

**The original documents are located in Box 1, folder “Amnesty - Congressional Proposals to Extend the Clemency Program” of the John Marsh Files at the Gerald R. Ford Presidential Library.**

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April 8, 1975

MEMORANDUM TO: PHIL BUCHEN  
FROM: JACK MARSH

Marty Hoffman at Defense called raising a question about the hearings next Monday on the Clemency Matter at which Charlie Goodell is the leadoff witness.

Marty is also slated to be witness, and although he is aware of our position on this matter, nevertheless, he would like to have some guidance. Also, he suggests that we be certain that others appearing before the Committee associated with the Administration similarly receive guidance so that all of our people correctly reflect the Administration's view.

My thought was it would be helpful if you would touch base with Marty, and get some ideas as well as get from him his thoughts on just what our position should be particularly among a number of the legal issues that are part of the Clemency program.

JOM:cb



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JOM:cb



THE WHITE HOUSE  
WASHINGTON

April 10, 1975

MEMO TO: JACK MARSH

FROM: RUSS ROURKE *fr*

Jack, Ted Marrs advises me that he has taken a rather strong position with regard to the Goodell memo. Basically, Ted suggests that the President should not address himself at all to this proposed legislation, and that, in any event, he should keep all of his options open. Ted, therefore, agrees with my recommended Option C on question No. 1.

Ted does not believe that Goodell is in a position to express the various positions of the President. He is not, as Goodell states in his memo, a member of the President's staff, but is rather, Chairman of a Presidential Board. Further, Ted is convinced that this legislation was, for the most part, prepared by Goodell's own staff.

In summary, Ted rips hell out of the entire Option memo.



THE WHITE HOUSE

WASHINGTON

April 10, 1975

MEMORANDUM TO: JACK MARSH  
FROM: RUSS ROURKE *R*

Jay French is extremely upset over the entire Clemency matter. He is convinced that Goodell's memo seriously misleads the President with regard to the nature of the problem. The issue of constitutionality is a critical one, which is not even touched on in the Goodell memo.

Moreover, S. 1290 is not even a contemplated subject of discussion in the House hearings on Monday, in which Goodell will participate. The hearings have been scheduled to discuss four House bills, all relating in one form or another to amnesty.

OMB, which coordinates the testimony on the various executive witnesses, has been unable to get a copy of Goodell's proposed testimony.

Jay French feels that it is critically important that a meeting be held tomorrow to accomplish this coordination. That meeting would include Phil Buchen, Marty Hoffman, Charlie Goodell, Jay French, Ted Marrs, a Department of Justice witness, etc.

Unfortunately, the Jerry Jones memo has a deadline of "COB" today. Jay has attempted, without success, to contact Phil Buchen in an effort to get Phil to put a halt to the Jerry Jones memo. He has an alternative; he'll attempt to get Rod Hills to do this sometime this afternoon.



THE WHITE HOUSE

WASHINGTON

April 10, 1975

Jack, Bill Nichols (OMB) called to seek some guidance for the Justice Department witness at Monday's hearings. (His concern ties in directly with those same concerns previously expressed by Ted Marrs and Jay French.) With Charlie Goodell testifying first, and in the event he addresses himself to Presidential positions on the substance of any of these proposed bills, he might, in effect, "cut the legs off" the subsequent Justice Department witness as far as the constitutional question is concerned.

Russ



THE WHITE HOUSE

WASHINGTON

April 9, 1975

RAR Recommendations:

- 1) Option C. Goodell recommendation would violate the President's basic practice of not commenting on ~~a~~ possible veto legislation, until the legislation is presented to him in its final form.
- 2) Option C. This option suggests, however, that you might make a statement with regard to S. 1290, something we have already recommended against. The rationale for selecting Option C is that the matter of "folding all parts" of the Clemency Board is a fundamental question that might well come up in a Q & A, and can be answered hypothetically.
- 3) Option C. I would prefer that no statement be made on this question, but if one is asked, I feel the Administration must have a position.
- 4) Option D. "Broadening the scope" of any future Clemency Board is a judgement for the Congress to make. Again, I disagree with the Goodell suggestion that the President "telegraph" his veto position on this question.



