

**MINORITY VIEWS
REPORT ON "JUSTICE UNDONE:
CLEMENCY DECISIONS IN THE CLINTON WHITE HOUSE"**

On his last day in office, President Clinton issued 140 pardons and 36 commutations. Several were controversial, particularly the pardon of Marc Rich, and prompted criticism from across the political spectrum. Some of the most vocal critics were those who had been strong supporters and often defenders of President Clinton. For example, Sen. Charles Schumer said, "There can be no justification in pardoning a fugitive from justice. Pardoning a fugitive stands our justice system on its head and makes a mockery of it."¹ Rep. Barney Frank likewise said, "It was a real betrayal by Bill Clinton of all who had been strongly supportive of him to do something this unjustified. It was contemptuous."²

These sentiments were echoed by the Democratic members of this Committee. Rep. Henry Waxman said, "The Rich pardon is bad precedent. It appears to set a double standard for the wealthy and powerful. And it is an end run around the judicial process."³ At a Committee hearing on the Marc Rich pardon, Rep. Elijah Cummings expressed the view of many members when he said:

It's one thing to go to trial. It's one thing to stay here and face the music. It's one thing to be found not guilty. It's a whole other thing, in my opinion, when somebody, because they have the money, can go outside the country and evade the system. I tell you it really concerns me because my constituents have a major problem with that, and I do, too."⁴

Chairman Burton could have chosen to build upon this consensus. He could have conducted a focused and bipartisan inquiry, issued a report that set out the facts for the public, and avoided the partisanship that has hampered this Committee's work over the past five years.⁵ Unfortunately, he chose to do the opposite.

The Committee's investigation continued more than a year after Republican congressional leaders themselves acknowledged it should have ended. In an interview broadcast nationally on

¹*U.S. Attorney: Was Clinton Bribed? Feds Hunting for Link Between Rich Pardon and Campaign Contributions*, Chicago Sun-Times (Feb. 15, 2001).

²E.J. Dionne Jr., *And the Gifts that Keep on Giving*, Washington Post (Feb. 6, 2001).

³House Committee on Government Reform, *Hearings on the Controversial Pardon of International Fugitive Marc Rich*, 37, 107th Cong., 1st Sess. (Feb. 8, and Mar. 1, 2001) (hereinafter "Pardon Hearings, Day One or Day Two").

⁴*Id.* at 164-65.

⁵See Minority Staff Report, House Committee on Government Reform, *Unsubstantiated Allegations of Wrongdoing Involving the Clinton Administration* (March 2001) (Exhibit 1).

March 10, 2001, House Speaker Dennis Hastert said, "I think, probably from my point of view, about all that information [that] is going to come out, has come out" and "I think this is kind of winding down on its own."⁶ Senator Trent Lott, then Majority Leader, expressed similar sentiments, stating: "I'd be inclined to move on."⁷

Rather than wind down the investigation, Chairman Burton chose to expand its scope. What began in January 2001 as an inquiry into the pardon of Marc Rich rapidly multiplied to include dozens of other requests for executive clemency. The majority report states that "the Committee limited its investigation to pardons and commutations where there was no credible explanation for the grant of clemency, and where there was an appearance of impropriety relating to inappropriate access or corruption."⁸ But as reflected in its voluminous report, the majority not only investigated requests for clemency that President Clinton chose to grant, it investigated requests that President Clinton denied.⁹ The majority also devoted great attention to requests for clemency that were pondered but never even submitted to the Justice Department or the White House for consideration.¹⁰ It even examined unsuccessful efforts by Roger Clinton, the President's half-brother, to assist a federal inmate in his petition for parole;¹¹ Roger Clinton's purported role in unsuccessful efforts by the head of an association to obtain the Secretary of Transportation as a speaker for symposium;¹² and Roger Clinton's apparent acceptance of fees to lobby the Administration to ease Cuban travel restrictions.¹³

⁶*Hastert Backs Off Pardon Probe*, Chicago Tribune (Mar. 11, 2001); *see* Letter from Rep. Henry Waxman to Chairman Dan Burton (Mar. 15, 2001) (Exhibit 2).

⁷*Hastert Backs Off Pardon Probe*, Chicago Tribune (Mar. 11, 2001).

⁸Majority Report, Introduction, at 3.

⁹For example, the majority devotes an entire chapter of its report to efforts by Roger Clinton to obtain clemency for others, even though none of the people Roger Clinton recommended for clemency ever received it from President Clinton. *See* Majority Report, Chapter 2, at 1-123.

¹⁰For example, the majority report devotes great attention to allegations that Roger Clinton participated in a scheme to sell a pardon to Garland Lincecum, a petition for whom was apparently never submitted to the Justice Department or White House. *See* Majority Report, Chapter Two, at 67-87. These allegations have been denied by Roger Clinton. *Swindle is Reported to Use the Name of Roger Clinton*, New York Times (June 21, 2001).

¹¹Majority Report, Chapter Two, at 22-64.

¹²*Id.* at 15-22.

¹³*Id.* at 13-15.

As part of this far-flung enterprise, Chairman Burton unilaterally issued 153 subpoenas and requests for documents. Of these, fewer than one-third included requests for records relating to the pardon of Marc Rich. The remainder focused on members of President Clinton's family. Seventy-five related to Roger Clinton, twenty-three related to Hugh Rodham, and eight related to Tony Rodham. In response to these requests for documents, private parties and government agencies produced nearly 25,000 pages of documents.

In the end, the majority's investigation sheds little new light. It is primarily a collection of unsupported and irresponsible statements. The majority report repeatedly suggests that corruption by President Clinton or his Administration may explain the Rich pardon. For example, the majority states that notes of a conversation between President Clinton and former Israeli Prime Minister Ehud Barak "raise[] the possibility that either Barak or Clinton acted on the Rich matter because of some promise of future financial return."¹⁴ And the majority accuses President Clinton of making "false and misleading statements."¹⁵

The majority also makes serious allegations of wrongdoing against other Administration officials. Most notably, the majority accuses Deputy Attorney General Eric Holder of deliberately cutting out other Justice Department officials in an effort to assist with the Rich petition.¹⁶ It suggests, moreover, that Mr. Holder did this because he believed Jack Quinn could help him become Attorney General in a possible Gore Administration.¹⁷

There is a critical difference, however, between bad judgment and the corruption the majority hints at -- but never establishes -- in its report. The Rich pardon is indisputably a case of bad judgment. As wealthy fugitives, Marc Rich and his associate Pincus Green did not deserve the pardons they received from President Clinton. But it is equally evident that the sprawling record assembled by the Committee does not support the allegation that President Clinton or any other Administration official was bribed or otherwise corrupted.

