

The original documents are located in Box 2, folder “Amnesty - White House Meetings” of the John Marsh Files at the Gerald R. Ford Presidential Library.

Copyright Notice

The copyright law of the United States (Title 17, United States Code) governs the making of photocopies or other reproductions of copyrighted material. Gerald R. Ford donated to the United States of America his copyrights in all of his unpublished writings in National Archives collections. Works prepared by U.S. Government employees as part of their official duties are in the public domain. The copyrights to materials written by other individuals or organizations are presumed to remain with them. If you think any of the information displayed in the PDF is subject to a valid copyright claim, please contact the Gerald R. Ford Presidential Library.

B



THE SECRETARY OF DEFENSE
WASHINGTON, D. C. 20301

August 30, 1974

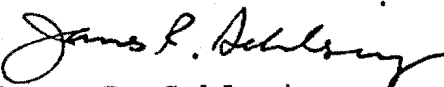
The President
The White House
Washington, D.C.

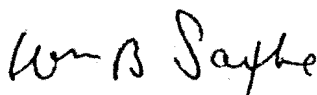
Dear Mr. President:

This letter responds to your request that we give you our "unvarnished views" as well as the full spectrum of American opinion on the question of "amnesty" for draft evaders and military deserters. This response has been drafted on the assumption that existing legal structures should be utilized to the maximum in administering a program of earned reentry. We concur that a Presidential initiative addressed to the issue is a timely step in efforts to heal the nation's wounds.

A continuing recognition of a citizen's obligation to serve his country in time of need is a national necessity. A national reconciliation of differences arising from the Vietnam war is also desirable. The program outlined in the attached memorandum attempts to meet those divergent objectives.

Respectfully,


James R. Schlesinger
Secretary of Defense


William B. Saxbe
Attorney General



ANALYSIS

Attorney General Saxbe is very opposed to amnesty, but recognizes that you are moving in that direction and wants to be supportive. Since most draft evaders now pleading guilty get only suspended sentences, Saxbe advocates the simplest of solutions for draft evaders: essentially a promise to be a good citizen from now on and a grace period of one year to blend back into the community.

Secretary Schlesinger recognizes that he has trouble within his own Department since he has never "worn a uniform". He knows he must advocate the toughest option, but as he describes the details, the option becomes more and more lenient. Schlesinger feels we are seeking a political solution to a problem for which there is no legal solution. Basically, he advocates an undesirable discharge, coupled with a confession of desertion and a promise to perform public service.

Both men have considered and rejected establishing an enforceable program of public service employment for evaders or deserters. This rejection is based upon their considered judgment that the administrative chaos and adverse press coverage from the attempted enforcement would far outweigh any advantage to you or the Nation of really knowing whether the promised public service was actually performed.

The possible effect of this upon the Nation's future ability to draft an Army has not received detailed consideration by either individual.

The recommended statement of allegiance and promise of public service is designed to both satisfy the Nation that there will be an "earned re-entry" and to discourage re-entry of the true revolutionaries who might best remain abroad indefinitely.

The choice is essentially whether you agree that this is sufficient, or whether you actually want your Administration to enforce the program and attempt to impose discipline (with the anticipated demonstrations and endless court suits by dissentients) upon a group which is in public disfavor precisely because it rebelled against discipline.



3 PM JWF
3 PM JWF
3 PM JWF

MEMORANDUM FOR THE PRESIDENT

SUBJECT: A Program for the Return of Vietnam Era Draft Evaders
and Military Deserters

I. The Nature and Scope of the Problem

A. Introduction

The program outlined in this memorandum transcends the normal processes of jurisprudence in an effort to reconcile the nation in the aftermath of a lengthy and divisive war.

Refusal to serve one's country has always been viewed as unacceptable. Moreover, both evasion of military service and desertion are potentially grave threats to the national security. In particular, desertion in time of war is a most serious and heinous offense. This program is designed as a unique act of mercy, intended to heal the nation's wounds. In no way is it intended to condone acts of evasion or desertion.

B. Historical Experience with "Amnesty"

A general amnesty for all deserters or draft evaders has never followed an American war. In the past, partial amnesties have typically applied only to those already convicted. There have been about 20 such amnesty or pardons' proclamations in American history. In other instances, clemency has been obtained by draft evaders or deserters through prosecutorial inaction.

