

# INTRODUCTION

## A. Why the Committee Investigated These Matters

Unlike most other powers granted to the President by the Constitution, the power to grant executive clemency is virtually unchecked. Some have argued that because the power to grant clemency is unlimited, Congress has no oversight role over grants of executive clemency. The opposite is true. Because the President can grant clemency to whomever he wants for whatever reasons, it is critically important that certain grants of clemency be subject to Congressional and public scrutiny. If this scrutiny were not applied to grants of clemency, the power could easily be abused. As James Madison observed:

A popular Government, without popular information, or the means of acquiring it, is but a prologue to a Farce or a Tragedy; or perhaps both. Knowledge will forever govern ignorance: And a people who mean to be their own Governors, must arm themselves with the power which knowledge gives.<sup>1</sup>

While the grants of clemency issued by President Clinton will not, and cannot, be overturned by the Committee's investigation, this report can serve a valuable purpose to inform the public about President Clinton's abuse of power in issuing grants of clemency to so many undeserving individuals. The report can also serve as a reminder to future Presidents not to exercise their pardon power in such a reckless and corrupting fashion.

Before President Clinton, when a President made controversial grants of clemency, he often provided a full accounting of his reasons for the decision. For example, when President Ford pardoned former President Nixon in 1974, President Ford made an unprecedented appearance before the House Judiciary Committee to explain his decision.<sup>2</sup> When President George H.W. Bush pardoned Caspar Weinberger for his involvement in the Iran-Contra matter, he provided a full accounting of his decision in a public statement, and released a number of documents dispelling any concerns that President Bush's pardon was meant to cover up his own involvement in the Iran-Contra matter.<sup>3</sup> President Bush even consulted with prominent Democratic Members of Congress before issuing the Weinberger pardon to see if they would object.<sup>4</sup> However, President Clinton issued a number of controversial pardons and commutations and failed to ever provide a satisfactory accounting for his decisions. Not only did he avoid consultation with Members of Congress, but President Clinton also avoided consultation with his own Justice Department and other knowledgeable agencies. Moreover, President Clinton has

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<sup>1</sup> JAMES MADISON, THE WRITINGS OF JAMES MADISON 103 (Gaillard Hunt ed., 9<sup>th</sup> ed. 1910).

<sup>2</sup> "Pardon of Richard M. Nixon and Related Matters," *Hearing Before the House Comm. on the Judiciary*, 93<sup>rd</sup> Cong. (Oct. 17, 1974).

<sup>3</sup> 57 Fed. Reg. 62,145 (1992).

<sup>4</sup> According to news reports, House Speaker Tom Foley, Chairman Les Aspin, and Senator Daniel Patrick Moynihan told President Bush that they would not object to the Weinberger pardon. Senator Moynihan even urged President Bush to grant a pardon to Iran-Contra figure Elliot Abrams, a former Moynihan aide. See Marjorie Williams, *Burden of Proof*, WASH. POST MAG., Apr. 11, 1993, at 6; Rowland Evans and Robert Novak, *Bush Faces Fallout on Iran-Contra Pardons*, CHI. SUN-TIMES, Dec. 30, 1992, at 25.

declined to answer any questions about his decisions, choosing instead to make occasional self-serving statements to friendly reporters.<sup>5</sup>

President Clinton's abuse of the clemency power began with the August 11, 1999, grants of clemency to 16 terrorists who were part of the FALN and Macheteros terrorist network. When the Committee and the public understandably raised questions regarding these grants of clemency, President Clinton did nothing to answer those questions. Rather, he invoked executive privilege over 2,800 pages of documents which would have showed why he made his decision.<sup>6</sup> When President Clinton did attempt to offer an explanation for the FALN clemency, it was factually inaccurate. Indeed, some documents indicated that the President made his decision for political benefit.<sup>7</sup> For example, one document said that the release of the 16 terrorists would "have a positive impact among strategic Puerto Rican communities in the U.S. (read, voters)." Another document stated: "[t]he Vice President's Puerto Rican position would be helped."<sup>8</sup>

In the final hours of his term, President Clinton issued 140 pardons and 36 commutations.<sup>9</sup> While other Presidents had issued controversial pardons and commutations, never before had a President made so many grants of clemency with so little justification. To understand the wholesale nature of the President's questionable clemency grants, it is useful to recall that he granted clemency to 13 individuals convicted in connection with independent counsel investigations of the Clinton Administration.<sup>10</sup> Strong arguments could be made against all of these grants of clemency. The individuals who received these grants of clemency were convicted of serious crimes, and many of them played significant roles in major political scandals. For example, Susan McDougal was convicted of mail fraud, misapplication of funds, and false statements, and then was jailed on contempt of court charges for refusing to tell a grand jury whether President Clinton had testified truthfully at her trial. If Susan McDougal were not a close friend of the President, her pardon would be troubling enough. She was a convicted felon who defrauded a bank, and defied the right of a grand jury to receive honest testimony. Considering that McDougal was a close friend of the President, who was jailed for contempt rather than testify against him, there is the indelible appearance that the pardon was a reward for McDougal's silence. Yet the Committee did not investigate the McDougal pardon, or any of the

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<sup>5</sup> See, e.g., *Rivera Live* (CNBC television broadcast, Feb. 15, 2001).

<sup>6</sup> Log of Documents Subject to Executive Privilege, noted in "The FALN and Macheteros Clemency: Misleading Explanations, A Reckless Decision, A Dangerous Message," *Hearing Before the Comm. on Govt. Reform*, 106<sup>th</sup> Cong. 325-68 (Dec. 10, 1999).

<sup>7</sup> See generally "The FALN and Macheteros Clemency: Misleading Explanations, A Reckless Decision, A Dangerous Message," *Hearing Before the Comm. on Govt. Reform*, 106<sup>th</sup> Cong. (Dec. 10, 1999).

<sup>8</sup> *Id.*

<sup>9</sup> Department of Justice Document Production DJ/PAO-MR-00009-23 (List of Pardon and Commutation Grants (Jan. 20, 2001)) (Exhibit 1).

