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Draft

075
DJS
DOD
JIM

THE WHITE HOUSE
WASHINGTON
February 20, 1975

Dear Secretary Schlesinger:

Pursuant to my authority under Section 2 of Article 2 of the Constitution of the United States and in accordance with my program to afford reconciliation to Vietnam era draft evaders and military deserters, I request that you direct the Secretaries of the appropriate Military Departments to issue Clemency Discharge certificates, from time to time, to those former members of the armed forces who are recommended for such certificates by the Presidential Clemency Board and who have satisfied any condition for alternate service in the national interest which may have been imposed. *in the clemency warrant.*

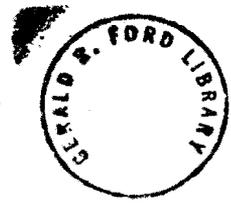
The issuance of a Clemency Discharge certificate shall not preclude further review and action by the appropriate Military Department Discharge Review Board and the Board for Correction of Military Records in accordance with existing procedures upon application by the former member of the armed forces.

Executive clemency under this program does not affect or alter the military record of service of any former member of the armed forces for the purpose of such further review.

Sincerely,

Gerald R. Ford

The Honorable James R. Schlesinger
Secretary of Defense
Department of Defense
Washington, D. C. 20301



To: Russ
Rourke

From: Jay



SELECTIVE SERVICE SYSTEM
ROUTING SLIP

TO	NAME	DIVISION AND ROOM NUMBER
1.	Mr. Jay T. French	
2.		
3.		

<input type="checkbox"/> FOR IMMEDIATE ACTION	<input type="checkbox"/> FOR INITIAL	<input type="checkbox"/> AS REQUIRED
<input type="checkbox"/> FOR NECESSARY ACTION	<input type="checkbox"/> FOR RECOMMENDATION	<input type="checkbox"/> NOTE AND RETURN
<input type="checkbox"/> FOR APPROVAL	<input type="checkbox"/> FOR SIGNATURE	<input type="checkbox"/> PER OUR CONVERSATION
<input type="checkbox"/> FOR CONCURRENCE	<input type="checkbox"/> FOR YOUR INFORMATION	<input type="checkbox"/> PER OUR TELEPHONE CONVERSATION
<input type="checkbox"/> FOR REPORT	<input type="checkbox"/> FOR YOUR COMMENT	<input type="checkbox"/> SEE ME
<input type="checkbox"/> FOR CORRECTION	<input type="checkbox"/> FOR FILING	<input type="checkbox"/> OTHER (INDICATE)
<input type="checkbox"/> FOR DIRECT HANDLING	<input type="checkbox"/> NOTE AND FORWARD	

ANSWER OR ACKNOWLEDGE ON OR BEFORE _____

PREPARE REPLY FOR THE SIGNATURE OF _____

REMARKS

Attached forwarded for your information.

FROM	NAME	DIVISION AND ROOM NUMBER	
	Peter T. Straub General Counsel	General Counsel	
		TELEPHONE	DATE
		343-7174	2/27/75

J

Jacob
FT
R



a continuing war called peace
a demand for silence called clemency
a continuing NO
by those who refused to kill
by those who refuse to forget



SOME OF
THOSE WHO
WILL BE
PRESENT ARE THE
RESISTERS, PHIL BERRIGAN,
FRED BRANFMAN, KAY CAMP,
NOAM CHOMSKY, REV. WM. SLOAN
COFFIN, DAVE DELLINGER, DICK
FALK, DICK GREGORY, BILL
KUNSTLER, LIZ MCALLISTER,
GEORGE WALD

THE WHITE HOUSE

SATURDAY MARCH 1

9³⁰ A.M

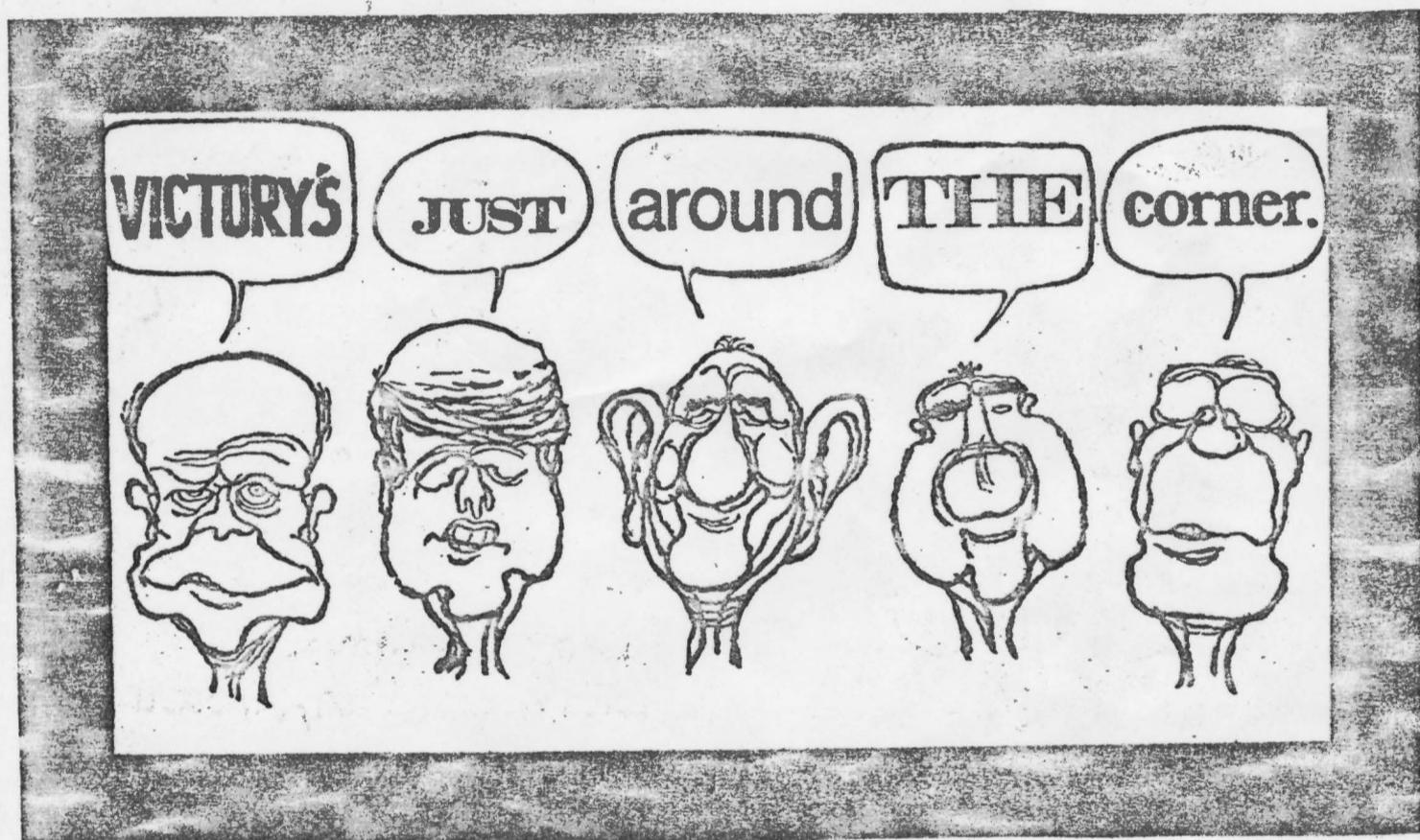
this is a call to all those who
are eligible for clemency:
selective service violators, those
who have refused to cooperate
with the military, those who were
imprisoned, in exile, deserters,
families, friends, supporters, all
are invited to come to the
White House to personally return
to Gerald Ford their invitations
to subservience, to say clearly
and visibly:

