USE AND MISUSE OF PRESIDENTIAL CLEMENCY POWER FOR EXECUTIVE BRANCH OFFICIALS

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BEFORE THE

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HOUSE OF REPRESENTATIVES

ONE HUNDRED TENTH CONGRESS

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USE AND MISUSE OF PRESIDENTIAL CLEMENCY POWER FOR EXECUTIVE BRANCH OFFICIALS

WEDNESDAY, JULY 11, 2007

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to call, at 12:30 p.m., in Room 2138, Rayburn House Office Building, the Honorable John Conyers, Jr. (Chairman of the Committee) presiding.

Present: Representatives Conyers, Nadler, Scott, Lofgren, Jackson Lee, Delahunt, Wexler, Cohen, Weiner, Wasserman Schultz, Ellison, Smith, Sensenbrenner, Coble, Gallegly, Chabot, Lungren, Cannon, Keller, Issa, Pence, Forbes, King, Feeney, Franks, Gohmert, and Jordan.

Staff Present: Perry Apelbaum, Staff Director and Chief Counsel; Mark Dubester, Majority Counsel; Caroline Lynch, Minority Counsel; Allison Beach, Minority Counsel; Sean McLaughlin, Deputy Chief Minority Counsel/Staff Director; Crystal Jezierski, Minority Counsel; and Matt Morgan, Staff Assistant.

Mr. CONYERS. The Committee will come to order. I welcome my colleagues, our witnesses, and our guests here in the Judiciary hearing room. We are gathered here today on the subject of the hearing on the use and misuse of President's commutation power. Without objection, the Chair is authorized to declare a recess.

And I begin with the observation that there are few principles in our society more important than equal justice under law. The idea that no man or woman is above the law is firmly embedded in our Nation's founding documents and underlies the entirety of the criminal justice system.

When clemency is granted outside the normal pardon system, and particularly when it is issued to members of the President's own Administration, that fundamental concept is called into question.

I respect the President's authority under the Constitution to grant clemency. At the same time, I would hope that the White House would acknowledge our role as a co-equal branch of government with not only the right but the duty to conduct oversight.

Today as part of our oversight responsibility I hope we can obtain answers to several important questions surrounding the President's recent decision to commute the prison sentence of Mr. Libby: Was the grant of clemency here consistent with other pardons and commutations by this President? Were the prosecutor, the pardon

attorney or other relevant officials in the Department of Justice consulted before the commutation was issued? Was the process to consider the commutation fair, thorough and available to similarly situated individuals? Was the net result of the commutation consistent with the Nation's sentencing guidelines?

Looking at his initial public statement, the President evidently believed that the 30-month prison sentence issued by Judge Walton was too harsh but felt some punishment was appropriate; in this case, a fine and probation. Is there any construction by which this ultimate sentence is consistent with sentencing guidelines? If not, do we need to reconsider the guidelines so that whatever factor the President identified can be taken into account in future sentencing decisions for others? What impact will the President's decision have on Congress' ability to learn how Ms. Plame came to be outed from the CIA in 2003? Was her outing the inadvertent result of a slip of the tongue by a government bureaucrat or was it part of a larger conspiracy to besmirch Ms. Plame and her husband Ambassador Wilson, who had written an op ed criticizing the Administration? Does the fact that Mr. Libby has received a commuted sentence rather than a pardon inhibit Congress' ability to learn the truth?

Some have sought to divert our efforts to ascertain the truth in this matter by focusing on unrelated issues or by muddying the facts of the Libby investigation. For example, it has been asserted that criminal charges should never have been brought against Mr. Libby or that there was never an underlying crime. But of course this belies the fact that Mr. Fitzgerald's investigation found that several individuals, including Mr. Libby, leaked classified information not just to Mr. Novak but to the *New York Times*, Time Magazine, and other publications.

Some have tried to turn our attention to the events of some 7 years ago when President Clinton pardoned Mark Rich. I did not support that action. But whatever its demerits were, it was investigated in four separate hearings in the Senate and the House and it did not involve someone who worked in the White House and who could potentially implicate others there, as may be or appears to be the case in this instance.

I close by noting that if we are truly to get to the bottom of the controversies surrounding the President's commutation of Mr. Libby's present sentence, we would need to hear from two additional parties. The first is Special Counsel Patrick Fitzgerald. He declined our invitation to participate today, but I hope that at some point he will offer us his perspective and that he does so when it is still timely and relevant.

The second party of course is the White House. I have written President Bush asking him not to assert executive privilege in this matter, just as President Clinton did not assert the privilege 7 years ago. I have not received a response as of yet, but certainly obtaining the testimony of those directly involved in the commutation would be useful and informative to this Committee. The principle of equal justice under law demands no less.

I am pleased now to recognize the Ranking Member of the House Judiciary Committee, the gentleman from Texas, Mr. Lamar Smith.

Mr. SMITH. Thank you, Mr. Chairman. A wise American once said, quote, "we are a Nation of laws, and if any matter is abundantly clear by our Constitution, it is that the President has the sole and unitary power to grant clemency," end quote.

I agree with that statement, which was made by Chairman Conyers about President Clinton's grant of clemency to 16 members of the FALN organization. The Constitution does give the President the authority to grant clemency. Congress cannot restrict this power, and yet here we are spending time and resources that would be better used focusing on the real needs of the American people, protecting our country from terrorist attacks, such as those recently attempted at Ft. Dix, New Jersey and JFK Airport in New York, securing our borders and reducing illegal immigration, investigating gang violence and violent crime, which is on the rise, and protecting our children from sexual predators on the Internet.

Each of these issues was a priority for this Committee during the last Congress and there are pending bills within the Judiciary Committee's jurisdiction on these subjects now. It is time to get back to the people's business. But here we go again and we will spend half a day on the President's decision to commute the 30-month prison sentence of one person, an individual with an outstanding lifetime reputation.

To put this in perspective, President Clinton admitted to perjury, was not sentenced to jail, and paid no fine. Sandy Berger, Mr. Clinton's National Security Adviser, did not go to jail for lying to investigators about stealing classified documents from the National Archives. President Clinton granted a total of 457 pardons and commutations compared to only 117 to date for President Bush.

President Franklin Roosevelt granted 3,687 during his 4-year terms in office, and President Harry Truman granted 1,913. What is it about Democratic Presidents and pardons? I was going to call President Clinton the king of pardons, but considering these figures, I think it is only fair to call him the prince of pardons. However, on his last day in office President Clinton issued dozens of pardons, an unprecedented use of the pardon authority, and of course by waiting until then to announce the pardons Mr. Clinton escaped being held accountable for his actions while in office.

One of President Clinton's pardons went to Mark Rich, a fugitive from justice who fled to Switzerland. He was granted clemency after being indicted for tax evasion and illegal oil deals made with Iran during the hostage crisis. Over $400,000 was donated by his ex-wife Denise Rich to the Clinton Library and the Democratic Party.

Other notorious Clinton clemencies went to 16 members of FALN, a Puerto Rican Nationalist Group responsible for setting off 120 bombs in the United States, killing six and injuring dozens more.

In 1999, the House passed a resolution by a vote of 311 to 41 that the President should not have granted clemency to terrorists. Only 2 Democrats on the Judiciary Committee today voted in favor of the resolution, 14 Democrats voted against the resolution or voted present. I hope they will show the same leniency toward Mr. Libby.

Mr. Clinton also pardoned numerous criminals convicted of cocaine distribution and trafficking, including his half brother Roger and Carlos Vignale, who paid the First Lady's brother $200,000 to represent him. Also pardoned was a former Cabinet member who pleaded guilty to making false statement to authorities, and Susan McDougal, a real estate business partner of the Clintons who had relevant information about the Whitewater scandal and had been convicted of criminal contempt.

As troubling as these pardons are, they are within President Clinton's authority to grant and neither I nor this Committee nor Congress can limit that power.

New York Times columnist David Brooks summed it up last week in a column about Mr. Libby. He said, quote: "Of course the howlers howl. That is their assigned posture in this drama. They entered howling, they will leave howling, and the only thing you can count on is their anger has been cynically manufactured from start to finish," end quote.

Mr. Chairman, I have never offered my Democratic friends advice before, which is obviously unsolicited and no doubt unwanted, but if you want to avoid becoming the party of howlers, forget the partisanship, the Bush bashing, and the negativism. Let's come up with a positive agenda that benefits working men and women. The American people will appreciate it.

I welcome our witnesses and look forward to hearing their testimony, and I yield back the balance of my time.

Mr. CONYERS. I thank the gentleman, and without objection, other Members' opening statements will be included in the record. And I accept his advice as well.

The witness list includes Tom Cochran, Professor Douglas A. Berman, David Rivkin, Roger Adams, and the Honorable Joseph C. Wilson, IV, former Ambassador. Mr. Wilson from 1976 to 1998, during both Democratic and Republican administrations, held various diplomatic posts throughout Africa, eventually serving as Ambassador to Gabon. He was Acting Ambassador to Iraq when it invaded Kuwait in 1990. He is married to the former CIA agent, Valerie Plame. He will be our first witness.

The witnesses know we limit testimony to 5 minutes. Welcome, all witnesses. Welcome, Ambassador Wilson.

TESTIMONY OF THE HONORABLE JOSEPH C. WILSON, IV, FORMER AMBASSADOR

Mr. WILSON. Thank you, Congressman, Mr. Chairman. Mr. Chairman, Mr. Ranking Member, Members of the Committee, thank you for the invitation to appear before you at this hearing on the possible abuse of presidential authority in the commutation of I. Lewis Libby, convicted on four counts of lying to Federal investigators, perjury, and obstruction of justice.

I am not a lawyer, but I have understandably followed this case closely. This matter, after all, involves the betrayal of our national security, specifically the leaking of the identity of a covert officer of the Central Intelligence Agency, my wife, Valerie Wilson, as a vicious means of political retribution.

After it became apparent in the spring of 2003 that one of the key justifications for war in the President's State of the Union Ad-

dress was not supported by the facts, I felt an obligation and a sense of responsibility to the American people and to our men and women in uniform to share my firsthand knowledge about the unsubstantiated allegations of uranium yellowcake sales from Niger to Iraq.

Accordingly, in a *New York Times* article of July 6, 2003, I disclosed the deliberate deception surrounding the justification for the invasion, conquest and occupation of Iraq. Eight days later Valerie's status as a CIA operative was made public in a newspaper column by Robert Novak. We now know from testimony and evidence presented in the *United States v. I. Lewis Libby* that Novak's column was the end product of a process that was initiated by Vice President Cheney, who directed his Chief of Staff Scooter Libby to supervise it.

Never in my 23 years as a member of the Diplomatic Service of the United States did I ever imagine a betrayal of our national security at the highest levels. Fifteen years ago this week I was sworn in as George Herbert Walker Bush's Ambassador to two African nations, the Gabonese Republic and the Democratic Republic of Sao Tome and Principe. Seventeen years ago I served as his Acting Ambassador to Iraq in the first Gulf War. I was the last American diplomat to confront Saddam Hussein about his invasion of Kuwait prior to Desert Storm. As Acting Ambassador, my embassy was responsible for the safe evacuation of over 2,000 Americans from Kuwait and Iraq and the release of close to 150 Americans being held hostage by Saddam and his thugs.

I was proud to serve my country mostly overseas for 23 years in both Republican and Democratic administrations and to promote and defend the values enshrined in our Constitution and Bill of Rights. I was honored to be then President Bush's Envoy to Iraq and to have been part of the foreign policy team that managed the international crisis created by Saddam's invasion of Kuwait. Members of that foreign policy team remain among my closest colleagues and friends.

Given my service, it has been therefore disconcerting to see my family and me targeted in the crosshairs of a character assassination campaign launched by the Vice President and carried out by his Chief of Staff and by the President's political aide, Carl Rove, among others.

Ultimately this concerted effort to discredit me, ruining my wife's career along the way, has had a larger objective. This matter has always been about this Administration's case for war and willingness to mislead the American people to justify it.

In order to protect its original falsehoods, the Vice President and his men decided to engage in a further betrayal of our national security. Scooter Libby sought to blame the press, yet another deception. He was willing even to allow a journalist to spend 85 days in jail in a most cowardly act designed to avoid telling the truth.

President Bush promised that if any member of the White House staff were engaged in this matter, it would be a firing offense. However, the trial of Scooter Libby has proved conclusively that Carl Rove was involved and although he escaped indictment he still works at the White House. We also know as a result of evidence introduced in that trial that President Bush himself selec-

tively declassified national security material to attempt to support the false rationale for war.

The President's broken promise and his own involvement in this unseemly smear campaign reveal a chief executive willing to subvert the rule of law and system of justice that has undergirded this great republic of ours for over 200 years.

Make no mistake, the President's actions last week cast a pall of suspicious over his office and Vice President Cheney. Mr. Libby was convicted of, among other things, obstruction of justice, a legal term used to describe a coverup. The Justice Department's Special Counsel Patrick Fitzgerald has said repeatedly that Mr. Libby's blatant lying has been the equivalent of throwing sand in the eyes of the umpire, therefore ensuring that the umpire, our system of justice, cannot ascertain the whole truth.

As a result Fitzgerald has said a cloud remains over the Vice President. In commuting Mr. Libby's sentence the President has removed any incentive for Mr. Libby to cooperate with the prosecutor. The obstruction of justice is ongoing and now the President has emerged as its greatest protector.

The President's explanation for his commutation that Mr. Libby's sentence was excessive turns out to be yet another falsehood because the sentence was quite normal, as Special Counsel Fitzgerald noted.

The President at the very least owes the American people a full and honest explanation of his actions and those of other senior Administration officials in this matter, including but not limited to the Vice President.

In closing, let me address the question of the underlying crime. Mr. Libby's attorneys and his apologists have tried to downplay the conviction on the grounds that nobody was actually indicted for the leak of Valerie's status as a covert CIA officer. Libby's propaganda is an effort to distract from his crime, his obstruction of justice, his coverup. Who is he protecting?

I would like the Committee Members and all Americans to think about this matter in this way: If senior American officials take time from their busy schedules to meet with a foreign military attache for the purpose of compromising the identity of a CIA covert officer, what would we call that? Although that scenario is hypothetical, the end result is no different from what happened in this case, the betrayal of our national security.

I look forward to answering any and all legitimate questions. Thank you.

Mr. CONYERS. Thank you.

[The prepared statement of Mr. Wilson follows:]

PREPARED STATEMENT OF AMBASSADOR JOSEPH C. WILSON, IV (RET.)

Mr. Chairman, Mr. Ranking member, members of the Committee,

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Ultimately, this concerted effort to discredit me, ruining my wife's career along the way, has had a larger objective. This matter has always been about this administration's case for war and its willingness to mislead the American people to justify it. In order to protect its original falsehoods, the Vice President and his men decided to engage in a further betrayal of our national security. Scooter Libby sought to blame the Press, yet another deception. He was willing even to allow a journalist to spend eighty-five days in jail in a most cowardly act to avoid telling the truth.

President Bush promised that if any member of the White House staff were engaged in this matter, it would be a firing offense. However, the trial of Scooter Libby has proved conclusively that Karl Rove was involved, and although he escaped indictment, he still works at the White House. We also know as a result of evidence introduced in the trial that President Bush himself selectively declassified national security material to attempt to support the false rationale for war. The President's broken promise and his own involvement in this unseemly smear campaign reveal a chief executive willing to subvert the rule of law and system of justice that has undergirded this great republic of ours for over 200 years.

Make no mistake, the President's actions last week cast a pall of suspicion over his office and Vice President Cheney. Mr. Libby was convicted of, among other crimes, obstruction of justice—a legal term used to describe a cover-up. The Justice Department's Special Counsel, Patrick Fitzgerald, has said repeatedly that Mr. Libby's blatant lying had been the equivalent of "throwing sand in the eyes of the umpire", thereby ensuring that the umpire, the system of justice, cannot ascertain the whole truth. As a result, Fitzgerald has said, "a cloud remains over the Vice President." In commuting Mr. Libby's sentence, the President has removed any incentive for Mr. Libby to cooperate with the prosecutor. The obstruction of justice is ongoing and now the President has emerged as its greatest protector. The President's explanation for his commutation that Mr. Libby's sentence was excessive turns out to be yet another falsehood because the sentence was quite normal, as Special Counsel Fitzgerald noted. The President, at the very least, owes the American people a full and honest explanation of his actions and those of other senior administration officials in this matter, including, but not limited to the Vice President.

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I would like the committee members and all Americans to think about this matter in this way: If senior American officials take time from their busy schedules to meet with a foreign military attaché for the purpose of compromising the identity of a CIA covert officer, what would we call that? Although that scenario is hypothetical, the end result is no different from what happened in this case—the betrayal of our national security.

I look forward to answering any and all legitimate questions.

Mr. CONYERS. Doug Berman is the William B. Saxbe Professor at Ohio State University's Moritz College of Law. Professor Berman is nationally recognized in criminal law sentencing, co-author of the casebook, sentencing Law and Policy, creator and author of the Sentencing Law and Policy blog, and a longtime editor of the Federal Sentencing Reporter.

We welcome you to this hearing for your testimony.

TESTIMONY OF DOUGLAS A. BERMAN, PROFESSOR, MORITZ COLLEGE OF LAW, THE OHIO STATE UNIVERSITY

Mr. BERMAN. Thank you very much, Mr. Chairman, Mr. Ranking Member, Members of the Committee. I very much appreciate this opportunity to share my perspective on President George W. Bush's sudden and surprising decision to commute entirely the prison term of I. Lewis "Scooter" Libby.

As I will explain, President Bush's commutation was fundamentally a sentencing decision and a sentencing decision that is peculiar and suspect on its own terms and a sentencing decision that is inconsistent with the Justice Department's stated sentencing policies, with arguments Federal prosecutors make in court to courts across the Nation every day, and with the equal justice principles that Congress has pursued in modern sentencing reforms.

Significantly, President Bush's statement in support of the commutation actually praises Mr. Fitzgerald's investigation and prosecution and also the jury's work in returning convictions. Ultimately, the statement focuses its criticism on U.S. District Judge Reggie Walton's sentencing choices.

The President says, quote: "The prison sentence given to Mr. Libby is excessive," and that is why he says he decided to compute the 30-month prison term imposed by Judge Walton. Seeking to justify this decision, the President claims that Mr. Libby is still subject to, quote, "a harsh punishment because the commutation left in place the fine and supervision term ordered by Judge Walton." President Bush's statement also stresses collateral consequences, the damage to Mr. Libby's reputation and his family's suffering.

I must say as a student of sentencing that the stated reasons that President Bush gave for commuting all of Mr. Libby's prison time are somewhat hard to understand and perhaps even harder to justify. Mr. Libby's prison term was set at the bottom of the sentencing range suggested by the Federal guidelines created by the U.S. Sentencing Commission. This term was recommended by an experienced prosecutor and selected by an experienced judge.

The President's conclusion that Mr. Libby's term was excessive thus contradicts the recommendation of an expert sentencing agency and the determinations of the prosecutor and the judge most familiar with Mr. Libby's criminal offenses and personal circumstances.

Quite notably, under existing precedence the D.C. Circuit Court of Appeals would have considered Mr. Libby's 30-month prison term and even a longer term set within the guidelines presumptively reasonable on appeal.

Significantly, unlike some other high profile cases which have led to calls for the President to exercise his clemency power, even by some Members of this Committee, the prison sentence in Mr. Libby's case was not the product of a mandatory sentencing provision.

Judge Walton clearly had discretion to choose whatever term he thought was appropriate under the circumstances, although Federal law did require him to impose a sentence he judged sufficient but not greater than necessary to achieve the purposes of punishment that Congress has set forth in Federal law.

Obviously Judge Walton believed that not only a fine and supervision was necessary but that the 30-month prison term, again to stress at the bottom of the applicable sentencing range, was sufficient but not greater than necessary to achieve the punishment goals that Congress has set forth.

Of course defendants and their attorneys often complain that sentences set within guideline ranges are excessive and they frequently appeal within-guideline sentences, claiming that they are unreasonably long. But in thousands of such appeals in recent years no Federal appellate court has declared a single within-guideline sentence to be unreasonably long.

Indeed, since the Supreme Court's decision in *United States v. Booker* the vast majority of sentences imposed above the guidelines have been declared reasonable by Federal circuit courts and many sentences below the guidelines have been declared by courts unreasonable in light of congressional sentencing purposes and policies.

Even if one accepts the President's assertion that a 30-month prison term for Mr. Libby was excessive, it is hard to justify or understand the President's decision to commute Mr. Libby's prison sentence in its entirety, keeping Mr. Libby from having to spend even a single day in prison for convictions that the President in his own statement said were serious and are matters that cut to the heart of our criminal justice system.

The Justice Department in a series of policy advocacy and speeches to this Committee and speeches to the Senate and a variety of testimony has emphasized the importance of equal justice. Members of this Committee and Congress as a whole have often emphasized the need for guidelines to be enforced in a way to ensure that all members of society are treated equally.

Candidly, in my own writings I have been concerned that some of the personal circumstances emphasized by President Bush don't find their way into the application of the guidelines, but I am particularly concerned that the Bush administration argues every day in court that other persons should not be subject to the compassion that the President showed obviously in the statement toward Mr. Libby.

I have in my testimony detailed in particular some of the inconsistencies between the goals that Congress has pursued in sentencing reform and the statements made by the President. I am happy to answer questions about those particulars, and I very

much appreciate the chance to testify before this Committee. Thank you.

[The prepared statement of Mr. Berman follows:]

PREPARED STATEMENT OF DOUGLAS A. BERMAN

Written Statement of Professor Douglas A. Berman

William B. Saxbe Designated Professor of Law
Moritz College of Law, The Ohio State University

before

The U.S. House of Representatives
Committee on the Judiciary

on

"The Use and Misuse of Presidential Clemency Power for Executive Branch Officials"

July 11, 2007

Mr. Chairman, Mr. Ranking Member, members of the Committee:

Thank you for this opportunity to share my perspective on President George W. Bush's sudden and surprising decision to commute entirely the prison term of I. Lewis "Scooter" Libby.

As I will explain, President Bush's commutation was fundamentally a sentencing decision — a sentencing decision that is peculiar and suspect on its own terms, and a sentencing decision that is inconsistent with the Justice Department's stated sentencing policies, with arguments federal prosecutors make in courts across the nation every day, and with the equal justice principles Congress has pursued in modern sentencing reforms. Nevertheless, even though President Bush's commutation undermines the rule of law and complicates the work of federal prosecutors and judges, I hope this Committee will not respond by seeking to restrict historic Presidential clemency powers. Rather, because the President's commutation shines light on some troublesome consequences of peculiar use of the clemency power, I urge this Committee to seize this unique political moment to consider ways Congress might improve the process of, and public respect for, executive clemency decision-making.

I. The Commutation is a Peculiar and Suspect Sentencing Decision.

President Bush's official statement which accompanied his clemency decision sets out some reasons for his decision to commute entirely the prison term of Mr. Libby. Tony Snow and other White House officials have subsequently provided additional details about the President's thinking and the nature of his decision. These explanations make clear that the President's commutation is fundamentally a sentencing decision. But, upon careful review, the commutation is revealed to be a peculiar and suspect sentencing decision given the President's own statements about the Libby case and U.S. District Judge Reggie Walton's determination that Mr. Libby should receive a significant term of imprisonment for his crimes.

A. The President's explanation for commuting Mr. Libby's prison term

President Bush's official statement notes the "serious convictions of perjury and obstruction of justice" in Mr. Libby's case. The statement stresses the importance of the investigation into the leaking of Valerie Plame's name and describes Special Counsel Patrick Fitzgerald as "a highly qualified, professional prosecutor who carried out his responsibilities as charged." President Bush's statement also expresses "respect" for the jury's verdict and asserts that "if a person does not tell the truth, particularly if he serves in government and holds the public trust, he must be held accountable." President Bush emphasizes that "our entire system of justice relies on people telling the truth." Taken together, these statements indicate that the President has no public concerns about either the investigation or the prosecution that led to Mr. Libby's "serious convictions."

Though lauding Mr. Fitzgerald's investigation and prosecution and the jury's work,

President Bush's statement criticizes U.S. District Judge Reggie Walton's sentencing decision. The President's statement asserts that "the district court rejected the advice of the probation office," which apparently suggested a sentence in the range of 15-21 months' imprisonment. The President then explains that he has "concluded that the prison sentence given to Mr. Libby is excessive" and has decided to commute the 30-month prison term imposed by Judge Walton.

Seeking to justify this decision, the President claims that Mr. Libby is still subject to "a harsh punishment" because his commutation leaves in place the fine and supervision term ordered by Judge Walton. President Bush's statement also stresses collateral consequences — the damage to his reputation and his family's suffering — from Mr. Libby's convictions.

Providing a further account of the President's commutation decision, White House spokesman Tony Snow made these points in a July 5th *USA Today* commentary:

> The president believes pardons and commutations should reflect a genuine determination to strengthen the rule of law and increase public faith in government.... In reviewing the case, the president chose to rectify an excessive punishment, and at the same time, the president made clear that he would not second-guess the jury that found Libby guilty.

B. Peculiar and suspect aspects of the President's sentencing decision

The President's stated reasons for commuting all of Mr. Libby's prison are hard to understand and harder to justify. Mr. Libby's prison term was set at the *bottom* of the sentencing range suggested by the federal guidelines created by the U.S. Sentencing Commission; this prison term was recommended by an experienced prosecutor and selected by an experienced federal district judge. In other words, the President's conclusion that Mr. Libby's prison term was "excessive" contradicts the recommendation of an expert sentencing agency and the determinations of the prosecutor and judge most familiar with the details of Mr. Libby's criminal

offenses and personal circumstances. (Notably, under existing precedents, the U.S. Court of Appeals for the D.C. Circuit would have considered Mr. Libby's 30-month prison term — and even a longer within-guideline term — "presumptively reasonable" on appeal.)

Unlike some other high-profile cases which have led to calls for the President to exercise his clemency powers,[1] the prison sentence in Mr. Libby's case was not the product of a mandatory sentencing provision. Rather, under federal statutes, Judge Walton could have imposed a lower sentence or a sentence as high as the statutory maximum of 25 years' imprisonment. In the exercise of his discretion, however, Judge Walton was obliged to consider the guideline range of 30-37 months' imprisonment and was required to select a sentence he judged "sufficient, but not greater than necessary" to achieve the purposes of punishment Congress has set forth in 18 U.S.C. § 3553(a).

Judge Walton reached his sentencing decision after reviewing a detailed pre-sentencing report, lengthy sentencing memoranda from the parties, and hundreds of letters from interested persons. Judge Walton also held a sentencing hearing in which he heard arguments from the parties and provided Mr. Libby an opportunity to address the court directly. Judge Walton thereafter determined that a 30-month prison sentence for Mr. Libby, in addition to a sizeable fine and a post-imprisonment term of supervision, was appropriate in light of federal sentencing

[1] Two weeks ago, in a hearing before this Committee's Subcommittee on Crime, Terrorism and Homeland Security, numerous witnesses described how mandatory sentencing provisions can sometimes require judges to impose unduly severe prison sentences for certain offenders. Providing specific examples, these witnesses stressed the unfairness of the 11- and 12-year federal prison sentences received by former Border Patrol Agents Ignacio Ramos and Jose Alonso Compean, and noted the excessiveness of the 55-year federal prison sentence received by first-offender Weldon Angelos for minor marijuana sales. Despite many calls for clemency relief in these and other cases involving long mandatory prison terms, President Bush to date has not remedied or even expressed concern about an "excessive" sentence in any case where a judge was required to impose a long prison term without considering the defendant's unique circumstances.

law and policy.[2]

Judge Walton's sentencing determinations would appear to vindicate President Bush's stated view that "serious convictions of perjury and obstruction of justice," especially when committed by a person who "serves in government and holds the public trust," call for "a harsh punishment." Moreover, Judge Walton's selection of a prison term at the very *bottom* of the calculated guideline range suggests that he was attentive to collateral personal consequences that Mr. Libby's prosecution and convictions necessarily produce. Nevertheless, Judge Walton still concluded that a 30-month prison term was "sufficient, but not greater than necessary" to achieve the punishment goals Congress set out in 18 U.S.C. § 3553(a).

Of course, defendants and their attorneys often complain that sentences imposed within guidelines ranges are excessive, and they frequently appeal within-guideline sentences claiming that they are unreasonably long. In thousands of such appeals in recent years, however, no federal appellate court has declared a single within-guideline sentence to be unreasonably long. Indeed, since the Supreme Court's 2005 decision in *United States v. Booker*,[3] the vast majority of sentences imposed *above* the guidelines have been declared reasonable by federal circuit courts, and many sentences below the guidelines have been declared unreasonable in light of congressional sentencing purposes and policies.

Given that Mr. Libby faced a statutory maximum sentence of 25 years' imprisonment and

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[2] In an unusual statement issued the same day President Bush announced his commutation decision, Mr. Fitzgerald responded to the President's assertion that Mr. Libby's sentence was excessive by stressing its regularity:

> The sentence in this case was imposed pursuant to the laws governing sentencings which occur every day throughout this country. In this case, an experienced federal judge considered extensive argument from the parties and then imposed a sentence consistent with the applicable laws.

Statement of Special Counsel Patrick J. Fitzgerald (July 2, 2007).

a calculated guideline range of 30-37 months' imprisonment, Judge Walton's imposition of a prison term of only 30 months was arguably merciful. As noted above, this prison term would have been considered presumptively reasonable by the U.S. Court of Appeals. Against this legal backdrop, the President's conclusion that Mr. Libby's prison term was "excessive" is curious, to say the least.

Even if one accepts the President's assertion that a 30-month prison term for Mr. Libby was excessive, it is hard to justify or understand the President's decision to commute Mr. Libby's prison sentence *in its entirety*. It is particularly difficult to see how, in Tony Snow's words, "the rule of law" and "public faith in government" have been served by enabling Mr. Libby to avoid having to serve even one day in prison following his "serious convictions of perjury and obstruction of justice." Indeed, the conclusion to the prosecution's sentencing memorandum submitted to the District Court in this case spotlights why a term of imprisonment for Mr. Libby seemed essential — and certainly not "excessive" — to both Mr. Fitzgerald and Judge Walton:

> Mr. Libby, a high-ranking public official and experienced lawyer, lied repeatedly and blatantly about matters at the heart of a criminal investigation concerning the disclosure of a covert intelligence officer's identity. He has shown no regret for his actions, which significantly impeded the investigation. Mr. Libby's prosecution was based not upon politics but upon his own conduct, as well as upon a principle fundamental to preserving our judicial system's independence from politics: that any witness, whatever his political affiliation, whatever his views on any policy or national issue, whether he works in the White House or drives a truck to earn a living, must tell the truth when he raises his hand and takes an oath in a judicial proceeding, or gives a statement to federal law enforcement officers. The judicial system has not corruptly mistreated Mr. Libby; Mr. Libby has been found by a jury of his peers to have corrupted the judicial system.[4]

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[3] 543 U.S. 220 (2005).

[4] Government's Sentencing Memorandum, *United States v. Libby*, Cr. No. 05-394 (RBW), at 16-17 (May 25, 2007).

II. The Commutation is Contrary to the Bush Administration's Sentencing Policies and Practices, and to Principles of the Sentencing Reform Act.

Though peculiar and suspect on its own terms, President Bush's decision to commute entirely the prison term of Mr. Libby is especially puzzling and troubling in light of the Bush Administration's stated sentencing policies and practices. The President's commutation also undermines principles of modern federal sentencing reform reflected in the Sentencing Reform Act of 1984 and sentencing policies stressed by members of Congress from both political parties.

A. The Justice Department's modern vigorous advocacy for within-guidelines prison sentence for white-collar offenders

In testimony to Congress and the U.S. Sentencing Commission and in other policy advocacy, the Justice Department during the Bush Administration has repeatedly and vigorously argued for certain and stiff punishment for white-collar offenders. In addition, throughout the Bush Administration, federal prosecutors in courts nationwide have repeatedly and vigorously argued against judges reducing sentences below the guidelines based on the kinds of personal considerations mentioned in President Bush's commutation statement.

Policy advocacy. The Justice Department during the Bush Administration has consistently urged Congress and the Sentencing Commission to support and strengthen sentencing laws to ensure that white-collar offenders receive serious punishments including terms of imprisonment. Here are a few notable excerpts taken from written testimony and speeches from various Justice Department officials:

- In 2001, then-Acting Deputy Attorney General Robert Mueller testifying before the U.S. Sentencing Commission stressed the importance of equal and severe punishment for privileged defendants:

> When [successful professionals] break the law, they should not be excused from serving a prison sentence simply because they did not commit crimes of violence. The public has a right to expect that people with privileged backgrounds who commit crimes will not be exempt from the full force of the law and will not be treated with inappropriate leniency.[5]

- In 2002, then-U.S. Attorney James Comey echoed similar points when testifying before the United States Senate:

> [T]he real and immediate prospect of significant periods of incarceration is necessary to give force to law. Nothing erodes the deterrent power of our laws — and breeds contempt for obeying the law — more quickly than if certain criminals appear to receive punishment not according to the gravity of the offense, but according to their social or economic status.[6]

- In 2003, the Justice Department's Ex Officio member of the U.S. Sentencing Commission expressed the Justice Department's concerns about the Commission's failure to address "the increasingly severe problem of federal judges ignoring the existing guidelines to grant lenient sentences or even probation to wealthy, well connected criminals."[7]

- In a 2005 speech, Attorney General Alberto Gonzales advocated responding to the Supreme Court's *Booker* decision through "the construction of a minimum guideline system" in order to create "a system of tougher, fairer, and greater justice for all." Here are some of Attorney General Gonzales' points in support of his proposal to limit judicial authority to reduce sentences below calculated guideline ranges:

> In the 17-plus years that they have been in existence, federal sentencing guidelines have achieved the ambitious goals of public safety and fairness set out by Congress.... [because] increased incarceration means reduced crime.... Federal sentencing guidelines have helped keep Americans safe while also delivering on their promise to reduce unwarranted disparities in sentences....

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[5] Testimony of James B. Comey before the Subcommittee on Crime and Drugs of the Senate Judiciary Committee (June 19, 2002) (quoting prior testimony of then-Acting Deputy Attorney General Robert Mueller), *available at* http://judiciary.senate.gov/print_testimony.cfm?id=280&wit_id=650

[6] *Id.*

[7] Minutes of the January 8, 2003 U.S. Sentencing Commission Public Meeting (reporting remarks of Eric Jaso), *available at* http://www.ussc.gov/MINUTES/1_08_03.htm

> For 17 years, mandatory federal sentencing guidelines have helped drive down crime. The guidelines have evolved over time to adapt to changing circumstances and a better understanding of societal problems and the criminal justice system. Judges, legislators, the Sentencing Commission, prosecutors, defense lawyers, and others have worked hard to develop a system of sentencing guidelines that has protected Americans and improved American justice.[8]

Interestingly, in his 2005 speech calling for a legislative response to *Booker*, Attorney General Gonzales expressed particular concern about defendants "receiving sentences dramatically lower than the guidelines range ... on the basis of factors that could not be considered under the guidelines."[9] Attorney General Gonzales singled out for criticism below-guideline sentences given to white-collar offenders: he assailed one judge's decision to impose only a term of probation due to the collateral harms suffered by the defendant; he attacked another judge's decision to reduce a prison term based in part on the defendant's advanced age and his need to help care for his severely ill wife.[10]

Court advocacy. The Justice Department's vigorous advocacy for within-guidelines prison sentences for white-collar offenders takes place in courtrooms as well as in testimony and speeches. In response to defense arguments for reduced prison terms, federal prosecutors regularly argue to sentencing judges and appellate courts that terms of imprisonment, and not merely fines and probation, are essential to achieve the goals of punishment and deterrence stressed by Congress in the Sentencing Reform Act. Especially in white-collar cases involving first-offenders — whether involving economic crimes such as those that led to convictions in the

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[8] Sentencing Guidelines Speech by Attorney General Alberto Gonzales (June 21, 2005), *available at* http://www.usdoj.gov/ag/speeches/2005/06212005victimsofcrime.htm.

[9] *Id.*

[10] *Id.*

Enron and WorldCom prosecutions, or involving high-profile defendants such as Martha Stewart and the rapper Lil' Kim convicted for perjury and obstruction like Mr. Libby — federal prosecutors consistently encourage judges to disregard defense arguments for lower sentences because of the collateral harms that prominent and privileged defendants necessarily suffer as a result of a federal prosecution.

Perhaps the most telling recent court advocacy relevant here comes from the Justice Department's successful arguments before the Supreme Court in support of the reasonableness of a 33-month sentence received by Victor Rita for perjury and obstruction of justice. Mr. Rita, a highly decorated military veteran who suffers significant medical ailments, was peripherally involved in a federal investigation of InterOrdinance, a firearms company. Based on a misrepresentation about his dealings with InterOrdinance, Mr. Rita was prosecuted and convicted of perjury and obstruction of justice, and he was given a within-guideline sentence of 33-months' imprisonment.

In response to Mr. Rita's claims on appeal that his sentence was unreasonably long given his distinguished military and government service and his poor health, the Department of Justice argued to the Fourth Circuit and then to the Supreme Court that a 33-month prison term for Mr. Rita was "reasonable." The Department supported its reasonableness claims by stressing that Mr. Rita's sentence was at the bottom of the calculated guideline range, that Mr. Rita committed his crimes while serving as a federal government employee, and that Mr. Rita failed to accept responsibility for his crimes.

In its 8-1 decision in *Rita v. United States*[11] — which was handed down just days before

[11] 75 U.S.L.W. 4471 (S. Ct. June 21, 2007)

President Bush called Mr. Libby's 30-month prison "excessive" — the Supreme Court declared Mr. Rita's 33-month prison sentence reasonable. The majority opinion in *Rita* stresses that it was sensible to afford within-guideline sentences a "presumption of reasonableness" because in such cases "*both* the sentencing judge and the Sentencing Commission will have reached the *same* conclusion as to the proper sentence in the particular case [which] significantly increases the likelihood that the sentence is a reasonable one."[12] The majority opinion also concluded that "Rita's lengthy military service, including over 25 years of service, both on active duty and in the Reserve, and Rita's receipt of 35 medals, awards, and nominations," even when considered together with other personal suffering and circumstances, did not create "special circumstances [that] are special enough" to call for a lower prison sentence.[13] Notably, in a separate concurrence, Justice Antonin Scalia (joined by Justice Clarence Thomas) described Victor Rita's 33-month prison term for perjury and obstruction of justice as a "relatively low sentence."[14]

Because I personally believe that a long and distinguished military career should be considered an important mitigating factor at sentencing, I was somewhat disappointed and a bit surprised that only one member of the Supreme Court expressed serious concern about the reasonableness of Mr. Rita's 33-month prison sentence for perjury and obstruction of justice. But I was more disappointed and surprised that President Bush decided Mr. Libby should not have to serve even a single day in prison for the same crimes that his Justice Department and the Supreme Court believed reasonably required Mr. Rita to serve 1000 days in prison. (Moreover,

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[12] *Id.*

[13] *Id.*

[14] *Id.* (Scalia, J., concurring in part and concurring in the judgment).

the important nature of the underlying investigation that Mr. Libby obstructed, as well as his background as a lawyer and as a high-ranking government official, arguably makes Mr. Libby's crimes even more serious than Mr. Rita's.)

I must note here that, in my scholarly writings, I have often criticized the federal guidelines' heavy emphasis on aggravating *offense* factors while disregarding many mitigating *offender* characteristics. Indeed, along with many federal judges, I have repeatedly urged the U.S. Sentencing Commission to amend the guidelines to ensure that judges at sentencing can give greater consideration to various mitigating personal circumstances — such as prior good works, age and mental condition, and family responsibilities — which can sometimes diminish culpability and indicate reduced risks of recidivism. The official statement issued with Mr. Libby's commutation indicates that President Bush now recognizes these deficiencies in the guidelines, and I now hope all prosecutors working in his Administration will start consistently supporting sensible consideration of mitigating personal circumstances for all federal offenders at sentencing.

B. Congress's long-standing interest in achieving equal justice and respect for the law through modern sentencing reforms.

In 1984, Congress enacted the landmark Sentencing Reform Act ("SRA") which sought to remedy a perceived "shameful disparity in criminal sentences" that created "disrespect for the law." S. Rep. No. 98-225, at 46, 65 (1983). The SRA was the result of more than a decade of reports and hearings and it passed with broad bipartisan support: prominent supporters of the legislation included Representatives John Conyers and Dan Lundgren as well as Senators Strom Thurmond, Edward Kennedy, Orrin Hatch, Patrick Leahy, and Arlen Specter.

Throughout the last two decades, members of Congress from both parties have restated their belief and reaffirmed the vitality of the principles of equal justice reflected in the Sentencing Reform Act. Most recently, members of this Committee have played a leading role in stressing the importance of equal justice in federal sentencing. Representative Tom Feeney, for example, has repeatedly praised the federal sentencing guidelines for ensuring "that offenders would be treated equally before the law regardless of their socioeconomic standing,"[15] and he has advocated legislative efforts to guarantee that sentencing justice is "the same for all, regardless of one's race, gender, status, or socioeconomic background."[16] Similarly, former House Judiciary Committee Chairman, Representative F. James Sensenbrenner, has called for sentencing legislation in the wake of the *Booker* decision to help ensure that "all defendants [will] be treated equally under the law."[17] Representative Sensenbrenner recently introduced legislation designed to vindicate "two of the hallmarks of our judicial system, fairness and equity," and "to ensure that the sentence administered depends more upon the crime committed than which courtroom is issuing the sentence."[18] Senators have also emphasized the enduring importance of sentencing fairness and equity. During a 2000 oversight hearing, for example, Senator Strom Thurmond stressed the need for "similar punishment for similarly situated defendants" because "disparity breeds disrespect for the law and it undermines public confidence

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[15] Tom Feeney, *Reaffirming the Rule of Law in Federal Sentencing* (November 21, 2003), *available at* http://www.house.gov/feeney/pdf/lawreviewfeeneyamd.pdf.

[16] Letter to Editor of the National Journal from Representative Tom Feeney (February 14, 2003), *available at* http://www.house.gov/feeney/pdf/feeneyamendart1.pdf.

[17] News Advisory released by F. James Sensenbrenner (March 14, 2006), *available at* http://judiciary.house.gov/MEDIA/PDFS/BOOKERREPORT.PDF

[18] News Advisory released by F. James Sensenbrenner (September 29, 2006), *available at* http://judiciary.house.gov/media/pdfs/Bookerfixbillintro92906.pdf

in our system."[19] And, in a brief submitted this year to the Supreme Court, Senators Edward Kennedy, Orrin Hatch and Dianne Feinstein urged the Court to vindicate "the basic goals of the Sentencing Reform Act, including transparency, the elimination of unwarranted disparity, and fair and proportional sentences,"[20] and stressed that Congress has long sought to "remove politics, prejudice, and subjectivity from sentencing."[21]

As evidenced by the public and media reaction, the President's commutation of the entirety of Mr. Libby's prison sentence is not viewed as a paragon of "fairness and equality." Indeed, notwithstanding spokesman Tony Snow's claims to the contrary, the President's commutation decision seems likely to weaken the rule of law and to decrease public faith in government. Moreover, the President's commutation decision is certain to complicate the important work of federal prosecutors and federal judges who seek to advance the principles of equal justice and fairness reflected in the Sentencing Reform Act.

Many academic commentators and media stories have noted that defense attorneys are certain to start filing in many federal sentencing proceedings what is being called the "Libby Motion." Here is how Professor Ellen Podgor has explained the challenges that the President's commutation decision present for those working within the federal criminal justice system:

> [E]very criminal defense lawyer who practices in the white collar arena is asking him or herself — why shouldn't my client have this same privilege? After all the client may have been convicted of a perjury or obstruction charge, may have children, may be suffering the collateral consequences of the loss of a law license, may have served their

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[19] Statement of Senator Strom Thurmond at Senate Judiciary Committee Hearing (October 13, 2000), *reprinted at* 15 Federal Sentencing Reporter 317 (2003).

[20] Brief of Amici Curiae Senators Edward M. Kennedy, Orrin G. Hatch, and Dianne Feinstein in Support of Affirmance in *Claiborne v. United States* at 18-19 (January 2007).

[21] *Id.* at 21.

> country — perhaps in war, and may be a first offender. Should they not receive the same sentence of "no time."
>
> One should expect that there will be Libby Motions made, and/or motions that contain this language in a request for a departure from the guidelines. The motion will likely include a comparison to the client's circumstances with that of Libby. It will probably also contain language from the U.S. Sentencing Guidelines that speaks to a basic policy consideration of the guidelines being to obtain "reasonable uniformity in sentencing by narrowing the wide disparity in sentences imposed for similar criminal conduct." And after all, the guidelines permit departure for factors that were not considered by the U.S. Sentencing Commission. Did the Commission consider that a President would take an entire sentence and commute it prior to the individual even seeing one day in jail? And understanding that the U.S. Sentencing Commission did not consider this, should a departure therefore be allowed?
>
> And the judges, what will they do with these motions? The activist ones might follow the activist executive and say — yes this is grounds for departure. But more likely we will see judges continue to follow the flow of the guidelines and sentence individuals as if the Libby case did not exist.
>
> And we law professors will be left to try and explain this to students.[22]

Professor Podgor's comments spotlight how defense attorneys and judges will likely respond to President Bush's commutation, but I think federal prosecutors may now be placed in the most difficult of all positions. Nationwide, federal prosecutors must return to all the courtrooms in which they have argued that within-guideline sentences are always reasonable and now somehow explain why their boss concluded that Mr. Libby's within-guideline sentence was "excessive."

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[22] Ellen S. Podgor, *The Libby Motion*, Post on White Collar Crime Prof Blog, July 3, 2007, *available at* http://lawprofessors.typepad.com/whitecollarcrime_blog/2007/07/the-libby-motio.html

III. This Committee Should Explore Possible Ways to Enhance the Process and Improve Public Appreciation for the Exercise of Historic Executive Clemency Powers.

There is a sad personal irony to my criticism of President Bush's decision to commute Mr. Libby's entire prison sentence. Almost exactly a decade ago, I was critical of then-Governor Bush's decision not to commute the death sentence of one of my clients, Terry Washington. Mr. Washington was a poor, African-American man who suffered from mental retardation and was sentenced to death in Texas after his conviction for killing a co-worker. Along with other lawyers at a large law firm, I served as Mr. Washington's pro bono appellate lawyer, and I drafted a clemency petition on Mr. Washington's behalf. In addition to noting the mistakes of Mr. Washington's appointed trial lawyer, the clemency petition stressed the severe abuse that Mr. Washington suffered as a child and his significantly diminished mental capacities. In May 1997, then-Governor Bush denied our request to commute Mr. Washington's sentence to life in prison, and the state of Texas executed Mr. Washington.

According to a 2003 *Atlantic Monthly* article by Alan Berlow, then-Governor Bush focused only on the facts of Mr. Washington's crime and never seriously considered the significant personal considerations that arguably justified commuting Mr. Washington's death sentence.[23] Needless to say, Mr. Washington's personal life story could not have been more different than Mr. Libby's. But, after seeing the President's obvious compassion for Mr. Libby's fate in his commutation statement, I cannot help but have some sadness about the President's

[23] *See* Alan Berlow, *The Texas Clemency Memos*, The Atlantic Monthly, July/August 2003. It bears noting that the clemency petition argument urging then-Governor Bush to spare Mr. Washington from execution because of his mental retardation a few years later became a winning constitutional claim in the Supreme Court's landmark decision in *Atkins v. Virginia*, 536 U.S. 304 (2002). *Atkins* declared that any execution of a person with mental retardation would constitute cruel and unusual punishment in violation of the Eighth Amendment.

failure to show similar compassion for Mr. Washington and the great majority of criminal offenders whose personal suffering perhaps can never be fully understood by those who are more fortunate.

I relay the story of Mr. Washington to make clear that my concerns about the President's commutation do not stem from a broader aversion to the exercise of executive clemency power. In fact, I have long been a supporter of robust exercise of clemency powers by chief executives at state and federal levels, and I have previously criticized President Bush for having pardoned more Thanksgiving turkeys than he has commuted federal sentences. Especially as evidence of wrongful convictions and overzealous prosecutions continues to be revealed, executive clemency power can and should remain a vital component of the structure and fabric of modern criminal justice systems. Consequently, I sincerely hope that this hearing and the work of this Committee will not lead to efforts seeking to restrict executive clemency authority. Rather, I urge this Committee to recognize that President Bush's commutation might energize Congress and others to explore means to improve the process of, and public respect for, executive clemency decision-making.

Executive clemency power has a rich and distinguished history. The Framers of our Constitution robustly championed executive clemency power. At the time of founding, Alexander Hamilton stressed the importance of clemency in the Federalist Papers, emphasizing that "[t]he 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 too sanguinary and cruel."[24] Similarly, James Iredell of North Carolina championed the crucial

[24] The Federalist No. 74, pp. 447-49 (C. Rossiter ed. 1961).

nature of the executive clemency power, explaining that "there may be many instances where, though a man offends against the letter of the law, yet peculiar circumstances in his case may entitle him to mercy. It is impossible for any general law to foresee and provide for all possible cases that may arise; and therefore an inflexible adherence to it, in every instance, might frequently be the cause of very great injustice."[25]

Of course, one need not look back hundreds of years to find praise for the executive power of clemency. The late Chief Justice William Rehnquist, writing for the Supreme Court, spotlighted that executive clemency power is "deeply rooted in our Anglo-American tradition of law, and is the historic remedy for preventing miscarriages of justice."[26] Such a power is essential, continued Chief Justice Rehnquist, because "[i]t is an unalterable fact that our judicial system, like the human beings who administer it, is fallible" and thus executive clemency provides "the 'fail safe' in our criminal justice system."[27]

Unfortunately, in modern times, the "fail safe" of executive clemency has been failing to effectively serve the ends of justice that the Framers emphasized. Perhaps because only the most troublesome grants of clemency generate media attention and legislative hearings, executive officials often sensibly conclude that they will never face serious criticisms for failing ever to exercise their historic clemency powers, but will always face scrutiny for exercising this power. These political realities have led a Supreme Court Justice and leading scholars to lament that the clemency process has "been drained of its moral force" and that the important concept of mercy

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[25] Address by James Iredell, North Carolina Ratifying Convention (July 28, 1788), *reprinted in* 4 The Founders Constitution 17-18 (P. Kurland & R. Lerner ed. 1987).

