

**The original documents are located in Box 9, folder “Questions and Answers (1)” of the Charles E. Goodell Papers at the Gerald R. Ford Presidential Library.**

### **Copyright Notice**

The copyright law of the United States (Title 17, United States Code) governs the making of photocopies or other reproductions of copyrighted material. Charles Goodell donated to the United States of America his copyrights in all of his unpublished writings in National Archives collections. Works prepared by U.S. Government employees as part of their official duties are in the public domain. The copyrights to materials written by other individuals or organizations are presumed to remain with them. If you think any of the information displayed in the PDF is subject to a valid copyright claim, please contact the Gerald R. Ford Presidential Library.

QUESTIONS AND ANSWERS



HISTORY



WHAT EARLY AMERICAN PRECEDENCE IS  
THERE FOR TREATING GENEROUSLY THOSE  
WHO BREAK THE LAW?

WHAT HAVE OTHER NATIONS DONE WHEN LARGE SEGMENTS  
OF THEIR POPULATIONS HAVE RESISTED?



CONFRONTED WITH ACTS OF HOSTILITY AGAINST THE NATION INCOMPARABLY MORE SERIOUS THAN THOSE ALLEGED AGAINST OUR DESERTERS OR DRAFT EVADERS. FRANCE, NORWAY, BELGIUM, THE NETHERLANDS, AND JAPAN ALL GRANTED PARTIAL AMNESTY TO THOSE VERY LARGE SEGMENTS OF THEIR POPULATIONS WHO HAD ENGAGED IN DISLOYAL ACTIVITIES. IT IS PERHAPS EVEN MORE RELEVANT TO RECALL THAT THAT GREAT SOLDIER WHO WAS ALSO A GREAT STATESMAN AND PATRIOT, GENERAL DE GAULLE, PROCLAIMED A GENERAL AMNESTY TO THE OVERWHELMING MAJORITY OF THOSE WHO HAD RESISTED - EVEN BY ARMS - HIS POLICY DURING THE ALGERIAN CRISIS.

IN ALL THIS WE ARE REMINDED OF WHAT THAT OTHER GREAT SOLDIER AND STATEMAN, WINSTON CHURCHILL, SAID, "THERE MUST BE A BLESSED ACT OF OBLIVION."

AMNESTY OR PARDON GRANTED BY PRESIDENT GEORGE WASHINGTON

Incident: Whiskey Insurrection ending July 17, 1794.

Action:

One year later, July 10, 1795, President George Washington granted a general pardon to all who agreed to obey the law.

The insurrection involved several hundred men who attacked and burned the home of the regional inspector of the excise (tax collector).

President Washington in explaining his actions to Congress stated:

"For though I shall always think it a sacred duty to exercise with firmness and energy the constitutional powers with which I am vested, yet my personal feeling is to mingle in the operations of the Government every degree of moderation and tenderness which the national justice, dignity and safety may permit."



AMNESTY OR PARDON GRANTED BY PRESIDENT JOHN ADAMS

Incident: Pennsylvania Insurrectionists - 1799

Action:

In 1799 a small band of Pennsylvanians (over 100) rebelled against the laws for the value placed on lands and dwellings, Further, they freed prisoners being held by a U.S. marshal and prevented him from performing his duties.

The following year, on May 21, 1800, President Adams granted a full pardon to all who were involved who had not already been indicted or convicted.



AMNESTY OR PARDON GRANTED BY PRESIDENT THOMAS JEFFERSON

Incident: Deserters from the Army of the United States

Action:

On October 15, 1807, President Jefferson, by proclamation granted a full pardon to all deserters from the U.S. Army, providing they surrendered themselves within four months from the signing of the document.



AMNESTY OR PARDON GRANTED BY PRESIDENT JAMES MADISON

Incident: Prior to and during War of 1812

Action:

President Madison signed three proclamations (February 7, 1812; October 8, 1812; and June 14, 1814) offering full pardon to deserters providing they surrendered within four months.

Further, on February 6, 1815, President Madison offered amnesty to pirates and smugglers who aided in fighting the British during the War of 1812. In essence, this was designed for those pirates and smugglers who had law suits, indictments or prosecutions brought against them.





