From Death Row to Rehabilitation and Redemption

JEFFREY D. COLMAN

The author is a partner with Jenner & Block LLP, Chicago.

This is about—and for—an extraordinary client, Antonio, who spent 27 years in prison (including 10 years on death row), and who is today a free man. Antonio’s life story is about a brutal childhood and violent teenage years, but his story is also about the possibility of rehabilitation and the power of redemption. Antonio is an important symbol because he is one of the 2,000 boys and girls across our country who were sentenced to mandatory life in prison with no chance of parole for murders they committed when they were under the age of 18, and who now have new chances at gaining their freedom because of the United States Supreme Court’s recent decision in Miller v. Alabama, 132 S. Ct. 2455 (2012).

Antonio was not an innocent man. He is not one of “the exonerated.” He was convicted of two murders. There were victims, and there are victims’ families. Antonio’s story is also one about the often bizarre nature of our criminal justice system. (“Antonio” is not his real name. Because he is in the process of building a new life, we are using a pseudonym. I have his permission to write this article and use letters he wrote to me.)

Antonio grew up with an abusive father who, from the time Antonio was eight years old, beat Antonio mercilessly and repeatedly with fists, belts, and a metal pipe. By age 13, Antonio was into drugs and alcohol and a frequent runaway. In 1985, at the age of 16, after he had run away from home for good, Antonio killed a 49-year-old man who was abusing him. Antonio pleaded guilty and was sentenced to 35 years in prison.

In 1990, while serving this sentence, Antonio was involved in a fight in the prison yard in which a gang leader was killed. At trial, the state’s key witnesses were three inmates who testified that Antonio was the aggressor. Three other inmates (including Antonio) testified that the gang leader attacked Antonio and that Antonio killed him in self-defense. Antonio was convicted, and his conviction and death sentence were affirmed on appeal by a strongly divided 3–1–3 Illinois Supreme Court.

Antonio sought post-conviction relief raising a number of substantial issues, including violations of Brady v. Maryland, 373 U.S. 83 (1963), and ineffective assistance of counsel. At an evidentiary hearing during the post-conviction proceedings, all three inmates who testified for the state recanted their testimony that Antonio was the aggressor in the prison fight and explained that...
they testified falsely at trial in exchange for benefits from the state—including leniency on other pending convictions—which the state did not reveal at the time of Antonio’s trial. This recanted testimony and undisclosed exculpatory evidence became another subject of state post-conviction proceedings. The trial court denied Antonio’s request for post-conviction relief, and the Illinois Appellate Court affirmed.

In 1996, Antonio’s guilty plea in the original case—for killing the 49-year-old man who had abused him—was vacated because the judge who took the guilty plea had erroneously (to put it mildly) told Antonio that the maximum possible punishment was the death penalty. That was flat-out wrong: Sixteen-year-olds simply were not eligible for capital punishment under Illinois law. After appeals and a remand, the case proceeded to trial in 1999. Antonio was convicted by a jury in a trial marked by outrageous prosecutorial misconduct. Because Antonio now had the conviction for the prison yard murder, he was sentenced to life without possibility of parole. On appeal, the Illinois Appellate Court found “intentional and systematic” prosecutorial misconduct that “called into question the state’s commitment to fair and just enforcement of the law,” but the court concluded that the misconduct was “harmless error.” The Illinois Supreme Court granted leave to appeal; but one justice recused himself, and the 3–3 split among the remaining justices left the conviction intact.

In 2007, Judge Elaine E. Bucklo appointed us to represent Antonio in federal habeas corpus proceedings challenging the first of his two murder convictions. Her initial order reads in part:

[T]his court has decided to appoint additional counsel for the defendant. There is no doubt there was serious prosecutor misconduct in this case. Defendant has been represented by the same persevering counsel from trial through the present. I do not know whether additional counsel will have anything new to add but defendant will have no further opportunity to challenge the conviction and his life sentence.

A Last Chance

“No further opportunity”—a last chance. Judge Bucklo’s order altered the course of Antonio’s life and, in some ways, the lives of his lawyers. After additional briefing, Judge Bucklo granted Antonio’s habeas petition, holding that the prosecutor’s intentional misconduct denied Antonio a fair trial. She found the prosecutorial misconduct so egregious as to warrant relief without application of the stringent harmless error analysis usually required in federal habeas review of state court convictions. In so holding, to the best of our knowledge, Judge Bucklo became the first and only federal judge in the nation to apply a narrow exception suggested by the United States Supreme Court 20 years ago for cases in which “a deliberate and especially egregious error of the trial type, or one that is combined with a pattern of prosecutorial misconduct, might so infect the integrity of the proceeding as to warrant the grant of habeas relief, even if it did not substantially influence the jury’s verdict.” Brecht v. Abrahamson, 507 U.S. 619, 638 n.9 (1993).