[26] Herrera v. Collins 506 U.S. 390, 411-12 (1993).

[27] *Id.* at 415.

has lost its resonance in modern times.[28] The diminished state and perception of executive clemency is quite unfortunate, especially because I believe the Framers would view an executive's record of denying all clemency requests to be a matter of embarrassment rather than a point of pride.

For these reasons, I sincerely hope that this hearing and the work of this Committee will not begin any effort to limit or diminish executive clemency power, but rather will result in efforts to revive and restore this power to its historically important and respected status. To this end, let me close my testimony by making one suggestion as to how Congress might start down this path. Specifically, I urge this Committee to begin work on the creation of a "Clemency Commission."

My vision of this proposed "Clemency Commission" is very much in the model of the U.S. Sentencing Commission. A Clemency Commission could and should be a special administrative body, perhaps placed in the Judicial Branch, which would be primarily tasked with helping federal officials (and perhaps also state officials) improve the functioning and public respect for executive clemency as, in Chief Justice Rehnquist's words, "the historic remedy for preventing miscarriages of justice." Though the structure and staffing and mandates

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[28] *See, e.g.*, Address by Justice Anthony M. Kennedy to the American Bar Association Annual meeting (August 9, 2003), *available at* http://www.supremecourtus.gov/publicinfo/speeches/sp_08-09-03.html; Austin Sarat, *Governor Perry, Governor Ryan, and The Disappearance of Executive Clemency in Capital Cases: What Has Happened to Mercy in America?*, FindLaw column, December 29, 2004, *available at* http://writ.news.findlaw.com/commentary/20041229_sarat.html#bio; *see also* Samuel T. Morison, *The Politics of Grace: On the Moral Justification of Executive Clemency*, 9 Buffalo Criminal Law Review 1 (2005).

of a Clemency Commission could take many forms, I envision it as having personnel with expertise about the nature of and reasons for occasional miscarriages of justice in the operation of modern criminal justice systems. The Commission could study the causes of wrongful conviction and "excessive" sentences and overzealous prosecutions and make recommendations to the other branches about specific cases that might merit clemency relief or about systemic reforms that could reduce the risk of miscarriages of justice. In addition, the Commission could be a clearing-house for historical and current data on the operation of executive clemency powers in state and federal systems, and could serve as a valuable resource for offenders and their families and friends seeking information about who might be a good candidate for receiving clemency relief.

Despite constitutional limitations on significant legislative interference with the President's clemency powers, there are certainly various ways this Committee could seek to improve the transparency and understanding of the exercise of this historic executive power. Though the creation of a Clemency Commission would be an ambitious endeavor, I am quite confident that the effort could pay long-term dividends for both the reality and the perception of justice and fairness in our nation's criminal justice systems.

* * *

Thank you once again for this opportunity to share my perspective on these important issues. I would be happy and eager to answer any questions members of the Committee may have.

Mr. CONYERS. Thank you, Professor Berman.

Our next witness is Pardon Attorney Roger Adams at the Department of Justice, a career position he has held throughout the current Bush administration as well as for 3 years in the Clinton administration. He testified before the Senate Judiciary Committee in 2001 regarding President Clinton's pardon of Mark Rich.

While Mr. Adams can provide the Committee with information regarding the pardon and commutation process as it ordinarily works and the extent to which the ordinary process was followed or diverged from in this instance, career department officials such as Mr. Adams do not generally state policy positions on behalf of the Department. Under those circumstances, we are pleased to welcome you to the hearing today.

TESTIMONY OF ROGER C. ADAMS, OFFICE OF THE PARDON ATTORNEY, U.S. DEPARTMENT OF JUSTICE

Mr. ADAMS. Chairman Conyers, Ranking Member Smith, and Members of the Committee, thank you for asking me to appear before the Committee to discuss the work of the Office of the Pardon Attorney. For over a century the White House has usually relied on the Department of Justice and specifically the Office of the Pardon Attorney to receive, investigate——

Mr. CONYERS. Pull your mike closer, sir.

Mr. ADAMS [continuing]. Usually relied on the Office of the Pardon Attorney to receive, investigate and make recommendations on clemency requests and to prepare the documents the President signs when granting a pardon or commutation of sentence.

It is crucial to emphasize at the outset, as you just did, Mr. Chairman, that for the past quarter century the Pardon Attorney and all the employees in the office have been career officials rather than political appointees. And as you noted, Mr. Chairman, I began my tenure as Pardon Attorney in 1997 during the administration of President Clinton and have been privileged to serve since then.

While the Department processes requests for executive clemency in accordance with regulations promulgated by the President and set forth in the Code of Federal Regulations, it is important to keep in mind that those regulations create no enforceable rights in persons applying for executive clemency, and they do not restrict the plenary authority granted to the President under Article II, section 2 of the Constitution. The President is free to grant a pardon or commutation without the involvement of the Pardon Attorney or anyone else in the Department of Justice. However, my testimony outlines the more common situation when my office is involved.

When we are involved our task is to prepare what is called a letter of advice, actually a report and recommendation setting out what we think the President should do. The Office of the Pardon Attorney sends a report and recommendation to the Deputy Attorney General, who reviews it, directs any changes he believes are appropriate, and signs a recommendation when he is satisfied that it reflects the Department's best advice on the matter. The report is then sent to the Counsel to the President.

As for the steps we take to prepare a letter of advice, let me first discuss the process my office follows in pardon cases. Under the provisions of 28 CFR, section 1.2, a person does not become eligible

to file for a pardon request until the expiration of a 5-year waiting period that commences upon the date of the individual's release from confinement, or if no condition of confinement was imposed, the date of conviction.

The pardon applicant files the petition with my office. The standard application form requests information about the offense, the petitioner's other criminal record, biographical information, including such matters as employment and residence history since conviction, and the reasons the person seeks the pardon.

As an initial investigative step the Office of the Pardon Attorney contacts the United States probation office for the district of conviction to obtain copies of the presentence report and judgment order as well as information regarding the petitioner's compliance with court supervision and to ascertain the probation office's views regarding the merits of the pardon request.

If review of the pardon petition and the data obtained from the Probation Office reveals information that clearly indicates favorable action is not warranted, my office prepares a report to the President recommending that pardon be denied.

Alternatively, if the initial review indicates that the case may have some merit, it is referred to the FBI for a background investigation.

The Bureau provides the Office of the Pardon Attorney with factual information about the petitioner, including his or her criminal history, records concerning the offense for which pardon is sought, employment and residence history, and the petitioner's reputation in the community. If the FBI report suggests that favorable treatment may be warranted or if the case is of particular importance or raises significant factual questions, the Office of the Pardon Attorney requests input from the prosecuting authority, the sentencing judge and, in appropriate circumstances, the victims of the petitioner's crime.

After an evaluation of all the relevant facts, my office prepares a report containing a recommendation as to whether a pardon should be granted or denied.

Let me now briefly turn to commutation requests. As with pardons, a Federal inmate seeking a Presidential commutation of his sentence files a petition with the Office of the Pardon Attorney. The petitioner is free to supply any additional documentation he or she believes will provide support for the request.

In completing the petition, the person explains the circumstances underlying his conviction, provides information regarding his or her sentence, criminal record, any appeals or other court challenges that have been filed, and the grounds upon which relief is sought.

After my office reviews the commutation petition to ensure that the applicant is eligible to apply, we contact the warden of the petitioner's correctional institution to obtain copies of the presentence report and judgment of conviction as well as the most recent prison progress report. The latter details the inmate's adjustment to incarceration, including his participation in work, educational, vocational, counseling and financial responsibility programs and other matters. We also check automated legal databases for court opinions relating to the petitioner's conviction.

If our review of this information uncovers significant issues or suggests that the case may have some merit, my office solicits the views of the prosecuting authority, sentencing judge and, in appropriate cases, the victim of the crime.

Just to wind up, Mr. Chairman, following the evaluation of all the material gathered in the course of the investigation, the Pardon Attorney's Office drafts its report and recommendation for or against commuting the sentence.

Mr. Chairman, the Office of the Pardon Attorney plays an important role in preparing recommendations to inform the President's consideration of pardon and commutation petitions. However, as I noted, the office is staffed by career employees, has no policymaking authority, and its recommendations cannot bind the President in the discharge of constitutional authority.

In closing, let me thank you again for the opportunity to testify; and, as you noted in your introduction, I am here in my capacity as pardon attorney and would be glad to answer any questions you have at the appropriate time.

Mr. CONYERS. Thank you, Attorney Adams.

[The prepared statement of Mr. Adams follows:]

PREPARED STATEMENT OF ROGER C. ADAMS

Statement of Roger C. Adams
Pardon Attorney
Department of Justice
Before the
Committee on the Judiciary
United States House of Representatives

July 11, 2007

Good Morning Mr. Chairman and Members of the Committee:

I am here today at the Committee's request to describe the process the Office of the Pardon Attorney follows in carrying out the Department of Justice's responsibility to assist the President in the exercise of his clemency power. I might note initially that this is something the Department has done for over 100 years. Since at least the administration of William McKinley, the White House has usually relied on the Department, and specifically the Office of the Pardon Attorney, to receive, investigate, and make recommendations on clemency requests, and to prepare the documents the President signs when granting a pardon or a commutation of sentence. I say "usually," because the President is always free to grant clemency without the involvement of the Office of the Pardon Attorney or anyone else in the Department of Justice.

Executive clemency petitions usually request either a pardon after completion of sentence or a commutation – reduction of sentence – currently being served. The Department of Justice processes requests for executive clemency in accordance with regulations promulgated by the President and set forth at 28 C.F.R. §§ 1.1 to 1.11. These regulations provide internal guidance for Department of Justice personnel who advise and assist the President in carrying out the clemency function, but they create no enforceable rights in persons applying for executive clemency and they do not restrict in any way the clemency authority of the President. Under Article II, Section 2 of the Constitution, this power is plenary, and the President is free to

exercise it by means of procedures and methods of his own choosing. But the procedures and other matters I am going to describe today are those followed by my office in processing requests for clemency that are filed with the Department of Justice.

A presidential pardon serves as an official statement of forgiveness for the commission of a federal crime and restores basic civil rights. It does not connote innocence. Under the provisions of 28 C.F.R. § 1.2, a person does not become eligible to file a pardon request until the expiration of a five-year waiting period that commences upon the date of the individual's release from confinement (including home or community confinement) for his most recent conviction or, if no condition of confinement was imposed as part of that sentence, the date of conviction. Typically, the waiting period is triggered by the sentence imposed for the offense for which the pardon is sought, but any subsequent conviction begins the waiting period anew. Moreover, the same regulation stipulates that no petition for pardon should be filed by an individual who is then on probation, parole, or supervised release. In contrast to a pardon, a commutation is not an act of forgiveness, but rather simply remits some portion of the punishment being served. An inmate is eligible to apply for commutation so long as he has reported to prison to begin serving his sentence and is not challenging his conviction through an appeal or other court proceeding.

Pardon Requests

A pardon request is typically processed in the following manner. The pardon applicant files his clemency petition, addressed to the President, with the Office of the Pardon Attorney. He is free to utilize the services of an attorney or to act on his own behalf in seeking pardon. I would note that the application form and instructions are on my office's web site, and we will send them to an applicant by mail if asked to do so. The standard form utilized for this process requests information about the offense, the petitioner's other criminal record, his employment

and residence history since the conviction and other biographical information, and his reasons for seeking pardon. The application must be signed and notarized, and the applicant must also submit three notarized affidavits from character references who are unrelated to him, know of his conviction, and support his pardon request. When my office receives a pardon petition, it is screened to ensure that the applicant is in fact eligible to seek a pardon (*i.e.*, that the crime for which pardon is sought is a federal offense and that the waiting period has been satisfied), to determine whether any necessary information has been omitted from the application or whether the applicant's responses to the questions require further elaboration, and to ascertain whether the petitioner has described his efforts at rehabilitation. If the petitioner is ineligible to apply for pardon under the regulations, he is so informed. If the application is incomplete, further information is sought from the petitioner.

As an initial investigative step in a pardon case, the Office of the Pardon Attorney contacts the United States Probation Office for the federal district in which the petitioner was prosecuted to obtain copies of the presentence report and the judgment of conviction, as well as information regarding the petitioner's compliance with court supervision, and to ascertain the Probation Office's views regarding the merits of the pardon request. If review of the pardon petition and the data obtained from the Probation Office reveals information that clearly indicates favorable action is not warranted, my office prepares a report to the President for the signature of the Deputy Attorney General recommending that pardon be denied.

Alternatively, if the initial review indicates that the case may have some merit, it is referred to the FBI so that a background investigation can be conducted. The FBI does not make a recommendation to support or deny a pardon request. Rather, the Bureau provides the Office

of the Pardon Attorney with factual information about the petitioner, including such matters as his criminal history, records concerning the offense for which pardon is sought, his employment and residence history, and his reputation in the community. The FBI report is reviewed by my staff to ascertain whether favorable consideration of the case may be warranted. If the investigation reveals derogatory information of a type that would render pardon inappropriate and warrant denial of the request, my office prepares a report to the President through the Deputy Attorney General recommending such a result.

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

recommendation. After the recommendation is signed by the Deputy Attorney General, the report is transmitted to the Counsel to the President for the President's action on the pardon request whenever he deems it appropriate.

Let me briefly discuss the standards that are typically considered by the Department of Justice in formulating our recommendations to the White House in pardon cases. They are set out in the United States Attorneys' Manual, which is a public record document, and the portions of the Manual that pertain to clemency can be found though my office's web site. Five factors are discussed in the Manual: the seriousness and relative recency of the offense; the applicant's post-conviction conduct, character, and reputation; the applicant's acceptance of responsibility for the crime and his or her remorse and atonement; the need for relief, in other words, why the person has applied for a pardon; and recommendations and reports we have solicited from the prosecuting office – usually a United States Attorney's Office – and the sentencing judge. I would also note another factor that is not explicitly listed in the U.S. Attorneys' Manual, but which is very important nevertheless. That is a lack of candor and honesty on the part of the applicant on the application form, during the interview with the FBI, or at some other stage. It is quite difficult to recommend that the President grant a pardon to someone who has lied to us during the process, even about a relatively minor matter that may have occurred many years ago, such as drug experimentation or the attempt to conceal an early marriage. Consequently, dishonesty in the course of applying for a pardon makes it less likely that the Department will recommend one.

Commutation Requests

Let me turn now to commutation requests. As is the case with pardons, a federal inmate seeking a presidential commutation of his sentence files a petition for such relief with the Office of the Pardon Attorney. The petitioner is free to append to the commutation application - or to submit separately at a later date - any additional documentation he believes will provide support for his request. In completing the petition, the inmate - or his attorney, if he is represented by counsel - explains the circumstances underlying his conviction; provides information regarding his sentence, his criminal record, and any appeals or other court challenges he has filed regarding the conviction for which he seeks commutation; and states the grounds upon which he bases his request for relief.

When my office receives a commutation petition, we review it to ensure that the applicant is eligible to apply for clemency, and we commence an investigation of the merits of the request. The initial investigative step usually involves contacting the warden of the petitioner's correctional institution to obtain copies of the presentence report and judgment of conviction for the petitioner's offense, as well as the most recent prison progress report that has been prepared detailing his adjustment to incarceration, including his participation in work, educational, vocational, counseling, and financial responsibility programs; his medical status; and his disciplinary history. We also check automated legal databases for any court opinions relating to the petitioner's conviction. In most cases, the totality of this information establishes that a commutation would not be appropriate, and my office prepares a report to the President through the Deputy Attorney General recommending that commutation be denied.

In a minority of cases, however, if our review of this information raises questions of material fact or suggests that the commutation application may have some merit, or because the

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

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

Let me mention briefly the matters the Department of Justice considers in formulating our recommendations in commutation cases. Those standards are also set out in the U.S. Attorneys' Manual, whose relevant portions may be accessed through my office's web site. As the Manual states, and as we inform commutation applicants and their relatives, while we

consider all requests carefully, a commutation of sentence is an extraordinary form of clemency that is rarely granted. Factors that weigh in favor of a commutation include disparity of the sentence as compared to those imposed on codefendants or others involved in the same crime; extraordinary medical issues – such as paralysis or blindness that make living in a prison setting unduly difficult – especially if the disability was not known at the time of sentencing; and unrewarded cooperation with the government.

The last factor, unrewarded cooperation with law enforcement, is less likely to result in a commutation today than in the past. That is because Rule 35 of the Federal Rules of Criminal Procedure has been amended in recent years to expand the time frame and circumstances under which the government may request the sentencing court to reduce a person's sentence to reward his cooperation after sentencing. Consequently, applicants who claim that their cooperation with the government should merit a sentence commutation have often received some reduction from the court, or at least the prosecutor has considered whether to request such a reduction. The Department's position is that the court is better situated to consider the extent, if any, to which an inmate's cooperation merits a sentence reduction. It is generally not the policy of the Department to ask the President to step in and grant a further reduction in this situation.

Grants of Clemency

When the President decides to grant clemency, whether in the form of pardon or commutation of sentence, the Counsel to the President informs the Office of the Pardon Attorney to prepare the appropriate clemency warrant. Typically, if the President intends to pardon a number of applicants, a master warrant of pardon will be prepared for his signature. The signed warrant lists the names of all of the individuals to whom the President grants pardon, and directs

the Pardon Attorney to prepare and sign individual warrants of pardon reflecting the President's action to be delivered to each pardon recipient. Like the master warrant, the individual warrant bears the seal of the Department of Justice and reflects that it has been prepared at the direction of the President. When the individual pardon warrant has been prepared, it is sent to the applicant or to his attorney if he is represented by counsel.

If the President decides to commute a prisoner's sentence, the Pardon Attorney's Office likewise prepares the warrant of commutation for the President's signature. Depending upon how many sentences are to be commuted, either a master warrant detailing all of the commuted sentences or individual commutation warrants may be prepared. After the President has signed the commutation warrant, which bears the seal of the Department of Justice, the Pardon Attorney's Office transmits a certified copy of the document to the Bureau of Prisons to effect the inmate's release. A copy of the warrant is also sent to the petitioner's attorney if he is represented by counsel. Whenever the President grants a pardon or a commutation, the Pardon Attorney's Office notifies the prosecuting authority (United States Attorney or Division of the Justice Department), the sentencing judge, the relevant United States Probation Office, the FBI, and any other government agencies whose views were solicited, of the final decision in the matter. Finally, whenever the President grants either a pardon or a commutation, the Office of the Pardon Attorney prepares a press notice listing the names of the persons who received clemency, their cities and states of residence, the offense, the district and date of conviction, and the sentence imposed. The press notice does not, however, include details about the person's offense or the reason the President granted him clemency. The press notice is made available to the news media shortly after the President has acted.

Denials of Clemency

When the President denies clemency, the Counsel to the President typically notifies the Deputy Attorney General and the Pardon Attorney's Office by memorandum that the affected cases have been decided adversely. The Pardon Attorney's Office then notifies the pardon or commutation applicant, or his attorney, in writing, of the decision. In the case of a commutation applicant, the notification is made by a memorandum to the warden at the appropriate federal prison, who is requested to inform the applicant. In addition, the Pardon Attorney's Office notifies the prosecuting authority, the sentencing judge, and other government agencies whose views were solicited. No reasons for the President's action are given in the notice of denial.

Statistics and Record Keeping

Traditionally, the Office of the Pardon Attorney has served as a repository for records of clemency grants by prior Presidents. We maintain on compact discs copies of documents signed by Presidents George Washington through William J. Clinton granting pardons or other forms of clemency. We believe these records to be very complete, and we make these compact discs available to the public upon request. Using these CDs and other indices, we have the ability to research whether an individual has received a pardon during a particular time period. These records also have enabled the Office to assemble statistics showing the numbers of clemency petitions received and granted for each fiscal year as well as for entire presidential administrations from 1901 through January 20, 2001. All of these statistics are available on my office's web site. Not on the web site, but made available as a public record document by my office to anyone who asks, are statistics showing the numbers of applications and grants of clemency for each fiscal year of the current administration.

Mr. Chairman, that concludes my prepared testimony. I would be glad to try to answer any questions you and the members of the Committee may have.

Mr. CONYERS. Next we have Attorney Thomas Cochran, who has served for more than 15 years as an Assistant Federal Public Defender for the Middle District of North Carolina. Mr. Cochran represented Victor Rita, Jr., in the recently decided Supreme Court case Rita versus the United States which involved important issues regarding interpretation of the Federal sentencing guidelines.

We welcome you, sir, to this hearing.

TESTIMONY OF THOMAS COCHRAN, ASSISTANT FEDERAL PUBLIC DEFENDER, MIDDLE DISTRICT OF NORTH CAROLINA

Mr. COCHRAN. Thank you.

Mr. Chairman, Mr. Ranking Member, distinguished Members of the Committee, I want to thank you for convening this hearing and for granting me the opportunity to appear before you today on behalf of my client, Mr. Rita.

I have been an attorney for over 20 years and for over 14 with the Federal Public Defender's Office in North Carolina. In 2005, I was appointed as appellate counsel to represent Mr. Rita; and I assisted him with his case through to the United States Supreme Court. On appeal, Mr. Rita sought to have his sentence of 33 months vacated based on various factors, contending that such a sentence was excessive and unreasonable.

Mr. Rita has asked me to thank you for your time, and he expressed his regret in not being able to be here with us today. Unfortunately, Mr. Rita was required to report to the Bureau of Prisons on July 2, 2007, to begin the service of his sentence. Ironically, this was the same day that President Bush commuted the 30-month prison term of I. Lewis Libby, concluding that his sentence was excessive.

It is highly appropriate for you to examine the legal background in Mr. Rita's case and Mr. Libby's case. I believe you will be surprised to find they are nearly identical in many aspects. To begin, you will be surprised to find that neither man was truly the target of the investigation for which he ultimately was charged.

In North Carolina, Assistant U.S. Attorney Matthew Martens began an investigation of a North Carolina firearms company, InterOrdnance, to determine whether it was violating the Federal firearms laws. In the process of this investigation, Mr. Martens called witnesses, including Mr. Rita, before the grand jury.

Here in Washington, U.S. Attorney Patrick Fitzgerald was appointed to investigate the leaking of Valerie Plame's name to columnist Robert Novak to learn whether any person violated either the Intelligence Identities Protection Act or the Espionage Act. In the process of this investigation, Mr. Fitzgerald called witnesses, including Mr. Libby, before the grand jury to testify.

Both men, Rita and Libby, were federally indicted on counts of making false statements under oath, perjury and obstruction of justice. Both were convicted by a jury. Both men were sentenced to over 2 years of imprisonment, Mr. Rita for 33 months and Mr. Libby for 30 months. Both men have extensive civil service backgrounds, are dedicated family men, and have been subjected to a harsh sentence based in part on allegations never presented to the jury.

Despite all of these similarities, today Mr. Rita is in prison and Mr. Libby is not.

I have no involvement in the Libby case, and therefore cannot comment upon the details of what transpired other than what I have gleaned from documents retrieved from the district court file. Having represented Mr. Rita, however, I can give you a better explanation of his case and background.

Mr. Rita is a 59-year-old man who spent the better part of his life in public service. Like Mr. Libby, who has received various awards for his service, Mr. Rita has accumulated over 35 medals, awards and commendations for his military service. All told, Mr. Rita retired with more than 32 years of service to the Federal Government.

Like Mr. Libby, whose attorneys described him in their sentencing memorandum as a dedicated family man, Mr. Rita is also devoted to his family. He describes himself as a family man, having helped raised his two sons.

Despite these similarities, his personal background is different from Mr. Libby's in many respects. While Mr. Libby is a law school graduate, Mr. Rita had a troubled youth and had to grow up partly on his own and dropped out of high school. He did obtain his GED and later completed an associate of arts degree while working for then the INS.

As a result, Mr. Rita is not of the same means as Mr. Libby. Though he retained his own attorney in the district court, he went into debt and exhausted all of his funds during that trial. His pro se notice of appeal he filed himself and was appointed counsel for the appellate process.

In comparison, Mr. Libby had the benefit of his own legal training, large defense team, and the Libby Legal Defense Trust formed to defray the legal costs for his defense.

In addition to his severely strained economic condition, Mr. Rita also differs from Mr. Libby with regard to his health. Mr. Rita suffers from hypertension, degenerative disc disease, type 2 diabetes, an enlarged prostate, infection in his legs, and a skin rash due to the exposure of Agent Orange while he was a foot soldier in Vietnam. There are suspicions some of his illnesses originated from the exposure of Agent Orange. He takes well over a dozen medications per day and requires a C-PAP machine to sleep at night.

Now I would like to address some of the parts of the decision in the Supreme Court case. Leading to that, Mr. Rita appeared before the grand jury in North Carolina and gave answers that were contrary to his actions. Those answers provided the basis for charges of false testimony and obstruction. He was indicted on these charges.

With regard to Mr. Libby's case, please note that his five counts of obstruction and false statement and perjury revolve around three conversations that he had. Mr. Rita was only brought before the grand jury once, Mr. Libby four times.

Mr. Rita went to trial and was convicted on all five counts. His trial counsel filed a motion for reduced sentence. At sentencing, counsel presented evidence; and Mr. Rita was sentenced to 33 months.

Mr. Libby also went to trial and was convicted of four of the five charges against him. He filed sentencing memoranda requesting a sentence of probation. The court sentenced him to 30 months, 2 years of supervision and a $250,000 fine. On July 2, President Bush commuted Mr. Libby's 30-month sentence.

Mr. CONYERS. Could you wind up, sir?

Mr. COCHRAN. I would be happy, Mr. Chairman.

Incredibly, the President's justification for commuting Mr. Libby's sentence mirrors Mr. Rita's argument before the Supreme Court. However, when Mr. Rita appeared before the Court this past February the President's Solicitor General took the opposite position and argued that uniformity in sentencing trumped Mr. Rita's justification.

The President's actions placed his absolute constitutional pardon power at odds with his own Solicitor General's successful argument before the Supreme Court.

I spoke by telephone with Mr. Rita this past Monday. He had one question that he asked that I pose to this Committee: How can the executive branch argue that my reasons for seeking a lower sentence before the Supreme Court were wrong and then use my same reasons for a lower sentence to justify wiping out Mr. Libby's prison time completely?

I would like to thank you for your time, and I would be happy to answer whatever questions I can.

Mr. CONYERS. I thank the witness.

[The prepared statement of Mr. Cochran follows:]

PREPARED STATEMENT OF THOMAS COCHRAN

STATEMENT OF THOMAS COCHRAN, ESQ.
Assistant Federal Public Defender
Federal Public Defender's Office, Middle District of North Carolina
The Use and Misnse of Presidential Clemency Power for Executive Branch Officials
Convened by Representative John Conyers
Chair, Judiciary Committee, United States House of Representatives
July 11, 2007

Mr. Chairman and Distinguished Members of the Committee:

I want to thank you for convening this hearing and for granting me the opportunity to appear before you today on behalf of my client, Victor A. Rita, Jr. I have been an attorney for over 20 years and have worked as an Assistant Federal Public Defender in North Carolina for over 15 years. In 2005, I was appointed as appellate counsel to represent Mr. Rita, and I assisted him with his case through to the United States Supreme Court. On appeal, Mr. Rita sought to have his sentence of 33 months vacated, based upon various factors, contending that such a sentence was excessive and unreasonable. Mr. Rita has asked me to thank you for your time, and he expressed his regret for being unable to be here with us today. Unfortunately, Mr. Rita was required to report to the Bureau of Prisons on July 2, 2007, to begin the service of his sentence. Ironically, this was the same day that President Bush commuted the 30 month prison term of I. Lewis Libby, concluding that it was "excessive."[1]

My testimony will begin with an introduction to Mr. Rita's case and a comparison of the striking similarities between his case and that of Mr. Libby. Next, I will discuss the evolution of Mr. Rita's case, and its final disposition in the Supreme Court. Finally, I will conclude by bringing to your attention the parallel arguments which President Bush made on behalf of Mr. Libby and which I have repeatedly argued on behalf of Mr. Rita. In my conclusion, I hope that you will understand the vast discrepancy between the results of these two similar cases.

I. A Comparison of the Facts in the Cases of Victor Rita and I. Lewis Libby

It is highly appropriate for you to examine the legal background of Mr. Rita's case and Mr. Libby's case. I believe you will be surprised to find that they are nearly identical in many aspects. To begin, neither man was the target of the investigation for which he was ultimately charged. In North Carolina, Assistant U.S. Attorney Matthew Martens began an investigation of

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[1] "Statement by the President on Executive Clemency for Lewis Libby," at http://www.whitehouse.gov/news/releases/2007/07/print/20070702-3.html (last visited July 4, 2007) (hereinafter "Statement").

a North Carolina firearms company, InterOrdnance, Inc., to determine whether it was violating the federal firearms laws. In the process of this investigation, Mr. Martens called witnesses, including Mr. Rita, before the grand jury to testify. In Washington, D.C., U.S. Attorney Patrick Fitzgerald was appointed to investigate the leaking of Valerie Plame's name to columnist Robert Novak to learn whether any person violated either the Intelligence Identities Protection Act or the Espionage Act. In the process of this investigation, Mr. Fitzgerald called witnesses, including Mr. Libby, before the grand jury to testify. Both men -- Rita and Libby -- were federally indicted on two counts of making false statements under oath, two counts of perjury, and one count of obstruction of justice. Both were convicted by a jury. Both men were sentenced to over two years of imprisonment: Mr. Rita for 33 months and Mr. Libby for 30 months. Both men have extensive civil service backgrounds, are dedicated family men, and have been subjected to "a harsh sentence based in part on allegations never presented to the jury."[2] Despite all of these similarities, today Mr. Rita is in prison and Mr. Libby is not.

I had no involvement in Mr. Libby's case, and therefore, cannot comment upon the details of what transpired other than what I have read from documents retrieved from the district court file. Having represented Mr. Rita, however, I can give a better explanation of his case and background.

Public Service: Mr. Rita is a 59 year old man who has spent the better part of his life in public service. Like Mr. Libby, who has served in the Defense Department, Mr. Rita has served in the United States Marine Corps, the United States Army, and the former Immigration and Naturalization Service (now the Department of Homeland Security). During Mr. Rita's military service, he contributed nine years of active duty and fifteen years of reserve duty. He served in theater in both the Vietnam War and the first Gulf War. During Mr. Rita's service in Vietnam, he was exposed to Agent Orange. During the first Gulf War, he suffered a crushed foot which, after being treated in Germany and in the U.S., he was honorably discharged on August 17, 1992. Like Mr. Libby, who has received various awards for his service, Mr. Rita has accumulated over 35 medals, awards, and commendations for his service.[3] During Mr. Rita's

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[2]Statement.

[3]This information comes from page 65 of Mr. Rita's Joint Appendix filed in the Supreme Court (hereinafter "J.A. __"). Rita v. United States, No. 06-5754 (2007) (Joint Appendix).

years of service in what is now the Department of Homeland Security, he worked first as an INS criminal investigator and later as an INS asylum officer. All told, Mr. Rita retired with more than 32 years of service to the federal government. Finally, even though neither man had any criminal history points as contemplated by the federal Sentencing Guidelines, Mr. Rita did have one prior probationary conviction in 1986 for using his father's address when purchasing a firearm. This conviction was never an issue in Mr. Rita's appeal nor did it prevent or inhibit the INS from later hiring Mr. Rita as an Immigration Asylum Officer.

Family: Like Mr. Libby, whose attorneys describe his dedication to serving his country as being surpassed only by his commitment to his family, Mr. Rita is also devoted to his family. He describes himself as "a family man."[4] While Mr. Libby has young children who have become victims, it also "bothers [Mr. Rita] that [his] family [went] through this."[5] Mr. Rita has been married for almost 28 years and is "the co-parent of two boys. One son was a teenager and the other [was] a 25 year old college student" at the time of trial.[6] He "support[ed] the boys financially and otherwise," despite being retired and disabled. He also "help[ed] out [his] mother-in-law as well[,]" because she was in a retirement home.[7]

Discrepancies: Despite these similarities, Mr. Rita's personal background is very different from Mr. Libby's in many respects. While Mr. Libby is a law school graduate, Mr. Rita had a troubled youth as he "had to grow up partly on his own" and dropped out of high school.[8] Mr. Rita obtained his GED and then later completed his Associate of Arts degree while working for the INS. As a result, Mr. Rita is not of the same means as Mr. Libby. Though he retained his own attorney in the district court, he went into debt and "exhausted funds from [his] savings" during his trial.[9] He filed a pro se notice of appeal and was appointed counsel for his appellate process. In comparison, Mr. Libby had the benefit of his own legal training, a large

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[4]J.A. 79.

[5]J.A. 80.

[6]J.A. 42.

[7]J.A. 83.

[8]J.A. 64.

[9]J.A. 92.

defense team, and the Libby Legal Defense Trust, which was formed "to help defray the legal defense costs for Lewis 'Scooter' Libby and his family."[10]

In addition to his severely strained economic condition, Mr. Rita also differs from Mr. Libby with regard to his health condition. Mr. Rita suffers from: "hypertension, degenerative disc disease, Type 2 diabetes, enlarged prostate, infection in his legs, skin rash due to exposure to Agent Orange while he was a foot soldier in Vietnam, arthritis, sleep apnea, and different respiratory ailments."[11] He also suffers from "NTN elevated BP, hyperlipidemia . . . arthritis of [the] cervical spine, and acid reflux."[12] There are suspicions that some of his illnesses originated from his exposure to Agent Orange in Vietnam, as he served between 1968-69, years during which the chemical was used.[13] "At the end of the tour he started to have gum disease, rashes, headaches, migraines," and despite having "no history of [Type 2] diabetes or any sort . . . in his family . . . [h]e started to have symptoms of that soon thereafter."[14] He takes well over a dozen medications per day and requires a continuous positive airway pressure (CPAP) machine to sleep through the night and awaken again the next morning.

Finally, Mr. Rita and Mr. Libby differ in their vulnerability now that Mr. Libby will serve no prison time. Due to his prior service with immigration, as well as his poor physical condition, Mr. Rita is an especially vulnerable victim in prison. During his time with the INS in both New York and in Miami, Mr. Rita "worked on immigration matters and other drug interdiction matters to where his testimony was used to put offenders away in prison. Those offenders threatened him directly and indirectly."[15] To demonstrate the gravity of his testimony, at one time "there was a $50,000 bounty on his head" as a result of his law enforcement activities.

Now, I would like to address the important parts of Mr. Rita's legal case.

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[10] Libby Legal Defense Trust: www.scooterlibby.com.

[11] J.A. 51.

[12] J.A. 68.

[13] Vietnam's War Against Agent Orange at http://news.bbc.co.uk/2/hi/health/3798581.stm (last accessed July 8, 2007).

[14] J.A. 72.

[15] J.A. 61.

II. Mr. Rita's Case

Between March 2002 and February 2004, the U.S. Attorneys office for the Western District of North Carolina began a federal grand jury investigation "into the sale of, among other things, PPSH 41 machinegun 'parts kits' by a company . . . located in Union County, in the Western District of North Carolina."[16] The purpose of the investigation, in part, was "to determine whether violations of 18 U.S.C. § 922(o) had been committed with regard to PPSH 41 machinegun 'parts kit' distributed by the [c]ompany[.]"[17]

In January 2003, Mr. Rita purchased one PPSH 41 parts kit and one RPK part kits from the same company.[18] Three months later, the ATF began a national recall of all PPSH 41 parts kits and in September 2003, an agent spoke with Mr. Rita by phone about the recall. During the conversation, Mr. Rita agreed to return "the last 'parts kit' he had ordered" to an attorney in Miami the following week.[19] Two days later, Mr. Rita shipped the PPSH 41 kit back to the company and gave the RPK kit to his attorney for delivery to the ATF. A week and a half later, the agent visited the attorney to claim the kit, but upon inspection discovered that it was not the PPSH 41 kit that she had asked Mr. Rita to surrender. Two weeks later, the federal grand jury issued a subpoena for Mr. Rita to appear to explain why he had not surrendered the PPSH 41 parts kit.

When Mr. Rita appeared before the grand jury in October 2003, he gave answers contrary to his literal actions. Those answers provided the basis for the charges of false testimony and obstruction of justice. Based upon these statements, Mr. Rita was indicted three weeks later for the five aforementioned counts.

Though I have no intimate knowledge of Mr. Libby's case, please note that his five counts of obstruction of justice, false statements, and perjury revolve around three conversations with Tim Russert, Matthew Cooper, and Judith Miller. While Mr. Rita was only brought before the grand jury once, Mr. Libby testified in October and November 2003 as well as twice in

[16]J.A. 41.

[17]J.A. 9.

[18]J.A. 7.

[19]J.A. 41.

March 2004. Each time, he was questioned about these three conversations and each time, like Mr. Rita, he made what the jury determined to be false statements. As the prosecutor noted in Mr. Rita's case: "Mr. Rita was not a target at the time. He would never have been a target . . . if he had simply told us what he knew."[20] Likewise, the prosecutor in Mr. Libby's case noted that he "could have told the truth, . . . could have declined to speak with FBI agents, invoked his Fifth Amendment rights before the grand jury, or challenged any lines of inquiry. Mr. Libby had access to counsel and had adequate time to review relevant documents and contemplate his conduct."[21] While both had the option of remaining silent or of telling the truth, Mr. Libby arguably had a greater ability to decide his own fate because he was both an attorney by training and had ready access to other counsel.

Mr. Rita went to trial and was convicted on all five counts. His trial counsel filed a motion for downward departure prior to sentencing and elaborated on Mr. Rita's public service, military service, medical history, and vulnerability to victimization in prison. Trial counsel requested a downward departure through federal Sentencing Guideline § 5H1.4, "which allows [a] non-custodial sentence for a seriously infirm defendant."[22] At sentencing, counsel again presented evidence of the above facts. Mr. Rita was sentenced to 33 months imprisonment followed by three years of supervised release. The district court imposed no fine upon Mr. Rita due to his health condition.[23]

Mr. Libby also went to trial and was convicted of four of the five charges against him. Both parties filed sentencing memoranda that outlined how Mr. Libby should be sentenced appropriately, even though each party listed different applicable guideline ranges. On June 5, 2007, Mr. Libby was sentenced to 30 months imprisonment followed by two years of supervised release. The district court imposed a $250,000 fine upon Mr. Libby which he paid July 5, 2007. Though Mr. Libby's actions included more instances of false statements and perjury, he was given a 3 month lighter sentence than Mr. Rita.

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[20]J.A. 74.

[21]Government's Sentencing Memorandum at 5. United States v. Libby, 1:05CR394-RBW.

[22]J.A. 44.

[23]J.A. 87.

On appeal in April 2006, Mr. Rita questioned the reasonableness of his sentence. In Booker v. United States, 543 U.S. 220 (2005), the Supreme Court declared the mandatory sentencing guidelines unconstitutional and instructed the lower federal courts to treat the guidelines as merely advisory: just one of seven factors to be considered under 18 U.S.C. § 3553(a).[24] The Fourth Circuit court of appeals affirmed Mr. Rita's sentence because it "affirm[s] a post-Booker sentence if it is both reasonable and within the statutorily prescribed range." The court held that a sentence "'within the properly calculated Guidelines range . . . is presumptively reasonable.'"[25] Mr. Rita sought further review in the Supreme Court arguing that his sentence was unreasonable and that the judicial establishment of a presumption of reasonableness by the courts of appeals was essentially a return to pre-Booker mandatory guideline sentencing.

III. The Supreme Court Decision in Rita v. U.S.

In November, 2006, the Supreme Court agreed to review Mr. Rita's case. The Court asked Mr. Rita and the Executive Branch, by way of the Solicitor General's Office, to brief three questions, the first of which was whether the district court's choice of a within-guidelines sentence for Mr. Rita was reasonable. The Solicitor General argued vehemently, indeed successfully, that Mr. Rita's 33 month sentence was reasonable--the Supreme Court agreed. Considering the significant similarities between the cases of Mr. Rita and Mr. Libby, one can reasonably conclude that Mr. Rita's Supreme Court precedent would have applied to Mr. Libby's case had Mr. Libby appealed the reasonableness of his 30 month sentence.

IV. Rita's Argument Compared with President Bush's Executive Order of Clemency

On July 2, 2007, President Bush commuted Mr. Libby's 30 month sentence.[26] In his signing statement, President Bush based his reasoning upon the fact that "the district court rejected the advice of the probation office, which recommended a lesser sentence and the consideration of factors that could have led to a sentence of home confinement or probation."[27] Though the President stated he "respect[s] the jury's verdict, . . . [he] concluded that the prison

[24]J.A. 113.

[25]Id. (citations omitted).

[26]Statement.

[27]Id.

sentence . . . [was] excessive."[28] The President's statement listed the arguments of those critical of Mr. Libby's punishment in further justification of his decision. Those factors included: that "the punishment [did] not fit the crime," that "Mr. Libby was a first-time offender with years of exceptional public service," and that he "was handed a harsh sentence based in part on allegations never presented to the jury."[29]

Incredibly, the President's justifications for commuting Mr. Libby's sentence mirror Mr. Rita's arguments before the Supreme Court. However, when Mr. Rita appeared before the Supreme Court this past February, the President's Solicitor General took the opposite position and argued that "uniformity" trumped Mr. Rita's justifications for a lesser sentence.[30] The President's actions place his absolute constitutional pardoning power at odds with his own Solicitor General's successful argument before the Supreme Court. As noted by one legal scholar, "The Bush administration, in some sense following the leads of three previous administrations, has repeatedly supported a federal sentencing system that is distinctly disrespectful of the very arguments that Bush has put forward in cutting Libby a break."[31] When I spoke by telephone with Mr. Rita this past Monday, he had one simple question for me to pass along to you: How can the Executive Branch argue that my reasons for seeking a lower sentence before the Supreme Court were wrong and then use my same reasons for a lower sentence to justify wiping out Mr. Libby's prison time completely? I am hopeful this committee will explore Mr. Rita's question concerning the disparate treatment of him and Mr. Libby more deeply.

Conclusion

For now, I would like to conclude with a summary of two men who were both facing the same charges and who received nearly the same sentence. Neither one appears to have been the

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[28] Id.

[29] Id.

[30] At oral argument before the Court in Mr. Rita's case, Deputy Solicitor General Michael Dreeben argued that "one of the things [a judge] is required to do under section 3553(a) is to consider the need to avoid unwarranted disparity between defendants who have been convicted of similar criminal conduct and have similar records." (Oral Arguments Tr. 37, February 20, 2007.) Mr. Dreeben further noted that "we are in a Federal system with 674 Federal district judges, and we cannot have all our own personal guidelines systems." Id.

[31] Adam Liptak, Bush Rationale on Libby Stirs Legal Debate, N.Y.Times, July 4, 2007 (quoting Ohio State University Law Professor Douglas A. Berman).

main target: both were called as witnesses as a part of larger investigations. Both had distinguished careers in public service and neither had any countable criminal history points under the federal Sentencing Guidelines. One is of economic means, able to hire an entire defense team and pay a quarter million dollar fine at the drop of a hat. The other is economically destitute, appearing before you today through the public defender's office. One's sentence has been commuted by the Executive Branch, the other's sentence has been affirmed by the Supreme Court based upon the adverse arguments of the Executive Branch. Today, one is in prison suffering from multiple, serious medical conditions that may lead to his victimization, or to further disablement. Today, the other walks on the outside, free, knowing that he will wake up tomorrow in his own bed, in his own home, and with his family. I would like to thank you for your time, and I am happy to answer your questions to the best of my ability.

Mr. CONYERS. Finally, we have Attorney David Rivkin, a partner in the office of BakerHostetler. Prior to entering private practice, Mr. Rivkin served in the George H. W. Bush White House as Associate Executive Director and Counsel of the President's Council on Competitiveness, as a Special Assistant for Domestic Policy to Vice President Quayle.

We welcome you, sir, at this important hearing.

TESTIMONY OF DAVID RIVKIN, BAKER & HOSTETLER LLP

Mr. RIVKIN. Chairman Conyers, Ranking Member Smith, Members of the Committee, I do appreciate a chance to appear before you and address this important public policy issue.

We all agree that the President constitutionally has the right to engage in the practice he has engaged in regard to Mr. Libby. The question is one of propriety and policy merits.

We have heard criticisms today and before that commutation of Mr. Libby's sentence imposed after a jury found him guilty of perjury and obstruction of justice evidences disregard for the rule of law, at the very least, realizes the very serious nature of the offenses involved.

Let me stipulate that perjury and obstruction of justice indeed are serious transgressions that ought to be taken seriously. By the same token, the very nature of the pardon power presupposes the President's ability to pardon individuals accused of minor as well as serious offenses.

More fundamentally, and in a certain sense apropos, given Chairman Conyers' statement, I believe that the pardon power, when properly deployed by the President, properly advances the cause of justice.

The framers understood the justice under the law, the justice of rules, procedures, equal treatment, due process, which again Chairman Conyers mentioned in his opening statement, while important to our systems of ordered liberty, is not the only conceivable form of justice. The framers believed the political branches ought to render in appropriate circumstances a different kind of justice driven by considerations of equity and not rules. It is the closest to what the framers would have called the natural draw-driven justice.

The President's pardon power is one notable example of his justice. Incidentally, the ability of Congress to pass private bills, which sidestep the rules governing immigration or land acquisition, is another.

The pardon power is inherently selective. It does critics no good to complain that thousands of people seek it but only few obtain favorable results. It is inherently discretionary when he believes it to be in the best interest of justice. The fact that somebody was prosecuted and punished by a jury of his peers in accordance with the established evidentiary and other judicial procedures suggests in most instances that justice was done. Unfortunately, that is not always the case.

This is not, by the way, to criticize our criminal justice system, which is, in my view, the most defendant-friendly system in today's world, and certainly the fairest. But any rule-based system, no

matter how well-managed and operated, produces less than perfect results.

In my view, there are several reasons why the entire prosecution of Mr. Libby did not evolve in a way that could promote justice. With all due respect to the Chairman, these are not extraneous considerations, these are the key factors bearing upon the President's decision, in my opinion, to provide the pardon power.

I do not want to impugn the integrity of any participant in this process. Prosecutor Fitzgerald does not have a partisan bone in his body, neither does Judge Walton. But to me the whole process was irredeemably tainted from the very beginning.

The most important and consequential problem was the decision to appoint a Special Counsel. This step was particularly regrettable since the senior DOJ officials knew prior to tapping Mr. Fitzgerald that the leak of Valerie Plame's name to the columnist Robert Novak, the ostensible reason for the CIA's referral of the matter to the Department of Justice, was in effect by the Deputy Secretary of State Dick Armitage. Mr. Fitzgerald certainly knew of that fact at the time he accepted his appointment and shortly thereafter.

As I have written and said on many occasions on a pretty bipartisan basis, the appointment of a special and independent counsel, no matter what the virtues of the individual involved, invariably skews the exercise of prosecutorial discretion and is virtually guaranteed to produce less than optimal results. It fosters time and again a leave-no-stone-unturned, protracted, costly and Inspector Javier-like pursuit of the individual being investigated.

Here we have a situation where Special Counsel spent several years and millions of taxpayer dollars all because he believed Mr. Libby might have lied to him or his investigators. In the process he caused a great deal of harm for the ability of reporters to conduct business. I emphasize that because I do not see how, quite aside from frailties of human memory, Mr. Fitzgerald could have known for sure at the time he went after Judith Miller and Matt Cooper and other media figures that Mr. Libby's account of his discussions with reporters does not square with theirs. Ask yourself whether a regular DOJ prosecutor not wearing a Special Counsel hat would have done this.

Now I am not going to retrace the discussion about Sandy Berger because among other things Ranking Member Smith mentioned it. By the way, I am not suggesting that Mr. Berger was treated too leniently, I am suggesting Mr. Libby was treated too harshly.

Here we have two senior officials accused of—suspected of engaging in similar conduct. They received dramatically different treatment from our criminal justice system.

That brings me to my last point, which is trumpeted by many critics of this commutation, why wasn't he exonerated by the jury? In my view, the reason has everything to do with how Mr. Fitzgerald presented it to the jury. He did this ably but in a way that fundamentally was unfair and sealed Mr. Libby's fate with the jury. Jurors are human beings, and as human beings, and particularly in a case that does not involve money, they want to understand the defendant's motivations.

The key thing is the narrative presented by the prosecutor. In Mr. Libby's case he presented the following narrative, we actually

heard the narrative substantially repeated by Mr. Wilson on this panel today, that there was a nefarious effort in the White House to destroy Mr. Wilson's reputation and even to punish him by allegedly hurting the career of his wife Valerie Plame and these activities were a part and parcel of the broader effort to sell the Iraq war to the American people. While I believe this narrative to be fundamentally false, it proved successful with the jury. The fact that the critics of the President's decision to commute Mr. Libby's sentence invariably invoke the broad narrative of the alleged White House Iraq war-related nefarious activities, underscore how unfair and politicized this whole prosecution has been.

To summarize, since Mr. Libby's prosecution led to a fundamentally unjust result, the use of the pardon power to remedy the injustice, if only partially at this time, was an entirely correct and proper exercise of the President's power in this instance, what the framers expected the pardon power to be used for at this point in time. I hope the President completes the job and pardons Mr. Libby at the appropriate time.

Thank you.

[The prepared statement of Mr. Rivkin follows:]

PREPARED STATEMENT OF DAVID B. RIVKIN, JR.

I want to express my gratitude to Chairman Conyers and Ranking Member Lamar Smith, for inviting me to appear before you today to participate in the hearing on President Bush's use of his pardon power to commute the prison sentence of the former Chief of Staff to Vice President Cheney, Scooter Libby. Let me say at the outset that nobody can seriously argue that, with the single exception of impeachment cases, the President's pardon power is not absolute on its face or that it cannot be exercised by the President in any and all policy contexts, so long as the underlying offense involves violations of federal law. Indeed, the concerns that have been expressed about this commutation are primarily of a policy nature and go to the propriety of the commutation of Mr. Libby's prison sentence and the context in which it was issued. My bottom line view is that, given all the facts and circumstances involved in Patrick Fitzgerald's investigation and prosecution of Mr. Libby, the commutation of his sentence at this time by the President is entirely appropriate. Indeed, it is my hope that, in due course, the President will take the next step and issue a full pardon to Mr. Libby.

