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DOCUMENT NO.	FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
001	Letter	[Letter] [2 PAGES RELEASED IN WHOLE ON PRA RE-REVIEW 09/08/2025 JLS] - To: Dan Burton - From: Sheryl L. Walter	2	03/27/2001	
002	Letter	[Letter] [2 PAGES RELEASED IN WHOLE ON PRA RE-REVIEW 09/08/2025 JLS] - To: Richard Shelby - From: Sheryl L. Walter	2	03/27/2001	
003	Letter	[Letter] [2 PAGES RELEASED IN WHOLE ON PRA RE-REVIEW 09/08/2025 JLS] - To: Orrin G. Hatch - From: Sheryl L. Walter	2	03/20/2001	
004	Memorandum	[Memorandum] [3 PAGES RELEASED IN WHOLE ON PRA RE-REVIEW 09/08/2025 JLS] - To: Alberto R. Gonzales, et al. - From: Brett M. Kavanaugh	3	02/11/2001	

COLLECTION TITLE:
Counsel's Office, White House

SERIES:
Kavanaugh, Brett - Subject Files

FOLDER TITLE:
Rich, Marc Pardon

FRC ID:
9122

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]

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

Deed of Gift Restrictions

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B. Closed by statute or by the agency which originated the document.
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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]
b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) 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]

Records Not Subject to FOIA

Court Sealed - The document is withheld under a court seal and is not subject to the Freedom of Information Act.

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DOCUMENT NO.	FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
006	Fax Cover Sheet	Fax Transmission [with attachments] [10 PAGES RELEASED IN WHOLE ON PRA RE-REVIEW 09/08/2025 JLS] - To: Brett Kavanaugh	10	02/12/2001	
007	Fax Cover Sheet	Fax Transmission [1 PAGE RELEASED IN WHOLE ON PRA RE-REVIEW 09/08/2025 JLS]	1	02/02/2001	
008	Email	Executive Privilege [with attachments] [5 PAGES RELEASED IN WHOLE ON PRA RE-REVIEW 09/08/2025 JLS] - To: Timothy E. Flanigan - From: Brett M. Kavanaugh	5	02/02/2001	

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SUPERSEDED

DOCUMENT NO.	FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
001	Letter	[Letter] - To: Dan Burton - From: Sheryl L. Walter	2	03/27/2001	P5;
002	Letter	[Letter] - To: Richard Shelby - From: Sheryl L. Walter	2	03/27/2001	P5;
003	Letter	[Letter] - To: Orrin G. Hatch - From: Sheryl L. Walter	2	03/20/2001	P5;
004	Memorandum	[Memorandum] - To: Alberto R. Gonzales, et al. - From: Brett M. Kavanaugh	3	02/11/2001	P5;
006	Fax Cover Sheet	Fax Transmission [with attachments] - To: Brett Kavanaugh	10	02/12/2001	P5;
007	Fax Cover Sheet	Fax Transmission	1	02/02/2001	P5;
008	Email	Executive Privilege [with attachments] - To: Timothy E. Flanigan - From: Brett M. Kavanaugh	5	02/02/2001	P5;

COLLECTION TITLE:
Counsel's Office, White House
SERIES:
Kavanaugh, Brett - Subject Files
FOLDER TITLE:
Rich, Marc Pardon
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U.S. Department of Justice

Office of Legislative Affairs

Washington, D.C. 20530

Draft March 27, 2001

The Honorable Dan Burton
Chairman
Committee on Government Reform
U.S. House of Representatives
Washington, DC 20515

Department of Justice

Dear Mr. Chairman:

This responds to your letter, dated March 14, 2001, which requested documents relating to certain recent presidential pardons. Your letter requested four categories of documents.

The first category consists of records relating to the consideration of clemency for 18 named individuals. Consistent with the approach that the ~~executive branch~~ took in response to similar document requests made by congressional committees in 1999 with regard to grants of clemency for certain Puerto Rican Nationalists, we are prepared to provide the Committee with documents submitted to the Department from outside the executive branch and certain law enforcement records, such as pre-sentencing reports, but ~~we are~~ not ~~prepared to provide~~ internal executive branch documents concerning the deliberations regarding possible grants of clemency. Documents concerning the grant to Carlos Vignali fall within an exception to this limitation, because the privilege protections have previously been lifted with respect to that matter (as was the case with respect to the pardons of Marc Rich and Pincus Green). We are searching for documents within this category that we are prepared to provide, and will inform you when they are assembled.

The second and third categories consist of records relating to any criminal investigations concerning individuals and matters identified in your letter. Our longstanding policy regarding the confidentiality of ongoing criminal investigations precludes us from providing records in response to this request. Although we can neither confirm nor deny that we are investigating any of the specific matters referred to in your letter, the United States Attorney's Office for the Southern District of New York has informed us that your request does have some relationship to its ongoing investigations.

Finally, your fourth category consists of records relating to clemency requests for which the White House requested priority review. White House requests to the Department concerning clemency deliberations, such as requests that we prioritize certain matters, fall within the category of deliberative information that we are protecting, consistent with the ~~executive branch~~ position on the Puerto Rican Nationalist matter. Accordingly, we are not prepared to identify which matters the White House asked us to prioritize and therefore are not providing documents in response to this request.

Please do not hesitate to contact me if you would like additional assistance regarding this or any other matter.

Sincerely,

Sheryl L. Walter
Acting Assistant Attorney General

cc: The Honorable Henry Waxman
Ranking Minority Member

U.S. Department of Justice

Office of Legislative Affairs

Washington, D.C. 20530

Draft March 27, 2001

The Honorable Richard C. Shelby
Chairman
Select Committee on Intelligence
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

This responds to your letter of March 12, 2001, which requested "an outline of the role, formal or informal, of officials of the Department of Justice in the consideration and granting" of pardons to John Deutch and Samuel Morison. We are sending an identical letter to Vice Chairman Graham.

Under the Constitution, the pardon power is exercised by the President alone, although the Department has traditionally played an extensive advisory role with respect to most pardons and commutations. Mr. Deutch's pardon was an exception to that general rule. The President made his decision in this matter without consultation with or advice from the Department of Justice. To our knowledge, the Pardon Attorney is the only Department official who was advised that Mr. Deutch was going to receive a pardon. At about 9:30 or 9:45 A.M. on the morning of January 20, 2001, the Pardon Attorney was informed in a telephone call from an Associate White House Counsel that President Clinton had decided to grant a pardon to Mr. Deutch. The Associate Counsel requested technical advice in drafting the language of the pardon warrant and the Pardon Attorney attempted to provide such advice, although his only knowledge of the Deutch matter was the information provided by the Associate Counsel. Prior to this occurrence, neither he nor anyone on his staff was aware that Mr. Deutch was being considered for a pardon, and the pardon warrant was drafted by members of the White House Counsel's Office, rather than by attorneys at the Department of Justice.

By contrast, Mr. Morison submitted a petition for pardon to the Office of the Pardon Attorney, and it was processed routinely. The process typically includes obtaining the presentence report, requesting an FBI background investigation, and seeking recommendations from the United States Attorney whose office prosecuted the case and from the sentencing judge. After completing its investigation of Mr. Morison's case, the Pardon Attorney's Office prepared a report and recommendation for the Deputy Attorney General's signature. The report was signed by the Deputy Attorney General and sent to the White House Counsel. Subsequently, President Clinton made the decision to grant Mr. Morison a pardon. I would emphasize that the role of the Department of Justice in this case, as in all clemency cases in which the applicant applies through the Pardon Attorney, was to conduct an appropriate investigation and provide advice and a recommendation to the President. The President, however, is always free to accept or ignore the Department's recommendation in a particular case.

I hope that this information is helpful. Please do not hesitate to contact me if you would like assistance regarding any other matter.

