

Death Penalty in US Not Dead Yet

Elected officials are not having a collective epiphany about capital punishment, writes John Kiriakou. But for other reasons executions are still going down.

By John Kiriakou

Special to Consortium News



Will 2019 be the year that the death penalty is finally abolished? The answer is no. But states, increasingly, are either revoking it, initiating moratoria or just not executing people. This isn't necessarily because elected officials around the country have had an epiphany; it's for myriad reasons.

First, the American public is finally coming to realize that innocent people have been—and continue to be—sentenced to death. Since 1973, 156 people on death row have been found to be innocent and have been released, according to the [Death Penalty Information Center](#). One wrongful execution is bad enough. But 156 innocent people could have been killed if not for the attorneys and activists who took up their cases and proved that they had been wronged. That, in and of itself, ought to be enough to abolish the death penalty. What governor, warden, or judge wants the blood of innocents on his hands?

Second, it is increasingly difficult for states to acquire the drugs necessary to perform a lethal injection execution. All 31 states that have a death penalty on the books use lethal injection as a method of execution. Several states still have the option of executing a prisoner in the

electric chair; by hanging; and in the case of Oklahoma and Utah, by firing squad. But lethal injection is increasingly seen as cruel and unusual punishment.

A lethal injection execution uses three different drugs, all of which come with complications. The prisoner is first given a sedative. But sedatives work on different ways on different people, and the level of sedation may not be very deep. Also, some people metabolize sedatives quickly and thus may be coming out of the sedation when other drugs are administered. Following the sedative, the prisoner is given an injection of muscle relaxants. This is controversial because muscle relaxants can mask signs of distress, such as convulsions or twitching. And when given in large doses, it paralyzes the muscles that control breathing, causing the prisoner to suffocate slowly. Remember, with the sedative already working, the prisoner is unable to signal that he is in distress. Finally, the prisoner is given a shot of potassium chloride. Potassium in high doses, such as in an execution, causes cardiac arrest and is intensely painful.

Drug Access Problem

Some drug makers, meanwhile, balk at allowing their products to be used for executions. Nevada and Nebraska have run out of lethal injection drugs and have announced that they will begin experimenting with other available drugs, including diazepam, cisatracurium, and fentanyl. Nebraska also will use a potassium compound to stop the heart. All of these drugs individually can cause death. How they will work as a combination is not known. And the courts have not ruled on whether the new combination causes pain and is constitutional. It could be years before they are ever

used.

Third, the courts have taken on more and more cases concerning lethal injection executions and whether they are “humane.” Although challenges to the death penalty have general been defeated at the Supreme Court, appeal after appeal has caused delays in many death sentences that in some cases have lasted for decades. In many of those cases, the prisoners died of natural causes while they were appealing their death sentences.

Minimum Age

Finally, a decade ago, the Supreme Court took up a case related to a minimum age for executions. Before 2005, states generally could execute prisoners once they turned 18, even if the crime had been committed when they were minors. The Supreme Court ended that, ruling that an execution could take place only if the prisoner was over the age of 18 at the time the crime was committed, even if states used the ages of 16 or 17 when charging minors as adults. Similarly, the court ruled in 2002 that it was unconstitutional to execute a prisoner who was intellectually disabled.

None of this signals an end to the death penalty. But it’s a good trend.

Twenty-seven states have an active death penalty. Twenty states do not. And three states have moratoria imposed by the governor. (In Washington State, where there had been a moratorium, the Supreme Court recently ruled that the death penalty there was unconstitutional.) Last year saw a record low death penalty usage in the United States. Thirty six of

the 50 states sentenced no one to death. California and Pennsylvania, which combine to represent one-third of all Americans on death row, had record lows of new death penalty sentences. Even several southern states, which had been among the heaviest users of capital punishment, have not sentenced anybody to death in years. North Carolina, for example, has gone two consecutive years without a death sentence and has imposed only one in the past four years.

