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May 10, 2007

National Appeals Board
United States Parole Commission
Office of General Counsel
5550 Friendship Boulevard, Suite 420
Chevy Chase, MD 20815-7286

Re: Zvonko Basic
Register No. 03941158
Supplement to Appeal

Members of the National Appeal Board:

Zvonko Basic, through undersigned counsel, hereby submits this letter to supplement the appeal filed by him, pursuant to 28 C.F.R. §2.27, of the decision of the United States Parole Commission denying him mandatory parole under 18 U.S.C. § 4206(d). At the time the appeal was filed, Mr. Basic had not yet received a copy of the audiotape of the hearing.

I. Introduction

Mr. Basic has been imprisoned for more than 30 years and should have been released pursuant to the mandatory release provisions of 18 U.S.C. § 4206(d) in September 2006. Instead, he was denied parole by the United States Parole Commission on October 14, 2006. In its Notice of Action ("NOA"), the Commission stated: "Your failure to accept responsibility for your criminal acts and your rationalization of these crimes evidenced by your statements at various proceedings in your case, indicates to the Commission that there is still a significant probability that you would resort to crime to accomplish what you believed is a justifiable purpose."¹ Mr. Basic filed a timely appeal of that decision. This letter is submitted to supplement the appeal. An unofficial transcript of Mr. Basic's statement at the Hearing is attached as Exhibit A

In his statement at the July 24, 2006 mandatory parole hearing, Mr. Basic expressed remorse and acceptance of responsibility for his crime. His comments, which echo the statements in his 2003 letter to the Commission, provide a stark contradiction to the Commission's finding that he continues to rationalize his conduct and has not fully accepted responsibility. Significantly, as noted in the appeal, the Commission's NOA contained not a single reference to any particular statements made by him at any time nor to any event or action by him during the past 20 years that supports the Commission's findings.

¹ Notice Of Action ("NOA"), dated October 14, 2006.

II. There Is No Rational Basis in the Record for the Commission's Conclusions Embodied in its Statement of Reasons

A. The Commission Failed to Consider Zvonko Basic's Statements

Mr. Basic hereby respectfully supplements his appeal and asserts as a new ground that the in denying mandatory parole, the Commission failed to consider the statement made by Mr. Basic at his 2006 mandatory parole hearing. The Commission also failed to consider his statements during the immediately preceding hearings in 2003 and 2004. There is a gap of nearly ten years between hearings from October 5, 1993 to July 1, 2003 because Zvonko Basic did not seek parole for a period of nearly 10 years, from 1993 until 2003. In each of the statements in 2003, 2004 and 2006, Zvonko Basic fully accepts responsibility for his offense.

These statements are directly contrary to the Commission's stated reason for denying parole:

You continue to minimize the deadly result of your original criminal behavior by focusing on the fact that the bomb was inadvertently detonated by law enforcement officers rather than the fact that the criminal acts committed by you and your co-defendants triggered the deadly result. Your failure to accept responsibility for your criminal acts and your rationalization of these crimes evidenced by your statements at various proceedings in your case, indicates to the Commission that there is still a significant probability that you would resort to crime to accomplish what you believed is a justifiable purpose.

NOA, Oct 14, 2006.

1. Zvonko Basic Has Fully Accepted Responsibility for His Crime

Zvonko Basic's statement at the 2006 hearing directly contradicts the Commission finding:

As we know, I have had plenty of time to look back on my life, reflect back and I must admit that it's only about up to closely 20 years I finally managed to gather enough courage to honestly face myself and all my deeds. For a long time, I used to justify my offense with the sorry plight of Croatian people and with a very precarious situation I personally was in also even as I greatly grieved Officer Brian Murray's death. For a long time I used to blame it almost entirely on the police negligence or I saw it as an incomprehensible and tragic accident. Now though I am absolutely convinced that no one can nor

should escape personal responsibility for their action by blaming by laying the blame on something or someone else.

