

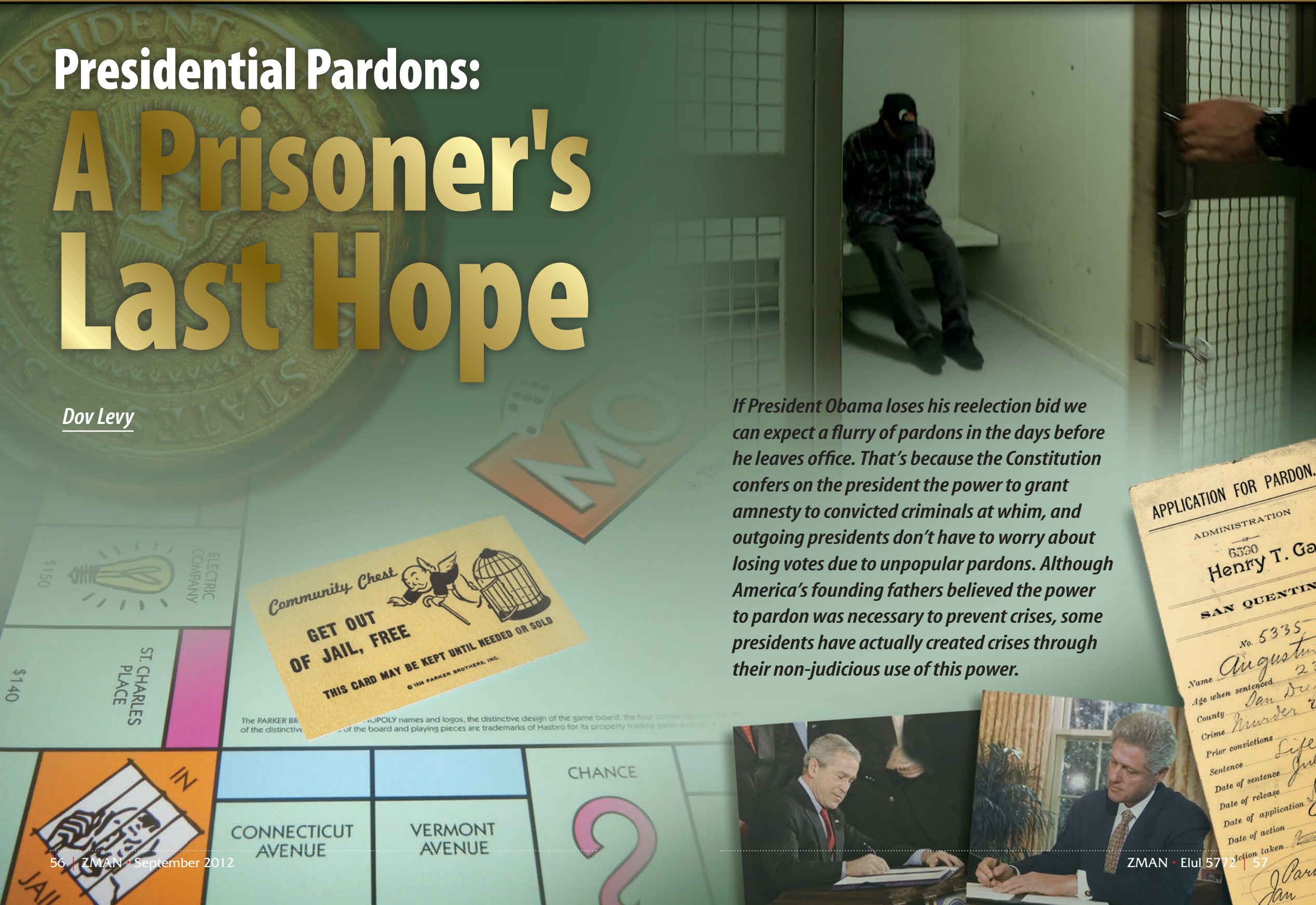
# Presidential Pardons: A Prisoner's Last Hope

Dov Levy

*If President Obama loses his reelection bid we can expect a flurry of pardons in the days before he leaves office. That's because the Constitution confers on the president the power to grant amnesty to convicted criminals at whim, and outgoing presidents don't have to worry about losing votes due to unpopular pardons. Although America's founding fathers believed the power to pardon was necessary to prevent crises, some presidents have actually created crises through their non-judicious use of this power.*



APPLICATION FOR PARDON.  
ADMINISTRATION  
of  
6590  
Henry T. Ga  
SAN QUENTIN  
No. 5335  
Name August  
Age when sentenced 23  
County San Diego  
Crime Murder  
Prior convictions  
Sentence Life  
Date of sentence July  
Date of release  
Date of application  
Date of action  
Action taken  
Jan



*The President... shall have Power to Grant Reprieves and Pardons for Offenses against the United States, except in Cases of Impeachment.*

**US Constitution Article II Section 2**

The last few months of any president's term in office are always a flurry of activity. The departing president settles his last-minute affairs before leaving the White House and forever relinquishing the unique power he wields as an American president. Therefore, if President Obama loses his reelection bid we can expect a flurry of pardons in the days before he leaves office.