The Illinois Attorney General, to her credit, decided not to appeal Judge Bucklo’s decision. However, the Cook County State’s Attorney’s Office decided to retry the case, refused to engage in plea negotiations, and asserted—until Miller v. Alabama was decided in June 2012—that, if Antonio was convicted in a new trial, mandatory life in prison would be the only possible sentence.

We also represented Antonio in a separate federal habeas corpus petition challenging the prison murder conviction. The habeas petition raised a number of very substantial constitutional violations, but the district court dismissed the petition on procedural grounds, finding that Antonio’s prior counsel filed it 14 days late. The Seventh Circuit affirmed, and rehearing en banc was denied, with three judges dissenting. The United States Supreme Court denied certiorari.

But this was not the end of the legal road. Another courageous judge, the Honorable Jennifer Bauknecht of the Circuit Court of Livingston County, Illinois, decided that a new sentencing hearing was warranted because the death sentence (commuted to life without parole) had been predicated on the earlier murder conviction, which Judge Bucklo set aside.

The new sentencing hearing occurred in February 2012. Antonio’s prison records demonstrated that he had not had any significant disciplinary problems in more than 20 years. Sixteen witnesses testified about Antonio’s life and his incredible transformation. Five correctional officers described him as a model prisoner; four family members (who had never previously been asked to testify) recounted Antonio’s years of abuse; five former lawyers testified to Antonio’s great character; and a neuropsychologist described the impact of the physical abuse Antonio suffered as a child. Antonio testified about his life and his remorsefulness:

Before the judge had sentenced me to death, he basically told me in so many words that I was not redeemable, there was nothing good about me, and that really bothered me, because that was the first time that anyone ever told me something as bad as that. I never just saw myself like that. So when I got to death row, it was the first time in my entire life that I was just able to stop and think about all the things that I had done and where I came from, and where I was at. For the first time, I had to re-look at myself and see who I really was, and I didn’t like that person. I knew I had to change.

Antonio recounted how he met William Bracy, another death row inmate:
Redemption on Death Row

Antonio also spoke about the many years on death row when he attempted to become a better person:

By the time I was on death row and I was surrounded by these wonderful people, my attorneys and doctors and family, I began to feel that I wasn’t dumb, that I was capable of doing more. I would read everything that was put in front of me, every book. I watched every educational program on TV just so that I could learn. I didn’t know where it was going to take me. I didn’t know what was going to be the results, but I enjoyed learning, and I wish I had that mentality when I was ten, twelve, thirteen.

So as the years went by, I saw myself grow. I saw the change in me, and other people began to see the change in me also. There was a time when people would see me come, they used to go the other way. Now people were coming towards me. They wanted to talk to me. They wanted to get to know who I was, and that’s a good feeling.

I tell a lot of guys who I talk to nowadays that death row was the best thing that ever happened to me, that I found my salvation on death row. Some people can’t understand that, and I understand why. But by the time Governor Ryan granted me clemency, he let Antonio off the hook. But the Antonio that came off death row was not the same one that went on in 1992. That person died. The man that came off is ten times better. The man that’s talking to you right now is a good man who’s done horrible things.

At the conclusion of the two-day hearing, Judge Bauknecht found Antonio totally rehabilitated and sentenced him to the minimum possible sentence, 20 years with full credit for time served.

One personal example of Antonio and his character: For many years, Antonio was in a maximum security prison in Menard, Illinois. Through no fault of his, the prison was frequently in a lockdown status, which meant that all the inmates were confined to their cells essentially 24 hours a day and often seven days a week. My colleagues and I sent books to Antonio, and he devoured them. One of the books was Eleni, written by Nicholas Gage. Eleni was Gage’s mother. In the late 1940s, during the civil war in Greece, Communists took over villages, and one of their first orders was that parents turn their children over to the Communist Youth League. The children were then sent to Yugoslavia for military training. Eleni smuggled three of her children—including then-eight-year-old Nicholas—out of Greece. Eleni is the story of her life, and of her arrest, trial, and execution for smuggling her children out of Greece. In one of his many letters, Antonio reported that he finished reading Eleni:

Jeff, this is a great book. I remember you telling me that you had a hard time finishing it, and that you found it sad and depressing. I agree that it is sad what happened to her (and so many others) during that time in history, but in many ways her story is inspirational. I felt embarrassed over the many times I made a big stink over some of the bad things that happened to me. My life may not be what I want it to be, but compared to Eleni and so many others, my life is great. Her story reminds me to count my blessings instead of my hardships.

A Prisoner’s Empathy

It was simply extraordinary for us to observe the ability of this man—locked up almost 24 hours a day for many years—to identify so powerfully and sincerely with the tragedies and sadnesses of others.

