GEORGE CLIVE HOOK
1802 CAMDEN DRIVE
GLENVIEW, ILLINOIS
60025-7606
(847) 724-0907

Susan M. Kuzma
Deputy Pardon Attorney
US Department of Justice
Office of the Pardon Attorney
Washington, D.C. 20530

Re: George Clive Hook II and Carmen Viana Pardons

Dear Ms. Kuzma:

You are yet again addressing my Petition for Presidential Pardon, albeit now in the preliminary of waiver of the Attorney General's regulatory minimum five year waiting period.

I received your letter of 1/21/05 and, as I was in the midst of ARDC proceedings in Illinois with respect to lifting the suspension of my license to practice law, I requested deferral of any decision regarding waiver of the five year waiting period until I had a chance to provide information in support of that waiver. The Hearing Board heard testimony on 2/2 and 2/3. As we did not finish, the hearing resumed 3/16 and has been continued to 4/19 for a final evidentiary session and closing argument. In the interim, I respond as follows regarding waiver.

In summary, you made the following points in opposition to waiver in your letter of 1/21/05:

(1) President Bush has followed the five year waiting period of the clemency regulations (28 CFR 1.1, et seq.).

(2) Waiver of the waiting period is very rarely granted.

(3) Pardons based on innocence are rarely granted,

(a) as pardon is an act of forgiveness and therefore dependent on
(i) acceptance of responsibility for the crime committed and
(ii) evidence of good citizenship as demonstrated over a significant period.

(4) Pardoners do not attempt to retry the case.

(5) Contests of interpretation of the law applied by the courts to the case require overcoming the presumption of correctness of the interpretation, since the judiciary are generally regarded as right based upon their position and experience.

(6) Expunction is not an option as it is a rarely granted judicial remedy.

(7) Ms. Viana cannot be pardoned pursuant to my request because
(a) it is not an application by her and
(b) she has not been convicted.

I address each of your arguments as follows:

Even if President Bush follows 28 CFR 1.2. He Must Not Do So Slavishly.

The five year waiting period, of course, is of recent vintage, having come into being in October, 1993.[1] Consistency regardless of circumstance is the hobgobblin of little minds. President Bush has given no other indication that he wishes to be so constrained in his thinking or conduct. Indeed, it is contrary to the character he projects publicly. Rather than mindless adherence to pro forma administrative restraints, the President should be concerned about freeing the innocent and ameliorating judicial abuse wherever and whenever they are found by

[1] It came into existence during the Presidency of the current President's father. Even in his term and thereafter it has been ignored: Joseph Occhipinti, Phillip Joseph Grandmaison, Joseph Riddick Hendrick, III, Daniel Rostenkowski, Archibald R. Schaffer, III, Henry G. Cisneros, Edwin L. Cox, Jr., John Deutch, Richard Douglas, Alvarez Ferrouillet, William Denis Fugazy, Lloyd Reid George, John J. Hemmingson, Linda D. Medlar, James Howard Lake, Gary Robert Tredway, Brook K. Mitchell, Sr., John Fife Symington, III, Jack L. Williams, Ernest Charles Krikava, Jackie A. Trautman, Johnny Palacios, Vicki Lopez-Lukis, Dorothy Marie Gaines, Bobby Franklin Griffin, Kemba Niambi Smith, Benjamin Berger, Ronald Henderson Blackley, Jacob Elbaum, David Goldstein, Arnold Paul Prosperi, Melvin J. Reynolds, Dorothy Rivers, Kalmen Stern, Thomas W. Waddell, III.

exercising his pardon power. That is what a compassionate conservative would do.

Waiver is Rarely Granted, But Mine is the Rarity that Compels Waiver.

As clearly demonstrated in my petition, I am innocent of any crime, as well as not guilty of any federal crime. In addition, my trial and appeal were plainly farcical, as, contrary to well established precedent, my defense was not permitted as to the missing essential element for prosecution under 18 USC 664. The misrepresentation alleged as required under 18 USC 1341 for wire fraud was beyond a reasonable doubt not made, beyond a reasonable doubt not relied upon, beyond a reasonable doubt not plausibly chargeable to me, and beyond a reasonable doubt the fantasy of the prosecutor signed onto by a stupid[2] bank vice president who feared she would be prosecuted otherwise and would lose her job. Beyond all reasonable doubt, there was no intent to conceal and no concealment, indeed, no predicate unlawful act to conceal as required for money laundering under 18 USC 1956! Waiver should be granted to an innocent who has been sorely abused by the judicial system.

