FEDERAL BUREAU OF INVESTIGATION
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Total Deleted Page(s) = 107
Page 5 ~ b5; b6; b7C; b7D;
Page 7 ~ b3; b5; b6; b7C; b7D;
Page 8 ~ b3; b5; b6; b7C; b7D;
Page 9 ~ b3; b5; b6; b7C; b7D;
Page 10 ~ b3; b5; b6; b7C; b7D;
Page 12 ~ b5; b6; b7C; b7D;
Page 15 ~ b5; b6; b7C; b7D;
Page 16 ~ b5; b6; b7C; b7D;
Page 18 ~ b5; b6; b7C; b7D;
Page 19 ~ b5; b6; b7C; b7D;
Page 20 ~ b5; b6; b7C; b7D;
Page 21 ~ b5; b6; b7C; b7D;
Page 22 ~ b5; b6; b7C; b7D;
Page 23 ~ b5; b6; b7C; b7D;
Page 24 ~ b5; b6; b7C; b7D;
Page 25 ~ b5; b6; b7C; b7D;
Page 27 ~ b5; b6; b7C; b7D;
Page 28 ~ b5; b6; b7C; b7D;
Page 29 ~ b5; b6; b7C; b7D;
Page 30 ~ b5; b6; b7C; b7D;
Page 31 ~ b5; b6; b7C; b7D;
Page 32 ~ b5; b6; b7C; b7D;
Page 33 ~ b5; b6; b7C; b7D;
Page 36 ~ b6; b7C; b7D;
Page 37 ~ b6; b7C; b7D;
Page 38 ~ b6; b7C; b7D;
Page 39 ~ b6; b7C; b7D;
Page 40 ~ b6; b7C; b7D;
Page 41 ~ b6; b7C; b7D;
Page 42 ~ b6; b7C; b7D;
Page 43 ~ b6; b7C; b7D;
Page 44 ~ b6; b7C; b7D;
Page 45 ~ b6; b7C; b7D;
Page 46 ~ b6; b7C; b7D;
Page 47 ~ b6; b7C; b7D;
Page 48 ~ b6; b7C; b7D;
Page 49 ~ b6; b7C; b7D;
Page 50 ~ b6; b7C; b7D;
Page 51 ~ b6; b7C; b7D;
Page 54 ~ b5; b6; b7C;
Page 56 ~ b6; b7C; b7D;
Page 57 ~ b6; b7C; b7D;
Page 59 ~ b7D;
Page 60 ~ b7D;
Page 61 ~ b6; b7C; b7D;
Page 62 ~ b6; b7C; b7D;
Page 63 ~ b7D;
Page 64 ~ b7D;
Page 65 ~ b7D;
Page 66 ~ b7D;
Page 67 ~ b7D;
Page 68 ~ b7D;

Page 69 ~ b6; b7C; b7D;
Page 70 ~ b7D;
Page 71 ~ b7D;
Page 73 ~ b5; b6; b7C; b7D;
Page 74 ~ b5; b6; b7C; b7D;
Page 75 ~ b5; b6; b7C; b7D;
Page 76 ~ b5; b6; b7C; b7D;
Page 77 ~ b5; b6; b7C; b7D;
Page 78 ~ b5; b6; b7C; b7D;
Page 79 ~ b5; b6; b7C; b7D;
Page 80 ~ b5; b6; b7C; b7D;
Page 82 ~ b3; b5; b6; b7C; b7D;
Page 83 ~ b3; b5; b6; b7C; b7D;
Page 84 ~ b3; b5; b6; b7C; b7D;
Page 85 ~ b3; b5; b6; b7C; b7D;
Page 86 ~ b3; b5; b6; b7C; b7D;
Page 87 ~ b3; b5; b6; b7C; b7D;
Page 88 ~ b3; b5; b6; b7C; b7D;
Page 89 ~ b3; b5; b6; b7C; b7D;
Page 91 ~ b3; b5; b6; b7C; b7D;
Page 92 ~ b3; b5; b6; b7C; b7D;
Page 93 ~ b3; b5; b6; b7C; b7D;
Page 94 ~ b3; b5; b6; b7C; b7D;
Page 95 ~ b3; b5; b6; b7C; b7D;
Page 96 ~ b3; b5; b6; b7C; b7D;
Page 97 ~ b3; b5; b6; b7C; b7D;
Page 98 ~ b3; b5; b6; b7C; b7D;
Page 99 ~ b3; b5; b6; b7C; b7D;
Page 100 ~ b3; b5; b6; b7C; b7D;
Page 101 ~ b3; b5; b6; b7C; b7D;
Page 102 ~ b3; b5; b6; b7C; b7D;
Page 103 ~ b3; b5; b6; b7C; b7D;
Page 104 ~ b3; b5; b6; b7C; b7D;
Page 105 ~ b3; b5; b6; b7C; b7D;
Page 106 ~ b3; b5; b6; b7C; b7D;
Page 107 ~ b3; b5; b6; b7C; b7D;
Page 108 ~ b3; b5; b6; b7C; b7D;
Page 109 ~ b3; b5; b6; b7C; b7D;
Page 110 ~ b3; b5; b6; b7C; b7D;
Page 111 ~ b3; b5; b6; b7C; b7D;
Page 112 ~ b3; b5; b6; b7C; b7D;
Page 113 ~ b3; b5; b6; b7C; b7D;
Page 115 ~ b3; b5; b6; b7C; b7D;
Page 116 ~ b3; b5; b6; b7C; b7D;
Page 117 ~ b3; b5; b6; b7C; b7D;
Page 118 ~ b3; b5; b6; b7C; b7D;
Page 119 ~ b3; b5; b6; b7C; b7D;
Page 120 ~ b3; b5; b6; b7C; b7D;
Page 121 ~ b3; b5; b6; b7C; b7D;
Page 122 ~ b3; b5; b6; b7C; b7D;
Page 123 ~ b3; b5; b6; b7C; b7D;
Page 124 ~ b3; b5; b6; b7C; b7D;
Page 125 ~ b3; b5; b6; b7C; b7D;
Page 126 ~ b3; b5; b6; b7C; b7D;
Page 127 ~ b3; b5; b6; b7C; b7D;

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FD-340a (Rev. 11-12-89)

(Title) Pardon Inv.

(File No.) 58A-NY-278417-1AS

Item	Date Filed	To be returned Yes	No		Disposition
1A18	4/12/01		/	ORIG. notes Re: [redacted] (Tel) 4/12/01	yg
1A19	4/20/01		/	ORIG. notes Re: [redacted] on 4/18/01	yg
1A20	4/25/01		/	ORIGinal notes Re: [redacted] on 4/24/01	yg
1A21	4/26/01		/	ORIG. notes Re: [redacted]	yg
1A22	4/27/01		/	ORIG. notes Re [redacted] on 4/24/01	yg
1A23	5/3/01		/	ORIG. notes Re: [redacted] 4/26/01	yg
1A24	5/3/01		/	Photos of [redacted]	yg
1A25	5/7/01		/	ORIG. notes Re: [redacted] on 4/30/01	yg
1A26	5/9/01		/	Note from [redacted] Rec'd on 4/30/01	yg
1A27	5/9/01		/	fax Rec'd from [redacted]	yg
1A28	5/18/01		/	[redacted] notes on 5/7/01 MA [redacted]	yg
1A29	5/23/01		/	ORIG. notes Re: [redacted] on 5/8/01	yg
1A30	6/7/01		/	ORIG. notes Re. [redacted] 2/21/01	yg
1A31	6/7/01		/	ORIG. notes Re [redacted] 2/25/01	yg
				Do not Add Anymore	
				1A Exhibits See Vol. 2	

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58A-NY-278417-1AS

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FBI — NEW YORK
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FD-340 (Rev. 8-7-97)

Universal Case File Number 58A-NY-278417 -1A18

Field Office Acquiring Evidence NY

Serial # of Originating Document

Date Received 04/12/01

From
(Name of Contributor)

(Address of Contributor)

(City and State)

By [redacted]
(Name of Special Agent)

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To Be Returned ☐ Yes ☑ No
Receipt Given ☐ Yes ☑ No
Grand Jury Material - Disseminate Only Pursuant to Rule 6 (e)
Federal Rules of Criminal Procedure
☐ Yes ☑ No

Title: PARDON INV.
MR, et. al
CFPD - Exec. Br.
OO: NY

Reference:
(Communication Enclosing Material)

Description: ☑ Original notes re interview of
[redacted] (Tel) on 04/12/01

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FD-340 (Rev. 8-7-97)

Universal Case File Number 58A-NY-278417 — 1A19

Field Office Acquiring Evidence New York

Serial # of Originating Document

Date Received 04/18/2001

From
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By [redacted] b6 b7C
(Name of Special Agent)

To Be Returned ☐ Yes ☑ No

Receipt Given ☐ Yes ☑ No

Grand Jury Material - Disseminate Only Pursuant to Rule 6 (e)
Federal Rules of Criminal Procedure
☐ Yes ☑ No

Title: PRES. PARDON
MARC RICH; ET AL.
CFBO- EXEC. BR
OD: NY

Reference:
(Communication Enclosing Material)

Description: ☑ Original notes re interview of
[redacted] on 04/18/01

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FD-340 (Rev. 8-7-97)

Universal Case File Number 58A-NY-278417 -1920

Field Office Acquiring Evidence NY

Serial # of Originating Document

Date Received 04/25/2001

From [redacted]
(Name of Contributor)

(Address of Contributor)

(City and State)

By [redacted]
(Name of Special Agent)

To Be Returned ☐ Yes ☑ No

Receipt Given ☐ Yes ☑ No

Grand Jury Material - Disseminate Only Pursuant to Rule 6 (e)
Federal Rules of Criminal Procedure
☐ Yes ☑ No

Title:
UNSUBS;
MARC RICH, ETAL.
LFPD - EXEC. BR;
OO: NY

Reference:
(Communication Enclosing Material)

Description: ☑ Original notes re interview of
[redacted] on 04/24/01

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FD-340 (Rev. 8-7-97)

Universal Case File Number 58A-NY-278417-
Field Office Acquiring Evidence BF 1A21
Serial # of Originating Document
Date Received

From
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(Address of Contributor)

(City and State)

By SA [redacted] (Name of Special Agent)

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To Be Returned ☐ Yes ☒ No
Receipt Given ☐ Yes ☒ No
Grand Jury Material - Disseminate Only Pursuant to Rule 6 (e)
Federal Rules of Criminal Procedure
☐ Yes ☒ No

Title:

Reference:
(Communication Enclosing Material)

Description: ☒ Original notes re interview of
[redacted]

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NY-278417 1A21

FD-340 (Rev. 8-7-97)

Universal Case File Number 58A-NY-278417 - 1A22

Field Office Acquiring Evidence NY

Serial # of Originating Document

Date Received 04/24/01

From [redacted]
(Name of Contributor)

(Address of Contributor)

(City and State)

By [redacted]
(Name of Special Agent)

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To Be Returned ☐ Yes ☑ No

Receipt Given ☐ Yes ☑ No

Grand Jury Material - Disseminate Only Pursuant to Rule 6 (e)
Federal Rules of Criminal Procedure
☐ Yes ☑ No

Title:
UNSUBS;
PARDON INV.
MR; ET AL;
CFPD- EXEC. BR.
OO: NY

Reference:
(Communication Enclosing Material)

Description: ☑ Original notes re interview of
[redacted] on 04/24/01

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FD-340 (Rev. 8-7-97)

Universal Case File Number 58A-NY-278417-1A23

Field Office Acquiring Evidence New York

Serial # of Originating Document

Date Received 04/26/01

From [redacted]

(Address of Contributor)

(City and State)

By [redacted]
(Name of Special Agent)

To Be Returned ☐ Yes ☑ No

Receipt Given ☐ Yes ☑ No

Grand Jury Material - Disseminate Only Pursuant to Rule 6 (e)
Federal Rules of Criminal Procedure
☐ Yes ☑ No

Title: RICH Pardon
CFPD - Exec. Br.
OO: NY

Reference:
(Communication Enclosing Material)

Description: ☑ Original notes re interview of
[redacted] on 04/26/01

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b7D

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b7C
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FD-340 (Rev. 8-7-97)

Universal Case File Number 58A-NY-278417 - 1A24

Field Office Acquiring Evidence New York

Serial # of Originating Document

Date Received 04/30/01

From [redacted]
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(City and State)

By [redacted]
(Name of Special Agent)

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To Be Returned ☐ Yes ☑ No

Receipt Given ☐ Yes ☑ No

Grand Jury Material - Disseminate Only Pursuant to Rule 6 (e) Federal Rules of Criminal Procedure

☐ Yes ☑ No

Title: RICH PARDON
CFPD - EXEC. BR
OO: NY

Reference:
(Communication Enclosing Material)

Description: ☐ Original notes re interview of

Photographs of [redacted]

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NY-278417 1A24

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FD-340 (Rev. 8-7-97)

Universal Case File Number 58A-NY-278417-1A25

Field Office Acquiring Evidence

Serial # of Originating Document

Date Received 04/30/01

From [redacted]

(Name of Contributor)

(Address of Contributor)

(City and State)

By [redacted]

(Name of Special Agent)

To Be Returned ☐ Yes ☑ No

Receipt Given ☐ Yes ☑ No

Grand Jury Material - Disseminate Only Pursuant to Rule 6 (e)

Federal Rules of Criminal Procedure

☐ Yes ☑ No

Title: PARDON INVESTIGATION
MARC RICH, ET AL.
CFPO - EXEC
OO: NY

Reference:

(Communication Enclosing Material)

Description: ☑ Original notes re interview of

[redacted] on 04/30/01

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NY -278417 1A25

FD-340 (Rev. 8-7-97)

Universal Case File Number 58A-NY-278417-1A 26

Field Office Acquiring Evidence New York

Serial # of Originating Document

Date Received 04/30/01

From [redacted]

(Name of Contributor)

(Address of Contributor)

(City and State)

By [redacted]

(Name of Special Agent)

To Be Returned ☐ Yes ☑ No

Receipt Given ☐ Yes ☑ No

Grand Jury Material - Disseminate Only Pursuant to Rule 6 (e)

Federal Rules of Criminal Procedure

☐ Yes ☑ No

Title:

MARC RICH PARDON

CFRO: EXEC. BR.

OO: NY

Reference:

(Communication Enclosing Material)

Description: ☑ Original notes re interview of

Note from [redacted] New York on 04/30/01

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FD-340 (Rev. 8-7-97)

Universal Case File Number 58A-NY-278417 -1A27

Field Office Acquiring Evidence New York

Serial # of Originating Document

Date Received 05/02/01

From [redacted]
(Name of Contributor)

(Address of Contributor)

(City and State)

By [redacted]
(Name of Special Agent)

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To Be Returned ☐ Yes ☑ No

Receipt Given ☐ Yes ☑ No

Grand Jury Material - Disseminate Only Pursuant to Rule 6 (e)
Federal Rules of Criminal Procedure
☐ Yes ☑ No

Title: MARC RICH PARDON INV.
CFPO - EXEC. BR
OO:NY

Reference:
(Communication Enclosing Material)

Description: ☐ Original notes re interview of

Fax received from [redacted]

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FD-340 (Rev. 8-7-97)

Universal Case File Number 58A-NY-278417 — 1A28

Field Office Acquiring Evidence New York

Serial # of Originating Document

Date Received 05/07/01

From [redacted]
(Name of Contributor)

(Address of Contributor)

(City and State)

By [redacted]
(Name of Special Agent)

b5
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To Be Returned ☐ Yes ☑ No

Receipt Given ☐ Yes ☑ No

Grand Jury Material - Disseminate Only Pursuant to Rule 6 (e)
Federal Rules of Criminal Procedure
☐ Yes ☑ No

Title: PARDON INVESTIGATION
MARC RICH, ET AL.)
CFPO - EXEC. BR.;
OO: NY

Reference:
(Communication Enclosing Material)

Description: ☑ Original notes re interview of [redacted] on 05/07/01 @ [redacted]

b5
b6
b7C
b7D

FD-340 (Rev. 8-7-97)

Universal Case File Number 58A-NY-278417 - 1A29

Field Office Acquiring Evidence New York

Serial # of Originating Document

Date Received 05/03/01

From [redacted]
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(City and State)

By [redacted]
(Name of Special Agent)

b3
b5
b6
b7C
b7D

To Be Returned ☐ Yes ☑ No

Receipt Given ☐ Yes ☑ No

Grand Jury Material - Disseminate Only Pursuant to Rule 6 (e)
Federal Rules of Criminal Procedure
☐ Yes ☑ No

Title: UNSUB(S);
WJC - Former U.S. President
MARC RICH; et al.
CFPO - Exec. Br.
OO:NY

Reference:
(Communication Enclosing Material)

Description: ☑ Original notes re interview of
[redacted] on 05/03/01

b3
b5
b6
b7C
b7D

FD-340 (Rev. 8-7-97)

Universal Case File Number 58A NY 278417 —1A30

Field Office Acquiring Evidence NY

Serial # of Originating Document

Date Received

From
(Name of Contributor)

(Address of Contributor)

(City and State)

By [redacted]
(Name of Special Agent)

b6
b7C

To Be Returned ☐ Yes ☒ No

Receipt Given ☐ Yes ☒ No

Grand Jury Material - Disseminate Only Pursuant to Rule 6 (e)
Federal Rules of Criminal Procedure
☒ Yes ☐ No

Title:
William J Clinton, etal;
CFPO-Local
OO: NY

Reference:
(Communication Enclosing Material)

Description: ☐ Original notes re interview of
[redacted] 2/21/01

b3
b5
b6
b7C
b7D

58A NY 278417 - 1A

1

SEARCHED ___ INDEXED ___
SERIALIZED ___ FILED ___
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FD-340 (Rev. 8-7-97)

Universal Case File Number 58A NY-278417 — 1A81

Field Office Acquiring Evidence NY

Serial # of Originating Document

Date Received [redacted]

From [redacted]
(Name of Contributor)

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b7C

To Be Returned ☐ Yes ☒ No

Receipt Given ☐ Yes ☒ No

Grand Jury Material - Disseminate Only Pursuant to Rule 6 (e)
Federal Rules of Criminal Procedure
☒ Yes ☐ No

Title:

William J Clinton; et al.;
CFPO- Executive Branch
OO:NY

Reference:
(Communication Enclosing Material)

Description: ☒ Original notes re interview of
[redacted]
2/25/01

b3
b5
b6
b7C
b7D

58A-NY 278417-1A

SEARCHED ____ INDEXED ____
SERIALIZED ____ FILED ____
JUN 04 2001
FBI — NEW YORK

FEDERAL BUREAU OF INVESTIGATION
FOI/PA
DELETED PAGE INFORMATION SHEET
FOI/PA# 1256617-0

Total Deleted Page(s) = 122
Page 6 ~ b3; b5; b6; b7C; b7D;
Page 7 ~ b3; b5; b6; b7C; b7D;
Page 8 ~ b3; b5; b6; b7C; b7D;
Page 10 ~ b3; b5; b6; b7C; b7D;
Page 11 ~ b3; b5; b6; b7C; b7D;
Page 12 ~ b3; b5; b6; b7C; b7D;
Page 13 ~ b3; b5; b6; b7C; b7D;
Page 14 ~ b3; b5; b6; b7C; b7D;
Page 15 ~ b3; b5; b6; b7C; b7D;
Page 16 ~ b3; b5; b6; b7C; b7D;
Page 17 ~ b3; b5; b6; b7C; b7D;
Page 18 ~ b3; b5; b6; b7C; b7D;
Page 19 ~ b3; b5; b6; b7C; b7D;
Page 20 ~ b3; b5; b6; b7C; b7D;
Page 21 ~ b3; b5; b6; b7C; b7D;
Page 22 ~ b3; b5; b6; b7C; b7D;
Page 23 ~ b3; b5; b6; b7C; b7D;
Page 24 ~ b3; b5; b6; b7C; b7D;
Page 25 ~ b3; b5; b6; b7C; b7D;
Page 26 ~ b3; b5; b6; b7C; b7D;
Page 27 ~ b3; b5; b6; b7C; b7D;
Page 28 ~ b3; b5; b6; b7C; b7D;
Page 29 ~ b3; b5; b6; b7C; b7D;
Page 30 ~ b3; b5; b6; b7C; b7D;
Page 31 ~ b3; b5; b6; b7C; b7D;
Page 33 ~ b3; b5; b6; b7C; b7D;
Page 34 ~ b3; b5; b6; b7C; b7D;
Page 35 ~ b3; b5; b6; b7C; b7D;
Page 36 ~ b3; b5; b6; b7C; b7D;
Page 38 ~ b3; b5; b6; b7C; b7D;
Page 39 ~ b3; b5; b6; b7C; b7D;
Page 40 ~ b3; b5; b6; b7C; b7D;
Page 41 ~ b3; b5; b6; b7C; b7D;
Page 42 ~ b3; b5; b6; b7C; b7D;
Page 43 ~ b3; b5; b6; b7C; b7D;
Page 44 ~ b3; b5; b6; b7C; b7D;
Page 46 ~ b3; b5; b6; b7C; b7D;
Page 47 ~ b3; b5; b6; b7C; b7D;
Page 48 ~ b3; b5; b6; b7C; b7D;
Page 49 ~ b3; b5; b6; b7C; b7D;
Page 50 ~ b3; b5; b6; b7C; b7D;
Page 51 ~ b3; b5; b6; b7C; b7D;
Page 52 ~ b3; b5; b6; b7C; b7D;
Page 53 ~ b3; b5; b6; b7C; b7D;
Page 54 ~ b3; b5; b6; b7C; b7D;
Page 55 ~ b3; b5; b6; b7C; b7D;
Page 56 ~ b3; b5; b6; b7C; b7D;
Page 57 ~ b3; b5; b6; b7C; b7D;
Page 58 ~ b3; b5; b6; b7C; b7D;
Page 59 ~ b3; b5; b6; b7C; b7D;
Page 61 ~ b3; b5; b6; b7C; b7D;
Page 62 ~ b3; b5; b6; b7C; b7D;