Early in the investigation, former White House Chief of Staff John Podesta, former White House Counsel Beth Nolan, and former Deputy White House Counsel Bruce Lindsey appeared before the Committee to explain the decision-making behind the Rich pardon. Each of these eyewitnesses testified that while they disagreed with the President's decision, they believed that he made a decision based on his evaluation of the merits and had no reason to believe that a quid

¹⁴Majority Report, Executive Summary, at 4.

¹⁵Majority Report, Chapter One, at 159.

¹⁶*Id.* at 114.

¹⁷*Id.* at 115.

pro quo or any other improper consideration influenced his exercise of the pardon power.¹⁸ There is nothing in the record before the Committee that contradicts this testimony.

In reality, what happened was that in the waning hours of the Administration, the process broke down, and President Clinton and other officials exercised poor judgment. Beth Nolan explained that in late 1999 or early 2000, President Clinton told her that he "wanted to exercise the pardon power more than he had in the past, that he felt he hadn't exercised it fully, and he wanted to be sure that we had a process in place to be sure that pardons moved quickly through the process."¹⁹ Ms. Nolan communicated the President's instructions to speed up the review process to the Deputy Attorney General and the Justice Department's Pardon Attorney in several meetings beginning in early 2000.

As Ms. Nolan testified, however, these efforts produced "no movement."²⁰ She testified that by the fall of 2000, the Pardon Attorney had indicated that he would not process any more pardon applications.²¹ But despite this development, President Clinton insisted on exercising his prerogative to receive and consider requests for clemency, even up until his last day in office. Under these circumstances, and working against the clock, the White House and Justice Department officials responsible for assisting the President could not and did not conduct a full and appropriate review of every petition.

The Marc Rich pardon was an outgrowth of this flawed procedure. It was the product of a rushed and one-sided process, and it reflected deeply flawed judgment by the President. It was not, however, the criminal conspiracy that the majority insinuates.

I. UNFOUNDED ALLEGATIONS OF WRONGDOING INVOLVING PRESIDENT CLINTON

Article II, section 2 of the Constitution grants the President "Power to grant reprieves and pardons for offences against the United States, except in cases of impeachment." The Framers of the Constitution intentionally vested the pardon power in one person who would have sole discretion to make decisions and bear full responsibility for the consequences.²² In 1788,

¹⁸*E.g.*, Pardon Hearings, Day Two, at 318, 328, 335, 337.

¹⁹*Id.* at 100.

²⁰*Id.* at 102.

²¹*Id.* at 342.

²²Despite the existence of guidelines on the subject, such as those set out in Title 28 of the Code of Federal Regulations, the clemency power is reserved exclusively to the President under the Constitution. It cannot be constrained by any executive branch regulations or by the

Alexander Hamilton explained why it should be so:

Humanity and good policy conspire to dictate that the benign prerogative of pardoning should be as little as possible fettered or embarrassed. . . . As the sense of responsibility is always strongest in proportion as it undivided, it may be inferred that a single man would be most ready to attend to the force of those motives, which might plead for a mitigation of the rigor of the law, and least apt to yield to considerations, which were calculated to shelter a fit object of its vengeance.²³

As the person entrusted with the pardon power, President Clinton should bear the full responsibility and the brunt of the criticism for disarray in the clemency review process and for his controversial decisions. This criticism has properly been widespread and vociferous. As one commentator noted, President Clinton's "truly remarkable achievement was in creating a consensus against himself with his pardon of March Rich."²⁴

Unfortunately, as with the Committee's past investigations of the Clinton Administration, the majority's report goes too far. The report does not recite facts and draw reasonable conclusions. Instead, the report intersperses suppositions with facts and draws every possible inference against President Clinton, those who assisted him in making clemency decisions, and individuals who advocated clemency for others. Moreover, the report unfairly questions the motives and integrity of individuals, and makes numerous unsubstantiated allegations of wrongdoing.

The following discussion summarizes some of the major allegations involving President Clinton in the majority report and then compares them to the facts in the record before the Committee.

judgments of any of the President's subordinates. Indeed, even the majority acknowledges this point. Majority Report, Introduction, at 4. The clemency power also cannot be constrained by Congress. The Supreme Court has made clear that the power "flows from the Constitution alone, not from any legislative enactments, and that it cannot be modified, abridged, or diminished by the Congress." *Schick v. Reed*, 419 U.S. 256, 268 (1974). For this reason, some observers have questioned the power of Congress even to investigate the President's clemency decisions. For example, Stanley Brand, who served as General Counsel to the House of Representatives from 1976 to 1984, opined that the pardon controversy was not a subject "on which legislation could be had" and was therefore a matter outside the bounds of legitimate congressional inquiry. See Stanley M. Brand, *A Pardon Probe: It's None of Congress's Business*, Washington Post (Feb. 28, 2001).

²³The Federalist No. 74, at 377 (Alexander Hamilton) (Gary Wills ed., 1982).

²⁴E.J. Dionne Jr., *And the Gifts that Keep on Giving*, Washington Post (Feb. 6, 2001).

- ***Allegation: It is possible that President Clinton “acted on the Rich matter because of some promise of future financial return.”²⁵***

The Facts: The majority, interpreting a gap in notes of a conversation between President Clinton and former Israeli Prime Minister Ehud Barak, suggests that President Clinton pardoned Marc Rich on the promise of future financial return, a federal felony. The majority report states:

Barak had met with Rich personally, and told Clinton that the Rich pardon "could be important . . . not just financially, but he helped Mossad on more than one case." Barak's statement raises the possibility that either Barak or Clinton acted on the Rich matter because of some promise of future financial return.²⁶

As the majority report later acknowledges, these typewritten notes specify that there is a gap in the note taking, and the reference may relate to Mr. Rich's past financial support for the State of Israel.²⁷ The majority has not and cannot cite to any evidence that President Clinton acted on the Rich matter because he expected a financial benefit. The majority's innuendo is irresponsible and contradicted by the overwhelming evidence before the Committee.