As set forth in detail in my Pardon Petition, the jury did not hear much of my defense because Judge Mihm[3] thought his opinion on pension matters was better than my expert's [4] and therefore did not permit the jury to hear my expert's opinion. Judge Mihm did not permit me to challenge the prosecutor's opinion on cross examination either. Having as his primary experience prosecution before he ascended to the bench, Judge Mihm acted throughout as an auxiliary prosecutor, denigrating me and my defense in front of the jury, denying me time to develop my case merely because it would take more time than the soap opera presentation of the prosecutor and refusing to permit me to disclose most of the things I did to protect the pension plan loan security.

As set forth in detail in my Pardon Petition, the appellate opinion of Judge Kanne[5] was contrary to the law regarding waiver, preclusion, termination, expert testimony and the rule of lenity, to name a few of his egregious errors.

---

[2] This is her assessment of herself stated in her trial testimony.
[3] He practiced only for two years before becoming a prosecutor and then a federal judge!
[4] If he has any expertise, it is the federal sentencing guidelines. However, he did not demonstrate even that in my case.
[5] Judge Kanne practices law in a small town for four years, one of which was as city attorney. He is most noted for his extreme slowness, lack of vision and unfairness to individuals in employment and criminal cases.

Such sorry judicial performance cries out for remedy, which can be provided now only by Presidential Pardon.

As Only the Guilty May Be Pardoned, the Innocent Need Not Apply?

Your paraphrase of the President's bases for exercise of his plenary pardon power is tantamount to not pardoning me because I am innocent, because I will not barter my innocence for pardon, because I will not lie and falsely admit guilt for pardon, because I have not suffered long enough. In so doing, you portray the President as a perverse mountebank such as some of his cartoonist critics do. I doubt that he would wish to be so characterized by posterity. More likely he would regard your portrayal as a betrayal of his core beliefs.

Your statements about innocence as not being basis for pardon are historically inaccurate. As Chief Justice Rehnquist observed in Herrera v. Collins, 506 US 390 (1993): "Clemency provided the principal avenue of relief for individuals convicted of criminal offenses—most of which were capital—because there was no right of appeal until 1907. 1L. Radzinowicz, A History of English Criminal Law 122 (1948). It was the only means by which one could challenge his conviction on the ground of innocence. United States Dept. of Justice, 3 Attorney General's Survey of Release Procedures 73 (1939)." He continued: "Our Constitution adopts the British model and gives to the President the 'Power to grant Reprieves and Pardons for Offences against the United States,' citing Chief Justice Marshall in United States v. Wilson, 7 Pet. 150, 160-161 (1833). He continued: "Executive clemency has provided the 'fail safe' in our criminal justice system. K. Moore, Pardons: Justice, Mercy, and the Public Interest 131 (1989). It is an unalterable fact that our judicial system, like the human beings who administer it, is fallible. But history is replete with examples of wrongfully convicted persons who have been pardoned in the wake of after-discovered evidence establishing their innocence. In his classic work, Professor Edwin Borchard compiled 65 cases in which it was later determined that individuals had been wrongfully convicted of crimes. Clemency provided the relief mechanism in 47 of these cases..." "History shows that the traditional remedy for claims of innocence...has been executive clemency."

As the very case you cite[6] observes, Ex Parte Garland, 71 US 333, 374 (1866) held "A pardon reaches both the punishment prescribed for the offense and

[6] United States v. Noonan, 906 F.2d 952 (3rd Cir. 1990), albeit for the purpose of asserting that the President lacks the power to expunge as an adjunct of his Pardon Power.

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 offense." Truly, the Supreme Court later went off track in Burdick v. United States, 236 US 79 (1915) to surmise, contrary to history and common sense, "confession of guilt is implied in the acceptance of a pardon." That, of course, is readily confuted by one, such as me, who emphatically states that "I am innocent, but because of that I am not precluded from seeking pardon from the flawed judicial process which accounted me guilty."

I doubt that the President would want to deny the innocent a pardon on the ground you assert. If he does, let it be on his conscience. I will not follow the path of Jefferson Davis, given in your cited case[6] as an example, who eschewed asking. His was a much different case. He would have been asking pardon of a sovereign which he did not recognize as legitimately his. I am not at that point. Nor should the innocent and judicially abused be driven there! I will not withdraw my pardon petition because I am innocent and I will continue to seek it until I get it, even if the Attorney General's Regulations would render my pardon a useless thing by requiring that it await full satisfaction of sentence and supervised release and not include expunction of conviction, leaving nothing for the President's Pardon to act upon!