...

Thirty years ago my offense resulted in absolutely and totally unintentional death of an innocent police officer and there is nothing I can do about it. We cannot undo the past. And I am truly sorry that I cannot right the wrongs I have done, the hurts, the harms I have caused.

Transcript of Tape Recording of July 24, 2006 Hearing.

Mr. Basic fully accepts that he cannot “escape personal responsibility” for his actions by laying the blame on others. It is equally true, that he did not intend to cause the death of another. Although the two statements may appear inconsistent, they are not. Indeed, the law recognizes the difference between intent and criminal responsibility.

Under the law an accidental killing may be second degree murder, manslaughter, or no crime at all, depending on the degree of recklessness involved. Thus . . .second degree murder may consist of an unintentional killing where the ‘act which imports danger to another is one so reckless or so wrongful as to manifest depravity or a depraved mind and disregard of human life.’

Thomas v. United States, 419 F.2d 1203, 1205 (D.C. Cir. 1969) (emphasis added).

In his statement in 2003, Zvonko Basic left absolutely no doubt that he took responsibility for his actions, providing a detailed explanation of his personal struggle and the process that finally allowed him many years later to come to grips with his crime.

It is probably easier for everyone to see their limitations when they are in their 50's than when they are in their 20's. And in my case, I have also had more time than most to think about these things. In any case, it has taken many years, but I finally understand that I am not that smart and that Officer Murray's death really was my fault. Believe me, I resisted this recognition. First, because it required me to see myself for the egotist I was (am). Second, (and far more difficult) because it required me to stop thinking about Officer Murray as an abstraction and start thinking about him as a person, a person who is dead because of me. I thought I had mourned his death before. The grief I felt when his life became real to me was immeasurably greater.

Busic Letter to the Honorable Edward F. Reilly, Jr., dated April noncurrent, 2003, at 2 (Exh. B).

The statements clearly reflect that Mr. Busic has accepted responsibility for his crime. Nothing in the record supports the Commission's finding that Zvonko Busic failed to "accept responsibility for [his] criminal acts and [his] rationalization of these crimes evidenced by [his] statements at various proceedings in your case, indicates to the Commission that there is still a significant probability that you would resort to crime to accomplish what you believed is a justifiable purpose."²

2. Parole Commission Failed to Review or Ignored Busic's Statements

In particular, when it denied parole on October 14, 2006, the Parole Commission apparently did not have available to it the tape recording of the July 24, 2006 hearing. In a letter dated, December 4, 2006, responding to a disclosure request by undersigned counsel, the Commission wrote that "a copy of the tape recording of your hearing held on July 24, 2006 cannot be located at this time. If the tape is located, a copy will be provided to you." USPC Letter, Dec. 4, 2006 at 1, attached as Exhibit B. The tape was provided earlier this year, well after the October 2006 NOA, when the Commission located it.

The Commission also did not review the April 28, 2003 letter that Zvonko Busic had written to Chair Reilly. Earlier this year, after the Busic appeal was filed and well after the Commission issued its NOA, Commission staff requested of counsel a copy of the 2003 letter. Undersigned counsel provided the letter on March 9, 2007. Letter attached as Exhibit C; 2003 Statement attached as Exhibit. D.

3. Parole Commission Ignored the Statement of a Bureau of Prisons Medical Officer Who Treated Zvonko Busic in the Recent Past

The NOA denying parole also disregards the very detailed and specific comments by Dr. Judith L. Tharp, now retired, who as a Bureau of Prisons medical officer saw Mr. Busic as a patient. She details in her letter that she found him to be a

² Because Mr. Busic declined to request a parole hearing for ten years, from 1993 until 2003, any other statements that the Commission could have possibly relied on to make its findings would have had to have been made in connection with the Statutory Interim Hearings in 1991 and 1993. Such statements would be too non-current to consider, in light of more recent statements.