APR 8 1974

PRESIDENTIAL CLEMENCY BOARD  
THE WHITE HOUSE

WASHINGTON  
April 7, 1975

NOTE FOR JACK MARSH

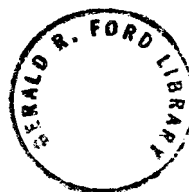
Attached is a memorandum which I am sending to the President, requesting that he establish his policy on four questions which I expect to arise during the clemency hearing before a House Judiciary Subcommittee next Monday. The Subcommittee will treat my statements as Administration policy, and I want to ensure that I will be equipped to accurately reflect what the President feels on these issues.

I will be grateful if you will give some attention to the memorandum today or tomorrow, so that it will be possible to have a clear statement from the President on the four issues--whether by his checking boxes on the memorandum, or in a meeting--by Friday afternoon.



CHARLES E. GOODELL

Attachment





PRESIDENTIAL CLEMENCY BOARD  
THE WHITE HOUSE

WASHINGTON  
April 10, 1975

ACTION

MEMORANDUM FOR THE PRESIDENT

FROM: CHARLES E. GOODELL

SUBJECT: Your Position on Congressional  
Proposals to Extend the Clemency Program

This memorandum presents four questions upon which you should decide what your policy is to be. In my White House staff capacity as Chairman of your Presidential Clemency Board, I have been invited to submit testimony on Monday, April 14, before the Subcommittee on Courts, Civil Liberties, and Administration of Justice of the House Judiciary Committee. I need to have decisions by you on these four questions in order to be able to state Administration policy on your behalf at that hearing.

I will not raise these questions in my testimony, but I am sure that they will arise in the Q & A. At that point, I will state whatever positions you indicate.

- I. Should you support Congressional extension of your clemency program?

BACKGROUND

Senators Javits and Nelson have introduced legislation whose primary purpose is to extend indefinitely the clemency program. This is not unconditional amnesty legislation, but rather an attempt to extend indefinitely the application period of essentially the program which you have established.

DISCUSSION

The Congressional supporters of the Javits-Nelson bill (S. 1290) support your program, are opposed to unconditional amnesty, and believe that the Administration has failed to communicate your offer of clemency to most of those eligible for it. Their stated intention is for Congress, in institutionalizing your program, to share the political responsibility for it, and to help you in explaining to the American people why a clemency program is necessary and appropriate.



The principal argument for taking a position in support of S. 1290 is that it essentially urges Congressional adoption of your program. Congressional passage of the bill will constitute, in the public's eyes, a statement that your clemency program has broadly-based national support, and that it was the right kind of program to create. If there are to be political costs of an extension of the application deadline, those costs would thereafter be shared by Congress.

On the other hand, institutionalization of the clemency program may keep alive an issue which you sought to have closed in a limited period of time. You set an application deadline originally because you did want closure on public discussion of the issue. Indefinite extension of the deadline may prevent that closure, and may prolong the life of clemency as a political issue.

I do not believe that argument to be dispositive, because I believe that clemency will remain a political issue irrespective of the position you take, and that deadline extension will not contribute to the intensity of discussion of that issue. The Clemency Board has ended its public information campaign, and there will be no more television advertisements, barnstorming trips, or press conferences. If applicants continue to come into your program, they will do so quietly, without any public visibility.

It has been my consistent experience, confirmed by the experience of the other Board members, that most of the opposition to your program is based on ignorance and confusion. Whenever we have explained its details, whether General Walt to veterans groups, or Father Hesburgh and I to others, initial hostility has changed at least to tolerance and very often to explicit support. For example, many service organizations are surprised to learn that the program has real benefits for VN veterans. It is my belief, and the Board members concur, that your program -- properly explained -- can be popular, and widely accepted as a fair and reasonable solution to the difficult amnesty/clemency issue.

There is a danger, should S. 1290 come out of committee to the Senate and House floors, that a spate of floor amendments will change a simple extension which you find relatively unobjectionable into a hodge-podge which you will feel compelled to veto.