None of this is to say that the movement to end the death penalty has suddenly swelled into an unstoppable force. Even though the death penalty is wrong and should be done away with immediately, the fight is slow and steady. However, opponents of the death penalty should take heart. Exonerations, appeals, and civil suits drag on. And in that time, some prisoners can be saved. Meanwhile, we should never stop lobbying our elected officials, including governors and state representatives. This thing can be won, one vote at a time.

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California May Abolish the Death Penalty

California voters will get a chance to abolish the state's expensive and flawed death-penalty system, a step that could reduce America's death-row population by almost a quarter, writes Marjorie Cohn.

By Marjorie Cohn

On Election Day, California voters will make a monumental moral and financial decision. Proposition 62 – the [Justice That Works Act](#) – is on the Nov. 8 ballot, and if the initiative passes, it will replace the death penalty with life in prison without parole. It will also require convicted murderers to work and pay restitution to their victims' families. And it will save taxpayers \$150 million a year, according to the Legislative Analyst's Office.

Among the states still part of the U.S. death penalty system, California has the [most people on death row—746](#). Florida is next, with [388](#), according to the Yes on 62 campaign. Overall, 2,943 people are on death row [in the United States](#) (as of Jan. 1) – meaning almost one in four people waiting to be executed are in the California penal system. The elderly make up 11 percent, and the oldest condemned inmate is 86. The average stay on death row is 18 years.

Although California has spent about \$5 billion administering the death penalty, it has executed just 13 people since 1978. This means taxpayers have spent about \$384 million per execution.

There is no evidence demonstrating that the death penalty deters crime, according to a [2012 National Academy of Sciences study](#). Capital punishment has been applied arbitrarily due to inherent bias, local political pressures on prosecutors and judges, and lack of access to quality defense attorneys by those convicted. According to [Death Penalty Focus](#), the race of the victim and the race of the defendant are major determinants in who is sentenced to death in this country.

According to the [Death Penalty Information Center\(DPIC\)](#), since 1973, 156 people

sent to death row nationwide were later exonerated. A 2014 study conducted by the Proceedings of the National Academy of Sciences concluded that 4.1 percent of all death row inmates are actually innocent.

But the innocence rate is more than twice the rate of exoneration. That means an unknown number of innocent people have been or will be put to death.

“Every time we have an execution, there is a risk of executing an innocent,” said Richard Dieter, former executive director of the DPIC. “The risk may be small, but it’s unacceptable.”

The United States has no uniform law on the death penalty. Each state is free to choose whether or not to execute people. Nineteen states have abolished the death penalty. The Inter-American Commission on Human Rights determined that this discrepancy violates the American Declaration of the Rights and Duties of Man, which the U.S. has signed.

And look at the company we keep. Only China, Iran, Iraq and Saudi Arabia execute more people than the United States.

Comparing Propositions

California voters will be confronted with two competing death penalty propositions on the November ballot.

Whereas Proposition 62 would replace the death penalty with life in prison without parole, Proposition 66 – the Death Penalty Reform and Savings Act – purports to execute Californians more efficiently. The latter initiative would double down on the death penalty and spread the costs and burdens to local courts and counties.

Under the guise of efficiency, Proposition 66 would add two additional layers of habeas corpus review in superior and appellate courts. It would impose unworkable time frames for appeals and habeas proceedings. And it would require attorneys who may be inexperienced, unqualified or unwilling to take death penalty cases or face expulsion from the court’s public defender panel.

Moreover, Proposition 66 would transfer 746 inmates to new death row facilities at local prisons built and maintained with county funds. Counties would be on the hook to provide separate housing, guards with specialized training, security level IV facilities, and unique physical and mental health accommodations.

The increased workload on superior and appellate courts would take up a significant and (in some counties) overwhelming percentage of local resources. Proposition 66 prioritizes death penalty cases at the expense of all other

matters before the criminal and civil courts. The judicial system's ability to handle issues like business claims, family custody hearings and traffic tickets in a timely manner would be negatively impacted.

