litigation — FTS-8-202-373-7174

or

Mr. L.L.Martin — FTS-8-202-373-7174
Assistant, Trial Litigation

Inquiries involving APPELLATE litigation should be directed to:

Mr. C.R.Harris — FTS-8-202-373-7174
Chief, Appellate Litigation

or

Colonel J. E. McDonald — FTS-8-202-373-7174
Assistant, Appellate Litigation

2. Dismissal of Selective Service Indictments

There has been some misunderstanding as to the Department's practice, as provided in United States Attorneys Bulletin, Vol. 17, No. 26, page 679, dated 10/3/69, to allow dismissal of selective service indictments where a defendant makes a belated attempt to submit to induction. In this regard, this policy is restricted to those cases where the indictment is based upon a failure or refusal to submit to induction, or alternative civilian work. It does not apply to those offenses involving draft board depredations, and filing fraudulent documents with local boards and the like. In order to insure uniform application of this practice, we believe a restatement of this policy may be useful to United States Attorneys.

It has been and continues to be the Department's policy to allow a defendant, in the absence of aggravating circumstances, to remove his delinquency under the Military Selective Service Act by submitting to induction processing and to authorize a dismissal of his indictment upon successful completion of induction. Thus, it is our policy not to dismiss the indictment until the defendant has completed his physical examination at the induction station and has been inducted. Accordingly, United States Attorneys should not agree to a dismissal of the indictment at the time the defendant offers to submit to induction, but should await completion of the induction processing. In the event the defendant is rejected on the basis of a physical, mental or psychiatric defect or on moral grounds, which preexisted his violation, authorization to dismiss will be granted. However, if the basis for rejection occurred after the violation, and the disqualifying physical defect was self-inflicted, self-induced or occurred as a result of the defendant's own fault, authorization to dismiss will not be granted. The Department will not, for example, authorize the dismissal of an indictment where subsequent to the issuance of an induction order the defendant had committed a criminal offense making him unacceptable on moral grounds, has become addicted

to drugs, deliberately inflicted a disqualifying wound upon himself, or where just prior to his physical examination he has resorted to stimulants (coffee, etc.) or depressants for the purpose of affecting his blood pressure reading, physical locomotion, or ability to properly function during a physical or mental examination.

Moreover, United States Attorneys should not give consideration to defendants who offer to submit to induction in lieu of prosecution where their offenses are attended by aggravating circumstances. Aggravating circumstances may appertain to those situations which clearly indicate that defendant's primary goal was to evade service at whatever cost and which reflect, for example, a long history of non-cooperation with or obstruction of the operations of the Selective Service System, particularly if such activities are the bases for additional counts in the indictments. Examples of such activities might be interfering with the operation of a local draft board, harassment of local board employees, or the like. Such circumstances could also be found in the case of a defendant who has made a concerted and deliberate attempt to elude detection by the F.B.I. and, after having exhausted every possible avenue to evade his service responsibility, finally offers at time of trial to submit to induction in lieu of prosecution.

In situations where, at about the time of commencement of trial proceedings, a defendant moves the court for permission to submit to belated induction and a dismissal of the indictment, the United States Attorney should oppose such motion, and ask the court for a continuance to allow the defendant to be inducted. He should also advise the court that if the defendant is inducted, or rejected for physical, mental or moral defects which preexisted his offense, or, if occurring following his offense, were not self inflicted, self-induced or occurred as a result of the defendant's own fault, he will then recommend a dismissal of the indictment.

In those cases where the defendant, while awaiting sentence asks to be permitted to be inducted, the United States Attorney should inform the court that if the defendant is placed on probation, or the imposition or execution of his sentence is suspended, he may be inducted into the Armed Forces provided he obtains a waiver from the United States Army Recruiting Service. On the other hand, if the defendant, subsequent to the imposition of a sentence of imprisonment asks to be permitted to be inducted, the United States Attorney should inform the court of the provisions of 32 CFR 1643.1-1643.3, which provide for procedures whereby the defendant after he has been placed in the custody of the Attorney General, may apply for parole, conditioned upon his entrance into the Armed Forces, or, in the case of a conscientious objector, his performance of alternative civilian work.

In requesting authorization to dismiss an indictment, the circumstances surrounding the reason for dismissal should be stated with particularity on Form No. USA 900, "Authorization for Dismissal of Indictment and Information."

A. William Olson

A. WILLIAM OLSON
Acting Assistant Attorney General

SELECTIVE SERVICE SYSTEM REGIONAL COUNSEL ADDRESS & AREA OF RESPONSIBILITY

ION	STATES RESPONSIBLE	REGIONAL COUNSEL	ASSISTANT REGIONAL COUNSEL	ADDRESS	TELEPHONE (FTS)
	Connecticut Delaware D. C. Maine Maryland Massachusetts New Hampshire New Jersey New York City New York State Pennsylvania Puerto Rico Rhode Island Vermont Virginia Virgin Islands West Virginia	Mr. Williard Silverberg	Mr. Paul Ostien	Region III Service Center Selective Service System Post Office Box 4130 Philadelphia, Pa 19144	8-215-438-7208
	Alabama Canal Zone Florida Georgia Kentucky Mississippi N. Carolina S. Carolina Tennessee	Mr. James L. Davis Jr.		Region IV Service Center Selective Service System 175 Houston Street, Suite 950 Citizens Trust Building Atlanta, Georgia 30303	8-404-526-6197
	Illinois Indiana Michigan Minnesota Ohio Wisconsin	Mr. Donald Guritz	Mr. Lester Moore, Jr.	Region V Service Center Selective Service System 536 S. Clark Street, Room 122 Chicago, Illinois 60605	8-312-353-7202
			Capt Curtis Griffith	85 Marconi Boulevard Columbus, Ohio 43215	8-614-469-5665