The very case you cite [6] employs the false syllogism that if there be no guilt, there is no ground for forgiveness, which confuses grace[7] with forgiveness when the latter is but one form of the former. It is an act of grace for me to save a drowning man because I do not have to do it; but to say I cannot do it merely because he does not seek my forgiveness is as absurd as your innocence conundrum.

Not granting pardon to all who are innocent is a travesty which makes a mockery of True Justice and the Rule of Law. Further, it reflects poorly on the Presidency, which should be the ultimate protector of innocence and justice, even as a king and despot are as their heads of state. Why isolate the President from petition by the innocent or judicially abused? Why emasculate him?

[7] "The very notion of mercy implies the accuracy of the claims of justice." James Kent, Commentaries on American Law (O. Halsted 1826), Vol. I, p. 264.

The historical and theoretical purpose of pardon is to provide a safety valve for innocence and miscarriages of justice.[8] If only those who are admittedly guilty may successfully apply for pardon, the innocent and victims of miscarriages are relegated to the role of outcasts. If a society refuses relief to the miscast of their pain and burden, is it deserving of respect, preservation? The question answers itself. The question has been answered in Our Time in Germany, Japan, Poland, Russia, Viet Nam. It is being answered throughout the world currently. The answer is No, resounding throughout history in nations destroyed from within of their own rotten core.

Not only is such treatment of innocence a counter-intuitive and counter-productive travesty and mockery of justice and all that is good and noble. It is also an indictment against US. It makes out the Presidency to be one of those quite pathetic institutions, appearing to care, appearing to help, but merely going through the motions, that Ayn Rand's innocent describes in Atlas Shrugged,[9] her severe indictment of US, her wake up call to America; the Presidency as "that kind ...who said theirs was the job of helping sufferers" without sincerely meaning it.

There is no way that one who is innocent such as myself is going to declare guilt for pardon. Galileo's recantation cost the world hundreds of years of dumbing heliocentricity as well as him eternal moral damnation. Rather martyrdom than follow his pursuit of "forgiveness."

Pardon is Dependent on Acceptance of Responsibility for the Crime Committed?

The President must not be counseled to ignore the remedial component of his Pardon Power, for that would exclude the innocent and the unjustly convicted. How can there be acceptance of responsibility by the innocent? I committed no crime. How can there be acceptance of responsibility by those who have been unjustly convicted? The plain language of the criminal statutes under which I was tried was ignored by the judges. So were all the legal precedents. What greater

[8] "...all States have in reserve an ultimate remedy for the miscarriages of law in the Prerogative of Pardon..." Henry Sumner Maine, Ancient Law (John Murray, Albemarle Street 1861), p.380.

[9] "She knew the institutions of that kind and the women who ran them, the women who said that theirs was the job of helping sufferers. If she went in—she thought, stumbling past—if she faced them and begged them for help, 'What is your guilt?' they would ask her. 'Drink? Dope? Pregnancy? Shoplifting?' She would answer, 'I have no guilt, I am innocent, but I'm—' 'Sorry [they would reply], we have no concern for the pain of the innocent." (p.834)

injustice can there be? How can obeisance from me be expected? To give it would make me truly abject and pathetic; to expect it of me, perversely presumptuous.

Evidence of Good Citizenship Demonstrated Over a Significant Period is a Pre-requisite to Pardon.

Such an excuse for ignoring the innocent or the unjustly convicted is inexcusable. Nevertheless, I meet this criterion. My "good citizenship" will stack up with anyone's. I have led an exemplary life, even while incarcerated. As the law clerk at the Metropolitan Correctional Center, as a mentor there, I helped thousands of inmates with their cases, their other problems, their lives. I remained there six years! I started out at Oxford Camp. I responded to the Metropolitan Correctional Center's call for work cadre. I could have returned to a camp after 18 months and relished good food instead of suffering slop and tasteless TV dinners; sunshine and fresh air instead of dark drab halls and stale, germ infested air 85% recycled; healthy outdoor activities[10] instead of rounds of walking confined to the floor intermixed with make due pull-ups, pushups and squats; daily runs out of doors instead of gym wide hit the wall wind sprints in stale air one night a week and little better on a congested rooftop one other dodging and caroming off bodies at great risk of injury to me and others; camaraderie among the white collar set instead of always seething, often exploding anger of society's rejects. Instead, I opted to give help and hope to those most in need, those who were pre-trial, re-trial, on appeal,[11]even though it meant my confinement to a maximum security administrative facility 24/7 for six years!

