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Dr. Preston King: POTUS Memo

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Withdrawal/Redaction Sheet

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. memo	Beth Nolan, et al. to the President; RE: Executive Clemency for Preston King, POB [partial] (1 page)	02/21/2000	b(6)

COLLECTION:

Clinton Presidential Records
Counsel Office
Meredith Cabe
OA/Box Number: 23500

FOLDER TITLE:

Dr. Preston King: POTUS Memo

2006-1704-F

db3766

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
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- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

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THE WHITE HOUSE

WASHINGTON
February 21, 2000

MEMORANDUM FOR THE PRESIDENT

FROM: BETH NOLAN *Beth Nolan*
BRUCE LINDSEY *Bruce Lindsey*
MEREDITH CABE *Meredith Cabe*
DAWN CHIRWA *DWC/alc*

SUBJECT: Executive Clemency for Preston King

Dr. Preston King has requested executive clemency. We have set out the basic facts of his request below. As you discussed with Bruce Lindsey, one of his brothers has just passed away. Dr. King, who was unable to attend either of his parents' funerals, would like to be able to return to the United States for his brother's funeral, which is scheduled for Wednesday, February 23.

I. Offenses

Preston King was convicted in April 1961, for failing to report for and submit himself to an Armed Forces physical examination and for failing to report for induction. He was sentenced to 18 months' imprisonment. He posted bond pending his appeal to the Fifth Circuit. When the Fifth Circuit dismissed his appeal and ordered him to appear before the District Court, King left the United States for England, defaulting on the terms of his bond. There are two outstanding warrants for King's arrest that would bar his entry into the United States: one based on his failure to serve his sentence for his conviction, and one based on his default on the terms of his bond.

King has requested clemency before, in 1978 and in 1989. In both cases his requests were not considered because he is a non-resident and a fugitive. Had he been convicted three years later, after August 1964, he would have been covered by the unconditional amnesty issued by President Carter.

II. Background

Dr. King, age 63, was born [REDACTED] (b)(6) and now lives in Lancaster, England, where he teaches political theory at Lancaster University. He registered for the draft in 1954, and received student deferments through the middle of 1958 to pursue his undergraduate degree from Fisk University, and his Master's Degree from the London School of Economics. When King's student deferment expired, the draft board reclassified him as a non-student, giving him notice and 60 days to appeal. The draft board made several attempts to contact him, and then ordered him to appear for physical examination and induction. King was apparently travelling at the time, and did not receive any of the draft board's letters before his time to appeal expired. He wrote the draft board to explain what had occurred and to request an additional deferment to pursue his Ph.D. in London. That request was denied, and he was ordered on several occasions in 1958 and

[001]

1959 to present himself for physical examination and induction. King failed to appear for his examination and induction, and, upon his return to the United States, was arrested under an indictment for failing to perform the duties required under selective service laws and regulations.

King argued in letters to the local draft board, and at his trial, that while he was willing to serve in the military, he was offended that, after addressing earlier letters to him, "Dear Sir," that the draft board later addressed him as "Dear Preston." King believes this change occurred only after he appeared in person and the local board realized he is African-American. Upon investigation, the Department of Justice found this claim unpersuasive, since King's registration card showed his race, as did the permit the draft board issued to permit him to leave the country to pursue his master's degree. His file, therefore, would have reflected that he is African-American even during the time the board addressed him as "Dear Sir."

Whether or not the record supports King's explanation, the change in the way he was addressed nonetheless occurred, and the draft board official who wrote the letters never offered a plausible explanation. It is possible she changed the salutation of King's letters after meeting him because she regularly addressed registrants by their first names once acquainted with them. It is also possible that, as King believes, she addressed him as "Preston" out of disrespect. At the time, it was a routine form of racism to deny African-Americans the titles or salutations of respect afforded to white people. Conflicts over race were particularly acute at that time in Albany – and King's family was prominent in the struggle for civil rights. His brother, C.B. King, was only the third African-American lawyer in Georgia outside of Atlanta.¹ His father, C.W. King, was one of the founders of the local branch of the NAACP, and, according to "60 Minutes," headed the local voter's rights league. Given the climate of the time, King's perception is not unreasonable.

The comments of Judge William Bootle, who presided over King's trial and sentencing, are particularly noteworthy. The Department of Justice asked Judge Bootle to explain a comment he made to "60 Minutes" that the case never would have arisen if it weren't for racial discrimination. Judge Bootle said King was not inducted, reported for delinquency, prosecuted or convicted because of his race, and that the sentence he imposed was necessary to deter others. He explained, however, that whites at the time believed African-Americans should be kept in their place, and that not shaking hands or addressing them as "Mr." or "Mrs." was a calculated way to accomplish that purpose. Judge Bootle believes firmly that, if that were not the case, King would not have chosen this battle to resist discrimination, and the case would not have arisen. In a letter to you supporting pardon, he described King's conduct as "conscience-driven resistance to racial discrimination." He has also said it would be "unthinkable" for King to have to serve the sentence today, because "enough is enough." In another interview, he said, "He rebelled, but he has served enough, and he has paid his price."

