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Pardon You? Pardon Me.  
Controversial Usage of the Presidential Pardoning Power:  
From Carter to Clinton.

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A thesis  
presented to  
the faculty of the Department of History  
East Tennessee State University

In partial fulfillment  
of the requirements for the degree  
Masters of Arts in History

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by  
Michael Keith Allen

August 2003

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Keywords: Pardons, Presidents, Constitution, Clemency,  
Controversy

## ABSTRACT

Pardon You? Pardon Me.  
Controversial Usage of the Presidential Pardoning Power:  
From Carter to Clinton.

by

Michael Keith Allen

In this study I propose to examine the usage of the pardoning power of the president as it relates to four aspects: the Nixon pardon, political advancement, defense of the person and his party, and independent private gain through the issuance of pardons. These aspects are all a part of the modern day usage of Article II Section 2 of the Constitution.

The study relies primarily on statements made from the presidents involved, as well as statements made by judicial persons involved in the pardoning process. The study is also drawn from direct investigations, both private and governmental. A good number of secondary sources were used also to establish the historical setting and round out the story where inconsistencies developed.

The study concludes that presidents since Gerald Ford have used his pardon of Richard Nixon as a precedent to allow them a political alibi for questionable endeavors.

## ACKNOWLEDGEMENTS

This thesis was made possible because of a number of reasons: my love of political history, an ingrained incredulity, advice from my professors, and support from my family and friends. The first and second I was born with. For the third, a great amount of credit goes to Dr. Elwood Watson, my thesis chair. Dr. Watson provided priceless advice and insight into my research, writing, and editing of my thesis. I would also like to thank Dr. Stephen Fritz who was my second reader as well as a great role model for any future professional. I would also like to thank Dr. Dale Schmitt, my third reader. Most of all I would like to thank my family who have put up with me during endless hours of study and preparation during this endeavor.

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## CHAPTER 1

### INTRODUCTION

The President's pardon power was established under the United States Constitution, Article II, Section 2, in which it stated, "The President...shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment."<sup>1</sup> This power reigned over all other offenses including treason. The exception to persons of impeachment is thought to have arisen from a 17<sup>th</sup> century English constitutional crisis that developed after the King (Charles II) pardoned a close friend the Earl of Danby (Thomas Osborne) who had been recently impeached by the Parliament.<sup>2</sup> Because early American laws and preferences arose from the knowledge of English governmental history, the auspices around the pardon power are thought to have suffered through the same fate. This English transformation was also apparent in the lack of restrictions around the pardon power. The drafters of the Constitution were aware of the problems that arose when trying to get a consensus in Parliament so they decided to forgo that route with respect to someone's fate. The drafters and signers of the Constitution favored the development of this power under the direction of one branch of government or even better one person. Alexander Hamilton defended the issuance of the power to the

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<sup>1</sup>. United States Constitution, article II, section 2.

<sup>2</sup>. Daniel T. Kobil, "The Quality of Mercy Strained: Wrestling the Pardoning Power from the King," *Texas Law Rev.* 69 (1991): 568-571.

President, stating in the Federalist Papers, "It is not to be doubted, that a single man of prudence and good sense is better fitted, in delicate conjunctures, to balance the motives which may plead for and against the remission of the punishment, than any numerous body whatever."<sup>3</sup> Now that the auspices of giving such a large power to one man had been defined, Hamilton, John Jay, and James Madison decided to further their thoughts on just when this power should be used. They stated that, "in seasons of rebellion, there are often critical moments, when a well-timed offer of pardon to the insurgents or rebels may restore the tranquility of the commonwealth."<sup>4</sup>

With no direct guidelines built into the Constitution and only minor advisements in the Federalist Papers, the president was left with unbridled authorization to use the pardon power, restrained only by outside judgments of the people. This meant that unless the judicial or legislative branch involved themselves, punishment would have to be issued via citizens at the voting booth. Framers of the Constitution, however, did not feel that this problem would arise. Their vast knowledge of English history provided them with nearly 165 years of uncontested pardon usage, disregarding the Danby case, which they felt they had addressed.

Thomas Osborne, Earl of Danby, in 1678, while acting as the Lord High Treasurer of England, had secretly followed the King's order to extend an offer of neutrality to France in exchange for a substantial payment. This

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<sup>3</sup>. Alexander Hamilton, James Madison, and John Jay, The Federalist Papers (New York: Mentor Books, 1961), 415-416.

<sup>4</sup>. Ibid., 417.

offer, however, was made in direct opposition to an act Parliament had passed only a few days earlier. The act that Parliament had passed was similar to modern war bonds, which tried to raise money for a war with France. Because the King was above the Parliament's power, they chose to enforce their authority over Osborne through an act of impeachment. Impeachment in England during this time called for more than just removal from office: in some cases, the punishment could be death. Charles II proceeded to intervene with a pardon to Osborne ending the trial and virtually saving himself from future problems.<sup>5</sup>

Educated in the English style of government, the American forefathers proceeded to base their judgments on English history thereby limiting opposition to challenging the power. During the Constitutional Convention a motion was made to limit the President's power by allowing the President to grant pardons only with the consent of the Senate, but the motion was soundly rejected. Edmund Randolph followed the motion by requesting that the power to pardon cases of treason also be removed. This request did linger on but would eventually fail because Randolph would refuse to agree that the power should be placed jointly in the President and Senate.<sup>6</sup> Hamilton contradicted Randolph's view stating,

*benign prerogative of pardoning should be as little as possible fettered or embarrassed. The criminal code of every country partakes so much of necessary severity that without easy access to exceptions in favor of unfortunate guilt, justice would wear a countenance too sanguinary and cruel. As the sense of responsibility is always*

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<sup>5</sup>. Kobil, "The Quality of Mercy Strained," 571-574.

<sup>6</sup>. Ibid.

*strongest in proportion as it is undivided, it may be inferred that a single man would be most ready to attend to the force of those motives which might plead for mitigation of the rigor of the law...<sup>7</sup>*

James Iredell agreed and pushed the power towards the President alone with his argument that,

*a shrewd use of the pardoning power might prevent civil war...and that the clemency power could be used to procure the testimony of the accomplices of great criminal offenders and to protect that set of wretches whom all nations despise, but whom all employ (spies).<sup>8</sup>*

With the pardoning power solidified solely in the hands of the executive branch, the President preceded to use the power along the guidelines stated in the Federalist Papers. In 1795, President George Washington used the power to grant a pardon to the participants involved in the Pennsylvania Whiskey Rebellion. This pardon saved the lives of two offenders who had been sentenced to death and cleared the names of the others involved. President Samuel Adams, followed in Washington's footsteps, pardoning another set of Pennsylvania insurrectionists. Adams laid the bedding for the next controversial pardon in which Jefferson pardoned those convicted and sentenced under the Alien and Sedition Act. Like the other controversial pardons before this one, Jefferson's use of the power could be placed under the auspices of trying to secure peace and tranquility.

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<sup>7</sup>. Hamilton, Madison, and Jay, The Federalist Papers, 416-417.

<sup>8</sup>. James Duker, "The Presidents Power to Pardon: A Constitutional History," *William & Mary Law Review* 18 (1977): 475-478.

There was not much cause for any more controversial pardons until the Civil War. After the war was over Presidents Lincoln and Johnson must have believed that the only way to restore tranquility was to forgive the Confederate soldiers by issuing them pardons if they would swear allegiance to the Union.<sup>9</sup> This pardon infuriated northern members of congress who took it upon themselves to bring about change in the whole process. They however were beaten to the punch by the judiciary branch, which under John Marshall had set a precedent in 1833, in the United States v. Wilson case. The court ruled that the pardon was defined as, "an act of grace proceeding from the power entrusted with the execution of the laws, which exempts the individual, on whom it is bestowed, from the punishment the law inflicts for a crime he has committed."<sup>10</sup>

Because Congress was unable to change the process they decided to develop the office of the Pardon Clerk, which was later changed to the office of the Attorney in Charge of Pardons and eventually became the U.S. Department of Justice's Office of the Pardon Attorney. Originally the office was needed to cover the submission, consideration, and awarding of pardons. The office's official duties were later set down in Title 28 of the U.S. Code of Federal Regulations, Section 1.1-1.10. The regulations suggest a five-year waiting period (after conviction or the end of incarceration) before a person becomes eligible to apply for a pardon, set out the forms and information that should be submitted by persons seeking pardon, allow for FBI investigation of the petitioner before a pardon is

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<sup>9</sup>. Ibid.

<sup>10</sup>. United States v. Wilson, 32 U.S. 7 (1833).

recommended, and give the Pardon Attorney jurisdiction to review the completed pardon application and recommend action to the president. The president retains the right to grant or deny the pardon request. If the president does not act on a recommended denial of pardon within thirty days, his concurrence with the denial recommendation is assumed. All petitioners are notified in writing of recommendations on their cases.<sup>11</sup>

The legislative branch had now been successful at setting further guidelines for the use of the pardon power, but they had not been able to legally infringe on the right that the Constitution had provided for the President. The legislative branch had been hampered by the Constitution, but this fate did not fall on the judicial branch. The judiciary worked to limit the exercise of the power via the courts. The judiciary gradually developed a bifurcated approach to evaluating exercises of clemency that treated the president's reasons for using the power as sacrosanct, but it also recognized that the courts might review and invalidate some pardons because of their impermissible effect.

This is most clearly noticeable in the Hoffa v. Saxbe case. This review forbids the courts from trying to analyze the president's reasons for issuing a pardon, which prohibits an investigation into the mindset of a President. The review however also imposed a new restraint requiring that there not be allowed any limits or requirements for a pardon, meaning a pardon may only be issued if it is the use of the pardon power, it did set a precedent. It showed

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<sup>11</sup>. United States Government, "United States Code of Federal Regulations," Title 28, Sections 1.1-1.10.

that limitations could be imposed on the power, unconditionally.<sup>12</sup> Although this case did not directly curtail the power, it did limit it, thereby allowing a future case to limit it even further.

The greatest test to the pardoning power developed out of the Nixon resignation. When Ford pardoned Nixon, he tested the entirety of the Pardon Attorney and any guidelines that accompanied clemency. The Nixon pardon came before a sentence, trial, conviction, punishment, and before the end of the suggested five-year grace period. The allowance of Ford's pardon to Nixon struck right at the very heart of the clemency issue. The pardon proved that there was indeed no true restrictions or ramifications that accompanied a controversial pardon. This also set a new precedent for the presidents who followed Ford-(Carter, Reagan, Bush, and Clinton.) Ford proved to them that they could use the power to aid their political future or to bail themselves out in a time of need.<sup>13</sup>

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<sup>12</sup> . U.S. Congress, House of Representatives, Committee on the Judiciary, *"Presidential Pardon Power: Hearing Before the Subcommittee on the Constitution of the Committee on the Judiciary,"* 107<sup>th</sup> Cong., 1<sup>st</sup> session 28 February 2001, 2.; Hoffa v Saxbe, 378 F. Supp.1221 (1974).

<sup>13</sup> . Mark J. Rozell, "President Ford's Pardon of Richard M. Nixon: Constitutional and Political Considerations," *Presidential Studies Quarterly* 24, (1975): 121-124.

## CHAPTER 2

### JIMMY CARTER'S CONTROVERSIAL PARDONS

The significance of the Nixon pardon was immediately acknowledged by Jimmy Carter, who would immediately use the power to aid him in his bid for the presidency. Unlike Ford, Carter knew the importance of this precedent to his future campaign and presidency. Carter was aware that Ford had issued certain restricted pardons to Vietnam War personnel but had not issued pardons to those who evaded the draft and fled to another country. Ford's amnesty program placed itself halfway between unconditional amnesty and no amnesty at all. Ford had addressed the Chicago convention of Veterans of Foreign Wars stating, "I am a long-time opponent of any unconditional blanket amnesty for those who evaded or fled military service but the time is at hand to bind up the wounds of the nation."<sup>1</sup> Ford's pardon was issued to those evaders and deserters who were still at large and to those who had earlier surrendered to or had been caught by military authorities. It would include those who had been convicted or otherwise punished for their offenses and those who still awaited trial or sentencing. Ford did not refer to the program as an act of amnesty but rather as a program of earned reentry into the mainstream of American society.<sup>2</sup>

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<sup>1</sup>. Edward Dolan, Amnesty: The American Puzzle (New York: Franklin Watts, 1976), 71.

<sup>2</sup>. Ibid., 71.

Ford however accompanied his pardon with a few conditions: (1) The deserters and evaders had to consent to do up to twenty-four months in public service work that the government called "reconciliation service" but that was more popularly known as "alternative service." Such work was intended to take the place of military duty or any fines or prison sentences that might otherwise be imposed. They ranged from work as hospital attendants and orderlies to that as workers with public service organizations, ecological projects, and church groups dedicated to the public good. They were to be paying jobs, but, because of their nature, the pay was to be low. (2) Certain of the evaders and deserters were to sign their names to documents reaffirming their allegiance to the United States and pledging to do the twenty-four months of alternative service. This condition applied only to those evaders and deserters who had not yet been convicted for their offenses. All of those who did not fit in the prementioned categories or those who had already been convicted or punished would have to independently apply to the president's clemency board.<sup>3</sup> Although Ford had theoretically pardoned the Vietnam draft dodgers, he had not accomplished the 'tranquility' he wanted. The halfway pardon he had issued failed to silence the subject.

Carter took this issue and ran. Carter repeated this slogan at every campaign stop telling the people that if he were elected he would pardon these resisters and move America pass this controversial era. Carter campaigned on the issue of the pardons offering up that if elected one of

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<sup>3</sup>. Alfonso Damico, Democracy and the Case for Amnesty (Gainesville: University of Florida Press, 1975), 8-10.

the first things he would do would be to override Ford's pardon. Carter held true to his word issuing his blanket pardon just days after taking his oath. On January 21, 1977 Carter issued his proclamation ending forever the legal matters surrounding Vietnam draft evasion.<sup>4</sup>

The proclamation however did little for the actual debate over whether or not the pardon was deserved. Many military officials as well as dedicated patriots strongly disagreed with pardoning these persons. Their main argument surrounded those who had served but had been charged with some offense. How could a person be held accountable for some type of military wrongdoing if you were going to give those who refused even to go a blanket amnesty? These people also could not understand how you could make this statement and still enforce the Selective Service Act in the future. These people were afraid that this would set a precedent that would not be easily overcome the next time the draft had to be put into effect. Tip Marlow of the Veterans of Foreign Wars organization stated, "We were very displeased with the pardon-We feel that there is a better way for people who have broken laws to come back into the country, and that's though one of the pillars of the formation of our nation-and that is our present system of justice."<sup>5</sup> Mr. Marlow's belief was countered by pardon advocates, like Representative

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<sup>4</sup>. U.S. President, Proclamation, "Granting Pardons for Violations of Selective Service Act, Proclamation 4483," *Federal Register* 42, no. 250 (21 January 1977): 4391, microfiche. full article in appendix, 86.

<sup>5</sup>. MacNeil/Lehrer Report, "Carter's Pardon," *PBS.org* 21 January 1977 [on-line] available from [http://www.pbs.org/newshour/bb/asia/vietnam/vietnam\\_1-21-77.html](http://www.pbs.org/newshour/bb/asia/vietnam/vietnam_1-21-77.html) Internet: accessed 9 December 2002, 1.

