Donald Trump’s Theatre of Pardoning: What Did We Learn?

THE FUTURE OF THE PRESIDENT’S PARDON POWER

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Panelists:

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Bernadette Meyler, Carl and Sheila Spaeth Professor of Law, Stanford Law School
Amy Povah, founder, CAN-DO Justice through Clemency
Kenneth Vogel, New York Times

Moderator:

Margaret Love, executive director, Collateral Consequences Resource Center and former U.S. Pardon Attorney

TRANSCRIPT

Holly Griffin: Thank you for attending our first event in the Future of the President's Pardon Series titled Donald Trump's Theater of Pardoning: What did we learn. The event is jointly organized by the Drug Enforcement and Policy Center at The Ohio State University Moritz College of Law, the Collateral Consequences Resource Center, the Federal Sentencing Reporter, and the David F. and Constance B. Girard-diCarlo Center for Ethics Integrity and Compliance at the Villanova University Charles Widger School of Law.

Before we begin, we have just a few notes we'd like to share with you. First, to streamline the appearance of the event today, we suggest that you hide non video participants. Second, we want to draw attention to the Q&A function at the bottom of the Zoom window, you may submit questions at any time during the presentation. Third, please note that auto generated transcription has been enabled for this event. To change how you view the automated transcription or to hide it, click live transcript in the menu at the bottom of your Zoom window. Finally, this event is being recorded. The recording will be made available on the event page and social media channels as soon as possible after the event.

Follow us at @osulawdepc to stay up to date on our research, programming and future events. Thank you again for joining us and we hope you enjoy the event, Doug.
Douglas Berman: Thank you so much Holly and thank to everybody for participating and and attending. I'm so excited to welcome everyone to this great online panel on Donald Trump's theater of pardoning and what what did we learn. This is the first, as you can see from the slides, in a terrific series of online panels that's going to be exploring federal clemency and related powers in in depth over the next three weeks. A whole lot of folks deserve lots of things, all those groups you heard, lots of people involved in putting this all together, but I want to do a special shout out, right before I hand the mic over to her to moderate, to Margaret Love. She really deserves extra praise for her efforts and putting these panels together, and it really builds off of the work that she helped do with the Federal Sentencing Reporter. I'm going to promote another product that I'm involved with the Federal Sentencing Reporter, which in its June 2021 issue collected, largely thanks to Margys's efforts as guest editor, a bunch of really terrific articles reviewing the pardon power and where we go from here. And so these panels are an effort to sort of spread that message and get some other voices put all together, and so I encourage everybody to check out this issue of the Federal Sentencing Reporter, I encourage everybody to sign up and register for the subsequent panels, but now I will just get out of the way and hand it over to Margie so that we can actually hear from the folks you came to hear from. So thank you all very much and thank you Margie for taking it away.

Margaret Love: Well, thank you Doug for making it all possible. I am so excited by this panel today, it's a varied one and they all have kind of different viewpoints perspectives on the president's pardon power and, particularly, how it was used by President Donald Trump. I'd like to start by introducing our panel. Bernadette Meyler is Carl and Sheila Spaeth Professor of Law at Stanford Law School where her research and teaching bring together the fields of legal history and law and literature. Her 2019 book Theaters of Pardoning shows how the representation of pardoning within the plays and politics of 17th century England track changing conceptions of sovereignty. More recently, Bernadette has applied this framework to the pardoning practices of President Trump arguing that they embody a concept of the presidency that differs markedly from his predecessors. Frank Bowman, is a Floyd R. Gibson Missouri Endowed Professor of Law at the University of Missouri. An expert on impeachment, Frank has also written about some of the more controversial pardon issues that arose during the Trump presidency, including the validity of a self pardon and he's argued that there are inherent limits on this supposedly unlimited presidential pardon power, which I hope we will hear about more later. Amy Ralston Povah has had a more personal involvement with the presidential pardon power than anyone else on this panel. Once a prisoner herself whose sentence was commuted by President Bill Clinton, her subsequent tireless and frequently successful work as an advocate for prisoners through her Can Do foundation earned her a full pardon from President Trump. Kenneth Vogel is a journalist and author, who currently reports for the New York Times covering conflicts of interest, lobbying and money in politics. Given these areas of his expertise, it is not surprising that Ken's byline appears on many of the most deeply reported stories about the pardons and commutations granted by President Trump during his final weeks in office.

So I would like to start out this session by asking each of the panelists to take five minutes or so, to comment generally on how you view Donald Trump's use of the pardon power, how does it reflect on his
concept of his office and the relationship of pardon to politics and to law, how does it reflect popular notions of the pardon power, as opposed to the bureaucratic reality that has generally characterized presidential pardoning at least since the 19th century. I want to go first just to set the stage by describing that bureaucratic reality that has been the hallmark of pardoning in the federal system following Hamilton's reasons for President, for giving the President this power. Pardons were intended to temper the severity of the law, to shorten prison sentences, to restore rights and there were also occasional broad political grants of amnesty often during or after wars. After the civil war, the Attorney General assumed responsibility from managing how the President received recommendations in pardon matters. Almost all grants were made pursuant to these recommendations that were produced through a conceived bureaucratic process that operated for the most part, out of the public eye. Until about 1980 this pardon process in the Justice Department produced hundreds of grants every year to ordinary people. That may be surprising to some but it's true. During the 30 years of the crime war however, starting around 1980, the Justice Department's pardoning process produced fewer and fewer grants increasingly reflecting the policies and preferences of federal prosecutors as well, perhaps as those of the President. That was the situation when Trump took office at the beginning of 2017.

So with that little bit of background I'd like to turn it over to our panelists and maybe we'll start with Bernadette whose work has been most illuminating in figuring out what was going on with President Trump's pardons, at least for me.

Bernadette Meyler: Thank you so much Margy, and I just want to thank both you and Professor Berman so much for inviting me to both participate in the Federal Sentencing Reporter issue and also to participate in this panel here today. I'm really excited about our discussion. So, with that I think I'm going to build a little bit on some of the remarks that you made actually Margy. Within European and American traditions, I think there have been long there have long been two forms that pardoning and other state displays of mercy have taken. One involves a systematic review of individual cases in which mitigation might be deserved and could be called bureaucratic in the best sense of the word. The other is spectacular and dramatic focused on I think this contrast was already evidenced back in 16th and 17th century England.

As scholars like Naomi Hernard and Krista Castlering have shown in the medieval and 16th century context, pardoning often served as a quasi judicial mechanism for mitigating harsh sentences in cases of manslaughter rather than murder or other kinds of marginal offenses. When the consolidation of the monarchy happened, however, in the 16th century, pardoning became explicit, increasingly explicit prerogative of the king. As French political theorist Jean Bodin wrote in his Six Books of the Republic, the first modern work to define sovereignty or the supreme power in a state, that pardoning was one of sovereignty's indivisible marks.

The rise of a spectacular form of pardoning did not go unnoticed in the cultural sphere, as I argue in my book Theaters of Pardoning from a few years ago. As I described there, an entire genre of tragic comedy arose in 17th century England that turned on a final series of pardons. One of the most prominent examples was Shakespeare's 1604 play Measure for Measure, which was itself performed before King James the First, who was an avid reader and devotee of Bodin theory of sovereignty.
In Measure for Measure itself, the return of the mostly absent Duke who’s the sovereign figure of the play results in the pardon of the main protagonists. Here pardoning comes from above and furnishes a theatrical reaffirmation of the duke's sovereignty. These 17th century theaters of pardoning also raised an issue of increasing contention about the pardon power, which was the question of its exclusive locus and the king.