REGION	STATES RESPONSIBLE	REGIONAL COUNSEL	ASSISTANT	ADDRESS	TELEPHONE (F
IX **4	Alaska Idaho Montana Oregon Washington	Col. Rupert E. Park		Selective Service System Post Office Box 5247 Tacoma, Washington 98405	8-206-383-

*2,3,4 Effective July 1, 1972, there will be only one Regional Office for Region IX. The addres will be: Region IX Service Center, Selective Service System, Bldg. 2-G, GSA, Federal Cent 620 Central Ave., Alameda, California 94501, FTS 8-415-273-7734. The Regional Attorney will be Lt. Col. Benjamin O'Brien, and the Assistants will be Mr. Guin Menard Fisher, and Lt. Col. Klagge. These Attorneys will be located at Alameda, California.

ION	RESPONSIBLE	REGIONAL COUNSEL	ASSISTANT	ADDRESS	TELEPHONE (FTS)
*1	Arkansas Louisiana Oklahoma New Mexico Texas	Mr. Neil Metcalf		Region VI Svc. Center Federal Building 819 Taylor Street Fort Worth, Texas 76102	8-817-334-3561
			Mr. Joseph Taranto	Selective Service System 4400 Dauphine St. Building 601-5-A New Orleans, Louisiana 70140	8-504-527-2361
*1	Effective July 1, 1972, the Regional Office at New Orleans, La. will be closed.				
I	Colorado Iowa Kansas Missouri Nebraska N. Dakota S. Dakota Utah Wyoming	Mr. Bernard McNulty		Region VIII Svc. Ctr. Denver Federal Ctr. P. O. Box 25206 Denver, Colorado 80225	8-303-234-2253
**2	Arizona California, Eastern & Northern Dist. Guam Hawaii Nevada	Mr. Guin Menard Fisher	LtCol Jules Klagge	Selective Svc. System 450 Golden Gate Ave. P.O. Box 36002 San Francisco Cal. 94102	8-415-556-6324
**3	California, Central & Southern Dist.	Lt Col Benjamin O'Brien		Selective Svc. Sys.. 1206 S. Maple Avenue Bendix Building, Rm.1100 Los Angeles, Cal. 90015	8-213-688-3158

ASSISTANT ATTORNEY GENERAL
INTERNAL SECURITY DIVISION

Department of Justice
Washington, D.C. 20530

August 2, 1971

TO ALL UNITED STATES ATTORNEYS

In connection with our recent request in the United States Attorney's Bulletin that each United States Attorney assure himself of the timeliness and accuracy of the statistical data under the Military Selective Service Act forwarded each month by his office to the Department, we have discovered that in different judicial districts distinct problems may exist in connection with the enforcement of the Act. These problems stem from a variety of reasons, among which are the failure by the Selective Service System to weed out files with procedural defects sent to United States Attorneys for prosecution, lack of personnel in United States Attorney's offices to review the files, present the matters to grand juries and to try the selective service indictments, congestion of trial calendars and lack of judges to hear selective service cases.

We desire to be of assistance, wherever possible, in the prosecution of these cases. If lack of sufficient number of judges is causing a backlog of selective service cases, we

will endeavor to add visiting judges to the affected judicial districts so as to ease their burdens. We have also arranged a program to assign military reserve legal officers to aid United States Attorneys in the review of selective service files in preparation for trial, and to assign temporarily Assistant United States Attorneys from other districts to assist United States Attorneys in the prosecution of such cases.

In order to help us in appraising the various problems which may exist in the different districts, it is essential that we have an answer by August 15, 1971, to the five short questions listed in the enclosed Questionnaire. Your cooperation in this respect is earnestly solicited in order to continue vigorous and effective enforcement of the Act.

ROBERT C. MARDIAN
Assistant Attorney General

Questionnaire to United States Attorneys re current status of all Selective Service cases or matters pending in their offices (all figures are to be as of June 30, 1971)

1. Number of SS violations reported by SS awaiting preindictment review by your office where no FBI investigation has been requested. _____

   Received in 1971_____

   Received in 1970_____

   Received in 1969_____

   Received prior to 1968_____

   (If FBI investigation is automatically requested on referral of complaint to you by the local board this question need not be answered).

2. Number of SS violations reported by SS awaiting preindictment review by your office where FBI Investigations have been requested but not yet completed.

   Total pending_____

3. Number of SS violations reported by SS awaiting preindictment review by your office where FBI investigations have been completed.

   Total pending_____

4. Number of SS indictments pending trial. _____

5. Number of SS indictments pending trial where the defendant is a fugitive.

   _____

6. Total SS cases tried during F/Y 1971. _____

_____
United States Attorney
District _____

UNITED STATES GOVERNMENT

Memorandum

TO : Jonathan C. Rose
Associate Deputy Attorney General

DATE: September 24, 1974

FROM : Norman A. Carlson, Director
Bureau of Prisons

SUBJECT: FURLOUGHS UNDER 18 U.S.C. 4082

This is in reference to your request for our interpretation of the maximum period allowable for furlough under the provisions of 18 U.S.C. 4082.

