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*Clemency*

Tuesday 11/26/74

9:50 Jay said Charles Goodell's general counsel, Larry Baskir called and asked him to go over all the points Jay had concerning the Goodell memorandum. Jay indicated he wouldn't get into it unless you wanted him to work with Baskir.

Jay wants to know if it would be more wise to wait until Stan Ebner and the Pardon Attorney have completed their reviews?

Wait \_\_\_\_\_

Call Baskir \_\_\_\_\_



*Clemency*

Thursday 11/7/74

6:35 Dr. Marrs said Gen. Walt, Father Hessburg and Senator Goodell have all agreed on the concept for the Clemency Board approach to the cases that you and Dr. Marrs discussed and -- all should be very appreciative to young Jim Maye (member of Clemency Board) who helped Dr. Marrs a great deal in getting these folks together. Looks like it's pretty smoothed out.



November 14, 1974

Dear Dean Medearis:

I would like to acknowledge receipt of your most recent letter of October twenty-first concerning a pardon for Mr. Steven Besich.

I understand that Mr. Besich is eligible for the amnesty program, but that he has refused to make application to the Clemency Board. He may, of course, apply for a pardon or reprieve through the Office of the Pardon Attorney at the Department of Justice. Any application for executive clemency which is received by the Pardon Attorney, will be processed in accordance with existing procedures.

It is also Mr. Besich's right to elect to remain in prison until he has completed serving his sentence or is granted a parole.

Sincerely,

Phillip W. Buchen  
Counsel to the President

Charles Medearis, Dean  
Liberal Arts and Sciences  
Elgin Community College  
1700 Spartan Drive  
Elgin, Illinois 60120

PWB:JF:em



Wednesday 10/30/74

9:55 Jay said to tell you twice we have received a letter from this guy -- that's how he's aware there is one guy still in jail.

Could we reply that this is a matter which must be processed thru the Clemency Board?

P.



*Eva* - please get me a copy of our earlier answer, attached



# elgin community college

Community College District 509  
1700 Spartan Drive  
Elgin, Illinois 60120  
Phone: (312) 697-1000

October 21, 1974

Mr. Philip Buchen  
Counsel to the President  
The White House  
Washington, D.C.

Dear Mr. Buchen:

Thank you for your reply to my letter to the President asking for an unconditional pardon for Mr. Steven Bezich.

Mr. Bezich is an imprisoned draft evader. Of the 84 imprisoned draft evaders he alone has refused an amnesty furlough and a transfer to a community treatment center to his home town of Chicago. He is staying in the federal prison at El Reno until he completes his sentence or is granted an unconditional pardon. He has 14 months to go on his sentence. He is resolute and will not yield to ask for clemency as outlined in the Proclamation.

Now I do not know Mr. Bezich and he does not know me, but his situation is one that perturbs me. I have lived fifty-two years in the United States and have seen some bad and many good things done on behalf of the people by their government.

I am disturbed by the inequitable distribution of justice in this case. When I worked in high school in the 1960's many of the young men enlisted immediately after graduation. Three that I knew were killed in Vietnam. Their service was choice based on the beliefs commonly held at the time.

When I came to work for this institution it was obvious that many students were here simply to avoid the draft. Other men like the eligible sons of the mayor of a large city to the east of us were quietly deferred. I understand there was a firm of lawyers in Chicago whose practice was devoted to legal draft evasion.



Mr. Philip Buchen  
Page 2  
October 21, 1974

~~My point simply is that here is one who did not take the path of the apostate~~ but held to his beliefs whatever the consequences and has suffered for it, perhaps justly so, even though there were other methods of achieving evasion without any insuing discomfort or castigation by society.

In 1919 Woodrow Wilson, who is always characterized as a great humanitarian, refused to free Gene Debs because of his resistance to the participation of the United States in World War I. It took a much maligned president, Warren G. Harding, to see that Debs posed no threat to this country and pardoned him.

Mr. Bezich is no threat to the stability of the present government and I feel that President Ford could well emulate President Harding in this case.

I attach two news items from the Chicago Sun-Times for your edification.

Yours truly,

  
Charles Medearis, Dean  
Liberal Arts and Sciences

CM/jer

Enc:



# Loophole for deserters in amnesty proposal

By Austin Scott  
*Washington Post Special*

gram public, but "it was the only thing they could do."

The amnesty program calls

ternative-service civilian job.

Justice Department spokesman John Russell said his

liability to any deserters trying to get jobs.

The Justice Department

Any prison sentence given for other crimes would have to be served before the Presidential



**Bob  
Greene**



**A hollow echo**

***Would Nixon pardon others? 'Never'***

October 7, 1974

Dear Dean Madearis:

Thank you very much for your kind letter of September twentieth, requesting executive clemency for Mr. Steven Bezich. Your thoughts on the overall matter of amnesty are most interesting.

It is my understanding that if Mr. Bezich committed a violation of the Military Selective Service Act, which is covered by the President's Proclamation, that he will be furloughed from prison and allowed to apply to the Clemency Board for executive clemency. Should you discover that he has not been released, provided he falls within the categories established by the Proclamation, please get in touch with the Department of Justice. As a last recourse I would be pleased to assist. You must understand that my statements above are based on the facts as you have presented them to me. The act of evasion must have been committed within the relevant time periods set forth in the Proclamation.

I appreciate your inquiry on this matter.

Most sincerely yours,

Philip W. Buchen  
Counsel to the President

Dean Charles Madearis  
Liberal Arts and Sciences  
Elgin Community College  
1700 Spartan Drive  
Elgin, Illinois 60120

PWB:em





# elgin community college

Community College District 509  
1700 Spartan Drive  
Elgin, Illinois 60120  
Phone: (312) 697-1000

September 20, 1974

PB-1  
President Gerald R. Ford  
The White House  
Washington, D.C. 20000

Dear Mr. President:

I appreciate the courage it took for you to make the amnesty offer. I am a veteran myself and do not hold to the belief in no mercy pontificated by veterans organizations.

I would like to call to your attention a matter wherein I would hope that you would employ the same serene judgement and Christian mercy which has been so evident in the last month in your dealings with others.

It has always been my impression that if you were a person who got into trouble and had lots of money and a good battery of lawyers, you could pettifog most any issue and get off with a light sentence or get off completely. If you are poor and without funds its a different matter.

I have always felt that the only official who completely represented all of the people of the United States was the President and that the common people in their need would turn to him and petition for a redress of grievance.

It is in that sense that I ask that you grant a Presidential pardon to Mr. Steven Bezich, a pardon free and unfettered by any obligation and that his rights be completely restored to him.

Mr. Bezich is at present in the Federal penitentiary at El Reno, Oklahoma serving a three year term for resisting the draft. He did not believe in the war in Viet Nam and volunteered instead to build hospitals in Viet Nam.



President Gerald R. Ford  
Page 2  
September 20, 1974

This promise did not appeal to the Justice Department and Mr. Bezich was sentenced to three years imprisonment by U.S. District Judge Julius J. Hoffman.

I recall in my own time that Lew Ayers was lodged in a stockade in the Second World War as an objector because there was no rule to apply to his case that while he would not serve as a fighting man he would serve as a Medic. He did this later in the war and was decorated for bravery.

Mr. Bezich appears to me to have wanted to perform a similar healing service and was not given the opportunity to do so.

Mr. President, those who have no advocate, look to you for that advocacy; all of us look to you to apply healing to the terrible rift the Viet Nam war brought.

Give Steven Bezich a pardon for an offense that was no crime. Bestow upon him the same compassionate consideration you would expect for yourself or anyone else.

Yours truly,

  
Charles Medearis, Dean  
Liberal Arts and Sciences

CM/jer





# elgin community college

Community College District 509  
1700 Spartan Drive  
Elgin, Illinois 60120

President Gerald R. Ford  
The White House  
Washington, D.C. 20000

THE WHITE HOUSE  
WASHINGTON

Date 11-27-74

TO: Mr. Phil Buchen

FROM: DR. THEODORE C. MARRIS *TCM*

For your signature \_\_\_\_\_

For your coordination \_\_\_\_\_

For your information X

Per our conversation \_\_\_\_\_

Other:

# American Civil Liberties Union Foundation

22 East 40th Street • New York, New York 10016 • (212) 725-1222

## Project on Amnesty

Henry Schwarzschild, Director

November 19, 1974

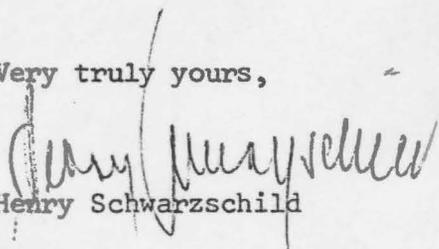
Dr. Theodore C. Marrs  
Special Assistant to the President  
The White House  
Washington, D.C. 20005

Dear Dr. Marrs:

I understand, of course, that your note of November 11 was intended as a courtesy, for all that it surely was a form letter to all those with whom you spoke during the drafting period of the "clemency" program. I, too, am a believer in good manners, but I hold very emphatically that, in the event of a conflict, manners must yield to substance. I cannot, therefore, accept your courteous and routine pap about my having contributed to the President's understanding. The flattery is empty and the record is clear: The President understood nothing at all.