- ***Allegation: President Clinton “may be attempting to use former Israeli Prime Minister Ehud Barak's interest in the Rich matter as a cover for his own motivations for granting the Rich pardon.”²⁸***

The Facts: President Clinton, in an op-ed published in the *New York Times*, explained that one of the reasons he granted Marc Rich a pardon was because former high-ranking Israeli officials and Jewish community leaders had urged the pardon.²⁹ The majority disputes this explanation and concludes that President Clinton was simply using Prime Minister Barak's interest as pretext. As explanation, the majority states: "An examination of the transcripts of the calls [between President Clinton and Prime Minister Barak] shows that Barak did not make a particularly impassioned plea for Rich."³⁰ The majority offers no other support for its unsubstantiated conclusion.

²⁵Majority Report, Executive Summary, at 4.

²⁶*Id.* at 4.

²⁷Majority Report, Chapter One, at 128.

²⁸*Id.* at 4.

²⁹See William Jefferson Clinton, *My Reasons for the Pardons*, *New York Times* (Feb. 18, 2001).

³⁰Majority Report, Chapter One, at 4.

- ***Allegation: President Clinton has failed to offer a full accounting of his decision to issue the Marc Rich and Pincus Green pardons.***³¹

The Facts: With the possible exception of President Gerald Ford, who personally testified before the House Judiciary Committee about his pardon of Richard Nixon, no President has given a more complete accounting of a clemency decision than has President Clinton on his decision to pardon Marc Rich and Pincus Green.

As the majority notes in its report, President Clinton took the extraordinary step of waiving all executive privilege claims with respect to the testimony of former White House officials.³² He allowed his most senior advisors and lawyers to testify before this Committee, not only with respect to the Rich pardon, but other requests for clemency as well. John Podesta, President Clinton's former Chief of Staff, Beth Nolan, the former Counsel to the President, and Bruce Lindsey, Assistant and Deputy Counsel to the President, all answered detailed questions for more than six and half hours about their deliberative process, confidential internal communications, and personal recommendations to the President.³³ Moreover, President Clinton waived executive privilege and allowed Committee staff to review the raw notes of conversations he had with another head of state, former Prime Minister Ehud Barak. The Committee would never have been able to obtain such detailed information about the clemency decisions without the willing cooperation of President Clinton.³⁴

In addition to making his former staff available for interrogation, President Clinton published a written explanation for his pardons of Marc Rich and Pincus Green.³⁵ He laid out

³¹*Id.* at 6.

³²Majority Report, Introduction, at 13.

³³Pardon Hearings, Day Two, at 279-437.

³⁴Attempting to contrast the explanation offered by President Clinton, the majority cites with approval a "full accounting" published by President Bush to explain his 1992 pardon of Caspar Weinberger and others involved in the Iran-Contra matter. *See* Majority Report, Introduction, at 1. President Bush's explanation, however, does little more than identify Mr. Weinberger as "a true American patriot," note the length of various investigations into the Iran-Contra Affair, and criticize the "criminalization of policy decisions." *See* Proclamation 6518, 57 Fed. Reg. 62145 (Dec. 24, 1992). Unlike President Clinton's published explanation, *see infra* note 35 and accompanying text, President Bush's explanation made no attempt to address the criminal conduct alleged against Mr. Weinberger and gave no substantive explanation as to why he believed a pardon was justified.

³⁵William Jefferson Clinton, *My Reasons for the Pardons*, New York Times (Feb. 18, 2001).

several reasons for the pardons that he understood to be true at the time: (1) He understood that oil companies that had structured transactions like Mr. Rich and Mr. Green had been sued civilly rather than prosecuted criminally; (2) he was told that in 1985, the Energy Department had found in a related case that the manner in which Mr. Rich's companies had accounted for the transactions at issue was proper; (3) two highly regarded tax experts concluded that the companies had adhered to the tax law; (4) the companies had paid approximately \$200 million in fines, penalties, and taxes to resolve the case; (5) in 1989, the Justice Department rejected the use of racketeering statutes in tax cases, such as the case against Mr. Rich and Mr. Green; (6) he understood that the Deputy Attorney General was "neutral, leaning for" the pardons; (7) the case was reviewed and advocated by his former White House Counsel Jack Quinn and three distinguished Republican lawyers: Leonard Garment, William Bradford Reynolds, and Lewis Libby,³⁶ and (8) most importantly, former high-ranking Israeli officials and Jewish community leaders had urged the pardon.³⁷

- ***Allegation: President Clinton's written explanation for the Marc Rich pardon is "rife with false and misleading statements."***³⁸

The Facts: In its report, the majority dismisses President Clinton's explanation, reaching the inflammatory conclusion that "it was rife with false and misleading statements" and left the Committee "wondering what the President's true motivations were."³⁹ While the majority may legitimately question the merit of President Clinton's decision, its report provides no basis for the claim that his explanation was not creditable.

Lawyers not involved in the pardon effort, such as Harvard Law School Professor Alan Dershowitz, supported President Clinton's decision.⁴⁰ In addition, one prominent Bush Administration official who testified before the Committee – Lewis "Scooter" Libby – agreed

³⁶As the majority notes in its report, an initial draft of the statement incorrectly stated that the "applications were reviewed and advocated" by Mr. Garment, Mr. Reynolds, and Mr. Libby. (See Majority Report, Chapter One, at 161). President Clinton's representatives notified the *New York Times* of the mistake, which corrected the piece in most printed editions and published a correction. (See *Editors' Note*, *New York Times* (Feb. 19, 2001).)

³⁷William Jefferson Clinton, *My Reasons for the Pardons*, *New York Times* (Feb. 18, 2001).

³⁸Majority Report, Chapter One, at 159.

³⁹*Id.* at 159, 163.