If you support Congressional extension of the deadline, you will provide a live option for some supporters of unconditional amnesty to coalesce quietly around, in lieu of public debate on the merits of unconditional amnesty. If you oppose Congressional extension of the deadline, there will be substantial debate on the Hill. That debate will probably rise



in decibel level if supporters of unconditional amnesty decide, seeing no live option that they can get passed, to focus debate instead on unconditional amnesty.

On balance, therefore, it seems to me unwise for you to oppose S. 1290, and there is some political benefit to you in supporting it. I am compelled against the conclusion that you should support it, however, by the simple argument that if you favor extension of your program, you can extend it yourself by executive order, and ask the Hill for an appropriation. If you come out in favor of S. 1290, its Congressional supporters and those on their left will make the argument that you are abdicating responsibility by not extending your own program yourself.

### OPTIONS

- (a) Support indefinite Congressional extension of your clemency program (S. 1290)
- (b) No position, but you will not veto S. 1290 if Congress assumes the responsibility of enacting it
- (c) No position, and no statement on whether you will sign S. 1290 if Congress enacts it
- (d) Oppose S. 1290

### RECOMMENDATION

I recommend option (b)--that you take no position, but intend not to veto S. 1290 if Congress should enact it.

DECISION (a) \_\_\_\_\_ (b) \_\_\_\_\_ (c) \_\_\_\_\_ (d) \_\_\_\_\_

- II. If your clemency program is extended, should all parts of it be folded into the Presidential Clemency Board?

### BACKGROUND

S. 1290 provides that the functions currently under the jurisdiction of the Departments of Justice, Defense, and Transportation be transferred to the Presidential Clemency Board until the end of 1976, when the Board goes out of existence under your executive order. At that point, the whole clemency program is to revert to the Department of Justice.



## DISCUSSION

The Congressional supporters of S. 1290 believe that equity and consistency in the treatment of similarly situated applicants will be greatest if all the parts of your clemency program are under the jurisdiction of the Clemency Board, instead of being split between the Board and three Departments. Moreover, the Congressional supporters of the bill argue that the Board projects to potential applicants an image of your clement intent which is more likely to attract applicants to the clemency program than the images projected by the three Departments.

On the other hand, you originally split the jurisdiction of your program four ways because the Justice Department is uniquely qualified to engage in plea bargaining negotiation with draft evaders who have not yet been indicted, and the Defense and Transportation Departments are uniquely qualified to handle through their normal procedures military deserters who have not yet been discharged from their service.

The rationale for that original decision remains, although the history of your clemency program does support the proposition that inequities and inconsistencies in assignment of length of alternate service have been present as a result of the program's being split into four jurisdictions.

## OPTIONS

- (a) Support Congressional folding of all clemency decisions into the Presidential Clemency Board, removing jurisdiction from the three Departments
- (b) No position
- (c) Oppose Congressional folding of all clemency decision-making into the Presidential Clemency Board

## RECOMMENDATION

I recommend option (c)--that you remain consistent with your original decision to split jurisdiction under the clemency program, and oppose Congressional folding of the whole program into the Board.

DECISION (a) \_\_\_\_\_ (b) \_\_\_\_\_ (c) \_\_\_\_\_

- III. Should draft evader and deserter exiles in foreign countries be permitted to visit this country for thirty days each year?



BACKGROUND

S. 1290 provides that those eligible for your clemency program who choose not to apply for clemency will be permitted to come home to visit, under a non-immigrant visa, for thirty days a year, with immunity from arrest and prosecution during those thirty days.

DISCUSSION

Although most potential applicants under your program have turned out not to be ideologically motivated, there are some who have not accepted your clemency offer either for ideological reasons or because they have stable families and jobs in other countries, and dare not disrupt those stable situations.

The Javits-Nelson bill assumes that there is a significant number of such people who will never come back to this country to live, but who have families here. The bill seeks to permit the reunification of those troubled families by allowing an annual visiting period.

This issue raises again the specter of the exiles -- the most politically sensitive group, on which excessive media has been focused.

OPTIONS

- (a) Support thirty-day visiting period for exiles
- (b) No position
- (c) Oppose thirty-day visiting periods for exiles

RECOMMENDATION

Consistently with your taking no position on the legislation as a whole, I recommend option (b)--no position on the visiting period question. If there is to be an act of mercy to exiles and their families, let Congress assume the responsibility for the immunity from prosecution decision which is essential to that act of mercy.

