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NATIONAL SELECTIVE SERVICE APPEAL BOARD

Washington, D.C. 20435

Frank De Balogh, Chairman  
Julius Belso, Member  
Guadalupe Hinckle, Member

6 August 1986

Hon. David Waller, Senior Associate Counsel  
Old Executive Office Building, Room 103  
THE WHITE HOUSE  
Washington D.C. 20500

Re: **STATUS ON  
LEGAL GUIDANCE**

Dear Mr. Waller:

The National Appeal Board, Selective Service System, earlier this year requested legal counsel from your office regarding certain questions about the Board's functions, authority and status. The matter was referred by Mr. Garrick to the Department of Justice. You have presumably since then received the legal opinion of the General Counsel of the System issued on June 2, 1986 on these questions.

The enclosed is a copy of the Board's response to the report and a copy of the Board's letter to the Department of Justice requesting its further assistance.

Should you require additional information, please feel free to contact me.

Most Cordially,

A handwritten signature in cursive script that reads "Frank De Balogh".

**FRANK DE BALOGH**  
Chairman

FDEB:sa

Dist:

Board Members:  
Hon. Julius Belso  
Hon. Guadalupe Hinckle  
File



DEPARTMENT OF ENERGY  
WASHINGTON, D.C. 20585

Assistant Secretary for  
International Affairs and  
Energy Emergencies

August 19, 1986

Diana Holland:

I received the attached information and thought you  
might be interested in seeing it.

David



**COPY**

**NATIONAL SELECTIVE SERVICE APPEAL BOARD**

Washington, D.C. 20435

Frank De Balogh, Chairman  
Julius Belso, Member  
Guadalupe Hinckle, Member

6 August 1986

Hon. Samuel A. Alito, Jr.  
Deputy Assistant Attorney General  
Office of Legal Counsel  
U.S. Department of Justice  
Washington D.C 20530

Re: **LEGAL ADVICE FOR  
NATIONAL APPEAL BOARD**

Dear Mr. Alito:

As you may recall, the National Appeal Board, Selective Service System, earlier this year requested legal counsel from the White House which was referred to your office. Since that time and at your request the General Counsel of the System, Dr. Henry Williams, has issued and sent to you a report, dated 2 June 1986, which presents the System's legal opinion on the questions raised by the Board.

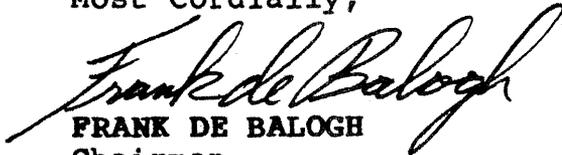
After careful study of the report, the Board has unanimously concluded that a number of issues and questions remain in dispute. An unbiased, Department of Justice legal opinion is essential if the independence, effectiveness and integrity of the selective service appeal process and board at the Presidential level are to be safeguarded during any future national emergency.

CONTINUED NEXT PAGE

Letter to Department of Justice, dtd 6 August 1986, p2.

The Board would greatly appreciate the further assistance of your office in that regard. (See attachments) Should you so require, members of the Board are prepared to meet with your staff in Washington D.C. to elaborate on the issues and questions in dispute.

Most Cordially,



FRANK DE BALOGH

Chairman

FDEB:sa

Dist:

Board Members:

Hon. Julius Belso

Hon. Guadalupe Hinckle

Director, Selective Service

General Counsel, Selective Service

Senior Associate Counsel, White House

Director, Presidential Boards and

Commissions, White House

File

Board letter to Department of Justice, dtd 6 August 1986.

ATTACHMENT A

**ISSUES IN DISPUTE RELATING TO NATIONAL SELECTIVE SERVICE  
APPEAL BOARD FUNCTIONS AND AUTHORITY**

1. Does the Chairman of the Board currently have the independent authority to call a meeting of the Board at government expense to consider issues that the Board feels pertinent to its current preparedness planning, training, logistical coordination and future operations in the event of reinstatement of the military draft?

2. Does the Board currently have the authority to request reasonable logistical support from the Selective Service System in connection with items noted in Question #1?

3. The 1982 Executive Order states in par. 1605.6(e):

"The National Board shall in all respects be independent of the Director of Selective Service, except that the Director of Selective Service shall provide for the payment of the compensation and expenses of the members of the National Board, shall furnish that board and its panels necessary personnel, suitable office space, necessary services and facilities."