As the century went on, and the English revolution saw the execution of King Charles the First and the restoration of King Charles the Second, plays increasingly figured larger bodies or even citizens themselves furnishing pardons. This tendency found an analog in the political sphere with parliament's passage of an Act of Oblivion covering and erasing from public prosecution the deeds of many of those involved in the English revolution itself. Rather than being issued by King Charles on his restoration, although he had advocated for the Act, the law was passed by the entire body of Parliament.

The struggles, both in plays and politics over who controlled the acts of pardoning or amnesty reveal the extent to which those acts reflected the true location of power and sovereignty in the state. In the American context, as you probably know, the US Constitution grants the pardon power to the President in Article II. It was only in the late 19th century, though, after the English, after the American Civil War, and in light of the disputes between President Andrew Johnson and the reconstruction Congress over vast swathes of pardons that Johnson was giving to members of the former confederacy that the Supreme Court insisted on consolidating the presidential pardon power more absolutely in the President. At that time, the Court made broad proclamations like quote "pardon includes amnesty, it blots out the offense pardoned and removes all its consequences".

The breadth of the powers nominally given to the President, though were largely held in check through the 20th century by the Office of the Pardon Attorney, which we've just heard described and the concomitant routinization of pardoning through the vetting process of that office. When Donald Trump took office in 2016 though, he rapidly revitalized the theatrical form of pardoning that had seemed to atrophy under his predecessors.

I am mindful of time here, but I want to raise three crucial aspects of Trump's theater of pardoning which we could perhaps talk about a bit later. First, his pardons were often staged and timed to aggrandized Trump's own power and political message, such as his pardon of John Ponder during the 2020 Republican National Convention. Second, and relatedly, they used theatrical techniques, whether of the stage or of the page. An example is Trump's use of a vast personal signature on his pardons, unlike Obama's pardons, which dwarfed the rest of the document on the pardons that he issued. And thirdly, his pardons frequently affirmed his own power above the law, which harken back, I think, to the work of early modern sovereigns and how they use the pardon power by calling into question the enforcement of laws to which Trump objected. So an example here would be his commutation of the sentence of former Illinois Governor Rod Blagojevich who had been convicted of corruption.

So what I want to argue, is that Trump drew on the resources of pardoning as a mechanism for symbolically asserting a kind of early modern sovereignty and a power that exceeded the laws themselves. So thank you so much again and I look forward to the discussion.
Margaret Love: Sorry, OK Frank why don't you take it from there, since you also have a sense of the history that that is pretty important for our understanding of Trump's pardoning.

Frank Bowman: Well, thank you Margy, and thanks to you and to Doug again. Particularly all the rest of the gang of the Federal Sentencing Reporter with with which I've been associated happily for for many years, and thanks to the other really eminent panelists here. Some of what I'm going to say I think is going to echo or amplify what Bernadette said, but I hope I'm not repeating myself or ourselves too much. To speak of pardons is to speak of many different things.

The most immediate association of course is with mercy. Pardon is an act of benevolent grace, in which a king or or President grants relief from the pains and penalties of the criminal law, either to a single person or to a group. This is certainly the most common use of of the power, but as Bernadette mentioned pardons have also been used repeatedly to reconcile civil civil discord by affording clemency to groups of people involved in rebellion or other national discontents after the Civil War, after Vietnam and so forth and so on. Now these faces of the pardon were characterized by, if my memory serves, by Blackstone as the king's most amiable prerogative. I love that phrase, with its aura of benevolent stately antiquity, but I love it, particularly because the sting in the tail that's carried by the word prerogative. It's not a word that has much significance in the modern world, but it was hugely important in England, because it described, at least for a long time the king's relationship with the law itself.

The law, it was said at least by some, was at bottom an emanation of the king's will and certainly a good deal of many of the early kings thought so. In early times the king himself actually proclaimed the law, it was his prerogative and even as Parliament gained an authority over law making, it's enactment nonetheless only had legal force with the consent of the Crown, hence the evolution of that uniquely English notion that sovereignty rested in the king and Parliament. Even adjudication of offenses against the law was, in some periods of history, a Royal prerogative. There were, for a long time, special prerogative courts. One of which most people have heard of was the Court of Star Chamber, and these courts effectively operated as extensions of the will and grace of the king. And even after the prerogative courts are abolished and judging became pretty much exclusively an exercise in interpreting statutes and applying the common law, the courts in England nonetheless remain in theory, the king's courts.

And the point of all this for present purposes, with apologies for all this antiquarian stuff, but the point is that, at its inception, the pardon power was an aspect of Royal, of the Royal prerogative, the law was, after all, the king's law. And therefore, it made logical sense that the King could exempt subjects from, subject from the operation of his laws.

The power to pardon, even if amiable was nonetheless an aspect of royal power and, like all power, it was subject to the possibility of abuse, because if the executive authority in any state can exempt favorite persons from the operation of law, and do so without restraint or review by any other actor, then the power to pardon can too easily be employed to warp or even shatter a pillar of the Anglo American political order, which is the rule of law. And therefore any conversation about pardons must include its relation to the problem of limiting executive authority, of preventing autocracy.
And that's how I got interested in pardons because, as Margy said, you know, a lot of what I do is about impeachment, I spent most of the Trump years studying and writing about impeachment. And impeachment, of course, is another venerable great institution invented by Parliament to check royal power. Parliament couldn't impeach the King himself, but they could chasten him and constrain him by impeaching his ministers or his favorites. And of course the inventors of impeachment understood very quickly that it wouldn't be very useful if the King could simply pardon anybody Parliament impeached. So over time, Parliament adopted and the Crown grudgingly accepted the rule that a Royal pardon could not be pleaded as a bar to impeachment.

This British practice was adopted and somewhat expanded in fact by the American framers who wrote into Article II a limitation on the pardon power they gave to the President. It cannot be used to pardon an impeachment. On the other hand, number of the framers were quite vocal about their view that a presidential misuse of the pardon power would be a proper ground for impeachment and the example that they had in mind was a president pardoning co-conspirators in a plot against the national interest. And the relation of impeachment, pardons, executive overreach and the effort to constraint presidential power in the modern era are illustrated by several examples from the Trump era.

First, early in Trump's Presidency the Sheriff Arpaio and Dinesh D'souza pardons as means of protecting political allies from their misdeeds and securing their loyalty. Second, at the end of Trump's term examples would be Manafort, Flynn, Papadopoulos, Stone pardons effectively creating a bubble of impunity for people either convicted of crimes related to their work for Trump or persons who, it could be reasonably surmised, could reveal damaging information about Trump if they cooperated with the government. Third, the speculation fueled by Trump himself that he might pardon himself for, and crucially, January the 6th.

Following the attack on the capital, it was suggested the Trump might pardon everyone involved. Indeed, in the two weeks between January 6 and January the 20th when Joe Biden took office, I think Trump had the constitutional power to do just that. Pardons can be extended to groups and pardons can be issued for offenses that were committed in the past but haven't yet been charged. To make a long story short, it's my belief that the only reason Trump did not pardon himself and all the insurrectionists, is precisely because as his presidency ticked to a close, he was being impeached. I suspect he was advised that a self pardon or a group pardon of the insurrectionists might very well tip enough Republican senators into voting against him that he really would be successfully impeached and convicted.