None of these instances, where some form of clemency or amnesty was given, provides an exact precedent for deserters or draft evaders from the Vietnam war period. The purpose of the contemplated program for reconciliation in the case of Vietnam war resisters would be to give those individuals an opportunity to "earn their way back" into American society, thereby promoting national reconciliation consistent with maintaining a strong military force and a viable prospect for conscripting armies in future emergencies.



C. Individuals Potentially Eligible for the Program

1. Draft Evaders

There are two groups of draft evaders from the Vietnam war period who may be eligible for the program: 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 reconciliation program.

Draft evaders acted for a variety of motives. Some acted because of opposition to the Vietnam war. Others may have acted out of dislike for a range of aspects of military service. Those who strongly favor amnesty believe that most draft evaders should be treated as if they acted out of opposition to the war. Those who oppose any lenient treatment tend to emphasize motivations other than anti-war sentiment, and reject attempts to characterize their motivations as expressions of moral principle.

2. Deserters

An individual who is absent without leave for 30 days or more is classified as a deserter. There are at present approximately 12,500 Vietnam era military deserters "at large"; approximately 1,500 of these are in Canada. During the Vietnam era, approximately 500,000 incidents of desertion were resolved through the normal processes of the military justice system. Approximately 600 individuals are currently serving sentences or awaiting trial for absence offenses during this same period. Thus, approximately 13,000 unconvicted deserters are potentially eligible for the program. The motives of these deserters varied. As with evaders, those who favor amnesty tend to believe that many of the deserters were motivated by opposition to the Vietnam war. However, the available data indicates that only a small percentage of this group acted for that reason. A profile of the typical deserter indicates that he was an enlistee, a non-high school graduate, was from 18 to 21 years old, was single, and was in one of the four lowest enlisted pay grades.



It should be noted that some of the 13,000 deserters at large have other criminal charges in addition to 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 considered under the alternate service program.

D. Spectrum of Opinion on Amnesty

The Vietnam war ultimately generated a sharp division in American society based upon fundamental moral and philosophical differences in perceptions of the war. Some groups support blanket amnesty for war resisters. They believe resisters committed no offense and they assert that they provided a moral guide for the rest of society. Others oppose any form of reprieve because they believe evaders and deserters shirked their patriotic duty, and they have concluded that to take the absentees back without punishment would demean honorable military service. Between these two positions lies a wide spectrum of views 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) through alternate service for evaders only (Taft) to resolutions opposing any amnesty (Hogan).

In the last analysis, for any program contemplating the return of Vietnam era evaders and deserters to heal the wounds of the Vietnam conflict, as large a majority of Americans as possible must view it as fair and just, considering both the diverse attitudes toward the war and notably, the sacrifices of those who served.

II. The Program

The program outlined in this memorandum assures returning evaders and deserters that they will not be prosecuted for offenses of evasion or absenteeism, if they agree to perform alternate national service. Several elements can be adjusted to realize the appropriate degree of leniency of the program. The key elements are as follows: (1) whether to indict a returning evader; (2) the type of discharge



received by a returning deserter; (3) the nature and length of the commitment to perform alternate service, the degree of latitude in the type of alternate service, and the degree to which this performance will be monitored and enforced; (4) the nature, if any, of a reaffirmation of allegiance, including acknowledgement of absence; and (5) the degree of exoneration which will be afforded upon successful completion of a period of alternate service.

Other variables relate to the scope of the program and the period during which evaders and deserters may apply. It is recommended that only those who committed offenses between the dates of the Tonkin Gulf Resolution (August 4, 1964) and the withdrawal of U.S. forces from Vietnam (March 28, 1973) be included. We also recommend that applications for the program be limited to a period of 120 days commencing 30 days from the date of the proclamation announcing the program.

Taking these variables into account, the program aims to fulfill the objective of giving evaders and deserters an opportunity for an "earned re-entry" into American society. Under the plan, both the returning evader and the returning deserter would execute a formal pledge for alternate service including a form of reaffirmation of allegiance to the United States. The evader would remain subject to indictment until he completes the period of alternate service. The deserter would immediately receive an undesirable discharge from the armed forces. The alternate service program would be monitored by the Director of the Selective Service System.