My current supervised release is at most an impediment to continuing that "good citizenship." It prevents me from helping those who need my help most, the very people I was permitted to help as law clerk at the Metropolitan Correctional Center. Were I to get suspension of my law license lifted, I would still not be able to communicate with inmates and the convicted without prior permission of my probation officer, an insurmountable barrier to trusted legal representation.

Pardoners Need Not Retry My Case.

[10] Even a year after release, I am struggling mightily but with little success to regain the level of cardio-vascular fitness I had before my incarceration when seven minute miles were easy routine, as they are for President Bush currently.

[11] Possibly, a Deputy Pardon Attorney, as a loyal employee of the Department of Justice, might not look favorably upon such conduct, but such assistance as permitted by regulation and case law, to prison inmates (the most downtrodden, the most rejected, the most unpopular and the most unprotected), I would posit, demonstrates admirable citizenship.

My case needs no retrying. The unjustness of it leaps from every page of the trial record and appellate opinion.[12] The bona fide, lawful loan transaction which I documented pursuant to the structure outlined by a pension law expert, the gross mischaracterization of which was the basis for my prosecution and conviction, occurred 13 years ago. I have recently had my 66th birthday. Although I expect to live a good while longer, as each year passes I draw closer to the time when pardon in my lifetime becomes less likely. I do not wish to impose upon my progeny nor the body politic the burden of Mudd.[13]

Had the Department of Justice rationally and fairly exercised proper discretion regarding prosecution, I would not have been prosecuted. Carmen Viana's and my efforts from the outset, and continuing, to protect the pension plan assets were wrongly characterized as misappropriation to the use of another when the rational characterization of our efforts was that of protecting the assets and lack of criminal intent. That we received no personal benefit from what we did is yet another demonstration that criminal intent was lacking.

Had the federal judicial system adhered to statutory language and precedent, my indictment would have been dismissed. The pension plan had ceased to be a title I plan. 18 USC 664 is applicable only to a title I plan. 18 USC 664 so states plainly. That plain statement is supported by the legislative history. Wire fraud requires a misrepresentation. That Harris Bank had no trust powers, the bogus assertion of the prosecution, and accepted as the misrepresentation by Judge Mihm, and the jury (because Judge Mihm precluded my evidence to the contrary), that Harris Bank had not accepted trusteeship, the bogus assertion of Judge Kanne in his appellate opinion (because he knew from the record that Harris Bank did have full trust powers) are demonstrated by the record itself to be false. Not only did Harris Bank accept trusteeship of the pension plan, it accepted trusteeship of five other plans and, due to pressure from the Department of Labor and the bank's erroneous belief that it could absolve itself of its fiduciary obligations by resigning (without complying with the trust agreement provisions thereto) as a trustee, Harris Bank did resign as trustee (from all plans, including the pension plan) and converted assets which would otherwise have been applied to repayment of the pension plan loan. This is proof that Harris Bank accepted trusteeship of the pension plan. Were that

[12] United States v. Hook, 195 F.3d 299 (7th Cir. 1999)

[13] For more than 150 years after his execution for setting the broken leg of John Wilkes Booth, which was his duty as a doctor, Dr. Mudd's heirs pursued pardon on his behalf based on his being innocent of any involvement in President Lincoln's assassination.

not enough, the Brady phase discovery revealed Harris Bank's written admission that it "had control." Money laundering requires an unlawful predicate act. The wire fraud was alleged to be that predicate act, but without a representation, let alone a misrepresentation, it could not rationally serve as such. Money laundering also requires an attempt to conceal. Disclosure from bank to bank in the banking system, disclosure in the internal records of Wittek, disclosure to the pension plan auditor, filing with the Department of Labor pension plan financial statements containing a subsequent events footnote citing the transaction, reference to the loan in Wittek's financials, each and all together belie both the intent to conceal and concealment! In short, my conviction was an outrage!