I commend to your attention the introductory paragraph of the memorandum on the "clemency" program that I prepared a month ago. Let me only add that even if one accepts arguendo the political and moral assumptions of the White House with respect to the amnesty issue, one quickly realizes that the drafters of the program -- Messrs. Marsh, Laird, Saxbe, Schlesinger, their associates and their task-forces -- ought to be summarily fired for sheer incompetence. Malevolence, incompetence, and power are a troublesome combination. The country is beginning to become aware of that.

Very truly yours,

  
Henry Schwarzschild

HS:c  
Enc.



Edward J. Ennis, President • Aryeh Neier, Executive Vice President • David Isbell, Harriet Pilpel, George Slaff, Vice Presidents • Winthrop Wadleigh, Treasurer • Norman Dorsen, Osmond R. Fraenkel, Marvin M. Karpatkin, General Counsel  
Melvin L. Wulf, Legal Director • Ben Clark, Foundation Coordinator

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# American Civil Liberties Union Foundation

22 East 40th Street • New York, New York 10016 • (212) 725-1222

## Project on Amnesty

Henry Schwarzschild, Director

### THE CLEMENCY PROGRAM

Summary - Alternative Options - Resources

<u>CONTENTS:</u>	Introduction
	Notes
	I Categories of persons who qualify
	II Organization of the clemency program
	III Limitations and conditions
	IV Caveats and <u>alternative options</u>
	V <u>Counseling and legal resources</u>

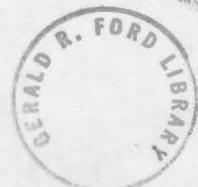
INTRODUCTION The American Civil Liberties Union, through its Project on Amnesty, has been a leading advocate of universal and unconditional amnesty for all those who came into conflict with the draft, the military, and the war during the Vietnam era. We consider the "clemency" (or "earned re-entry") program instituted by President Ford offensive in its moral and political assumptions and outrageous in its implementation. The Ford "clemency" program is worse than no amnesty at all. It is punitive and demeaning. Most of those who fall under the provisions of the "clemency" have better legal options outside the program than within it. Equally as serious is the possibility that the American people may be misled into believing that the "clemency" was a humane and generous act that has ended the victimization of those who refused to participate in the catastrophic war in southeast Asia. The ACLU, together with the war resisters and the rest of the amnesty movement, will persist in its demand for universal and unconditional amnesty. At the same time, we intend to litigate a variety of constitutional and legal issues raised by the program, and we are prepared to furnish legal representation to all affected whose rights and interests within or without the "clemency program" need to be asserted.

NOTES 1. This memorandum is intended to give lawyers who are not specially familiar with draft and military law, as well as counselors and war resisters, a basic outline of the operations of the "clemency" program and of some of its defects, and to indicate the alternative avenues that must be explored if the rights and interests of those affected are to be secured.

2. The memorandum states our best understanding, at the time of writing, of the "clemency" program's functioning and its traps, and the

Edward J. Ennis, President • Aryeh Neier, Executive Vice President • David Isbell, Harriet Pilpel, George Staff, Vice Presidents • Winthrop Wadleigh, Treasurer • Norman Dorsen, Osmond K. Fraenkel, Marvin M. Karpatkin, General Counsel  
Melvin L. Wulf, Legal Director • Ben Clark, Foundation Coordinator

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alternative options available. Many administrative and legal issues remain unclear; some of the aspects of the program may change; we may discover errors in our analysis of it; other counseling and legal resources will become available.

3. Enquiries about individual problems under the "clemency" program should be directed to the counseling centers listed in part V of this memorandum. Counselors and attorneys are invited to discuss legal issues and to seek the legal assistance of the American Civil Liberties Union through the offices also listed in part V.

#### I. CATEGORIES OF PERSONS WHO QUALIFY

The following categories of persons qualify for the clemency program:

(A) Persons convicted by federal courts of violating the selective service laws by refusing induction and the like;

(B) Persons convicted by military courts of desertion, absence without leave, or missing a military movement;

(C) Veterans who hold certain kinds of less-than-honorable discharge because of desertion, absence without leave, or missing a military movement;

(D) Persons who have (or may have) violated the selective service laws but have not been convicted, whether or not they are fugitives; and

(E) Persons who have (or may have) violated the military laws against desertion, absence without leave, or missing a military movement but have not been convicted, whether or not they are fugitives.

#### II ORGANIZATION OF THE CLEMENCY PROGRAM

The clemency program is generally organized as follows:

##### 1. Presidential Clemency Board (PCB)

The jurisdiction of the PCB is limited to persons in categories (A), (B), and (C). Its function is confined to: (a) making recommendations to the President as to whether clemency should be granted to persons in categories (A) and (B); (b) making recommendations for the

issuance of a "Clemency Discharge" for persons in categories (B) and (C); and (c) imposing in its discretion the condition of up to two years of "alternate service" for such recommendations.

2. Department of Justice (DOJ)

The jurisdiction of the DOJ is limited to persons in category (D). Such persons may surrender to United States Attorneys and sign a waiver of certain constitutional rights and a pledge to do up to two years of "alternate service." That pledge contains an implied "reaffirmation of allegiance." Upon the satisfactory completion of the "alternate service," the government will dismiss the indictment or waive prosecution for the draft violation.

3. Department of Defense (DOD)

The jurisdiction of DOD is limited to persons in category (E). Such persons may surrender to any military installation, whence they will be transported to Fort Benjamin Harrison, Indiana, where they will be processed in about one day, issued an "Undesirable Discharge" upon signing a "reaffirmation of allegiance" and a pledge to do up to two years of "alternate service." Upon the satisfactory completion of the "alternate service," they may exchange the "Undesirable Discharge" for a "Clemency Discharge."

4. Selective Service System (SSS)

The SSS administers the "alternate service" program (which is technically called "Reconciliation Service"). Persons assigned by the PCB, DOJ or DOD to "alternate service" are under the guidelines and supervision of the SSS, which has to certify the satisfactory completion of the terms of "alternate service" before the other effects of the clemency are granted.

### III LIMITATIONS AND CONDITIONS

1. In order to qualify for the clemency program, the violations of law that underlie the criminal charges for which "clemency" is extended must have occurred between August 4, 1964 and March 28, 1973.

2. The deadline for submission to the program is January 31, 1975.

3. Persons who submit to the DOD must sign a "reaffirmation of allegiance" and a pledge to do the assigned period of "alternate service." They will also be asked to fill out a form on which they explain their unauthorized absence, which is self-incriminating in effect. Persons who submit to the DOJ must sign the pledge to do the "alternate service," and this pledge includes an implied "reaffirmation of allegiance." They must also sign a waiver of the constitutional rights to due process of law and to a speedy trial and the guarantees against double jeopardy and self-incrimination. It is not presently known what sort of documents will have to be signed by those who submit to the PCB.



4. The normal period of "alternate service" assigned under the program is 24 months. "Mitigating factors" that may reduce the term include such considerations as combat duty, personal hardship, and ignorance of the law, but emphatically appear not to include sincere anti-war sentiments. Under DOD jurisdiction, "mitigating factors" are evaluated and the term of "alternate service" is set by an interservice board of four colonel-level officers at Fort Benjamin Harrison, Indiana. Under DOJ jurisdiction, this task is performed by the United States Attorney on behalf of the Attorney General. Under PCB jurisdiction, the task is performed by the PCB.

5. Persons who otherwise qualify for the clemency program but who have also been charged with or convicted of crimes other than the draft violations or military offenses alluded to above may not qualify for the clemency.

6. Persons who may not be admitted to the United States under the immigration laws (e.g. aliens as well as possibly former U.S. citizens who are now naturalized elsewhere and left the U.S. because of the draft) are not qualified to participate in the clemency program.

#### IV CAVEATS AND ALTERNATIVE OPTIONS

1. Persons in categories (A) and (B), i.e. those convicted under the selective service laws or under the Uniform Code of Military Justice, should be aware that any executive clemency which the PCB might recommend after some period of "alternate service" may neither expunge their criminal record nor relieve them fully of federal or state civil disabilities. The executive clemency will probably not be a full pardon. It is therefore difficult to see what advantage they would gain from submitting to the program.

2. Persons in category (C), i.e. those with certain kinds of less-than-honorable discharge, should be aware that the "Clemency Discharge" is in our view marginally worse than an "Undesirable Discharge" (it is more stigmatizing; it absolutely disqualifies from veterans' benefits; it is very likely unreviewable), and that "alternate service" may be required as a condition for the mere recommendation for the issuance of such a "Clemency Discharge."

