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

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The quality of mercy is not strained,” Shakespeare wrote in *The Merchant of Venice*. That concept was the focus of the UB Law School’s Capital Advocacy Project’s panel discussion featuring four presenters included lawyers in the case of Connecticut serial killer Michael Ross. The event was moderated by Professor Teresa Miller.

“Mercy 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 dismissed 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 prevented from presenting evidence that another person committed the crime, though forensics evidence implicated Holmes. Blume said grants of clemency are extremely rare. Since the death penalty was reinstated in 1976, he said, about 8,000 people have been sentenced to death. And 429 grants of executive clemency have been made – 172 of them in one dramatic action by the governor of Illinois. In Texas – “leader in all things death,” he said – there have been 361 executions since 1982, and just one has been granted clemency.

The conventional wisdom, Blume said, is that today’s exhaustive appellate process paves the way to a new trial. “It asks the question, is the death penalty an appropriate punishment? Reviewing courts do not ask, was the punishment right? Was the punishment just?”

“Executives hide behind the legal process, in my opinion. You can hide evidence that another person committed the crime, though forensic evidence implicated Holmes. Blume said grants of clemency are extremely rare. Since the death penalty was reinstated in 1976, he said, about 8,000 people have been sentenced to death. And 429 grants of executive clemency have been made – 172 of them in one dramatic action by the governor of Illinois. In Texas – ‘leader in all things death,” he said – there have been 361 executions since 1982, and just one has been granted clemency.”

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 six 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 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 distort your client’s delusions. It could be catastrophic, and it destroys the trust relationship between lawyer and client.”

At 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 inappropriateness 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 moral backstop, not a legal backstop. 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 other murder cases to ensure that execution is warranted. And if a sentence is overturned, the case goes back to a new jury for the penalty phase. That happened twice for Ross, he said, as a result: “24 people said Michael Ross should die.”

As to a governor’s pardon, Weller said: “Clemency was an act of grace. There should be a reason for grace. There is a death warrant, and it is a lawful order of the court, and once the appeals are complete, it is our responsibility to carry out that order. If you want to change that, you go to the Legislature, you do not go to the courts.”

The legal team based its clemency petition on the remarkable turnaround of defendant’s 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 more harm than good.

But he was not surprised that the clemency effort was turned down. “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 was just completely against clemency.”

Harris ended his remarks by showing a brief video that was part of the legal team representing “Tookey” Williams’ clemency petition – a “bottom-up” clemency effort that gathered testimonials from former gang members and others.

About 50 people attended the forum, held in Room 106 of O’Brian Hall.
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 March 27 at a UBL Law School panel discussion featuring four lawyers 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 represented former Crips 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 dismissed out of hand.”

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Blume said grants of clemency are extremely rare. Since the death penalty was reinstated in 1976, he said, about 9,000 people have been sentenced to death, and 429 grants of executive clemency have been made – 172 of them in one dramatic action by the governor of Illinois. In Texas – “leader of the capital punishment” he said – 172 of 4,000 people have been sentenced to death. Clemency have been made – 172 of 8,000 people have been sentenced to death.

Defenders on both sides of the capital punishment debate engage in an argument that many believe they can never fully resolve. What is gone over and over is the original trial, which was a pretty bad thing.

But he was not surprised that the clemency effort proved futile. “I think the politics were just too strong,” he said.

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

The referendum to restore it was approved by the legislators in 2002, and the proposal then moved to the voters. The referendum passed by a margin of 61 to 39 percent. The death penalty is very popular in California.

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