DECISION    (a) \_\_\_\_\_    (b) \_\_\_\_\_    (c) \_\_\_\_\_

- IV. Assuming extension of your clemency program, should its scope be broadened to include offenses other than draft evasion and desertion?

BACKGROUND

Several bills have been introduced in the House to provide unconditional amnesty for a variety of categories of offenses. Most of those bills



cover offenses beyond draft evasion and desertion, such as failure to obey a lawful order and draft counselling. Some of the bills provide for amnesty for any offense if it is shown that the offense was substantially motivated by moral opposition to the Indochina war.

### DISCUSSION

In choosing to have your clemency program cover only draft evasion and desertion offenses, you extended an offer of clemency to two categories of people most of whose offenses were not related to moral opposition to the war. The Congressional sponsors of amnesty legislation admit that extension of coverage to different offenses would fold into the clemency program a large number of people who did not act out of conscience. They further argue, however, that your original clemency program has already done that--and they are correct.

One possible task is to enumerate a list of offenses (draft counselling, for example) not included in your clemency program, but committed by many people for reasons of conscience. An alternative tack, designed to restrict clemency to those who acted for moral reasons, is to broaden the jurisdiction of your clemency program to cover any offense, but to stipulate that clemency may only be offered if a clear showing is made that the offense was committed as an act of conscience in opposition to the war. A third tack is to maintain that you have already covered most of those who have acted in conscience, since most of them are evaders and deserters, and that the program's jurisdiction should not be extended to further offenses, however motivated.

Since it has turned out that most of the evaders and deserters before the Board have not committed their offenses because of moral opposition to the war, it seems irrational to me to take that third tack, even though that is most consistent with your original position.

We can justly argue, based on the experience of the Board and of the Defense Department, that we have learned since September that most of those eligible for your clemency program did not act out of moral opposition to the war, and there are a lot of people who did and whose offenses are not covered by the program. A change in your position is justified by your having learned new facts from the experience of your program.



OPTIONS

- (a) Support broadening of scope of clemency program to include several new specified categories of offenses
- (b) Support broadening of scope of clemency program to include any offense, provided that a showing is made in individual cases that the offense was committed as an act of conscience
- (c) No position, but would not veto broadening as in option (b) above
- (d) No position
- (e) Oppose broadening to other offenses

RECOMMENDATION

Consistently with your taking no position on clemency extension as a whole, and consistently with what you have learned about the clemency problem since your program began, I recommend option (c) --no position, but you would not veto broadening to any offense, provided a showing is made that an individual offense was committed as an act of conscience.

DECISION

- (a) \_\_\_\_\_ (b) \_\_\_\_\_ (c) \_\_\_\_\_ (d) \_\_\_\_\_  
(e) \_\_\_\_\_



APR 9 1974

PRESIDENTIAL CLEMENCY BOARD  
THE WHITE HOUSE

WASHINGTON  
April 7, 1975

NOTE FOR PHIL BUCHEN

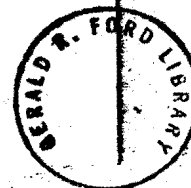
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*Charles Goodell*  
CHARLES E. GOODELL

Attachment

*Handwritten notes:*  
...  
...  
...





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THE WHITE HOUSE

WASHINGTON  
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cover offenses beyond draft evasion and desertion, such as failure to obey a lawful order and draft counselling. Some of the bills provide for amnesty for any offense if it is shown that the offense was substantially motivated by moral opposition to the Indochina war.

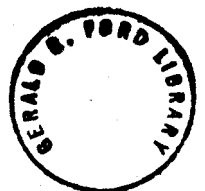
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One possible task is to enumerate a list of offenses (draft counselling, for example) not included in your clemency program, but committed by many people for reasons of conscience. An alternative tack, designed to restrict clemency to those who acted for moral reasons, is to broaden the jurisdiction of your clemency program to cover any offense, but to stipulate that clemency may only be offered if a clear showing is made that the offense was committed as an act of conscience in opposition to the war. A third tack is to maintain that you have already covered most of those who have acted in conscience, since most of them are evaders and deserters, and that the program's jurisdiction should not be extended to further offenses, however motivated.