⁴⁰Letter from Alan M. Dershowitz to Mike Tirone, Producer, *Hardball With Chris Matthews* (Jan. 25, 2001) (Exhibit 3).

with most of the reasons given by President Clinton for the pardons.⁴¹ Mr. Libby represented Marc Rich before his decision to seek a pardon and now serves as Chief of Staff to Vice President Cheney. Testifying after two former federal prosecutors laid out the strength of their case against Mr. Rich, Mr. Libby flatly stated: "I believe that the Southern District of New York misconstrued the facts and the law, and looking at all of the evidence of the defense he had not violated the tax laws."⁴² Mr. Libby testified, moreover, that if he had been asked to pursue a pardon during his representation of Mr. Rich, he could have put together a strong and defensible case for clemency.⁴³

The fact that lawyers like Mr. Libby believe Mr. Rich had a defensible case for a pardon does not make the President's decision right. But it does indicate that it was possible for the President to reach the decision he did without being corrupt or deceptive.

- ***Allegation: President Clinton "encouraged Roger Clinton to capitalize on their relationship."***⁴⁴

The Facts: In its report, the majority states as a "finding of the Committee" that "President Clinton encouraged Roger Clinton to capitalize on their relationship" and that he "instructed Roger Clinton to use his connections to the Administration to gain financial advantage."⁴⁵ The majority makes similar allegations elsewhere in this chapter. For example, it states:

Roger Clinton repeatedly treated his relationship to President Clinton as a commodity to be sold to the highest bidder. . . . Roger Clinton's behavior was unseemly at best, but it is even more troubling that the President himself appears to have instigated and encouraged his behavior.⁴⁶

The majority's sole basis for this finding is a statement made by a lawyer representing former Arkansas State Senator George Locke. The majority apparently heard this statement from the lawyer, who had purportedly heard it from Mr. Locke. Mr. Locke had purportedly heard it

⁴¹Pardon Hearings, Day 2, at 477-78.

⁴²*Id.* at 485.

⁴³*Id.* at 522.

⁴⁴Majority Report, Chapter Two, at 1.

⁴⁵*Id.*

⁴⁶*Id.* at 8.

from Roger Clinton. Roger Clinton, in turn, had purportedly heard it from President Clinton.⁴⁷ Mr. Locke, on whose credibility the majority primarily relies, had been convicted of cocaine-related charges and served time in prison with Roger Clinton. The unreliability of this triple hearsay should be self-evident.

The majority devotes 120 pages to Roger Clinton's apparent efforts to influence various decisions by the President and other executive branch officials. It is telling that the evidence before the Committee shows that he failed in each and every instance to obtain the result that he sought.

II. UNFOUNDED ALLEGATIONS OF WRONGDOING INVOLVING OTHERS

President Clinton is not the only individual who is the target of unsubstantiated allegations in the majority report. The following discussion addresses unsubstantiated allegations involving other individuals.

- ***Allegation: Deputy Attorney General Eric Holder deliberately assisted Jack Quinn with the Rich petition,⁴⁸ worked with Jack Quinn to cut the Justice Department out of the process,⁴⁹ and probably did so out of a desire to become Attorney General in a possible Gore Administration.⁵⁰***

The Facts: Deputy Attorney General Eric Holder gave ambiguously worded and ill-considered advice to the White House on the Rich pardon petition without knowing all of the facts and without involving others in the Justice Department. Contrary to the majority's assertions, however, Mr. Holder was never in league with advocates seeking a pardon for Marc Rich and never sought to help them "circumvent" the Justice Department. Moreover, the majority's suggestion that Mr. Holder acted out of a desire to become Attorney General is implausible.⁵¹

The majority repeatedly exaggerates evidence received by the Committee in an attempt to

⁴⁷*Id.* at 1, 10.

⁴⁸Majority Report, Chapter One, at 114.

⁴⁹Majority Report, Executive Summary, at 5.

⁵⁰Majority Report, Chapter One, at 115.

⁵¹The majority also contends that Jack Quinn "circumvented" the Justice Department by limiting his contact on the pardon petition to Eric Holder. This makes no sense, as Mr. Holder served as Deputy Attorney General, the Justice Department official second in rank only to the Attorney General.

show a conspiracy between Mr. Holder and Mr. Quinn. For example, the majority suggests that Mr. Holder purposefully steered Marc Rich to Jack Quinn. According to the majority report:

Quinn was hired after a recommendation from Deputy Attorney General Eric Holder. Gershon Kekst, who worked for Marc Rich on the pardon matter, asked Holder for a recommendation of how to settle a criminal matter with the Justice Department. Holder recommended that he hire a Washington lawyer "who knows the process, he comes to me, and we work it out." Holder then explicitly recommended the hiring of Jack Quinn.⁵²

To reach the conclusion that Mr. Holder "recommended" Mr. Quinn to Mr. Kekst, the majority ascribes great significance to a chance social encounter in late 1998 between Mr. Holder and Mr. Kekst, who had never before met. According to Mr. Kekst, he found himself seated next to Mr. Holder at a large corporate event. After Mr. Holder indicated that he "worked at Main Justice," Mr. Kekst recalled asking him general questions about the system of accountability at the Department of Justice and, in particular, to whom U.S. Attorneys were responsible. Mr. Holder apparently responded that they were accountable to him; that was his job. He recalls asking Mr. Holder what a person would do if he believed he was the victim of an overzealous prosecutor. Mr. Kekst said that Mr. Holder suggested hiring a lawyer in Washington, D.C., who knows the process. He recalled that Mr. Holder then spotted Jack Quinn and said words to the effect of, "There is Jack Quinn, someone like that." According to Mr. Kekst, Marc Rich's name never came up in the conversation.⁵³

The majority also exaggerates the significance of Mr. Holder's attempt to facilitate a meeting between prosecutors in the Southern District of New York and lawyers representing Mr. Rich. The majority writes that "Holder had worked with Quinn during the previous year to try to force the Southern District of New York to sit down and meet with Quinn about settling the charges against Rich."⁵⁴ The majority goes on to say that "Holder had a basically sympathetic view of the Rich case."⁵⁵ In his hearing testimony, Mr. Holder acknowledged receiving the

⁵²Majority Report, Executive Summary, at 2-3. In its report, the majority attributes the following statement to Mr. Holder as though it was a direct quote: "Holder told Kekst that such a person should 'hire a lawyer who knows the process, he comes to me, and we work it out.'" Majority Report, Chapter One, at 37. The minority staff notes of Mr. Kekst's interview do not reflect any mention of the words, "he comes to me, and we work it out." Even if Mr. Kekst did use those or similar words to describe Mr. Holder's statement, his recollection is more than two years old, and he certainly did not purport to remember Mr. Holder's exact words.