The language of the statute, in our opinion, is quite clear in limiting each furlough to a period of not to exceed 30 days. Consequently, except for a few cases of a most compelling nature, we have limited furloughs to 30 days. In those comparatively few instances, additional furlough periods were authorized.

I do not believe, however, that the law enables us, as a matter of course, to provide for renewed furlough periods.

Jonathan C. Rose
Associate Deputy Attorney General

September 24, 1974

Norman A. Carlson, Director
Bureau of Prisons

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ASSISTANT ATTORNEY GENERAL

Department of Justice
Washington, D.C. 20530

SEP 24 1974

MEMORANDUM FOR THE CLEMENCY BOARD

Attention: Chairman Goodell

We are responding herewith to Senator Goodell's questions as put to us by Jonathan Rose, Associate Deputy Attorney General. Time considerations have not permitted us to give some of the questions as much attention as we might wish, but as to those we do regard the responses as suitable for present purposes.

Question (1) - Inhibitions and restrictions on Board members

a. The Conflict of Interest Laws

The only relevant statutes we are aware of are the conflict of interest laws, 18 U.S.C. 202-209. These are, of course, criminal statutes, but they do distinguish between regular government officers and employees and a separate category designated in 18 U.S.C. 202 as "special Government employees." That category covers, inter alia, officers and employees in the executive branch appointed to serve, with or without compensation, for not more than 130 days during any period of 365 consecutive days, temporary duties either on a full time or intermittent basis. There is no doubt that special Government employees performing advisory functions are covered. Board members coming from private life presumably will serve as special Government employees and on that basis will be concerned primarily with the prohibitions contained in 18 U.S.C. 203, 205, and 208. *

* See generally the Department of Justice Memorandum reprinted as a note to 18 U.S.C. 201. Section 204 applies only to members of Congress and section 206 to retired officers of the uniformed services. Section 207 provides post-employment restrictions of a representational nature against both regular and special Government employees, while section 209, prohibiting supplementation of government compensation from private sources, expressly excludes special Government employees.

Sections 203 and 205 in combination prohibit a regular officer or employee of the Government, except in the discharge of his official duties, from representing another person before any department, agency or court, whether with or without compensation, in a particular matter in which the United States is a party or has a direct and substantial interest. As applied to a special Government employee, he may not, except in the discharge of his official duties, represent anyone else before a court or Government agency in a particular matter in which the United States is a party or has a direct and substantial interest and in which he has at any time participated personally and substantially for the Government. Similarly, a special Government employee may not, except in the discharge of his official duties, represent anyone else in a particular matter pending before his agency unless he has served there no more than sixty days during the past 365 days. He is bound by this restraint even though the matter is not one in which he ever participated personally and substantially. These restrictions apply to both paid and unpaid representation. An application to the Board is plainly a covered particular matter, and will embrace personal and substantial participation by a Board member in the consideration of the application through "recommendation, the rendering of advice, investigation, or otherwise."

Thus, if Board members were regular officers or employees, they would be prevented from engaging in legal or other representation of others before Government agencies or courts in any particular matter in which the Government is a party or has a direct and substantial interest. But as to those members who are special Government employees, the restrictions of section 203 and 205 should be of no real concern because those restrictions will not preclude representational activities on their part before any agencies or bodies other than the Board.

Section 208 prohibits a special government employee from participating in his governmental capacity in any particular matter in which he, his spouse, minor child, outside business associate, or person with whom he is negotiating for employment has a financial interest. If the financial interest is insubstantial he may obtain a waiver pursuant to section 208(b).

The Federal Personnel Manual (Chapter 735-C-1, 2, November 9, 1965, revised July 1969) lays down Government-wide rules for determining whether an individual who serves temporarily or intermittently is a regular or special Government employee and thus subject to the full or limited prohibitions of sections 203 and 205. These rules require that the agency which obtains or utilizes the services of the individual shall, at the time of his appointment, make an estimate of the number of days during the following 365 on which it will require his services. If it is estimated that he will serve more than 130 days during the ensuing 365 days, the appointee should be carried on the roles as a regular Government employee. If the estimate is that he will serve no more than 130 days in all, whether consecutively or in a combination of intermittent periods, he should be carried by the agency as a special Government employee. If the estimate ultimately proves to be inaccurate, he is nevertheless deemed to continue in the status of a special or regular Government employee, as the case may be, for the full 365-day period for which the estimate was made. The Board, as a newly established body, should ask the Counsel to the President or the Chief Executive Clerk of the White House as to who is empowered to make the "special Government employee" determination for its members.

b. Executive Order 11222

Executive Order 11222 of May 8, 1965 (30 F.R. 6469) establishes standards of ethical conduct for both regular and special Government employees. The standards set forth in Part II of the order are applicable to all employees;

Part III sets forth standards for special Government employees, including advisers. They include provisions dealing with such matters as using public office for private gain, giving preferential treatment, the receipt of gifts or favors, use of inside information for financial gain, and engaging in outside activities that conflict with official responsibilities. The order is concerned not only with conduct which constitutes an actual conflict of interest, but also with conduct that may create the appearance of a conflict of interest.