Is the Board an independent agency? If it is not, what legal authority and functions does the Director of Selective Service have over the operation of the Board?

4. The Board views certain "services" as essential to its preparedness to carry out its mission when/if the military draft is reinstated. Its previously stated position remains as follows:

"The Board feels that, at the very least, a mobilization plan to include logistical and other requirements estimates be prepared. The Selective Service has been asked by the Board to prepare such a plan for Board review. (See Attachment) Furthermore, that certain questions about the proposed operation of the Board be subjected to analysis (e.g. workload estimates by type of case; expected duration of Board meetings in Washington given alternate workload scenarios; etc.) as deemed fit by the Board. The Board feels that it has significant planning and training preparedness functions related to its future operation which must be addressed on a continuing basis prior to any mobilization."

The Director has not agreed to provide these services requested previously by the Board. (Attachment B) Requested training of

**ISSUES IN DISPUTE RELATING TO NATIONAL SELECTIVE SERVICE  
APPEAL BOARD FUNCTIONS AND AUTHORITY (CONTINUED)**

Board members has also not been provided by the Director.  
(Attachment C)

Does the Board have the independent authority to determine today by itself its own requirements for services such as the above and others which are necessary for it to be able to carry out its "classifying" function in the event of mobilization?

5. If the Director refuses to provide such services in peacetime or during mobilization to the satisfaction of the Board, what legal options does the Board have other than to appeal to the President? To whom in the White House should such an appeal to the President be directed to?

6. When the Board was initially appointed, compensation for its members was prescribed as part of Selective Service regulations. The Service initially refused to compensate Board members saying they were not eligible. Subsequently, it was determined (see Williams report) that the Board was correct and not the Service in its interpretation of the regulations. The Board was given GS15 status and paid but only in June 1986 after the Board requested a legal opinion from the White House. However, the Director since the appointment of the Board changed the regulations making the Board uncompensated effective mid-June 1986. This was done under protest of the Board. Its Chairman was never briefed in correspondence from the Director about the Chairman's right of appeal to the President which exists regarding any proposed Selective Service regulation change related to the Board that he does not agree with.

Can the Board now request changes to the Selective Service regulations as these apply to the Board and its operation?

7. The Board feels that the Service has not provided it with the services necessary for carrying out sound preparedness and mobilization planning for Board operations.

Is the Board authorized to formally request the Director to include resources for such services into the agency's next annual budgetary request to Congress?

END OF QUESTIONS



## NATIONAL SELECTIVE SERVICE APPEAL BOARD

Washington, D.C. 20435

Frank De Balogh, Chairman  
Julius Belso, Member  
Guadalupe Hinckle, Member

**COPY**

23 February 1986

Colonel James De Wire, U.S. Army  
Chief of Staff, Selective Service System  
Washington D.C. 20435

**RE: MOBILIZATION PLAN**

Dear Colonel De Wire:

Thank you for your recent letter which indicated that certain parts of a mobilization plan related to the National Appeal Board have been completed. The proposed organization manning structure looks fine. As I mentioned in our most recent telephone conversation there are a number of additional subjects that I would like to have the plan address. I would appreciate if your staff would prepare plans/estimates for those based on their professional judgement. These are identified in the attachment.

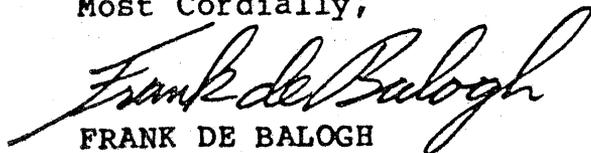
On a related matter, the Board would like access to any documentation (any written records) dealing with operations of previous Board during such periods as the Vietnam and Korean Wars or such peace-time periods when the draft was in being. Please provide the Board with a listing of such reference materials found in the records of the Selective Service or, to your knowledge, in possession of other government agencies or depositories. Given that the Board has not been in operation for almost a decade such historical information would be very valuable for this Board (or any future Board) in its contingency planning.

Continued ....

Letter to Col. De Wire, dtd 23 Feb 1986, page 2.

Thank you for your expert assistance.