AMNESTY OR PARDON GRANTED BY PRESIDENT ANDREW JACKSON

Incident: Desertion from U.S. Army

Action:

Congress repealed the death penalty for peace-time desertion. On June 12, 1830, President Jackson proclaimed amnesty for deserters with provisions: (1) Those in confinement return to duty. (2) Those at large under sentence of death discharged, never again to be enlisted.



AMNESTY AND PAROLE GRANTED BY PRESIDENT ABRAHAM LINCOLN

Incident: The Civil War

Action:

On February 14, 1862, at the direction of President Lincoln, Secretary of War Stanton ordered the release of political prisoners and others held under military custody. The majority of these individuals had been detained simply as a result of the confusion which occurred at the outbreak of the Civil War.

Further, on February 27, a special commission was created for the purpose of determining whether prisoners who were being detained should be bound over for civil trial.

Congress enacted the Confiscation Law on July 17, 1862, which authorized President Lincoln to extend a pardon or amnesty to those participating in the initial rebellion. However, Lincoln, through a series of subsequent proclamations which he issued, clearly indicated that he didn't consider this Law to be his sole source of authority.

On March 10, 1863, Lincoln issued a Presidential Proclamation stating that deserters who reported to their regiments prior to April 1, 1863, would receive no punishment except to forfeit their pay accrued during their desertion.

On December 8, 1863, Lincoln, again by proclamation, extended full pardon to all who were implicated in the rebellion providing they took an oath of loyalty to the Union. There were some exceptions.

Because of some ambiguity in the December 8 proclamation, Lincoln issued another proclamation which defined cases which would be eligible for the benefits outlined in the original document. (March 24, 1864)

An Act of Congress, on March 3, 1865, required that deserters forfeit their citizenship and directed Lincoln to issue a proclamation which pardoned all deserters who returned to their posts within 60 days and served a period of time equal to their original enlistment. Lincoln issued that proclamation on March 11, 1865.

In addition, the Department of War on July 3, 1866, offered conditional amnesty to deserters who surrendered prior to August 15, 1866.

## AMNESTY OR PARDON GRANTED BY PRESIDENT ANDREW JOHNSON

Incident: Civil War

Action:

President Johnson issued a proclamation of Amnesty and Reconstruction on May 29, 1865. This act called for full pardon to all Confederates who took oath of allegiance to the United States. There were exceptions.

On January 21, 1869, the first real battle between the executive and the legislative occurred in regard to authority of the President to grant amnesty and pardons. This conflict resulted in the repeal of Section 13 of the Confiscation Act.

President Johnson, unhappy about this, chose in essence to ignore the action. Through three subsequent proclamations (September 7, 1867 - July 4, 1868 - December 5, 1868) Johnson first granted conditional amnesty with exceptions (certain officers; those indicted for felony or treason) finally culminating in universal and unconditional amnesty for persons of the Confederate States.

Congress was infuriated. The Senate Judiciary Committee issued a report on February 17, 1869, which said in effect that the President had gone beyond his constitutional power.

The Judiciary Committee issued a resolution stating that the President's proclamation ". . . was not authorized by the Constitution or laws." The Senate did not act upon the resolution.

Although, subsequently Congress did become much more involved in granting amnesty and pardon, primarily through the implementation of the fourteenth amendment.

However, as Pat Buchanan points out ". . . there was never a general unconditional amnesty for either draft-dodgers or deserters; and indeed, not until 1898 did the Universal Amnesty Act remove all disabilities against all former Confederates."

Incidentally, it was the pressures brought on by the Spanish-American War which resulted in the Universal Amnesty Bill being enacted and not the Civil War.

AMNESTY OR PARDON GRANTED BY PRESIDENT TEDDY ROOSEVELT

Incident: Philippine Insurrection

Action:

On July 4, 1902, President Teddy Roosevelt issued a proclamation granting "complete pardon and amnesty" for all who took part in the rebellion. It was, however, subject to condition -- the participants had to take an oath recognizing "the supreme authority of the United States in the Philippine Islands."