Sincerely,

Sheryl L. Walter
Acting Assistant Attorney General

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

Draft March 20, 2001

The Honorable Orrin G. Hatch
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

This is to provide information responsive to Senator Feinstein's questions at the Committee's hearing on February 14, 2001 regarding clemency granted by President Clinton on January 20, 2001. We request that this information, which pertains to the role of victims in the clemency review process, be included in the hearing record.

The impact on victims of the crime for which the applicant seeks executive clemency has long been a significant factor for the Office of the Pardon Attorney in its investigation of clemency petitions and in its preparation of the Department's advice to the President concerning whether a pardon or commutation should be granted. Since 1997, the portion of the United States Attorneys Manual that deals with the role of the United States Attorney in clemency matters (Section 1-2.111, USAM) has expressly noted the importance of providing information to the Pardon Attorney regarding victim impact in clemency cases. The practice of victim consultation in clemency cases has now been standardized by a regulation (28 CFR § 1.6(b)) which applies to clemency petitions filed on or after September 28, 2000, but this reflects more of a continuation of past practice than the commencement of a new procedure.

In response to Senator Feinstein's request, we examined pardons and commutations granted between December 1, 1999, and December 31, 2000. Of the ten commutations granted in this period, none involved an individual victim who suffered either physical or financial harm. Of the 147 pardons granted during this period, only two involved physical harm to persons or property. The victims were not consulted in these two cases. In both instances, the defendant/pardon applicant had been charged with a regulatory type offense, not an assault or property destruction offense. In one case, restitution had been fully paid many years ago, and the defendant had taken great pains not to hurt any persons and to do only damage to the personal property of an individual with whom he was having a personal feud. The other case involved merely bad judgment that resulted in an accident, and neither drugs nor alcohol were involved.

I hope that this information is helpful. Please do not hesitate to contact me if you would like additional assistance regarding this matter.

Sincerely,

Sheryl L. Walter
Acting Assistant Attorney General

cc: The Honorable Patrick J. Leahy
Ranking Minority Member

To: Stuart B.
6-1647

THE WHITE HOUSE
WASHINGTON

OFFICE OF THE COUNSEL TO THE PRESIDENT

FACSIMILE COVER SHEET

Date: 3/28 Time: ________

To: Brad (6-2146) + Brett (6-1647)

Fax: ________

From: Judge

Phone: (202) 456-2632 Fax: (202) 456-6279

Number of Pages (including cover sheet): ~~3~~ 4

Message:

The Judge wants to visit with you both about this.
He meets w/ Cantwell + Murray on Th. @ 10:45 am (w/ Stuart).

Confidentiality Notice

The document accompanying this telecopy transmission contain confidential information belonging to the sender which is legally privileged. The information is intended only for the use of the individual or entity named above. If you are not the intended recipient, you are hereby notified that any disclosure, copying, or distribution or the taking of any action in reliance on the contents of this telecopied information is strictly prohibited. If you have received this telecopy in error, please immediately notify us by telephone to arrange for return of the original documents to us.

THE WHITE HOUSE

WASHINGTON

Facsimile
Cover Sheet

Date: ____________
Time: ____________

To: Paul Colburn

Fax: 305-8524

From: ________________________________

Number of Pages: _____

Message:

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DAN BURTON, INDIANA,
CHAIRMAN

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CHRISTOPHER SHAYS, CONNECTICUT
ILEANA ROS-LEHTINEN, FLORIDA
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DAVE WELDON, FLORIDA
CHRIS CANNON, UTAH
ADAM H. PUTNAM, FLORIDA
C.L. "BUTCH" OTTER, IDAHO
EDWARD L. SCHROCK, VA

ONE HUNDRED SEVENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5074
MINORITY (202) 225-5051
TTY (202) 225-6852

www.house.gov/reform

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RANKING MINORITY MEMBER

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THOMAS H. ALLEN, MAINE
JANICE D. SCHAKOWSKY, ILLINOIS
WM. LACY CLAY, MISSOURI

BERNARD SANDERS, VERMONT,
INDEPENDENT

March 14, 2001

The Honorable John Ashcroft
Attorney General
United States Department of Justice
Tenth Street & Constitution Avenue, N.W.
Washington, D.C. 20530

Re: <u>Request for Documents</u>

Dear General Ashcroft:

Pursuant to its authority under Rules X and XI of the Rules of the House of Representatives, the Committee on Government Reform is conducting an investigation of certain pardons and commutations granted by President Clinton. The Committee hereby requests certain records.

Please provide the Committee with the following records:

1. All records relating to the consideration of Executive Grants of Clemency for the following individuals:

   a. Benjamin Berger;
   b. Almon Glenn Braswell;
   c. Jacob Elbaum;
   d. Robert Clinton Fain;
   e. David Goldstein;
   f. Edgar Allen Gregory;
   g. Vonna Jo Gregory;
   h. Garland Lincecum;
   i. Eugene Lum;
   j. Nora Lum;
   k. James Lowell Manning;
   l. Joe McKernan;
   m. Kalmen Stern;
   n. Carlos Vignali;
   o. Thomas Waddell III;

1 deliberative
2 FALN line

p. Harvey Weinig;
q. Mitchell Couey Wood;
r. Phillip Young;

2. All records relating to any criminal investigation of Roger Clinton's involvement in the pardon request of Phillip Young;

3. All records relating to any criminal investigation relating to the relationship between Roger Clinton, Arkansas lawyer Larry Wallace, and Birmingham, Alabama, businessman John Katopodis; and

4. All records from October 2000 through January 20, 2001, relating to any requests for grants of clemency for which the White House requested priority review by the Justice Department.

Please provide the requested records by March 21, 2001. If you have any questions about this matter, please have your staff contact the Committee's Chief Counsel, James C. Wilson, at (202) 225-5074. Thank you for your cooperation with this request.

Sincerely,

Dan Burton

Dan Burton
Chairman

cc: The Honorable Henry A. Waxman, Ranking Minority Member

DAN BURTON, INDIANA,
CHAIRMAN

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BERNARD SANDERS, VERMONT,
INDEPENDENT

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United States Department of Justice
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Dan Burton

Dan Burton
Chairman

cc: The Honorable Henry A. Waxman, Ranking Minority Member

THE WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

ID#
PAGE 1

DATE RECEIVED: 3/15/01

NAME OF CORRESPONDENT: Paul Colborn

SUBJECT: Request for Documents from the House Cmte. on Govt. Reform

ROUTE TO: OFFICE/AGENCY	(STAFF NAME)	ACTION CODE	ACTION DATE YY/MM/DD	DISPOSITION TYPE RESP	C D	COMPLETED YY/MM/DD
CUGONZ		A	3/15/01		A	3/15/01
ACTION COMMENTS:						
CUATOS		A	3/15/01			/ /
ACTION COMMENTS:						
			/ /			/ /
ACTION COMMENTS:						
			/ /			/ /
ACTION COMMENTS:						

COMMENTS

ADDITIONAL CORRESPONDENTS:

MEDIA:

ACTION CODES:
A - APPROPRIATE ACTION
C - COMMENT/RECOMMENDATION
D - DRAFT RESPONSE
F - FURNISH FACT SHEET
I - INFO COPY/NO ACT NECESSARY
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DISPOSITION CODES:
A - ANSWERED
B - NON-SEPC-REFERRAL
C - COMPLETED
S - SUSPENDED

OUTGOING CORRESPONDENCE:
TYPE RESP = INITIALS OF SIGNER
CODE = A
COMPLETED = DATE OF OUTGOING

REFER QUESTIONS AND ROUTING UPDATES TO RECORDS MANAGEMENT (ROOM 72, OEOB) EXT 6-2590.
KEEP THIS WORKSHEET ATTACHED TO THE ORIGINAL INCOMING LETTER AT ALL TIMES AND SEND COMPLETED RECORD TO RECORDS MANAGEMENT.