The concept of alternate service as a condition of "earned return" to U.S. society is derived from Selective Service regulations relating to the program for conscientious objectors. This concept is central to Senator Taft's "earned" immunity proposal.

It should be recognized that a program of this type will create administrative and enforcement problems. If a substantial number of individuals seek alternate service, the Director of Selective Service will need additional funds to assist in the location of appropriate jobs. In most instances, it would be hoped that the individual seeking to qualify would be able to find his own job. The type of qualifying alternate service would, as in the case of the conscientious objector program, be concerned with "the national health, safety, or interest."



The Selective Service would be accorded a wider discretion than the existing guidelines on the type of qualifying service. It should include jobs or service in hospitals, schools, ecology and other community or charitable organizations. The length and/or character of such service, recommended to be 18 months at most, could be reduced in individual cases in consideration of special circumstances.

An evader who successfully completed alternate service would receive a certificate, upon receipt of which the U.S. Attorney would drop draft evasion charges. A deserter would be entitled to have his undesirable discharge marked with an appropriate legend to indicate fulfillment of his commitment upon presentation of the certificate to the concerned military department. No deserter would be eligible for veterans benefits.

Draft Evaders

Military Deserters

- | | | |
|----|--|---|
| 1. | Report to U.S. Attorney | Report to designated military authority |
| 2. | Reaffirmation of allegiance | Same |
| 3. | Keep existing indictments on file and require waiver letters from all evaders (including unindicted) pending completion of alternate service | Undesirable discharge |
| 4. | Written agreement with U.S. Attorney to perform alternate service under the supervision of the State Selective Service Director for a period, a maximum of 18 months mitigated in individual circumstances under generalized guidelines. | Same; written agreement received by DoD |



- | | | |
|----|---|--|
| 5. | Employer or sponsor certification of good performance. Alternate service counseling by State Selective Service Director | Same |
| 6. | Review of certification by State Selective Service Director and issuance of certificate of satisfactory completion of alternate service | Same |
| 7. | Dismissal of indictment | Undesirable discharge would remain with legend indicating certification of completion of alternate service |
| 8. | No veterans benefits | Same |
- III. Post Conviction Group (Military and Civilian)

A three member Clemency Board would be established by Executive Order pursuant to the President's pardon power. The Board would review the records of convicted draft evaders and deserters who apply, and recommend clemency consistent with the President's program. The Board would have authority to issue appropriate guidelines.

With respect to convicted deserters, those who applied could have a dishonorable or bad conduct discharge received for an offense of absenteeism upgraded to an undesirable discharge by action of their service. There following, through Selective Service, they could complete a program of alternate service which would be indicated on the discharge.

The Board would also have discretionary authority to review, under the President's ultimate clemency power, decisions under the program in order to achieve the objectives of the program.



THE WHITE HOUSE
WASHINGTON

*File
Annex*

MEETING ON LENIENCY

September 11, 1974
5:00 p. m.
The Roosevelt Room

Participants:

John Marsh	Robert Andrews
Philip Buchen	Frederick Smith, Jr.
Martin Hoffman	Carlyle Maw
Lawrence H. Silberman	Bruce Fine
Byron Pepitone	Jonathan Rose
Ted Marrs	Bud McFarlane
Geoff Shepard	
John Corcoran	
Philip Warman	
Jay French	
Howard Kerr	
General Haig	

Purpose:

General review of the proposed clemency program and its elements. Discussion of certain remaining issues.

Format:

A: Review of Proposed Clemency Program.

B: Issues for Discussion.



A. Review of Proposed Clemency Program.

1. Announcement of Clemency as soon as possible.

a. Proclamation effective immediately through January 31, 1975.

b. Administrative time from signing until October 1, 1974; program commences then.

2. Reception of those claiming clemency.

a. Pre-conviction

1. Evaders: report to U.S. Attorneys or U.S. Embassies (only to be given credit).

2. Deserters: report to nearest military installation of same service deserted.

b. Post-conviction

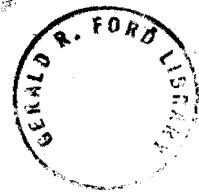
1. Evaders: apply to clemency board.

