

2012

Commutations Symposium: An Introduction

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Bluebook Citation

Mark W. Osler, Foreword, *Commutations Symposium: An Introduction*, 9 U. St. Thomas L.J. 665 (2012).

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FOREWORD

COMMUTATIONS SYMPOSIUM: AN INTRODUCTION

MARK OSLER

When the editors of the University of St. Thomas Law Journal scheduled a symposium for April 2012 on the topic of federal commutations, they probably did not realize quite how timely that discussion would be. In the end, the symposium was not only fascinating, but may be historically significant.

A number of factors, including the hard work of those editors, combined to make this true. Perhaps most striking was the emergence of this issue in the popular press and political imagination of this country as the symposium approached. In the months leading up to the meeting, award-winning journalist Dafna Linzer began writing a series of articles for ProPublica¹ and the *Washington Post* which laid bare the dirty secret of the United States Pardon Office: That they were largely failing to perform their assigned (and important) task of advising the President. One such article warned that those with friends in high places had the best chance at clemency,² while later pieces laid out with alarming clarity the shape of inaction within the pardon office.³

The symposium was a turning point in this continuing focus on the pardon power's fall into desuetude. Just three weeks later, five of the participants re-convened as part of a panel in the halls of Congress in a hearing called by Rep. Robert C. "Bobby" Scott and sponsored by the American Constitution Society.⁴ A few months after that, the White House an-

1. ProPublica describes itself as "an independent, non-profit newsroom that produces investigative journalism in the public interest." *About Us*, PROPUBLICA, <http://www.propublica.org/about> (last visited Jan. 3, 2013).

2. Dafna Linzer, *Pardon Applicants Benefit From Friends in High Places*, PROPUBLICA, Dec. 4, 2011, <http://www.propublica.org/article/pardon-applicants-benefit-from-friends-in-high-places>.

3. The entire archive of Dafna Linzer's articles is available at http://www.propublica.org/site/author/dafna_linzer.

4. See *Reimagining the Constitutional Pardon Power: Does the President Have a Role in Making Drug Sentences Fairer?*, AM. CONSTITUTION SOC'Y, <http://www.acslaw.org/Reimagining-the-Constitutional-Pardon-Power> (last visited Jan 3, 2013).

nounced a comprehensive review of the actions of the pardon office, conducted by an outside firm, and administration insiders reported that “the White House and leaders in the Justice Department ha[d] lost confidence in [Pardon Attorney] Rodgers and [were] seeking a replacement.”⁵ Clearly, in pushing the administration to examine the pardon office, the symposium played a role true to the mission of the University of St. Thomas’s School of Law, which requires us to “integrate faith and reason in the search for truth through a focus on morality and social justice.”⁶

Such a significant continuing conversation is not surprising, though, given the background and contributions of those who came to Minneapolis for the first national symposium in a decade on this topic. This group included social scientists Jeffrey Crouch and P.S. Ruckman, journalist Dafna Linzer, former Pardon Attorney Margaret Colgate Love, former Maryland Governor Robert Ehrlich, United States District Court Judge Richard Sullivan, and academics Daniel Kobil, Douglas Berman, David Zlotnick, Steven Chanenson, and Cecelia Klingele. Fittingly, the day concluded with an unforgettable panel: the recipient of a commutation, Serena Nunn, appeared with the federal judge who sentenced her (Hon. David S. Doty) and the former Assistant United States Attorney who prosecuted her (Hon. Denise D. Reilly).

In sum, nearly all the national experts on the issue of clemency were in one room discussing an important topic, at a time of crisis, before an audience of engaged students. In the world of symposia, that is as good as it gets.

The articles in this book embody much of what was best about the symposium itself.

Jeffrey Crouch is, by any measure, one of the nation’s foremost authorities on clemency. His book, *The Presidential Pardon Power*,⁷ is a comprehensive history of federal clemency which takes a balanced and probing look at this little-examined institution. In his article here, “The President’s Power to Commute: Is It Still Relevant?” Professor Crouch brings up a question that first arose during the Presidency of George Washington.