Most Cordially,

A handwritten signature in cursive script that reads "Frank De Balogh". The signature is written in dark ink and is positioned above the printed name.

FRANK DE BALOGH  
Chairman

FDEB:sa

Dist:

Board Members:

Hon. Julius Belso

Hon. Guadalupe Hinckle

File

## ATTACHMENT

### ADDITIONAL SUBJECTS FOR INCLUSION IN BOARD MOBILIZATION PLAN

The following list is divided into two parts: (1) pre-M Day 1 planning; and, (2) post-M Day 1 planning. Subjects in (1) should be developed NOW whereas those in (2) may be developed after the military draft has been reinstated by Congress.

This list assumes that relevant functions and operational procedures of the Board as described in current Selective Service regulations will be included as appropriate. The subjects in this list are in addition to those items found in current regulations.

#### PART 1 PLAN REQUIREMENTS

##### 1.0 APPEAL CASE LOAD ESTIMATE.

This should include the following quantitative estimates:

\* NUMBER OF APPEALS FORWARDED TO THE NATIONAL BOARD DURING M+1 THROUGH M+180 DAYS BY:

# TYPE OF CASE (E.G., C.O., RELIGIOUS, ETC.)

# NUMBER OF CASES BY TYPE BY INDIVIDUAL MONTH STARTING FROM MONTH 1 THROUGH MONTH 6 AFTER MOBILIZATION

The above estimates should be based on alternative scenarios that call for drafting varied numbers of persons for military service based on current Selective Service plans. Two case load estimates should be prepared. One for the "most likely" and one for the "worst case" draft level scenarios found in current plans.

\* AVERAGE CASE HEARING TIME (MINUTES) REQUIRED BY THE APPEAL BOARD SITTING IN SESSION IN WASHINGTON D.C. BY TYPE OF CASE;

\* NUMBER OF DAYS BOARD MEMBERS MUST BE IN WASHINGTON D.C. HEARING APPEALS BY INDIVIDUAL MONTH STARTING FROM MONTH 1 THROUGH MONTH 6 AFTER MOBILIZATION BASED ON THE ABOVE CASE LOAD ESTIMATES.

This should consist of two estimates. One for "most likely" and one for "worst case" scenarios.

##### 2.0 STAFFING REQUIREMENTS ESTIMATE AND MANNING SCHEDULE.

Based on the above workload estimates and the current manning levels proposed for the Board by the Selective Service, a schedule for Board staffing by month should be established. The current manning estimate should be confirmed or altered based on the workload estimates derived from par. 1.0.

##### 3.0 MOBILIZATION PLAN OUTLINE.

The outline (table of contents) of the proposed mobilization plan for

ATTACHMENT (CONT)

ADDITIONAL SUBJECTS FOR INCLUSION IN BOARD MOBILIZATION PLAN

the National Board should be developed. The estimates developed in this part (above) should be included and updated on the same basis as the mobilization plan for National Headquarters.

PART 2 PLAN REQUIREMENTS

The following list of subjects - although not comprehensive or exhaustive - should be included in the mobilization plan outline referred to above. They should be developed in detail immediately after the military draft is resumed. These items are:

- \* PROCEDURE FOR OBTAINING FOR LEGAL COUNSEL SUPPORT TO THE BOARD;
- \* INFORMATION SYSTEMS SUPPORT REQUIREMENTS:
  - Case Management and Case Recordskeeping;
  - Word Processing
- \* POSITION DESCRIPTIONS FOR BOARD STAFF;
- \* PROCEDURES FOR CASE INFORMATION SAFEGUARDING AND RECORD KEEPING;
- \* PROCEDURES FOR HANDLING OF CLASSIFIED OR SENSITIVE INFORMATION;
- \* BOARD PROGRAM BUDGET PLANNING PROCESS;
- \* CASE PROCESSING QUALITY CONTROL;
- \* BOARD MEMBER AND STAFF TRAINING REQUIREMENTS;
- \* MEDIA RELATIONS GUIDELINES;
- \* SECURITY.

END OF LIST



# Selective Service System

National Headquarters / Washington, D.C. 20435

OP:HWW:sac

February 24, 1986

Mr. Frank G. De Balogh, Jr.  
Chairman, National Appeal Board  
Selective Service System  
227 South Del Mar  
San Gabriel, CA 91776

Dear Mr. De Balogh,

This is in response to your inquiry concerning National Appeal Board (NAB) training.