NO to your clemency,
NO to your war!



march first coalition 1345 euclid st. nw washington, d.c. 20009
202-667-6407

WE DEMAND AN END TO THE WAR.
 WE DEMAND THE RELEASE OF ALL
 POLITICAL PRISONERS IN
 SOUTH VIETNAM.
 WE REJECT YOUR CLEMENCY, AND
 WE DEMAND UNIVERSAL AND
 UNCONDITIONAL AMNESTY.



THE MARCH FIRST COALITION IS SPONSORED BY

CATHOLIC PEACE FELLOWSHIP CLERGY AND LAITY CONCERNED
 COMMUNITY FOR CREATIVE NON-VIOLENCE
 COUNCIL FOR CHRISTIAN SOCIAL ACTION, UNITED CHURCH OF CHRIST
 EPISCOPAL PEACE FELLOWSHIP FAST FOR FAMINE RELIEF
 GOLD STAR PARENTS FOR AMNESTY INDOCHINA MOBILE EDUCATION PROJECT
 INDOCHINA RESOURCE CENTER JONAH HOUSE
 NATIONAL COUNCIL FOR UNIVERSAL & UNCONDITIONAL AMNESTY & AFFILIATES
 NATIONAL CAMPUS ALLIANCE FOR AMNESTY/USNSA WAR RESISTERS LEAGUE
 WASHINGTON COMMUNITY FOR NON-VIOLENT ACTION WASHINGTON WOMEN'S STRIKE I
 PEACE BOB ALPERN(SANE) TIM BUTZ(WASHINGTON VVAW/WSO) REV.
 RICHARD KILLMER(DIR. OF SPECIAL MINISTRIES, VIETNAM GENERATION,
 NATIONAL COUNCIL OF CHURCHES). RABBI DAVID SAPERSTEIN, (ASSOCIATE
 DIRECTOR RELIGIOUS ACTION CENTER, UNION OF AMERICAN HEBREW CON-
 GREGATIONS) DWAYNE SHANK(NATIONAL INTER-RELIGIOUS SERVICE BOARD
 FOR CO'S)
 WHERE THE NAMES OF INDIVIDUALS ARE USED, ORGANIZATIONS ARE LISTED
 FOR IDENTIFICATION ONLY.



CONTACT THE ABOVE ORGANIZATIONS FOR INFORMATION
 AND WORK WITH THEM AND THEIR AFFILIATES IN YOUR
 LOCAL AREA.

[1976]

ISSUES RAISED BY THE GAO DRAFT CLEMENCY REPORT

- I. Differing views held by U.S. Attorneys, including consideration of social and economic circumstances, influenced the determination of the amount of alternate service assigned to alleged draft evaders.
 - U.S. Attorney in Eastern District of New York assigned the maximum alternate service period in 6 percent of the cases reviewed, while in the Southern District of New York, the U.S. Attorney assigned the maximum alternate service period in 100 percent of the cases reviewed by GAO.

- II. Errors in preparing a list of prosecutable alleged draft evaders resulted in freedom from prosecution of many individuals.

- III. No more than 14 percent of alleged Army deserters received individual legal counsel. The other services generally provided individual legal counsel to their members.

- IV. Almost two years after the program began:
 - 9 percent of those who entered the program had completed alternate service
 - 17 percent were in alternate service jobs or still waiting for placement
 - 74 percent had never showed up or had been dropped from the program

GAO estimates that more than 75 percent of those who have been assigned periods of alternate service will not have completed them nor earned clemency.

- V. Estimates of the number of persons eligible to participate in the program have ranged from about 113,000 to over 300,000 or more.