But as we look into the future, it's extremely unlikely that, that particular limiting condition will be present, should a similar circumstance arise. So the once, and God help us perhaps future Trump presidency, raises serious questions about whether and, if so how, the apparently plenary presidential pardon power can be constrained to at least reduce its utility as a. In the interest of time, I am going to say simply three things right now. First, for better or worse, I think the pardon power is nearly plenary in the sense that a President can pardon anybody for any past federal crimes. Second, while the framers apparently conceived of impeachment as the remedy for misuse of the pardon power, at least the principal one,
it's increasingly obvious that, at least in the current era, impeachment or at least conviction and removal is not a serious possibility for practically any presidential misdeed. And third, this means that other mechanisms would have to be explored. My reading of British parliamentary history and the supreme court's repeated intimation that scope of the presidential pardon powers is coterminous of the pardon power of the British Crown, suggests, for example, that Congress could perhaps play some procedural constraints on the exercise of the power and even as Parliament did, over time insinuate itself further into the substance of the pardon practice. And I've gone on long enough, and so let me turn it over to our next panelist.

Margaret Love: Okay, Amy, you have a slightly different take, much more contemporary take on Trump's pardoning. Why don't you go ahead and make some preliminary comments, because I want to ask you more detail later about your experience. You're there, you were active in advocating for people and you knew how Trump was using the power and how it reflected on his sense of his own office. So why don't you go ahead.

Amy Povah : Okay, thank you, Margaret, Doug Berman and everyone who made this panel possible. As you said, Margaret, I'm a clemency recipient under President Clinton and since we're going to focus on the Trump pardons and look at that, under a microscope I want to provide some context and full disclosure about my own clemency and how that came about. Very briefly, you know I didn't get clemency because I submitted a petition and waited for justice to be served, you know quite the opposite. My clemency petition was written up for a denial by a staff attorney over at the pardon office. It wasn't officially denied but it wasn't going anywhere, despite the fact that I had 16 politicians who have written to Roger Adams, who was the pardon attorney at that time.

I never would have received clemency if it weren't for two senators from Arkansas, my home state, who advocated on my behalf and could not get any traction through the pardon office. They met with Roger Adams, he was, you know, not interested in really anything that they wanted to to discuss about my case, so they took my case directly to President Clinton. And long story short, that's how I came home. So I think it's notable that the Clinton administration was asking for clemency applications and for the most part, I may say OPA from time to time - that's the Office to the Pardon Attorney, would not send them over under the premise that they didn't really have any good candidates, you know, for the most part and that's a problem. When you have a president asking for clemency petitions and there's not really maybe the cooperation that there should be. We know this because I met Sam Morrison the same night I met you in person, Margaret, at the kickoff of the Obama clemency project 2014 dinner in DC. And Sam worked at the Office of Pardon Attorney while my petition was pending there, so he gave me some insights about all of that.

Fast forward to the Trump administration. We have to look at the timeline to understand how a few things came about. President Trump granted clemency to Sholom Rubashkin in December, which was his first year in office, and that had not happened since President Reagan commuted two sentences in December of his first year. You know from Bush, Clinton, Bush number two, forward. People weren't granting clemencies early on, so. I think it's common knowledge in our circle that Rubashkin advocate was Alan Dershowitz. And, like the two senators from Arkansas, he had the president's ear.
As some may remember, the Washington Examiner quoted Alan Dershowitz to encourage people to write directly to the White House and implied that you know anyone could get clemency if they could write a compelling letter. I think that's a stretch, but that was a dog whistle to everyone working in the clemency space that was kind of the first signal that the Trump administration might be willing to to skirt the Office of Pardon Attorney DOJ quagmire so. We'll revisit that later, but fast forward to Kim Kardashian seeing the video of Alice Marie Johnson. You know, some people were critical that she went to the White House, and in doing so, secured clemency for Alice Marie Johnson, but if the clemency process worked the way it should, Alice should have come home during the Obama clemency initiative. Why, because she was right in that sweet spot that the Obama administration was focused on. She was an African American, serving life without parole for a nonviolent drug case, she had an impeccable record while she was in prison, and out of 1715 commutations 568 were were lifers that the Obama Administration, almost half. And Alice was the first time nonviolent drug case serving life. The only reason she didn't get it, we have to assume, and, and maybe has even been validated, was because her prosecutor did not give her a favorable recommendation and they often have the loudest voice. Which is noted, even on the Office of the Pardon Attorney website. So you know, in summary, you, you cannot blame people who go through the back door for access if your prosecutor or Department of Justice locks the front door simply because maybe you didn't cooperate.

We help most people who got 20 to life at the Can Do foundation. There wasn't a term "trial penalty" back in the day, but that's become sort of a big issue now that these are people that if they had cut a deal with the prosecutor, they would have gotten drastically reduced sentence. So I think this is going to keep happening until the Office of the Pardon Attorney becomes an independent agency, free of interference or something changes.

Margaret Love: Okay Amy, thank you. You certainly have given us a bridge into what Ken may have to say about the whole experience of the Trump pardons and the picture that I think is a theme that will stretch throughout these three panels: Is the system for helping the President use his pardon power plainly broke down? And it broke down in a kind of a weird, disorganized way, but one of the consequences of that breakdown can observed on the front lines of the journalists covering those pardons. So why don't you go ahead and give us your take on this.

Kenneth Vogel: Absolutely, thank you Margy, and thank you Frank, Bernadette and Amy as well as the Collateral Consequences Resource Center and the Federal Sentencing Reporter. I'm thrilled to be here, though, unlike most of the other panelists I don't have a ton of deep experience in criminal justice issues. Thankfully, not as a participant, but also not as a journalist covering them. I had covered, you know cops and courts, like a lot of journalists sort of my era coming up and before the, before the Internet destroyed local local newspapers, but I never really covered the criminal justice system in a broad way or even thought a whole lot about, you know, clemency and the role that it plays therein or any of the other myriad issues that clemency can at its best address and and sort of serve as a check. What I had done, however, for the last 20 years or so, is cover the confluence of money influence and politics and those all played out in a big way in Donald Trump's use of his clemency power.
You know, Amy mentioned that we can't blame people for accessing the back door, but, you know, there were people who had access to that back door because of their ties to either the President himself or his political allies, or because they fit into some sort of issue that he was trying to push, political issue that he was trying to push. As Bernadette mentioned the sort of theatre of using clemency to further an argument that he was making on a political issue was was certainly present. And, you know, the specifics of what I ended up focusing on and I think what our readers and editors were interested in is the way that gatekeepers to Trump sort of marketed themselves as brokers who could help get through that back door and help secure clemency in a way that a just an overwhelming majority of federal prisoners did not, or you know federal folks who had served their sentences that were seeking pardons, did not have access to.

These are folks who either had the connections or the money themselves to hire someone who had the connections, or the money to be donors to Trump and to sort of lay the groundwork in a way that again was was available to just an infinitesimal portion of the people who were seeking clemency. So some names have already been talked about and I don't want to get too deep into my reporting but certainly Alan Dershowitz was someone who had endeared himself to the President, President Trump by representing him in the impeachment hearings and going on Fox News and defending him and sort of casting himself as in some ways like a token liberal or democrat who thought that some of the attacks on the President were misguided or overwrought. And for whatever reason Dershowitz had had an entree into the White House and he used it very early on in that very first clemency case of Shalom Rubashkin. But he used it repeatedly throughout sometimes he was paid, sometimes he was not and he did it as a volunteer.

