

The original documents are located in Box 5, folder “Clemency Program - General (7)” of the Philip Buchen Files at the Gerald R. Ford Presidential Library.

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May 17, 1976

To: Mr. Charles Goodell

The Photo Office was only able to get a partial list of names and addresses of people on the Clemency Board and unable to identify the people in these pictures.

Would it be possible that you could forward pictures to the people on the Board who would like to have them.

Thanks very much.



Clemency

4:00 p.m.

Thursday, May 27, 1976

Dr. Ted Marrs called to advise that he had a call from Bob Horne who used to work on the Clemency Board. Horne advises that Jack Anderson will be doing an article on the Clemency Board Study and Dr. Marrs would like to talk to you in that reference.

Present
Positions

Bob Horne
Dir. Gov. of Michigan's Office
Wash., D.C.
872 - 8550

6:25 Mr. Bucher
talked with
Dr. Marrs.



ITEM WITHDRAWAL SHEET
WITHDRAWAL ID 00659

Collection/Series/Folder ID No. : 001900098
Reason for Withdrawal : DR, Donor restriction
Type of Material : MEM, Memo(s)
Creator's Name : Phil Buchen
Receiver's Name : Ken Lazarus
Description : re Marine Corps Private who has b
een AWOL since 1964
Creation Date : 06/07/1976
Date Withdrawn : 05/10/1988

ITEM WITHDRAWAL SHEET
WITHDRAWAL ID 00660

Collection/Series/Folder ID No. : 001900098
Reason for Withdrawal : DR,Donor restriction
Type of Material : LET,Letter(s)
Creator's Name : Theodore Marrs
Receiver's Name : Marine Corps Private
Description : re application for clemency
Creation Date : 06/25/1976
Date Withdrawn : 05/10/1988

THE WHITE HOUSE
WASHINGTON

Clemency

July 15, 1976

Dear Father Hesburgh:

The President has asked me to thank you for your letter of July 1, 1976, concerning the question of clemency for Vietnam-era draft and military offenders.

We have noted your observations on the President's clemency program and your belief that more remains to be done to achieve true reconciliation. The inquiry which is being undertaken into this subject by the Center for Civil Rights of the University's Law School should be of considerable interest in this connection.

We look forward to examining the results of that inquiry when it is completed this fall.

Sincerely,

Philip W. Buchen

Philip W. Buchen
Counsel to the President

The Reverend Theodore M. Hesburgh
President
University of Notre Dame
Notre Dame, Indiana 46556



ROUTING AND TRANSMITTAL SLIP

1 TO (Name, office symbol or location)
 Kenneth A. Lazarus
 Associate Counsel to the President

2

3

4

	INITIALS	ACTION
President		CIRCULATE
	DATE	COORDINATION
	INITIALS	FILE
	DATE	INFORMATION
	INITIALS	NOTE AND RETURN
	DATE	PER CONVERSATION
	INITIALS	SEE ME
	DATE	SIGNATURE

REMARKS

Attached is a suggested draft reply to Theodore M. Hesburg, President of Notre Dame. resident, University

Do NOT use this form as a RECORD of approvals, disapprovals, clearances, and similar actions.

FROM (Name, office symbol or location)
 Pardon Attorney, DOJ *LM*

of approvals, concurrences, and similar actions. *LM*

DATE
 7-14-76
 PHONE

D R A F T

The Reverend Theodore M. Hesburgh
President,
University of Notre Dame,
Notre Dame, Indiana 46556

Dear Father Hesburgh:

The President has asked me to thank you for your letter of July 1, 1976 concerning the question of clemency for Vietnam-era draft and military offenders.

We have noted your observations on the President's clemency program and your belief that more remains to be done to achieve true reconciliation. The inquiry which is being undertaken into this subject by the Center for Civil Rights of the University's Law School should be of considerable interest in this connection.

We look forward to examining the results of that inquiry when it is completed this fall.

Sincerely,

Kenneth A. Lazarus
Associate Counsel to the President



THE WHITE HOUSE OFFICE

REFERRAL

To: Lawrence M. Traylor
Pardon Attorney
Department of Justice
Washington, D. C. 20534

Date: 7/12/76

ACTION REQUESTED

- Draft reply for:
 - President's signature.
 - Undersigned's signature.
- Memorandum for use as enclosure to reply.
- Direct reply.
- Furnish information copy.
- Suitable acknowledgment or other appropriate handling.
- Furnish copy of reply, if any.
- For your information.
- For comment.

NOTE

Prompt action is essential.

If more than 72 hours' delay is encountered, please telephone the undersigned immediately, Code 1450.

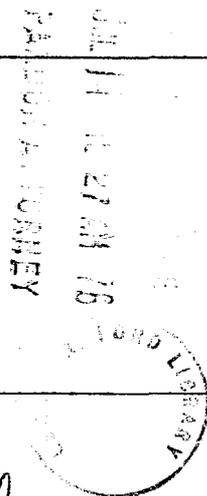
Basic correspondence should be returned when draft reply, memorandum, or comment is requested.