AMNESTY OR PARDON GRANTED BY PRESIDENT WOODROW WILSON

Incident: World War I

Action:

President Wilson declared no general amnesty for deserters.

There was, however, two Presidential proclamations which granted particular amnesty to some deserters and draft violaters.



AMNESTY OR PARDON GRANTED BY PRESIDENT CALVIN COOLIDGE

Incident: World War I

Action:

In 1924, President Coolidge granted amnesty and return of citizenship to about 100 individuals who had deserted since the armistice for World War I was declared.

It wasn't until December 23, 1933, that President Roosevelt granted amnesty and citizenship to those individuals who were involved in draft infractions and espionage acts resulting from World War I. And it was only granted after they had completed their prison sentence.



AMNESTY OR PARDON GRANTED BY PRESIDENT HARRY S. TRUMAN

Incident: World War II and Korean War

Action:

Based upon recommendations from the Amnesty Board, only 1,523 individuals who violated the Selective Service Act during World War II were pardoned by President Truman. That was out of a total of 15,805 cases.

On December 24, 1950, Truman issued two proclamations which pardoned ex-convicts with a year or more in the armed forces after June 25, 1950, and all those convicted between August 15, 1945, and June 25, 1950, for desertion who had been court-martialed or dishonorably discharged or both.



AMNESTY OR PARDON GRANTED BY PRESIDENT DWIGHT D. EISENHOWER

Incident: Korean War

Action:

There is no record of Presidential amnesty for draft evasion or deserters after the Korean War.





## AMNESTY

### WHAT IS AMNESTY?

THE WORD ITSELF IS GREEK - AMNESTIA - MEANS FORGETFULNESS, OBLIVION, THE ERASING FROM MEMORY.

THERE IS THE HIGHEST JUDICIAL SANCTION FOR THIS DEFINITION: "AMNESTY IS THE ABOLITION AND FORGETFULNESS OF THE OFFENSE: PARDON IS FORGIVENESS," SAID THE SUPREME COURT, *KNOTE v. U.S.*, 95 U.S. 149.

AMNESTY IS A DISCRETIONARY ACT BY A SOVEREIGN TO DECIDE THAT A CLASS OF OFFENDERS WILL BE IGNORED. AMNESTIES USUALLY APPLY TO POLITICAL OFFENDERS OR ALLEGED POLITICAL OFFENDERS AFTER THE SITUATION THAT PROVOKED THEIR ACTS HAS CHANGED. THE PURPOSE OF AN AMNESTY IS TO MAKE POSSIBLE THE LARGER GOALS OF A SOCIETY AS IT LOOKS FORWARD TO A FUTURE WITHOUT RECRIMINATIONS.



WHAT IS THE DIFFERENCE BETWEEN AMNESTY AND PARDON?

A PARDON GENERALLY APPLIES TO A SINGLE OFFENDER WHO HAS ALREADY BEEN JUDGED GUILTY. IT IMPLIES FORGIVENESS RATHER THAN FORGETTING. ALONG WITH CLEMENCY, THE ACT OF PARDON PRESUPPOSES THAT NO FURTHER PURPOSE WOULD BE SERVED BY CONTINUING PUNISHMENT ALREADY STARTED OR COMPLETED.

AMNESTY DOES NOT CONSIDER GUILT OR INNOCENCE, BUT ON BEHALF OF SOCIETY, THE GOVERNMENT CLEARS THE RECORD FOR AN ENTIRE GROUP OF PEOPLE. IT IS IN THE EYES OF THE LAW AS IF THE ALLEGED OFFENSE HAD NEVER HAPPENED.



WHAT DOES AMNESTY MEAN IN TERMS OF LEGAL AND  
POLITICAL RIGHTS?