One of the most high-profile events in the swan song of the administration is the granting of presidential pardons. During "pardon season" the president's staff reviews hundreds of requests from convicted criminals of all sorts. Traditionally, presidents leave the most controversial cases for the last week of their terms, hoping the public is more focused on the incoming administration and is less likely to raise a clamor about an unpopular pardon from the outgoing president.

It doesn't always happen that way, of course.

On August 9, 1974, President Gerald Ford pardoned former President Richard Nixon for any crimes he may have committed in office. That was only one month after Nixon resigned and Ford entered the White House. Ford's pardon caused a national uproar.

More recently, President George W. Bush pardoned Lewis "Scooter" Libby, the former chief of staff to Vice President Dick Cheney, for his part in the Valerie Plame Wilson affair. That pardon also took place mid-term. Libby was accused of perjury and obstruction of justice in the investigation to uncover who leaked Wilson's identity as a CIA agent to the press. With a flourish of his presidential pen, Bush freed Libby from ever having to serve time behind bars. The Democrats were up in arms at this granting of amnesty to a White House aide closely connected to him. But other than storming about it, there

was nothing anyone could do. The Constitution permits it.

However, that controversy pales in comparison to the storm President Bill Clinton touched off on his last day in office. Clinton pardoned no less than 140 convicted criminals during his final hours in the White House. Among them was an influential billionaire named Marc Rich who fled to Switzerland rather than face charges for income tax evasion and racketeering. Rich's wife gave a very large donation toward Clinton's presidential library. Clinton came close to facing charges of accepting bribes in return for granting the pardon.

As these incidents played themselves out in the media, many Americans wondered how the president could pardon any criminal at a whim. The answer is simple: because the Constitution says so. The president has the right to override the justice system and allow anyone accused of any crime outside of an impeachment to go free. There is no oversight or appeal for presidential clemency and no way to overturn it. It is apparently the only instance in the US system of government in which an individual is granted a power over which there are no checks or balances.

Why do presidents draw so much attention to themselves when they exercise this power?

Perhaps because it gives them the appearance of a despot. Traditionally, the granting a pardon was the exclusive right of kings. And in their attempts to shed all trappings of royalty, America's founding fathers succeeded in eliminating virtually all such appearances - except the power of pardon. In fact, it was deemed so essential that they guaranteed it as a right in the Constitution.

## History of Pardons

The idea of issuing the president the right to grant pardons was presumably borrowed from the British. Like dictators in many other times and places, the English monarchs at one time were vested with the unlimited right to pardon anyone they

pleased. Finally, during the rule of King Charles II (1660-1685) Parliament passed a law restricting the king's right to pardon when it came to political dissidents who had been impeached by Parliament. This was a result of a constitutional crisis which had developed after the king pardoned the Earl of Danby, Thomas Osborne, who had been impeached by Parliament.

When the framers of the US Constitution began debating the proper system of checks and balances for the new federal government, it did not occur to them to allow their president to wield such absolute power. Early drafts of the Constitution did not include this clause. George Mason, a Virginia statesman and delegate to the Constitutional Convention in 1787, objected that it would be a fatal mistake to the fledgling republic to grant its president such extraordinary rights.

With the successful conclusion of the Revolutionary War in 1783, the United States had only just freed itself from the claws of England's King George III. Most colonists viewed the British monarch as a cruel tyrant. Mason argued that it made no sense to allow the new president any outstanding power that could result in a repeat of the monarchy. Any chief executive would be tempted to abuse his power and relieve his friends of the consequences of any crimes they might commit.

Meanwhile, Alexander Hamilton from New York was a fervent believer in establishing a strong central power for the federal government. Although most of his views on the subject were watered down by other delegates, Hamilton's influence showed in arguing for the president's pardon power. He convinced other delegates of this idea and it found its way into subsequent drafts until it was included in the final version of the Constitution.

Hamilton had argued that the ability of the president to pardon criminals could well prove vital for the stability of the nation. If, for example, a part of the nation would rebel against the federal government, the ability of the president to grant amnesty could mean the difference between prolonging a



Aside from pardoning criminals, White House tradition has the president "pardon" a turkey each year during Thanksgiving season, permitting it to avoid a death sentence at the slaughterhouse. Here: Presidents Bush and Obama participate in the turkey tradition.

conflict and negotiating an early end to it. No one would agree to back down if there could be no guarantee of clemency. And for this reason it was equally critical that the president's power to pardon not be limited by the possibility of others later retracting that pardon.

In short, the inclusion of a pardon clause was intended to allow for the swift and painless resolution of major internal conflicts.

In reality, the power to grant a pardon was used almost exclusively for this purpose in the early days of the nation. Before the ink had finished drying in the Constitution, the first