<sup>10</sup> Individuals convicted in the Whitewater investigation and receiving pardons on January 20, 2001, were: Susan H. McDougal; Robert W. Palmer; Stephen A. Smith; and Christopher V. Wade. Individuals convicted in the investigation of former Agriculture Secretary Mike Espy and receiving pardons on January 20, 2001, were: Richard Douglas; Alvarez Ferrouillet; John Hemmingson; James H. Lake; Brook K. Mitchell, Sr.; and Jack L. Williams. Receiving a commutation for a conviction in the Espy case was Ronald Blackley. Individuals convicted in the Cisneros investigation and receiving pardons on January 20, 2001, were: Henry Cisneros and Linda Jones. In addition, Archibald Schaffer, a key defendant in the Espy investigation, received a pardon shortly before the end of the Clinton Administration, on December 22, 2000.

other 12 pardons and commutations relating to independent counsel investigations. Neither did the Committee investigate the pardons and commutations granted to former Congressman Mel Reynolds,<sup>11</sup> William Borders,<sup>12</sup> or CIA Director John Deutch,<sup>13</sup> all of which were subject to widespread criticism. Rather, the Committee limited its investigation to pardons and commutations where there was no credible explanation for the grant of clemency, and where there was an appearance of impropriety relating to inappropriate access or corruption. The fact that the Committee did not investigate pardons like Susan McDougal's speaks volumes about both the Committee's exercise of restraint and severity of the abuses in those cases the Committee did investigate.

The Committee investigated two types of clemency grants. First was the case of Marc Rich and Pincus Green, which raised substantial questions of direct corruption, primarily whether pardons were issued in exchange for political and other financial contributions. The second group of cases involved indirect corruption, where close relatives of the President — namely Roger Clinton, Hugh Rodham, and Tony Rodham — apparently traded on their relationships with the President to lobby for pardons and commutations. These cases raised serious concerns that Roger Clinton and the Rodhams used their access to the White House to lobby for pardons, in some cases successfully, and received large payments for their lobbying efforts.

The Committee had three main purposes in its clemency investigation. First, as discussed above, the Committee sought to let the public know whether President Clinton had abused the clemency power. By subjecting the President's exercise of clemency to public scrutiny, the Committee hopes to make it clear to future Presidents that history will hold them accountable for clemency grants that are abusive. Second, the Committee sought to determine whether there are adequate safeguards in place to prevent individuals with close relationships with the President from trading on their access to win pardons. A number of the most troubling pardons granted by President Clinton were the result of lobbying from former White House staff like Jack Quinn, or close relatives like Hugh Rodham. Third, the Committee examined whether there are adequate procedures in the pardon process to protect against abuse by the President. While the Justice

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<sup>11</sup> Reynolds received a commutation for his federal convictions for bank fraud, wire fraud, false statements, and conspiracy to defraud. He also served time in prison for state convictions for sexual misconduct, obstruction of justice and solicitation of child pornography. He is currently a registered sex offender in the state of Illinois. See *Illinois Sex Offender Information* (visited Mar. 4, 2002) <<http://samnet.isp.state.il.us>> (listing Reynolds' registration as a sex offender).

<sup>12</sup> Borders was convicted for participating in a conspiracy to bribe federal judge Alcee Hastings. Borders refused to testify at Hastings' criminal trial or his impeachment hearings, which resulted in Borders' imprisonment for both contempt of court and contempt of Congress. By granting clemency to Borders, President Clinton violated his own standards as drafted by then-White House Counsel Jack Quinn. Quinn wrote that "offenses involving central involvement in political corruption" were among those President Clinton would not consider "under almost any circumstances." Arnold & Porter Document Production A0556-57 (Executive Clemency Policy (Jan. 26, 1996)) (Exhibit 2).

<sup>13</sup> Deutch was accused of mishandling hundreds of highly classified documents, including information relating to covert actions, storing many on a home computer used to surf "high risk" sites on the internet, making the documents easily accessible to a hacker. Jerry Seper, *Deutch Planned Guilty Plea Before Clinton Pardoned Him*, WASH. TIMES, Jan. 25, 2001, at A3. Less than a day before receiving the pardon, Deutch had signed a plea agreement wherein he admitted a misdemeanor and agreed to pay a \$5,000 fine. Vernon Loeb, *Senate Committee Questions Clinton's Pardon of Deutch*, WASH. POST, Feb. 16, 2001, at A2.

Department has regulations governing its handling of applications for clemency, the President is free to ignore those regulations, and President Clinton did ignore them in the last month he was in office. The key lesson to be learned from the facts detailed in this report is that more disclosure is likely to remedy the problems in each of these three areas of concern. Public scrutiny after-the-fact may provide some deterrence, but a more open process before a grant of clemency is likely to be more effective. That is why the Committee moved legislation to require public disclosure of contributions to entities like the Clinton Library, given the potential effect of such contributions on policymaking decisions.<sup>14</sup> Another example of potential legislation would be a clarification of the definition of “lobbying” under the Lobbying Disclosure Act.<sup>15</sup> It could be amended to explicitly cover those who are paid to contact executive branch officials on behalf of clemency seekers.<sup>16</sup> If Jack Quinn and Hugh Rodham had been required to disclose their status publicly as paid lobbyists seeking clemency for their clients, then Marc Rich and Carlos Vignali may not have been pardoned. The public outcry could have occurred beforehand and possibly prevented the damage done by these grants of clemency to public confidence in the integrity of government. Even if such a measure would not have prevented these particular grants of clemency, knowing who is paid to lobby for clemency would certainly assist future presidents in making appropriate decisions.

## **B. President Clinton Deviated From All Applicable Standards**

In his rush to grant pardons and commutations in the waning hours of his presidency, Bill Clinton ignored almost every applicable standard governing the exercise of the clemency power. There were three obvious sources of guidance regarding the exercise of the power. First, the Justice Department had published guidelines regarding its handling of clemency petitions. While these guidelines were not binding upon the President, they should have provided guidance to the Justice Department and the President. At a minimum, they provide a mechanism to provide the President with relevant information. The Justice Department guidelines state first that pardon petitions should not be filed until five years after the petitioner is released from prison, or, if no

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<sup>14</sup> As a result of the Committee’s investigation into the Marc Rich and Pincus Green pardons, the Committee voted out H.R. 577, the Presidential Library Disclosure Act, a bill which ensures that contributions to presidential libraries are publicly disclosed. This bill was approved by the House of Representatives in a 392 to 3 vote on Feb. 5, 2002, and is awaiting action in the Senate.