The report states: "There does not appear to us any way to resolve the difference in these estimates because, among other reasons, if individuals never registered for the draft and they were never discovered, they never became part of the statistics. However, we can state with reasonable certainty that about 21,700 individuals actually participated in some elements of the program as follows:

Assigned alternate service	13,750
Received pardons	6,052
Denied clemency	911
Pending cases (as of February 9, 1976)	<u>1,000</u>
	21,713"

IV. Questions raised by the GAO report:

- (1) Why did about 1,000 eligible participants never report to Selective Service offices to perform alternate service?
- (2) Why had about 2,200 participants already been dropped from the program without completing their alternate service?

-- Low pay and distance to the job were most frequently cited

VII. Who Got Out and Who Stayed In

As of September 1, 1975, about 57 percent of the alleged deserters failed to complete their alternate service and had been terminated from the program. These deserters had already been granted an undesirable discharge and their consequences were to live with that situation.

In comparison only 5 percent of the alleged draft evaders participating in the alternate service program failed to complete and had been terminated as of September 1, 1975. The alleged draft evaders who failed to complete alternate service are subject to resumed prosecution for their alleged offenses.



CHAPTER 6
THE LINGERING ISSUE
REQUIREMENT FOR JUDGEMENT

REMAINING
THE OPEN QUESTION

The Vietnam era encompassed the 8 and one half year period from August 4, 1964 through March 28, 1973. The era ended without resolution of the status of thousands of Americans who remained convicted, charged, investigated, or still sought for draft law violations of offenses related to unauthorized absences during military service.

On September 16, 1974, the President issued his proclamation announcing the program which among other matters, stated:

"Over a year after the last American combatant had left Vietnam, the status of thousands of our countrymen--convicted, charged, investigated or still sought for violations of the Military Selective Service Act or of the Uniform Code of Military Justice--remains unresolved.

In furtherance of our national commitment to justice and mercy these young Americans should have the chance to contribute a share to the rebuilding of peace among ourselves and with all nations. They should be allowed the opportunity to earn return to their country, their communities, and their families, upon their agreement to a period of alternate service in the national interest, together with an acknowledgment of their allegiance to the country and its Constitution."

In this report we have discussed that indeed there were thousands whose status was unresolved at the time of the proclamation. Further we have discussed that after being allowed an opportunity to resolve their status under the provisions of the proclamation ^{several} many thousands ~~did~~ chose not to do so while ^{many} several thousands ^{did not,} chose to do so.

For those several thousands who ^{entered the program} chose to resolve their status, this report has discussed the processes which dealt with them, the



consequences of not satisfying the provisions of the program, and the rewards for satisfying those provisions,

For the many thousands who did not take the opportunity offered to them by the President's proclamation, the resolution of their status remains an open question.

A MATTER OF JUDGEMENT
THE NECESSARY JUDGEMENT

We believe that this report together with other public information may help to provide a basis upon which to render a judgement as to whether the clemency program achieved its stated purpose.

If the judgement is made that ^{program information received and was understood} both the time allowed to enter the ^{people affected} program was sufficient, and the conditions and processes were appropriate and fair, then the program should be allowed to run the balance of its course and become part of the nation's history. However, if the judgement is made that ^{information, time, conditions, and processes were} the program did not resolve the status of "thousands" convicted, charged, investigated, or still sought for violations of the Military Selective Service Act or of the Uniform Code of Military Justice, ^{was not resolved,} then remedies should be sought.





d. Strong implication that the Army should have given individual legal counsel to all its participants or at least those who were non-graduates and/or limited in mental ability (i.e., in Category IV or V on the AFQT). It is interesting to note here that the legal precedent which they cite; Feretta v. California, June, 1975--was settled after the Presidential Program was over.

✓ e. Omission of the statistics that the Presidential Clemency Board (PCB) handled 86% of the eligibles and 71% of the participants. This is an important omission since the GAO report does not cover the work of the PCB in the body of its report.

3. Discussions with Mr. Kandle of GAO left the impression that GAO was not going to make any major changes in the draft. They consider the draft to be accurate and to meet our major objections. In light of that stance, it seems that the best DOD can hope for is that GAO will correct the remaining factual errors. These are listed below.

a. (p.i) addition of the sources of the pie charts would help and/or reference to the page where they are discussed.

b. (p.iii) the 9% graduation rate is probably a function of the length of alternate service assigned. This should be clarified.

c.
d. →

Ⓔ. (p. 24, paragraph 3) These are ARI figures for the Army (Table 2), If DOD figures are needed, they can be found in table 10 of the DOD After-Action Report.

Ⓕ d. Does the fact that 60% of the DOD letters were returned have any impact upon participation rates? If so, should that influence be acknowledged?

Ⓖ e. What is the impact of individual counseling by the Navy and Air Force have upon its participants (p. 27-31), which is missing for the Army participants? Does the fact that the Army had 71% of the participants and 450 men during the first two weeks of September have any impact

DEEM upon its ability to provide individual legal counseling? If so, shouldn't these limitations be discussed?

c. The last sentence on page 10 implies that applicants were accepted after the end of the Program. Is this so?

(p. 24)

d. The screening of eligibles might have an effect upon participation rates, but it is hard to see how it would affect the number of participants. Could this assertion be more adequately explained?



~~GREEN-EMER~~

January 7, 1976

MEMORANDUM TO: BARRY ROTH
FROM: RUSS ROURKE

Barry, although we have tried our level best to stay out of the Clemency Business, Col. Dickman, et. al., continue to communicate with us.

Would you be good enough to handle the attached. I believe a pro forma response to Dickman would be satisfactory.

Many thanks.

P.S. Congratulations on your great news... Cathy Barker is a lovely and delightful lady.