AMNESTY NORMALLY INVOLVES THE TOTAL RESTORATION OF ALL LEGAL AND POLITICAL RIGHTS AND THE CLEARING OF ANY CRIMINAL RECORD THAT THE INDIVIDUAL MIGHT HAVE FOR THE ACTS AMNESTIED. THESE WHO HAVE BEEN CONVICTED WOULD HAVE THEIR RECORDS EXPUNGED, THOSE IN PRISON WOULD BE RELEASED, THOSE WHO FACE POSSIBLE PROSECUTION WOULD BE IMMUNE FROM THAT PROSECUTION. PERSONS NOW UNABLE TO RETURN TO THE UNITED STATES COULD THEN RETURN, THOSE WHO CANNOT VOTE, HOLD PUBLIC OFFICE, OR EVEN OBTAIN PROFESSIONAL LICENSES IN MOST STATES, WOULD HAVE RESTORATION OF THEIR CIVIL AND POLITICAL RIGHTS.



WHO HAS THE AUTHORITY TO GRANT AN AMNESTY?

THE CONSTITUTION GIVES THE EXECUTIVE THE "POWER TO GRANT REPRIEVES AND PARDONS FOR OFFENSES AGAINST THE UNITED STATES. . ." IT HAS BEEN HELD BY THE SUPREME COURT THAT THIS POWER ALSO INCLUDES AMNESTIES. (U.S. v. KLEIN 1872).

IN THE HISTORY OF THE UNITED STATES, AMNESTIES HAVE BEEN GRANTED BY THE PRESIDENT ALONE, BY THE PRESIDENT WITH THE AUTHORIZATION OF CONGRESS, AND BY CONGRESS ALONE.



IS THERE A TIME LIMIT FOR AMNESTY?

THERE IS NO TIME LIMIT TO AMNESTIES. PRESIDENT MC KINLEY DECLARED THE LAST OF THE AMNESTIES FOR THE CONFEDERACY, AND PRESIDENT FRANKLIN ROOSEVELT COMPLETED THE AMNESTIES FOR WORLD WAR I. THE LONGER AN AMNESTY IS DELAYED, HOWEVER, THE LESS RELEVANT IT WILL BE.



WHAT IS THE RATIONALE BEHIND THE CLEMENCY PROGRAM?

THE PROGRAM IS BASED ON THE BELIEF THAT EACH CITIZEN HAS A DUTY OF SERVICE TO HIS COUNTRY AND THAT THIS DUTY HAS NOT BEEN MET BY THOSE WHO EVADED THE DRAFT OR DESERTED FROM THE MILITARY. ALTHOUGH MANY OF THESE PEOPLE ACTED AS A MATTER OF CONSCIENCE, THE FACT REMAINS, HOWEVER, THAT IN ALL BUT A FEW CASES THEIR DUTY TO SERVE THEIR COUNTRY STILL REMAINS.

THE PRESIDENT, IN FURTHERANCE OF OUR NATIONAL COMMITMENT TO JUSTICE AND MERCY, AND IN THE SPIRIT OF RECONCILIATION HAS INSTITUTED THE CLEMENCY PROGRAM WHEREBY RESISTERS MAY BE RELIEVED OF PROSECUTION AND PUNISHMENT. INSTEAD OF PUNISHMENT, DRAFT EVADERS AND MILITARY ABSENTEES ARE GIVEN THE OPPORTUNITY TO FULFILL THEIR OBLIGATIONS BY DOING ALTERNATIVE SERVICE. IT IS ESSENTIAL TO REMEMBER THAT ALTERNATIVE SERVICE IS THE FULFILLMENT OF AN OBLIGATION -- NOT A PUNISHMENT, AND THAT INDIVIDUALS ARE BEING ASKED TO PROMOTE THE NATIONAL HEALTH, SAFETY, OR INTEREST -- NOT FIGHT A WAR.

WHAT CASES WILL BE CONSIDERED BY THE PRESIDENTIAL CLEMENCY BOARD?

THE PCB WILL CONSIDER THE CASES OF PERSONS WHO:

1. HAVE BEEN CONVICTED OF VIOLATING SECTION 12 OR 6 (j) OF MILITARY SELECTIVE SERVICE ACT, OR ANY RULE OR REGULATION PROMULGATED PURSUANT TO THOSE SECTIONS.
2. HAVE RECEIVED PUNITIVE OR UNDESIRABLE DISCHARGES FOR VIOLATIONS OF ARTICLES 85, 86, or 87 OF THE UNIFORM CODE OF MILITARY JUSTICE, OR, AS OF SEPTEMBER 16, 1974, WERE CONFINED FOR SUCH VIOLATIONS.