⁵³Joint Interview of Gershon Kekst (March 15, 2001).

⁵⁴Majority Report, Chapter One, at 109.

⁵⁵*Id.* at 110.

request from Mr. Quinn and asking a career Justice Department official on his staff to look into the matter. He explained that the prosecutors in New York declined the meeting and said that neither he nor anyone on his staff ever pressed them to have the meeting.⁵⁶ Mr. Holder further stated:

We simply deferred to them [the Southern District of New York prosecutors] because it was their case. In candor, if I were making the decision as the U.S. Attorney, I probably would have held a meeting. In my view, the government – and the cause of justice – often gains from hearing about the flaws, real or imagined, cited by defense counsel in a criminal case. But my only goal was to ensure that the request was fully considered.⁵⁷

The majority has no evidence to support its assertion that Mr. Holder "tried to force" prosecutors to meet with Mr. Quinn or was sympathetic to anything other than Mr. Quinn's effort to set up a meeting with the prosecutors.

The evidence before the Committee also does not prove the majority's accusation that Mr. Holder worked with Mr. Quinn to cut other Justice Department officials out of the pardon review process. In retrospect, it is clear that Mr. Holder should have done more to include other Justice Department officials in the review process. Indeed, Mr. Holder conceded as much during his testimony.⁵⁸ This mistake in judgment is not evidence of misconduct.

The majority points to a November 18, 2001, e-mail message as proof of a conspiracy between Mr. Holder and Mr. Quinn. The subject line of the message reads, "eric."⁵⁹ The text of the message reads: "spoke to him last evening. he says go straight to wh. also says timing is good. we shd get in soon. will elab when we speak."⁶⁰ Neither Mr. Quinn nor Mr. Holder testified about this message, however. Indeed, as the majority itself acknowledges, it is unclear that "eric" even refers to Eric Holder.⁶¹

Assuming the e-mail accurately reflects the words of Mr. Holder, it shows that he advised Mr. Quinn to submit the pardon petition directly to the White House. But this is not proof of

⁵⁶Pardon Hearings, Day One, at 193.

⁵⁷*Id.*

⁵⁸*See id.* at 192.

⁵⁹Majority Report, Chapter One, at 114; Majority Exhibit 146.

⁶⁰E-mail from Jack Quinn to Kathleen Behan, Arnold & Porter, et al. (Nov. 18, 2000) (Majority Exhibit 146).

⁶¹*See* Majority Report, Chapter One, at 114.

wrongdoing. As Beth Nolan testified, the Pardon Attorney in the Justice Department had indicated by then that he would not process any more pardon applications,⁶² while the President was continuing to accept clemency applications at the White House.⁶³ Advising Mr. Quinn of these facts is not criminal behavior, and it is consistent with Mr. Holder's expectation that Justice Department officials would be consulted even if Mr. Quinn submitted the petition directly to the White House.⁶⁴ It is certainly more plausible than the conspiracy suggested in the majority's report.

Finally, the majority suggests that Mr. Holder helped with the Rich petition out of a desire to be appointed Attorney General in a Gore Administration. The majority report states:

At the time when Holder made the decision to assist Quinn, there was still a realistic possibility of Vice President Gore winning the election. As an influential friend of Vice President Gore, Jack Quinn would be in a key position to assist Holder's chances of becoming Attorney General. While this may not have been Holder's sole motivation in aiding Quinn, it was likely a powerful motivation for Holder.⁶⁵

This speculation is completely implausible. At the time when it was still possible for Al Gore to be President, the most Mr. Holder did was attempt to facilitate a meeting with prosecutors in New York and talk to Mr. Quinn about submitting the pardon petition directly to the White House. He did nothing to support the Rich petition until he gave an opinion to Beth Nolan on January 19, 2001. This was the last full day of the Clinton Administration, and his chances of becoming Attorney General were nil. As the second ranking official in the Justice Department, Mr. Holder could have given powerful support to the Rich petition long before January 19, while the Presidential election was still in doubt. The evidence before the Committee shows that he did nothing of the sort.

⁶²Pardon Hearings, Day Two, at 342.

⁶³*See id.*

⁶⁴Mr. Holder testified that he believed the Justice Department would have an opportunity to review and consider a pardon petition, even if it was submitted directly to the White House. Pardon Hearings, Day One, at 193. The White House Counsel's office consulted frequently with the Justice Department Pardon Attorney, and did so until the end of the Administration. *See, e.g.,* Pardon Hearings, Day Two, at 355. Indeed, toward the end of the Clinton Administration, Mr. Holder asked that the White House Counsel's office keep his office informed whenever it needed information from the Office of the Pardon Attorney so that his office could keep track. Joint Interview of Meredith Cabe, former Associate Counsel to the President (Mar. 16, 2001). This was normal procedure, as the Deputy Attorney General is the designated Justice Department liaison to the White House. *See* U.S. Attorney's Manual § 1-2.102(D).

⁶⁵Majority Report, Chapter One, at 115.

Mr. Holder exercised poor judgment when he told Beth Nolan on January 19 that he was neutral, leaning toward favorable on the Rich petition, if there was a foreign policy benefit to be gained. As he acknowledged, he knew little about the case against Marc Rich.⁶⁶ He was not in a position to give any recommendation on the petition, even if there was a foreign policy benefit. Mr. Holder publicly expressed regret about this, testifying that he wished he had ensured the Justice Department was more fully informed and involved in the pardon process.⁶⁷ He also acknowledged that if he had known everything about the case that he later came to know, he would not have given his opinion.⁶⁸

- ***Allegation: Jack Quinn and other lawyers representing Marc Rich made arguments that were "false and misleading"⁶⁹ and "fraudulent."⁷⁰***

The Facts: The majority repeatedly and inappropriately disparages the lawyers involved in the Rich pardon effort, accusing them of dishonesty and deception. The majority bases such remarks solely on its disagreement with the legal arguments advanced in the Rich pardon petition.

