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At the Eleventh Hour: Forum Debates an Increasing Rarity: Executive Clemency

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Forum debates an increasing rarity: executive clemency

"Executives hide behind the legal process, in my opinion." — John Blume, an associate professor at Cornell University Law School

The quality of mercy is not strained," Shakespeare wrote in The Merchant of Venice that advocates on both sides of the capital punishment debate strain to find common ground over the last opportunity for mercy for a condemned inmate: a pardon from the governor.

Executive Clemency in Capital Cases was the focus of a March 27 discussion at a UBuffalo Law School panel discussion featuring four attorneys with experience in capital cases, which was sponsored by the Law School’s Capital Advocacy Project.

Presenters included lawyers involved in four highly publicized death-row cases, including an attorney who handled the case of former Crips gang leader Stanley "Tookie" Williams in California and a prosecutor in the case of Connecticut serial killer Michael Ross. The event was moderated by Professor Teresa Miller.

"Clemency rarely is ever granted, even in cases where there is a clear argument for clemency," said third-year student Jenny Mills, founder and co-president of the Capital Advocacy Project. "Because of the way the justice system is structured, inmates traditionally are barred from raising various claims during their appeals and post-conviction proceedings. The clemency process is thus the only time they can raise certain issues, but it would appear that most clemency petitions are dis- missed out of hand.

John Blume, an associate professor at Cornell University Law School, recently argued a case before the U.S. Supreme Court involving South Carolina death-row inmate Bobby Lee Holmes. In his criminal trial, Holmes was convicted of murdering his pregnant wife and her parents. In recounting the crime, Baird told of a "big burly man" who took over his hands and strangled his wife.

Nagy took his case 20 years after his conviction, and spoke of the difficulty of dealing effectively with a mentally ill client. "It is a very fine line you walk," she said, "because you do not want to disturb your client’s delusions. It could be catastrophic, and it destroys the trust relationship between lawyer and client.

Nearly the last minute, Nagy said, she came into possession of a court-ordered psychiatric report that showed Baird to be "extremely psychotic." A friendly reporter got the story into Sunday’s newspaper, and Monday morning at 11, the call came that the governor would grant clemency. Baird remains in prison, but in the general population. His delusions continue.

The prosecutor on the panel, Harry Weller, handled the case of serial killer Michael Ross, the first person executed in Connecticut since 1950.

Weller argued that clemency is appropriately rare because the law provides ample safeguards for imposition of the death penalty. "We have a pathway of review that has never before existed on the face of the earth," he said.

Juries are asked to consider mitigating factors inherent in the crime and the defendant’s life — even hearing testimony that the defendant would be a good and productive citizen in prison. They must make a "reasoned, moral judgment" as to whether the death penalty is appropriate.

In addition, he said, appellate courts in many states require a proportionality review, in which the case at hand is compared with others murder cases to ensure that execution is warranted. And if a sentence is overturned, the case goes back to a lower court for a new jury for the penalty phase. "That happened twice for Ross," he said, as a result: "24 people said Michael Ross should die."

Defense attorney Sarah Nagy last year won clemency for Arthur P. Baird II, a mentally ill death-row inmate in Indiana. Baird was granted clemency just 36 hours before his scheduled execution.

She spoke of her interactions with her client, who had suffered from hallucinations since age 11 and had no criminal history until, prompted by imagined voices, he killed his pregnant wife and his parents. In recounting the crime, Baird told of a "big burly man" who took over his hands and strangled his wife.

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At the eleventh hour, defense attorney Jonathan Harris was part of the legal team representing ‘Stanley “Tookie” Williams,’ who founded the notorious Crips gang in Los Angeles. Williams was executed last year despite pleas for clemency that noted he had written nine children’s books renouncing gang violence and had become a strong proponent for young people's advocacy against guns.

But he was not surprised that the clemency effort failed. “The governor polled,” he said. “The death penalty is very popular in California. The referendum to restore it passed with something like 84 percent support. I think the politics were just completely against clemency.”

Harris ended his remarks by showing a brief video that was part of Williams’ clemency petition—a ‘bottom-up, in person’ clemency’ featuring testimonials from former gang members.

At nearly the last minute, Nagy said, "There was a lot of evidence that Stanley Williams was a very bad man, and no one argues that Los Angeles was not a safe place because he was off the streets. But if anybody here got into a bar fight and was facing expulsion from the law school, they would get a better trial than most criminal defendants get in this country.”

And appellate courts do not address every issue, Harris said: “Guilt or innocence is never litigated on appeal.”

What is gone over and over is the original trial, which was a pretty bad thing.” The legal team based its clemency petition on the remarkable turnaround in Williams’ life, citing tens of thousands of letters and e-mails which testified that Williams had “become a role model for someone who shows you can do more with your life.” The case drew considerable attention from celebrities in show business, attention that Harris said did much more harm than good.

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