



BY EMAIL AND POSTAL MAIL

July 15, 2020

President Donald J. Trump
The White House
1600 Pennsylvania Avenue
Washington, D.C. 20500

Your Commutation of Roger Stone's Sentence

Dear Mr. President:

You have by now heard from many quarters the widespread condemnation of your action in commuting the 40-month sentence imposed on your close associate Roger Stone by the United States District Court in Washington, D.C., following Mr. Stone's conviction on seven counts for lying to investigators and witness tampering. The New York City Bar Association joins in that condemnation because your action in this matter undermines the rule of law that the Presidential oath requires you to uphold.

The commutation of Mr. Stone's sentence appears to have completely bypassed the established procedure for Justice Department review and recommendations for such Presidential actions.¹ That this irregular process was followed to afford dispensation to a close personal associate of yours is itself a cause of concern. However, when, as appears to be the case here, a President

¹ The ability to grant clemency in special cases is an important power entrusted to the Executive. In practice, presidential pardons have consistently been supported by an evaluative process before the President announced the decision. "Past Presidents have taken the step of overruling or otherwise intervening in the outcome of the criminal justice process only after concluding that unique considerations of humanitarianism, national interest or other overarching perspectives warranted setting aside the results of the criminal process. Other factors considered by Presidents evaluating whether to issue a pardon, as described in guidance by the Department of Justice, include the defendant's remorse; exhaustion of other forms of relief; post-conviction rehabilitation; passage of time; seriousness of offense; the need for relief; and the recommendations of others involved in the matter, particularly the U.S. Attorney who prosecuted the underlying charges." STATEMENT OF THE NEW YORK CITY BAR ASSOCIATION REGARDING PRESIDENT TRUMP'S AUGUST 25, 2017 PARDON OF SHERIFF JOE ARPAIO, Sept. 8, 2017, <https://www.nycbar.org/media-listing/media/detail/statement-of-the-new-york-city-bar-association-regarding-president-trumps-august-25-2017-pardon-of-sheriff-joe-arpaiio>. All websites cited in this letter were last visited on July 15, 2020.

uses the pardon power to reward an associate for declining to provide a duly authorized federal prosecutor with relevant information about the President's own actions, the effects on our nation's Constitutional system – and our society's commitment to live according to law – are profound. Where, as here, the pardon power is wielded in tandem with the Attorney General's overruling of career prosecutors to urge an unusually lenient sentence for Mr. Stone and follows the President's own public attacks on the federal judge presiding over the prosecution, the cumulative effect of these actions amounts to a Presidential claim to be beyond the reach of the law that your oath requires you to uphold.² This is the very claim that the Supreme Court has repeatedly rejected throughout our nation's history and decisively rejected once again this past week in *Trump v. Vance*.

There is an additional element to the Stone pardon that raises serious concerns. First, juries give an oath to do justice and do not pledge an oath to the President or Presidency. Their role is apolitical. Yet, in the White House statement granting Mr. Stone's clemency, you personally attacked the jury forewoman for "conceal[ing]" her alleged "'resistance' to the Trump Presidency." Second, you had previously singled out and attacked the same juror following Mr. Stone's conviction by a unanimous jury, even though Judge Amy Berman Jackson specifically considered and rejected the defendant's claim of misconduct by one or more jurors. It is one thing for a President to disagree with political opponents, other public figures, or even with court rulings, but it is not acceptable for the President of the United States to single out an identifiable private individual who is fulfilling her good faith obligation to serve as a juror. Jurors perform that function, often at considerable inconvenience and expense, because it is a part of their responsibility as citizens. To aim the power of the Presidency at them with public scorn and derision is an insult to the untold number of citizens who willingly participate each year in our judicial system and expect it to work in the manner contemplated by our Constitution. It also adversely affects the administration of justice because it threatens to undermine the confidence the public should have in the justice system and the purposes for which it was created.

Jurors should be able to assume and perform their duty in a conscientious manner free of outside influence and personal criticism from their nation's President. We call upon you to cease such efforts to intimidate or excoriate your fellow citizens in ways that are merely self-beneficial and suggest that you – and your close allies – are above the law.

Respectfully,

Sheila S. Boston
President

Stephen L. Kass
Chair, Task Force on the Rule of Law

Christopher M. W. Pioch
Jessenia Vazcones-Yagual
Co-Chairs, Task Force for the Independence of Lawyers and Judges

² We do not here address and have not considered the question of whether there are grounds to invalidate the grant of clemency or for Congress to impose limits on the exercise of the pardon power.