2. Deserters: apply to clemency board.

3. Processing procedure

a. Pre-conviction

1. Evaders: -- sign combined oath/alternate service agreement
-- 24 months/6 months
-- subject to modification by U.S. Attorneys
-- report to Selective Service
-- return on completion to U.S. Attorney; charges dropped.



2. Deserters: -- sign oath and alternate service agreements
-- received Undesirable Discharge
-- 24 months/6 months
-- subject to modification by DOD
-- report to Selective Service
-- return on completion to DOD for Clemency Discharge

b. Post Conviction

1. Evaders: -- apply to Clemency Board
(parole remains an issue if in jail)
-- 24 months/6 months
-- alternate service subject to discretion of Board
-- recommendation of pardon
2. Deserters: -- apply to Clemency Board
(parole remains an issue if in jail)
-- 24 months/6 months
-- alternate service subject to discretion of Board
-- recommendation of pardon
-- apply to DOD for Clemency Discharge

B. Issues for Discussion

1. Receipt by U.S. Embassies of Evaders

- a. Should U.S. Embassies receive evaders for the reporting purposes only?
- b. If an evader is indigent, how shall his return to a U.S. Attorney be effected?
- c. Should any consideration be given family and its return including travel; visas, etc. ?
- d. Could any disparity of treatment arise between those evaders in Sweden and those in Canada? For example, how is an indigent defined? If the evader must pay his own way, obviously the cost is greater from Sweden.
- e. How long should an evader who reports to an Embassy be given to return to U.S. ?



2. Parole of Evaders or Deserters in Jail.

a. Can the President direct immediate parole or take some administrative action to effect release of those in jail pending application to Board?

3. Definition of "Deserter."

a. How should the word "deserter" be defined to avoid mislabelling post-conviction absentees?

4. Bypass of Military Courts.

Background: Senator John Tower has indicated his strong concern that if the "military courts" are bypassed in dealing with deserters, military discipline would collapse.

a. Should pre-conviction deserters be brought before military courts?

b. If not, is this concern satisfied because the return program is part of the overall system of military justice?

5. Veterans Benefits under Clemency Discharge.

Background: An Undesirable Discharge allows the VA to determine on an individual case basis which, if any, VA benefits the person should receive. The Clemency Discharge (C.D.) is a new administrative discharge designed for this program. The President has indicated that no benefits should be allowed under the C.D. VA believes there is merit to allowing each case to be determined on an individual basis.

a. Should the VA be directed to determine in each case whether any or all VA benefits should be allowed?

b. Is there a conflict with those deserters who ignore alternate service, and thus keep their Undesirable Discharge, since automatically their benefits may be allowed or disallowed on an individual basis?



7. Other Benefits.

Background: Other federal agencies administer benefits for Veterans, e.g., Departments of Labor, Agriculture, Civil Service Commission, Social Security Administration.

- a. What benefits will be allowed under a C.D.?
- b. Should not all benefits relating to a C.D. be at least the same, if not greater, under a C.D. or an Undesirable Discharge?

8. Timetable/Draft of Documents.

- a. Who should draft the documents:
 1. Proclamation
 2. Executive Order -- Clemency Board
 3. Executive Order -- Selective Service/Alternate Service Program
 4. *Fact Sheet*
- b. Which office will coordinate drafting?
- c. Timetable for drafts?
- d. Timetable for announcement?

9. Next Meeting.

- a. Should there be a final meeting?



10. Other Selective Service Act Violators

- a. Should an individual who failed to register under the Selective Service Act be considered?
- b. Should an individual who burned his draft card be considered?

11. Other Proposals

- a. Should a Commission be set up to deal with the whole universe of Vietnam War era offenders?



THE WHITE HOUSE


WASHINGTON

September 11, 1974

MEMORANDUM FOR:

EXECUTIVE PROTECTIVE SERVICE

FROM:

HOWARD J. KERR 
CDR, USN.
Assitant to John O. Marsh, Jr.

SUBJECT:

Clearance for 5:00 p.m.
Amnesty Meeting in Roosevelt Room

Would you please clear the following people for the 5:00 p.m. Amnesty meeting in the Roosevelt Room, West Wing.