very mature and learned man, who conducted himself in a very dignified and uncomplaining manner . . . was unfailingly cooperative, and enjoyed the good will of staff and also other inmates. . . . In fact, after he was transferred, three different inmates expressed (unprompted) sorrow that he was gone, at the same time deep gratitude for his constructive influence on their lives. One of the men told me that because of Mr. Basic he had finally begun to think beyond himself, to “grow up.” Another said that Mr. Basic had inspired him to read classic philosophy, history, and literature, and looked to Mr. Basic as a mentor. A third inmate expressed similar sentiments about Mr. Basic. I mention this phenomenon because in the nearly nine years I worked at USP-Leavenworth, this was the first time I had heard and seen inmates voice such positive things about another inmate.

...

As I see it, the chances of reoffending are nonexistent. He poses zero risk or hazard to public safety.

Dr. Tharp explains that her opinion was well-considered and conservative. As “a matter of habit and training I am careful and considered when rendering any written declarations or opinions in writing,” she wrote. Dr. Tharp’s opinion that Mr. Basic does not present a risk of recidivism is completely at odds with the finding of the Parole Commission.

4. The Commission Disregarded the Recommendations of the Sentencing Judge

In denying parole, the Commission also disregards the decision of the Honorable John R. Bartels, the sentencing judge in this case, who wrote the Commission on several occasions in support of Zvonko Basic’s parole. On April 3, 1979, Judge Bartels also formally amended the judgment and modified the sentence to make Mr. Basic immediately eligible for parole pursuant to 18 U.S.C. § 4205(b)(2). Judge Bartels also explained that in his many years on the bench this was the first time he had ever written to the Parole Commission in support of the parole of anyone he had ever sentenced.

5. Parole Commission Ignored that Mr. Basic, a Non-US Citizen Will be Deported to Croatia Upon Release and Other Mitigating Circumstances

The Parole Commission also seemingly ignored the fact that Zvonko Basic, a Croatian national will be subject to a detainer to be deported by American immigration authorities immediately upon his parole. He will not be released in the United States. Moreover, the Commission ignored its own data that reflects that someone of Mr. Basic's age is much less likely to recidivate. It also ignored the fact that Mr. Basic will have a home and family to return, including his wife, who awaits his return to Croatia. Mrs. Basic, who was convicted of the identical crimes that Mr. Basic stands convicted was paroled nearly 20 years ago. Although she is an American citizen and returns to this country on annual basis, she has never committed another offense. Mr. Basic also has a job waiting for him. All these factors, based on the Commission's own data, reduce the likelihood of recidivism.

The Parole Commission also ignored the letters of support that were submitted on behalf of Zvonko Basic, some for humanitarian reasons and others because they are acquainted with the facts and circumstances of the case. The letters include the following:

1. Former United States Ambassador to the Vatican, Thomas Melady;
2. Cardinal Theodore McCarrick, Archbishop of Washington, DC (retired);
3. Cardinal Frances George, Archbishop of Chicago;
4. Cardinal Vinko Puljic, Archbishop of Sarajevo;
5. Honorary President of B'nai B'rith and former prosecutor, Tommy Baer.

II. The Law

Section 4206(d) of Title 18 states:

(d) Any prisoner, serving a sentence of five years or longer, who is not earlier released under this section or any other applicable provision of law, shall be released on parole after having served two-thirds of each consecutive term or terms, or after serving thirty years of each consecutive term or terms of more than forty-five years including any life term, whichever is earlier: *Provided, however,* That the Commission shall not release such prisoner if it determines that he has seriously or frequently violated institution rules and regulations or that there is a reasonable probability that he will commit any Federal, State, or local crime.

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May 10, 2007
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Congress was clear that absent the express finding that there is a "reasonable probability" that a person who has been imprisoned for thirty years, as Mr. Busic has, will commit another crime in the United States, he "shall be released." Without competent evidence in the record to support such a finding, the Parole Commission acts in violation of the Congressional mandate in § 4206(d). In this case, there is no such evidence and the Commission's decision must be reversed.

