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Otto
Kerner



Clemency

THE WHITE HOUSE

WASHINGTON

February 13, 1975

Dear Mr. Corush:

On behalf of the President, I would like to thank you for your letter of January 24, 1975, concerning the case of Otto Kerner.

Executive clemency is only considered upon formal application by the person who has been convicted. I have been informed by the Pardon Attorney at the Department of Justice that no petition has been filed by Otto Kerner. If he should file an application for Executive clemency, you may be assured that it will be given every appropriate consideration.

Your views are appreciated.

Sincerely,

Philip W. Buchen

Philip W. Buchen
Counsel to the President

Mr. Saul L. Corush
Illinois Beach Lodge
Zion, Illinois 60099



Clemency

THE WHITE HOUSE

WASHINGTON

February 13, 1975

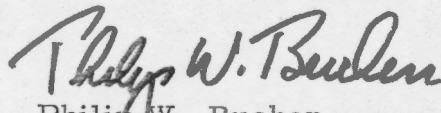
Dear Mr. Herring:

On behalf of the President, I would like to thank you for your letter of January 28, 1975, concerning the case of Otto Kerner.

Executive clemency is only considered upon formal application by the person who has been convicted. I have been informed by the Pardon Attorney at the Department of Justice that no petition has been filed by Otto Kerner. If he should file an application for Executive clemency, you may be assured that it will be given every appropriate consideration.

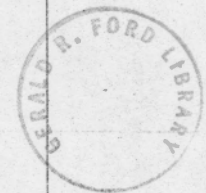
Your views are appreciated.

Sincerely,



Philip W. Buchen
Counsel to the President

Mr. H. A. Herring
Vice President
Capitol Machinery Company
Interstate 55 & Toronto Road
Post Office Box 2008
Springfield, Illinois 62705



THE WHITE HOUSE
WASHINGTON

April 2, 1975

Dear Mr. Rentschler:

On behalf of the President, I would like to acknowledge receipt of your letter of March 20 concerning the case of Otto Kerner.

Executive clemency is only considered when a formal application is filed by one who has been convicted of a Federal offense. Presently, Otto Kerner, who was recently released on parole has made no application. If he should choose to file the appropriate papers with the Department of Justice, his request would be given careful consideration under existing guidelines.

Sincerely,

Philip W. Buchen
Philip W. Buchen
Counsel to the President

Mr. William H. Rentschler
Box 910
Lake Forest, Illinois 60045

Clemency



November 11, 1975

Justice

Dear Mr. Kupciast:

Thank you for your letter of October 20, 1975, urging the President to grant a pardon to Mr. Otto Kerner.

Executive clemency, for one who has been convicted of a Federal offense, is only considered upon formal application by the person who has been convicted. When an application is submitted, it is processed by the Pardon Attorney at the Department of Justice in accordance with specific guidelines which the President has approved. If letters are received in support of, or in opposition to these applications, then they are made a part of each file.

The Pardon Attorney has informed me that Mr. Kerner has filed a petition for clemency; therefore, your letter of support will be forwarded to the Department of Justice.

With best wishes,

Sincerely,

**Phillip W. Buchen
Counsel to the President**

**Mr. Irv Kupciast
Chicago Sun-Times
401 North Wabash Avenue
Chicago, Illinois 60611**

bcc: Lawrence Traylor

PWB:BNR:HPG:kt

Central Files



*Kerner,
Otto*

May 24, 1976

To: Dawn

From: Eva

This is the letter Mr. Buchen
mentioned to Ken on the phone.





CITY OF BERWYN, ILLINOIS

EMIL VACIN, MAYOR

DONALD E. PECHOUS
ALDERMAN 1ST WARD

3244 S. MAPLE AV
BERWYN, ILL. 604
749-3064

May 17, 1976

Honorable Gerald R. Ford
The President of the United States
The White House
Washington, D. C.

Dear Mr. President:

As a recent member of Chuck Percy's Senatorial Advisory Committee of the 6th Congressional District of Illinois, I had occasion in April to offer Chuck help in polling one hundred Berwyn residents. The purpose of the poll was to determine whether a sampling of Berwynites favored a Presidential Pardon for former Governor Otto Kerner.