THE CLEMENCY PROGRAM IS MEANT FOR VIETNAM-ERA OFFENSES, HOW IS "VIETNAM-ERA" DEFINED?

THE PROGRAM COVERS ONLY CERTAIN OFFENSES THAT WERE COMMITTED OR COMMENCED BETWEEN **AUGUST 4, 1964, AND MARCH 28, 1973, INCLUSIVE.** "COMMENCED" IS IMPORTANT TO REMEMBER--IF A MAN DESERTED ON MARCH 28, 1973, HIS CASE COULD STILL BE CONSIDERED BY THE PRESIDENTIAL CLEMENCY BOARD.

WHEN IS THE DEADLINE FOR APPLICATIONS?

THE CORRECT ANSWER IS PRIOR TO JANUARY 31, 1975. THE RIGHT ANSWER IS, HOWEVER, PROBABLY BY JANUARY 31, 1975. THE NEWS MEDIA AND EVEN SOME OF THE PCB STAFF CONTINUE TO SAY "BY" INSTEAD OF "PRIOR TO." THE PCB IS CERTAINLY NOT LEGALLY ESTOPPED FROM REFUSING TO CONSIDER APPLICATIONS RECEIVED ON JANUARY 31, 1975, BUT EQUITY SEEMS TO DEMAND THAT THE PCB CONSIDER APPLICATIONS RECEIVED ON THIS DATE.



WILL AN INDIVIDUAL WHO HAS COMPLETED HIS SENTENCE FOR A  
SELECTIVE SERVICE VIOLATION OR DESERTION BE ELIGIBLE FOR  
A PARDON UNDER THE PROGRAM?

YES, PROVIDED THE OFFENSE WAS COMMITTED BETWEEN AUGUST 4, 1964,  
AND MARCH 28, 1973, INCLUSIVE.

WILL AN INDIVIDUAL WHO HAS COMPLETED HIS SENTENCE FOR A SELECTIVE  
SERVICE VIOLATION OR AN ABSENTEE BE ELIGIBLE FOR A PARDON UNDER  
THE PROGRAM?

YES, PROVIDED THE OFFENSE WAS COMMITTED BETWEEN AUGUST 4, 1964,  
AND MARCH 28, 1973, INCLUSIVE.





WHAT RECOMMENDATIONS CAN THE BOARD MAKE TO THE PRESIDENT?

CIVILIAN:

1. FULL PARDON.
2. PARDON CONDITIONED ON COMPLETION OF ALTERNATIVE SERVICE.
3. COMMUTATION OF SENTENCE WITHOUT PARDON.
4. NO CLEMENCY.

CAN THE PRESIDENT CONDITION THE PARDON?

YES. THE POWER TO PARDON EMBRACES ALL "OFFENSES AGAINST THE UNITED STATES," EXCEPT CASES OF IMPEACHMENT. IT ~~ON~~ INCLUDES THE POWER TO REMIT FINES, PENALTIES, AND FORFEITURES, 5/ AND THE POWER TO PARDON ABSOLUTELY OR CONDITIONALLY: AND INCLUDES THE POWER TO COMMUTE SENTENCES WITHOUT THE RECIPIENT'S CONSENT. 6/ THE POWER ALSO INCLUDES THE RIGHT TO PROCLAIM AMNESTY TO A SPECIFIED CLASS OF INDIVIDUALS.



US V. KLEIN  
80 US 128

"CONDITIONAL PARDON INCLUDED  
IN POWER TO PARDON"

KAVALIN V. WHITE  
44 F. 49

"CONDITION THAT RECIPIENT  
WILL NOT LEAVE THE STATE"

US V. WILSON  
32 US 150

"PARDON MAY BE ABSOLUTE  
OR CONDITIONAL."

MAY A MILITARY APPLICANT WHOSE CASE IS BEING CONSIDERED BY  
EITHER THE PRESIDENTIAL CLEMENCY BOARD OR DEPARTMENT OF DEFENSE  
APPLY SIMULTANEOUSLY TO HIS BRANCH OF THE SERVICE TO HAVE HIS  
DISCHARGE UPGRADED?