Fax Transmission

Faxed over

Paul P. Colborn
Special Counsel
United States Department of Justice
Office of Legal Counsel
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530
Phone: 202-514-2048
Fax: 202-305-8524

To: Brett Kavanaugh Date: 3-15-01

Office # ( ) Pages: 3 (including cover sheet)

Fax#: ( ) 456-6279

Subject: Oversight on Pardons

Comments: Please call me to discuss the DOJ response to the attached.

Draft

MEMORANDUM

TO: Alberto R. Gonzales
Timothy E. Flanigan

FROM: Brett M. Kavanaugh

DATE: February 11, 2001

RE: Executive Privilege Issues

The Senate Judiciary Committee is holding hearings this week on President Clinton's pardon of Marc Rich. We may face two issues related to Executive privilege: (i) potential testimony by former White House Counsel Beth Nolan and (ii) potential testimony by the Pardon Attorney in the Department of Justice.

I recommend against an assertion of Executive privilege (or an order for either official to refuse to testify) for two primary reasons: (i) this matter involves the former President, and he has neither sought to assert Executive Privilege nor asked President Bush to do so; and (ii) Executive privilege is ordinarily imprudent when, as here, Congress seeks information in connection with an investigation of possible Executive Branch wrongdoing, there is substantial and credible evidence of such wrongdoing, and the matter being investigated by Congress does not involve an ongoing Executive Branch matter.

As to the Pardon Attorney, however, I also recommend that the Department of Justice continue to negotiate with the Committee to seek to limit the scope of his testimony, but no assertion of Executive privilege should be made.

First, as to Beth Nolan, I would recommend against any assertion of privilege absent a specific request from or assertion of privilege by the former President. (At a minimum, President Bush should not assert privilege absent specific knowledge of the contents of the communications between the President and Ms. Nolan.)

Even if President Clinton so requests or asserts (which I do not expect as a practical matter), I would recommend against an Executive privilege claim. In my opinion, Congress has satisfied the high threshold requirement upon which I believe the Executive Branch should and must insist before allowing disclosure of sensitive and confidential Executive Branch communications – namely, that Congress is seeking the information in connection with an investigation of potentially serious Executive Branch wrongdoing. In this case, substantial and credible evidence suggest that President Clinton may have issued a pardon to a fugitive because of the fugitive's (or his wife's) political contributions. At a minimum, there is little dispute that the pardon reflects a potential Presidential abuse of power. In extraordinary cases such as this -- as opposed to cases where Congress simply disagrees as a policy matter with the President's exercise of his duties or is fishing as a part of ordinary oversight or is seeking information in connection with possible legislation or appropriations -- an Executive Privilege claim is ordinarily imprudent, in my opinion.

History support this pragmatic distinction between (i) congressional inquiries into wrongdoing and (ii) general congressional oversight or requests related to possible legislation. President Jackson, for example, stated the essential principle that if there is reason "to suspect corruption or abuse of trust, no obstacle which I can remove shall be interposed to prevent the fullest scrutiny by all legal means." So, too, the Supreme Court and the Office of Legal Counsel have recognized that Congress may inquire into fraud, waste, and abuse in the Executive Branch. *See Watkins v. United States*, 354 U.S. 178, 187 (1957); 13 Op. O.L.C. 93, at 6. Indeed, President Clinton's policy, as stated by his former Counsel, Lloyd Cutler, was that "[i]n circumstances relating to investigations of personal wrongdoing by government officials, it is our practice not to assert executive privilege, either in judicial proceedings or in congressional investigations and hearings." Numerous Presidents, moreover, have waived all privileges in connection with legitimate congressional investigations of potentially serious Executive Branch wrongdoing, such as in the Iran-Contra matter (Reagan) and in the peanut warehouse matter (Carter). Those who have not done so often have had something to hide, thus employing an official privilege to assist their own personal or political interests. That itself carries grave danger: The House Judiciary Committee introduced articles of impeachment against both President Nixon and President Clinton for inappropriately asserting Executive privilege to protect their personal or political interests.

Nor, in my opinion, can there be any serious claim that the congressional inquiry into the Rich pardon is beyond the scope of congressional authority. Congress has investigated potential Executive Branch wrongdoing since the Founding. Indeed, the Supreme Court has recognized, as has the Office of Legal Counsel, that Congress may inquire into fraud, waste, and abuse in the Executive Branch. *See Watkins*, 354 U.S at 187 (1957). In any event, the congressional inquiries here easily could lead to new legislation – as to fugitives, political contributions, pardons, and the like – or to new constitutional amendments.

It also bears emphasis that the Rich pardon is not an ongoing matter. Where Congress seeks to obtain open law enforcement files, the need to claim Executive privilege is far stronger. For example, if Congress sought the open files of the Counsel's office regarding an ongoing matter, that would raise a far more serious question. *See* 40 Op. Att'y Gen. 45, 46 (1941) (opinion of Attorney General Jackson).

Second, the same considerations govern the congressional request for the Pardon Attorney to testify. He will testify about typical pardon procedures and about what happened in the Rich case. Because his testimony as to the former issue is public knowledge and as to the latter issue is related to potentially serious Executive Branch wrongdoing, I recommend against any assertion of Executive Privilege. Moreover, I do not believe a credible case can be made that the Pardon Attorney's testimony about such matters will "chill" his frank advice in future pardon matters.

It is generally true, of course, that disclosure of sensitive Executive Branch communications to Congress should not occur absent negotiation and an attempt at accommodation. *See* 13 Op. O.L.C. 185 (1989). As to Ms. Nolan, due to the unique and extraordinary circumstances in this case – involving a former President and where we have no idea about the contents of the communications -- I advise against any such consultation or negotiation process with Congress. As to the Pardon Attorney, the Department of Justice already has been engaged in such a process with the relevant Committees, and that should continue. To the extent, however, that the relevant Committees articulate a need and continue to insist on seeking his testimony, I would not interpose any objection for the reasons stated above.

Good morning, Mr. Chairman and Members of the Committee:

I am here today at the Committee's request to provide information about how my office, the Office of the Pardon Attorney, normally handles clemency petitions, and to describe the procedures we followed with regard to President Clinton's grants of pardon to individuals, including Marc Rich and Pincus Green, on January 20, 2001.

Executive clemency petitions most commonly request relief in the form of pardon or commutation of sentence. The Department of Justice processes requests for executive clemency in accordance with regulations promulgated by the President and set forth at 28 C.F.R. §§ 1.1 to 1.11. These regulations provide internal guidance for Department of Justice personnel who advise and assist the President in carrying out the pardon function, but they create no enforceable rights in persons applying for executive clemency and do not restrict in any way the plenary clemency authority granted to the President under Article II, Section 2 of the Constitution. While the regulations thus govern the process for clemency requests submitted to the Department, they do not govern requests submitted directly to the President.

A presidential pardon serves as an official statement of forgiveness for the commission of a federal crime and restores basic civil rights. It does not connote innocence. Under the provisions of 28 C.F.R. § 1.2, a person does not become eligible to file a pardon request with the Department until the expiration of a five-year waiting period that commences upon the date of the individual's release from confinement (including home or community confinement) for his most recent conviction or, if no condition of confinement was imposed as part of that sentence, the date of conviction. Typically, the waiting period is triggered by the sentence imposed for the offense for which the pardon is sought, but any subsequent conviction begins the waiting period anew. Moreover, the same regulation stipulates that no petition for pardon should be filed by an individual who is then on probation, parole, or supervised release. As the foregoing indicates, a person who has not yet been convicted or has not fully served the sentence for the federal crime for which pardon is sought is ineligible for pardon under the regulations that guide the

Department of Justice's processing of pardon requests. However, these rules do not bind the President. The President retains the authority under the Constitution to consider a pardon request from an individual who is ineligible to apply under the regulations or who has not applied at all, and to grant clemency to such a person if he believes such action to be appropriate.

