

The Death Penalty's Grotesque Reality

On April 29, Oklahoma authorities strapped convicted murderer Clayton Lockett to a gurney and began pumping in drugs to kill him. But the process went awry as Lockett writhed in pain for 43 minutes, raising moral questions discussed by Dennis J Bernstein with death-penalty opponent Michael Kroll.

By Dennis J Bernstein

Oklahoma's recent botched execution when a disputed cocktail of drugs left Clayton Lockett writhing in pain for 43 minutes before finally succumbing to an apparent heart attack has again put the spotlight on the death penalty and raised the question of whether Lockett was essentially tortured to death.

Dennis J Bernstein spoke about the Oklahoma case and other developments in America's continuing use of the death penalty with Michael Kroll, the first executive director of the Death Penalty Information Center in Washington, D.C., and a specialist on the American criminal justice system with a special emphasis on the death penalty. He wrote "The Final Days of Robert Alton Harris" about California's gas-chamber execution of Harris at San Quentin.

DB: First of all, your initial response to what happened [in Oklahoma].

MK: I think the appropriate adjective for that cocktail is "experimental" and it put me in mind of Dr. Josef Mengele, who experimented on human beings for the Nazis. This is an experiment because this state, Oklahoma, as well as a growing number of other states, have decided in the wake of not being able to get approved procedures and drugs for killing people – mainly because Europe refuses to supply them as they once did. They are going to secret pharmacies, pharmacies that we have no ability to learn what they are prescribing, how they're orchestrating the procedure, what mixture. So everything that is being done there, since it's being done in secret, has to be called an experiment. So we are experimenting on human beings. And we are in this case, definitely torturing this man.

In the execution that I witnessed, which went completely according to the book,,,

DB: That was Robert Alton Harris.

MK: That was Robert Harris. And that was by lethal gas. That execution took 16 minutes which was absolutely an eternity. And this execution took almost three times that long before they killed him. And who knows by what means they actually killed him, since they closed the curtain on the public very literally,

not just saying we have no right to see what cocktails, no right to see what process they used but in this case, literally they closed the visual line into what was going on. They could have hit him in the head with a hammer for all we know.

DB: Now, is that illegal? I thought you, as a part of the process, you have to have witnesses observe the entire process.

MK: I honestly can't tell you what the law in Oklahoma is. The death penalty, except for a very few cases, is a state-by-state process. And each state has its own procedures. What happened in Oklahoma very much could not happen in California. It might happen. But I'm saying at the moment a federal judge has said we must know that process. And unless we know that process and it meets constitutional mainly Eighth Amendment non-cruel and unusual standards we will not sign off on it.

That did not happen in Oklahoma where the state supreme court first found that there were issues about this method, then the governor [Mary Fallin] said "I'm going ahead with it whether you tell me to or not." And then the next day the supreme court caved and said, "Well, we withdraw, there are no issues." So they killed him [Clayton Lockett], and then stopped the next execution and probably any number of executions that might follow.

DB: And this governor was so proud. If they [the justices] wanted to delay that first execution, she was gonna give us a double header, wasn't she? It almost seemed this was a vindictive response, and it came back to bite her, of course, in the middle of torturing a human being.

MK: Well, who knows what goes on in the heads of politicians? They're always looking for the next issue that's going to put them back in the state house or the senate or wherever they happen to be. And the issue becomes less important than their evaluation of how much it is going to help their political careers. So basically we are saying here that we are willing to torture people to death for the basic right of seeking public office, and keeping it. It's a very, very disturbing, and even a disgusting practice.

DB: But it is a consistency, torture at home, torture abroad.

MK: Absolutely.

DB: We accept it in foreign countries.

MK: We don't call it torture. Dennis, we don't torture in this country. Yes, we kill people slowly. It takes 43 minutes to strangle them to death, yes water-boarding, we hit them over the head, but that's not torture, because we say it's

not torture. This is really "1984" where words control history, not what is done but what is said about what is done.

You know, everyone should be extremely upset by this happening and should look at it as much more than an Oklahoma story. In California, right now, three former failed governors – Wilson, Davis and Schwarzenegger – have a proposal for a ballot initiative in November that would greatly speed the process of executions in California. And a report came out just today showing that probably, about, more than 4 percent of those we condemn to death are not guilty of capital murder, should not be there, a mistake was made. The system makes mistakes. It is human. We make mistakes. To say that we don't is to say that we are gods, and that is how we are acting.

DB: So, the cocktails they were using in this day were outlawed. The cocktails that they used in Oklahoma this week, were devastating, and yet you've got these governors hell-bent going forward to speed up the process. And, how will they kill these people? Torture? The 43-minute torture, will they hit them over the head, gas coming back?