REMARKS:

Description:

Letter: Telegram: Other:

To: President Ford
From: Father Theodore Hesburgh, Notre Dame University
Date: 7/1/76
Subject: clemency program



By direction of the President:

Kenneth A. Lazarus

Kenneth A. Lazarus
Associate Counsel to the President

(Copy to remain with correspondence)

University of Notre Dame
Notre Dame, Indiana 46556

Office of the President

July 1, 1976

Cable Address "Dulac"

Honorable Gerald R. Ford
The White House
Washington, D. C.

Dear Mr. President:

I would like to take this opportunity to urge that you give renewed attention to the issue of clemency for Vietnam-era draft and military offenders. Your clemency program of last year was an important and courageous effort to address this problem. It offered significant benefits for those who participated, and was of substantial help to a great many young Americans.

Although your program was a useful first step, it is evident that it touched only a small portion of those who were eligible. For a variety of reasons, there still remain perhaps hundreds of thousands who were not helped and who still suffer the consequences of their conduct during the war period.

As a member of your Clemency Board, I had the opportunity to review first-hand thousands of cases of young men who got into legal difficulty because of the draft or while serving in the armed forces. It became very evident to me that most of these young people got into trouble not because of a well-formed, carefully considered moral view about our policies in Vietnam. The vast majority of them were from socially or economically deprived circumstances, or were of marginal intellectual capacity. Their problems were very often the result of immaturity, family difficulties, or personal problems. A great many of those who violated the draft law did so because of ignorance, or carelessness, because they were uninformed of their rights, or because they had no effective means of asserting those rights. It is noteworthy that barely 4% of those accused of draft violations were eventually tried and convicted. They stand in sharp contrast to the millions of young Americans who managed to escape military service by means which did not entail the consequences of a criminal violation.

The military absentee is also far different from the commonly believed stereotypes. Few were motivated by conscious and articulate



opposition to the war, and an insignificant number deserted under combat. The typical military absentee was motivated by personal or family problems, or had difficulties in adjusting to the demands of military life. A good number had marginal ability, but were accepted into service under policies which acknowledged the possibility that they would prove unsatisfactory. A large percentage served honorably in Vietnam, often with distinguished records, but could not adjust to the make-work environment of garrison duty when they returned to the United States.

As a result of my experience on your Clemency Board, I became convinced that more remains to be done to achieve true reconciliation over the issue of clemency. It is evident that a just and effective policy requires that we take into account the diverse circumstances and motivations of these individuals and that we must fashion a policy which does not further aggravate the social and legal inequities which contributed in such large measure to the circumstances in which these young citizens now find themselves.

You may recall that last Fall I wrote you concerning my intention to have the Center for Civil Rights of the University's Law School undertake a comprehensive and objective inquiry into this subject. You were kind enough to express your support and encouragement for this effort. The project is being conducted, through a special Ford Foundation grant, by Lawrence M. Baskir and William A. Strauss, two men who gained considerable insight into these matters during the clemency program. They, like myself, undertook this effort because they believed that the prior policy was too limited an approach. Their work over the course of this year has already produced a wealth of information which could be of great assistance in the development of future policy. The project is preparing a set of practical proposals which will provide a detailed outline for a comprehensive and equitable program of reconciliation. It is my hope that the results of their inquiry when completed this Fall, will go far towards increasing public understanding of this important issue and that their proposals will help to shape a policy that deals responsibly with the situation of draft and military law offenders.

If through this project, I can be of any assistance to you, please do not hesitate to call upon me.

Sincerely yours,

Theodore M. Hesburgh

(Rev.) Theodore M. Hesburgh, C.S.C.
President



Clemency

September 11, 1976

MEMORANDUM FOR: KEN LAZARUS
FROM: PHIL BUCHEN
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



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



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.



MEMORANDUM

THE WHITE HOUSE
WASHINGTON

October 12, 1976

MEMORANDUM FOR: PHILIP W. BUCHEN
FROM: W. L. GULLEY *B.J.*
SUBJECT: Congressional Inquiry

The Presidential Clemency Board, chaired by Senator Charles E. Goodell, met at Camp David September 2 - 4, 1975, to prepare its final report to the President. A list of attendees and their schedule is at TAB A.

The then new Commanding Officer at Camp David later reported to the Military Assistant that this group was unusually souvenir-conscious and had taken an uncommon amount, and type, of items. This fact was brought to Mr. Rumsfeld's attention by memo of September 24, 1975 (copy attached - TAB B). No response was ever received and nothing further heard.

Several press inquiries did follow, however, concerning reputed "damage" to the Camp caused by the PCB. These were routinely referred to the Press Office but, apparently, not pursued.