<sup>15</sup> 2 U.S.C. § 1602(8)(a) currently defines a “lobbying contact” as:

. . . any oral or written communication . . . to a covered executive branch official . . . that is made on behalf of a client with regard to—

- (i) the formulation, modification, or adoption of Federal legislation (including legislative proposals);
- (ii) the formulation, modification, or adoption of a Federal rule, regulation, Executive order, or any other program, policy, or position of the United States Government;
- (iii) the administration or execution of a Federal program or policy (including the negotiation, award, or administration of a Federal contract, grant, loan, permit, or license); or
- (iv) the nomination or confirmation of a person for a position subject to confirmation by the Senate.

<sup>16</sup> 2 U.S.C. § 1602(8)(b)(xii) currently contains an exception for “. . . a communication that is . . . made to an official in an agency with regard to . . . a judicial proceeding or a criminal or civil law enforcement inquiry, investigation, or proceeding.” This exception could arguably exclude lobbying for clemency from the statute’s disclosure requirements. *But see In re Grand Jury Subpoenas*, 179 F. Supp. 270 (S.D.N.Y., Mar. 9, 2001) (holding that “the pardon process was not adversarial” in the Marc Rich case, that his lawyers were “acting principally as lobbyists,” and that they were, therefore, not entitled to withhold certain documents under the attorney-client privilege).

prison time is served, five years after the date of conviction.<sup>17</sup> The guidelines also state that commutation petitions should not be filed while there are other forms of judicial or administrative relief, like appeals, still available.<sup>18</sup>

The U.S. Attorney's Manual also contains detailed standards applied to clemency petitions by the Pardon Attorney's Office. The Manual lists five standards applicable to the review of pardon petitions:

1. Post-conviction conduct, character, and reputation.

An individual's demonstrated ability to lead a responsible and productive life for a significant period after conviction or release from confinement is strong evidence of rehabilitation and worthiness for pardon.

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2. Seriousness and relative recentness of the offense.

When an offense is very serious (e.g., a violent crime, major drug trafficking, breach of public trust, or white collar crime involving substantial sums of money), a suitable length of time should have elapsed in order to avoid denigrating the seriousness of the offense or undermining the deterrent effect of the conviction. In the case of a prominent individual or notorious crime, the likely effect of a pardon on law enforcement interests or upon the general public should be taken into account.

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3. Acceptance of responsibility, remorse, and atonement.

The extent to which a petitioner has accepted responsibility for his or her criminal conduct and made restitution to its victims are important considerations. A petitioner should be genuinely desirous of forgiveness rather than vindication. While the absence of expressions of remorse should not preclude favorable consideration, a petitioner's attempts to minimize or rationalize culpability does not advance the case for pardon.

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4. The need for relief.

The purpose for which a pardon is sought may influence disposition of the petition. A felony conviction may result in a wide variety of legal disabilities

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<sup>17</sup> 28 C.F.R. § 1.2 (2002).

<sup>18</sup> 28 C.F.R. § 1.3 (2002).

under state or federal law, some of which can provide persuasive grounds for recommending a pardon.

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#### 5. Official recommendations and reports.

The comments and recommendations of concerned and knowledgeable officials, particularly the United States Attorney whose office prosecuted the case and the sentencing judge, are carefully considered. The likely impact of favorable action in the district or nationally, particularly on current law enforcement priorities, will always be relevant to the President's decision.<sup>19</sup>

The U.S. Attorney's manual also contains standards for the consideration of commutation petitions:

Generally, commutation of sentence is an extraordinary remedy that is rarely granted. Appropriate grounds for considering commutation have traditionally included disparity or undue severity of sentence, critical illness or old age, and meritorious service rendered to the government by the petitioner, e.g., cooperation with investigative or prosecutive efforts that has not been adequately rewarded by other official action.<sup>20</sup>

A second source of guidance comes from a 1996 memorandum from then-White House Counsel Jack Quinn to Deputy Attorney General Jamie Gorelick and Pardon Attorney Margaret Colgate Love. In this memorandum, Quinn issued a number of directives from President Clinton regarding the exercise of his clemency authority. Quinn first stated that the "President intends to continue to rely greatly on your joint recommendations regarding clemency applications." Quinn also stated that President Clinton had identified a number of factors in addition to those listed in the U.S. Attorney's Manual, which he wanted considered as part of the review of clemency petitions:

The following circumstances would weigh in favor of granting clemency:

1. Indications that the crime for which clemency is sought was truly aberrational, i.e., a lone instance of criminal behavior in an otherwise exemplary life.
2. Cases committed long ago when the individual was very young and which do not involve major crimes.
3. Cases not involving major crimes in which the individual has clearly turned his or her life around by making sustained and significant contributions to the community since being released from prison.

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<sup>19</sup> U.S. Attorney's Manual 1-2.112.

<sup>20</sup> U.S. Attorney's Manual 1-2.113.

By contrast, in certain cases, even extraordinarily exemplary actions post-conviction may not merit the remedy of executive clemency. These cases might include:

1. The commission of major crimes: There are categories of crimes which are so serious that the President will not consider granting a pardon for them under almost any circumstances. Such crimes would include large-scale drug trafficking, sex offenses involving minors, offenses involving central involvement in political corruption, or violent crimes such as murder or rape.
2. An extensive criminal history: Three or more separate convictions should raise a substantial presumption against granting a pardon with respect to any one of them. This presumption would only be overcome by a truly exceptional rehabilitative history involving exemplary service to the individual's community or country.<sup>21</sup>

The final source of guidance regarding the exercise of the President's clemency power is, of course, the President's own personal views. In 1996, President Clinton was asked if he was considering a pardon for Susan McDougal and other Whitewater defendants. He responded:

[M]y position would be that their cases should be handled like others . . . there's a regular process for that, and I have regular meetings on that. And I review those cases as they come up and after there's an evaluation done by the Justice Department, and that's how I think it should be handled.<sup>22</sup>

Therefore, the President suggested that the McDougal case, and all others, would be handled according to the "regular process," including screening by the Justice Department.