3. Persons in category (D), i.e. those who may have violated the selective service laws but have not been convicted, should have their draft file examined with the greatest care by a specialist in draft law before they submit to the program. Many men who think they have violated the law did not actually do so; the violations of others were never formally noticed by the draft system; among those whom the draft system considered delinquent and referred to the Justice Department for prosecution, nine out of ten were never indicted by the federal authorities because of violations of laws and regulations on the part of the selective service system that would have made a conviction impossible; of those indicted, as many as two-thirds



had their indictments dismissed by the courts or were acquitted. The likelihood is substantial, therefore, that persons who think they are in category (D) may have legal defenses to the draft-violation charges that can be successfully advanced by their attorney and that would make their submission to the clemency program, with its punitive conditions, unnecessary.

4. Persons in category (D) who fail satisfactorily to complete their "alternate service" under the clemency program become subject to prosecution for their draft violation.

5. Persons in category (E) should have their military personnel file checked carefully by an attorney or counselor familiar with military and draft law. There may be defenses to the desertion or absence charges arising from such matters as unlawful induction, hardship, medical, dependency, or in-service conscientious-objection claims which would overcome the charges of violation of the Uniform Code of Military Justice.

6. For persons in category (E), it should also be borne in mind that the Army, at several military installations around the country, continues to give discharges to persons who have been absent without leave for long periods by a relatively simple "Chapter 10" administrative proceeding. This takes about two weeks (during which the "deserter" remains in an Army "personnel confinement facility") and results in an "Undesirable Discharge" but none of the other complications of the clemency program.

7. For persons in category (E), it is extremely important to keep in mind also the "deserters' loophole": The pledge to do "alternate service" seems to be unenforceable against people in this category unless the government can show that the pledge was made in bad faith at the time it was signed. The cloud hanging over the "deserters' loophole" is the possibility that the military or civilian authorities might try to prosecute "deserters" who take advantage of the loophole for having fraudulently obtained the "Undesirable Discharge" that was issued in exchange for the pledge to do the "alternate service."

8. Citizenship problems: Persons who are not admissible to the United States under the immigration laws (e.g. either aliens subject to the draft or American citizens who left the country in order to avoid military service and became naturalized in another country) may be excluded from the clemency program. The "reaffirmation of allegiance" to the United States that is required of many of those who submit to the program might also jeopardize their new, foreign citizenship. War-resister exiles in Canada who have gained "landed immigrant" status there may be jeopardizing their legal residence in Canada for similar reasons.



V RESOURCES

1. Information about the clemency program, generally

American Civil Liberties Union, Project on Amnesty (ACLU)  
22 East 40th Street, New York, N.Y. 10016  
(212) 725-1222  
Henry Schwarzschild

United Church of Christ, Center for Social Action (UCC)  
110 Maryland Avenue, N.E., Washington, D.C. 20002  
(202) 543-1517  
Barry Lynn

National Interreligious Service Board for Conscientious Objectors (NISBCO)  
550 Washington Bldg., 15th and New York Avenue, Washington, D.C. 20005  
(202) 393-4868  
Duane Shank

National Council for Universal and Unconditional Amnesty (NCUUA)  
339 Lafayette Street, New York, N.Y. 10012  
(212) 228-1500

2. Counseling centers

(a) United States

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

CCCO (Central Committee for Conscientious Objectors) National Office  
2016 Walnut Street, Philadelphia, Pa. 19103  
(215) 568-7971  
Robert Seeley

CCCO Southern Office  
Suite 303, 848 Peachtree Street, Atlanta, Ga. 30308  
(404) 881-6666

CCCO Midwestern Office  
407 S. Dearborn Street, Chicago, Ill. 60605  
(312) 427-3350

CCCO Western Office  
1251 Second Avenue, San Francisco, Cal. 94122  
(415) 441-3700

CCCO Rocky Mountain Military Project  
1764 Gilpin Street, Denver, Colo. 80218  
(303) 321-3717



NCUUA Amnesty Action Information Center  
339 Lafayette Street, New York, N.Y. 10012  
(212) 228-1500

NCUUA Amnesty Action Information Center  
5899 West Pico Blvd., Los Angeles, Cal.  
(213) WE 7-5833

NCUUA Amnesty Action Information Center  
1764 Gilpin Street, Denver, Colo. 80218  
(303) 321-3717

NCUUA Amnesty Action  
1384 Fairview Road, Atlanta, Ga. 30309 (P.O.B. 7477)  
(404) 373-5833

ACLU Project on Amnesty  
22 East 40th Street, New York, N.Y. 10016  
(212) 725-1222  
Ed Oppenheimer (lawyers and counselors only)

(b) Canada

War Resistor Information Program  
567 Broadway, Winnipeg, Manitoba R3C OW2  
800-665-8885 (toll-free in Canada)  
(204) 774-9323  
Jerry Olsen, Tim Maloney

American Refugee Service  
P.O.B. 5, Westmount Station, Montreal 215, Quebec  
(514) 488-8960  
Gary Davis

Toronto Anti-Draft Programme  
185 Sheridan Avenue, #5, Toronto, Ont.  
(416) 532-0724  
Cadie McGovern

Vancouver Committee to Aid American War Objectors  
P.O.B. 34231, Station D, Vancouver, B.C.  
(604) 980-4910  
Larry Martin

(c) Europe

Union of American Exiles in Britain  
2 Turquand Street, London SE 17 1L2  
(01) 701-5104  
Fritz Eufaw



Zero (journal of American war resisters in France)  
46, rue de Vaugirard, Paris 6e  
David Swartz

American Exile Project (KFUK-KFUM Riksforbund)  
Birger Jarlsgatan 33, 111 45 Stockholm C  
(08) 20 67 29

3. Legal resources

ACLU - Legal Director: Melvin L. Wulf  
Clemency matters, esp. draft and military law: Ed Oppenheimer  
22 East 40th Street, New York, N.Y. 10016  
(212) 725-1222

ACLU - Military Rights Project: David Addlestone (esp. military law  
and discharge problems)  
Suite 604, 1346 Connecticut Avenue, Washington, D.C. 20036  
(202) 659-1138

ACLU (with Indiana Civil Liberties Union) (esp. military law and  
matters arising from "deserter" processing at Fort  
Benjamin Harrison, Ind.)  
Prof. Edward Sherman, Indiana University School of Law, Bloomington, Ind.  
(812) 337-4140  
Gerald Ortman, ACLU/ICLU at Fort Benjamin Harrison  
(317) 542-2125

CCCO - Staff counsel: John Landau (esp. draft law and conscientious  
objection issues)  
2016 Walnut Street, Philadelphia, Pa. 19103  
(215) 568-7971

Public Law Education Institute (Selective Service Law Reporter and  
Military Law Reporter) (esp. draft and military law and  
lawyers' listing)  
1346 Connecticut Avenue, Washington, D.C. 20036  
(202) 296-7590  
Tom Alder, John Schulz

October 18, 1974



*Clemency*

December 4, 1974

MEMORANDUM FOR:

JACK MARSH  
TED MARRS

FROM:

Philip Buchen *Phil*

Kindly review the attached memo from Jay French and give me your comments and suggestions.



] December 3, 1974

**FOR:** Philip W. Buchen  
**FROM:** Jay French  
**SUBJECT:** President's earned re-entry program  
for evaders/deserters

On January 31st the President's earned return program for evaders/deserters will conclude. Anyone apprehended after that date is subject to prosecution. I would like to ask whether we are prepared to prosecute these offenders and if so, whether the American public is prepared for these prosecutions.

I have been told, fourthhand, that the FBI is collecting telephone numbers of persons calling the designated amnesty information numbers and that these numbers will be used to trace evaders and deserters. I wonder if this is a good thing, or whether it is an abuse of good faith. If it is true, what reaction, if any, would there be if this became public knowledge, particularly in light of recent disclosures about FBI tactics.

If the FBI is prepared to arrest several hundred evaders/deserters during February 1975, and if, numerous legal groups are preparing to defend these evaders/deserters, I wonder if we are not about to enter another period of divisiveness over these trials.

I would like to suggest that we look ahead now and answer some of these questions. I personally believe that we must prosecute these cases after January 31st in order to be true to our own stated values. And, I also believe that we need to make it abundantly clear now, to the public, before the program is over, just what our intentions are. If the public believes that we have gone overboard to forewarn evaders/deserters of the consequences of apprehension after January 31st, then I believe that the public will accept these prosecutions as fair.



MEMORANDUM

THE WHITE HOUSE

WASHINGTON

December 11, 1974

FOR: Rick Tropp, Special Counsel  
Presidential Clemency Board

THROUGH: Phillip Buchen *P.W.B.*

FROM: Jay French

SUBJECT: Rules and Regulations for Presidential  
Clemency Board

You have invited the White House Counsel's office to comment on the Presidential Clemency Board's rules and regulations which were proposed in the Federal Register, Vol. 39, No. 230, at pages 41351-41354. Set forth below, by Section Number, are these comments.