RAR:cb





OFFICE OF THE DIRECTOR

DEC 31 1975

NATIONAL HEADQUARTERS
SELECTIVE SERVICE SYSTEM

1724 F STREET NW.
WASHINGTON, D. C. 20435



ADDRESS REPLY TO
THE DIRECTOR OF SELECTIVE SERVICE

December 31, 1975

Russ:

If possible would you please keep an eye on the up-grade cases? Since Jay French is gone they might try to push them through for V.A. benefits.

The original deal was to submit them as straight cases and let the individual go to the Discharge Review Board for any possible up-grade and V.A. benefits. This is as it should be, of course.

Mr. Traylor has been sitting on them for some time. Don't know why he will not submit them. Baskier is still concerned about them. His contact in the PCB, Justice Program is Chuck Hilbert. Would guess the cases are being held up waiting for an opportune time to submit them.

Sorry to be such a bother.

Have a Happy New Year.

Bill

Col. W. Dickman



December 30, 1975

Russ:

There is a move under way to attempt to equate the Alternate Service assignments of the DOD candidates with those referrals from the Clemency Board. This gives some cause for concern since in all reality the individuals involved fall into two separate and distinct categories. They cannot be compared or equated.

In the President's Proclamation of September 16, 1974, he specifically addressed the two types of returnees that he wished to reach:

1. The unconvicted draft evader and military absentee
2. The convicted draft evader and military absentee

In the first case, these individuals were to report to the jurisdictional United States Attorney or to the proper Military Department or Secretary of Transportation. In any case, since they had not been tried or convicted or served any sentence or probation, they were to be assigned to perform 24 months of alternate service (or less if there were mitigating circumstances).

In the second instance, the person involved had been convicted of draft evasion offense, or had received a punitive or undesirable discharge or was serving a sentence of confinement for such violations. Here, the President stated that where appropriate the Clemency Board could recommend that clemency be conditioned upon the completion of a period of alternate service. The Clemency Board took this to mean a three month period as a base, where alternate service was indicated.

In either case the appropriate referring authority was to take into account such honorable service as an individual may have rendered prior to his absence, penalties already paid under law, and such other mitigating factors as may be appropriate to seek equity among the program participants.

It is my belief that since most of the convicted evaders and military absentees have already "paid some penalty under law" whereas the unconvicted individuals have not, that it is not in any way possible to compare their assignments in an equitable way. In a word, apples and oranges cannot be compared.

Keep your eye open for this possibly coming through the White House.



I believe the Army bounced this to Monty Hoffman for some sort of decision also.

The General said to get this information to you ASAP.

Regards,

Bill

Col. W.C. Dickman



THE WHITE HOUSE
WASHINGTON

DONNA:

Do you have a more recent
file on the Clemency stuff?

If not, I'll put this up
here with some of the older
junk. There really hasn't
been too much that's come in
these days re Clemency...

cb



THE WHITE HOUSE
WASHINGTON
September 9, 1976

MEMORANDUM TO: ED SCHMULTS

FROM:  RUSS ROURKE 

Ed, as indicated in the attached notes, Jack has expressed serious concern over the delay in the White House processing of the attached. It would appear that this might have been by design, rather than by sloth. I would appreciate your reaction.

Many thanks.

This is being processed in an orderly way!

*Ed Schmult 9/10
(disc w/Jom 9/15)*



THE WHITE HOUSE

WASHINGTON

September 8, 1976

MEMORANDUM FOR: RUSS ROURKE

FROM: JACK MARSH *Jack*

My concern remains on the attached -- the date of the incoming Justice memo (2 August) and what might have occurred at Justice since it was submitted.

Please see the Counsel's office.



THE WHITE HOUSE
WASHINGTON

September 8



Mr. Marsh:

Attached is another copy
of the Lazarus memo. I
have also attached a
copy of Russ' memo to
you.

FYI, Lazarus' office said
Buchen suggested he hold
up on this until after the
election.

Donna

September 3, 1976

MEMORANDUM TO: JACK MARSH
FROM: RUSS ROURKE

Jack, I recommend option #4.

To approve all 900 as is could cause great embarrassment to the President... some of the more serious felony cases contained in the 900, if they became the subject of pardons, would make a mockery of the program, **N**ot to mention the political fall-out attendant thereto.

RAR:cb

(re Lazarus memo - clemency)

Handwritten notes:
9/3/76
re Lazarus memo - clemency
T



THE WHITE HOUSE

WASHINGTON

September 1, 1976

MEMO FOR: PHIL BUCHEN
JACK MARSH ✓

FROM: KEN LAZARUS ✓

Attached is the most recent recommendation of the Department of Justice dealing with Clemency Board recommendations as to known felons.

May I have your guidance?

Attachment





Office of the Attorney General

Washington, D. C. 20530

August 2, 1976

TO: Kenneth A. Lazarus
Associate Counsel to the President

FROM: Mark L. Wolf, Special Assistant
to the Attorney General **MLW**

SUBJECT: Presidential Clemency Board Recommendations
Regarding Known Felons

Among the applicants recommended for clemency by the Presidential Clemency Board are some 800 felons. In addition, since assuming responsibility for the residual functions of the Board, the Department of Justice has processed the applications of almost 100 felons who are believed to qualify for a recommendation of clemency under the standards established by the Board. As yet, however, none of these 900 cases has been forwarded to the President, and the Department has been asked to outline and evaluate possible alternatives for their disposition.

There appear to be five alternatives worthy of consideration: (1) acceptance of the Board's recommendations; (2) denial of clemency to all known felons; (3) case-by-case review of all applications from known felons; (4) case-by-case review of those applications involving the most serious felonies, and acceptance of the Board's recommendations as to the remaining applications; (5) adoption of an objective eligibility standard to be met by each applicant-felon. The Department believes that former members of the Board's staff may have suggested other alternatives but is unaware of their substance.