Elizabeth Holtzman. Holtzman, a Democratic Senator from New York, was,

*pleased that the pardon was issued, I'm pleased that it was done on the first day [of Carter's administration] and I'm pleased that President Carter kept a commitment that he made very clear to the American people...however, I would have liked to seen it broader, I would like to have seen it extend to some of the people who are clearly not covered and whose families will continue to be separated from them-but I don't think President Carter has closed the door on this category of people.*<sup>6</sup>

The people Mrs. Holtzman was referring to were the deserters, who served and left before the end of the term, and the soldiers who received less than honorable discharges, as well as some civilian protestors who were arrested.

The pardon also received some criticism for its use in Carter's campaign. This was the first time that a pardon had been promised by a Presidential candidate not even in office. Once Carter got past the controversy that surrounded the Vietnam draft evaders pardon, he moved on to another very controversial topic.

Carter decided to commute the sentence of G.Gordon Liddy. Liddy had been the leader of the *plumbers*, a group that had been organized to find a so-called leak in the Republican Party during the Nixon administration. Liddy had been sentenced for breaking and entering into the Watergate Hotel, which would lend its name to the scandal that would develop from the incident. Liddy and his plumbers had gone to the hotel to bug the Democratic National Committee. At the time Liddy was working for the Committee to Reelect the

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<sup>6</sup>.Ibid., 2-3.

President as an attorney, but his background in intelligence pushed him to the forefront of Nixon's domestic spying. Liddy had worked for Army intelligence as well as the FBI before he signed on with the Nixon administration. Although not directly linked to the President, Liddy's work would allegedly be used by Nixon subordinates, unknowingly by Nixon.<sup>7</sup>

Liddy was put in charge of a group of Cubans, and their job was to break into the headquarters of the Democratic National Committee. Their break-in, however, was not successful and they were caught in the process. Liddy was arrested and charged with breaking and entering. The break-in sparked a long drawn-out investigation into Nixon's administration, which would eventually bring down the President. Liddy must have believed, albeit naively, that he could protect the President, the Republican Party, and the country if he would confess to being the mastermind behind the project. Liddy would go on to state that he had created the whole thing out of a devout sense of duty to his President, but without any prior knowledge from the Nixon administration. Liddy's statement would eventually fall through as the investigation went on, leaving Liddy to fend for himself.<sup>8</sup> Liddy's, pardon although somewhat controversial, can be seen as an act of mercy for someone who was naïve enough to believe that he was aiding the country.

After the small Liddy uproar in 1977, Carter removed himself from the pardon scene until late in his presidency.

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<sup>7</sup>. G. Gordon Liddy, Will: The Autobiography of G.Gordon Liddy (New York: St. Martin's Press, updated 1997), 153-162.

<sup>8</sup>. Ibid., 74-101.

In 1979 Carter jumped back into the pardon arena with an even more controversial act of clemency. In December 1979, decided to pardon Irving Flores Rodriguez, Lolita Lebron, and Rafael Cancel Miranda. In 1954 these Puerto Rican individuals, upset over American domination in their homeland, decided to raid Congress. Led by Lolita Lebron they broke into the Capitol building and with decommissioned World War II machine guns, sprayed the chamber floor wounding five Congressmen before they were arrested. President Carter backed his decision to pardon them with the argument that they were the oldest political prisoners in the hemisphere and it was time to move on. These people, however, should not have been viewed as political prisoners because they were not arrested on the basis that they held different views, they were arrested because they tried to murder numerous members of the House of Representatives.<sup>9</sup> Carter moved on to another so-called "political prisoner," when he pardoned Oscar Collazo, who in 1950 had attempted to assassinate President Truman. Collazo had not been happy with Americanism in Puerto Rico and decided that one way to end the American encroachment was a direct attack on then President Truman. Collazo and a friend bought one-way tickets to Washington D.C. and decided that they would attack the Blair house, where the Trumans were staying during the renovation of the White House. Collazo and his partner stormed the grounds of the Blair House and began to trade fire with Secret Servicemen. Three Secret Servicemen were killed but not before they

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<sup>9</sup>. U.S. Congress, House of Representatives, Committee on Government Reform, "Examples of Controversial Pardons by Previous Presidents: Hearing Before the Minority Staff/ Committee on Government Reform," 107<sup>th</sup> Cong., 1<sup>st</sup> sess., 20 April 2001, 3.

killed Collazo's partner and critically wounded Collazo. Truman, however, was not injured in the crossfire. For his involvement, Collazo received the death sentence but one week before the execution, Truman stepped in and commuted the sentence to life in prison.<sup>10</sup> Apparently Carter felt that the commutation that Truman had issued was still too harsh for an attempted assassination of a U.S. President as well as the attempted murder of three Secret Servicemen.

Carter followed the Collazo pardon with one of his most controversial acts of clemency. In 1979, Carter decided to commute the sentence of media heiress Patricia Hearst. Hearst was a teenage-girl who was abducted from her house in Berkeley California by a terrorist group known as the Symbionese Liberation Army. The group demanded that her father share his wealth by starting a \$2 million food drive, which he did. A month later Miss Hearst announced on a tape recording that she had taken the name Tania and had decided to join her kidnapers. A photograph of Miss Hearst carrying a gun in front of a poster depicting the SLA's symbol, a seven-headed cobra, accompanied the tape. On April 14, 1974 Hearst joined her accomplices in a successful bank robbery in San Francisco. On May 16<sup>th</sup> of the same year Miss Hearst sprayed a Los Angeles street with bullets to cover her accomplices' escape from a shoplifting spree. The following day, on May 17<sup>th</sup>, Hearst watched six of her fellow members die in a fire and shootout with the police at their Los Angeles hideout. On June 7<sup>th</sup> Hearst released another tape in which she expressed her love for a

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<sup>10</sup>. Truman Presidential Museum and Library, "Assassination Attempt on President Truman's Life," [on-line] available from <http://www.trumanlibrary.org/trivia/assassin.htm> Internet: accessed 4 January 2003.

fellow member (William Wolfe) who had been killed in the shootout with the police. Hearst and remaining members then tried to lay low for a while but were captured on September 18<sup>th</sup>, 1975 in San Francisco.<sup>11</sup>

On March 29<sup>th</sup> 1975 Hearst made the first, of what would prove to be many, court appearances. Hearst was first tried for her involvement in the bank robbery, for which she would be sentenced to seven years in jail. She was later released on \$1.5 million bail, pending the appeal of her charges. Hearst then failed to convince the Supreme Court of her need for an appeal. Before she started to serve her time she had to be tried for her involvement in the sporting store robbery. In this trial Hearst was charged with assault with a deadly weapon and robbery in which she pleaded 'no contest' and received five years probation.<sup>12</sup>

After Miss Hearst was denied her last appeal, her lawyers decided to use another route. They approached the Attorney General, Griffin Bell, and asked for his assistance in securing her a pardon. Less than thirty days later President Carter stepped in and commuted Hearst's sentence. President Carter made no official statement but the White House stated that, "Miss Hearst needs no further rehabilitation and she is no risk to the community."<sup>13</sup> Carter's spokesperson defended his actions stating,

*Without the act of clemency Miss Hearst would have been eligible for parole next July 11,*

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<sup>11</sup>.Hearst, Patricia Campbell, Every Secret Thing, (New York: Doubleday and Company, 1982), 140-192.

<sup>12</sup>. United Press International, "A Chronology of the Hearst Case," *New York Times*, 29 January 1979, sec. B, 4, (L).

<sup>13</sup>. Nicholas M. Horrock, "U.S. Said too Support Freeing Miss Hearst," *New York Times*, 29 January 1979, sec. A, 1 & 15.

*and the White House believes that her release would have been mandatory in July 1982 if she had remained a 'model prisoner' under terms in the Federal parole laws.<sup>14</sup>*

Hollywood also weighed in when John Wayne defended the pardon stating,

*It seems quite odd to me that the American people have immediately accepted the fact that one man can brainwash nine hundred human beings into mass suicide [referring to the Guyana tragedy] but will not accept the fact that a ruthless group, The Symbionese Liberation Army, could brainwash a little girl by torture, degradation and confinement.<sup>15</sup>*

The reason John Wayne could not understand the American people was because most of them saw her as a spoiled little rich girl, who like Wayne was out of their league. Carter, however, did not catch much heat from the American people mainly because Hearst was the daughter of a media mogul who could control the media, or at least have big stars like John Wayne come out in favor of his daughter.

During Carter's four-year term he had not issued many pardons and of those not many were controversial. He had, however, started a new trend in the usage of pardons. This trend was the use of pardons as appeasement. That is any time that you believe a well-timed pardon would help the administration, politically, issue it; he apparently did not pay enough attention to Hamilton's "a well timed pardon

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<sup>14</sup>. Associated Press, "Miss Hearst is 'Grateful' to Carter And Praises 'Courageous' Decision," *New York Times*, 29 January 1979, sec. B, 4, (L).

<sup>15</sup>. Hearst, Every Secret Thing, 443.

may secure the tranquility...of a nation."<sup>16</sup>

Carter had learned from the Nixon pardon that pardons could either hurt or help you. This meant that you needed to pardon people that would appease the country, someone that would gather the majority's sympathy thereby resulting in a boost at the polls. Most of Carter's controversial pardons reflected his personality. The pardons showed his belief in people and his willingness to give people a second chance. This personality trait has been credited for his pardons of Collazo and the FALN terrorists who attacked the capital.

Overall Carter did not overuse his power to pardon nor did he make a new precedent with an extremely controversial pardon, what he did do was use the power to his advantage politically. Carter used the power for the first time in history as a promise of what he would do once elected and he continued its use to appease the country, hoping to aid his falling approval rates. In essence Carter paved the way for the next president, Ronald Reagan and all future ones to use his and Ford's pardons as stepping-stones for their political advancement through the issuance of pardons.

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<sup>16</sup>. Alexander Hamilton, James Madison, and John Jay, The Federalist Papers (New York: Mentor Books, 1961), 416-417.

## CHAPTER 3

### RONALD REAGAN'S CONTROVERSIAL PARDONS

Although it was evident that Jimmy Carter had issued pardons to keep himself in the good graces of the American people, he had not been able to do enough to ensure himself reelection. Ronald Reagan soon became the beneficiary of a country that was not pleased with the state of affairs in America under Jimmy Carter. California Governor Ronald Reagan easily won the presidential election in 1980 with 489 electoral votes to Carter's 49.

Ironically the steps that Reagan took to ensure his presidential seat would eventually result in the issuance of an even more controversial pardon than the one received by Richard Nixon. Just like Carter, Reagan knew that he had to promise certain actions once in office in order to win the 1980 presidential election. Reagan had noticed that Americans were extremely upset with Carter for not bringing home the American hostages in Iran and decided that this was the promise that he would make. Reagan promised to bring the hostages home, but he also took another step, one of controversial legality. People in Reagan's future administration involved themselves directly in bringing home the hostages before Reagan had been elected. The trade promise that arose would result in the Iran Contra scandal in which arms were traded for hostages. The pre-mentioned trade promise of Reagan's administration would eventually place administration officials on the receiving side of the pardon process.<sup>1</sup> Although the later

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<sup>1</sup>. John Tower, The Tower Commission Report (New York: Bantam Books, Inc. and Times Books, Inc., 1987), 18-30.

scandal would result in controversial pardons, the actions taken at the time aided in Reagan's electoral victory in 1980.

Ronald Reagan would serve as President for two terms stretching from 1981-1989. Unlike Carter and Ford this presidency, once it was put under the microscope, would prove to be extremely controversial in all its pardons. Ronald Reagan pardoned 406 people during his presidency; however, the recipients of these pardons were not revealed as public information.<sup>2</sup> This required immediate inquiry. How could a president issue 406 pardons without telling the public? Reagan was able to do this because he had noticed that it had never been put in writing that a president had to write down and disclose whom he pardoned. Up until 1893 all pardons were handwritten and a copy was kept on file. In fact you can get microfilm copies of Washington's, Jefferson's, Lincoln's, as well as the rest of our great presidents acts of clemency up until 1893. And for pardons issued from 1894-1933 researchers can consult the Annual Reports of the Attorney General: however, there has been no reporting of individual acts of clemency since 1933.<sup>3</sup>

Despite this fact, most Presidential administrations kept adequate records of the pardons delivered during their terms. In fact the Department of Justice has on-line records of Presidents Ford, Carter, Bush, and Clinton. Reagan, however, decided that he wanted to forego this

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<sup>2</sup>. P.S. Ruchman Jr, " Keys to Clemency Reform: Knowledge, Transparency," (JURIST) [on-line] available from <http://jurist.law.pitt.edu/pardonp5.htm> Internet: accessed 9 December 2002, 2.

<sup>3</sup>. Ibid., 3.

process during his term. Reagan only wanted to release certain helpful names of pardon recipients when it would help him politically and, when it would not, he would keep it undisclosed. This process continued despite the Freedom of Information Act; apparently if the media asked Reagan who he had pardoned he would answer, but only if he was pushed to do it.<sup>4</sup>

Reagan apparently took this action to coincide with his tough stance on crime. He had taken a hard line and did not want to be seen given reprieves to criminals unless it would advance one of his programs or his favor in the polls. Reagan, however, diligently followed the guidelines set by the Pardon Attorney and the Justice Department when it came to the process a pardon applicant had to follow in order to be eligible for the reception of a pardon.<sup>5</sup>

Reagan also followed the testimonies of involved officials who knew first hand the misdeeds that had been done by the applicants. Alan Raul, former associate counsel to Reagan from 1986-1988, stated,

*Pardon applications were handled with the utmost care and seriousness as befitting the President's authority under Article II, section 2 of the Constitution to exercise plenary the 'Power to Grant Reprieves and Pardons for Offenses against the United States, except in Cases of Impeachment.'*<sup>6</sup>

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<sup>4</sup>. Ruchman Jr., "Keys to Clemency Reform," <http://jurist.law.pitt.edu/pardonp5.htm>, 2.

<sup>5</sup>. U.S. Congress, House of Representatives, Committee on the Judiciary, "Testimony of Alan Charles Raul: Hearing before the Committee on the Judiciary," 107<sup>th</sup> Cong., 1<sup>st</sup> sess., 28 January 2001, 1-3.

<sup>6</sup>. Ibid.

After investigations into other Presidential irregularities in the following of the pardon guidelines, Raul stated,

*It is my recollection and belief that the Justice Department and White House Counsel's Office ensured that no pardon application proceeded without all relevant points of view being reflected in the review process. I cannot imagine any circumstances under which a pardon would be considered without input from the prosecuting U.S. Attorney's office and sentencing Judge.*<sup>7</sup>

Reagan might have diligently followed the Guidelines that accompanied the use of Presidential pardons, but that did not prevent him from issuing several overtly political and controversial pardons. Two pardons that were extremely controversial were issued to Mark Felt and Edward Miller. Mr. Felt and Mr. Miller were two ex-FBI agents who illegally broke into Vietnam protestors' offices without warrants during the Nixon Presidency. Felt and Miller admitted that they had committed the acts to keep the Director of the FBI, the Attorney General, and the President advised of the activities of hostile foreign powers and their collaborators in this country. When their actions were found out, the two came forward and admitted their wrongdoing.<sup>8</sup>

Although these two had done the right thing and came forward to admit their guilt, the fact that they acted

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<sup>7</sup>. Ibid., 2.