With a backlog of more than 150 capital appeals and habeas petitions now awaiting review, and hundreds more in the pipeline, the California Supreme Court would have to turn its full attention to death penalty cases for years, to the exclusion of other important matters, in order to meet Proposition 66's proposed timeline.

Proposition 66 adds sped-up appeals timelines that are unenforceable and infringe on judicial and legislative separation of powers. Constitutionally required court procedures cannot be changed through the ballot process. California's death penalty system is beyond repair.

Who Supports Proposition 62?

A diverse coalition of people and groups supports Proposition 62, including former death penalty advocates, victims' families, exonerated and wrongly convicted prisoners, retired district attorneys and judges, criminal law and economic experts, and faith, labor and civil rights leaders.

Ron Briggs, who led the 1978 campaign that brought the death penalty to California, calls it a "costly mistake." Briggs says, "Now I know we just hurt the victims' families we were trying to help and wasted taxpayers dollars." He maintains, "The death penalty cannot be fixed. We need to replace it, lock up murderers for good, make them work, and move on."

Franky Carrillo, who was convicted of a crime he didn't commit, was released after spending 20 years in prison. Witnesses recanted, and new evidence came to light.

"I am living proof that our justice system sometimes gets it wrong," Carrillo says. "If I had been sentenced to death instead of life in prison, this might have been a different story." An innocent man might have been put to death.

The Catholic Bishops of America supports Proposition 62, stating "capital punishment has repeatedly been shown to be severely and irrevocably flawed in its application."

Endorsers of Proposition 62 include the California Democratic Party, California Labor Federation, Service Employees International Union, California Federation of Teachers, Exonerated Nation, National Association of Criminal Defense Lawyers, Rainbow Push Coalition, California NAACP, Clergy and Laity United for Economic Justice, California Catholic Conference, and the League of Women Voters

of California.

Proposition 62 would replace California's failed death penalty system with life in prison, guaranteeing that the worst criminals would never be released. It would provide a measure of respect to victims' families by requiring convicted murderers to work and pay restitution. And it would save taxpayers \$150 million per year, money that could be spent on education and repairing California's crumbling infrastructure.

The United Nations Special Rapporteurs on summary executions, Christof Heyns (whose term recently expired), and on torture, Juan E. Mendez, have called on the U.S. government to initiate a federal moratorium on the imposition of the death penalty with a view to abolish it. They observed that more than three-quarters of countries around the world have abolished the death penalty either in law or practice.

"Despite all efforts to implement capital punishment in a 'humane' fashion, time and again executions have resulted in a degrading spectacle," they wrote. "The death penalty as a form of punishment is inherently flawed."

None of the three major international criminal tribunals – the International Criminal Court, the International Criminal Tribunal for the Former Yugoslavia, and the International Criminal Tribunal for Rwanda – allow the death penalty as a sentencing option for the most heinous of crimes over which they have jurisdiction.

Former U.S. Supreme Court Justice John Paul Stevens (quoting former Justice Byron White's 1972 concurrence in Furman v. Georgia) thinks "the imposition of the death penalty represents 'the pointless and needless extinction of life with only marginal contributions to any discernible social or public purposes. A penalty with such negligible returns to the State [is] patently excessive and cruel and unusual punishment violative of the Eighth Amendment.' "

In a 1976 Boston Globe article, then-U.S. Supreme Court Justice Arthur L. Goldberg wrote: "The deliberate institutionalized taking of human life by the state is the greatest conceivable degradation to the dignity of the human personality."

When speaking to the French Chamber of Deputies in 1830, years after witnessing the excesses of the French Revolution, the Marquis de Lafayette, said, "I shall ask for the abolition of the punishment of death until I have the infallibility of human judgment demonstrated to me."

The premeditated killing of human beings by the state is expensive and just plain wrong. Californians should abolish it.