Since it has turned out that most of the evaders and deserters before the Board have not committed their offenses because of moral opposition to the war, it seems irrational to me to take that third tack, even though that is most consistent with your original position.

We can justly argue, based on the experience of the Board and of the Defense Department, that we have learned since September that most of those eligible for your clemency program did not act out of moral opposition to the war, and there are a host of people who did and whose offenses are not covered by the program. A change in your position is justified by your having learned new facts from the experience of your program.



OPTIONS

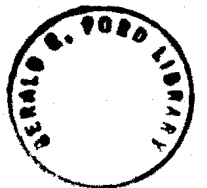
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- (e) Oppose broadening to other offenses

RECOMMENDATION

Consistently with your taking no position on clemency extension as a whole, and consistently with what you have learned about the clemency problem since your program began, I recommend option (c)--no position, but you would not veto broadening to any offense, provided a showing is made that an individual offense was committed as an act of conscience.

DECISION

- (a) \_\_\_\_\_ (b) \_\_\_\_\_ (c) \_\_\_\_\_ (d) \_\_\_\_\_  
(e) \_\_\_\_\_



THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

*due 4/10*

*cob*

APR 10 1975

Date: April 9, 1975

Time:

FOR ACTION: Phil Buchen  
Jack Marsh  
Ted Marrs

cc (for information):

FROM THE STAFF SECRETARY

DUE: Date: Thursday, April 10, 1975

Time: cob

SUBJECT:

Goodell memo (4/10/75) re: Your Position  
on Congressional Proposals to Extend the  
Clemency Program

ACTION REQUESTED:

For Necessary Action

For Your Recommendations

Prepare Agenda and Brief

Draft Reply

For Your Comments

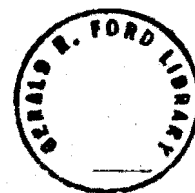
Draft Remarks

REMARKS:

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a  
delay in submitting the required material, please  
telephone the Staff Secretary immediately.

Jerry H. Jones  
Staff Secretary





PRESIDENTIAL CLEMENCY BOARD  
THE WHITE HOUSE

WASHINGTON

April 10, 1975

ACTION

MEMORANDUM FOR THE PRESIDENT

FROM:

CHARLES E. GOODELL

*Charles E. Goodell*

SUBJECT:

Your Position on Congressional

Proposals to Extend the Clemency Program

This memorandum presents four questions upon which you should decide what your policy is to be. In my White House staff capacity as Chairman of your Presidential Clemency Board, I have been invited to submit testimony on Monday, April 14, before the Subcommittee on Courts, Civil Liberties, and Administration of Justice of the House Judiciary Committee. I need to have decisions by you on these four questions in order to be able to state Administration policy on your behalf at that hearing.

I will not raise these questions in my testimony, but I am sure that they will arise in the Q & A. At that point, I will state whatever positions you indicate.

- I. Should you support Congressional extension of your clemency program?

BACKGROUND

Senators Javits and Nelson have introduced legislation one of whose purposes is to extend indefinitely the clemency program. This is not unconditional amnesty legislation, but rather an attempt to extend indefinitely the application period of essentially the program which you have established.

DISCUSSION

The Congressional supporters of the Javits-Nelson bill (S. 1290) support your program, are opposed to unconditional amnesty, and believe that the Administration has failed to communicate your offer of clemency to most of those eligible for it. Their stated intention is for Congress, in institutionalizing your program, to share the political responsibility for it, and to help you in explaining to the American people why a clemency program is necessary and appropriate.



The principal argument for taking a position in support of S. 1290 is that it essentially urges Congressional adoption of your program. Congressional passage of the bill will constitute, in the public's eyes, a statement that your clemency program has broadly-based national support, and that it was the right kind of program to create. If there are to be political costs of an extension of the application deadline, those costs would thereafter be shared by Congress.

On the other hand, institutionalization of the clemency program may keep alive an issue which you sought to have closed in a limited period of time. You set an application deadline originally because you did want closure on public discussion of the issue. Indefinite extension of the deadline may prevent that closure, and may prolong the life of clemency as a political issue.