LEGALLY, THE ANSWER IS YES. IN ALL PROBABILITY, HOWEVER, THE DISCHARGE REVIEW BOARD WOULD DO NOTHING UNTIL AFTER THE DEPARTMENT OF DEFENSE OR THE PRESIDENT DECIDED THE CASE.

THE REFERRAL LIST THAT EACH PCB ATTORNEY HAS IS AS FOLLOWS:

Commanding Officer  
U.S. Army Adm. Center  
The Adjutant General's Office  
St. Louis, Missouri 63132

Army Discharge Review Board\*  
Room 1E 479, The Pentagon  
Washington, D. C. 20310  
OX5-4682 Statute of Limitations: 15 years from date of discharge

Army Board for Corrections of Military Records  
Room 1E 512, The Pentagon  
Washington, D. C. 20310  
OX7-4254 Statute of Limitations: 3 years within discovery  
of error or injustice--exceptions allowed with  
justification

Air Force Discharge Review Board\*\*  
Commonwealth Building  
1300 Wilson Boulevard, Room 903  
Arlington, Virginia 22209  
OX5-5249 Statute of Limitations: 15 years from date of discharge

Air Force Board for the Correction  
of Military Records  
Room 5C 860, The Pentagon  
Washington, D. C. 20330  
OX5-2359 Statute of Limitations: 3 years within discovery of  
error or injustice--exceptions allowed with justification

Navy Discharge Review Board\*\*\*  
Navy Department, Arlington Annex  
Room G711  
Washington, D.C. 20370  
OX4-1648 Statute of Limitations: 15 years from date of discharge

Coast Guard  
Boards of Review of Discharges & Dismissals  
Coast Guard Headquarters  
Washington, D. C. 20590  
426-1317 Statute of Limitations: 15 years from date of discharge

(see next page)



(Referrals - Continued)

\*Applicants should apply to the Army Discharge Review Board first. If the applicant wants to appeal their decision, he can take his case to the Army Board for Corrections. After 15 years, all cases should go directly to the Army Board of Corrections.

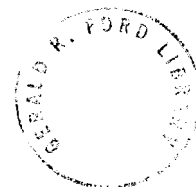
\*\*Any type of administrative, non-punitive (no court martials involved) discharges go to the AF Discharge Review Board. Their decision may be appealed to the AF Corrections Board. Any type of Bad Conduct or Dishonorable Discharge by court martial goes only to the Corrections Board. Any appeal over 15 years from date of discharge also goes directly to the Corrections Board.

\*\*\*This address also applies to Marines.



WILL A PARDON RESTORE A PERSON'S CIVIL RIGHTS?

A PARDON WILL RESTORE ALL FEDERAL CIVIL RIGHTS, INCLUDING THE RIGHT TO VOTE. IT WILL PROBABLY RESTORE MOST IF NOT ALL STATE CIVIL RIGHTS AND WILL BE OF GREAT VALUE IN FINDING EMPLOYMENT AND OBTAINING VARIOUS STATE LICENSES.



WHAT IS THE EFFECT OF A PARDON?

IT DOES NOT MAKE AMENDS FOR THE PAST. IT IS AN ACT OF GRACE WHICH RESTORES TO A MAN THOSE FULL RIGHTS OF CITIZENSHIP LOST AS A RESULT OF CONVICTION. THE MOST RECENT SUPREME COURT DECISION HELD THAT THE PARDON POWER "...DOES NOT CONFER UPON THE PRESIDENT, POWER TO WIPE OUT GUILT...IT IS AN ACT OF GRACE WHICH DOES NOT OBLITERATE THE FINDING OF GUILT.

DOES A PARDON SET ASIDE A CONVICTION OR EXPUNGE A RECORD?