Marjorie Cohn is professor emerita at Thomas Jefferson School of Law, former president of the National Lawyers Guild, and deputy secretary general of the International Association of Democratic Lawyers. Her books include *Cameras in the Courtroom: Television and the Pursuit of Justice*. Visit [her website](#) and follow her on Twitter at @marjoriecohn.

This article first appeared on Truthdig

[http://www.truthdig.com/report/item/death_to_the_death_penalty_in_california_20160826]

Death to the Death Penalty

Oklahoma's [ghoulish killing](#) of convicted murderer Clayton Lockett on April 29 has brought new attention to America's continued use of the death penalty, a politically popular issue in some states but a practice that has many reasons justifying its abolition, writes Marjorie Cohn.

By Marjorie Cohn

The recent torturous execution of Clayton Lockett in Oklahoma has propelled the death penalty into the national discourse. The secret three-drug cocktail prison authorities administered to Lockett the first to render him unconscious, the second to paralyze him, and the third to stop his heart and kill him – didn't work as planned. After writhing in pain for 43 minutes, he finally died of a heart attack.

Madeline Cohen, a lawyer who witnessed the botched execution, said Lockett had been "tortured to death." Seasoned reporters, also witnesses, called it "horrific." President Barack Obama found it "deeply disturbing" and promised a review of how the death penalty is administered.

But the issue is not simply the most "painless," fair, and efficient method the 32 death penalty states should use to put someone to death. It is not just a problem of executing innocent people, or the dubious constitutionality of the death penalty, or racism in its application and imposition, or that the death penalty does not deter homicide, or the higher cost of keeping someone on Death Row, or that nearly all industrialized countries have abolished capital punishment. The premeditated killing of a human being by the state is just plain wrong and the United States should abolish it. A week after Lockett's execution,

the Constitution Project released its report after one of the most comprehensive examinations of capital punishment in the United States. Calling the administration of the death penalty “deeply flawed,” the report focused on procedural deficiencies.

It recommended that death penalty states should use one drug instead of three to kill their citizens. It called for fewer constraints on post-conviction review of exonerating evidence, and videotaping of interrogations to identify false confessions, concluding that over 80 percent of 125 documented false confessions occurred in homicide cases; 20 percent of the defendants in those cases were sentenced to death. It recommended the abolition of the death penalty for “felony murder,” in which a person participates in, but does not commit, the homicidal act.

It expressed concern about inconsistent application of the ultimate penalty since the Supreme Court ruled in 2002 that intellectually disabled individuals should not be executed. It criticized states such as Texas, Alabama and Pennsylvania for compensating capital defense lawyers so poorly that it is “nearly impossible” to receive a proper defense. And it urged death penalty states to determine whether there are racial disparities in the application of the death penalty. The bipartisan panel did not, however, recommend abolition of capital punishment.

A new study just released by the Proceedings of the National Academy of Sciences determined that 1 in every 25, or 4.1 percent, of people on death row, are innocent. But the innocence rate is 4.1 percent, more than twice the rate of exoneration. That means an unknown number of innocent people have been put to death.

“Every time we have an execution, there is a risk of executing an innocent. The risk may be small, but it’s unacceptable,” said Richard Dieter, executive director of the Death Penalty Information Center.

Cruel and Unusual

The Eighth Amendment to the Constitution outlaws “cruel and unusual punishments.” Although the Supreme Court has upheld the death penalty, some justices have concluded it violates the Eighth Amendment.

In 1972, in *Furman v. Georgia*, the high court imposed a moratorium on the death penalty because it was arbitrarily imposed. Justice Potter Stewart wrote for the majority that executions were “so wantonly and so freakishly imposed” that they are “cruel and unusual in the same way that being struck by lightning is cruel and unusual.” But Stewart was only opposed to capital punishment as a matter of

policy.