Mr. Quinn and other lawyers representing Mr. Rich were carrying out their duty of zealous advocacy on behalf of their client. The bar rules of the District of Columbia, which govern the professional conduct of lawyers in this jurisdiction, impose an obligation of diligence and zeal within the bounds of the law.⁷¹ This rule provides that "[a] lawyer shall not intentionally -- [f]ail to seek the lawful objectives of a client through reasonably available means" or "prejudice or damage the client during the course of the professional relationship."⁷² A lawyer who fails to adhere to this duty is subject to discipline, including suspension or disbarment from the practice of law.

President Clinton and members of his staff were well aware that Mr. Quinn was acting as an advocate. Bruce Lindsey even told President Clinton that "he should consider Mr. Quinn in

⁶⁶*Id.* at 192.

⁶⁷Pardon Hearings, Day One, at 192.

⁶⁸*Id.* at 194-95, 233.

⁶⁹Majority Report, Chapter One, at 34.

⁷⁰*Id.* at 113.

⁷¹District of Columbia Rule of Professional Responsibility 1.3.

⁷²*Id.*

this to be an advocate on one side and not his advisor, and that Jack had a client."⁷³ In keeping with his professional responsibilities as a lawyer, Mr. Quinn had an obligation not only to advocate the pardon, but to do so in a manner that would not prejudice his client's interests. He had no obligation to point out the weaknesses in Mr. Rich's case. The responsibility to marshal the full array of facts and arguments against the petition belonged to the government officials involved in the decisional process.

It is revealing to contrast the majority's treatment of Mr. Quinn, who is a Democratic lawyer, with its treatment of Scooter Libby, a Republican lawyer who also represented Mr. Rich. The majority castigates Mr. Quinn for his representation of Mr. Rich and contends that he made fraudulent arguments.⁷⁴ Mr. Libby is hardly mentioned, and the majority takes great pains to point out that he didn't work on the pardon effort.⁷⁵ But in fact, Mr. Libby represented Mr. Rich far longer than did Mr. Quinn, and he instructed Mr. Quinn on the facts of the case and on controversial arguments later used in the Rich pardon petition.⁷⁶ Moreover, Mr. Libby chose to represent Mr. Rich – and to accept enormous legal fees from him – despite his personal conviction that he was a traitor to the United States.⁷⁷

- ***Allegation: When Jack Quinn filed the Marc Rich petition with the White House and contacted White House staff regarding the pardon, he violated ethical rules set out in Executive Order 12834.***⁷⁸

The Facts: The majority contends that Mr. Quinn violated Executive Order 12834, which prohibits, for a period of five years, a former executive branch employee from lobbying his or her former agency (including the Executive Office of the President). The majority asserts that because Mr. Quinn left the White House in February 1997, his contacts with respect to the Marc Rich pardon were prohibited by the order.

Although the executive order arguably should extend to contacts related to executive clemency, it is not clear that it does so. In fact, Chairman Burton indicated that the Committee was exploring legislation to close the "loophole" in the executive order.⁷⁹

⁷³Pardon Hearings, Day Two, at 145.

⁷⁴See, e.g., Majority Report, Chapter One, at 113.

⁷⁵See *id.* at 33.

⁷⁶See Pardon Hearings, Day One, at 123.

⁷⁷Pardon Hearings, Day Two, at 491.

⁷⁸Majority Report, Chapter One, at 117.

⁷⁹House Committee on Government Reform, Committee Meeting (Mar. 14, 2002).

The executive order identifies six exceptions to the proscribed lobbying activity. The second exception expressly allows "communicating or appearing with regard to a judicial proceeding."⁸⁰ The majority contends that because the clemency power is wielded by the executive, not the legislative branch, it cannot be a judicial proceeding. The majority's interpretation, however, is not supported by the language of the executive order. To fall within the ambit of the exception, Mr. Quinn's efforts needed to be "with regard to" a judicial proceeding.⁸¹ The criminal case pending against Mr. Rich in New York arguably constituted such a judicial proceeding. The President's decision to grant Mr. Rich a pardon resolved the criminal indictment and ended that proceeding. Mr. Quinn's contacts with the White House appear to fall within the exception and to be permissible.

The majority also asserts that its conclusion is supported by the opinion of a U.S. District Court judge, who found that Mr. Quinn acted as a lobbyist and was not hired because he was a lawyer.⁸² The court's opinion in that case, however, related to the attorney-client privilege and work product doctrine, and it did not address the scope of lobbying as it is defined in the executive order. It does not support the majority's contention that Mr. Quinn violated the ethics ban.

As the majority notes in its report, White House Counsel Beth Nolan raised the issue of the executive order with Mr. Quinn.⁸³ Ms. Nolan appropriately asked an associate counsel on her staff to look independently at the question. The associate counsel concurred with Mr. Quinn's interpretation of the rule and concluded that his work was permissible.⁸⁴

- ***Allegation: It is likely that Jack Quinn attempted to mislead the public and the Committee when he claimed that he did not expect to be paid for his work on the Rich pardon.***⁸⁵

The Facts: The majority mischaracterizes Jack Quinn's testimony in an effort to show that he lied to the Committee about his compensation from Marc Rich. For example, the

⁸⁰Exec. Order 12834, 58 Fed. Reg. 5,911 (1993).

⁸¹The word "regard" is commonly defined as "to refer or relate to; concern." *See* Random House Webster's College Dictionary, 1094 (2nd ed. 1997); American Heritage College Dictionary, 1149 (3rd ed. 1997).

⁸²Majority Report, Chapter One, at 119 (citing *In re Grand Jury Subpoenas*, No. M11-189 DC (S.D.N.Y. 2001).)

⁸³Majority Report, Chapter One, at 117.

⁸⁴Pardon Hearings, Day Two, at 324.