Page 63 ~ b3; b5; b6; b7C; b7D;
Page 64 ~ b3; b5; b6; b7C; b7D;
Page 65 ~ b3; b5; b6; b7C; b7D;
Page 66 ~ b3; b5; b6; b7C; b7D;
Page 67 ~ b3; b5; b6; b7C; b7D;
Page 68 ~ b3; b5; b6; b7C; b7D;
Page 69 ~ b3; b5; b6; b7C; b7D;
Page 71 ~ b3; b5; b6; b7C; b7D;
Page 72 ~ b3; b5; b6; b7C; b7D;
Page 73 ~ b3; b5; b6; b7C; b7D;
Page 74 ~ b3; b5; b6; b7C; b7D;
Page 75 ~ b3; b5; b6; b7C; b7D;
Page 76 ~ b3; b5; b6; b7C; b7D;
Page 77 ~ b3; b5; b6; b7C; b7D;
Page 78 ~ b3; b5; b6; b7C; b7D;
Page 80 ~ b3; b5; b6; b7C; b7D;
Page 81 ~ b3; b5; b6; b7C; b7D;
Page 82 ~ b3; b5; b6; b7C; b7D;
Page 83 ~ b3; b5; b6; b7C; b7D;
Page 84 ~ b3; b5; b6; b7C; b7D;
Page 85 ~ b3; b5; b6; b7C; b7D;
Page 86 ~ b3; b5; b6; b7C; b7D;
Page 87 ~ b3; b5; b6; b7C; b7D;
Page 88 ~ b3; b5; b6; b7C; b7D;
Page 89 ~ b3; b5; b6; b7C; b7D;
Page 90 ~ b3; b5; b6; b7C; b7D;
Page 92 ~ b3; b5; b6; b7C; b7D;
Page 93 ~ b3; b5; b6; b7C; b7D;
Page 94 ~ b3; b5; b6; b7C; b7D;
Page 95 ~ b3; b5; b6; b7C; b7D;
Page 97 ~ b3; b5; b6; b7C; b7D;
Page 98 ~ b3; b5; b6; b7C; b7D;
Page 99 ~ b3; b5; b6; b7C; b7D;
Page 101 ~ b3; b5; b6; b7C; b7D;
Page 102 ~ b3; b5; b6; b7C; b7D;
Page 103 ~ b3; b5; b6; b7C; b7D;
Page 105 ~ b3; b5; b6; b7C; b7D;
Page 106 ~ b3; b5; b6; b7C; b7D;
Page 107 ~ b3; b5; b6; b7C; b7D;
Page 108 ~ b3; b5; b6; b7C; b7D;
Page 109 ~ b3; b5; b6; b7C; b7D;
Page 111 ~ b5; b6; b7C; b7D;
Page 113 ~ b3; b5; b6; b7C; b7D;
Page 115 ~ b6; b7C; b7D;
Page 116 ~ b6; b7C; b7D;
Page 117 ~ b6; b7C; b7D;
Page 118 ~ b6; b7C; b7D;
Page 119 ~ b6; b7C; b7D;
Page 120 ~ b6; b7C; b7D;
Page 121 ~ b6; b7C; b7D;
Page 122 ~ b5; b6; b7C; b7D;
Page 124 ~ b5; b6; b7C; b7D;
Page 125 ~ b5; b6; b7C; b7D;
Page 126 ~ b5; b6; b7C; b7D;
Page 128 ~ b5; b6; b7C; b7D;
Page 129 ~ b5; b6; b7C; b7D;
Page 130 ~ b5; b6; b7C; b7D;
Page 131 ~ b5; b6; b7C; b7D;

Page 132 ~ b5; b6; b7C; b7D;
Page 133 ~ b5; b6; b7C; b7D;
Page 134 ~ b5; b6; b7C; b7D;
Page 135 ~ b5; b6; b7C; b7D;
Page 136 ~ b5; b6; b7C; b7D;
Page 137 ~ b5; b6; b7C; b7D;
Page 138 ~ b5; b6; b7C; b7D;
Page 139 ~ b5; b6; b7C; b7D;
Page 140 ~ b5; b6; b7C; b7D;
Page 141 ~ b5; b6; b7C; b7D;
Page 142 ~ b5; b6; b7C; b7D;
Page 143 ~ b5; b6; b7C; b7D;

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FD-340a (Rev. 11-12-89)

(Title) Clinton Pardons

(File No.) 58A-NY-278417-1AS

Item	Date Filed	To be returned Yes	No		Disposition
1A32	6/7/01		/	ORIG. notes Re: [redacted]	2/28/01 yg
1A33	6/7/01		/	ORIG. notes Re: [redacted]	3/8/01 yg
1A34	6/7/01		/	ORIG. notes Re: [redacted]	3/21/01 yg
1A35	6/7/01		/	ORIG. notes Re: [redacted]	3/27/01 yg
1A36	6/7/01		/	ORIG. notes Re: [redacted]	3/30/01 yg
1A37	6/7/01		/	ORIG. notes Re: [redacted]	4/4/01 yg
1A38	6/7/01		/	ORIG. notes Re: [redacted]	4/10/01 yg
1A39	6/7/01		/	ORIG. notes Re: [redacted]	4/27/01 yg
1A40	6/7/01		/	ORIG. notes Re: [redacted]	5/1/01 yg
1A41	6/11/01		/	ORIG. notes Re: [redacted]	5/15/01 yg
1A42	6/20/01		/	ORIG. notes Re: [redacted]	yg
1A43	7/9/01		/	ORIG. notes Re: [redacted]	yg
1A44	7/17/01		/	ORIG. notes Re: [redacted]	(tel) on 7/17/01 yg
1A45	7/19/01		/	ORIG. notes Re: [redacted]	yg
1A46	8/13/01		/	[redacted] FAXed material on 8/7/01 (Tel) from [redacted]	yg
1A47	8/14/01		/	ORIG. notes Re: [redacted]	yg
1A48	12/4/01		/	ORIG notes Re: [redacted] 11/15/01	yg

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DO NOT ADD ANYMORE 1A Exhibits See Vol. 3

58A-NY-278417-1AS
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FD-340 (Rev. 8-7-97)

Universal Case File Number 58A NY 278417 -1A32

Field Office Acquiring Evidence NY

Serial # of Originating Document ________

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(City and State)

By [redacted]
(Name of Special Agent)

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To Be Returned ☐ Yes ☒ No
Receipt Given ☐ Yes ☒ No
Grand Jury Material - Disseminate Only Pursuant to Rule 6 (e)
Federal Rules of Criminal Procedure
☒ Yes ☐ No

Title: William J Clinton, etal
CFPO- Exec Brand

Reference: ________
(Communication Enclosing Material)

Description: ☒ Original notes re interview of

[redacted] - 2/28/01

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58A NY 278417 -1A

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NY-278417 1A32

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Universal Case File Number 58A NY 278417 — 1A33

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(Name of Special Agent)

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To Be Returned ☐ Yes ☒ No

Receipt Given ☐ Yes ☒ No

Grand Jury Material - Disseminate Only Pursuant to Rule 6 (e)
Federal Rules of Criminal Procedure

☒ Yes ☐ No

Title:

William J Clinton, et al
CFPO - Exec. Branch
OO: NY

Reference:

(Communication Enclosing Material)

Description: ☒ Original notes re interview of [redacted] 3/8/01

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58A NY 278417

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FD-340 (Rev. 8-7-97)

Universal Case File Number 58A-NY-278417 - 1A34

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Serial # of Originating Document NY

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By [redacted]
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To Be Returned: ☐ Yes ☒ No

Receipt Given ☐ Yes ☒ No

Grand Jury Material - Disseminate Only Pursuant to Rule 6 (e)
Federal Rules of Criminal Procedure

☒ Yes ☐ No

Title:

William J Clinton et al;
CFPO- Exec Branch
OO: NY

Reference:
(Communication Enclosing Material)

Description: ☒ Original notes re interview of

[redacted] 2/21/01

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58A-NY-278417-1A

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FD-340 (Rev. 8-7-97)

Universal Case File Number 58A NY 278417 — 1A35

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Serial # of Originating Document

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By [redacted]
(Name of Special Agent)

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To Be Returned ☐ Yes ☒ No
Receipt Given ☐ Yes ☒ No
Grand Jury Material - Disseminate Only Pursuant to Rule 6 (e)
Federal Rules of Criminal Procedure
☒ Yes ☐ No

Title:

William J Clinton, et al;
CFPO Exec Branch

OO:NY

Reference:
(Communication Enclosing Material)

Description: ☒ Original notes re interview of

[redacted] 3/27/01

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58A NY 278417 - 1A

SEARCHED_____ INDEXED_____
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FD-340 (Rev. 8-7-97)

Universal Case File Number 58A NY 278417 - 1A36

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By ______ [redacted] ______
(Name of Special Agent)

To Be Returned ☐ Yes ☒ No
Receipt Given ☐ Yes ☒ No
Grand Jury Material - Disseminate Only Pursuant to Rule 6 (e)
Federal Rules of Criminal Procedure
☒ Yes ☐ No

Title:
William J Clinton, et al
CFDO-Zxcc Branch
OO:NY

Reference: ______
(Communication Enclosing Material)

Description: ☒ Original notes re interview of
[redacted] 3/30/01

58A NY 278417 (1)

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FD-340 (Rev. 8-7-97)

Universal Case File Number 58A NY 278417 - 1A3 T

Field Office Acquiring Evidence NY

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(Address of Contributor)

(City and State)

By [redacted]
(Name of Special Agent)

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To Be Returned ☐ Yes ☒ No

Receipt Given ☐ Yes ☒ No

Grand Jury Material - Disseminate Only Pursuant to Rule 6 (e)
Federal Rules of Criminal Procedure
☒ Yes ☐ No

Title:

William J Clinton; et al.
CFPO - ~~Local~~ Exec. Branch
OO: NY

Reference:
(Communication Enclosing Material)

Description: ☒ Original notes re interview of
[redacted] 4/4/01

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58A NY 278417 - 1A

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FD-340 (Rev. 8-7-97)

Universal Case File Number 58A NY 278417 — 1A38

Field Office Acquiring Evidence NY

Serial # of Originating Document

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(Name of Special Agent)

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To Be Returned ☐ Yes ☒ No
Receipt Given ☐ Yes ☒ No
Grand Jury Material - Disseminate Only Pursuant to Rule 6 (e)
Federal Rules of Criminal Procedure
☒ Yes ☐ No

Title:
William J. Clinton, et al
CFPO - Exec. Brand
OO:NY

Reference:
(Communication Enclosing Material)

Description: ☒ Original notes re interview of [redacted] 4/10/01

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58A NY 278417 - 1A

SEARCHED ____ INDEXED ____
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FD-340 (Rev. 8-7-97)

Universal Case File Number 58A NY 278417 - 1A39

Field Office Acquiring Evidence NY

Serial # of Originating Document

Date Received

From
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(City and State)

By [redacted]
(Name of Special Agent)

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To Be Returned ☐ Yes ☒ No

Receipt Given ☐ Yes ☒ No

Grand Jury Material - Disseminate Only Pursuant to Rule 6 (e)
Federal Rules of Criminal Procedure
☒ Yes ☐ No

Title:

William J Clinton, et al
CFPO - EXEC - BRANCH
OO:M

Reference:
(Communication Enclosing Material)

Description: ☒ Original notes re interview of
[redacted] 4/27/01

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58A NY 278417
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Universal Case File Number 58A NY 278417 - 1A40

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From [redacted]
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By [redacted]
(Name of Special Agent)

To Be Returned ☐ Yes ☒ No
Receipt Given ☐ Yes ☒ No
Grand Jury Material - Disseminate Only Pursuant to Rule 6 (e)
Federal Rules of Criminal Procedure
☒ Yes ☐ No

Title:
William J Clinton, et al
OPR - Exec. Branch

Reference:
(Communication Enclosing Material)

Description: ☒ Original notes re interview of
[redacted] 5/1/0

58A NY 278417 - 1A

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FD-340 (Rev. 8-7-97)

Universal Case File Number 58A-NY-278417 - 1A41

Field Office Acquiring Evidence New York

Serial # of Originating Document

Date Received 05/15/01

From [redacted]

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To Be Returned ☐ Yes ☑ No

Receipt Given ☐ Yes ☑ No

Grand Jury Material - Disseminate Only Pursuant to Rule 6 (e) Federal Rules of Criminal Procedure

☑ Yes ☑ No

Title:

UNSUB(S)

WJC: former U.S. Pres.

MARC RICH; et al

CFPO - Exec Br.

OO: NY

Reference:

(Communication Enclosing Material)

Description: ☑ Original notes re interview of

[redacted] on 05/15/01

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FD-340 (Rev. 8-7-97)

Universal Case File Number 58A-NY-278417 - 1A42

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By [redacted]
(Name of Special Agent)

To Be Returned ☐ Yes ☒ No
Receipt Given ☐ Yes ☒ No
Grand Jury Material - Disseminate Only Pursuant to Rule 6 (e)
Federal Rules of Criminal Procedure
☒ Yes ☐ No

Title:
William J. Clinton et al;
CFPO - Exec. Branch
OO: NY

Reference: ______
(Communication Enclosing Material)

Description: ☒ Original notes re interview of [redacted]

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58A NY 278417 -1A 1

SEARCHED ______ INDEXED ______
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(Rev. 8-7-97)

Universal Case File Number 58A-NY-278417-1A43

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Serial # of Originating Document

Date Received 6/18/01

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(City and State)

By [redacted]
(Name of Special Agent)

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To Be Returned ☐ Yes ☒ No
Receipt Given ☐ Yes ☒ No
Grand Jury Material - Disseminate Only Pursuant to Rule 6 (e)
Federal Rules of Criminal Procedure
☒ Yes ☐ No

Title:

Reference:
(Communication Enclosing Material)

Description: ☒ Original notes re interview of
[redacted]

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b5
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58A NY 278417 - 1A

SEARCHED ______ INDEXED ______
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1A44

Universal Case File Number 58A-NY-278417

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Serial # of Originating Document ____________

Date Received 07/17/01

From [redacted]

(Name of Contributor)

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By [redacted]

(Name of Special Agent)

To Be Returned ☐ Yes ☑ No

Receipt Given ☐ Yes ☑ No

Grand Jury Material - Disseminate Only Pursuant to Rule 6 (e), Federal Rules of Criminal Procedure

☐ Yes ☑ No

Title: UNSUBS
WILLIAM CLINTON
MARC RICH PARDON
CFPD - EXEC. BR.
OO:NY

Reference: ____________

(Communication Enclosing Material)

Description: ☑ Original notes re interview of [redacted] (Tel)
on 07/17/01

b5
b6
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FD-340b (Rev. 2-5-93)

1A45

Universal Case File Number 58A-NY-278417 -

Field Office Acquiring Evidence NY

Serial # of Originating Document

Date Received

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By [redacted]
(Name of Special Agent)

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To Be Returned ☐ Yes ☒ No

Receipt Given ☐ Yes ☒ No

Grand Jury Material - Disseminate Only Pursuant to Rule 6 (e), Federal Rules of Criminal Procedure

☒ Yes ☐ No

Title:

William J Clinton et al :
CEPO- Exec. Branch
OO:NY-

Reference:
(Communication Enclosing Material)

Description: ☐ Original notes re interview of

[redacted]

b3
b5
b6
b7C
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58A-NY-278417-1A

SEARCHED ___ INDEXED ___
SERIALIZED ___ FILED ___
JUL 17 2001
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FD-340b (Rev. 2-5-93)

-1A46

Universal Case File Number 58A-NY-278417

Field Office Acquiring Evidence New York

Serial # of Originating Document ______

Date Received 08/07/01

From [redacted]
(Name of Contributor)

(Address of Contributor)

By [redacted]
(Name of Special Agent)

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To Be Returned ☐ Yes ☑ No

Receipt Given ☐ Yes ☑ No

Grand Jury Material - Disseminate Only Pursuant to Rule 6 (e), Federal Rules of Criminal Procedure

☐ Yes ☑ No

Title: MARC RICH PARDON
CFPD-EXEC; BR.
OO: NY

Reference: ______
(Communication Enclosing Material)

Description: ☑ Original notes re interview of

1 [redacted] on 08/07/01. (Tel)

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FD-340b (Rev. 2-5-93)

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Universal Case File Number 58A NY 278417

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Serial # of Originating Document

Date Received

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By [redacted]

To Be Returned ☐ Yes ☑ No

Receipt Given ☐ Yes ☑ No

Grand Jury Material - Disseminate Only Pursuant to Rule 6 (e), Federal Rules of Criminal Procedure

☐ Yes ☑ No

Title: William J. Clinton
Marc Rich et al;
CFPO Exec-Branch

Reference:

(Communication Enclosing Material)

Description: ☑ Original notes re interview of [redacted]

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b6
b7C
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SEARCHED ____ INDEXED ____
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FD-340 (7-19-00)

Universal Case File Number 58A-NY-278417-1A48

Field Office Acquiring Evidence NY

Serial # of Originating Document

Date Received

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To Be Returned ☐ Yes ☐ No

Receipt Given ☐ ☐ No

Grand Jury Material - Disseminate Only Pursuant to Rule 6 (e)
Federal Rules of Criminal Procedure
☐ Yes ☐ No

Federal Taxpayer Information (FTI)
☐ Yes ☐ No

Title: William J. Clinton, et al
CFPO - Exec. Branch
OI-NY

Reference:
(Communication Enclosing Material)

Description: ☐ Original notes re interview of Notes interview of [redacted] 11/15/01

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58A-NY-278417

SEARCHED INDEXED
SERIALIZED FILED

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17

FEDERAL BUREAU OF INVESTIGATION
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Total Deleted Page(s) = 133
Page 6 ~ b3; b5; b6; b7C; b7D;
Page 7 ~ b3; b5; b6; b7C; b7D;
Page 8 ~ b3; b5; b6; b7C; b7D;
Page 9 ~ b3; b5; b6; b7C; b7D;
Page 10 ~ b3; b5; b6; b7C; b7D;
Page 11 ~ b3; b5; b6; b7C; b7D;
Page 12 ~ b3; b5; b6; b7C; b7D;
Page 13 ~ b3; b5; b6; b7C; b7D;
Page 14 ~ b3; b5; b6; b7C; b7D;
Page 15 ~ b3; b5; b6; b7C; b7D;
Page 16 ~ b3; b6; b7C; b7D;
Page 19 ~ b5; b6; b7C; b7D;
Page 20 ~ b5; b6; b7C; b7D;
Page 21 ~ b5; b6; b7C; b7D;
Page 22 ~ b5; b6; b7C; b7D;
Page 23 ~ b5; b6; b7C; b7D;
Page 24 ~ b5; b6; b7C; b7D;
Page 25 ~ b5; b6; b7C; b7D;
Page 27 ~ b5; b6; b7C; b7D;
Page 28 ~ b5; b6; b7C; b7D;
Page 30 ~ b5; b6; b7C; b7D;
Page 31 ~ b5; b6; b7C; b7D;
Page 32 ~ b5; b6; b7C; b7D;
Page 33 ~ b5; b6; b7C; b7D;
Page 34 ~ b5; b6; b7C; b7D;
Page 35 ~ b5; b6; b7C; b7D;
Page 36 ~ b5; b6; b7C; b7D;
Page 37 ~ b5; b6; b7C; b7D;
Page 38 ~ b5; b6; b7C; b7D;
Page 39 ~ b5; b6; b7C; b7D;
Page 40 ~ b6; b7C; b7D;
Page 42 ~ b5; b6; b7C; b7D;
Page 44 ~ b6; b7C; b7D;
Page 45 ~ b6; b7C; b7D;
Page 46 ~ b6; b7C; b7D;
Page 47 ~ b6; b7C; b7D;
Page 48 ~ b6; b7C; b7D;
Page 49 ~ b6; b7C; b7D;
Page 50 ~ b6; b7C; b7D;
Page 51 ~ b6; b7C; b7D;
Page 52 ~ b6; b7C; b7D;
Page 53 ~ b6; b7C; b7D;
Page 54 ~ b6; b7C; b7D;
Page 55 ~ b6; b7C; b7D;
Page 56 ~ b6; b7C; b7D;
Page 57 ~ b6; b7C; b7D;
Page 58 ~ b6; b7C; b7D;
Page 59 ~ b6; b7C; b7D;
Page 60 ~ b6; b7C; b7D;
Page 61 ~ b6; b7C; b7D;
Page 62 ~ b6; b7C; b7D;
Page 63 ~ b6; b7C; b7D;

Page 64 ~ b6; b7C; b7D;
Page 65 ~ b6; b7C; b7D;
Page 66 ~ b6; b7C; b7D;
Page 67 ~ b6; b7C; b7D;
Page 68 ~ b6; b7C; b7D;
Page 69 ~ b6; b7C; b7D;
Page 70 ~ b6; b7C; b7D;
Page 71 ~ b6; b7C; b7D;
Page 72 ~ b6; b7C; b7D;
Page 73 ~ b6; b7C; b7D;
Page 74 ~ b6; b7C; b7D;
Page 75 ~ b6; b7C; b7D;
Page 76 ~ b6; b7C; b7D;
Page 79 ~ b5; b6; b7C; b7D;
Page 82 ~ b5; b6; b7C; b7D;
Page 83 ~ b5; b6; b7C; b7D;
Page 84 ~ b5; b6; b7C; b7D;
Page 87 ~ b3; b5; b6; b7C; b7D;
Page 88 ~ b3; b5; b6; b7C; b7D;
Page 90 ~ b5; b6; b7C; b7D;
Page 91 ~ b5; b6; b7C; b7D;
Page 92 ~ b5; b6; b7C; b7D;
Page 93 ~ b5; b6; b7C; b7D;
Page 94 ~ b5; b6; b7C; b7D;
Page 95 ~ b5; b6; b7C; b7D;
Page 98 ~ b3; b6; b7C;
Page 100 ~ b5; b6; b7C; b7D;
Page 101 ~ b5; b6; b7C; b7D;
Page 102 ~ b5; b6; b7C; b7D;
Page 103 ~ b5; b6; b7C; b7D;
Page 104 ~ b5; b6; b7C; b7D;
Page 105 ~ b5; b6; b7C; b7D;
Page 107 ~ b5; b6; b7C; b7D;
Page 108 ~ b5; b6; b7C; b7D;
Page 109 ~ b5; b6; b7C; b7D;
Page 110 ~ b5; b6; b7C; b7D;
Page 111 ~ b5; b6; b7C; b7D;
Page 113 ~ b5; b6; b7C; b7D;
Page 114 ~ b5; b6; b7C; b7D;
Page 115 ~ b5; b6; b7C; b7D;
Page 116 ~ b5; b6; b7C; b7D;
Page 117 ~ b5; b6; b7C; b7D;
Page 118 ~ b5; b6; b7C; b7D;
Page 119 ~ b5; b6; b7C; b7D;
Page 120 ~ b5; b6; b7C; b7D;
Page 121 ~ b5; b6; b7C; b7D;
Page 122 ~ b5; b6; b7C; b7D;
Page 123 ~ b5; b6; b7C; b7D;
Page 124 ~ b5; b6; b7C; b7D;
Page 125 ~ b5; b6; b7C; b7D;
Page 126 ~ b5; b6; b7C; b7D;
Page 127 ~ b5; b6; b7C; b7D;
Page 128 ~ b5; b6; b7C; b7D;
Page 129 ~ b5; b6; b7C; b7D;
Page 130 ~ b5; b6; b7C; b7D;
Page 131 ~ b5; b6; b7C; b7D;
Page 132 ~ b5; b6; b7C; b7D;
Page 133 ~ b5; b6; b7C; b7D;