<sup>8</sup>. JURIST, "Presidential Pardons," [on-line] available from <http://jurist.law.pitt.edu/pardon6.htm> Internet: accessed 21 November 2002.

alone provoked suspicion. The suspicion arose from the fact that this occurred under the same president who knew of the break-in at Watergate but still tried to cover it up. Another question about the public issuance of this pardon was why Reagan decided to inform the public on this pardon when he would not on many others, especially when this pardon would not serve any apparent political good?

Reagan answered this question in a speech on April 15<sup>th</sup> 1981, in which he stated,

*Their convictions in the U.S. District Court, on appeal at the time I signed the pardons, grew out of their good-faith belief that their actions were necessary to preserve the security interest of our country. The record demonstrates that they acted not with criminal intent, but in the belief that they had grants of authority reaching to the highest levels of government.*<sup>9</sup>

The President followed up by stating,

*Four years ago, thousands of draft evaders and others who violated the Selective Service laws were unconditionally pardoned by my predecessor. America was generous to those who refused to serve their country in the Vietnam War. We can be no less generous to two men who acted on high principle to bring an end to the terrorism that was threatening our nation.*<sup>10</sup>

Although these answers seemed viable it did not fully convince a public, who had just witnessed the totality of Nixon that these two men acted on their own.

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<sup>9</sup> . Ronald Reagan, "Statement on Granting Pardons to W. Mark Felt and Edward S. Miller," 15 April 1981 [on-line] available from <http://www.reagan.utexas.edu/resource/speeches1981/41581.htm> Internet: accessed 14 December 2002, full statement in appendix 87.

<sup>10</sup> . Ibid.

Leaving the controversial spectrum of Reagan's pardons, we arrive at the unexplainable. A most puzzling case arose from Reagan's pardon of Robert Wendell Walker, who was convicted in 1979 for attempted bank robbery. No one knows why Reagan pardoned Walker, who had received fifteen years for his actions.<sup>11</sup> The pardon would have remained in the shadows if it were not for Walker's arrest on November 3, 2000. Walker was charged with killing his wife and dismembering her body. Upon his arrest it was discovered that he had received an unexplained pardon from President Reagan.<sup>12</sup> With Reagan out of office and under the effects of Alzheimer's disease the pardon was never explained.

Another unexplainable pardon was issued to Gilbert L. Dozier in 1984. Dozier had been convicted in 1980 for extortion and racketeering. Dozier used his position as Louisiana Agriculture Commissioner to demand \$329,000 in campaign contributions from farmers and industry officials in exchange for issuing permits for farming projects.<sup>13</sup> The commutation was granted over the objections of the sentencing judge and the U.S. attorney in charge of the case. This proved to be another case that Reagan would not explain. There was however a notable catch in the process, Dozier's lobbyist for his pardon was former Reagan White

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<sup>11</sup>. JURIST, "Presidential Pardons,"  
<http://jurist.law.pitt.edu/pardon6.htm>.

<sup>12</sup>. CNN.com, "In-Depth Special: Presidents and the Power to Pardon," [on-line] available from  
<http://www.cnn.com/SPECIALS/2001/pardons/pardon.history.html>  
Internet: accessed 2 January 2003.

<sup>13</sup>. JURIST, "Presidential Pardons,"  
<http://jurist.law.pitt.edu/pardon6.htm>.

House aide Lyn Nofziger, and his attorney was John Stanish, a former pardon attorney under President Carter.<sup>14</sup>

Soon after pardoning Dozier Reagan would issue an even more controversial pardon to George Steinbrenner. In 1989, Ronald Reagan pardoned New York Yankee's owner George Steinbrenner who happened to be a major Republican donor.<sup>15</sup> In 1974 Mr. Steinbrenner was convicted on charges of conspiring to violate federal election laws during President Richard Nixon's 1972 reelection campaign. Steinbrenner donated money outside of the guidelines to be used by the Nixon campaign as they pleased. Steinbrenner was supposedly aware of the fact that the money was not going to regular election procedures because the money had been asked for after large donations had already been made.<sup>16</sup>

Mr. Steinbrenner pled guilty to the charges but claimed that an attorney of the American Ship Building Company of which he was Chairman of the Board had made the donations. Steinbrenner in applying for his pardon tried to redeem himself by stating, "I...fully accept that my actions or lack of actions in what occurred was in fact a

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<sup>14</sup>. U.S. Congress, House of Representatives, Committee on Government Reform, "Examples of Controversial Pardons by Previous Presidents: Prepared by Minority Staff Committee on Government Reform," 107<sup>th</sup> Cong., 1<sup>st</sup> Sess., 20 April 2001, 2.

<sup>15</sup>. Ibid., 1-2.

<sup>16</sup>. U.S. Congress, House of Representatives, Committee on the Judiciary, "Testimony of Alan J. Lichtman Chair, Department of History, American University: Hearing before the Subcommittee on the Constitution," 107<sup>th</sup> Cong., 1<sup>st</sup> sess., 28 February 2001, 1.

criminal act."<sup>17</sup> This admission coincided with the fact that Reagan refused to pardon applicants unless they would admit to the crime. This was another way to keep up the 'tough on crime' image. This admittance of guilt was confirmed by the Armand Hammer case, in which Reagan refused to pardon Hammer unless he would admit guilt.

Hammer was convicted alongside Steinbrenner for illegal contributions to the Nixon campaign. Reagan's refusal to pardon Hammer without an admittance of guilt was a testimony to his desire to be 'tough on crime,' especially when you factor in the \$1.3 million to Hammer promised to donate to Reagan's library upon receipt of the pardon. This refusal would continue throughout Reagan's presidency and on through Bush's term until Hammer decided to admit guilt for his involvement with the Watergate scandal through illegal contributions.<sup>18</sup>

Reagan would counterbalance the controversial pardons with those pardons directed towards certain constituents. One such pardon was issued to Junior Johnson. Johnson was convicted in the 1950s of transferring liquor across state lines and selling illegal substances. Both counts were the result of running moonshine, which during the 1950s was a common southern activity.<sup>19</sup> Not coincidentally, at the time that Johnson received his pardon he just happened to be a very popular NASCAR driver. Johnson's pardon, like

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<sup>17</sup>. George Steinbrenner, "Affidavit of George M. Steinbrenner, III," *Submitted to Ronald Reagan's Pardon attorney*, 15 September, 1988, full article in appendix, 88.

<sup>18</sup>. U.S. Congress, House of Representatives, Committee on Government Reform, "Statement of Rep. Henry A. Waxman: Hearing on Marc Rich Pardon," 107<sup>th</sup> Cong., 2<sup>nd</sup> sess., 1 March 2001.

<sup>19</sup>. JURIST, "Presidential Pardons," <http://jurist.law.pitt.edu/pardon6.htm>.

Steinbrenner's, can be viewed as a way to gather support with their fans. The more controversial part of the Johnson pardon, however, was the fact that there were hundreds if not thousands of other people convicted of running moonshine who did not receive a pardon.

Another controversial aspect of this pardon was the fact that it shared certain similarities with a pardon Reagan issued to Merle Haggard while Governor of California. Haggard had been paroled in 1960 after serving a three-year stretch at San Quentin for an attempted burglary. Haggard had been in juvenile institutions and county jails before as the results of burglaries, car thefts, and even escapes. This, however, did not make Haggard undeserving of a pardon. Controversy however arises from the fact that all of this had occurred more than fifteen years before Reagan pardoned him in 1972, coincidentally while Haggard was extremely popular for his musical accomplishments.<sup>20</sup>

Although President Ronald Reagan issued few controversial pardons during his Presidency, he did extend the political misuse of the power. Out of the 406 pardons Reagan issued few were controversial and out of those, none could be compared to the extremely controversial pardons that had been issued before. However, Reagan cannot be portrayed as a president who only morally used the power within the guidelines of the Constitution, as defined in the Federalist Papers. Reagan like those who wielded the power before him, used the power in timely fashions and in

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<sup>20</sup>. "Biography of Merle Haggard," [on-line] available from <http://tesscentral.com/presite/haggard.html> Internet. accessed 5 October 2001.

necessary places. Reagan pardoned popular people to help boost support and pardoned unpopular people to keep the faith of those enlisted in the war on crime. Reagan also advanced the controversial usage of the power in the way that he did not publicly disclose the people whom he pardoned. Overall, Reagan, like Carter, did not take great advantage of the power, but he did continue to pave the way for George Herbert Walker Bush and future Presidents to wield the power in the political arena to aid their advancements and to protect their administrations.

## CHAPTER 4

### GEORGE H.W. BUSH'S CONTROVERSIAL PARDONS

In January 1989, George Herbert Walker Bush became the 41<sup>st</sup> president of the United States. Bush was the son of a Connecticut Senator and was raised with Republican values and ideas. George Walker Bush gained a secure knowledge of the process involved in the pardoning arena while serving as Vice President to Ronald Reagan. While serving as Reagan's V.P. Bush was able to get an insider's view of what benefits the founding fathers allotted the President with the inclusion of Article II, Section II of the Constitution. Bush was a direct witness to the 406 pardons issued by Reagan. Although Bush was Reagan's right hand man, he had different convictions about the uses of the pardoning power. Bush believed in moderation, something of which Reagan was never accused.

In 1979, George Bush, a long-shot primary candidate, condemned Reagan for his useless "voodoo economics" because they were supposedly excessive and overshot their purpose. His view of Reagan's excessiveness can be transplanted into the arena of pardons as well. Ronald Reagan pardoned 406 people during his two terms, giving him an average of over two hundred pardons a term. This number, although small in comparison to Presidents who served at the turn of the century, was extremely excessive in relation to Bush's 77 pardons. Bush's limited use of pardons is also extremely small in relation to the forty other men who have served in the same position. Excluding James Garfield and William H.

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Harrison who died early in office, Bush pardoned fewer people than all Presidents other than George Washington, John Adams, and Zachary Taylor (who also died in office).<sup>1</sup> This minute amount of pardons revamped the Republican numbers in the clemency area. George Bush's moderate approach is extremely clear when compared to the Republican Party's average of 413 pardons a term. Although the number of pardons had dropped each consecutive Republican term since Calvin Coolidge, it took a nose-dive with Bush's numbers.<sup>2</sup> This small number, however, would not conceal him from the scrutiny that accompanied the more controversial pardons.

Bush had now reinvented the Republican Party in respect to the area of pardons. This reinvention, however, was not truly unique; it did bring along with it a lot of old party politics. The main part of this continuity came in the pardons issued to wealthy political donors. This, however, was not a character trait evident in only one party. This trait is noticeable in both parties, especially in the latter half of the 20<sup>th</sup> century. A few more notable examples can be seen in the two previous presidents acts of clemency. Jimmy Carter's pardon of Patty Hearst and Ronald Reagan's pardon of George Steinbrenner would both be surrounded in controversy over the large donations made to the specific party and presidential library.

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<sup>1</sup>. Jurist, "Presidential Clemency Actions," [on-line] available from <http://jurist.law.pitt.edu/pardonspres1.htm>., Internet: accessed 14 December 2002.

<sup>2</sup>. United States Department of Justice, "Pardons and Commutations Granted by President George H. W. Bush," [on-line] available from <http://www.usdoj.gov/pardon/bushgrants.htm>. Internet: accessed 20 September 2002.

This type of controversial pardon extended to the pardon issued to Edwin Cox, Jr. Cox was sentenced in 1988, during Bush's second term as V.P. for bank fraud. Cox was convicted for falsifying collateral on \$78 million in loans while president of a Dallas bank. Five years later in 1993 Bush pardoned Cox just two days before he would leave office in a last minute gift of sorts.<sup>3</sup> This monetary gift or payment came less than two years later when oil magnate Edwin Cox, Sr. donated between \$100,000 and \$250,000 to the Bush presidential library. The figure is only an estimate because Cox's name comes up on the Bush presidential library website as a benefactor, listing donators who contributed between \$100,000 and \$250,000. This figure is still only an estimate, protected by the Presidential Libraries Act of 1955. The act allowed donations to be unlimited in size, solicited from foreign governments and individuals, and most importantly protected from disclosure.<sup>4</sup>

Cox's donation was indeed seen as a lapse in the system but that was taken even further when Edwin Cox, Sr. was inducted as a library trustee eleven months later. The appointment was questioned by *Time* magazine after the infamous Marc Rich pardon.<sup>5</sup> *Time* stated that upon questioning former White House Chief counsel C. Boyden Gray

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<sup>3</sup> . Ibid.

<sup>4</sup> . U.S. Congress, House of Representatives, Committee on Government Reform, "Presidential Libraries Act/ National Archives and Records Administration Act: Before Committee on Government Reform," 83<sup>rd</sup> Cong., 2<sup>nd</sup> sess., March 1955.

<sup>5</sup> . Kelly Wallace/CNN, "Former President Bush Granted Last-Minute Pardon to Contributor's Son," 7 March 2001, [on-line] available from <http://www.cnn.com/2001/ALLPOLITICS/03/07/bush.pardon/>, Internet: accessed 3 August 2002.

he informed them that,

*he could not recall the case..., but said Baker's mention of Cox being a 'longtime supporter' would not have affected the president's decision...and that he did not see any problem with Cox's contribution because it was made after the pardon.*<sup>6</sup>

Cox's determination to receive a pardon can be related to other business officials who repeatedly turn to the president for clemency to move on in their lives. Convicted business officials repeatedly seek a presidential pardon to allow them to reenter the business world that is restricted without specific licenses. Licenses and voting rights are revoked for certain white-collar crimes as a means to prevent a second occurrence.

Although Cox's donation was unearthed and then publicized in Scott Harshburger's testimony to the House Subcommittee on Government Efficiency, Financial Management, and Intergovernmental Relations, it is unclear if any of the other fourteen extremely wealthy people pardoned for bank fraud and embezzlement under Bush also contributed to the library.<sup>7</sup> Out of the fourteen-pardoned white collar banking criminals Bush pardoned, four of them were from his home state of Texas, and strangely only one

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<sup>6</sup>. Michael Weisskopf, "A Pardon, a Presidential Library, a Big Donation," *Time.com* [on-line] available from <http://www.time.com/time/nation/article/0,8599,101652,00.html>, Internet: accessed 6 March 2001.

<sup>7</sup>. U.S. Congress, House of Representatives, Committee on Government Reform, "Testimony of Scott Harshburger, President and CEO of Common Cause, Regarding H.R.577, A Bill to Require Disclosure of Contributions to Presidential Library Foundations: Before the House Subcommittee on Government Efficiency, Financial Management and Intergovernmental Relations," 107<sup>th</sup> Cong., 1<sup>st</sup> sess., 5 April 2001.

was sentenced before 1974.<sup>8</sup> This is strange because all of these crimes occurred during the time frame of the Savings and Loan scandals that Bush and Reagan publicly attacked and sought to punish while in office. Although it might not be clear if any of these corrupt bankers persuaded Bush with a contribution promise, it is evident that the pardon issued to Armand Hammer was surrounded with monetary innuendos.

