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Law School Report

CAPITAL ADVOCACY PROJECT

Inside the walls

For opponents of the death penalty, deeply personal perspectives

A lively discussion on the American system of justice – its strengths, its limitations and how it might be improved – was the result of a provocative O’Brian Hall forum on capital punishment. The April 19 event, “Inside the Walls: Three Perspectives on Life in Prison and the Death Penalty,” was hosted by UB Law School’s Capital Advocacy Project. Co-sponsors were the Prison Task Force, Witness to Innocence, and New Yorkers Against the Death Penalty.

Jim Michalek, president of New Yorkers Against the Death Penalty, noted that the state currently does not have a death penalty, but now has two new members of the Court of Appeals whose positions on the issue are unclear, raising the possibility that capital punishment could be reinstated. He briefly stated some reasons for concern about the death penalty, pointing to the conviction of innocent persons; the penalty’s disproportionate imposition on persons of color; and the enormous cost of administering the capital system. In the years that the death penalty existed in New York, he said, more than \$200 million in taxpayer money was allocated to capital cases.

Forming the center of the presentation were comments by three individuals who have had direct contact with the prison system. The first was **Gary Beeman**, who spent three years on death row in Ohio for aggravated murder before he was exonerated and freed.

Beeman asked those in attendance to remember a time they had been wrongly accused of some wrongdoing, perhaps as a child. “Think about the feelings that go along with that,” he said. “Fear, anger, betrayal, resentment, rage. It is a horrible experience. There is nothing I know to compare it to.”

Beeman told the story of his wrongful conviction, which came after a fellow inmate testified that Beeman had confessed the crime to him. His court-appointed attorney, he said, did no investigation and very little trial preparation, and Beeman was swiftly convicted of murder.

“I thought that innocence was all I needed,” Beeman said. “One thing I learned from this case is that innocence is irrelevant. It is a battle between two sides, and whichever side has the most power and the most maneuvering, that is the side that wins. Too often, if you are not affluent, you do not have a chance.

“I swore at that time I would never put my life and liberty in the hands of lawyers. I have recanted that attitude. I know a lot of good lawyers. But that is the point at which I started working on my own case.”

He was sentenced to die in the electric chair. But an Ohio appeals court reversed his conviction, partly on the grounds of inadequate counsel, and in a second trial at which he represented himself, Beeman was found not guilty.

“My case shines a light on the lack of effective assistance of counsel in capital cases,” he said. And of those who are on death row: “They live every day on the edge of fear that their name will be called next.”



Left to right: Jim Michalek, Nora Massey, Rev. Tim Buss and Gary Beeman

The **Rev. Tim Buss**, a former advocate of the death penalty, spoke next on his change of heart on the matter. “I spent 12 years as a youth pastor in the Niagara Falls area,” he said, “and I saw how easy it was for kids to slip through the cracks, how easy it was for them to get the short end of the stick in terms of academic and educational opportunities. I began to hear the facts, and suddenly I began to realize that, wow, we have got a real problem.”

Those who advocate the death penalty as a deterrent to murder, Buss said, ignore the fact that most murders are either crimes

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of passion or committed when another crime, such as a robbery, goes wrong. And fairness, he said, is a problem: "If you are poor, a person of color or mentally handicapped, the chances of your being wrongly convicted of a capital crime skyrocket. The people who are most often wrongly convicted are those who are least able to defend themselves."

As a pastor, he also says it is a myth that executing the killer brings closure to a victim's family. "Say it takes 12 years to finally terminate the life of this person who killed your daughter," Buss

said. "That means you have got to hold it in for 12 years until you can finally say, we got you, buddy. That will eat you alive."

"No amount of vengeance is ever going to bring the victim back. What we need to be doing is helping these families with forgiveness. Typically it is found that people who do carry this until the time when their person is actually executed turn out to be sour, miserable, mentally unstable people. They have literally been drinking their own waste."

Instead of the death penalty, Buss argues for the option of life imprisonment without parole. "I am not only here for those who were wrongly convicted, I am here for those who were rightly convicted," he said. "By giving them a sentence of life in prison, you give them the rest of their lives to make something of themselves, albeit behind prison bars where we will always be safe from them."

"If you kill this person who did this horrible thing, then that person's family, too, is victimized. We need to provide for life imprisonment for those who have been involved in a crime, no matter how hideous. That way there are no innocent killed. That way we minimize the damage, we minimize the victims, and we give them the opportunity to create meaning in their own lives."

The final speaker was Nora Massey, an Amherst resident whose teenage son Terrell Massey was awaiting sentencing the next day on his conviction for killing an elderly woman as part of her daughter-in-law's plot to collect \$150,000 in insurance money.

Mrs. Massey told the story of that fateful night in May 2005 when her son went straight from school to a party and ended up in the Amherst town jail. Five people including her son were charged in the killing; only Terrell, she said, was denied access to a lawyer. She was never notified of his arrest; she learned of it while watching the 11 p.m. news. While she waited in the police station, Terrell was told that if he signed a statement, he could see his parents.

She contends that he was given drugs and alcohol at the party, and was dragged into a murder plot against his will.

"My question is, how just is our justice system?" Massey said. "I spent over \$30,000 for an attorney. I did most of the footwork. I could have kept my \$30,000 in my pocket and defended him better than she did."

She also saw elements of racism in the process; her son was the only black defendant, and he was convicted by an all-white jury, "some of them the same age as the victim."

To the students in attendance, she said, "I want you to be able to distinguish between justice, fairness and injustice. If you are going into this field, you need to know that people are human beings first. If you think you cannot defend someone whether they are guilty or innocent, you are in the wrong profession. You should stop being a lawyer and be a prosecutor."

The day after the forum, sentence was handed down for Terrell Massey: 20 years to life in prison.