Page 134 ~ b5; b6; b7C; b7D;
Page 137 ~ b5; b6; b7C; b7D;
Page 138 ~ b5; b6; b7C; b7D;
Page 139 ~ b5; b6; b7C; b7D;
Page 140 ~ b5; b6; b7C; b7D;
Page 141 ~ b5; b6; b7C; b7D;
Page 142 ~ b5; b6; b7C; b7D;
Page 143 ~ b5; b6; b7C; b7D;
Page 144 ~ b5; b6; b7C; b7D;
Page 145 ~ b5; b6; b7C; b7D;
Page 148 ~ b6; b7C;
Page 149 ~ b6; b7C;
Page 150 ~ b6; b7C;
Page 156 ~ b6; b7C;
Page 158 ~ Duplicate;
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Page 161 ~ b6; b7C;
Page 162 ~ b6; b7C;
Page 163 ~ b6; b7C;
Page 164 ~ b6; b7C;
Page 171 ~ b6; b7C;
Page 172 ~ b6; b7C;

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FD-340a (Rev. 11-12-89)

(Title) " Pardons"

(File No.) 58A-NY-278417-1A Supps

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Item	Date Filed	To be returned Yes	No		Disposition	
1A49	12/18/01		/	ORIG. notes Re: [redacted]	10/15/01	yg
1A50	1/2/02		/	ORIG. notes re: [redacted] 4/20-4/23/01		yg
1A51	1/2/02		/	ORIG. notes re: [redacted] 7/11/01		yg
1A52	1/2/02		/	ORIG. notes re: [redacted]	8/14/01	yg
1A53	1/2/02		/	ORIG. notes re: [redacted]	11/7/01	yg
1A54	1/23/02		/	Complaint letters no follow up		yg
1A55	2/28/02		/	[redacted]		yg
1A56	2/28/02		/	[redacted] 2/26/02		yg
1A57	6/2/02		/	ORIG. notes re: [redacted]		yg
1A58	6/3/02		/	ORIG. notes re: [redacted]	on 5/28/02	yg
1A59	7/30/02		/	ORIG travel itinerary for [redacted]		yg
1A60	8/1/02		/	ORIG. notes re: [redacted] 4/12/02		yg
1A61	8/1/02		/	ORIG. notes re: [redacted]		yg
1A62	12/4/02		/	ORIG. notes re: [redacted] 12/10/01		yg
1A63	12/4/02		/	ORIG. notes re: [redacted]	11/16/98	yg
1A64	12/4/02		/	copies/ORIG of Court documents		yg
1A65	4/21/03		/	copy of submission made to SDNY on behalf attorney of Marc Rich to not prosecute		yg

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if exhibits see Vol. 4

58A-NY-278417-1A Supps
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FD-340 (Rev. 3-8-01)

Universal Case File Number 58A-NY-278417 – 1A49

Field Office Acquiring Evidence New York

Serial # of Originating Document

Date Received 10/15/01

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By [redacted]

To Be Returned ☐ Yes ☑ No

Receipt Given ☐ Yes ☑ No

Grand Jury Material - Disseminate Only Pursuant to Rule 6 (e)
Federal Rules of Criminal Procedure

☐ Yes ☑ No

Federal Taxpayer Information (FTI)

☐ Yes ☑ No

Title: MARC RICH; ET AL.
PARDON INVESTIGATION

Reference:

(Communication Enclosing Material)

Description: ☑ Original notes re interview of

[redacted] ON 10/15/01

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FD-340 (Rev. 3-8-01)

Universal Case File Number 58A-NY-278417 - 1A 50

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By [redacted]

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To Be Returned ☐ Yes ☒ No

Receipt Given ☐ Yes ☒ No

Grand Jury Material - Disseminate Only Pursuant to Rule 6 (e)
Federal Rules of Criminal Procedure
☐ Yes ☒ No

Federal Taxpayer Information (FTI)
☐ Yes ☒ No

Title:
William J Clinton, Former U.S President, etal
CFPO - Exec. Branch

Reference: OO: NY
(Communication Enclosing Material)

Description: ☒ 58A-NY-278417 - 71
Original notes re interview of [redacted]

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NY-278417 1A50

FD-340 (Rev. 3-8-01)

Universal Case File Number 58A-NY-278417-1A51

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By [redacted]

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To Be Returned ☐ Yes ☒ No

Receipt Given ☐ Yes ☒ No

Grand Jury Material - Disseminate Only Pursuant to Rule 6 (e)
Federal Rules of Criminal Procedure

☐ Yes ☒ No

Federal Taxpayer Information (FTI)

☐ Yes ☒ No

Title: William J Clinton et al;
CFPO - Exec. Branch
OO NY

Reference

(Communication Enclosing Material)

Description: ☒ Original notes re interview of

[redacted] 7/11/01

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58A-NY-278417

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FD-340 (7-19-00)

Universal Case File Number 58A-NY-278417-1A52

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☐ Yes ☐ No

Federal Taxpayer Information (FTI)
☐ Yes ☐ No

Title: William J. Clinton, et al;
CPO - Exec. Branch
OO:NY

Reference: ____________________
(Communication Enclosing Material)

Description: ☒ Original notes re interview of [redacted] 8/14/01

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58A-NY 278417

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FD-340 (Rev. 3-8-01)

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Receipt Given ☐ Yes ☒ No

Grand Jury Material - Disseminate Only Pursuant to Rule 6 (e) Federal Rules of Criminal Procedure

☐ Yes ☒ No

Federal Taxpayer Information (FTI)

☐ Yes ☒ No

Title:

William J Clinton et al;
CFRU - EXEC BRANCH
OO:NY

58A NY 278417

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FBI — NEW YORK

Reference:

(Communication Enclosing Material)

Description: ☒ Original notes re interview of [redacted] 11/7/01

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FD-340 (Rev. 3-8-01)

Universal Case File Number 58A NY-278417 - 1A54

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Serial # of Originating Document

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To Be Returned ☐ Yes ☒ No

Receipt Given ☐ Yes ☒ No

Grand Jury Material - Disseminate Only Pursuant to Rule 6 (e)
Federal Rules of Criminal Procedure
☐ Yes ☒ No

Federal Taxpayer Information (FTI)
☐ Yes ☒ No

Title:

William J Clinton;
CFA Exec Branch
UI; NY

Reference
(Communication Enclosing Material)

Description: ☐ Original notes re interview of

- Complaint letters
No follow up

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To Be Returned ☐ Yes ☒ No

Receipt Given ☐ ☒ No

Grand Jury Material - Disseminate Only Pursuant to Rule 6 (e)
Federal Rules of Criminal Procedure

☐ Yes ☒ No

Federal Taxpayer Information (FTI)

☐ Yes ☒ No

Title: UNSUB(S);
William J. Clinton, et al;
CFRU - Exec. Branch

58A-NY-278417-10

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Reference:
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Description: ☐ Original notes re interview of [redacted]

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To Be Returned ☐ Yes ☐ No

Receipt Given ☐ Yes ☐ No

Grand Jury Material - Disseminate Only Pursuant to Rule 6 (e)
Federal Rules of Criminal Procedure

☐ Yes ☐ No

Federal Taxpayer Information (FTI)

☐ Yes ☐ No

Title:

UNSUB(S);
William J Clinton, et al
CFPO - Exec. Branch

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58A NY 278417 - 1A

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2002

Reference:

(Communication Enclosing Material)

Description: ☐ Original notes re interview of [redacted] 2/20/02

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NY-278417 1A56

FD-340 (7-19-00)

Universal Case File Number 58A-NY-278417 - 1A57

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Serial # of Originating Document

Date Received

From
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(Address of Contributor)

(City and State)

By [redacted]

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To Be Returned ☐ Yes ☒ No

Receipt Given ☐ ☒ No

Grand Jury Material - Disseminate Only Pursuant to Rule 6 (e)
Federal Rules of Criminal Procedure

☒ Yes ☒ No

Federal Taxpayer Information (FTI)

☒ Yes ☒ No

Title:

William J Clinton, et al:
CFPO - Exec. Branch
OO:NY

Reference:
(Communication Enclosing Material)

58A-NY-278417

Description: ☒ Original ~~notes re interview of~~ [redacted] 1

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2002
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FD-340 (7-19-00)

Universal Case File Number 58A-NY-278417 – 1A58

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Serial # of Originating Document

Date Received 05/28/02

From [redacted]

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(City and State)

By [redacted]

To Be Returned ☐ Yes ☑ No

Receipt Given ☐ ☑ No

Grand Jury Material - Disseminate Only Pursuant to Rule 6 (e) Federal Rules of Criminal Procedure

☐ Yes ☑ No

Federal Taxpayer Information (FTI)

☐ Yes ☑ No

Title: MARC RICH PARDON INVESTIGATION

Reference:

(Communication Enclosing Material)

Description: ☑ Original notes re interview of

[redacted] on 05/28/02

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Universal Case File Number 58A-NY-278417 - 1A59

Field Office Acquiring Evidence New York

Serial # of Originating Document

Date Received 07/23/02

From [redacted]

(Name of Contributor)

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(City and State)

By [redacted]

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To Be Returned ☐ Yes ☑ No

Receipt Given ☐ ☑ No

Grand Jury Material - Disseminate Only Pursuant to Rule 6 (e)
Federal Rules of Criminal Procedure

☑ Yes ☐ No

Federal Taxpayer Information (FTI)

☐ Yes ☑ No

Title: "MARC RICH PARDON INVESTIGATION"

Reference:

(Communication Enclosing Material)

Description: ☐ Original notes re interview of

ORIGINAL TRAVEL ITINERARY FOR [redacted]

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Receipt Given ☐ Yes ☒ No

Grand Jury Material - Disseminate Only Pursuant to Rule 6 (e)
Federal Rules of Criminal Procedure
☐ Yes ☒ No

Title:

William J. Clinton, et al;
CFPU- Exec. Branch

Reference:
(Communication Enclosing Material)

Description: ☒ Original notes re interview of [redacted] 4/12/02

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Universal Case File Number 58A-NY-278417

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Serial # of Originating Document ______

Date Received 6/24/02

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Receipt Given ☐ Yes ☑ No

Grand Jury Material - Disseminate Only Pursuant to Rule 6 (e), Federal Rules of Criminal Procedure

☐ Yes ☐ No

Title:

Reference: ______

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Description: ☑ Original notes re interview of [redacted]

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Universal Case File Number 58A-NY-278417

Field Office Acquiring Evidence

Serial # of Originating Document

Date Received 12/10/01

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Receipt Given ☐ ☒ No

Grand Jury Material - Disseminate Only Pursuant to Rule 6 (e)
Federal Rules of Criminal Procedure

☐ Yes ☒ No

Federal Taxpayer Information (FTI)

☐ Yes ☐ No

Title:

William J Clinton, etal
CFPO - Exec Branch
OO:NY

Reference:

(Communication Enclosing Material)

Description: ☒ Original notes re interview of [redacted] 1

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FD-340 (7-19-00)

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(City and State)

By ______

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Grand Jury Material - Disseminate Only Pursuant to Rule 6 (e)
Federal Rules of Criminal Procedure
☐ Yes ☒ No
Federal Taxpayer Information (FTI)
☐ Yes ☒ No

Title: TPBA

194C-NY-278417
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Reference: ______
(Communication Enclosing Material)

Description: ☒ Original notes re interview of [redacted] 11/16/98

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FD-340 (7-19-00)

Universal Case File Number 194G-NY-278417 -1A64

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Date Received ____________________

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Receipt Given ☐ ☒ No

Grand Jury Material - Disseminate Only Pursuant to Rule 6 (e)
Federal Rules of Criminal Procedure
☐ Yes ☒ No

Federal Taxpayer Information (FTI)
☐ Yes ☒ No

Title: [redacted] etal

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Reference: ____________________
(Communication Enclosing Material)

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Description: ☐ Original notes re interview of

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NY -278417 IA 64

Challenge to Police Union Leadership

Insurgents Want to Review P.B.A.'s Finances for Mismanagement

FOUR FOUND GUILTY OF SCAMMING COP UNION

4 Convicted in Corruption At Union for Transit Police

Bribery Scheme Involved Manhattan Law Firm

Transit cop union bigs guilty in massive scam

Ex-Head of a Police Union Pleads Guilty to Perjury

Transit cop union bigs guilty in massive scam

FOUR FOUND GUILTY OF SCAMMING COP UNION

4 Convicted in Corruption At Union for Transit Police

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Challenge to Police Union Leadership

Insurgents Want to Review P.B.A.'s Finances for Mismanagement

Daily News 8/26/97

Ex-PBA boss' 200G deal

He's consultant to union law firm

By WILLIAM K. RASHBAUM, JOE CALDERONE and KEVIN FLYNN
Daily News Staff Writers

Soon after retiring, former Patrolmen's Benevolent Association President Phil Caruso landed a $200,000-a-year consulting contract with a Long Island law firm that had gotten $20 million in PBA work during his tenure as union boss, the Daily News has learned.

The ex-cop's lucrative deal with the firm, Lysaght, Lysaght & Kramer, was uncovered by federal authorities investigating whether businesses bribed PBA officials to secure work.

Investigators have already charged the firm's lead partners, James Lysaght and Peter Kramer, with bribing officials of the former transit police union to obtain legal work.

Caruso, who was called to appear before a federal grand jury investigating possible corruption within the PBA earlier this year, failed to return repeated telephone calls.

Officials said the consulting contract does not constitute evidence of a crime. But union watchdogs called it a clear conflict of interest.

"It's an ethical violation," said Herman Benson of the Association for Union Democracy.

"The fact that there is a possibility that you might get a high-paying job affects your judgment on whether you are getting your money's worth from the vendor."

Investigators are looking into the shadowy world of PBA finances in part because nearly every dollar spent on legal, insurance, labor and pension advice in the past decade has gone to a handful of lawyers and their wives.

For example, while Lysaght and Kramer — who remain the union's lawyers — collect large legal fees, their wives have collected more than $8 million in commissions as the insurance brokers for the PBA, according to court records.

Caruso, who is not a lawyer, was hired by the law firm to consult on PBA contract matters. The consulting contract paid him double his old PBA salary.

PBA President Lou Matarazzo said Caruso, acting in his capacity as a consultant for the law firm, had helped the union in contract talks this year. But Matarazzo, who got his daughter a secretarial job at the same law firm, refused to comment on conflict-of-interest questions.

He also declined to detail how much contact Caruso had with the union.

The law firm did not return calls for comment.

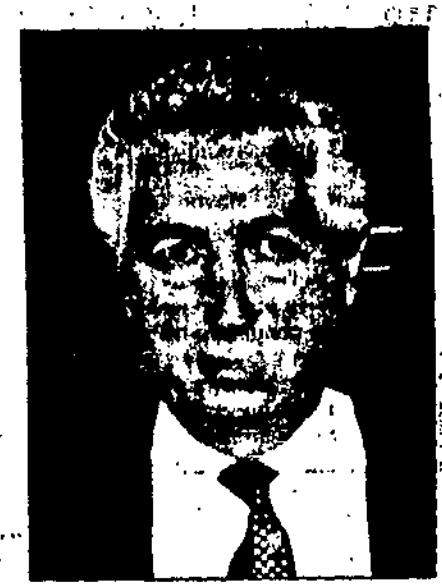
Caruso, who led the 27,000-member union for 15 years, signed on with the firm several months after his retirement in 1995. He had been union president in 1989 when the PBA hired the Lysaght firm, replacing veteran PBA attorney Richard Hartman, who had been caught dipping into escrow funds to cover his gambling debts.

City auditors reviewed the hiring because much of the PBA's legal expenses are, by contract, funded by the city. The auditors faulted the PBA for failing to use competitive bidding to select Hartman's replacement.

Since being selected, the law firm has hired several people connected to the PBA. Caruso's daughter was employed for a time as a staff attorney.

The firm also has employed the daughter of PBA Treasurer Ronald DeVito and two children of the union's recording secretary, James Higgins.

With Greg B. Smith



NICE WORK IF . . . Phil Caruso

I lied on rip-off, ex-union big sez

A former leader of the housing police union admitted he lied to investigators about helping another cop union boss rip off a taxpayer-funded campaign financing program, prosecutors announced yesterday.

Jack Jordan, 59, secretly pleaded guilty to perjury Dec. 8 during the trial of ex-Transit Police Benevolent Association President Ron Reale and three union lawyers — James Lysaght, Peter Kramer and Richard Hartman.

Jordan admitted he participated in a scheme to rip off the campaign finance system with Reale, who used union funds to reimburse people who donated to his quixotic 1993 campaign for city public advocate.

In his plea, Jordan admitted he lied to federal prosecutors when he was asked if he, his sister and three others were reimbursed for their donations.

The proceeding was sealed so as not to taint the jury hearing the Reale case.

That trial ended Monday, when all four were convicted. Jordan's plea was unsealed yesterday.

Greg B. Smith

Ex-Union Head Pleas Guilty To Perjury

Housing PBA leader faces 5 years prison

By Patricia Hurtado
STAFF WRITER

The former president of the now-defunct Housing Police union has pleaded guilty to federal perjury charges, the office of U.S. Attorney Mary Jo White said yesterday.

Jack Jordan, 59, president of the Housing Patrolmen's Benevolent Association from 1977 to 1991, pleaded guilty Dec. 8 to giving false answers to a Manhattan federal grand jury investigating campaign finance fraud in the [illegible] campaign of Ronald Reale for Public Advocate, Assistant U.S. Attorney Nancy Kestenbaum said yesterday.

Reale, former president of the transit police union, was convicted Monday in federal court of racketeering, conspiracy, wire and [illegible] fraud as well as campaign finance fraud stemming from the city campaign after a three-month trial in Manhattan.

Lawyers from the police union, James Lysaght and Peter Kramer, were tried with Reale and also [illegible] of racketeering and conspiracy charges as [illegible] Richard Hartman, who worked as a labor negotiator for the city transit and housing police unions.

Jordan's plea, before U.S. District Court Judge John Sprizzo, was sealed because it occurred during Reale's trial, law enforcement officials said. Sprizzo unsealed it yesterday.

Jordan pleaded guilty to a one-count indictment that charged him with testifying falsely in response to 26 separate questions regarding his knowledge and participation in a scheme to illegally obtain matching funds for Reale's campaign.

He faces up to 5 years in prison and a maximum fine of up to $250,000.

According to the indictment, testimony and bank records introduced at Reale's trial show that Jordan, his wife, and four other friends all wrote $1,000 checks to Reale's campaign and deposited them in an account called "The Friends of Ron Reale."

The indictment charges that Reale's campaign then falsely submitted a request to the Campaign Finance Board for matching funds from contributions made by Jordan, his wife and the four friends although all the individuals had been reimbursed by Reale. Reale obtained $129,617 in matching funds through the scheme and reimbursed the "donors" their money.

When Jordan was called before a federal grand jury about the contributions in 1996, prosecutors said Jordan denied being reimbursed for the contribution and having knowledge of, or participating in the scheme.

But a handwriting expert testified at the Reale trial that the deposit tickets for the donor-reimbursement checks were in Jordan's handwriting and the payee's portion of the checks were in Hartman's handwriting.

Prosecutors also charged that Jordan had deposited the reimbursement checks to the "donors" at Hartman's behest.

In addition to racketeering and conspiracy, Hartman was convicted of campaign finance fraud as well as wire fraud for preparing false disclosure statements related to the scheme.

Ex-Union Head Pleas Guilty To Perjury

Housing PBA leader faces 5 years prison

By Patricia Hurtado
STAFF WRITER

The former president of the now-defunct Housing Police union has pleaded guilty to federal perjury charges, the office of U.S. Attorney Mary Jo White said yesterday.

Jack Jordan, 59, president of the Housing Patrolmen's Benevolent Association from 1977 to 1991, pleaded guilty Dec. 8 to giving false answers to a Manhattan federal grand jury investigating campaign finance fraud in the 1993 campaign of Ronald Reale for Public Advocate, Assistant U.S. Attorney Nancy Kestenbaum said yesterday.

Reale, former president of the Transit police union, was convicted Monday in federal court of racketeering, conspiracy, wire and tax fraud as well as campaign finance fraud stemming from the city campaign after a three-month trial in Manhattan.

Lawyers from the police union, James Lysaght and Peter Kramer, were tried with Reale and also convicted of racketeering and conspiracy charges as was Richard Hartman, who worked as a labor negotiator for the city transit and housing police unions.

Of mice & men & corruption

By LISA REIN

Daily News Staff Writer

One of Chinatown's biggest restaurants and two Manhattan delis bribed city health inspectors to overlook mouse droppings in prepared dishes and encrusted food on floors in a sting operation, authorities said.

The owners were arrested by the Department of Investigation yesterday and charged with paying bribes of up to $200 to insure clean bills of health for the Silver Palace restaurant, the Gourmet Deli on Park Ave. South and the Chambers Gourmet Deli on Chambers St.

Health inspectors visited Chinatown's Silver Palace in September in response to anonymous complaints about a mouse problem that extended to droppings in the food, officials said.

The inspector was offered a bribe twice but refused it and reported it to DOI, officials said.

A DOI investigator showed up two days later posing as an inspector and was offered $100 by owner Liang Dong Wu not to issue any health code violations, a DOI spokesman said.

Health inspectors were also offered money when they visited Gourmet Deli on Park Ave. South on the same day for a followup inspection. The deli previously had been cited for allowing food to build up on the floor. Owner Jong Youn bribed a DOI officer with $200, officials said.

Inspectors were conducting a pre-opening inspection at the new Chambers Gourmet Deli on Chambers St. when they were offered $50 not to issue violations because the deli lacked a working freezer thermometer.