Back in the state trial court, after four years of motion practice and an interlocutory appeal, Antonio was still awaiting retrial on the killing that occurred in 1985. In June 2012, the U.S. Supreme Court ruled in Miller v. Alabama that a mandatory sentence of life in prison without the possibility of parole for individuals under the age of 18 who are convicted of murder is a violation of the Eighth Amendment’s prohibition against cruel and unusual punishment. Even though Antonio was now 43 years old, for purposes of the 1985 case, Antonio was a 16-year-old in the eyes of the law. Before the Miller decision, the state was refusing to engage in plea negotiations and was taking the position that the only penalty Antonio could receive—if he were convicted—would be life in prison without possibility of parole.

The same day the Supreme Court rendered its opinion in Miller, we filed an emergency motion asking the trial court...
to declare Illinois’s mandatory life-without-parole statute unconstitutional as applied to 16-year-olds, such as Antonio, and release Antonio immediately. After a few weeks of briefing, the state agreed to a plea bargain: Antonio would be released from custody if he pled guilty to the charges in the 1985 case. That was how Antonio won his freedom.

In Miller, Justice Kagan wrote for the Court’s majority that a mandatory life sentence for a juvenile was akin to a sentence of death in prison. She wrote that mandatory life sentences for juveniles are contrary to our society’s view that juveniles generally bear a lesser form of culpability and that mandatory sentences ignore the individualized qualities of the offender.

As Justice Kagan put it:

To recap, mandatory life without parole for a juvenile precludes consideration of his chronological age, and its hallmark features—among them, immaturity, impetuosity, and failure to appreciate risks and consequences. It prevents taking into account the family and home environment that surrounds him—and from which he cannot usually extricate himself—no matter how brutal or dysfunctional. It neglects the circumstances of the homicide offense, including the extent of his participation in the conduct and the way familial and peer pressures may have affected him. Indeed, it ignores that he might have been charged and convicted of a lesser offense if not for incompetencies associated with youth—for example, his inability to deal with police officers or prosecutors (including on a plea agreement) or his incapacity to assist his own attorneys. . . . And finally, this mandatory punishment disregards the possibility of rehabilitation even when the circumstances most suggest it.

The Embodiment of Miller v. Alabama

Justice Kagan and her colleagues obviously did not know Antonio. But if they had, they would have understood how very poignantly their words described his life back in 1985. In addition, through some of the bizarre features of our legal system, by 2012, Antonio had had 27 years in prison to actually demonstrate the powers of redemption and rehabilitation. His release is a fitting testament to the power of Justice Kagan’s language in Miller and to the Court’s holding. To the best of our knowledge, Antonio is the only “Miller person” who has now been released from custody. But there are almost 2,000 more individuals who are suffering similar sentencing fates. One only hopes that the other boys and girls sentenced to life in prison without possibility of parole will be afforded the opportunity to demonstrate—during their resentencing proceedings—that they too merit a second chance in life.

Shortly before Antonio was released, he wrote us another letter:

I know without any doubt that this would not be possible had it not been for you. I have thought long and hard of what words to say to express how grateful I am for everything you have done. But there are no words that can express the level of appreciation that I feel. What do you say to the person who gave you your life back? The person who made your dream of 27 years come true? . . .

So to answer my own question, what do I say to you? I won’t say anything. I will let my actions express my sincere appreciation. I will dedicate the rest of my life to be the best son, friend, and neighbor that I can be. I will try to be as kind a human being as possible, and help those, particularly young people, to not go down the roads that I have taken. I will keep my promise to you and others to never do anything that would embarrass or disappoint you. I will make you proud, and perhaps one day when you talk to others about the successful people who you work with and know, you will speak of me with a proud smile.

Since his release in July 2012, Antonio has entered the world of what civil rights advocate and author Michelle Alexander calls the “new Jim Crow.” Because of his felony convictions, it is lawful for him to be discriminated against in employment, housing, voting, and a number of other rights that most of us take for granted. But Antonio is keeping his promise and is proceeding with patience, strength, and grace. He is reunited with his mother and sisters; he has the support of good friends. With the help of many, he has found a great place to live and an excellent job. Antonio is taking every possible opportunity to talk with young people—in high school, college, and law school—about his past, the mistakes he made, and how he is now living his life. He also spends a considerable amount of time volunteering with a food depository, a homeless shelter, and a prison reform group.

When Antonio left prison, he was afraid to cross a street. Almost every life experience has been a new one for him. He now has a driver’s license, and he is emailing, texting, using the Internet, and learning many other things about the world that he missed for 27 years.

I deeply appreciate that Judge Bucklo appointed us to represent this extraordinary man and that our law firm is so steadfast in its commitment to our pro bono clients. Antonio’s representation has been an incredible team effort involving an extraordinary group of partners, associates, summer associates, paralegals, law professors, a mitigation specialist, an investigator, a number of skilled and totally committed public defenders, experts, and lawyers at other firms and from legal services organizations who filed amicus curiae briefs. Antonio remains my dear friend. And, as I hope you can tell from reading this article, I already speak of him with a proud smile. ■