On February 12, 2025, leaders of the Council on Criminal Justice Centering Justice initiative – Khalil Cumberbatch and Marc Levin – led a discussion exploring the use of executive clemency, including pardons, commutations, and reprieves. Panelists included David Safavian, criminal justice policy adviser at the Conservative Political Action Conference (CPAC) and COO at Unify.US; Paul Larkin, a legal research fellow at the Heritage Foundation; and Cynthia Roseberry, director of policy and government affairs, justice at the American Civil Liberties Union (ACLU). The panelists discussed the historical context and evolution of clemency, its structural and substantive criticisms, and challenges and solutions in clemency applications.

Watch the Recording

Highlights from the Conversation



PaulLarkin

Senior Legal Research Fellow, The Heritage Foundation



CynthiaRoseberry

Director of Policy and Government Affairs,Justice, ACLU



DavidSafavian

Criminal Justice Policy Adviser, CPAC; COO, Unify.Us

On the Historical Roots of Clemency

- **PAUL LARKIN:** *"Clemency is the law's version of mercy, and it has a history almost as old as mercy itself. It goes back at least as far as the Code of Hammurabi and probably has existed as long as there have been political units or families."*

  "The framers of our Constitution placed the clemency power in Article Two, which gives the president the power to grant reprieves and pardons … [the framers] … assumed presidents would be of the same character as George Washington, and sadly, it hasn't

always worked out that way."

"The problems we have in the current clemency process … are twofold. On the one hand, there is a structural criticism. Clemency has been left largely in the hands of the Justice Department That creates an actual or apparent conflict of interest, however, because the Justice Department prosecutes every federal clemency applicant, and if you leave the Justice Department in charge of processing clemency applications, it's not likely you're going to see a lot of justified people who automatically get it. The substantive criticism is that … there have been a host of different clemency recipients that did not deserve that relief. What has happened is that clemency has become more a political tool than it was a tool for ensuring that justice and mercy have a role in the criminal justice system."

- **CYNTHIA ROSEBERRY:** "*This prerogative goes all the way back to a king, and even when Hamilton wrote about it in the Federalist Papers, he talked about it being unfettered … So I see this executive power of redemption as a way to redeem our justice system, as much as it is to redeem those folks who are involved with it as well. It gives us an opportunity to reflect back on errors that we've made, and to make sweeping corrections of those errors with the stroke of a pen."*
- **DAVID SAFAVIAN:** "*If you read through the Federalist Papers, there was pretty active debate about the granting of this largely unchecked power to the president. Some wanted pardons to be confirmed by Congress. Alexander Hamilton in Federalist 74 suggested that pardons should be used sparingly … It's important to consider that there are a whole bunch of very positive benefits from using the pardon power … My hope, my prayer, is that we are able to, down the road, do some tinkering with the pardon process, not by constitutional amendment, but in a way in which we are addressing the conflict-of-interest issue."*

Structural Challenges and Ethical Dilemmas in the Clemency Process

- **PL:** "*Unfortunately, [clemency] has become besmirched with politics, whether it is Republicans or Democrats, both sides have done it. The political aspects of pardoning have, I think, besmirched the almost theological nature of the decision to forgive someone for what someone has done."*
- **DS:** "*I think one of the bigger problems here is that there are so few grants of pardon or*

clemency, for political reasons and structural reasons, that when they do come about, people immediately assume that there is some nefarious reason for doing so rather than potentially looking at someone getting an overly harsh sentence or someone who was prosecuted under a unique version of the law or unique reading of the law. Some of that assumption by the public writ large, I think, could be alleviated if we did more, if we had a 'Forgiveness Friday' or 'Redemption Monday' where every day, the White House released a list of people who have made mistakes, paid their price, and deserve to come back to society. Regularizing the process, I think, has that value."

- **CR:** *"One of the practical issues with clemency and pardons is that with clemency in particular, the view has been backward looking. In other words, the process is considering a crime that happened 10, 20, 30 years ago, by an individual who no longer exists. The look has to be at the individual … who is coming before that board, how that person has been redeemed, how they've performed … and to not have the DOJ, the folks who actually prosecuted the case, have a thumb on that scale."*

On Structural Alternatives to the Current Process

- **PL:** "*An additional problem [besides insufficient staff] is politics, because if you appoint only people who are very pro-prosecution to the decision-making positions in the clemency process, you're not going to see very many people recommended for clemency … One way is to have a clemency board … Another way is to put somebody who is very prominent and very powerful in charge of this process for making recommendations to the president or the governor … The president should appoint the vice president as head of the clemency process and let the vice president then manage the process of getting recommendations from the attorney general and from outside people, and then presenting those recommendations to the president."*
- **DS:** "*I couldn't agree more with [Paul] that fear of the political response is what has the largest impact on pardons, whether they're considered by the president or a governor … It would be great to have someone with stature who oversees the process. I think the vice president tends to be a problematic point person on this, because we all know that nearly every vice president is looking to run [for president], and the last thing that a vice president wants to do is sign off on a clemency petition, and then that person goes out and does a horrific crime, and it's thrown back in his face …"*

  "Creating a panel made up of former prosecutors, maybe former judges, certainly defense attorneys, maybe criminologists and psychologists to look at the individuals,

look at the circumstances, look at whether or not that person is still at risk for reoffending down the road would help put a degree of insulation in place."