Let me go through the policy arguments that have been raised against the President's action and outline for you some suitable rebuttals. First, let's take the issue of timing of the commutation, since many critics have suggested that it was premature. The simple answer is that, following Judge Walton's decision not to allow the continuation of bail for Mr. Libby during the pendency of his appeal, and the rejection by the D.C. Circuit of Mr. Libby's challenge to this decision, he was subject to an immediate incarceration. In this regard, I recognize that Judge Walton's decision was entirely within his discretion—there is no constitutionally-protected right to bail following conviction. Accordingly, the D.C. Circuit's affirmation of this decision is also quite legally correct. Nevertheless, in my view, it was unnecessarily harsh.

Second is the criticism that the commutation of Mr. Libby's sentence, imposed after the jury found him guilty of perjury and obstruction of justice, somehow evinces disregard for the rule of law or, at the very least, trivializes what are properly considered to be serious violations of federal law. Let me stipulate that perjury and obstruction of justice are indeed major transgressions and ought to be taken seriously. By the same token, the very nature of the pardon power presupposes the President's ability to pardon individuals convicted of serious violations of federal law; there is no suggestion in the Constitution that only minor offenses ought to be a proper subject for the exercise of the pardon power.

More fundamentally, I believe that the pardon power, when properly deployed, advances the cause of justice. The Framer's understood that justice under the law, the justice of rules, procedures and "due process", while important to our system of "ordered" liberty, is not the only conceivable form of justice. They wanted the political branches to render a different kind of justice, driven by the considerations of equity

and not by rules. It is the closest we come today to what the Founders would have called the natural law-driven justice. The President's pardon power is one example of such justice; the ability of Congress to pass private bills, which sidestep the rules governing immigration or land acquisition, is another.

The pardon power is, of course, inherently selective—it does critics no good to complain that thousands of people seek it, but only a few obtain favorable results. It is inherently discretionary, and is an extraordinary remedy to advance what the President exercising it believes to be in the best interests of justice. The fact that somebody was prosecuted and convicted by the jury of his peers, in accordance with the established evidentiary and other judicial procedures, suggests, in most instances, that justice was done. Unfortunately, there are some instances where this is not the case.

This is not, by the way, to criticize our criminal justice system, which is, probably, the fairest and most defendant-friendly system in today's world. However, any rule-based system, no matter how well-managed and operated, inevitably, albeit very occasionally, produces less than perfect results. There are instances where obviously guilty individuals go free, and there are occasions where individuals, who should not have been prosecuted at all, end up being convicted.

In my view, there are several reasons why the entire prosecution of Mr. Libby did not evolve in a way that could have promoted justice or ended up promoting justice. This, incidentally, is not meant to impugn the integrity of any of the participants in what, in my view, became a rather tragic process. Prosecutor Fitzgerald is undoubtedly an honorable man, and, by all accounts, does not have a partisan bone in his body. The same is true about Judge Walton, and I have no doubt that the jury was fair and conscientious in its deliberations. The problems reside elsewhere.

The most important and consequential problem was the decision to appoint a Special Counsel to investigate this matter in the first place. This step was particularly regrettably, since the senior DOJ officials knew, prior to tapping Mr. Fitzgerald, that the leak of Valerie Plame's name to the columnist Robert Novak—the ostensible basis of the CIA's referral of the matter to the Department of Justice—was effected by the Deputy Secretary of State Dick Armitage and that Mr. Fitzgerald either learned about this fact at the time he was appointed and likewise. Also, it appears that shortly after his appointment, Mr. Fitzgerald knew that the very reason for his appointment—alleged violation of IIPA—was in error, since Ms. Wilson was not a covert agent within the meaning of the IIPA. More generally, as I have written and argued on other occasions, the appointment of a Special or Independent Counsel, no matter the probity and virtue of the individual involved, invariably skews the exercise of prosecutorial discretion and is virtually guaranteed to produce less than optimal results. It fosters time and again a "leave no stone unturned," protracted, costly, and Inspector Javier-like pursuit of the individual being investigated. Yet, doing justice is not a mechanical process and it must always be informed by a sound exercise of prosecutorial discretion.

Here, we have a situation where a Special Counsel spent several years and millions of taxpayer dollars all because he believed that Mr. Libby might have lied to him or to his investigators when they investigated a "crime" they already knew had not been committed. In the process, the Special Counsel caused a great deal of harm to the ability of reporters to ply their business—which is a core element of our body polity's overall system of political and institutional checks and balances. I emphasize the word "might" because, quite aside from the frailties of human memory, Mr. Fitzgerald could not have known for sure at the time he went after Judith Miller, Matt Cooper, and other media figures that Mr. Libby's account of having heard first from reporters of Ms. Plame's work and her alleged role in organizing her husband's trip to Niger was false. That conclusion on his part necessarily had to await until he successfully coerced the reporters involved. Ask yourself whether a regular DOJ prosecutor, not wearing a Special Counsel hat, would have done this.

And, to those who say that, given Mr. Libby's high-government position, a regular government prosecutor would have been just as relentless as Mr. Fitzgerald, my response is look at how the Department of Justice's career attorneys (in the Public Integrity section) treated another high-ranking official, President Clinton's former National Security Advisor, Sandy Berger. There is no dispute about what Mr. Berger has done, since he admitted, after some time lapsed, to such transgressions as stealing highly classified documents from the National Archives, destroying at least some of them, and lying about it to Executive branch officials. What he did certainly amounted to an obstruction of justice, providing misleading and false information to Executive branch officials, and several other serious criminal law transgressions. The only reason perjury is not on my list is because Mr. Berger was not put in the position where he had to testify under oath.

Yet, presented with all of these facts, the career attorneys in the Department of Justice decided not to prosecute him and settled for the imposition of a fine on Mr. Berger, as well as the forfeiture for a period of years of his security clearance. My point here is not to suggest that Mr. Berger was treated too leniently; rather it is to suggest that Mr. Libby was treated too harshly. In my view, when two senior government officials, who have been accused or suspected of having engaged in a substantially similar conduct—in neither case was personal enrichment or any other pecuniary consideration an issue—receive a dramatically different treatment from our criminal justice system, we cannot say that justice was done.

This brings me to my last point, which has been trumpeted by the critics of the President's commutation of Mr. Libby's sentence—why wasn't he exonerated by the jury, since juries are often swayed by arguments that a particular defendant was treated overly harshly by the government or was made a scapegoat for the transgressions of others. Indeed, Mr. Libby's lawyers have tried to deploy some arguments along these lines and yet, did not succeed. In my view, the reason for this has to do with how Mr. Fitzgerald chose to present his case to the jury. He did so ably, and without violating his ethical obligations; yet, in my view, it was done in a way that was fundamentally unfair and sealed Mr. Libby's fate with the jury.

Jurors are human beings and as human beings want to understand a defendant's motivations. As a result, the overall narrative provided by the prosecutor, the context if you will, is extremely important. In Mr. Libby's case, Mr. Fitzgerald presented the jury the following damning narrative—there was a nefarious effort in the White House to destroy Joe Wilson's reputation and even to punish him, by allegedly hurting the career of his wife Valerie Plame; these activities were a part and parcel of the broader effort to sell the Iraq war to the American people. While I believe this narrative to be fundamentally false, it proved successful with the jury.

The fact that the critics of the President's decision to commute Mr. Libby's sentence invariably invoke the broad narrative of the alleged White House Iraq war-related nefarious activities, underscores how unfair and politicized this whole exercise has been.

To summarize, since, in my opinion, Mr. Libby's prosecution led to a fundamentally unjust result, the use of the pardon power to remedy the injustice, if only partially at this time, was an entirely correct and proper exercise of the President's powers.

Mr. CONYERS. Thank you very much. Let me begin the questions by asking Mr. Adams, based upon your experience as Justice Department's Pardon Attorney for over a decade, are you aware of any other instance in which a President has given clemency to an official in his own Administration regarding a conviction for obstructing an investigation into possible wrongdoing potentially involving other officials in his Administration?

Mr. ADAMS. Let me make sure I understand the question, Mr. Chairman. Clemency for a former official in his Administration?

Mr. CONYERS. Yes. Are you aware of any other instance in which a President has given clemency to an official in his own Administration regarding a conviction for obstructing an investigation into possible wrongdoing that could involve other officials in his Administration.

Mr. ADAMS. That is a fairly narrow criteria, and I have had a lot of cases that have gone through my office. I don't think I can recall such a specific case. I can recall—we are all familiar with cases where a President has pardoned or granted either pardons or commutations to people who have formerly been in the executive branch.

Mr. CONYERS. Thank you. Mr. Berman, ordinarily under the sentencing guidelines would the fact that a person has led a privileged life and has held high positions in government be a mitigating factor in determining an appropriate sentence rather than an aggravating factor, in your view?

Mr. BERMAN. The guidelines say prior military service, prior good works, it speaks to these factors being not ordinarily relevant in deciding whether to go outside the guideline range. The guidelines provide, as they did in this case, a range, usually fairly narrow, again, for Mr. Libby it was 30 to 37 months. The fact that Judge Walton picked a sentence at the bottom of the range suggests to me that Judge Walton was attentive at some level to some of these personal factors, and I think your question itself highlights the way in which these kinds of personal factors could be seen as either mitigating or aggravating. In fact, Mr. Fitzgerald in his sentencing memorandum highlighted that by virtue of Mr. Libby having a career as a lawyer, being a high government official; that background may have made it a more aggravating set of circumstances to obstruct justice in these situations.

Other cases obviously raise these personal factors in different contexts.

Mr. CONYERS. Thank you. Ambassador Wilson, you have listened patiently through all of this except for your own testimony. Would you want to share anything with our Committee in connection with what you have heard thus far in this hearing?

Mr. WILSON. Well, Congressman, I am surrounded by a number of lawyers, and I am not a lawyer, even though the half of the lawyers in this town who are not employed by Mr. Libby are probably employed by me.

I am struck by, one, the nature of the underlying crime that was initially investigated. It was a breach of the national security of this country. It is very clear from the testimony that came out that a number of senior White House officials were involved, and I repeat what I said in my earlier prepared testimony, that Mr. Fitzgerald suggested that there was a cloud over the Vice President. These people were in the direct chain of command of the President of the United States and commuting their sentence and commuting Mr. Libby's sentence and keeping Mr. Rove employed as his political adviser even after it became known that Mr. Rove was one of the leakers and in violation of the President's own edict, it casts a pall over the President and over his office and over these senior officials.

I would like to see the President and the Vice President come clean with the American people, beginning with perhaps releasing their own interviews with Special Counsel Fitzgerald. I think they owe that to the American people. I would like to see the cloud lifted.

Mr. CONYERS. Thank you so much. Mr. Berman, did the President's statement encourage Federal judges to disregard the guidelines?

Mr. BERMAN. I think there is a likelihood that defense attorneys will be citing the President's statement in support of their own what's been called Libby motions suggesting that the guidelines ought not be followed whenever a person has these kind of collateral harms to reputation, harms to their family, which are in some sense inevitable when any person of high position or privilege is subject to a criminal indication.

Again, personally I think there may be circumstances, there may be situations in which those kind of personal circumstances ought

to come to bear, and I am often disappointed that there isn't a way for defense attorneys to put that within the guidelines, that the guidelines do not enable judges, generally speaking, to formally consider some of these factors that may bear on culpability and likelihood of recidivism. But I think it is almost inevitable not only that defense attorneys will make these motions, but that different judges around the country will react to the motions differently, some believing that the President made the right judgment and then reducing the sentence below the guidelines in accordance with the President's sentiments, others listening to more standard Justice Department arguments that these factors ought not be considered because there is a risk that it sends the message that those of privilege or those who suffer outside the courtroom ought not be punished through the normal processes.

Mr. CONYERS. Thank you very much. The Chair recognizes the distinguished Ranking Member, Lamar Smith.

Mr. SMITH. Thank you, Mr. Chairman. First of all, I would like to ask unanimous consent to have made a part of the record all the commutations and pardons by the current President Bush to date as well as all the pardons and commutations of the former President Clinton.

Mr. CONYERS. Without objection, so ordered.

Mr. SMITH. Today is kind of an interesting hearing. When you and I spoke about this hearing several days ago, you assured me that it was not going to be a partisan hearing, and the reason you gave as to why it was not going to be a partisan hearing is because we were going to examine previous Administrations, Republican and Democrat alike.

I read all the majority witnesses' testimony and there is no mention of any previous Administration. I listened to their oral testimony today and there was no mention of any previous Administration. So I am a little disappointed and I know it wasn't intended but clearly has turned out to be a partisan hearing, and particularly not any curiosity about past Administrations.

I would like to ask the majority witnesses this question though, did any of the majority witnesses take a look at the Clinton record, particularly in regard to the pardons that were given to individuals convicted of similar crimes that Mr. Libby had been convicted of? In other words, did you look to see how many people received pardons for being convicted of perjury, obstruction of justice or making false statements? Was there any curiosity about that? Mr. Berman.

Mr. BERMAN. A lot of curiosity, although I would say I have been long critical of President Clinton's own record on pardons and commutations. I was particularly disappointed that in light of his period as President and the extraordinary growth in the Federal prison population, the increasing use of mandatory minimum sentences, the extent to which many, many first offenders with the same kind of personal circumstances that are involved in Mr. Libby's case, not always the exact same crime but often nonviolent first offenses when there is no risk of recidivism that the President didn't take a more proactive role, President Clinton, in bringing justice to those cases.

Because as others have mentioned, the justice system does not always work perfectly, and the clemency power exists to deal with

not just cases of wrongful conviction, not just cases of overzealous prosecutions, not cases that go off the track because of special prosecutors, but to notice that rigid sentencing rules particularly can often lead to extraordinarily long sentences. And I am quite honestly quite disappointed not so much with the grants that Clinton did, although some of those were very suspect and I think did undermine the rule of law, but disappointed there wasn't an effort to look more broadly at the justice considerations in play here.

Mr. SMITH. Thank you. By the way, the answer is there were 39 individuals who were pardoned or whose sentences were commuted by President Clinton who had been charged with similar crimes.

Mr. Rivkin, let me address my second question to you. What do you say to Mr. Cochran or what do you say to his client? There are obviously many instances where individuals have been pardoned and other individuals have not been pardoned who have been convicted of the same or similar crimes.

What do you say to Mr. Cochran's client, what do you say to the convicted drug traffickers that were not pardoned by Mr. Clinton although he pardoned several dozen?

What about the discrepancy there.

Mr. RIVKIN. I would say a couple of things, Congressman Smith.

As I tried to explain in a very brief 5 minutes, there is something unique and distinctive about the pardon power. It is a particularly ill-suited area for growing precedence and lessons for the future. You do not form a case law by exercising pardon power.

My view would be that while the President did not dwell on it in his remarks—and this actually is relevant to the question of the so-called "Libby motion"—what he is really trying to say with the use of pardon power is not that it is inherently excessive to sentence somebody to 2½ years in prison when that person has a good family and has suffered enough and has not had enough prior offenses but that it was excessive in these circumstances.

Everything that you do when you exercise a pardon power is what we lawyers call "facts- and circumstances-specific." so I have absolutely no view as to the merits of that pardon.

Mr. SMITH. Mr. Rivkin, let me squeeze in a last question here.

You said one of the reasons that you favored the commutation of Mr. Libby's sentence was that you felt that a special counsel should never have been appointed in the first place. Tell me why that is.

Mr. RIVKIN. Well, I tend to think that—and this is, again, whether you call them special counsels, independent counsels—whenever you have—one was made, actually, a long time ago by Jesse Jackson. Whenever you have a prosecutor who is operating outside the normal bureaucratic and institutional constraints, it does not matter if it is a politically appointed prosecutor or a career prosecutor. The inherent exercise of prosecutorial discretion is skewed to the point where there is obsessive, never-ending, no-stone-unturned prosecutions. There is enormous pressure.

I will tell you I was not a fan of Ken Starr's prosecutions, either.

So it has nothing to do with whether or not it is a Republican or a Democrat. I think the decision to appoint a special counsel in a situation where the Department of Justice knew that the individual involved was not a member of the White House staff and who certainly was not a supporter of the war did not fit into any

kind of narrative about this nefarious activity. It was ludicrous, frankly, to appoint a special counsel, and it was ludicrous to continue this investigation. It is unfortunate that it went on, and you cannot divorce these considerations from the sentencing and the conviction here, and that, to me, is a very, very serious matter.

Again, not to dwell on matters pertaining to Mr. Berger, but we have two senior government officials who are accused of doing virtually the same thing, and one is a mess. The only difference is Mr. Berger was investigated by career attorneys in the Office of Public Integrity who decided not to prosecute him. That is a perfectly fine decision. Mr. Libby was prosecuted by special counsel. The disparity in their treatment is remarkable, and that is fundamentally unfair and unjust.

Mr. SMITH. Thank you, Mr. Rivkin.

Thank you, Mr. Chairman.

Mr. CONYERS. Thank you.

The Chair recognizes the Chairman of the Constitution Subcommittee, the gentleman from New York, Jerry Nadler.

Mr. NADLER. Thank you.

Let me comment first before I ask a few rapid questions.

In response, I think, to a question by the gentleman from Texas, I think this is a very unique situation, not quite unique but it is a very unusual situation, comparable only to the pardons in the Iran-Contra situation. In that situation and in this situation, pardons were issued to former or to current government officials. There was confidence in the President who had engaged in wrongdoing with the pardons and in the situation in which their actions frustrated a legitimate investigation, and the pardons guaranteed to make sure that that investigation could go no further, investigations in each case of wrongdoing by the Administration and perhaps by the President himself.

That makes those two cases—this one and the Iran-Contra—quite different from Mr. Clinton's pardons or anybody else's pardons, in my view. To me, they undermine the functioning of government and the trust in government that we must have; and that is why they are particularly loathsome.

Now, my questions are going to be really structured by Mr. Rivkin's statement. Mr. Rivkin stated a number of things. Let us go to number one.

You said that the appointment of the special counsel is particularly regrettable since the senior DOJ officials knew, prior to tapping Fitzgerald, that the leak of Valerie Plame's name to syndicated columnist Mr. Robert Novak, that the ostensible basis for the investigation was affected by the Deputy Secretary of State, Dick Armitage, and that Fitzgerald either learned about the fact at the time he was appointed or shortly thereafter. And it appears that shortly after his appointment Fitzgerald also knew that the reason for the appointment, the alleged violation of the law by outing CIA agents, was in error since Ms. Wilson was not a covert agent within the meaning of that act. But the submission to the court by the special prosecutor specifically said that the investigation seeks to determine which Administration officials disseminated information concerning Ms. Plame to members of the media

in spring 2003, the motive for the dissemination and whether any violations of law were committed in the process.

While the initial reporting regarding Ms. Plame's employment was a column by syndicated columnist Robert Novak, the investigation of unauthorized disclosures is not limited to disclosures to Mr. Novak. So it was a broader investigation, which would seem to negate that point that you made. Moreover, the investigation seeks to determine whether any witnesses interviewed to date have made false statements, et cetera.

Mr. Wilson—Ambassador Wilson, I should say—you also say in your statement that Ms. Plame was not a covert agent. Mr. Wilson, was Ms. Plame a covert agent?

Mr. WILSON. Thank you, Congressman.

Ms. Plame's actual name is "Mrs. Wilson." Mr. Novak did not even get that part of his article quite correct——

Mr. NADLER. Nor did I.

Mr. WILSON [continuing]. But she has become "Ms. Plame" again thanks to Mr. Novak's article, and she accepts that.

The case was referred by the CIA to the Department of Justice because the CIA believed that a crime had been committed. The special counsel has said repeatedly, both in representations to the court and publicly, that she was a classified officer who should have been protected under the relevant American law.

My wife, Valerie Wilson, was a covert officer, a classified officer, a member of the Central Intelligence Agency, who served her country for 20 years both in covert positions and in nonofficial covert positions during the course of her career.

Could I also just answer in response to the question raised by Congressman Smith?

I took a look at pardons and other Presidential actions because my concern in this was whether or not the whole truth is coming out or whether or not the decision to commute was, in fact, part and parcel to a cover-up or to an ongoing obstruction of justice.

The case that I really looked at was that of President Nixon's, who did not, in fact, pardon or commute the sentences of his senior White House staff, Mr. Haldeman and Mr. Ehrlich.

Mr. NADLER. Thank you. Let me go further.

You state, Mr. Rivkin, that in Mr. Libby's case Mr. Fitzgerald presented the jury with the following damning narrative—and, by implication, you are saying it is a false narrative—that there was a nefarious effort in the White House to destroy Joe Wilson's reputation, to punish him by allegedly hurting the career of his wife's, Valerie Plame—Valerie Wilson. These activities were part and parcel of the broader effort to sell the Iraq War to the American people.

I believe this narrative to be fundamentally false if proved successful to the jury, and that is why these pardons were okay, because the whole thing was essentially wrong because of that false narrative.

I must tell you that I think the evidence richly bears out that narrative, that the Vice President—we have in his own handwriting that he seems to have directed an effort to discredit—here, we have in the Vice President's own handwriting to call out to key press varying—saying the same thing about Scooter, not going to

protect one staffer and sacrifice the guy who was asked to—I cannot read it—stick his neck in the meat grinder because of the incompetence of others.

There seems to have been—it is clear from the record that Mr. Cheney, Mr. Rove, Mr. Libby, and others were engaged in talking to all sorts of reporters to get the word out that Valerie Wilson was the motivating factor behind Ambassador Wilson's trip in order to discredit Mr. Wilson.

Mr. Wilson, is that a correct reading of the data?

Mr. WILSON. I certainly believe so, Congressman. Indeed, Mr. Fitzgerald said in one of his comments that it was hard to conceive that there was not a conspiracy to discredit, punish and seek revenge. That may not be a literal translation, but I believe those are the words that he used, not necessarily in that order. Discredit, punish and seek revenge on Ambassador Wilson were the terms.

Mr. NADLER. Mr. Chairman, can I have one additional minute?

Mr. CONYERS. No.

Mr. NADLER. Okay.

Mr. CONYERS. I am not inclined for additional minutes.

The former Chair of the House Judiciary Committee, Jim Sensenbrenner of Wisconsin.

Mr. SENSENBRENNER. Thank you very much, Mr. Chairman.

Let me say that I think this hearing today is a waste of time. Article II, Section 2 of the Constitution gives the President plenary power to pardon or to grant clemency. It is one of the few powers in the Constitution that is not reviewable, checked or balanced by the other two branches, similar to each House of Congress' power to establish their own rules of procedure. So, no matter what we do here today, the President will still continue to have his power to grant clemency, just as all of his predecessors and all of his successors have.

Now, this Congress is rapidly becoming a "do even more nothing Congress" than the one in the last Congress that was criticized by my friends on the other side of the aisle. About 80 percent of the laws that we have passed in the first 6 months have been to rename post offices. Maybe we can slow down on that because there are not any more post offices left to rename after former colleagues or other notables in our various districts.

It seems to me that what is going on here today is more braying at the moon by my friends on the other side of the aisle who spend more time looking into real or imagined misconduct on the part of the Bush administration rather than doing the job that we were elected to do.

Now I will point out that on this Committee we have got jurisdiction over private bills. Sometimes we have passed out a lot. I do not like them, and on my watch we passed out very few, but every private bill is a way of bending the rules or of waiving rules to provide equity to people that the majority of the Congress decides to provide equity to. And what is being done when we consider a private bill is intrinsically, really, no different than when the President exercises his constitutional power to provide clemency to whomever he wants.

Now, we have heard a little bit about process today and why this was different strokes for different folks. Mr. Adams, you know you

are supposed to be the gatekeeper to look at pardon applications and to make recommendations which the President is free either to accept or to disregard or to not even talk to you about.

I guess the one question that I want to ask, rather than prolonging this hearing, is that at the end of the Clinton administration, there were a bunch of pardons issued on his last day of office. I want to ask you if you were consulted on any of the four individuals who were granted clemency: Marc Rich, whose wife was a major donor to the Clinton Library; Roger Clinton, the President's half brother; John Deutch, his CIA Director; and our beloved former colleague, Dan Rostenkowski.

Were you consulted on any of these; and, if so, which ones and how?

Mr. ADAMS. Just to clarify, Congressman, Mr. Rostenkowski was not pardoned on the last day. His pardon was in December of 2000. My office was not consulted on that one.

Mr. SENSENBRENNER. Okay.

Mr. ADAMS. My office was not consulted on the Marc Rich pardon. We were not consulted on the Roger Clinton pardon.

My only involvement with the pardon of Mr. Deutch was to provide some technical assistance on the morning of January 20 on how they would prepare the pardon warrant for Mr. Deutch because he was pardoned for offenses that he had not actually been convicted of yet. He had entered into a plea agreement on January 19 that he would plead guilty to an information, which set out various charges, and Mr. Deutch's name is not on the master warrant that was signed by President Clinton. They apparently were considering him so late that his name did not make it onto the master warrant, so I was asked to provide technical assistance on how they would prepare the individual pardon warrant for Mr. Deutch, and I did that.

Mr. SENSENBRENNER. Maybe it would be a good idea for you to come up with some boilerplate language and just send it up to the White House for them to keep for posterity in case they need a rush job. Would that be accurate?

Mr. ADAMS. I really am not going to comment on that.

Mr. SENSENBRENNER. You do not have to.

Mr. ADAMS. You know, it is not terribly difficult draftsmanship to grant someone a full unconditional pardon.

Mr. SENSENBRENNER. I yield back the balance of my time.

Mr. CONYERS. Thank you.

The Chair recognizes the gentleman from Virginia, the Chairman of the Subcommittee on Crime, Bobby Scott.

Mr. SCOTT. Thank you, Mr. Chairman.

Mr. CONYERS. Would you yield just briefly to me?

Mr. SCOTT. I will yield.

Mr. CONYERS. I was just reviewing the activities of the 110th Congress, of the Judiciary and the 109th Congress; and the 110th Congress has passed to the House 37 measures—bills; and the 109th Congress has sent 15 during the period from July 1, 2005, to July 1, 2007.

I thank the gentleman for yielding.

Mr. SCOTT. Thank you. Thank you, Mr. Chairman.

I would also like to respond to whether or not this is an important hearing. This is not a hearing of whether the President has the power of pardon. Of course he does. This is just an oversight as to how he is using it, and we want to put this thing in context.

The allegation that we are considering is that there was a scheme to punish Ambassador Wilson for telling the truth and to discourage others from doing the same thing. Now, what happens when people do not tell the truth and do not speak up?

We are in a war today partially because no one was speaking up. Somebody must have known there were no weapons of mass destruction. Nobody said anything.

Somebody knew that there was no connection with 9/11. No one said anything.

Somebody had to have problems with Secretary Powell's testimony before the U.N.

Somebody knew that when the Administration officials estimated the length of this war going in and they said 6 days, 6 weeks, no more than 6 months, somebody must have had some problems with that.

Somebody should have known that when the Administration came before the Budget Committee and said that we should not even bother to budget the war because it would not cost anything, that it would not cost enough to budget, somebody must have known that it was not true.

Here we are investigating the U.S. Attorneys. There seems to be a pattern. If you do not follow a political line, you might get fired.

This morning, the former Surgeon General was in the paper telling a congressional panel Tuesday that top Administration officials repeatedly tried to weaken or to suppress important public health reports because of political considerations. Why is he just speaking out now and not before? Because of what might happen. On January 29, 2006, climate experts at NASA tried to silence him; and when you have a situation like this when this is the scheme that is part of the pardon, we can see how important this is.

Now, Ambassador Wilson, is there any question that this revealing of your wife's name might have endangered her life?

Mr. WILSON. Congressman, the CIA would normally have prepared a damage assessment. Neither my wife nor I would have been made aware of that. It is very clear with respect to her own life and to her own security that there have been threats. Some have been credible, some have not been credible, and those have all been investigated.

More to the point, the question arises, with respect to the compromise and to the betrayal of her identity, to what other national assets were betrayed and as to whether or not there was a threat to them.

It has been written in a number of books that she was involved in counterproliferation activities. In other words, her responsibility was to ensure that nuclear weapons would not arrive on our shores. I would not comment on whether that is accurate or not but just refer you to the books.

In fact, as a way of thinking about this, as soon as her identity is compromised, you make the assumption that every program, every project, every operation, every asset, every individual with

whom she has come into contact either innocently or in the course of her professional activities have in one way or another been compromised.

Mr. SCOTT. And this affected her career?

Mr. WILSON. Yes, sir, it did. Once she became known as a CIA officer, she could no longer continue to do those things for which she had been trained and had been working for close to 20 years.

Mr. SCOTT. Is there any question in your mind that this revelation was a direct result of your telling the truth about the yellowcake?

Mr. WILSON. There is certainly no question in my mind, sir.

Mr. SCOTT. Now, a lot has been said that Armitage was the one who informed Novak. Is there any question that others—did Libby actually reveal her name to a reporter?

Mr. WILSON. During the course of Mr. Libby's trial, it was revealed that Mr. Libby, Mr. Armitage and Mr. Rove all were actively peddling her name to members of the press.

Mr. SCOTT. Thank you.

Mr. Adams, if they had gone through the normal process—now, the President, finally, does not take issue with the fact that there was a violation of the code section. He just had problems in his public statements about the excessive punishment.

If they had gone through the normal process, would you have caught the issue that supervised probation cannot take place without incarceration and avoid the spectacle of the President's saying and others' saying that the supervised probation will still remain? Would you have caught that and recommended something before that spectacle occurred?

Mr. ADAMS. I think, Congressman, you are referring to the term of "supervised release," which the President said he was leaving intact in his commutation order of decision.

Mr. SCOTT. Would you have caught that?

Mr. ADAMS. I am not sure what you mean by "caught that." It is not uncommon, Congressman, for the President to commute a sentence of incarceration and leave intact a sentence of supervised release.

Mr. SCOTT. Is that not a question now that the judge has suggested that you cannot do that?

Mr. ADAMS. I think the judge has asked for opinions on it, and it is my understanding that the Justice Department—Mr. Fitzgerald's office—has filed a pleading, an answer, to that question.

Mr. SCOTT. Cooperation is a factor in downward departure. Is there any expectation that Mr. Libby will now cooperate, particularly in light of the fact that the special prosecutor has represented that all in this situation is not known? Is there any suggestion that he may now start cooperating?

Mr. ADAMS. I have had nothing to do with Mr. Libby's prosecution, and I really cannot——

Mr. SCOTT. So that is not an expectation?

Mr. ADAMS. I cannot answer the question, Congressman.

Mr. SCOTT. Well, you are the only Administration witness up here. So, you know, it is the best we can do.

Remorse is a factor in the downward departure. Based on what you know about his behavior, would he be entitled to a downward departure because of remorse?

Mr. ADAMS. I do not know enough about the facts of the case. I do not know anything about the facts of that case.

Mr. CONYERS. The gentleman's time has expired.

The Chair recognizes the distinguished gentleman from North Carolina, Howard Coble.

Mr. COBLE. I thank you, Mr. Chairman.

It is good to have you all with us, especially my fellow North Carolinian.

Mr. Rivkin, for what it is worth—it is probably not worth anything—but if I had been the United States Attorney and the Libby case were presented to me, I am confident that I would have declined prosecution, and you touched on some of those issues in your testimony.

Ambassador, you touched on some of these in response to the gentlewoman from Virginia's questioning, but in your written statement, Ambassador, you indicate that the actions by the Vice President and by Mr. Libby, among others, caused untold damage to national security. Now, I am told that bipartisan inquiries and Mr. Libby's criminal trial did not demonstrate that. Now, if I am off course, bring me back on course.

Mr. WILSON. Congressman, any time that a covert CIA officer's identity is betrayed, all of those assets and all of those programs and all of those projects and all of those people with whom that CIA officer has come into contact are presumed to have been betrayed as well.

Mr. COBLE. Well, I guess I am having trouble with "untold damage," but we will visit that another day.

Mr. Adams, it has been reported that the Libby commutation is the first instance in which commutation was granted prior to the recipient's appeal having been exhausted. Is this, in fact, accurate?

Mr. ADAMS. No, sir. Do you mean historically or——

Mr. COBLE. Yes.

Mr. ADAMS. No, sir, that is not correct.

There was a commutation of a man named Arnold Prosperi, who was commuted on the last day of the Clinton administration. He had an appeal pending at the time.

Mr. COBLE. Okay. I cannot recall where I read this, but I read somewhere that this was a case of first impression, and you tell me it is not.

Mr. ADAMS. There was another case.

Mr. COBLE. Yes.

Mr. ADAMS. Prosperi's case was—he had an appeal pending, and his sentence was commuted——

Mr. COBLE. I have got you.

Mr. ADAMS [continuing]. Back to home confinement in his case.

Mr. COBLE. Thank you, Mr. Adams.

Now, Mr. Sandy Berger, President Clinton's National Security Advisor, his name has been mentioned two or three times, and I was going to pursue that. But it was disposed of, as best I recall, on a guilty plea, and I was going to ask about what appropriate

punitive action would be in order, but I think I will save that for another day.

Let me talk to Mr. Rivkin.

Mr. Rivkin, apparently, a new motion—I think one of you has commented about this—called the "Libby motion" has surfaced by which defendants will argue for a downward departure because the recommended sentence is excessive.

Are you aware of any instance in which a defendant has successfully argued for a reduced sentence based upon the commutation of a third party's sentence?

Mr. RIVKIN. I am not, Congressman. In fact, I would not begrudge defense counsel from utilizing any creative argument in the advance interests of your client, but I think it would be oddly frivolous, and the reason for it is the fundamental difference between the way the President exercises his constitutional authority to pardon somebody and the way that the judge is engaged in the sentencing authority. They are just apples and oranges, and it would be quite ludicrous, in my opinion. You can argue that, but it would be quite ludicrous to say, gee, the judge sentenced somebody within the range or in the middle of the range or in some other portion of the range of the sentencing guidelines, but there are some mitigating factors, and he did not take them into account.

But as to the President's articulating, exercising an entirely different process—again, I have tried to be a little dispassionate about it. I was talking about different kinds of justice in my opening statement. It just has nothing to do with it. You cannot draw any implications, in or out, based on how the President exercises his pardon power, so those motions are going to be tried, and they are going to fail. I think they have no merit.

Mr. COBLE. Thank you, Mr. Rivkin.

Mr. Chairman, do you award credit if I yield back my time prior to the red light's illuminating?

Mr. CONYERS. Always, without fail.

Mr. COBLE. I thank the Chairman.

Mr. CONYERS. Thank you.

The Chair is pleased to recognize the gentlelady from Texas, the distinguished former Subcommittee Chairwoman on this Committee, Sheila Jackson Lee.

Ms. JACKSON LEE. Mr. Chairman, thank you very much.

I thank the witnesses as well, and I particularly thank my Chairman for making this the most constructive Oversight Judiciary Committee that we have had in more than a decade, and I want to compliment him very quickly for matching legislative initiatives that have been passed with oversight. One of the criticisms of the past Congresses has been by the American people of the complete abdication of any responsibility of oversight.

Let me quickly speak to the 800-pound gorilla that is in the room—and that is Marc Rich—and lay out some unique differences.

One, the past President did pardon Mr. Rich. There was an expose of that, or an explanation, shortly thereafter. The point was made that there were experts who indicated that this should have been a civil case versus a criminal case. The company had already paid $200 million-plus; and the experts—two tax attorneys—indi-

cated, as I have said previously, that they thought that appropriate handling of tax matters had occurred.

In addition, let me note for the record that staff members Podesta, Nolan and Lindsey said that they advised against it. We do not know what staff persons advised against it in the Bush White House, and the past President waived all executive privilege so that all of his staff could be questioned.

I do not know, Mr. Chairman, whether we have gotten a waiver of all executive privilege, but I would venture to say on the record that we have not.

Let me move quickly to the questions and to be able to pose this, having put the big 800-pound gorilla on the record, and to acknowledge why I am concerned.

Mr. Wilson, I will ask about Ms. Wilson. As a woman, let me applaud and take great pride in her service. I thank you both for your service and what you are trying to do.

I believe that this has to do with the lives that have been lost in this violent, misdirected and wrong-headed war. The tragedy of the Libby case is that we will not now be able to explore the violence of this war, the internal workings of the decision on this war, because we have now had a person who was a key element, along with the Vice President, on leading us into this misdirected, falsely designed war, and we now have a block because of this interruption by the CEO, the President of the United States, recognizing that he is using a constitutional power.

My question, Mr. Wilson: We indicated that there certainly seems to have been the jeopardy of Ms. Wilson's life, but isn't it true, when you are covert, when you are classified, that there are many, many other principles that work with you? Do we even know the far range of those lives that may have been put in jeopardy by this horrific and, I think, vile act?

Mr. WILSON. Thank you, Congresslady, for your comments about Valerie. I share your views about her service to our country; and let me also say, before I walked in today, I heard from your district that it has finally stopped raining——

Ms. JACKSON LEE. Thank you so very much. What a relief.

Mr. WILSON [continuing]. Which is a good thing.

I, obviously, cannot speak to the damage assessment. I know that Valerie was asked about all of her contacts and all of her projects and all of her programs, but, as you can imagine, all of this is compartmentalized, and she would have no reason to know and, therefore, neither she and, more particularly, I would not know.

Let me also just say that, while the article that I wrote on July 6 was designed to alert my fellow Americans to what I believe were fundamental misstatements of facts in the President's State of the Union Address in making the justification for taking our country to war, this hearing, I believe, is really designed to determine the extent to which the President may have exceeded or may have used his commutation authority in order to engage in a cover-up and in an ongoing obstruction of justice.

Ms. JACKSON LEE. And if I may reclaim my time, only because of the shortness of time of my questions. I thank you for that answer.

Let me quickly put on the record that Judge Walton indicated that he thought the evidence against Mr. Libby was overwhelming, but I want to go particularly to the Vice President and to the impact of the internal workings of the House. The only representative is the pardon attorney.

It indicated that Mr. Bush uncharacteristically put himself into the details of this case. It also indicated—and I am reading from a Newsweek article that is quoting Fred Fielding, who indicated that, after great review, they were disappointed that the evidence against Mr. Libby was so strong that he had testified falsely.

Let the record also reflect that he is charged and convicted of four counts.

It also says that Mr. Cheney was very intimately involved.

I want to ask, have you waived executive privilege and whether or not you can account for the involvement of Vice President Cheney in forcing the commutation of the sentence of Mr. Libby? I am asking. Can I get the gentleman to answer the question? I am asking Mr. Adams, please.

Mr. ADAMS. Congresswoman, neither I nor my office had anything to do with the commutation for Mr. Libby. That is all I can say.

Ms. JACKSON LEE. Do you know anything about the executive privilege, whether the White House has waived that for us to ask the——

Mr. ADAMS. I do not. If you would direct a letter to the White House, I will assume——

Ms. JACKSON LEE. And you know nothing about the——

Mr. CONYERS. The gentlelady's time has expired.

Ms. JACKSON LEE. I thank you, Mr. Chairman.

Mr. CONYERS. I just wanted the Committee to note that I have just had put in my hand a letter dated July 11, 2007, from the White House in which Fred Fielding, Counsel to the President, has indicated, "We respectfully must decline your request that the President provide documents and testimony relating to the commutation decision and trust that the Committee appreciates the basis for this decision."

I ask unanimous consent to put it in the record.

[The information referred to is located in the Appendix.]

Ms. JACKSON LEE. Thank you, Mr. Chairman, for that clarification.

Mr. CONYERS. You are welcome. Thanks for raising the point.

The Chair recognizes the only former state—oh, I am sorry. Mr. Gallegly, the distinguished gentleman from California, is now recognized for 5 minutes.

Mr. GALLEGLY. Thank you very much, Mr. Chairman.

Like Mr. Wilson, I am not a lawyer, but I have had the honor to serve on this Committee for, I think, 17 years; and it has been quite a ride. So sometimes you do not have the advantage of having been briefed in law school that you do not ask questions you do not know the answers to, so I may ask a question I do not know the answer to this afternoon, and I may even ask a question that I think I know the answer to, but I would like to start with Mr. Cochran.

In listening to your testimony and in reviewing your testimony, I think it is clear to all of us that the principal focus in your testimony was relating to your client, Victor Rita. Is that a fair statement?

Mr. COCHRAN. That is correct.

Mr. GALLEGLY. Is it true, Mr. Cochran, that you argued to the Supreme Court that you believe that Mr. Rita's sentence was excessive?

Mr. COCHRAN. That is correct.

Mr. GALLEGLY. You also in your testimony today were making, maybe not identifying, the comparison as a mirror image that there were similarities that were very extreme or almost a mirror image would be a fair assessment; is that correct?

Mr. COCHRAN. Yes, sir.

Mr. GALLEGLY. Having said that, would you agree with President Bush's opinion that the sentence for Mr. Libby was excessive?

Mr. COCHRAN. I do not know that I can comment, because I do not know the intricate facts of Mr. Libby's case.

Mr. Rita's concern was more directed at the perception of unfair treatment more than anything else. In the Supreme Court, he put forth several arguments regarding personal characteristics of his background—his military service, his health condition, his military record—as possibilities for the Court to consider whether he should have a reduced sentence in weighing that against his conviction.

In the Supreme Court, the Solicitor General argued against our position persuasively, convincing the Court that those were not things that mattered in Mr. Rita's case; and I think the best way to characterize Mr. Rita's concern is confusion. He brought his case to the Court based on personal background issues; and then, in reading the statements signed by the President in commuting Mr. Libby's sentence, the President mentions some of the very same personal characteristics and background in commuting Mr. Libby's sentence.

Mr. GALLEGLY. Mr. Cochran, you said you really were not that familiar with Mr. Libby's case, but it is clear that you were familiar enough to weave him into your testimony today. Is that a fair assessment?

Mr. COCHRAN. Yes, sir. Clearly, the two men faced the same charges. These charges came about during the same time period. They both have backgrounds in civil service. They are both family oriented men. There are some very obvious and common themes throughout.

Mr. GALLEGLY. And you stand by your claim that Mr. Rita's sentence was really unreasonable and excessive?

Mr. COCHRAN. That was our contention from the beginning.

Mr. GALLEGLY. Mr. Cochran, have you ever filed a clemency petition for the Department of Justice on behalf of Mr. Rita?

Mr. COCHRAN. I have not, sir.

Mr. GALLEGLY. Okay. Do you anticipate that you will?

Mr. COCHRAN. I have discussed that with Mr. Rita, and we have not come to a final decision on that issue yet.

Mr. GALLEGLY. Have you sought alternatives for incarceration for other defendants who you have represented?

Mr. COCHRAN. I have on one occasion.

If I may ask the Congressman, is that in terms of clemency proceedings or other matters?

Mr. GALLEGLY. Other alternatives, including clemency but not limited to it.

Mr. COCHRAN. I have sought departure motions, what we characterize as "3553(a) motions," to ask the sentencing court to forward these sentences. Yes, sir.

Mr. GALLEGLY. Well, would you say then, in summary, while you have argued that Mr. Rita's sentencing was excessive and you have repeatedly mentioned, really, the real similarities in the two cases, that it could be conceivable by a reasonable thinking person that Mr. Libby's sentence was also excessive?

Mr. COCHRAN. It could be. I am not taking issue with the commutation as such. Again, it is Mr. Rita's concern—it is more the perception of fairness.

Mr. GALLEGLY. Thank you very much, Mr. Chairman.

Mr. CONYERS. You are welcome.

The Chair is pleased to recognize a former prosecutor from the State of Massachusetts, Bill Delahunt.

Mr. DELAHUNT. I thank the Chairman.

You know, Mr. Cochran, you are drawing comparisons here. Let me suggest this as a distinction, and I am not familiar with the facts of your case, but what your client did, I am sure, had an impact, but it was a limited impact. Is that a fair statement?

Mr. COCHRAN. In what regard, sir?

Mr. DELAHUNT. Well, in terms of its consequences.

Mr. COCHRAN. I am sorry, sir. If I could get more clarification.

Mr. DELAHUNT. Okay. Well, let me suggest this. What distinguishes, in my opinion, the Libby case is that, if one accepts the verdict and the testimony at the trial, one can conclude that this is really not about Ambassador Wilson, it is really not even about his spouse, but it is about influencing the decision to go to war; and I would suggest that that has a special burden on the perception of justice and on the gravity of what has occurred in terms of this commutation. Because I think that we can agree that the activities of the Administration to discredit Ambassador Wilson was maybe not necessarily ad hominem but to influence both the American public opinion and Members of Congress in terms of the authorization to go to war.

What could be more severe? What could be more grave?

With all due respect to your client and in the case of your client, Mr. Cochran, it was not about whether Members of this Committee and Members of this House would make a decision to go to war, and I have no doubt that many in Congress were convinced to vote for the resolution because of the statement by the President at the State of the Union Address. It had an impact on me.

But let me put this to Ambassador Wilson. What impacted me was the omission—the omission—by Secretary of State Powell of the reference to the yellowcake uranium when he made his presentation a week later before the Security Council of the United Nations. Maybe it was just simply being an old prosecutor, just an old county prosecutor in a small, little place called Boston, Massachusetts, but something really smelt. Why? Why wouldn't the Secretary of State make this the centerpiece of his argument before

the international body with the eyes of the world watching him? So it did have an impact at least on this particular Congressman.

Ambassador Wilson, would you care to comment?

Mr. WILSON. Well, thank you, Congressman.

Certainly, in the months leading up to the March invasion, conquest and occupation of Iraq, one of the centerpieces of the President's—and indeed, the Administration's—defining of the threat to national security interests was that we could not afford to wait for the smoking gun to come in the form of a mushroom cloud. Now, while the "use of force" authorization was passed prior to the President's State of the Union Address, clearly, the rhetoric up to, including and beyond the State of the Union Address included that.

With respect to Mr. Powell, he later said, of course, that he discarded the Niger claim, which was just one of many claims that were made, because it did not rise to his standards, and he later said we did not need——

Mr. DELAHUNT. Can you repeat that, Ambassador Wilson? It did not rise to his standards a week later.

Mr. WILSON. A week later. He later said—and I think this is quite——

Mr. DELAHUNT. Let me interrupt you again, because I just want to make one other observation.

With all due respect, Mr. Rivkin, the failure to appoint a special prosecutor, not an independent counsel—and I understand the distinction—I dare say would have infected the body politic in terms of the credibility of the investigation and subsequent prosecution. I cannot imagine a Justice Department, given the high-profile nature of this case, not having appointed a special prosecutor.

I have to tell you this. I had heard of Mr. Fitzgerald's reputation. It came before this Committee, there was discussion about it, and I defended that appointment because of his reputation as a professional. I know he was appointed by a Republican President. I said, "Justice will be done," and I think he did an outstanding job.

Mr. RIVKIN. May I respond at this point?

Mr. WILSON. I am sorry. Can I just add one thing? Excuse me, Congressman.

My understanding was that the appointment of Mr. Fitzgerald as special counsel came about as a consequence of Mr. Ashcroft's decision, the Attorney General, to recuse himself in the case because of a possible conflict of interest, which, of course, is what one does. But, again, I am not an attorney.

Mr. CONYERS. All right. I thank the gentleman for his questions.

The Chair is pleased to recognize the distinguished gentleman from Florida, Mr. Ric Keller.

Mr. KELLER. Well, thank you, Mr. Chairman.

As I have listened to you and others, it seems like this hearing boils down to three questions, and I want to walk through this.

First, is there any evidence that this pardon or commutation of sentence was given to protect senior White House officials? Second, is this pardon consistent with other pardons or commutations? Third, is the action in commuting this sentence legal?

So let me begin with the very first issue, and I would like each of the witnesses to listen carefully to my question because I am

going to go down the line and ask each of you this. I am going to begin with you, Ambassador Wilson.

Do you have any evidence whatsoever, based on your personal knowledge, that Scooter Libby threatened to implicate the President, the Vice President or Karl Rove if he was not given a pardon or a commutation?

Mr. Ambassador.

Mr. WILSON. I have no personal knowledge as an outsider to this. It is a question that I think is worth raising. Leonard Decof, one of the top 100 trial attorneys, historically has said that Ted Wells and the rest of Libby's defense team are experienced, competent trial lawyers. Ted, on opening statement, promised the jury they would hear testimony from Libby and from Cheney. Yet he never put either on the stand. His promise was not merely a miscue. I believe it was shot across the bow.

Mr. KELLER. I do not want to hear outside hearsay from what some lawyer said somewhere else. I am just looking for evidence and personal knowledge.

So let me go to the next gentleman, and I guess we have—is it Mr. Adams?

Do you have any evidence whatsoever, based on your personal knowledge, that Scooter Libby threatened to implicate the President, the Vice President or Karl Rove if he were not given a pardon or a commutation?

Mr. ADAMS. Congressman, my office is in the Justice Department, and it was not involved in either the prosecution of Mr. Libby or the decision to——

Mr. KELLER. You have no such evidence?

Mr. ADAMS. The answer is, I do not know anything about it.

Mr. KELLER. Mr. Rivkin, do you have any such evidence?

Mr. RIVKIN. I do not, but let me just say that I cannot conceive, even if you assume that there were some nefarious activities, the context in which——

Mr. KELLER. I am going to cut you off, because I only have a certain amount of time.

Professor Berman, do you have any such evidence?

Mr. BERMAN. No.

Mr. KELLER. Mr. Cochran, do you have any such evidence?

Mr. COCHRAN. No, sir.

Mr. KELLER. Okay. The next question we have, is this pardon consistent with other pardons?

I would make the argument in some ways that this pardon is not, in fact, consistent with other pardons or commutations. Scooter Libby was not the half brother of President Bush, unlike the situation with Bill Clinton's brother, Roger. Scooter Libby did not pay hundreds of thousands of dollars to the siblings of the First Lady, unlike the pardon-seeking, convicted felons who paid money to Hillary Clinton's two brothers successfully. Scooter Libby was not a fugitive who left to Switzerland after being charged with the largest tax increase or tax evasion scheme in history, unlike Bill Clinton's pardon of Marc Rich.

Now, it has been said that perhaps some inconsistency is that DOJ guidelines were not followed in this case.

Mr. Adams, you have testified that, essentially, DOJ guidelines are that you have to wait 5 years after you were imprisoned or, if there is no imprisonment, 5 years after you were convicted in order to seek a pardon and that this is merely advisory.

Were the DOJ guidelines followed in the case of Marc Rich?

Mr. ADAMS. No, sir.

Mr. KELLER. Were the DOJ guidelines followed in the case of Carlos Vignali?

Mr. ADAMS. Mr. Vignali did apply for a commutation. He was eligible to apply.

Mr. KELLER. In fact, that was strongly opposed by DOJ, was it not?

Mr. ADAMS. I cannot tell you what the Justice Department said about that.