(1) Acceptance of the Board's recommendations

Although the Board requested information only about offenses within its jurisdiction, it did receive and evaluate information about other offenses. In many cases, this unsolicited information about other crimes contributed substantially to the Board's decision to recommend a denial of clemency and, in other cases, resulted in the recommendation of a longer term of alternative service.



The Department believes that this approach was both reasonable and consistent with the purpose and spirit of the President's Clemency program, which offers a pardon only for draft and military offenses. Those applicants with the most serious felony records either have been denied clemency or, because they are incarcerated, will be unable to complete the alternative service on which their pardons are conditioned.

(2) Denial of clemency to all known felons

Clemency could be denied to all applicants known to have been convicted of a felony other than those for which a pardon is sought. The Department believes, however, that to deny clemency to applicants solely because they are known to have committed other felonies would be inconsistent with the limited and compassionate nature of the program. Such a policy would be somewhat arbitrary since it is only by chance that knowledge of other offenses was obtained. There undoubtedly are many cases in which clemency already has been granted to persons whose felony records were unknown to the Board at the time it made its recommendations.

(3) Case-by-case review of all applications from known felons

Each of the 900 cases could be carefully reviewed and evaluated to determine whether the felony record is sufficiently serious to warrant a denial of clemency. This approach presents two problems. First, the Department does not now have complete and reliable felony records in all 900 cases, and a substantial amount of staff time would be necessary to obtain this information. Second, a rather elaborate calculus--based on the number of felonies, their nature, and their age--would have to be developed to determine when a supplementary recommendation against clemency would be appropriate. It is estimated that this approach would require resources not now available to the Department and cause a substantial delay in the disposition of these cases. The Department does not recommend this alternative.

(4) Case-by-case review of only those applications involving the most serious felonies

The Department could carry out a summary review of all 900 felony cases. Those which appear to involve the most serious misconduct--perhaps 10 to 20 percent--would be se



aside for the sort of scrutiny described in the preceding section, while the remainder would be sent to the President with the present recommendation of clemency. Although this approach would present problems of resources and delay, the Department would not consider it an unreasonable alternative to outright adoption of the Board's recommendations.

(5) Adoption of an objective eligibility standard

Each case could be evaluated without case-by-case review by reference to an objective standard. An objective and easily verifiable eligibility standard that each recipient would have to meet in order to qualify for pardon would be drafted for inclusion in the master clemency warrant. Specifically, the master warrant granting pardon to the known felons would contain a condition that only those who had been free of felony convictions or who had not been incarcerated at any time within a designated period of years immediately preceding the grant of pardon could benefit from such grant. (Suggested conditional language is attached). One possibility would be a three-year period, which is identical to the waiting period applicable to ordinary pardon applicants for the purpose of establishing eligibility. Whether an individual listed on the master warrant would benefit from the grant of clemency would be determined by reference to the Federal Bureau of Investigation identification record, and any person denied clemency on the basis of such determination would be permitted to have the record corrected if it is erroneous. This approach is similar to that taken by the President Truman in his 1945 and 1952 proclamations granting pardons to all previously convicted servicemen who thereafter had completed at least one year of service during World War II or the Korean War and were thereafter honorably discharged. The principal difference is that the Truman proclamations applied only to categories of individuals but not to named individuals. In the Clemency Board felon cases only the master warrant would contain the conditional language. If the subsequent check of the individuals' name on the FBI identification record shows that he does not meet the condition, he would be denied a pardon.

It should be noted that the felon cases also could be evaluated by reference to the same objective standard without the necessity of including it in the master warrant. All applicants who are determined to meet the standard would then



be granted unconditional clemency, except for alternative service requirements. Those applicants who do not qualify would be notified that their applications had been denied but would be reconsidered if they could present, within a specified time, evidence that the denial has been based upon incorrect information. This approach has the merit of avoiding the necessity of using a new form of conditional master warrant.

Adoption of this alternative would have the merit of avoiding any significant problems of resources or delay. The first variation of this option would involve significant uncertainty and, probably, confusion. Both variations would cause arbitrary results because it is only by chance that knowledge of other offenses has been obtained. The Department does not recommend this approach.

Conclusion

The Department believes that no further review of the 900 felon cases is required and that recommendations of clemency should be submitted to the President. If this approach is not acceptable, the Department feels that the most reasonable alternative is the sort of limited review suggested in section (4).



. . .upon the express condition that they shall not have been convicted in any court of the United States, federal or state, of any felony within the three year period immediately preceding this grant or that they shall not have been confined at any time within the same three year period pursuant to a sentence of imprisonment imposed by any such court upon conviction of a felony, regardless of when such conviction was obtained, the publicly available arrest record maintained by the Federal Bureau of Investigation, if any such record exists, to be conclusive as to the existence of any such conviction and sentence, provided, however, that such record shall be corrected if shown to be incorrect and, as corrected, shall be conclusive, and if they have been so convicted or so imprisoned, the pardon is null and of no effect.



SEP 12 1976

THE WHITE HOUSE

WASHINGTON

September 11, 1976

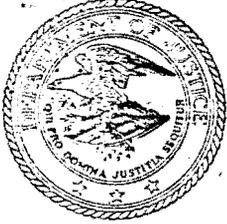


MEMORANDUM FOR: KEN LAZARUS
FROM: PHIL BUCHEN *P.*
SUBJECT: Memo to You From Mark Wolf Concerning
the Presidential Clemency Board
Recommendations

I understand that you will be getting additional information to help us evaluate the various options.