Section 201.3

1. Paragraph III in Appendix B, (see Federal Register at page 41352) states that an applicant must inform the Board when a representative is authorized to act for the applicant. It is not clear how the Board will know that an initial filing made by a representative is authorized by the applicant.
2. The President set January 31, 1975, as the deadline for making application for executive clemency. The indefiniteness of not knowing who an authorized representative is, as well as not knowing when a particular oral or written communication demonstrates an intention to request consideration, may cause problems with respect to this deadline.

Section 201.4

3. It is unclear how a staff member can make a determination of probable jurisdiction based upon an initial filing which may only contain a brief statement demonstrating an intent to request consideration.



4. The word applicant, defined in § 201.2, is improperly used in subparagraphs (a), (b), and (c) of this section.
5. The word "determination" in the last sentence of subparagraph (a) should correspond with the word "decision" in subparagraph (b).
6. Appendix A is not listed in the Rules and Regulations.

Section 201.5

7. It is uncertain whether an applicant whose initial filing is accepted as containing adequate information under subparagraph (c) will receive information about the Program and a statement describing the Board's procedure as set forth in subparagraph (a).

Section 201.6

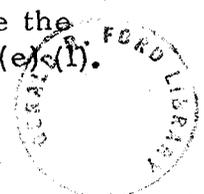
8. In some sections throughout these rules and regulations, as well as in this section, the words "applicant" and "representative" are not consistently used. For example, compare the use of these words in the last sentence of subparagraph (a) with the first sentence of subparagraph (b).
9. In subparagraph (d) the Board will not necessarily know when an applicant has received the initial summary.

Section 201.8

10. It is perhaps unnecessary to inform applicants in these regulations that they should remain available for further consultation with the Board for a period not to exceed one hour.

Section 201.10

11. I do not believe the Board has the authority to reduce the term of alternate service as stated in subparagraph (e)(1).



Section 201.12

12. It appears that the privacy of an individual may not be protected, if he contacts the Board and subsequently learns that it does not have jurisdiction of his case, because the definition of "applicant" excludes such individuals.
13. The last sentence in subparagraph (b) is unnecessary in light of § 201.5 (c).

Section 201.13

14. Subparagraph (b) contemplates filing "in person" although previous sections indicate that mailing applications is acceptable. This is confusing.
15. Perhaps a subparagraph could be added to this section, stating that written authorization must be filed with the Board by the applicant before an individual can represent that applicant.

Section 201.14

16. Determination of the Board's jurisdiction is mentioned in three sections: § 201.4 (a), § 201.5 (a), § 201.14 (a). These sections might be consolidated.

Appendix B

17. In paragraph I, what is a "serious" crime?
18. Have special procedures been established which do away with the January 31, 1975 filing deadline, for incarcerated persons?

Section 202.4

19. With regard to subparagraph (b) (8), it is likely that judicial decisions will vary with each jurisdiction thus making it difficult to equally apply this mitigating circumstance in all cases.



# rules and regulations

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

## Title 2—Clemency

### CHAPTER II—PRESIDENTIAL CLEMENCY BOARD

#### PART 201—ADMINISTRATIVE PROCEDURES

#### PART 202—SUBSTANTIVE STANDARDS OF THE PRESIDENTIAL CLEMENCY BOARD

##### Procedures and Standards

In order to accommodate new regulations being issued by the Presidential Clemency Board, the heading of Title 2 of the Code of Federal Regulations is changed to read: Title 2—Clemency. In addition, a new Chapter II, Presidential Clemency Board, is added, reading as set forth below.

This notice of rulemaking sets forth in Part 201 the administrative procedures and in Part 202 the substantive standards to be used by the Presidential Clemency Board (hereinafter "the Board") in accepting and processing applications from individuals subject to the jurisdiction of the Board and in the determination of its recommendations to the President concerning those individuals.

The Presidential Clemency Board has made every reasonable effort to assure to both applicants and those individuals who may be subject to the jurisdiction of any of the three parts of the Presidential clemency program every procedural consideration. Applicants will be sent notice concerning the procedures and standards used by the Board; their privacy will be respected in every way possible within the bounds of the law. All information concerning the applicant which is sought by the Board from governmental sources will be open to inspection by the applicant or his representative. The records and files concerning the applicant will be summarized by an attorney on the staff of the Board, and sent to the applicant for his amendment and correction. A sure process for the appeal of adverse determinations has been established. In the Board's discretion, the applicant or his representative may be allowed to present an oral statement to the Board prior to its determination of his case. Each applicant will have an opportunity to petition for reconsideration of the decision to recommend, grant, or deny executive clemency in his case.

Individuals who may be subject to the jurisdiction of the Department of Justice or the Departments of Defense or Transportation will be assisted in confidence in determining their status with respect to the clemency program.

Finally, it cannot be too often stated that an applicant may apply to the Clemency Board without risk. His application will be held in confidence, and he may withdraw his application at any time.

It is the intent of the Presidential Clemency Board to provide notice to applicants, and to maximize public certainty and predictability, about the substantive standards which the Board will apply in recommending to the President proposed dispositions of applications for executive clemency under Proclamation 4313 (published in the FEDERAL REGISTER on September 17, 1974, 39 FR 33293). It is further the intent of the Board to ensure equity and consistency in the way that similarly situated applicants are treated.

The Presidential Clemency Board therefore herein publishes the substantive standards to which it has committed itself in the implementation of the clemency program. Applicants for executive clemency under the program are invited to submit evidence suggesting that one or more of the mitigating circumstances listed below apply to their case, or that one or more of the aggravating circumstances listed do not apply to their case. Applicants are also invited to submit letters from third parties containing such evidence, or to ask other people to write directly to the Board on their behalf.

It is contemplated that the Board will weigh the factors listed below in each individual case. It is not contemplated, however, that any one of these factors will necessarily be dispositive of a particular case, and the Board reserves the option of considering other factors in mitigation not listed herein to be dispositive of a particular case.

Actions taken and determinations made by the Presidential Clemency Board and members of the Board's staff prior to the issuance of these regulations have been in substantial compliance with the provisions thereof.

Because of the short duration of the Presidential clemency program, and for other good cause appearing, it is hereby determined that publication of this chapter in accordance with normal rulemaking procedure is impracticable and that good cause exists for making these regulations effective in less than thirty (30) days. Notwithstanding the abbreviated rulemaking procedure, however, comments and views regarding the proposed chapter are solicited, and may be filed to be received no later than 5 p.m. d.s.t., December 12, 1974. Comments

should be submitted in five (5) copies, and directed to:

Office of the General Counsel  
Presidential Clemency Board  
The White House  
Washington, D.C. 20500

(Executive Order 11803, 39 FR 33297)

In consideration of the foregoing, this chapter will become effective immediately.

Issued in Washington, D.C., on November 25, 1974.

CHARLES E. GOODELL,  
Chairman,  
Presidential Clemency Board.

#### 1. Part 201 is added to read as follows:

- Sec.
- 201.1 Purpose and scope.
  - 201.2 General definitions.
  - 201.3 Initial filing.
  - 201.4 Application form.
  - 201.5 Assignment of Action Attorney and case number, and determination of jurisdiction.
  - 201.6 Initial summary.
  - 201.7 Final summary.
  - 201.8 Consideration before the Board.
  - 201.9 Recommendations to the President.
  - 201.10 Reconsideration.
  - 201.11 Referral to appropriate agencies.
  - 201.12 Confidentiality of communications.
  - 201.13 Representation before the Board.
  - 201.14 Requests for information about the clemency program.

Appendix A.

Appendix B.

AUTHORITY: E.O. 11803, 39 FR 33297.

#### § 201.1 Purpose and scope.

This subpart contains the regulations of the Presidential Clemency Board, created pursuant to Executive Order 11803 (39 FR 33297) concerning the procedures by which the Board will accept and process applications from individuals who avail themselves of the opportunity to come within its jurisdiction. Certain other matters are also treated, such as the assistance to be given to individuals requesting determinations of jurisdiction, or requesting information respecting those parts of the Presidential Clemency Program which are administered by the Department of Defense and the Department of Justice under Presidential Proclamation 4313 (39 FR 33293).

#### § 201.2 General definitions.

"Action attorney" means an attorney on the staff of the Board who is assigned an applicant's case and is thereafter responsible for all information-gathering and communications concerning that

applicant's case from the applicant's initial filing until final disposition has been made by the Board.

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

"Board" means the Presidential Clemency Board as created by Executive Order 11803, or any successor agencies.

#### § 201.3 Initial filing.

In order to comply with the requirements of Executive Order 11803 as to timely application for consideration by the Board, an individual must make an initial filing prior to January 31, 1975. The Board will consider sufficient as an initial filing any written communication received from an individual or his representative which requests consideration of the individual's specific case or which demonstrates an intention to request consideration. Oral initial filings will be considered sufficient if reduced to writing and received by the Board within thirty (30) calendar days.