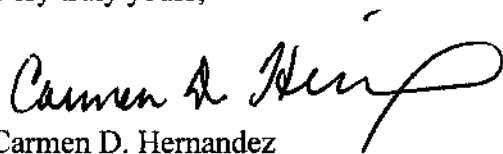
III. Conclusion

There is no rational basis in the record for the Parole Commission's conclusions, as set forth in its Notice of Action, that there is a "reasonable probability" that Zvonko Busic will commit any Federal, State, or local crime. To the contrary, the record supports only one conclusion, that having served thirty years, he is subject to mandatory release on parole as provided in 18 U.S.C. § 4206(d).

In the words of the former medical officer for the Bureau of Prisons, the chances that Zvonko Busic will reoffend "are nonexistent. He poses zero risk or hazard to public safety."

Thank you for your consideration. If you require additional information, I am available to provide it.

Very truly yours,


Carmen D. Hernandez

cc: Zvonko Busic

Exhibit A. Statement of Zvonko Basic from Parole Hearing Recording, July 24, 2006

In pertinent part, Mr. Basic stated the following:

As for me, I would like to say a few words. On several previous opportunities during the court hearings and during the parole hearings, I gave lengthy statements and tried to present my side of the story and explain myself the best I could. Today, I would like to just briefly state my present thoughts and feelings. [sigh] Ah, as you know, throughout the ages of human history, divine law keeps reminding us that God works in mysterious ways and that we mortals will never know why there are such great differences, such huge differences between individual destinies of human beings. Indeed, it could be argued that the problem is not in ourselves that the problem is in the stars. Over the years, I have heard many prisoners professing their innocence for the crime they have been convicted of and as a personal survey somehow I used to ask quite a few of those prisoners who claimed that they were framed whether they would exchange the supposed railroaded sentences for the due punishment the judge could impose on him if he had knowledge of all the crimes they ever committed. Since 99% of them readily admitted that such exchange would put them in much worse situation, my usual comment to them that thereby lied the moral justification for assumed ahh framing and they should cease to complain.

As for myself, my case is quite clear and indeed my whole life is an open book and I can categorically state that I have no skeletons in my closet. Having spent 3/4 of my adult life among America's most serious and mostly incorrigible criminals, I am fully aware of the Parole Commission's difficult and important duty in protecting society. Nevertheless, in my opinion there cannot be true justice where the exercise of power is not seasoned with mercy. Mercy in this sense is not a softening or undermining of the law but an exercise of sympathetic understanding which enhances the power of the law by freeing it from many defects a written law that cannot take into account the infinite varieties of circumstances.

As we know, I have had plenty of time to look back on my life, reflect back and I must admit that it's only about up to closely 20 years I

Supplement to Basic Appeal – Exhibit A.

finally managed to gather enough courage to honestly face myself and all my deeds. For a long time, I used to justify my offense with the sorry plight of Croatian people and with a very precarious situation I personally was in also even as I greatly grieved Officer Brian Murray's death. For a long time I used to blame it almost entirely on the police negligence or I saw it as an incomprehensible and tragic accident. Now though I am absolutely convinced that no one can nor should escape personal responsibility for their action by blaming by laying the blame on something or someone else. Furthermore, I believe that ultimately it is misfortune for anyone to escape a merited punishment because such punishment may awaken in him the recognition that the wrong has been done and thus purify his soul and improve his character.

Over the years, I have had a chance to read many good books and these extensive readings have enormously widened my horizon and broadened my understanding of life and human nature. And my very painful and prolonged sufferings have inspired many solitary conversations with my own soul so that I can now accept almost any destiny without the slightest bitterness. I don't have any bitterness toward the people who tried to assassinate me nor towards those who have vilified me. For by forgiving them all, I put myself in a position of earning forgiveness for the wrongs I myself have done.