Lawrence Silberman--Justice

Robert Andrews--Justice *Defense*

Byron Pepitone--Justice *Executive Service*

Martin Hoffman--DOD

Jonathan Rose-- Justice

Bruce Fine--Justice

John Corcoran--VA *Federal Counsel's office*

Philip Warman --VA

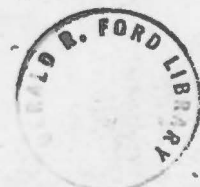
Bud McFarlane- NSC

Carlyle Maw -- State Department/Under Secretary for Security Assistance

Frederick Smith, Jr. --State Department

Richard Kennedy NSC

Justice DOD WH



THE WHITE HOUSE

WASHINGTON

MEETING ON CLEMENCY

September 12, 1974

2:00 p.m.

Conference Room, Situation Room

Participants:

John Marsh
Howard Kerr
General Haig
Philip Buchen
Geoff Shepard
Ted Marrs
Jay French
Bob Hartmann

Lawrence Silberman
Bruce Fine
Jonathan Rose
Robert Andrews
Martin Hoffman
Capt. William O. Miller
Arnold Anderson Vickery



THE WHITE HOUSE

WASHINGTON

September 12, 1974

MEMORANDUM FOR: EXECUTIVE PROTECTIVE SERVICE

FROM: HOWARD J. KERR *HJK*
CDR, USN.
Assistant to John O. Marsh, Jr.

SUBJECT: Clearance

Would you please clear the following people for the 2:00 p. m.
Clemency Meeting in the Conference Room, Situation Room,
West Wing:

Justice Department

Lawrence Silberman
Bruce Fine
Jonathan Rose

Defense Department:

Robert Andrews
Martin Hoffman
Capt. William O. Miller
Arnold Anderson Vickery



THE WHITE HOUSE

WASHINGTON

MEETING ON LENIENCY

September 11, 1974

5:00 p. m.

The Roosevelt Room

Participants:

John Marsh
Philip Buchen
Martin Hoffman
Lawrence H. Silberman
Byron Pepitone
Ted Marrs
Geoff Shepard
John Corcoran
Philip Warman
Jay French
Howard Kerr
General Haig

Robert Andrews
Frederick Smith, Jr.
Carlyle Maw
Bruce Fine
Jonathan Rose
Bud McFarlane

Purpose:

General review of the proposed clemency program and its elements. Discussion of certain remaining issues.

Format:

A: Review of Proposed Clemency Program.

B: Issues for Discussion.



A. Review of Proposed Clemency Program.

1. Announcement of Clemency as soon as possible.

a. Proclamation effective immediately through January 31, 1975.

b. Administrative time from signing until October 1, 1974; program commences then.

2. Reception of those claiming clemency.

a. Pre-conviction

1. Evaders: report to U.S. Attorneys or U.S. Embassies (only to be given credit).

2. Deserters: report to nearest military installation of same service deserted.

b. Post-conviction

1. Evaders: apply to clemency board.

2. Deserters: apply to clemency board.

3. Processing procedure

a. Pre-conviction

1. Evaders: -- sign combined oath/alternate service agreement
-- 24 months/6 months
-- subject to modification by U.S. Attorneys
-- report to Selective Service
-- return on completion to U.S. Attorney;
charges dropped.



2. Deserters: -- sign oath and alternate service agreements
-- received Undesirable Discharge
-- 24 months/6 months
-- subject to modification by DOD
-- report to Selective Service
-- return on completion to DOD for Clemency Discharge

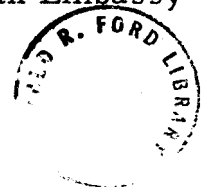
b. Post Conviction

1. Evaders: -- apply to Clemency Board (parole remains an issue if in jail)
-- 24 months/6 months
-- alternate service subject to discretion of Board
-- recommendation of pardon
2. Deserters: -- apply to Clemency Board (parole remains an issue if in jail)
-- 24 months/6 months
-- alternate service subject to discretion of Board
-- recommendation of pardon
-- apply to DOD for Clemency Discharge

B. Issues for Discussion

1. Receipt by U.S. Embassies of Evaders

- a. Should U.S. Embassies receive evaders for the reporting purposes only?
- b. If an evader is indigent, how shall his return to a U.S. Attorney be effected?
- c. Should any consideration be given family and its return including travel; visas, etc. ?
- d. Could any disparity of treatment arise between those evaders in Sweden and those in Canada? For example, how is an indigent defined? If the evader must pay his own way, obviously the cost is greater from Sweden.
- e. How long should an evader who reports to an Embassy be given to return to U.S. ?