Then, on August 31, 1976, Congressman John M. Ashbrook sent a letter to the Director of the FBI enclosing a copy of a memo of unknown origin detailing these same allegations -- along with a few more, and demanded an immediate investigation. Director Kelly responded that this was properly a matter for the Naval Investigative Service, not the FBI; and, forwarded a copy of the correspondence exchange to that agency for action.

NIS contacted me. I told them that we would conduct our own investigation; I would contact Congressman Ashbrook to inform him of this; and, that no further action was required on their part.



I called Ashbrook's office and discussed it with George Armstrong of his staff, who expressed complete satisfaction with this proposal. A confirming letter was sent by the Congressman on September 29th (TAB C).

During the course of my conversation with Mr. Armstrong, he confided that Congressman Ashbrook was seeking to make an issue of this incident in order to discredit Senator Goodell and the PCB because he had heard reports that, should Carter be elected, this board would be reconvened. Further, he volunteered that General Lewis W. Walt, USMC (Ret.), a former member of the board, had been the source of their information.

The report of the resultant investigation conducted by our Security Advisor is attached at TAB D. I think you will agree after reading it that much ado has been made about nothing.

Hopefully, Ashbrook will drop this after the election. In the meantime, however, he is owed an answer. And -- if it is not to his liking -- I believe there is a possibility of a less than desirable reaction.

Your advice/counsel/handling would be appreciated.



*Clemency
file*

THE WHITE HOUSE

WASHINGTON

November 17, 1976

MEMORANDUM FOR: PHIL BUCHEN

FROM: JACK MARSH *Jack*

I know you received a copy of Russ Rourke's memo on the Clemency Program reflecting Jim Cannon's views.

This issue may become rather troublesome. What guidance can you give us, particularly what can we pass on to Selective Service?

Many thanks.



THE WHITE HOUSE

WASHINGTON

November 17, 1976

Clemency

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





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

11/10
copy given
to Jim Gramer

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.



November 16, 1976

MEMORANDUM TO: JACK MARSH

FROM: RUSS BOURKE *RF*

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: PBuchen ✓

RAR:cb



THE WHITE HOUSE
WASHINGTON

November 11, 1976

*This has been
handled.
Please file
with related
memos to
Roubin et al.
F-*

MEMORANDUM TO: PHIL BUCHEN

FROM: JACK MARSH *JM*

Phil, Byron Pepitone called Russ re the attached matter. Pepitone is, of course, seeking guidance from the White House.

Please advise.



THE WHITE HOUSE

WASHINGTON

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.

✓ cc: Phil Buchen





NATIONAL HEADQUARTERS
SELECTIVE SERVICE SYSTEM

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



ADDRESS REPLY TO
THE DIRECTOR OF SELECTIVE SERVICE

OFFICE OF THE DIRECTOR

NOV 10 1976

November 9, 1976

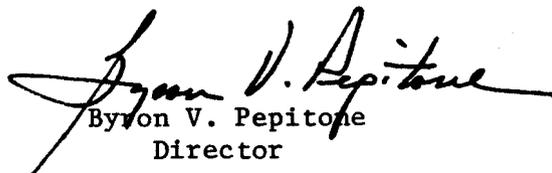
MEMORANDUM FOR THE HONORABLE JOHN O. MARSH, JR.

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.



THE WHITE HOUSE
WASHINGTON

Clemency Board

December 21, 1976

MEMORANDUM FOR: BARRY ROTH

FROM: PHILIP BUCHEN *P.*

Is there any more to be done in regard to the attached material concerning the meeting of the Clemency Board at Camp David? If so, please follow-up.

Attachment

Amnesty

Wednesday 1/5/77

11:20 Mary in Dick Parsons' office said she has received quite a few calls since Dick has been gone asking that the President not=change his position on the amnesty question. One of the men in the legislature of the State of Georgia who has been a very strong supporter of President Ford was quite vehement about -- said he hopes the President doesn't change his position.



Clemency

THE WHITE HOUSE

WASHINGTON

January 7, 1977

Dear Mr. Ashbrook:

In response to a request from Mr. George Armstrong on your behalf for a copy of a report of inquiry concerning the Clemency Board Staff visit to Camp David in September 1975, enclosed is a copy of that report.

I trust this is responsive to your request.

Sincerely,

Philip W. Buchen

Philip W. Buchen
Counsel to the President

The Honorable John M. Ashbrook
House of Representatives
Washington, D.C. 20515

Enclosure

Amnesty

Monday 1/10/77

9:40 Retired Lcdr. Eugene F. Chase called
from Pensacola, Florida.

He said he had two sons in the service --
lost one in Vietnam. Two sons-in-law
and one lost a foot; also a stepson in the
service.

He wanted someone to know that he's standing
very solidly against any sort of amnesty program.

He is with the Fleet Reserve Association, VFW
and American Legion and all of them are against
amnesty.