Its key provisions (as well as those of the conflict of interest statutes) are embodied in the Standards of Conduct for the component agencies of the Executive Office of the President. 3 CFR Part 100 (§100.735-1 to 100.735-32). These will apply to the members of the Board which is an entity established by section 1 of the Executive order in the Executive Office of the President. The attention of Board members should be directed, in particular, to 3 CFR 100.735-11, which summarizes the more important prohibitions applicable to special Government employees. It should further be noted that Subpart B (3 CFR 100.735-31) specifically applies to part-time members of a board appointed by the President. This provides that when the Counsel to the President determines that the functions and responsibilities of a board are such that,consistent with the policy and purpose of Executive Order 11222, its members should submit statements of employment and financial interests, he is to request each member to submit such a statement to the Chairman of the Civil Service Commission.

Question (2) - <u>The Hatch Act</u>

The application of the Hatch Act to members of the Board who will serve on a part-time basis depends on several factors. Section 9(a) of the Act (5 U.S.C. 7324(a)(2)) prohibits "employees in an Executive agency" from taking "an active part in political management or political campaigns."

The term "employee" includes "an officer or employee" appointed in the civil service * * * by the President." 5 U.S.C. 2105(a)(1)(A). Section 18 of the Hatch Act (5 U.S.C. 7324(d)(1)) excepts from the prohibition certain employees, including "an employee paid from the appropriation for the office of the President." Under section 6 of the Executive order establishing the Board its expenses are to be paid from the Unanticipated Personnel Needs Fund of the President. That fund does not, in our view, satisfy the Hatch Act exception. The phrase "office of the President" was used in the appropriation statutes as a separate item included in the appropriation for the Executive Office of the President when the Hatch Act was enacted in 1939 (Independent Offices Appropriation Act, 1940, 53 Stat. 524). Since 1940, however, the appropriation item "office of the President" has been replaced by the item "the White House Office." See Independent Offices Appropriation Act, 1941, 54 Stat. 112. The appropriation for the Unanticipated Personnel Needs Fund of the President in the amount of $500,000 appears for the first time in P.L. 93-381, August 21, 1974. We are informed that this item was intended to replace the separate appropriation in prior enactments for the Executive Office of the President appearing under the item entitled "Emergency Fund for the President." See, e.g., P.L. 93-143, Title 3, approved October 30, 1973. Because Board expenses would not be paid from the appropriation for "the White House Office", we believe that the members of the Board are not entitled to the Hatch Act exemption. An informal check with the legal staff of the Civil Service Commission confirms this conclusion.

The legal staff of the Commission advises us, however, that it is uncertain in the absence of further information from the Board whether the Hatch Act prohibition will apply only on the days of their actual service. See Civil Service Commission Pamphlet 20 (May 1966) 8. Since the Commission has primary jurisdiction over Hatch Act matters, the Board should consult the Commission.

Question (3) - Other Legal Involvement of Board Members

We are not aware of any other "legal warnings" that should be given to individual Board members. As for their potential tort liability, Board members, whether regular or special Government employees, are "employees of the Government" within the meaning of the Federal Tort Claims Act, 28 U.S.C. § 2671. The nature of a member's tort liability would depend upon the particular facts.

Certain alleged tortious conduct (e.g., libel, abuse of discretion) is excepted from the Tort Claims Act. See 28 U.S.C. § 2680. When such conduct (e.g., arising out of an automobile accident) comes within the Act, the plaintiff may seek relief against the United States. 28 U.S.C. 1346(b).

Generally speaking, if a Board member were sued in a tort action relating to performance of his duties, he is entitled to representation by the Department of Justice. However, should the plaintiff obtain a judgment against a member in his individual capacity, the member would be personally liable for the judgment. It would appear that members could be covered by the official immunity doctrine, as set forth in Barr v. Mateo, 360 U.S. 564 (1959) (libel action). See also Bivens v. Six Unknown Named Agents, 456 F. 2d 1339 (2d Cir.,1972) (action for violation of Fourth Amendment rights).

Question (4) - Applicability of Federal Advisory Committee Act

The definition of "advisory committee" contained in section 3(2) of the Federal Advisory Committee Act, 5 U.S.C. App. I (1972 Supp.), expressly covers committees or boards, not composed wholly of full-time Federal employees, which are ". . . established . . . by the President . . . in the interest of obtaining advice or recommendations for the President or one or more agencies . . . ." The term "Presidential advisory committee" is defined in section 3(4) as "an advisory committee which advises the President." As a statutory matter the Board is covered by the Act.

Under the Executive order establishing the Board, the Board's functions are (1) to consider individual applications for clemency from persons falling within a described class and (2) to "report to the President its findings and recommendations" concerning the granting of Executive clemency. It may turn out that all or virtually all of the Board's recommendations are adopted by the President. Still, the fact remains that the ultimate legal power to decide belongs to the President.

The membership of the Board includes persons who are not full-time employees of the Government. It follows, therefore, that the elements of section 3(2) and section 3(4) of the Act are present and under the Act the Board is a "Presidential advisory committee."

The Advisory Committee Act deals in a comprehensive way with the operation of groups which are subject to its terms. The Director of the Office of Management and Budget is responsible for overseeing compliance with the Act on the part of Federal agencies generally, and the Director has special responsibilities with respect to Presidential advisory committees. The Director's functions have been delegated to the OMB Committee Management Secretariat. A recent OMB circular provides some guidance regarding the Act's procedural requirements. See OMB Circular No. A-63 (Mar. 1974) (a copy of which is attached).

The following describes briefly provisions of the Act which have immediate effect upon the Board.