Mr. KELLER. I can tell you that it was.

Were the DOJ guidelines followed in the case of the Gregorys?

Mr. ADAMS. The Gregorys were eligible to apply for pardons, and they did so.

Mr. KELLER. And that also was opposed by the Department of Justice?

Mr. ADAMS. Once again, Congressman, I am sorry. I cannot comment on what we said in that case.

Mr. KELLER. I can tell you that it was.

The next issue I want to talk about is the legality of the pardons or the commutations, and this has been questioned. In fact, it has been questioned by none other than the Clintons. President Bill Clinton said recently that this Administration believes that after hearing of this commutation that the law is a minor obstacle. Hillary Clinton said that this has elevated cronyism over the rule of law, questioning it.

So just to be crystal clear on the legality of this, Article II, Section 2 of the Constitution expressly provides, "The President shall have power to grant reprieves and pardons for offenses against the United States except in cases of impeachment."

Now, the Supreme Court is the ultimate arbiter of the Constitution, and the Supreme Court has expressly held—and I quote—"The pardon power flows from the Constitution alone, not any legislative enactments, and cannot be modified, abridged or diminished by the Congress."

Do you have any evidence, Mr. Adams, that the Constitution in this case was not followed by the President of the United States?

Mr. ADAMS. The President clearly had the authority to commute Mr. Libby's sentence, Congressman.

Mr. KELLER. When we talk about Justice Department guidelines, those are purely advisory, and they are not binding in any way on the President; isn't that correct?

Mr. ADAMS. Yes, sir. As I said in my prepared statement, that is the case.

Mr. KELLER. Thank you.

I yield back the balance of my time.

Mr. CONYERS. Thank you.

The Chair recognizes the distinguished gentleman from Florida, Robert Wexler.

Mr. WEXLER. Thank you, Mr. Chairman.

I, too, want to thank you for holding today's hearings. It seems evident to me that the President's decision to commute Scooter Libby's 30-month prison sentence is egregious. It rewards loyalty above the rule of law. It encourages future acts of obstruction of justice. As a result, yesterday, I introduced H.Res. 530 with my Judiciary colleagues—Congressman Cohen, Congresswoman Jackson Lee, Congresswoman Baldwin, and 14 additional Members of Congress—to censure President Bush and to condemn this unconscionable abuse of power which began with the Administration's falsifying of intelligence on Iraqi nuclear capabilities.

After a month-long trial, Scooter Libby was found guilty by a jury of his peers of very serious crimes: four counts of perjury, of obstruction of justice and of making false statements to FBI investigators. Mr. Libby's criminal actions obstructed the Federal investigation into the White House's failure to comply with an executive order mandating the protection of classified national security information. It is clear that the perjury of Mr. Libby was designed to do one thing and one thing only, to protect President Bush, to protect Vice President Cheney and other Administration officials from further scrutiny regarding the coordinated political retaliation against former Ambassador Wilson and his wife.

President Bush's commutation of Mr. Libby's 30-month prison sentence is an egregious abuse of the President's clemency power, and it could only be described as politically motivated quid pro quo to reward Libby for halting further investigation into the White House's failure to protect the confidential identity of a CIA operative.

Despite President Bush's assertion that Mr. Libby's sentence was excessive, the record shows that it was not. The 30-month prison term imposed by Judge Walton is supported by the Federal sentencing guidelines. Indeed, under the Federal sentencing guidelines, those who commit perjury and who successfully obstruct justice—as did Mr. Libby—actually lengthen the prison term, not shorten it.

Not only is Mr. Libby's sentence supported by the Federal sentencing guidelines, but a similar sentence in a similar case involving perjury was recently upheld by the United States Supreme Court in Rita versus the United States.

In fact, President Bush's position that the commutation was needed because of the excessive nature of Mr. Libby's sentence is intellectually dishonest. If the President truly believed it was excessive, he could have commuted Mr. Libby's sentence after Mr. Libby had served 12, 18, 20 months or whatever sentence the President deemed appropriate. Commuting it before Mr. Libby served even 1 day in prison proves that the length of sentence was not the President's real concern.

While the President has the constitutional authority to commute an individual sentence, it does not mean that Congress must sit by and give tacit approval when a President unjustly exercises that authority. Congress must go on record against the President's actions. Censure, in my mind, would be a strong statement to the President from Congress and from the American people that his decision to reward loyalty above the rule of law is wrong and will not be tolerated.

Mr. Berman, you had testified, I believe—and I just want to make sure this is clear for the record—that President Bush said his reason for using the commutation was that the sentence was excessive.

Isn't it true that if, in fact, that were the President's reason that he could have commuted Mr. Libby's sentence after Mr. Libby served 12 months or 16 months or whatever time the President deemed appropriate?

Mr. BERMAN. That is absolutely right.

My understanding, too, is that he could have also commuted it to a lower sentence even before that time had started but used that as the alternative to put in place a sentence that the President may have thought more appropriate. One of the useful analogies here might be some other very high-profile cases involving other prominent people who were found guilty of perjury and obstruction of justice in the Federal system.

I think particularly of Martha Stewart, whose case was all the rage in the papers and was an issue that I followed closely; also of the well-known rapper, Lil' Kim. Both of them, I believe, served 10-month terms for, obviously, not exactly similar crimes but of similar kinds of misstatements to investigators. And it strikes me that, to the extent that we are talking about equity and fairness, if the real goal were to bring Mr. Libby's sentence in line with the President's conception of equity and fairness, he might have looked more directly to some other high-profile cases in which the rule of law was upheld.

Mr. WEXLER. So let me understand this, Mr. Berman. What you are saying is that the President could have done at least one of two things if he really believed the sentence to be excessive. He could have let Mr. Libby serve a period of time and then could have commuted his sentence, or he could have even commuted his sentence downward now and have let Mr. Libby serve 12 months, 16 months or whatever it is the President thought appropriate.

Mr. BERMAN. That is correct.

Mr. WEXLER. Thank you, Mr. Chairman.

Mr. CONYERS. Thank you very much.

The Chair is now pleased to recognize the only former Attorney General who we have in the Congress, Mr. Dan Lungren.

Mr. LUNGREN. Thank you very much, Mr. Chairman.

You and I go back a long ways on this Committee, and I have great respect for you. I must say, however, that this hearing is one that troubles me very much.

We now have had, by my count, since your party has taken over, a minimum of 300 investigations within the first 100 days, investigation after investigation after investigation. So far today, we have heard of Iran-Contra. We have heard of Nixon, Haldeman and Ehrlich. I am wondering what is next. Nixon's dog, Checkers? Maybe Sherman Adams' vicuna coat?

To put it on the record, it is true, as was suggested by the gentleman from Florida, that the President could have done other things, but he did not, and the big difference is he is the President and you are not, and he made the judgment to exercise his constitutional authority in the way he did.

I would like to put on the record one piece of evidence that has not been presented on the record, and that is of Mr. Rita's case. The recommendation in the pre-sentence report was that he get 33 to 41 months, and he got 33, the lower end of the recommendation of the pre-sentence report. In Mr. Libby's case, it was recommended that he get between 15 and 21 months, and he got 30 months, which is double the lower end of the recommendation.

Now, Mr. Chairman, I remember very well the Committee's Christmas party that we had, and I remember at that time that the only celebrity you introduced at that time was Ambassador Wilson. So I was wondering when we were going to have a hearing so that we could, once again, have this story told, and I did not know it was going to take this long.

Mr. Wilson, let me ask you: Are you able to name any person who ever told the White House officials that your wife's status was covert?

Mr. WILSON. Congressman, first of all, thank you for referring to me as a "celebrity."

Mr. LUNGREN. No. No. I understand that, sir, but I only have a few minutes. So can you answer that question?

Mr. WILSON. I am not a celebrity. I am just simply a citizen of this country, and when you talk about the CIA in this——

Mr. LUNGREN. Sir, I just asked you a question.

Are you aware of anybody who ever told the White House officials that your wife's status was covert before Scooter Libby made his revelation?

Mr. WILSON. I am not aware.

Mr. LUNGREN. Okay. Isn't it true that, at the trial, there were several CIA witnesses who testified that they did not know that your wife's status was covert?

Mr. WILSON. That is possible. I have not reviewed the testimony for that.

Mr. LUNGREN. *The Washington Post* said this:

"Mr. Wilson was embraced by many because he was clearly and publicly charging that the Bush administration had twisted, if not invented, facts in making the case for war against Iraq. Conversations with journalists are in the July 6, 2003, Op-Ed. He claimed to have debunked evidence that Iraq was seeking uranium from Niger. It was suggested that he had been dispatched by Mr. Cheney to look into the matter and alleged that his report had circulated at the highest levels of the Administration. The bipartisan investigation by the Senate Intelligence Committee subsequently established that all of these claims were false and that Mr. Wilson was recommended for the trip by his wife."

Do you disagree with that?

Mr. WILSON. Profoundly, Congressman.

Mr. LUNGREN. Is *The Washington Post* part of the conspiracy against you and your wife?

Mr. WILSON. I have not asserted that.

Mr. LUNGREN. Well, does that mean that reasonable people could differ with respect to conclusions that you have drawn?

Mr. WILSON. It means you cannot always believe what you read in the press, sir.

Mr. LUNGREN. I see. So reasonable people cannot disagree with your conclusions?

Mr. WILSON. Congressman, on October 1 of 2002—or October 2—the Deputy Director of Central Intelligence testified to the Senate Intelligence Committee that one of the areas where we believe the British have stretched the case beyond where we would stretch it is uranium sales from Africa to Iraq. Within 3 days, the Director of the Central Intelligence had said that twice or three times to the White House. Mr. Hadley later submitted his resignation because, in fact, he had lost those documents.

Mr. LUNGREN. Okay.

Mr. WILSON. The day after my article appeared, Congressman, the White House acknowledged that the 16 words do not rise to the level of inclusion in the State of the Union Address; and, by the end of the month, the National Security Advisor had apologized or had expressed her regrets on a PBS newscast.

Mr. LUNGREN. Let me ask you this:

According to the Rob Silverman report, the national intelligence estimate at the time of the State of the Union concluded that Iraq was, quote, "vigorously trying to procure uranium or/and yellowcake from Africa," end quote. The report, itself, found that, quote, "the CIA analysts continued to believe that Iraq was probably seeking uranium from Africa," unquote.

The bipartisan Senate Intelligence Committee report said that, at the time of the State of the Union, quote, "the CIA and Iraq nuclear analysts and the Director of WINPAC still believed that Iraq was probably seeking uranium from Africa." That is from the intelligence report at page 66.

Finally, the Butler report in Great Britain called the President's statement in the State of the Union Address, quote, unquote, "well-founded."

The bipartisan Senate Intelligence Committee report said at the time of the State of the Union, quote, "CIA and Iraq nuclear analysts and the Director of WINPAC still believed that Iraq was probably seeking uranium from Africa." That is from the report at page 66.

Finally, the Butler report in Great Britain called the President's statement in the State of the Union Address, quote/unquote, "well founded." Doesn't that suggest that there are other conclusions that can be drawn from the facts other than yours?

Mr. WILSON. Certainly, Congressman.

Mr. LUNGREN. People that draw other conclusions aren't necessarily making falsehoods.

Mr. WILSON. Congressman, that is entirely possible. Let me just suggest, as I said in my article, that mine was one of several reports that were done at the time in subsequent testimony, all of which reached the same conclusions. I also just say once again for the record that the Director of Central Intelligence and his deputy testified both to Congress and offered their recommendations and went to great lengths to try and remove this from any speech, and *The Washington Post* reported in January that in response to a Pentagon question the National Intelligence Officer circulated a memorandum to the government and Vice President in which the

NIO said the allegations that Iraq sought uranium from Niger are baseless and should be used.

Mr. LUNGREN. That is from *The Washington Post.*

Mr. WILSON. That was a *Washington Post* article.

Mr. LUNGREN. Which also said on March 7, 2007, the trial has provided convincing evidence that there was no conspiracy to punish Mr. Wilson by leaking his wife's identity and no evidence that she was in fact covert.

Mr. WILSON. I would refer you——

Mr. LUNGREN. The same folks that you were referring to for your——

Mr. WILSON. I would refer you to Mr. Fitzgerald's statement that it is hard to see there was not a conspiracy to defame, punish or discredit, seek to punish Ambassador Wilson.

Mr. CONYERS. The gentleman's time has expired. The Chair is pleased to recognize the distinguished gentleman from Tennessee, Steve Cohen.

Mr. COHEN. Thank you, Mr. Chairman. Mr. Adams, what is the criteria or standard that you use, if any, to recommend or not recommend a pardon or commutation to the President?

Mr. ADAMS. Let me describe the usual standard for pardon first. One, it is acceptance of responsibility.

Mr. COHEN. I understand those things, but is there an equitable standard, a standard that is equity or some clear and convincing, do you have any standards at all?

Mr. ADAMS. The standard is that we need to be convinced that this person is deserving of a pardon, by fairly clear and convincing evidence.

Mr. COHEN. We talked about, I think it was Mr. Scott was asking you about probation and if you could have probation without jail time hanging over your head. Let's assume that the commutation has been given, he is going to have probation and a fine. What if he violates his probation, what is his penalty?

Mr. ADAMS. Actually, I think the sentence is a term of supervised release, Congressman. If a person violates supervised release, it can be revoked and he can be imprisoned.

Mr. COHEN. Even if his sentence has been commuted?

Mr. ADAMS. I think so. Let me get back.

Mr. COHEN. The sentence has been commuted. You send him to go back to work for Vice President Cheney? What could you do?

Mr. ADAMS. I don't have any knowledge about the decision in Mr. Libby's case. I am not going to comment on that.

Mr. COHEN. All right. There seems to be somewhat divergence on this panel. The Republicans have said that the Democrats are howling because they are bringing up deeds that the Republicans have done, at least the President and the Vice President may have done, and yet the Republicans are somewhat howling when they bring up President Clinton. And two wrongs don't make a right and there have been abuses I think of this system over the years. It has been said by Mr. Keller that this is in the Constitution. Of course that is incorrect because we can propose the Constitution be amended. And we just had our Fourth of July holiday whereby we celebrated the fact that we didn't have a king, we had a democracy. We had checks and balances. This power is a vestige of the king.

I know Mr. Rivkin said it is for equity and that the Founding Fathers got together and discussed it. Well, the Founding Fathers were great guys, but they were all kind of close to whoever the President was going to be. Kind of inside baseball, in a way.

In 1977, there was a problem in Tennessee, we had a Democratic Governor that was issuing pardons and it was questionably illegal. At the time we had a constitutional convention, of which I served as Vice President, and I suggested we should limit the power of pardon. And to say that the Supreme Court—it didn't pass, but the Supreme Court by four out of five members of the Tennessee Supreme Court would say that a pardon shouldn't be issued because it would be harmful to justice, that there should be a check.

What would be wrong with a constitutional amendment to suggest that any pardon or commutation by the President would have to go to the Supreme Court or some other body, let's say the Supreme Court for now, Mr. Adams, and say six out of nine of the Supreme Court members would have to affirmatively say this should not be issue because it will be helpful to the public's respect for the law or is unfair or unjust? Would that be an improvement on the system of justice, a continuation of our revolution of 231 years ago, or do you think the President should have this power of a king?

Mr. ADAMS. I would just answer your question on two levels. It strikes me as a matter of constitutional law, the Constitution probably could be amended along the lines that you just suggested if you went through the proper procedure to do that. Whether that is a wise idea or not, I have no comment on that.

Mr. COHEN. Mr. Cochran, Mr. Berman, Ambassador Wilson. Mr. Rivkin is I am sure going to be against it. Any thoughts?

Mr. BERMAN. Candidly, I would be disappointed with any rigorous substantive review because the President's power here, though I think it is right to accurately describe it as king-like, is a power to show mercy. I fear and much of my scholarship is about the failure of——

Mr. COHEN. What if it doesn't show mercy, when it is to cover up a crime, take care of one of your cronies or take care of a political contributor or somebody that has paid somebody in your family. That is not mercy. So shouldn't six of the nine justices go, hey, the Berman rule hadn't been met. Wouldn't that be okay?

Mr. BERMAN. I certainly like anything that suggests a Berman rule is put in place. That said, I think this oversight hearing is a perfect example of the opportunities that exists to in a sense push back, and, again, developed more fully in my testimony, I would welcome efforts short of a constitutional amendment. I think a constitutional amendment is not only very difficult to achieve but sends an extraordinarily broad statement about our country's values. And, fundamentally, and this is why I myself have written about our country's values, safeguarding liberty, and the concept of mercy. And candidly, and this is again something that I have spent a lot of time thinking about. What worries me most is not the fact that Mr. Libby alone got a commutation but that this President has pardoned more turkeys at Thanksgiving than he has shown mercy with respect to other offenders in our Federal criminal justice system.

And so though I can understand this Committee's concern and the having of an oversight hearing to look very, very closely at this particular commutation, the way I am inclined to make lemonade out of that lemon is to notice and in some sense hold the Administration's feet to the fire that if these are principles that should be vindicated in Mr. Libby's case, that other defendants, Mr. Rita with his years of military service on behalf of this country, the border agents whose cases led to calls for some sort of clemency action in the service of their country, that there be more of an effort by this Administration to exercise that its own Justice Department can make mistakes and that there be a more rigorous effort to convince the people of this country that it is not just those inside the Beltway who get the benefit of the President's compassion and that every member of our country can get eaten up by an overzealous criminal justice system and should get the opportunity to plead to the executive and have those pleas taken very seriously, that justice and mercy ought to come to bear in their case.

Mr. CONYERS. The gentleman's time has expired. I thank you. The Chair is pleased to recognize Chris Cannon, the gentleman from Utah, who is the Ranking Member on the Commercial and Administrative Law Committee.

Mr. CANNON. I thank you, Mr. Chairman, and thank you for the time. I just want to say, Mr. Berman, that I actually agree very much with what you are saying; that is, that the nature of prosecution in America is so fundamentally different from the executive branch that you can't merge these two and that we probably ought to have a more aggressive approach in the executive branch to overseeing the kind of excesses that sometimes happen with prosecutors.

This Committee I think should be fairly familiar with some of those prosecutions. And in fact I just want to—actually, I want to thank Mr. Cohen for making the point of brothers or relatives and cronies, which I take is a reference, bipartisan reference from this bipartisan Committee to the fact that President Clinton gave some very questionable pardons.

First of all, Mr. Chairman, I would like to ask unanimous consent to have included in the record a story from *The Washington Post* dated March 7, 2007, entitled the Libby Verdict and the Minority Views from the Senate by Vice Chairman Bond joined by Senators Hatch and Burr.

Mr. CONYERS. Without objection, so ordered.

[The information referred to is located in the Appendix.]

Mr. CANNON. Thank you, Mr. Chairman. I have a love-hate relationship with *The Washington Post.* I hate it because it tends to be left, and I hate it because they are smart and they tend to hurt the right when they go left. On the other hand, the fact that they are smart makes them readable and interesting, and this article I think is profound because it punctures some balloons here.

There is, I think, no question about their saying that Mr. Libby did something wrong, but they are trying to balance things and they say relatively eloquent in what they are trying to balance. What they are essentially saying is we have a myth here, and that myth, Mr. Chairman, has been repeated by you and by Mr. Nadler and Mr. Wexler and by others on your side, and it goes to this ne-

farious activity of blaming or hurting or going after personally Mr. Wilson. In the process of that they lay out the myths that we have heard here today. Let me just go through those.

One is that Mr. Wilson was embraced by many because of his early publicly charging the Bush administration twisted if not invented facts, action in making the case for war against Iraq. In conversations with journalists in his op ed he claimed to have debunked evidence that Iraq was seeking uranium from Niger, suggesting that he had been dispatched by Mr. Cheney to look into the matter and alleged that his report had been circulated at the highest levels of the Administration.

It goes on to say that essentially—concludes that what was established out of all this was that all these claims were false. In other words, the left *Washington Post* calls Mr. Wilson, who is here today, a liar. They are saying he is not true, he is not telling the truth about this.

The article points out the other myth that is here before us today, that somehow, as I recall, I think we have referred to this as a slip of the tongue on the part of Mr. Libby or was it rather a nefarious scheme to out and hurt Mr. Wilson. Well, the article points out it was Richard Armitage and that the trial provided convincing evidence that there was no conspiracy to punish Mr. Wilson by leaking Ms. Plame's identity, but that would be Ms. Wilson's identity, and no evidence that she was in fact covert.

Then in conclusion, the article says Mr. Wilson's case has besmirched nearly everyone it has touched. The former Ambassador will be remembered as a blow hard. Mr. Cheney and Mr. Libby were overbearing in their zeal to rebut Mr. Wilson and careless in their handling of classified information and Mr. Libby's statements were reprehensible. Mr. Fitzgerald has shown again why handing a Washington political case to a Federal prosecutor is a prescription for excess.

That is why we are talking about and why Mr. Berman is suggesting we need to have a greater intervention by the President.

Now, Mr. Wilson, your wife has given inconsistent testimony to the Senate and the House. I take it in your zeal for getting the truth out you would encourage her to come to the Committee on Oversight and Government Reform, which is evaluating that, I think there is a letter from the Ranking Member asking the Chairman, Mr. Waxman, to review that. I would take it given your zeal for truth and getting it all out you would encourage her to come and meet with staff of the minority and majority and discuss these matters, would you not?

Mr. WILSON. Congressman, thank you for your questions and your comments. I am a part time resident of your State, not of your district, and my condolence to those of your constituents who are suffering——

Mr. CANNON. Thank you. I have limited time.

Mr. WILSON. The purpose of testifying is in fact to try and get——

Mr. CANNON. Would you encourage your wife——

Mr. WILSON. My wife has testified truthfully to the best of her ability to everybody who has asked her.

Mr. CANNON. Yet there were substantial inconsistencies, you acknowledge that.

Mr. WILSON. I don't believe there were inconsistencies.

Mr. CANNON. The record shows inconsistencies. Would you encourage her to come and clarify those inconsistencies?

Mr. WILSON. Congressman, I don't believe that she was inconsistent in her testimony, neither does she. She testified truthfully, honest and the best of her ability to the Senate and the House.

Mr. CANNON. Would you tell us whether or not you will encourage her to come?

Mr. WILSON. I have said to her, as I said to you, as I said to Mr. Davis the other day in the House dining room, we are prepared to answer any and all legitimate questions that any Member of this or the other body might have, Congressman.

Mr. CANNON. Or the Committee on Oversight and Government Reform.

Mr. WILSON. Either body, yes, sir.

Mr. CANNON. Thank you very much, Mr. Chairman. I see my time has expired and I yield back.

Mr. CONYERS. I thank you. The Chair would inquire of Ambassador Wilson, in all fairness, did he want to make any additional responses to our colleague from Utah?

Mr. WILSON. Well, with respect to some of the things that were in the SSCI, part 2 report, it perpetuates a number of the myths that have been part of this story from the beginning.

First of all and foremost is the allegation that somehow I have asserted that the Vice President sent me on this trip. If you go back and you look at the testimony that was introduced in the trial and in the run-up to the trial, you will find that there were three articles that the Vice President and his staff were most focused on at the time that they launched this effort to, as Fitzgerald said, punish,

defame and discredit. One was the Nick Kristof article, one was the Walter Pincus—one was the Spencer Ackerman article, Walter Pincus article, and the fourth was my article.

I have actually gone back and taken a look at those articles and they all say very clearly that it was the Office of the Vice President that asked the question, which of course is what my wife testified to when she testified to the Government Oversight Committee.

The other one of course is the assertion that somehow I was running around saying that I had debunked it. If you take a look at my article of July 6, which regrettably was not included in the SSCI report but should have been made a part of it, I believe, since they devoted 17 pages to discussion of this particular issue, I said in my meeting with the Ambassador who was resident there in Niger that she had said she thought she had debunked the particular issue.

So those are a couple of comments.

Mr. CONYERS. I thank the gentleman. Mr. Johnson, would you mind if Mr. Davis goes first? He has got a little time problem.

The Chair recognizes the gentleman from Alabama.

Mr. DAVIS. Thank you, Mr. Chairman, for your indulgence. Let me pick up on some comments that the President of the United States made when he was the Governor of the State of Texas.

President Bush wrote a book called A Charge to Keep in 1999 when he was traveling the country talking about his efforts to be elected President and he had occasion in the book to make some comments about the standards that he uses to commute sentences, and he made the following comments, quote, "I don't believe my role is to replace the verdict of a jury with my own unless there are new facts or evidence of which the jury was unaware or evidence that the trial was somehow unfair."

The President on another occasion said in this same book: My job is to ask two questions, is the person guilty of the crime, and did the person have full access to the courts of law? And of course he meant two questions as to when he would use his power of commutation.

And let me just ask the panel, to your knowledge, any of you, has the President of the United States raised any question of there being new facts that have come out regarding the Libby case since the sentence? Does anyone know of the President referring to any new facts that have come out, any member of the panel?

Mr. WILSON. No, sir.

Mr. DAVIS. I think all witnesses are shaking their heads negatively. Does anyone know of the President suggesting that the trial was somehow unfair in any way? Has the President made any statement that the Libby trial was unfair in some way? Again, all Members are shaking their heads negatively.

The judge in this case, Judge Walton, was appointed by President Bush, is that correct? The prosecutor in this case was a Republican appointee of President Bush, is that correct? You are all nodding your heads affirmatively. I even recall that when the Republican Party in Illinois was desperately searching for an alternative to Mr. Obama that Mr. Fitzgerald was approached about being the Republican nominee by Mr. Rove.

Every now and then people make comments during campaigns and they change their minds and they evolve in office. So let's look at the record and see if President Bush has changed his mind at all about his standard for commutations.

Mr. Adams, 4,000 petitions for commutation during the last 6 years and so many months, 3 granted. By the way, is that 3 counting Libby?

Mr. ADAMS. Mr. Libby makes the fourth.

Mr. DAVIS. Mr. Libby makes the fourth. Four out of 4,000. In fact, did Mr. Libby actually submit a request for commutation, Mr. Adams?

Mr. ADAMS. Not to my office, no, sir.

Mr. DAVIS. There are at least 4,000 individuals who did. Mr. Berman, let me pick on something that has not come out in the hearing today. A lot of people ask the question, Mr. Rivkin, you asked the question or raised the issue, why not just grant the pardon? Why engage in this business of a commutation? A lot of people have said to the President, Mr. President, have the courage of your convictions and grant a pardon.

Mr. Berman, do this analysis for me. If the President had granted a pardon, that might have subjected Mr. Libby to being subpoenaed to testify before this or some other Committee, is that correct, Mr. Berman?

Mr. BERMAN. I think that is possible. Sentencing is my specialty. The way that clicks together is beyond——

Mr. DAVIS. You tell me as a lawyer if you agree. If President Bush had granted a pardon, Mr. Libby could not then have invoked the fifth amendment if he had been called before this Committee, is that correct?

Mr. BERMAN. I think that is probably right, although, again, that is out of my field of expertise.

Mr. DAVIS. I understand. It is my understanding that is correct and I am sure Mr. Rivkin will tell me if I am wrong. If I can finish my questions.

So one effect of this commutation I would submit is that it has had the effect of immunizing this individual from ever being called to testify. That is one effect of the commutation in this instance. That ought to be worrisome to the Committee because it suggests one very simple thing, if the President had given a pardon, instead of you all being here, as much as we have enjoyed you, I think we would all have rather heard from Scooter Libby on a variety of things.

If a pardon had been granted, this Committee could have immunized him and brought him here. Because of the commutation, because that means an appeal is still lingering, that created a very different scenario.

Mr. Wilson, final question to you, let me give you this hypothetical for a moment. Let's say that William Jefferson Clinton had been President of the United States and an allegation had been made that his Administration had leaked the identity of a covert CIA informant and that the Clinton administration had done it for the purpose of punishing——

Mr. CONYERS. The gentleman's time has expired.

Mr. DAVIS. Mr. Wilson, can you comment?

Mr. WILSON. Well, let me comment by referring you to what the first President Bush said at the dedication of the new CIA headquarters when he said that those who would betray the identity of their sources, by sources he meant CIA officers, are the most heinous of traitors, something to that effect, sir.

Mr. CONYERS. The time has expired. As the Members of the Committee know, we have got bells on and I have got Mr. Issa has just come in, Randy Forbes is here. Let me divide all the time we can between the several of you. Randy Forbes, do you want to start off or does Mr. Issa?

Mr. ISSA. I will be brief. Ambassador Wilson, today I think we are dealing with the question of whether or not we—we should be dealing with the question of whether or not there is a legitimate right if the President believes that a sentence is severe, to commute it. Do you agree with that?

Mr. WILSON. Actually, Congressman, thank you for the question. My understanding was whether or not he had exceeded his commutation authority, but more to the point, as I testified, whether or not by having taken this action to really impede—really remove from Mr. Libby any incentive to cooperate with the prosecutor if he has a guarantee that there remains a cloud over the head of the Vice President.

Mr. ISSA. I heard you say that but the fact is he granted no immunity, he granted no pardon, he simply said you are not going to jail, is that correct?

Mr. WILSON. That is correct. That is my understanding, sir.

Mr. ISSA. This essentially was for failure of candor/lying, not under oath, to Federal officials. That is pretty much it. That was what it was all about.

Mr. WILSON. My understanding of the conviction, it was four counts of lying to Federal investigators, lying to the grand jury, and obstruction of justice.

Mr. ISSA. I am going to ask you, because you are uniquely qualified. Your wife, the subject of what started this whole thing, came before both the House and the Senate and told us that she didn't promote you for the job in Niger, and yet after I have been able to read her communications and documents, classified documents, I have come to the opinion that she perjured herself.

So now let me ask you, because you are uniquely qualified here, do you think that if in fact your wife was less than candid, was not completely honest, or in some way shaded the truth while under sworn testimony before the House or the Senate, that in fact she should not be granted any limitation on a sentence or any pardon for what she has done and should be prosecuted if appropriate?

Mr. WILSON. Congressman, the question before this Committee——

Mr. ISSA. The question before you, excuse me, Ambassador, the question before you is appropriate because in fact this is a political environment, your wife has testified before this Committee, you have been chosen to be here on this subject through no accident. You are here as in fact a tangential part of the underlying investigation while issuing an opinion before us as to whether this was intellectually honest to commute it.

So now I am asking you, if your wife, as I believe, has perjured herself before the House and the Senate, are you going to say here today that in fact there should be no impeding of that, she should be granted no clemency or pardon so that we can get to the bottom of why she said one thing in classified documents and another thing before Congress.

Mr. WILSON. Congressman, my wife answered honestly and truthfully to the best of her ability.

Mr. ISSA. Ambassador, that is not just true.

Mr. CONYERS. The witness and the Member will suspend, please. We are going—since there have been so many requests for time, I will grant you additional time when we come back. But we will stop at this point to answer our responsibilities on the floor. The Committee stands in recess.

[Recess.]

Mr. CONYERS. The Committee will come to order.

We will come back to the conclusion of the responses from the questions of Mr. Issa, but right now the Chair will now call upon the gentlelady from California.

Ms. LOFGREN. I just walked in from chairing our delegation. If I could defer?

Mr. CONYERS. Absolutely.

Ms. LOFGREN. Thank you.

Mr. CONYERS. The Chair will recognize Congressman Debbie Wasserman Schultz of Florida.

Ms. WASSERMAN SCHULTZ. Thank you so much. My question is of Professor Berman. Professor, forgive me, I wasn't here for your testimony, I had an Appropriations Committee meeting at the same time. But I have followed this case and certainly spent some time reviewing the decision of the President. Doesn't reducing a sentence for public service open up a tremendous loophole where the wealthy and privileged can have reduced sentences because of charitable contributions or whatever public service commitments they have made? On the flip side, those would be unavailable to the under privileged or working poor? And how does that factor in with the guidelines that are supposed to address what an appropriate sentence is that would be equitable of course if we are treating people equally as the Constitution dictates that we do? How does that juxtapose against that notion?

Mr. BERMAN. Well, I think you have nicely put your finger on exactly why the sentencing guidelines have policy statements that tell judges that they should not ordinarily consider matters such as community service or family ties or responsibilities, because my understanding of the background there was that the Commission was greatly concerned that if it suggested to judges to consider matters like public service, damage to reputations, it would cut against Congress' own statements as part of the sentencing format that socioeconomic class should not be a factor that is relevant to sentencing whatsoever.

And so I certainly agree, and that is itself one of the curiosities I take away from the President's statement that this seems to be an endorsement of the notion that damaged reputation, family harms are not just valid considerations, but could justify completely eliminating an entire prison term. So I guess I share your concern. I would resist a little bit the idea of a loophole. By that, I mean I do think, and I have written to this effect, that prior good works and a commitment to public service might be indicative of a low likelihood of recidivism or might suggest a diminished culpability, what I would hope both the President and Sentencing Commission and those who work in this field look for ways that those could be valid considerations, but don't have the kind of privilege skew that I think you are rightly putting your finger on. I think that is the broader concern here. If we too readily endorse those as considerations, it will only be the privileged with well heeled lawyers that are able to convince that they deserve a break for these circumstances.

Ms. WASSERMAN SCHULTZ. Professor Berman, you wouldn't know that I asked a question as an opponent of sentencing guidelines so I—the whole decision is baffling to me. Not 2 weeks before you had a gentleman named Victor Rita, who was given 33 months in jail and whose case was argued all the way up to the Supreme Court—I am sure that has been mentioned by my colleagues prior to my question—all the way up to the Supreme Court vigorously argued in support of by the Department of Justice for an obstruction of justice and perjury. Yet just 2 weeks after that the President issues a statement saying, my decision to commute his prison sentence leaves in place a harsh punishment for Mr. Libby. The reputation

he gained through his years of public service and professional work in the legal community is forever damaged. His wife and young children have also suffered immensely, he will remain on probation. And then it goes on a couple more sentences.

The President literally leaves the impression to the country, to the Nation that if you have a wife and young children and you have a reputation that you gained through years of public service that somehow there is an asterisk next to your name when it comes to having a sentencing guideline applied to your case.

Mr. BERMAN. I would respond to that that those who work in the system know that that is an asterisk that hasn't been utilized for virtually any other defendant, and that really is where my own surprise and disconcert was that I myself have represented clients who have made a mistake and wish to 'fess up to it, plead guilty, look to turn their lives around and assert their prior good works, assert their history of being responsible citizens and they don't get a break. In fact the Justice Department regularly——

Ms. WASSERMAN SCHULTZ. Before my time expires, let me ask you one more question. Do you think that the higher ranking the employee the greater latitude the employee should have in committing crimes and escaping punishment, so that the Chief of Staff to the Vice President doesn't get any jail time at all when convicted by a jury of four serious felonies—and not in defense of Mr. Rita's action because I don't think obstruction of justice and perjury is okay under any circumstances, but is there any difference in these two cases where Mr. Rita was a public official, a public servant, and does get 33 months argued by the Department of Justice in support of that sentence, but Mr. Libby gets a commutation of his sentence by the President?

Mr. BERMAN. I certainly don't think one's higher status in government is a justification or an additional mitigating factor. If you are a believer in the current impact of the criminal law, it strikes me it is especially important in a high profile case to make extra sure. I think this ultimately was part of what drove Judge Walton's decision, was that this was a case that would be closely watched, not just by everyone in the Nation but around the world, and that making a statement that nobody is above the law and they get subject to the same rules—I believe Mr. Fitzgerald emphasized this point as well in response to the President's commutation. If you are a believer in deterrence, if anything, the higher profile, the more prominent the defendant, arguably the more severe the sanction should be.

Mr. CONYERS. The gentlelady's time has expired.

Ms. WASSERMAN SCHULTZ. Thank you.

Mr. CONYERS. When we went to take our votes, we had the gentleman from California, Mr. Issa, who had 1 minute and 42 seconds remaining and there was a colloquy going on. If you would like to finish up now, we will yield to the gentleman from California.

Mr. ISSA. Thank you, Mr. Chairman.

I know that this hearing today is not about clemency, it is not about the power of clemency by the President. It is clearly quite frankly about whether or not we can get some more mileage out of the disclosure of Valerie Plame as a CIA agent. And I am sorry to see that, because I think that we have taken what should have

been serious business and we have reduced it. And I apologize, Mr. Chairman, that I feel that this is a very hypocritical event, that in fact we are not having the discussion that we should be having, because if we were having the discussion that we should be having the President's determination of whether politics plays a role in sentencing and therefore clemency is or isn't appropriate is in fact a legitimate subject for debate.

I happen to believe, and I will say it on the record so like your statement from the past it will be on the record, that in fact that is the fair use of clemency or pardoning.

And I will close, Mr. Chairman, by saying that all of us together, not too long ago, talked about how when President Gerald Ford restored a certain amount of confidence, paying a high price for it by the way, by pardoning President Nixon so the Nation could get on with its work, pardoning him not for his sake, but for the Nation's sake that he used a pardon authority, not because it was popular, but because it allowed the Office of the President and the rest of government to move on.

I am sorry that this one will not have the same legacy, but in fact it should be taken in the same light. We have had a lot of politics related to this for a long time. I certainly believe Ambassador Wilson at his word, but I hope he believes me at my word, which is that in fact having read all the information, I believe that his wife will soon be asking for a pardon, that in fact she has not been genuine in her testimony before Congress and, if pursued, Ambassador Wilson and Valerie would be asking for the same sort of treatment, which is that in fact we put this behind us.

So Mr. Chairman, I hope this will be the last time we use political theater in this way. I do not believe this was good use of the Committee's time, because I believe that in fact this should have been and I hope in the future we will have a real debate about the proper use of clemency and pardoning so that we not have it be for other than healing the Nation.

I yield back.

Mr. CONYERS. Well, let me just assure the gentleman that this is not theater, this is a legitimate part of our oversight and had the gentleman heard much of the testimony before he arrived, he would find out that this wasn't about one issue or one person, it was about the use or misuse of the commutation prerogative that is constitutionally——

Mr. ISSA. Mr. Chairman, I have read the written statements, I have been going back and forth between Committees, I appreciate that there was some genuineness here——

Mr. CONYERS. I don't want to discuss the merits of whether we should have held this hearing. I will accept your advice on that regard.

Mr. ISSA. Thank you, Mr. Chairman.

Mr. CONYERS. In all fairness to the Ambassador, I recognize him to make a response before we move on.

Mr. WILSON. Mr. Chairman, I feel my responsibilities to speak to my elected representatives very seriously. Before I wrote my article, I came and spoke to the House Intelligence Committee staff and I spoke to the Senate Intelligence Committee staff before I

went public, because my objective in this was for the Administration to tell the truth.

My great uncle sat in this body. The statute of Junipero Serra in Statuary Hall was put in at the request of my great uncle who was Governor, a Republican Governor of the great State of California, Sonny Jim" Rolph. I find it an outrage for Members of this Congress to dare to assert that my wife, a public servant of 20 years standing, or myself had committed perjury either before this Committee or before any Committee.

What sort of signal does it send to public servants? What sort of signal does it send to intelligence assets, that not only can they not count on their government to protect them, but they cannot count on members of the President's party to do anything other than to further defame them? It is an absolute outrage——

Mr. ISSA. Point of order.

Mr. Wilson. It is beneath the dignity——

Mr. ISSA. Point of order.

Mr. CONYERS. Just a moment, you have not been recognized and furthermore this witness who has been accused of something quite serious to me has an opportunity to respond.

Mr. ISSA. Point of order, Mr. Chairman.

Mr. CONYERS. By the way, we gave Monica Goodling the same courtesy.

Mr. ISSA. Point of order, Mr. Chairman.

Mr. CONYERS. The Chair will allow the Ambassador to finish his comment.

Mr. ISSA. Mr. Chairman, I respect that and I would like him to do so, but I would like to raise a point of order.

Mr. CONYERS. I cannot recognize him for that purpose. Continue, please.

Mr. WILSON. This is yet a further smear of my wife's good name and my good name, and it is indeed an attempt to divert attention from the facts at hand.

The facts on my wife's participation or lack thereof are well established. One week after Bob Novak's article appeared the CIA spokesman told two reporters from Newsday that she had nothing to do with sending me.

The INR memo of June 10 of 2002, which is a memorandum of the meeting at which the trip was discussed, a meeting at which my wife was not present, made it very clear that it was a subject under active discussion at that time, also made it very clear that I agreed with the State Department that there was no need to make this trip. Furthermore, the Congressman has said that he has read all the information.

Let me quote for you if I may a passage from the SSCI number 2 report, the Senate Select Committee second report, which refers to testimony which should have been included in the first report because it was taken by them during that hearing process. This is—the report's officer who my wife testified told her after the first report came out that in fact he had been the one who recommended.

I quote, let me speak to what I know of where she is substantively involved. She offered up his name as a possibility because we were—we didn't have much in the way of other resources

to try to get at this problem to the best of my knowledge. And so whenever she offered his name up it seemed like a logical thing to do. I didn't make the decision to send him, but I certainly agreed with it. I recommended he should go. That is the report's officer.

I would like to state emphatically, he continued, that from what I've seen Valerie Wilson has been the consummate professional through all of this from the start. Whenever she mentioned to me and some others that her husband had experience and was willing to travel, that she would have to step away from the operation because she couldn't be involved in the decision making to send him, either that or in his debriefing and dissemination of the report and these kinds of things, because it could appear as a conflict of interest.

That should have been in the first report, it was not. The legitimate question to ask about that is why not? At what level of cooperation and collaboration existed between the Vice President's staff, President's staff and those preparing the report and particularly the additional views?

Thank you, sir.

Mr. CONYERS. The Chair now will recognize Randy Forbes. Are you prepared, sir?

Mr. FORBES. I am prepared.

Mr. CONYERS. Randy Forbes is the Ranking Member of the Crime Committee from Virginia.

Mr. FORBES. Mr. Chairman, thank you. And let me say at the outset you know the enormous personal respect I have for you and for the Ranking Member, but I have to say I have to agree with the gentleman from California. I am disappointed, one, in the tenor of this hearing, the direction it has gone, the manner in which it has been conducted.

I will just say, Mr. Chairman, I have learned some stuff today as I have heard about our witnesses that we need to avoid even the appearance of impropriety when we have witnesses here. I think it is careful that we not have them at Christmas parties and invite them there, because it does give the illusion that perhaps it is less than what we would like to have before this Committee.

Let me say this, I think the Ranking Member said it as clearly and articulately as I can, on a hearing like this the howlers will howl. Fortunately, the public is a lot smarter than we give them credit for. They realize oftentimes that the opinions are based on whether the howlers are the Democrats or the Republicans. We hear testimony today, you can't always believe what you read in the press, and yet we hear some of our witnesses who base their testimony on what they read in the press.

Mr. Wexler got up here a while ago, he was very impassioned. He said, it is the duty of Congress to speak up when it is a bad clemency decision or a pardon decision that we need to speak up about. And yet 1999, when there was a sense of Congress on the floor about the Clinton pardon of a terrorist organization that had 120 bombings in the United States, killed 16 people, and Congress put it to the vote, Mr. Wexler didn't speak up for or against it, he voted present.

Mr. Nadler comes up very impassioned today and talks about the importance of this hearing, but on February 28, 2001, when they

were looking at the pardons that Mr. Clinton had done, Mr. Nadler says there seems to be little disagreement among scholars that Congress has no power whatsoever to put any restrictions or conditions or guidelines on the exercise of this power other than by starting a constitutional amendment. When they talked about the constitutional amendment, he talked about the fact that it had already been debated in the Constitutional Convention. They are a lot smarter than we were.

Mr. Chairman, it would be comical, because it is oftentimes like a Casablanca movie and we just say let us round up the usual suspects and put them on here, if it wasn't so damaging to the country because 6 of 11 hearings that this Committee has had have been political attacks on George Bush for constitutional executive privilege issues.

Here is what is happening. Right now the United States is the number one target of virtually every significant espionage service on the face of the Earth. Just over 100 countries have been identified as a threat to the United States interest. China, Cuba, Russia and Iran are the most aggressive countries spying on the United States.

We asked to look at cyber crime and espionage. Have we had the hearing on that? No. The answer is always we will get to that later because we need to get to the political stuff first.

There are 850,000 criminal gang members in the United States. People at home are concerned about what is happening on the streets. Are we dealing with those issues? No. Answer, we will get to that later, let us deal with the political stuff first.

Violent crime, there is an uptake in it. Could we be having a hearing by the full Committee on that? Yes. Are we doing it? We will get to that later.

Terrorism, we had news articles, Mr. Chairman, that al-Qaeda has a cell here in the United States or on the way. Are we having a full hearing on that? No, because we have to do the howling first and do the political stuff.

Crime victims issues, emergency and disaster assistance fraud, drug trafficking, all issues we put out at the beginning of the year and asked let us have hearings on those issues.

That is what is resonating with people sitting in their homes watching this on TV today. They know we are coming in here and howling. That is why poll after poll corroborates that we know that this Democratic majority is coming in because they want to talk and talk and talk, or as the Ranking Member says, howl and howl and howl, but not face real problems and deal with real solutions.

Mr. Chairman, with all my respect for you and for the Ranking Member, I just hope that we will stop the howling and start dealing with the issues that are really impacting the American people while we still have an opportunity to do it.

Mr. Chairman, I yield back.

Mr. CONYERS. Well, I thank the gentleman from Virginia. I don't know if he was here when we told the number of bills passed in the 110th Congress these first 6 months and those passed in the 109th Congress.

Mr. FORBES. Mr. Chairman——

Mr. CONYERS. Let me just tell you, in the 109th Congress we passed 15 measures out of the Judiciary Committee. In the 110th Congress we passed 37.

And I would yield to the gentleman. I don't know if he was aware of that.

Mr. FORBES. I would like it if you don't mind, Mr. Chairman. Mr. Chairman, the American people don't care how many bills we pass, they care about whether or not we are dealing with the issues impacting them and the solutions. That is why you heard earlier today from the former Chairman that we named a number of post offices. We have——

Mr. CONYERS. The gentleman's time has expired.

Mr. FORBES. When you raise those issues, you allowed the Ambassador to do additional time. I am trying to take additional time on what you raised.

Mr. CONYERS. Just a moment, sir. This is not an informal conversation, and I didn't mean to provoke the gentleman. I just didn't know if he was aware of this.

Mr. FORBES. I was just trying to answer your question.

Mr. CONYERS. Thank you.

The Chair now recognizes the distinguished gentlewoman from California, Zoe Lofgren, who Chairs the Immigration Committee in the Judiciary Committee.

Ms. LOFGREN. Thank you, Mr. Chairman. I want to before asking my question, apparently with my other obligations today I missed some animated discussions here. I want to say how unfortunate I think my colleague from California's comments were, especially in light of what we have seen, what appears to be the prosecution by the Justice Department of individuals based on political considerations and to even hint that an innocent person would somehow be in need of a pardon, especially given the service. With that background of politicized prosecution, I think it is very unfortunate.

I would like to ask a question of Mr. Cochran. One of the suggestions that has been made to me is that while we know that Congress and I believe the courts have no power to review the pardon power of the executive, I believe it to be true that the rationale advanced by the President in this case is going to be used by defense counsel prospectively and to good effect to lessen sentences of defendants in Federal proceedings.

Do you believe that is true? Can you advise me on that point?

Mr. COCHRAN. I think that is true and I have to disagree with Mr. Rivkin, I believe that is a legitimate basis. In the President's signing statement he listed very clearly the bases for the commutation in Mr. Libby's sentence. Many of those were in fact reasons Mr. Rita asked the judiciary to vacate his sentence and return it for resentencing.

Ms. LOFGREN. That is a different question. That is something that is happening. I am looking 5 years from now, 6 months from now. Will this be used effectively in your judgment? You are an experienced——

Mr. COCHRAN. I don't know in terms of effectively. I do believe genuinely it will be used and probably will be used a great deal. I think we have yet to see and will only see by appellate decisions how effective it becomes, but it does open up an entire area for

seeking reduced sentences in Federal court. And because of the President's listing of those factors that he considered in commuting Mr. Libby's sentence were fairly specific, I think there will be many defense attorneys that will use that as the basis for seeking reduced time.

Ms. LOFGREN. Now, I have a question for Professor Berman relative to the impact of—the legal impact of a pardon. I believe it is clear that the Congress and the courts have no power to review the commutation or pardoning by the executive. I don't think—I think that is well settled.

Mr. BERMAN. I think that is right.

Ms. LOFGREN. The question is this, if the President can, any President, I don't want to talk necessarily about this case, if any President can pardon for any reason, would that include a reason that was to advance a criminal conspiracy, for example, or for some other reason that was violative of the law? Would that——

Mr. BERMAN. The Supreme Court has said that the Constitution itself provides the only real limit on the constitutional power of——

Ms. LOFGREN. It would just be an impeachment?

Mr. BERMAN. I think so. What is often true is there really isn't sort of elaborate legal development of some of these parameters. Ultimately at the end of day Presidents historically have used their power with sufficient circumspection.

Ms. LOFGREN. Here is one of the reasons why I am interested. I think it was during the Clinton years and there was a court said well, it is no problem to proceed with the civil litigation because it wouldn't take any time whatsoever. I think at some point subsequent to that there were statutes at least discussed, I don't know if they were implemented, to toll the statute of limitation for civil matters for the President and Vice President during their terms of office, so that civil matters wouldn't disappear, they would just be deferred to the end of the term.

I thought and I don't think there is a similar provision for criminal matters. And so here is the question. Just as if you can fire somebody for whatever reason you want except you can't fire them on the basis of race, you can use a pardon for whatever reason you want, but could you use that pardon in furtherance of a criminal conspiracy and if we were to toll the statute of limitation, would that be considered, do you think, or could that be constitutionally considered by a court after a term of either the executive or the Vice President was ended?

Mr. BERMAN. What is interesting is we haven't really had much effort by Congress to sort of test what you might say is procedural regulation on the operation of the clemency and pardon power. I think your question leads to what sorts of ways could Congress seek to push back or, put differently——

Ms. LOFGREN. Not put back, but for example, if there was a pardon intended by someone's silence or to further some other wrongdoing, the political remedy of impeachment has never been achieved in the history of the United States. There has never been a conviction on impeachment in the Senate, and yet we all agree criminality would be wrong. And so the question is, is there some remedy for no man is above the law, is what was said during the Clinton impeachment, but there was really no remedy.

Mr. CONYERS. The gentlelady's time has expired.

Ms. LOFGREN. Thank you, Mr. Chairman.

Mr. CONYERS. I thank you very much.