Thirty years ago my offense resulted in absolutely and totally unintentional death of an innocent police officer and there is nothing I can do about it. We cannot undo the past. And I am truly sorry that I cannot right the wrongs I have done, the hurts, the harms I have caused. But if the past cannot be changed, a profound, powerful and bitter lesson from that past will never be forgotten. I sincerely hope the Parole Commission will now recognize my remorse and exercise the aforementioned sympathetic understanding by granting me prompt release and I equally hope that you Mr. Howard as the examiner will recommend to the Commission my immediate parole.

Thank you for hearing me out.

Audio-tape of Basic Parole Hearing, July 26, 2006



**U.S. DEPARTMENT OF JUSTICE
United States Parole Commission**

5550 Friendship Boulevard
Chevy Chase, Maryland 20815-7201
Telephone: (301)492-5821
Facsimile: (301)492-5525

December 4, 2006

Mr. Zvonko Basic
Reg. No. 03941-158
c/o Carmen D. Hernandez
717 D Street, N. W.
Suite 310
Washington, DC 20004

Re: Your Disclosure Request

Dear Mr. Basic:

This is in response to your request of July 18, 2006 received on August 1, 2006 for copies of documents from your parole file. The terms of your request cover:

Copies of all documents contained in the U.S. Parole Commission's file since the Commission's previous disclosure of November 24, 2003.

The Commission is disclosing all of the documents you requested which are in your active file as of the date of this response, except those documents or portions of documents listed below.

Because the Parole Commission is exempt from the access provisions of the Privacy Act, this disclosure is made under the Freedom of Information Act (FOIA).

Any copies of documents provided in previous FOIA responses are not included in this response.

Under the FOIA, a document or portion thereof, may be withheld if protected by any of the FOIA exemptions. These exemptions can be found at 5 U.S.C. Section 552(b)(1)-(9).

There are documents in your file that are duplicates of documents that originated with the Bureau of Prisons (BOP). These documents are available through your case manager. We have not interpreted your request to include these documents as you may already have obtained them from the BOP. Please advise the undersigned if you wish the Parole Commission to process these documents. Under departmental regulations, the Commission will then refer these documents to the BOP for processing and a direct response to you.

In addition, a copy of the tape recording of your hearing held on July 24, 2006 cannot be located at this time. If the tape is located, a copy will be provided to you.

**BASIC APPEAL - EXHIBIT B
SUPPLEMENT**

If you are dissatisfied with my action on this request, you have thirty (30) days from the receipt of this letter to appeal this decision to the Chairman of the U.S. Parole Commission. An appeal to the Chairman must be made in writing and addressed to the Office of the Chairman, U.S. Parole Commission, 5550 Friendship Boulevard, Suite 420, Chevy Chase, MD 20815.

Sincerely,

A handwritten signature in black ink, appearing to read "Anissa N. Hunter". The signature is fluid and cursive, with the first name being the most prominent.

Anissa N. Hunter
FOIA Specialist

Enclosures - 56 pages

ANH

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March 9, 2007

National Appeals Board
United States Parole Commission
Office of General Counsel
5550 Friendship Boulevard, Suite 420
Chevy Chase, MD 20815-7286

Re: Zvonko Basic
Register No. 03941158

Dear Sir/Madam:

As requested, attached is a copy of the letter that Mr. Basic submitted to the Honorable Edward F. Reilly, Chairman of the US Parole Commission on April 28, 2003 in support of his 2003 application for parole. This letter was referenced and relied upon by Mr. Basic in his appeal to the National Appeals Board, filed November 3, 2006, of the decision of the United States Parole Commission (NOA 10/4/06) denying him mandatory parole under 18 U.S.C. § 4206(d). The April 2003 letter was not attached to the appeal as it was believed that it was part of the official record on file.