There are many others who we've written about, John Doubt another lawyer who represented the President Trump during the Muller probe, ended up marketing himself to a number of people as a potential broker for clemency grants and was paid 10s of thousands of dollars by at least one guy who ended up getting clemency. This is a a gentleman by the name of William Walters who has been sentenced in 2017 on Insider Trading charges. Doubt you know, played a role, and Doubt was paid by this guy, played a role in getting this guy clemency. Dershowitz I'll just give the top lines instead of going into each case, he played a role in, we found, in at least 12 clemency grants, two pardons and 10 commutations. There were folks like Matt Schlapp, the head of the American Conservative Union which puts on CPAC, which gave a platform to Trump early on when not a lot of Republicans or Conservatives were willing to take him seriously. Schlapp ended up being paid $750,000 for like a month of work trying to get this republican donor a pardon. He was unsuccessful. I should point out it's not a slam dunk just because you have access to that back door that that you're going to get it, but we did see the back door as something that was compelling to a lot of people who were willing to pay for the possibility of having a leg up getting to the front of the line of a clemency process that, as the other panelists have laid out, does not work in an effective way for people who were just waiting in line.

That increases the incentives for people to try to seek some sort of shortcut and in the Trump administration, like we saw on so many other fronts, there was a very transactional system through which people who had connections or money were able to avail themselves of opportunities
that others were unable to access. So that's sort of my overarching shtick, I'm happy to get into any of
the specific details of these cases that I mentioned, or others more in the questions.

**Margaret Love:** Great, oh thank, thank you Ken so much. It's really, it's fascinating to me to see how
the, what I would call the breakdown of the ordinary bureaucratic process that had for a long time served
the President very well gave rise to kind of predictable and legitimate kinds of interventions, members of
Congress have always been very accepted message carriers, for example, in pardon matters and it's
not like a criminal trial. And so Amy's case, for example, where the two Arkansas senators advocated for
her case that was the typical and and legitimate way to kind of do an end run. The kinds of situations
that Ken describes where you have a lot of money changing hands, lobbying, that sort of thing, that that
strikes me as a kind of a way out breakdown of a process that was supposed to give a modicum of
regularity and respect for the rule of law, well. But this this whole idea of the rule of law being a part of
pardoning is kind of interesting to me. Bernadette you talked about in your in your FSR essay and also
in one that was on the Stanford Law Review site about how Trump's pardoning called the rule of law into
question in a sense, and sort of asserted his own impunity from the law, can you just elaborate a little bit
on that.

**Bernadette Meyler:** Absolutely. Thank you so much for the question. So I want to sort of step back for a
moment and also comment on what Frank and Amy were talking about, because I think this is related.
So I think part of the problem here is that, as a kind of sovereign function, pardoning was supposed to
demonstrate the prerogative power of the King above the law, or to amend the law or to change the law.
And so, what Trump winds up kind of actualizing I think in his pardons, is that power above the law.
Now, at the same time, it seems like, you know this sort of history of pardoning recently, you know, has
been diminished in the use of the pardon power and as Amy was talking about that, you know, there
wasn't really a sufficient avenue in recent years, to raise pardons to the presidential level and also, I
think there's a feeling of diminished legitimacy of the pardon power because the kind of institutions
surrounding pardoning aren't sufficiently democratically based or aren't sufficiently seen as part of or
constituting a rule of law, rather than opposed to it. So I think that both of these problems were at issue
in the Trump use of pardoning. And in terms of just sort of elaborating what I mean by Trump's pardons
placing him about the law, there are a couple of different ways, I think that that happened. So one had to
do with the pardons of kind of associates or close you know, close associates or the threatened pardons
of family members or also the pardon of Charles Kushner during his last few weeks in office. And I think
that those kinds of pardons seem to be ways of asserting that Trump and his associates were above the
law, of course he, as Frank mentioned, always threatened to pardon himself during the course of his
presidency. It didn't happen but that those all, I think are kind of bundle where it sort of saying, well look
I and my associates are not really subject to the rule of law in the same way as other people I might be.

And then also, I think the, some of what Ken was talking about in terms of the mechanisms for securing
pardons, but then also, I think the pardons of corruption, as I mentioned the Rod Blagojevich pardon and
others also signal that the kinds of behaviors that Trump was engaged in were also not going to be
subject to prosecution. That, you know, if other politicians engaged in corruption that was also okay with
him. It wasn't exclusive to his own dealings. And then, finally, I think the pardon that was mentioned
earlier, also of Maricopa County sheriff Joe Arpaio is, you know, an example of another kind of pardon that really violated the rule of law. Right so so, in his campaign actually Trump had talked about being sympathetic with Arpaio's kind of extra-legal mechanisms for trying to intervene in immigration enforcement and by pardoning Arpaio and then later by pardoning various war criminals, he demonstrated that these kinds of constitutional values or human rights values we're not going to be adhered to, so it was really a kind of expressive statement against the the rule of law. But, then just kind of the final thing I would say, is that I see some of his use of pardoning as in line with the assertions of presidential immunity, the very broad assertions of presidential immunity or other forms of you know, kind of immunity or impunity from the law that were happening in the Trump administration. So I, while I think that actually some of the pardons were were good, you know, they should have happened to Alice Johnson but the mechanism by which they occurred, I think, is the problem and caused the feeling that pardoning is, you know, sort of reinforcement of the feeling that pardoning is illegitimate.

Margaret Love: Yeah it's, it's interesting your notion that pardon's function is to break rules. It is to go against the law as it were, and when you commute a sentence that was righteously imposed for example, I'm not talking about innocence cases, but, but so pardon's function is to break rules and, for example, and then, there have been numerous examples of a president sort of intervening in the justice system. I'm thinking of the two pardons that Ronald Reagan issued very early on in his term to Mark Felt and Ed Miller, two FBI officials that were being prosecuted for black bag jobs against the Weatherman and he basically short circuited the whole prosecution. They were on appeal at the time and he was not criticized for those. He had said during his campaign that he intended to do that because he thought it was a baseless prosecution. So, in a sense, what what you got is is a political constraint, so maybe we're not talking about Rule of Law, I mean rule of law has been sort of the President should abide by the law in his pardoning. No, I don't think that's right because pardons are indeed to short circuit the law. But again, you know, when the President goes as far as he went as Ken is describing with this mad rush of lobbyists and and all, that's when the political outrage constraints can come into play. So Frank, you talked about institutional constraints, inherent constraints on the pardon in power, can you talk about what some of those limits might be, I mean I mean how, how can we prevent the the kind of abuses if you will, that we saw that Ken describes with with the crush of favor seekers and lobbyists.

Frank Bowman: um.

Margaret Love: Or maybe we can't. Well, maybe it is all political.

Frank Bowman: A couple things occurred to me and one is, you know you said that, you know correctly enough, I think that that the whole point of pardons is to break rules. Or to produce results that are outside those dictated by the law strictly construed or as it has been, it has been applied in a particular case. That's true enough mechanically, functionally, formally that's true.