The Chair recognizes Steve King, the Ranking Member of the Immigration Committee on the Judiciary Committee, from Iowa.

Mr. KING. Thank you, Mr. Chairman. I would first like to start out with an inquiry of Ambassador Wilson. I am interested in a trip you took to Niger and I understand some of the work that you did there. Was that overt or covert on that mission?

Mr. WILSON. I have said repeatedly that my trip was made at the request of my government. I made it very clear at the request of the CIA, and this is in the June 10, 2002 memo that was entered into evidence in the *U.S. v. Libby* case.

Mr. KING. My clock is ticking, Ambassador. Could you just help me——

Mr. WILSON. I would have to go—I would have to have approval of the State Department and indeed of the Ambassador there.

Mr. KING. That is a question of classified, you can't answer that?

Mr. WILSON. I also made it clear to my interlocutors that I had questions that I had been asked to do, so it was not covert.

Mr. KING. It was not covert.

And when you came back from there, did you deliver a report to the CIA?

Mr. WILSON. I did indeed. There were two CIA officers who came to my house within an hour of my having returned from Niger.

Mr. KING. Was it written report?

Mr. WILSON. It was oral report, I also provided an oral briefing to another State Department employee in Niamey.

Mr. KING. And was that report then classified, did it become a classified report?

Mr. WILSON. The report was classified by the CIA, my understanding is. I never saw the written report until parts were declassified and published.

Mr. KING. And parts of it were declassified but not all of it. Some of it remains classified?

Mr. WILSON. I don't know, because I have only seen what is declassified, sir.

Mr. KING. That is curious, because you are the individual who delivered it all. The parts you have seen that were declassified wouldn't be the entirety of the report so one could conclude that parts you have not seen would be classified to this day?

Mr. WILSON. The role of the reports officer is to take the raw data and turn it into a report, it is then distributed throughout the intelligence community using appropriate intelligence.

Mr. KING. I understand.

Did you view your report that you had delivered to the CIA as classified in its entirety at the time? And were you bound by that confidentiality of classified information?

Mr. WILSON. I did not classify it and I did not view it as classified information. It was a report that I gave to the CIA at their request. The mission was undertaken as a discreet mission but it was not a classified mission.

Mr. KING. Let me get this right. After the CIA left your home and you had delivered mostly an oral report to them, did you be-

lieve that you were free to disseminate the knowledge that you accumulated on the government's dime anywhere you chose?

Mr. WILSON. The government's dime, define that. As I made no wages for this 8 days in Niamey, Niger.

Mr. KING. Let's not get bogged down in that.

Did you believe that you could disseminate that information to the public at will or did you believe that you were bound by some confidentiality at least to the level of integrity of the intel that you were bringing in for the government?

Mr. WILSON. I did not. It was a discreet mission. It was undertaken at the request of my government and it was handled on a need-to-know basis, that is correct.

Mr. KING. So it is classified.

Have you then leaked any of that to the press prior to the time——

Mr. WILSON. "classified" is perhaps the wrong word. I would not describe it as classified, I would describe it as discreet.

Mr. KING. Fine.

Did you then leak any of that information to the press prior to your July 6 Op-Ed that you wrote?

Mr. WILSON. First of all, I shared it with Democratic Senators at that trip after the President's State of the Union Address and after Dr. ElBaradei testified before the U.N. Security Council that the documents that he had received at the Department—that was March 17——

Mr. KING. But none of those people are classified.

And so did you leak any of that to the press?

Mr. WILSON. After I spoke to the Democratic Senators a *New York Times* reporter asked me if I would share some of the details of the story with him.

Mr. KING. And so was that the reporter Walter Pincus.

Mr. WILSON. No, Nick Kristof.

Mr. KING. I see here an article by Walter Pincus revealed June 12th, which should be prior to your July article, that he had an unnamed retired diplomat that had given the CIA a negative report. Would that be you?

Mr. WILSON. Mr. Pincus learned of my name and he did call me.

Mr. KING. So you did talk with him?

Mr. WILSON. I did talk to him, yes.

Mr. KING. You have referenced the 16 words that you allege to be—I don't want to put words in your mouth, but I picked things out that said today, fundamental misstatements of facts in the President's State of the Union Address. I take that to mean that you disagree with the facts.

Do you believe that the President intended to misinform the American people?

Mr. WILSON. My view on that is that somebody put a statement in the President's mouth that was not sustained by the evidence, and that became apparent the day after my article appeared when the President's spokesman said to the press that the 16 words do not rise to the level of inclusion in the State of the Union Address.

Mr. CONYERS.

Mr. KING. I am reading from the 16 words and they seem to be honest and true to this day, that the British government has

learned that Saddam Hussein recently sought significant quantities of uranium from Africa, and yet your written testimony references sales not seeking those quantities, but actually the sales of those quantities. Isn't that a bit deceptive as a part of your testimony here at the beginning of this hearing?

Mr. WILSON. In March the Director General of the IAEA testified the U.N. Security council that the information was provided him by the Department of State to undergird the assertion in the President's statement——

Mr. KING. The President's reference is sought uranium. There is a distinction, wouldn't you agree?

Mr. WILSON. Congressman, everything the White House and the Administration has said since Dr. ElBaradei's statement indicates that——

Mr. KING. That is not the answer to my question. Do you recognize a distinction between the two?

Mr. WILSON. Congressman——

Mr. CONYERS. The gentleman's time has expired.

Mr. KING. I would yield back if the honorable Ambassador would yield back as well, Mr. Chairman.

Mr. CONYERS. Well, if your time is expired then we will move on to the next witness, and I thank you very much, Mr. King.

The Chair is now pleased to recognize the gentleman from New York, Mr. Anthony Weiner, who serves with great distinction on the Judiciary Committee.

Mr. WEINER. Thank you, Mr. Chairman.

This hearing has had its sublime moments, perhaps none so sublime as the last one that apparently we have found the last remaining person that believes the 16 words were correct. There have been some, I think, regrettable——

Mr. KING. Would the gentleman yield?

Mr. WEINER. Certainly.

Mr. KING. Yes. I do believe they are correct and I think they are defensible and if you would like to point out where I am incorrect, I would be happy to hear it.

Mr. WEINER. I reclaim my time. That debate has happened and your side has prevailed by a margin of everyone against you apparently.

Mr. KING. That is an easy statement to make. You are not prepared to defend your statement I can see, so I would yield back.

Mr. WEINER. You don't control the time. We have also had moments in this hearing, one recently, that I think are truly regrettable, when the gentleman from California sought in a way to misdirect this hearing and implied in a shameful way that the wife of a witness was guilty of a criminal act and not only a criminal act but one that required pardon. And I think knowing the gentleman from California, given a moment or two to reflect, perhaps would consider returning to this chamber and expressing some regret for those words.

I don't have nearly the strident view on that that some in this chamber do. I think it is the President's right. There is at least one person in particular that I think should get a presidential pardon. People who get presidential pardons are criminals. They are all bad guys and women, they do bad things. But when President Clinton

had a large number of controversial pardons and commutations, he brought upon himself hearings by a Committee of this body. Government Reform and Oversight Committee had rather extensive hearings into those things.

When President Bush put the 16 words in, said he was going to do everything possible to get to the bottom of the leak of Ms. Plame's name, said he believes very seriously in mandatory minimum sentences, believes it was a law and order matter and would make sure he got to the bottom of who did the leak and crimes would be prosecuted around. If he found out someone in his Administration had done something wrong they would be dealt with.

The President provoked this hearing. Commutations and pardons, I think we have a greater obligation to review them than other elements of the legislative process and judicial process because there is very little, if any, transparency to them.

Mr. ISSA. Would the gentleman yield?

Mr. WEINER. Certainly.

Mr. ISSA. I guess you asked that I come back to enter a colloquy earlier. I apologize, I was on the other side in government reform. But I am happy to not only defend——

Mr. WEINER. If I could reclaim my time, just let me finish my point. I had a couple of rhetorical flourishes I wanted to get to.

Mr. ISSA. I don't want to miss them.

Mr. WEINER. When the President made those proclamations that he would get to the bottom of this by commuting the sentence of someone who is involved in the investigation to find out where it went, he in a sense was covering up activities in his own Administration.

I think it is reasonable for the House Judiciary Committee to ask questions about the contradictions between what the President said about mandatory minimums and what he did about mandatory minimums, about the contradiction between what he said about getting to the bottom of this case and what he is doing by not getting to the bottom of this case. And at the end of the day, there is a very important distinction and I think, and I have listened to this here or on television, is a very important distinction that I don't think one has said is not precedent setting, and that is this was the case of someone being pardoned or having their sentence commuted. That was as part of an investigation that was a hair's breath away from the President of the United States. This was the Chief of Staff to the President's singularly top adviser in all of government. And when you say well, it is just a little perjury thing, well, let's remember how investigations happen. They happen because people ask questions, they tell the truth, it leads investigators to go someplace.

This could well be an act of covering up for crimes made by the President of the United States. If that doesn't rise to an important enough thing for us to have hearings on, then I don't know what does.

I would be glad to yield to the gentleman from California.

Mr. ISSA. Thank you, I hope you understand that my assertions against Valerie Plame have everything to do with reviewing her testimony before the House and the Senate and——

Mr. WEINER. If I could reclaim my time.

Mr. ISSA. The——

Mr. WEINER. So your review and the conclusion you reach thereto does not require a pardon. A pardon is a distinct thing, as we have learned, that is granted only to people found guilty of crimes before a judge or before a jury.

By implying that someone from this important chair that you sit in, someone needs a pardon or may need a pardon does not mean you have come to a different conclusion, it means that you have drawn the conclusion as a Member of Congress that they are a criminal. That is not your place, sir, and it is irresponsible for you to try to make it your place simply because you disagree with that person.

Mr. ISSA. Of course it is my place to draw from the information, both classified and unclassified——

Mr. WEINER. Reclaiming my time, reclaiming my time.

Let me just say this, because it has now become apparent that my good friend does not understand that pardon is a legal term. It is not something—you were not saying, well, pardon me, as you brush by someone in the hallway, you were implying that they would soon need a pardon.

Mr. CONYERS. The gentleman's time has expired.

Mr. WEINER. I thank you, Mr. Chairman.

Mr. CONYERS. And the Chair now recognizes Tom Feeney, the distinguished gentleman from Florida.

Mr. FEENEY. Thank you, Mr. Chairman. I think I want to join the course on this side in the great debate as to whether or not this hearing has been fruitful or not. I think the majority has pointed out repeatedly it thinks it is an important oversight hearing, is what I continue to hear, we have alleged it appears to be almost exclusively for partisan reasons.

It is hard to imagine we are having an oversight hearing knowing the power of the presidential clemency under Article II, clause 2, section 1, but over whether or not that power was abused or used rightly in the Libby case. That is all we are talking about here today. Given the fact that everybody that I have heard has acknowledged that the power with the President is plenary, it cannot be a bridge modified or undermined by the Congress.

It is sort of bemusing to wonder why we are here conducting an oversight function on a part of government that we have no oversight responsibility to conduct. And I would suggest that it is well established that Congress has no oversight authority because we can't change it other than through constitutional amendment, in which case we ought to be talking about the power itself.

One suggestion is that the pardon should not be used for political purposes, but one of the first major uses of the pardon power under Article II is when President Jefferson utilized the clemency power to pardon all of those convicted and sentenced under the Alien Sedition Act, which the federalists had used against the Jeffersonian Republicans. So he granted clemency to a whole category of people that I think most persons upon reflection would think that is correct.

Mr. Wilson, you said in paragraph 1 of your statement that you believe fundamentally this case involves, and I quote you, the betrayal of all of our national security, specifically the leaking of the

identity of a covert officer of the Central Intelligence Agency, my wife, Valerie Wilson, as a vicious means of political retribution.

Do you believe that a Federal crime was committed when your wife's name was leaked?

Mr. WILSON. Congressman, thank you for the question. Indeed it was the CIA itself that referred the matter to the Justice Department.

Mr. FEENEY. Do you believe that a crime occurred?

Mr. WILSON. Congressman, I would just refer you to what the CIA itself did.

Mr. FEENEY. You don't have an opinion on that matter?

Mr. WILSON. I may, but I will keep that to myself.

Mr. FEENEY. Well, I am asking you your opinion. The only reason you are here is to give facts and opinions, I presume. If you don't have an opinion, you don't have an opinion.

Mr. WILSON. Legitimate institutions of my government referred this matter to the Department of Justice for an investigation. They investigated it, the Department of Justice in the name of the Special Prosecutor indicted and convicted Mr. Libby on four counts of perjury and obstruction of justice.

Mr. FEENEY. Well, now, you have really put the bunny in the hat now. This is the sort of gamesmanship you have been playing.

I asked you whether a crime was committed when your wife was outed and you refused to answer that and instead said, yes, because Libby was indicted. But he wasn't indicted for outing your wife, he was indicted for other reasons. Richard Armitage wasn't indicted. As a matter of fact, the Special Prosecutor found that there was no violation of law here despite your position.

Mr. WILSON. On the contrary, Congressman, the Special Prosecutor found because of Mr. Libby's blatant lying and obstruction of justice he could not determine——

Mr. FEENEY. We are not talking about his testimony, but whether or not a crime was committed. You don't have an opinion that you are willing to share with the Committee. You do have an opinion that the whole purpose of this talking about your wife's role was a vicious means of political retribution. That is your testimony. And yet the Special Prosecutor which you just cited for defense of your proposition, which in fact he didn't find any underlying crime in this case, the Special Prosecutor concluded in fact neither Armitage nor Libby disclosed your wife's name for the purpose of compromising either your or her identity. Isn't that what the Special Prosecutor concluded?

Mr. WILSON. The Special Prosecutor found that as a consequence of Mr. Libby's blatant lying and obstruction of justice——

Mr. FEENEY. You don't want to answer the question. We are talking about the outing of your wife.

Mr. WILSON. The underlying crime had been committed. He also said that in fact it was hard to see that a conspiracy had not been in existence——

Mr. FEENEY. It is pretty clear the Special Prosecutor has come to different conclusions.

Mr. Rivkin, I would like you to elaborate on why you think it is that fundamentally in this case when a Special Prosecutor was appointed nothing good was going to happen to promote justice, noth-

ing but mischief could occur. I think you are right in concluding that that is the only thing that has occurred is mischief. Why is it that you think that that was inevitable?

Mr. RIVKIN. The only reason it is inevitable experience shows that no matter the individual probity of the people involved if you appoint an independent, a special counsel, if you free that person from any supervisory responsibility to justify his decisions, if you free him or her from any resource constraint, if you focus all of that person's attention——

Mr. CONYERS. The gentleman's time has expired. You may finish your answer.

Mr. RIVKIN. Thank you, Mr. Chairman.

You are going to produce the decisions that do not comport with the decision of a normal justice system. Again most things happened before. It is extremely unfortunate, somebody said earlier, that officials receive the more favorable treatment in our justice system because of the possibility of pardons. I would respectfully submit that the reverse is true, that individuals not in Mr. Libby's position would not have been subject to appointment of special counsel, things would not have gotten anywhere. I would much prefer the regular treatment at the front end to any favoritism to the extent there was one at the back end.

Thank you.

Mr. CONYERS. Thank you. The gentleman from Minnesota, Keith Ellison.

Mr. ELLISON. Thank you, Mr. Chair.

Let's just say Mr. Libby cooperated fully and had not lied to the grant jury or the FBI, is it at least possible we would really know who leaked what and who disclosed your wife's name?

Mr. WILSON. Congressman, I was not party to the investigation, not party to the testimony, so I really don't know. All I can tell you is what Mr. Fitzgerald has said repeatedly, which is that Mr. Libby lied blatantly and repeatedly and obstructed justice, therefore throwing sand in the empire's eyes and guaranteeing there would remain a cloud over the President's head. That cloud remains as a consequence of the President's commuting the sentence of Mr. Libby, thereby no longer providing any incentive for Mr. Libby to finally come forward and tell the prosecutor the truth and the whole truth.

Mr. ELLISON. Mr. Wilson, people lie for a reason; isn't that right? If you are going to lie to a grand jury and FBI agent, you are going to lie in order to achieve some goal. If that had not happened, isn't it possible that we would know much more about what really happened than we know now?

Mr. WILSON. I would certainly hope so. I would think one of the principal objectives of our civil suit is to ensure that in fact the truth on this matter gets out.

Mr. ELLISON. Do we have the truth about who leaked your wife's name specifically now? I am not asking what your views are. Is it a matter of record?

Mr. WILSON. I think, Congressman, it is a matter of record who is involved in this. I am not exactly clear that we know everybody who was involved in it. In fact the argument that I have tried to

make is that the commutation makes certain that we are not able to lift the cloud over the Vice President.

Mr. ELLISON. Let me direct my next question to—I am sorry, sir—the gentleman in the middle.

Mr. CONYERS. Mr. Berman.

Mr. ELLISON. I do apologize, it was on the tip of my tongue.

Mr. Berman, we have now a commutation, not a pardon. What does that mean from the standpoint of Mr. Libby's fifth amendment rights? Can a congressional hearing or grand jury or anybody compel Mr. Libby to now answer questions more fully about what he knows about this case given the posture of the case?

Mr. BERMAN. Well, I think it is very difficult in a lot of settings with ongoing criminal proceedings, or not yet started or not yet finished criminal proceedings, to be confident how the scope of fifth amendment rights play out. Oftentimes it will be quite valid disputes.

What I think is really interesting, and this gets back to my sentencing expertise more so than fifth amendment issues, it is very common when a person has been sentenced to a term of imprisonment for them to then start cooperating at that stage with an investigation in a hope of getting a motion from the prosecutor.

Mr. ELLISON. Reclaiming my time, but now that is not going to happen.

Mr. BERMAN. That is one of my concerns.

Mr. ELLISON. Yet if there was a pardon is there at least a colorable argument that his testimony could be compelled?

Mr. BERMAN. The equation changes. That is the key point, and one of the reasons I think I am here is the commutation is a uniquely different exercise of the clemency——

Mr. ELLISON. Commutation puts us in limbo, no-mans land, where we probably can't compel him to come forward and actually come forward and talk about happened to the U.S. CIA agent who happens to be Mr. Wilson's wife.

Mr. BERMAN. I am inclined to offer a fifth amendment opinion on what you can and cannot compel him to do, but it certainly keeps the case ongoing in a way that adds complications to being able to sensibly ask Mr. Libby for more complete disclosure.

Mr. ELLISON. Mr. Rivkin I believe has a point of view on this.

Mr. RIVKIN. Thank you very much. Very briefly, I do not understand this argument at all. I heard this assertion being made a number of times. I wish we could spend more time on it, but my opinion, of course I don't represent Mr. Libby, his ability to invoke the fifth amendment privilege depends entirely on whether or not the questions you are asking him would produce information that may incriminate him. It doesn't depend upon pendency or lack thereof of his appeal. That is number one.

Number two, for the President to pardon him for the specific offenses of which he was charged if there are other facts in Mr. Libby's past activities that if disclosed may incriminate him, I don't understand——

Mr. ELLISON. Reclaiming my time, Mr. Rivkin.

If somebody said some court wanted to compel Mr. Libby's testimony right now and if he could make a colorable argument to a judge that might expose him to some other criminal liability,

wouldn't the court have to say, well, I guess you don't have to testify?

Mr. RIVKIN. No, if he has a valid basis. All I am trying to say is if has a valid basis to invoke fifth amendment privilege. If he doesn't, it is a very binary proposition. If he doesn't have it the existence of commutation versus a pardon doesn't hold up in this equation. If he does——

Mr. CONYERS. The gentleman is out of time.

Mr. RIVKIN. It makes no sense as a matter of basic constitutional law. There is nothing unique about the commutation.

Mr. CONYERS. The Chairis now pleased to recognize the Ranking Member of the Constitution Committee of Judiciary, a gentleman from Arizona, Trent Franks.

Mr. FRANKS. Thank you, Mr. Chairman.

The Ranking Member of the full Committee made the observation that we were given the impression that this hearing would be the examination of both the Bush and Clinton administration pardons earlier, and which is only appropriate since our Democratic colleague noted that we need to put the case of Scooter Libby in its proper context.

To do that, it is true Mr. Bush has pardoned a few people, but the Clinton administration gives us a lot to work with when it comes to examining the pardoning of criminal activity. We need not fear that we don't have enough evidence to compare here. Just to cite some sources, the number of folks close to Mr. Clinton convicted or pleaded guilty to crimes was about 44. The convictions during his Administration were 33. 61 indictments and misdemeanor charges, 14 imprisonments, 7 independent counsel investigations, 72 congressional witnesses pleading the fifth amendment, 17 witnesses fleeing the country to avoid testifying, 19 foreign witnesses who have declined witnesses by investigative bodies and of course that one matter of one presidential impeachment.

So Mr. Clinton also holds the record, his Administration, for the most number of convictions and guilty pleas, the most number of Cabinet members to come under criminal investigation, the largest number of witnesses to flee the country or refuse to testify, the greatest amount of illegal campaign contributions, with illegal contributions from foreign countries. That gives us quite a lot to work with for comparison.

The Democrats argue this hearing serves a purpose because Mr. Libby's case came down to personal considerations, because it was politically motivated because the aim was to protect the Administration, although all five of the witnesses agree with Mr. Keller that they had no evidence that Mr. Libby was going to implicate others in the Administration. So how do these Democrat objections hold up if we subject the Clinton pardons to the same scrutiny?

Mr. Keller touched on some of them. Mark Rich, a fugitive financier who fled to Switzerland while being prosecuted for tax evasion and illegal oil deals made with Iran during the hostage crisis.

Denise Rich, his ex-wife, contributed $450,000 to the library and the Democratic Party shortly after Mr. Clinton pardoned Rich. The FBI began to investigate whether the contributions by Denise Rich influenced that pardon. So I don't know, Mr. Chairman.

Carlos Vignali was pardoned for cocaine trafficking after paying 200,000 to Senator Hillary Rodham Clinton's brother, Hugh Rodham, to represent Vignali's case for clemency. Roger Clinton, the brother of President Clinton, that is pretty close, was pardoned by his brother for conviction on drug-related charges in the eighties, and he also pled guilty later in 1985 to conspiring to distribute cocaine.

Susan McDougal, former real estate business partner of the Clintons, was pardoned. She was convicted to four felonies related to a fraudulent $300,000 federally backed loan that she and her husband James McDougal never repaid. Some of the monies were placed in the name of Whitewater Development.

A former CIA director, John Deutch, a one-time spy chief and top Pentagon official, was pardoned although he was facing criminal charges in connection with his mishandling of national secrets on a home computer.

Mr. Chairman, aside from Clinton administration officials acting in their official capacity, and business partners and supporters acting in support of Mr. Clinton, there were hundreds of other interesting pardons such as where Mr. Clinton commuted the sentences of 16 members of FALN gang, a Puerto Rican nationalist group that set off 120 bombs in the United States killing six people and injuring numerous others.

It kind of goes on, and I think it is excellent reading and something I recommend for the Department of Justice's Web site if they ever get a little down time.

In light of those questions, Mr. Rivkin, my question is how can we distinguish the Scooter Libby case from the above instances of pardon that involve public officials acting in official capacity? And do any of the distinctions change the legality or the propriety of the treatment of Mr. Libby?

Mr. RIVKIN. We do not.

Mr. FRANKS. I yield back, Mr. Chairman.

Mr. CONYERS. I thank the gentleman and recognize now Judge Louie Gohmert of Texas.

Mr. GOHMERT. Thank you, Mr. Chairman. I can't see any warning signs, so we will just go from here.

I am grateful for Mr. Wilson's wife, for her CIA service. The CIA is engaged in very difficult service to this country, and they are to be applauded and appreciated.

I am concerned, as reported in June in sworn testimony before the House Committee on Oversight and Government Reform—in March of this year that Mr. Wilson's wife denied categorically that she had suggested her husband, and I quote, "I did not recommend him. I did not suggest him."

We have the e-mail here that was finally disclosed by the Senate Committee, and it says, "So where do I fit in? As you may recall"—and it has been redacted, apparently—"CP office 2 recently, 2001, approached my husband to possibly use his contacts in Niger to investigate a separate Niger matter." there is a redacted part there. "after many fits and starts"—redacted—"finally advised that the station wished to pursue this with the liaison. My husband is willing to help if it makes sense but no problem if not, end of story," but that was not the end of the e-mail.

Let me ask you: Were you aware that she sent this e-mail, Mr. Wilson?

Mr. WILSON. Congressman, first of all, thank you for recognizing that.

Mr. GOHMERT. Okay. I will take that as a non-answer.

Going back to the e-mail, "Now with this report, it is clear that the I.C. is still wondering what is going on." so it was not the end of the story, the paragraph. "my husband has good relationships with both the P.M. and the former Ministry of Mines, not to mention lots of French contacts, both of whom could possibly shed light on this sort of activity. To be frank with you, I was somewhat embarrassed by the agency's sloppy work last go-around, and I am hesitant to suggest anything again," but that is not the end. "however, my husband may be in a position to assist."

Now, it may be that, under her testimony, the definition of "did" or "did not" may come into play as to whether or not that was being truthful or not truthful to say she did not suggest or recommend you, Mr. Wilson, and reasonable minds may disagree, but I have a hard time appreciating that.

Now, as far as the——

Mr. WILSON. May I respond, Congressman?

Mr. GOHMERT. Do you have an answer yet on whether you knew about that e-mail when you testified before the Senate Committee?

Mr. WILSON. No. In fact, I did not know about that e-mail, but my wife——

Mr. GOHMERT. She never told you that——

Mr. WILSON. I am sorry. Can I conclude? May I finish?

Mr. GOHMERT. Well, it was a yes-or-no answer, so anything else would be a non-answer to my question.

Mr. WILSON. Yes. Well, I want a chance to testify that, in fact, the genesis of that e-mail was her supervisor's asking her to send——

Mr. GOHMERT. I have read her testimony, but she did send an e-mail——

Mr. WILSON [continuing]. To her supervisor, which was preparatory——

Mr. GOHMERT. I am now reclaiming my time because the answer is not answering the question.

You never knew about the e-mail, though—that is what you are testifying—before you testified before the Senate Committee; is that correct?

Mr. WILSON. That is correct.

Mr. GOHMERT. Okay. Now, did she tell you? Because in her testimony she said she was going to go home and talk to you about it. Did she?

Mr. WILSON. That is correct. She came home and talked to me about coming into the agency to attend a meeting that took place in February at which the question was raised how do we best answer the question posed by the Office of the Vice President of the United States relative to these documents on which they had been briefed.

Mr. GOHMERT. All right. Apparently, the Vice President was concerned about it. Now, again, the e-mail says——

Mr. WILSON. Pardon me, Congressman. It was the Office of the Vice President, which I have said repeatedly, and that has been a point of——

Mr. GOHMERT. Let me go to the e-mail.

She said, "Not to mention, lots of French contacts," and it has been documented or at least mentioned in the media in many places that you have international clients that you assist, and your wife indicates that you have a lot of French contacts. In 2002, did you have French clients that included either the French Government, French business or French individuals who engaged in international trade?

Mr. WILSON. No, sir.

Mr. GOHMERT. All right. Have you since that time?

Mr. WILSON. No, sir.

Mr. GOHMERT. Okay. So, of your French contacts, would you say that they are friends or would you say they are just people you know?

Mr. WILSON. Congressman, I was a diplomat for 23 years, mostly in francophone countries. I have had a lot of dealings with the French Government.

Mr. GOHMERT. So is that a yes? They are friends or they are contacts?

Mr. WILSON. They are diplomatic colleagues and contacts. Sometimes they are friends, and sometimes they are not friends, because we compete with the French in a number of different areas.

Mr. GOHMERT. That is true.

I am also curious. Is there any requirement for CIA agents' filing disclosure documents as to relations that a spouse or an immediate family member may have with foreign governments?

Mr. WILSON. You will have to ask the CIA, Congressman.

Mr. GOHMERT. Okay. You are not aware.

Mr. CONYERS. The gentleman's time has expired.

Mr. GOHMERT. Could I just make one statement that I do not think you will have a disagreement with?

The jury found that Scooter Libby had lied. I have a hard time ever setting aside a finding of fact by a jury, so I would not have supported a pardon based on the jury finding unless an appellate court would find otherwise. Based on the statements by the judge and the prosecutor, however, I do not think the commutation was out of line, and I appreciate the Chairman's indulgence.

Mr. CONYERS. I thank the gentleman.

I apologize to Mike Pence, whom I should have called at an earlier time. The gentleman from Indiana, Mr. Pence.

Mr. PENCE. Thank you, Chairman, and there is no apology necessary. I appreciate your calling this hearing and your characteristic decorum in conducting it.

You know, I must confess. This has been an interesting hearing, and I think the four witnesses on this end of the table have contributed mildly to my understanding of this issue. Now, I am a bit mystified, I would say respectfully to the Committee leadership, to have Ambassador Wilson here, although I admire his panache at a certain level.

I do not often quote *The Washington Post,* being kind of a cheerful, right-wing conservative. Quite frankly, I do not often read *The*

Washington Post. But there was an editorial entitled "The Libby Verdict: The Serious Consequences of a Pointless Washington Scandal" that was published in the wake of the verdict in the attendant case on 7 March, 2007. I think it bears on some of the discussion we have had today.

Again, this is *The Washington Post,* not a world view I generally endorse, but it referred to this case as one, quote, "propelled not by actual wrongdoing but by inflated and frequently false claims and by the aggressive and occasionally reckless response of senior Bush administration officials."

Yes, I must say to you respectfully, Ambassador Wilson, that your claims early in your testimony—and I have reviewed your written testimony as well—again asserting that your wife was covert when, as *The Washington Post* pointed out in this same editorial, that there was no evidence presented at trial that your wife was, in fact, a covert operative and the assertion that you made again before this Committee that it was, essentially, a conspiracy to do violence to your reputation and to your wife's reputation.

Again, I am quoting *The Washington Post* that said, quote, "The trial has provided convincing evidence that there was no conspiracy to punish Mr. Wilson by leaking Ms. Plame's identity and," they added, "no evidence that she was, in fact, covert," close quote.

You know, you have made a number of extraordinary comments. They are not new allegations on your part. They have been reiterated frequently by you, which is your right as an American. You are certainly entitled to your own opinion, but I would argue that you are not entitled to your own facts.

Respectfully, Mr. Ambassador, the findings of this trial are supported by the editorial in *The Washington Post*. The trial had provided no convincing evidence that there was a conspiracy to punish you and no evidence that your wife was, in fact, covert.

I would also say that I have actually authored a Federal media shield statute that I hope this Committee will actually consider in markup this week, and it is about some elements of the Administration being as annoyed at me as I have been with some of the people on this panel, but it derives, interestingly, from this case, from my being appalled at the image of an American journalist being put behind bars for being forced to reveal who her source was in this case. So this has had a big impact on my life. You can imagine how more appalled I was when I found out that the prosecutor in this case, Mr. Fitzgerald, learned early on that Mr. Novak's primary source in this case was not Mr. Libby at all.

Let me quote again from *The Washington Post.*

Quote, "In fact, he learned early on that Mr. Novak's primary source was former Deputy Secretary of State Richard L. Armitage, an unlikely tool of the White House," by his reputation and career. That was my addition.

The Washington Post went on to say, "It would have been sensible for Mr. Fitzgerald to end his investigation after learning about Mr. Armitage. Instead, like many special prosecutors, he pressed on," and, they added, "the damage done to journalists' ability to obtain information from confidential government sources has yet to be measured," close quote.

Now, I will not reiterate because I do not believe in name-calling, even if I am just quoting editorials, but I will not reiterate the name that they called the distinguished witness of this panel. Even as strongly as I feel about this issue, I thought it was out of line and uncalled for.

I thought it was at least worth reflecting, Mr. Chairman, that even though *The Washington Post* has a different version of this case than does, I think, perhaps the most celebrated witness on this panel that, in fact, his wife was not a covert operative and that the court found, in effect, no evidence that she was covert, the court provided convincing evidence there was no conspiracy to punish Mr. Wilson by leaking Ms. Plame's identity. In fact, Scooter Libby was not the primary source in this case at all.

None of which is to say that I excuse Scooter Libby for committing felony perjury. I certainly do not excuse President Clinton for having committed felony perjury. I just think that the contrast between President Clinton, who lost his law license for having committed felony perjury, compared to Scooter Libby's facing 2½ years behind bars for having committed the same act before a grand jury impaneled by a special prosecutor, suggests that, as the President observed, the punishment did not entirely fit the crime.

So, with that, I will yield whatever remains of my time to the gentleman from California.

Mr. ISSA. Thank you. I thank the gentleman for yielding.

I just want to follow up on one thing you said, Mr. Ambassador. You said you briefed the HPSCI and the SSCI before your Op-Ed, and I wanted to know if you could provide us with details since, in calling to the HPSCI—the House Intelligence Committee—they can find no record, including the individuals who were tasked with looking specifically at the file history, of who you met with.

Who did you meet with in the way of staff on the Republican side, which was the majority and the controlling side, prior to that Op-Ed?

Mr. CONYERS. The gentleman's time has expired.

Please respond to the question.

Mr. WILSON. Certainly.

I do not recall who I met with, Congressman. I called—the Republican party, I believe, was in the majority then—and I asked that there be staff members from both sides of the aisle, sir.

Mr. ISSA. But you did meet with them in person?

Mr. WILSON. I did, yes, sir.

Mr. ISSA. Thank you, Mr. Chairman.

Mr. WILSON. That, of course, is reflected, albeit imperfectly, in the SSCI report. I cannot tell you about the HPSCI report, if the HPSCI ever did a report.

Mr. CONYERS. I thank the witnesses. They have been exceedingly patient through all of the voting that has caused us recesses; and, of course, I commend my colleagues, as usual, who have provided such interesting insights.

Might I just say that Presidents of all parties have used pardon powers without subjecting them to the usual or proper process. In my judgment, that is sometimes a dangerous practice, and it is particularly problematic when the pardon or commutation applies to

a member of the President's own Administration, as has been the case here and which has really created the extra interest.

The record reflects that the prosecution in this case was legitimate and in good faith. The investigation was initiated by the Central Intelligence Agency and was pursued by the Justice Department and, eventually, by a Republican appointee, Patrick Fitzgerald, who was named as special counsel and who is a widely respected prosecutor.

There have been a number of questions raised regarding the Marc Rich pardon and its appropriateness; and whatever the concerns were that were raised about the merits of that pardon, President Clinton, in my judgment, did the right thing; and hearings were held on that subject in both the Senate and the House Government Operations Committees and in the House Judiciary Committee, itself.

So when that happened, the President did not assert executive privilege, and he allowed a number of his aides to testify, some who came and said that they had recommended against the pardon that has been repeatedly brought up here, and so we offered the same thing, for President Bush to send someone up here to work with us, and he declined to do so.

I thank the witnesses. I thank the Members of the Committee for their attempts at keeping order and decorum to the best of their abilities.

Mr. ISSA. Mr. Chairman, could I add that point of order now?

Mr. CONYERS. No.

Mr. ISSA. I have been waiting.

Mr. CONYERS. I know, but—yes, yes.

Mr. ISSA. Mr. Chairman.

Mr. CONYERS. Do you know what I am going to do? I am going to grant you a point of order now that you are back.

Mr. ISSA. Thank you, Mr. Chairman.

Mr. CONYERS. You are welcome. What is it?

Mr. ISSA. My point of order was that the rules of the Committee, in fact, require unanimous consent or a vote of the Committee in order to exceed the 5-minute rule. My point of order was, in fact, that rehabilitating a witness who by this statement that now has been read in by another member was, in fact, misplaced, and incorrectly trying to rehabilitate both himself and his wife on nobody's time is, in fact, inconsistent with our rules, is it not? Is that point of order not correct, that rehabilitation will require——

Mr. CONYERS. The point of order, referring to the rule, is correct, but there are times when I have let many of the witnesses go over time, and the charge that was raised, incidentally, by you was of such magnitude that I felt it very inappropriate. I did the same thing for Monica Goodling.

Mr. ISSA. Mr. Chairman, I am not objecting to your decision that you may want to rehabilitate, but my point of order, which was timely, would have required a unanimous consent in order to do that. That is the basis under which, I understand, we exceed the 5-minute rule. Is that not correct, Mr. Chairman?

Mr. WEINER. Mr. Chairman, may I be heard on that point of order?

Mr. CONYERS. No. I would like to take this up with our staff, which assures me that I am in the totally correct position on——

Mr. ISSA. Is the Chairman prepared to rule on my point of order?

Mr. CONYERS. Yes. I will rule your point of order not to be appropriate.

Mr. ISSA. I appeal the ruling of the Chair.

Mr. WEINER. Mr. Chairman, I move to table.

Mr. ISSA. Mr. Chairman.

Mr. CONYERS. This is not in particularly good faith, my friend. I did this for you, and now you want to have a roll call on a point of order.

Mr. ISSA. Mr. Chairman, I believe my point of order was good and valid, and I would ask the Chairman to take under reconsideration, for the next appropriate meeting, his ruling.

Mr. CONYERS. Well, I will not only do that, but I will acquaint you with the details of the point of order.

Mr. ISSA. I will look forward to that, Mr. Chairman, and I will withhold my quorum.

Mr. CONYERS. Well, you know, your generosity continues to confound me.

Mr. ISSA. Thank you, Mr. Chairman.

Mr. CONYERS. I thank all of the witnesses, and I declare this hearing at an end.

[Whereupon, at 5:30 p.m., the Committee was adjourned.]

APPENDIX

Material Submitted for the Hearing Record

LIST OF PARDONS GRANTED BY PRESIDENT GEORGE W. BUSH AND PARDONS GRANTED BY PRESIDENT WILLIAM CLINTON, SUBMITTED BY THE HONORABLE LAMAR SMITH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS, AND RANKING MEMBER, COMMITTEE ON THE JUDICIARY

PARDONS GRANTED BY PRESIDENT GEORGE W. BUSH
December 20, 2002

NAME	*DISTRICT*	*SENTENCED*	*OFFENSE*
Kenneth Franklin Copley	M. D. Tenn.	1962	Manufacturing untaxed whiskey, 26 U.S.C. §§ 5173, 5179, 5205, 5222, 5601, and 5604.
Harlan Paul Dobas	W. D. Wash.	1966	Conspiracy, 18 U.S.C. § 371.
Stephen James Jackson	E. D. La.	1993	Altering the odometer of a motor vehicle, 15 U.S.C. §§ 1984 and 1990(c)(A).
Douglas Harley Rogers	E. D. Wis.	1957	Failure to submit to induction into the Armed Forces of the United States; 50 App. U.S.C. § 451 *et seq.*
Walter Fred Schuerer	N. D. Iowa	1989	Making a false statement to the Social Security Administration regarding his employment; 18 U.S.C. § 1001.
Paul Herman Wieser	W. D. Wash.	1972	Theft from an interstate shipment, 18 U.S.C. § 695.
Olgen Williams	S. D. Ind.	1971	Theft from the mail by a postal employee, 18 U.S.C. § 1709.

PARDONS GRANTED BY PRESIDENT GEORGE W. BUSH
November 5, 2003

NAME	*DISTRICT*	*SENTENCED*	*OFFENSE*
Bruce Louis Bartos	S. D. Fla.	1987	Transportation of a machine gun in foreign commerce, 18 U.S.C. §§ 922(a)(4) and 924.
Brianna Lea Haney	W. D. Wash.	1991	Failure to report monetary instruments, 31 U.S.C. §§ 5316 and 5322(a).
David Custer Heaston	D. Nev.	1988	False statement, 18 U.S.C. § 1001.
Michael Robert Moelter	W. D. Wis.	1988	Conducting an illegal gambling business, 18 U.S.C. § 1955.

PARDONS GRANTED BY PRESIDENT GEORGE W. BUSH
February 14, 2004

NAME	*DISTRICT*	*SENTENCED*	*OFFENSE*
David B. McCall, Jr.	E. D. Tex.	1997	False entry in bank books and aiding and abetting, 18 U.S.C. §§ 1006 and 2.

PARDONS GRANTED BY PRESIDENT GEORGE W. BUSH
May 20, 2004

NAME	*DISTRICT*	*SENTENCED*	*OFFENSE*
Paul Jude Donnici	W. D. Mo.	1993	Use of a telephone in the transmission of wagering information, 18 U.S.C. § 1084.
Samuel Wattie Guerry	D. So. Car.	1994	Food stamp fraud, 7 U.S.C. § 2024(b).
Charles E. Hamilton	W. D. Wash.	1989	Mail fraud, 18 U.S.C. §§ 1341 and 2.
Kenneth Lynn Norris	W. D. Okla.	1993	Unlawful disposal of hazardous waste, 42 U.S.C. § 6928(d)(2)(A) and 18 U.S.C. § 2.
Johnson Heyward Tisdale	D. So. Car.	1994	Food stamp fraud, 7 U.S.C. § 2024(b).

PARDONS GRANTED BY PRESIDENT GEORGE W. BUSH
July 6, 2004

NAME	*DISTRICT*	*SENTENCED*	*OFFENSE*
Anthony John Curreri	E. D. Wis.	1976	Mail fraud, 18 U.S.C. § 1341.
Craven Wilford McLemore	W. D. Okla.	1983	Conspiracy to defraud the United States and Caddo County, 18 U.S.C. § 371.

PARDONS GRANTED BY PRESIDENT GEORGE W. BUSH
November 17, 2004

NAME	*DISTRICT*	*SENTENCED*	*OFFENSE*
Meredith Elizabeth Casares	D. Kan.	1989	Embezzlement of U.S. Postal Service funds, 18 U.S.C. § 641.
Gerald Douglas Ficke	D. Neb.	1992	Structuring currency transactions to evade reporting requirements, 31 U.S.C. §§ 5324(3) and 5322(a) and 18 U.S.C. § 2.
Richard Arthur Morse	S. D. Miss.	1963	Interstate transportation of a stolen motor vehicle, 18 U.S.C. § 2312.
Fred Dale Pitzer	S. D. Ohio	1976	Interstate transportation of falsely made securities, 18 U.S.C. § 2314.
Cecil John Rhodes	N. D. Tex.	1981	Making a materially false statement in a loan application to a federally insured bank, 18 U.S.C. § 1014.
Russell Don Sell	D. Kan.	1995	Aiding and abetting the making of a false statement to a credit institution, 18 U.S.C. §§ 1014 and 2.

PARDONS GRANTED BY PRESIDENT GEORGE W. BUSH
December 21, 2004

NAME	*DISTRICT*	*SENTENCED*	*OFFENSE*
Kristan Diane Akins, fka Kristan Diane Bullock and Kristan D. Wheeler	E. D. No. Car.	1990	Embezzlement by a bank employee, 18 U.S.C. § 656.
Ronald William Cauley	D. Rhode Island	1980	Misapplication of bank funds by an employee, 18 U.S.C. § 657.
Stephen Davis Simmons	W. D. Tex.	1981	Possession of counterfeit obligations, 18 U.S.C. § 472.
Roger Charles Weber	C. D. Calif.	1969	Theft from an interstate shipment, 18 U.S.C. § 659.

PARDONS GRANTED BY PRESIDENT GEORGE W. BUSH
March 3, 2005

NAME	*DISTRICT*	*SENTENCED*	*OFFENSE*
Alan Dale Austin	W. D. Tex.	1987	Misapplication of mortgage funds, 18 U.S.C. § 657.
Charles Russell Cooper	D. So. Car.	1959	Bootlegging, 26 U.S.C. §§ 5174a, 5605, 5632, and 5681.
Joseph Daniel Gavin	U.S. Army general court-martial	1984	Failure to obey an order, drunk and disorderly in quarters, communicating a threat, disrespect to a superior commissioned officer, assault, damage to government property, resisting apprehension, Articles 89, 92, 95, 108, 128, and 134, UCMJ.
Raul Marin	W. D. Tex.	1982	Failure to appear, 18 U.S.C. § 3150.
Ernest Rudnet	E. D. N. Y.	1992	Conspiracy to file false tax returns, 18 U.S.C. § 371.
Gary L. Saltzburg	D. New Mex.	1995	Theft of government property, 18 U.S.C. § 641.
David Lloyd St. Croix	D. N. Dak.	1989	Disposing of stolen explosives, 18 U.S.C. §§ 842(h) and 844(a).
Joseph William Warner	D. S. Dak.	1995	Arson, 18 U.S.C. §§ 1152 and 81.

PARDONS GRANTED BY PRESIDENT GEORGE W. BUSH
June 8, 2005

NAME	*DISTRICT*	*SENTENCED*	*OFFENSE*
David Thomas Billmyer	U.S. Air Force special court-martial	1978 (approved in 1979)	Making a false claim, Article 132, UCMJ.
William Charles Davis	M. D. Fla.	1983	Income tax evasion, 26 U.S.C. § 7201.
Richard Ardell Krueger	D. So. Car.	1979	Mail fraud, 18 U.S.C. § 1341.
	D. So. Car.	1980	Furnishing false information on a Housing and Urban Development loan application, 18 U.S.C. § 1010.
Michael Mark McLaughlin	D. New Hamp.	1983 (sentence modified in 1984)	Conspiracy to commit mail fraud and mail fraud, 18 U.S.C. §§ 2, 371, and 1341.
Billie Curtis Moore	E. D. Mich.	1977	Income tax evasion, 26 U.S.C. § 7201.
James Edward Reed	N. D. Tex.	1975	Conspiracy to possess with intent to distribute marijuana, 21 U.S.C. § 846.
Scott LaVerne Sparks	D. So. Car.	1989	Theft of government property, 18 U.S.C. § 641.

PARDONS GRANTED BY PRESIDENT GEORGE W. BUSH
September 28, 2005

NAME	*DISTRICT*	*SENTENCED*	*OFFENSE*
Gene Armand Bridger	W. D. Mich.	1963	Conspiracy to commit mail fraud and mail fraud, 18 U.S.C. §§ 2, 371, 1341.
Cathryn Hine Clasen-Gage	N. D. Tex.	1992	Misprision of felony, 18 U.S.C. § 4.
Thomas Kimble Collinsworth	W. D. Ark.	1989	Receipt of a stolen motor vehicle transported in interstate commerce, 18 U.S.C. § 2313.
Morris F. Cranmer, Jr.	E. D. Ark.	1988	Making materially false statements to a federally insured lending institution, 18 U.S.C. § 1014.
Rusty Lawrence Elliott	W. D. Mo.	1991	Making counterfeit Federal Reserve notes, 18 U.S.C. § 471.

PARDONS GRANTED BY PRESIDENT GEORGE W. BUSH
September 28, 2005

NAME	*DISTRICT*	*SENTENCED*	*OFFENSE*
Adam Wade Graham	D. Wyo.	1992	Conspiracy to deliver 10 or more grams of LSD, 21 U.S.C. §§ 841(a)(1), 841 (b)(1)(A)(v), and 846.
Rufus Edward Harris	1. M. D. Ga.	1. 1963	1. Possession of tax-unpaid whiskey, 26 U.S.C. §§ 5205 and 2604.
	2. N. D. Ga.	2. 1970	2. Possession and selling tax-unpaid whiskey, 26 U.S.C. §§ 5601, 5604, and 5205.
Jesse Ray Harvey	S. D. W. Va.	1990	Property damage by use of explosives and destruction of an energy facility, 18 U.S.C. §§ 844(i) and 1366(a).
Larry Paul Lenius	D. No. Dak.	1989	Conspiracy to distribute cocaine, 21 U.S.C. § 846.
Larry Lee Lopez	M. D. Fla.	1985	Conspiracy to import marijuana, 21 U.S.C. §§ 952 and 953.
Bobbie Archie Maxwell	M. D. Ga.	1962	Mailing a threatening letter, 18 U.S.C. § 876.
Deuise Bitters Mendelkow	D. Utah	1981	Embezzlement by a bank employee, 18 U.S.C. § 656.
Michael John Pozorski	W. D. Wis.	1988	Unlawful possession of an unregistered firearm, 26 U.S.C. §§ 5861(d) and 5871.
Mark Lewis Weber	U.S. Air Force general court-martial	1981	Selling Quaalude tablets (one specification) and selling, using, and possessing marijuana (three specifications), Articles 92 and 134, UCMJ.

PARDONS GRANTED BY PRESIDENT GEORGE W. BUSH
December 20, 2005

NAME	*DISTRICT*	*SENTENCED*	*OFFENSE*
Carl Eugene Cantrell	E. D. Tenn.	1967	Violation of Internal Revenue Service liquor laws, 26 U.S.C. §§ 2601 *et seq.*

PARDONS GRANTED BY PRESIDENT GEORGE W. BUSH
December 20, 2005

NAME	*DISTRICT*	*SENTENCED*	*OFFENSE*
Charles Winston Carter	S. (now Central) D. Ill.	1964	Conspiracy to steal property of the United States, 18 U.S.C. §§ 371 and 641.
Harper James Finucan	D. So. Car.	1980	Possession with intent to distribute marijuana, 21 U.S.C. 841(a)(1).
Bobby Frank Kay, Sr.	E. D. Va.	1959	Operation of an illegal distillery, 26 U.S.C. §§ 5174, 5606, 5216, 5686(b), and 7302.
Melvin L. McKee	D. Nev.	1982	Conspiracy to make and cause the making of false statements in loan applications; aiding and abetting the making of a materially false statement in a loan application, 18 U.S.C. §§ 371, 1014, and 2.
Charles Elis McKinley	M. D. Tenn.	1950	Violation of Internal Revenue Service liquor laws, 26 U.S.C. § 1185 (as in effect in 1950).
Donald Lee Pendergrass	S. D. Calif.	1964	Bank robbery by use of a dangerous weapon, 18 U.S.C. §§ 2113(a) and (d).
Charles Blurford Power	N. D. Ga.	1948	Interstate transportation of a stolen motor vehicle, 18 U.S.C. §408 (1940 edition).
John Gregory Schillace	E. D. La.	1988	Conspiracy to possess cocaine with intent to distribute, 21 U.S.C. § 846.
Wendy Rose St. Charles, fka Wendy Rose St. Charles Holmes	N. D. Ill.	1984	Conspiracy to conduct a narcotics enterprise, and distribution of cocaine, 18 U.S.C. § 1962(d) and 21 U.S.C. § 841(a)(1).
Jimmy Lee Williams	N. D. Tex.	1995	False statement on a loan application, 18 U.S.C. § 1014.