cc: Jack Marsh ✓
Ed Schmults





Office of the Attorney General

Washington, D. C. 20530

August 2, 1976

TO: Kenneth A. Lazarus
Associate Counsel to the President

FROM: Mark L. Wolf, Special Assistant
to the Attorney General **MLW**

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Each case could be evaluated without case-by-case review by reference to an objective standard. An objective and easily verifiable eligibility standard that each recipient would have to meet in order to qualify for pardon would be drafted for inclusion in the master clemency warrant. Specifically, the master warrant granting pardon to the known felons would contain a condition that only those who had been free of felony convictions or who had not been incarcerated at any time within a designated period of years immediately preceding the grant of pardon could benefit from such grant. (Suggested conditional language is attached). One possibility would be a three-year period, which is identical to the waiting period applicable to ordinary pardon applicants for the purpose of establishing eligibility. Whether an individual listed on the master warrant would benefit from the grant of clemency would be determined by reference to the Federal Bureau of Investigation identification record, and any person denied clemency on the basis of such determination would be permitted to have the record corrected if it is erroneous. This approach is similar to that taken by the President Truman in his 1945 and 1952 proclamations granting pardons to all previously convicted servicemen who thereafter had completed at least one year of service during World War II or the Korean War and were thereafter honorably discharged. The principal difference is that the Truman proclamations applied only to categories of individuals but not to named individuals. In the Clemency Board felon cases only the master warrant would contain the conditional language. If the subsequent check of the individuals' name on the FBI identification record shows that he does not meet the condition, he would be denied a pardon.

It should be noted that the felon cases' also could be evaluated by reference to the same objective standard without the necessity of including it in the master warrant. All applicants who are determined to meet the standard would then



be granted unconditional clemency, except for alternative service requirements. Those applicants who do not qualify would be notified that their applications had been denied but would be reconsidered if they could present, within a specified time, evidence that the denial has been based upon incorrect information. This approach has the merit of avoiding the necessity of using a new form of conditional master warrant.

Adoption of this alternative would have the merit of avoiding any significant problems of resources or delay. The first variation of this option would involve significant uncertainty and, probably, confusion. Both variations would cause arbitrary results because it is only by chance that knowledge of other offenses has been obtained. The Department does not recommend this approach.

Conclusion

The Department believes that no further review of the 900 felon cases is required and that recommendations of clemency should be submitted to the President. If this approach is not acceptable, the Department feels that the most reasonable alternative is the sort of limited review suggested in section (4).



. . . upon the express condition that they shall not have been convicted in any court of the United States, federal or state, of any felony within the three year period immediately preceding this grant or that they shall not have been confined at any time within the same three year period pursuant to a sentence of imprisonment imposed by any such court upon conviction of a felony, regardless of when such conviction was obtained, the publicly available arrest record maintained by the Federal Bureau of Investigation, if any such record exists, to be conclusive as to the existence of any such conviction and sentence, provided, however, that such record shall be corrected if shown to be incorrect and, as corrected, shall be conclusive, and if they have been so convicted or so imprisoned, the pardon is null and of no effect.



November 13, 1976

MEMORANDUM FOR: JACK WATSON

FROM: JACK MARSH

You should be aware of the attached memo from the Director of the Selective Service raising certain questions as to the status of the Alternate Service work program pursuant to the Clemency program initiated in the Fall of 1975.

For your information, we are also bringing this to the attention of Philip Buchen, Counsel to the President, for guidance on the status of the program.

bcc: Phil Buchen

JOM/dl





NATIONAL HEADQUARTERS
SELECTIVE SERVICE SYSTEM

7TH FLOOR
600 E STREET, N.W.
WASHINGTON, D. C. 20435



ADDRESS REPLY TO
THE DIRECTOR OF SELECTIVE SERVICE

NOV 10 1976

November 9, 1976

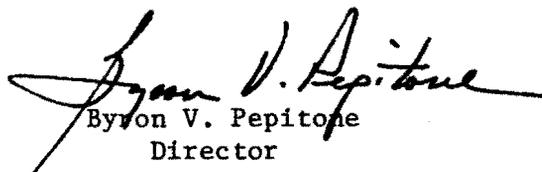
MEMORANDUM FOR THE HONORABLE JOHN O. MARSH, JR.

SUBJECT: The President's Clemency Program

My responsibility for the alternate service work phase of President Ford's clemency program under Executive Order 11804, and public inquiry as to its continuation, prompt this memorandum. Specifically, the press, at least one TV station and an individual now participating in the alternate service work program have inquired as to the conceptual relationship between the clemency program and the pronouncements of the President-elect concerning blanket pardon for persons who violated the Military Selective Service Act during the Vietnam era.

There are over 300 persons either at work or scheduled to commence work in the alternate service program who, upon successful completion of such work, will have the outstanding indictments against them dismissed in accordance with agreements they have reached with U. S. Attorneys. These individuals are the only ones whose inquiries are my concern. Attached are the current statistics concerning the numbers and categories of all participants in the alternate service work program of President Ford's clemency program.

This memorandum is provided in accord with my conversation with Mr. Rourke on November 8, 1976.


Byron V. Pepitone
Director

Attachment



The following chart presents the statistics as of November 2, 1976 for military deserters and draft evaders who enrolled with the Selective Service System.

<u>Status</u>	<u>Totals</u>	<u>DOD(1)</u>	<u>DOJ(2)</u>	<u>Presidential Clemency Board (PCB)</u>		
				<u>Total PCB</u>	<u>CAG(3)</u>	<u>AWOL(4)</u>
Enrolled	8,464	4,545	704	3,215	144	3,071
Completed	1,579	396	174	1,009	85	924
At Work	1,239	611	293	335	18	317
To Be Placed	420	85	51	284	7	277
Terminated	5,226	3,453	186	1,587	34	1,553

- (1) - Military deserters
- (2) - Indicted draft evaders
- (3) - Convicted draft offenders
- (4) - Discharged AWOL offenders

The Selective Service System's responsibility in support of President Ford's clemency program began when a deserter or evader enrolled in the program. In the case of the evader the System enrolled a total of 848 persons, of which 216 have completed their alternate service obligation; 311 are currently at work; 58 are awaiting placement on a job; and 220 enrollees have terminated from the program.