As to the President's claim that he would follow the "regular process," he granted clemency to 30 individuals who had not even filed clemency petitions with the Justice Department,<sup>23</sup> and some who had not filed any petition at all, not even with the White House.<sup>24</sup> The President also granted clemency to 14 individuals who had their petitions previously denied and thus were not pending with the Justice Department.<sup>25</sup> Even more important, in a number of

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<sup>21</sup> Arnold & Porter Document Production A0556-57 (Memorandum from Jack Quinn to Jamie Gorelick (Jan. 26, 1996)) (Exhibit 2).

<sup>22</sup> *The NewsHour with Jim Lehrer* (PBS television broadcast, Sept. 23, 1996).

<sup>23</sup> Letter from Sheryl Walter, Office of Legislative Affairs, Department of Justice, to the Honorable Dan Burton, Chairman, Comm. on Govt. Reform (Feb. 6, 2001) (Exhibit 3).

<sup>24</sup> The Committee has not attempted to discover every single case where clemency was granted without a clemency petition being filed. However, it has been reported that a number of individuals who were convicted in connection with independent counsel investigations, for example, Richard Douglas, Alvarez Ferrouillet, John Hemmingson, James H. Lake, Brook K. Mitchell, Sr., Jack L. Williams, Ronald Blackley, Henry Cisneros, and Linda Jones all received grants of clemency without having filed a petition with either the White House or the Justice Department. See Weston Kosova, *Running on Fumes: Pulling All-Nighters, Bill Clinton Spent His Last Days Obsessing Over Details and Pardons*, NEWSWEEK, Feb. 26, 2001, at 30.

<sup>25</sup> Letter from Sheryl Walter, Office of Legislative Affairs, Department of Justice, to the Honorable Dan Burton, Chairman, Comm. on Govt. Reform (Feb. 6, 2001) (Exhibit 3).

cases, President Clinton dramatically deviated from the “regular process” of seeking the Justice Department’s input.

Many of the President’s last-minute grants of clemency violated all of these standards. Marc Rich and Pincus Green, for example, fail all five Justice Department criteria for pardons. They did not demonstrate responsible behavior after their indictment. Rather, by all accounts, they have remained fugitives from justice and continued to engage in business relations with the enemies of the United States. Their offenses were serious and notorious crimes for which, according to the Justice Department, a suitable length of time should pass between conviction and pardon. Yet Rich and Green never even stood trial. Rich and Green did not demonstrate any responsibility, remorse, or atonement for their crimes. Rather, they maintained that they were “singled out” and unfairly prosecuted. Rich and Green had no real need for relief. They lived in luxury, and apparently sought the pardons only so that they could travel freely around the world, without the fear of being apprehended by the U.S. Marshals Service in countries that were cooperating with U.S. efforts to apprehend them. Finally, there were no official recommendations or reports regarding the Rich and Green pardons, since the White House circumvented the normal pardon review process. If there had been such reports, however, it is safe to assume that the U.S. Attorney’s office would have strongly objected to the Rich and Green pardons.

The other grants of clemency reviewed in this report also fail to meet the applicable standards. Carlos Vignali satisfies none of the appropriate grounds for commutation identified in Justice Department regulations, as his sentence was not disparate or unfair, and he did not cooperate with law enforcement. As a large-scale drug dealer, Vignali also was not eligible for clemency under the President’s own guidelines of 1996. Harvey Weinig similarly failed all relevant standards, having been sentenced fairly, and having never cooperated with law enforcement. Weinig, as a large-scale money launderer for the Cali Cartel, also was ineligible for clemency under the President’s guidelines. Glenn Braswell clearly failed to meet the standards for a pardon, as he was under active investigation for new criminal acts at the time he received a pardon. Edgar and Vonna Jo Gregory similarly fell short of the applicable standard, having committed one of the largest bank frauds in Alabama history. Moreover, prosecutors objected to the Gregory pardons.

### **C. Individuals Close to President Clinton Used Their Influence to Lobby for Undeserved Grants of Clemency**

One of the most disturbing aspects of the closing month of President Clinton’s term in office is that a number of people close to the President used their relationship with him to lobby for clemency grants which ordinarily would not have been considered. While there are certainly individuals who would seek to abuse their access in any administration, never have they been so successful as in the Clinton Administration. Jack Quinn abused his relationship with the President to lobby for the pardons of Marc Rich and Pincus Green. There can be little doubt that these pardons would not have been issued if Jack Quinn had not exploited his position as former White House Counsel. Hugh Rodham successfully lobbied the President for grants of clemency to Carlos Vignali and Glenn Braswell. Tony Rodham successfully lobbied the President to grant

pardons to Edgar and Vonna Jo Gregory. David Dreyer, a former White House staffer, lobbied the President to grant a commutation to his cousin, Cali Cartel money launderer Harvey Weinig.

It is clear that none of these grants of clemency would have been issued on the merits. Marc Rich and Pincus Green were fugitives from justice, indicted for the largest tax evasion scheme in U.S. history and for selling oil to Iran while Americans were being held hostage. Carlos Vignali was the source of cocaine for a major drug dealing ring. Glenn Braswell was an extremely successful con artist who was actually under criminal investigation at the time he received his pardon from President Clinton. Edgar and Vonna Jo Gregory had been convicted for the largest bank fraud in Alabama history. Harvey Weinig laundered millions of dollars for the Cali cartel and participated in a kidnapping, and was only caught when he began to steal money from the Cali cartel. Only by capitalizing on relationships between President Clinton and individuals close to him were these petitioners able to obtain grants of clemency.

#### **D. A Number of Potential Violations of Law Have Been Discovered by the Committee**

In the course of its investigation, the Committee has learned of a number of potential violations of law by Roger Clinton and Tony Rodham. The Committee recommends that the Department of Justice review these matters in conjunction with the ongoing criminal investigation being conducted by the U.S. Attorney for the Southern District of New York.