#### § 201.4 Application form.

(a) Upon receipt of an initial filing a member of the Board's staff will make a determination of probable jurisdiction. Applicants who are clearly beyond the Board's jurisdiction will be so notified in writing. An applicant who questions this adverse determination of probable jurisdiction should promptly write the General Counsel, Presidential Clemency Board, The White House, Washington, D.C. 20500, stating his reasons for questioning the determination. The General Counsel of the Board shall make the final determination of jurisdiction.

(b) An applicant who has been notified that probable jurisdiction does not lie in his case will be considered as having made a timely filing should the final decision be that the Board has jurisdiction over his case.

(c) Applicants who are within the probable jurisdiction of the Board will be sent by mail:

(1) An application form (see appendix "A");

(2) Information about the Presidential Clemency program and instructions for the preparation of the application form (see appendix "B");

(3) A statement describing the Board's procedures and method of determining cases.

(d) The applicant will be urged to return the completed application form to the Board as soon as possible. In the absence of extenuating circumstances, completed application forms must be received by the Board within thirty (30) calendar days of receipt.

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

(a) Upon receipt of all necessary information, the applicant's case will be assigned to an Action Attorney, who will make a preliminary determination of the Board's jurisdiction. If the Action At-

torney determines that the Board has jurisdiction over the applicant, a file for the applicant's case will be opened and a case number for that file will be assigned. With the opening of the file, the Action Attorney shall request from all appropriate government agencies the relevant records and files pertaining to the applicant's case before the Board.

(b) In normal cases, the relevant records and files will include for civilian cases the applicant's files from the Selective Service System and the Bureau of Prisons, and for military cases the applicant's military personnel records, military clemency folder, and record of court martial. Applicants may request that the Board consider other pertinent files, but such applicant-requested files will not be made available to the applicant and his representative as of right.

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

(d) If the Action Attorney determines that probable jurisdiction does not exist, he will promptly notify the applicant in writing, stating the reasons therefor.

(e) An applicant who questions this adverse determination of jurisdiction should write the General Counsel of the Board in accordance with the provisions of § 201.4(a).

#### § 201.6 Initial summary.

(a) Upon receipt of the necessary records and files, the Action Attorney will prepare an initial summary of the applicant's case. The files, records, and any additional sources used in preparing the initial summary will be noted thereupon; no material not so noted will be used in its preparation. The initial summary shall include the name and business telephone number of the Action Attorney who prepared it, and who may be contacted by the applicant or his representative.

(b) The initial summary shall be sent by certified mail to the applicant. The summary will be accompanied by an instruction sheet describing the method by which the summary was prepared, and by a copy of the guidelines that have been adopted by the Board for the determination of cases. Applicants will be requested to review the initial summary for accuracy and completeness, and advised of their right to submit additional sworn or unsworn material. Such additional material may be submitted in any length, but should be accompanied by a summary of not more than three (3) single-spaced, typewritten, letter-sized pages in length. If a summary of suitable length is not submitted with the additional material, the Action Attorney will prepare such a summary.

(c) At any time after the mailing to the applicant of his initial summary, the applicant's complete Board file, and the files from which the summary was prepared, may be examined at the offices of the Board by the applicant, his representative, or by any member of the Board. An applicant or his representative may submit evidence of inaccurate, in-

complete, or misleading information in the complete Board file.

(d) An applicant's case will be considered ready for consideration by the Board not earlier than twenty (20) days after the initial summary has been received by the applicant. Material which amends or supplements the applicant's initial summary must therefore be received by the Board within twenty (20) days to insure that it will be considered, unless within that period the applicant requests and receives permission for an extension. Permission for late filing shall be liberally granted, if the request is received prior to Board action.

#### § 201.7 Final summary.

(a) Upon receipt of the applicant's response to the initial summary, the Action Attorney will note such amendments, supplements, or corrections on the initial summary as are indicated by the applicant.

(b) The final summary shall then consist of the initial summary with appropriate amendments and additions, and the summary of the materials submitted by the applicant as described in § 201.6 (b).

#### § 201.8 Consideration before the Board.

(a) At a regularly scheduled meeting of the Presidential Clemency Board, a quorum of at least five (5) members being present, the Board will consider the applicant's case.

(b) The Action Attorney will present to the Board, a brief statement of the final summary of the applicant's case. The Action Attorney will then stand ready to answer from the complete file any questions from the members of the Board concerning the applicant's case.

(c) At the Board's discretion, it may permit an applicant or his representative to present before the Board an oral statement, not to exceed ten (10) minutes in length. Neither applicant nor his representative may be present when the Board begins deliberations, but should remain available for further consultation immediately thereafter for a period not to exceed one hour.

(d) After due deliberation, the Board will decide upon its recommendation to the President concerning the applicant's case, stating the reasons for its recommendation.

#### § 201.9 Recommendations to the President.

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

(b) Following action by the President, the Board will send notice of such action in writing to all persons whose names were submitted to the President. Persons not receiving executive clemency will be so notified.

<sup>1</sup> Filed as part of the original document.

**§ 201.10 Reconsideration.**

(a) An applicant may petition the Board for reconsideration of his grant or denial of executive clemency, or of the terms and conditions thereof.

(b) Such petitions for reconsideration, including any supplementary material, must be received by the Board within thirty (30) days of the mailing of the notification in § 201.9(b).

(c) At a regularly scheduled Board meeting, a quorum being present, the Board will consider the applicant's petition for reconsideration.

(d) In appropriate cases, the Board may permit an applicant or his representative to present before the Board an oral statement not to exceed fifteen (15) minutes in length.

(e) After due deliberation, the Board may either:

(1) As to any person granted executive clemency, let stand or mitigate the terms and conditions upon which executive clemency was granted;

(2) As to any person denied executive clemency, recommend to the President that he grant executive clemency in accordance with such terms and conditions as may be appropriate; or

(3) As to any person denied executive clemency, again not recommend the applicant for executive clemency.

**§ 201.11 Referral to appropriate agencies.**

After the expiration of the period allowed for petitions for reconsideration, the Chairman of the Board shall forward for further action to the Secretaries of the Army, Navy, and Air Force, the Secretary of the Department of Transportation, the Director of the Selective Service System, and the Attorney General, as appropriate, the President's determination as to each recipient of executive clemency.

**§ 201.12 Confidentiality of communications.**

(a) The Board has determined that it will take all steps possible to protect the privacy of applicants and potential applicants to the Presidential clemency program. No personal information concerning an applicant or potential applicant and related to the Presidential clemency program will be made known to any agency, organization, or individual, whether public or private, unless such disclosure is necessary for the normal and proper functioning of the Presidential Clemency Board. However, information which reveals the existence of a violation of law (other than an offense subject to the Presidential clemency program) will of necessity be forwarded to the appropriate authorities.

(b) In order to have his case considered by the Board, an applicant need submit only information sufficient for a determination of jurisdiction, and for the retrieval of necessary official records and files. The application form will therefore require the applicant's name; date of birth; selective

service number; military service and service number, if applicable; information concerning the draft evasion offenses or absence-related military offenses and the disposition thereof; and the mailing address of either the applicant or his representative. If the applicant submits such information as part of his initial filing, the completion of the application form itself is not necessary.

**§ 201.13 Representation before the Board.**

(a) Although an applicant may bring his case before the Board without a representative or legal counsel, each applicant is entitled to representation and will be encouraged to seek legal counsel experienced in military or selective service law. Upon request, Board staff will attempt to refer an applicant to a skilled volunteer representative.

(b) An applicant who does not wish to file his application in person may have his representative do so on his behalf.

**§ 201.14 Requests for information about the clemency program.**

(a) Upon receipt by the Board of an oral or written request for information or consideration concerning an individual who is clearly beyond the jurisdiction of the Board, a member of the Board's staff shall inform the individual:

(1) That jurisdiction does not lie;

(2) Whether jurisdiction may lie within the Presidential clemency program, and if so, with which agency;

(3) That in the event the individual prefers not to contact personally such other agency that an Action Attorney will obtain from such other agency information concerning the individual's status with respect to the Presidential clemency program, and provide to the individual that information.

(b) The Action Attorney shall submit to the Executive Secretariat of the Presidential Clemency Board a summary of the communication with, and information provided to, such individuals.

**APPENDIX B**

**INSTRUCTIONS FOR APPLICATION FOR CLEMENCY**

On September 16, 1974 the President announced a program of clemency. Depending on your case, you may apply to the Presidential Clemency Board, the Department of Justice, or the Department of Defense.

You may be eligible for clemency by the Presidential Clemency Board if you have been convicted of a draft evasion offense such as failure to register or register on time; failure to keep the local board informed of current address; failure to report for or submit to pre-induction or induction examination; failure to report for or submit to or complete service, during the period from August 4, 1964 to March 28, 1973; or if you have received an undesirable, bad conduct, or dishonorable discharge for desertion, absence without leave, or missing movement, and for offenses directly related, between August 4, 1964 to March 28, 1973.