Wu and Youn await arraignment on felony charges of bribery, DOI spokesman Kevin Ryan said. Gasse Manun, owner of the Chambers Gourmet Deli, was arrested on a lesser misdemeanor charge.

Surprise witness called at cop union fraud trial

By GREG B. SMITH
Daily News Staff Writer

The one-time girlfriend of former transit police union President Ron Reale took the stand against her ex yesterday, painting a sordid portrait of him illegally laundering campaign funds.

Margherite Golino, 32, met Reale in 1992, when she was a receptionist for her brother Angelo, a Staten Island car dealer, and Reale was president of the 4,300-member Transit Police Benevolent Association.

Golino appeared as a surprise witness for Manhattan U.S. Attorney Mary Jo White, whose office is prosecuting Reale, 44, and three former police union lawyers in a corruption trial before Manhattan Federal Judge Deborah Batts.

In her most damning testimony, Golino addressed allegations that in 1993, Reale used union funds in his cash-strapped campaign for public advocate.

Prosecutors charge that Reale used the illegal donations to get taxpayer matching funds for his candidacy, in which he won only 1% of the vote.

Under questioning by Assistant U.S. Attorney Michele Hirshman, Golino said the union chief "asked me, if he gave me $3,000, if I would be able to get three people to write out checks for $1,000 each" to his campaign. "I said I would do it," said Golino, who was granted immunity from prosecution.

Golino also told how her brother had her use the car dealership — from which the transit police union rented numerous cars — to buy money orders that then were used as donations to Reale's campaign. She recalled putting down the names of unwitting "donors," including friends, family and "a woman who lives up the block."

Later, she said, Reale paid back the dealership with union and campaign funds, and to cover his tracks, had her make up invoices for fictional goods and services.

Outside the presence of the jury, it was revealed that Margherite and Angelo Golino are in the witness protection program.

Prosecutors and defense attorneys declined to discuss why, citing a sweeping gag order imposed by Batts.

FD-340 (Rev. 3-8-01)

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SUBMISSION ON BEHALF OF MARC RICH WITH RESPECT TO THE EVENTS LEADING TO HIS PARDON BY PRESIDENT CLINTON IN JANUARY 2001

[redacted] b6 b7C
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March 27, 2003

TABLE OF CONTENTS

Page

PRELIMINARY STATEMENT 1

STATEMENT OF FACTS 2

I. WORK ON BEHALF OF THE PARDON 6

A. Direct Appeals to the President 6

B. Other Contacts 7

II. THE GOVERNMENT INVESTIGATION 9

ARGUMENT 10

I. THE CONTEMPLATED CHARGES ARE UNPRECEDENTED AND LIKELY UNCONSTITUTIONAL 10

A. The President's Power To Offer Unconditional Pardons Is Absolute 10

B. The Circumstances Surrounding The Rich Pardon Are Common 15

C. The Rich Pardon Clearly Does Not Warrant Unprecedented Charges 18

II. THE CONTEMPLATED CHARGES DO NOT MEET THE ELEMENTS OF THE BRIBERY STATUTE 21

A. The Canon Of Constitutional Avoidance Applies to This Case and Mandates The Narrowest Possible Construction of the Bribery Statute 21

B. Overview Of The Federal Bribery Statute, 18 U.S.C. § 201 22

1. Subsections (b) and (c) 22

2. Differences between subsections (b) and (c) 23

3. Side-By-Side Comparison 25

C. These Elements Are Not Met Here 25

1. The Public Official Element Is Not Met 25

2. The "Anything of Value" Element Is Not Met 29

a. "Anything of Value" Under Subsection (c) 29

b. "Anything of Value" Under Subsection (b) 30

3. The "Official Act" Element Is Not Met 32

4. The "Intent and Causal Connection" Elements Are Not Met 34

a. Intent Under Section 201(b) 34

b. Intent Under Section 201(c) 35

D. The Government's "Best" Evidence Is Not Admissible Against Marc Rich 35

III. THE INTERESTS OF THIS OFFICE, THE PRESIDENCY, AND THE POLICIES OF THE DEPARTMENT OF JUSTICE MILITATE AGAINST BRINGING THIS CASE AGAINST MARC RICH 37

A. The Testimony of President Clinton Is Central To This Case. 37

CONCLUSION 39

TABLE OF AUTHORITIES

Page(s)

Cases

Barnhart v. Sigmon Coal Co.,
534 U.S. 438 (2002) ... 29

Bourjaily v. United States,
483 U.S. 171 (1987) ... 36

Bowsher v. Synar,
478 U.S. 714 (1986) ... 13, 14

Buckley v. Valeo,
424 U.S. 1 (1976) ... 14

Burdick v. United States,
236 U.S. 79 (1915) ... 32

Carlisle v. United States,
83 U.S. (16 Wall.) 147 (1872) ... 22

Chambers v. Mississippi,
410 U.S. 284 (1973) ... 37

Cousin v. Office of Thrift Supervision,
73 F.3d 1242 (2d Cir. 1996) ... 27

Dixson v. United States,
465 U.S. 482 (1984) ... 26

Evans v. United States,
504 U.S. 255 (1992) ... 24

Ex Parte Garland,
71 U.S. (4 Wall.) 333 (1866) ... 12

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267 U.S. 87 (1925) ... 12

Ex Parte Wells,
59 U.S. (18 How.) 307 (1855) ... 12, 33

Harris v. United States,
536 U.S. 545 (2002) ... 21

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295 U.S. 602 (1935)....................13

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462 U.S. 919 (1983)....................14

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103 U.S. (13 Otto) 168 (1880)....................13

McCormick v. United States,
500 U.S. 257 (1991)....................23, 24, 31

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488 U.S. 361 (1989)....................13

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272 U.S. 52 (1926)....................14

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693 A.2d 1173 (N.J. Super. Ct. App. Div. 1997)....................31

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355 F.2d 167 (5th Cir. 1965)....................23

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480 U.S. 39 (1987)....................38

Public Citizen v. Dep't of Justice,
491 U.S. 440 (1989)....................13

Schick v. Reed,
419 U.S. 256 (1974)....................passim

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484 U.S. 400 (1988)....................37

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213 U.S. 366 (1909)....................21

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308 F.3d 144 (2d Cir. 2002)....................23, 27, 35

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871 F.2d 1181 (2d Cir. 1989)....................36

United States v. Biaggi,
853 F.2d 89 (2d Cir. 1988)....................32

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233 U.S. 223 (1914)....................32

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506 F.2d 62 (D.C. Cir. 1974)....................23, 24, 25, 29

United States v. Clark,
18 F.3d 1337 (6th Cir. 1994)....................36

United States v. Dhinsa,
243 F.3d 635 (2d Cir. 2001)....................27

United States v. Diaz,
176 F.3d 52 (2d Cir. 1999)....................36

United States v. Durenburger,
No. CRIM 3–93 65, 1993 WL 738477 (D. Minn. Dec. 3, 1993)....................34

United States v. Gallo,
863 F.2d 185 (2d Cir. 1988)....................27

United States v. Gigante,
166 F.3d 75 (2d Cir. 1999)....................36

United States v. Girard,
601 F.2d 69 (2d Cir. 1979)....................29

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807 F.2d 1299 (6th Cir. 1986)....................30

United States v. Guzman,
282 F.3d 177 (2d Cir. 2002)....................27

United States v. Heinemann,
801 F.2d 86 (2d Cir. 1986)....................36

United States v. Helstoski,
442 U.S. 477 (1979)....................33, 34

United States v. Irwin,
354 F.2d 192 (2d Cir. 1965)....................35

United States v. Jacobs,
431 F.2d 754 (2d Cir. 1970)....................27, 28

United States v. Jennings,
160 F.3d 1006 (4th Cir. 1998)....................35

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383 U.S. 169 (1966)....................33

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80 U.S. (13 Wall.) 128 (1871)....................12

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637 F.2d 95 (2d Cir. 1980)....................36

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272 F.3d 159 (2d Cir. 2001)....................27

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107 F.2d 834 (2d Cir. 1939)....................27

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692 F.2d 823 (2d Cir. 1982)....................24

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967 F.2d 539 (11th Cir. 1992)....................31

United States v. Nixon,
418 U.S. 683 (1974)....................34

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203 F.3d 156 (2d Cir. 2000)....................36

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133 F.3d 322 (5th Cir. 1998)....................32

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503 U.S. 291 (1992)....................26

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110 F.3d 948 (2d Cir. 1997)....................27

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624 F.2d 384 (2d Cir. 1988)....................28, 37

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526 U.S. 398 (1999)....................passim

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Constitutional Provisions

U.S. Const. Art. I, § 6, cl. 1 33

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U.S. Const. Art. II, § 2 .... 2, 10, 13, 14

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Statutes

18 U.S.C. § 201 .... passim

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27 U. Rich. L. Rev. 345 (Winter 1993) 17

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Restoring Balance to the Debate Over Executive Privilege,
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N.Y. Times, Dec. 25, 1992 17

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N.Y. Times, Feb. 15, 2001 9

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Up for a Pardon, George Steinbrenner Defeated the Odds,
Wall St. J., Feb. 3, 1999 16

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Houst. Chron. Mar. 28, 1993 16

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Wash. Post, Feb. 28, 2001 11

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My Reasons for the Pardons,
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For the past two years Marc Rich has been under investigation for violation of the Bribery Statute, 18 U.S.C. § 201, arising from successful efforts on his behalf to obtain a pardon from President Clinton in January 2001. For the reasons set forth below we respectfully submit that the government has no colorable case against Mr. Rich. This investigation should therefore be terminated and no charges should be brought.

PRELIMINARY STATEMENT

The charges contemplated here are unprecedented, likely unconstitutional, and certainly unwarranted. In two centuries of American constitutional history, no pardoned individual has ever been charged for crimes arising from the presidential pardon process. The reason is not for lack of controversial pardons. Presidents from George Washington to Bill Clinton have granted pardons that angered prosecutors and troubled the public at large. Nor is it for lack of evidence that insider influence and access often sway the pardon process. They have and do, which is not surprising. The reason, rather, is that the Constitution reserves the pardon power to the President alone, subject to neither oversight nor review by any other person, official, or coordinate branch of government. Prosecutors have thus not pursued, and courts have not permitted, cases that even tangentially implicate the inner-workings of the pardon process.

This is clearly such a case. Former President Clinton has declared repeatedly that he pardoned Marc Rich on the merits of the application before him. This office is entitled to disagree, but the President's explanation is squarely at issue and cannot be dismissed. Marc Rich's pardon application was supported by prominent international figures such as the Prime Minister of Israel Ehud Barak, Noble Peace Prize recipient Simon Peres, and King Juan Carlos of Spain. The legal arguments supporting the application, moreover, had over time been developed by respected lawyers of both political parties, including Lewis Libby[1], William Bradford Reynolds, Leonard Garment, and esteemed tax authorities, Professor Martin Ginsburg of Georgetown, and Professor Bernard Wolfman of Harvard. In addition, the second highest official in the Department of Justice, Deputy Attorney General Eric Holder, specifically advised the President's staff that he was "neutral leaning towards favorable" on the merits of the Marc Rich pardon. President Clinton cited the opinions and/or counsel of such figures among the many reasons that led to his decision to pardon Marc Rich.

That respected government officials and lawyers believed that a deserving case could be made on behalf of Mr. Rich does not make the pardon decision right. But it proves that it was possible for the President to reach the decision without being corrupt or deceptive. More to the point, any prosecution based on the pardon would effectively require the government to dispute the former President's strong affirmation that the decision to pardon Mr. Rich was made on the

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1 Indeed, Mr. Libby, who now serves as Chief of Staff to Vice President Cheney, acknowledged before Congress that if he had been asked to pursue the pardon during his representation of Mr. Rich, he could have put together a strong and defensible case for clemency. *See* Mar. 1, 2001 House Comm. Test. of L. Libby, at 286–87 (attached as Ex. 1).

merits. We respectfully submit that this office has no constitutional authority to second guess or investigate that decision for any reason, including the pursuit of criminal charges against the pardoned individual, Mr. Rich.

Indeed, the charges contemplated here are untenable on at least three grounds:

First, there is no precedent or constitutional authority for federal prosecutors to base criminal charges on facts gleaned from the presidential pardon process. The pardon power is absolute, unlike any other power provided in the Constitution. The history of its exercise, moreover, proves that Marc Rich acted no differently than countless others who have sought presidential pardons. And the pardon process itself, which would be integral to any trial on the merits, is squarely at issue here. Indeed, the constitutional dynamic of the government's case is inescapable. Because courts repeatedly and consistently reject any attempted intrusion into the presidential pardon process, this case should not be brought.

Second, even if the constitutional hurdles could be overcome, the evidence is legally and factually insufficient to support a bribery prosecution. The contemplated charges implicate a number of novel questions under the federal bribery statute, and relevant authorities suggest that the statute would be construed against the government. Indeed, the government could not prove the essential elements of that statute absent an expansive and unprecedented construction of its relevant terms. Finally, not only is there insufficient credible evidence of a conspiracy to bribe the President, what scant evidence exists is hearsay testimony and probably inadmissible against Mr. Rich.

Third, the proposed prosecution would generate difficult issues of executive privilege and a divisive political controversy which should not be provoked by a case based on unprecedented legal theories and poor evidence. The testimony of President Clinton and other high profile figures are central to Mr. Rich's defense, and he could not receive a fair trial without their testimony. The spectacle generated by such an intensely high profile case, as well as the inevitable political consequences, make the prosecution contemplated here particularly ill-advised.

STATEMENT OF FACTS

On January 20, 2001, President William Jefferson Clinton exercised his power pursuant to Article II, Section 2 of the United States Constitution to grant Marc Rich and Pincus Green unconditional pardons. The pardon application was the last step in a more than decade-long effort by Mr. Rich's lawyers to convince the United States Attorney for the Southern District of New York, the Department of Justice, and ultimately the President, that the indictments returned in 1983 and 1984 contained inappropriate legal charges — in light of the facts of the case, intervening case law, and Department of Justice guidelines — and treated Messrs. Rich and Green more harshly than similarly-situated parties. On February 18, 2001, President Clinton advised the nation that he granted a pardon to Mr. Rich based upon the merits of the legal arguments advanced by Mr. Rich's lawyers, as well as "foreign policy reasons," including the support of foreign leaders, Mr. Rich's assistance to the Middle East peace process, and Mr. Rich's participation in Israeli charitable causes.[2]

The pardon concluded a case that the United States Attorney for the Southern District of New York had brought against Mr. Rich, Mr. Pincus Green and others, including two foreign companies with which they were associated. The two companies resolved the charges by plea in 1984.[3] Messrs. Rich and Pincus Green did not return to the United States for trial, and the case against them remained outstanding. The legal arguments presented to the President in the pardon petition had their genesis in the spring of 1985, when Messrs. Rich and Pincus Green retained Mr. Garment and Mr. Libby to head a legal team to review the legal sufficiency of the criminal charges contained in the pending indictment. These charges in the superseding indictment included tax evasion, mail fraud, wire fraud, racketeering and trading with the enemy, all arising out of a complex series of oil trades in 1980 and 1981.

Mr. Garment ultimately retained two of the country's leading tax experts, Professor Martin Ginsburg of Georgetown University Law Center and Professor Bernard Wolfman of Harvard Law School, to analyze the tax evasion charges that were at the core of the indictment. In December 1990, the professors submitted to the prosecutors their detailed written conclusion that, in their professional opinion, the transactions in issue had been correctly reported for tax purposes.[4] Complementing their work on the tax charges, Mr. Rich's lawyers developed comprehensive defenses to the mail and wire fraud, RICO, and trading with the enemy charges in the indictment. Mr. Rich's counsel argued that the alleged conduct was not criminal under a post-indictment Supreme Court interpretation of the mail fraud statute and revised Department of Justice guidelines; that the prosecutors should not have brought RICO or predicate charges based on tax evasion claims;[5] and that Mr. Rich's alleged "trading with the enemy" was permitted

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2 William J. Clinton, *My Reasons for the Pardons*, N.Y. Times, Feb. 18, 2001 (attached as Ex. 2).

3 As more fully described in the pardon petition, the guilty pleas of the corporations were induced by the freezing of assets, the imposition of a contempt fine resulting from discovery disputes and the threat of RICO forfeitures. *See* Pardon Petition at 23-25, Gov't Ex. 1 (attached as Ex. 3). (For the Government's convenience, "Gov't Ex." refers to exhibits previously attached to the Government's Memorandum of Law in Support of Motion to Compel Testimony and Production of Documents, No. M11-189(DC) (S.D.N.Y. Sept. 10, 2001).)

4 *Id.* at 23, 28; *see also* Dec. 7, 1990 Letter from B. Wolfman to [redacted] attaching Proposed Findings of Fact and Conclusions of Law of M. Ginsburg and B. Wolfman (attached as Ex. 4). b6 b7C

5 *See* Pardon Petition at 23, Gov't Ex. 1 (attached as Ex. 3).

under a regulatory exception for foreign companies.[6] Moreover, the factual underpinnings of the government's energy fraud theory were undermined by a post-indictment analysis by the Department of Energy that contradicted the prosecutors' claim that the companies had incorrectly accounted for the income from the underlying oil transactions.[7] Finally, Mr. Rich's attorneys contended that in other cases involving similar allegations of oil trading violations, the government pursued only civil charges.[8] The defense contentions were presented to the government at various times, but the prosecutors refused to engage in any meaningful discussion on the merits of Mr. Rich's legal defenses while he remained outside the country.[9] Instead, the prosecutors remained committed to Mr. Rich's apprehension, warning that Mr. Rich remained absent at his peril.

Mr. Garment recently attributed the impasse between prosecutors and the Rich legal team to a cycle of misunderstandings traceable at first to aggressive defense strategies which "succeeded only in rendering the prosecutors even more inflamed than they were by nature."[10] But by the early 1990s, Mr. Garment found the breakdown in communication largely attributable to the prosecutors' determination that there was just "too much history" to permit reconsideration of the premises underlying the government's case. Thus, although Mr. Garment and Mr. Libby had "concluded, unavoidably, that Rich and Green were not only free of criminal tax liability; they were free of civil liability as well,"[11] their efforts to present a case to the prosecutors proved unproductive.[12]

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6 Feb. 8, 2001 House Comm. Test. of [redacted] at 227-28 (attached as Ex. 5).

7 *See* Pardon Petition at 28; Gov't Ex. 1 (citing United States Dep't of Energy Regulatory Admin. Proposed Remedial Order Issued to ARCO on Oct. 4, 1998, at 17-19) (attached as Ex. 3).

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8 *See* Jan. 17, 2001 Fax from [redacted] (attached as Ex. 6).

9 June 27, 1994 Letter from [redacted] Gov't Ex. 6 (attached as Ex. 7).

10 Leonard Garment, *Crazy Rhythm* 394 (2001) (attached as Ex. 8).

11 *Id.* at 397.

12 Mr. Garment has detailed these unproductive efforts, as follows:

> "[We] [Mr. Garment and Mr. Libby] spent several years trying to get meetings, preparing for meetings, holding meetings, attempting to follow up on meetings. The prosecutors would not talk about the merits of the underlying case. Some of their positions, like their vehement feelings about fugitivity, were understandable. Some were not. The low point at one of our meetings came when a young prosecutor said that it didn't matter whether Marc and Pinky actually owed taxes or not; what mattered was that they

(Continued...)

Faced with this stalemate, [redacted] who was Marc Rich's attorney in New York, in or around 1997, began meeting with [redacted] a prominent businessman and [redacted] who is a friend of Mr. Rich. [redacted] suggested that [redacted] meet Gershon Kekst, a well known public relations consultant and philanthropist.[13] Messrs. [redacted] Kekst and [redacted] discussed both the impasse and the possibility of using a public relations initiative to change Mr. Rich's public image as part of the process of opening a dialogue with the government. Mr. Kekst recommended that [redacted] meet with [redacted] the law firm of Arnold & Porter [redacted] White House Counsel during the Clinton administration. [redacted] met with [redacted] in early 1999 to discuss their possible representation of Mr. Rich. Thereafter, [redacted] were hired to approach the Department of Justice to seek a review of Mr. Rich's indictment. b6 b7C

In October 1999, [redacted] met with Deputy Attorney General Eric Holder to explore whether he could play a role in facilitating a resolution with the United States Attorney's Office for the Southern District of New York. Mr. Holder reviewed the case and informed [redacted] that he should attempt first to revive discussions with the Southern District prosecutors. Following Mr. Holder's suggestion, on December 1, 1999, [redacted] sent a letter to the prosecutors in the Southern District, with a copy to Mr. Holder, explaining the reasons for a requested meeting.[14] On February 2, 2000, the United States Attorney's office responded, refusing to meet with Mr. Rich's lawyers as long as Mr. Rich remained outside the United States.[15] Shortly after receiving the Southern District's response, [redacted] forwarded a memorandum to Mr. Holder explaining why Department of Justice review of Mr. Rich's case was warranted and why Mr. Rich's absence should not be — and in other cases involving absent defendants had not been — an impediment to discussion.[16] Although Mr. Holder has testified that he probably would have held the meeting if he were the United States Attorney, he deferred to the Southern District's decision not to meet because it was "their case."[17] b6 b7C

> *thought* they owed taxes and nevertheless did not pay them. The two men, in other words, had stolen their own car. Such a doctrine is not exactly a foundation of the tax laws. Perhaps more to the point, however, was a later comment by one of the prosecutors: 'There's just too much history.' Indeed there was."

Id.

13 [redacted] Grand Jury Test. of [redacted] at 22, Gov't Ex. 7 (attached as Ex. 9).

14 Dec. 1, 1999 Letter from [redacted] Gov't Ex. 12 (attached as Ex. 10).

15 Feb. 2, 2000 Letter from [redacted] Gov't Ex. 14 (attached as Ex. 11). b3 b6 b7C

16 *See* Feb. 28, 2000 Memo from [redacted] to E. Holder (attached as Ex. 12).