The Committee has uncovered a number of potential criminal acts by Roger Clinton. First, Roger Clinton may have imported more than \$10,000 in monetary instruments into the United States without properly disclosing it to the Customs Service. Clinton received substantial sums of money originating from overseas between 1998 and 2000. If Clinton imported this money into the United States, then he was required to report it to proper authorities, and apparently did not do so. Second, Roger Clinton appears to have violated the Lobbying Disclosure Act. There is evidence that Roger Clinton lobbied the President regarding travel restrictions to Cuba. Clinton did not register as a lobbyist, despite the fact that he was likely required to do so. Third, Clinton lied to FBI agents who interviewed him regarding his lobbying for Rosario Gambino in 1999. When they interviewed Roger Clinton, he claimed that “he did not represent to anyone on the Parole Commission that his brother was aware of his efforts to assist the Gambino family”<sup>26</sup> However, when Clinton lobbied the U.S. Parole Commission, he had explicitly stated that his brother was “completely aware” of his involvement.<sup>27</sup> Roger Clinton also lied to the FBI about a \$50,000 payment from the Gambino family.<sup>28</sup> Although he deposited the payment the same day as the FBI interview, he did not disclose it to the agents

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<sup>26</sup> Department of Justice Document Production FBI-RC-00003 (Summary of Interview with Roger Clinton, Oct. 1, 1999) (Exhibit 4).

<sup>27</sup> USPC Document Production 00894 (Memorandum from Michael A. Stover, General Counsel, U.S. Parole Commission, to File (Jan. 31, 1996)) (Exhibit 5); Telephone Interview with Thomas Kowalski, Case Operations Manager, U.S. Parole Commission (July 27, 2001). Roger Clinton made it clear to Parole Commission staff on multiple occasions that President Clinton had specific knowledge that he was contacting the Parole Commission regarding Rosario Gambino. *See generally*, Chapter Two: Roger Clinton’s Involvement in Lobbying for Executive Clemency, Section II.E.1., “Roger Clinton’s Statements Regarding his Brother’s Knowledge.”

<sup>28</sup> *See generally*, Chapter Two: Roger Clinton’s Involvement in Lobbying for Executive Clemency, Section II.E.2., “Roger Clinton’s Statements Regarding Payment from the Gambinos.”

explicitly or truthfully. Rather he claimed that Rosario Gambino's son had offered to loan him money for a down payment on a house.<sup>29</sup> Despite this claim to the FBI, which Clinton repeated to the media in the summer of 2001, bank records indicate that Clinton neither used the \$50,000 for a down payment nor did he ever repay any of the money. During the interview, Clinton also told three separate and contradictory stories when questioned about a Rolex watch he received from the Gambinos.<sup>30</sup>

The Committee has also learned about Tony Rodham's participation in a scheme to defraud Vivian Mannerud in connection with Mannerud's effort to obtain a commutation for her father, Fernando Fuentes Coba. Tony Rodham was introduced to Mannerud by his business partner, Marilyn J. Parker. Together, Rodham and Parker attempted to convince Mannerud to hire Rodham to help her obtain a commutation for her father. In making his pitch to Mannerud, Rodham made a number of false statements to Mannerud, including the assertion that he was friendly with Pardon Attorney Roger Adams, and that he would hire a law firm at which Adams' wife was a partner. Rodham then asked Mannerud to pay him \$50,000 to help with the Fernando Fuentes Coba commutation effort. After Mannerud refused, Marilyn Parker called Mannerud to tell her that Rodham now only wanted \$30,000 to help with the Fuentes commutation. Mannerud declined both offers for fear of being involved in some improper activity. The activity by Rodham and Parker may amount to a criminal conspiracy to defraud Vivian Mannerud. Whether or not the conduct by Rodham and Parker amounts to criminal activity depends greatly upon the specific evidence that can be gathered by the Justice Department. However, it is clear that this matter deserves thorough investigation by the Department of Justice.

#### **E. The Message Sent by President Clinton's Grants of Clemency**

The way in which a President exercises the clemency power speaks volumes about that President's priorities. The clemency grants reviewed in this report send a clear message, one that does not speak well of President Clinton. While the clemency power is vitally important and should be used by the President, it should not be debased, particularly where large sums of money are flowing to relatives of the President or to foundations in which he has a significant interest.

First, President Clinton granted pardons and commutations to individuals who never would have received clemency but for the fact that they hired individuals close to the President to represent them. Marc Rich, Pincus Green, Carlos Vignali, Glenn Braswell, Edgar Gregory and Vonna Jo Gregory were all extremely wealthy, and were able to hire Jack Quinn, Tony Rodham, and Hugh Rodham to lobby the White House and short-circuit the normal clemency review procedures. The average low-income criminal defendant does not have the money necessary to hire a White House insider to lobby for their pardon. At best, they can fill out their

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<sup>29</sup> Department of Justice Document Production FBI-RC-00005-06 (Summary of Interview with Roger Clinton, Oct. 1, 1999) (Exhibit 4).

<sup>30</sup> The interviewing FBI agents apparently were not satisfied with Roger Clinton's candor during the interview, as they took the unusual step of explaining to Clinton the penalties for making false statements during the course of the interview. *Id.* at FBI-RC-00006. *See generally*, Chapter Two: Roger Clinton's Involvement in Lobbying for Executive Clemency, Section II.E.3., "Roger Clinton's Statements Regarding the Rolex Watch."

clemency application, and watch it proceed through the normal Justice Department review process. By listening to the advice of highly-paid White House insiders like Jack Quinn, Hugh Rodham, and Tony Rodham, and by granting clemency to their clients, President Clinton has sent the message that he had two standards of justice — one for the rich, and one for the poor. Representative Elijah Cummings described some of his concerns about this issue at the Committee’s February 8, 2001, hearing:

One of the things that concerns me about [the Rich] pardon is that I think anybody who is sitting in this audience or anybody who is watching this at home, you know, when the little guy, when the Department of Justice comes after the little guy, the guys that I used to represent, they tear their lives apart, I mean rip them apart. They can’t afford the Mr. diGenovas, the great lawyers, as he is and others. They do the best they can. They spend all of their money. Their reputations are tarnished. Even if they’re found not guilty, friends are brought in, FBI goes into their homes, subpoenas are issued.

