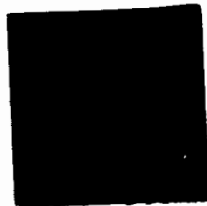


The original documents are located in Box C2, folder “Presidential Handwriting, 8/29/1974” of the Presidential Handwriting File at the Gerald R. Ford Presidential Library.

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THE WHITE HOUSE
WASHINGTON

August 29, 1974

MEMORANDUM FOR:

AL HAIG

FROM:

JERRY H. JONES

[Handwritten signature]

*OBE -
Muhwy already
too k place
Need debrief
from Domestic
Council.
J*

Attached is a draft of the policy options which Saxbe and Schlesinger intend to present to the President on amnesty. I thought you might want to have some advance warning on the current thinking in case you want to bring the President up to speed before the meeting.

THE WHITE HOUSE
WASHINGTON

Return to Haig Box in room 400



THE WHITE HOUSE

WASHINGTON

August 29, 1974

MEMORANDUM FOR GENERAL HAIG

SUBJECT: Leniency

Attached for your information is the latest draft of the requested report to the President on amnesty from Saxbe and Schlesinger.

They are meeting at 1:00 p.m. today to try to iron out the final differences and to discuss which of the plans each is likely to recommend to President Ford in their meeting Saturday morning.

It is my present understanding that Schlesinger will recommend Plan A. Saxbe remains undecided.

Please let me know if you have any further questions.


Geoff Shepard

Attachment



MEMORANDUM FOR THE PRESIDENT

SUBJECT: Leniency

I. The Nature and Scope of the Leniency Problem

A. Historical Experience

A general amnesty for all deserters or draft evaders has never followed an American war. Partial amnesties have applied only to those already convicted. There have been about 20 such amnesty or pardons' proclamations in American history. In other instances, leniency has been afforded draft evaders or deserters through prosecutorial neglect.

None of these instances where some form of leniency or amnesty was given provides an exact precedent for deserters or draft evaders from the Vietnam war period. The purpose of leniency in the case of Vietnam war resisters is to give those individuals an opportunity to "earn their way back" into American society and thereby promote national reconciliation consistent with the need to maintain a strong military force.

B. Individuals Potentially Eligible for Leniency

1. Draft Evaders

There are two groups of draft evaders during the Vietnam war period who may be eligible for leniency: those who have been convicted of an offense and those who are under either indictment or investigation. There are approximately 8,700 in the former group and 6,610 in the latter. Only a handful of those convicted of draft evasion are incarcerated today. There are 4,352 alleged violators under indictment and of those, 4,061 are fugitives. Approximately 3,000 of the fugitives are in Canada. An additional 2,258 persons are under investigation for draft evasion. Thus,



approximately 15,500 draft evaders will potentially be eligible for the leniency program.

Draft evaders acted for a variety of motives. Some acted because of opposition to the Vietnam war. Others may have acted because they disliked military service for a variety of reasons. Those who strongly favor leniency believe that most draft evaders should be treated as if they acted out of opposition to the war. Those who oppose leniency tend to believe that true anti-war motivation was significant in relatively few cases.

Some research has been done on American exiles in Canada. It has been observed that the draft evader group tended to be members of the middle class while the deserters had lesser social status.

2. Deserters

There are presently approximately 12,478 Vietnam era military deserters "at large", approximately 1,500 in Canada. During the Vietnam era, approximately 500,000 incidents of desertion were resolved. Approximately 360 individuals are currently serving sentences or awaiting trial based on Vietnam-era absence offenses. Thus, approximately 12,838 deserters are potentially eligible for leniency. The motives of these deserters varied. As with evaders, those who favor leniency tend to believe that many of the deserters were motivated by opposition to the Vietnam war. However, the Department of Defense estimates that only a small percent of this group acted for that reason. The Department of Defense has prepared a profile of the average military deserter. The typical deserter was a high school drop-out (69 percent), dull of intellect (43 percent in mental Category IV of V), white (85 percent), and had no prior criminal record (70 percent).

It should be noted that some of the 12,478 deserters at large have criminal charges other than desertion pending against them. In such cases the other charges would be disposed of as provided by the Uniform Code of Military Justice before the deserter would be eligible for the leniency program.



C. Spectrum of Opinion on Leniency

The Vietnam war clearly generated a sharp division in American society based upon fundamental moral and philosophical differences in the perception of the war. Some groups support blanket amnesty for war resisters because they believe resisters committed no offense and served as a beacon for the rest of society. Others oppose any form of leniency because they believe evaders and deserters shirked their patriotic obligations. In between these two positions is a wide spectrum of views on leniency held with varying degrees of intensity.

Recent public opinion polls indicate that a substantial majority of Americans favor some form of amnesty. -Of that group, a majority favor conditional, rather than blanket amnesty.

Congressional proposals mirror this spectrum of opinion ranging from immediate general amnesty for all draft evaders and deserters (Abzug-Dellums) to resolutions opposing any amnesty (Hebert-Hogan).

In the last analysis for leniency to heal the wounds of the Vietnam conflict, the majority of Americans must view it as fair and just considering both the objections to the nature of the war and the sacrifices of those who served.

II. Post-Conviction Group (Military and Civilian)

A Leniency Board of three persons would be established by Executive Order to deal with post-conviction records of both draft evaders and military deserters. The Board would establish criteria for the recommendation of pardons consistent with the underlying philosophy of the plan in Section III ultimately selected by the President.



