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## Gray Letter Law

**Black letter law.** That's what we lawyers are always looking for. We want to be sure. And sometimes, when the law and precedent are clear, it is easy to be sure.

But sometimes it isn't easy and sometimes, if we are honest about it, we make decisions as best we can—with the full knowledge that we might be wrong.

Two highly publicized cases from the end of 2005 illustrate the point.

In the first case, the Arizona Supreme Court ruled against the admission of James Hamm to the State Bar of Arizona.

The Court sidestepped the key issue somewhat, but the result is the same. I debated Hamm and the then-Dean of the ASU Law School on *60 Minutes* with Mike Wallace a few years back. They reran it recently and several old friends from around the country called to say that I looked better than ever—it was true: I looked exactly the same in the rerun as when they filmed the piece five years earlier.

I listened to my own arguments as to why Hamm shouldn't have been admitted to a state law school in the first place—taking the place of someone who *hadn't* committed a premeditated cold-blooded killing—and how the standards for lawyers maybe weren't that high but they surely excluded murderers. I was able to listen to my position almost from afar, as if I were hearing the words of someone else.

After much reassessment, I came to the same conclusion. But I think it is a close call.

California Governor Arnold Schwarzenegger had an even more difficult decision to make regarding the clemency of Tookie Williams. There was certainly a powerful argument to be made that something good could come out of granting clemency and that executing a changed man no longer made sense. The governor was able to avoid that more difficult issue because Tookie was not the poster child he initially seemed to be. He refused to admit to the horrific crimes he was convicted of committing or to apologize and express remorse. In the governor's view, this disqualified him for clemency.

I think the governor was right. But I'm not positive.

These are tough ones. How does redemption play in

our system of justice? If reform is the goal, why do we not reward the reformation instead of ignore it? Are there some crimes that are so bad that it does not matter what changes happen in the future to the person who committed them?

For example, in New York several years ago there was the case of the man who had robbed a convenience store and took a young cop hostage. Over the course of a couple of days, he slowly tortured this father of young children and killed him before he was captured. Flash-forward a couple of decades and he is a changed man, unquestionably reformed, and totally remorseful for what he did way back in his troubled youth. What do we do with this man now?

I believe he should still be executed. I think that when somebody commits that sort of horrific offense against another human being and society in general, he must pay the ultimate price. I think it does send a message that some things will not be tolerated, no matter what. We executed many such men while I was Attorney General and I have no regrets. But I do have doubts.

I fully realize that the death penalty could be viewed as immoral. It can be seen as ineffective and too expensive. It is the only area of the law that can't be undone when a mistake is made, and maybe that too is unacceptable.

Just like maybe James Hamm should be given the chance to show how well the system can work and how much people can actually change. Like maybe in a close case like Tookie Williams we should err on the side of life. In the end, we make our best judgment and hope we were right.

But we cannot be sure. That is the nature of gray letter law. **AZ**

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