It is important to note that this informal poll was taken and concluded at a time when Mr. Kerner was alive. The results were better than three to two in favor of a pardon.

Last week, public visitation services for former Governor Kerner were held in the City of Berwyn. Thousands attended.

The attached clipping reflects the feeling of many residents. I trust this information might help you in deciding this difficult question.

Respectfully,

Donald E. Pechous

Donald E. Pechous

cc: Senator Charles H. Percy



P. S. I know you by reputation to be a conscientious man who has done a fine job. You will again be President in November. Regardless of your decision in this matter, you will have my support throughout the campaign.

June 2, 1976

Dear Mr. Pechous:

This is in response to your recent letter to the President concerning the grant of a posthumous pardon to the former Governor of Illinois, Otto Kerner.

As you may know, just prior to the death of Mr. Kerner, the Department of Justice granted him a waiver of the rule requiring a person convicted of income tax evasion to wait five years from the date of his release from confinement before applying for pardon. Thus, at the time of the former Governor's death, the Department had proceeded to the merits of his application.

Mr. Kerner's long career of dedicated and distinguished public service, as a United States Attorney, State judge, Governor of Illinois and finally as a Federal judge, is a matter of public record. Notwithstanding the belief of many that the grant of a pardon to Mr. Kerner during his lifetime could have been justified as a recognition of the importance and significance of his many contributions to his state and the Nation, we have been advised by the Department of Justice of their determination that there is no legal basis for the grant of a posthumous pardon.

In a trilogy of cases, the Supreme Court established the rule that a pardon is a "deed" to the validity of which delivery is essential and is not complete without acceptance [United States v. Wilson, 32 U.S. 150 (1838); Burdick v. United States, 236 U.S. 79 (1915); and Biddle v. Perovich, 274 U.S. 480 (1972)]. The requirement of acceptance of a pardon has also been recognized in a series of rulings by the Attorney General. [See 11 Op. A.G. 227 (1865) and 41 Op. A.G. 251 (1955)]. Thus, as a matter of law, the President would not appear to possess the power to issue a posthumous pardon.



The President appreciates your interest in this subject and trusts that the foregoing will sufficiently explain why it is not possible to take any further steps in this matter.

Sincerely,

Kenneth A. Lazarus
Associate Counsel
to the President

Mr. Donald E. Pechous
3244 S. Maple Avenue
Berwyn, Illinois 60402

KAL_dlm



June 2, 1976

Dear Mr. Randolph:

This is in response to your recent letter to the President concerning the grant of a posthumous pardon to the former Governor of Illinois, Otto Kerner.

As you may know, just prior to the death of Mr. Kerner, the Department of Justice granted him a waiver of the rule requiring a person convicted of income tax evasion to wait five years from the date of his release from confinement before applying for pardon. Thus, at the time of the former Governor's death, the Department had proceeded to the merits of his application.

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The President appreciates your interest in this subject and trusts that the foregoing will sufficiently explain why it is not possible to take any further steps in this matter.

Sincerely,

Kenneth A. Lazarus
Associate Counsel
to the President

The Honorable Paul J. Randolph
State Representative
850 N. Dewitt Place
Chicago, Illinois 60611

KAL:dln



THE WHITE HOUSE
WASHINGTON

May 22, 1976

file
May 18
memo sent
to Ken.

ADMINISTRATIVELY CONFIDENTIAL

MEMORANDUM FOR: PHILIP BUCHEN
FROM: JAMES E. CONNOR *JEC*
SUBJECT: Posthumous Pardons

The President reviewed your memorandum of May 18 on the above subject and has approved your recommendation that he decline to have the Department of Justice consider further the request for pardon made by Otto Kerner prior to his death.

Please follow-up with the appropriate action.

cc: Dick Cheney



THE WHITE HOUSE
WASHINGTON

May 18, 1976

Pardons

MEMORANDUM FOR: THE PRESIDENT

FROM: PHILIP BUCHEN *P.*

SUBJECT: Posthumous Pardons

BACKGROUND

At the time of the terminal illness of Otto Kerner of Illinois, he, his family and friends sought to make it possible for you to consider granting him a pardon from the Federal tax fraud crime of which he had earlier been convicted.