Had I been timely indicted, Ms. Viana would have been available to rebut, nay preclude and devastate, the lies and prosecutorial subornation of perjury perpetrated by the testimony of James Baughman, Jay Hedges, Sam Lillie, Robert Munse, none of whom I knew nor their pathetic circumstances as she did, whose testimony was substantially different from my understandings from her, and whose testimony therefor I could not absolutely destroy as it deserved. Instead, because the prosecutor was pursuing a tax evasion indictment against her, I learned in the course of my criminal case discovery, she had returned to her native Brazil long before the indictment was issued, indubitably without any knowledge of her indictment or mine.[14]

Had Judge Mihm permitted me the removal to which I was entitled from a biased and inconvenient venue, had Judge Mihm permitted me to present my defense without the interference of his judicial ignorance and bias, had Judge Mihm constrained the rampant prosecutorial misconduct in my case, had Judge Mihm not openly disdained my defense thereby prejudicing and confusing the jury, I could not have been found guilty by any rational jury.

Contests of Judicial Interpretation are Not Favored.

Had Judge Kanne not perverted the appellate process by falsely asserting waiver of issues not waived and contrary to precedent, had Judge Kanne not contorted the argument by concocting a scenario not supported by the trial record or the facts, had Judge Kanne not refused to apply the doctrines of judicial

[14] The assertion of the prosecutor and judges that she was a "fugitive from justice" was false therefor. She departed North America and returned to her native South America because her business had failed, primarily due to egregious unwarranted conduct by the IRS, not because of any perception that she had committed a crime. See 18 USC 1071 et seq. as demonstration of her mischaracterization as a "fugitive from justice."

estoppel, collateral estoppel and res judicata, giving as his main reason that "1991" and "not 1991" were not inconsistent and another that such prior judicial determination was in the nature of an "administrative" determination and not entitled to estoppel effect despite all the precedent being the exact opposite, my conviction would not have been sustained.

Had the US Supreme Court given me audience either pursuant to my petitions for writs of mandamus or certiorari or in a proceeding to remove me from its attorney roll,[15] my conviction would not have been sustained and I would not have need of Presidential Pardon.

The Courts' misinterpretation of the law applicable to my case is patent from the simplest review of the applicable statutes and the Courts' own precedent. I easily overcome the presumption of correctness.

Analysis of the Passage of Time Reveals that Substantively I am Beyond the Five Year Period.

My drafting job that occurred in July 1992 took the prosecution until March 1995 to indict, because of their desire to include tax charges against my co-defendant and having nothing to do with me. Appearance before a biased judge, Judge McDade, took until 1997 to resolve. The prosecution's failure to disclose Brady material and Judge Mihm's prejudicial handling of the Brady proceeding caused sentencing to be delayed until 1998. Commencement of service of sentence therefor occurred a full six years after the event. Sentence itself exceeded the legal limit by 78 months [the sentencing level should have been 4 (up to 6 months incarceration, incarceration not mandatory, no supervised release) as for harmless unlawful conversion of pension plan assets to the use of Wittek, not 28 as for money laundering[16] which was the result of abusive charging by the prosecution]. Apprendi v. New Jersey , 530 US 466 (2000), was decided at the time my case was up in the Supreme Court.[17] Under its aegis, at the very least, my sentence should

[15] That I am still a member of the United States Supreme Court Bar, I attribute to the Supreme Court not wanting to give me a forum where I would have to be given the opportunity the Supreme Court denied me to challenge a conviction which is so contrary to law as to constitute an indictment of the federal judicial system.

[16] This is a part of the RICO statute which its draftsman and Congress intended for organized crime (specifically, the mafia, but not specifically identified to avoid obvious constitutional prohibitions), not those ordinary businessmen and professionals against whom, unfortunately, routinely it has been abused.

[17] Now we have Blakely v. Washington, 542 US (2004) and Booker v. United States, 543 US (2005) to confirm application of the 6th Amendment right of

have been reduced by elimination of those matters--Judge Mihm determined that I had abused my position of trust with the pension plan[18] and that my testimony was perjurious in every instance where it differed from the government's liars--which were neither in the indictment nor decided by the jury. This added another 6 levels unlawfully. The Supreme Court ignored Apprendi's application to my case even though, presciently,[19] I had made the argument at my sentencing.[see fn 17]I served my sentence under a flawed statutory good time regime contrary to the statute which resulted in my having to serve 103 more days than lawful.[20] All told, my five years waiting period would have ended long ago. Clearly, I should now be eligible for pardon without the need for waiver of the five year period. However, that fact alone should compel waiver.