I do not believe that argument to be dispositive, because I believe that clemency will remain a political issue irrespective of the position you take, and that deadline extension will not contribute to the intensity of discussion of that issue. The Clemency Board has ended its public information campaign, and there will be no more television advertisements, barnstorming trips, or press conferences. If applicants continue to come into your program, they will do so quietly, without any public visibility.

It has been my consistent experience, confirmed by the experience of the other Board members, that most of the opposition to your program is based on ignorance and confusion. Whenever we have explained its details, whether General Walt to veterans groups, or Father Hesburgh and I to others, initial hostility has changed at least to tolerance and very often to explicit support. For example, many service organizations are surprised to learn that the program has real benefits for VN veterans. It is my belief, and the Board members concur, that your program -- properly explained -- can be popular, and widely accepted as a fair and reasonable solution to the difficult amnesty/clemency issue.

There is a danger, should S. 1290 come out of committee to the Senate and House floors, that a spate of floor amendments will change a simple extension which you find relatively unobjectionable into a hodge-podge which you will feel compelled to veto.

If you support Congressional extension of the deadline, you will provide a live option for some supporters of unconditional amnesty to coalesce quietly around, in lieu of public debate on the merits of unconditional amnesty. If you oppose Congressional extension of the deadline, there will be substantial debate on the Hill. That debate will probably rise



in decibel level if supporters of unconditional amnesty decide, seeing no live option that they can get passed, to focus debate instead on unconditional amnesty.

On balance, therefore, it seems to me unwise for you to oppose S. 1290, and there is some political benefit to you in supporting it. I am compelled against the conclusion that you should support it, however, by the simple argument that if you favor extension of your program, you can extend it yourself by executive order, and ask the Hill for an appropriation. If you come out in favor of S. 1290, its Congressional supporters and those on their left will make the argument that you are abdicating responsibility by not extending your own program yourself.

OPTIONS

- (a) Support indefinite Congressional extension of your clemency program (S. 1290)
- (b) No position, but you will not veto S. 1290 if Congress assumes the responsibility of enacting it
- (c) No position, and no statement on whether you will sign S. 1290 if Congress enacts it
- (d) Oppose S. 1290

RECOMMENDATION

I recommend option (b)--that you take no position, but intend not to veto S. 1290 if Congress should enact it.

DECISION (a) \_\_\_\_\_ (b) \_\_\_\_\_ (c)  \_\_\_\_\_ (d) \_\_\_\_\_

- II. If your clemency program is extended, should all parts of it be folded into the Presidential Clemency Board?

BACKGROUND

S. 1290 provides that the functions currently under the jurisdiction of the Departments of Justice, Defense, and Transportation be transferred to the Presidential Clemency Board until the end of 1976, when the Board goes out of existence under your executive order. At that point, the whole clemency program is to revert to the Department of Justice.



DISCUSSION

The Congressional supporters of S. 1290 believe that equity and consistency in the treatment of similarly situated applicants will be greatest if all the parts of your clemency program are under the jurisdiction of the Clemency Board, instead of being split between the Board and three Departments. Moreover, the Congressional supporters of the bill argue that the Board projects to potential applicants an image of your clement intent which is more likely to attract applicants to the clemency program than the images projected by the three Departments.

On the other hand, you originally split the jurisdiction of your program four ways because the Justice Department is uniquely qualified to engage in plea bargaining negotiation with draft evaders who have not yet been indicted, and the Defense and Transportation Departments are uniquely qualified to handle through their normal procedures military deserters who have not yet been discharged from their service.

The rationale for that original decision remains, although the history of your clemency program does support the proposition that inequities and inconsistencies in assignment of length of alternate service have been present as a result of the program's being split into four jurisdictions.

OPTIONS

- (a) Support Congressional folding of all clemency decisions into the Presidential Clemency Board, removing jurisdiction from the three Departments
- (b) No position
- (c) Oppose Congressional folding of all clemency decision-making into the Presidential Clemency Board

RECOMMENDATION

I recommend option (c)--that you remain consistent with your original decision to split jurisdiction under the clemency program, and oppose Congressional folding of the whole program into the Board.