Under current rules governing petitions for pardons, it is provided that no petition for pardon in cases involving violation of income tax laws should be filed until the expiration of five years from the release of the petitioner from imprisonment. Under the circumstances of the Kerner case, the petitioner sought from the Deputy Attorney General a waiver of this waiting period based on the medical evidence that the petitioner would not survive the five year period and would probably die within a matter of months. This waiver was granted and the Department of Justice started to process the petition for a pardon, without regard to the waiting period, so as to determine whether or not the petition on its merit warranted favorable action by you. This process was just barely begun when Otto Kerner died.

Now, the surviving family of Otto Kerner and his friends are urging that the Department of Justice proceed to treat the initially filed request for a pardon as one which could lead to a posthumous pardon by you. Under these circumstances, I asked the Department of Justice to advise me on whether a posthumous pardon could be validly granted by you.



The Department of Justice files show that the same issue was raised in 1956 by the then Attorney General. The opinion at that time by the Office of Legal Counsel was that the President does not possess the power to issue a posthumous pardon. (A copy of this opinion is attached at Tab A.)

I am further advised by the Department of Justice that there has been no instance either before or after this opinion which indicates that the President of the U. S. has issued a posthumous pardon, except for one instance where the pardon was issued to a grantee under the mistaken impression that he was still alive when in fact he had died just before the date of the pardon.

DISCUSSION

If you were to take the innovative step of issuing a pardon for a deceased person merely for its symbolic effect, I do not see that anyone would have standing to challenge this action on your part. However, such a step on your part would undoubtedly provoke considerable public discussion and would undoubtedly lead to other requests from families of persons formerly convicted of Federal crimes who have since died. This possibility would make it almost mandatory that some criteria be developed for judging when to grant and when to decline requests for pardons in favor of deceased persons, and the Department of Justice would have to be instructed to set up a machinery for handling such requests.

RECOMMENDATION

I recommend that you decline to have the Department of Justice consider further the request for pardon made by Otto Kerner prior to his death.

Concurring in this recommendation are:

Opposing are:

APPROVE RECOMMENDATION _____

DISAPPROVE RECOMMENDATION _____



Attachments

copy

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MEMORANDUM FOR THE ATTORNEY GENERAL

Re: The President's power to
issue a posthumous pardon

This is in response to your request for our advice on the above question. The Constitution, Article II, Section 2, vests in the President "Power to grant Reprieves and Pardons for Offences against the United States." The authorities dealing with the question whether this power extends to the issuance of posthumous pardons are few and not of recent date.

At its December 1871 term, the Court of Claims held in Meldrim v. United States, 7 Ct. Cl. 595, that where an individual guilty of giving aid or comfort to the rebellion of the Southern States died without pardon and before the President's General Amnesty Proclamation of December 25, 1868 (15 Stat. 711), the proclamation did not obliterate the offense, and his administratrix therefore could not maintain an action for the proceeds of his captured property in the Treasury. It further appeared that the President had issued a special pardon but the intestate died shortly after its issuance and never accepted it. In a subsequent case, Sierra v. United States, 9 Ct. Cl. 224 (Dec. T., 1873), the court held on the authority of its decision in the Meldrim case that the Amnesty Proclamation of 1868 was "inoperative as to one who had died before its issue." See also Scott's Case, 8 Ct. Cl. 457 (Dec. T., 1873).

At an earlier date, in 1864, the President had before him the question whether he could remit a fine after the death of a man convicted of aiding and rescuing a deserter, the court having imposed a sentence of a \$500 fine. Attorney General Bates advised the President that he had this power. 11 Ops. A.G. 35. He said that "it might be doubtful on technical principles whether the President could grant a deed of pardon to a man after his death, since as Chief Justice Marshall says, in United States vs. Wilson, (7 Pet., 161,) 'a pardon is a deed, to the validity of which delivery is essential, and delivery is not complete without acceptance', and, of course, there can be no delivery to and acceptance by a dead man" (p. 36). However, he continued (pp. 36-37):