17 Feb. 8, 2001 House Comm. Test. of E. Holder at 2, Gov't Ex. 11 (attached as Ex. 13).

I. WORK ON BEHALF OF THE PARDON

After this last rejection by the government, Mr. Rich and his counsel decided to petition the President for a pardon.[18] Although the general idea of a pardon had been discussed earlier, the decision to actively seek a pardon was not made until the end of October 2000.[19] With President Clinton's term drawing to a close, Mr. Rich's lawyers embarked on a significant effort with only a short period of time to accomplish the task. Because Mr. Rich was seeking a pardon based in part on the flaws in the indictment against him, the petition contained a number of legal arguments addressing the merits of the pending charges.[20] Moreover, because pardon petitions are also addressed to the President's constitutional power to grant clemency as a matter of grace, they traditionally contain statements from those who knew the petitioner and who could testify as to the petitioner's good character and good works. Mr. Rich's lawyers — [redacted] and Messrs. [redacted] — worked diligently to prepare both aspects of the petition. Working with [redacted] a longtime associate of Mr. Rich and [redacted] of Mr. Rich's charitable foundations, they approached prominent individuals in Israel, Europe and the United States familiar with Mr. Rich's many charitable and social contributions over the past twenty years.[21]

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The petition, more than two inches thick and in two separate volumes, was filed at the White House on December 11, 2000, more than a month before the pardon was granted.

Many pardon petitions are submitted to the President, particularly at the end of his term of office, and his personal attention to the merits of a petition is often crucial to its chances of success. Thus, in order to effectively represent their client, attorneys for a pardon petitioner must also do their best to ensure that the President reads and understands the petition, and to provide answers to any questions he or his advisors may have about the petition. This is precisely what Mr. Rich's lawyers did. During the six-week period following the filing of the petition, the Rich team embarked on a comprehensive campaign in support of the pardon including the following steps.

A. Direct Appeals to the President

The Rich team arranged several direct and indirect personal appeals to President Clinton on behalf of the pardon.[22] *First,* [redacted] and others sought the support of [redacted]

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18 Feb. 8, 2001 House Comm. Test. of [redacted] at 7, Gov't Ex. 17 (attached as Ex. 5). b3

19 [redacted] Grand Jury Test. of [redacted] at 38, Gov't Ex. 9 (attached as Ex. 14); *see also* Feb. 14, 2001 Senate Comm. Test. of [redacted] at 8, Gov't Ex. 25 (attached as Ex. 15). b6 b7C

20 *See* Pardon Petition at 20-30, Gov't Ex. 1 (attached as Ex. 3).

21 *See id.* at 9-12.

22 [redacted] traveled to the United States again in December and January to personally (Continued...)

[redacted] who wrote a letter that was included in the pardon petition, was to write a second, personal letter to the President expressing her support of the pardon.[23] [redacted] also spoke to President Clinton in person, at a holiday White House event.[24] b6 b7C

Second, [redacted] a close friend of [redacted] and President Clinton, was also asked to assist in bringing the pardon petition to the President's attention. As [redacted] testified, [redacted] was contacted to assure "that the president himself was aware that we had filed the petition. . . . President Clinton had said I should make my case to . . . the White House Counsel's Office."[25]

Third, [redacted] made direct personal contact with the President regarding the pardon. He spoke to the President by telephone and also wrote to him on January 5, 2001 stating, among other things, that "[o]n a personal note, I believe in this cause with all my heart."[26] b6 b7C

Fourth, [redacted] asked a number of prominent individuals in Israel to contact the President regarding the pardon. These contacts included then-Prime Minister Ehud Barak (who spoke with the President on several occasions about the pardon) and former Prime Minister Shimon Peres.[27]

B. Other Contacts

Members of the Rich team also made a series of personal contacts with high-level officials in the Clinton Administration to promote the pardon. [redacted] a Washington, D.C. attorney, spoke with White House Chief of Staff John D. Podesta, a law school friend and a former client, to obtain periodic reports as to the status of the pardon application inside the White House.[28] b6 b7C

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assist in the lobbying effort.

23 Dec. 19, 2000 E-mail from [redacted] *et al.*; Dec. 19, 2000 E-mail from [redacted] Gov't Ex. 24 (attached as Ex. 16).

24 Feb. 14, 2001 Senate Comm. Test. of [redacted] at 10-11, Gov't Ex. 25 (attached as Ex. 15). b6 b7C

25 *Id.* at 11.

26 Jan. 5, 2001 Letter from [redacted] to The Honorable William J. Clinton, Gov't Ex. 26 (attached as Ex. 17).

27 Dec. 25, 2000 E-mail from [redacted] Jan. 12, 2001 E-mail from [redacted] *et al.*, Gov't Ex. 28 (attached as Ex. 18); *see also* Jan. 5, 2001 Letter from [redacted] to The Honorable William J. Clinton, Gov't Ex. 26 (attached as Ex. 17). b6 b7C

28 Mar. 1, 2001 House Comm. Test. of [redacted] Gov't Ex. 29 (attached as Ex. 19).

In early December, [redacted] spoke to White House Counsel [redacted] as well as to Deputy White House Counsel Bruce Lindsey, and provided them with background materials relating to the proposed pardon.[29] [redacted] also sought the support of Deputy Attorney General Holder. On January 10, 2001, [redacted] forwarded Mr. Holder a copy of the correspondence he had previously sent the President, along with the following cover note: b6 b7C

> Dear Eric: I hope you can say you agree with this letter. Your saying positive things, I'm told, would make this happen. Thanks for your consideration. Sincerely, [redacted][30]

Ultimately, when asked by [redacted] for his view of the pardon application on January 19, 2001, Mr. Holder indicated that he was "neutral, leaning towards favorable."[31] [redacted] reported Mr. Holder's assessment to the President that evening.[32] The President would later call Mr. Holder's position an important factor in his decision to grant the pardon.[33] b6 b7C

The President discussed Mr. Rich's pardon petition directly with [redacted] on January 19, 2001. [redacted] has testified that the President seemed fully informed of the legal issues surrounding Mr. Rich's outstanding criminal case:[34]

> In that conversation [January 19th], I could tell that President Clinton had obviously read and studied the pardon petition. He grasped the essence of my argument about this case being a case that should have been handled civilly, not criminally, and discussed whether the passage of time would permit statute of limitation defenses.[35]

[redacted] has further testified to his understanding that the President granted the pardon based

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29 Mar. 1, 2001 House Comm. Test. of [redacted] at 167, Gov't Ex. 30 (attached as Ex. 20).

30 Jan. 10, 2001 Letter from [redacted] to E. Holder, Gov't Ex. 31 (attached as Ex. 21).

31 Feb. 8, 2001 House Comm. Test. of E. Holder at 3, Gov't Ext. 11 (attached as Ex. 13).

32 *See id.* b6 b7C

33 *See* William J. Clinton, *My Reasons for the Pardon*, N. Y. Times, Feb. 18, 2001 (attached as Ex. 2); *see also* Feb. 8, 2001 House Comm. Test. of [redacted] at 3, Gov't Ex. 17 (attached as Ex. 5).

34 *See* Feb. 14, 2001 Senate Comm. Test. of [redacted] at 12, Gov't Ex. 25 (attached as Ex. 15).

35 *See Id.*

squarely on the merits of those legal issues:

> President Clinton properly gave serious consideration to Mr. Rich's pardon application. [He] demanded that Mr. Rich's lawyers waive all procedural defense related to the transactions in question so that Mr. Rich would be potentially subject to civil penalties, such as those faced by others who were involved in similar transactions. This case should have been treated that way years ago.[36]

Later that night, President Clinton issued an unconditional pardon of Mr. Rich on January 20, 2001. In his subsequent public statement, President Clinton acknowledged that the pardon petition, buttressed by the further explanations provided by [redacted] convinced him that Mr. b6
Rich's petition was well-founded, and should be granted "on the merits."[37] b7C

II. THE GOVERNMENT INVESTIGATION

By January 25, 2001, only five days after the pardons had been issued, the House Committee on Government Operations served initial requests for documents on lawyers who worked on the pardon petition, including Messrs. [redacted] Mr. Libby, [redacted] Mr. Holder, [redacted] all testified before Congress. On February 15, 2001, the United States Attorney's office formally confirmed that it was launching an investigation into the pardons.[39] During the next two years, the government conducted an extraordinarily aggressive and thorough investigation of the Rich team's effort to obtain a b3
pardon, spanning several countries and a decade of activities. In addition to reviewing thousands b6
of documents, the government called Messrs. [redacted] to testify repeatedly before the b7C
grand jury, and [redacted] were interviewed by government prosecutors. [redacted] has appeared before the grand jury on [redacted] after two preliminary interviews by the U.S. Attorney's Office and FBI agents. [redacted] also testified [redacted] before the grand jury. During each of their appearances, Messrs. [redacted] provided detailed testimony on a wide range of subjects and answered all questions not seeking [redacted] The prosecutors also subpoenaed and received testimony from many third parties, including [redacted]

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36 *See* Feb. 8, 2001 House Comm. Test. of [redacted] at 9-10, Gov't Ex. 17 (attached as Ex. 5).

37 William J. Clinton, *My Reasons for the Pardons*, N.Y. Times, Feb. 18, 2001 (attached as Ex. 2). b6 b7C

38 *See* Jan. 25, 2001 Requests for Documents from [redacted] (attached as Exs. 22 and 23).

39 *See* James V. Grimaldi & Dan Eggen, *Criminal Probe of Pardon Begins: Gifts From Ex-Wife of Rich are Focus*, Wash. Post, Feb. 15, 2001; David Johnston, *U.S. is Beginning Criminal Inquiry in Pardon of Rich*, N.Y. Times, Feb. 15, 2001.

[redacted] The government further sought and received access to [redacted]

Although [redacted] During questioning in the grand jury, the government has asked whether [redacted]

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ARGUMENT

I. THE CONTEMPLATED CHARGES ARE UNPRECEDENTED AND LIKELY UNCONSTITUTIONAL

This case cannot be separated from Article II of the Constitution, which grants the President unlimited power to authorize pardons. The only checks on that power are the President's own sense of right and the threat of public opprobrium. No external authority — whether executive, legislative, or judicial — enjoys a constitutional mandate to intrude into the pardon process for any reason, including the criminal pursuit of a pardoned individual. Indeed, the prosecution contemplated here is entirely unprecedented and raises a host of constitutional questions of the first order. It should not be brought.

A. The President's Power To Offer Unconditional Pardons Is Absolute

Article II, Section 2 of the Constitution grants the President "Power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment." The Framers of

40 [redacted]

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the Constitution intentionally vested the pardon power in one person who would have *sole discretion* to make pardon decisions and bear full responsibility for the consequences.[41] In 1788, Alexander Hamilton explained why:

> 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 is undivided, it may be inferred that *a single man* would be most ready to attend to the forces 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.

The Federalist No. 74, at 447 (Clinton Rossiter ed., 1982) (emphasis added).

Hamilton was responding in this paragraph to critics of the Federal Constitution who claimed the pardon power gave too much discretion to the President. Yet the *only* concern of these critics was the President's authority to pardon treason. As Hamilton explained, "The expediency of vesting the power of pardoning in the President has, if I mistake not, been *only* contested in relation to the crime of treason." *Id.* (emphasis added). Thus, there was no suggestion, even by anti-Federalists, that the President's unlimited discretion to grant pardons was somehow unjustified or too broad.

Taking its cue from the text of Article II, and the clear statements of the Framers, the Supreme Court has consistently held that the pardon power is uniquely unfettered by any of the regular checks and balances of governmental structure, including oversight by a coordinate

[41] Despite 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 the judgments of any of the President's subordinates, *see, e.g.*, H.R. Rep. No. 107-454, pt. 1, at 25–26 (2002) ("Burton Report"), or by Congress, *see, e.g.*, *Schick v. Reed*, 419 U.S. 256, 266 (1974). For this reason, some observers have questioned the power of Congress to even *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 a matter outside the bounds of legitimate congressional inquiry. *See* Stanley M. Brand, *A Pardon Probe: It's None of Congress's Business*, Wash. Post, Feb. 28, 2001 ("The exclusive commitment of the pardon power to the president was also a 'conscious choice,' and legislative revulsion at its use does not supply the constitutional authority to challenge it."). It is an open question whether the same principle extends to federal prosecutors who bridle at use of the pardon power in a particular way. Moreover, any evidence gleaned from the Congress in this matter is subject to constitutional challenge on grounds that Congress had no constitutional basis for conducting its inquiry.

branch or executive agency. *See, e.g., Schick*, 419 U.S. at 266 ("[T]he power flows from the Constitution alone, not from any legislative enactments, and cannot be modified, abridged or diminished by the Congress."); *Ex Parte Garland*, 71 U.S. (4 Wall.) 333, 380 (1866) ("The benign prerogative of mercy reposed in [the President] cannot be fettered by any legislative restrictions."); *Ex Parte Wells*, 59 U.S. (18 How.) 307, 315 (1855) ("[B]y giving to its words their proper meaning, the power to pardon conditionally is not one of inference at all, but one conferred in terms."); *e.g, Ex Parte Grossman*, 267 U.S. 87, 121 (1925) ("Our Constitution confers this discretion [to pardon] on the highest officer in the nation in confidence that he will not abuse it.").

It is thus well-settled that Congress and the courts are prohibited from either interfering in any manner with the President's exercise of the pardon power, *see, e.g., Schick*, 419 U.S. at 266; *Ex Parte Garland*, 71 U.S. at 380, or hindering the full exercise of that power by curtailing the constitutional privileges of the person pardoned, *see, e.g., United States v. Klein*, 80 U.S. (13 Wall.) 128, 147 (1871); *Garland*, 71 U.S. at 380. The Supreme Court confirmed the latter point in *Garland*, saying:

> Congress can neither limit the effect of [a] pardon, nor exclude from its exercise any class of offenders. . . . A pardon reaches both the punishment prescribed for the offence and the guilt of the offender; and when the pardon is full, it releases the punishment and blots out of existence the guilt, so that in the eye of the law the offender is as innocent as if he had never committed the offence. If granted before conviction, it prevents any of the penalties and disabilities consequent upon conviction from attaching; . . . it makes him, as it were, a new man, and gives him a new credit and capacity.

Garland, 71 U.S. at 380–81. *See also Klein*, 80 U.S. at 147–48 ("To the executive alone is intrusted the power of pardon; and it is granted without limit. . . . [T]he legislature cannot change the effect of such a pardon any more than the executive can change a law."); *United States v. Wilson*, 32 U.S. (7 Pet.) 150, 160 (1833) ("A pardon is an act of grace, proceeding from the power intrusted with the execution of the laws, which exempts the individual, on whom it is bestowed, from the punishment the law inflicts for a crime he has committed." (Marshall, C.J.)). The federal criminal laws, thus, cannot be interpreted or applied in a manner that effectively limits the privileges of a presidential pardon, or permits even indirect intrusion by the federal courts into the pardoning process.[42]

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42 As Professor Laurence Tribe explains, the Framers knew and intended for Presidents to exercise the pardon power in controversial and high profile cases. *See* Laurence H. Tribe, *American Constitutional Law* § 4-10, at 721 (3d ed. 2000) (noting that President George H. W. Bush's pardon of Caspar Weinberger just ten days before Weinberger's criminal trial "would not have come as a surprise to the Framers"). For this reason, the Framers purposely left the pardon power "virtually unbounded" with the only check being impeachment, rebuke at the polls, or, for a President at the end of his term, "the judgment

(Continued...)

Indeed, expansive interpretations of the criminal laws in the context of the pardon power — interpretations that invite roving investigations into presidential deliberations, cast an indefinite shadow over the effectiveness of individual pardons, and require the federal courts to become enmeshed in purely executive action — implicate fundamental separation of powers principles. The Constitution requires that the coordinate branches remain "free from the control or coercive influence, *direct* or *indirect*, of either of the others." *Humphry's Executor v. United States*, 295 U.S. 602, 629 (1935) (emphasis added); *see also Bowsher v. Synar*, 478 U.S. 714, 725–26 (1986); *Wiener v. United States*, 357 U.S. 349, 355–56 (1958); *Kilbourn v. Thompson*, 103 U.S. (13 Otto) 168, 190–91 (1880). This principle of non-interference is not absolute, *see, e.g., Mistretta v. United States*, 488 U.S. 361, 380 (1989), especially where constitutional powers are vaguely defined — such as the President's power to "take Care that the Laws be faithfully executed," U.S. Const. Art. II, § 3 — or implicitly shared — such as the President's "commander in chief" power, *id.*, Art. II, § 2, cl.1, and Congress' power to "declare war," *id.*, Art. I, § 8, cl. 11. But the pardon power is neither vague nor shared. Indeed, unlike virtually every other power granted under the Constitution, the pardon power is textually pristine: by its terms it belongs exclusively to the President alone and may not be interfered with by Congress, the courts, or any government official. The principle of non-interference is thus *at its height* where the pardon power is concerned. *See, e.g., Public Citizen v. Dep't of Justice*, 491 U.S. 440, 485 (1989) (Kennedy, J., concurring) ("[W]here the Constitution by explicit text commits the power at issue to the exclusive control of the President, we have refused to tolerate *any* intrusion by the Legislative Branch.") (emphasis in original; citing the pardon power as the paradigmatic example). Accordingly, an interpretation of the federal criminal laws that reaches the presidential pardon process, or invites the federal courts to review that process for any reason, implicates fundamental constitutional principles that are vital to our system of government.

Moreover, the prosecution proposed here would be flatly contrary to the vision of the unitary executive and the rigorous conception of the separation of powers long advocated by Justice Scalia and other sitting Justices. *See, e.g., Morrison v. Olson*, 487 U.S. 654, 705 (1988) (Scalia, J., dissenting).[43] For the precedent established by this case would not only permit

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of history or . . . . less indelible forms of moral opprobrium." *Id.* at 721–22. Clearly, limiting the effects of a pardon by threatening the pardoned individual with federal crimes arising from the pardon process itself is not a check contemplated in the constitutional scheme. Equally to the point, the Supreme Court has rejected any interpretation of the pardon power that "would in all probability tend to inhibit [its] exercise . . . . and reduce the frequency of commutations." *Schick*, 419 U.S. at 266. Threatening pardoned persons with criminal charges arising from the pardoning process certainly inhibits the unfettered discretion to pardon granted under Article II. For no President would exercise the power in highly controversial cases if the decision could be open for review in the federal courts, whether directly through prosecution of the President, or indirectly through prosecution of the person pardoned.

43 Although the Supreme Court's jurisprudence in this area is not a model of consistency, several opinions have taken a formalist approach consistent with theory of the unitary (Continued...)

intrusive investigations into the pardoning process but, by necessary implication, would make future Presidents answerable to charges arising from that process. By what principle, for example, is a pardon-petitioner liable for bribing the President but the President not liable for accepting the bribe? Similarly, on what authority can succeeding Presidents investigate a prior President's pardoning process to charge a pardoned person, but not the President himself, with a crime? Indeed, on what authority can a succeeding President *ever* invite the federal courts, via a prosecution, to review the pardoning process of a prior President? The Founders intended no such result. Even liberal constitutional theorists who reject a formal separation of powers make an exception for the pardon power — universally recognized as the *sine qua non* of purely executive authority. Professor Charles Black, for example, claimed that the President possesses only the five powers specifically enumerated in Article II: the power to receive ambassadors, the power to take care that the laws be faithfully executed, the power of commander in chief, the veto power, and the power to grant pardons. *See* Charles L. Black, Jr., *The Working Balance of the American Political Departments*, 1 Hastings Const. L.Q. 13, 14–15 (1974). Yet among those five powers, the pardon power is unique in that it is the *only* substantive power explicitly free from congressional oversight, other than impeachment. *See* Charles L. Black, Jr., *Impeachment: A Handbook* 34 (1974) (noting that "only impeachment" can check the President's legally-unlimited pardon power). Professor Black concluded, thus, that even the most egregious conduct in the exercise of the pardon power would not be reachable by the federal criminal laws.[44] The inescapable conclusion is that regardless of how one views separation of powers principles, the case proposed here would cross all recognizable constitutional lines and would be the first to intrude, even indirectly, upon the only unencumbered Article II power.

We respectfully submit that these bedrock principles render the charges contemplated here highly dubious if not self-evidently unconstitutional. There is simply no constitutional warrant for federal prosecutors to invite the federal courts to hear criminal charges arising from the process by which a person obtained a pardon, even under cover of a generously-worded criminal statute. Nor is there constitutional warrant for federal prosecutors to effectively undo a

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executive. *See, e.g.*, *Metropolitan Wash. Airports Auth. v. Citizens for the Abatement of Aircraft Noise, Inc.*, 501 U.S. 252 (1991); *Bowsher v. Synar*, 478 U.S. 714 (1986); *I.N.S. v. Chadha*, 462 U.S. 919 (1983); *Buckley v. Valeo*, 424 U.S. 1 (1976); *Myers v. United States*, 272 U.S. 52 (1926). For the reasons discussed above, a formalist approach is especially pertinent in any case that implicates the uniquely unfettered pardoning power. *See also Schick*, 419 U.S. at 266–67.

44 Professor Black illustrates the point with the following hypothetical: "Suppose a President were to announce and follow a policy of granting full pardons, in advance of indictment or trial, to all federal agents or police who killed anybody in line of duty, in the District of Columbia, whatever the circumstances and however unnecessary the killing. *This would not be a crime, and probably could not be made a crime under the Constitution.*" Charles L. Black, *Impeachment: A Handbook* at 34 (1974) (emphasis added).

pardon by endlessly threatening new criminal charges against the pardoned individual. And that is precisely what is happening here — unless and until this investigation is terminated the government has effectively stripped Marc Rich of many of the privileges that a presidential pardon entails.

B. The Circumstances Surrounding The Rich Pardon Are Common

The government may wish to argue that this case is an exception to the constitutional norm, because the facts surrounding this pardon are unusual in some way, or uniquely give rise to evidence of corruption or foul play. But the only provable thing exceptional about the Marc Rich pardon is that the government has chosen to effectively nullify it with an unprecedented investigation. In reality, the facts here not only fail to set forth any crime, they parallel how the pardon process has operated since 1787.

Indeed, the historical record on this score is overwhelming and indisputable:

George Washington on his final day in office pardoned David Blair, a prominent rum smuggler convicted for his participation in the Whiskey Rebellion. Washington's reasons are not clear, though many suspected Blair supplied Whiskey to prominent revolutionaries, including Washington.

John Adams hurled his political opponents into prison under the Alien and Sedition Laws. He pardoned them on the eve of the election against Thomas Jefferson, saying he hoped the pardons would help his reelection chances. They did not.

Thomas Jefferson wielded the pardon power to compel testimony in the treason trial of Aaron Burr by preemptively pardoning a key witness.

James Madison pardoned a prominent slave trader and pirate, with no explanation given.