A pardon request is typically processed in the following manner. The pardon applicant files his clemency petition, addressed to the President, with the Office of the Pardon Attorney. He is free to utilize the services of an attorney or to act on his own behalf in seeking pardon. The standard form utilized for this process requests information about the offense, the petitioner's other criminal record, his employment and residence history since the conviction and other biographical information, and his reasons for seeking pardon. The application must be signed and notarized, and the applicant must also submit three notarized affidavits from character references who are unrelated to him, know of his conviction, and support his pardon request. When my office receives a pardon petition, it is screened to ensure that the applicant is in fact eligible to seek a pardon (*i.e.*, that the crime for which pardon is sought is a federal offense and that the waiting period has been satisfied), to determine whether any necessary information has been omitted from the application or whether the applicant's responses to the questions require further elaboration, and to ascertain whether the petitioner has described his efforts at rehabilitation. If the petitioner is ineligible to apply for pardon under the regulations, he is so informed. If the application is incomplete, further information is sought from the petitioner.

As an initial investigative step in a pardon case, the Office of the Pardon Attorney contacts the United States Probation Office for the federal district in which the petitioner was prosecuted to obtain copies of the presentence report and the judgment of conviction, as well as information regarding the petitioner's compliance with court supervision, and to ascertain the Probation Office's views regarding the merits of the pardon request. If review of the pardon petition and the data obtained from the Probation Office reveals information that clearly excludes the case from further favorable consideration, my office prepares a report to the President for the signature of the Deputy Attorney General recommending that pardon be denied. Alternatively, if the initial review indicates that the case may have some merit, it is referred to the FBI so that a background investigation can be conducted.

The FBI does not make a recommendation to support or deny a pardon request. Rather, the Bureau provides the Office of the Pardon Attorney with factual information about the petitioner including such matters as his criminal history, records concerning the offense for which pardon is sought, his employment and residence history, and his reputation in the community. The FBI report is reviewed by my staff to ascertain whether favorable consideration of the case may be warranted. If the investigation reveals derogatory information of a type that would render pardon inappropriate and warrant denial of the request, my office prepares a report to the President through the Deputy Attorney General recommending such a result.

If the FBI report suggests that favorable treatment may be warranted, or in cases which are of particular importance or in which significant factual questions exist, the Office of the Pardon Attorney requests input from the prosecuting authority (*e.g.*, a United States Attorney, a Division of the Department of Justice, or in some cases, an Independent Counsel) and the sentencing judge concerning the merits of the pardon request. If the individual case warrants, other government agencies, such as the Internal Revenue Service or the Immigration and Naturalization Service, may be contacted as well. In appropriate cases in which the offense involved a victim, the prosecuting authority is asked to notify the victim of the pendency of the clemency petition and advise him that he may submit comments concerning the pardon request. Upon receipt of the responses to these inquiries, my office prepares a report and a proposed recommendation for action upon the case. The report is drafted for the signature of the Deputy Attorney General and is submitted for his review. If the Deputy Attorney General concurs with my office's assessment, he signs the recommendation and returns the report to my office for transmittal to the Counsel to the President. If the Deputy Attorney General disagrees with the disposition proposed by the Office of the Pardon Attorney, he may direct the Pardon Attorney to modify the Department's recommendation. After the recommendation is signed by the Deputy Attorney General, the report is transmitted to the Counsel to the President for the President's action on the pardon request whenever he deems it appropriate.

Similarly, a federal inmate seeking a presidential commutation (reduction) of his sentence files a petition for such relief with the Office of the Pardon Attorney. In contrast to a pardon, a commutation is not an act of forgiveness, but rather simply remits some portion of the punishment being served. An inmate is eligible to apply for commutation so long as he has reported to prison to begin serving his sentence and is not concurrently challenging his conviction through an appeal or other court proceeding. The petitioner is free to append to the commutation application - or to submit separately at a later date - any additional documentation he believes will provide support for his request. In completing the petition, the inmate - or his attorney, if he is represented by counsel - explains the circumstances underlying his conviction; provides information regarding his sentence, his criminal record, and any appeals or other court challenges he has filed regarding the conviction for which he seeks commutation; and states the grounds upon which he bases his request for relief.

When my office receives a commutation petition, we review it to ensure that the applicant is eligible to apply for clemency, and we commence an investigation of the merits of the request. The initial investigative step involves contacting the warden of the petitioner's correctional institution to obtain copies of the presentence report and judgment of conviction for the petitioner's offense, as well as the most recent prison progress report that has been prepared detailing his adjustment to incarceration, including his participation in work, educational, vocational, counseling, and financial responsibility programs; his medical status; and his disciplinary history. We also check automated legal databases for any court opinions relating to the petitioner's conviction. In most cases, this information is sufficient to enable my office to prepare a report to the President through the Deputy Attorney General recommending that commutation be denied.

In a minority of cases, however, if our review of this information raises questions of material fact or suggests that the commutation application may have some merit, or because the case presents significant issues, my office contacts the United States Attorney for the federal district of conviction or the prosecuting section of the Department of Justice for comments and recommendations regarding the commutation request. We also contact the sentencing judge, either through the United States Attorney or directly, to solicit the judge's views and recommendation on the clemency application. As with pardon requests, if the individual case warrants, other government agencies may be contacted as well. In appropriate cases in which the offense involved a victim, the prosecuting authority is asked to notify the victim of the pendency of the commutation petition and advise him that he may submit comments concerning the clemency request.

Following an evaluation of all of the material gathered in the course of the investigation, the Pardon Attorney's Office drafts a report and recommendation for action on the merits of the commutation request which is transmitted to the Deputy Attorney General. Following his review, the Deputy Attorney General may either sign the report and recommendation or return it to my office for revision. Once the Deputy Attorney General determines that the report and recommendation satisfactorily reflects his views on the merits of the clemency request, he signs the document, which is then forwarded to the Counsel to the President for consideration by the President. Thereafter, when he deems it appropriate, the President acts on the commutation petition and grants or denies clemency, as he sees fit.

When the President decides to grant clemency, whether in the form of pardon or commutation of sentence, the Counsel to the President informs the Office of the Pardon Attorney to prepare the appropriate clemency warrant. Typically, if the President intends to pardon a number of applicants, a master warrant of pardon will be prepared for his signature. The signed warrant bears the seal of the Department of Justice, lists the names of all of the individuals to whom the President grants pardon, and directs the Pardon Attorney to prepare and sign individual warrants of pardon reflecting President's action to be delivered to each pardon recipient. The individual warrant signed by the Pardon Attorney likewise bears the seal of the Department of Justice and reflects that it has been prepared at the direction of the President. When the individual pardon warrant has been prepared, it is sent to the applicant, or his attorney if he is represented by counsel, along with an acknowledgment form that the pardon recipient completes and returns to the Pardon Attorney's Office to reflect receipt of the warrant.

If the President decides to commute a prisoner's sentence, the Pardon Attorney's Office likewise prepares the warrant of commutation for the President's signature. Depending upon how many sentences are to be commuted, either a master warrant detailing all of the commuted sentences or individual commutation warrants may be prepared. After the President has signed the commutation warrant, which bears the seal of the Department of Justice, the Pardon Attorney's Office transmits a certified copy of the document to the Bureau of Prisons to effect the inmate's release. A copy of the warrant is also sent to the petitioner's attorney if he is represented by counsel. Whenever the President grants a pardon or commutation, the Pardon Attorney's Office notifies the prosecuting authority (United States Attorney or Division of the Justice Department), the sentencing judge, the relevant United States Probation Office, the FBI, and any other government agencies whose views were solicited, of the final decision in the matter.

When the President denies clemency, the Counsel to the President typically notifies the Deputy Attorney General and the Pardon Attorney's Office by memorandum that the affected cases have been decided adversely. The Pardon Attorney's office then notifies the pardon or commutation applicant, or his attorney, of the decision. In addition, the Pardon Attorney's Office notifies the prosecuting authority, the sentencing judge, other government agencies whose views were solicited, and, in the case of a commutation, the Federal Bureau of Prisons, of the outcome of the request. No reasons for the President's action are given in the notice of denial.