Expunction Not Part of Pardon?

For this proposition you cite United States v. Noonan, 906 F.2d 952 (3rd Cir. 1990). The reasoning of that case is seriously flawed. Indeed, its illogic is so

---

trial by jury to sentencing with one large step remaining to be taken, the additional one I urged at my sentencing hearing and on appeal, that a jury demand includes a demand that the jury be apprized of all sentencing factors and determine the sentence instead of the bench, as in practical effect under the common law (which led to jury nullification, the reason underlying current unconstitutional judicial sentencing)and in civil practice today where the jury decides both liability and damage (even though criminal and civil jury language is identical in the Constitution).

[18] I did not represent the pension plan and I held no such position of trust in relation to the pension plan as a matter of law. See United States v. Hathcoat, 30 F.3d 913, 919 (7th Cir. 1994), United States v. Moored, 997 F.2d 139, 144-145 (6th Cir. 1993), United States v. Broderson, 67 F.3d 452, 456 (2nd Cir. 1995), United States v. Moore, 29 F.3d 175, 179-180 (4th Cir. 1994), United States v. Pardo, 25 F.3d 1187, 1192 (3rd Cir. 1994), United States v. Castagnet, 936 F.2d 57, 62 (2nd Cir. 1991), United States v. Hill, 915 F.2d 502, 506, n.3 (9th Cir. 1990).

[19] Only so for those who do not realize that the right to trial by jury extends to sentencing as well when demand for trial by jury is made. Only by a perversion of history does one come to any different conclusion, i.e., offenses had a specifically prescribed sentence so that the finding of guilt included the finding as to sentence. This led effectively to jury nullification of the laws that carried too severe a sentence upon a sympathetic defendant, the consequent legislation of ranges and the unconstitutional taking of sentencing from the place it belongs, before the jury. Our civil practice correctly informs us. There the jury still determines liability to include the award of damages.

[20] Of the total, 57 days are due to the difference between the niggardly 12.8% the BOP calculates (based on its erroneous definition of "term of imprisonment," and the 15% that Congress legislated and intended by 18 USC 3624(b), and 46 days are due as "official detention" court time per BOP PS 5880.28 and its statutory precursor, 18 USC 3585(b), which term the BOP likewise has intentionally misapplied to exclude all but the first day of court time.

obvious that its citation by the Department of Justice should be an extreme embarrassment, especially since the Third Circuit Court of Appeals, itself, disavowed the case in United States v. Dunegan, 251 F.3d 477 (3rd Cir. 2001). Noonan held that a Presidential Pardon did not include entitlement to expunction. Relying on a recent English case,[21] which held that the Crown no longer had the prerogative of justice,[22] the Noonan panel held that under the doctrine of separation of powers, the Presidential Pardon cannot be interpreted to include a mandate to expunge judicial records, while unwittingly undercutting its separation of powers argument in noting that Congress legislated the requirement that the judiciary maintain judicial records and legislated expunction in limited cases. The panel's inability to parse is evident from their statement that "a federal court has the inherent power to expunge an arrest[23] and conviction record."[24] Also, their lobotomized mind boggling assertion that "no challenge to the conviction" is made by Pardon! Of course, this oxymoron proceeds from their interpolation of Burdick v. United States, 236 US 79 (1915): "Pardon implies guilt. If there be no guilt, there is no ground for forgiveness...It is asked as a matter of favor to the guilty." And then the false dichotomy: "A party is acquitted on the ground of innocence; he is pardoned through favor." When the panel assert "pardon removes all legal punishment for the offense," they do not recognize that existence of a public criminal record is part of the punishment. It is the equivalent of pillory and stock in the Puritan square! Most clearly, if the general policy is for the President not even to entertain petitions for pardons until five years after the sentence has been served, the only relief from punishment remaining to the petitioner is expunction of the criminal record! To deny expunction as a consequence of the Presidential Pardon is so obviously mean spirited, so cruel a joke. It renders the Presidential Pardon of no effect![25]

Furthermore, the denial of expunction emanates from that common fallacy of interpretation—looking at the past through modern rather than ancient eyes. The

---

[21] Thereby ignoring that the English common law adopted in the United States necessarily was the common law predating the Revolution and that anything thereafter is irrelevant as precedent.

[22] The Crown had that prerogative in its colonies through current times, certainly at least through the time that the common law would have been a guide for the Founding Fathers with respect to presidential pardon. Campbell v. Hall, (1774) 1 Cowp. 204.