Abraham Lincoln was apparently so fond of the pardon power that Senator Elihu Root wrote: "Secretary [of War] Stanton used to get out of patience with Lincoln because he was all the time pardoning men who ought to be shot."

Andrew Johnson pardoned Jefferson Davis and granted a conditional blanket pardon to all confederate soldiers.

The modern era is no exception:

Jimmy Carter pardoned all Vietnam-era violators of the Military Selective Service Act, whether or not the violators had fled to avoid prosecution. *See* 42 Fed. Reg. 4391 (Jan. 24, 1977) (Pres. Proc. No. 4483).

President Carter also pardoned Irving Flores Rodriguez, Lolita Lebron, and Rafael Cancel-Miranda, who in 1954 machine-gunned the U.S. House of Representatives and wounded five Congressmen.

Ronald Reagan

In 1984, President Reagan pardoned former Louisiana agriculture commissioner Gilbert L. Dozier. Dozier was convicted in 1980 of demanding $329,000 in campaign contributions from farmers and industry officials in exchange for permits issued by his department. The commutation was granted over the objections of the sentencing judge and the federal prosecutors in charge of the case. One of Mr. Dozier's lobbyists during the pardon process was former Reagan White House aide Lyn Nofzinger, who met personally with White House Officials. *See* Howard Kurtz & David Hoffman, *Recent Commutation by Reagan Stirs Controversy in Louisiana,* Wash. Post, July 27, 1984.

In 1989, President Reagan pardoned George Steinbrenner for conspiring to violate federal election laws. Prosecutors were never consulted and prominent Republican lawyers, including former Attorney General William Saxbe, represented Steinbrenner. *See* Jim Abramson, *Up for a Pardon, George Steinbrenner Defeated the Odds*, Wall St. J., Feb. 3, 1999.

Former President Bush

In 1989, President Bush pardoned Armand Hammer, a former head of Occidental Petroleum. Shortly before the pardons, Mr. Hammer reportedly contributed over $100,000 to the Republican Party and $100,000 to the Bush-Quayle Inaugural Committee. Mr. Hammer's attorney [redacted] a Philadelphia attorney and b6
Republican activist, was well known to then-Attorney General Dick Thornburgh. *See* b7C
Bella Stumbo, *Hammer Pardon Turned on the Issues of Innocence,* L.A. Times, Aug. 28, 1989; Pamela Mendels, *Inaugural Committee Lists $100,000 Lenders,* Newsday, Jan. 19, 1989.

In 1993, two days before leaving office, President Bush pardoned Aslam Adam, a Pakistani drug trafficker who had served eight years of a 55-year sentence in federal prison in North Carolina. Mr. Adam was convicted of conspiracy to possess with intent to distribute $1 million worth of heroin. The Assistant U.S. Attorney who prosecuted Adam, stated: "It's most unusual. . . . There must have been some diplomatic aspect. I can't see President Bush making a cavalier move on the brink of leaving in this fashion after what he's said about the war on drugs." John Monk & Gary L. Wright, *Freeing of Drug Smuggler Baffles Legal Authorities,* Houst. Chron., Mar. 28, 1993.

In December 1992, President Bush pardoned Caspar Weinberger and five other individuals involved in the Iran-Contra scandal. This action cut off legal proceedings that had commenced against Mr. Weinberger as a result of Independent Counsel Lawrence Walsh's investigation. Walsh harshly criticized the pardon, calling it "terrible" and "grossly wrong." James N. Jorgensen, *Federal Executive Clemency Power: The President's Prerogative To Escape Accountability,* 27 U. Rich. L. Rev. 345 (Winter

1993); David Johnston, *Bush Pardons 6 in Iran Affair, Aborting a Weinberger Trial; Prosecutor Assails Cover Up*, N.Y. Times, Dec. 25, 1992.[45]

President Clinton

At the end of his term, President Clinton pardoned Carlos Vignali, a cocaine trafficker. [redacted] donated more than $150,000 to Democratic causes, including $10,000 to the 2000 Democratic National Committee. Letters of support from several leading California politicians and a Roman Catholic Cardinal reportedly helped persuade Clinton to pardon Vignali. Federal prosecutors expressed their disagreement but, like every other pardon in history, did not pursue charges. *See Would You Pardon Them?*, Time, Feb. 26, 2001 ("Angry prosecutors called Vignali a drug kingpin.").

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President Clinton also pardoned three men convicted during an investigation of [redacted] thanks to "crucial" lobbying and support from [redacted] *See id.*

President Clinton commuted the sentence of Melvin Reynolds, a former Illinois Congressman serving seven years for corruption and statutory rape, after a direct appeal from Jesse Jackson. Other Jackson associates who received pardons include John H. Bustameante, a former adviser who pleaded guilty to fraud in 1993, and Dorothy Rivers, a former Operation PUSH official convicted for embezzling more than a $1 million in federal aid for homeless children. *See id.*

President Clinton pardoned William Fugazy, a friend of Mario Cuomo's who was convicted of hiding $75 million from creditors. The Department of Justice earlier rejected Fugazy's pardon petition because guidelines required applicants to wait five years after conviction. Clinton ignored the Justice Department and ignored the guidelines. *See id.*

President Clinton also pardoned Edward Downe Jr., a publishing and financial executive, who pleaded guilty to insider trading in 1983. Downe had contributed $21,500 to Democrats since 1991, including $1,000 to Hillary Clinton's 2000 Senate campaign. His application was submitted directly to President Clinton with no review from the Justice Department. *See id.*

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45 Professor Tribe uses the Weinberger pardon to illustrate the legally-unlimited nature of the pardon power, saying: "[N]othing prevents a President from pardoning his closest friends and associates, even if the conduct for which they have been prosecuted occurred in the course of their service in his Administration, and even if the further prosecution of those parties might otherwise implicate the President himself in criminal conduct." Laurence H. Tribe, *American Constitutional Law* § 4–10, at 721 (3d ed. 2000).

Many less notorious pardons were similarly pursued with money and insider connections:

> [redacted] a longtime friend of Bill and Hillary Clinton, and the Texas [redacted] Gore presidential campaign, reported that he received more than 300 calls in November b6 and December 2000 asking for help on behalf of a relative or friend who wanted to obtain b7C a pardon. *See* Kurt Eichenwalk & Michael Moss, *Did $$ and connections buy last-minute pardons?,* Desert News, Jan. 29, 2001.

> [redacted] sought a pardon for [redacted] who was convicted of bank fraud in 1994. She prepared a petition with dozens of letters from politicians and prominent business people. She also sought help from a former Democratic congressman, John Bryant, who had administration connections; Bryant offered to join b6 the effort for a payment of $200,000 up front, with a $300,000 bonus if a pardon was b7C granted. (Bryant has said that the fee was to cover the extensive work that would have been required to put together an application with some chance of success.) [redacted] also sought assistance from many other people with White House connections. She has said that the process "was all kind of mysterious." [redacted] was pardoned on January 20, 2001, the same day as Marc Rich. *See id.*

These historical examples are directly relevant to the charges contemplated here on a number of grounds. *First*, they prove that the Rich team acted no differently than countless others who have sought presidential pardons. *Second*, they support the view that Mr. Rich is being investigated for conduct that has never been investigated before, much less prosecuted criminally. *Third*, they demonstrate that the interpretation of the federal bribery statute contemplated here would permit federal prosecutors (and succeeding Presidents) to routinely investigate the background of controversial pardons. For the historical record proves that it is common for pardon-petitioners to offer substantial payments to campaign committees and/or well-connected individuals to act as lobbyists on the petitioner's behalf. If such allegations give rise to a criminal investigation, then prosecutors have an unprecedented tool for investigating the mechanics of the pardon process. For that reason alone, courts are not likely to accept such a construction, let alone do so for the first time in a case premised on weak hearsay evidence, which is all the government could present here.

C. The Rich Pardon Clearly Does Not Warrant Unprecedented Charges

In the course of this investigation, the government has suggested that this case is atypical because Mr. Rich and his defense team sidestepped the Department of Justice to petition President Clinton directly. The suggestion has been that this fact may provide circumstantial evidence of a criminal intent on the part of Mr. Rich and members of the defense team. But this suggestion is incorrect, and it fails as a matter of law. Putting aside that Deputy Attorney General Holder *specifically advised* [redacted] to send the petition directly to the White House, b6 the constitutional pardon power explicitly warrants direct appeals to the President. No role b7C whatsoever is provided for prosecutors or lower government officials in the pardon process. Indeed, the whole point of the pardon clause is to permit Presidents to grant pardons *no matter what* prosecutors or other officials may think.

Alexander Hamilton emphasized this point, saying:

> [A]s men generally derive confidence from their numbers, they might often encourage each other in an act of obduracy, and might be less sensible to the apprehension or suspicion or censure for an injudicious or affected clemency. On the accounts, *one man* appears to be a more eligible dispenser of the mercy of the government than a body of men.

The Federalist No. 74, at 447–48 (emphasis added). Hamilton then reiterated, for good measure: "It is not to be doubted, that a *single man* of prudence and good sense is better fitted, in delicate conjunctures, to balance the motives which may plead for and against the remission of the punishment, than any numerous body whatever." *Id.* at 448 (emphasis added). Therefore, no less authority than the Founder's understanding of Article II flatly rejects the government's claim that it is somehow suspicious — or gives rise to circumstantial evidence that could be used against a criminal defendant charged with bribery — for an individual to present a pardon petition directly to the President.

Moreover, President Clinton himself concluded that this case falls squarely in line with what Hamilton saw as the central purpose of the constitutional pardon power. Though this office does not agree with Mr. Rich's arguments on the merits, there is no denying that President Clinton found them convincing. He has in fact stated that he "was aware of and took into account the fact that the United States attorney for the Southern District of New York did not support these pardons." Nonetheless, he granted the pardons, as the Constitution entitled him to do, reasoning that:

1. The RICO charges pending against Rich and Green were unprecedented and unjustified;

2. the Department of Energy in 1985 — long after Rich was branded a fugitive — found the manner in which Rich accounted for his transactions to be proper;

3. Professors Ginsburg and Wolfman reviewed the transactions in question and concluded that there was no basis for any tax liability;

4. Mr. Rich and Mr. Green's companies paid approximately $200 million in fines and penalties to settle charges that "might not even have been warranted under the Wolfman/Ginsburg analysis that the companies correctly followed the law and correctly reported their income"; and,

5. the Justice Department in 1989 rejected the use of RICO in identical cases, a position that was never considered controversial.

William J. Clinton, *My Reasons for the Pardons*, N.Y. Times, Feb. 18, 2001.

According to President Clinton, therefore, this office has applied different rules to Mr. Rich. On that belief, this case is not the black sheep of presidential pardons. To the contrary, it exemplifies what the pardon power is all about, *i.e.*, a constitutional escape hatch for individuals unfairly treated by federal prosecutors. Indeed, the suggestion that there is something untoward about not permitting federal prosecutors to vet a controversial pardon simply misunderstands the Framer's intent and the nature of the pardon power itself.[46]

President Clinton has further explained that he granted Mr. Rich a pardon on a number of "foreign policy" grounds, saying in part:

> [F]inally and importantly, many present and former high-ranking Israeli officials of both major political parties and leaders of Jewish communities in America and Europe urged the pardon of Mr. Rich because of his contributions and services to Israeli charitable causes, to the Mossad's efforts to rescue and evacuate Jews from hostile countries, and to the peace process through sponsorship of education and health programs in Gaza and the West Bank.

Id. This case, thus, though ordinary in many respects, has added constitutional significance, as it implicates not only the President's unfettered pardon authority, but also the President's authority in the arena of foreign affairs. President Clinton made this point clear when he explained that he *knew* this office "did not support these pardons," yet nonetheless found the pardons warranted "in the best interests of justice," saying: "[T]he essential facts were before me, and I felt the foreign policy considerations and the legal arguments justified moving forward." *Id.*

Therefore, there is every reason to doubt the wisdom of moving forward with the charges contemplated here. The elementary point is that such charges would establish the first precedent for basing a criminal prosecution on some aspect of the pardon process, thus unavoidably laying the foundation for future intrusions into this uniquely unfettered area of presidential power. But perhaps more fundamentally, the President of the United States has explicitly criticized how this office handled the prosecution of Mr. Rich and, indeed, has said that he granted the pardon for this very reason, knowing full well that this office would vehemently disagree. The President is thus on record as essentially vetoing the views of this office to grant a pardon that he found warranted on the legal merits, and further justified on foreign policy grounds. For this office, then, to turn around and base unprecedented criminal charges on the process by which that

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46 It is also inconsistent with a position recently advanced by the Justice Department before the Senate Judiciary Committee. In 1999, the Senate proposed a "Crime Victim's Rights Constitutional Amendment," which provided in part that a victim of a crime of violence had the right "to reasonable notice of and an opportunity to submit a statement concerning any proposed pardon or commutation of sentence." *See* S. Rep. No. 106-254, at 35 (1999). This language was strenuously opposed by the Justice Department as "an unprecedented incursion on the President's exclusive power to grant pardons." *See* 146 Cong. Rec. S2966-01 (daily ed. Apr. 27, 2000) (statement of Assistant Attorney General Robert Raben). Part of the problem was that requiring input by any person other than the President on the merits of a pardon petition "would arguably permit a court to reopen a pardon . . . and grant victims rights in a setting in which no one . . . has ever possessed rights." *Id.*

pardon was pursued, appears to raise a host of issues — both constitutional and prudential — that are peculiar to this case, and which go far beyond those already addressed above.

* * *

In sum, the government cannot escape the many threshold constitutional questions that plague this case. There is no precedent for the contemplated charges. The few Supreme Court opinions that discuss the pardon power uniformly suggest that any charges in this case (even if brought on credible evidence, which is lacking) would cross the constitutional line. And the history of the pardon power, as well as its purpose as expressed by the Framers, and its exercise in this case as confirmed by President Clinton, directly undermine any basis for a colorable prosecution. Indeed, even if the government had stronger facts, this case would still be an unconventional prosecution that should not be brought. The constitutional context is central to any defense on the merits, and the constitutional consequences of permitting the case to proceed — including the defying of presidential powers and the unprecedented intrusion of the judiciary into a purely executive process — are unavoidable. Against this backdrop, there is simply no basis for going forward with this case.

II. THE CONTEMPLATED CHARGES DO NOT MEET THE ELEMENTS OF THE BRIBERY STATUTE

Even if all of the constitutional impediments could be overcome, the proposed charges are still unwarranted because they are factually unsupported and fail on the merits. The bribery statute is vague on whether it even encompasses the facts and circumstances alleged here; if it does, its elements still could not be proven beyond a reasonable doubt. Either way, there is no basis for a prosecution.

A. The Canon Of Constitutional Avoidance Applies to This Case and Mandates The Narrowest Possible Construction of the Bribery Statute

If this prosecution were to proceed, the government would initially face a number of first impression matters regarding the federal bribery statute's unprecedented application to conduct arising out of the presidential pardon process. In passing on these matters, courts would likely employ an exceedingly narrow statutory construction. The canon of constitutional avoidance provides that "'when 'a statute is susceptible to two constructions, by one which grave and doubtful constitutional questions arise and by the other of which such questions are avoided, our duty is to adopt the latter.'" *Harris v. United States,* 536 U.S. 545, 122 S.Ct. 2406, 2413 (2002) (quoting *United States ex rel. Attorney General v. Delaware & Hudson Co.*, 213 U.S. 366, 408 (1909)). The Supreme Court has applied this canon in the context of the pardon power:

> It is not to be supposed that Congress intended by the general language of the act to encroach upon any of the prerogatives of the President, *and especially that benign prerogative of mercy which lies in the pardoning power.*

Carlisle v. United States, 83 U.S. (16 Wall.) 147, 153 (1872) (emphasis added) (interpreting Captured and Abandoned Property Act to allow recovery by aliens who had been pardoned for aiding the Confederacy).

We submit that it would do so again here. Indeed, one way to subvert the design of the pardon power is to loosely interpret a criminal statute in a manner that permits prosecutors to pursue pardoned individuals with endless hearings, grand juries, and legal fees, or to effectively undo a pardon on threat of indefinite exposure to new criminal charges. As the historical record proves, a generous construction of the federal bribery statute would permit prosecutors and courts to routinely investigate facts and circumstances surrounding controversial pardons. As indicated, there is no constitutional warrant for such intrusions, even if Congress intended to permit them, which is not the case here.

Moreover, putting to the side the many constitutional concerns, the following statutory analysis demonstrates overwhelmingly that there is no statutory basis for this case to proceed. The contemplated charges raise substantial questions of first impression under virtually *every* substantive element of the bribery statute. As the statute would not consistently be interpreted in the government's favor, on account of the avoidance canon, existing precedent, and other settled rules of construction, this investigation should be terminated.

B. Overview Of The Federal Bribery Statute, 18 U.S.C. § 201

1. Subsections (b) and (c)

The federal bribery statute, which is set forth below, comprises two distinct offenses.[47] The first offense (bribery), is codified in section 201(b). This provision prohibits the giving or accepting of anything of value to or by a public official, if the thing is given "with intent . . . to influence" an official act, or if it is received by the official "in return for . . . being influenced."

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[47] Section 201(b) provides in relevant part:

> Whoever—(1) directly or indirectly, corruptly gives, offers or promises anything of value to any public official or person who has been selected to be a public official, or offers or promises any public official or any person who has been selected to be a public official to give anything of value to any other person or entity, with intent—(A) to influence any official act . . . .

Section 201(c) provides in relevant part:

> Whoever—(1) otherwise than as provided by law for the proper discharge of official duty—(A) directly or indirectly gives, offers, or promises anything of value to any public official, former public official, or person selected to be a public official, for or because of any official act performed or to be performed by such public official, former public official, or person selected to be a public official. . . .

The second offense (illegal gratuity), is codified in section 201(c). This provision prohibits the giving or accepting of anything of value "for or because of" any official act; it is commonly understood to prohibit "personal gifts that could unduly affect a public official's performance of his duties." *United States v. Brewster*, 506 F.2d 62, 78 (D.C. Cir. 1974).

Generally speaking, conviction for either offense requires proof of the same basic six elements:

1. a public official;

2. a thing of value;

3. an offer or promise;

4. made for the benefit of the public official (or in the case of bribery, of some other person or entity);

5. in exchange for an official act;

6. with the requisite criminal intent.

In the run of cases, these six elements are broadly construed. *See, e.g., United States v. Alfisi*, 308 F.3d 144, 150–52 (2d Cir. 2002); *Parks v. United States,* 355 F.2d 167, 168 (5th Cir. 1965) (noting "broad construction to be given this statute"). But where, as here, charges are premised on contributions to an elected political official, the Supreme Court demands textual precision. *See, e.g., United States v. Sun-Diamond Growers,* 526 U.S. 398, 412 (1999) ("[A] statute in this field [gifts or contributions to public officials] that can linguistically be interpreted to be either a meat axe or a scalpel should reasonably be taken to be the latter.") (construing 18 U.S.C. § 201(c)); *McCormick v. United States*, 500 U.S. 257, 273 (1991) (holding that campaign contributions are chargeable under the Hobbs Act "only if the payments are made in return for an explicit promise or undertaking by the official to perform or not to perform an official act"); *see also United States v. Tomblin*, 46 F.3d 1369, 1379–81 (5th Cir. 1995) (discussing intent requirements in bribery prosecution where campaign contributions are at issue).

2. Differences between subsections (b) and (c)

There are two significant differences between the bribery and illegal gratuity provisions, and both are critical to the charges contemplated here.

First, the provisions differ on the connection required between the giving of the thing of value, on the one hand, and the doing of the official act, on the other. On this score, the illegal gratuity provision (subsection (c)) is *broader* than the bribery provision (subsection (b)). For example, if the connection is *causally direct* — if money is given to purchase or ensure an official act, as a *quid pro quo* — then the crime is chargeable as bribery under subsection (b). *See, e.g., Alfisi*, 308 F.3d at 149 ("[The] intent necessary to a bribery conviction is in the nature of a *quid pro quo* requirement; that is, there must be 'a specific intent to give . . . something of value *in exchange for* an official act.'") (quoting *Sun-Diamond Growers*, 526 U.S. at 404–05 (emphasis in original)). But if the connection is looser — if money is given after the fact, as "thanks" for a specific official act, but not in exchange for it — then the crime is chargeable as an illegal gratuity under subsection (c). *See, e.g.*, *United States v. Myers*, 692 F.2d 823, 841 (2d Cir. 1982) ("[B]ribery under section 201[(b)] requires a promise of a future act in exchange for the money given to the public official, an element not required for receipt of an unlawful gratuity under section 201[(c)].").[48]

Second, the provisions differ on who or what must receive the thing of value in connection with the chargeable offense. On this score, the illegal gratuity provision is *narrower* than the bribery provision. For example, under the bribery provision the chargeable giving or offering of a thing of value may inure "to any other person or entity." In extreme cases, this broadening clause may criminalize the giving or receiving of campaign contributions. *See Brewster*, 506 F.2d at 69–70. Under the illegal gratuity provision, however, this clause — "to any other person or entity" — is omitted. Therefore, a chargeable thing of value must be given or offered *directly* to the public official for that official's *own personal benefit*. For this reason, campaign contributions are not chargeable as an illegal gratuity. *See, e.g.*, *Brewster*, 506 F.2d at at 77 ("[B]ona fide contributions directed to a lawfully conducted campaign committee or other person or entity are not prohibited by [the illegal gratuity provision]."); 4 Department of Justice Manual, Title 9 Criminal ("Dep't of Justice Manual") No. 2046 ("Where the transaction represents a *bona fide* campaign contribution, prosecutors must normally be prepared to prove that it involved a *quid pro quo* understanding and thereby constituted a 'bribe' offense actionably under section 201(b).").[49]

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48 The illegal gratuity provision is not as elastic as first appears; for the government still must establish a *direct nexus* between the gratuity conferred and the official act performed by the public official. *See Sun-Diamond Growers*, 526 U.S. at 412.

49 This understanding is in line with *McCormick v. United States*, 500 U.S. 257, 271 (1991), which held that prosecution under the Hobbs Act cannot be premised on allegedly corrupt campaign contributions absent explicit evidence of a *quid pro quo*. *See also Evans v. United States*, 504 U.S. 255, 268–69 (1992). The Department of Justice Manual recognizes that the same heightened proof standards must apply to a bribery charge premised on a campaign contribution. *See* Dep't of Justice Manual, No. 2046 (2d ed. 1999) (discussing *McCormick* and *Evans* in the context of the federal bribery statute). The alleged conduct here involves offers of donations to an independent non-profit entity established to fund a presidential library. Because no reported decision discusses bribery charges premised on offers of donations to any sort of independent third party entity, it is an open question whether the charges contemplated here would trigger *McCormick*'s heightened standard.