With respect to the pardon of Marc Rich and Pincus Green, none of the regular procedures were followed. The first time I learned that the White House was considering these two persons for pardon was shortly after midnight on the morning of Saturday, January 20, 2001. At that time, I received a telephone call from the Office of the White House Counsel advising me that they were faxing me a list of additional persons to whom the President was considering granting pardons. When the facsimile arrived, among the several names listed were Pincus Green and Marc Rich. Since the fax included no other information about these persons, I telephoned the White House Counsel's Office to advise that I would need additional identifying data in order to request that the FBI conduct criminal records checks on the named individuals. (I had been contacting the FBI for the past several days with names of persons for whom the White House wanted checks of criminal records and outstanding warrants.)

I was told by White House Counsel staff that the only two people on the list for whom I needed to obtain records checks were Marc Rich and Pincus Green, and that it was expected there would be little information about the two men because they had been "living abroad" for several years. I obtained the dates of birth and Social Security numbers for Rich and Green from Counsel's Office and then passed this information along to the FBI by telephone so that the records checks could be completed. Shortly thereafter, White House Counsel's Office personnel faxed to my office a few pages that appeared to have come from a clemency petition that had been submitted to the White House on behalf of Rich and Green by Jack Quinn, Esq. and other attorneys. The information contained in these documents revealed that the pardon request sought clemency for pending charges that had been brought by indictment in the Southern District of New York some 17 years earlier, and that Rich and Green had resided outside the United States ever since and were considered to be fugitives. At that point, a member of my staff began to conduct a quick Internet search for information about the two men.

While that search was ongoing, I received a facsimile transmission from the FBI of records which confirmed that Rich and Green were wanted fugitives whom law enforcement authorities were willing to extradite for a variety of felony charges, including mail and wire fraud, arms trading, and tax evasion. Because I was concerned that the FBI transmission would not be readable if it were itself faxed to the White House Counsel's Office, I wrote a quick summary of the information regarding the outstanding charges against Rich and Green and their fugitive status and faxed that to Counsel's Office shortly before 1:00 a.m. on January 20th. Because of what we had learned about Rich and Green, I also immediately contacted Deputy Attorney General Eric Holder at home through the Justice Department Command Center to alert him that the President was considering granting pardons to the two men. Mr. Holder indicated to me at that time that he was aware of the pending clemency requests by Rich and Green. After receiving my short summary of the FBI's information about Rich and Green, personnel from the White House Counsel's Office called to ask that I fax them a copy of the FBI record itself. I did so shortly after 1:00 a.m., and also included the limited information about Rich's fugitive status and the charges against him that my staff had been able to obtain from the Internet.

The only other time the names of Marc Rich and Pincus Green had come to my attention was on the morning of January 19, 2001, when I first saw a copy of a letter dated January 10, 2001, that their attorney, Jack Quinn, had sent to Deputy Attorney General Holder seeking his support for pardons for the two men. The Justice Department transmittal sheet attached to the letter indicated that on January 17th, the Department's Executive Secretariat had assigned the Quinn letter to my office for response and had sent a copy to the Deputy Attorney General's Office for information. My office received its copy on the afternoon of January 18th, and on the morning of the 19th, I saw it in our mail. The due date for response indicated by the Executive Secretariat was January 31st. Because neither Rich nor Green had filed a clemency application with my office and because the White House Counsel's Office had never indicated to me that pardons for these two persons were under consideration, I simply drafted a short response on the morning of the 19th, to be held until the following Monday, advising Mr. Quinn that neither man had submitted a pardon petition to my office and that if they wished to request pardons, the application forms were available upon request.

Mr. Chairman, I understand that the Committee is also interested in hearing how the Department of Justice determined the scope of the individual pardon grants made on January 20, 2001. A majority of the persons named on the master pardon warrant had submitted petitions for pardon to the Department of Justice. Their applications specified the offenses for which they had been convicted and for which they sought pardon. In many cases, we had sufficient time to fully process their cases and submit reports and recommendations to the White House in which we discussed those offenses. In these cases, it is clear that President Clinton intended to grant pardons for the offenses so noted and discussed.

Other persons named on the master warrant also submitted petitions to the Department, but they arrived too late for us to submit a report and recommendation. Many of these persons had also submitted their petitions directly to the White House, and in some cases the White House asked the Office of the Pardon Attorney for copies of their petitions. In these cases as well, we are confident that President Clinton intended to grant pardons for the offenses cited in their petitions.

Some of the persons whose names were on the master pardon warrant never submitted petitions to the Department. We have determined the scope of the pardons for these persons in a variety of ways. In some cases, including those of Marc Rich and Pincus Green, the White House Counsel's office sent us, just prior to the granting of the pardons, copies of or excerpts from the pardon requests that these persons or their counsels had submitted to the White House. We therefore drafted the individual pardon warrants to reflect the offenses for which the pardon recipients were convicted (or, in the case of Rich and Green, indicted) as described in these submissions made directly to the White House.

In several other cases in which the Department received nothing from the pardoned person, we were able to determine that the person had been prosecuted by an Independent Counsel. In these instances, we determined that the Independent Counsel conviction is the person's only federal conviction. We therefore are confident that it was this conviction that

President Clinton intended to pardon, and drafted the individual warrant accordingly. We obtained information as to dates of conviction and exact offenses for which these persons were convicted from the Internet web sites of several Independent Counsels, and in some cases obtained court documents such as the judgment orders, which give the date of conviction and the United States Code citation for the offense of conviction.

In non-Independent Counsel cases in which we have received either no documents at all or very sketchy information from the White House Counsel in the last hours before the pardons were granted, we have determined in all but one case that the person has only one federal conviction. We are therefore confident that it was this single conviction that President Clinton intended to pardon, and so drafted the individual warrants accordingly. We obtained information as to the date of conviction and the exact charges by contacting United States Attorney's Offices and United States Probation Offices and requesting the judgment orders in each case. We intend to prepare in this fashion the remaining nine individual warrants that have not been completed as of today. The delay in the processing of these warrants is occasioned by the need of the U.S. Attorneys and Probation Officers to request the official records from archived files stored at distant locations, and is not due to any doubt as to the scope of the pardon intended by President Clinton. We expect to complete this task shortly. In one case (that of Adolph Schwimmer), the conviction of which we have knowledge is more than 50 years old. The age of that conviction and Mr. Schwimmer's own advanced age may prolong for awhile the process of confirming that this is only conviction. In any event, we have no knowledge or belief that President Clinton intended to pardon anyone for conduct for which he or she was not at least charged and, in most cases, convicted. Moreover, my office has had no contact of any sort with President Clinton or any of his assistants since the master pardon warrant was signed on January 20th.

Fax Transmission

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Fax#: ( ) 456-6279

Subject: Draft Pardon Attorney Statement

Comments:

This is Roger's draft testimony, which we would like converted into ~~some~~ a written submission.

Note that the second & third paragraphs ~~are~~ need to be amended to clarify that these requirements apply only to petitions under the regulations. A president can use whatever procedures or standards he wishes for petitions made directly to him.

H:\clemencyprocess.

Executive clemency petitions most commonly request relief in the form of pardon or commutation of sentence. The Department of Justice processes requests for executive clemency in accordance with regulations promulgated by the President and set forth at 28 C.F.R. §§ 1.1 to 1.11. While these regulations provide internal guidance for Department of Justice personnel carrying out this function, they create no enforceable rights in persons applying for executive clemency, and they do not restrict in any way the plenary clemency authority granted to the President under Article II, Section 2 of the Constitution.