PARDONS GRANTED BY PRESIDENT GEORGE W. BUSH
April 18, 2006

NAME	*DISTRICT*	*SENTENCED*	*OFFENSE*
Patrick Harold Ackerman	D. Ore.	1980	Filing false statements, 18 U.S.C. § 1001.

PARDONS GRANTED BY PRESIDENT GEORGE W. BUSH
April 18, 2006

NAME	*DISTRICT*	*SENTENCED*	*OFFENSE*
Karen Marie Edmonson	D. Minn.	1978	Distribution of methamphetamine, 21 U.S.C. § 841(a)(1).
Anthony Americo Franchi	D. Mass.	1983	Income tax evasion, 26 U.S.C. § 7201.
Timothy Mark Freudenthal	E. D. Wis.	1985	Conspiracy to introduce imported merchandise into commerce of the United States, 18 U.S.C. § 371.
George Anderson Glenn	U.S. Army general court-martial	1956	Conspiracy to commit larceny and larceny, Articles 81 and 121, UCMJ
Mark Reuben Hale	E. D. Tex.	1991	Savings and Loan fraud, 18 U.S.C. § 1344.
Kenneth Ward Hill	N. D. Miss.	1992	Attempted tax evasion, 26 U.S.C. § 7201.
Margaret Ann Leggett	E. D. Ark.	1981	Conspiracy to defraud the United States by making false claims for income tax refunds, 18 U.S.C. § 286.
Elke Margarethe Mikaelian	D. New Mex.	1993	Misprision of felony, 18 U.S.C. § 4.
Karl Bruce Weber	N. D. Fla.	1985	Possession of cocaine with intent to distribute, 21 U.S.C. § 841(a)(1).
Carl Manar White	E. D. Okla.	1983	Conspiracy to defraud the United States and Pittsburgh County, Oklahoma, by tax evasion and mail fraud, 18 U.S.C. § 371.

PARDONS GRANTED BY PRESIDENT GEORGE W. BUSH
August 15, 2006

NAME	*DISTRICT*	*SENTENCED*	*OFFENSE*
James Leon Adams	D. So. Car.	1976	Selling firearms to out-of-state residents and falsifying firearms records, 18 U.S.C. §§ 922(b)(3), 922(m), and 924(a).
Tony Dale Ashworth	D. So. Car.	1989	Unlawful transfer of a firearm, 26 U.S.C. §§ 5861(e) and 5871.

PARDONS GRANTED BY PRESIDENT GEORGE W. BUSH
August 15, 2006

NAME	*DISTRICT*	*SENTENCED*	*OFFENSE*
Randall Leece Deal	1. N. D. Ga.	1. 1960	1. Liquor law violation, 26 U.S.C.
	2. N. D. Ga	2. 1964	2. Liquor law violation, 26 U.S.C.
	3. N. D. Ga.	3. 1964	3. Conspiracy to violate the liquor laws, 26 U.S.C.
William Henry Eagle	E. D. Ark.	1972	Possessing an unregistered still, carrying on the business of a distiller without giving the required bond, and manufacturing mash on other than lawfully qualified premises, 26 U.S.C. §§ 5601(a)(1), 5601(a)(4), and 5601(a)(7).
Robert Carter Eversole	E. D. Tenn.	1984	Conspiracy to commit theft from an interstate shipment, 18 U.S.C. § 371.
Kenneth Clifford Foner	D. Neb.	1991	Conspiracy to impede functions of the FDIC, commit embezzlement as a bank officer, make false entries in the records of an FDIC-insured bank, and commit bank fraud, 18 U.S.C. §§ 371, 656, 1005, and 1344.
Victoria Diane Frost	W. D. N. Y.	1994	Conspiracy to possess and distribute L-ephedrine hydrochloride, 21 U.S.C. § 846.
William Grover Frye	1. U.S. Army general court-martial	1. 1968	1. Absence without leave (two specifications), Article 86, UCMJ (10 U.S.C. § 886), and escape from lawful confinement, Article 95, UCMJ (10 U.S.C. § 895).
	2. S. D. Ind.	2. 1973	2. Sale of a stolen motor vehicle moving in interstate commerce, 18 U.S.C. § 2313.
Stanley Bernard Hamilton	S. D. Miss.	1990	Altering U.S. postal money orders, 18 U.S.C. § 500.
Melodie Jean Hebert	D. Rhode Island	1984	Conspiracy to defraud the United States by making false claims, 18 U.S.C. §§ 371 and 1001.

PARDONS GRANTED BY PRESIDENT GEORGE W. BUSH
August 15, 2006

NAME	*DISTRICT*	*SENTENCED*	*OFFENSE*
James Earnest Kinard, Jr.	D. So. Car.	1984	Failure by a licensed firearms dealer to make appropriate entries in firearms records required to be kept by law (four counts), making false entries by a licensed firearms dealer in firearms records required to be made by law, 18 U.S.C. §§ 922(m) and 2.
Devin Timothy Kruse	U.S. Coast Guard special court-martial	1978	Unauthorized absence, Article 86, UCMJ (10 U.S.C. § 886).
Gerard Murphy	M. D. Fla.	1972	Theft of a motor vehicle from a U.S. Air Force base, 18 U.S.C. §§ 7 and 13.
Joseph Matthew Novak	N. D. Ohio	1994	Possession and transfer of an illegal weapon, 18 U.S.C. §§ 922(o)(1) and 924(a)(2).
John Louis Ribando	1. C. D. Calif.	1. 1976	1. Possession with intent to distribute a controlled substance (marijuana), 21 U.S.C. §§ 841(a)(1).
	2. C. D. Calif.	2. 1978	2. Conspiracy to possess with intent to distribute a controlled substance (marijuana), aud importing a controlled substance (marijuana), 21 U.S.C. §§ 841(a)(1), 846, 952(a), 960(a)(1), and 963.
Edward Rodriguez Trevino, Jr.	U.S. Navy special court-martial	1997	Larceny, Article 121, UCMJ (10 U.S.C. § 921).
Jerry Dean Walker	W. D. No. Car.	1989	Possession with intent to distribute cocaine, 21 U.S.C. § 841(a)(1).

PARDONS GRANTED BY PRESIDENT GEORGE W. BUSH
December 21, 2006

NAME	*DISTRICT*	*SENTENCED*	*OFFENSE*
Charles James Allen	D. Md.	1979	Conspiracy to defraud the United States, 18 U.S.C. § 371.
William Sidney Baldwin, Sr.	D. So. Car.	1981	Conspiracy to possess marijuana, 21 U.S.C. § 846.

PARDONS GRANTED BY PRESIDENT GEORGE W. BUSH
December 21, 2006

NAME	*DISTRICT*	*SENTENCED*	*OFFENSE*
Timothy Evans Barfield	E. D. No. Car.	1989	Aiding and abetting false statements in a Small Business Administration loan application, 15 U.S.C. § 645(a) and 18 U.S.C. § 2.
Clyde Philip Boudreaux	U.S. Navy general court-martial	1975	Borrowing money from enlisted men, accepting a non-interest-bearing loan from a government contractor, and swearing to a false affidavit, Articles 92, 107, 134, UCMJ.
Marie Georgette Ginette Briere	D. P. R.	1982	Possession of cocaine with intent to distribute, 21 U.S.C. § 841(a)(1).
Dale C. Critz, Jr.	M. D. Fla.	1989	Making a false statement, 18 U.S.C. § 1001.
Mark Allen Eberwine	W. D. Tex.	1985 (as amended in 1986)	Conspiracy to defraud the United States by impeding, impairing, and obstructing the assessment of taxes by the Internal Revenue Service, 18 U.S.C. § 371; false declaration to the grand jury, 18 U.S.C. § 1623.
Colin Earl Francis	D. Conn.	1993	Accepting a kickback, 41 U.S.C. §§ 53 and 54.
George Thomas Harley	D. New Mex.	1984	Aiding and abetting the distribution of cocaine, 21 U.S.C. § 841(a)(1) and 18 U.S.C. § 2
Patricia Ann Hultman	W. D. Pa.	1985	Conspiracy to possess with intent to distribute and to distribute cocaine, 21 U.S.C. 846.
Eric William Olson	U.S. Army general court-martial	1984	Conspiracy to possess with intent to distribute, possession with intent to distribute, possession of, and use of hashish, Articles 81 1nd 134, UCMJ.
Thomas R. Reece	N. D. Ga.	1969	Violating the Internal Revenue Code pertaining to alcohol, 26 U.S.C. § 5681(c).
Larry Gene Ross	D. Wyo.	1989	Making false statements in a bank loan application, 18 U.S.C. § 1014.
Jearld David Swanner	W. D. Okla.	1991	Making false statements in a bank loan application, 18 U.S.C. § 1005.

PARDONS GRANTED BY PRESIDENT GEORGE W. BUSH
December 21, 2006

NAME	*DISTRICT*	*SENTENCED*	*OFFENSE*
James Walter Taylor	E. D. Ark. 1991	1991	Bank fraud, 18 U.S.C. § 1344.
Janet Theone Upton	D. Nev.	1975	Mail fraud, 18 U.S.C. § 1341.

COMMUTATIONS GRANTED BY PRESIDENT GEORGE W. BUSH

May 20, 2004: **Bobby Mac Berry**

Offense: Conspiracy to manufacture and possess with intent to manufacture marijuana, 21 U.S.C. § 846; money laundering, 18 U.S.C. § 1956(a)(1)(A)(i)

District/Date: Middle District North Carolina; September 17, 1997

Sentence: 108 months' imprisonment, five years' supervised release

Terms of Grant: Sentence of imprisonment to expire May 27, 2004, leaving intact and in effect the term of supervised release

May 20, 2004: **Geraldine Gordon**

Offense: Conspiracy to distribute phencyclidine, 21 U.S.C. § 846; distribution of phencyclidine, 21 U.S.C. § 841(a)(1)

District/Date: District of Nevada; September 22, 1989

Sentence: 240 months' imprisonment, 10 years' supervised release

Terms of Grant: Sentence of imprisonment to expire September 20, 2004, leaving intact and in effect the term of supervised release

December 21, 2006: **Phillip Anthony Emmert**

Offense: Conspiracy to distribute methamphetamine, 21 U.S.C. § 846

District/Date: Southern District of Iowa; December 23, 1992

Sentence: 262 months' imprisonment (as reduced on February 21, 1996); five years' supervised release

Terms of Grant: Sentence of imprisonment to expire January 20, 2007, leaving intact and in effect the term of supervised release.

SEARCH

OFFICE OF THE PARDON ATTORNEY

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November 23, 1994			
NAME	DISTRICT	SENTENCED	OF
David Phillip Aronsohn	D. Minn.	1961	Failure to pay special occu U.S.C. § 7203
Wanda Kaye Bain-Prentice	D. Ariz.	1982	Mail fraud, 18 U.S.C. § 13
Antonio Barucco	U. S. Army general court-martial	1945	Desertion in violation of th
Kristine Margo Beck	D. Idaho	1981	Bank embezzlement, 18 U.
David Christopher Billmaier	D. New Mex.	1980	Possession with intent to d U.S.C. § 841(a)(1)
Terry Lee Brown	E. D. Ky.	1962	Interstate transportation o 18 U.S.C. § 2312
Joe Carl Bruton	N. D. Tex.	1979	Conspiracy to commit mail
Nolan Lynn DeMarce	W. D. Wis.	1983	Making false statements tc § 1014
Jimmy C. Dick	N. D. Calif.	1976	Conspiracy to manufacture Notes, 18 U.S.C. § 371
Edward Eugene Dishman	W. D. Okla.	1983	Conspiracy to defraud the counties, 18 U.S.C. § 371
Brenda Kay Engle	S. D. Ind.	1983	Conspiracy to commit thef U.S.C. § 371
Mary Theresa Fajer	D. Oregon	1980	Conspiracy to commit bani §§ 2 and 371
Albert James Forte	D. Dist. Col.	1973	Making and subscribing fal return, 26 U.S.C. § 7206(1
Fendley Lee Frazier	S. D. Ala.	1965	Interstate transportation o U.S.C. § 2312

Robert Linward Freeland, Jr.	N. D. Ind.	1983	Forcible rescue of seized p
Ralph Leon Furst	S. D. Calif.	1966	Embezzlement of United S not cited)
Barbara Ann Gericke	W. D. Wis.	1984	Conspiracy to introduce co 18 U.S.C. §§ 371 and 179
Billy Joe Gilmore	N. D. Tex.	1982	Mail fraud and aiding and and 2
Loreto Joseph Tafrate	N. D. W. Va.	1976	Failure to record receipt of 922(m) and 924(a)
Carl Bruce Jones	W. D. Mo.	1983	Distribution of marijuana a facilitate marijuana distrib 21 U.S.C. §§ 841(a)(1) an
Candace Deon Leverenz	N. D. Calif.	1972	Unlawful distribution of LS and (b)(1)(B)
George William Lindgren	S. D. N. Y.	1975	Bank embezzlement, 18 U.
Brian George Meierkord	C. D. Ill.	1983	Making false statement to
Jackie Lee Miller	N. D. Okla.	1983	Conspiracy to defraud the 371
Joseph Patrick Naulty	E. D. Pa.	1980	Carrying away goods movi shipment, 18 U.S.C. § 659
Theodore Roosevelt Noel	N. D. Ala.	1972	Selling whiskey in unstamp false statement in the acq licensed dealer, 26 U.S.C. §§ 922(a)(6) and 924(a)
Mary Louise Oaks	M. D. La.	1979	Conspiracy to defraud the claims, 18 U.S.C. § 286
Robert Paul Padelsky	D. Utah	1980	Misapplication of bank fun
Elizabeth Amy Peterson	D. Nev.	1985	Conspiracy to make false s § 371
Susan Lauranne Prather	W. D. Ark.	1975	Causing marijuana to be tr 21 U.S.C. § 843(b)
Gary Lynn Quammen	W. D. Wis.	1976	Misapplication of bank fun
Robert Ronal Raymond	D. Conn.	1972	Conspiracy to manufacture firearms silencers, 18 U.S.
Elizabeth Hogg Rushing	N. D. Ga.	1978	Misapplication of bank fun
Marc Alan Schaffer	S. D. N. Y.	1968	Submission of false statem System Local Board, 50 U.
Roy Aaron Smith	E. D. Tex.	1982	Misprision of a felony, 18
Diane Dorothea Smunk	D. So. Dak.	1984	Embezzlement by governm 641
Thomas Peter Stathakis	D. So. Car.	1976	Selling and delivering firea and falsifying firearms rec 922(m), and 924(a)
Kathleen Vacanti	C. D. Calif.	1979	Conspiracy to defraud the payment of false claims, p United States, forging a w abetting, 18 U.S.C. §§ 2, 2

Pupi White	W. D. Mo.	1985	Making false statement on application, 18 U.S.C. § 91
Charles Coleman Wicker	E. D. Mo.	1975	Conspiracy to conduct illeg U.S.C. § 371
Roderick Douglas Woods	S. D. Miss.	1982	Misappropriation of bank fu 18 U.S.C. §§ 656 and 2

April 17, 1995

NAME	DISTRICT	SENTENCED	OF
Bradley Vaughn Barisic	N. D. Calif.	1980	Making false statement to Board, 18 U.S.C. § 1001
Herschel L. Brantley	U. S. Air Force general court-martial	1951	Larceny in violation of 93rd
Linda Bailey Byars	D. So. Car.	1975	Bank embezzlement, 18 U.
Patricia Ann Chapin	W. D. Mo.	1986	Falsifying prescription for c U.S.C. § 843(a)(4)(A) and
Ronald Jacobs	E. D. Pa.	1967	Theft from interstate shipn
Margaret Mary Marks	N. D. Ohio	1984	Willful misapplication of ba
John Richard Martin	S. D. Calif.	1956	Embezzlement of funds fro association, 18 U.S.C. § 65
Earl Thomas McKinney	1. U. S. Air Force summary court-martial	1. 1951	1. Absent without leave
	2. U. S. Air Force general court-martial	2. 1959	2. Larceny by check, writi insufficient funds, and f violation of U.C.M.J. Art and 134
Shirley Jean Odoms	S. D. Tex.	1978	Filing false claim for tax re
Jack Pakis	W. D. Ark.	1972	Operation of illegal gambli and 1955
Gordon Roberts, Jr.	M. D. La.	1977	Interstate transportation o securities, 18 U.S.C. §§ 2
Carl Edward Terhune, Jr.	N. D. Okla.	1985	Issuing United States Post postal employee with inter 18 U.S.C. § 500

December 23, 1997

NAME	DISTRICT	SENTENCED	OF
Irving Frank Avery	D. Colo.	1984	Possession of counterfeit p
Billy K. Berry	E. D. Ark.	1986	Medicaid and mail fraud, 4 18 U.S.C. § 1341
Clio Louise Carson	D. Wyo.	1979	Transmission of wagering i
Giuseppe Casadei-Severei	D. Puerto Rico	1987	Obstruction of justice, 18 U

Glen Edison Chapman	1. W. D. No.Car.	1. 1955	1. Removing, possessing, non-tax-paid whiskey, §§ 5632 and 7206
	2. W. D. No. Car.	2. 1957	2. Removing, possessing, non-tax-paid whiskey, §§ 5632 and 5008(b)(1
Ralph Wallace Crawford	C. D. Calif.	1985	Mail fraud, 18 U.S.C. § 13
Aaron Golden	W. D. Tex.	1986	Failure to file a currency tr §§ 5313 and 5322(a)
Monroe Lee King	S. D. Tex.	1973	Making plates for counterf 18 U.S.C. § 474
Ralph Lee Limbaugh	N. D. Ala.	1974	Theft from interstate shipn
George Edward Maynes, Jr.	D. Canal Zone	1975	Distribution of cocaine, 21
Charley Morgan	N.D. Okla.	1964	Unlawful possession of still 26 U.S.C. §§ 5179(a), 560
Linzie Murle Morse	W. D. La.	1973	Interstate transportation o selling stolen motor vehicl 2313
Charles Patrick Murrin	C. D. Calif.	1988	Bank robbery, 18 U.S.C. §
Moises Jaurequi Ramos	D. New Mexico	1983	Misprision of a felony, 18 U
William Ray Richardson	W. D. Mo.	1983	Interstate transportation o §§ 2 and 2314
Raymond Phillip Weaver	U. S. Navy summary court-martial	1947	Theft of four pounds of but
Bill Wayne West	E. D. Miss.	1984	Dealing in firearms withou 922(a)(1) and 924(a)
Anita Glenn Whitlock	D. Dist. Col.	1978	Bank embezzlement, 18 U.
Edward Kenneth Williams, Jr.	S. D. Iowa	1979	Receiving and selling stole and abetting the same, 18
Larry Edward Winfield	W. D. Ark.	1987	Mail fraud, 18 U.S.C. § 13
Louis Anthony Winters	1. U.S. Navy general court-martial	1. 1957	1. Unauthorized absence fr
	2.D. So. Dak.	2. 1969	2. Assault with dangerous

		December 24, 1998	
NAME	**DISTRICT**	**SENTENCED**	**OF**
Haig Ardash Arakelian **(aka Haig Arthur Arakelian)**	S. D. Calif.	1975	Possession of marijuana, 2
Estel Edmond Ashworth	N. D. Tex.	1974	Theft of mail by Postal em

Vincent Anthony Burgio	C. D. Calif.	1972	Possession of counterfeit g U.S.C. § 472
Thomas Earl Burton	E. D. Va.	1982	Attempted possession with 21 U.S.C. §§ 841(a)(1) an
Jesse Cuevas	D. Neb.	1984	Unauthorized possession o 2024(b)
Harry Erla Fox	U.S. Army summary and special courts-martial	1961	Absence without leave, Art
James William Gardner	D. Wyo.	1983	Conspiracy to distribute co 841(a)(1)
Alejandro Cruz Guedea	U.S. Army general court-martial	1949	Larceny of government pro
Sebraien Michael Haygood	E. D. N. Y.	1982	Importation of cocaine, 21 960(a)(1)
Warren Curtis Hultgren, Jr.	W. D. Tex.	1982	Conspiracy to possess with 21 U.S.C. §§ 846 and 841(
Sharon Sue Johnson	E. D. Ark.	1986	Bank embezzlement, 18 U.
Ronald Ray Kelly	U.S. Marine Corps special court-martial	1969	Unauthorized absences, es and breaking restriction
Francis Dale Knippling	D. So. Dak.	1985	Conversion of mortgaged p
Michael Ray Krukar	D. Alaska	1988	Unlawful distribution of ma § 841(a)(1)
Michael Francis Larkin	D. Mass.	1984	False statements to HUD,
Leslie Jan McCall	W. D. Okla.	1988	Use of telephone to facilita U.S.C. § 843(b)
Bobby Joe Miller	E. D. Tex.	1982	Misprision of a felony, 18 U
William Edward Payne	D. Ore.	1965	Willful attempt to evade ex U.S.C. § 7201
Robert Earl Radke	C. D. Calif.	1981	Willful attempt to evade in 7201
David Walter Ratliff	N. D. Okla.	1981	Making false statement to 1001
Billy Wayne Reynolds	E. D. Tex.	1981	Mail fraud, 18 U.S.C. § 134
Benito Maldonado Sanchez, Jr.	W. D. Tex.	1960	Possession of marijuana w tax, 26 U.S.C. § 4744(1)
Vicki Lynn Seals (fka Vicki Lynn Miller)	W. D. Tex.	1984	Making a false statement t while an employee of that
Lewis Craig Seymour	W. D. Okla.	1979	Distribution of Phencyclidi 841(a)(1)
Irving A. Smith	D. Md.	1957	Conspiracy to engage in pr 2 (Sherman Act)

Darrin Paul Sobin	E. D. Calif.	1987	Conspiracy to manufacture 841(a)(1)
Monty Mac Stewart	W. D. Okla.	1983	Conspiracy to defraud U.S. Oklahoma, mail fraud, and false income tax return, 18 and 26 U.S.C. § 7206(1)
Kevin Lester Teker	W. D. Wash.	1989	Maliciously damaging prop affecting interstate comme explosive, 18 U.S.C. § 844
John Timothy Thompson	W. D. Okla.	1986	Use of the telephone to fac 21 U.S.C. § 843(b)
Paul Loy Tobin	S. D. Ala.	1968	Interstate transportation o U.S.C. § 2312
Gerald William Wachter	E. D. Pa.	1974	Conspiracy to cause stolen interstate commerce, 18 U
Marian Lane Wolf	N. D. Tex.	1988	Misprision of a felony, 18 U
Samuel Harrell Woodard	1. U.S. Air Force summary court-martial	1. 1952	1. Absent without leave
	2. S. D. Ga.	2. 1955	2. Theft from an interstate

February 19, 1999

NAME	DISTRICT	SENTENCED	OF
Henry Ossian Flipper	U.S. Army general court-martial	1881	Conduct unbecoming an of

December 23, 1999

NAME	DISTRICT	SENTENCED	OF
Meredith Marcus Appleton, II	W. D. Okla.	1990	Conspiracy to possess with and to distribute cocaine, 2
Steven Laurence Barnett	E. D. Calif.	1987	Misapplication of bank fun same, 18 U.S.C. §§ 2 and
Russell Carl Clifton	N. D. Calif.	1977	Transmission of a false dis (misdemeanor)
Albert McMullen Cox	S. D. Ga.	1987	Bribery of a public official,
Bernard Earl Crandall	C. D. Ill.	1985	Theft from interstate shipn
Eugene Harold Del Carlo	N. D. Calif.	1979	Conspiracy and blackmail, (misdemeanors)
Kenneth Lee Deusterman	D. Minn.	1991	False statement to HUD, 1 (misdemeanor)
Frank Allen Els	E. D. Wash.	1976	Possession of an unregiste § 5861(d)
Arthur Neil Evans	N. D. Calif.	1954	Protecting and assisting a 18 U.S.C. § 1381
Elizabeth Marie Frederick (fka Elizabeth Sigmon)	D. So. Dak.	1987	Distribution and possessio cocaine, 21 U.S.C. § 841(a

Jackie Lynn Gano	N. D. Iowa	1976	Receiving money or benefi federal credit institution wi officer or employee of insti
Daniel Clifton Gilmour, Jr.	D. So. Car.	1985	Importation of marijuana, 963, and 18 U.S.C. § 2
Michael Lee Gilmour	D. So. Car.	1985	Importation of marijuana, 963, and 18 U.S.C. § 2
Theodore Avram Goodman	S. D. Calif.	1981	Unauthorized sale of gover § 641
Michael Charles Jorgensen	D. N. Mex.	1981	Misprision of a felony, 18 U
Leonard Charles Kampf	E. D. Va.	1990	Conveyance of governmen 18 U.S.C. § 641
Kenneth Marshall Knull	Navy general court-martial	1976	Disobeying a lawful genera destruction of military prop two Naval vessels, Articles
Reza Arabian Maleki	D. No. Dak.	1984	Conspiracy to make false s statements to INS, and aid 18 U.S.C. §§ 2, 371, and 1
William Ronald McGuire	E. D. N. Y.	1978	Income tax evasion, 26 U.
Freddie Meeks	Navy general court-martial	1944	Making a mutiny during wa
Steven Dwayne Miller	E. D. Tex.	1985	Possession of counterfeit F intent to sell or otherwise
Jodie David Moreland	W. D. La.	1987	Conspiracy to possess with marijuana, 21 U.S.C. §§ 8
Lloyd Robert Odell	E. D. Wash.	1983	Theft of government prope
John Richard Palubicki	E. D. Wis.	1988	Conspiracy to defraud the 18 U.S.C. § 371 and 26 U.
Patricia Ann Palubicki	E. D. Wis.	1988	Conspiracy to defraud the 18 U.S.C. § 371 and 26 U.
Mark Edwin Pixley	D. Oregon	1991	Aiding in the manufacture, 21 U.S.C. § 841(a)(1) and
Theodore Alfred Rhone	D. Dist. Col.	1987	Wire fraud and aiding and §§ 2 and 1343
Warren David Samet	S. D. Fla.	1968	Transporting, concealing, transportation of marijuan paying the tax imposed, 2
Steven Elliott Skorman	N. D. Ga.	1972	Distributing lysergic acid d § 841(a)(1)
Ronald Marsh Smith	Army general court-martial	1977	Stealing mail matter, Artic
Richard Beauchamp Steele	S. D. Tex.	1989	Conspiracy to eliminate co interstate commerce, 15 U
Christine Ann Summerbell (fka Christine Ann McKeown)	W. D. Wis.	1984	Theft of mail by postal em
Robert A. Suvino	W. D. Ark.	1988	Conspiracy to commit mail U.S.C. §§ 371 and 1341

Daniel Larry Thomas, Jr.	N. D. Ohio	1987	Illegal use of a communica cocaine, 21 U.S.C. § 843
Howard Edwin Walraven	W. D. Ark.	1968	Theft from an interstate sh
Martin Harry Wesenberg	E. D. Wis.	1964	Willfully failing to pay the s wagering, and aiding and a § 7203 and 18 U.S.C. § 2
Virgil Edwin West	N. D. Okla.	1982	Mail fraud, 18 U.S.C. §§ 2

February 19, 2000			
NAME	**DISTRICT**	**SENTENCED**	**OFF**
Preston Theodore King	1. M.D. Ga.	1. 1961	1. Failure to appear for phys examination; failure to ap induction into the Armed U.S.C. App. § 46
	2. M.D. Ga.	2. 1962 (indicted)	2. Bail jumping, 18 U.S.C. §

March 15, 2000			
NAME	**DISTRICT**	**SENTENCED**	**OFF**
Gregory Leon Crosby	D. Maine	1987	Theft by postal employee, 1
Everett Gale Dague	N. D. Iowa	1982	Conspiracy to obstruct comr demanding or receiving illeg labor union, and demanding fees from a motor vehicle dr 1951, 29 U.S.C. §§186(b)(1
Terry Stephen Duller	W. D. Wis.	1990	Engaging in illegal gambling failure to pay excise tax, 26
Richard George Frye	D. Maine	1973	Knowingly shipping and tran interstate commerce, having 18 U.S.C. §§ 922(g) and 92
Edgar Allen Gregory, Jr.	S. D. Ala.	1986	Conspiracy to willfully misap statements to a bank, and c misapplication of bank funds bank, 18 U.S.C. §§ 371, 65
Vonna Jo Gregory	S. D. Ala.	1986	Conspiracy to willfully misap statements to a bank, and c misapplication of bank funds bank, 18 U.S.C. §§ 371, 65
Carl David Hamilton	E. D. Ark.	1986	Bank fraud, and conspiracy fraud, 18 U.S.C. §§ 1343 an
Charles Edward Kirschner	D. Alaska	1993	Theft of bank property, 18 U
Charles Douglas Megla	W. D. Ky.	1980	Mail fraud, 18 U.S.C. §§ 134
Owen Neil Nordine	D. Ariz.	1963	Interstate transportation of U.S.C. § 2312
William Thomas Rohring	D. Minn.	1986	Forgery of U.S. Treasury che
Lawrence David Share	S. D. Calif.	1975	Conspiracy to commit securi unregistered securities, and devices in connection with th 18 U.S.C. §§ 371 and 2, and

			77q(a), 77x, 78ff, and 78j(b
Wayne Cletus Steinkamp	N. D. Iowa	1988	Conspiracy in restraint of tra 15 U.S.C. § 1
Peter John Thomas	D. Del.	1978	Conspiracy to possess cocai 21 U.S.C. § 846
Heather Elizabeth Wilson **(fka Heather Elizabeth Calvin)**	E. D. Okla.	1993	Use of telephone to facilitate drug-trafficking felony, 21 U
Donna Marie Yellow Owl **(fka Donna Marie Coursey)**	D. Montana	1988	False statements, 18 U.S.C.

July 7, 2000

NAME	DISTRICT	SENTENCED	OFF
Carl Stanley Gilbreath	N. D. Ga.	1971	Interstate transportation of U.S.C. § 2312
Claudette Dean Goodson **(fka Claudette Goodson Findeisen)**	E. D. No. Car.	1986	Aiding and abetting embezzl 18 U.S.C. §§ 641 and 2
Dane Robert Hessling	S. D. Ohio	1987	Conspiracy to distribute and distribute cocaine, 21 U.S.C. possession with intent to dis 841(a)(1)
Elwood Dwight Hopkins	D. New Jersey	1962	1. Theft of government prop 2. Mutilation of coins, 18 U.S
Thomas Vernon Jones	D. Wyo.	1989	Filing a false tax return 26 U
Madison Dow Kimball, Jr.	W. D. Ark.	1983	Bank robbery, 18 U.S.C. § 2
Cynthia Lou LeBlanc **(fka Cynthia Lou Gallagher)**	N. D. Tex.	1978	Conspiracy to distribute and U.S.C. § 846
Peter Thomas Lipps	C. D. Calif.	1981	Possession of counterfeit go U.S.C. § 472
John Carroll Michaels	N. D. Ind.	1989	Purloining and coverting pro Environmental Protection Ag therein, 18 U.S.C. §§ 641 ar
Richard Edwin Sacchi	M. D. Fla.	1989	Conspiracy to possess cocai 21 U.S.C. §§ 841(a)(1) and
Horace Carroll Smith	D. So. Car.	1992	Conspiracy to violate the fec 18 U.S.C. §§ 371 and 2
Tammy Lawan Tallant	E. D. Okla.	1991	Misprision of a felony, 18 U.
Carl Dennis Waren	W. D. Ark.	1980	Interstate transportation of U.S.C. § 2314
Robert Alexander Warr	D. So. Car.	1982	False statements, 18 U.S.C.

James H. Wetzel, Jr.	E. D. La.	1981	Conspiracy to distribute coca U.S.C. § 841(a)(1)
Diane Mae Zeman **(aka Diane Mae Moseman)**	E. D. N. Y.	1981	Use of a telephone to facilita 21 U.S.C. § 843(b)

October 20, 2000			
NAME	**DISTRICT**	**SENTENCED**	**OFF**
William Oshel Casto, III	E. D. Wis.	1984	Embezzlement by a bank en
Donald Demerest Hall	D. Del	1974	Misapplication of bank funds 656
Cheryl Ada Elizabeth Little	S. D. Fla.	1978	Conspiracy with intent to dis substance, 21 U.S.C. §§ 846
Joe Clint McMillan	M. D. No. Car.	1992	Conspiracy to violate the Sh U.S.C. § 1
Jeralyn Kay Rust	D. Minn.	1990	Wire fraud, 18 U.S.C. §§ 13
Jane Marie Schoffstall	S. D. Calif.	1989	Possession with intent to dis (methamphetamine), 21 U.S
William Calvin Smith, Jr.	E. D. Pa.	1970	Interstate transportation of U.S.C. § 2312

November 21, 2000			
NAME	**DISTRICT**	**SENTENCED**	**OFF**
Glen David Curry	S. D. Ala.	1982	Conspiracy to distribute and distribute cocaine, distributi to distribute cocaine, and us distribution of cocaine, 21 U and 846
Dave Meyer Hartson, III	E. D. La.	1993	Mail fraud, 18 U.S.C. §§ 134
Carl Edward Karstetter	M. D. Pa.	1992	Conversion of government p
Donald Spencer Lewis	S. D. Tex.	1991	False statements to a gover 1001
Walter Sidney Orlinsky	D. Md.	1982	Extortion under color of offic
Howard Charles Petersen	D. Neb.	1971	Embezzlement by a bank en entries in a bank's records,
John Laurence Silvi	D. New Jersey	1992	Conspiracy to make unlawfu 18 U.S.C. § 371, 29 U.S.C.
Laurence John Silvi, II	D. New Jersey	1992	Conspiracy to bribe a union U.S.C. § 186
John Donald Vodde	N. D. Ind.	1989	Possession and distribution abetting, 21 U.S.C. § 841(a)
Melinda Kay Stewart Vodde	N. D. Ind.	1989	Distribution of cocaine, and U.S.C. § 841(a)(1) and 18 U
Philip Donald Winn	D. Dist. Col.	1994	Conspiracy to give illegal gra

December 22, 2000			
NAME	**DISTRICT**	**SENTENCED**	**OFI**

Jimmy Lee Allen	W. D. Ark.	1990	False statements to agenc § 714m(a)
Virgil Lamoin Baker	E. D. (now S. D.) Ill.	1959	Violation of the Military Tra U.S.C. App. § 462
Garran Dee Barker	E. D. Ark	1986	Conspiracy to commit bank 371
Nancy M. Baxter	W. D. Va.	1990	Tax evasion and filing a fal U.S.C. §§ 7201 and 7206(
Charles N. Besser	N. D. Ill	1985	Mail fraud, 18 U.S.C. § 134
Harlan Richard Billings	D. Maine	1985	Conspiracy to possess with of 1,000 pounds of marijua
Edward Raymond Birdseye	E. D. Calif.	1992	Unlawful use of a communi 843(b)
Roscoe Crosby Blunt, Jr.	Army court-martial	1945	Fraternization, Article of W
Charles Edward Boggs	E. D. Ark.	1977	Receiving a stolen motor v interstate commerce, 18 U
Terry Coy Bonner	N. D. W. Va.	1986	Possession of an illegally m U.S.C. § 5861(c)
Alfred Whitney Brown, III	E. D. La.	1992	Illegal sale of wildlife by all field, 16 U.S.C. §§ 3372(a) 3373(d)(1)(B), and 18 U.S
William Robert Carpenter	N. D. Calif.	1991	Possession of marijuana wi U.S.C. § 841(a)(1)
Philip Vito DiGirolamo	N. D. Calif.	1984	Conspiracy to import marij willfully subscribing to a fa 7206(1)
Peter Welling Dionis	N. D. N. Y.	1976	Conspiracy, importation, a distribute hashish, 21 U.S. 963, and 18 U.S.C. § 2
Darrin Dean Dorn	S. D. Iowa	1981	Conspiracy to damage pro explosive, 18 U.S.C. § 371
Peter Bailey Gimbel	S. D. N. Y.	1991	Conspiracy to distribute co
Philip Joseph Grandmaison	D. New Hamp.	1996	Mail fraud, 18 U.S.C. §§ 1
Joe Robert Grist	W. D. Tex.	1990	Misapplication of funds by 656
LeRoy Kenneth Hartung, Jr.	D. Nev.	1986	Interception of wire comm 2511(1)(a)
Joseph Riddick Hendrick, III	W. D. No. Car.	1997	Mail fraud, 18 U.S.C. § 134
Judd Blair Hirschberg	N. D. Ill.	1991	Mail fraud, 18 U.S.C. § 134
Robert Quinn Houston	S. D. Miss.	1986	Conspiracy to obstruct com U.S.C. § 1951(a)
Martin Joseph Hughes	N. D. Ohio	1987	Aiding and abetting the fal aiding and assisting in the records, making false state agency, 29 U.S.C. § 439(c U.S.C. § 7204, 18 U.S.C. §

Jere Wayne Johnson	W. D. Okla.	1982	Conspiracy to defraud the I County, Oklahoma, while s commissioner, 18 U.S.C. §
Michael Thomas Johnson	S. D. Miss.	1987	Filing false tax returns, 26
Daniel Wayne Keys	S. D. Tex.	1977	Possession with intent to d § 841(a)(1)
Larry Ray Killough	E. D. Ark.	1985	Unlawful distribution of pre 841(a)(1)
Jack Kligman	E. D. Pa.	1985	Conspiracy and mail fraud,
Hector Osvaldo Labagnara	D. New Jersey	1976	Conspiracy to transport stc interstate commerce, to re vehicles, to transport false interstate commerce, and I vehicle registrations; recei vehicles; 18 U.S.C. §§ 371
Moses Jubilee Lestz **(fka Michael Eugene Lestz)**	W. D. Ark.	1982	Forgery of United States sa
Leon Lee Liebscher	W. D. Okla.	1982	Conspiracy to defraud the I 18 U.S.C. § 371
Pierluigi Mancini	N. D. Ga.	1985	Possession of cocaine with § 841(a)
John Ross McCown, Jr.	D. Neb.	1992	Structuring of transactions requirements, 31 U.S.C. §! 18 U.S.C. § 2
Edward Francis McKenna, III	S. D. Miss.	1993	Possession with intent to d U.S.C. § 333(e)(1)
Andrew Kirkpatrick Mearns, III	D. Del.	1978	Conspiracy to distribute an distribute cocaine, 21 U.S.
Ralph Eugene Meczyk	N. D. Ill.	1987	Filing false partnership anc returns, and aiding and ab § 7206(1) and 18 U.S.C. §
Philip James Morin	W. D. Tex.	1984	Distribution of cocaine; 21
Thomas Edward Nash, Jr.	W. D. No. Car.	1988	Conspiracy to restrain inte 15 U.S.C. § 1
Roger Lee Nelson	D. Neb.	1981	Aiding and abetting mail fr
Jose Rene Pineda-Martinez	1. S. D. Tex.	1. 1983	1. Entering U.S. without ir 8 U.S.C. § 1325
	2. S. D. Tex.	2. 1983	2. Transporting an illegal a § 1324(a)(2)
	3. S. D. Tex.	3. 1984	3. Transporting an illegal a § 1324(a)(2)
John Russell Raup	Air Force general court-martial	1984	Larceny of government pro possession of marijuana; U
James William Rogers	D. So. Car.	1983 (as modified)	Conspiracy to commit rack
George Wisham Roper, II	E. D. Va.	1974	Conspiracy to bribe public United States government,

Daniel Rostenkowski	D. Dist. Col.	1996	Mail fraud (two counts), 18
Dean Raymond Rush	W. D. Tex.	1993	False statements on a loan 1014
Archibald R. Schaffer, III	D. Dist. Col.	2000	Violation of the Meat Inspe
Anthony Andrew Schmidt	D. Kan.	1985	Conspiracy to possess and §§ 841(a)(1) and 846
Stanley Sirote	E. D. N. Y.	1974	Bribery of a public official,
Dent Elwood Snider, Jr.	D. Colo.	1981	Use of a telephone to facili cocaine, 21 U.S.C. § 843(b
James Lawrence Swisher	M. D. No. Car.	1977	Obstruction of a criminal in
Larry Kalvy Thompson	N. D. Tex.	1988	Aiding and abetting misapp misprision of a felony, 18 U
Stephanie Marie Vetter	D. New Mex.	1979	Possession with intent to d 21 U.S.C. § 841(a)(1)
Danny Ray Walker	E. D. Ark.	1975	Interstate transportation o 2316
Thomas Andrew Warren	S. D. Fla.	1975	Conspiracy to import marij
Michael Lynn Weatherford	E. D. No. Car.	1986	Aiding and abetting interst racketeering, 18 U.S.C. §§
Jack Weinstein	D. Nev.	1975	Conspiracy and interstate t property, 18 U.S.C. §§ 371
Robert Owen Wilson	M. D. Tenn.	1980	Mail fraud, 18 U.S.C. § 134
Charles Elvin Witherspoon	E. D. Tex.	1977	Embezzlement of bank fun
Charles Z. Yonce, Jr.	D. So. Car.	1988	Conspiracy to possess with and aiding and abetting the 841(a)(1), 846, and 841(b

January 20, 2001

NAME	DISTRICT	SENTENCED	OF
Verla Jean Allen	W. D. Ark.	1990	False statements to agen § 714m(a)
Bernice Ruth Altschul	D. Ariz.	1992	Conspiracy to commit mo 371
Nicholas M. Altiere	S. D. Fla.	1983	Importation of cocaine, 2 960(a)(1)
Joe Anderson, Jr.	S. D. Ala.	1988	Income tax evasion, 26 U
William Sterling Anderson	D. So. Car.	1987	Conspiracy to defraud a fe institution, false statemen financial institution, wire f 1014, and 1343
Mansour T. Azizkhani	W. D. Okla.	1984	Conspiracy and making fa applications, 18 U.S.C. §§
Cleveland Victor Babin, Jr.	W. D. Okla.	1987	Conspiracy to commit offe States by utilizing the U.S scheme to defraud, 18 U.

Chris Harmon Bagley	W. D. Okla.	1989	Conspiracy to possess wit 21 U.S.C. § 846
Scott Lynn Bane	C. D. Ill.	1984	Unlawful distribution of m 841(a)(1) and 18 U.S.C. !
Thomas Cleveland Barber	M. D. Fla.	1977	Issuing worthless checks,
Peggy Ann Bargon	C. D. Ill.	1995	Violation of Lacey Act, vio Protection Act, 16 U.S.C. and 668(a); 18 U.S.C. § 2
Tansukhlal Bhatka	W. D. Ark.	1991	Filing fraudulent income t
David Roscoe Blampied	D. Idaho	1979	Conspiracy to distribute c
William Arthur Borders, Jr.	N. D. Ga.	1982	Conspiracy to corruptly sc return for influencing the district court judge, and t connection with the perfo functions; corruptly influe and endeavoring to influe due administration of just therein; traveling intersta bribery, 18 U.S.C. §§ 371
Arthur David Borel	E. D. Ark.	1991	Odometer rollback, 15 U.!
Douglas Charles Borel	E. D. Ark.	1991	Odometer rollback, 15 U.!
George Thomas Brabham	E. D. Tex.	1989	Making a false statement insured bank, 18 U.S.C. §
Almon Glenn Braswell	1. N. D. Ga.	1. 1983	1. Mail fraud, 18 U.S.C. §
	2. N. D. Ga.	2. 1983	2. Perjury, 18 U.S.C. § 16
	3. N. D. Ga.	3. 1983	3. Filing false income tax
Leonard Browder	D. So. Car.	1990	Illegal dispensing of contr fraud, 21 U.S.C. §§ 827(a 843(a)(4)(A), and 843(c)
David Steven Brown	S. D. N. Y.	1987	Securities fraud and mail and 78ff; 18 U.S.C. §§ 13 §240.106-5
Delores Caroylene Burleson	E. D. Okla.	1978	Possession of marijuana,
John H. Bustamante	N. D. Ohio	1993	Wire fraud, 18 U.S.C. § 1
Mary Louise Campbell	N. D. Miss.	1988	Aiding and abetting the u of food stamps, 18 U.S.C.
Eloida Candelaria	D. New Mex.	1992	False information in regis 1973i(c)
Dennis Sobrevinas Capili	E. D. Calif.	1990	Filing false statements in 1306(c)
Donna Denise Chambers	E. D. Wis.	1986	Conspiracy to possess wit distribute cocaine, posses cocaine, use of a telephor conspiracy, 21 U.S.C. §§
Douglas Eugene Chapman	E. D. Ark.	1993	Bank fraud, 18 U.S.C. § 1

Ronald Keith Chapman	E. D. Ark.	1993	Bank fraud, 18 U.S.C. § 1
Francisco Larios Chavez	S. D. Calif.	1986	Aiding and abetting illega 1325 and 18 U.S.C. § 2
Henry G. Cisneros	D. Dist. Col.	1999	False statement (misdem
Roger Clinton	1. W. D. Ark.	1. 1985	1. Conspiracy to distribut
	2. W.D. Ark.	2. 1985	2. Distribution of cocaine,
Stuart Harris Cohn	S. D. N. Y.	1983	Illegal sale of commodity and 13(b), and 18 U.S.C.
David M. Cooper	N. D. Ohio	1992	Conspiracy to defraud the 371
Ernest Harley Cox, Jr.	E. D. Ark.	1991	Conspiracy to defraud a f loan, misapplication of ba 18 U.S.C. §§ 371, 657, a
John F. Cross, Jr.	E. D. Ark.	1995	Embezzlement, 18 U.S.C.
Rickey Lee Cunningham	S. D. Tex.	1973	Possession with intent to U.S.C. § 841(a)(1)
Richard Anthony De Labio	D. Md.	1977	Mail fraud, aiding and abe 2
John Deutch	D. Dist. Col.	2001 information	Offenses charged in Janu
Richard Douglas	N. D. Calif.	1998	False statements to a gov 1001
Edward Reynolds Downe, Jr.	S. D. N. Y.	1993	Conspiracy to commit wir false income tax returns, 371 and 15 U.S.C. §§ 78
Marvin Dean Dudley	D. Neb.	1992	False statements, 18 U.S.
Larry Lee Duncan	W. D. Okla.	1992	Altering an automobile od
Robert Clinton Fain	E. D. Ark.	1982	Aiding and assisting in th false corporate tax return
Marcos Arcenio Fernandez	S. D. Fla.	1980	Conspiracy to possess wit marijuana, 21 U.S.C. § 8
Alvarez Ferrouillet	1. E. D. La.	1. 1997	1. Interstate transportati property, 18 U.S.C. § laundering, 18 U.S.C. (b)(i); engaging in a n transaction with crimi property, 18 U.S.C. § statements to governn U.S.C. § 1001
	2. N. D. Miss.	2. 1997	2. Conspiracy to make fa to a financial institutio §§ 371 and 1014
William Denis Fugazy	S. D. N. Y.	1997	Perjury in a bankruptcy p
Lloyd Reid George	E. D. Ark.	1997	Aiding and abetting mail f 2
Louis Goldstein	N. D. Ill.	1985	Possession of goods stole 18 U.S.C. § 659

Rubye Lee Gordon	M. D. Ga.	1974	Forgery of U.S. Treasury
Pincus Green	S. D. N. Y.	1984 superseding indictment	Wire fraud, mail fraud, ra conspiracy, criminal forfei and trading with Iran in v U.S.C. §§ 1343, 1341, 19 26 U.S.C. § 7201, 50 U.S 535.206(a)(4), 535.208 a
Robert Ivey Hamner	C. D. Ill.	1986	Conspiracy to distribute n marijuana with intent to c and 841(a)(1)
Samuel Price Handley	W. D. Ky.	1963	Conspiracy to steal goven 371
Woodie Randolph Handley	W. D. Ky.	1963	Conspiracy to steal goven 371
Jay Houston Harmon	1. E. D. Ark.	1. 1982	1. Conspiracy to import r conspiracy to possess intent to distribute, im marijuana, possession with intent to distribut 963, 846, 952, and 84
	2. M. D. Ga.	2. 1986	2. Conspiracy to import c 21 U.S.C. §§ 952, 960
John J. Hemmingson	E. D. La.	1997	Interstate transportation § 2314; money launderin § 1956(a)(1)(b)(i); engag with criminally derived pr
David S. Herdlinger	W. D. Ark.	1986	Mail fraud, 18 U.S.C. § 13
Debi Rae Huckleberry, **(fka Debi Rae VanDenakker)**	D. Utah	1986	Distribution of methamph 841(a)(1)
Donald Ray James	W. D. Tenn.	1983	Mail fraud, wire fraud, an to influence credit approv and 1014
Stanley Pruet Jobe	W. D. Tex.	1994	Conspiracy to commit bar U.S.C. §§ 371, 1005, 101
Ruben H. Johnson	W. D. Tex.	1989	Theft and misapplication officer or director (13 cou
Linda Jones, **(fka Linda D. Medlar)**	N. D. Tex.	1998	Conspiracy to commit bar statement to a bank, to la and to engage in monetar derived from specific unla abetting bank fraud; aidir statements to a bank; aid monetary instruments; ai monetary transactions in unlawful activity; obstruct concealing and covering u scheme, or device; makin U.S.C. §§ 2, 371, 1001, 1 1956(a)(1)(A)(i) and (B)(
James Howard Lake	D. Dist. Col.	1998	Illegal corporate campaig wire fraud, 2 U.S.C. §§ 43 441f, and 18 U.S.C. §§ 2,