But I I think it's, it's wrong to suggest that that it is appropriate for presidents to just willy nilly do whatever the hell they please, because in fact I think one of the things that pardons do is that while they may operate outside the realm of formal law, in fact, they often and quite properly are designed to uphold, reinforce, create proper norms. Okay.
Pardons are often issued either to individuals or groups when there's a perception that the result that the law dictated, while legally correct, perhaps formally procedurally correct, violate some normative sense of what's appropriate, what's right either for the individual or, in some cases, for you know society at large. As for example the various uses of pardons of statecraft in the wake of wars and so forth, and so on. So the problem arises when you have a President who doesn't understand, doesn't see the pardoning power, or the rest of his powers in Trump's case, as being constrained by some general obligation to promote the public welfare. To to promote and uphold moral and political norms that are generally accepted by other folks. And, of course, the problem with Trump is that Trump as an individual, I think, simply doesn't accept virtually any of the either moral or political norms that, as we discovered to our distress throughout his presidency, are the real things that actually you know, are the structural supports of American democracy, indeed, any democratic government. It's not the laws it's the norms that basically support, are the things that are, that are holding us up and what we found is, if you have a President who, basically, is prepared to disregard all the norms and you don't have institutions that are capable of pushing back and reinforcing those norms, you're on a short road to autocracy. So in terms of your practical question, you know how do you constrain the misuse of pardon power by President determined to, to abuse the norms, determined to engage in sort of self aggrandizement, it's really hard.

The first answer, of course, is don't elect some chump who is predictably going to be an autocrat. And and to be, you know, sort of less flippant and colloquial to a certain extent, I think that's kind of, the kind of the response of the framers if you asked them the same question. I mean they granted this new president person a pardon power, roughly coextensive with that that the English king had and even though they didn't want to have a king. But what they understood is that they were giving it to someone quite different from the king. They were giving this power to someone who had to face the electorate every four years and who was in their view, you know, hedged about with all kinds of other, you know, practical and political constraints on on his authority. Moreover, they created this impeachment mechanism that they thought was something that Congress would step in and use if the President got completely out of line on these pardon powers and other sorts of things. And they conceived, I think, of the, to the extent they thought about it at all, we have to remember that the framers didn't think about everything, they didn't have time. They were working on this silly document for about three months, and it was really hot in Philadelphia, they couldn't think of everything.

To the extent they were worried about the abuses to the pardon power and constraining them, the constraints are really in their view, probably built into the general, you know, hedge of constraints that that they thought were around the presidency. We have very different Presidency now than they imagined. And if you put somebody in that office who simply is determined to ignore the norms and if you confront that President with a Congress that is resolutely determined not to perform its constitutional function in the face of a president who is ignoring the norms, we got a big big big problem. And so as long as those two factors confront one another in any given era, an autocratic president and a spineless Congress, it is unclear what we can do if a person tries to repeat Trump's performance.
Kenneth Vogel: If I could just jump in for a second and offer some context that I think, might be helpful.

Margaret Love: Absolutely, absolutely Ken. Go ahead.

Kenneth Vogel: Something that Frank talking about and Bernadette talked about, just like this idea of norms and the willingness to disregard them. It's not just the willingness to disregard norms and some of it, you know political norms goes back to what I was talking about about avoiding the perception that pardons are for sale, that's certainly like a big one. But another one is just the justice system as a whole, like President, if you look at some of the common themes that course through some of the pardons, particularly in that last round, you know, it's a lot of public officials who were convicted of public corruption. In some cases, like public corruption that, like, there's not, there weren't a whole lot of arguments that this is prosecutorial overreach or there's something wrong with this trial. We're talking about Randy Duke Cunningham, the Congressman who had a bribe menu for his Congressional, it was on his Congressional office stationary, that featured different levels of payments that he required for military contractors, if you wanted to, if they wanted his help in like winning contracts. We are talking about the former mayor of Detroit Kwame Kilpatrick who turned his office at City Hall into, what a prosecutor called his "private profit machine", taking bribes, fixing municipal contracts. I mean list goes on and on. Robin Hayes former member of Congress who pleaded guilty to lying about his role in a plot to bribe a state insurance Commissioner. You mentioned Joe Arpaio, you know, it's a lot of this. Maybe you find Arpaio, you know, you might find him more detestable personally, but he might even have a little bit of a better argument that some of these three folks that I mentioned as to why he was treated unfairly.

But what Trump saw in them is that he felt like he was unfairly targeted from the beginning of his Presidency by law enforcement, by you know, Comey, by the Mueller investigation, by the impeachment, by, you know, on and on. He felt like the the law enforcement, they had it in for him, law enforcement was unfair and so he pardoned a bunch of people who were public officials who were convicted of abusing their office, the same thing that he was repeatedly, you know, that the democrats and prosecutors repeatedly looked into whether he had done and he felt that was unfair. And this was, not to put him on the couch too much, but sort of the equal and opposite reaction where he's going to correct this single handedly regardless of whether these folks deserved mercy, regardless of whether there is prosecutorial overreach, this category of people who he sees similarities to what he thought was the witch hunt against him.

Margaret Love: Wow yeah. You know it's fascinating because if you try to unpack the variety of grants that Trump made and and his desire for the theater to aggrandize himself, where he pardoned people who probably well deserved it, but in a context in which it was a great show. And then the kinds of pardons that Ken is talking about where, where the norms are simply shattered or simply overwhelmed in a pretty shocking way, and there were so many of them that we are, we got sort of dealt the whole thing. Amy has a kind of a different experience of this. I don't want to say a different take because I'm sure she doesn't disagree at all, actually i'm not sure but I bet she doesn't disagree with what Ken is talking about, but there were. Given that the ordinary route to pardons has become just calcified, stuck, and not only that. There was so much need, there were so, the legal system was so broken really,
particularly the sentencing. The mandatory sentences, long sentences for drug crimes which had a real racial cut and also the gravity of the collateral consequences, that the severity basically prevents you from regaining your life after conviction. There was, there was this broken legal system and too much work for pardon. So that everybody wanted to apply and and the Justice Department was pretty committed to enforcing the law as it was so they thought pardons should just sort of shut up and sit down. But, but Amy had a little bit of a different experience at the end there, perhaps not only at the end, where where there were pros of breaking the process, not breaking the norms, but breaking the quote law if you will. Can you just talk a little bit about the the good things that that that happened at the end of the Trump administration?

Amy Povah: Well, there were pros and cons both. So first I want people to understand my motivation. I, you know, I actually feel, I stuff, excuse me, suffer from PTSD and survivor's guilt because I, my little organization is not funded, we're volunteers, I have the luxury of being able to afford to work on this full time but I can't get over what happened to me, I guess. And then I met so many women who did less than I did in my participation in the conspiracy. And once you live through a visitation day where that baby is being pulled apart from his mother, you know, you can't get that sound, because it's a different kind of scream from a child that's being severed from its mother over and over without understanding why and so you know, everybody comes to this table with different motivations.

And I'm not sure all of them are so pure but the Trump administration was willing to listen to some clemency experts about our concerns related to the Office of the Pardon Attorney, the DOJ quagmire, they, you know, Mark Osler and Rachel Barkow. were invited to the White House to lay out their concerns. Sean Hopwood, Mark Holden I had a meeting with Jared Kushner's staff about clemency and was later invited to a clemency roundtable hosted by Brooke Rawlings and David Sabean. So for clemency advocates like myself and I had about 60 people on my website, you know the best news you can ever hear is "Oh, you can send the petitions over directly to the White House." Which is you know, unorthodox, is that fair to thousands of people who are sitting in prison who don't have an advocate? Of course not, it's it's not fair at all. Neither is sending it into the Office of the Pardon Attorney and never knowing what their process is either and being able to make it over to the White House, because the Department of Justice can sideline cases. So, you know it's... I sent over about 45 petitions to the White House there's someone who had considerably more clout than I had, and then you know we kept working with our volunteers and because we were filling out forms.