*** a distinction exists between the act of a pardon by which a man is relieved of corporal punishment for guilt and the act for remission of a fine which operates on his estate only. The technical reason which may (I do not say will) prevent a pardon from operating in favor of a dead man, does not apply to the remission of a fine, for that may be accepted by the heirs to the estate whose interests are affected by it. The distinction between pardon of corporal punishment and remission of a pecuniary fine is recognized by the act of February 20, 1863, chap. 46, which gives the President the full discretionary power to remit the one without disturbing the other.*

In my opinion you have the power to remit the fine imposed on the late John Caldwell, notwithstanding his death, by an instrument reciting the circumstances of the case.**

The deed concept of a pardon as expressed by Chief Justice Marshall was approved in Burdick v. United States, 236 U.S. 79, and on that basis it was held that the President "cannot force a pardon upon a man." However, in Biddle v. Perovich, 274 U.S. 480, the Supreme Court held that the reasoning of the Burdick case was not to be extended to the commutation of a death sentence to life imprisonment. Without overruling Burdick, the Court did say (p. 486) that "A pardon in our days is not a private act of grace from an individual happening to possess power." However, it would seem that as the law now stands a pardon, except in the situation involved in Perovich, must be considered as in the nature of a deed so that to be effective it has to be accepted. Moreover, the law is well-settled that in the absence of statute a deed to a deceased party is ineffectual to pass title to real property. Davenport v. Lamb, 13 Wall. 418; Note, 148 A.L.R. 252.

*See, 18 U.S.C. 3570, providing that when an individual is sentenced to two kinds of punishment "the one Pecuniary and the other corporal, the President's remission in whole or in part of either kind shall not impair the legal validity of the other kind or of any portion of either kind, not remitted."

**This opinion has never been subsequently cited.



The Pardon Attorney advises us that with the exception of the fine case above (11 Ops. A.G. 35), he has found no record of the President issuing a posthumous pardon. He further states that it has always been the view of his office that it would not be practical to issue pardons to deceased persons although personally he "would not object in hardship cases such as cases of widows of Government employees who are deprived of annuities to follow the precedent established in the Caldwell case /11 Ops. A.G. 35, supra/ * * * where an estate is involved rather than a person. I would counsel against, however, the practice of recommending pardons for deceased persons for the mere purpose of clearing the name, etc. There is no doubt that many widows and survivors would want that done."

Unless the deed theory of a pardon is to be rejected, which I do not believe is warranted under existing decisions, it is my opinion that the President does not possess the power to issue a posthumous pardon; he does have the power, as established by the opinion of Attorney General Bates, to remit a fine posthumously. Unless there is occasion to do so, I feel that we should leave open the question whether Attorney General Bates' reasoning as to remission of a fine may be extended to affording relief, by way of a posthumous pardon, with respect to a Government annuity, as suggested by the Pardon Attorney.

/s/ J. Lee Rankin
J. Lee Rankin
Assistant Attorney General
Office of Legal Counsel





THE DEPUTY ATTORNEY GENERAL
WASHINGTON, D.C. 20530

*Copy to
Ken.*

May 12, 1976

MEMORANDUM FOR:

PHILIP BUCHEN, ESQ.
COUNSEL TO THE PRESIDENT

FROM:

HAROLD R. TYLER, JR. *HTJ*
DEPUTY ATTORNEY GENERAL

RE:

POSTHUMOUS PARDONS

Please be advised that my investigations in regard to posthumous pardons reveals the following:

1. In August, 1956, the then Assistant Attorney General, Office of Legal Counsel, Department of Justice, rendered an opinion to the Attorney General that the President, as a matter of law, does not possess the power to issue a posthumous pardon.
2. Until August, 1956, there were no records indicating that a President had issued a posthumous pardon.
3. Since 1956, there has been one case where a pardon was issued by the President, but in the curious situation of the grantee of the pardon being deceased without knowledge thereof by the President or the Justice Department. In other words, though the pardon was issued, it was issued on the mistaken understanding that the grantee thereof was alive.
4. It is interesting to note that the present rules governing petitions for Executive clemency



Page 2
May 12, 1976

require that the pardon application be filed by the convicted person and not by any other person on his or her behalf. See 28 CFR 1.1 and 1.2. Moreover, the traditional practice in the Department has been that when an individual files a pardon application but dies prior to final action being taken on his petition, the file is closed without taking any further action.