⁸⁵Majority Report, Chapter One, at 45.

majority states: "Quinn has taken the incredible position that he did not expect to be paid for any of his work on the Rich case after he left Arnold & Porter" and "[i]t is impossible to believe that Jack Quinn did his work on the Rich pardon out of the goodness of his heart, on a pro bono basis."⁸⁶ Mr. Quinn never said that he did not expect to be paid for any of his work on the Rich case after he left Arnold & Porter, or that he was working on a pro bono basis. Rather, he said that he discussed the matter with Robert Fink, another lawyer for Marc Rich, and came to the conclusion that he would not be paid additional fees for his work to obtain a pardon. As the majority notes in its own report, Mr. Quinn testified:

After leaving Arnold & Porter, I did consider and discuss with Mr. Fink whether we should have a new arrangement. I came to the conclusion that, particularly because of the fact that we were unsuccessful in achieving a resolution of this at the Southern District, and because I didn't think, frankly, there would be that much more additional time in it, and because I believed that the earlier payments had been fair and reasonable, that I would see this through to the end simply on the basis of the fees we had been paid.⁸⁷

In his testimony, Mr. Quinn further said that he had not accepted payments after leaving Arnold & Porter for his work to obtain a pardon, nor would he accept any such payments in the future.⁸⁸ Mr. Quinn said, however, that he would accept payment from Mr. Rich to reimburse him for expenses he incurred in connection with the pardon controversy.⁸⁹ And he said that he would accept additional fees for services other than for his efforts to win Marc Rich a pardon. He testified:

Well, look, I don't think it would be fair to ask me to commit never to accept moneys from him. As I've said to you, if I do work that justifies my billing him for it, I will do so. I expect to be reimbursed for the expenses I'm put to in connection this. Those are the only moneys I anticipate receiving from him.⁹⁰

The majority claims that the testimony of Mr. Fink contradicts Mr. Quinn. As the majority notes in its report, Mr. Fink testified that he believed Mr. Rich and Mr. Quinn would come to a fair fee arrangement that was consistent with his normal fee arrangements and

⁸⁶Majority Report, Chapter One, at 39-40.

⁸⁷Pardon Hearings, Day One, at 242.

⁸⁸*Id.* at 242, 266.

⁸⁹*Id.* at 266.

⁹⁰*Id.*

communicated that to Mr. Quinn in November 2000.⁹¹ It does not appear from any of the evidence before the Committee, however, that Mr. Quinn ever concluded an agreement on fees for the pardon effort. Mr. Quinn could have concluded that he would not receive any additional fees for that work.

The Committee has no evidence that Mr. Quinn accepted additional fees from Mr. Rich for his efforts to obtain a pardon. Mr. Quinn made no promise that he would not accept fees for work separate from his efforts to obtain a pardon or to reimburse him for expenses he incurred in connection with the pardon scandal. The Committee has no basis upon which to conclude that Mr. Quinn misled the Committee.

- ***Allegation: Denise Rich's and Beth Dozoretz's contributions, efforts to help with the Marc Rich pardon, and their decision to invoke their Fifth Amendment privilege against self incrimination raise "the indelible appearance of impropriety."***⁹²

The Facts: In its report, the majority acknowledges that it was unable to substantiate the allegation that Denise Rich or Beth Dozoretz improperly or illegally influenced President Clinton's decision to grant a pardon to Marc Rich. The majority nevertheless states that their actions create "the indelible appearance of impropriety."⁹³ The majority bases this conclusion on the political contributions of Ms. Rich and Ms. Dozoretz, their lawful efforts to assist with the Marc Rich pardon effort, and their decision to invoke their constitutional right against self-incrimination before this Committee.

The testimony of Ms. Rich and Ms. Dozoretz would have helped the Committee determine the truth, and their decision to assert their Fifth Amendment rights was a setback to the Committee's efforts. The majority is wrong, however, to draw adverse inferences about Ms. Rich and Ms. Dozoretz from their assertion of their constitutional privilege. The Supreme Court has repeatedly stated that a witness's assertion of the privilege against self-incrimination does not give rise to an inference of guilt. Calling the privilege "an important advance in the development of our liberty," the Court has explained that "[t]oo many, even those who should be better advised, view this privilege as a shelter for wrongdoers. They too readily assume that those who invoke it are either guilty of a crime or commit perjury in claiming the privilege."⁹⁴

As the majority acknowledges in its own report, the Committee could have compelled Ms. Rich's and Ms. Dozoretz's testimony by conferring a grant of immunity from prosecution.

⁹¹Majority Report, Chapter One, at 44.

⁹²*Id.* at 82, 87.

⁹³*Id.*

⁹⁴*Ullmann v. United States*, 350 U.S. 422, 426 (1956).

The majority elected not to pursue that option. The majority should not seek to establish by innuendo allegations of wrongdoing that it could not establish by the evidence.

- ***Allegation: Marie Ragghianti, the Chief of Staff of the U.S. Parole Commission, hindered an FBI investigation into Roger Clinton's contacts with commissioners and Commission staff and may have been trying to protect Roger Clinton.***⁹⁵

The Facts: The majority report devotes over 40 pages to Roger Clinton's unsuccessful efforts to assist a federal inmate, Rosario Gambino, in an application for parole before the U.S. Parole Commission (USPC).⁹⁶ The majority also discusses Mr. Gambino's unsuccessful application for executive clemency.⁹⁷

As is detailed in the majority report, Roger Clinton contacted commissioners and staff of the USPC numerous times to discuss Mr. Gambino's request for parole. While Roger Clinton's repeated contacts proved to be a nuisance to these officials, the contacts did not violate any law or regulation.⁹⁸ Moreover, U.S. Parole Commission officials were aware of the appearance of improper political influence in its proceedings. Out of an abundance of caution, Commission officials attempted to discontinue further contacts with Roger Clinton.⁹⁹ The USPC even created a policy "restrict[ing] the ability of Commission staff from engaging in any continued series of calls or discussions on official matters that are not in the context of an agency proceeding," which it communicated in writing to Roger Clinton.¹⁰⁰

For reasons that are not entirely clear from the Committee's evidence, the FBI took steps to investigate Roger Clinton's contacts with the USPC. As part of this effort, the FBI proposed a sting operation whereby a Commission employee would set up a meeting with Roger Clinton at a nearby hotel restaurant and introduce Roger Clinton to an FBI agent posing as a USPC official.¹⁰¹ The FBI also apparently proposed that the Commission employee wear a body wire to record the

⁹⁵Majority Report, Chapter Two, at 2, 50.