Charter - Subsection 9(c) of the Act provides that no advisory committee is to meet or take any action until a charter has been filed in accord with section 9(c). The Board's charter should be filed with OMB, the Judiciary Committees and perhaps the Armed Services Committees of the House and the Senate, and the Library of Congress. The items to be included in a charter are set forth in section 9(c). Also, see para. 6c of the OMB circular.

Notice of meetings - Under section 10(a)(2) of the Act, "timely notice" of each advisory committee meeting must be published in the Federal Register, unless the President (i.e., OMB) determines that public notice would be contrary to national security. Para. 8b(3) of the OMB circular requires 15 days' advance notice, except for "emergency situations." Para. 8b of the OMB circular discusses the contents of the Federal Register notices and the use of additional types of notice.

Designated Federal employee - Under sections 10(e)-(f), each advisory committee meeting is to be attended by a "designated officer or employee of the Federal Government;" and no meeting may be called without the approval of the designated officer or employee. See para. 8f of the OMB circular.

Agenda - Under our interpretation of the Act, an agenda should be prepared for each meeting of an advisory committee or a Presidential advisory committee. See section 10(f) of the Act; para. 8a(2) of the OMB circular.

Openness of meetings - In general, advisory committee meetings are to be open to the public. A meeting or portion of a meeting may be closed if an appropriate official (here, the OMB Director or his delegate) determines that a Freedom of Information Act exemption applies. See section 10(a)(1), (3); and section 10(d) of the Advisory Committee Act; paras. 8(c) and (d) of the OMB circular. A request to close a meeting of a Presidential advisory committee is to be submitted to OMB at least 30 days before the date of the meeting.

Minutes - Detailed minutes are to be kept of each advisory committee meeting. Section 10(c) of the Act; para. 8(e) of the OMB circular.

Compensation of advisory committee members and staff - Para. 11b of the OMB circular sets forth pay guidelines with regard to advisory committees. See section 7(d) of the Act.

Advisory Committee records - Section 10(b) of the Advisory Committee Act makes the Freedom of Information Act

applicable to advisory committee records. See discussion under Question (5).

Additional information regarding implementation of the Advisory Committee Act may be obtained from Mr. Chet Warner of OMB (395-5193) or Mr. David Marblestone of our office (739-3713).

Question (5) - Application of the Administrative Procedure Act, and particularly the Freedom of Information Act provisions

There are two routes by which the Freedom of Information Act may be applied to the Board. One is through the Federal Advisory Committee Act. A second possible route is through the Administrative Procedure Act, of which the Freedom of Information Act is a part, if the Board is to be regarded as an agency, as that term is defined in the Administrative Procedure Act.

As an advisory committee subject to the Federal Advisory Committee Act, section 10(b) of that Act applies. It provides:

> "Subject to section 552 of Title 5 [The Freedom of Information Act], the records, reports, transcripts, minutes, appendices, working papers, drafts, studies, agenda, or other documents which were made available to or prepared for or by each advisory committee shall be available for public inspection and copying at a single location in the offices of the advisory committee or the agency to which the advisory committee reports until the advisory committee ceases to exist." 5 U.S.C. App. I § 10(b).

This section of the Federal Advisory Committee Act in effect applies only one portion of the Freedom of Information Act to the Board. That portion is 5 U.S.C. 552(b), which contains the exemptions to the Freedom of Information Act. On this

basis all of the documents described in section 10(b), which are presumably all the documents that the Board will have in its possession, will be available for public inspection or copying unless they are specifically exempted by the Freedom of Information Act. Because we are not in a position to know what documents the Board will possess, it is not possible for us to state at this time what exemptions will apply. However, the sixth exemption, which covers "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy" (5 U.S.C. 552(b)(6)) will almost certainly apply to some of the records that the Board will possess. Other possible exemptions that may be utilized are the first exemption (5 U.S.C. 552(b)(1)) for classified material which might be given to the Board, and the seventh exemption for "investigative files compiled for law enforcement purposes" (5 U.S.C. 552(b)(7)).

If the Board's activities are litigated in an appropriate case, it is conceivable, however, as pointed out below, that the courts might hold that the Board is an "agency" as that term is defined in the Administrative Procedure Act. In that event, the entire Administrative Procedure Act, including the entire Freedom of Information Act, will apply. The consequences will be that the requirements thus imposed on the Board would include publishing its organization, its rules of procedure, its rules of general applicability and statements of general policy. See 5 U.S.C. 552(a). In addition, it would be required to make available for public inspection all its documents not specifically exempted from disclosure by the Freedom of Information Act. See 5 U.S.C. 552(a) and (b). If the courts should hold that the Board's proceedings in individual cases are adjudicative in nature, the requirements of the Administrative Procedure Act would apply, including the requirements of notice and an impartial hearing before a member of the agency or a hearing examiner. By the same token, rule-making would be required to follow the provisions of the Administrative Procedure Act with its notice and other requirements. See 5 U.S.C. 552-558. It could also follow

Assistant Attorney General

Department of Justice
Washington, D.C. 20530

SEP 24 1974

MEMORANDUM FOR THE CLEMENCY BOARD

Attention: Chairman Goodell

We are responding herewith to Senator Goodell's questions as put to us by Jonathan Rose, Associate Deputy Attorney General. Time considerations have not permitted us to give some of the questions as much attention as we might wish, but as to those we do regard the responses as suitable for present purposes.