Hammer was one of the first people Bush pardoned in 1989.<sup>9</sup> This pardon was again surrounded by monetary donations and loads of controversy. In 1986 Armand Hammer publicly approached Ronald Reagan for consideration for clemency. Hammer pledged \$1 million to the planned Ronald Reagan Presidential Library in order to sway Reagan's position on his behalf. In 1987 Hammer boosted this pledge to \$1.3 million but was again left without any success. Reagan would leave office without pardoning Armand Hammer. Reagan refused to pardon Hammer because Hammer would never admit guilt and therefore would not accept a post admittance pardon.<sup>10</sup>

Hammer's affair was a winding labyrinth of money scandals. The FBI had been monitoring Hammer under Hoover's illegal surveillances since 1921, when Hammer had transferred \$34,000 to the Communist party in America. This was red flagged because Hammer was a personal friend

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<sup>8</sup>. United States Department of Justice, "Pardons and Commutations Granted by President George H. W. Bush," <http://www.usdoj.gov/pardon/bushgrants.htm>.

<sup>9</sup>. Ibid.

<sup>10</sup>. U.S. Congress, House of Representatives, Committee on Government Reform, "Statement of Rep. Henry A. Waxman: Hearing on Marc Rich Pardon," 107<sup>th</sup> Cong., 2<sup>nd</sup> sess., 1 March 2001.

of Lenin's.<sup>11</sup> This, however, was not the reason that Hammer was in need of an act of clemency. Hammer had been told that he would be considered for the Nobel Peace Prize for the work he had done in negotiations between the U.S. and the U.S.S.R. This weighed heavily on Hammer's mind because he would have a harder time receiving the prize if he had a criminal record, which he did. Hammer was convicted in 1976 for illegal campaign donations to the Republican Party and Richard Nixon. Although Hammer's case seemed innocuous enough, it had worsened by the actual usage of the money. Hammer illegally gave \$54,000, anonymously, to Richard Nixon to be used in the Watergate scandal specifically in paying the Cuban plumbers, thus Reagan's insistence that he admit guilt.<sup>12</sup> It would not have boasted well for the Republican Party if a Republican president pardoned a person directly involved in a scandal of a past Republican administration.

It is ironic that Hammer was convicted of illegal campaign contributions because *Newsday* reported that briefly before receiving his pardon in 1989 Hammer contributed to the Republican Party and the Bush-Quayle campaign. Hammer was the president of Occidental Petroleum when reported by *Newsday* as contributing \$100,000 to the Republican Party and \$100,000 to the Bush-Quayle Inaugural Committee.<sup>13</sup> Hammer's Lawyer, Dick Thornburgh, a Republican activist, was integral in the developed relationship.

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<sup>11</sup> . F.B.I., "Armand Hammer papers/ Freedom of Information Act," [on-line] available from <http://FOIA.FBI.gov/hammerop/hammeropl.pdf> , Internet: accessed 18 August 2002.

<sup>12</sup> . Ibid.

<sup>13</sup> . "Inaugural Committee Lists \$100,000 Lenders," *Newsday*, 19 January 1989, 48-49.

Although it was clear that Hammer donated money directly to the Bush campaign, it was not clear if he donated to Bush's library. Hammer might have donated some sum to the library but it was very clear that because Reagan did not deliver a pardon Hammer felt he didn't have to deliver the promised \$1.3 million.<sup>14</sup>

In pardoning Cox and Hammer, Bush clearly abused the powers of the executive office. Although Bush did not violate the powers issued by Article II, Section II of the Constitution he did step outside of the guidelines listed by Hamilton, Madison, and Jay in the Federalist Papers. They stated that the president should use his power to "overthrow injustices in excessive sentences," "unfortunate guilt," "situations of cruelty," and to "restore the tranquility of the commonwealth."<sup>15</sup> Because the cases of Cox and Hammer were proven and lightly sentenced, Bush was unable to hide behind the auspices of excessive sentences, cruelty, or unfortunate guilt; so he must have pardoned them on the basis that the commonwealth was in uproar over their convictions. Because this was not the case and monetary contributions were involved, this lends support to the charges of abuse of power.

Although pardons surrounded by monetary contributions are extremely controversial, they cannot compare with the contentiousness raised by pardons of political allies. Throughout the first three and a half years of Bush's presidency pardons had mainly been handed out to white-collar criminals, which fit the Republican historical

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<sup>14</sup>. Bella Stumbo, "Hammer Pardon Turned on the Issue of Innocence," *Los Angeles Times*, 28 August 1989, 1 & 16.

<sup>15</sup>. Hamilton, Madison, and Jay, The Federalist Papers, 417.

context.<sup>16</sup> This consistency was about to be even more enhanced. Bush was the first Vice President to move up to the Presidency since Gerald Ford and just like Ford, Bush would be forever linked with his predecessor, through a controversial pardon. On December 24, 1992 George Herbert Walker Bush pushed through an extremely controversial set of pardons. Bush's Christmas Eve pardons would clean the slate of his and Reagan's possible punishment through their involvement with the Iran Contra affair.

These controversial pardons were issued to Caspar W. Weinberger, Elliot Abrams, Duane R. Clarridge, Alan Fiers, Clair George, and Robert C. McFarlane. These five individuals were involved in the Iran Contra Scandal. This scandal, which started even before Reagan's oath of office, had its roots in securing the release of American hostages in Iran. To secure a victory over incumbent President Jimmy Carter and ease Reagan's first year advisors of Reagan supposedly took it upon themselves to make arrangements that would help them on two different campaign promises. These advisors, led by Lt. Col. Oliver North arranged, to make arms deals with Iran to secure the release of the hostages, which would also provide monetary payments to Nicaraguan right wing 'contra' guerillas. These payments were provided to hide the illegal arms trades and also to secretly help bring an end to the leftist government. This involvement with the contras directly violated the Boland Agreement passed by Congress in 1984, which prohibited direct or indirect U.S. military aid to the contras, and the Hughes-Ryan Amendment that prevented the CIA from

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<sup>16</sup> . United States Department of Justice, "Pardons and Commutations Granted by President George H. W. Bush," <http://www.usdoj.gov/pardon/bushgrants.htm>.

appropriating funds for uses in other countries outside of gathering intelligence.<sup>17</sup>

The basis of these transactions laid within the realms of the old political phrase, "The enemy of my enemy is my friend." Although the transactions were made by Oliver North, many others inside of Reagan's administration knew of the dealings. When Congress learned of these dealings they also discovered North's involvement. Immediately Congress wanted to know how far up this scandal went. Reagan isolated these questions by confining the scandal to the National Security Agency. Reagan's next steps paralleled those taken by Nixon a decade before. Reagan proposed a special investigation while taking steps to cover up any White House involvement. These steps required Reagan and Bush to announce publicly that they had no prior knowledge of the affair and that they were totally behind the investigation. As a result of the investigations Caspar W. Weinberger, Elliot Abrams, Duane R. Clarridge, Alan Fiers, Clair George, and Robert C. McFarlane were convicted and sentenced for withholding information.<sup>18</sup>

After the Tower Commission reported its findings, independent prosecutor Lawrence Walsh decided to follow up the investigations into presidential involvement. The case was brought to an end when Bush pardoned these men before leaving office. This pardon came only one month after Walsh in a new investigation had indicted Clarridge and Weinberger for obstruction of justice. After the pardon

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<sup>17</sup>. John Tower, The Tower Commission Report, (New York: Bantam Books, Inc. and Times Books, Inc., 1987), 519.

<sup>18</sup>. Lawrence Walsh, Iran-Contra: The Final Report, (New York: Times Books, 1994), xxii.

Walsh commented, "It demonstrates that powerful people with powerful allies can commit serious crimes in high office—deliberately abusing the public trust—without consequence."<sup>19</sup> Walsh later followed up by stating, "In light of President Bush's own misconduct, we are gravely concerned by his decision to pardon others who lied to Congress and obstructed official investigations."<sup>20</sup> These pardons were extremely controversial but the Clarridge and Weinberger pardons went even further. For the first time, a non-president was pardoned before he was convicted or started to serve his sentence, which violated the guidelines of the Constitution. Walsh and other counsels charged, "Cover up."<sup>21</sup> This continued an alarming area of pardons. Bush, just like Ford, pardoned a mistake in his political past. This new precedent combined with the coverage of the controversial executive privilege introduced a new level of secrecy to the presidential ranks. During his four years in office President Bush never publicly defended any of his pardons except those issued to the members involved in the Iran Contra Affair. Although Bush's explanation was doused with historical comparisons, patriotic duties, political motives, and Constitutional duties, it aroused more questions than answers. On December 24, 1992, President Bush issued Proclamation 6518, which stated,

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<sup>19</sup> . David Johnson, "Bush Pardons 6 In Iran Affair Averting a Weinberger Trial; Prosecutor Assails 'Cover Up,'" *New York Times*, 24 December 1992, sec. A, 22, (L+).

<sup>20</sup> . Ibid.

<sup>21</sup> . Ibid.

A Proclamation,

Today I am exercising my power under the Constitution to pardon former Secretary of Defense Caspar Weinberger and others for their conduct related to the Iran Contra affair.

For more than 6 years now, the American people have invested enormous resources into what has become the most thoroughly investigated matter of its kind in our history. During that time, the last American hostage has come home to freedom, ...the Cold War has ended in victory for the American people and the cause of freedom we championed.

...Caspar Weinberger is a true American patriot. He has rendered long extraordinary service to our country. He served for 4 years in the Army during World War II where his bravery earned him a Bronze Star. He

gave up a lucrative career in private life to accept a series of public positions in the late 1960's and 1970's, including Chairman of the Federal Trade Commission, Director of the Office of Management and Budget, and Secretary of health, Education, and Welfare. Caspar Weinberger served in all these position with distinction and was admired as a public servant above reproach.

I have also decided to pardon five other individuals for their conduct related to the Iran Contra affair: Elliott Abrams, Duane Clarridge, Alan Fiers, Clair George, and Robert McFarlane. First, the common denominator of their motivation—whether their actions were right or wrong—was patriotism. Second, they did not profit or seek to profit from their conduct. Third, each has a record of long and distinguished service to this country. And finally, all five have already paid a price—in depleted savings, lost careers, anguished families—grossly disproportionate to any misdeeds or errors of judgment they may have committed.

The prosecutions of the individuals I am pardoning represent what I believe is a profoundly troubling development in the political and legal climate of our country: the criminalization of policy differences. These differences should be addressed in the political arena, without the Damocles sword of criminality

hanging over the heads of some of the combatants. The proper target is the President, not his subordinates; the proper forum is the voting booth, not the courtroom. In recent years, the use of criminal processes in policy disputes has become all too common. It is my hope that the action I am taking today will begin to restore these disputes to the battleground where they properly belong.

In addition, the actions of the men I am pardoning took place within the larger Cold War struggle. At home, we had a long, sometimes heated debate about how that struggle should be waged. Now the Cold War is over. When earlier wars have ended, Presidents have historically used the power to pardon to put bitterness behind us and look to the future. This healing tradition reaches at least from James Madison's pardon of Lafitte's pirates after the War of 1812, to Andrew Johnson's pardon of soldiers who had fought for the Confederacy, to Harry Truman's and Jimmy Carter's pardons of those who violated the Selective Service laws in World War II and Vietnam.

Moreover, the Independent Counsel stated last September that he had completed the active phase of his investigation. He will have the opportunity to place his full assessment of the facts in the public record when he submits his final report. While no impartial person has seriously suggested that my own role in this matter is legally questionable, I have further requested that the Independent Counsel provide me with a copy of my sworn testimony to his office, which I am prepared to release immediately. And I understand Secretary Weinberger has requested the release of all his notes pertaining to the Iran-Contra matter.<sup>22</sup>

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<sup>22</sup>. U.S. President, Proclamation, "Grant of Executive Clemency, Proclamation 6518," *Federal Register* 57, no. 252 (24 December 1992): 62145, microfiche, full article in appendix, 91.

Although Bush's explanation is worded very eloquently, upon critical reading, it reveals many flaws. Bush claimed that the actions taken by these individuals were pardonable because terrorism had declined, democratic governments were elected, and the cold war had ended. If this is accepted, then Bush simply defended breaking the laws of the U.S. because individuals had good intentions. Bush continued in his proclamation by stating that, "the last of the hostages has come home," therefore admitting that these actions had been taken directly to free the Americans held by pro-Iranian nationals. Most of the hostages had been released following Reagan's swearing in, and if that was the case, then there had to be negotiations between the two before Reagan took office. This was extremely contentious considering Reagan had repeatedly stated that he had not negotiated with the Iranians during Carter's term.<sup>23</sup> Bush followed up by forgiving them because their, "common denominator was patriotism." This was also unacceptable considering terrorists around the world routinely commit illegal violations under the auspices of "patriotism."

The most controversial part of Bush's proclamation was the part in which he stated, "The proper target is the President, not his subordinates; the proper forum is the voting booth, not the courtroom." In this sentence and the context surrounding it, Bush circled his wagons around presidential administrations and the use of executive privilege. Bush demanded that presidents, not subordinates, be held responsible for their administrations and that the

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<sup>23</sup> . Bob Woodward, Shadow: Five Presidents and the Legacy of Watergate (New York: Simon and Schuster, 1999), 97-99.

courtroom of congressional hearings was not viable. This belief was contradicted a decade earlier when under similar circumstances Richard Nixon was not allowed to use executive privilege to cover his subordinates or himself.<sup>24</sup> Bush deepened the hole when he compared his Iran Contra pardons to the war pardons issued by Carter, Truman, and Johnson. Those pardons, however, were under the auspices of the nation moving on, which are outlined in the Federalist Papers. In this particular case the nation was unaffected and therefore it was not, "a critical moment for a well timed offer of a pardon to the insurgents-to restore the tranquility of the commonwealth."<sup>25</sup>

Bush finished his proclamation by commenting on the ongoing investigation of Lawrence Walsh. Bush stated, " he (Walsh) had completed the active phase of the investigation... And will have the opportunity to place his full assessment of the facts in the public record when he submits his final record." This comment indicated that the investigation had not been followed up on with judicial proceedings, and yet Bush believed it was time to end this affair. Apparently Bush believed that it was critical to issue the pardon and to avoid the hearings. Bush also believed that enough time and money had been invested into this affair and it was time to move on, "as I have noted, the Independent Counsel investigation has gone on for more than 6 years, and it has cost more than \$31 million." Bush apparently combined all of the investigations into this total. Strangely, Bush's explanation didn't consider the fact that the pardon would be cheating the people out of

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<sup>24</sup> . Ibid., 124-125.

<sup>25</sup> . Hamilton, Madison, and Jay The Federalist Papers, 417.

their investment by ending the investigation right before judicial proceedings, and oddly, only one year before a statute of limitations would have taken effect.