2. Parole of Evaders or Deserters in Jail.

a. Can the President direct immediate parole or take some administrative action to effect release of those in jail pending application to Board?

3. Definition of "Deserter."

a. How should the word "deserter" be defined to avoid mislabelling post-conviction absentees?

4. Bypass of Military Courts.

Background: Senator John Tower has indicated his strong concern that if the "military courts" are bypassed in dealing with deserters, military discipline would collapse.

a. Should pre-conviction deserters be brought before military courts?

b. If not, is this concern satisfied because the return program is part of the overall system of military justice?

5. Veterans Benefits under Clemency Discharge.

Background: An Undesirable Discharge allows the VA to determine on an individual case basis which, if any, VA benefits the person should receive. The Clemency Discharge (C.D.) is a new administrative discharge designed for this program. The President has indicated that no benefits should be allowed under the C.D. VA believes there is merit to allowing each case to be determined on an individual basis.

a. Should the VA be directed to determine in each case whether any or all VA benefits should be allowed?

b. Is there a conflict with those deserters who ignore alternate service, and thus keep their Undesirable Discharge, since automatically their benefits may be allowed or disallowed on an individual basis?



7. Other Benefits.

Background: Other federal agencies administer benefits for Veterans, e.g., Departments of Labor, Agriculture, Civil Service Commission, Social Security Administration.

- a. What benefits will be allowed under a C.D. ?
- b. Should not all benefits relating to a C.D. be at least the same, if not greater, under a C.D. or an Undesirable Discharge?

8. Timetable/Draft of Documents.

- a. Who should draft the documents:
 - 1. Proclamation
 - 2. Executive Order -- Clemency Board
 - 3. Executive Order -- Selective Service/Alternate Service Program
- b. Which office will coordinate drafting?
- c. Timetable for drafts?
- d. Timetable for announcement?

9. Next Meeting.

- a. Should there be a final meeting?



10. Other Selective Service Act Violators

- a. Should an individual who failed to register under the Selective Service Act be considered?
- b. Should an individual who burned his draft card be considered?

11. Other Proposals

- a. Should a Commission be set up to deal with the whole universe of Vietnam War era offenders?

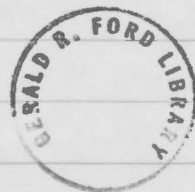


WH Mtg Sept 14 '74

0900 P Mtg with Cong. leaders
Phil Buchan
Larry
Marty

to Kelley
Bullock
etc.

Armed Services
Judiciary
Bi-Partisan Leadership
Att. Gen
Sec. Def
Joint Chiefs
SSS
VA



Larry + Marty - Meet Sunday
night - then hold Press
Conference after Cong. Leaders mtg.
How handle broad political
~~service~~ question?

How avoid questions as to
how decisions arrived at, +
position of each participant?

Press Format still to be decided.



2

Bad names not to be announced.

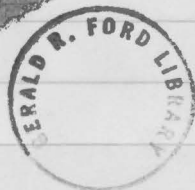
09¹⁵~~00~~ Press Embargo
0900 Conf. Judges
0945 Press ~~Instructions~~ Session

Constitutional powers reference -
DOJ to submit revised language.

What about military deserters
who after conviction escape,
how is he carried? If similarly,

deserter with non-destination
offenses, should he be tried at
Orel -

Under this program, do we want
him? If not, should we carry
him on the rolls?



Amnesty

THE WHITE HOUSE

WASHINGTON

September 13, 1974

MEMORANDUM FOR: EXECUTIVE PROTECTIVE SERVICE
Clearance Center
FROM: COMMANDER HOWARD KERR, USN
Assistant to John O. Marsh, Jr.
SUBJECT: Clearance

Would you please clear the following people for an Amnesty meeting tomorrow, September 14, 1974 at 10:00 a.m. in the Roosevelt Room, West Wing?

Jonathan Rose
Captain William Miller
Bruce Fine
Robert Andrews
Martin Hoffman
Lawrence H. Silberman
Byron Pepitone
John Corcoran

