FACULTY PROFILE:

Stuart Banner Explores Why America Has the Death Penalty

Although capital punishment has been part of the American criminal justice system from the beginning and is one of our most contentious issues of public policy today, no one has written the history of the death penalty--until now.

Professor Stuart Banner will survey capital punishment from the early 17th-century colonies to the present in his new book, *Dangling Between Heaven and Earth: A History of Capital Punishment in the United States*, to be published by Harvard University Press. The book will detail four centuries of American experience with capital punishment--what Americans thought about the death penalty, how and why they conducted executions, and even what the condemned felt like on the verge of death.

"Capital punishment presents several puzzles," Banner said. "It gets more attention than any other issue of criminal justice, yet it is but a minuscule part of our criminal justice system. It is very popular despite some well-known shortcomings. It ostensibly serves the goals of deterrence and retribution, but we impose it in secret, and we take great care to make it as painless as possible."

Banner emphasizes that he is interested not in arguing for or against the death penalty, but in trying to understand how these puzzles came to exist. According to Banner, capital punishment served important deterrent and retributive purposes in the 17th and 18th centuries. It gradually lost those purposes over the 19th and 20th centuries, yet it has nevertheless persisted due to its symbolic role as a statement of society's strong desire to stop crime.

In an effort to gain a comprehensive understanding of capital punishment, Banner traveled all over the country to read archival records, newspaper accounts, sermons, memoirs, diaries, fiction, and whatever else he could find. In state archives he discovered a largely untapped set of sources--the records of clemency applications directed to executive branch officials. "Clemency records contain all sorts of fascinating material about the people affected by the death penalty--the condemned, their families and neighbors, crime victims and their families, judges, jurors, lawyers, governors, and so on," explained Banner. "These stories flesh out the larger, more structural changes described in the book."

David Thomas Konig, professor of history in Arts & Sciences at Washington University, said, "What
most impresses historians about Banner's work is that he goes beyond adding legal insight to the historical findings of others; his own research breaks new ground in the domain of the past, and his legal acumen gives to that past a rich, new meaning."

Banner has seen the death penalty from a variety of perspectives. Each year he teaches the law school's Capital Punishment Clinic, in which students have the opportunity to work closely with the public defenders who represent defendants charged with capital murder. He has worked on several capital cases himself, both as a lawyer and as a law clerk at the U.S. Supreme Court.

He finds that his work on the book is enriching his teaching, and that lessons learned in practice and while teaching are finding their way into the book. "The subject allows me to combine teaching, practice, and research in a way that most academic projects don't allow," Banner said. "I feel very lucky."

Professor Banner has a BA from Yale University and a JD from Stanford Law School. His previous two books are *Anglo-American Securities Regulation: Cultural and Political Roots, 1690-1860* (Cambridge University Press, 1998), and *Legal Systems in Conflict: Property and Sovereignty in Missouri, 1750-1860* (University of Oklahoma Press, 2000). Banner teaches Property, American Legal History, Supreme Court, and Capital Punishment Clinic.