Question (1) - Inhibitions and restrictions on Board members

a. The Conflict of Interest Laws

The only relevant statutes we are aware of are the conflict of interest laws, 18 U.S.C. 202-209. These are, of course, criminal statutes, but they do distinguish between regular government officers and employees and a separate category designated in 18 U.S.C. 202 as "special Government employees." That category covers, inter alia, officers and employees in the executive branch appointed to serve, with or without compensation, for not more than 130 days during any period of 365 consecutive days, temporary duties either on a full time or intermittent basis. There is no doubt that special Government employees performing advisory functions are covered. Board members coming from private life presumably will serve as special Government employees and on that basis will be concerned primarily with the prohibitions contained in 18 U.S.C. 203, 205, and 208. *

* See generally the Department of Justice Memorandum reprinted as a note to 18 U.S.C. 201. Section 204 applies only to members of Congress and section 206 to retired officers of the uniformed services. Section 207 provides post-employment restrictions of a representational nature against both regular and special Government employees, while section 209, prohibiting supplementation of government compensation from private sources, expressly excludes special Government employees.

Sections 203 and 205 in combination prohibit a regular officer or employee of the Government, except in the discharge of his official duties, from representing another person before any department, agency or court, whether with or without compensation, in a particular matter in which the United States is a party or has a direct and substantial interest. As applied to a special Government employee, he may not, except in the discharge of his official duties, represent anyone else before a court or Government agency in a particular matter in which the United States is a party or has a direct and substantial interest and in which he has at any time participated personally and substantially for the Government. Similarly, a special Government employee may not, except in the discharge of his official duties, represent anyone else in a particular matter pending before his agency unless he has served there no more than sixty days during the past 365 days. He is bound by this restraint even though the matter is not one in which he ever participated personally and substantially. These restrictions apply to both paid and unpaid representation. An application to the Board is plainly a covered particular matter, and will embrace personal and substantial participation by a Board member in the consideration of the application through "recommendation, the rendering of advice, investigation, or otherwise."

Thus, if Board members were regular officers or employees, they would be prevented from engaging in legal or other representation of others before Government agencies or courts in any particular matter in which the Government is a party or has a direct and substantial interest. But as to those members who are special Government employees, the restrictions of section 203 and 205 should be of no real concern because those restrictions will not preclude representational activities on their part before any agencies or bodies other than the Board.

Section 208 prohibits a special government employee from participating in his governmental capacity in any particular matter in which he, his spouse, minor child, outside business associate, or person with whom he is negotiating for employment has a financial interest. If the financial interest is insubstantial he may obtain a waiver pursuant to section 208(b).

The Federal Personnel Manual (Chapter 735-C-1, 2, November 9, 1965, revised July 1969) lays down Government-wide rules for determining whether an individual who serves temporarily or intermittently is a regular or special Government employee and thus subject to the full or limited prohibitions of sections 203 and 205. These rules require that the agency which obtains or utilizes the services of the individual shall, at the time of his appointment, make an estimate of the number of days during the following 365 on which it will require his services. If it is estimated that he will serve more than 130 days during the ensuing 365 days, the appointee should be carried on the roles as a regular Government employee. If the estimate is that he will serve no more than 130 days in all, whether consecutively or in a combination of intermittent periods, he should be carried by the agency as a special Government employee. If the estimate ultimately proves to be inaccurate, he is nevertheless deemed to continue in the status of a special or regular Government employee, as the case may be, for the full 365-day period for which the estimate was made. The Board, as a newly established body, should ask the Counsel to the President or the Chief Executive Clerk of the White House as to who is empowered to make the "special Government employee" determination for its members.

b. Executive Order 11222

Executive Order 11222 of May 8, 1965 (30 F.R. 6469) establishes standards of ethical conduct for both regular and special Government employees. The standards set forth in Part II of the order are applicable to all employees;

Part III sets forth standards for special Government employees, including advisers. They include provisions dealing with such matters as using public office for private gain, giving preferential treatment, the receipt of gifts or favors, use of inside information for financial gain, and engaging in outside activities that conflict with official responsibilities. The order is concerned not only with conduct which constitutes an actual conflict of interest, but also with conduct that may create the appearance of a conflict of interest.

Its key provisions (as well as those of the conflict of interest statutes) are embodied in the Standards of Conduct for the component agencies of the Executive Office of the President. 3 CFR Part 100 (§100.735-1 to 100.735-32). These will apply to the members of the Board which is an entity established by section 1 of the Executive order in the Executive Office of the President. The attention of Board members should be directed, in particular, to 3 CFR 100.735-11, which summarizes the more important prohibitions applicable to special Government employees. It should further be noted that Subpart B (3 CFR 100.735-31) specifically applies to part-time members of a board appointed by the President. This provides that when the Counsel to the President determines that the functions and responsibilities of a board are such that,consistent with the policy and purpose of Executive Order 11222, its members should submit statements of employment and financial interests, he is to request each member to submit such a statement to the Chairman of the Civil Service Commission.

Question (2) - <u>The Hatch Act</u>

The application of the Hatch Act to members of the Board who will serve on a part-time basis depends on several factors. Section 9(a) of the Act (5 U.S.C. 7324(a)(2)) prohibits "employees in an Executive agency" from taking "an active part in political management or political campaigns."

PRESIDENTIAL RECORD BOOK
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TO: Marilyn

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RETURN DATE: ____ _____

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Levi's Takeover Affected

Justice Losing Top Officials

By Orr Kelly
Washington Star Staff Writer

Atty. Gen. Edward H. Levi is losing top-level people at the Justice Department faster than he can fill the vacancies that existed when he took office 2½ months ago.