NO. WE FIND NO LEGAL AUTHORITY THAT A PARDON EXPUNGES A RECORD OR SETS ASIDE THE CONVICTION. IN SOME INSTANCES, A PARDON MAY BE LESS DESIRABLE THAN OTHER REMEDIES PROVIDED BY LAW. FOR EXAMPLE, IF AN APPLICANT WAS SENTENCED FOR A DRAFT VIOLATION UNDER THE YOUTH CORRECTION ACT, HE COULD HAVE HIS RECORD EXPUNGED WHEN HE COMPLETES HIS SENTENCE. THAT WOULD NOT BE THE CASE IF HE SEEKS CLEMENCY. A PARDON WILL NOT EXPUNGE HIS RECORD.



WHEN IS A PARDON GRANTED?

IF THE PRESIDENT APPROVES A RECOMMENDATION FOR A PARDON, HE SIGNS A MASTER WARRANT AND SENDS IT TO THE ATTORNEY GENERAL FOR EXECUTION. THE PARDON IS NOT GRANTED UNTIL ALL CONDITIONS ARE FULFILLED, SUCH AS ALTERNATIVE SERVICE.

MUST A PARDON BE ACCEPTED?

A PARDON MAY BE REJECTED BY THE PERSON TO WHOM IT IS TENDERED. A PARDON IS A DEED - A DELIVERY OF WHICH IS ESSENTIAL. IF DELIVERY IS NOT COMPLETE, THERE IS NO ACCEPTANCE.



WHAT FACTORS DO THE BOARD CONSIDER IN DECIDING A CASE?

CIVILIAN:

AGGRAVATING CIRCUMSTANCES

1. Prior criminal convictions.
2. False statement to the Presidential Clemency Board by applicant.
3. Use of force by applicant collaterally to AWOL, desertion, or missing movement.
4. Desertion during combat.
5. Evidence that applicant committed offense for obviously manipulative and selfish reasons.
6. Prior refusal to fulfill alternative service.
7. Violation of Probation or Parole.
8. Multiple AWOL/UA Offenses.
9. Length of AWOL/UA.

MITIGATING CIRCUMSTANCES

1. Lack of sufficient education or ability to understand obligations under the law.
2. Personal and family circumstances either at the time of offense or afterwards.
3. Mental or physical condition.
4. Employment and other activities of service to the public since conviction or military discharge.
5. Service-connected disability, wounds in combat, or decorations for valor in combat.
6. Period of creditable military service.
7. Tours of service in the war zone.
8. Substantial evidence of personal or procedural unfairness.
9. Denial of conscientious objector status on procedural, technical or improper grounds.
10. Evidence that an applicant acted for conscientious, not for manipulative or selfish, reasons.



MITIGATING CIRCUMSTANCES (CONTINUED)

11. Voluntarily submitted himself to authorities.
12. Behavior which reflects mental stress caused by combat.

HOW CAN YOU TELL IF SOMEONE IS A CONSCIENCIOUS OBJECTOR?

WE REVIEW THE FILES. THE APPLICANT'S BACKGROUND AND ANY OTHER DATA HE MAY CARE TO SUBMIT, INCLUDING STATEMENTS FROM PEOPLE WHO KNOW THE APPLICANT. WHAT WE LOOK FOR IS EVIDENCE OF SINCERITY.





DUE PROCESS QUESTIONS:

HAS ANY EFFORT BEEN MADE TO INSURE THE APPLICANT DUE PROCESS OF LAW?

THE RULES AND REGULATIONS OF THE CLEMENCY BOARD ARE PUBLISHED IN THE FEDERAL REGISTER. THE PROCEDURES AND STANDARDS PUBLISHED THERE AND IMPLEMENTED BY THE BOARD ARE EMINENTLY FAIR AND DESIGNED TO GIVE TO EACH AND EVERY APPLICANT AS MUCH DUE PROCESS OF LAW AS POSSIBLE UNDER THE CIRCUMSTANCES.

HOW CAN AN APPLICANT GET THE FACTS OF HIS CASE BEFORE THE BOARD, OR AT LEAST BE ENSURED THAT THEY ARE THE RIGHT FACTS?

WILL APPLICANTS HAVE AN OPPORTUNITY TO REVIEW THEIR FILES?

ALL INFORMATION CONCERNING THE APPLICANT WHICH IS SOUGHT BY THE BOARD FROM GOVERNMENTAL SOURCES WILL BE OPEN FOR INSPECTION BY THE APPLICANT OR HIS REPRESENTATIVE.