States revised their death penalty statutes to eliminate arbitrariness, and four years later, the Court upheld Georgia's new and improved death penalty law in *Gregg v. Georgia*. Unlike Justices William Brennan and Thurgood Marshall, Stewart did not believe the death penalty was unconstitutional.

Marshall noted in his concurrence in *Furman*, "Perhaps the most important principle in analyzing 'cruel and unusual' punishment questions is [that] . . . the cruel and unusual language 'must draw its meaning from the evolving standards of decency that mark the progress of a maturing society' . . . Assuming knowledge of all the facts presently available regarding capital punishment, the average citizen would, in my opinion, find it shocking to his conscience and sense of justice. For this reason alone, capital punishment cannot stand."

Brennan also concurred in *Furman*. He wrote, "When examined by the principles applicable under the Cruel and Unusual Punishment Clause, death stands condemned as fatally offensive to human dignity. The punishment of death is therefore 'cruel and unusual,' and the States may no longer inflict it as a punishment for crimes. Rather than kill an arbitrary handful of criminals each year, the States will confine them in prison."

Eighteen years after *Furman*, Justice Harry Blackmun came to the conclusion that the death penalty was unconstitutional. In 1994, his last year on the Court, Blackmun famously wrote, "From this day forward, I no longer shall tinker with the machinery of death."

Most recently, in 2008, Justice John Paul Stevens decided the death penalty amounts to cruel and unusual punishment. Stevens concluded, "[T]he imposition of the death penalty represents 'the pointless and needless extinction of life with only marginal contributions to any discernible social or public purposes. A penalty with such negligible returns to the State [is] patently excessive and cruel and unusual punishment violative of the Eighth Amendment.'" [quoting Justice Byron White's *Furman* concurrence].

In his new book, *Six Amendments*, Stevens proposes the Eighth Amendment be changed to read, "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments such as the death penalty inflicted."

Racism in Imposition

According to Death Penalty Focus, the race of the victim and the race of the defendant in capital cases are major determinants in who is sentenced to death in the United States. A 1990 report by the General Accounting Office found "in

82 percent of the studies [reviewed], race of the victim was found to influence the likelihood of being charged with capital murder or receiving the death penalty, i.e. those who murdered whites were more likely to be sentenced to death than those who murdered blacks.”

The Innocence Project reports that of the 316 post-conviction DNA exonerations, 198 involved African Americans.

Think Progress reports that African-American defendants convicted of killing whites are much more likely to receive a sentence of death than white defendants convicted of killing African-Americans. Since 1976, only 20 white people have been executed in the United States for killing a black person. But 269 black defendants were executed for killing a white person. Death sentences in Louisiana are 97 percent more likely in murder cases when the victim is white. Florida has never executed a white person for killing a black person.

Not a Deterrent

Capital punishment does not deter people from committing homicide. Dartmouth University statistician John Lamperti notes “an overwhelming majority among America’s leading criminologists [have concluded that] capital punishment does not contribute to lower rates of homicide.” In fact, murder rates in non-death penalty states are lower than murder rates in states with the death penalty, according to the Death Penalty Information Center.

Life Without Parole Saves Money

The alternative to the death penalty is life in prison without the possibility of parole. Judge Arthur Alarcon and Prof. Paula Mitchell concluded that the cost of the death penalty in California has totaled over \$4 billion since 1978. They calculated that a gubernatorial commutation of those sentences would result in an immediate savings of \$170 million per year, a savings of \$5 billion over the next 20 years.

The California Commission on the Fair Administration of Justice found in 2008: “The additional cost of confining an inmate to death row, as compared to the maximum security prisons where those sentenced to life without possibility of parole ordinarily serve their sentences, is \$90,000 per year per inmate.”

International Consensus

International treaties and customary norms forbid capital punishment. They include the International Covenant on Civil and Political Rights (ICCPR) and its Second Optional Protocol, and Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms Concerning the Abolition of

the Death Penalty.

