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| **Feature Article - My Take** | | | |
| Webitor [Paul Joseph](http://docs.google.com/articles/paul_joseph.htm) - Associate Dean for International and External programs -  teaches constitutional law, torts, and criminal procedure at [Nova Southeastern University](http://nsulaw.nova.edu/) in Fort Lauderdale, Florida.          **"**  *The West Wing* is more than a **great show**. For me, an aging boomer, as for many others, the show is a **yearning cry** and a fantasy of **desire fulfilled**.    **"**            **"**  From the political perspective, delay allows the Democrats to **avoid taking a clear position** (either by commuting the sentence or by allowing it to be carried out).  **"** |  |  | **My Take**  **Sometimes Real Life is Better than Television**  by Paul Joseph  For me as for millions of others, Wednesday nights have become sacrosanct. My wife and I do not go out. We do not answer the phone. Instead, we watch *The West Wing*. Of course, we tell each other, it’s just a good show. We are wowed by the quality of the writing and the structure of the plots. The characters, at once hard-boiled and innocent, practical and idealistic, professional and yet slightly out of their depth, touches us. The plots, with the aid of Aaron Sorkin’s keen eye and Dee Dee Myers’ insider knowledge as the show’s consultant, blend fact and fiction in a way which makes us feel we are learning something real or at least something fundamentally true about the way in which the inner circle of the White House actually works.  But now, it is confession time. *The West Wing* is more than a great show. For me, an aging boomer, as for many others, the show is a yearning cry and a fantasy of desire fulfilled. Its President Bartlet is more than a great character, artfully played by Martin Sheen; he is the President Clinton who could have been–the full expression of the intelligent, perceptive, good-hearted, visionary agenda-setter and change agent that Clinton can be, but without Monica Lewinsky. Bartlet is Clinton without Clinton’s weaknesses, weaknesses that blunted his drive and occupied all too much of his eight years in office. Bartlet, is, in essence, the vision of the perfected Clinton.  Not that Bartlet doesn’t have his failings too. During the first season we became aware that Bartlet and those around him have a tendency toward timidity at times and it’s clear that the staff is just learning the ropes. Yet, as we heard towards the end of the season, the new motto is "Let Bartlet be Bartlet," and we have no doubt that a Bartlet unleashed will be unstoppable. And with Mendoza on the Court, all things seem possible.  The yearning for Bartlet is understandable. Those of us who think Clinton was a good President who led the country during a remarkably extended economic boom and showed the way during a time of fundamental technological change and international dislocation and reorganization, those of us who admire many of the President’s foreign policy initiatives and domestic policies, wonder how much more could have been accomplished if only . . . if only.  Yet, for those too ready to sink into a reverie of Bartlet and the vision of the second Camelot that might have been, it’s helpful, every once in a while, to get a dose of reality to remind us that Clinton has ways and means beyond those of a mere Bartlet. Don’t count the President out yet.  Recently, *The West Wing* featured a show on the death penalty. On the show, as in real life, various federal death penalty provisions, enacted as parts of "get tough on drugs" initiatives, have finally resulted in the real likelihood that the federal government will shortly execute a federal prisoner for the first time in over thirty years. This puts the President directly in the cross-hairs of the death penalty debate. The President has pardon powers under the Constitution. Will he commute the sentence or will he allow the condemned to be killed?  *The West Wing’*s take on the matter, which was re-run recently, was a deeply moving mixture of morality and politics. First-term President Bartlet, who personally opposes the death penalty but worries both about the polls and about the effect of his actions on future Presidents’, struggles to find some way to delay the execution and fails. The episode ends with Bartlet, a Catholic, making his confession. "Bless me father, for I have sinned." We all know what Bartlet is thinking.  Back in real life, President Clinton faces the same issue. Juan Raul Garza is scheduled to be put to death on August 5, 2000. Considering the frenzy of the death penalty debate, the pressures on Clinton, from all sides, must be enormous. Clinton has his own moral views on the matter. He’s also a second-term President with a legacy to protect and a Vice President to elect. The mix of forces, then, may not be so different from those working on Bartlet. Except, that, in real life, Clinton found a way–or at least a possible path.  On July 7, 2000, the New York Times reported that the administration planned to delay the Garza execution because it needs time to construct a set of clemency procedures to be used by federal death-row inmates and because it wants to review an expected Justice Department report on the issue of whether the death penalty is being applied in a racially neutral manner.  The second rationale for delay is the potential hot potato but it comes at a time when an increasing number of Americans, even those in favor of the death penalty, are becoming concerned about both the accuracy of the guilt-finding process and the fairness of the administration of the death/life imprisonment choice. Following closely on the Illinois Governor’s moratorium on executions and the work of the Innocence Project, which has, with alarming frequency, been proving convicted condemned inmates innocent using DNA evidence, it sometimes seems that the only person wholly comfortable with the present death penalty system is George W. Bush, who is apparently still convinced that only the guilty die in Texas.  