III. Alternative Leniency Plans

The alternate leniency plans generally provide for no confinement of evaders or deserters conditioned upon an agreement to perform alternate national service. By adjusting several variables, the program can be made more severe or more lenient. The key variables are as follows: (1) the length of the grace period during which an individual may return; (2) whether to formally indict a returning evader; the type of discharge received by a returning deserter; (3) the nature and length of the commitment to perform alternate service and the degree to which this performance will be monitored and enforced; (4) the nature, if any, of a reaffirmation of allegiance; and (5) the degree of exoneration which will be afforded upon successful completion of a period of alternate service. Adjusting these variables, we have devised three options of the basic program which are presented in the order of decreasing severity.

^[Most] ~~All~~ of the alternate service plans would likely be ^{would} administered by the Director of Selective Service. To make the alternate service requirement credible, he ~~will~~ require adequate budget support to administer the program coupled with your instructions to various departments and agencies to supply a sufficient number of alternate service jobs.

Plan A - Required Alternate Service and Strong Reaffirmation of Allegiance; Permanent Undesirable Discharge.

<u>Department of Justice</u>	<u>Department of Defense</u>
1. Report to U. S. Attorney or State Selective Service Director	Report to designated military authority
2. Indict any returnees not yet indicted	Undesirable discharge
3. Sworn two-year Alternate Service Agreement with U. S. Attorney or State Selective Director, including a strong statement of reaffirmation of allegiance	Sworn two-year Alternate Service Agreement with DoD, including strong statement of reaffirmation of allegiance.



- | | | |
|----|--|--|
| 4. | Employer certification of good performance. Alternate Service counseling by State Selective Service Director | Same |
| 5. | Review of certification by U.S. Attorney or State Selective Service Director | Review of employer certification by [Leniency Board or] DoD and issuance of certificate of satisfactory completion of Alternate Service. |
| 6. | Dismissal of indictment | Undesirable discharge remains |
| 7. | No Government benefits | Same |

Non-Completion of Alternate Service

Sanctions

Department of Justice

1. Prosecution
2. No certificate of satisfactory completion of alternate service

Department of Defense

No certification of satisfactory completion of alternate service

Pros

1. Gives strongest support to current laws governing draft evasion and military desertion.
2. Less likely to undermine future draft or military discipline.
3. Contains most stringent requirement for "earned reentry" to U.S. society.
4. Less likely to give deserters and evaders a better break than those who served honorably.



Cons

1. Will likely attract fewer violators because
 - (a) Places permanent stigma on record regardless of future service;
 - (b) Requires strenuous service and reaffirmation of allegiance for acts many of this group believed satisfied their obligations to the United States.
2. A possible result therefore is that Presidential goal of national reconciliation of Vietnam conflict will be perceived to have failed.
3. The administrative requirements of this option are likely to prolong the leniency process for a period of years.

Plan B - Mild or No Reaffirmation of Allegiance, Required Alternate Service; Upgrading of Undesirable Discharge

<u>Department of Justice</u>	<u>Department of Defense</u>
1. Report to U.S. Attorney or State Selective Service Director	Report to designated military authority
2. Keep existing indictments on file and require waiver letters from all pending completion of alternate service	Undesirable discharge subject to revision after alternate service
3. Written agreement to perform alternate service for 18 months with the U.S. Attorney or State Selective Service Director. Mild or no statement of reaffirmation of allegiance.	Written agreement with DoD to perform alternate service for 18 months. Mild or no statement of reaffirmation of allegiance
4. Employer's certification of good performance	Same



- | | | |
|----|--|--|
| 5. | Review of certificate by U.S. Attorney or State Selective Service Director | Review of certificate by military authority |
| 6. | Dropping of charges or dismissal of indictment | Military department issues special leniency discharge pursuant to Presidential Proclamation of leniency. |
| 7. | No Government benefits | Same |

Sanctions

- | | | |
|----|------------------------------|------------------------------|
| | <u>Department of Justice</u> | <u>Department of Defense</u> |
| 1. | Prosecution | No upgraded discharge |

Pros

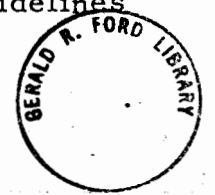
1. Symmetry between procedures for evaders (Department of Justice) and deserters (Department of Defense).
2. Possibility for earned leniency, but with minimal incentive for future draft evaders or deserters.

Cons

1. Plan B may be perceived as too lenient by those generally opposed to amnesty, yet too stringent to attract a number of evaders or deserters

Plan C - No Reaffirmation of Allegiance, General Discharge, and Commitment only to Alternate Service

- | | | |
|----|---|--|
| | <u>Department of Justice</u> | <u>Department of Defense</u> |
| 1. | Report to U.S. Attorney or Selective Service Director | Report to designated military authority |
| 2. | Letter from the U.S. Attorney or State Selective Director indicating the dropping of charges or the dismissal of indictment based on 18 months alternate service commitments pursuant to guidelines | Letter from military department indicating special leniency discharge pursuant to Presidential Proclamation based on 18 months alternate service commitment. Alternate service guidelines provided |



3. No certification of satisfactory completion of alternate service; no statement of re-affirmation of allegiance Same

4. No Government benefits Same

Pros

1. Ease of administration and uniformity in application.
2. Will attract maximum participation by war resisters because of minimal contrition required and lack of stigma.
3. President may be perceived as having succeeded in national reconciliation.

Cons

1. May be perceived as easy alternative to military service. Therefore, the draft and military discipline in future conflicts may be difficult to enforce, particularly if they are unpopular. It tends to devalue the currency of service with the All Volunteer Force. *conflicts are* *may*

2. Lack of an enforcement mechanism may create disrespect for the program.