Although the Iran Contra pardons drew large amounts of attention due to the internal involvements of the Bush administration, they were not as strange as the pardons issued to Orlando Bosch and Aslam Adam. In 1990, the Bush Justice Department directly intervened to grant a controversial parole to Orlando Bosch, freeing him on house arrest.<sup>26</sup> Bosch had been convicted in 1989 for illegally entering the country and upon his conviction the *New York Times* dubbed him, "The hemisphere's most notorious terrorist." The *Times* followed by pointing out that Bush's son Jeb, then an up-and-coming Republican had lobbied on his behalf, evidently trying to secure favor with hard-core anti-Castro Cubans in Florida.<sup>27</sup> Mr. Bosch was linked to a dozen bombings, including the 1976 bombing of a Cuban airliner, which killed 73 civilians.<sup>28</sup> Although President Bush avoided public outcry by not signing an official act of clemency, he did receive some media attention for idly standing by and allowing a convicted terrorist to be set free.

Mr. Bosch's pardon could be grouped with other campaign pardons such as Carter's draft dodger pardon and Clinton's FALN (which was criticized as being a bargaining chip between Hillary and the Puerto Rican voters of New

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<sup>26</sup> .Harold Kohl "Begging Bush's Pardon," *Houston Law Review*, no. 29 (1992): 889.

<sup>27</sup> . James LeMoyne, "Cuban Linked to Terror Bombings Is Freed By Government in Miami," *New York Times* 18 July 1990, sec. A, 1 & 18.

<sup>28</sup> . James LeMoyne, "Bomber Away," *New York Times*, 20 July 1990, sec. A, 15.

York.) On the other side of the controversial spectrum was the pardon of Aslam P. Adam. Adam was a Pakistani drug trafficker who was convicted and sentenced to 55 years for possession with the intent to distribute over \$1 million worth of heroin.<sup>29</sup> Adam had been apprehended after U.S. customs had discovered over 500 grams of 72% pure heroin in a tubular package addressed to Mr. John at P.O. Box 668086, Charlotte. The DEA was notified and authorities moved in and arrested Adam when he picked up the package.<sup>30</sup> So far the story paralleled the era, a harsh sentence for a harsh crime. But when Bush issued this pardon he struck a blow against the war on drugs. President Bush turned down over 1,000 requests for pardons, which makes this pardon even more bizarre.<sup>31</sup> The 32-year-old Adam had only served eight years of his 55 years when Bush handed down his reprieve.

This action greatly confused the authorities who continually risked their lives to bring in these criminals. Prosecuting attorney Ken Anderson stated,

*This move by President Bush as he was on the verge of leaving office strikes me as exceedingly peculiar, given his strong rhetoric regarding his efforts to fight crime in general and drugs in particular. There must be something more at play here than is readily apparent.*<sup>32</sup>

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<sup>29</sup>. U.S. Congress, House of Representatives, Committee on Government Reform, "Examples of Controversial Pardons by Previous Presidents: Hearing Before the Minority Staff/ Committee on Government Reform," 107<sup>th</sup> Cong., 1<sup>st</sup> sess., 20 April 2001, 3.

<sup>30</sup>. Eric Nadler, "George Bush's Heroin Connection," *Rolling Stone*, 6 October 1994, 45.

<sup>31</sup>. U.S. Congress, House of Representatives, Committee on the Judiciary, "Presidential Pardon Power: Subcommittee on the Constitution of the Committee on the Judiciary," 107<sup>th</sup> Cong., 1<sup>st</sup> session 28 February 2001, 38.

<sup>32</sup>. Associated Press, "Prosecutor Attempted to Block Pardon," *New York Times*, 29 January 1993, sec. A, 2.

The statement was followed up by a press article in the *Charlotte Observer*, *Rolling Stone* paraphrased stating, "The Drug Enforcement Administration or the CIA wanted something from Pakistan—and what they wanted will never see the light of day."<sup>33</sup> This statement might only be speculation, but it was very thoughtful speculation. Why would President Bush intervene with a pardon when the suspect was up for parole in three more years unless it was simply as a bargaining chip in a bigger issue? Although the pardon might have been a diplomatic move, it made no sense domestically. These feelings were shared by U.S. magistrate Paul Taylor who stated that,

*Deportation of a Pakistani national back to the very country from which the heroin was shipped...defies all logic and makes a mockery of the laws which were designed to prohibit drug importation and punish serious offenders.*<sup>34</sup>

This attitude was shared by *Rolling Stone*, which initiated a massive investigation into the Adam pardon. *Rolling Stone* interviewed the prosecuting attorney, the Judge, Adam's warden, North Carolina Senator Jesse Helms, and White House officials involved in the pardoning process all of whom could not explain the situation. *Rolling Stone*, however, was unable to prove any political motives, even after moving the investigation to Pakistan and focusing on Adam's family. *Rolling Stone* continued to be baffled and concluded that,

*With two Bush sons currently campaigning for governor's spots in Texas and Florida, the former president cannot be counted on for candor in this*

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<sup>33</sup> . Nadler, "George Bush's Heroin Connection," 45.

<sup>34</sup> . Ibid.

*matter. At the very least, though, Republicans should be forced to confront this mysterious affair as they prepare for the 1996 race against an opposition they will try to label as soft on drugs.*<sup>35</sup>

Upon leaving office, Bush reminded everyone of his morals, especially in his Iran Contra proclamation, but this is to be questioned after studying his use of pardons. Bush, like the two Presidents before him, escalated and advanced the number of political pardons. Bush, like Carter and Reagan, knew that an unchecked ability to forgive your own administration allowed presidents to take on endeavors that could otherwise ruin their presidency. Bush, a long-time Washington insider, knew that the precedent that Ford had set would provide future presidents a means to get out of situations just like Watergate. Now a president could bob, weave, stall, and pardon until an investigation went away and do it all under constitutional authority. Presidents before Gerald Ford had pardoned lots of people, but usually under the guidelines set by the Department of Justice. Nixon's pardon proved that guidelines were just that, and nothing to hold one back from a necessary political move.

During Bush's one term, he elevated controversial, political pardons to a new high. Bush's pardons reached out to drug dealers, convicted terrorists, white-collar criminals, wealthy donors, and of course to the past administration. Bush's pardons moved the pardon power into a new quagmire of endless non-responsibility. Bush advanced

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<sup>35</sup> .Ibid., 45-46.

Nixon's plan of cutting controversy off in different sections away from the president, to cutting off and avoiding future problems by eliminating their criminal record with a pardon. Basically, Bush had found a way to pardon oneself. Bush also continued and escalated an alarming amount of controversial lame duck pardons. Bush's most notorious pardons were issued after he had already lost his bid for re-election. The pardons issued to Edwin Cox, Aslam P. Adam, and the Iran/Contra members were all with the knowledge that there would be no restitution. It is ironic that Mr. Bush made the comment that, "The proper target is the President, not his subordinates; the proper forum is the voting booth, not the courtroom," considering that he was fully aware that the people would not be able to exhibit their disapproval with his actions.<sup>36</sup> Bush's continuance of controversial pardons would extend on to the next president, William Jefferson Clinton.

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<sup>36</sup>. President, "Proclamation 6518/ Grant of Executive Clemency."

## CHAPTER 5

### BILL CLINTON'S CONTROVERSIAL PARDONS

In January 1993, William Jefferson Clinton became the 42<sup>nd</sup> President of the United States. Clinton, however, was a lot different from the three men who had preceded him. Clinton, unlike Carter, Reagan and Bush, was able to understand the totality of the pardon power. Used correctly it was like a big eraser to wipe away the mistakes one had made. Clinton had also had the fortune to follow George Bush, who had retested the grandeur of the power. Clinton, like other political officials, witnessed the precedent that the Iran Contra pardons had set. The pardons set the stage for an even more controversial act of clemency by the next president, which just happened to be Bill Clinton. Clinton, however, would use the power more wisely and avoid the public criticism or punishment that accompanies extremely controversial acts.

Clinton tested this belief at the end of his lame duck years in order that he would not be in public office to face public retaliation. His lame duck years proved that this Rhodes scholar had learned much from Ford's pardon of Nixon, as well as those that followed it, mainly the Bush pardons. In the final one hundred days of his presidential term Bill Clinton issued one hundred seventy-seven pardons and commutations.<sup>1</sup> These last minute pardons, combined with

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<sup>1</sup>. Charles Krauthammer, "The Presidential Corruption Index," *Washington Post*, 2 February 2001, sec. A, 23.

the large number he had already issued, added up to over four hundred fifty sentence reductions. This type of wholesale amnesty in a short period of time had never been witnessed in the history of the presidential office.

No other President had ever shown the same flare for attention, even for unwanted attention, that Bill Clinton did. Before the pardongate debacle Clinton had experienced one scandal after another, each bouncing off the chest of his superman suit with time. With the economy at an all time high accountability in other areas seemed to drop by the wayside. Clinton had somehow made it through Whitewater, the "Sex Scandals," the "China donations," "Filegate", and other scandals by deflecting the public's attention and without too much outcry from the public. With these accomplishments under his belt, Clinton showed his political brilliance in following the way his predecessors had manipulated the pardon power.

Other presidents had faced the heat of public outcry by issuing pardons at the beginning and in the middle of their terms, but Clinton was too smart for that path. Although other presidents had issued very controversial pardons, most were relatively balanced by actions of their predecessors. Clinton, however, issued few pardons in his first seven years of office, waiting until the end.<sup>2</sup>

Clinton stamped his name on the pardoning process by issuing pardons in bulk and by pushing them through at the last minute. While the number of overall pardons granted by

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<sup>2</sup>. Jurist, "Notable Pardons," [on-line] available from <http://jurist.law.pitt.edu/pardons6.htm>. Internet, accessed 6 October 2001.

Clinton was relatively equal to those of recent presidents, no other president had issued such a large number of unfiltered pardons at the last possible moment. Clinton's predecessors generally granted pardons throughout their terms; Clinton, by contrast, granted no pardons at all during his first four years as president, the fewest since George Washington, then he strangely accelerated the pace. Over half of the 457 pardons issued by Clinton came during his last month in office.<sup>3</sup>

Former Justice Department attorney Margaret Colgate Love called the pardons, "unprecedented," and said, "The number of situations in recent decades in which a pardon was granted without a prior Justice Department investigation and recommendation from the attorney general could be counted on the fingers of one hand."<sup>4</sup> The exceptions were President Gerald R. Ford's 1974 pardon of former president Richard M. Nixon; President Ronald Reagan's 1981 pardon of two top FBI officials who had ordered illegal surveillance of American radicals, and President George H.W. Bush's 1992 pardons of former defense secretary Caspar W. Weinberger and five other Iran-Contra figures. By contrast, more than thirty of the 177 pardons commutations granted by Clinton on his last day did not go through the regular channels, which typically take eighteen

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<sup>3</sup> . Barbara Olson, Final Days: The Last Desperate Abuses of Power by the Clinton White House (Washington D.C.: Regnery Publishing Inc., 1999), 1-4.

<sup>4</sup> . U.S. Congress, Senate, Committee on the Judiciary, "Statement of Margaret Colgate Love, Former Pardon Attorney from 1990 to 1997: Hearing on Presidential Pardons before the Senate Judiciary Committee," 107<sup>th</sup> Cong., 1<sup>st</sup> sess., 14, February 2001.

to twenty-four months.<sup>5</sup>

It is not clear why President Clinton took this route especially when it contradicted a statement he had made earlier in his second term. In a 1996 interview with PBS about possible pardons for Whitewater business partners, President Clinton stated,

*My position would be that their cases should be handled like others. There's a review process for that, and I have regular meetings on that, and I review those cases as they come up, after there's an evaluation done by the Justice Department. That's how I think it should be handled.*<sup>6</sup>

Clinton iterated these words on January 26, 1996, when his former Counsel, Jack Quinn, issued a two and a half page document to Jamie S. Gorelick, Deputy Attorney General. Quinn wrote,

*I write this memorandum to convey to you as well as the Pardon Attorney the essence of several recent directives I received from the President concerning the essence of several recent directives I received from the President concerning his executive clemency policy. Preliminarily, the President reiterated his belief that the power to grant executive clemency is an important presidential prerogative, which he takes very seriously. As such, he asked me to express to you and to the Pardon Attorney his sincere appreciation for the care and attention with which your office reviews clemency requests. The President intends to continue to rely greatly*

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<sup>5</sup> Peter Slevin and George Lardner Jr., "Rush of Pardons Unusual in Scope, Lack of Scrutiny," *Washington Post*, 10 March 2001, sec. A, 3.

<sup>6</sup> Jerry Seper, "Clinton Broke Vow in Pardon of Rich; Violated His Pledge of Justice Review," *Washington Times*, 2 February 2001, sec. A, 1.

*on your joint recommendations regarding clemency applications.*<sup>7</sup>

The sudden urge to show compliance can be looked upon in two ways: 1.) as just a routine memo to back up a previous statement, or 2.) as a means to throw attention away from something that might happen in the immediate future. Apparently Clinton changed his mind about the review process.

Clinton had, however, already planned to pardon multiple criminals with his exit. Clinton was quoted numerous times suggesting that the list kept growing and growing, with statements to press officials like, "You got anybody you want to get pardoned." Or, "It's crazy, I've got 400 to 500 requests for commutations and pardons," "Were still getting applications in the mail!" and "You wouldn't believe the people that want to talk to you when you have the power of amnesty at your beck and call."<sup>8</sup>

The late attorney and Clinton critic Barbara Olson stated in her book, The Final Days, The last Desperate Abuses of Power by the Clinton White House that, "Not since the opening of the gates of Bastille have so many criminals been liberated on a single day."<sup>9</sup> These pardon recipients had been sentenced for a variety of different reasons. The most controversial reason concerned the pardon allotted to

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<sup>7</sup>. U.S. Congress, House of Representatives, Committee on Government Reform, "Memorandum for Jamie S. Gorelick, Deputy Attorney General, Exhibit 78.: Before the House Committee on Government Reform," 107<sup>th</sup> Cong., 1<sup>st</sup> sess., 26 January 2001, 1.

<sup>8</sup>. Weston Kosova, "Backstage at the Finale," *Newsweek*, 26 February 2001, 30.; Don Van Natta Jr. and Marc Lacy, "Access Proved Vital in Last-Minute Race for Clinton Pardons," *New York Times*, 25 February 2001, sec.A, 1.

<sup>9</sup>. Olson, The Final Days, 10.

Marc Rich. Rich, a fugitive from justice, had been living in Switzerland for the last eighteen years where he had successfully avoided apprehension for being one of America's most wanted fugitives. Rich was a financial tycoon who had started out as a commodities buyer for Philip Brother's Metals. Rich apparently didn't believe that the laws of the land applied to him when it came to his prosperity. Rich went as far as to trade with Cuba after trade sanctions were imposed. Through other friendships Rich moved on to trade Soviet crude oil during the Cold War. Rich continued trading with Iran after Jimmy Carter put a trade ban on them, trading weapons for oil. He continued his ways with Libya and Gaddafi after the U.S. issued a trade embargo on them.<sup>10</sup>

After avoiding punishment for these violations of U.S. law, Rich moved on to more domestic practices. Rich involved himself in daisy chaining and calving. Daisy chaining was the practice of making illegal trades, avoiding regulations by relabeling old oil as new. Calving was a practice where American multinational organizations would buy materials from their subsidiary companies overseas for inflated prices to avoid taxes and sanctions on imported goods.