And when people look at Mr. Rich and others who apparently goes off to another country, they’ve got the money to do so, and it appears as if they’re evading the process. The little guys that I represent and the women, you know, they really have a problem with that, because they sit here and they say, wait a minute, you know, I’m sitting in jail for 20 years. And it does not even compare. I mean, I may have done one-millionth of what was allegedly done here, but I’m sitting in jail. And I didn’t have the money to go off somewhere else. I didn’t have the money to do that. I didn’t have the money to hire the big-time lawyers. So it does concern me.

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And it’s one thing to go to trial. It’s one thing to stay here and face the music. It’s one thing to be found not guilty. It’s a whole other thing, in my opinion, when somebody, because they have the money, can go outside the country and evade the system. I tell you it really concerns me because my constituents have a major problem with that, and I do, too.<sup>31</sup>

These concerns are shared by many on the Committee.

President Clinton’s pardons did not just send the message that he believes in two standards of justice. By pardoning fugitives from justice, President Clinton undermined the efforts of law enforcement officers everywhere. Since 1983, Assistant United States Attorneys and agents of the United States Marshals Service have been trying to apprehend Marc Rich and Pincus Green. They listed Rich as one of the most wanted fugitives in the world. They set up sting operations to arrest Rich overseas. They have submitted arrest requests and extradition requests to a number of foreign countries. President Clinton’s pardon of wanted fugitives is a direct slap in the face to the U.S. law enforcement officers who spent almost two decades trying

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<sup>31</sup> “The Controversial Pardon of International Fugitive Marc Rich,” *Hearings Before the Comm. on Govt. Reform*, 107<sup>th</sup> Cong. 164-65 (Feb. 8, 2001) (statement of the Honorable Elijah Cummings).

to apprehend Rich. The pardons also could serve to undermine U.S. efforts to extradite fugitives in the future.

By commuting the sentences of Carlos Vignali and Harvey Weinig, President Clinton undermined U.S. efforts to fight the flow of illegal drugs into the country. Neither was a minor participant in drug trafficking. Vignali supplied cocaine to the largest drug-dealing ring in Minnesota history. Moreover, he never cooperated with law enforcement, and failed to reveal where he obtained his cocaine. Harvey Weinig laundered millions of dollars for the Cali Cartel. Without individuals like Harvey Weinig, drug traffickers would not be able to enjoy the proceeds from their drug sales. Despite the seriousness of their crimes, President Clinton commuted the sentences of both Vignali and Weinig.

The message of these commutations was loud and clear. Tony Adams, a narcotics detective in Minnesota, spoke eloquently to the meaning of the Vignali commutation. Adams stated that he was stunned to learn of the commutation: "It's like, basically, you've just been told that this kid, he's untouchable."<sup>32</sup> Adams observed that the Vignali case "more or less tells us that America's system has been bought if you have money."<sup>33</sup> He also observed that "politicians always get in front of this camera and say 'We're trying to take dope off the streets. We're trying to put dope dealers in jail.' Well, you just let one out, a big one."<sup>34</sup> Finally, Adams suggested that "the politicians in L.A. or Washington, D.C., should finish the nine years that [Vignali] has left on his time, and I'm standing right by that."<sup>35</sup> Adams is certainly not alone in his criticism of the Vignali commutation, but his comments are particularly noteworthy, coming from a detective who investigated the case, and who routinely places his life on the line to protect the public from drug traffickers.<sup>36</sup>

The Weinig case has sent no less a destructive message to U.S. law enforcement. In fact, the Weinig commutation has created a great deal of consternation in Latin American nations from which the U.S. is attempting to extradite drug kingpins. Many individuals in these nations have argued that they should not extradite their citizens to the U.S. for narcotics offenses because the U.S. clearly is not serious about enforcing its narcotics laws, pointing specifically to the Weinig commutation.<sup>37</sup> By pardoning a major money launderer for the Cali Cartel, President Clinton has made it harder for the U.S. to extradite drug traffickers to the U.S. and harder to fight the war on drugs.

## **F. Obstacles Faced by the Committee**

The Committee conducted a thorough investigation, interviewing dozens of witnesses. The majority of parties contacted by the Committee cooperated with the investigation. However,

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<sup>32</sup> Richard A. Serrano and Stephen Braun, *Working the American System*, L.A. TIMES, Apr. 29, 2001, at 10.

<sup>33</sup> *Fox Special Report with Brit Hume* (Fox News television broadcast, Feb. 27, 2001).

<sup>34</sup> *Nightline* (ABC News television broadcast, Feb. 23, 2001).

<sup>35</sup> *Fox Special Report with Brit Hume* (Fox News television broadcast, Feb. 23, 2001).

<sup>36</sup> While conducting plainclothes surveillance in April 2001, Adams was shot at by a suspect, and escaped uninjured. David Chanen, *Man Fires at Officer, But Nobody is Hurt*, STAR TRIBUNE (Minneapolis, MN), Apr. 20, 2001, at 9B.

<sup>37</sup> See *Colombian General Hits Clinton Commutation*, WASH. TIMES, Mar. 6, 2001, at A13; Russell Crandall, *The Americas: In the War on Drugs, Colombians Die, Americans Are Pardoned*, WALL ST. J., Apr. 20, 2001, at A15.

a number of key individuals refused to cooperate, which in turn seriously hampered the Committee's investigation.

## **1. Witnesses Who Have Not Cooperated with the Investigation**

The Committee has faced a number of obstacles that have prevented it from discovering the full truth regarding the pardon and commutations which it investigated. The greatest problem faced by the Committee was that a number of key witnesses invoked their Fifth Amendment rights, or otherwise refused to cooperate with the Committee's investigation. A total of 26 witnesses either invoked their Fifth Amendment rights or refused to be interviewed in the course of the Committee's investigation. Some of these witnesses, like Marc Rich, Denise Rich, Beth Dozoretz, and Roger Clinton, were critically important. The impact of the refusal of key witnesses to cooperate is discussed below, in the relevant chapters regarding each part of the investigation.