June Louise Lewis	N. D. Ohio	1991	Embezzlement by a bank
Salim Bonnor Lewis	S. D. N. Y.	1989	Securities fraud, record k violations, 15 U.S.C. §§ 7 78j(b), and 18 U.S.C. § 2
John Leighton Lodwick	W. D. Mo.	1968	Income tax evasion, 26 U
Hildebrando Lopez	S. D. Tex.	1981	Distribution of cocaine, 2:
Jose Julio Luaces, Jr.	S. D. Fla.	1989	Possession of an unregist 5861(d) and 5871
James Timothy Maness	W. D. Tenn.	1985	Conspiracy to distribute V 841(a)(1)
James Lowell Manning	E. D. Ark.	1982	Aiding and assisting in th corporate income tax retu
John Robert Martin	N. D. Fla.	1987	Income tax evasion, 26 U
Frank Ayala Martinez	W. D. Tex.	1989	Conspiracy to supply false Immigration and Naturali: 371
Silvia Leticia Beltran Martinez	W. D. Tex.	1989	Conspiracy to supply false Immigration and Naturali: 371
John Francis McCormick	D. Mass.	1988	Racketeering, racketeerin abetting Hobbjay houston counts), 18 U.S.C. §§ 196
Susan H. McDougal	E. D. Ark.	1996	Mail fraud, 18 U.S.C. § 1: misapplication of Small B Corporation funds, 18 U.S abetting in making false e and 2; aiding and abettin 18 U.S.C. §§ 1014 and 2
Howard Lawrence Mechanic, (aka Gary Robert Tredway)	1. E. D. Mo. 2. D. Ariz. 3. D. Ariz.	1. 1970 2. 2000 3. 2000	1. Violating the Civil Diso 1968, 18 U.S.C. § 213 2. Failure to appear, 18 U 3. Making a false statem a passport, 18 U.S.C.
Brook K. Mitchell, Sr.	D. Dist. Col.	1999	Conspiracy to illegally obt false statements to USDA on USDA forms, 15 U.S.C 714m(b)(ii); 18 U.S.C. §
Charles Wilfred Morgan, III	W. D. Ark.	1984	Conspiracy to distribute c
Samuel Loring Morison	D. Md.	1985	Willful transmission of del unauthorized possession information, theft of gove §§ 641, 793(d), and 793(
Richard Anthony Nazzaro	D. Mass.	1988	Perjury and conspiracy to §§ 371 and 1623
Charlene Ann Nosenko	N. D. Ill.	1990	Conspiracy to defraud the influencing or injuring an U.S.C. §§ 371 and 1503

Vernon Raymond Obermeier	S. D. Ill.	1989	Conspiracy to distribute c cocaine, and using a com facilitate distribution of co 841(a)(1), and 843(b)
Miguelina Ogalde	D. Puerto Rico	1981	Conspiracy to import coca 963
David C. Owen	D. Kans.	1993	Filing a false tax return, 2
Robert William Palmer	E. D. Ark.	1995	Conspiracy to make false
Kelli Anne Perhosky **(fka Kelli Anne Flynn)**	W. D. Pa.	1989	Conspiracy to commit ma
Richard H. Pezzopane	N. D. Ill.	1988	Conspiracy to commit rac U.S.C. §§ 1962(d) and 13
Orville Rex Phillips	W. D. Tex.	1991	Unlawful structuring of a U.S.C. § 5324
Vinson Stewart Poling, Jr.	D. Md.	1980	Making a false bank entry U.S.C. §§ 1005 and 2
Normal Lyle Prouse	D. Minn.	1990	Operating or directing the carrier while under the in § 342
Willie H. H. Pruitt, Jr.	U.S. Air Force special court-martial	1954	Absent without official lea
Danny Martin Pursley, Sr.	M. D. Tenn.	1991	Aiding and abetting the co business, and obstruction illegal gambling, 18 U.S.C
Charles D. Ravenel	D. So. Car.	1996	Conspiring to defraud the 371
William Clyde Ray	W. D. Okla.	1989	Fraud using the telephone
Alfredo Luna Regalado	S. D. Tex.	1987	Failure to report the trans excess of $10,000 into th § 5316(a)(1)(B)
Ildefonso Reynes Ricafort	Veterans Administration Compensation and Pension Service	1987	Submission of false claim 38 U.S.C. § 3503(a), now 6103(a)
Marc Rich	S. D. N. Y.	1984 superseding indictment	Wire fraud, mail fraud, ra conspiracy, criminal forfei and trading with Iran in v U.S.C. §§ 1343, 1341, 19 26 U.S.C. § 7201, 50 U.S 535.206(a)(4), 535.208 a
Howard Winfield Riddle	N. D. Tex.	1989	Violation of the Lacey Act animal skins), 18 U.S.C. §
Richard Wilson Riley, Jr.	D. So. Car.	1993	Conspiring to possess wit distribute marijuana and
Samuel Lee Robbins	W. D. Tex.	1990	Misprision of a felony, 18
Joel Gonzales Rodriguez	S. D. Tex.	1991	Theft of mail by a postal
Michael James Rogers	S. D. Tex.	1977	Conspiracy to possess wit marijuana, 21 U.S.C. §§ 8

Anna Louise Ross	N. D. Tex.	1988	Distribution of cocaine, 2: U.S.C. § 2
Gerald Glen Rust	E. D. Tex.	1991	False declarations before
Jerri Ann Rust	E. D. Tex.	1991	False declarations before
Bettye June Rutherford	D. New Mex.	1992	Possession of marijuana v U.S.C. §§ 841(a)(1) and
Gregory Lee Sands	D. So. Dak.	1990	Conspiracy to distribute c 846
Adolph Schwimmer	S. D. Calif.	1950	Conspiracy to violate the control laws, and conspira ammunition, etc. to a fore 18 U.S.C. §§ 88 (1946 ed and 50 U.S.C. § 701
Albert A. Seretti, Jr.	D. Nev.	1983	Conspiracy and wire fraud
Patricia Campbell Hearst Shaw	N. D. Calif.	1976	Armed bank robbery and felony, 18 U.S.C. §§ 2113
Dennis Joseph Smith	1. U.S. Army summary court-martial	1. 1951	1. Unauthorized absence
	2. U.S. Army summary court-martial	2. 1952	2. Failure to obey off limit
	3. U.S. Army special court-martial	3. 1954	3. Unauthorized absence
Gerald Owen Smith	S. D. Miss.	1956	Armed bank robbery, 18
Stephen A. Smith	E. D. Ark.	1996	Conspiracy to misapply S loans, 18 U.S.C. § 371
Jimmie Lee Speake	N. D. Tex.	1976	Conspiracy to possess an Federal Reserve notes, 18
Charles Bernard Stewart	M. D. Ga.	1986	Illegally destroying U.S. n
Marlena Francisca Stewart-Rollins	N. D. Ohio	1989	Conspiracy to distribute c
John Fife Symington, III	D. Ariz.	1996 indictment; 1997 superseding indictment	False statements to feder institutions, wire fraud, at statements in bankruptcy 1014, 1343, 1951, 152, 2
Richard Lee Tannehill	D. Colo.	1990	Conspiracy in restraint of
Nicholas C. Tenaglia	E. D. Pa.	1985	Receipt of illegal payment Program, 42 U.S.C. § 139
Gary Allen Thomas	W. D. Tex.	1987	Theft of mail by postal em
Larry Weldon Todd	W. D. Tex.	1983	Conspiracy to commit an States in violation of the Hunting Act, 18 U.S.C. § 3372(a)(1), 3373(d)(1)(E
Olga C. Trevino	W. D. Tex.	1987	Misapplication by a bank

Ignatious Vamvouklis	D. New. Hamp.	1991	Possession of cocaine, 21
Patricia A. Van De Weerd	W. D. Wis.	1990	Theft by U.S. postal empl
Christopher V. Wade	E. D. Ark.	1995	Bank fraud and false stat 18 U.S.C. §§ 152 and 10
Bill Wayne Warmath	W. D. Tenn.	1965	Obstruction of correspond
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Donna Lynn Webb	N. D. Fla.	1989	False entry in savings and U.S.C. § 1006
Donald William Wells	M. D. No. Car.	1973	Possession of an unregist 5861(d) and 5871
Robert H. Wendt	E. D. Mo.	1982	Conspiracy to effectuate prisoner, 18 U.S.C. § 371
Jack L. Williams	D. Dist. Col.	1998	Making false statements counts), 18 U.S.C. § 100
Kevin Arthur Williams	D. Neb.	1990	Conspiracy to distribute a distribute crack cocaine,
Robert Michael Williams	E. D. Mich.	1981	Conspiracy to transport i obtained by fraud, 18 U.S
Jimmie Lee Wilson	E. D. Ark.	1990	Converting property mort credit agency, and conver use, 18 U.S.C. §§ 641 an
Thelma Louise Wingate	M. D. Ga.	1991	Mail fraud, 18 U.S.C. §§ 1
Mitchell Couey Wood	E. D. Ark.	1986	Conspiracy to possess an U.S.C. § 371 and 21 U.S.
Warren Stannard Wood	S. D. Calif.	1978	Conspiracy to defraud the false document with the Commission, 18 U.S.C. § and 78ff
Dewey Worthey	E. D. Ark.	1988	Medicaid fraud, 42 U.S.C.
Rick Allen Yale	S. D. Ill.	1992	Bank fraud, 18 U.S.C. §§
Joseph A. Yasak	N. D. Ill.	1988	Knowingly making under regarding a material fact U.S.C. § 1623
William Stanley Yingling	E. D. Ark.	1979	Receipt of a stolen motor
Philip David Young	W. D. La.	1992	Interstate transportation 16 U.S.C. §§ 3372(a)(2)(

SEARCH

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Commutations granted by President Clinton (1993-2001)

COMMUTATIONS, REMISSIONS, AND REPRIEVES GRANTED BY PRESIDENT CLINTON

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November 23, 1994

Ernest Charles Krikava

Offense: Perjury in bankruptcy proceedings, 18 U.S.C. § 152

District/Date: Nebraska; November 10, 1993

Sentence: Five months' jail, three years' supervised release with special condition of five months' home confinement

Terms of Grant: Sentence of imprisonment to expire immediately; supervised release reduced to 31 months; special condition of home confinement removed

April 17, 1995

Jackie A. Trautman

Offense: Conspiracy to distribute cocaine, 21 U.S.C. §§ 846 and 841(a)(1)

District/Date: Northern Ohio; October 1, 1992

Sentence: 33 months' imprisonment (as modified); five years' supervised release

Terms of Grant: Sentence of imprisonment to expire immediately

August 21, 1995

Johnny Palacios

Offense: Conspiracy to possess with intent to distribute marijuana, and possession with intent to distribute marijuana, 21 U.S.C. §§ 841(a)(1) and 846, and 18 U.S.C. § 2

District/Date: Middle Florida; October 11, 1991

Sentence: 71 months' imprisonment; four years' supervised release

Terms of Grant: Sentence of imprisonment to expire immediately

August 11, 1999

Elizam Escobar

Offense: Seditious conspiracy, 18 U.S.C. § 2384; interference with interstate commerce by threats or violence, 18 U.S.C. §§ 1951 and 2; possession of an unregistered firearm, 26 U.S.C. § 5861(d) and 18 U.S.C. § 2; carrying firearms during the commission of seditious conspiracy and interference with interstate commerce by violence, 18 U.S.C. § 924(c)(2); interstate transportation of firearms with intent to commit seditious conspiracy and interference with interstate commerce by violence, 18 U.S.C. §§ 924(b) and 2; interstate transportation of a stolen vehicle, 18 U.S.C. §§ 2312 and 2

District/Date: Northern Illinois; February 18, 1981

Sentence: Total effective sentence of 60 years' imprisonment

Terms of Grant: Sentence commuted to a total effective sentence of 24 years, 10 months, and 10 days' imprisonment, conditioned on the submission of a statement requesting that the sentence be commuted, agreeing to abide by all conditions of release, and renouncing the use or threatened use of violence; and on conditions that he not be found by the Parole Commission to have violated the terms and conditions of release and that he not be convicted of another crime

Ricardo Jiménez

Offense: Seditious conspiracy, 18 U.S.C. § 2384; interference with interstate commerce by threats or violence, 18 U.S.C. §§ 1951 and 2; possession of an unregistered firearm, 26 U.S.C. § 5861(d) and 18 U.S.C. § 2; carrying firearms during the commission of seditious conspiracy and interference with interstate commerce by violence, 18 U.S.C. § 924(c)(2); interstate transportation of firearms with intent to commit seditious conspiracy and interference with interstate commerce by violence, 18 U.S.C. §§ 924(b) and 2; interstate transportation of a stolen vehicle, 18 U.S.C. §§ 2312 and 2

District/Date: Northern Illinois; February 18, 1981

Sentence: Total effective sentence of 90 years' imprisonment

Terms of Grant: Sentence commuted to a total effective sentence of 25 years, one month, and 17 days' imprisonment, conditioned on the submission of a statement requesting that the sentence be commuted, agreeing to abide by all conditions of release, and renouncing the use or threatened use of violence; and on conditions that he not be found by the Parole Commission to have violated the terms and conditions of release and that he not be convicted of another crime

Adolfo Matos

Offense: Seditious conspiracy, 18 U.S.C. § 2384; interference with interstate commerce by threats or violence, 18 U.S.C. §§ 1951 and 2; possession of an unregistered firearm, 26 U.S.C. § 5861(d) and 18 U.S.C. § 2; carrying firearms during the commission of seditious conspiracy and interference with interstate commerce by violence, 18 U.S.C. § 924(c)(2); interstate

	transportation of firearms with intent to commit seditious conspiracy and interference with interstate commerce by violence, 18 U.S.C. §§ 924(b) and 2; interstate transportation of a stolen vehicle, 18 U.S.C. §§ 2312 and 2
District/Date:	Northern Illinois; February 18, 1981
Sentence:	Total effective sentence of 70 years' imprisonment
Terms of Grant:	Sentence commuted to a total effective sentence of 24 years, 11 months, and 10 days' imprisonment, conditioned on the submission of a statement requesting that the sentence be commuted, agreeing to abide by all conditions of release, and renouncing the use or threatened use of violence; and on conditions that he not be found by the Parole Commission to have violated the terms and conditions of release and that he not be convicted of another crime
	Dylcia Noemi Pagán
Offense:	Seditious conspiracy, 18 U.S.C. § 2384; interference with interstate commerce by threats or violence, 18 U.S.C. §§ 1951 and 2; possession of an unregistered firearm, 26 U.S.C. § 5861(d) and 18 U.S.C. § 2; carrying firearms during the commission of seditious conspiracy and interference with interstate commerce by violence, 18 U.S.C. § 924(c)(2); interstate transportation of firearms with intent to commit seditious conspiracy and interference with interstate commerce by violence, 18 U.S.C. §§ 924(b) and 2; interstate transportation of a stolen vehicle, 18 U.S.C. §§ 2312 and 2
District/Date:	Northern Illinois; February 18, 1981
Sentence:	Total effective sentence of 55 years' imprisonment
Terms of Grant:	Sentence commuted to a total effective sentence of 26 years, five months, and 20 days' imprisonment, conditioned on the submission of a statement requesting that the sentence be commuted, agreeing to abide by all conditions of release, and renouncing the use or threatened use of violence; and on conditions that she not be found by the Parole Commission to have violated the terms and conditions of release and that she not be convicted of another crime
	Alicia Rodríguez
Offense:	Seditious conspiracy, 18 U.S.C. § 2384; interference with interstate commerce by threats or violence, 18 U.S.C. §§ 1951 and 2; possession of an unregistered firearm, 26 U.S.C. § 5861(d) and 18 U.S.C. § 2; carrying firearms during the commission of seditious conspiracy and interference with interstate commerce by violence, 18 U.S.C. § 924(c)(2); interstate transportation of firearms with intent to commit seditious conspiracy and interference with interstate commerce by violence, 18 U.S.C. §§ 924(b) and 2; interstate transportation of a stolen vehicle, 18 U.S.C. §§ 2312 and 2
District/Date:	Northern Illinois; February 18, 1981
Sentence:	Total effective sentence of 55 years' imprisonment

Terms of Grant: Sentence commuted to a total effective sentence of four years and three months' imprisonment, conditioned on the submission of a statement requesting that the sentence be commuted, agreeing to abide by all conditions of release, and renouncing the use or threatened use of violence; and on conditions that she not be found by the Parole Commission to have violated the terms and conditions of release and that she not be convicted of another crime

Ida Luz Rodríguez

Offense: Seditious conspiracy, 18 U.S.C. § 2384; interference with interstate commerce by threats or violence, 18 U.S.C. §§ 1951 and 2; possession of an unregistered firearm, 26 U.S.C. § 5861(d) and 18 U.S.C. § 2; carrying firearms during the commission of seditious conspiracy and interference with interstate commerce by violence, 18 U.S.C. § 924(c)(2); interstate transportation of firearms with intent to commit seditious conspiracy and interference with interstate commerce by violence, 18 U.S.C. §§ 924(b) and 2; interstate transportation of a stolen vehicle, 18 U.S.C. §§ 2312 and 2

District/Date: Northern Illinois; February 18, 1981

Sentence: Total effective sentence of 75 years' imprisonment

Terms of Grant: Sentence commuted to a total effective sentence of 23 years, two months, and 27 days' imprisonment, conditioned on the submission of a statement requesting that the sentence be commuted, agreeing to abide by all conditions of release, and renouncing the use or threatened use of violence; and on conditions that she not be found by the Parole Commission to have violated the terms and conditions of release and that she not be convicted of another crime

Luis Rosa

Offense: Seditious conspiracy, 18 U.S.C. § 2384; interference with interstate commerce by threats or violence, 18 U.S.C. §§ 1951 and 2; possession of an unregistered firearm, 26 U.S.C. § 5861(d) and 18 U.S.C. § 2; carrying a firearm during the commission of seditious conspiracy and interference with interstate commerce by violence, 18 U.S.C. § 924(c)(2); interstate transportation of firearms with intent to commit seditious conspiracy and interference with interstate commerce by violence, 18 U.S.C. §§ 924(b) and 2; interstate transportation of a stolen vehicle, 18 U.S.C. §§ 2312 and 2

District/Date: Northern Illinois; February 18, 1981

Sentence: Total effective sentence of 75 years' imprisonment

Terms of Grant: Sentence commuted to a total effective sentence of four years, seven months, and 15 days' imprisonment, conditioned on the submission of a statement requesting that the sentence be commuted, agreeing to abide by all conditions of release, and renouncing the use or threatened use of violence; and on conditions that he not be found by the Parole Commission to have violated the terms and conditions of release, and that he

not be convicted of another crime

Carmen Valentín

Offense: Seditious conspiracy, 18 U.S.C. § 2384; interference with interstate commerce by threats or violence, 18 U.S.C. §§ 1951 and 2; possession of an unregistered firearm, 26 U.S.C. § 5861(d) and 18 U.S.C. § 2; carrying a firearm during the commission of seditious conspiracy and interference with interstate commerce by violence, 18 U.S.C. § 924(c)(2); interstate transportation of firearms with intent to commit seditious conspiracy and interference with interstate commerce by violence, 18 U.S.C. §§ 924(b) and 2; interstate transportation of a stolen vehicle, 18 U.S.C. §§ 2312 and 2

District/Date: Northern Illinois; February 18, 1981

Sentence: Total effective sentence of 90 years' imprisonment

Terms of Grant: Sentence commuted to a total effective sentence of 24 years, 11 months, and 22 days' imprisonment, conditioned on the submission of a statement requesting that the sentence be commuted, agreeing to abide by all conditions of release, and renouncing the use or threatened use of violence; and on conditions that she not be found by the Parole Commission to have violated the terms and conditions of release and that she not be convicted of another crime

August 11, 1999: **Edwin Cortés**

Offense: Seditious conspiracy, 18 U.S.C. § 2384; possession of unregistered firearms, 26 U.S.C. § 5861(d); conspiracy to make destructive devices, 18 U.S.C. § 371 and 26 U.S.C. § 5861(f); unlawful storage of explosives, 18 U.S.C. § 842(j); interstate transportation of a stolen vehicle, 18 U.S.C. § 2312; possession of a firearm without a serial number, 26 U.S.C. § 5861(i); conspiracy to obstruct interstate commerce by robbery, 18 U.S.C. § 1951

District/Date: Northern Illinois; October 4, 1985

Sentence: Total effective sentence of 35 years' imprisonment and five years' probation

Terms of Grant: entence commuted to a total effective sentence of 26 years, 10 months, and 25 days' imprisonment, conditioned on the submission of a statement requesting that the sentence be commuted, agreeing to abide by all conditions of release, and renouncing the use or threatened use of violence; and on conditions that he not be found by the Parole Commission to have violated the terms and conditions of release and that he not be convicted of another crime

Alberto Rodríguez

Offense: Seditious conspiracy, 18 U.S.C. § 2384; conspiracy to make destructive devices, 18 U.S.C. § 371 and 26 U.S.C. § 5861(f); possession of unregistered firearms, 26 U.S.C. § 5861(d); possession of a firearm without a serial number, 26 U.S.C. § 5861(i); conspiracy to obstruct interstate commerce by robbery, 18 U.S.C. § 1951

District/Date: Northern Illinois; October 4, 1985
Sentence: Total effective sentence of 35 years' imprisonment and five years' probation
Terms of Grant: Sentence commuted to a total effective sentence of 26 years, seven months, and 26 days' imprisonment, conditioned on the submission of a statement requesting that the sentence be commuted, agreeing to abide by all conditions of release, and renouncing the use or threatened use of violence; and on conditions that he not be found by the Parole Commission to have violated the terms and conditions of release and that he not be convicted of another crime

Alejandrina Torres
Offense: Seditious conspiracy, 18 U.S.C. § 2384; possession of unregistered firearms, 26 U.S.C. § 5861(d); conspiracy to make destructive devices, 18 U.S.C. § 371 and 26 U.S.C. § 5861(f); unlawful storage of explosives, 18 U.S.C. § 842(j); interstate transportation of a stolen vehicle, 18 U.S.C. § 2312; conspiracy to obstruct interstate commerce by robbery, 18 U.S.C. § 1951
District/Date: Northern Illinois; October 4, 1985
Sentence: Total effective sentence of 35 years' imprisonment and five years' probation
Terms of Grant: Sentence commuted to a total effective sentence of 26 years and 23 days' imprisonment, conditioned on the submission of a statement requesting that the sentence be commuted, agreeing to abide by all conditions of release, and renouncing the use or threatened use of violence; and on conditions that she not be found by the Parole Commission to have violated the terms and conditions of release and that she not be convicted of another crime

Juan Enrique Segarra-Palmer
Offense: Robbery of bank funds, 18 U.S.C. § 2113(a); transportation of stolen money in interstate and foreign commerce, 18 U.S.C. § 2314; conspiracy to interfere with interstate commerce by robbery, 18 U.S.C. § 1951; interference with interstate commerce by robbery, 18 U.S.C. § 1951; conspiracy to rob federally insured bank funds, commit a theft from an interstate shipment, and transport stolen money in interstate and foreign commerce, 18 U.S.C. §§ 371, 659, and 2314
District/Date: Connecticut; June 15, 1989
Sentence: Total effective sentence of 55 years' imprisonment (as modified on appeal) and $500,000 fine
Terms of Grant: Sentence commuted to a total effective sentence of 29 years, 11 months, and seven days' imprisonment and unpaid balance of fine remitted, conditioned on the submission of a statement requesting that the sentence be commuted, agreeing to abide by all conditions of release, and renouncing the use or threatened use of violence; and on conditions that he not be found by the Parole Commission to have violated the terms and conditions of release, that he not be convicted of another crime, and that he obey

institution rules and regulations during the remaining period of incarceration

Roberto Maldonado-Rivera

Offense: Conspiracy to rob federally insured bank funds, commit a theft from an interstate shipment, and transport stolen money in interstate and foreign commerce, 18 U.S.C. §§ 371, 659, and 2314

District/Date: Connecticut; June 8, 1989

Sentence: Five years' imprisonment; $100,000 fine

Terms of Grant: Unpaid balance of fine remitted, conditioned on the submission of a statement requesting that the unpaid balance of the fine be remitted and renouncing the use or threatened use of violence

Norman Ramírez-Talavera

Offense: Conspiracy to rob federally insured bank funds, commit a theft from an interstate shipment, and transport stolen money in interstate and foreign commerce, 18 U.S.C. §§ 371, 659, and 2314

District/Date: Connecticut; June 8, 1989

Sentence: Five years' imprisonment; $50,000 fine

Terms of Grant: Unpaid balance of fine remitted, conditioned on the submission of a statement requesting that the unpaid balance of the fine be remitted and renouncing the use or threatened use of violence

March 15, 2000

George Franklin Dillman

Offense: Conspiracy, bank fraud, misapplication of financial institution funds, unlawful transactions by an officer of a financial institution, money laundering, and bank bribery, 18 U.S.C. §§ 371, 1344, 657, 1006, 1956, 215, and 2

District/Date: Northern Texas; June 18, 1992

Sentence: 108 months' imprisonment; two years' supervised release

Terms of Grant: Sentence of imprisonment to expire immediately

July 7, 2000

Louise Cain House

Offense: Engaging in a continuing criminal enterprise, 21 U.S.C. § 848

District/Date: Eastern Missouri; May 16, 1994

Sentence: 180 months' imprisonment; three years' supervised release

Terms of Grant: Sentence of imprisonment to expire immediately

Shawndra Lenese Mills

Offense: Conspiracy to possess with intent to distribute a controlled substance, 21 U.S.C. § 846

District/Date: Eastern Kentucky; January 7, 1993

Sentence: 120 months' imprisonment; five years' supervised release

Terms of Grant: Sentence of imprisonment to expire immediately

Serena Denise Nunn

Offense: Conspiracy to possess with intent to distribute cocaine, possession with intent to distribute cocaine, aiding and abetting the attempt to possess with intent to distribute cocaine, 21 U.S.C. §§ 841(a)(1), 841(b)(1)(A), and 846, and

18 U.S.C. § 2
District/Date: Minnesota; April 11, 1990
Sentence: 188 months' imprisonment; five years' supervised release
Terms of Grant: Sentence of imprisonment to expire immediately

Alain Orozco, aka Allan Jene Velasquez
Offense: Conspiracy to manufacture, distribute, and possess with intent to distribute cocaine base and to possess with intent to distribute cocaine, 21 U.S.C. §§ 846 and 841; making a false statement; 18 U.S.C. § 1001
District/Date: Northern Georgia; November 16, 1990
Sentence: 151 months' imprisonment; five years' supervised release
Terms of Grant: Sentence of imprisonment to expire immediately

Amy Ralston Pofahl
Offense: Conspiracy to distribute a controlled substance, 21 U.S.C. §846; conspiracy to import a controlled substance, 21 U.S.C. § 963; and money laundering, 18 U.S.C. § 1956(a))(1)(B)(i).
District/Date: Western Texas; February 27, 1992
Sentence: 292 months' imprisonment; three years' supervised release; $10,000 fine
Terms of Grant: Sentence of imprisonment to expire immediately

August 2, 2000

Juan Raul Garza
Offense: **Capital offenses:** Homicide in furtherance of a continuing criminal enterprise, 21 U.S.C. §§ 848(a), 848(c), and 848(e)(1)(A) and 18 U.S.C. § 2 (three counts)
Non-capital offenses: Conspiracy to import marijuana, 21 U.S.C. §§ 963, 952(a)(2), and 960(b)(1)(G); conspiracy to possess with intent to distribute marijuana, 21 U.S.C. §§ 846, 841(a)(1), and 841(b)(1)(A)(vii); possession with intent to distribute marijuana, 21 U.S.C. §§ 841(a)(1), 841(b)(1)(B)(vii), and 841(b)(1)(C) and 18 U.S.C. § 2 (three counts); operating a continuing criminal enterprise, 21 U.S.C. §§ 848(a) and (c); money laundering, 18 U.S.C. §§ 2 and 1956(a)(1)(A)(i)
District/Date: Southern Texas; August 10, 1993
Sentence: Death; concurrent sentence of life imprisonment on non-capital counts
Terms of Grant: Reprieve of the date for execution of the death sentence from August 5, 2000, to December 12, 2000, which is set as the new execution date

November 21, 2000

Vicki Lopez-Lukis
Offense: Mail fraud, 18 U.S.C. §§ 1341 and 1346
District/Date: Middle Florida; November 14, 1997
Sentence: 27 months' imprisonment; two years' supervised release
Terms of Grant: Sentence of imprisonment to expire immediately

December 11, 2000

Juan Raul Garza

Offense: Capital offenses: Homicide in furtherance of a continuing criminal enterprise, 21 U.S.C. §§ 848(a), 848(c), 848(e)(1)(A) and 18 U.S.C. § 2 (three counts) Non-capital offenses: Conspiracy to import marijuana, 21 U.S.C. §§ 963, 952(a)(2), and 960(b)(1)(G); conspiracy to possess with intent to distribute marijuana, 21 U.S.C. §§ 846, 841(a)(1), and 841(b)(1)(A)(vii); possession with intent to distribute marijuana, 21 U.S.C. §§ 841(a)(1), 841(b)(1)(B)(vii), and 841(b)(1)(C) and 18 U.S.C. § 2 (three counts); operating a continuing criminal enterprise, 21 U.S.C. §§ 848(a) and (c); money laundering, 18 U.S.C. §§ 2 and 1956(a)(1)(A)(i)

District/Date: Southern Texas; August 10, 1993

Sentence: Death; concurrent sentence of life imprisonment on non-capital counts

Terms of Grant: Reprieve of the date for execution of the death sentence from December 12, 2000, to June 19, 2001, which is set as the new execution date

December 22, 2000

Dorothy Marie Gaines

Offense: Conspiracy to possess with intent to distribute, and possession with intent to distribute, cocaine base; 21 U.S.C. §§ 841(a)(1) and 846, 18 U.S.C. § 2

District/Date: Southern Alabama; March 10, 1995

Sentence: 235 months' imprisonment; five years' supervised release; $100 special assessment

Terms of Grant: Sentence of imprisonment to expire immediately

Bobby Franklin Griffin

Offense: Bribery, mail fraud 18 U.S.C. §§ 666 (a)(1)(B) and 1341

District/Date: Western Missouri; December 4, 1997

Sentence: 48 months' and one day's imprisonment; three years' supervised release; $7,500 fine

Terms of Grant: Sentence of imprisonment to expire immediately

Kemba Niambi Smith

Offense: Conspiracy to distribute and possess with intent to distribute cocaine and cocaine base, conspiracy to engage in money laundering, making false statements to federal agents; 21 U.S.C. § 846, 18 U.S.C. §§ 2, 371, 1001, and 1956(a)(1)(B)(i)

District/Date: Eastern Virginia; April 21, 1995

Sentence: 294 months' imprisonment; five years' supervised release; $150 special assessment

Terms of Grant: Sentence of imprisonment to expire immediately

January 20, 2001

Benjamin Berger

Offense: Conspiracy to defraud the United States, 18 U.S.C. § 371; wire fraud, 18 U.S.C. § 1343; false statement, 18 U.S.C. § 1001; money laundering, 18 U.S.C. § 1956(a)(1)(B)(1); filing a false tax return, 26 U.S.C. § 7206(1)

District/Date: Southern New York; October 18, 1999
Sentence: 30 months' imprisonment; two years' supervised release; $522,977 restitution
Terms of Grant: Sentence of imprisonment commuted to 24 months' imprisonment

Ronald Henderson Blackley
Offense: False statements; 18 U.S.C. § 1001
District/Date: District of Columbia; March 18, 1998
Sentence: 27 months' imprisonment; three years' supervised release
Terms of Grant: Sentence of imprisonment to expire immediately

Bert Wayne Bolan
Offense: Conspiracy to commit mail fraud and illegal remuneration for patient referrals, 18 U.S.C. § 371; mail fraud, 18 U.S.C. § 1341
District/Date: Northern Texas; April 14, 1995
Sentence: 97 months' imprisonment; three years' supervised release; $375,000 fine
Terms of Grant: Sentence of imprisonment to expire immediately, unpaid balance of fine in excess of $15,000 remitted

Gloria Libia Camargo
Offense: Conspiracy to possess cocaine with intent to distribute, attempt to possess cocaine with intent to distribute, 21 U.S.C. § 846
District/Date: Southern Florida; February 22, 1990
Sentence: 188 months' imprisonment; five years' supervised release
Terms of Grant: Sentence of imprisonment to expire immediately

Charles F. Campbell
Offense: Conspiracy to distribute 50 grams or more of crack cocaine, 21 U.S.C. § 846; distribution of 50 grams or more of crack cocaine, 21 U.S.C. 841(a)(1)
District/Date: District of Columbia; January 25, 1994, as modified on December 17, 1997
Sentence: 240 months' imprisonment; 10 years' supervised release
Terms of Grant: Sentence of imprisonment to expire immediately, on the condition that he serve a five-year period of supervised release with all the conditions set by the court for the period of supervised release previously imposed and a special condition of drug testing, as provided in 18 U.S.C. § 3583(d)

David Ronald Chandler
Offense: Capital offense: Murder while engaged in and working in furtherance of a continuing criminal enterprise, 21 U.S.C. § 848(e) Non-capital offenses: Conspiracy to possess with intent to distribute and to distribute over 1,000 kilograms of marijuana and 1,000 marijuana plants, 21 U.S.C. §§ 846 and 841(a)(1); engaging in a continuing criminal enterprise, 21 U.S.C. § 848(a); using or carrying of a firearm in relation to a drug-trafficking crime (two counts), 18 U.S.C. § 924(c); money laundering (four counts), 18 U.S.C. § 1956

District/Date: Northern Alabama; May 14, 1991
Sentence: Death by lethal injection; concurrent life sentence on non-capital counts
Terms of Grant: Death sentence commuted to imprisonment for life without the possibility of parole

Lau Ching Chin
Offense: Conspiracy to possess heroin with intent to distribute, interstate travel to commit a drug offense, 21 U.S.C. § 846, 18 U.S.C. §§ 1952 and 2
District/Date: Northern Illinois; June 27, 1990
Sentence: 210 months' imprisonment; five years' supervised release
Terms of Grant: Sentence of imprisonment to expire immediately

Donald R. Clark
Offense: Conspiracy to manufacture, distribute, and possess with intent to distribute 1,000 or more marijuana plants, 21 U.S.C. § 846
District/Date: Middle Florida; November 4, 1994, as modified December 20, 1996
Sentence: 329 months' imprisonment; five years' supervised release
Terms of Grant: Sentence of imprisonment to expire immediately, on the condition that he be subject to a special condition of drug testing, as provided in 18 U.S.C. § 3583(d), during his period of supervised release

Loretta De-Ann Coffman
Offense: Conspiracy, 21 U.S.C. § 846; possession with intent to distribute more than 50 grams of crack cocaine, 21 U.S.C. § 841(a)(1); use of telephone to commit drug offense (five counts), 21 U.S.C. § 843(b); distribution of crack cocaine near school, 21 U.S.C. § 860
District/Date: Northern Texas; November 12, 1993, as modified June 24, 1996 and February 26, 1998
Sentence: 85 years' imprisonment; five years' supervised release
Terms of Grant: Sentence of imprisonment to expire immediately, on the condition that she be subject to a special condition of drug testing, as provided in 18 U.S.C. § 3583(d), during her period of supervised release

Derrick Anthony Curry
Offense: Conspiracy to distribute and possess with intent to distribute cocaine and cocaine base, aiding and abetting the distribution of cocaine base, and aiding and abetting the possession of cocaine base with intent to distribute, 21 U.S.C. §§ 841(a)(1) and 846, 18 U.S.C. § 2
District/Date: Maryland; October 1, 1993
Sentence: 235 months' imprisonment; five years' supervised release
Terms of Grant: Sentence of imprisonment to expire immediately, on the condition that he be subject to a special condition of drug testing, as provided in 18 U.S.C. § 3583(d), during his period of supervised release

Velinda Desalus

Offense: Possession with intent to distribute 50 grams or more of cocaine base, 21 U.S.C. § 841(a)(1) and 18 U.S.C. § 2

District/Date: Middle Florida; December 18, 1992

Sentence: 120 months' imprisonment; five years' supervised release

Terms of Grant: Sentence of imprisonment to expire immediately, on the condition that she be subject to a special condition of drug testing, as provided in 18 U.S.C. § 3583(d), during her period of supervised release

Jacob Elbaum

Offense: Conspiracy to defraud the United States, 18 U.S.C. § 371; embezzlement from a federally funded program, 18 U.S.C. § 666; wire fraud, 18 U.S.C. § 1343; mail fraud, 18 U.S.C. § 1341; making a false statement, 18 U.S.C. § 1001; filing a false tax return, 26 U.S.C. § 7206; failure to file a tax return, 26 U.S.C. § 7203

District/Date: Southern New York; October 18, 1999

Sentence: 57 months' imprisonment; two years' supervised release; $11,089,721 restitution

Terms of Grant: Sentence of imprisonment commuted to 30 months' imprisonment

Linda Sue Evans

Offense:

1. Possession of a firearm by a convicted felon, 18 U.S.C. App. § 1202(a)(1)
2. Harboring a fugitive, 18 U.S.C. § 1071
3. Possession of a firearm by a convicted felon, and false statements in acquiring firearms, 18 U.S.C. §§ 922(h)(1), 922(a)(6), and 924(a)
4. Malicious damage to Government property and conspiracy to damage Government property, 18 U.S.C. §§ 371 and 844(f)

District/Date:
1. Southern New York; November 21, 1985
2. Southern New York; July 10, 1986
3. Eastern Louisiana; May 20, 1987 (modified on December 8, 1988)
4. District of Columbia; December 6, 1990

Sentence:
1. Two years' imprisonment
2. Three years' imprisonment, consecutive to no. 1
3. 30 years' imprisonment (as modified on appeal), consecutive to nos. 1 & 2
4. Five years' imprisonment, consecutive to nos. 1-3

TOTAL SENTENCE: 40 years' imprisonment

Terms of Grant: Sentence of imprisonment commuted to 25 years, eight months, and 11 days, effectuating her immediate release by virtue of having served to her mandatory release date for the aggregate sentence as commuted

Loretta Sharon Fish

Offense: Conspiracy to manufacture and distribute methamphetamine, 21 U.S.C. § 846

District/Date: Eastern Pennsylvania; December 8, 1994

Sentence: 235 months' imprisonment; five years' supervised release
Terms of Grant: Sentence of imprisonment to expire immediately, on the condition that she be subject to a special condition of drug testing, as provided in 18 U.S.C. § 3583(d), during her period of supervised release

Antoinette M. Frink
Offense: Conspiracy to aid and abet the possession of cocaine with intent to distribute, aiding and abetting the possession of cocaine with intent to distribute, and counseling others to travel in interstate commerce with the intent of facilitating the possession of cocaine with intent to distribute; 21 U.S.C. §§ 846 and 841(a)(1) and 18 U.S.C. § 1952
District/Date: Middle Georgia; July 11, 1989
Sentence: 188 months' imprisonment; five years' supervised release
Terms of Grant: Sentence of imprisonment to expire immediately, on the condition that she be subject to a special condition of drug testing, as provided in 18 U.S.C. § 3583(d), during her period of supervised release

David Goldstein
Offense: Conspiracy to defraud the United States, 18 U.S.C. § 371; wire fraud, 18 U.S.C. § 1343; embezzlement from a federally funded program, 18 U.S.C. § 666; mail fraud, 18 U.S.C. § 1341
District/Date: Southern New York; October 18, 1999
Sentence: 70 months' imprisonment; three years' supervised release; $10,118,182 restitution
Terms of Grant: Sentence of imprisonment commuted to 30 months' imprisonment

Gerard Anthony Greenfield
Offense: Possession of phencyclidine (PCP) with intent to distribute, 21 U.S.C. § 841(a)
District/Date: Utah; September 9, 1993
Sentence: 192 months' imprisonment; five years' supervised release; $ 25,000 fine
Terms of Grant: Sentence of imprisonment to expire immediately, on the condition that he be subject to a special condition of drug testing, as provided in 18 U.S.C. § 3583(d), during his period of supervised release

Jodie Elleyn Israel
Offense: Conspiracy to manufacture, possess with intent to distribute and distribute marijuana, 21 U.S.C. §§ 841(a)(1) and 846 and 18 U.S.C. § 2; conducting financial transaction with proceeds from sale of controlled substances (three counts), 18 U.S.C. §§ 1956 and 2; distribution of marijuana (seven counts), 21 U.S.C. § 841 and 18 U.S.C. § 2
District/Date: Montana; February 4, 1994
Sentence: 135 months' imprisonment; five years' supervised release
Terms of Grant: Sentence of imprisonment to expire immediately, on the condition that she be subject to a special condition of drug testing, as provided in 18 U.S.C. § 3583(d), during her

period of supervised release

Kimberly D. Johnson

Offense: Conspiracy to possess with intent to distribute cocaine base, 21 U.S.C. § 846

District/Date: South Carolina; November 14, 1994

Sentence: 188 months' imprisonment; five years' supervised release

Terms of Grant: Sentence of imprisonment to expire immediately, upon the condition that she be subject to a special condition of drug testing, as provided in 18 U.S.C. § 3583(d), during her period of supervised release

Billy Thornton Langston, Jr.

Offense: Conspiracy to manufacture PCP, 21 U.S.C. § 846; manufacture of PCP, 21 U.S.C. § 841(a)(1)

District/Date: Central California; September 9, 1994 (as modified by 1996 court order)

Sentence: 324 months' imprisonment; five years' supervised release

Terms of Grant: Sentence of imprisonment to expire immediately, on the condition that he be subject to a special condition of drug testing, as provided in 18 U.S.C. § 3583(d), during his period of supervised release

Belinda Lynn Lumpkin

Offense: Conspiracy to possess with intent to distribute crack cocaine and marijuana, 21 U.S.C. §§ 841(a)(1) and 846

District/Date: Eastern Michigan; March 24, 1989

Sentence: 300 months' imprisonment; three years' supervised release

Terms of Grant: Sentence of imprisonment to expire immediately, on the condition that she serve a five-year period of supervised release with all the conditions set by the court for the three-year period of supervised release previously imposed and a special condition of drug testing, as provided in 18 U.S.C. § 3583(d)

Peter MacDonald, Sr.

Offense: 1. Racketeering, racketeering conspiracy, extortion by an Indian tribal official, mail fraud, wire fraud, and interstate transportation in aid of racketeering, 18 U.S.C. §§ 1962(c), 1962(d), 666(a)(1)(B), 1341, 1343, and 1952
2. Conspiracy to commit kidnapping, third-degree burglary, 18 U.S.C. §§ 1153, 371, and 1201(c), and 18 U.S.C. §§ 1153 and 2 and Arizona Revised Statutes § 13-1506

District/Date: 1. Arizona; November 30, 1992
2. Arizona; February 16, 1993

Sentence: 1. 60 months' imprisonment; 36 months' supervised release; $ 10,000 fine;

$ 1,500,000 restitution
2. 175 months' imprisonment; 60 months' supervised release (concurrent with no.1); $ 5,000 fine; $ 4,431.03 restitution

Terms of Grant: Sentences of imprisonment to expire immediately

Kellie Ann Mann

Offense: Conspiracy to distribute LSD, 21 U.S.C. § 846; possession of LSD with intent to distribute, 21 U.S.C. § 841(a)(1); use of mail to facilitate a drug offense, 21 U.S.C. § 843(b)

District/Date: Northern Georgia; January 26, 1994

Sentence: 120 months' imprisonment; five years' supervised release

Terms of Grant: Sentence of imprisonment to expire immediately, on the condition that she be subject to a special condition of drug testing, as provided in 18 U.S.C. § 3583(d), during her period of supervised release

Peter Ninemire

Offense: 1. Manufacturing marijuana, 21 U.S.C. § 841(a)(1)
2. Failure to appear, 18 U.S.C. § 3146(a)(1)

District/Date: 1. Kansas; April 26, 1991
2. Kansas; June 28, 1991

Sentence: 1. 292 months' imprisonment; eight years' supervised release
2. 30 months' imprisonment, consecutive to no. 1; three years' supervised release

Terms of Grant: Sentences of imprisonment to expire immediately, on the condition that he serve a five-year period of supervised release with all the conditions set by the court for the periods of supervised release previously imposed and a special condition of drug testing, as provided in 18 U.S.C. § 3583(d)

Hugh Ricardo Padmore

Offense: Possession with intent to distribute cocaine base, 21 U.S.C. § 841(a)(1) and 18 U.S.C. § 2

District/Date: Eastern North Carolina; October 31, 1995

Sentence: 135 months' imprisonment; five years' supervised release

Terms of Grant: Sentence of imprisonment to expire immediately, on the condition that he be subject to a special condition of drug testing, as provided in 18 U.S.C. § 3583(d), during his period of supervised release

Arnold Paul Prosperi

Offense: Filing a false tax return and making, uttering, or possessing a counterfeited security with intent to deceive another, 26 U.S.C. § 7206(1) and 18 U.S.C. § 513(a)

District/Date: Southern Florida; March 27, 1998

Sentence: 36 months' imprisonment; one year's supervised release; $25,000 fine

Terms of Grant: Any sentence of imprisonment imposed or to be imposed that is in excess of 36 months commuted; any period of confinement imposed to be served in home confinement

Melvin J. Reynolds

Offense: Bank fraud, 18 U.S.C. § 1344; wire fraud, 18 U.S.C. § 1343; making false statements to a financial institution, 18 U.S.C. §1014; conspiracy to defraud the Federal Election Commission, 18 U.S.C. § 371; false statements to a federal official, 18 U.S.C. § 1001

District/Date: Northern Illinois; July 15, 1997

Sentence: 78 months' imprisonment; five years' supervised release; $20,000 restitution

Terms of Grant: Unserved portion of sentence of imprisonment commuted to a period of equal length to be served in a community corrections center designated by the Bureau of Prisons, on the condition that he comply with Bureau of Prisons rules and regulations concerning confinement in a community corrections center

Pedro Miguel Riveiro

Offense: Conspiracy to possess with intent to distribute cocaine, 21 U.S.C. § 846

District/Date: Southern Florida; February 9, 1995

Sentence: 102 months' imprisonment; five years' supervised release

Terms of Grant: Sentence of imprisonment to expire immediately, on the condition that he be subject to a special condition of drug testing, as provided in 18 U.S.C. § 3583(d), during his period of supervised release

Dorothy Rivers

Offense: Obstruction of a federal audit, 18 U.S.C. § 1516; false statements to a federal agency, 18 U.S.C. § 1001; tax evasion, 26 U.S.C. § 7201; failure to file tax returns, 26 U.S.C. § 7203; wire fraud, 18 U.S.C. § 1343; mail fraud, 18 U.S.C. § 1341; theft from a federally funded organization, 18 U.S.C. § 666

District/Date: Northern Illinois; November 17, 1997

Sentence: 70 months' imprisonment; three years' supervised release

Terms of Grant: Sentence of imprisonment commuted to 50 months' imprisonment

Susan Lisa Rosenberg

Offense: Conspiracy to possess unregistered firearm, receive firearms and explosives shipped in interstate commerce while a fugitive, and unlawfully use false identification documents, 18 U.S.C. § 371; possession of unregistered destructive devices, possession of unregistered firearm (two counts), 26 U.S.C. §§ 5861(d) and 5871; carrying explosives during commission of a felony, 18 U.S.C. § 844(h)(2); possession with intent to unlawfully use false identification documents, 18 U.S.C. §§ 1028(a)(3), 1028(b)(2)(B), 1028(c)(1) and 1028(c); false representation of Social Security number, possession of counterfeit Social Security cards, 42 U.S.C. § 408(g)(2)

District/Date: New Jersey; May 20, 1985

Sentence: 58 years' imprisonment

Terms of Grant: Sentence of imprisonment commuted to an aggregate of 27 years, seven months, and 19 days, effectuating her immediate release by virtue of having served to her mandatory release date for the aggregate sentence as commuted

Kalmen Stern

Offense: Conspiracy to defraud the United States, 18 U.S.C. § 371; embezzlement from a federally funded program, 18 U.S.C. § 666; wire fraud, 18 U.S.C. §1343; mail fraud, 18 U.S.C. § 1341; filing a false tax return, 26 U.S.C. § 7206(1)

District/Date: Southern New York; October 18, 1999

Sentence: 78 months' imprisonment; three years' supervised release; $11,179,513 restitution

Terms of Grant: Sentence of imprisonment commuted to 30 months

Cory Hollis Stringfellow

Offense: 1. Conspiracy to possess with intent to distribute and to distribute LSD, 21 U.S.C. §§ 846 and 841(a)(1), (b)(1)(A)
2. False statements in a passport application, 18 U.S.C. § 1542

District/Date: 1. Colorado; July 21, 1995
2. Utah; November 17, 1995

Sentence: 1. 188 months' imprisonment; four years' supervised release
2. Four months' imprisonment (consecutive to no. 1); four years' supervised release

Terms of Grant: Sentence of imprisonment of 188 months for conspiracy to possess LSD with intent to distribute to expire immediately, on the condition that he serve a five-year period of supervised release with all the conditions set by the court for the four-year period of supervised release previously imposed and a special condition of drug testing, as provided in 18 U.S.C. § 3583(d), leaving intact and in effect the consecutive four-month prison sentence imposed upon him for making false statements in a passport application

Carlos Anibal Vignali, Jr.

Offense: Conspiracy to distribute cocaine, 21 U.S.C. § 846; using facilities in interstate commerce with intent to promote a business enterprise involving narcotics, 18 U.S.C. § 1952(b); illegal use of communication facility to facilitate commission of controlled substance offense, 21 U.S.C. § 843(b)

District/Date: Minnesota; July 17, 1995

Sentence: 175 months' imprisonment; five years' supervised release

Terms of Grant: Sentence of imprisonment to expire immediately, on the condition that he be subject to a special condition of drug testing, as provided in 18 U.S.C. § 3583(d), during his period of supervised release

Thomas W. Waddell, III

Offense: Conducting an illegal gambling business, 18 U.S.C. § 1955; conspiracy to commit money laundering, 18 U.S.C. §§ 1956(a)(1)(B)(1) and (h)

District/Date: Northern California; January 13, 2000

Sentence: 24 months' imprisonment; three years' supervised release; $7,500 fine; criminal forfeiture

Terms of Grant: Sentence of imprisonment commuted to 12 months' imprisonment and one year's supervised release, to be served before the three-year period of supervised release already imposed

Harvey Weinig

Offense: Conspiracy to commit money laundering, criminal forfeiture, and misprision of felony, 18 U.S.C. §§ 1956(h), 982(a)(1) and (b)(1)(A), and 4

District/Date: Southern New York; March 22, 1996

Sentence: 135 months' imprisonment; three years' supervised release

Terms of Grant: Sentence of imprisonment commuted to five years and 270 days, on the condition that he serve a period of supervised release of three years and 95 days with all the conditions set by the court for his previously imposed three-year period of supervised release

Kim Allen Willis

Offense: Conspiracy to distribute cocaine, aiding and abetting the attempt to possess with intent to distribute cocaine, 21 U.S.C. §§ 841(a)(1), 841(b)(1)(A), and 846

District/Date: Minnesota; April 20, 1990

Sentence: 188 months' imprisonment; five years' supervised release

Terms of Grant: Sentence of imprisonment to expire immediately, on the condition that he be subject to a special condition of drug testing, as provided in 18 U.S.C. § 3583(d), during his period of supervised release

ARTICLE FROM *THE WASHINGTON POST*, DATED MARCH 7, 2007, SUBMITTED BY THE HONORABLE CHRIS CANNON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF UTAH, AND MEMBER, COMMITTEE ON THE JUDICIARY

The Washington Post

March 7, 2007 Wednesday
Final Edition

The Libby Verdict;
The serious consequences of a pointless Washington scandal

SECTION: Editorial; A16

LENGTH: 662 words

THE CONVICTION of I. Lewis Libby on charges of perjury, making false statements and obstruction of justice was grounded in strong evidence and what appeared to be careful deliberation by a jury. The former chief of staff to Vice President Cheney told the FBI and a grand jury that he had not leaked the identity of CIA employee Valerie Plame to journalists but rather had learned it from them. But abundant testimony at his trial showed that he had found out about Ms. Plame from official sources and was dedicated to discrediting her husband, former ambassador Joseph C. Wilson IV. Particularly for a senior government official, lying under oath is a serious offense. Mr. Libby's conviction should send a message to this and future administrations about the dangers of attempting to block official investigations.