5. I should note that I have not asked the Office of Legal Counsel to bring up to date its memorandum opinion of 1956. This could be done, of course, but all indications are that American case law on the point has been virtually non-existent since the summer of 1956.



copy

156

MEMORANDUM FOR THE ATTORNEY GENERAL

Re: The President's power to
issue a posthumous pardon

This is in response to your request for our advice on the above question. The Constitution, Article II, Section 2, vests in the President "Power to grant Reprieves and Pardons for Offenses against the United States." The authorities dealing with the question whether this power extends to the issuance of posthumous pardons are few and not of recent date.

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*See, 18 U.S.C. 3570, providing that when an individual is sentenced to two kinds of punishment "the one Pecuniary and the other corporal, the President's remission in whole or in part of either kind shall not impair the legal validity of the other kind or of any portion of either kind, not remitted."

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/s/ J. Lee Rankin
J. Lee Rankin
Assistant Attorney General
Office of Legal Counsel



RULES GOVERNING PETITIONS FOR EXECUTIVE CLEMENCY

Department of Justice

WASHINGTON, D.C.

§ 1.1 *Submission of petition; form to be used.*—Persons seeking Executive clemency, by pardon or by commutation of sentence, including remission of fine, shall execute formal petitions therefor which shall be addressed to the President of the United States and which, except those relating to military or naval offenses, shall be submitted to the Attorney General of the United States. Appropriate forms for such petitions will be furnished by the Department of Justice, Washington, D.C., upon application therefor. Forms for petition for commutation of sentence may also be obtained from the warden of Federal penal institutions. Forms furnished by the Department of Justice for use in pardon cases may be used by petitioners in cases relating to the forfeiture of veterans' benefits, with appropriate modifications. A petitioner applying for Executive clemency with respect to military or naval offenses should submit his petition directly to the Secretary of the military department which had original jurisdiction over the court-martial trial and conviction of the petitioner. In such instance, a form furnished by the Department of Justice may be used but should be modified to meet the needs of the particular case.

§ 1.2 *Contents of petition.*—Each petition for Executive clemency should include: the name and age of the petitioner; the court, district, and State in which he was convicted; the date of sentence; the crime of which he was convicted; the sentence imposed; the date he commenced service of sentence; and the place of confinement. In the case of a petition for pardon, the petitioner should also state his age at the time of commission of the offense; the date of release from confinement; whether he is a citizen of the United States or an alien; his marital status; his prior and subsequent criminal record, if any; his employment since conviction; and his place of residence. A petition may be accompanied by endorsements. It is desirable that all applications for pardons be accompanied by at least three character affidavits.

§ 1.3 *Eligibility for filing petition for pardon.*—No petition for pardon should be filed until the expiration of a waiting period of at least 3 years subsequent to the date of the release of the petitioner from confinement, or, in case no prison sentence was imposed, until the expiration of a period of at least 3 years subsequent to the date of the conviction of the petitioner. In some cases, such as those involving violation of narcotic laws, income tax laws, perjury, violation of public trust involving personal dishonesty, or other crimes of a serious nature a waiting period of 5 years is usually required. In cases of aliens seeking a pardon to avert deportation, the waiting period may be waived. Generally, no petition should be submitted by a person who is on probation or parole.

§ 1.4 *Eligibility for filing petition for commutation of sentence.*—A petition for commutation of sentence, including remission of fine, should be filed only if no other form of relief is available, such as from the court or the United States Board of Parole, or if unusual circumstances exist, such as critical illness, severity of sentence, ineligibility for parole, or meritorious service rendered by the petitioner.

§ 1.5 *Offenses against the laws of possessions or territories of the United States.*—Petitions for Executive clemency shall relate only to violations of laws of the United States. Petitions relating to violations of laws of the possessions of the United States or territories subject to the jurisdiction thereof should be submitted to the appropriate official or agency of the possession or territory concerned.

§ 1.6 *Disclosure of files.*—Reports, memoranda, and communications submitted or furnished in connection with the consideration of a petition for Executive clemency shall be available only to officials concerned with the consideration of the petition; provided that they may be open to inspection by the petitioner or by his attorney or other representative if, in the opinion of the Attorney General or his representative, the disclosure sought is required by the ends of justice.