You have to understand, we suddenly kind of took on the job of the pardon office, because we were collecting progress reports, we were putting support letters together, we were helping them fill out their petitions and that's where I really feel the Trump administration should have created structure. They should have created, hired somebody even that's paid because this was a backbreaking process. And with no structure in place, or at least somebody over at the Trump White House, who was assigned specifically to handle these cases. Yet we also submitted those petitions and I didn't really know if anything was happening with them so toward, time started running out, so towards the end it really became a free for all with just about everybody who had helped with the First Step Act was using their connects and we all knew one another, so there was a lot of cross pollination, there was a lot of frantic
anxiety of trying to connect with anybody who had access and overlapping. I think I made lists out for just about everybody in criminal justice reform because the Trump administration kept asking for a list of names. Which that didn't make sense to me because you needed to have a petition and people were just sending in names on a piece of paper, so a lot of people would contact me and ask me for names. And I felt like well, if I can get all my people on multiple lists that serves their purpose. But you know, I was working with Weldon Angelo's on the marijuana prisoners. all of, ICDL, test deck with their trial penalty phases, the informal Committee was created that was Matt Whitaker. who headed that up and consisted of Alice Johnson and others. I was associated because they needed petitions and I had petitions.

I ultimately submitted 53 petitions, many of them the same ones that I had already sent in over there, a year prior. 16 people that I provided petitions for got clemency so of course that made me happy. Tragic for those who didn't have that opportunity. But people like Michael Peltier I had written his clemency petition during the Obama administration. He was a paraplegic pot lifer nearly all the pot lifers got left behind by the Obama administration and he was still pending, he never got a response. Even though there was a promise that everybody would get a response from the Obama Administration before the end of their before he left office. And you know, Michael came home, John Bowen got to come home he only let some drug dealers use a boat, chartered boat of his and they cut deals and John Bowen was a first-time offender serving multiple life sentences.

So you know the final chapter of Trumps clemencies was brutal because, for the most part, like so many Presidents, I feel like waited until the last minute. Going into the final weeks, it was my understanding White House Council tried to knock out a lot of people that the Jared staff had approved that they wanted to get it so that became a tug of war and, ultimately, there was a list there, towards the end. And we were asked for family members phone numbers because we were told they were coming home and Michael Montalvo is one of them, he's a Vietnam veteran that served up for 34 years and you know, we notified the family and his name was taken off at the very last second, even some media sources, who contacted me had his name. Luke Scarmazo serving time for medical marijuana that Weldon Angello has helped, so many of their names just magically disappeared in the very final seconds, that is tragic. And I do feel like we have to avoid this kind of trauma for family members and for people in prison and open up this access so that everybody has a fair chance. How do we do that, I I don't know you guys probably are better experts about that than I am, but I think that we have, the system is broken. It needs to be fixed and a lot of us are tired of begging, we keep begging. And working 2,3,4 there's a lot of unsung heroes in this space that I worked with. Volunteers who stayed up till 2, 3, 4 in the morning, trying to get clemency petitions together and frankly we're tired, we're exhausted, let's fix the system.

**Margaret Love:** Wow you know Bernadette asked you a question, I'm going to relay Bernadette's question to Amy because I think I have a kind of a take on it. Bernadette wanted to know why did the names disappear. Why did they get taken off the list? I think the, the answer is, to back up a little bit, that as Amy suggested, not really I had not heard frankly a lot of this it is fascinating to me and and will be very useful, as we all go forward trying to work to figure out what is wrong, not what went wrong, but what is wrong and how do we fix that. In a sense, because the justice department pardon process, the
way that the President was supposed to be advised just didn't work. There was a new process that was
set up in the White House to to sort of mirror what had been going on in the Justice Department. It
reminds me as you talk about it, of what happened at the end of the Clinton administration which, which
has been written up. You know, massive Congressional hearings up to five volumes up there of the
hearings, and it was very much the same thing. When you had the first lady's brother coming in taking
huge amount of money to to advance their clients. So so it's not totally dissimilar from the kind of melee
the Andrew Jackson and the chief sort of melee at the White House. It's not totally dissimilar and that
can't happen because while clemency is not fair, in that sense it's not supposed to be fair, there's got to
be a different way to handle these cases that are meritorious that we believe are deserving under an
interpretation of law, in a way, I mean it is law and mercy together.

But I think the reason that the names fell off, Bernadette, is that it was typical it was a pardon process. It
was a black box pardon process and people who are reviewing these names said oh look, look at
PSR's, he's got these associations or he did this or did that, strike them in. And it's, it is, believe me, I
did this for 10 years so so call me at fault. Because it's a it's an awesome responsibility to get a petition,
you are not a court, you are not bound by rules, you are, you can do whatever you want and and you.
And gosh I had lawyers working for me in that office, all of whom had sort of biases from their own life
experiences, biases and they would present cases in ways that were just you mentioned one Amy to me
in an email, that that I mean I couldn't trust this person at all, because she ruined good cases by the way
she presented them. So, so I think that's the the answer, it was arbitrary, it was unfair and so taking
Ken's, I don't want to describe it as the cream, it's sort of the opposite, of the bottom of the barrel cases
together with what Amy describes as a massive dysfunction in the legal system that the pardon process
is being asked to correct. We have a couple of different problems with with the system and in going
forward and reconstructing. I think we ought to be informed by all of these side problems that arise when
the rule of law breaks down and when the process for considering the extra legal considerations also
breaks down. Um I, I have one question that I want to ask Ken before it gets away from me, this kind of
departs from Amy's larger concern about how do we handle these righteous cases. And and I'm thinking
about how the process of bringing some of these cases to the White House involved lobbying. Um I
mean I represented clemency applicants for gosh 23 years now and it never occurred to me in the world
that I should have to register as a lobbyist and gosh you know i'm just a country, not a country, I am a
city lawyer, but but I'm a lawyer and I represent people and occasionally I have contact with the pardon
attorney's people and, occasionally, even with people at the White House, but I have never registered.

Tell me, what is this idea of registering as as a lobbyist Ken and and when do you have to, and this is
just my own ignorance, and why did people have to or did they for pardons?