MK: We have no way of knowing since it's a closed system. They have said that this particular process, which is giving government THE most awesome power it can exert over individual citizens, giving them this awesome power does not require that the public which gave them this power, has any right to know how it is implemented. And, you know, that is absolutely a formula for corruption, and for absolute corruption.

DB: Unbelievable. We are speaking with Michael Kroll. He's a rights activists specializing in the American criminal justice system. He watched his friend, Robert Alton Harris, suffocate, brutally die in the California death chamber at San Quentin. Which governor brought this back?

MK: Actually, the governor didn't bring it back. First, the people voted it in, in an initiative and then the legislature voted it in. So there was actually two different processes.

DB: Was that a democratic majority, at the time?

MK: I believe it was.

DB: Wow, so we can thank the Democrats again.

MK: Well, sure. I mean I have a piece [from] some years ago in which the Democrats in the state legislature circulated a letter saying very clearly, one, two, three, four, five, we Democrats should rip the criminal justice issue out of the hands of the Republicans by being for longer sentences, being for the

death penalty, and they just gave a litany of those things which Republicans have become famous for advocating. And basically said we should be advocating the same thing so we can get elected.

Now, things have changed somewhat since then. The public support for the death penalty has dropped fairly substantially, even though it still shows, depending on how you ask the question, a slight majority. If you ask people whether they would prefer the alternative of life in prison without parole, a majority says "Yes." That's what they would prefer.

DB: But there's still enough of an edge that comes out of it, that these hit-hard, no-holds-bar, criminal-justice-type politicians are worth playing the death card.

MK: Absolutely. While they play the death card on their right hand, on the left hand they are opposing any efforts to put very, very modest limits on the ability to gain access to firearms which kill 20,000-plus people in America each year. And we've seen the mass shootings of severely mentally ill people who can't get mental health treatment. And that seems to be okay, on that side. But we've got to kill them on this side. The hypocrisy of it is to me is so mind boggling that I feel schizophrenic sometimes when I read the news and listen to what I hear, and see what I see.

DB: Alright, Michael, I want to get from you, because you have spent a lot of time thinking about this. As we said, you have watched your friend grovel and suffocate, and die a horrible death. You've spent a good chunk of your life fighting this brutality. What does this thing that happened in Oklahoma, what does that say about who we are in 2014?

MK: Well, you know, as a political system I think it says that we have still not lifted our last foot out of the slime of antiquity. We are still holding on to basically what become human sacrifices. I mean, the numbers of people who commit murder in this country, as I said, 20,000-plus. The numbers of people who get sentenced to death, then again the numbers of people who actually get executed, you have this very tiny, in terms of the total number of people who could qualify. This very tiny group of sacrifices.

And it's very much like throwing the virgins into the – I don't want to equate people who commit murder with virgins – but I'm talking about a process that lets leadership keep their leadership. We don't mind sacrificing human beings. We condemn the act of taking a life, by taking a life. And it doesn't require more than a six-year-old to understand the absurdity of that.

DB: Do we have any idea how many people, so far, who ended up on death row

managed to be rescued, and were found not guilty, or innocent, or were taken off of death row? How can we evaluate that?

MK: You should get yourself this very, very new study. It just came out. It says as many as 300 people who were sentenced to death in the United States over a three decade period were likely innocent, according to a study published in a leading scientific journal. And that journal is Proceedings of the National Academy of Sciences. Quite a reputable journal. And they did a very reputable study ... and one of the more disturbing, not just disturbing that we've got these people on death row that we've found them to be innocent and we've gotten them off. But that the longer a person stays on death row, the more likely the error is to be found. Which means that those processes that are quick, like that which these governors have suggested for California almost certainly will result in more wrongful executions.

DB: Now, I'm trying to find the phrase that the White House used [about the Oklahoma execution], but it was so mild it. Things ...

MK: Fall short...

DB: It fell short of fairness ... or something like that. So do you think that this could be a prompt? Is this a possibility? Does this open up the door for a big battle to hold these folks accountable, about what happened here, and to prevent it by making this kind of torture illegal? Is there any hope here?

MK: Well, here's what I want to say about that. First, the President's comments refer to that his authority exists only over federal law. He has no authority over the laws of Oklahoma, or California, or Georgia. So that he speaks on the subject is welcome but he has no real power to influence what goes on in Oklahoma other than the power of the bully pulpit. I want to say the bloody pulpit, and that is probably more accurate.

However, I am hopeful, and I've been hopeful in the past, so I wouldn't bet the farm on it, but I'm hopeful that this barbarity, this torture that no one can deny occurred, will at least make judges in those states, which have made this information secret, recognize that there is an issue here. There is an issue about public knowledge and accessibility to government process. And if you close that process, if you say, the public has no right to know what the public has authorized you have moved into a very different kind of government. We call it tyranny.

Dennis J Bernstein is a host of "Flashpoints" on the Pacifica radio network and the author of *Special Ed: Voices from a Hidden Classroom*.