In addition, I am hereby respectfully requesting an additional 30-day period to supplement the pending appeal. The supplemental statement will address the tape recording of the July 26, 2006 parole hearing, which was not available at the time the appeal was filed. The appeal explicitly requested an opportunity to supplement the appeal after receipt of the July 26, 2006 tape recording, which has since been provided to me. (Appeal at 2).

Thank you very much for your consideration. If you require additional information, please let me know.

Very truly yours,



Carmen D. Hernandez
Counsel for Mr. Basic

BASIC APPEAL SUPPLEMENT - EXHIBIT C

Practice Limited to Federal Courts

April 28, 2003

Zvonko Basic
03941-158
P.O. Box 1000
Leavenworth, Kansas 66048-1000

Hon. Edward F. Reilly, Jr.
Chairman, United States Parole Commission
5550 Friendship Boulevard, Suite 420
Chevy Chase, MD 20815-7286

Dear Mr. Reilly:

As you know, I am represented by attorney Marc Blackman in my pending parole application. He will be selecting the documentation and presenting the legal reasons for granting this application. The purpose of this statement is to try to give you, the parole examiner, and the Commission a sense of who I am today.

It would be easy for me to tell you that to my core I am a man of peace, not violence, that my crime was the result of a unique set of circumstances that will never reoccur, that I have foresworn violence as a means to any end, no matter how noble, and that if granted release I would pose no threat to society. But those would just be my words. And while they would be true, there is no reason why you should accept them. It is for that reason that Mr. Blackman will be submitting letters and materials from others who know this to be the case. He and I believe that they will convey this information more reliably and objectively than I can.

What is not so easy for me to tell you is that I have come to understand that reckless arrogance was the cause of this terrible crime. Just about everyone who knows the facts - for example, both Judge Bartels and Judge Goettel - found that I had no intention to hurt anyone and that I honestly believed that my plan eliminated any risk that anyone would be hurt, let alone killed. For years, I took great comfort in those conclusions, for they said to me: "Taik [this is the nickname I have had since childhood], you are not a bad man, you are a good man who had a bad thing happen while trying to do a good thing."

I no longer take comfort in those conclusions. For as I aged, I realized that they identified a deep flaw in me. The flaw they identified - and that for years I could not see and for years more I did not want to acknowledge - was that I really believed that I was too smart and too caring to put into action a plan that would really put another person at risk. And that since I really believed that, I could not and did not really accept

BASIC APPEAL SUPPEMENT - EXH D

Hon. Edward F. Reilly, Jr.
Chairman, United States Parole Commission
April 28, 2003
Page 2

responsibility for Officer Murray's death. Rather, that I continued to believe that I was so smart and my plan was so good that his death could only be explained as an unforeseeable accident.

It is probably easier for everyone to see their limitations when they are in their 50's than when they are in their 20's. And in my case, I have also had more time than most to think about these things. In any case, it has taken many years, but I finally understand that I am not that smart and that Officer Murray's death really was my fault. Believe me, I resisted this recognition. First, because it required me to see myself for the egotist I was [am]. Second [and far more difficult] because it required me to stop thinking about Officer Murray as an abstraction and start thinking about him as a person, a person who is dead because of me. I thought I had mourned his death before. The grief I felt when his life became real to me was immeasurably greater.

For the last ten years, I have not sought a parole hearing. After my last hearing, I felt there was nothing more that could be said, that if the record presented during that proceeding did not result in my parole, there was no reason to believe the Commission would ever grant me parole. So my family devoted its energy to other options. With the establishment of the Republic of Croatia, they seriously explored a transfer to a prison in Croatia under the Prisoner's Exchange Treaty. And they prompted an on-going dialog on the diplomatic level [every Croatian government has sought my release, or at least transfer to a Croatian prison]. Those options have not been exhausted. But in the last year I have come to realize that the Commission's rejection of my last application for parole might not have been a result of its failure to appreciate the merits in my case, but my failure to appreciate the reality of my crime. And so I decided to apply again, for I believe I now have that appreciation.

Thank you.

Respectfully submitted,

Zvonko Busic