DECISION (a) \_\_\_\_\_ (b) \_\_\_\_\_ (c)

III. Should draft evader and deserter exiles in foreign countries be permitted to visit this country for thirty days each year



BACKGROUND

S. 1290 provides that those eligible for your clemency program who choose not to apply for clemency will be permitted to come home to visit, under a non-immigrant visa, for thirty days a year, with immunity from arrest and prosecution during those thirty days.

DISCUSSION

Although most potential applicants under your program have turned out not to be ideologically motivated, there are some who have not accepted your clemency offer either for ideological reasons or because they have stable families and jobs in other countries, and dare not disrupt those stable situations.

The Javits-Nelson bill assumes that there is a significant number of such people who will never come back to this country to live, but who have families here. The bill seeks to permit the reunification of those troubled families by allowing an annual visiting period.

This issue raises again the specter of the exiles -- the most politically sensitive group, on which excessive media has been focused.

OPTIONS

- (a) Support thirty-day visiting period for exiles
- (b) No position
- (c) Oppose thirty-day visiting periods for exiles

RECOMMENDATION

Consistently with your taking no position on the legislation as a whole, I recommend option (b)--no position on the visiting period question. If there is to be an act of mercy to exiles and their families, let Congress assume the responsibility for the immunity from prosecution decision which is essential to that act of mercy.

DECISION    (a) \_\_\_\_\_ (b) \_\_\_\_\_ (c)  \_\_\_\_\_

IV. Assuming extension of your clemency program, should its scope be broadened to include offenses other than draft evasion and desertion?

BACKGROUND

Several bills have been introduced in the House to provide unconditional amnesty for a variety of categories of offenses. Most of those bills



cover offenses beyond draft evasion and desertion, such as failure to obey a lawful order and draft counselling. Some of the bills provide for amnesty for any offense if it is shown that the offense was substantially motivated by moral opposition to the Indochina war.

### DISCUSSION

In choosing to have your clemency program cover only draft evasion and desertion offenses, you extended an offer of clemency to two categories of people most of whose offenses were not related to moral opposition to the war. The Congressional sponsors of amnesty legislation admit that extension of coverage to different offenses would fold into the clemency program a large number of people who did not act out of conscience. They further argue, however, that your original clemency program has already done that--and they are correct.

One possible task is to enumerate a list of offenses (draft counselling, for example) not included in your clemency program, but committed by many people for reasons of conscience. An alternative tack, designed to restrict clemency to those who acted for moral reasons, is to broaden the jurisdiction of your clemency program to cover any offense, but to stipulate that clemency may only be offered if a clear showing is made that the offense was committed as an act of conscience in opposition to the war. A third tack is to maintain that you have already covered most of those who have acted in conscience, since most of them are evaders and deserters, and that the program's jurisdiction should not be extended to further offenses, however motivated.

Since it has turned out that most of the evaders and deserters before the Board have not committed their offenses because of moral opposition to the war, it seems irrational to me to take that third tack, even though that is most consistent with your original position.

We can justly argue, based on the experience of the Board and of the Defense Department, that we have learned since September that most of those eligible for your clemency program did not act out of moral opposition to the war, and there are a lot of people who did and whose offenses are not covered by the program. A change in your position is justified by your having learned new facts from the experience of your program.



OPTIONS

- (a) Support broadening of scope of clemency program to include several new specified categories of offenses
- (b) Support broadening of scope of clemency program to include any offense, provided that a showing is made in individual cases that the offense was committed as an act of conscience
- (c) No position, but would not veto broadening as in option (b) above
- (d) No position
- (e) Oppose broadening to other offenses

RECOMMENDATION

Consistently with your taking no position on clemency extension as a whole, and consistently with what you have learned about the clemency problem since your program began, I recommend option (c)--no position, but you would not veto broadening to any offense, provided a showing is made that an individual offense was committed as an act of conscience.

DECISION

- (a) \_\_\_\_\_ (b) \_\_\_\_\_ (c) \_\_\_\_\_ (d)  \_\_\_\_\_  
(e) \_\_\_\_\_