§ 1.7 *Consideration of petitions by the Attorney General; recommendations to the President.*—(a) Upon receipt of a petition for Executive clemency, the Attorney General shall consider that petition and cause such investigation to be made with respect thereto as he may deem appropriate and necessary, using the services of, or obtaining reports from appropriate officials and agencies of the Government, including the Federal Bureau of Investigation, to the extent deemed necessary or desirable.

(b) The Attorney General shall review each petition and all pertinent information developed by his investigation thereof and shall advise the President whether, in his judgment, the request for clemency is of sufficient merit to warrant favorable action by the President.

(c) If he determines that the request merits favorable action by the President, he shall submit the petition to the President together with a warrant prepared for the signature of the President granting the clemency recommended by the Attorney General.

(d) If he determines that the petition and information developed by his investigation do not, in his judgment, merit favorable action by the President he shall provide the President with a concise statement enumerating the essential facts concerning the petitioner, the petition, and his reasons for recommending denial of clemency.

§ 1.8 *Notification of grant of clemency.*—When a petition for pardon is granted, the petitioner or his attorney shall be notified of such action, and the warrant of pardon shall be mailed to the petitioner. When commutation of sentence is granted, the petitioner shall be notified of such action, and the warrant of commutation shall be sent to the petitioner through the officer in charge of his place of confinement, or directly to the petitioner if he is on parole.

§ 1.9 *Notification of denial of clemency.*—(a) Whenever the President notifies the Attorney General that he is denying a request for clemency, the Attorney General, or at his direction the Pardon Attorney, shall so advise the petitioner and close the case.

(b) Whenever the Attorney General recommends that the President deny a request for clemency and the President does not disapprove or take other action with respect to that adverse recommendation within 30 days after the date of its submission to him, it shall be presumed that the President concurs in that adverse recommendation of the Attorney General, and the Attorney General, or at his direction the Pardon Attorney, shall so advise the petitioner and close the case.

These regulations shall become effective on the thirty-first day following the date of their publication in the FEDERAL REGISTER.

ROBERT F. KENNEDY,
Attorney General.

Date: October 18, 1962.

Approved: JOHN F. KENNEDY.

Date: October 30, 1962.

Published in the FEDERAL REGISTER of the National Archives of the United States, November 10, 1962, Volume 27, Number 220, Part I, at pages 11002 and 11003.

Copy - Buchen

For filing

THE WHITE HOUSE
WASHINGTON

Date 4/28/76

TO: BILL NICHOLSON

FROM: KEN LAZARUS

ACTION:

- Approval/Signature
- Comments/Recommendations
- Prepare Response
- Please Handle
- For Your Information
- File

REMARKS:

Attached is a copy of our most recent correspondence on the Kerner pardon.



THE WHITE HOUSE
WASHINGTON

April 23, 1976

MEMORANDUM FOR: PHILIP BUCHEN
FROM: WILLIAM NICHOLSON *WUN*
SUBJECT: Former Governor Otto Kerner

This morning Mr. Wally Johnson of Chicago called concerning a Presidential pardon for former Governor Otto Kerner.

Mr. Johnson advises that the Governor's physical condition is bad and that he will not be living much longer. When the Governor dies he will not have full Masonic honors at his burial unless he is pardoned prior to death. Mr. Johnson knew the President was a 33^o Mason and would understand the importance of these honors.



THE WHITE HOUSE

WASHINGTON

April 28, 1976

Dear Mr. Patton:

This is in reply to your letter to the President of April 13, 1976, expressing the view that consideration of a pardon for former Governor Otto Kerner is justified prior to the expiration of the normal five-year waiting period.

The question of a waiver of the waiting period is being reconsidered by the Deputy Attorney General on the basis of recent medical information concerning Mr. Kerner's condition. I shall contact you again when a decision has been made concerning the waiver.

Your views on this matter are appreciated.