⁹⁶*Id.* at 22-64.

⁹⁷*Id.* at 64-67.

⁹⁸*See* Joint Interview of Michael Stover (July 17, 2001); *see also* Letter from Elaine J. Mittleman to Chairman Dan Burton (Apr. 3, 2002) (Exhibit 4).

⁹⁹Joint Interview of Michael Stover (July 17, 2001); Joint Interview of Marie Ragghianti (July 27, 2001).

¹⁰⁰Letter from Marie Ragghianti (Oct. 26, 1998) (Exhibit 5); Joint Interview of Michael Stover (July 17, 2001).

¹⁰¹Joint Interview of Marie Ragghianti (July 27, 2001).

conversation with Roger Clinton.¹⁰² Marie Ragghianti, the Chief of Staff of the USPC at the time, was uncomfortable with the proposal and rejected it. Ms. Ragghianti explained that the Commission did not conduct meetings in restaurants, and she said that she thought the FBI's proposed arrangements would be unprofessional and would put the commission in bad light. She explained further that the agency could accommodate the FBI in ways other than the proposed sting and maintain professionalism.

After the Commissioners considered the matter, the USPC did permit the FBI to place a hidden microphone under the desk of a USPC employee, who agreed to meet with Roger Clinton.¹⁰³ According to this employee, Tom Kowalski, the FBI proposed that he ask leading questions to draw out Roger Clinton, but Mr. Kowalski did not feel comfortable with that approach.¹⁰⁴ Mr. Kowalski recalls that he had a half-hour meeting with Roger Clinton, but Mr. Clinton made no incriminating comments.¹⁰⁵ The FBI's investigation then apparently ended.¹⁰⁶

In its report, the majority alleges that Ms. Ragghianti hindered the FBI investigation and may have done so to protect Roger Clinton.¹⁰⁷ But the evidence before the Committee shows only that Ms. Ragghianti exercised her judgment on the appropriateness of a proposed sting operation. Although the majority may disagree with her judgment, there is no evidence that her decision was based on factors other than her evaluation of the interests of the USPC. The majority's suggestion that she acted to protect Roger Clinton is unfair speculation.

- ***Allegation: Hugh Rodham told the White House that First Lady Hillary Rodham Clinton was aware of the clemency petition of Carlos Vignali and that his commutation was "very important to her." Either the First Lady was aware of the petition and approved of Mr. Rodham's lobbying efforts or Hugh Rodham lied regarding the First Lady's knowledge.***¹⁰⁸

The Facts: The majority alleges that Hugh Rodham told the White House that First Lady Hillary Rodham Clinton was aware of his efforts to lobby for clemency for Carlos Vignali and that his commutation was "very important to her." The majority then concludes that because

¹⁰²*Id.*

¹⁰³Joint Interview of Tom Kowalski (July 27, 2001).

¹⁰⁴*Id.*

¹⁰⁵*Id.*

¹⁰⁶*See* Joint Interview of Michael Stover (July 17, 2001).

¹⁰⁷Majority Report, Chapter Two, at 2, 50.

¹⁰⁸Majority Report, Chapter Three, at 4.

both have denied discussing Mr. Vignali's petition, either one or the other lied.¹⁰⁹

The majority bases its contention primarily on one phone message from a former White House staff member. The phone message is an undated, handwritten note on White House stationery that reads:

Hugh says this is very important to him and the First Lady as well as others.

Sheriff Baca from LA is more than happy to speak with you about him but is uncomfortable writing a letter offering his full support.¹¹⁰

Committee staff also conducted a joint interview of the author of the note, Dawn Woolen, who served as an assistant to Bruce Lindsey in the White House. When asked about this note and what Mr. Rodham told her on the phone, Ms. Woolen responded that she had no independent recollection of the conversation and that she usually paraphrased phone messages.¹¹¹ Asked to interpret the meaning of the word "this" in the phrase "this is important," Ms. Woolen speculated that it meant the message concerning the Vignali commutation.¹¹²

The majority sought to interview Mr. Rodham about the issue. But Mr. Rodham's attorney informed the Committee that Mr. Rodham would not testify because Mr. Rodham was constrained from revealing his client's confidences by the bar rules of the District of Columbia.¹¹³ The majority did not seek to interview Senator Clinton.

These fragmentary facts do raise questions about what Mr. Rodham may have said to Ms. Woolen. But they are wholly insufficient to support the definitive conclusions that the majority seeks to draw.

III. CONCLUSION

Despite widespread consensus that the Marc Rich pardon and other last-minute grants of clemency were unjustified, Chairman Burton conducted a far-flung and partisan investigation.

¹⁰⁹*See id.* at 57.

¹¹⁰Handwritten note by Dawn Woolen, Assistant to Deputy Counsel to the President Bruce Lindsey (Majority Exhibit 22).

¹¹¹Joint Interview of Dawn Woolen (Sept. 25, 2001).

¹¹²*Id.*

¹¹³Letter from Nancy Luque to Chairman Dan Burton (Mar. 14, 2002) (attaching District of Columbia Rule of Professional Responsibility 1.6) (Exhibit 6).

The majority report reflects this approach. The report does not recite facts and draw reasonable conclusions. Rather, it mixes facts with suppositions, unfairly questions the motives and integrity of the individuals involved, and makes numerous unsupported allegations of wrongdoing. The Committee's extensive investigation uncovered a clemency process in disarray at the end of the Clinton Administration and poor judgment. The majority's insinuation of corruption and serious wrongdoing in the pardon process, however, is unsubstantiated and wrong.¹¹⁴

¹¹⁴A number of individuals wrote to Chairman Burton to protest the manner in which the majority conducted its investigation and aspects of the majority report. Those which were copied to the minority are attached at Exhibits 4, 6, and 7.