[23] An arrest record, of course, is an executive department record!

[24] Why so, if the record is required by Congress to be maintained?

[25] One must note as parallel the proclivity of federal judges to render decisions of no effect, of which their no expunction opinions are but one more example, and the disrespect for the judiciary and the law they engender.

full recitation of the Blackstone the court utilized to buttress their argument makes this eminently clear:

> 4. Lastly, the effect of such pardon by the king, is to make the offender a new man; to acquit him of all corporal penalties and forfeitures annexed to that offence for which he obtains his pardon; and not so much to restore his former, as to give him a new, credit and capacity.[26] But nothing can restore or purify the blood when once corrupted, if the pardon be not allowed till after attainder, but the high and transcendent power of parliament. Yet if a person attainted receives the king's pardon, and afterwards hath a son, that son may be heir to his father; because the father, being made a new man, might transmit new inheritable blood; though, had he been born before the pardon, he could never have inherited at all." William Blackstone, Commentaries on the Laws of England (Clarendon Press 1769, Vol. IV, p. 395).

Plainly, the premises for the conviction remaining despite pardon are attainder and corruption of blood,[27] both of which insidious devices our Founding Fathers eliminated! (US Constitution, Article I, § 9, cl. 3, Article I, § 10, cl. 1, Article III, § 3, cl. 2.)

Although Dunegan disavows Noonan, its analysis is no better. In asserting that "there must be some statutory or Constitutional basis for [a federal court's] jurisdiction to hear the independent action before it," noting that plaintiff "did not seek expungement under any statute, Rule of Court, or under the Constitution," the Dunegan panel ignored the patently obvious, that the Pardon was the Constitutional basis for the expunction!

The Supreme Court was not constrained by separation of powers in Ex Parte Matter of Philip Grossman, 267 US 87 (1925) when it held that a criminal contempt of court was pardonable by the President. If so, why can he not also expunge a

---

[26] This is where the Court's quoting stopped!

[27] Corruption of blood is prohibited by the Constitution only with respect to treason for the historical reason that forfeiture resulted to the king in that circumstance alone. For other felonies, escheat to the subject's lord occurred because it was from such lord that the grant of all property came.

judicial record which is required by the Legislature? Pardon was intended by the Founding Fathers to be a Trump Card in all cases save impeachment.

I would ask that the President's Pardon include expunction of my conviction to make clear that his Pardon includes that as well as all other incidents of Pardon because otherwise Courts may have difficulty countenancing that it was intended. Furthermore, I would delight in presenting to a federal court the Constitutional and other analysis for expunction in consequence of Presidential Pardon.

Carmen Viana Cannot be Pardoned Pursuant to A Request Other than Her Own.

This is contrary to the Constitutional Right to Petition.[28] This is contrary to the history of Pardon. Coming to mind immediately are posthumous petitions and individual and class pardon proclamations (for example, President Andrew Johnson's Civil War pardons, President George H. W. Bush's individual pardons of Caspar Weinberger, Elliot Abrams, Duane Clarridge, Alan Fiers, Clair George, Robert McFarlane, President Jimmy Carter's class pardons for Viet Nam War Resisters, and President Gerald E. Ford's individual pardon of Richard M. Nixon and class pardons pursuant to his Clemency Board). What about President Clinton's pardons of Pincus Green and Marc Rich?

Carmen Viana Cannot be Pardoned Because She Has Not Been Convicted.

This concept is as inane as that an innocent person cannot be pardoned. Most of those named in the immediately preceding paragraph were not convicted either. Nor does the concept have historical credence. In The Federalist, Alexander Hamilton observed: "in seasons of insurrection or rebellion, there are often critical moments, when a well-timed offer of pardon to the insurgents or rebels may restore the tranquility of the commonwealth." At the Constitutional Convention, Luther Martin's suggestion of confining pardons to convicted persons was soundly rejected, those there assembled concluding that pre-conviction pardons might be useful to further national interests—immediately pardoning a captured spy, for instance, might yield important military intelligence. In fact, as discussed at the Convention, the only limitation on the Presidential Power of Pardon is set forth in the language of the Constitution and was put there to avoid a constitutional crisis such as was engendered when King Charles II pardoned the

[28] This right is granted by the First Amendment. I am sorely aggrieved by the mistreatment of my former client, Carmen Viana, who has been indicted, like me, for conduct that is not criminal.