Another significant problem the Committee has faced is the refusal of a number of parties to produce records subpoenaed or requested by the Committee. A number of document requests issued by the Committee have not been complied with by their recipients, either because of an invocation of Fifth Amendment rights or an invocation of attorney-client privilege. In some cases, the invocation of privilege has been spurious. For example, Hugh Rodham refused to produce any records regarding the Vignali matter because of the attorney-client privilege. Obviously, Rodham possesses records which are not privileged, which he could provide to the Committee, however, he simply declined to do so.<sup>38</sup> This refusal adversely impacted the ability of the Committee to develop a full understanding of Rodham's work on the Vignali matter. The specific problems faced by the Committee in each aspect of the pardon investigation are discussed below, in the relevant chapters regarding each pardon and commutation.

## **2. The White House**

It is a matter of some concern that the Bush White House and Justice Department failed to cooperate fully with the Committee's investigation. Early in its investigation of the Marc Rich pardon, the Chairman requested that former President Clinton waive any claim of executive privilege he might have over testimony and documents relating to the pardons and commutations he granted.<sup>39</sup> On February 27, 2001, former President Clinton's attorney, David Kendall, sent the Chairman a letter in which he informed the Committee that "he will interpose no Executive Privilege objections to the testimony of his former staff concerning these pardons, or to other pardons and commutations he granted."<sup>40</sup> Despite former President Clinton's decision to waive

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<sup>38</sup> Such records would include records provided to Rodham by third parties and documents which Rodham provided to third parties.

<sup>39</sup> Letter from the Honorable Dan Burton, Chairman, Comm. on Govt. Reform, to former President William J. Clinton (Feb. 15, 2001) (Exhibit 6).

<sup>40</sup> Letter from David E. Kendall, counsel for President Clinton, Williams & Connolly, to the Honorable Dan Burton, Chairman, Comm. on Govt. Reform (Feb. 27, 2001) (Exhibit 7). In addition to waiving any claim of privilege with respect to the testimony of his former staff, President Clinton has not raised executive privilege with respect to any of the records the Committee has requested from the National Archives.

executive privilege, the Committee faced a number of problems receiving records relating to the pardons and commutations, both from the White House and the Justice Department.

Beginning on January 25, 2001, the Committee issued a series of document requests to the National Archives and Records Administration (“NARA”), seeking records relating to pardons and commutations issued or considered by former President Clinton. Under the Presidential Records Act, once the responsive records were located by NARA staff, they were provided to staff for former President Clinton to be reviewed for executive privilege concerns.<sup>41</sup> After President Clinton’s staff had reviewed them, the records were reviewed by staff for President Bush, who independently has the right to assert executive privilege over the records. The Committee’s first requests to NARA for records relating to Marc Rich and Pincus Green were satisfied. However, shortly thereafter, the Committee began to have significant problems receiving the records it had requested from NARA.

On March 8, 2001, the Committee issued a request to NARA for records relating to the pardons and commutations of a number of individuals, including Glenn Braswell, Carlos Vignali, Edgar and Vonna Jo Gregory, Eugene and Nora Lum, as well as records relating to Roger Clinton’s involvement in lobbying for pardons. The Committee’s request called for the records to be provided to the Committee by March 22, 2001. At some point in April 2001, NARA had gathered all of the responsive documents, and they had been reviewed and cleared by the office of former President Clinton. However, they had not been provided to the Committee because of objections from the Bush White House Counsel’s Office.<sup>42</sup>

Committee staff spent the next month engaged in fruitless negotiations with the Bush White House regarding the production of the requested records. Staff from the Bush White House explained that they had concerns about producing the requested records, because the records went to the heart of the clemency review process, which was part of a core Presidential power. During these negotiations, Committee staff pointed out that the White House had been delaying the production of a wide variety of records from NARA, including documents sent into the White House from individuals seeking pardons, and that these records could not possibly raise any privilege concerns. The White House agreed to provide these types of non-deliberative records to the Committee.<sup>43</sup>

However, the White House was not nearly so accommodating with respect to deliberative documents about the clemency process that were generated inside of the Clinton Administration. White House staff informed the Committee staff that the White House did not plan to assert executive privilege over these records, but would simply decline to produce them and hope that the Committee understood the reasons why. Committee staff attempted to explain that a number of these records were critically important to the Committee’s investigation. For example, the

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<sup>41</sup> See 44 U.S.C. § 2204 (2002).

<sup>42</sup> Notes of Telephone Conversation with Amy Krupsky, Associate General Counsel, National Archives and Records Administration (May 1, 2001).

<sup>43</sup> The White House did not agree to provide records provided to the White House from third parties until June 6, 2001. It is unclear why these types of records, which were clearly not privileged, were withheld from the Committee for so long. The delay in the production of these records — which did not occur until three months after they were requested — imposed a substantial delay on the Committee’s investigation.

report prepared by Pardon Attorney Roger Adams regarding the Vignali commutation was central to the Committee's understanding of the Vignali matter. Committee staff also offered to reach a number of compromise accommodations, which would satisfy the Committee's needs to review the Adams memo, while still protecting the White House's interests. All of these offers were rejected. The White House's refusal to reach any accommodation meant that the Committee was unable to obtain a number of key documents regarding pardons and commutations issued by President Clinton.

On June 7, 2001, shortly after the Committee's offers to the White House were rejected, the Committee received a production of records from NARA. This production apparently included both deliberative and non-deliberative records responsive to the Committee's March 8, 2001, request. Approximately two weeks later, Committee staff informed the White House that NARA had provided the Committee with a number of records that the White House may have intended to withhold from the Committee. Shortly thereafter, the Committee received a telephone call, and then a letter from the NARA General Counsel, Gary Stern, requesting the return of the documents. In his letter, Stern stated that "some of the records that were provided to the Committee were inadvertently produced. Accordingly, we now request the return of these records, and any copies made thereof."<sup>44</sup>

However, for several reasons, the Committee decided not to return the records in response to Stern's request. First, the records were responsive to the Committee's request, and therefore, should have been produced in any event. Second, neither President Bush nor President Clinton asserted any privilege over the documents. In the absence of a valid claim of privilege, the Committee has a right to receive documents responsive to its request. Third, even if President Bush or President Clinton had asserted executive privilege, the Committee might have determined to keep certain essential records produced by NARA on June 7, 2001. A number of these records were critical to the Committee's investigation, and did not raise legitimate executive privilege concerns. However, since neither the current nor the former President raised any such privilege, the Committee used these documents in its investigation and in this report.