Clemency

November 18, 1976

MEMORANDUM TO: BYRON PEPITONE
FROM: RUSS ROUBEK

Byron, the attached memos to and from Phil Buchen should serve to clarify Administration position on the question of "the prosecution of cases pending against draft resisters".

If you have any further questions concerning this matter, please call me.

RAR:cb

*Search
Done (2)*



THE WHITE HOUSE

WASHINGTON

NOV 17 1976

November 17, 1976

MEMORANDUM FOR:

JIM CANNON ✓
RUSS ROURKE ✓

FROM

PHILIP BUCHEN P-

In reference to the memorandum from Russ Rourke dated November 16 to Jack Marsh regarding the effect of the Department of Justice policy concerning draft resisters on the President's clemency program, I attach a copy of a memo sent to me on November 10 by the Attorney General.

cc: Jack Marsh



November 16, 1976

MEMORANDUM TO: JACK MARSH

FROM: ROSS POURKE *rc*

Jack, I discussed the Clemency program matter with Jim Cannon. Jim feels very strongly that some firm White House action, one way or the other, should be taken ASAP. Jim's view, either we should state that the law would be followed to the letter until January 20, or the White House should state that "as a result of the President-elect's statements, it has become impossible to deal with this matter in an orderly and equitable fashion. We are, therefore, suspending all legal actions against the individuals concerned."

cc: PSuchen ✓

RAR:cb





Office of the Attorney General
Washington, D. C. 20530

November 10, 1976

MEMORANDUM FOR: PHILIP W. BUCHEN
Counsel to the President

FROM: EDWARD H. LEVI *EL*
Attorney General

You have asked whether the Department of Justice has recently modified its position concerning the prosecution of draft resisters and have asked whether the Department of Justice has advised United States Attorneys to defer the prosecution of cases pending against draft resisters.

NBC News has reported that the Department of Justice has advised United States Attorneys to defer the prosecution of draft resisters until President-elect Carter has taken a position concerning the granting of executive clemency to draft resisters.

The Department of Justice's position concerning the prosecution of draft resisters has not changed since the expiration of the clemency program instituted by President Ford. Absent unusual circumstances, the Department's policy has been to permit the release of draft resisters on their own recognizance and to acquiesce in a defendant's waiver of his right to a speedy trial. In response to the report broadcast by NBC News, Robert J. Havel, Director of the Department's Office of Public Information, has issued a statement declaring that the Department has not altered its position as a result of the election and that it is conducting "business as usual." Mr. Havel's statement accurately expresses the Department's position concerning the prosecution of draft resisters. No statements have been issued to United States Attorneys suggesting that the Department's posture on this issue has been or will be altered.



I have been advised that since November 2, 1976, at least two inquiries have been made by United States Attorneys to the Department of Justice concerning the Department's policies pertaining to draft resisters. In response to those inquiries, Department officials stated that the Department will continue to adhere to the long-standing policies that have governed its activities in cases involving possible violations of the selective service laws.



FOR IMMEDIATE DELIVERY ON ARISING

THE WHITE HOUSE

WASHINGTON

December 29, 1976

MEMORANDUM FOR:

DICK CHENEY
JIM CAVANAUGH
BRENT SCOWCROFT

FROM:

JACK MARSH

Please note the attached story. This appears to be taking a thrust of a more intensive review, with a possible change in the President's position on this issue, than we had anticipated.

Ed Schmults' inquiry to Justice was limited to a request for statistical data, but apparently the press are taking that inquiry, together with the President's remarks, to build this into a greater story than we really believe it is.

If our assumption of no major change is correct, I believe you will have to get this into the desired perspective out there.

Attachment

Justice Dept., at Ford Request, Considers Viet Amnesty Issue

VAIL, Colo., Dec. 28 (UPI)—The administration has begun the process of considering presidential amnesty for all Vietnam-era draft resisters and deserters, President Ford said today.

"We have started the process," Ford told reporters when asked if the Justice Department had begun working on a study of the subject.

Ford, red-faced from the cold, skied down the slopes after 3½ hours on the mountains and frowned when asked if his consideration of the proposal indicated a change of mind.

"You don't have to make stories about something that is very plain and very direct," Ford said, repeating an earlier statement that Jane Hart, the widow of Sen. Philip A. Hart (D-Mich.) who died Sunday, had asked him to grant amnesty.

Mrs. Hart was a longtime opponent of U.S. participation in the Vietnam war.

Within hours after revealing his promise to Mrs. Hart, Ford raised some doubts about it by saying "oh, no," when asked if he was serious. One White House official was reported to have said the President was unlikely to grant amnesty.

But today, asked to clarify his position, Ford said: "There's no confusion whatsoever. I said that at her request that I'd take a look at it, and that's what I'm going to do."

[A Justice Department spokesman, asked what Ford had meant about

"starting the process," said that White House counsel Philip W. Buchen's office had contacted Lawrence M. Traylor, the department's pardon attorney, today and had asked for statistics relating to Ford's clemency program.

[The information requested by the White House, the spokesman said, covered such questions as how many draft resisters had applied for clemency and how many had fulfilled its alternative service requirements.]

President-elect Jimmy Carter has said a pardon for draft resisters would be one of his first acts after taking office Jan. 20 and that he is studying suggestions that he include military deserters as well.

Under a clemency program that Ford created shortly after becoming President in August, 1974, draft resisters and deserters were given a chance to "earn their way back" by performing two years of alternative service as a substitute for military service.

The government said 106,000 persons were eligible under Ford's program, but only about 20 per cent took advantage of it. Ford has said in the past that he thought his previous position was adequate.