While everyone involved insists that the resignations are not the result of unhappiness with Levi himself, the number of those who have left — or who are about to leave — has significantly complicated his problems in taking over the department.

When he took office, he knew he would have to find a new deputy and two assistant attorneys general — all presidential appointments. He has found a new deputy and one assistant. But another assistant left, still leaving two jobs open at that level.

negotiating with the law firm since before Levi took office.

Donald I. Baker, another deputy to Kauper, will leave in July to teach at Cornell University in Ithaca, N.Y. Baker, who has been in the department for nine years, said he had made his decision to go to Cornell last August.

IN THE CRIMINAL division, the vacancy in the post of assistant attorney general has existed since the departure of Henry E. Petersen at the end of the year. Now, Thomas J. McTiernan, head of the division's fraud section, has let it be known that he will be leaving soon to take a key job at the Treasury Department.

While Levi now has a new deputy — former U.S. District Judge Harold R. Tyler Jr. — on the job, Tyler has

congressional committees investigating the nation's intelligence agencies.

Another associate deputy, James D. Hutchinson, will go to work tomorrow in a new post at the Labor Department. Hutchinson had been head of a committee Levi had set up to help him draft guidelines for the FBI in its collection and filing of information about individuals.

LEVI HAD BEEN on the job only a month when Carla Hills left her post as head of the civil division to become secretary of Housing and Urban Development. Her old post has been filled by Rex Lee, dean of the law school at Brigham Young University.

But the post of head of the office of legislative affairs has been vacant since W. Vincent Rakestraw resigned to accompany for-

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MAY 19 1975

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OFFICE OF THE DEPUTY ATTORNEY GENERAL
WASHINGTON, D.C. 20530

May 15, 1975

To: Honorable Charles E. Goodell
Chairman, Presidential Clemency Board

From: Harold R. Tyler, Jr.
Acting Attorney General

Subj: Eligibility of Convicted Draft Evaders for the President's Clemency Program

You have requested the views of the Department of Justice on the following question: whether a convicted draft evader, who rejected the opportunity to participate in the Department's clemency program before proceeding to trial, is ineligible to apply for clemency before the Presidential Clemency Board solely because he rejected the Department's pretrial offer of clemency.

The Presidential Clemency Board, of course, has the final authority, subject to possible court review, to determine which individuals are eligible for its clemency program. In the Department's view, an individual who declined to participate in its clemency program should not be ineligible for the Presidential Clemency Board's program solely because of that declination. Two reasons underlie that view. First, neither the President's Proclamation 4313 nor Executive Order 11803 expressly states or clearly implies that a convicted draft evader who declined participation in the Department's program should be excluded from the Presidential Clemency Board's program. Second, such an exclusion would in effect impose a type of sanction on the unconvicted draft evader for exercising his constitutional right to a trial to determine whether or not he was guilty. Thus, to deny an individual eligibility in the Clemency Board's program as a consequence of exercising his constitutional right to trial would raise constitutional questions.1/

1/ See United States v. Jackson, 390 U.S. 570 (1968), (concluding that Federal Kidnapping Act provisions, which operated to encourage quilty pleas by authorizing the death penalty only for defendants electing a jury trial, imposed an impermissible burden upon the exercise of a constitutional right).

Of course, in determining what clemency, if any, an individual should receive, the Clemency Board may appropriately consider what clemency he would have been offered by the Department.

L.B.

THE WHITE HOUSE

WASHINGTON

September 2, 1975

MEMORANDUM FOR THE HONORABLE EDWARD H. LEVI
Attorney General
Department of Justice

FROM: CHARLES E. GOODELL
Chairman
Presidential Clemency Board

SUBJECT: Transfer of Residual Presidential Clemency Board Functions to the Department of Justice

Since it is supported by the Unanticipated Personnel Needs Fund of the White House Office, the Presidential Clemency Board (PCB) is statutorily barred from entering into new obligations after September 15, one year from the date of its creation. The President has directed that the Board complete the disposition of clemency applications by September 15, and the Board will meet that target. We will have processed 15,500 cases and 5,000 ineligible applications.

Although the Board will have completed case disposition by September 15, several residual functions remain. Our staffs and that of OMB have agreed that those functions should be transferred to the Department of Justice. A number of open questions with respect to the transition remain, however, and you and I need to reach a resolution of those questions.

I. Exercise of Residual Discretion in Reconsideration Cases Triggered by Presentation of New Facts

Under the PCB regulations, an applicant has the right to petition for reconsideration of his case for thirty days after Board disposition, should the applicant present new facts material to the disposition of his application and not previously available to the Board. The Board's recommendations are not forwarded to the President until after that thirty-day period has run.

An applicant also is granted, by the regulations, entitlement to reconsideration within thirty days after the President's decision on his case, provided that the applicant presents new material facts not previously available for good cause.

Those two reconsideration periods will not have run by September 15, and the administrative processing of applications will therefore not be complete.

If it would be helpful to you, the Board has indicated its willingness to meet, as unpaid consultants to you, to resolve reconsideration petitions. Such a meeting probably would be for one day, and could take place immediately prior to November 1. If the Board members themselves resolve these residual cases, the President will be assured that decisions are made with maximum consistency with prior cases.