A presidential pardon serves as an official statement of forgiveness for the commission of a federal crime and restores basic civil rights. It does not connote innocence. Under the provisions of 28 C.F.R. § 1.2, a person does not become eligible to seek a pardon until the expiration of a five-year waiting period that commences upon the date of the individual's release from confinement (including home or community confinement) for his most recent conviction or, if no condition of confinement was imposed as part of that sentence, the date of conviction. Typically, the waiting period is triggered by the sentence imposed for the offense for which the pardon is sought, but any subsequent conviction begins the waiting period anew. Moreover, no petition for pardon should be filed by an individual who is then on probation, parole, or supervised release. As the foregoing indicates, a person who has not yet been convicted or has not fully served the sentence for the federal crime for which pardon is sought is ineligible for pardon under the regulations. A pardon request is typically processed in the following manner.

A pardon applicant files his clemency petition, addressed to the President, with the Office of the

Pardon Attorney. He is free to utilize the services of an attorney or to act on his own behalf in seeking pardon. The standard form utilized for this process requests information about the offense, the petitioner's other criminal record, his employment and residence history since the conviction and other biographical information, and his reasons for seeking pardon. The application must be signed and notarized, and the applicant must also submit three notarized affidavits from character references who are unrelated to him, know of his conviction, and support his pardon request. When the my office receives a pardon petition, it is screened to ensure that the applicant is in fact eligible to seek a pardon (*i.e.*, that the crime for which pardon is sought is a federal offense and that the waiting period has been satisfied), to determine whether any necessary information has been omitted from the application or whether the applicant's responses to the questions require further elaboration, and to ascertain whether the petitioner has described his efforts at rehabilitation. If the petitioner is ineligible to apply for pardon, he is so informed. If the application is incomplete, further information is sought from the petitioner.

As an initial investigative step in a pardon case, the Office of the Pardon Attorney contacts the United States Probation Office for the federal district in which the petitioner was prosecuted to obtain copies of the presentence report and the judgment of conviction, as well as information regarding the petitioner's compliance with court supervision, and to ascertain the Probation Office's views regarding the merits of the pardon request. If review of the pardon petition and the data obtained from the Probation Office reveals information that clearly excludes the case from further favorable consideration, my office prepares a report to the President for the signature of the Deputy Attorney General recommending that pardon be denied. Alternatively, if the initial review indicates that the case may have some merit, it is referred to the FBI so that a background investigation can be conducted.

The FBI does not make a recommendation to support or deny a pardon request. Rather, the Bureau provides the Office of the Pardon Attorney with factual information about the petitioner including such matters as his criminal history, records concerning the offense for which pardon is sought, his employment and residence history, and his reputation in the community. The FBI report is reviewed by my staff to ascertain whether favorable consideration of the case may be warranted. If the investigation reveals derogatory information of a type that would render pardon inappropriate and warrant denial of the request, my office prepares a report to the President through the Deputy Attorney General recommending such a result.

If the FBI report suggests that favorable treatment may be warranted, or in cases which are of particular importance or in which significant factual questions exist, the Office of the Pardon Attorney requests input from the prosecuting authority (*e.g.*, a United States Attorney, a Division of the Department of Justice, or in some cases, an Independent Counsel) and the sentencing judge concerning the merits of the pardon request. If the individual case warrants, other government agencies, such as the Internal Revenue Service or the Immigration and Naturalization Service, may be contacted as well. In appropriate cases in which the offense involved a victim, the prosecuting authority is asked to notify the victim of the pendency of the clemency petition and advise him that he may submit comments concerning the pardon request. Upon receipt of the responses to these inquiries, my office prepares a report and a proposed recommendation for action upon the case. The report is drafted for the signature of the Deputy Attorney General and is submitted for his review. If the Deputy Attorney General concurs with my office's assessment, he signs the recommendation and returns the report to my office for transmittal to the Counsel to the President. If the Deputy Attorney General disagrees with the disposition proposed by the Office of the Pardon Attorney, he may direct the Pardon Attorney to modify the Department's recommendation. After the recommendation is signed by Deputy Attorney General, the report is transmitted to the Counsel to the President for the President's action on the pardon request whenever he deems it appropriate.

Similarly, a federal inmate seeking a presidential commutation (reduction) of his sentence files a petition for such relief with the Office of the Pardon Attorney. In contrast to a pardon, a commutation is not an act of forgiveness, but rather simply remits some portion of the punishment being served. An inmate is eligible to apply for commutation so long as he has reported to prison to begin serving his sentence and is not concurrently challenging his conviction through an appeal or other court proceeding. The petitioner is free to append to the commutation application - or to submit separately at a later date - any additional documentation he believes will provide support for his request. In completing the petition, the inmate - or his attorney, if he is represented by counsel - explains the circumstances underlying his conviction; provides information regarding his sentence, his criminal record, and any appeals or other court challenges he has filed regarding the conviction for which he seeks commutation; and states the grounds upon which he bases his request for relief.

When my office receives a commutation petition, we review it to ensure that the applicant is eligible to apply for clemency, and we commence an investigation of the merits of the request. The initial investigative step involves contacting the warden of the petitioner's correctional institution to obtain copies of the presentence report and judgment of conviction for the petitioner's offense, as well as the most recent prison progress report that has been prepared detailing his adjustment to incarceration, including his participation in work, educational, vocational, counseling, and financial responsibility programs; his medical status; and his disciplinary history. We also check automated legal databases for any court opinions relating to the petitioner's conviction. In most cases, this information is sufficient to enable my office to prepare a report to the President through the Deputy Attorney General recommending that commutation be denied.

In a minority of cases, however, if our review of this information raises questions of material fact or suggests that the commutation application may have some merit, or because the case presents significant issues, my office contacts the United States Attorney for the federal district of conviction or the prosecuting section of the Department of Justice for comments and recommendations regarding the commutation request. We also contact the sentencing judge, either through the United States Attorney or directly, to solicit the judge's views and recommendation on the clemency application. As with pardon requests, if the individual case warrants, other government agencies may be contacted as well. In appropriate cases in which the offense involved a victim, the prosecuting authority is asked to notify the victim of the pendency of the commutation petition and advise him that he may submit comments concerning the clemency request.

Following an evaluation of all of the material gathered in the course of the investigation, the Pardon Attorney's Office drafts a report and recommendation for action on the merits of the commutation request which is transmitted to the Deputy Attorney General. Following his review, the Deputy Attorney General may either sign the report and recommendation or return it to my office for revision. Once the Deputy Attorney General determines that the report and recommendation satisfactorily reflects his views on the merits of the clemency request, he signs the document, which is then forwarded to the Counsel to the President for consideration by the President. Thereafter, when he deems it appropriate, the President acts on the commutation petition and grants or denies clemency, as he sees fit.

When the President decides to grant clemency, whether in the form of pardon or commutation of sentence, the Counsel to the President informs the Office of the Pardon Attorney to prepare the appropriate clemency warrant. Typically, if the President intends to pardon a number of applicants, a master warrant of pardon will be prepared for his signature. The signed warrant bears the seal of the Department of Justice, lists the names of all of the individuals to whom the President grants pardon, and directs the Pardon Attorney to prepare and sign individual warrants of pardon reflecting President's action to be delivered to each pardon recipient. The individual warrant signed by the Pardon Attorney likewise bears the seal of the Department of Justice and reflects that it has been prepared at the direction of the President. When the individual pardon warrant has been prepared, it is sent to the applicant, or his attorney if he is represented by counsel, along with an acknowledgment form that the pardon recipient completes and returns to the Pardon Attorney's Office to reflect receipt of the warrant.

If the President decides to commute a prisoner's sentence, the Pardon Attorney's Office likewise prepares the warrant of commutation for the President's signature. Depending upon how many sentences are to be commuted, either a master warrant detailing all of the commuted sentences or individual commutation warrants may be prepared. After the President has signed the commutation warrant, which bears the seal of the Department of Justice, the Pardon Attorney's Office transmits a certified copy of the document to the Bureau of Prisons to effect the inmate's release. A copy of the warrant is also sent to the petitioner's attorney if he is represented by counsel. Whenever the President grants a pardon or commutation, the Pardon Attorney's Office notifies the prosecuting authority (United States Attorney or Division of the Justice Department), the sentencing judge, the relevant United States Probation Office, the FBI, and any other government agencies whose views were solicited, of the final decision in the matter.