The documents that were "inadvertently" produced to the Committee were of central importance to the Committee's investigation. The following is a brief description of some of the records included in that production:

- *All White House records regarding the Vignali commutation:* These records included the report by Pardon Attorney Roger Adams objecting to the Vignali commutation.<sup>45</sup> This report was of critical importance to the Committee, as it showed the extent to which the Clinton White House was aware of Carlos Vignali's criminal activities. These records also included one White House document indicating that Hugh Rodham had informed the White House staff that the Vignali commutation was "very important" to First Lady Hillary Clinton.<sup>46</sup>

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<sup>44</sup> Letter from Gary Stern, General Counsel, NARA, to Jim Wilson, General Counsel, Comm. on Govt. Reform (June 21, 2001) (Exhibit 8).

<sup>45</sup> See NARA Document Production (Report to the President on Proposed Denial of Executive Clemency for Carlos Anibal Vignali, Jr., (Jan. 12, 2001) (Exhibit 9).

<sup>46</sup> See NARA Document Production (Note from Dawn Woolen, Administrative Assistant, to Bruce Lindsey, Deputy Chief of Staff, the White House (Exhibit 10).

- *Documents that led the Committee to uncover Roger Clinton's efforts to obtain a commutation for organized crime figure Rosario Gambino:* Before receiving these records from NARA, the Committee was aware only of a payment of \$50,000 from Anna Gambino to Roger Clinton. Only after receiving these documents did the Committee have reason to believe this payment might be related to an effort to free Rosario Gambino from prison.<sup>47</sup>
- *Documents showing three additional pardons that Roger Clinton attempted to obtain:* These documents indicated that representatives of Mark St. Pé and Steven Griggs sent materials requesting pardons to Roger Clinton at the White House, and that these materials were forwarded to the White House Counsel's office. Another document indicating that William McCord had sent a petition was produced in the midst of other Roger Clinton-related material.
- *Pardon Attorney Roger Adams' report on the commutation of drug money launderer Harvey Weinig:* This report demonstrated that the White House was fully aware of extent of Weinig's criminal activities, including his role in a kidnapping.<sup>48</sup>

Given the importance of these records to the Committee's investigation, and the absence of any claim of privilege over the documents, the Committee decided to use the records in its investigation and in this report. Given the apparent sensitivity of the records to the White House, the Committee is using only those records which are directly relevant to necessary subject matter covered in this report.

The Committee must emphasize that it is disappointed with the way the Administration handled its requests for documents relating to the pardon matter. It is clear that if a large number of documents relating to the pardon had not been "inadvertently" produced by NARA personnel on June 7, the Committee would never have received those records. Consequently, Members of Congress, historians, and the public might never have known about many of the significant abuses of public trust detailed in this report. Developments since June 2001 have made it clear that the Administration is engaged in a wide-ranging effort to expand executive privilege beyond its traditional boundaries and reduce Congressional oversight of the White House and Justice Department. It is disappointing that the Bush Administration would attempt to withhold key documents from the Committee in an investigation like this, where the Committee is looking into allegations of malfeasance at the highest levels of government. That the Bush Administration attempted to withhold these records even though former President Clinton approved their release is especially discouraging.

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<sup>47</sup> Committee staff had been unable to reach Mrs. Gambino or determine the purpose of her payment. The key document in the NARA production was a note apparently drafted by White House staffer Meredith Cabe which referenced the fact that she was requesting an NCIC check on Rosario Gambino. Given the fact that Rosario Gambino was a well-known organized crime figure who was an exceedingly unlikely candidate for a legitimate grant of clemency, the Committee investigated this matter, and determined that Anna Gambino was Rosario Gambino's daughter, and that the payment of \$50,000 from Anna Gambino to Roger Clinton was part of the Gambinos' efforts to obtain a commutation for Rosario Gambino.

<sup>48</sup> See NARA Document Production (Report to the President on Proposed Denial of Executive Clemency for Harvey Weinig (Exhibit 11)).

### **3. The Justice Department**

The recalcitrance of the Bush Administration in refusing to turn over records in the pardon investigation also extended to the Justice Department. The Justice Department refused to provide a number of records requested by the Committee in the course of its investigation. Most of these documents related to the Committee's investigation of Roger Clinton, specifically relating to Roger Clinton's efforts to obtain a commutation for Rosario Gambino. The Committee requested from the Justice Department all records relating to any consideration of a grant of clemency for Rosario Gambino, as well as all records relating to the Justice Department's investigation of Roger Clinton's efforts to obtain a grant of clemency for Gambino. The Justice Department refused to comply fully with either request.

With respect to the Committee's request for records relating to the Justice Department's work on the Gambino commutation request, the Department refused to turn over any records, or even specify which records it was withholding. Apparently, the Justice Department based its refusal on privilege concerns, presumably executive privilege, although Justice Department staff did not identify any specific privileges in explaining their decision.

With respect to the Committee's request for records relating to the investigation of Roger Clinton's involvement in the Gambino matter, the Justice Department initially provided records, but then abruptly stopped doing so. The Justice Department claimed that it was entitled to withhold records because of its ongoing investigation of Roger Clinton. However, the records that the Committee sought related to the Justice Department's investigation of Roger Clinton, which was conducted in 1998 and 1999, and then closed, not its ongoing investigation from the Southern District of New York. The Justice Department's decision to withhold these records significantly hindered the Committee's investigation of the Gambino matter. The withheld documents likely contain the Justice Department's rationale for failing to pursue criminal charges against Roger Clinton, as well as the answers to key factual questions such as whether the FBI was even aware of the \$50,000 payment from the Gambinos before the Committee uncovered it in the summer of 2001. Without a complete understanding of facts and reasoning underlying the Justice Department's decision to close the Clinton-Gambino investigation, the Committee is unable to determine whether that decision was made in good faith or may have been tainted by political considerations.