We provide limited training to members of Local Boards (LB), District Appeal Boards (DAB) and Civilian Review Boards (CRB). We have developed self-study packets for CRB training. LB and DAB members attend local training sessions administered usually by Reserve Forces Officers. The initial training session for board members is twelve hours in length and the annual, continuation program lasts from four to six hours. The board members receive no compensation for the time they devote to training or other service for the System.

All training for board members is a part of our efforts to be prepared should conscription ever become a necessity. The quantity and type of training is in direct proportion to the anticipated activation time delay after mobilization (M-Day). That is to say, local boards will be involved first in the adjudication process. Then later, as claims are appealed, other boards would become active.

By the time claims would be considered by the National Appeal Board several weeks or even months will have passed. This anticipated delay is considered sufficient time to bring the three National Appeal Board Members up to speed with the then current statute, regulations, Agency policies and registrant processing procedures. We feel the needed M-Day information base of NAB members concerning the aforementioned will be satisfied by close review of the reading materials provided thus far and by our continued provision for updating the material.

You should be aware that we continually evaluate our training programs and preparedness posture. You may rest assured that the training needs of National Appeal Board Members will continue to receive our full consideration. I will keep you informed of our training plans as they affect the National Appeal Board.

Sincerely,

A handwritten signature in black ink that reads "James E. De Wire". The signature is written in a cursive style with a large, sweeping initial "J".

James E. De Wire  
Colonel, U.S. Army  
Chief of Staff



**COPY**

**NATIONAL SELECTIVE SERVICE APPEAL BOARD**

Washington, D.C. 20435

Frank De Balogh, Chairman  
Julius Belso, Member  
Guadalupe Hinckle, Member

6 August 1986

Dr. Henry Williams, General Counsel  
Selective Service System  
Washington D.C. 20435

Re: **LEGAL OPINION ON  
NATIONAL APPEAL BOARD**

Dear Dr. Williams:

The Board would like to express its thanks to you for your comprehensive report addressing our questions regarding the authority, functions and status of the Board. We found it most valuable and instructive in that it represents the legal opinion of National Headquarters on a number of basic issues which we feel are critical to the effective functioning of the Board.

However, after careful study the Board has unanimously concluded that your legal opinion admirably serves the interest of your direct superior or "client", the System Director. In our view, it does not represent an unbiased legal analysis of the authority, functions and status of the Board. The entire document is oriented toward demonstrating that the Director of Selective Service has final control over the activities of the Board and its Chairman is hierarchically responsible to that office in all respects.

In contrast, the Board's position remains as follows:

1. The executive order which established the Board and in its subsequent revisions makes it clear that the Director neither selects nor appoints the Board which is independent "in all respects" and not simply in the processing of appeals. The Director and the Chairman are independent officials who have mutual responsibilities in reporting to each other according to the order. The Chairman has the option of referring all unresolvable differences between the Board and the Director to the President. In summary, the Board is neither "hired" nor "fired" by the Director but rather by the President. Differences between the Chairman and the Director as independent officials are specified in the executive order to be resolved at the presidential and not system level. This is a clear safeguard for as well as a basic indicator of Board independence.

CONTINUED NEXT PAGE

Letter to Selective Service General Counsel, dtd 6 Aug 1986, p2.

2. The internal administration and operations of the Board whether it be preparedness planning and training in peacetime for its mobilization mission or actual processing of presidential appeals in a national emergency are the prerogatives of the Board. The Director does not control the determination of the logistical and other requirements of the Board to carry out its mission. The Board has the authority to manage its own affairs. The Director provides the the logistical support (e.g., services, facilities, personnel, etc.) in peacetime and national emergency as required by the Board according to the executive order.