Earl of Danby from his impeachment by Parliament.[29] The least encroachment of the Power was strenuously opposed by the Department of Justice in testimony regarding the Crime Victim Rights Amendment proposed in 2000. As early as 1820, the Attorney General opined that there is no basis for limiting the Presidential Pardon Power to convicts at 1 Ops. Atty. Gen. 341.

Of the approximate 190 Supreme Court cases addressing pardon, many sanction pardon merely to remove the 5th Amendment obstacle to testifying before grand and petit juries. Many others recite pardons for civil war participants who had not been indicted.

Recognize that I really have nothing to gain from Pardon as presently posited other than vindication to my posterity, which I will achieve one way or another anyway, I can promise you; but that he who would recognize innocence and acknowledge egregious injustice by the judiciary by granting remedial pardon has much to gain, morally, psychically, staturely. Because it is my nature, my goal throughout has been to give everyone that chance who has the ability to do the Right Thing. That chance was given the prosecutors, the grand jury, Judge McDade, Judge Mihm, the petit jury, the Seventh Circuit Court of Appeals, the Supreme Court, President Clinton and now President Bush. All but the last have failed to do the Right Thing, lost their chance.

If I were granted pardon currently I would be absolved of the supervised release to which I am currently subject and a restitution[30] of $735,566 that has mounted to $949,136.98 from interest[31] and accruing monthly, obviously, in excess

---

[29] "The power of pardon vested in the president is without any limitation, except in the single case of impeachments." James Kent, Commentaries on American Law (O. Halsted, 1826), Vol. I, p.266

[30] As you can observe from my Objections to the Presentence Report, a copy of which I will be providing to you, restitution was imposed in violation of applicable law, 18 USC 3663, yet another example of Just US instead of Justice, even without considering that such imposition in my case violated the ex post facto clause of the Constitution, cf. fn 27 infra. See also U.S. v. Bach, 172 F.3d 520 (7th Cir. 1999), which states @523: "It would be different if the restitution order required the defendant to pay the victim's losses not to the victims but to the government for its own use and benefit. Then it would be a fine, cf. In Re Towers, 162 F.3d 952, 955 (7th Cir. 1998); U.S. v. Bongiorno, 106 F.3d 1027, 1036 (1st Cir. 1997). Even though the PBGC, a federal governmental entity, receives my payments, Judge Mihm imposed ex post facto restitution provisions on me over my objection.

[31] The imposition of interest is based upon statutory provisions which were enacted well after the conduct for which I was convicted. Unfortunately, the 7th Circuit, in which I was prosecuted, is one of only two (the 10th Circuit is the other), which does not regard restitution as a part of the sentence. Therefore, the 7th Circuit holds that matters relating to restitution are not

of any amount I can pay, thus hampering my ability to get on with any meaningful life beyond contest of past federal injustices.

I petition not only for myself, but also for Ms. Viana, who is also innocent. I do it too for Justice and the Rule of Law upon which this Nation is founded and the sole basis of its legitimacy, arising as it did from revolt against legitimate authority deriving, it was thought at the time, from God. This Nation's posture of legitimacy is not sustainable if the innocent are desecrated by abuse and disdainful pettifoggery. Continuing legitimacy is dependent upon the Nation being, and being perceived to be, internally and externally, a Just Nation governed by the impartial and consistent application of True Justice and the Rule of Law to everyone in every circumstance.[32] When the judiciary fails in this, the Presidency must provide the remedy as Head of State as provided under the Constitution and as preserver of the Nation .

As it is within his power and the Right Thing to do, please urge President Bush to grant me pardon, and Carmen Viana too, as I have drafted it. Thank you.

Respectfully yours,

George Clive Hook II

---

entitled to ex post facto protection under the Constitution, U.S. v. Dawson, 250 F.3d 1048 (7th Cir. 2001), U.S. v. Behrman, 235 F.3d 1049 (7th Cir. 2000), U.S. v. Szarwark, 168 F.3d 993, 998 (7th Cir. 1999), U.S. v. Newman, 144 F.3d 531 (7th Cir. 1998), even though it is imposed in the criminal sentencing proceeding and is a part of the Federal Sentencing Guidelines, i.e. Part E of Chapter 5, which, of course, deals exclusively with criminal sentences!

[32] Is this not especially true in these difficult times to have the shield of honor and justice when there are so many enemies and so few friends?