Professor Daniel T. Kobil is a long-time student of the clemency process, and hosted a prior symposium on clemency in 2002 at Capital University Law School in Ohio. Here, he offers “Compelling Mercy: Judicial Review and the Clemency Power,” which examines the interplay between

5. Dafna Linzer, *Obama Administration Wants Review of Prisoner’s Commutation Request*, WASH. POST, July 18, 2012, http://js.washingtonpost.com/politics/obama-seeks-fresh-review-of-federal-prisoners-commutation-request/2012/07/18/gJQApDm6tW_story.html.

6. *Mission & Vision*, UNIVERSITY OF ST. THOMAS SCHOOL OF LAW, <http://www.stthomas.edu/law/missionvision> (last visited Jan. 3, 2013).

7. JEFFREY CROUCH, *THE PRESIDENTIAL PARDON POWER* (2009).

two independent systems of post-conviction review which are housed in separate branches of government.

Perhaps most anxiously awaited of these articles is Margaret Colgate Love's "Reinvigorating the Federal Pardon Process: What the President Can Learn from the States." No one understands the problems of the clemency process like Margaret Love, and here she offers positive examples from high-functioning state systems as templates for reforming the troubled federal system.

My own offering is "A Biblical Value in the Constitution: Mercy, Clemency, Faith, and History," which holds up the pardon power's embodiment of mercy as one of the very few genuinely biblical values contained in the Constitution of the United States, and points to the irony of its disuse in an era of Christianized politics.

P.S. Ruckman, Jr., the purveyor of the nation's best blog on clemency,⁸ weighs in with "The Study of Mercy: What Political Scientists Know (and Don't Know) About the Pardon Power." Too often, social science has been left to the side in the debate over clemency, and Ruckman makes clear what the cost of that might be.

Finally, this issue offers a transcript of the excellent keynote address offered by Gov. Robert Ehrlich of Maryland, who laid out an insider's view of what characterizes a genuinely worthwhile clemency system. Ehrlich's interest in this subject, as a conservative Republican former governor, is of national significance as he becomes a leading voice in the movement to examine the clemency process. In fact, looking to St. Thomas's example and what he saw at the symposium, Gov. Ehrlich is now working to begin his own student clinic to work on pardon applications, which will be housed at Catholic University's law school.⁹

Perhaps most crucial to the success of the symposium was the work of the members of this journal and the other students who participated, including Symposium Editor Alison Oviden and Editor-in-Chief Marc Spooner. One of many tributes to the students involved was this posting by P.S. Ruckman on his blog:

Speaking of compelling, I have to say this, as a teacher and husband to a top-notch lawyer: I made it a point to talk to as many St. Thomas School of Law students as I could, not about myself, or my work, but about them. I asked them what year they were in, where they were from, what they liked / did not like about law school, was it everything they expected it to be, where do they want to be in the future, etc. I talked to several tables of

8. Mr. Ruckman's blog is available at <http://www.pardonpower.com>.

9. Dafna Linzer, *Ex.-Md. Governor Ehrlich Plans Law School Clinic, Training Program for Felons Seeking Pardons*, PROPUBLICA, Mar. 5, 2012, <http://www.propublica.org/article/law-school-clinic-for-pardons-is-planned>.

students before my presentation, several individually during breaks and others going to and from the campus.

Every single student I met was not just polite, but clearly welcoming, friendly, articulate and altogether impressive. They appeared focused, ambitious, intellectually curious, and a wide, fabulous world of potential just seemed to surround each and every single one of them. I haven't met so many impressive students in one place in many, many years. It was great to chat with them, and an encouragement as well. Yes, it is good for a teacher to see that kind of thing every now and then.¹⁰

Now, as an intellectual community moved by a great need, we move forward to face the continuing challenge of social justice in a complex world, offering some small wisdom in the pages of this volume.

10. P.S. Ruckman, Jr., *Personal Note*, PARDON POWER BLOG (Apr. 21, 2012), <http://www.pardonpower.com/2012/04/personal-note.html#more>.