Sincerely,

rs/

Kenneth A. Lazarus
Associate Counsel
to the President

Mr. Thomas E. Patton
Seymour & Patton
1225 Connecticut Avenue, N. W.
Washington, D. C. 20036

bcc: Phil Buchen - FYI ✓
Bill Nicholson - FYI
Dick Parsons - FYI



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SEYMOUR & PATTON

Attorneys at Law
1225 Connecticut Avenue
Washington, D.C. 20036

(202) 452-1711

April 13, 1976

Determined to be an
Administrative Marking

The Honorable Gerald R. Ford
President of the United States
The White House
Washington, D.C.

By VO NARA, Date 8/26/15

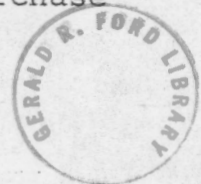
Re: Otto Kerner, Jr.

PRIVATE AND ~~CONFIDENTIAL~~

Dear Mr. President:

Otto Kerner is dying. The enclosed medical report from four eminent doctors leaves no room for doubt that Mr. Kerner is suffering from cancer that cannot be reversed. Until this time I, as his attorney, have sought a presidential pardon solely through normal channels by applying to the Pardon Attorney at the Justice Department. The Justice Department however, has held that they will not waive the normal five year waiting period following a criminal conviction. That decision is to my mind an outlandish refusal to exercise compassion toward a man who does not have anywhere near a five year life expectancy. Because of our frustrations in seeking a pardon through normal channels, and because we have met with failure through normal channels, it is my duty as Mr. Kerner's attorney to take off the gloves and appeal directly to you under your absolute constitutional power to grant a pardon. All of the arguments in favor of Mr. Kerner's pardon have already been set forth in our pardon petition, a copy of which was sent to the White House. I wish here only to summarize why you must, in the name of all that is compassionate and decent, pardon Otto Kerner.

Otto Kerner devoted forty years of his life to useful public service. As an Army Major General, as a United States Attorney, as two-term Governor of Illinois, as a Federal Appellate Judge and as the chairman of an important Presidential commission, Mr. Kerner spent his entire life in public service. No one who has ever studied his record has ever questioned the great value of his services to the public. The only blemish on his record was the purchase



The Honorable Gerald R. Ford
April 13, 1976
Page two

of racetrack stock which resulted in his indictment and conviction. (All other charges in the indictment followed that purchase.) When his 40 years of dedicated and useful public service is compared against this one blemish, surely Mr. Kerner is entitled to the compassionate gratitude of his country in his twilight days. Mr. Kerner's public career has always been marked by a compassionate sense of duty to the public. At this hour in his life he is entitled to receive the same compassion which he himself always demonstrated in his lifetime.

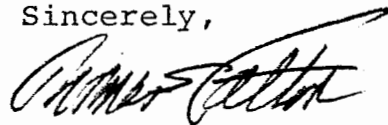
Because we have met with failure in the Justice Department, and because we cannot expect success without your personal consideration, this last appeal must necessarily be made directly to you, particularly because Mr. Kerner's days are measured in months and not years.

Ultimately this appeal cannot rest upon logic or reason; for ultimately your decision in Mr. Kerner's case must be based solely on considerations of humanity and compassion. We do not seek exoneration of his acts, but only a compassionate gesture, which transcends considerations of guilt or innocence. The report of his physicians leaves no doubt that Mr. Kerner's misery is due in large part to his conviction and that a pardon is the only way to relieve his mental distress which worsens his physical condition. The doctors' report itself contains the most eloquent statement of the need for a pardon:

"Such a humanitarian expression of kindness and generosity would offer Mr. Kerner the mental and spiritual peace he so desperately seeks and needs to face the end of his life with the same dignity with which he lived."

Mr. President, you have exhibited in many ways your understanding of the need to temper justice with mercy. A pardon for Otto Kerner, Jr. in these circumstances would be a truly humanitarian act.

Sincerely,



Thomas E. Patton
Attorney for Otto Kerner, Jr.

TEP/mb
Enclosure



THE WHITE HOUSE
WASHINGTON

January 29, 1976

Eva,

Thomas Patton, of Seymour & Patton, attorneys for Otto Kerner, former Governor of Illinois, telephoned late yesterday afternoon requesting a visit with someone in the White House regarding a pardon for Kerner.