If you are now absent from military service or have a charge against you for a Selective Service violation and have not been convicted or received a discharge, you may still be eligible for clemency under another part of the President's program. If you have any questions, please contact the Board and we will try to answer your questions.

If you believe that you are eligible to be considered by the Presidential Clemency Board but are not sure, you should apply to the Board. If it turns out that you are not eligible for consideration by the Board, you may possibly qualify under another part of the clemency program. You do not have to identify your current location. We will then be able to notify you of the proper agency to contact. If you are appealing a conviction or a military discharge you may continue your appeal, and still apply to the Board at the same time.

I. The Board will not give its files to any other federal agency. It will keep any information you provide in strictest confidence, except evidence of a serious crime which is not covered in the Presidential Clemency program.

II. Although you may apply to the Board without attorney or any other representative if you wish, we encourage you to obtain the help of legal counsel. If you do not have a counsel but desire one, we will be glad to refer you to a lawyers' organization which will help you find one. These organizations will help you get legal assistance even if you cannot afford to pay.

III. To apply to the Board, you need only supply the information necessary to find your file from other departments. If you do not wish to file your application personally, you may select a representative of your own choice to do it for you, but you must tell us that he is authorized. The Board will maintain its own file on your case and that file will be available for examination by you or your own attorney.

IV. You are encouraged to submit evidence which you feel helps your case, and to submit letters from other people on your behalf. You may submit evidence in order to correct inaccurate, incomplete, or misleading information to the Board's file.

V. A personal appearance by you before the Board will not be necessary.

If you have any questions, please call or write the Presidential Clemency Board, The White House, Washington, D.C. 20500, (202-456-6476). If application is made by a representative on your behalf, it is not necessary that your home address and telephone number be included. Your representative should indicate his capacity (attorney, friend, etc.) and give us his address and telephone number.

Application for people not in custody should be completed and mailed to the Board no later than midnight, January 31, 1975. Special procedures will be established for persons incarcerated whether or not they have been released on furlough.

**2. Part 202 is added to read as follows:**

- Sec.
- 202.1 Purpose and scope.
- 202.2 Board decision on whether or not to recommend that the President grant executive clemency.
- 202.3 Aggravating circumstances.
- 202.4 Mitigating circumstances.
- 202.5 Calculation of length of alternative service.

**AUTHORITY: E. O. 11803, 39 FR 33297.**

**§ 202.1 Purpose and scope.**

This part articulates the standards which the Presidential Clemency Board will employ in deciding whether to recommend that the President grant executive clemency to a particular applicant, and in then deciding whether that grant of clemency should be conditional, and, if so, upon what specified period of alternative service.

§ 202.2 Board decision on whether or not to recommend that the President grant executive clemency.

(a) The first decision which the Board will reach, with respect to an application before it, is whether or not it will recommend to the President that the applicant be granted executive clemency. In reaching that decision, the Board will take notice of the presence of any of the aggravating circumstances listed in § 202.3, and will further take notice of whether such aggravating circumstances are balanced by the presence of any of the mitigating circumstances listed in § 202.4.

(b) Unless there are aggravating circumstances not balanced by mitigating circumstances, the Board will recommend that the President grant executive clemency to each applicant.

§ 202.3 Aggravating circumstances.

(a) Presence of any of the aggravating circumstances listed herein either will disqualify an individual for executive clemency or may be considered by the Board as cause for recommending to the President executive clemency conditioned upon a length of alternative service exceeding the applicant's "baseline period of alternative service," as determined under § 202.5.

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

- (1) Prior adult criminal convictions.
- (2) False statement by applicant to the Presidential Clemency Board.
- (3) Use of force by applicant collaterally to AWOL, desertion, missing movement, or civilian draft evasion offense.
- (4) Desertion during combat.
- (5) Evidence that applicant committed the offense for obviously manipulative and selfish reasons.
- (6) Prior refusal to fulfill alternative service.
- (7) Prior violation of probation or parole requirements.

§ 202.4 Mitigating circumstances.

(a) Presence of any of the mitigating circumstances listed herein will be considered by the Board as cause for recommending that the President grant executive clemency to a particular applicant, and will in exceptional cases be further considered as cause for recommending clemency conditioned upon a period of alternative service less than the applicant's "baseline period of alternative service," as determined under § 202.5.

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

- (1) Applicant's lack of sufficient education or ability to understand obligations, or remedies available, under the law.
- (2) Personal and family hardship either at the time of the offense or if the applicant were to perform alternative service.
- (3) Mental or physical illness or condition, either at the time of the offense or currently.
- (4) Employment or volunteer 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) Tours of service in the war zone.

(7) Substantial evidence of personal or procedural unfairness in treatment of applicant.

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

(9) Evidence that an applicant acted in conscience, and not for manipulative or selfish reasons.

(10) Voluntary submission to authorities by applicant.

§ 202.5 Calculation of length of alternative service.

(a) Having reached a decision to recommend that the President grant executive clemency to a particular applicant, the Board will then decide whether clemency should be conditioned upon a specified period of alternative service and, if so, what length that period should be.

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

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

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

(4) That starting point will be further reduced by the amount of time served on probation or parole, provided that a prescribed period of alternative service has been satisfactorily completed.

(5) The remainder of those three subtractions will be the "baseline period of alternative service" applicable to a particular case before the Board: *Provided*, That the baseline period of alternative service shall not exceed a judge's sentence to imprisonment in any case: *And provided further*, That the baseline period of alternative service shall be, notwithstanding the remainder of the calculation above, not less than a minimum of three (3) months.

(6) In exceptional cases in which mitigating circumstances are present, the Board may consider such mitigating circumstances as cause for recommending clemency conditioned upon a period of alternative service less than an applicant's baseline period of alternative service.

(7) In cases in which aggravating circumstances are present and are not, in the Board's judgment, balanced by mitigating circumstances, the Board may consider such aggravating circumstances as cause for recommending clemency conditioned upon a period of alternative service exceeding, either by three (3) additional months or by six (6) additional

months, the applicant's baseline period of alternative service.

[FR Doc.74-27863 Filed 11-26-74;8:45 am]

## Title 7—Agriculture

### CHAPTER VII—AGRICULTURAL STABILIZATION AND CONSERVATION SERVICE (AGRICULTURAL ADJUSTMENT), DEPARTMENT OF AGRICULTURE

#### SUBCHAPTER B—FARM MARKETING QUOTAS AND ACREAGE ALLOTMENTS

##### PART 722—COTTON

Subpart—1975 Crop of Extra Long Staple Cotton; Acreage Allotments and Marketing Quotas

#### STATE RESERVES AND COUNTY ALLOTMENTS

Section 722.562 is issued pursuant to the Agricultural Adjustment Act of 1938, as amended (52 Stat. 31, as amended; 7 U.S.C. 1281 et seq.). This section establishes the State reserves and allocation thereof among uses for the 1975 crop of extra long staple cotton. It also establishes the county allotments. Such determinations were made initially by the respective State committees and are hereby approved and made effective by the Administrator, ASCS, pursuant to delegated authority (35 FR 19798, 36 FR 6907, 37 FR 624, 3845, 22008).

Notice that the Secretary was preparing to establish State and county allotments was published in the FEDERAL REGISTER on July 17, 1974 (39 FR 26160) in accordance with 5 U.S.C. 553. The views and recommendations received in response to such notice have been duly considered.

In order that farmers may be informed as soon as possible of 1975 farm allotments so that they may make plans accordingly, it is essential that this section be made effective as soon as possible. Accordingly, it is hereby found and determined that compliance with the 30-day effective date requirement of 5 U.S.C. 553 is impracticable and contrary to the public interest, and § 722.562 shall be effective November 22, 1974. The material previously appearing in this section under centerhead "1974 Crop of Extra Long Staple Cotton; Acreage Allotments and Marketing Quotas" remains in full force and effect as to the crop to which it was applicable.

Section 722.562 is revised to read as follows:

§ 722.562 State reserves and county allotments for the 1975 crop of extra long staple cotton.

(a) (1) *State reserves*. The State reserves for each State shall be established and allocated among uses for the 1975 crop of extra long staple cotton pursuant to § 722.508.

(2) It is hereby determined that no State reserve is required for trends, abnormal conditions, inequities, and hardships or small farms. The amount of the State reserve held in each State and the amount of allotment in the State productivity pool resulting from productivity adjustments under § 722.529 (c) and (d) is available for inspection at each State ASCS office.

(b) *County allotments*. County allotments are established for the 1975 crop of extra long staple cotton in accordance

Clamoney B2

THE WHITE HOUSE  
WASHINGTON

Dec. 16, 1974

To: Jay

From: Phil Buchen *P.W.B.*

Please respond.



THE WHITE HOUSE

WASHINGTON

December 4, 1974

MEMORANDUM FOR:

ROY ASH

FROM:

TED MARRS *Jul*

The unique role of Selective Service specifically designated by the President - in regard to follow-up on Presidential Clemency Board decisions does need to be continued.