II. Certification of Completion of Alternative Service

The critical remaining exercise of discretion after September 15 will relate to cases in which a local Selective Service board rules that an applicant either has not completed the prescribed period of alternative service, or did not make a good faith effort to find an alternative service job, and in which the applicant alleges either that he did indeed complete the period or did make a good faith effort. The question presented then is whether, notwithstanding that Selective Service alleges failure to complete alternative service for no good cause, the conditions attached to the President's grant of conditional clemency will be considered by the Department to have been met.

This is much more than a ministerial function. The Department must elect either to certify or not to certify the applicant as deserving of the pardon which the President has granted him conditionally. The Board has faced several such cases already.

The Board is very concerned that this exercise of discretion be informed by careful attention to each individual case in which a conflict arises between the applicant and his local board, and that the officials who make the discretionary decisions on your behalf have the organizational strength and resources to override the determination of a local board if the facts of a particular case warrant that.

We would feel most reassured on this point if you chose to place this residual discretionary authority--and the appropriate staff to work on such cases--in the Immediate Office of the Attorney General, rather than in the Office of the Pardon Attorney. I expect that the number of such cases will be small, and that the exercise of this function can be organizationally divorced from completion of the residual administrative tasks if you choose to house those in the Office of the Pardon Attorney.

III. Processing of the Paperwork

Because the two reconsideration periods will not have run until shortly before November 1, the Department will inherit a residual function of processing correspondence with applicants, including the final notification to applicants of the President's decisions. Files on most cases cannot be returned to the originating Department until final notification.

The Board proposes that you retain as many of its top staff as necessary--until November 1, under the supervision of your Immediate Office, in order to complete this series of administrative tasks without interruption.

IV. Cases for Which Files are Discovered After September 15

There will also probably be an indeterminate number of cases with respect to which the military services will not discover files until after September 15. Since such individuals have filed a timely application for clemency, we owe them consideration of their cases. You may wish to consider employing a small panel of former Board members as consultants at infrequent intervals in order to reach recommendations to the President on batches of such cases.

I will be pleased to discuss these issues with you at your convenience, should you find that helpful. Once we have reached resolution of them, I would suggest that we forward a joint information memorandum to the President outlining the salient features of the transition.

MEMORANDUM FOR THE HONORABLE EDWARD H. LEVI
Attorney General
Office of the Attorney General
U.S. Department of Justice

FROM: CHARLES E. GOODELL
Chairman

SUBJECT: Transfer of Residual Presidential Clemency Board Functions

By agreement of OMB, the Department of Justice, Presidential Clemency Board and other interested parties, on September 16 residual functions of the Presidential Clemency Board will be transferred to the Justice Department. I believe that all of these residual functions can be completed with dispatch no later than November 1, 1975.

In planning for the transfer of these functions and to ensure the expeditious completion of the remaining tasks I believe that you will find this function to be completed efficiently and expeditiously if you continue to employ a reduced staff consisting of persons who are familiar with the remaining responsibilities and to have been charged with these duties during the existence of the Clemency Board.

Because of Clemency Board rules that will remain after September 15 a residual of cases which may have to be re-considered before final recommendations be made to the President, I am pleased that the Justice Department will be employing the substantive and procedural rules for these cases in the same manner as the Clemency Board has evaluated the previous 15,000.

In order to ensure that these cases are decided in a manner consistent with prior cases I would suggest that you consider employing the present members of the Presidential Clemency Board to act in an advisory capacity. They have expressed the willingness to meet on the two or three days necessary on a voluntary basis.

I look forward to discussing these and any other matters involving the transition at your convenience.

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MEMORANDUM FOR THE HONORABLE EDWARD H. LEVI
Attorney General
Office of the Attorney General
U.S. Department of Justice

FROM: CHARLES E. GOODELL
Chairman

SUBJECT: Transfer of Presidential Clemency Board Functions to the Department of Justice

Our staffs and that of OMB are agreed that the residual functions of the Presidential Clemency Board should, after September 15, be transferred to the Department of Justice. The functions remaining primarily involve correspondence on cases for which the Board will have reached a disposition on after August 15th.

There are, however, three areas in which discretion will remain to be exercised after September 15th on individual cases:

1. Cases in which an applicant presents new facts, not previously available to the Clemency Board, after the Board has reached a disposition of his case but prior to Presidential action.
2. Cases in which an applicant presents new facts, not previously available to the Clemency Board for good cause, within 30 days after the President's decision. Under the Board's regulations, the applicant is entitled to reconsideration in such cases, and to the presentation of a new recommendation on his case by the Board to the President for the President's revised decision.

3. Cases in which a local Selective Service Board rules that an applicant either has not completed the prescribed period of alternative service, or did not make a good faith effort to find an alternative service job, and in which the applicant alleges either that he did indeed complete the period or make a good faith effort. The question presented is then whether, notwithstanding that Selective Service has not certified completion of alternative service, the conditions attached to the President's grant of conditional clemency shall be considered by the Department to have been met. The Board has faced several such cases already.

Not warranted

I am particularly concerned, as is the Board, that the exercise of those three kinds of discretion--which will have a very real effect on the lives of some recipients--be done with individual attention to each case. I would feel assured that that will be the case if you will organizationally place the residual exercise of that discretion, and the appropriate staff to work on that limited number of cases, in the Immediate Office of the Attorney General, rather than in the office of the Pardon Attorney. I expect the number of such cases to be small.

I will be pleased to discuss this with you at your convenience, if you feel that that will be helpful.