Others who have contacted the White House or the Department of Justice on King's behalf are: Julian Bond; Senator Max Cleland; Drew S. Days III; Representative Alcee Hastings; Liz Holtzman (who represents King); Oona King (King's daughter, a Member of Parliament); Professor Richard Thornell; Senator Robert Torricelli; and representatives of the British Embassy. The City of Albany, GA, and Dougherty County, GA, have both passed resolutions urging you to

¹ A new federal building and courthouse is being erected in Albany that will be named for C.B. King.

pardon King.² In addition, NBC, CBS, CNN, and NPR have all aired stories discussing Dr. King and his case. Several newspapers have also published editorials supporting clemency for King.

III. Department of Justice

Although the Department of Justice has conducted a preliminary investigation of Dr. King's case and request for clemency, it has not made a formal recommendation as to whether clemency should be granted in Dr. King's case. Justice has informally concluded that because Dr. King has not served his sentence he would not be eligible for a pardon under their normal practice. He would be eligible for a commutation, which Justice informally recommends, although Dr. King's representatives have not applied for a commutation. We learned, however, that commuting Dr. King's sentence would not by itself permit him to enter the U.S. He would also need waivers of various immigration provisions if his sentence is commuted but his conviction remains intact, and there are obstacles to obtaining the appropriate waivers immediately.

When we learned of the death of Dr. King's brother, we asked whether the Department had any law enforcement objections to issuing Dr. King a pardon (thus allowing his re-entry into the United States). After ordering a check of national and international law enforcement databases, and contacting local law enforcement in the countries where Dr. King has lived since leaving the U.S., the Department informed us it found no law enforcement reason to object to pardon.³

Representatives of the Department also informed us they are concerned that issuance of this pardon will anger those on the Hill who are upset about the pardon process, because it will, due to the necessarily compressed time frame, be issued outside of the normal investigative process outlined in the Department's clemency regulations. The Department has been discussing possible changes to those regulations with Senators Leahy and Hatch, hoping to obviate the need for legislation (Senator Hatch has already introduced legislation, which the Office of Legal Counsel believes is unconstitutional, seeking to regulate the Department's provision of advice to you on clemency cases). Justice is concerned that a controversial use of the pardon power at this time could affect negotiations on the regulations/legislation. Justice's proposal that we commute King's sentence and require some form of community service, however, comes with immigration issues for Dr. King, which he may be unable to resolve in time to attend his brother's funeral. Further, issuing a commutation instead of a pardon would not resolve their concerns about disrupting those ongoing negotiations.

² One post of the American Legion (different from the one that was headed by King's father, C.W. King), condemned those resolutions as insults to American war veterans.

³ As of this writing, the Department has received responses from local law enforcement officials in Great Britain and Australia, but has not yet heard from officials in Ghana, Kenya, or New Zealand (most likely because of differences in the relative abilities of those countries to respond in the necessarily short time frame).

IV. Recommendation

Based upon the foregoing, we recommend that you pardon Dr. King for his conviction, and, prospectively, for any conviction arising out of his default on his bond.

DECISION:

GRANT:

DENY:

DISCUSS:

DRAFT

Executive Grant of Clemency

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETING:

WHEREAS Preston Theodore King was convicted in the United States District Court for the Middle District of Georgia on an indictment (Criminal No. 2123) for violations of Section 462, Title 50 Appendix, United States Code and Section 1642.2, Title 32, Code of Federal Regulations, and was sentenced on April sixth, 1961, to 18 months' imprisonment:

NOW, THEREFORE, BE IT KNOWN, that I, William J. Clinton, President of the United States of America, in consideration of the premises, divers other good and sufficient reasons me thereunto moving, do hereby grant a full and unconditional pardon to Preston Theodore King for the above-described offense against the United States.

IN TESTIMONY WHEREOF, I have hereunto signed my name and caused the seal of the Department of Justice to be affixed.

Done at the City of Washington, District of

Columbia, this day of February

in the year of our Lord two thousand

and of the Independence of the United States

the two hundred and twenty-fourth.

President

DRAFT

DRAFT

Executive Grant of Clemency

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETING:

WHEREAS Preston Theodore King was charged by an indictment (Criminal No. 2192) filed in the United States District Court for the Middle District of Georgia on the twenty-sixth day of June, 1962, with a violation of Section 3146, Title 18, United States Code:

NOW, THEREFORE, BE IT KNOWN, that I, William J. Clinton, President of the United States of America, in consideration of the premises, divers other good and sufficient reasons me thereunto moving, do hereby grant a full and unconditional pardon to Preston Theodore King for the above-described offense against the United States.

IN TESTIMONY WHEREOF, I have hereunto signed my name and caused the seal of the Department of Justice to be affixed.

Done at the City of Washington, District of

Columbia, this day of February

in the year of our Lord two thousand

and of the Independence of the United States

the two hundred and twenty-fourth.

President

DRAFT