3. The Board has been charged by the executive order to act on behalf of and in the name of the President in acting on registrant appeals to him. The authority to appoint local and regional boards was delegated by the President to the Director. Hence all such appointments are approved by the Director and not the President. They serve at the Director's pleasure. Similar authority regarding the Board has not been delegated by the President to the Director. The recent reconstitution of the present Board in the fall of 1985 was a White House initiative and not of the Director who apparently privately opposed this step. The Board views its role as the highest level of appeal of the most difficult/controversial cases, ones referred to the President, and as such has greater finality or importance than decisions made at the local or regional boards. You expressed on page 2 (bottom paragraph) in your opinion the following:

"The importance of the decision of the Board to the registrant concerned is obvious but it is no different than the importance of the decision by the Local Board or District Appeal Board. Provision for the registrant to appeal to the Board is nothing more than giving him another opportunity to have his claim considered."

The Board does not share this unwarranted view which appears to devalue the importance of presidential appeal by concluding that the Board actions are the same import as those of the 500 or so local and regional boards now in existence. The executive order and its revisions are clear about the significance of the National Appeal Board as an instrument of the President (and not the Director) to ensure equity in the selective service process.

It is evident that the differences about the authority, functions and status of the Board as perceived in your legal opinion and the views of the Board are still fundamental. The Board has concluded that they must be resolved in an unbiased setting so as to safeguard the integrity, effectiveness and independence of the selective service appeal process at the Presidential level.

Therefore, the Board is referring all issues remaining in dispute and related questions to the Department of Justice for their legal opinion. (See attachment for specifics) This list should

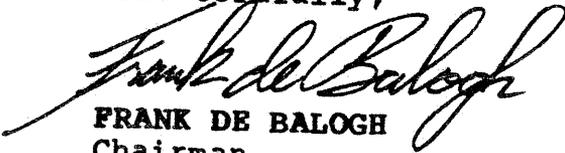
Letter to Selective Service General Counsel, dtd 6 Aug 1986, p3.

not be considered exhaustive or final precluding future requests for legal advice. Once such an opinion is rendered it is the intent of the Board to seek a memorandum of understanding between the Chairman and the Director as to the Board's functional responsibilities and requirements.

Please be assured that the above differences in viewpoint do not in any way diminish the high personal esteem of the Board for you and your many years of outstanding service to this country.

Thank you for your cooperation and assistance.

Most Cordially,



FRANK DE BALOGH  
Chairman

FDEB:sa

Dist:

Board Members:  
Hon. Julius Belso  
Hon. Guadalupe Hinckle

Department of Justice  
Senior Associate Counsel, White House  
Dir. of Pres. Boards and Commissions,  
White House

File

THE WHITE HOUSE  
WASHINGTON

Date 4.10.86

Suspense Date \_\_\_\_\_

MEMORANDUM FOR: David

FROM: **DIANNA G. HOLLAND**

**ACTION**

- Approved
- Please handle/review
- For your information *then to CF*
- For your recommendation
- For the files
- Please see me
- Please prepare response for \_\_\_\_\_ signature
- As we discussed
- Return to me for filing

**COMMENT**

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381022cc

Office of the  
Deputy Assistant Attorney General

Washington, D.C. 20530

JV

13257-01

APR 4 1986

Dr. Henry N. Williams  
General Counsel  
Selective Service System  
1023 31st St., N.W.  
Washington, D.C. 20435

Dear Dr. Williams:

We are taking the liberty of forwarding to you a request for legal advice that this Office received from Frank De Balogh, Chairman, National Selective Service Appeal Board ("Board"). Mr. De Balogh has several questions concerning the functions and powers of the Board and its relationship to the Selective Service System. The White House Counsel's Office has informed us that you are aware of these questions.

It has been our consistent practice, before providing legal advice to executive branch agencies, to draw on the expertise and legal analysis of the general counsel of the agency involved. In light of your special expertise, interest and historical practice in matters related to the Selective Service System, we are eager to obtain your views on the questions asked by Mr. De Balogh before we reach any conclusions of our own. Of course, if your office is unable to resolve the issues raised by Mr. De Balogh for any reason, or if some issues remain in dispute between your office and the Board after you have issued your opinion, we would be happy to assist you.

Please do not hesitate to contact me (633-2051) or Attorney-Adviser Susan Fine (633-3712) regarding this matter.

Sincerely,

*Samuel A. Alito, Jr.*

Samuel A. Alito, Jr.  
Deputy Assistant Attorney General  
Office of Legal Counsel

cc: Frank De Balogh  
Chairman  
National Selective Service Appeal Board  
✓ Fred F. Fielding  
Counsel to the President