When the President denies clemency, the Counsel to the President typically notifies the Deputy Attorney General and the Pardon Attorney's Office by memorandum that the affected cases have been decided adversely. The Pardon Attorney's office then notifies the pardon or commutation applicant, or his attorney, of the decision. In addition, the Pardon Attorney's Office notifies the prosecuting authority, the sentencing judge, other government agencies whose views were solicited, and, in the case of a commutation, the Federal Bureau of Prisons, of the outcome of the request. No reasons for the President's action are given in the notice of denial.

With respect to the pardon of Marc Rich and Pincus Green, none of the regular procedures were followed. The first time I learned that the White House was considering these two persons for pardon was shortly after midnight on the morning of Saturday, January 20, 2001. At that time, I received a telephone call from the Office of the White House Counsel advising me that they were faxing me a list of additional persons to whom the President was considering granting pardons. When the facsimile arrived, among the several names listed were Pincus Green and Marc Rich. Since the fax included no other information about these persons, I telephoned the White House Counsel's Office to advise that I would need additional identifying data in order to request that the FBI conduct criminal records checks on the named individuals. (I had been contacting the FBI for the past several days with names of persons for whom the White House wanted checks of criminal records and outstanding warrants.)

I was told by White House Counsel staff that the only two people on the list for whom I needed to obtain records checks were Marc Rich and Pincus Green, and that it was expected there would be little information about the two men because they had been "living abroad" for several years. I obtained the dates of birth and Social Security numbers for Rich and Green from Counsel's Office and then passed this information along to the FBI by telephone so that the records checks could be completed. Shortly thereafter, White House Counsel's Office personnel faxed to my office a few pages that appeared to have come from a clemency petition that had been submitted to the White House on behalf of Rich and Green by Jack Quinn, Esq. and other attorneys. The information contained in these documents revealed that the pardon request sought clemency for pending charges that had been brought by indictment in the Southern District of New York some 17 years earlier, and that Rich and Green had resided outside the United States ever since and were considered to be fugitives. At that point, a member of my staff began to conduct a quick Internet search for information about the two men.

While that search was ongoing, I received a facsimile transmission from the FBI of records which confirmed that Rich and Green were wanted fugitives whom law enforcement authorities were willing to extradite for a variety of felony charges, including mail and wire fraud, arms trading, and tax evasion. Because I was concerned that the FBI transmission would not be readable if it were itself faxed to the White House Counsel's Office, I wrote a quick summary of the information regarding the outstanding charges against Rich and Green and their fugitive status and faxed that to Counsel's Office shortly before 1:00 a.m. on January 20th. Because of what we had learned about Rich and Green, I also immediately contacted Deputy Attorney General Eric Holder at home through the Justice Department Command Center to alert him that the President was considering granting pardons to the two men. Mr. Holder indicated to me at that time that he was aware of the pending clemency requests by Rich and Green. After receiving my short summary of the FBI's information about Rich and Green, personnel from the White House Counsel's Office called to ask that I fax them a copy of the FBI record itself. I did so shortly after 1:00 a.m., and also included the limited information about Rich's fugitive status and the charges against him that my staff had been able to obtain from the Internet.

The only other time the names of Marc Rich and Pincus Green had come to my attention was on the morning of January 19, 2001, when I first saw a copy of a letter dated January 10, 2001, that their attorney, Jack Quinn, had sent to Deputy Attorney General Holder seeking his support for pardons for the two men. The Justice Department transmittal sheet attached to the letter indicated that on January 17th, the Department's Executive Secretariat had assigned the Quinn letter to my office for response and had sent a copy to the Deputy Attorney General's Office for information. My office received its copy on the afternoon of January 18th, and on the morning of the 19th, I saw it in our mail. The due date for response indicated by the Executive Secretariat was January 31st. Because neither Rich nor Green had filed a clemency application with my office and because the White House Counsel's Office had never indicated to me that pardons for these two persons were under consideration, I simply drafted a short response on the morning of the 19th, to be held until the following Monday, advising Mr. Quinn that neither man had submitted a pardon petition to my office and that if they wished to request pardons, the application forms were available upon request.

Fax Transmission

Paul P. Colborn
Special Counsel
United States Department of Justice
Office of Legal Counsel
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530
Phone: 202-514-2048
Fax: 202-305-8524

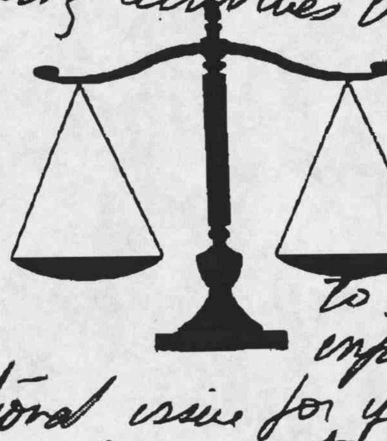
To: Tim Flanigan Date: 2/2/01

Office # ( ) 456-6611 Pages: 4 (including cover sheet)

Fax#: ( ) 456-6279

Subject: Oversight re Rich/Green Pardons

Comments: ① The attached letter from Burton's Chief Counsel suggests a broader scope for the oversight inquiry than we had previously understood, including an interest in ongoing activities by the Pardon Attorney.



Answering this letter is not a problem for us because the Pardon Attorney's practice is to make this category of information public.

② One additional issue for you is whether the WH would support a DOJ position that the Pardon Attorney should not testify. I haven't vetted that idea here, but wanted to add it to the mix for you.

DAN BURTON, INDIANA
CHAIRMAN

HENRY A. WAXMAN, CALIFORNIA
RANKING MINORITY MEMBER

ONE HUNDRED SEVENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON GOVERNMENT REFORM
2157 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6143

Majority (202) 225-5074
Minority (202) 225-5051

February 1, 2001

Roger C. Adams
Pardon Attorney
United States Department of Justice
Tenth Street & Constitution Avenue N.W.
Washington, D.C. 20530

Re: Grants of Executive Clemency by President Clinton on January 20, 2001

Dear Mr. Adams:

I am writing regarding the grants of executive clemency made by President Clinton to a number of individuals on January 20, 2001. It has come to the Committee's attention that the Justice Department may not have received copies of the clemency applications for certain individuals listed in the January 20, 2001, master warrant. The master warrant grants clemency to the named individuals "for those offenses against the United States described in each such request." The Committee is concerned that if certain individuals did not submit valid applications for clemency, the President's grant of clemency to those individuals may be legally suspect. Specifically, if an application describing an offense, or offenses, does not exist, then it may not be possible for you to effect the President's decision. In the event that you have no basis for determining the matter subject to the pardon decision, then to use discretion to discern the scope of the pardon may be an impermissible exercise of a power reserved exclusively for the President.

Therefore, I would like to know whether the Justice Department has received the clemency applications for the following named individuals:

1. Tansukhlal Bhatka
2. Almon Glenn Braswell
3. John H. Bustamante
4. Eloida Candelaria
5. Henry G. Cisneros
6. Roger Clinton
7. John F. Cross, Jr.