Last year, only 22 countries not involved in military conflict carried out executions. The United Nations Human Rights Committee found the United States to be in noncompliance with its obligations under the ICCPR due to the excessive number of offenses subject to the death penalty and the number of death sentences imposed.

The Death Penalty Information Center reports that the countries that carried out the most executions in 2013 were China, Iran, Iraq, Saudi Arabia, Somalia and the United States. Does the United States really want this to be its peer group?

End Institutionalized Murder

Five U.S. states have abolished capital punishment in the last seven years. Support for the death penalty in the United States is waning. In October 2013, 60 percent of Americans favored capital punishment, down 20 percent from 1994.

The American Medical Association, the American Public Health Association, the American Board of Anesthesiology, and the American Nurses Association prohibit members from assisting in executions; they consider it a violation of their medical code of ethics.

Years after witnessing the excesses of the French Revolution, the Marquis de Lafayette told the French Chamber of Deputies in 1830, "I shall ask for the abolition of the punishment of death until I have the infallibility of human judgment demonstrated to me."

Indeed, as Eugene Robinson wrote in the Washington Post, "We fool ourselves if we think there is a 'humane' way to kill someone . . . The death penalty has no place in a civilized society . . . [T]here is no way to impose capital punishment without betraying the moral standards that our justice system is theoretically designed to uphold. Put simply, when we murder we become murderers."

Supreme Court Justice Arthur J. Goldberg wrote in 1976, "The deliberate institutionalized taking of human life by the state is the greatest conceivable degradation to the dignity of the human personality."

It is high time for all of the states in this country and the federal government itself to outlaw capital punishment. There is no good reason to retain it, and compelling reasons to abolish it.

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International Association of Democratic Lawyers. Her next book, *Drones and Targeted Killing: Legal, Moral and Geopolitical Issues*, will be published this fall. Copyright, Truthout. Reprinted with permission.

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*.

Behind Oklahoma’s Ghoulish Execution

Oklahoma’s Gov. Fallin, who pushed for Tuesday’s execution of Clayton Lockett, is promising an “independent” review of the ghoulish process that left him writhing in pain as panicked officials pulled the shades on witnesses and later said he died of a heart attack, reports Richard L. Fricker.

By Richard L. Fricker

The botched execution of convicted murderer Clayton Lockett, in which he writhed in pain for 43 minutes before dying of an apparent heart attack, has brought demands for an independent investigation into Oklahoma’s execution protocols.

Eyewitnesses reported that Lockett appeared to suffer in pain, uttered some words and tried to rise off the gurney during his death struggle Tuesday night. It was not the quick and painless death that Attorney General Scott Pruitt had promised the State Supreme Court and the Court of Criminal Appeals.

The execution was “horrific,” according to seasoned reporters present. The White House weighed in with a statement saying the execution “fell short of humane standards.” Investigation demands have come from attorneys, religious leaders, legislators, and capital punishment opponents who recoiled at this prolonged death at the hands of executioners for Oklahoma’s Department of Corrections.

Lockett was the first of two inmates slated to be killed by the state Tuesday night. Following Lockett’s experience, Republican Gov. Mary Fallin granted a 14-day stay to Charles Warner, another convicted murderer, while DOC reviewed their execution protocols.

On Wednesday afternoon, Fallin announced she had appointed Public Safety Commissioner Mike Thompson to “independently” investigate the execution. Thompson is a Fallin appointee and a member of her cabinet. Whether or not Thompson’s appointment will satisfy those wanting an “independent” investigation remains to be seen. Thompson was in the execution chamber while Lockett was in his death throes.

Any investigation of the incident will, out of necessity, include an examination of the protocols and actions of the Department of Corrections. The head of the DOC, Robert Patton, is also a Fallin appointee.

An immediate call for an investigation came from Federal Public Defender Madeline Cohen who had represented the two inmates in their conviction appeals before the Tenth Circuit Court in Denver. She was present at the execution and sent a text at that time saying, "Awful, awful no executions in OK until full investigation and complete transparency."