This appears to force Alternative 1.

Would appreciate your comments.

Enclosure

CC: John Marsh  
Phil Buchen  
Jay French



THE WHITE HOUSE

WASHINGTON

December 13, 1974

MEMORANDUM FOR:

PHIL BUCHEN

THROUGH:

JACK MARSH *jm*

FROM:

TED MARRS *ted*

Jay French and Rick Tropp and I have discussed several issues connected with the Clemency Board. I think those issues and my first thoughts on them warrant your consideration:

- Since October there <sup>have</sup> been a number of exchanges between the Clemency Board's legal staff and the staffs of two or more Senators in regard to hearings on the Presidential Clemency Board before the Subcommittee on Administrative Procedures. I had not previously known of this or that the Board's staff had recommended to Senator Kennedy's staff the postponing of hearings proposed in October as being "of no value at that time."
- Also discussed was the possibility of providing questions to certain Senators participating in the hearings. Unless you recommend differently, I do not intend to participate in supplying such questions.
- Another subject was a recurrence of the allegations that FBI is using telephone records of evaders inquiries about clemency to locate and indict such people. There are allegedly eight such cases - four in Boston. As on the previous occasion when this was raised I contacted Mr. Silberman. On the first occasion he checked with FBI and advised me that he had been assured that this was not going on. My impression at

*Dates reviewed  
18th & 19th  
of December*



that time was that he did not think such a procedure was appropriate. Tonight when I contacted him again he said he would check again with the FBI and let me hear in the morning as soon as possible. All three of these attorneys advise me there is nothing illegal in FBI obtaining information of this type. They variously describe it as "shabby" and "not in accord with the President's concept." If there is further action indicated, please advise. I will let you know what Silberman learns in checking with FBI.

- . Another point that came up was the possibility of asking Justice to refrain from prosecution for a few months after termination of the clemency program. It is my inclination to leave prosecutory discretion to the better qualified people who customarily exercise same. Furthermore, I believe the staff and Presidential decision as to Clemency Board scope - while not satisfying the more distant parts of the spectrum - should stand on its record and not on manipulation.
- . A related point made was that publicity should be given to the fact that, after termination of the program, evaders could be prosecuted. I do not disagree but must point out that the evaders who have called me seem to understand this. Also, the publications by various organizations which claim to relate well with evaders have given this point emphasis. The material released from the White House and repeatedly stressed in Clemency Board, TV appearances, press comments and mailings have contributed to distributing this information. Of course there can be no limit as to the amount of communication necessary to get the word to everyone in the universe with which we are dealing and to insure total understanding. The attitude of some of the people we are trying to reach and the bias of some of the "helping" organizations are negative communication factors.
- . A point which probably warrants your consideration is the issue of whether Federal Attorneys should or should not give Miranda type warnings when interviewing evaders. I am not qualified to phrase this question properly to Justice but will be glad to follow your guidance.



- . Finally, subject to your concurrence, I shall ask Justice, Defense, Selective Service and The Clemency Board to provide statements, back up notes and anticipated Q's and A's for our information. Is it appropriate for the White House to try to coordinate these? One awkwardness that Tropp anticipates is that Goodell might be "pinned down" and have to express his personal views on Justice procedures. On the other hand, Tropp is convinced Defense and Clemency Board procedures will look good in the anticipated hearing. I have confidence in the intelligence on which his predictions are based.



THE WHITE HOUSE

WASHINGTON

December 13, 1974

MEMORANDUM FOR:

PHIL BUCHEN

THROUGH:

JACK MARSH *jm*

FROM:

TED MARRS *ted*

Jay French and Rick Tropp and I have discussed several issues connected with the Clemency Board. I think those issues and my first thoughts on them warrant your consideration:

- Since October there <sup>have</sup> ~~has~~ been a number of exchanges between the Clemency Board's legal staff and the staffs of two or more Senators in regard to hearings on the Presidential Clemency Board before the Subcommittee on Administrative Procedures. I had not previously known of this or that the Board's staff had recommended to Senator Kennedy's staff the postponing of hearings proposed in October as being "of no value at that time." *✓ Dates reviewed 18th & 19th of December*
- Also discussed was the possibility of providing questions to certain Senators participating in the hearings. Unless you recommend differently, I do not intend to participate in supplying such questions.
- Another subject was a recurrence of the allegations that FBI is using telephone records of evaders inquiries about clemency to locate and indict such people. There are allegedly eight such cases - four in Boston. As on the previous occasion when this was raised I contacted Mr. Silberman. On the first occasion he checked with FBI and advised me that he had been assured that this was not going on. My impression at



that time was that he did not think such a procedure was appropriate. Tonight when I contacted him again he said he would check again with the FBI and let me hear in the morning as soon as possible. All three of these attorneys advise me there is nothing illegal in FBI obtaining information of this type. They variously describe it as "shabby" and "not in accord with the President's concept." If there is further action indicated, please advise. I will let you know what Silberman learns in checking with FBI.

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For Jay F.

P.

Sent 12/19/24

118  
CLEMENCY/AMNESTY LAW  
COORDINATING OFFICE  
1346 CONNECTICUT AVENUE, N.W.  
WASHINGTON, D. C. 20036  
(202) 872-1640, 872-1641

800-424-8573

December 17, 1974

Philip W. Buchen, Esq.  
Counsel to the President  
The White House  
Washington, D. C.

Dear Mr. Buchen:

Thank you for your December 10, 1974, letter. I have given careful consideration to your comments and would like to take this opportunity to respond to them.

Attached to this letter is an exchange of correspondence between Mr. Lawrence Baskir, the General Counsel of the Presidential Clemency Board, and myself. In my letter to Mr. Baskir, I carefully explained CALCO's motivation for taking the position it did with respect to the Presidential Clemency Board. No purpose would be served in repeating that explanation in this letter.

One point must, however, be clearly set forth. As noted in your letter, it is seldom possible, or even desirable, for one group to prevail completely on a single major political issue in a democracy. Those of us who have been most actively involved in CALCO's efforts, have recognized from the outset that compromise is an essential ingredient of the American political process. Thus, despite the fact that the programs announced by President Ford on September 16, 1974, fell far short of the unconditional amnesty championed by most of us, we nonetheless decided to give those programs a fair chance.

It is, unfortunately, now clear that we were much too optimistic in our expectations with respect to the clemency programs. The programs, in our view, have not



Philip W. Buchen, Esq.  
December 17, 1974  
Page Two

been successful as evidenced by the fact that so few eligible individuals have applied to participate in them. Indeed, these clemency programs have been the greatest failures of any similar programs in American history.

However, it is not too late to restructure the programs in such a manner as to achieve the commendable goal of national reconciliation enunciated by President Ford. While you correctly note that some of the defects pointed out in our letter to the President have since been substantially rectified, other defects still remain unremedied.

Two of these defects deserve special mention. First, as pointed out in my letter to Mr. Baskir, the clemency discharge is totally unacceptable since it offers nothing to the individual except the life-long stigma of being branded as a war-time coward or traitor. So long as the clemency discharge is the only relief offered to a large number of potentially eligible individuals, the programs will remain a failure.

Second, the manner in which the Department of Justice is administering its clemency program is unacceptable. Specifically, the Attorney General's "prospective guideline number ten" requires the institution of new Vietnam era Selective Service Act prosecutions after January 31, 1975. Many of these new prosecutions would never have been undertaken were it not for the clemency programs. It is a mystery how such a prosecutive policy can be viewed as consistent with the President's avowed goal of reconciliation and ending the divisiveness of the Vietnam war. This problem can be resolved in one of two ways. First, prosecutive guideline number ten could be withdrawn and instructions given that all Vietnam era Selective Service prosecutions must be commenced by a specific date.\*/ Second, if CALCO

\*/ Obviously, the clemency programs would have to be extended for a period beyond the date specified in the present Executive Order to allow persons subject to such new prosecutions to decide whether taking their chances with litigation is preferable to doing alternate service.



Philip W. Buchen, Esq.

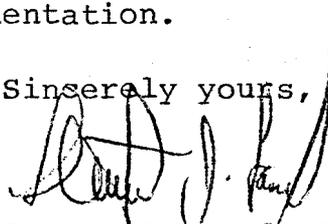
December 17, 1974

Page Three

or other groups could be provided with a completely accurate and final list of individuals subject to prosecution for Selective Service Act violations during the relevant time period, we would be in a position authoritatively to advise individuals with respect to their eligibility for one or more of the clemency programs.

We are deeply concerned about the fate of individuals who came into conflict with the law as a result of their opposition to the Vietnam war. We share President Ford's goal of ending the divisiveness caused by that unfortunate conflict. Accordingly, we stand willing to meet with you at your convenience to discuss a restructuring of the clemency programs to render them both meaningful in design and fair in implementation.