After an extensive investigation of Marc Rich, the U.S. Treasury Department seized tax records that Rich was trying to take out of the country. These documents set the case for the biggest tax fraud case in the history of the U.S. Rich was officially indicted on charges of evading

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<sup>10</sup>. U.S. Congress, House of Representatives, Committee on Government Operations, "The Strange Case of Marc Rich: Contracting with Tax Fugitives and at Large in the Alps; Hearing before the Government Information, Justice, and Agriculture Committee," 102<sup>nd</sup> Cong., 1<sup>st</sup> and 2<sup>nd</sup> sess., 4 December 1991, 18 February, and 5 March, 8.

corporate taxes on \$100,000,000 worth of domestic crude oil income, which came to over \$48,000,000 in taxes.<sup>11</sup>

Sandy Weinberg, lead prosecutor in United States v. Marc Rich, et al., was unable to understand Clinton's pardon. She stated,

*In my mind, our case was overwhelming. We had numerous witnesses, both from Marc Rich's New York Company and from third party companies who were prepared to testify in detail about the fraud. The witnesses would have testified that Marc Rich created what he referred to as the 'pots' on the books of several third party companies to hold the illegal domestic crude oil profits.*<sup>12</sup>

Rich originally prepared himself to go to court, but after he received a warning that he would not be able to beat the rap he decided to flee the country to Switzerland. Rich stayed in Switzerland making deals with Israel until Clinton pardoned him.

In pardoning Rich, apparently Clinton overlooked the millions of dollars that were sunk into Rich's trial, investigation, and attempts to bring him into custody. Upon hearing of his fate, Rich stated,

*I do not consider the pardon granted by President Clinton as an eradication of past deeds, but as the closing of a cycle of justice and a humanitarian act. The indictment against me in the United States was wrong and was meant to hurt me personally. The pardon granted by*

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<sup>11</sup>. Ibid.

<sup>12</sup>. Morris Weinberg, "Interview with Morris 'Sandy' Weinberg; Assistant U.S. Attorney, Southern District of New York, 1980-85: Lead Prosecutor in United States v. Marc Rich et al.," interview by Bernard Hibbitts; University of Pittsburgh School of Law *Jurist*, 7 March 2001 [on-line] available from <http://jurist.law.pitt.edu/pardonsex8.htm>, Internet, accessed 10 June 2002.; U.S. v Marc Rich, Pincus Green, et al.<sup>9</sup> (S.D.N.Y. March 6, 1984) (S 83 Cr. 579).

*President Clinton remedied this injustice eighteen years too late.*<sup>13</sup>

The U.S. Attorney in charge of the prosecution of Rich was none other than Rudolf Giuliani. Giuliani did not believe his ears when he was told the news and asked his secretary to check again to make sure the information was correct. He followed up by saying, "It's impossible, the President would never pardon a fugitive, especially Marc Rich. It cannot have happened."<sup>14</sup> Rich's attorney Jack Quinn, who was also a buddy of Clinton's, disagreed with Giuliani. Quinn stated,

*A pardon in the interests of justice is a reasonable end to all this. The indictment is seventeen years old and unfair by objective legal standards. Exile for two decades has been punishment without trial or resolution. And there is, frankly, an extraordinary amount to say about the exemplary contributions by Mr. Rich and Mr. Green to humanitarian and charitable causes this country encourages and admires—all told, over \$200 million throughout the world, contributions made over decades without any effort at publicity.*<sup>15</sup>

Pinky Green, Rich's business partner, also received a pardon from Clinton. Mr. Green had also benefited through the illegal deals of Marc Rich.

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<sup>13</sup>. Deb Riechmann, "America's 'Rich,' & Famous Asked Clinton to Grant Pardons," *Associated Press*, 9 March 2001.

<sup>14</sup>. Johnson, Jeff, "Government Reform Committee: Clinton Abused Pardons," 14 March 2002. [on-line] available from <http://www.CNSNews.com/archives/2002/3/14/> Internet: accessed 19 April 2002.

<sup>15</sup>. U.S. Congress, House of Representatives, Subcommittee on the Constitution, "Letter from Jack Quinn [Attorney for Marc Rich] to President William Jefferson Clinton on December 11, 2000: Before the Subcommittee on the Constitution," 106<sup>th</sup> Cong., 2<sup>nd</sup> sess., 8 February 2001.

After the more controversial case of Marc Rich came other less controversial cases. These cases covered the pardons of people from con men to cop-killers. One pardon went to a Hasidic group in New York that had also been prosecuted under Giuliani for the soliciting of funds for a private school they were supposed to be running. The Skevere Hasidic in Rockland County, New York had received millions of education-allotted dollars for a school they had simply created on paper. The group ran the school for seven years until the state recommended parents check out the school. When the parents told the state advisor that they were unable to find the school, red flags immediately flew up.<sup>16</sup>

Another group of pardon recipients came from the state of Tennessee. These recipients were Circus owners, who were prosecuted for fraud and criminal real-estate misconduct. The circus owners were Edward and Vonna Jo Gregory who owned United Shows of America. The Gregories sparked controversy because of their ties to Clinton. They had made numerous visits to Camp David with Bill Clinton and had staged carnivals in 1998 and 2000 on the White House lawn, which were all arranged by Hillary's brother Tony Rodham, who just happened to work for the Gregories. Controversy arose again after it was found out that the couple donated \$13,000 to Hillary's campaign and had given over \$100,000 to different Democratic Congressional committees in a four-year period.<sup>17</sup>

Another pardon recipient was the notorious Patty Hearst. Hearst's pardon was a disturbing continuation of

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<sup>16</sup>. Krauthammer, "The Presidential Corruption Index,"; Pat Milton, "Source U.S. Attorney Investigating Commutations," *Associated Press*, 23 February 2001.

<sup>17</sup>. Olson, The Final Days, 154-155.

pardons that provided amnesty for people who refused to admit guilt. Jimmy Carter had reduced Hearst's sentence in 1979, stating, "Miss Hearst needs no further rehabilitation and she is no risk to the community," but Carter refused to pardon Hearst. Carter's refusal to pardon Hearst arose from the popular interest that surrounded Hearst's actions and her refusal to admit guilt.<sup>18</sup> Clinton however didn't mind issuing this amnesty, which raised suspicion when grouped with the rest of Clinton's pardons. The suspicion comes from the known links between certain pardons and monetary contributions that will be elaborated on a little later.

Hearst's pardon, however, was just small fish when compared to the bigger fish Clinton pardoned. During a time when the U.S. was sinking billions of dollars a year to stop the illegal use of drugs, Clinton made the government take a huge step back in the drug war. Although Clinton's brother, Roger, was pardoned for his conviction of cocaine possession, this, however, is not the drug dealer I am alluding to. Clinton issued a pardon to Carlos Vignali a Los Angeles drug dealer. Vignali was not some small time peddler but a high volume cocaine trafficker. Vignali had been convicted of shipping over a half a ton of the drug to Minneapolis.<sup>19</sup>

Vignali was a drug tycoon, who brought cocaine into the country where he would have it processed in his own plants to save on the cost out of his rather large pocket. Vignali received fifteen years for his crimes. This

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<sup>18</sup>. Nicholas M. Horrock, "U.S. Said to Support Freeing Miss Hearst," *New York Times*, 29 January 1979, sec. A, 1 & 15.

<sup>19</sup>. Rene Sanchez, "Drug Felon's Powerful Supporters Retreat On Pardon," *Washington Post*, 24 February 2001, sec. A, 6.

sentence was thought by most to be very lax, but Clinton apparently believed it was too harsh. Vignali stated on his early exit that, "Word around prison was that it was the right time to approach the president."<sup>20</sup> This pardon created a split between the Justice Department and the White House. Todd Jones, the U.S. Attorney in charge of Vignali's case, stated about Vignali's release, "This guy was a major source in keeping a drug organization here being fed with dope from California." His assistant, U.S. Attorney Duncan Deville, followed suit saying, "I frequently place in danger both my life and, more importantly, the lives of law enforcement agents, in the pursuit of drug dealers. Accordingly I cannot support the recent actions in Vignali's pardon."<sup>21</sup>

The problem was that the U.S. Attorney had a little more character than the President. Vignali in the year 2000 donated over \$175,000 to the Democratic Party. To top this large sum off Vignali was reported by the *National Enquirer* on February 22, 2001, to have given the law firm of Hugh Rodham, Hillary's brother, \$200,000.<sup>22</sup> Although, initially reported by a not so credible magazine, the FBI confirmed this payoff, and Clinton followed up by asking his brother to return the money.<sup>23</sup>

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<sup>20</sup>. Ibid.

<sup>21</sup>. Ibid.

<sup>22</sup>. "Clinton Pardon Payoff Exposed," *National Enquirer*, 22 February 2001, 1.; Christopher Marquis and Michael Moss, "A Clinton In-Law Received \$400,000 in 2 Pardon Cases," *New York Times*, 22 February 2001, sec. A, 9.

<sup>23</sup>. Christopher Buckley, "Hillary: The Op-ed," *Wall Street Journal*, 27 February 2001, 1 & 5.

Another notorious pardon recipient was Harvey Weining. Weining was a Manhattan lawyer who was convicted in the largest money-laundering case in New York history. Weining was a front for the Cali Drug Cartel and had even played a part in a kidnapping scheme. Even the corrupt government of Colombia was outraged over the actions committed by former President Clinton. Columbian President Ernesto Samper protested,

*What would the American government have done if, with just a few days left in my presidency, I had set free several drug traffickers arrested in Bogota, and if those same people were found to be helping people in my government.*<sup>24</sup>

Colombian General Rosso Serrano weighed in saying,

*It sends the wrong message to the anti-drug struggle, because it negates the suffering of all the families of those who died to fight trafficking.*<sup>25</sup>

We move on to the ironic marriage councilor of Mr. Clinton, Jesse Jackson. Mr. Jackson stepped in to make sure that he threw his weight around in the pardons. Jackson intervened on the behalf of Mel Reynolds, an ex-Democratic Congressman from Chicago. Reynolds was found guilty for having sex with a sixteen-year old campaign volunteer. To add to the list Reynolds in 1997 was convicted for having aides try to launder money out of his campaign contributions into his own pockets. Jackson also stepped in to help another Democrat. This time it was for Dorothy Rivers who had pled guilty on the charges of stealing \$1.2

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<sup>24</sup> . Deroy Murdock, "Keep Pardongate Alive. It's Still Pertinent," *Scripps Howard News Service*, 9 March 2001.

<sup>25</sup> .Olson, The Final Days, 163.

million of government grants. She was found guilty on forty separate counts, ranging from theft, tax evasion, fraud, obstruction of justice, and lying under oath.<sup>26</sup> Both parties found Clinton to be sympathetic to the counts involving extra marital affairs, fraud, and theft. Both received last minute pardons.

After helping out other criminals, family, and friends, Clinton decided it was time to try to help himself. To try to bring an end to the Whitewater investigations and trials, Clinton stepped in to pardon ex-business partners. Clinton pardoned six former partners in the Whitewater affair. Most notable of these partners was Susan McDougal who received a pardon for her conviction in the misuse of \$300,000 of federally backed loans. After McDougal, Clinton pardoned Whitewater appraiser Robert Palmer and former aide Stephen Smith.<sup>27</sup>

After Whitewater had been settled, Clinton moved in to help former loyal allies. In this flurry of pardons, Clinton liberated Henry Cisneros, a prosecutor who helped to solicit and pay Linda Jones. Ronald Blackley also received a pardon for bribes he had received and money he had laundered while serving as chief of staff in the Department of Agriculture.<sup>28</sup> Other less notable officials were also pardoned in the Clinton rampage.

Clinton also played the helpful partisan in his pardon of Dan Rostenkowski, a former Democratic congressman from

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<sup>26</sup> . Kevin Sack, "Pardoned Couple Say Access Has Served Them Well," *New York Times*, 10 March 2001, sec. A, 18.

<sup>27</sup> . Krauthammer, "The Presidential Corruption Index," sec. A, 23.

<sup>28</sup> . Stephen Braun and Richard A. Serrano, "Clinton Pardons: Ego Fed a Numbers Game: A Desire to Add to His Legacy, Coupled with a Flood of Last-Minute Pleas from Every Corner, Overwhelmed the System," *Los Angeles Times*, 25 February 2001, sec. A, 1.

Illinois. Rostenkowski had been the chairman of the House Ways and Means Committee before being indicted on mail fraud charges in 1996. He was sentenced to seventeen months in jail and fines that accumulated up to \$100,000. Rostenkowski paid his fines and served out his sentence. His pardon, however, was one of a growing number of post sentence partisan acts of clemency in which a person would be pardoned simply to clear his name.<sup>29</sup> Rostenkowski's pardon had not been solicited, it was simply a gift levied upon him by a president who just happened to be a member of the same political party.

Clinton continued his questionable actions with the pardoning of members of the FALN. Puerto Ricans had been protesting U.S. Naval activity in the area for years. Most protestors, however, didn't take it too far because they didn't want to lose the protection of the U.S. or the millions of dollars poured into their country each year, tax-free. The FALN, however, was the part of the protestors who wanted the U.S. to remove themselves totally from everything involved in Puerto Rico. The *Fuerzas Armadas de Liberacion Nacional* or the FALN was a Marxist group that has claimed responsibility for over 130 bombings in the U.S. since 1974. This group had attacked most of the major cities in the U.S., targeting federal buildings such as FBI buildings, military barracks, and police stations. This group was responsible for six deaths and multiple numbers of wounded innocent victims. Families lost loved ones just as in the September 11<sup>th</sup> bombings. This group was first and foremost a terrorist organization. Sentenced in New York, the convicted members of the group received life without

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<sup>29</sup> . Ibid., 1 & 10; Olson, Final Days, 118.

parole because the state did not allow the punishment of death.<sup>30</sup>

President Clinton decided that members of this group would also be recipients of amnesty. Not to overlook the multiple FBI agents who were very displeased in the releasing of the FALN, we turn to one of their own Representative Carlos Barcelo. Puerto Rico's only nonvoting delegate to the U.S. stated that,

*These are the worst crimes in a democracy. If they said they were sorry for what they have done, if they accepted their guilt, then maybe my thoughts would be different. But they refuse to say that. How can we responsibly set them free? What if they kill somebody else? What do we say then, 'Too bad'?*<sup>31</sup>

Clinton continued his forgiveness of terrorists with his pardon of Susan Rosenberg. Rosenberg, who went by the alias of Elizabeth and Barbara Grodin, was a part of the Weather Underground. The Family as it was known to its members took part in multiple robberies and bombings across the eastern part of the U.S. Rosenberg personally aided in the robbery of a Brink's truck in which one guard and two policemen were killed.

Rosenberg also took part in the planning and execution of the bombings of the U.S. Capitol in 1983, the Naval War College, Washington Navy Yard, FBI office in Staten New York, South African Consulate in New York, and the Patrolmen's Benevolent Association in New York. Rosenberg was sentenced on the charge of murder in the 1<sup>st</sup> degree for

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<sup>30</sup> . "Judge Regrets He Could Not Impose Death Penalty ON FALN Terrorists," *United Press International*, 19 February 2001.; Gary Marx, "Terrorism on Trial: Justice and the FALN," *Chicago Tribune Sunday Magazine*, 22 October 1995, 22.