- **CR*:*** *"The other idea is to have categories of clemency where an executive can just routinely make grants. For example, among aging populations, among infirm populations, for laws that have been enacted but not made retroactive, to reflect a vision of our criminal legal system that we now hold, versus the vision that existed when the person was prosecuted and incarcerated. And [we can] also look at, on the front end, alternatives to incarceration … so that there's not such a need on the back end for so much clemency and for so many pardons."*

On Transparency, Data, and Public Perceptions

- **PL:** "*If the president tried to make this a more regular process using more objective types of criteria–a decision tree and a categorical approach–that would educate the people as to how he's thinking about problems."*
- **CR:** "*Publishing the criteria would be helpful so folks understand how the consideration was made and under what criteria they were made. I think also consistency in both grants and denials is important so that the public understands the kinds of cases that might be denied and the kinds of cases that might meet the criteria with success. And then, understanding who plays a role in the decision to grant clemency beyond the executive, and how that role impacts the decision maker and what information those folks have who are playing a role in that decision process."*
- **DS:** "*The more [pardons] that are done, the less impactful those strange ones, unique ones … the ones where there's a horrible set of facts behind it [are] … I will say though that I have a little bit of a problem with broad-based categorical pardons … If you don't do the due diligence, somebody who is included in the category that probably shouldn't be pardoned is going to get through … That is exactly the type of thing that undermines confidence in the pardon system."*
- **CR:** *"I don't disagree with that. I just believe that the categories should at least make people eligible for a review so that people are not just languishing in prison, not knowing whether they might be considered."*

  "I'll talk about some of the data that informs the process that is frankly a problem to the process, in my estimation. [This includes] things that are similar to rout disaggregating

for communities that see a lot more arrests because there's more of a police presence … That data feeds into the system and creates or feeds the algorithm to show that someone is a higher risk, when, in fact, they may not be a higher risk … That's one place where the data seems to cut against the idea of justice for the clemency process."

- **DS:** "*.. That does raise this massive problem structurally … there's about seven different layers of review of every pardon application … and at any one point in time, someone can ding you for any reason or no reason whatsoever, and there's no transparency there as to why, and once you've been rejected, you can't reapply for another five years."*

On Assistance with Pardon Applications

- **CR:** *"Unfortunately, during Clemency Project 2014, the courts ruled that [lawyers] who are funded by the Criminal Justice Act, which includes federal defenders and private attorneys who take appointed cases, could not be compensated for clemency petitions … So that significantly reduced the number of folks who were available to put these petitions together."*

- **PL:** "*Perhaps the best way to help this process is to get more law school faculty involved by creating clemency centers at law schools, because the law school faculty are being paid not by the applicant but by the university, the students are using this as an opportunity to get credit or to get practical experience, and you will get smart people working on these applications."*



Khalil Cumberbatch

“At its core, clemency is more than just a legal mechanism. It is a profound expression of mercy, justice, and second chances. It is a tool that can correct systemic injustices, reunite families, and restore dignity to those who have paid their debt to society. But as we have seen throughout history, its use or lack thereof can be a reflection of political calculations, rather than a commitment to fairness and rehabilitation.”



Marc Levin

“[Clemency] is an extraordinarily timely topic, and one that really brings to mind all of the different competing values and priorities that we look at in the criminal justice system in terms of ensuring accountability, ensuring deterrence of future crime on one hand but also making sure we have mercy and second chances as well, and correcting for the fact that we know there are mistakes in the criminal justice system … It’s really a backstop for what we know is a very imperfect system. Of course, human beings are also imperfect, and that comes to mind when we think of the fact that, whether it’s the president or any of the nation’s governors who exercise this power, how do we ensure that there are criteria that are unbiased as much as possible.”

“One of the things that we’re really focused on with Centering Justice is how the criminal justice system can earn the trust of, ideally, all Americans, certainly more Americans. I think

this discussion really focused, in many ways, on how the clemency process can be more transparent and can hopefully contribute to more Americans having faith and trust in the system, as opposed to being a source of favoritism or even cynicism. I think all of our panel really shed a lot of light on that."

About the Centering Justice Initiative

The Centering Justice initiative is a collaborative project engaging a diverse range of the nation's top thinkers and doers in an ongoing, ideologically vibrant conversation about criminal justice policy.

Additional Resources

To join the Centering Justice email list, please click here.