Whether the administration of the death penalty becomes a meaningful political issue for the Democrats in the 2000 campaign remains to be seen. But even without a final resolution of this troubling issue, delay has its own rewards. Delay gives time to look even more carefully at the system and how it’s run. If real problems are manifest, corrective action can be taken. From the political perspective, delay allows the Democrats to avoid taking a clear position (either by commuting the sentence or by allowing it to be carried out). The opportunity remains to keep the issue before the public if that seems to be working in the Democrats’ favor. It also allows the issue to be put off until after the election if that seems the better course.  Clinton is a lawyer who understands the importance of procedure and procedural arguments. Our system of justice demands not only that the right thing be done but that it be done in the right way. The country is currently beginning a debate on the administration of the death penalty. It needs time to jell. Delay is in order, but delay, with all of its virtues, is only made possible by the first rationale–the need for clear procedures. It has been so long since the President has had to face a clemency decision that nobody can fault him for wanting a set of fair and uniform procedures in place–not just for this condemned man but for all who will follow. Even those in favor of the death penalty can probably agree with that.  It might be easy to be cynical about Clinton’s actions. It’s true that, without truly deciding the issue, the President has bought himself and his party time to do whatever they want to do in a way that will benefit them the most (or hurt them the least). But, whatever the device, the result is that we all have more time to think this issue through and to ask ourselves the hard questions–both moral and practical–that we need to ask before proceeding. In this real less-than-perfect world, Clinton has found a way to do what Bartlet could not.  *Posted July 8, 2000*  *NOTE:*  On December 7, 2000, President Clinton stayed the execution of Juan Raul  Garza for six months and ordered further review of  information "about  racial and geographic disparities in the federal death penalty system."  For Immediate Release  December 7, 2000                          STATEMENT BY THE PRESIDENT       Today I have decided to stay the execution of Juan Raul Garza, an  inmate on federal death row, for six months, until June, 2001, to allow the  Justice Department time to gather and properly analyze more information  about racial and geographic disparities in the federal death penalty  system.       I believe that the death penalty is appropriate for the most heinous  crimes.  As President, I have signed federal legislation that authorizes it  under certain circumstances.  It is clearly, however, an issue of the most  serious weight.  The penalty of death, as Justice Potter Stewart and  Justice Sandra Day O'Connor have reminded us, is "qualitatively different"  from other punishments we impose.  Whether one supports the death penalty  or opposes it, there should be no question that the gravity and finality of  the penalty demand that we be certain that when it is imposed, it is  imposed fairly.       As I have said before, supporters of capital punishment bear a special  responsibility to ensure the fairness of this irreversible punishment.  Further, Article II of the Constitution vests in the President the sole  authority to grant pardons and reprieves for federal crimes.  Therefore, I  have approached this matter with great deliberation.       This Fall, the Department of Justice released the results of a  statistical survey of the federal death penalty.  It found that minority  defendants, and certain geographic districts, are disproportionately  represented in federal death penalty prosecutions.  As the Deputy Attorney  General said at the time the survey was released, no one confronted with  those statistics can help but be troubled by those disparities.  We do not,  however, fully understand what lies behind those statistics.  The Attorney  General has said that more information and a broader analysis are needed to  better interpret the data we now have and to determine whether the  disparities that are evident reflect any bias in our system.  She has  undertaken an effort to gather and analyze the relevant information, so  than an appropriate decision can be made on the question of bias.       After a close and careful review of this issue, and after conferring  with the Attorney General and the Deputy Attorney General, I am not  satisfied that, given the uncertainty that exists, it is appropriate to go  forward with an execution in a case that may implicate the very issues at  the center of that uncertainty.       In issuing this stay, I have not decided that the death penalty should  not be imposed in this case, in which heinous crimes were proved.  Nor have  I decided to halt all executions in the federal system.  I have simply  concluded that the examination of possible racial and regional bias should  be completed before the United States goes forward with an execution in a  case that may implicate the very questions raised by the Justice  Department's continuing study.  In this area there is no room for error.       I have asked that the Attorney General report to the President by the  end of April 2001 on the Justice Department's analysis of the racial and  geographic disparities in federal death penalty prosecutions.  **Would you like to comment on this article? 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