The fall of this skilled and long-respected public servant is particularly sobering because it arose from a Washington scandal remarkable for its lack of substance. It was propelled not by actual wrongdoing but by inflated and frequently false claims, and by the aggressive and occasionally reckless response of senior Bush administration officials -- culminating in Mr. Libby's perjury.

Mr. Wilson was embraced by many because he was early in publicly charging that the Bush administration had "twisted," if not invented, facts in making the case for war against Iraq. In conversations with journalists or in a July 6, 2003, op-ed, he claimed to have debunked evidence that Iraq was seeking uranium from Niger; suggested that he had been dispatched by Mr. Cheney to look into the matter; and alleged that his report had circulated at the highest levels of the administration.

A bipartisan investigation by the Senate intelligence committee subsequently established that all of these claims were false -- and that Mr. Wilson was recommended for the Niger trip by Ms. Plame, his wife. When this fact, along with Ms. Plame's name, was disclosed in a column by Robert D. Novak, Mr. Wilson advanced yet another sensational charge: that his wife was a covert CIA operative and that senior White House officials had orchestrated the leak of her name to destroy her career and thus punish Mr. Wilson.

The partisan furor over this allegation led to the appointment of special prosecutor Patrick J. Fitzgerald. Yet after two years of investigation, Mr. Fitzgerald charged no one with a crime for leaking Ms. Plame's name. In fact, he learned early on that Mr. Novak's primary source was former deputy secretary of state Richard L. Armitage, an unlikely tool of the White House. The trial has provided convincing evidence that there was no conspiracy to punish Mr. Wilson by

leaking Ms. Plame's identity -- and no evidence that she was, in fact, covert.

It would have been sensible for Mr. Fitzgerald to end his investigation after learning about Mr. Armitage. Instead, like many Washington special prosecutors before him, he pressed on, pursuing every tangent in the case. In so doing he unnecessarily subjected numerous journalists to the ordeal of having to disclose confidential sources or face imprisonment. One, Judith Miller of the New York Times, lost several court appeals and spent 85 days in jail before agreeing to testify. The damage done to journalists' ability to obtain information from confidential government sources has yet to be measured.

Mr. Wilson's case has besmirched nearly everyone it touched. The former ambassador will be remembered as a blowhard. Mr. Cheney and Mr. Libby were overbearing in their zeal to rebut Mr. Wilson and careless in their handling of classified information. Mr. Libby's subsequent false statements were reprehensible. And Mr. Fitzgerald has shown again why handing a Washington political case to a federal special prosecutor is a prescription for excess.

Mr. Fitzgerald was, at least, right about one thing: The Wilson-Plame case, and Mr. Libby's conviction, tell us nothing about the war in Iraq.

EXCERPTS FROM MINORITY VIEWS, REPORT ON PREWAR INTELLIGENCE ASSESSMENTS ABOUT POSTWAR IRAQ, TOGETHER WITH ADDITIONAL VIEWS, SENATE SELECT COMMITTEE ON INTELLIGENCE, 110TH CONGRESS, SUBMITTED BY THE HONORABLE CHRIS CANNON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF UTAH, AND MEMBER, COMMITTEE ON THE JUDICIARY

MINORITY VIEWS OF VICE CHAIRMAN BOND
JOINED BY
SENATORS HATCH AND BURR

While not directly related to the subject of the report released today, it is appropriate here to discuss some additional information that has come to light about an earlier prewar inquiry report by the Committee in July 2004 called "Phase I" that deals with the Iraq-Niger uranium intelligence. This section of the Committee report remains one of the most thoroughly investigated and detailed descriptions of the events and intelligence surrounding the Iraq-Niger uranium issue. The Committee devoted nearly 50 pages of the report to this section alone, in order to provide all of the details of the Intelligence Community's handling of this issue – from October 2001 when the Intelligence Community produced the first intelligence report on the Iraq-Niger uranium deal to July 2003 when the CIA finally produced an assessment that said, "we no longer believe that there is sufficient other reporting to conclude that Iraq pursued uranium from abroad."[1]

The vast majority of the Committee's findings were declassified and released in the July 2004 *Report of the Select Committee on Intelligence on the U.S. Intelligence Community's Prewar Intelligence Assessments on Iraq.* It is important to note that while the Committee's report was over 500 pages and covered many issues, the content was reviewed by all members of the Committee in great detail and was voted out unanimously. Nonetheless, nearly three years after the report's release it is apparent that some "experts" and commentators still seem to misunderstand, or choose to ignore, the basic facts surrounding this case. Additional information that became public during the Special Prosecutor's investigation of the Valerie Wilson leak case, some of which had not been provided to the Committee during its investigation, has only reinforced the Committee's findings.

Part of the continuing public and media misunderstanding of this case stems, we believe, from a letter sent to the Committee by former Ambassador Joseph Wilson in July 2004 and subsequently released publicly,

[1] There are two areas of the Iraq-Niger uranium story which were not covered in the Committee's inquiry. The first area was the source of the forged Iraq-Niger uranium deal documents passed to the US government in October 2002. This issue was being investigated by the Federal Bureau of Investigation at the request of then-Vice Chairman Rockefeller. The second area was the exposure of Valerie Wilson's affiliation with the CIA, which was investigated by a special prosecutor.

and from public comments and testimony from Ambassador Wilson and his wife, Valerie Wilson, asserting that the Committee's report contained errors and distortions. We take these charges seriously and believe it is important to outline information, new and old, that explains some of the key issues and supports the Committee's findings.

In July 2004, Ambassador Wilson sent a letter to the Committee in which he declared "not true" a conclusion in additional views of the Chairman and Senators Bond and Hatch that:

> **The plan to send the former ambassador to Niger was suggested by the former ambassador's wife, a CIA employee.**

In his letter to the Committee, Ambassador Wilson took issue with this conclusion although similar text was included in the body of the Committee's unanimous report. (p. 39.) Ambassador Wilson asserted that the Committee's finding appeared to be based on a quoted portion of a memo sent from his wife to her superior that says "My husband has good relations with the PM [prime minister] and the former Minister of Mines (not to mention lots of French contacts), both of whom could possibly shed light on this sort of activity" (p. 39 of the Committee's report.) Ambassador Wilson claims in his letter that this memo shows no suggestion that he be sent on the trip and is "little more than a recitation of his contacts and bona fides." This is not true. The Committee did not release the full text of the document, thinking it was unnecessary in light of the other evidence we provided in the report, but considering the controversy surrounding this document, making the full text available now seems prudent.

~~SECRET~~

12 February 2002

MEMORANDUM FOR: [Redacted]

FROM: [Valerie Wilson]

OFFICE: DO/CP/[office 1]

SUBJECT: Iraq-related Nuclear Report Makes a Splash

REFERENCE:

The report forwarded below has prompted me to send this on to you and request your comments and opinion. Briefly, it seems that Niger has signed a contract with Iraq to sell them uranium. The IC is getting spun up about this for obvious reasons. The Embassy in Niamey has taken the position that this report can't be true – they have such cozy relations with the GON that they would know if something like this transpired.

So, where do I fit in? As you may recall [redacted] of CP/[office 2] recently [2001] approached my husband to possibly use his contacts in Niger to investigate [redacted] [a separate Niger matter]. After many fits and starts, [redacted] finally advised that the Station wished to pursue this with liaison. My husband is willing to help if it makes sense, but no problem if not. End of story.

Now, with this report, it is clear that the IC is still wondering what is going on... my husband has good relationships with both the PM and the former Minister of Mines (not to mention lots of French contacts), both of whom could possibly shed light on this sort of activity. To be frank with you, I was somewhat embarrassed by the Agency's sloppy work last go round and I am hesitant to suggest anything again. However, [my husband] may be in a position to assist. Therefore, request your thoughts on what, if anything to pursue here. Thank you for your time on this.

~~SECRET~~

(end memo)

The report mentioned in the opening sentence was a February 5, 2002 CIA Directorate of Operations (DO) intelligence report describing "verbatim text" of a reported Iraq-Niger uranium agreement. The report was forwarded in an e-mail from a CIA reports officer to Mrs. Wilson and a number of other recipients which said that the DO had received a number of calls from the Intelligence Community about the Iraq-Niger uranium report, citing the Department of State's Bureau of Intelligence and Research (INR), the Defense Intelligence Agency (DIA), and SOCOM, specifically. This likely prompted Mrs. Wilson's comment that "the IC is getting spun up about this for obvious reasons." There was no mention in either the reports officer's e-mail or in Ms. Wilson's memo (also sent via e-mail) of a request from the Vice President about this matter.

This is significant because the CIA originally told the Committee, and Ambassador and Mrs. Wilson have stated publicly, that it was a question from the Vice President that prompted CIA's Counterproliferation Division (CIA/CPD) to discuss ways to obtain additional information about the reporting. However, the Committee now knows, based on information released during the Scooter Libby trial, that the Vice President had not even asked about the Iraq-Niger uranium deal until the following day.

Evidence from the Libby trial, numbered exhibit DX66.2, includes a tasking from the Vice President to his CIA briefer which indicates that after being shown a DIA assessment about the February 5, 2002 DO report, the Vice President asked for CIA's assessment (nb: not an investigation) of the matter. The date of the briefing is noted as February 13, 2002, the day after Mrs. Wilson's memo to her superiors.

While it may be possible that the Vice President's query is what led to the ultimate decision to use Ambassador Wilson to attempt to uncover additional information about the alleged Iraq-Niger uranium deal, it is clear from the dates of these two documents that CIA/CPD was discussing ways to seek additional information, including the possibility of using Ambassador Wilson to look into the deal, before the Vice President asked about the reporting.

Additional information also supports the Committee's finding that Mrs. Wilson is the one who originally suggested Ambassador Wilson to look into the Iraq-Niger uranium matter. Page 39 of the Committee's Phase I report noted that a CIA/CPD reports officer told the Committee staff that Mrs. Wilson "offered up" her husband's name. In Ambassador Wilson's letter to the Committee he claims that "the reports officer has a different conclusion about Valerie's role than the one offered in the "additional views." In recent public testimony before the House Committee on Oversight and Government Reform, Mrs. Wilson has also claimed that a memorandum from the reports officer written after he read the Committee's report "absolutely" contradicts the report, that he sought to be reinterviewed by the Committee, and that his words has been "twisted and distorted" by the Committee. None of these claims are true.

Committee staff had the opportunity to review the reports officers' "memorandum" (actually a letter addressed to Mrs. Wilson but apparently never sent) which says only that the reports officer's remarks about Ambassador Wilson's trip were "truncated" in the Committee's report. He cited two specific issues that the Committee did not include: his comments that he believed Mrs. Wilson had acted appropriately and that the reports officer "pushed for the trip" himself. The reports officer's letter does not say that the Committee twisted or distorted his words, does not contradict the Committee's finding that Mrs. Wilson is the one who suggested her husband, does not retract his comments to the Committee that she "offered up" her husband's name, and does not state that he would like to be re-interviewed by the Committee. Based on information and documents made available to the Committee, we have no reason to believe that the reports officer sought to be re-interviewed or that CIA prevented him from being re-interviewed.

The Committee interviewed nearly 300 people for the Phase I report and most interviews averaged between one to two hours. The Committee staff interviewed this reports officer for nearly an hour and a half. Obviously not all of his remarks, nor the entirety of the remarks of the other several hundred interviewees, could or needed to be included in the report. The Committee believed, as we still do, that the comment quoted in the report in response to a question about any substantive role Mrs. Wilson played in her husband's trip to Niger in 2002 accurately summarized his remarks. The reports officer's full remarks about the issue were:

> Let me speak to what I know of where she is substantively involved. She offered up his name as a possibility, because we were – we didn't have much in the way of other resources to try and get at this problem, to the best of my knowledge. And so whenever she offered up his name it seemed like a logical thing to do. I didn't make the decision to send him, but I certainly agreed with it, I recommended that he should go.

He later added:

> I'd like to state emphatically that, from what I've seen, Val Wilson has been the consummate professional through all this. From the very start, whenever she mentioned to me and some others that her husband had experience and was willing to travel but that she would have to step away from the operation because she couldn't be involved in the decisionmaking to send him, in [his] debriefing, [in] dissem[inating] the report and those kinds of things, because it could appear as a conflict of interest.

The Committee report never stated or implied that Mrs. Wilson's suggestion to her colleagues that her husband may be able to look into the Iraq-Niger uranium matter was inappropriate in any way, obviating the need to include the reports officer's comments that her role was "professional." In fact, a conclusion on page 25 of the Phase I report noted that "the Committee does not fault the CIA for exploiting the access enjoyed by the spouse of a CIA employee traveling to Niger. The Committee believes, however, that it is unfortunate, considering the significant resources available to the CIA, that this was the only option available."

In addition, the Committee report noted that it was a CIA/CPD decision ultimately to send Ambassador Wilson to Niger. The Committee report never claimed that Mrs. Wilson made the decision to send him, only that she suggested him.

In addition to the memo and reports officer's testimony described above, the Committee considered Mrs. Wilson's testimony to the CIA Inspector General. The Inspector General testified before our Committee that Mrs. Wilson "made the suggestion" that Ambassador Wilson could look into the Iraq-Niger uranium matter. Additional information recently made

available to the Committee indicates that this information came from Mrs. Wilson's own testimony to the CIA Inspector General.

Yet, Mrs. Wilson testified before the House Committee on Government Oversight and Reform on March 16, 2007 that, "I did not recommend him. I did not suggest him." Mrs. Wilson told the House Committee that a young junior officer in CIA/CPD received a phone call from someone in the Office of the Vice President asking about the alleged sale of uranium from Niger to Iraq. Mrs. Wilson testified that while she was talking to the junior officer, another officer heard this and suggested, "well, why don't we send Joe?"

This testimony was of great interest to us because during a nearly hour long interview with Mrs. Wilson in which Committee staff asked specifically what led CIA/CPD to think about sending someone to Niger and how it was that her husband's name came up, Mrs. Wilson never provided the story she provided to the House Committee. Rather, Mrs. Wilson told the Committee staff, "I honestly do not recall if I suggested it or my boss, who knew my husband and what he had done for us previously, my boss at the time being the head of the whole task force, during a brainstorming session suggested well, what about your husband, Ambassador Wilson, would he be willing to consider this." When asked specifically if she remembered whether she suggested her husband's name, she said "I honestly do not."

Mrs. Wilson told the CIA Inspector General that she suggested her husband for the trip, she told our Committee staff that she could not remember whether she did or her boss did, and told the House Committee, emphatically, that she did not suggest him.

Mrs. Wilson's role in her husband's trip was not limited merely to suggesting him. Notes from a State INR analyst, who participated in a February 19, 2002 meeting to discuss CIA/CPD's proposal to send Wilson to Niger, state that the meeting was "apparently convened by Valerie Wilson, a CIA WMD managerial type and the wife of Amb. Joe Wilson, with the idea that the agency and the larger USG could dispatch Joe to Niger." While Mrs. Wilson stayed at the meeting only long enough to introduce her husband, a CIA operations cable confirms the INR notes that she did convene the meeting. The cable, inviting Intelligence Community participants to the meeting, says that the "meeting was facilitated by [Mrs.

Wilson.]" According to her testimony before the House Committee, she did not tell the analysts who attended the meeting that she was under cover stating that she "believed they would have assumed as such." Apparently they did not "assume" she was under cover because the INR notes did not mark her name with a (C) as would be required to indicate that her association with the CIA was classified.

In addition, Mrs. Wilson drafted a cable that was sent overseas requesting concurrence with Ambassador Wilson's travel to Niger. While Ambassador Wilson suggested in his letter to the Committee and in his book that the question of him traveling to Niger was first broached during the February 19, 2002 meeting, the cable drafted by Mrs. Wilson was sent nearly a week earlier, on February 13, only one day after Mrs. Wilson's memo suggesting that her husband might be willing to look into the Niger matter. Interestingly the cable states that "both State and DOD have requested additional clarification [of the Niger-Iraq uranium report] and indeed, the Vice President's office just asked for background information ...." The cable was dated and time stamped 132142Z Feb 02, which is February 13, 2002 at 3:42 pm DC time. If the Vice President's office "just asked' it could not have been before Mrs. Wilson's e-mailed memo to her superior suggesting her husband for the Niger inquiry which was sent February 12, 2002.

Ambassador Wilson's implicit claim that the question of him traveling to Niger arose first at the February 19, 2002 meeting is also refuted by an intelligence memorandum provided to the Vice President on February 14, 2002 that stated that CIA had tasked a clandestine source with ties to the Nigerien government to seek additional information on the contract. Unless the CIA provided false information to the Vice President, CIA had already tasked Ambassador Wilson, the only source the CIA had other than the foreign liaison service, by the morning of February 14, 2002. In addition, Mrs. Wilson's own testimony to the Committee states that she went home and asked her husband if he would be consider looking into the Niger reporting. Contrary to Ambassador Wilson's allegations, the idea of sending him to Niger had been discussed in and among CIA officers for nearly a week before the February 19, 2002 meeting.

Ambassador Wilson's letter to the Committee stated that it is unfortunate that the Committee failed to include the CIA's position on this matter, citing press comments from "a senior CIA official" and "a senior

intelligence officer" who support Wilson's account that his wife did not propose him for the trip. We have been on this Committee long enough to know that leaks from CIA sources and unnamed senior officials do not represent CIA's official position and are certainly not the definitive word from the CIA. Furthermore, our Committee did seek an official response from the CIA. The response after conferring with CIA/CPD was "we do not recall specifically who surfaced [Ambassador Wilson's] name." Our Committee wisely chose to use the findings of the CIA Inspector General, our own interviews, and a thorough review of documents for our fact base to determine what CIA/CPD could not.

Ambassador Wilson's letter also took issue with the conclusion in the additional views of Chairman Roberts and Senators Hatch and Bond which said:

> **Rather than speaking publicly about his actual experiences during his inquiry of the Niger issue, the former ambassador seems to have included information he learned from press accounts and from his beliefs about how the Intelligence Community would have or should have handled the information he provided.**

The Committee report included several examples including his comments in a June 12, 2003 Washington Post story[2] by Walter Pincus which said, "among the envoy's conclusions was that the documents may have been forged because 'the dates were wrong and the names were wrong;'" his comments asserting that the Vice President had been briefed on his findings; and press stories, for which he appeared to be an anonymous source, that claimed his findings "debunked" the Niger-Iraq uranium story.

In his letter to the Committee, Ambassador Wilson took issue with this conclusion and asserted that his first "public statement" was in his *New York Times* op-ed on July 6, 2003.[3] He says that in this and his other public comments, he stated clearly that he never saw the documents, that he claimed "only that the transaction described in the documents that turned out to be forgeries could not have occurred and did not occur," and that he

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[2] Pincus, Walter, "CIA Did Not Share Doubt on Iraq Data; Bush Used Report of Uranium Bid," *The Washington Post,* June 12, 2003.
[3] Wilson, Joseph, "What I Didn't Find In Africa," *The New York Times*, July 6, 2003.

"never claimed to have 'debunked' the allegation that Iraq was seeking uranium from Africa."

Yet, Ambassador Wilson acknowledged to our Committee staff that he was the source of the June 12, 2003 *Washington Post* story in which he also claimed that the documents may have been forged and that the names and dates were wrong. In addition, a May 6, 2003 *New York Times* opinion piece by Nicolas Kristoff, in which Ambassador Wilson appears to be the source, says that the "envoy reported to the CIA and State Department that the information was unequivocally wrong and that the documents had been forged."[4] Kristoff added that the "envoy's debunking of the forgery was passed around the administration." Perhaps Mr. Kristoff and Mr. Pincus misunderstood the Ambassador's comments, or perhaps Ambassador Wilson is making a distinction between speaking out under his own name and speaking out as an anonymous source to the *Washington Post* and the *New York Times* with circulations of several million readers.

As for Ambassador Wilson's claim that he stated clearly in his *New York Times* op-ed that he did not have access to the actual memorandum that discussed the Niger-Iraq uranium deal, this is true, but not surprising. This admission came only *after* our Committee staff interviewed him and confronted him about the inconsistencies in his previous comments to reporters. It was during this interview with Committee staff that Ambassador Wilson asserted that he may have been confused about his own recollections after the International Atomic Energy Agency reported in March 2003 that the names and dates on the documents on the documents were wrong. We agree that Ambassador Wilson is confused.

Ambassador Wilson's letter also comments on two reports disseminated in the Intelligence Community by then-Ambassador to Niger Barbro Owens-Kirkpatrick. One report was based on her own meeting with Nigerien officials and another based on a meeting between General Carlton Fulford, who was accompanied by the Ambassador, and the Nigerien president. Ambassador Wilson has claimed in his book and in numerous public appearances that these reports indicated that there was nothing to the Niger-Iraq uranium story. Mrs. Wilson also said this in her testimony to the House Committee on Oversight and Government Reform. This too is untrue.

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[4] Kristoff, Nicholas, "Missing in Action: Truth," *New York Times*, May 6, 2003.

Contrary to these claims, then-Ambassador to Niger Barbro Owens-Kirkpatrick wrote a cable to State Department headquarters which said that the CIA report of a Niger-Iraq uranium deal "provides sufficient details to warrant another hard look at Niger's uranium sales." The cable reported that the Ambassador sought an unequivocal assurance from the Nigerien government that Niger would not sell uranium to rogue states. The cable noted that in September 2001 the Nigerien Prime Minister told embassy officials that "there were buyers like Iraq who would pay more for Niger's uranium than France," but added "of course Niger cannot sell to them." The Ambassador told the prime minister that such a sale would be wrong and disastrous for Niger's relations with the US. The cable said in a meeting on the 19th, Nigerien officials did not raise the issue or provide the requested assurances. The cable concluded by noting that despite past assurances from the Nigerien president that no uranium would be sold to rogue nations, "we should not dismiss out of hand the possibility that some scheme could be, or has been, underway to supply Iraq with yellowcake from here" (p. 40). The cable said that while "it would seem politically suicidal for [the Prime Minister] to embark on a risky venture like uranium sales to Iraq" and "would seem out of character" for the Nigerien president, "we must make sure."

General Fulford did not undertake an inquiry into the Iraq-Niger uranium matter at all. He was encouraged by Ambassador Owens-Kirkpatrick to use a previously scheduled refueling stop to raise the general issue of ensuring the peaceful use of Niger's uranium with the Nigerien President. The embassy reported on February 24, 2002, that at a meeting the same day, the Nigerien President told the Ambassador and General Fulford that Niger's goal was to keep its uranium in safe hands. General Fulford extended an offer on behalf of the US government to work with Niger to ensure its uranium was used for peaceful purposes only and did not fall into the wrong hands. The Nigerien President told General Fulford that "Niger's uranium is secure for the moment" and asked for unspecified US help to ensure its safety.

Neither of these reports resolved the question of whether Iraq was seeking uranium from Niger and neither discounted the reporting. In fact, Ambassador Owens-Kirkpatrick's first cable raises, more than discounts, concern about the potential deal noting that "we should not dismiss out of hand the possibility that some scheme could be, or has been, underway" and

providing the Prime Minister's comment that "buyers like Iraq" would pay more for Niger's uranium. The second cable did not address the alleged Iraq deal at all.

When Ambassador Wilson returned from Niger, the information he reported also did nothing to resolve the question of whether Iraq was seeking uranium from Niger, despite his claims to the contrary. The Committee interviewed every analyst involved in the analysis of this issue. These analysts told the Committee that the information from his report, if anything, merely reinforced their existing views, whatever those views were. The analysts consistently told Committee staff that they did not think the report outlining Ambassador Wilson's findings clarified the story or added a great deal of new information. For most analysts, the report lent more credibility, not less, to the reporter Niger-Iraq uranium deal. These analysts said that they were not surprised to read that Nigerien officials denied discussing uranium sales with Iraq because they had no expectation that they would admit to such discussions. These analysts did find it interesting that the former Nigerien Prime Minister acknowledged that an Iraqi delegation has visited Niger for what he believed was to discuss uranium sales, according to the Committee's report.

In addition to these comments from analysts, a CIA memorandum released during the Scooter Libby trial supports the Committee's findings, noting that "no definitiveness could be assigned to the [Wilson] report."

The Committee stated on page 46 of our report that because CIA analysts did not believe that the report added any new information to clarify the issue, they did not use the report to produce any further analytical products or highlight the report for policymakers. For the same reason, the Vice President's CIA briefer did not brief the Vice President about the report. The CIA Inspector General confirmed this account in testimony before the Committee in which he stated:

> His [the Vice President's] briefer has told us that what was learned on this subject simply didn't rise to a level where it met the threshold that they would go back and give him an account even of what little was known. There being no news, they didn't take his time with it.

In his letter to the Committee, Ambassador Wilson cited several examples from the Committee's report which he said contradict a conclusion on the additional views that, for most intelligence analysts, his findings lent more credibility, not less, to the original Niger-Iraq uranium reporting. While nearly all of the citations in his letter are correctly noted as instances in which the CIA did not use the uranium reporting or said the reporting was not key to Iraq's nuclear ambitions, Ambassador Wilson is wrong in two respects. First, the conclusion that his findings lent more credibility to the Niger-Iraq uranium reporting was a unanimous conclusion of the entire Committee, not just in Republican additional views. Second, he is mistaken in ascribing a correlation between these instances and his own findings. In fact, none of these instances had anything to do with Ambassador Wilson's findings in Niger. The INR analysts he cited believed the Niger-Iraq uranium reporting was unlikely to be true before Ambassador Wilson went on this trip. The CIA NESA analysts were not the CIA's primary Iraq WMD analysts and knew very little about the Niger reporting at all. Their assessments did not discount the reporting, they simply did not include it. Most of the other instances Ambassador Wilson cited, including CIA testimony to Congress and the DCI's caution against the President using the information in the Cincinnati speech, were based on a misunderstanding within the CIA. This misunderstanding was explained in the Committee's unanimous conclusions.

Ambassador Wilson also neglected to mention in his letter that the Intelligence Community used or cleared the Niger-Iraq uranium intelligence *fifteen* times before the President's State of the Union address and four times *after*, saying in several papers that Iraq was "vigorously pursuing uranium from Africa." As late as March 2003, even after the IAEA found that the documents themselves were "not authentic," and while noting that the CIA had questions about some specific claims in the original intelligence reporting, the CIA still reported that, "we are concerned that these reports may indicate Baghdad has attempted to secure an unreported source of uranium yellowcake for a nuclear weapons program."

It was not until April 5, 2003 that the National Intelligence Council issued an Intelligence Community assessment finally saying, "we judge it highly unlikely that Niamey has sold uranium yellowcake to Baghdad in recent years."[5] It was not until June 17, 2003 that the CIA produced an

[5] Several press stories have claimed that similar language appeared in a National Intelligence Council (NIC) assessment, from the Africa National Intelligence Officer (NIO) in January 2003 prior to the State of

internal memorandum for the DCI which said, "since learning that the Iraq-Niger uranium deal was based on false documents earlier this spring, we no longer believe that there is sufficient other reporting to conclude that Iraq pursued uranium from abroad." That was June 2003, not March 2002 as Ambassador Wilson would have you believe.

We consider most aspects of the Niger-Iraq uranium matter closed – Mrs. Wilson clearly suggested her husband for the trip to Niger, neither Ambassador Wilson's report, nor the reports from Ambassador Owens-Kirkpatrick resolved the Niger-Iraq uranium reporting, the Vice President was never briefed on Ambassador Wilson's findings because CIA believed the findings did not clarify the issue, and the Niger-Iraq uranium reporting was cleared, by the CIA, for use in the President's State of the Union address.

One area of inquiry which now seems to be unresolved is why Mrs. Wilson provided different testimony to the CIA Inspector General, our Committee staff, and the House Committee on Oversight and Government Reform. The account of a discussion among three colleagues about a phone call from the Vice President is new to us, and apparently new to the CIA which has been unable to find the alleged participants. Still, it is a story worth exploring. For that reason, Senator Bond has written to the CIA seeking interviews with the individuals involved, including a re-interview with Mrs. Wilson. We hope that these witnesses will enable us to tie up these loose ends once and for all.

In the meantime, because so much confusion remains about these issues and because most of the Committee's conclusions in its July 2004 report, including several conclusions that may alleviate some of this confusion, were never fully declassified, we believe it is important to submit some of those conclusions for declassification now. The three conclusions, unanimously adopted by the full Committee, which explain: the lack of impact that Ambassador Wilson's findings had on Intelligence Community judgments; the fact that the CIA never informed the Vice President about Ambassador Wilson's findings; and the misunderstanding within the CIA that led the DCI to suggesting striking the Niger-Iraq uranium information from the President's Cincinnati speech, are reprinted below. We intend to

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the Union. This is not correct. The April 2003 paper cited here is the only one prepared by the Africa NIO, according to the CIA. The only other NIC products disseminated prior to April 2003 said Iraq was "vigorously pursuing uranium from Africa."

seek declassification of the remaining Niger conclusions and the rest of the conclusions from the Committee's Phase I report separately.

Conclusion 13. The report on the former ambassador's trip to Niger, disseminated in March 2002, did not change any analysts' assessments of the Iraq-Niger uranium deal. For most analysts, the information in the report lent more credibility to the original Central Intelligence Agency (CIA) reports on the uranium deal, but State Department Bureau of Intelligence and Research (INR) analysts believed that the report supported their assessment that Niger was unlikely to be willing or able to sell uranium to Iraq.

The report on the former ambassador's trip to Niger did not change any analysts' assessments of the Iraq-Niger uranium deal. Those who assessed the Iraq-Niger uranium deal was credible prior to the former ambassador's report, continued to believe it was credible. Analysts who assessed the deal was unlikely, continued to believe it was unlikely. While INR analysts believed that the report corroborated their position that Niger was unlikely to be willing or able to sell uranium to Iraq, most analysts thought the information in the report lent more credibility to the original intelligence reports on the alleged uranium deal. In particular, analysts highlighted a meeting request by a Nigerien-Algerian businessman on behalf of an Iraqi delegation. The businessman told a former Nigerien Prime Minister that the Iraqi delegation wished to discuss "expanding commercial relations" with Niger. The former Prime Minister interpreted this request to mean that the delegation was interested in purchasing uranium. The report noted that "although the meeting took place, the [Prime Minister] let the matter drop due to the United Nations (UN) sanctions on Iraq." Although the report lacked important details, such as who participated in the meeting and what was actually discussed at the meeting, the report added to most Intelligence Community analysts' concerns about Iraqi interest in uranium from Niger. These analysts told Committee staff that they did not expect the former Nigerien officials to admit to entering into a uranium deal with rogue nations so they were not surprised that the report said the former Nigerien officials were unaware of any uranium contracts that had been signed with rogue nations.

After the report on the former ambassador's trip was disseminated, Intelligence Community agencies wrote intelligence products or cleared language indicating that Iraq was attempting to acquire uranium from Niger

or Africa fifteen times prior to the President's State of the Union speech and four more times following the speech.

Conclusion 14. The Central Intelligence Agency should have told the Vice President and other senior policymakers that it had sent someone to Niger to look into the alleged Iraq-Niger uranium deal and should have briefed the Vice President on the former ambassador's findings.

In February 2002, after the Vice President and officials in the Departments of State and Defense raised questions about Central Intelligence Agency (CIA) reports of alleged Iraqi efforts to purchase uranium from Niger, the CIA's Directorate of Operations (DO) made an effort to respond by sending a former ambassador to Niger to look into the issue. The agency did not tell these senior policymakers that the former ambassador had been sent. Following the trip, the DO notified analysts within the CIA's Directorate of Intelligence (DI) of the former ambassador's findings. Although the Vice President had asked his CIA morning briefer twice for additional information about this issue prior to the trip, and the CIA had noted in its assessment to the Vice President and others that the agency was working to clarify and corroborate information on the issue, the CIA never briefed the Vice President on the former ambassador's findings or told the Vice President that such a trip had been undertaken. Because of the level of policymaker interest in this issue, such information should have been passed along, regardless of the DI analysts' assessments of the substance or utility of the information.

Conclusion 20. The Central Intelligence Agency's (CIA) comments and assessments about the Iraq-Niger uranium reporting were inconsistent and, at times contradictory. These inconsistencies were based in part on a misunderstanding of a CIA Weapons Intelligence, Nonproliferation, and Arms Control Center (WINPAC) Iraq analyst's assessment of the reporting. The CIA should have had a mechanism in place to ensure that agency assessments and information passed to policymakers were consistent.

At a video teleconference (VTC) with the British, the CIA WINPAC Iraq analyst suggested that the British not use the information on Iraqi attempts to procure uranium from Africa in their white paper because he believed there were better examples of Iraq's efforts to reconstitute its nuclear program and because the reports were unconfirmed. Following the

VTC, another analyst from the CIA's Office of Near East and South Asia (NESA) prepared consolidated agency comments on the white paper to send to the British. Based on his understanding of the WINPAC analyst's comments, the NESA analyst wrote "recommend deleting sentence on 'compelling evidence that Iraq has sought the supply of uranium from Africa'. . . we don't view this reporting as credible." The WINPAC analyst told Committee staff, however, that these were never his comments. Documentation also shows that immediately after these comments were passed to the British, the WINPAC analyst denied saying that the Iraq-Niger reporting was not credible. The analyst said he suggested that the British not include the reporting on the Niger deal because it was unconfirmed and was not the strongest evidence of reconstitution.

The Committee believes that in attempting to summarize the WINPAC analyst's comments, the NESA analyst said the reporting was not viewed as credible, but that this was a misinterpretation of the WINPAC analyst's comments. Neither this analyst nor any other CIA Iraq analysts who had analyzed the Niger uranium reporting told Committee staff that at the time they coordinated the British white paper they viewed the reporting as not credible. In fact, each of these analysts told Committee staff that until at least March 2003 they believed that Iraq was seeking uranium from Africa.

The misinterpretation of the WINPAC analyst's comments led to inconsistencies in the CIA's message to policymakers on the Iraq-Niger uranium issue throughout the fall of 2002 and into early 2003. Intelligence Community officials who were provided with information from the NESA analyst told policymakers that the reporting was not credible. For example, at a Senate Select Committee on Intelligence hearing on October 2, 2002 the Deputy Director of Central Intelligence testified that "the one thing where I think [the British] stretched a little bit beyond where we would stretch is on the points about Iraq seeking uranium from various African locations. We've looked at those reports and we don't think they are very credible." The NESA analyst who misinterpreted the WINPAC analyst's comments prepared the DDCI for the hearing. The CIA told the Committee that this analyst believes he was also the analyst who raised concerns about the Iraq-Niger uranium reporting being used in the President's Cincinnati speech and that it was his comments that led the DCI to call the National Security Council (NSC) and suggest that the uranium reference be removed. This analyst had not performed an analysis of the Iraq-Niger uranium reporting

himself and was simply passing along what he believed was his WINPAC colleague's analysis of the reporting.

Throughout this time, CIA's WINPAC analysts continued to use the Iraq-Niger uranium reporting in intelligence assessments and approve the use of similar language for Administration speeches and publications. From the time the NESA analyst's comments were sent to the British until the President's State of the Union speech, the CIA and National Intelligence Council (NIC) staff had coordinated on the National Intelligence Estimate, cleared language in six policy speeches or documents for the White House and Department of State, and used language in four of CIA's own publications that all noted Iraq's attempts to acquire uranium from Africa or abroad.

The Committee believes that it was the initial misinterpretation of the WINPAC analyst's comments during coordination of the British white paper that led to mixed and inconsistent messages being passed to senior policymakers. While clearly this was an unintentional error, there should have been some mechanism in place within the CIA to ensure that different CIA analysts were not providing different assessments, to policymakers and that assessments in finished intelligence products provided a consistent message.

CHRISTOPHER "KIT" BOND
ORRIN G. HATCH
RICHARD BURR

MINORITY VIEWS OF SENATOR CHAMBLISS JOINED BY SENATORS HATCH AND BURR

The Vice Chairman's additional views accurately describe many of my concerns with the nature and structure of this report. For these reasons, I join in his views. However, unlike the Vice Chairman, I would not have set aside some of my concerns with this report merely for the sake of compromise. When conducting an investigation, I believe the Committee has an obligation to provide meaningful conclusions after a thorough review. I do not believe this was accomplished here. In no case should this obligation be compromised merely for the sake of consensus. Regrettably, this report does not provide meaningful conclusions nor is it the fruits of a thorough review.

As the Vice Chairman articulates, this report offers no investigative insight. The "conclusions" offered are merely restatements of selected text from two Intelligence Community Assessment's (ICA), *Principal Challenges in Post-Saddam Iraq* and *Regional Consequences of Regime Change in Iraq*. Without making judgments about the accuracy or reasonableness of the ICA's, the Committee's "conclusions" are no better then a summary of the reports. Although, even a summary usually includes the main points of a document. Here, the Committee selected the points it wished to highlight, and not necessarily the main points. These reports, fully unclassified, are included in Appendices A and B of this report. Anyone reading this report may review the primary documents. It is meaningless for the Committee to selectively highlight some text from these reports since they are included in full in appendices. Like the Vice Chairman, I do not see that these "conclusions" provide any value to the reader.

As the Vice Chairman also points out, the lack of a unique intelligence fact base behind the Intelligence Community's assessments in these reports means that they were no more authoritative or insightful then many other educated opinions, including those of Members of Congress. For the Committee to review these papers and highlight only those portions of the text that reflect issues that have arisen since the start of the conflict in Iraq, is misleading. Again, I support the Vice Chairman's comments on this point.

In addition, I supported the Vice Chairman's amendment to include the members of the Senate Select Committee on Intelligence and the House

Permanent Select Committee on Intelligence in the list of recipients of the two ICAs. I was disappointed to see my colleagues vote against such a non-partisan issue. I support fully the Vice Chairman's additional comments regarding the appropriateness and hypocrisy of this action by the Committee. Members of Congress are policymakers and are privy to the Intelligence Community's analysis when making policy decisions—such as the decision to authorize the President to use force against Iraq. If anyone is being accused of making policy decisions in a vacuum based on receiving but disregarding these two ICAs, then Congress should be held to the same standard. Effective oversight requires Congress to hold ourselves to the same standards that we demand from the Executive branch.

Aside from my concerns with this report, I believe that much of the Committee's Phase II investigation is a fruitless effort. Any investigation that the Senate Select Committee on Intelligence (SSCI) conducts should be done with the intention of improving the Intelligence Community and enhancing our national security. This Committee did just that in July of 2004, when the Committee unanimously adopted its report on the U.S. Intelligence Community's Prewar Intelligence Assessments on Iraq. This report led to much needed reform in the Intelligence Community and increased Congressional oversight. Regrettably, the present report neither improves our Intelligence Community nor enhances our national security.

I voted, along with the rest of the Committee, to authorize Phase II of this Committee's inquiry regarding the prewar intelligence on Iraq. My vote was based primarily on being able to vote out and approve a large portion, proving so far to be the only substantive portion, of the inquiry with the Committee's Phase I report while satisfying the further concerns of some members of this Committee. As Phase II continues, I see the Committee's resources wasted on an examination of past events meant to point fingers rather then improve our Intelligence Community.

SENATOR SAXBY CHAMBLISS
SENATOR ORRIN G. HATCH
SENATOR RICHARD BURR

COMMITTEE ACTION

Amendments to draft report, Prewar Intelligence About Postwar Iraq

On May 8, 2007, by a vote of 5 ayes and 10 noes, the Committee rejected an amendment by Vice Chairman Bond to strike Appendix D. The votes in person or by proxy were as follows: Chairman Rockefeller – no; Senator Feinstein – no; Senator Wyden – no; Senator Bayh – no; Senator Mikulski – no; Senator Feingold – no; Senator Nelson – no; Senator Whitehouse – no; Vice Chairman Bond – aye; Senator Warner – aye; Senator Hagel – no; Senator Chambliss – aye; Senator Hatch – aye; Senator Snowe – no; Senator Burr – aye.

On May 8, 2007, by a vote of 7 ayes and 8 noes, the Committee rejected an amendment by Vice Chairman Bond to add to Appendix D a list of Senate Select Committee on Intelligence and House Permanent Select Committee on Intelligence members in January 2003. The votes in person or by proxy were as follows: Chairman Rockefeller – no; Senator Feinstein – no; Senator Wyden – no; Senator Bayh – no; Senator Mikulski – no; Senator Feingold – no; Senator Nelson – no; Senator Whitehouse – no; Vice Chairman Bond – aye; Senator Warner – aye; Senator Hagel – aye; Senator Chambliss – aye; Senator Hatch – aye; Senator Snowe – aye; Senator Burr – aye.

On May 8, 2007, by a vote of 5 ayes and 10 noes, the Committee rejected an amendment by Vice Chairman Bond to insert a new conclusion that the Intelligence Community did not highlight an insurgency as a likely challenge for an occupying force in Iraq. The votes in person or by proxy were as follows: Chairman Rockefeller – no; Senator Feinstein – no; Senator Wyden – no; Senator Bayh – no; Senator Mikulski – no; Senator Feingold – no; Senator Nelson – no; Senator Whitehouse – no; Vice Chairman Bond – aye; Senator Warner – aye; Senator Hagel – no; Senator Chambliss – aye; Senator Hatch – aye; Senator Snowe – no; Senator Burr – aye.

Adoption of the report on Prewar Intelligence About Postwar Iraq.

On May 8, 2007, by a vote of 10 ayes and 5 noes, the Committee agreed to adopt the report on Prewar Intelligence About Postwar Iraq. The votes in person or by proxy were as follows: Chairman Rockefeller – aye; Senator Feinstein – aye; Senator Wyden – aye; Senator Bayh – aye; Senator

Mikulski – aye; Senator Feingold – aye; Senator Nelson – aye; Senator Whitehouse – aye; Vice Chairman Bond – no; Senator Warner – no; Senator Hagel – aye; Senator Chambliss – no; Senator Hatch – no; Senator Snowe – aye; Senator Burr – no.

LETTER FROM THE HONORABLE JOHN CONYERS, JR., A REPRESENTATIVE IN CONGRESS, FROM THE STATE OF MICHIGAN, AND CHAIRMAN, COMMITTEE ON THE JUDICIARY, TO PRESIDENT GEORGE W. BUSH, DATED JULY 6, 2007

Congress of the United States
House of Representatives
COMMITTEE ON THE JUDICIARY

July 6, 2007

President George W. Bush
The White House
1600 Pennsylvania Avenue N.W.
Washington, D.C. 20500

Dear President Bush:

Like many Americans, I was troubled to learn of your decision to commute the sentence of Vice President Cheney's former Chief of Staff Scooter Libby. Mr. Libby was convicted of serious crimes and sentenced by a fair and well-respected federal Judge who termed the evidence of Mr. Libby's guilt "overwhelming." It was surprising indeed to learn that you had deemed Mr. Libby's sentence "excessive" even before any of his appeals had run.

As you may know, my committee is holding a hearing this Wednesday titled "The Use and Misuse of Presidential Clemency Power for Executive Branch Officials." At this hearing we hope to learn about some of the consequences of Mr. Libby's misconduct, and we will hear from sentencing experts and people affected by federal sentencing laws as to whether or not Mr. Libby's sentence can fairly be considered "excessive." We will also explore the grave questions that arise when the Presidential clemency power is used to erase criminal penalties for high-ranking executive branch employees whose offenses relate to their work for the President. While I recognize that the clemency power is a Presidential prerogative, your decision to commute Scooter Libby's sentence has proven highly controversial, with commentators suggesting that this act may have had the effect of removing any further incentive that Mr. Libby may have had to provide more complete information about the leak of information on Valerie Wilson's work as an intelligence agent and the role that your Vice President and you yourself may have played in that leak.

When President Clinton's pardon of Marc Rich stirred its own controversy back in 2001, former President Clinton took the forthright step of waiving Executive Privilege and permitting some of his closest aides to testify about the facts of the matter. On March 1, 2001, President Clinton's former Chief of Staff John Podesta, his former Counsel Beth Nolan, and one of his

President George W. Bush
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closest counselors Bruce Lindsay testified before Chairman Burton's House Government Reform Committee on this matter. As Chairman Burton acknowledged in his opening statement: "We asked the president not to claim executive privilege so his aides could testify, and he's done that, and that's a positive step." (Transcript of March 1, 2001 hearing of the House Government Reform Committee.)

It is in this spirit that I call on you too to waive Executive Privilege and provide the relevant documents and testimony of any relevant aides regarding the decision to commute Mr. Libby's sentence. Given that then President Ford testified before our committee in 1974 about his pardon of President Nixon, there is ample additional precedent for your taking such a step. Many questions remain unanswered. For example:

- What role if any, did Vice President Cheney play in the decision to commute the sentence of his own former aide?
- On what basis did you conclude that Mr. Libby's apparently ordinary sentence was "excessive"?
- Was any consideration given to the impact commutation would have on the possibility that Mr. Libby might yet decide to cooperate with the Special Prosecutor?
- Had any assurances previously been given to Mr. Libby – either before or after his false testimony – that he would be protected from jail time through clemency?
- What outsiders lobbied the administration for clemency, and was there any improper quid pro quo?

Thank you very much for responding to this request. I hope you will be able to provide the relevant documents and allow your aides to testify at our hearing next week or at some time in the near future.

Sincerely,

JOHN CONYERS, JR.
Chairman

cc: The Honorable Lamar S. Smith, Ranking Republican

LETTER FROM THE HONORABLE JOHN CONYERS, JR., A REPRESENTATIVE IN CONGRESS, FROM THE STATE OF MICHIGAN, AND CHAIRMAN, COMMITTEE ON THE JUDICIARY, TO PRESIDENT GEORGE W. BUSH, JULY 10, 2007

JOHN CONYERS, JR., Michigan
CHAIRMAN

LAMAR S. SMITH, Texas
RANKING MINORITY MEMBER

ONE HUNDRED TENTH CONGRESS

Congress of the United States
House of Representatives
COMMITTEE ON THE JUDICIARY
2138 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515–6216
(202) 225–3951
http://www.house.gov/judiciary

July 10, 2006

President George W. Bush
The White House
1600 Pennsylvania Avenue N.W.
Washington, D.C. 20500

Dear President Bush:

Further to my letter of July 6, 2007, I write to clarify that, since you have not asserted Executive Privilege with respect to the Libby commutation matter, my request is that you simply decline to assert Executive Privilege in response to the committee's request for information, and not that you waive the privilege. The committee does not take a position at this time whether Executive Privilege would apply to this information.

I look forward to hearing from you regarding the committee's request.

Sincerely,

John Conyers, Jr.
Chairman

cc: The Honorable Lamar S. Smith

LETTER FROM FRED FIELDING, WHITE HOUSE COUNSEL, TO THE HONORABLE JOHN CONYERS, JR., A REPRESENTATIVE IN CONGRESS, FROM THE STATE OF MICHIGAN, AND CHAIRMAN, COMMITTEE ON THE JUDICIARY, DATED JULY 11, 2007

THE WHITE HOUSE

WASHINGTON

July 11, 2007

Dear Chairman Conyers:

This responds to your letters dated July 6, 2007 and July 10, 2007 requesting that President Bush provide documents and permit the testimony of aides concerning the President's decision to commute Mr. Libby's sentence.

As you have stated in the past, correctly we believe, "if any matter is abundantly clear by our Constitution, it is that the President has the sole and unitary power to grant clemency," and "the reason that he has the power to grant clemency is that the President is uniquely positioned to consider the law and the facts that apply" in each circumstance. 145 Cong. Rec. H8013 (daily ed. Sept. 9, 1999) (statement of Rep. Conyers).

Former Attorney General Janet Reno expressed that same view in advising President Clinton on the legal basis of his decision to assert executive privilege with respect to internal communications and documents related to his exercise of the President's constitutionally enumerated power to pardon. As Attorney General Reno explained, "Congress' oversight authority does not extend to the process employed in connection with a particular clemency decision, to the materials generated or the discussions that took place as part of that process, or to the advice or views the President received in connection with a clemency decision." And further, "even if the Committee [did have] some oversight role," it is outweighed by the "President's interest in the confidentiality of the deliberations relating to his exercise of this presidential prerogative." Memorandum from Janet Reno, Attorney General, Re: Assertion of Executive Privilege With Respect To Clemency Decision," at 3 (Sept. 16, 1999). Representative Waxman likewise agreed. *See also* "Third Report by the Committee on Government Reform," H.R. Rep. No. 106-488, at 531 (1999) ("The documents being sought by the Committee contained advice and recommendations presented to the President and his advisors. . . . [a]s stated by the Washington Post, 'if executive privilege does not cover the Puerto Rico flap, it does not meaningfully exist.'") (Statement of Rep. Waxman, et al.).

In the context of the Libby clemency, President Bush provided a full explanation of the basis for his commutation decision in the course of issuing that decision last week. There is simply no cause here for permitting a congressional inquiry into the advice and deliberations of presidential staff. As Attorney General Reno advised, Congress lacks oversight authority to review the decisionmaking leading up to a presidential clemency decision. And to allow such an inquiry would chill the complete and candid advice that President Bush, and future Presidents, must be able to rely upon in the course of discharging their constitutional responsibilities. *See, e.g.*, *In re Sealed Case*, 121 F.3d 729, 743 (D.C. Cir. 1997) ("A President and those who assist him must be free to explore alternatives in the process of shaping policies and making decisions and to do so in a way many would be unwilling to express except privately.").

Accordingly, we respectfully must decline your request that the President provide documents and testimony relating to the commutation decision, and trust that the Committee appreciates the basis for this decision.

Sincerely, yours,

Fred F. Fielding
Counsel to the President

The Honorable John Conyers, Jr.
United States House of Representatives
Washington, D.C. 20515

cc: The Honorable Lamar S. Smith

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