<sup>31</sup> . Olson, *The Final Days*, 17.

the death of a New Jersey State Trooper. She was also convicted on weapons and explosives charges for the 640 pounds of explosives she was caught with as well as the fourteen firearms that were found. Rosenberg was sentenced for fifty-eight years for the first two charges, which was the maximum she could receive. Because Rosenberg's sentencing had been so successful, prosecutors decided not to pursue the murder charge for the Brink's security robbery.<sup>32</sup> Despite the overwhelming evidence in the case, Clinton decided to provide her with one of his last minute pardons and commuted her sentence to time served.

We know the people whom Clinton continued building his controversial legacy on, but the question is, "Why?". Was it because truly in his heart President Clinton believed that these men had repented? Was it because truly in his heart President Clinton believed that these men were innocent or was it because truly in his heart President Clinton believed that these men had served enough time for their crimes? Maybe it was just like the case of the Hasidic group from New York. These ethnic backgrounds had a considerable amount of constituents in New York. Maybe, the late Barbara Olson and her news media peers were correct in their assumption that these specific pardons, along with a few others were done specifically to help secure an office for Hillary. Hillary Clinton was seeking a congressional seat in New York at the same time that her husband President Clinton was leaving his. The Hasidic group mentioned earlier represented an area in which the

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<sup>32</sup> . John Castelucci, The Big Dance: The Untold Story of Kathy Boudin and the Terrorist Family that Committed the Brink's Robbery Murders, (New York: Dodd Mead, 1986), 35.; Lee Hockstader, "7 Indicted in 1983 Capitol Building; Members of Communist Group Face Charges in 7 Other Explosions," *Washington Post*, 12 May 1988, sec., A, 1.

Democrats did not have a great hold. The Puerto Ricans, however, were an extremely large group, which usually voted Republican. Both of these areas were places in which Mrs. Clinton could use a little help, especially when she was running against a well-known and respected New Yorker in Rudolf Giuliani. After Giuliani withdrew due to health problems, Mrs. Clinton was able to step in and take the office, but who knows how much these local pardons had helped her. Mrs. Clinton was however, "saddened," "upset," and "disturbed" over the suggestion that the pardons were issued to help her win the senatorial seat.<sup>33</sup>

So what did President Clinton's peers have to say about the pardons or the scandals surrounding them? Ex-President Jimmy Carter led the way, stating, "Mr. Clinton brought a new level of disgrace to the office never before witnessed in the high office." Carter added, "I don't think there is any doubt that some of the factors in his (Marc Rich) pardon were attributable to his large gifts. In my opinion, that was disgraceful."<sup>34</sup> The gifts ex-President Carter was referring to are things like the mink coats, 24-karat saxophones, antique writing tables, and crystal dinnerware Clinton received. Or he could just be referring to the hundreds of thousands of dollars Denise Rich donated to the Clinton Presidential Library; whatever it was it was still not acceptable.<sup>35</sup> The gifts President Carter mentioned

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<sup>33</sup> . Cheryl Lavin, "Magazine Writer Tells How Hillary Became a New York Senator," *Chicago Tribune*, 28 February 2001, sec.C, 4.

<sup>34</sup> . Donald Lambro, "Carter Calls Clinton's Rich Pardon Disgraceful," *Washington Times*, 22 February 2001, sec. A, 1.

<sup>35</sup> . James V. Grimaldi, "E-Mail Trail Shows Rich's Associates Brainstorming For Ways to Influence President Clinton," *Washington Post*, 19 February 2001, sec. E, 7.

could have included the hundreds of thousands of dollars that Hugh Rodham and Roger Clinton solicited for him.

Ex-Democratic National Committee chairman Paul Goldman added,

*The president is the moral center of our political system and must lead by example to capture the power of America's principled idealism...In straying from the center Clinton didn't just take the White House to China; he took its soul and flushed it down the toilet straight to hell.*<sup>36</sup>

Clinton addressed his growing opposition in a 1,700-word article in the *New York Times* on February 18, 2001. Clinton began by stating,

*Because of the intense scrutiny and criticism over the pardons...I want to explain what I did and why...The reason the framers of our Constitution vested this broad power in the Executive Branch was to assure that the president would have the freedom to do what deemed to be the right thing, regardless of how unpopular a decision might be.*<sup>37</sup>

Clinton then brought up the names of other presidents who had also pardoned controversial figures and had faced upset constituents. Clinton issued his biggest excuse for the pardoning of Marc Rich. Clinton stated,

*Ordinarily I would have denied pardons in this case simply because these men did not return to the United States to face the charges against them. However, I decided to grant the pardons in this unusual case for the following legal and foreign policy reasons: (1) I understood that the other [similarly situated] oil companies [were]*

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<sup>36</sup> . Paul Goldman, "Democrats Must Censure Clinton," *Wall Street Journal*, 15 February 2001, sec. B, 3.

<sup>37</sup> . Bill Clinton, "My Reasons for the Pardons," *New York Times*, 18 February 2001, sec. 4, 13.

sued civilly by the government: (2) I was informed that, in 1985, in a related case against a trading partner of Mr. Rich and Mr. Green, the Energy Department... Found that the manner in which the Rich/Green companies had accounted for these transactions was proper: (3) two highly regarded tax experts reviewed the transactions in question and concluded that the companies "were correct in their U.S. income tax treatment of all the items in question." (4) in order to settle the government's case against them, the two men's companies had paid approximately \$200 million in fines, penalties and taxes; (5) the Justice Department in 1989 rejected the use of racketeering statutes in tax cases like this one; (6) it was my understanding that Deputy Attorney Eric Holder's position on the pardon was "neutral, leaning for" (7) the case for the former White House counsel Jack Quinn but also by three distinguished Republican attorneys: Leonard Garment, a former Nixon White House official; William Bradford Reynolds, a former high-ranking official in the Reagan Justice Department; and Lewis Libby, now Vice President Cheney's Chief of Staff; (8) finally, and most importantly, many present and former high-ranking Israeli officials of both major political parties and leaders of Jewish communities in America and Europe urged the pardon of Mr. Rich because of his contributions and services to Israeli charitable causes, to the Mossad's efforts to rescue and evacuate Jews from hostile countries, and to the peace process through sponsorship of education and health reform in Gaza and the West Bank... I believe my pardon was in the best interests of justice. If the two men were wrongly indicted in the first place, justice has now been done.<sup>38</sup>

It is hard to believe that a president of the United States could have put himself into a situation that would require that statement. Amnesty is not a process or account to be taken lightly. The word "if" implies that the

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<sup>38</sup>. Ibid, full article in appendix, 95.

President was not certain that they were wrongly indicted, meaning that he did not perform a thorough enough investigation to find out the truth. These pardons have brought ex-president Clinton a lot of heat since his exit from office, mainly because of the large number of pardons issued. Four hundred fifty, that's the number of people Clinton set free in his "Final Days" for his apparent guilt over the justice system. The massive number alone would have been enough to insist on an investigation, leaving out the more disputable ones issued on the very last day.

Upon taking office, Attorney General John Ashcroft ordered an investigation into the apparent crimes. The privilege of investigating this crime went to U.S. Attorney Mary Jo White of New York.<sup>39</sup> Because of Clinton's status as President and the vague guidelines set forth by the Constitution, no punishment could be delivered to Clinton even if he was proven guilty. Clinton may not be able to be punished but there are things that can be accomplished by furthering the investigation. First and foremost, a precedent can be established on how to handle the amnesty process in the future. Another thing that can be accomplished is the conviction of Hugh Rodham, Roger Clinton, and possibly Hilary Clinton. Hugh and Roger, are very easy targets because it has already been established by the FBI that they took part in soliciting pardons for money.<sup>40</sup> Hilary's indictment will take a little bit more investigating.

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<sup>39</sup> . "Ashcroft: Pardons Not For Sale," 28 March 2001. [on-line] available from <http://ww.newsmax.com/archives/articles/2001/3/28/>. Internet: accessed 19 April 2002.

In her case it will have to be proved that she was aware of the ex-President accepting monetary funds for his part in pardoning certain individuals. This will not only prove her guilt but will also prove that she lied under oath in a Congressional Committee established to investigate Pardongate. After September 11<sup>th</sup>, the investigations into Pardongate came not to a halt, but to a slowdown. Urged by President Bush, the Attorney General asked for the case to be put on the backburner. Bush and Ashcroft knew it would be political suicide to attempt to prosecute an ex-President during an ongoing military operation. The case was again halted when Mary Jo White resigned from office. This occurrence threw a monkey wrench into the investigation. The U.S. Attorney for southern New York is appointed by a committee, headed by none other than Senator Hillary Clinton.<sup>41</sup> With the War on Terrorism ongoing this is as far as the case has currently developed.

With the case halted, there is one question that needs to be considered. If President Clinton is guilty of selling pardons, what should the punishment be? Because he has already reached the zenith of power in the political world, not much can be done to his political future. There is, however, some considerations for the punishment of Bill Clinton. If guilty, one alternative could be a mandatory forfeiture of his \$7.5 million pension. This has been

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<sup>40</sup> .Michael Isikoff and Daniel Klaidman, "His Brother's Keeper," *Newsweek*, 26 February 2001, 33.

<sup>41</sup> . Limbacher, Carl "Hillary to Handpick Pardongate Prosecutor," 16 March 2002. [on-line] available from <http://www.newsmax.com/showinside.shtml?>. Internet: accessed 19 April 2002.

proposed by a number of political analysts in order to keep future Presidents from selling out in a lame-duck term. With Clinton receiving over two hundred and fifty thousand dollars a speech to tell his story money might not be a problem but \$7.5 million will always cause a big ripple when removed from the pocket.<sup>42</sup>

Clinton, however, is not the biggest problem. What Clinton has done cannot be reversed. The biggest problem is what to do in order to prevent this from happening again in the future?

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<sup>42</sup>. Eric Meyers, "How to Punish Clinton for Pardongate: Strip Him of His \$7.5 Million Pension," *Associated Press*, 28 February 2001.

## CHAPTER 6

### EPILOGUE

With the controversial ending to President Clinton's last term, we see that the uninhibited use of the pardon power has now come full swing. The precedent that Gerald Ford set by pardoning Richard Nixon without even being convicted of a crime has now been followed up on by every president since. Jimmy Carter used the pardon power to campaign for his election, promising to pardon Vietnam War evaders. Ronald Reagan added on to Ford's precedent by paralleling Carter's. Reagan pardoned Mark Felt and Edward Miller on the grounds that if Carter could pardon Vietnam draft evaders it was his right to pardon people who were fighting for us and just made a mistake. Reagan also used his political savvy to hide the pardon recipient's names. Although it might be possible to find out who was pardoned if you looked long and hard enough, there is no single document that shows who was pardoned, unlike presidents Ford, Carter, Bush, and Clinton, which have their pardon recipients posted under the Department of Justice pardon web page. Continuing the escalation we come to the most controversial pardon of them all, the pardons of the Iran-Contra figures. This pardon reigns supreme because of the person who issued the pardon. George Bush issued this pardon despite an ongoing investigation in which he could have been found guilty of perjury. Yes, the case had extended for many years, but for a president to pardon controversial figures from an administration in which he was an integral part of is still extremely contentious. These Christmas Eve pardons set a controversial new

precedent. In pardoning these officials after becoming aware that he would not be reelected, Bush showed future presidents that it was best to issue controversial pardons during the lame duck years in order to avoid any political backlash.

After Bush, we come to Clinton whom most people believe to be the most controversial. These people have a valid case because of the scope of his pardons. Clinton provided clemency for people who had paid relatives for soliciting pardons, directly solicited him through gifts, were involved in past scandals associated with him and his wife, and people who were even on FBI most wanted lists.

The big problem however remains the pardoning process and the question of what to do about it. First we must decide if we should do anything about it. The pardon process has been an integral part of the executive branch since the nation's development, and many would argue that we should not change a successful process because of the wrongdoings of a few. However, if it is decided that something must be done, it must be something that will set a precedent for future presidents to follow. Because partisan politics will never go away and you cannot disperse the pardoning process among Congress, many people argue that there must be an amendment to keep a president in check. If we don't remove a convicted president's pension then we must check him with the judiciary branch. This could be accomplished by having the Supreme Court or a lower Federal court approve all pardons. Although this could still be affected by partisanship, it could potentially pose for a more deserving pardon. However, this would totally undermine what the Framers of the

Constitution had in mind. The Federalist Papers addressed this issue stating,

*As the sense of the responsibility is always strongest in proportion as it is undivided, it may be inferred that a single man would be most ready to attend to the force of those motives which might plead for a mitigation of the rigor of the law...men often encourage each other in an act of obduracy, and might be less sensible to the apprehension of suspicion or censure for an injudicious or affected clemency. On these accounts, one man appears to be more eligible dispenser of the mercy of the government than a body of men.<sup>1</sup>*

Another avenue that could be pursued is a criminal punishment. A punishment that could be levied upon Mr. Clinton would be the removal of his BAR membership. Although, this has already been done for lying under oath, it could be permanently extended. This punishment, however, may not prove effective on other presidents such as the Bushes who do not possess a BAR membership. In this regard, it could be amended that punishment will be deemed individually. Upon being found guilty in an impeachment trial, this would allow Congress to hit a president where it would hurt, deciding what this might be with each different president. However, even with an impeachment trial this would start a startling trend of post term presidential attacks, which is exactly what Ford hoped to avoid with the pardon he issued to Nixon. These amendments are not needed to finish the 'witch hunt' of Clinton, but

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<sup>1</sup>. Hamilton, Madison, and Jay, The Federalist Papers, 415-416.

rather to make sure that this gross legal injustice is not allowed to take place again. There is only one problem in setting a precedent; there is a need for a first.

Going past Clinton we come to another interesting topic. If we do not pursue criminal charges on a president in which we have proof of guilt because of a sensitive time period, we will set another harmful precedent surrounding the pardon process. If we don't prosecute a guilty president how do we prevent similar occurrences from happening in the future? The answer is we don't, unless Congress or the Supreme Court passes something that could prohibit illegal usage of the power. There has been a couple proposed restrictions in Congress to prevent similar occurrences from happening again. One proposal by Barney Frank, a Massachusetts Democrat, was to ban pardons between October 1<sup>st</sup> in a presidential election year and the end of a president's term. This bill, however, was unable to pass into law.<sup>2</sup> Another proposed restriction was sponsored by Senator Arlene Specter. Specter's bill required disclosure of donations that totaled more than \$5,000, to presidential libraries to be made public information.<sup>3</sup> These amendments, however, are not as promising as the Mondale amendment, which was briefly considered after the Nixon pardon. The Mondale amendment allowed for a president's pardon to be overridden by a two-thirds vote of both the House of Representatives and the Senate within 180

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<sup>2</sup>. House of Representatives, Committee on the Judiciary, "Presidential Pardon Power," 107<sup>th</sup> Cong., 1<sup>st</sup> sess., 28 February 2001, 12-15.

