

The Opportunistic Commuter-in-Chief

The use and misuse of presidential clemency power

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When he announced the commutation of Scooter Libby's 30-month sentence, George W. Bush cited the ways Libby has and will suffer: damage to his reputation, the suffering of his wife and children, large fines, and the "long-lasting" consequences of being a convicted felon.

When he was governor of Texas , however, Bush showed no compassion for the 152 people whose death sentences he refused to commute. One was Terry Washington, a mentally retarded man executed for murdering a restaurant manager. The jury was never told about Washington 's mental condition. Bush was unmoved.

When Bush's Department of Justice recently convinced the Supreme Court to affirm the 33-month sentence of Victor Rita, a decorated war hero who was charged with the same crimes as Libby, Bush expressed no concern for Rita's family or future.

And when his attorney general, Alberto Gonzales, argued just last month that the Justice Department would advocate legislation to make federal sentences longer, Bush was unconcerned about how those long prison sentences would impact the family and future of the prisoners. Yet Bush found Scooter Libby's sentence to be "excessive." But instead of reducing the prison sentence of this convicted felon, Bush let him off without a day in jail.

By commuting Libby's sentence, Bush signaled his complicity in the obstruction of justice of which Libby was convicted. Bush and Cheney had initiated the smear campaign to discredit and punish Ambassador Joseph Wilson and his wife, Valerie Plame, after Wilson publicly debunked the centerpiece of the administration's lies about WMD in Iraq .

During Libby's trial, he subpoenaed Cheney and other top Bush officials to support his defense that he was the fall-guy for his superiors. But Libby ultimately backed down and presented almost no defense to the charges. The only logical explanation is that Bush promised Libby he would never see the inside of a prison cell. The quid pro quo: Libby keeps his mouth shut about Bush's and Cheney's involvement in the conspiracy. With the commutation, Bush made good on his promise.

Why didn't Bush simply pardon Libby and wipe his record clean? Because then Libby would be precluded from claiming the Fifth Amendment privilege against self-incrimination in any future criminal or congressional proceeding, and he would be susceptible to depositions in the Wilson/Plame civil lawsuit. This calculated commutation preserves his appeal rights (and thus his Fifth Amendment claim). It is a continuation of the cover-up.

James Madison warned, "if the President be connected, in any suspicious manner, with any person, and there be grounds to believe he will shelter him, the House of Representatives can impeach him; they can remove him if found guilty."

Rep. John Conyers Jr. has scheduled a hearing next week to investigate "the use and misuse of presidential clemency power." Responding to the Libby commutation, House Speaker Nancy Pelosi said Bush "abandoned all sense of fairness when it comes to justice, he has failed to uphold the rule of law, and he has failed to hold his administration accountable." Maybe now they will put impeachment back on the table.

Marjorie Cohn is a professor at Thomas Jefferson School of Law and president of the National Lawyers Guild. Her new book, Cowboy Republic: Six Ways the Bush Gang Has Defied the Law, has just been published by PoliPointPress.

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