8. Rickey Lee Cunningham
9. Richard Douglas
10. Edward Reynolds Downe
11. Robert Clinton Fain
12. Alvarez Ferrouillet
13. William Denis Fugazy
14. Lloyd Reid George
15. Louis Goldstein
16. Rubye Lee Gordon
17. John Hemmingson
18. Linda Jones
19. James Howard Lake
20. James Timothy Maness
21. John Robert Martin
22. Frank Ayala Martinez
23. Silvia Leticia Beltran
24. Susan H. McDougal
25. Miguelina Ogalde
26. Richard H. Pezzopane
27. Orville Rex Phillips
28. Charles D. Ravenel
29. Howard Winfield Riddle
30. Gerald Glen Rust
31. Jerri Ann Rust
32. Adolph Schwimmer
33. Stephen A. Smith
34. John Fife Symington III
35. Gary Allen Thomas
36. Larry Weldon Todd
37. Patricia A. Van De Weerd
38. Christopher V. Wade
39. Jack L. Williams
40. Jimmie Lee Wilson
41. Mitchell Couey Wood
42. William Stanley Yingling
43. Velinda Desalus
44. Kimberly D. Johnson
45. Arnold Paul Prosperi
46. Dorothy Rivers
47. Thomas Wilson Waddell III

For each clemency application the Department has received for these individuals, please inform the Committee of (1) whether the application was filed with the Justice Department before the President decided to grant clemency, and (2) whether the application was pending at the time the President decided to grant clemency. Please respond to this request by February 7, 2001.

Sincerely,

James C. Wilson
Chief Counsel

Brett M. Kavanaugh
02/02/2001 01:36:14 PM

Record Type: Record

To: Timothy E. Flanigan/WHO/EOP@EOP

cc: See the distribution list at the bottom of this message

Subject: Executive privilege

As you requested, this is a first very rough cut at an attempt to write up meaningful executive privilege principles for us to turn to when the issue arises. Comments are very welcome -- and needed.

Although the attached does not discuss the Clinton pardon issue, I would have serious qualms about asserting an executive privilege for a past President when Congress is investigating serious and potentially criminal (or otherwise impeachable, had it been done earlier) wrongdoing by that President, as opposed to merely focusing on a policy dispute. This hearing is not designed to challenge President Clinton's general policy on pardons -- for example his policy of giving them to drug offenders with long sentences (a situation where privilege against Congress would be appropriate) -- as much as it is to assess whether there was, in essence, a bribe (by Mrs. Rich) or other improper or criminal or unethical influence (by Jack Quinn). As the attached general memo suggests, I have real doubts about asserting an executive privilege in such a case where the allegation of wrongdoing is substantial and credible (as it certainly is here). (Although the President certainly has exclusive authority over pardons, it is also equally true that Congress can investigate -- and impeach and remove a President, or strip him of future benefits -- for accepting money in exchange for a pardon.)

Finally, the optics of President Bush asserting Executive Privilege to protect investigation of President Clinton's potentially criminal or otherwise impeachable pardons would be, to put it mildly, bizarre in my view and potentially open the President (and us) to ridicule in Congress and even in the liberal media. That may cheapen our ability to rely on the privilege when appropriate in the future because President Bush could get lumped in with President Clinton and his numerous abuses of the privilege (and his office more generally). We need to discuss that at some length as well.

executive privilege.rough1.

Message Copied To:

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KAVANAUGH DRAFT 2/02/01

Executive Privilege

At the outset, as the D.C. Circuit carefully explained in its lengthy opinion in the Espy case, please note that the blanket term executive privilege actually encompasses several distinct privileges – the presidential communications privilege (at issue in United States v. Nixon), the so-called government attorney-client privilege (at issue in D.C. Circuit Lindsey and Eighth Circuit Hillary Clinton notes decisions), the so-called Secret Service privilege (at issue in the Lewinsky investigation), and the deliberative process privilege, among others.

Proposed General Principles

Privileges in criminal or grand jury proceedings

Absent extraordinary circumstance, the President should not (and under the law, generally cannot) successfully maintain an executive privilege, including the presidential communications privilege, a government attorney-client privilege, a Secret Service privilege, or the deliberative process privilege, against a federal grand jury subpoena or against a criminal trial subpoena obtained by the United States. By now, that principle is all but settled law. The one clear exception to that general principle is for national security information.

The approach of the courts to such criminal cases is, in essence, that the President always remains free to withhold the information -- not by enlisting the courts, but by ordering the prosecutor to withdraw the subpoena and firing the prosecutor if he or she refuses. President Nixon followed this constitutional course -- with disastrous results, of course -- but that is the constitutionally dictated mechanism for the President to withhold information from the United States in response to a grand jury subpoena or a criminal trial subpoena obtained by the United States.

Privileges in Civil Proceedings

The President should be prepared to assert an executive privilege against subpoenas from private litigants in civil proceedings when the subpoena calls for disclosure of official presidential communications or the internal deliberative processes of the White House. As to internal agency decisionmaking in Executive agencies outside the White House, such privilege claims should be resolved on a case-by-case basis based on the functions of the agency, the nature of the lawsuit, the kind of information sought, and the like.

"Privileges" in Congress

The question whether a federal court today would resolve a congressional subpoena dispute between the Executive and Congress (a classic political question) is debatable. As a result, the term "privilege" is arguably somewhat of a misnomer in this context. Rather, the overriding principle is that the Executive, by tradition and long-standing policy accepted in both the Executive and the Legislative Branch, does not provide certain kinds of information to Congress, at least absent extraordinary circumstances. That includes, in particular, official presidential communications – both to and from his advisors.

Application of that principle must take account of the different kinds of congressional inquiries.

Policy Disputes: The President presumptively should assert what is referred to as an executive privilege (presidential communications, deliberative process, or government attorney-client) when Congress seeks to obtain access to presidential communications and decisionmaking and the congressional inquiry and congressional interest in such communications focuses on policy issues and a potential policy dispute. That is the classic area where "Executive Privilege" seems entirely appropriate.

Investigations of Serious Wrongdoing: If Congress decides to investigate a substantial and credible allegation of serious, criminal, or impeachable wrongdoing by an impeachable Executive Branch official or within an agency over which Congress has oversight control, the President should be wary of asserting any privilege. The Counsel should press Congress in such circumstances to be sure that there is, in fact, a sufficient predicate of wrongdoing to overcome the presumption of regularity and the presumption that internal Executive Branch deliberations remain confidential. That said, if a President or other Executive official is credibly accused of serious wrongdoing that potentially constitutes an impeachable or criminal offense – such as obstruction of justice, bribery, or treason – the presumption of President Bush should be that he will not assert any executive privilege against Congress in those circumstances.

Of course, there are levels of privileges, and the same analysis does not necessarily apply to all communications. Communications to and from the President – rather than simply among his advisors or within the departments and agencies of the Executive Branch – traditionally have received a higher level of congressional respect. Thus, a blanket assertion of privilege over all Executive Branch communications on a particular subject inevitably (and usually rightly) triggers great suspicion among Congress and the public. A narrower assertion for protection of the President's own communications generally fares better (absent an allegation that the President himself has committed wrongdoing). That is important to keep in mind.

The standard outlined here – policy inquiries versus investigations where there is a predicate showing of wrongdoing -- still would raise difficult questions in those instances where the Congress contends (as it no doubt will) that it needs to conduct an investigation to determine whether there, in fact, was or was not wrongdoing. Congress will argue that this kind of standard would put the cart before the horse by requiring Congress to produce predicate evidence of wrongdoing before they even have been able to gather evidence. That is true to a certain extent, but this nonetheless is and should be a line that the Counsel draws and enforces to smoke out congressional harassment from legitimate congressional investigation. (Otherwise, Congress could obtain carte blanche access to internal communications by trotting out this "potential wrongdoing" argument in every congressional inquiry.)

There are other additional principles we could adopt on a case-by-case basis. For example, during a particular investigation (or even beforehand), the Counsel could inform the Congress that the President will assert and maintain in Congress the privilege for presidential communications between the President and his advisors (and perhaps also among his advisors) unless at a minimum both the Speaker and Minority Leader of the House or the Majority and Minority Leaders of the Senate, as the case may be, sign off on the need for such information in certain particularized circumstances. That kind of procedure would provide an additional check on a single out-of-control Committee Chair (a real danger historically), but nonetheless acknowledge that there are times (as in impeachment proceedings or other allegations of serious White House wrongdoing) when Congress on a bipartisan basis concludes that it has a legitimate need for internal and sensitive presidential communications.