

7-2012

Pardon Me - The Need for a Fair and Impartial Judiciary

Jim Rosenblatt

Mississippi College School of Law, rosenbla@mc.edu

Follow this and additional works at: <http://dc.law.mc.edu/faculty-journals>



Part of the [Criminal Law Commons](#), [Judges Commons](#), and the [State and Local Government Law Commons](#)

Recommended Citation

The Benchers, July-Aug. 2012, at 18.

This Article is brought to you for free and open access by the Faculty Publications at MC Law Digital Commons. It has been accepted for inclusion in Journal Articles by an authorized administrator of MC Law Digital Commons. For more information, please contact walter@mc.edu.



July/August 2012

The Bench^{er}

THE MAGAZINE OF THE AMERICAN INNS OF COURT[®]

The Importance
of a Fair and
Impartial Judiciary

www.innsofcourt.org

 AMERICAN
INNS *of* COURT[®]



PHOTO CREDIT: ©iStockphoto.com/Scott Rothstein

PARDON ME

The Need For a Fair and Impartial Judiciary

By Dean Jim Rosenblatt

The pardons issued by former Mississippi Governor Haley Barbour shortly before he left office created a swirl of controversy in Mississippi that played out in the national media. The Governor's Mansion, the Hinds County Courthouse, the State Capitol, and the Gartin Justice Building were frequent backdrops for media stories that took place over a two-month period reporting on "Pardongate."

Several elements combined to make these pardons controversial and to make the issue such good fodder for the media.

First, was the sheer number of the pardons involved. There were over 200 pardons granted—an unprecedented quantity given the number of pardons that were granted under previous administrations.

Second, was the fact that the pardons were granted on the eve of the end of Governor Barbour's term. This timing precluded any public response that might cause the rethinking of the pardon decision.

After leaving office the governor spoke of his reasons for issuing the pardons citing the concepts of redemption and second chance. At that time the action had been taken and no modifications or reverses were possible.

Third, some of the pardons were for serious crimes for which the victims or the families of victims still felt the searing pain of the criminal actions. In one case, a man shot to death his wife while their son lay on her stomach. Another involved a negligent homicide in which two doctors were killed in a vehicular accident. In fairness, most of the pardons involved lesser crimes. Many of those pardoned had already served their prison sentence. Some of those pardoned had medical issues that would have proved expensive to the state to continue to provide medical treatment.

Fourth, some of those who received pardons worked as trustees in the Governor's Mansion under a traditional arrangement in the Mississippi

corrections system where prisoners of good behavior could be assigned to perform domestic type duties in the Governor's Mansion.

Finally, there was a provision in the 1890 Mississippi Constitution that referred to a publication requirement in connection with the submission of a request for a pardon. This publication requirement was not met in the case of some of the pardons for more serious crimes. In Mississippi, a governor's authority to issue pardons flows from this constitutional provision that is more than 120 years old. This issue caused attorneys and historians to parse every word of this section of the Mississippi Constitution in a manner in which this venerable document had not witnessed in many years.

The attorney general of Mississippi filed a request for a temporary restraining order (TRO) in the Hinds County Circuit Court to enjoin the Department of Corrections from releasing any of the pardoned inmates under their control. The circuit court judge granted the TRO and ordered inmates still confined and others who had been released to appear in court to examine the procedural aspects of their individual pardons when it appeared the publication requirement had not been met.

Attorneys for the pardoned inmates filed an interlocutory appeal to the Mississippi Supreme Court challenging the granting of the TRO, asserting the authority of the governor to issue the pardons, and asking that the pardons be allowed to stand.

The Mississippi Supreme Court stepped into the middle of this controversy, accepted the interlocutory appeal, and on February 1, 2012 ordered a hearing to take place on February 9, 2012. Prior to the hearing the court agreed to sit *en banc*, filed a supplemental order to allow the former Mississippi governor to present oral argument, poured over the eight briefs filed in the case, and engaged in extensive research. The hearing was over three hours in length and afforded full opportunity for questions from the bench and explanation and argument from counsel.

Less than 30 days later the Mississippi Supreme Court issued a 6-3 decision in a 77 page opinion that reversed and rendered the decision of the Hinds County Circuit Court. The Supreme Court—using a separation of powers analysis—held that the judicial branch did not have the authority to question the actions of the governor and the procedural aspects of how he issued the pardons. As a result the pardons were allowed to stand.

Shortly after the opinion was issued, the pardoned inmates remaining in prison were released (although one was immediately apprehended for

an immigration charge). Criminal records were wiped clean. Newspapers and media outlets reported the story as headline news.

However, in a manner of days, the swirl of controversy was gone. The highest judicial authority in Mississippi had spoken. While many were disappointed in the decision, the citizens of Mississippi accepted the decision and moved on. For some, the decision provided an incentive to pursue legislative action to limit a governor's authority. Others discussed how a constitutional amendment could be pursued to clear up ambiguous language or to provide for shared authority in the pardon process. The new governor spoke out against the pardon process and terminated the program of trustees working at the Governor's Mansion (and asked for a budget increase to allow domestic services to be provided by employees rather than by trustees).

In all of this, I was struck by how important it was for the state judiciary to be independent and free from the pressures that were present in this case. While there was a difference of opinion among the nine justices on the Mississippi Supreme Court, they respected the difference in the views of their colleagues, spoke civilly of those on the other side, and framed the issues in a careful and thoughtful manner.

I was even more struck by how the decision of the court was accepted with such finality by the citizens of Mississippi. Many—to include the victims of the crimes and the victims' families—still were frightened and angered by the pardons and releases from custody. Nonetheless, when the decision was issued, all considered the legal controversy resolved. What a testament to the respect that our judicial system and those attorneys who operate within it have earned. As one responsible for the education of future attorneys I was proud of the way the legal system operated and pleased to see the respect afforded the decisions of our judicial system. ♦

NOTE: The oral argument in this case (*Hooker v. Mississippi*) can be found on the website of Mississippi College School of Law at <http://judicial.mc.edu/case.php?id=25963>. The opinion of the Supreme Court can be found at <http://courts.ms.gov/Images/Opinions/CO76150.pdf>

Jim Rosenblatt is dean of the Mississippi College School of Law in Jackson, Mississippi. He is president of the Charles Clark American Inn of Court and the Mississippi chapter of the Federal Bar Association.

In all of this, I was struck by how important it was for the state judiciary to be independent and free from the pressures that were present in this case.

© 2012 JIM ROSENBLATT. This article, used with permission from the American Inns of Court and the author, was originally published in the July/August 2012 issue of *The Bench*, a bi-monthly publication of the American Inns of Court. This article, in full or in part, may not be copied, reprinted, distributed, or stored electronically in any form without the express written consent of the American Inns of Court.