ALSO

THE RECORDS AND FILES OF THE APPLICANT WILL BE SUMMARIZED BY A STAFF ATTORNEY AND SENT TO THE APPLICANT FOR AMENDMENT AND CORRECTIONS.



DO YOU SUGGEST TO APPLICANTS THAT THEY CONSULT WITH AN ATTORNEY?

YES, APPLICANTS ARE CURRENTLY BEING REFERRED TO:

Clemency Information Center  
1100 West 42nd Street  
Indianapolis, Indiana 46208  
317/635-8259 (accepts all collect calls)

For California and neighboring states:

Los Angeles County Bar Association Clemency Committee  
606 S. Olive  
Los Angeles, California 90014  
213/624-8571

Or their local Public Defender Service or Legal  
Aid Society



WHAT STANDARDS DO YOU FOLLOW IN DETERMINING ELIGIBILITY AS A CONSCIENTIOUS OBJECTOR?

THE LAWS HAVE CHANGED OVER THE YEARS. WE USE THE MOST RECENT BROAD LANGUAGE OF THE SUPREME COURT AND APPLY IT RETROACTIVELY TO ALL CASES.

Note: The most recent is WELSH V U.S. 398 U.S. 333 (1970). Exempts those who oppose all war for ethical, moral, and religious reasons.

CAN APPLICANT APPEAL FROM A DECISION OF THE BOARD?

YES. THE APPLICANT HAS THIRTY DAYS FROM THE DATE OF MAILING HIS NOTIFICATION OF WHAT ACTION THE BOARD HAS TAKEN.



x

WILL THE CONFIDENTIALITY OF ALL COMMUNICATIONS WITH THE APPLICANT  
BE MAINTAINED?

YES. NO PERSONAL INFORMATION CONCERNING AN APPLICANT WILL BE  
MADE KNOWN TO ANY ORGANIZATION, GOVERNMENTAL AGENCY, OR PRIVATE  
GROUP EXCEPT WHERE THE INFORMATION WILL BE FORWARDED TO THE  
APPROPRIATE AUTHORITIES.

IS THE ACCEPTANCE OF A PARDON AN ADMISSION OF GUILT?

YES.



AN UNCONVICTED DRAFT EVADER CAN RETURN TO THIS  
COUNTRY, DO ALTERNATE SERVICE AND BE LEFT WITHOUT  
A CRIMINAL RECORD. A CONVICTED EVADER, EVEN THOUGH  
HE GETS A PARDON WILL NOT HAVE HIS RECORDS EXPUNGED.  
IS THAT FAIR?

NO, IT IS NOT FAIR FROM THE STANDPOINT OF THE CONVICTED  
EVADER. BUT IT IS AN INEQUITY THAT WE MUST LIVE WITH.



IF A DRAFT VIOLATOR WANTED TO PARTICIPATE IN THE  
CLEMENCY PROGRAM, WHOM WOULD HE CONTACT?

HE WOULD REPORT TO THE UNITED STATES ATTORNEY  
FOR THE DISTRICT IN WHICH HE VIOLATED OR IS ALLEGED  
TO HAVE VIOLATED THE SELECTIVE SERVICE ACT.

WHO MAY APPLY FOR THE PROGRAM?

ANY PERSON UNDER INDICTMENT OR INVESTIGATION WHO  
PRESENTS HIMSELF TO THE UNITED STATES ATTORNEY  
BEFORE JANUARY 31, 1975, AND AGREES TO PERFORM  
ALTERNATIVE SERVICE.



WHAT FACTOR IF ANY, WILL THE US ATTORNEY CONSIDER  
IN REDUCING THE PERIOD OF ALTERNATE SERVICE?

(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.



IS THERE AN APPEAL FROM THE AMOUNT OF ALTERNATE  
SERVICE GIVEN A RETURNEE BY THE U.S. ATTORNEY?

NO. THE DECISION IS MADE PART OF AN AGREEMENT WHICH  
THE RETURNEE CAN ACCEPT OR REJECT.