3. Side-By-Side Comparison

The following chart highlights the differences between the two provisions and their relevance to this case. The text in brackets marks particular features found only in one subsection, but not the other. The text in UPPER CASE TEXT highlights the key distinctions between the two subsections. Similar charts with respect to the "receiving or accepting" of bribes and illegal gratuities are set forth in the Department of Justice Manual No. 2043, and *United States v. Brewster*, 506 F.2d at 67.

	§ 201(b)(1): Bribery	§ 201(c)(2): Illegal Gratuity
Status	Whoever . . .	Whoever . . .
Intent	CORRUPTLY . . .	[ ]
Act	directly or indirectly . . . gives, offers or promises . . .	[otherwise than as provided by law for the proper discharge of official duty,] directly or indirectly gives, offers, or promises . . .
Thing	anything of value . . .	anything of value . . .
For Whom	to any public official or person who has been selected to be a public official, or . . . TO ANY OTHER PERSON OR ENTITY . . .	to any public official, [former public official,] or person selected to be a public official . . . [ ]
Purpose	to influence any official act. . . .	FOR OR BECAUSE OF any official act performed or to be performed. . . .

C. These Elements Are Not Met Here

For the reasons discussed in this section — whether as a matter of law and statutory construction, or as a matter of fact for lack of credible evidence — neither provision of the bribery statute could be proven here beyond a reasonable doubt. Indeed, it is questionable whether the government could make its case with respect to *any* of four substantive elements.

1. The Public Official Element Is Not Met

The term "public official" is defined in Section 201(a), which provides:

> (1) [T]he term "public official" means Member of Congress, Delegate, or Resident Commissioner, either before or after such official has qualified, or an

officer or employee or person acting for or on behalf of the United States, or any department, agency or branch of the Government thereof, including the District of Columbia, in any official function, under or by authority of any such department, agency, or branch of Government, or a juror.

18 U.S.C. § 201(a)(1). This definition is sweeping and has been liberally construed. *See Dixson v. United States,* 465 U.S. 482, 496 (1984) ("[T]he proper inquiry is . . . whether the person occupies a position of public trust with official federal responsibilities."). But as far as we are aware, no prosecution has ever involved bribes or illegal gratuities offered to the President of the United States, let alone in the context of presidential pardon. Indeed, whether the President may be designated a "public official" pursuant to § 201(a) is a question of first impression, that appears open for challenge.[50]

But even if it is assumed that the President is a public official under Section 201, private citizens [redacted] are certainly *not* public officials under that section. Payments offered to them or made for their benefit thus provide no basis for prosecution.[51] The gravamen of any change under the bribery statute is that an offer or promise was made to influence *a public official*. Yet despite two years of independent investigations, and thousands of pages of testimony, there is no credible evidence to support that requisite link here. b6 b7C

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[50] The definition of public official under § 201(a) expressly includes Senators and Members of the House, but does not include the President. Moreover, while the President holds an office encompassed within the broad definition of "public official" set forth by the Supreme Court in *Dixson v. United States,* 465 U.S. 482 (1984), the legislative history of Section 201 says nothing about extending the bribery provisions to the President. The President also does not act "for or on behalf of the United States" when exercising the pardon power — he acts individually with no mechanism for oversight or scrutiny by any official body. Finally, the broad construction of *Dixson* is itself open to challenge, given that there were four dissenters in that case [redacted] b6 b7C and new members of the Court dismiss the holding as "[a] weak (indeed, utterly unreasoned) foundation for a rule of construction that permits legislative history to satisfy the ancient requirement that criminal statutes speak plainly and unmistakably." *United States v. R.L.C.,* 503 U.S. 291, 310 (1992) (Scalia, J., concurring, joined by Kennedy, J., and Thomas, J.).

[51] We understand that the government concluded that Mr. Rich offered to make a contribution to the G&P Foundation, a charitable organization in the name of his deceased daughter, in exchange for [redacted] agreement to assist his team in seeking a pardon. *See* Alison L. Cowan, *Rich Pardon Reportedly Followed Pledge to Charity of Former Wife*, N.Y. Times, May 1, 2001. In addition, the grand jury has heard evidence that [redacted] These matters are irrelevant to the legal issues posed by the current investigation. b3 b6 b7C

Indeed, it is the government's burden to show that any proposed contribution to the library foundation was *specifically* intended to influence President Clinton. Though the government need not prove that an actual payment was made, *see, e.g., United States v. Jacobs,* 431 F.2d 754, 760 (2d Cir. 1970), especially on a conspiracy theory of proof, *see, e.g., United States v. Manton,* 107 F.2d 834, 838 (2d Cir. 1939), it still must prove an agreement to bribe or pay an illegal gratuity to influence the President. And that showing cannot be made on the sort of innuendo and cryptic conversations alleged to have occurred here. Indeed, if reported decisions from the Second Circuit and the Southern District of New York are any guide, bribery charges are uniformly premised on *some* direct evidence — such as undercover video or audio recordings — of a specific intent to illegally influence a public official.[52] But here the government has no credible evidence (direct or indirect) that Marc Rich ever knew of any such offer (legal or illegal) to influence a public official, let alone that he made such an offer.

Finally, whatever evidence exists is fatally crippled by the disputed credibility of [redacted] the prosecution. To satisfy the "public official" element, the government must prove that Mr. Rich intended to make illegal offers to President Clinton, by demonstrating (a) that Mr. Rich authorized [redacted] a multi-million dollar contribution to the Clinton library foundation, *and* (b) that Mr. Rich intended for [redacted] to credibly relay such an offer to President Clinton. For a number of obvious reasons, neither proposition is factually sound.

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[52] *See, e.g., Alfisi,* 308 F.3d at 148 (undercover recordings support government theory of illegal gratuities and kickbacks); *United States v. Guzman,* 282 F.3d 177, 179 (2d Cir. 2002) (evidence in bribery prosecution included direct payments to undercover agent); *United States v. Manas,* 272 F.3d 159, 163 (2d Cir. 2001) (in prosecution for bribery and other crimes "[t]he government presented, among other evidence, taped recordings of numerous conversations involving the co-defendants and the testimony of the undercover agent and defendant"); *United States v. Dhinsa,* 243 F.3d 635, 661–62 (2d Cir. 2001) (bribery conviction on "overwhelming evidence" including the direct testimony of government inspector who received illegal payments); *United States v. Russo,* 110 F.3d 948, 951 (2d Cir. 1997) (conspiracy to commit bribery charge supported by videotapes and recordings of meetings with undercover agents); *Cousin v. Office of Thrift Supervision,* 73 F.3d 1242, 1245–46 (2d Cir. 1996) (direct offer and payment made to government official in the course of undercover sting operation). The government might point to *United States v. Gallo,* 863 F.2d 185, 189 (2d Cir. 1988), which affirmed a bribery conviction on circumstantial evidence, including an offer of "payment of money to a 'contact in Washington,'" and evidence that the defendants "talked in codes" and "covered their 'paper trail.'" But the circumstantial evidence in *Gallo* is light years removed from anything alleged here. *Gallo* arose from the investigation of the Gambino racketeering enterprise, and included direct electronic surveillance, phone recordings, and the testimony of an accomplice who detailed the defendant's participation in an intricate bribery scheme. *See id.* at 187–88. No such evidence could be presented here.

First, the core allegation in this case is simply not credible. Sophisticated individuals like Marc Rich and a former Mossad agent like [redacted] would not concoct a scheme to bribe the President of the United States with multi-million dollar contributions to a presidential foundation which are recorded as a matter of public record. A contribution in the amount of several millions of dollars would attract obvious scrutiny, and if these individuals contemplated a payment they believed was corrupt, they most assuredly would propose a more inventive and secretive scheme. It goes without saying, moreover, that Messrs. Rich and [redacted] would vigorously contest such far-fetched allegations.

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Second, the sustained, almost frantic efforts to gain support for the pardon including the final discussions between former President Clinton and [redacted] are all inconsistent with the notion that the "fix was in."

Third, the bribery theory is wholly contradicted by both the President's strong affirmation that he made the pardon decision on the merits, as well as the support for the pardon by Deputy Attorney General Holder and various world leaders.

Fourth, there is apparently no evidence of Mr. Rich's knowledge and involvement in the alleged offer, let alone that he authorized or approved it. It is elementary that Mr. Rich cannot be convicted of bribery unless he "expressed an ability and desire to pay" the alleged bribe. *United States v. Jacobs*, 431 F.2d 754, 760 (2d Cir. 1970); *see also United States v. Shulman*, 624 F.2d 384, 387 (2d Cir. 1980) (holding that "acts of preparation" to establish the willingness of a public official to accept a bribe cannot make out an offense); *id.* ("Only after Shulman *authorized the payment* of a bribe . . . was the actual offer of a bribe completed.") (emphasis added). Accordingly, because there is no credible evidence that Mr. Rich ever authorized or desired the payment of a bribe — whether before or after [redacted] spoke with [redacted] — there is no basis for bringing this case.[53]

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Fifth, the proposed prosecution is based on evidence that does not meet the minimum level of sufficiency required to warrant prosecution of a bribery case. Department of Justice guidance provides that "a Federal prosecutor should not be satisfied with merely developing witnesses to public corruption. These witnesses must be corroborated in every way possible, to overcome the very real presumption of innocence a jury will likely afford to a defendant/public official." [redacted] Public Integrity Section Criminal Division, U.S. Department of Justice, *The Use of the Undercover Technique in Corruption Investigations, in Prosecution of Public Corruption Cases*, at 103 (1988). "If a case rests on the uncorroborated testimony of a bribe payer, the case will probably be lost." [redacted] Public Integrity Section Criminal Division, U.S. Department of Justice, *Common Defenses, in Prosecution of Public Corruption Cases*, at 231 (1988). Thus, as the case law confirms,

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[53] Moreover, even in the event that the alleged offer could implicate Mr. Rich, for reasons discussed in detail below, [redacted] statements are not admissible against Mr. Rich. *See infra*, at 36–37.

evidence sufficient to support a bribery case typically includes taped conversations in which the proposed payment is discussed, as well as some evidence of receipt of corrupt payments in accounts traced to a public official. There is simply no corroboration, documentary or otherwise, for the core allegation in this case.

In short, with no credible evidence that offers of any kind were made or intended to be made to any public official, or to influence any public official, the government could not meet its burden under the "public official" element of federal bribery statute.

2. The "Anything of Value" Element Is Not Met

The phrase "anything of value" is used throughout Title 18, and has been broadly construed to include tangible as well as intangible things. *See, e.g., United States v. Girard*, 601 F.2d 69, 71 (2d Cir. 1979). The phrase has also been read to focus not on commercial value, but on the worth (or "value") that the intended recipient attaches to the offered "thing." *See, e.g., United States v. Williams*, 705 F.2d 603, 622–23 (2d Cir. 1983). Even under this broad construction, however, the government still could not prove this element on the facts alleged.

a. "Anything of Value" Under Subsection (c)

The "anything of value" element forecloses any possibility of prosecuting Marc Rich under the illegal gratuity provision of Section 201. For even if we assume that donations were made to the Clinton Library Foundation, and that such donations were made to influence President Clinton, the element *still* is not met. As the Department of Justice Manual explains, donation to a political party or campaign committee cannot make out an illegal gratuity charge. *See* Dep't of Justice Manual No. 2043 (discussing *Brewster*, 506 U.S. at 67–68). And donations to a presidential library foundation warrant the same result.

That is because the Clinton Library (no less than the Democratic National Committee) is an *entity*, not a *public official*, and donations to *entities* are not chargeable as illegal gratuities. For the government to pursue an illegal gratuity charge, thus, it must read "or entity" into the phrase "to any public official, former public official, or person selected to be a public official." 18 U.S.C. § 201(c). But no court would accept that construction, because Congress in § 201(c) specifically removed the phrase "other person or entity," which is included in the parallel bribery provision, § 201(b). *See, e.g., Barnhart v. Sigmon Coal Co.*, 534 U.S. 438, 452 (2002) ("[W]hen Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.") (internal quotations and citations omitted).

Therefore, any prosecution under § 201(c) is not only factually untenable — it is *textually foreclosed*. The donations alleged to have been offered here are donations to *entities*, and donations to *entities* cannot be illegal gratuities.

b. "Anything of Value" Under Subsection (b)

It is an open question whether the government could make out the "anything of value" element to support a bribery charge. But we submit that the element would be strictly construed *against* the government. No reported case holds (or even suggests) that donations to an independent non-profit organization such as a presidential library are sufficient to make out a bribery case. Therefore, any such construction here would require the unprecedented conclusion that donations to independent third-party entities are chargeable as bribes. There is no reason to think that a court would accept such a novel construction for the first time in a case of this magnitude, with the many constitutional and prudential considerations that compel a narrow reading.

The government's best case on this score is *United States v. Williams*, 705 F.2d 603, 622–23 (2d Cir. 1983), which held that the "value" of a bribe is to be subjectively measured from the standpoint of the public official for whom the bribe is offered or given. The panel there affirmed the conviction of a United States Senator who received worthless stock in exchange for an official act on the ground that the Senator believed the stock to be valuable when the bribe was consummated. *See* 705 F.2d at 623; *see also United States v. Gorman*, 807 F.2d 1299, 1305 (6th Cir. 1986) ("[T]he focus of the above term is to be placed on the value which the [recipient] subjectively attaches to the items received."). That holding is clearly correct — a public official should not escape liability simply because the stock market plummets on the eve of cashing in a bribe. But it does not apply here.

Williams was a classic bribery case. The defendant was a public official who expected to receive considerable personal value in direct exchange for a promise to perform an official act. *See Williams*, 705 F.2d at 622 ("When the Senator received shares of stock . . . he expected these shares to have considerable value, representing not only the potential value of the properties but also the benefit of the contemplated loan of $100 million."). This case is entirely different, because (among many other things) no such value inures from donations to an independent nonprofit entity. Even if it did, moreover, nothing in *Williams* addresses whether a donation to an independent third-party entity (let alone a *nonprofit* entity) might trigger liability under § 201(b). In fact, few reported cases address the "thing of value" element at all, presumably because bribery prosecutions are more clear cut, and rest on better evidence, than the sort of evidence alleged here.[54]

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54 If the United States Code Annotated can be relied upon, "anything of value" under Section 201 has been the subject of judicial construction in only four cases. The 2000 edition of the U.S.C.A. lists *United States v. Gorman*, 807 F.2d 1299 (6th Cir. 1986); *United States v. Williams*, 705 F.2d 603 (2d Cir. 1983); *United States v. Williams*, 7 F. Supp. 2d 40 (D.D.C. 1998); and *United States v. Sun-Diamond Growers*, 941 F. Supp. 1262 (D.D.C. 1996). Only two of these cases (*Williams* (2d Cir.)) and (*Gorman* (6th Cir.)) involved the scope of "anything of value" under Section 201(b), and the other two cases have either been vacated, *United States v. Williams*, 240 F.3d 35 (D.C. Cir. 2001),

(Continued...)

The government may argue that because intangibles (such as sex, employment, or companionship) are things of value under other criminal provisions, *see, e.g., United States v. Nilson*, 967 F.2d 539, 542 (11th Cir. 1992) ("Congress' frequent use of 'thing of value' in various criminal statutes has evolved the phrase into a term of art which the courts generally construe to envelope tangibles as well as intangibles.") (construing 18 U.S.C. § 876), then donations to a nonprofit entity must be things of value under § 201(b), so long as they are offered with an intent to influence the conduct of a public official. This argument has some textual support under the "any *other person or entity*" prong of § 201(b), but it ultimately fails because it stretches the statute well beyond its accepted meaning.

We have found only one reported case that addressed whether bribery charges could be brought where (as here) the benefit of the "thing of value" accrued entirely to an independent third-party entity. In that case, a New Jersey appellate court construing a statute similar to § 201(b) affirmed a bribery conviction of a town zoning official who in consideration for a zoning permit accepted a $500,000 donation to a parochial school. *See New Jersey v. Schenkolewski*, 693 A.2d 1173, 1185–86 (N.J. Super. Ct. App. Div. 1997). But Mr. Schenkolewski was the *head* of the parochial school, he received a salary from the school, and he had full control over its funds. President Clinton has no such relationship to his presidential foundation, which is an independent non-profit entity organized under Section 501(c)(3) of the Internal Revenue Code.

Moreover, while subsequent legislative materials are not generally relevant to the interpretation of prior enactments, it is interesting that the United States Senate in 1991 refused to recognize that § 201(b) criminalizes donations to independent third party entities. In the context of the [redacted] Five investigation, the Senate's Select Committee on Ethics concluded that vast donations by [redacted] and others to tax exempt organizations could not make out a bribery offense, even where such donations were "substantially linked" to a Senator's official acts. *See* Final Report of The Select Committee on Ethics, *Investigation of Senator Alan Cranston*, 137 Cong. Rec. S17175 (Nov. 20, 1991). Significantly, the Committee treated donations to non-profit entities no differently than donations to campaign committees, the latter of which trigger heightened proof standards and thus cannot support a bribery charge without strong evidence of a *quid pro quo*. *See, e.g., McCormick v. United States*, 500 U.S. 257, 271 (1991).

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It therefore appears that although the "anything of value" element of Section 201(b) is generously construed in the typical case, the government here must break new ground to support a theory that donations to an independent nonprofit entity are chargeable to the donor as an

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or reversed, *United States v. Sun-Diamond Growers*, 526 U.S. 398 (1999). Our research has not uncovered other reported decisions discussing this element, which underscores the lack of judicial guidance on whether the element reaches the facts alleged here. Indeed, the proper construction of "anything of value" under § 201(b) is but one of the many questions of first impression that this case would unavoidably trigger.

attempted bribe. Because this intensely high profile case is constitutionally suspect to begin with, involves no direct evidence of wrongdoing, and prompts inevitable political controversy, it is simply not the place to test such novel legal theories.[55]

3. The "Official Act" Element Is Not Met

An "official act" for the purposes of Section 201 (b) and (c) is defined as follows:

> [A]ny decision or action on any question, matter, cause, suit, proceeding or controversy, which may at any time be pending, or which may by law be brought before any public official, in such official's official capacity, or in such official's place of trust or profit.

18 U.S.C. § 201(a)(3). This definition has also been broadly construed. *See, e.g., United States v. Parker*, 133 F.3d 322, 326 (5th Cir. 1998) ("This broad definition of 'official act' reflects Congress' intent to 'include any decision or action taken by a public official in his capacity as such.'") (quoting S. Rep. No. 87-2213 (1962)); *United States v. Biaggi*, 853 F.2d 89, 97–98 (2d Cir. 1988) (discussing *United States v. Birdsall*, 233 U.S. 223 (1914)). But whether Congress intended the definition to reach the legally-unlimited presidential pardon power is an open question, to which the answer is probably no.

The Supreme Court has described a presidential pardon as "the 'private' act, the 'private deed' of the executive magistrate." *Burdick v. United States*, 236 U.S. 79, 88, 90 (1915) (citing *United States v. Wilson*, 32 U.S. (7 Pet.) 150 (1833) (Marshall, C.J.)). *But see Wilson*, 32 U.S. at 160–61 (describing a pardon "the private, though official, act of the magistrate") (this sentence was not cited in *Burdick*)). And there is no evidence that Congress intended a presidential pardon to be an "official act" for purposes of prosecution under the bribery statute.

Indeed, the singular nature of the pardon power — a power immune from *any* oversight or scrutiny — raises serious doubt as to whether Congress would (or could) have intended to sanction criminal investigations into matters relating to presidential pardons without explicitly saying so. Nothing in the legislative history of § 201 or its predecessor provisions, nor any

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[55] Indeed, even if such a theory would suffice in the *typical* bribery case, there remains the open question whether the unique context of this case calls for more stringent rules of construction. The Supreme Court has construed the text of § 201(c) with precision in the context of campaign contributions, *Sun-Diamond Growers*, 526 U.S. at 412, where the only competing value is the normal give and take of the political process. That value is equally present here, and it is significantly amplified by the unprecedented constitutional context of a bribery prosecution arising from a presidential pardon. It is thus doubtful whether the government could count on the liberal rules of construction that might govern in a more-conventional bribery case where the chargeable offer involved donations to an independent third-party entity.

reported case of which we are aware, discusses the prospect of a bribery prosecution arising from a presidential pardon. And no court has ever interpreted *any* law to permit inquiry into the pardon process for any reason. This would be the first.

The government may argue that by broadly drafting the federal bribery provisions, Congress intended to proscribe private individuals from seeking undue influence through gifts or promises of financial reward, even in the course of seeking a pardon. But broad statutory language merely creates the interpretive problem — it does not resolve it. No matter that an interpretation seems sensible to the government, the fact remains that no court has *ever* read a statute (any statute) to alter or abridge in any way the President's uniquely unfettered prerogative to grant pardons.[56]

In short, the power to pardon is the personal privilege of the President, immune from oversight by anyone other than the public at large, and even then only indirectly, either at the polls or in the history books. Unlike official powers that are held in public trust, the constitutional pardon power has historically been understood as authorizing individual acts of grace irrespective of public sentiment, often in the face of public controversy and uproar. Accordingly, if Congress intended for a general bribery statute to create the first ever mechanism for official scrutiny of presidential pardons, it surely would have spoken with a more direct voice than simply extending the sanction generally to conduct involving "an official act."[57]

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56. It is significant on this score that the practice of granting pardons for money was a well-known aspect of the King's power under English common law, *see, e.g.*, 3 U.S. Dep't of Justice, *The Attorney General's Survey of Release Procedures* 30 (1939) ("There was apparently no disgrace in the offer of a sum of money to the King or to other persons [in return for a pardon]."); Daniel T. Kobil, *The Quality of Mercy Strained: Wresting the Pardoning Power from the King*, 69 Tex. L. Rev. 569, 588 (1991) ("[In England] even the outright sale of pardons was commonplace"), and the Supreme Court has repeatedly and consistently held that the Constitution vests American Presidents with clemency powers equivalent to those possessed by the English King, *see, e.g.*, *Schick v. Reed*, 419 U.S. 256, 261 (1974); *Ex parte Wells*, 59 U.S. (18 How.) 307, 309 (1855); *United States v. Wilson*, 32 U.S. (7 Pet.) 150, 160 (1833) (Marshall, C.J.). On what authority, thus, could Congress extend the federal bribery statute to *criminalize* even the most egregious examples of payment in specific exchange for a presidential pardon? We submit that there is no such authority, absent an amendment to the Constitution.