Ford went skiing today with Trammel Crow, a Texas businessman and major supporter during the campaign. While on Vail Mountain, Ford had lunch with members of the ski patrol, aides said.

PRIORITY
PRECEDENCE

UNCLAS
CLASSIFICATION

FROM: JACK MARSH

TO: DICK CHENEY
JIM CAVINAUGH
BRENT SCOWCROFT

INFO:

RELEASED BY: GE

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HOUSE
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December 30, 1976

MEMORANDUM FOR: THE PRESIDENT

THROUGH: DICK CHENEY

FROM: JACK MARSH

Because of the recent discussions on amnesty, Sonny Montgomery wanted you to be aware of his recent press release and letter to Governor Carter on this subject. The same are attached.

Attachments

JOM/d1

THE WHITE HOUSE
WASHINGTON

December 30, 1976

MEMORANDUM FOR THE PRESIDENT

THROUGH: EDWARD C. SCHMULTS

FROM: BOBBIE GREENE KILBERG

In reconsidering the issue of Presidential clemency for Vietnam era draft evaders and military deserters, we have prepared the following options for your consideration. Each of these options would necessitate substantial analysis and it would be very difficult to announce a new clemency policy before January 20 which would be thoroughly reviewed and properly organized. The options are listed in the descending order of most comprehensive to most limited.

1. The issuance of a Presidential proclamation granting clemency discharges and pardons to all convicted and unconvicted draft offenders and to all fugitive and discharged AWOL offenders whose offenses occurred during the Vietnam War era.* This would apply to the approximately 91,608 individuals who were eligible for the clemency program but did not apply (eligibility was 113,337 -- application rate was 19 percent) and to the approximately 11,535 individuals who applied to the clemency program but did not enroll in, or have not or failed to complete the alternative service requirement. Under the present interpretation of clemency discharges and pardons, the AWOL offenders would not be entitled to veterans benefits. However, the Presidential proclamation would result in a dismissal of any military proceedings against them and the dismissal of any indictments against the draft evaders, plus the receipt of a military discharge which is not dishonorable.

A sub-issue within a new Presidential Clemency Proclamation would be the question of veterans benefits for all AWOL offenders or only for those who actually

* Defined in your Proclamation 4314 of September 16, 1974, which created the clemency program, as the period between the adoption of the Gulf of Tonkin Resolution (August 4, 1964) and the day the last American combatant left Vietnam (March 28, 1973).



served in Vietnam or perhaps only for those who were wounded in Vietnam. The Clemency Board recommended to you that veterans medical benefits be made available to 400 deserters with bad discharges who were permanently disabled from Vietnam wounds and that all veterans' benefits be made available to an additional 253 Vietnam veterans who had outstanding combat records in Vietnam. This could be accomplished by upgrading these individuals' discharges to at least a general discharge or making an exception for them within the category of the clemency discharge or the undesirable discharge. An alternative would be to direct the Defense Department in your Proclamation to review the records of all those eligible for clemency who served in Vietnam and to make individual determinations as to whose discharges should be upgraded and as to who should receive medical benefits as an exception to the clemency or undesirable discharge.

2. Issuance of a Presidential Proclamation granting clemency discharges and pardons to all persons who applied to the clemency program, whether or not they actually reported to the Selective Service for alternative service if that was required of them. This would cover approximately 11,535 individuals.

3. Issuance of a Presidential Proclamation granting clemency discharges and pardons to all persons who actually enrolled in the alternate service program. As approximately 79 percent of those individuals who enrolled in the alternative service program did not start, or have not or failed to complete alternate service, this proposal would cover approximately 6,639 individuals. Under this proposal, no distinction would be made between those who made a real effort to be placed in jobs and complete their assignments and those who did not.

An alternative would be to institute a "good faith" test in order to eliminate those who did not actually cooperate with the program but that would be very difficult to apply in an equitable manner.

4. Reopen the present clemency program and allow people to apply for another period of time. There is little evidence to indicate that many individuals would apply under a reopened program but such an action would give individuals a second chance to participate in earned clemency.



A technical difficulty with reopening the present program is that the Selective Service no longer has an organizational capacity to supervise alternative service. Another organizational mechanism would have to be found for supervision.

5. Take Presidential action in the case of approximately 800 felons whom the Presidential Clemency Board has recommended for clemency and approximately 100 additional felons whom the Department of Justice, since assuming jurisdiction, believes could qualify for clemency under the standards established by the Clemency Board. A pardon under the clemency program would be only for the draft and military offenses and not for the civilian felony convictions. There are five alternatives to consider in this regard:

- (1) Grant clemency now to the approximately 900 felons;
- (2) Deny clemency to all felons;
- (3) Institute a case-by-case review of all applications from known felons;
- (4) Institute a case-by-case review of those applications involving the most serious felonies and grant clemency now to the remaining applicants; or
- (5) Adopt an objective eligibility standard to be met by each applicant felon which, for example, could contain a condition that only those who had been free of felony convictions or who had not been incarcerated at any time within a designated period of years immediately preceding the grant of pardon could benefit from such grant.

6. Direct the Secretary of Defense to issue military discharges under honorable conditions to 253 Vietnam veterans whom the Clemency Board found to be particularly deserving of more than a clemency discharge. According to the Clemency Board, these individuals had outstanding combat records in Vietnam. The Board stated that they had been wounded in combat, had decorations for unusual valor in combat, had multiple tours of honorable military service in the combat zone, and had records of volunteering for hazardous duty.



* * *

We have several observations. First, your Presidential Clemency Program was based on sound decisions. Second, if you decide to select any of the above options, you should be aware that, given the time remaining in your Administration, it will be very difficult to do the proper staff and analytical work. There will not be sufficient time for a new clemency program to be properly organized, administered or implemented.

All in all, our recommendation is that you take no action and that you advise Mrs. Hart of your decision.