Kenneth Vogel: I don't think there's a clear answer to be honest, I mean there's certainly a number of
people who I talked to and who I wrote about, who were representing people who were, you know,
seeking clemency and doing what you would consider to be lobbying. That is, you know, they're not
representing them in court, this is a process that is outside of court and they're going to public officials
and open, in some cases overtly asking for clemency. I think there's, there is a case to be made there
that that is lobbying and should require registration.
But there are other people, including Dershowitz who said that no, no i'm representing clemency as part of the suite of legal services that I, the sort of bid for clemency is part of the suite of legal services that I am offering a client. Including representing them in in court, filing motions or even, you know, it just advising the lawyers and not being listed as an attorney of record on the docket and that, therefore, I should not register. Now Dershowitz did end up registering for some of them. I don't want to suggest that you know, that my questions about whether he should have registered prompted him to register, but I certainly asked about that at a time when he wasn't registered and he did end up registering. You know the people who can't make that argument because they're not lawyers, so if you're not a lawyer it's hard to argue that you're representing someone as a client. And so we saw instances of people who nonetheless you know who weren't lawyers, representing people who are seeking clemency, who nonetheless didn't register and what they said, and this is something this is an argument that actually occurs outside of the context of clemency, but there's this idea that like well I'm not actually lobbying I'm just educating decision makers who might make a decision that will help my client about my client. So there's a woman named Karen Jordan who served on the Trump campaign and actually she is, a side issue when she was running the Florida campaign at a time when the the very. sort of ham handed Russian meddling attempt was occurring where they were trying to set up protests in that these these folks who were subsequently found by the Mueller investigation to have been Russian agents were trying to set up protests in you know rallies that were anti-Clinton rallies in in Florida and entire journal was on the on the receiving end of some of that some of that outreach by these Russians. But that's a total non sequitur, so she she was representing a guy named John Kiracow, former CIA official who was convicted of I believe he was convicted of something related to like a leak of classified information and have been seeking a have been seeking a clemency and she went to the White House, and she she met with White House officials about John Kiracow and about his situation, and she said, well, I don't have, I don't have to register lobby because I wasn't asking them for a pardon, like government action, all I was doing was saying, like, it's a real bum deal that he got and she actually says, for the record to me like she was like sort of comparing his situation to Trump's. This idea that Trump believed that he got railroaded by, he was being railroaded by the justice system, about what I was talking about before. About really playing into that perception that Trump had that the justice system was like out to get public officials or various people whose politics put them outside of the you know the mainstream of what the, what law enforcement, the criminal justice system would. would look finely on. So you know you have a spectrum of people who like, were not lawyers and represented clemency seekers and did not register at all, and then people who were like Dershowitz who were lawyers and sometimes registered and sometimes didn't. I think Amy mentioned Brett Toman a guy who worked on the First Step Act for US Attorney out in Utah. He registered almost everything that he did, and he, as far as I could tell I mean he probably made the case for a lot of these people through his contacts and he said that he had them in the White House from his time working on the First Step Act. But I don't think he represented his folks in court, so that would be erring on the side of registering so.

I'll just finish up by saying that, like there was a lot of like lobbying, I use "lobbying" in sort of air quotes like not necessarily that formal register lobbying, but there was a lot of like sort of access brokering by
folks who were in the Trump orbit who were seeking to get people through this backdoor get them to the front of the line. And a lot of them didn't register at all John Doubt, I mentioned him in the William Walters case, he didn't, he didn't register at all. But even still there were more, twice, more than twice as many lobbying registrations for people who are registering as lobbyists seeking clemency for clients in the Trump and the sort of lame duck period or in the Trump administration, but particularly in the lame duck period of the, of the Trump Presidency than there were either in the Obama or the Bush presidencies. And before that, the lobbying records of the online access to them is a little spottier so it's not clear necessarily if we would try to make that comparison to Clinton I don't know, I don't know what it would show. But I choose Obama and Bush 43 because the the lobbying, the setup was the same, there was nothing different, and maybe people were doing the same thing, where they were unregistered lobbyists, but even still we have more than twice as many registered lobbyists seeking clemency under Trump than we did under the past two presidents. And and countless potentially countless more folks who were doing similar things but did not register.

Frank Bowman: Margy can I, can I just jump in and respond to something that that you said a little bit ago and I think is kind of a theme that runs through a lot of the last couple of comments. You just said simply at one point that there's just too much work for pardons. Well, I guess that's critical to a lot of this conversation. Right, because pardons, there's only so much pardons can possibly do. And I think it's completely unrealistic to suggest that the pardon process, for example, is a meaningful avenue for widespread remediation of, for example, excessive drug sentences, if you think drug sentences are excessive or mandatory minimums of other kinds. There's just too many people involved and the system is far, far, far too large. For a pardon process which is, unless the president's going to step in and provide group amnesty for everybody convicted of some particular class of crime under certain circumstances, which President could of course do. And would be analogous to some things, for example, that that British kings and Queens did.

But the idea that an individual based pardon process is going to be a significant avenue for criminal justice reform is, I think, just madness. It can't be, the system is too big, one could imagine such things with significant effects from presidential action in 1790 because the system was really small. And you know, you got a tiny government with hardly any federal law enforcement presence, very few criminal laws and sure the President could step in and remediate some notable miscarriages of justice, but when you got 70 some thousand 60 70,000 federal defendants being convicted of crimes every year in a system in which a lot of people think many of the sentences being imposed are too long, and that that's been true for a really long period, the notion that the pardon process can be a material contributor to solving those kinds of proceed problem seems to me to be just totally unrealistic. Maybe it's a tiny part. Or maybe if a president were to decide to do something like what Obama did but on a somewhat larger scale. In certain instances, maybe it could help, but the root problem that a lot of people would like to fix can only be fixed by you know, changing the sentencing system and perhaps making some of those changes systematically retroactive.

Margaret Love: Well you're...
Frank Bowman: You're putting too much weight, I think, a lot of people put too much weight on the pardon process that the process won't bear.

Margaret Love: You're preaching to the choir there, I mean I sometimes give the example of the President does the one man gun licensing. The only way that a person with a federal conviction can get their gun rights back that's ridiculous almost everybody who comes to me and wants a pardon wants to go hunting, that's insane. But you're kind of giving me a wonderful lead into next week's panel, because I think I agree with you completely that we have a broken legal system. It's broken in sentencing, it's broken in collateral consequences, and it is too much to ask the pardon power, no matter what kind of a regular system you have, it is too much to ask of the pardon, you should not ask the pardon power to fix the legal system. You have to fix the legal system, and you know, I think that is it for me, that is the main message with with the Ken's bottom of the barrel folks taken off deep six hopefully. And the the norms restored, we have a lot of hard work to perhaps spreading clemency as it needs to be. Bernadette mentioned how the courts in England, I mean this is wonderful I'm sure you know, the Albion Shade Tree book of essays that I mean they talk about how the courts were the ones that had the clemency power. Well, you can give courts, the clemency power in fact surprise, surprise the federal courts already has clemency power.

And it's been sort of squeezed to death by the Justice Department and the Bureau of Prisons, for decades, and now it's freed up by a law that the trump administration. enacted, the First Step Act. And now it's being used. And next week's panel John Gleason who really used this, this authority very muscularly in gun cases. He is going to talk about how the courts can solve part of the problem of long sentences if that. But my thing is the Justice Department has got to be pushing it and they are not now, they are resisting. So anyway, I mean, I think this this this theme, I am kind of trying to be a little bit mindful of the time and we haven't answered any questions, but I mean, I think this has been...

Frank Bowman: Bernadette, and Bernadette and Amy both had their hands up there. Oh yes, I recognize.

Margaret Love: Oh yeah yeah yeah no I didn't. Thank you Frank I'm kind of a neophyte this process but but yes, let me stop, and let me ask first Bernadette because she's on the left, go ahead.

Bernadette Meyler: Yeah great. Thank you so much, so I just wanted to sort of build on what you and Frank were talking about and to say that you know part of what I think is the problem is, has been expressed a little bit by Eric Sterling and some of his questions, which is about the political consequences for a president of pardoning. And so you know there's a disincentive for a lot of the presidents you know who are worried about, as I mentioned that kind of Willie Horton example, and then that means that there can't really be a great volume of pardons but at the same time, because we have this kind of legislative gridlock there hasn't been as much ability for Congress to really pass major legislation that would, either, you know grant amnesty, or I would reduce sentences. And you know I think I attribute part of the problem there also to the fact that the Supreme Court consolidated amnesty into pardoning.
And so around the time of the kind of Vietnam draft dodgers questions and whether there should be an amnesty, you know, there's all these Congressional hearings about whether Congress even was entitled to grant amnesty at that time. Which I think clearly they, they could, but because the Supreme Court had said that that was part of the pardon power it wasn't clear. Ultimately Carter was the one who issued the amnesty, and so I think, on the one hand, you know, there should be a revitalization of legislative efforts to intervene in the criminal justice process and to mitigate some of the harms and then, on the other, as Margy is saying you know the courts should be taking a more active role or there should be more of a kind of individualized decision making, based on what the judiciary is doing.