57. The government must also consider that even if a pardon is an official act under § 201, the sort of evidence available to prove that a pardon-petitioner sought to criminally influence the pardon process will be restricted. An apt analogy is to the Constitution's Speech and Debate Clause, Art. I, § 6, cl. 1, which does not shield Senators and Representatives against bribery charges, *see, e.g.*, *United States v. Johnson*, 383 U.S. 169 (1966), but which does impose significant limits on the type of evidence that can be used to prove that offense, *see, e.g.*, *United States v. Helstoski*, 442 U.S. 477 (1979) (reversing (Continued...)

4. The "Intent and Causal Connection" Elements Are Not Met

a. Intent Under Section 201(b)

The Second Circuit recently summarized the "corrupt" intent requirement of the bribery provision:

> The "corrupt" intent necessary to a bribery conviction is in the nature of a *quid pro quo* requirement; that is, there must be "a specific intent to give . . . something of value *in exchange* for an official act." Putting it only slightly differently, bribery involves the giving of value to procure a specific official action from a public official.

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conviction of congressman where evidence touched upon constitutional prerogatives of the legislative branch). *See also United States v. Durenburger*, No. CRIM 3-93 65, 1993 WL 738477, at *1 (D. Minn. Dec. 3, 1993) (bribery indictment dismissed where grand jury evidence improperly revealed "information about the performance of legislative acts and the legislator's motivation in conducting official duties") (quoting *Helstoski*, 442 U.S. at 489); Dep't of Justice Manual No. 2046 ("[W]here an official of the Legislative branch is the intended recipient [of a bribe], the task of proving the 'official act' element can present prosecutors with unique challenges."). As the Supreme Court reasoned in *Helstoski*, "[t]he Speech and Debate Clause was designed neither to assure fair trials nor to avoid coercion. Rather, its purpose was to preserve the constitutional structure of separate, coequal, and independent branches of government." 442 U.S. at 491. Separation of powers principles being no less implicated here, *see supra*, at 11–15, a similar principle should exclude the admissibility of predecisional deliberations closely linked to the President's exercise of his pardon authority. A corollary matter is executive privilege, which President Clinton may invoke if called to testify in this case. The boundaries of this privilege are unclear, and as far as we are aware, entirely unknown in the context of pardon deliberations. *See generally United States v. Nixon*, 418 U.S. 683, 703–13 (1974); Mark J. Rozell, *Restoring Balance to the Debate Over Executive Privilege*, 8 Wm. & Mary Bill of Rights L.J. 541, 567 (2000) ("[T]here are no clear, precise constitutional boundaries that determine, a priori, whether any particular claim of executive privilege is legitimate. The resolution to the dilemma of executive privilege is found in the political ebb and flow of the separation of powers system."). What is relevant for present purposes, however, is that even if a court interprets the "official act" element as extending to presidential pardons, the singularity of the pardon power and the principles of divided powers will certainly restrict the evidence available to make out a bribery charge. Accordingly, because the evidence here is entirely circumstantial, opportunities for the government to prove its case, or for the pardoned-defendant to receive a fair trial, will be significantly impaired.

United States v. Alfisi, 308 F.3d 144, 149 (2d Cir. 2002) (quoting *Sun-Diamond Growers*, 526 U.S. at 404–05 (emphasis in original)); *see also United States v. Jennings*, 160 F.3d 1006, 1013 (4th Cir. 1998) ("Under § 201 'corrupt intent' is the intent to receive a specific benefit in return for the payment. In other words, the payor of a bribe must intend to engage in some more or less specific *quid pro quo* with the official who receives the payment") (citing *United States v. Irwin*, 354 F.2d 192, 197 (2d Cir. 1965)) (quotations and other citations omitted); Dep't of Justice Manual No. 2044 ("[T]he bribery statute requires proof of an actual or intended *quid pro quo*: one thing in exchange for another"). For the government to establish this element, therefore, it must prove that Marc Rich specifically intended to offer the President a thing of value and to secure a presidential pardon in return for the offer. As we have already explained, the evidence required to make that showing is sorely lacking here.

b. Intent Under Section 201(c)

Finally, under Section 201(c), which does not require *quid pro quo*, the government still must prove a direct nexus between the gratuity and some official act. This is because the provision only prohibits gratuities given or offered "*for or because of* any official act performed or to be performed." 18 U.S.C. § 201(c) (emphasis added); *see, e.g., Sun-Diamond Growers*, 526 U.S. at 414 ("[T]he Government must prove a link between a thing of value conferred upon a public official and a specific 'official act' for or because of which it was given."). Therefore, *even if* the government could prove that a donation to an independent entity qualified as a "thing of value" under the illegal gratuity provision — an argument that is textually foreclosed, *see supra* at 29–30 — the government *still* must prove that such donations were to be offered "for or because of" the pardon by the President. Again, as demonstrated repeatedly in this submission, there is no such provable evidence here.

* * *

At bottom, the weaknesses in the proposed charges are replete and glaring. *First*, even if we assume that all of the government's evidence would be admissible, there is no credible evidence that Marc Rich or any of his associates offered or intended to offer anything of value to any public official. *Second*, donations to an entity like a presidential library foundation are not chargeable as illegal gratuities. *Third*, the government's theory that such donations may be chargeable as a bribe is unprecedented and unlikely to succeed. *Fourth*, even assuming such donations were offered (an assumption resting on testimony of one witness with dubious credibility), and that such offers were made with the specific intent to influence the President (an assumption resting on no evidence whatsoever), the government's case would still rest entirely on a series of untested legal theories and weak circumstantial evidence. For all of these reasons, the contemplated charges are unsupportable and there is no basis for proceeding with this case.

D. The Government's "Best" Evidence Is Not Admissible Against Marc Rich

This submission has assumed all along that the government could present its best circumstantial case against Marc Rich. For even on that assumption, the government still lacks any constitutional or factual basis for going forward with this case. Yet that assumption is wrong. The strongest circumstantial evidence is not admissible against Marc Rich.

The government rests much of its case on the alleged hearsay statements of Mr. Azulay, which purport to show that an offer was in the works and that that offer was intended to be relayed to President Clinton. Putting aside obvious problems of credibility and logic, these statements are admissible against Marc Rich *only* if they fall within the co-conspirator exception to the hearsay rule. The governing rule is Federal Rule of Evidence 801(d)(2)(E), which provides that an out-of-court statement "by a coconspirator of a party during the course and in furtherance of the conspiracy" is not hearsay, even when offered to prove the truth of the matter asserted. *See Bourjaily v. United States*, 483 U.S. 171, 173 (1987). To lay a proper foundation under this rule, the government must prove "by a preponderance of the evidence first, that a conspiracy existed that included the defendant and the declarant; and second, that the statement was made during the course of and in furtherance of the conspiracy." *United States v. Padilla*, 203 F.3d 156, 161 (2d Cir. 2000) (quotations and citation omitted).

The question here is whether a foundation can be laid to prove Marc Rich's participation in a conspiracy to bribe the President of the United States in exchange for a pardon. The answer is no, because other than the alleged co-conspirator hearsay statements themselves, there exists no independent evidence of such a conspiracy, let alone that Marc Rich was a participant. *See, e.g., United States v. Diaz*, 176 F.3d 52, 83 (2d Cir. 1999) ("'[Co-conspirator] hearsay statements are presumptively unreliable, and, for such statements to be admissible, there must be *some independent corroborating evidence* of the defendant's participation in the conspiracy.'") (emphasis added; quoting *United States v. Tellier*, 83 F.3d 578, 580 (2d Cir. 1996)); *United States v. Gigante*, 166 F.3d 75, 82 (2d Cir. 1999) (same) (quoting *Tellier*, 83 F.3d at 580)); *United States v. Clark*, 18 F.3d 1337, 1341–42 (6th Cir. 1994) ("Since *Bourjaily*, all circuits addressing the issue have explicitly held absent *some* independent, corroborating evidence of defendant's knowledge of and participation in the conspiracy, the out-of-court statements remain inadmissible.") (emphasis in original; citations omitted).[58]

To conceivably claim otherwise, the government must argue that because [redacted] offered [redacted] a multi-million dollar donation, and because only Marc Rich had the resources to fund such a donation, Marc Rich must be implicated in the conspiracy. No authority supports the view, however, that statements by one individual to employ resources illegally can implicate the owner of the resources in a conspiracy. b6 b7C

Indeed, in *United States v. Gigante*, 166 F.3d 75, 83 (2d Cir. 1999), the court held that a mafia boss was "necessarily involved" in a murder conspiracy because he was required by virtue of his position to authorize the murder. But to the extent that holding applies here, it supports Marc Rich. *First*, the *Gigante* court found "substantial corroborating evidence" of the

58 Circumstantial evidence of "idle chatter" or "merely narrative" descriptions by a conspirator do not generally meet the standards of admissibility under Rule 801(d)(2)(E). *See United States v. Beech-Nut Nutrition Corp.*, 871 F.2d 1181, 1199 (2d Cir. 1989) (citing *United States v. Lieberman*, 637 F.2d 95, 103 (2d Cir. 1980)); *United States v. Heinemann*, 801 F.2d 86, 95 (2d Cir. 1986).

defendant's participation in the conspiracy. *See id.* at 83 ("There was substantial direct and circumstantial evidence connecting Gigante to each of the crimes for which he was convicted."). There is no such evidence here. *Second*, the court *rejected* the admissibility of co-conspirator statements that suggested no crime would be committed without the defendant's explicit permission. *See id.* Similarly here, even assuming that [redacted] thought a substantial contribution to the Clinton Library might influence the President's decision on the merits of the petition, there is no credible evidence that Marc Rich authorized [redacted] to extend any such offer. *See, e.g., United States v. Shulman*, 624 F.2d 384, 387 (2d Cir. 1980) (holding that "the actual offer of a bribe" is completed only if the principal has "authorized the payment of a bribe"). To the contrary, according to the government's evidence, where money was to be transferred to [redacted] (the G&P Foundation payment) the evidence shows that the parties required a legitimate arrangement committed to writing.

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In sum, without independent corroborating evidence of a conspiracy to bribe the President, and of Marc Rich's participation in such a conspiracy, the alleged statements of [redacted] are inadmissible against Marc Rich. We respectfully submit that because no credible evidence supports either finding, there is no basis for bringing the charges contemplated here, *even if* every other legal and constitutional impediment could be overcome.

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III. THE INTERESTS OF THIS OFFICE, THE PRESIDENCY, AND THE POLICIES OF THE DEPARTMENT OF JUSTICE MILITATE AGAINST BRINGING THIS CASE AGAINST MARC RICH

Strong prudential factors also militate against pressing charges here. This matter directly implicates President Clinton and the institutional integrity of the presidency; the pardon process itself is squarely at issue, and President Clinton is integral to any defense on the merits. Given the thin factual record and the numerous constitutional and statutory difficulties already discussed, carrying this case forward seriously risks the reputation and authority of the presidency itself.

A. The Testimony of President Clinton Is Central To This Case.

The testimony of President Clinton is integral to any defense on the merits and would be required if this case reached the trial stage. The Sixth Amendment provides that "the accused shall enjoy the right . . . to have compulsory process for obtaining witnesses in his favor." Because this right is an essential attribute of the adversary system itself, the Supreme Court has repeatedly declared that "[f]ew rights are more fundamental than that of an accused to present witnesses in his own defense." *Chambers v. Mississippi*, 410 U.S. 284, 302 (1973).[59] It is

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59 *See also Taylor v. Illinois*, 484 U.S. 400, 409 (1988) ("The right to compel a witness' presence in the courtroom could not protect the integrity of the adversary process if it did not embrace the right to have the witness' testimony heard by the trier of fact."); *Washington v. Texas*, 388 U.S. 14, 20 (1967) ("[T]he Framers of the Constitution felt it necessary specifically to provide that defendants in criminal cases should be provided the (Continued...)

settled, thus, that if a criminal defendant makes "some plausible showing" that a witness is "material and favorable to his defense," the jury must hear testimony from that witness for a trial to comport with due process and the Sixth Amendment. *United States v. Valenzuela-Bernal*, 458 U.S. 858, 867 (1981); *see also Pennsylvania v. Ritchie*, 480 U.S. 39, 56 (1987) ("[C]riminal defendants have the right . . . to put before a jury evidence that *might influence the determination of guilt*.") (emphasis added).

President's Clinton's testimony clearly meets that standard. He has said:

> The suggestion that I granted the pardons because Mr. Rich's [redacted] made political contributions and contributed to the Clinton Library foundation is *utterly false*. There was absolutely no *quid pro quo*. Indeed, other friends and financial supporters sought pardons in cases which, after careful consideration based on the information available to me, I determined I could not grant.

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William J. Clinton, *My Reasons For The Pardons*, N.Y. Times, Feb. 18, 2001 (emphasis added). He has further set forth at least eight independent reasons for granting the Rich and Green pardons on the merits, and declared that his decision "was in the best interests of justice." *Id.* He concluded:

> If the two men were wrongly indicted in the first place, justice has been done. On the other hand, if they do personally owe money for Energy Department penalties, unpaid taxes or civil fines, they can now be sued civilly, as others in their position apparently were . . . .

Id. These statements and others go to the heart of any defense on the merits. They support the defense theory that the Rich pardon is not only fully consistent with other pardons by other Presidents, but also exemplify why it is that Presidents possess an unfettered pardon power to begin with, *i.e.*, to prevent or temper a perceived miscarriage of justice. Viewed thusly, the pardons were rightfully pursued, consistent with the Constitution, and decided on the merits.

The government is thus mistaken if it believes that this matter could be prosecuted without implicating Bill Clinton or the presidential pardon process. To the contrary, the former President's testimony is a necessary condition of a constitutionally fair trial. There are three consequences to this fact. *First*, it would unleash a media circus with attention focusing (fairly or unfairly) on the implicit and explosive allegation that former President Clinton granted a pardon in exchange for a bribe. *Second*, it would require the President to divulge inner-most deliberations with staff on pardon matters, thus necessarily implicating executive privilege. If privilege matters could not be overcome, the defense would be denied needed information, and the prosecution could not go forward. If privilege matters could be overcome, this case would

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means of obtaining witnesses so that their own evidence, as well as the prosecution's, might be evaluated by the jury.").

represent an unprecedented intrusion by the judiciary into a purely executive function. *Third*, any trial involving the testimony of the former President, combined with other prominent potential witnesses for the defense, including Messrs. Garment, Libby, Ginsburg, Wolfman, and [redacted] would realistically doom any chance that this prosecution would succeed on the merits. b6 b7C

CONCLUSION

For all the reasons discussed, we respectfully submit that the proposed case against Marc Rich is untenable on a number of grounds. It is unsupported by the factual record. It is an unprecedented and unreasonable application of the Federal bribery laws. And it would be the first time in the history of the United States that criminal charges arose from the process by which an individual sought a presidential pardon. In short, the case should not be brought and this investigation should be brought to a close.

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R[redacted]fully submitted,

[redacted]

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Total Deleted Page(s) = 23
Page 5 ~ b3; b6; b7C; b7D;
Page 6 ~ b3; b6; b7C; b7D;
Page 7 ~ b3; b6; b7C; b7D;
Page 8 ~ b3; b6; b7C; b7D;
Page 9 ~ b3; b7D;
Page 10 ~ b3; b7D;
Page 11 ~ b3; b6; b7C; b7D;
Page 12 ~ b3; b6; b7C; b7D;
Page 14 ~ b5; b6; b7C; b7D;
Page 15 ~ b5; b6; b7C; b7D;
Page 16 ~ b6; b7C; b7D;
Page 17 ~ b6; b7C; b7D;
Page 18 ~ b6; b7C; b7D;
Page 19 ~ b6; b7C; b7D;
Page 24 ~ b6; b7C;
Page 25 ~ b6; b7C;
Page 26 ~ b6; b7C;
Page 28 ~ b3; b6; b7C; b7D;
Page 29 ~ b3; b6; b7C; b7D;
Page 30 ~ b3; b6; b7C; b7D;
Page 31 ~ b3; b6; b7C; b7D;
Page 34 ~ b6; b7C; b7E;
Page 35 ~ b7E;

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Item	Date Filed	To be returned Yes	No		Disposition
1A66	10/22/03		/	[redacted]	(See Ser. 377) ug
1A67	4/20/04		/	orig. notes re: [redacted] + website: bio + [redacted]	(See Ser. 399) ug
1A68	5/10/04		/	[redacted] CD Rom Disks	(See Ser. 407) ug
1A69	8/30/04		/	{ [redacted]	
				{ [redacted]	(Ser 419) g
1A70	9/29/04		/	Cover letter and documents rec'd from [redacted]	(Ser 423) g
1A71	10/25/02		/	Receipt of Evidence TRANSfer to SDNY	Ejb

b3
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58A-NY-278417-1A Supp
SEARCHED ______ INDEXED ______
SERIALIZED ug FILED ug
OCT 2003
FBI - NEW YORK
ug

FD-340 (Rev. 3-8-01)

Universal Case File Number 58A-NY-278417-1A66

Field Office Acquiring Evidence ____________

Serial # of Originating Document 377

Date Received 10/6/03

From [redacted]
(Name of Contributor)

____
(Address of Contributor)

____
(City and State)

By [redacted]

b3
b6
b7C
b7D

To Be Returned ☐ Yes ☑ No

Receipt Given ☐ Yes ☑ No

Grand Jury Material - Disseminate Only Pursuant to Rule 6 (e)
Federal Rules of Criminal Procedure

☐ Yes ☑ No

Federal Taxpayer Information (FTI)

☐ Yes ☑ No

Title: PARDON INVESTIGATION

Reference: ____________
(Communication Enclosing Material)

Description: ☑ AN Original notes re interview of
[redacted]
[redacted]

b3
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b7C
b7D

FD-340b (Rev. 8-7-97)

-1A67

Universal Case File Number 58A-NY-278417

Field Office Acquiring Evidence ____________

Serial # of Originating Document 399

Date Received 1/21/04

From ____________
(Name of Contributor)

____
(Address of Contributor)

____

By [redacted]
(Name of Special Agent)

b6
b7C

To Be Returned ☐ Yes ☒ No

Receipt Given ☐ Yes ☒ No

Grand Jury Material - Disseminate Only Pursuant to Rule 6 (e), Federal Rules of Criminal Procedure

☐ Yes ☒ No

Title: Unsub(s);
William J Clinton - Former US Pres.
et al
CF&O

Reference: 302
(Communication Enclosing Material)

Description: ☒ Original notes re interview of [redacted]

and website [redacted]

b5
b6
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FBI/DOJ

FD-340b (Rev. 8-7-97)

-1A68

Universal Case File Number 58A-NY-278417

Field Office Acquiring Evidence NYO

Serial # of Originating Document 407

Date Received 5/5/04

From ____________________
(Name of Contributor)

____
(Address of Contributor)

By [redacted]

b6
b7C

To Be Returned ☐ Yes ☒ No

Receipt Given ☐ Yes ☒ No

Grand Jury Material - Disseminate Only Pursuant to Rule 6 (e), Federal Rules of Criminal Procedure

☐ Yes ☒ No

Title:
Marc Rich Pardon INV.

Reference: ____________________
(Communication Enclosing Material)

Description: ☐ Original notes re interview of

[redacted] CD Rom Disks

b7E

FBI/DOJ

FD-340a (Rev. 11-12-89)

(Title) MARC RICH PARDON INV.

b7E (File No.) 58A-NY-278417

Item	Date Filed	To be returned Yes	No		Disposition
			✓	CD ROM DISKS	

FD-340 (Rev. 4-11-03)

File Number 58A-NY-278417 -1A69

Field Office Acquiring Evidence ST

Serial # of Originating Document 419

Date Received 7/21/04

From [redacted]

(Name of Contributor/Interviewee)

[redacted]

(Address)

US Embassy - Kingston, Jamaica

(City and State)

By [redacted]

To Be Returned ☐ Yes ☑ No

Receipt Given ☐ Yes ☑ No

Grand Jury Material - Disseminate Only Pursuant to Rule 6 (e) Federal Rules of Criminal Procedure

☐ Yes ☑ No

Federal Taxpayer Information (FTI)

☐ Yes ☑ No

Title: UNSUB(S);
William J. Clinton - Former U.S. President;
ET AL
CFPO - Executive Branch;
OO: NY

Reference:

(Communication Enclosing Material)

Description: ☐ ~~Original notes re interview of~~

[redacted]

b6
b7C

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FD-340b (Rev. 4-11-03)

File Number 58A-NY-278417 -1A70

Field Office Acquiring Evidence NY

Serial # of Originating Document 423

Date Received 9/22/04

From AUSA [redacted]

(Name of Contributor/Interviewee)

SDNY

(Address)

(City and State)

By [redacted]

b6
b7C

To Be Returned ☐ Yes ☑ No

Receipt Given ☐ Yes ☑ No

Grand Jury Material - Disseminate Only Pursuant to Rule 6 (e) Federal Rules of Criminal Procedure

☐ Yes ☑ No

Federal Taxpayer Information (FTI)

☐ Yes ☑ No

Title: MARC RICH PARDON INVESTIGATION

Reference:

(Communication Enclosing Material)

Description: ☐ Original notes re interview of

Cover letter and documents received from [redacted]

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ce 9/7/07

FD-340b (Rev. 2-5-93)

(CLOSED) - 1A91

Universal Case File Number 58ANY278417

Field Office Acquiring Evidence NY

Serial # of Originating Document

Date Received MAY 16 2007

From

(Name of Contributor)

(Address of Contributor)

By [redacted]

(Name of Special Agent)

b6
b7C

To Be Returned ☐ Yes ☒ No

Receipt Given ☐ Yes ☒ No

Grand Jury Material - Disseminate Only Pursuant to Rule 6 (e), Federal Rules of Criminal Procedure

☐ Yes ☒ No

Title: [redacted]

ET AL;

DO: NY

b6
b7C

Reference:

(Communication Enclosing Material)

Description: ☐ Original ~~notes re interview of~~

RECEIPT OF EVIDENCE TRANSFER TO SDNY.

[redacted]

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USAO #
2001R01633
US VS MARC RICH