Patton had written on October 14, 1975; we referred his letter to Justice; and later we responded to Patton (copies of correspondence enclosed).

The Attorney General disqualified himself for the hearing. Judge Tyler presided at the hearing and ruled negatively with respect to the petition for pardon.

Patton feels he did not get a fair hearing and wants to talk to someone in the White House about it. Because his client is advancing in age and in very poor health, he feels he should make a "last-ditch" appeal to the White House.

Patton says many people have written in support of the pardon. If you want to see those letters, they undoubtedly are in Central Files.

Mary Donahue

Thomas Patton -- 452-1711

*sent to
Ken Layman
1/29/76*



November 18, 1975

Dear Mr. Patton:

President Ford has asked me to acknowledge your letter of October 14, 1975, concerning the petition for pardon of Otto Kerner, Jr., and enclosing a memorandum in support of the petition.

I am advised by the Pardon Attorney that Mr. Kerner's request for a waiver of the usual five-year waiting period subsequent to the date of release has been referred to the Attorney General for decision. I have also been advised that the Attorney General has recused himself in this matter and has requested the Deputy Attorney General to decide the request.

You may be sure that Mr. Kerner's request will be carefully considered.

Sincerely,

Richard D. Parsons _____
Associate Director and Counsel
Domestic Council

Mr. Thomas E. Patton
Seymour & Patton
1225 Connecticut Avenue, NW.
Washington, D. C. 20036

RDP:med



SEYMOUR & PATTON

Attorneys at Law
1225 Connecticut Avenue
Washington, D.C. 20036

(202) 452-1111

October 14, 1975

The Honorable Gerald R. Ford
President of the United States
The White House
Washington, D. C.

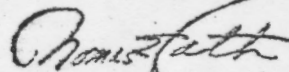
Re: Petition of Otto Kerner, Jr., for
Executive Clemency

Dear Mr. President:

This is to advise you that a petition has been filed this day with the Pardon Attorney of the Department of Justice requesting that you exercise your constitutional power to grant a Presidential pardon to Otto Kerner, Jr., former Governor of Illinois. I am enclosing a memorandum in support of the petition which I respectfully request be reviewed by the White House. In light of the highly significant nature of this case and of the extraordinary merits in support of the application, you should be directly advised of the pendency of this petition. Otto Kerner, Jr., devoted 40 years of his life to useful public service and a Presidential pardon would be a very small gesture of appreciation to Mr. Kerner for his dedicated service at a time when he is of an advanced age and with serious health problems.

As I have advised the Pardon Attorney, there are extraordinarily compelling reasons to grant this petition, and I trust that every fair consideration will be given to the petition on its merits.

Respectfully,



Thomas E. Patton
Attorney for Petitioner

Enclosures

cc: Lawrence Taylor, Esq.
Otto Kerner, Jr.

TEP/ssg



Pardon

THE WHITE HOUSE
WASHINGTON

April 23, 1976

MEMORANDUM FOR: PHILIP BUCHEN
FROM: WILLIAM NICHOLSON *WUN*
SUBJECT: Former Governor Otto Kerner

This morning Mr. Wally Johnson of Chicago called concerning a Presidential pardon for former Governor Otto Kerner.

Mr. Johnson advises that the Governor's physical condition is bad and that he will not be living much longer. When the Governor dies he will not have full Masonic honors at his burial unless he is pardoned prior to death. Mr. Johnson knew the President was a 33^o Mason and would understand the importance of these honors.



Pardon

April 23, 1976

Dear Senator Percy:

This is in further reply to your letter to the President of March 29, 1976, expressing the view that consideration of a pardon for former Governor Otto Kerner is justified prior to the expiration of the normal five-year waiting period.

The question of a waiver of the waiting period is being reconsidered by the Deputy Attorney General on the basis of recent medical information concerning Mr. Kerner's condition. I shall contact you again when a decision has been made concerning the waiver.

Your views on this matter are appreciated.

Sincerely,

/s/

**Kenneth A. Lazarus
Associate Counsel
to the President**

**The Honorable Charles H. Percy
United States Senate
Washington, D. C. 20510**

KAL:dlm

bcc: Phil Buchen ✓