<sup>3</sup>. U.S. Congress, Senate, Committee on the Judiciary, "Clinton's Use of the Pardon Power: Hearing Before the Subcommittee on Senate Governmental Affairs," 107<sup>th</sup> Cong., 1<sup>st</sup> sess., 3 March 2001. 6.

days of the issued pardon.<sup>4</sup> This is probably the best proposed amendment yet, but it also has a problem. The allowed 180 days would have to be changed or else a pardon that was issued as a decisive and swift end to a problem would lie in limbo throughout the allotted time for congressional reprieve. Ken Gormley, a professor of constitutional law at Duquesne University, addressed this problem in a statement to Congress in which he proposed amending the Mondale amendment with a 60 to 90 day period for Congress to act on a controversial pardon.<sup>5</sup> However, this has not happened yet and so far the only advancement in this area has come from the *Pardon Attorney Reform and Integrity Act*. This bill passed by the Senate takes a different route in placing blame for these controversial pardons. The act will require future pardon attorneys to make sure the victims have a voice in the process, as well as make sure that all law enforcement and judicial persons involved in the case are allowed to provide input. The act also requires that the pardon attorney keep all persons of interest up to date on all important dates and events surrounding the case. However, in order for the bill to apply, the president must first request a review by the Pardon Attorney, something that has been bypassed many times since Ford's pardon of Nixon.<sup>6</sup> So in the end, this bill really does nothing for restricting the usage of

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<sup>4</sup>. U.S. Congress, Senate, Committee on the Judiciary, "Statement of Professor Ken Gormley; Hearing before the Senate Judiciary Committee concerning possible constitutional amendments to the president's pardon power," 107<sup>th</sup> Cong., 1<sup>st</sup> sess., 14 February 2001, 1-5 & 9.

<sup>5</sup>. Ibid.

<sup>6</sup>. U.S. Congress, Senate, Committee on Government Reform, "Pardon Attorney Reform and Integrity Act: Before the Senate Committee on Government Reform," 106<sup>th</sup> Cong., 2<sup>nd</sup> sess., 9 February 2000.

controversial pardons. The only thing it accomplishes is a more structured account of the Pardon Attorney's part. Something which there has been no complaint about during this timeline.

So in moving on to the second President Bush and future presidents to come, we must still rely on the constitution as read through the Federalist Papers.

*The criminal code of every country partakes so much of necessary severity that without an easy access to exceptions in favor of unfortunate guilt, justice would wear a countenance to sanguinary and cruel. As the sense of responsibility is always strongest in proportion as it is undivided, it may be inferred that a single man would be most ready to attend to the force of those motives which might plead for a mitigation of the rigor of the law, and least apt to yield to considerations which were calculated to shelter a fit object of its vengeance.<sup>7</sup>*

But Hamilton, Madison, and Jay had two problems with their philosophy: 1. they counted on the hope that all persons elected to such high office would share the commonality of high morals and, 2. in resting the power in one man so that he could bear the whole of the responsibility, they did not take into account a lame duck president. Both of these problems can be easily noticed but hard to solve. These simple problems to a noble power have still not been dealt with and have caused us, regrettably, to be on the brink of removing this noble power or limiting it.

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<sup>7</sup>. Hamilton, Madison, and Jay, The Federalist Papers, 415-416.

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Statement on Granting Pardons to W. Mark Felt and Edward  
S. Miller  
April 15, 1981

Pursuant to the grant of authority in article II, section 2 of the Constitution of the United States, I have granted full and unconditional pardons to W. Mark Felt and Edward S. Miller.

During their long careers, Mark Felt and Edward Miller served the Federal Bureau of Investigation and our nation with great distinction. To punish the further—after 3 years of criminal prosecution proceedings - would not serve the ends of justice.

Their convictions in the U.S. District Court, on appeal at the time I signed the pardons, grew out of their good faith belief that their actions were necessary to preserve the security interests of our country. The record demonstrates that they acted not with criminal intent, but in the belief that they had grants of authority reaching to the highest levels of government.

America was at war in 1972, and Messrs. Felt and Miller followed procedures that they believed essential to keep the Director of the FBI, the Attorney General, and the President of the United States advised of the activities of hostile foreign powers and their collaborators in this country. They have never denied their actions, but , in fact came forward to acknowledged them publicly in order to relieve their subordinate agents from criminal actions.

Four years ago, thousands of draft evaders and others who violated the Selective Service laws were unconditionally pardoned by my predecessor. America was generous to those who refused to serve their country in the Vietnam War. We can be no less generous to two men who acted on high principle to bring an end to the terrorism that was threatening our nation.

Ronald Reagan

Affidavit of  
George M. Steinbrenner, III

I, George Steinbrenner, III, hereby state as follows: this Affidavit is submitted in support of my Petition for Pardon submitted to the President of the United States

1. My name is George M. Steinbrenner, III, and I reside at 5002 Shorecrest Circle, Tampa, Florida 33609.
2. In August 1974 I was the Chairman of the Board and Chief Executive Officer of the American Ship Building Company.
3. On August 23, 1974, I pled guilty in the United States District Court for the Northern District of Ohio to the felony of conspiracy to make corporate campaign contributions in violation of 18 U.S.C. 610. I also pled guilty to the misdemeanor charge of being an accessory after the fact to violations of Section 610 committed by American Ship Building and two of its officers.
4. My plea of guilty to those charges was voluntary and entirely proper. I was represented by eminent counsel, the late Edward Bennett Williams, and fully understood what I was doing. I explained to Judge Conte at the plea hearing that relying upon the legal advice of two of our corporate attorneys, I had authorized bonuses to be paid to employees with the understanding that they would from time to time use the money to contribute to national political campaigns as directed by the company. I also concurred with Mr. Williams' explanations and further explained to the Judge that, in connection with the FBI and Grand Jury investigations of the matter, I became aware that an attorney for the company had conveyed a false and misleading explanation of the events to various employees, and I did not take strong enough action to correct the situation. Additionally, Mr. Williams and I pointed out that, in discussing the events with certain

employees, I recounted a version that was favorable to the company with the hope of having those employees accept my recollection and to transmit it to the FBI. My guilty pleas were accepted as a result of these explanations of the events.

5. Nevertheless, pleading guilty to those charges was difficult for me to do. I had led a law-abiding life before the events giving rise to the charges, and I felt that I had been an upstanding citizen. After facing the realities of the situation, it became apparent that I had engaged in certain conduct, which was in fact prohibited by law. But admitting to myself that I had committed criminal offenses, even though it was clear as a matter of law, was something that I was unable to do then.
6. I have had a long time to think about what I did—eighteen years now—and over that time I have come to fully accept that my actions or lack of action in what occurred was in fact criminal conduct. The events giving rise to the charges are events in my life of which I am deeply remorseful. This mistake has had serious repercussions for me, my family, and some of my company's employees.
7. Throughout my life I have had an abiding faith in and respect for the American system of government. I understand that section 610 was intended to protect and preserve our system for selecting national leaders from undue influence of corporate funds. Seeking to evade the restrictions of Section 610 was totally inconsistent with the salutary process of the law.
8. In seeking a pardon, I am mindful of the offenses I committed. I regret what happened and have done all that I could since my conviction to atone for my transgressions. It is my sincere hope that the President will see fit to grant my petition.

Signed under the pains and penalties of perjury  
George M. Steinbrenner III,  
Subscribed and sworn before me this 15<sup>th</sup> day of  
September, 1988.

Leonard L. Kleinman,  
Notary Public  
My commission Expires 10/5/1991.

*Proclamation 6518  
Grant of Executive Clemency  
December 24, 1992*

*By the President of the United States of America*

*A Proclamation,*

*Today I am exercising my power under the Constitution to pardon former Secretary of Defense Caspar Weinberger and others for their conduct related to the Iran Contra affair.*

*For more than 6 years now, the American people have invested enormous resources into what has become the most thoroughly investigated matter of its kind in our history. During that time, the last American hostage has come home to freedom, worldwide terrorism has declined, the people of Nicaragua have elected a democratic government, and the Cold War has ended in victory for the American people and the cause of freedom we championed.*

*In the mid 1980's however, the outcome of these struggles was far from clear. Some of the best and most dedicated of our countrymen were called upon to step forward. Secretary Weinberger was among the foremost.*

*Caspar Weinberger is a true American patriot. He has rendered long extraordinary service to our country. He served for 4 years in the Army during World War II where his bravery earned him a Bronze Star. He gave up a lucrative career in private life to accept a series of public positions in the late 1960's and 1970's, including Chairman of the Federal Trade Commission, Director of the Office of Management and Budget, and Secretary of health, Education, and Welfare. Caspar Weinberger served in all these position with distinction and was admired as a public servant above reproach.*

*He saves his best for last. As Secretary of Defense throughout most of the Reagan Presidency, Caspar Weinberger was one of the principal architects of the downfall of the Berlin Wall and the Soviet Union. He directed the military renaissance in this country that led to the breakup of the communist bloc and a new birth of freedom and democracy. Upon his resignation in 1987, Caspar Weinberger was awarded the highest civilian medal our Nation can bestow on one of its citizens, the Presidential Medal of Freedom.*

*Secretary Weinberger's legacy will endure beyond the ending of the Cold War. The military readiness of this*

Nation that he in large measure created could not have been better displayed than it was 2 years ago in the Persian Gulf and today in Somalia.

*As Secretary Weinberger's pardon request noted, it is a bitter irony that on the day the first charges against Secretary Weinberger were filed, Russian President Boris Yeltsin arrived in the United States to celebrate the end of the Cold War. I am pardoning him not just out of compassion or to spare a 75-year-old patriot the torment of lengthy and costly legal proceedings, but to make it possible for him to receive the honor he deserves for his extraordinary service to our country.*

*Moreover, on a somewhat more personal note, I cannot ignore the debilitating illnesses faced by Caspar Weinberger and his wife. When he resigned as Secretary of Defense, it was because of his wife's cancer. In the years since he left public service, her condition has not improved. IN addition, since that time, he also has become ill. Nevertheless, Caspar Weinberger has been a pillar of strength for his wife; this pardon will enable him to be by her side undistracted by the ordeal of a costly and arduous trial.*

*I have also decided to pardon five other individuals for their conduct related to the Iran Contra affair: Elliott Abrams, Duane Clarridge, Alan Fiers, Clair George, and Robert McFarlane. First, the common denominator of their motivation—whether their actions were right or wrong—was patriotism. Second, they did not profit or seek to profit from their conduct. Third, each has a record of long and distinguished service to this country. And finally, all five have already paid a price—in depleted savings, lost careers, anguished families—grossly disproportionate to any misdeeds or errors of judgment they may have committed.*

*The prosecutions of the individuals I am pardoning represent what I believe is a profoundly troubling development in the political and legal climate of our country: the criminalization of policy differences. These differences should be addressed in the political arena, without the Damocles sword of criminality hanging over the heads of some of the combatants. The proper target is the President, not his subordinates; the proper forum is the voting booth, not the courtroom.*

*In recent years, the use of criminal processes in policy disputes has become all too common. It is my hope that the action I am taking today will begin to restore*

*these disputes to the battleground where they properly belong.*

*In addition, the actions of the men I am pardoning took place within the larger Cold War struggle. At home, we had a long, sometimes heated debate about how that struggle should be waged. Now the Cold War is over. When earlier wars have ended, Presidents have historically used the power to pardon to put bitterness behind us and look to the future. This healing tradition reaches at least from James Madison's pardon of Lafitte's pirates after the War of 1812, to Andrew Johnson's pardon of soldiers who had fought for the Confederacy, to Harry Truman's and Jimmy Carter's pardons of those who violated the Selective Service laws in World War II and Vietnam.*

*In many cases, the offenses pardoned by these Presidents were at least as serious as those I am pardoning today. The actions of those pardoned and the decisions to pardon them raised important issues of conscience, the rule of law, and the relationship under our Constitution between the government and the governed. Notwithstanding the seriousness of these issues and the passions they aroused, my predecessors acted because it was time for the country to move on. Today I do the same.*

*Some may argue that this decision will prevent full disclosure of some new key fact to the American people. That is not true. This matter has been investigated exhaustively. The Tower Board, the Joint Congressional Committee charged with investigating the Iran-Contra affair, and the Independent Counsel have looked into every aspect of this matter. The Tower Board interviewed more than 80 people and reviewed thousands of documents. The Joint Congressional Committee interviewed more than 500 people and reviewed more than 300,000 pages of material. Lengthy committee hearings were held and broadcast on national television to millions of Americans. And as I have noted, the Independent Counsel investigation has gone on for more than 6 years, and it has cost more than \$31 million.*

*Moreover, the Independent Counsel stated last September that he had completed the active phase of his investigation. He will have the opportunity to place his full assessment of the facts in the public record when he submits his final report. While no impartial person has seriously suggested that my own role in this matter is legally questionable, I have further requested that the*

*Independent Counsel provide me with at copy of my sworn testimony to his office, which I am prepared to release immediately. And I understand Secretary Weinberger has requested the release of all his notes pertaining to the Iran-Contra matter.*

*For more than 30 years in public service, I have tried to follow three precepts: honor, decency, and fairness. I know, from all those years of service, that the American people believe in fairness and fair play. In granting these pardons today, I am doing what I believe honor, decency, and fairness require.*

*NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, pursuant to my powers under Article II, Section 2 of the Constitution, do hereby grant a full, complete, and unconditional pardon to Elliot Abrams, Duane R. Clarridge, Alan Fiers, Clair George, Robert C. McFarlane, and Caspar W. Weinberger for all offenses charged or prosecuted by Independent Counsel Lawrence E. Walsh or other member of his office, or committed by these individuals and within jurisdiction of that office.*

*IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fourth day of December, in the year of our Lord nineteen hundred and ninety-two and of the Independence of the United States of America the two hundred and seventeenth.*

Clinton's explanation for last minute pardons, New York Times, 18 February 2001, section 4, pg. 13.

*"Ordinarily I would have denied pardons in this case simply because these men did not return to the United States to face the charges against the. However, I decided to grant the pardons in this unusual case for the following legal and foreign policy reasons: (1) I understood that the other [similarly situated] oil companies [were] sued civilly by the government: (2) I was informed that, in 1985, in a related case against a trading partner of Mr. Rich and Mr. Green, the Energy Department... Found that the manner in which the Rich/Green companies had accounted for these transactions was proper: (3) two highly regarded tax experts reviewed the transactions in question and concluded that the companies "were correct in their U.S. income tax treatment of all the items in question." (4) in order to settle the government's case against them, the two men's companies had paid approximately \$200 million in fines, penalties and taxes; (5) the Justice Department in 1989 rejected the use of racketeering statutes in tax cases like this one; (6) it was my understanding that Deputy Attorney Eric Holder's position on the pardon was "neutral, leaning for" (7) the case for the former White House counsel Jack Quinn but also by three distinguished Republican attorneys: Leonard Garment, a former Nixon White House official; William Bradford Reynolds, a former high-ranking official in the Reagan Justice Department; and Lewis Libby, now Vice President Cheney's Chief of Staff; (8) finally, and most importantly, many present and former high-ranking Israeli officials of both major political parties and leaders of Jewish communities in America and Europe urged the pardon of Mr. Rich because of his contributions and services to Israeli charitable causes, to the Mossad's efforts to rescue and evacuate Jews from hostile countries, and to the peace process through sponsorship of education and health reform in Gaza and the West Bank... I believe my pardon was in the best interests of justice. If the two men were wrongly indicted in the first place, justice has now been done.*

VITA  
MICHAEL KEITH ALLEN

Personal Data:                   Date of Birth: February 6, 1979  
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                                  Marital Status: Single

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                                  East Tennessee State University,  
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