Sincerely yours,



Stuart J. Land, Chairperson  
CALCO Steering Committee

Attachments

cc: Lawrence Baskir, Esq.



PRESIDENTIAL CLEMENCY BOARD

THE WHITE HOUSE  
WASHINGTON, D.C. 20500

December 12, 1974

Stuart J. Land, Esq.  
1229 Nineteenth Street, NW.  
Washington, D.C. 20036

Dear Stu:

I've been mulling over your letter of November 27 'til now. I also found the experience with CALCO disappointing, but for different reasons than those you have.

First, I should say that the Board staff used the 800 number only informally for two or three days following our very first meeting. We never used it again, not even following our conversation on the stairs. I took your statement then at face value, but still rechecked with you thereafter. Since you reaffirmed your original position, we never used the number.

As for the Board's and the staff's supposed unwillingness to cooperate, I can only say that I think the record is to the contrary. Four of the five issues CALCO raised were formally and publicly addressed two days after CALCO publicly "withdrew its support," and I told Henry and Ed and you even before that of the forthcoming announcements. That hardly justifies CALCO's charges of lack of cooperation.

As for the Clemency Discharge, I can only say that the Board just this week begins its consideration of military cases. While I can't predict what it will recommend, there is no question that the Board recognizes the problem. Even so, you well know that the Board's ability to clarify this issue is not exclusive, and that the DOD has a strong voice in the matter.

More than anything, I find it incomprehensible that CALCO could turn its back on the very real legal needs of the 800 citizens who have already applied to the Board and who deserve the practical benefits of their constitutional right to counsel. For CALCO, with



Stuart J. Land, Esq.

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its ready legal resources, to deny help to these individuals is not compatible with my view of a lawyer's professional responsibility. A person may not be denied his right to counsel because his views are unpopular. I see no justification in denying a person legal representation because the government's views are unpopular. If anything, the defects you see in the program make it more essential that you provide the best possible advice to those who have asked us to help them find lawyers. That was the only non-negotiable demand I made on CALCO, and it was not made for our benefit.

Sincerely,



Lawrence M. Baskir  
General Counsel



STUART J. LAND  
1929 NINETEENTH STREET, N. W.  
WASHINGTON, D. C. 20036

December 13, 1974

Lawrence M. Baskir, Esq.  
General Counsel  
Presidential Clemency Review Board  
Old Executive Office Building  
Washington, D. C. 20500

Dear Larry:

In your letter to me dated December 12, 1974, you take the position that CALCO's decision to withdraw its offer of cooperation from the Presidential Clemency Board was somehow incompatible with your views of a lawyer's professional responsibility. This statement is disturbing not only because it completely misapprehends what professional responsibility requires in the present situation, but also because it seriously distorts CALCO's decision.

Without rehashing old history, I would simply like to note that when we put together the entity called "CALCO" we were acting enthusiastically and with faith and trust that the Government intended to promulgate a meaningful clemency program which was fair in its implementation. However, after carefully reviewing the clemency programs, and familiarizing ourselves with some of the intricacies of military and selective service law, we quickly became aware of the unstructured and unfair nature of the programs as they then stood. In addition, we were soon informed by representatives of the Board that neither the Administrative Procedure Act nor minimum standards of procedural due process applied to the Board's deliberations.



Accordingly, we were confronted with a very difficult dilemma. On the one hand, we were concerned that, regardless of our views of the merits of the programs, individuals potentially eligible for one or more of the programs receive proper legal assistance and representation. On the other hand, it was also clear that, faced with such grievously flawed clemency programs, it would be impossible to generate sufficient enthusiasm to attract lawyers to volunteer their time to assist in this effort.\*/ Furthermore, many of us felt that CALCO and its members were being used to give the programs a legitimacy and aura of legal process which they in no respect deserved. As we said in our letter to the President, we were simply unwilling to grace what we viewed to be a "roll of the dice" with the appearance and dignity of legal process.

For all of these reasons it was decided that by continuing to cooperate with the Board, we were in effect giving our imprimatur to programs which suffered such fundamental flaws in design and implementation so as to preclude effective legal counseling and representation.

We recognize that you, Bob Knisely and others at the Board have cooperated with us in trying to formulate a mutually acceptable set of procedures for the adjudication of cases by the Board. We also recognize that some of our discussions bore fruit in the nature of certain procedural and substantive standards which are presently being used by the Board in processing cases. Despite these commendable steps forward, one crucial defect remains unremedied: the clemency discharge. While the clemency discharge is an essentially unknown

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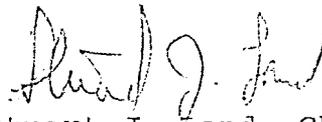
\*/ One can hardly expect lawyers to respond enthusiastically to a clemency program which has been repudiated by most of its potential applicants.



quantity, it would brand the holder, in the eyes of many, as a war time coward or traitor. It is difficult to envision any set of circumstances which would result in our recommending to an individual that he spend up to two years of his life doing alternate service in order to be so stigmatized.

While, to date, this has been a disappointing experience for all of us, hopefully, the final chapter has yet to be written.

Sincerely yours,



Stuart J. Land, Chairperson  
CALCO Steering Committee



PRESIDENTIAL CLEMENCY BOARD  
THE WHITE HOUSE

WASHINGTON

December 20, 1974

ACTION

MEMORANDUM FOR THE PRESIDENT

FROM: CHARLES E. GOODELL  
*Charles E. Goodell*

SUBJECT: Nature of the Clemency to be Granted  
Former Servicemen

The Presidential Clemency Board unanimously recommends that the particulars of the clemency to be granted in the military cases under your Clemency Proclamation be as follows:

- 1) A full and complete pardon;
- 2) A Clemency Discharge
- 3) An automatic review by appropriate military authorities of the service record of each individual to determine whether an Honorable Discharge or General Discharge should be awarded, such review to be made without consideration of the acts for which your pardon is granted.

In each case, such action will be conditioned upon the satisfactory completion of a period of alternate service, where appropriate.

- 4) In exceptional cases of merit, the immediate grant of an Honorable Discharge or General Discharge in addition to the pardon.

Discussion

Under the terms of the Proclamation, you have granted clemency in the form of pardons to those civilians convicted of draft-evasion offenses. The Board unanimously recommends that pardons be granted as well for the acts of unauthorized absence, desertion, or missing movement committed by former servicemen. Such pardons may, of course, be conditioned upon the satisfactory completion of an appropriate period of alternate service.



Because former servicemen applying for clemency have an additional disability in the form of a discharge under less than honorable conditions, the Proclamation states that a Clemency Discharge is to be substituted for the original discharge characterization. Such a Clemency Discharge does not, however, alter the bars to entitlement to veterans benefits which may exist as a result of the original discharge.

Under existing authority, each military department has procedures to review and upgrade discharges shown to be unjust, improper, or improvident. The Board unanimously believes that the grant of a Presidential pardon for the act which occasioned the less than honorable discharge is sufficient cause to require the services to review the grounds for the original discharge. The Board believes that this review properly should be undertaken without regard to the act for which you have granted the pardon. Since each former serviceman has already submitted an application for clemency, the Board believes it should not be necessary to require an additional application to be made to the services for this review to take place.

The Board has in its review of military cases, found that some individuals have performed well and faithfully their military duties prior to their offense. Many served courageously in Vietnam. Some were awarded decorations for valor in combat. Often they suffered severe psychological injuries from their experiences, and these led to the commission of the military offense for which they were discharged under other than honorable circumstances.

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

We recommend that pursuant to your authority as Commander in Chief and consistent with existing statutory authority, you should order the immediate issuance of an Honorable Discharge or General Discharge in these special cases. Such further action is not precluded by the terms of the Proclamation and is entirely consistent with the spirit of your act. Full respect of regular military procedures will be preserved since the services will then determine in each case whether the final discharge should be Honorable or General. The Board has



indicated in the recommendations it has forwarded to you which individuals should be granted this additional aspect of clemency.

The Board is engaged in consultation with the Department of Defense to work out appropriate procedures for the implementation of these recommendations.

Approve \_\_\_\_\_ Disapprove \_\_\_\_\_



PCB DISPOSITION DATA

<u>Announced Civilian</u>	<u>All Civilian</u>	<u>Military</u>	
N/A	N/A	5	General or Honorable Discharges
8	18	5	Pardons
3	11	21	1 - 3 months AS
5	8	16	4-6 months AS
0	5	9	7-9 months AS
2	6	12	10-12 months AS
0	0	2	over 12 months AS
0	1	0	commutation only
0	1	4	No clemency
<b>18</b>	<b>50</b>	<b>74</b>	<b>Total dispositions</b>
	<b>7</b>	<b>4</b>	<b>Tabled Cases</b>
	<b>57</b>	<b>78</b>	<b>Cases Reviewed</b>
6.1 mo.	6.2 mo.	6.9 mo.	Average AS for those with AS

Date of Preparation: 12/17/74