Margaret Love: Sorry, I was on mute Amy, go ahead your turn.

Amy Povah: All right, well you know I, I think that we need a pardon office that is staffed with individuals with different backgrounds, instead of it being loaded with former prosecutors, sorry. Anyway, I'm so sorry um, I feel that you know we need we need judges, prosecutors, certainly public defenders, formerly incarcerated people who can fill those seats and have... They need to be able to make the recommendations to the White House without interference from the Department of Justice. I know different people have different ideas about how to make that happen, but one thing that also bothered me, Margaret, and you were the pardon attorney when I went into prison, and I was sad when I saw that you weren't there anymore, but. How can there be a process where people can engage, it was such a black hole, we would, we would send our petitions and, frankly, there is no outreach at all, nobody reaches out to your family to see that does she have a stable place to live, there's, you don't ever get a sense that anybody is doing anything with your petition for any follow up or anything, it's just such a black hole. So I wish that there was more transparency, I agree with Frank that it's such a huge problem, you know there's so many people in prison, I don't know how to accomplish that but if the Office of the Pardon Attorney is going to be funded and I heard that they are increasing their funding, quite possibly under the Biden administration. So if they're going to be funded, then we do need those people to do their jobs, so that people like myself, you know I'd love to go do something else, quite frankly.

And I just want to touch before we leave on a question that was sent in like, what do people do who didn't get clemency, who had submitted under The trump administration? We were sending them directly over the White House, and I would tell people if you want to send it to the Office of the Pardon Attorney go ahead, but you don't have to. And so I believe people should amend if it's still pending, Jan Schneiderman sent in a question because she's advocating for a Cuban lady that she was roommates with who came here in the 80s Lazzara Das is her name, in the 80s as a refugee from from Cuba. She didn't have very many options, a lot of people who get involved in drugs they don't have a lot of options. Should they have done it? No, of course not. Are they redeemable? Yes. You know she's done 22 years on a 35 year sentence, I have to think that if Trump had actually heard about her case he probably would have chosen her with, given his love for the Cuban community. But I didn't have that access, you know after our petitions went in, just like with OPA, you kind of lose control.

Margaret Love: Well you're touching on something that will be talked about at some length in the third panel now, which is, which is great, I did not set these folks up, trust me. And I was going to do it myself. But but no, I mean next week we're going to talk about how do we unburden the pardon power. How do
we get other institutions of government to do what the pardon power has been asked to do, which is obviously too much. The third week we're going to talk about how can the President be better advised if he wants to use his pardon power. There's a very interesting thing going on right now is reported yesterday that the the folks that have been in home confinement and are resisting very righteously going back to prison after the end of COVID. These are the ones that were sent home because of COVID, the kind of compassionate, it's not really compassionate, but they were sent home out of prison so they don't die of COVID. Now there is a question as to whether they have to go back at the end of the COVID emergency. So there's talking about commuting a lot of their sentences and lo and behold, they are asked, apparently, according to the reporting, to file petitions with the pardon attorney and my thought is, why? I mean, if individuals, if the president is aware of individual cases that he thinks ought to be commuted he ought to just commute them. I don't understand somebody has brought these cases to his attention and if he wants them staffed he's got people in his own office. Anyway, that's my thought um, but we have two more, and I'm just looking at time and I'm afraid we're really going to run out and in just a couple of minutes.

We have a broken legal system, we have a broken pardon system, we have kind of a broken legislative system to tell you the truth, but but there, there are ways that we can start, and we do have the federal courts, and that is, you know our great hope, I suppose. And there are people who are working, the federal courts and so that is one really to me exciting possibility of offloading a lot of the business that has been in the pardon system. And as to the fixing the system, I think that that is a real challenge, I think there are a lot of issues. I got my own views about how you ought to fix it. I think if you set up a commission and invite everybody to come in you're going to have everybody overloading the clemency system again, and so, so you know you got to figure out what's the right balance of institutional responsibility here in a big system, in a big broken system. In a way, you know, Ken we count on you journalists out there to to to help us to a solution. And, and I think the reporting that was done on the Trump pardons was was terrific and now I think we have to have some reporting done on the sort of cleaning up the detritus, the mess, and how do we get ourselves out of the system. So so I'm really, I haven't been very good at watching the Q and A's I don't know whether I'm in default in my responsibilities, but I do see that we're practically done so, if anyone has any last minute thoughts to add to this. It's been a wonderful conversation. I've really learned a lot and have a ton of notes here, but if anyone has any any last words, for us, I would love I would love to hear them.Frank, give us a last word.

Frank Bowman: Margy I don't know if I have any last words. Because one of things that makes it, the last thing I'll say is, one of things it makes these conversations so incredibly difficult is the fact that, as I think Bernadette really emphasizes so wonderfully in her terrific book, is that pardons serve all sorts of different functions. Individual pardons serve different functions from each other, presidents and kings and Queens, even they serving different functions in different times and to talk about the pardon power, where to, how to fix the pardon power is really it's, it's not a unitary question. You have to first ask well, what what purpose of the pardon power are you addressing. If if what we're focusing on is how to make the pardon power a better vehicle for for dealing with individual injustice or no, or at least in some limited cases categories of improper or misbegotten sentencing rules, that's a different problem than the
question of well, how do we think about pardons when they're being used by would be autocrat President. And yet it's the same power given to the President, the same incredibly truncated constitutional language, based on by reference, on a really long and complicated British history. I suppose, the only thing I would enjoin the participants in your future conversations to do, and to think about is exactly which function of the pardon power are you addressing when you talk about any particular thing. Because that's the key, and and otherwise one tends to go round and round in circles.

**Margaret Love:** You know, I will just follow that up by saying you know, we have not had a conversation in this country about how the pardon power ought to be used for certainly my lifetime. And if the Trump experience, that that it didn't happen at the end of the Clinton administration and should have, but if the Trump Pardons in their massive variety and massive extraordinary nature has gotten us to the point where we can have that conversation and pick up on Frank's business about all the various types of issues that the pardon power can be used for, rather than kind of stumbling along and stumbling into things as the President apparently has stumbled into this home confinement issue. Let's have that conversation, and then we can have the conversation about Okay, so what mechanism do we set up to manage this great beastly thing. So so I'm really delighted that that we are at the point where, perhaps, and maybe the White House, will be the one that organizes it, that we can have this conversation and Doug has reappeared which suggests that the clock struck midnight. I am about to turns into a pumpkin.

**Douglas Berman:** I'm just here to say how delighted I am that you had the foresight to give us three afternoons to talk about this, rather than just one because I'm just so grateful, I thought was just spectacular conversation wonderfully moderated. And we all now can can look to the next two panels and the next to Tuesday's to continue the conversation so I'll just sort of, in the interest of time and all the attendees as well, say thank you yet again. And stay tuned because next week, we can we can convene to talk about another another facet of this through looking at second looks and compassionate releases with another star studded panel so so thank you all. Wonderful work and look forward to seeing you next week.

**Margaret Love:** Yeah, thank you all so much.