The "transparency" to which she referred involved the type of drugs, their source and any testing of the drugs. She also seriously questioned the DOC account of the exact cause of Lockett's pain. The DOC claimed the problem came from a ruptured vein in Lockett's arm.

State Senator Connie Johnson also called for an independent investigation, "I agree," she said Tuesday night, "it's time for a change. They (Fallin administration officials) threaten the judges with their pay, tenure and finally impeachment. Yes, I would support an independent investigation."

Lockett and Warner were slated to be executed with an unproven cocktail of chemicals of unknown origin. Attorney General Pruitt had relied on a 2011 statute, HB 1991, which dropped a veil of secrecy over the entire execution protocol, particularly the source of the drugs to be used.

HB1991 was in response to pharmaceutical manufacturers refusing to provide drugs to states for use in executions. Lockett and Warner had made an unsuccessful challenge of HB1991. Oklahoma District Court Judge Patricia Parrish ruled the law unconstitutional, but she was reversed by the Oklahoma Supreme Court.

Parrish's reversal came only after the Supreme Court issued a 5-4 stay of execution for Lockett and Warner until they had ruled on the issue. Gov. Fallin countered by granting her own stay, but only for seven days. This left open several questions regarding the separation of powers. The most overriding of those questions was: could the Governor execute someone under the protection of the Supreme Court?

The matter was settled the next day when the court reversed Judge Parrish and lifted the court-approved stay, setting the stage for what was to be the first double execution since 1937.

In the meantime, Republican State Representative Mike Christian introduced a bill calling for articles of impeachment against the five judges who voted to grant the stay. The impeachment bill still remains within the confines of the state House of Representatives.

Attorney General Pruitt did reveal the state planned to use a chemical cocktail

which included midazolam, a drug used for inducing sedation, as its first ingredient. Midazolam had never been used by Oklahoma, although it had been used in other states. The next step would be the injection of a paralytic followed by potassium chloride.

The execution got underway at 6:23 p.m., 23 minutes late. As the midazolam began to flow medical personal in the death chamber said Lockett was unconscious at 6:33 and the other drugs were administered. Reporters who viewed the execution have said that was not the case.

Lockett began to lurch and speak, the witnesses said. According to Ray Pearcey, managing editor of Tulsa's Oklahoma Eagle, "The doctor walked over and looked at him, and said 'he's still conscious.' The people in the room had a look of horror."

Shortly thereafter the screen was closed and the reporters were ushered out of the room. Nothing more was heard from the state until DOC Director Patton announced he had used his own authority to halt the execution.

At 7:06 p.m, reporters received the announcement that Lockett was dead. According to Patton, he died of heart failure. The official version is that the execution was halted because of a vein failure, the vein "exploded," according the Patton.

The outcry over the execution was immediate. Attorney David Autry said Lockett died the death he did because the state was in a hurry to carry out the executions. He termed the use of untried drugs of unknown origin an "experiment."

In the ensuing hours more questions began to emerge. Gov. Fallin became the focal point of much of the anger due to her insistence, along with that of Attorney General Pruitt, that the executions should be carried out as soon as possible with as much protocol secrecy as possible.

Fallin issued a statement at 8:22 p.m. which said in part, "Execution officials said Lockett remained unconscious after the lethal injection drugs were administered." However, reporters had already gone public with stories of Lockett being conscious.

Fallin's statement was also questionable because reporters were noting that Patton made several calls before halting the execution. Considering that he is the head of DOC, who would he be calling? The only authority above him is the governor. Would it be reasonable he would call the governor and not tell her Lockett was active and trying to speak?

Another question, especially regarding Thompson as independent investigator, was that Thompson was called from the death chamber to take a phone call. Who would be important enough to take a cabinet minister away from such a crisis situation?

Ryan Kiesel, executive director of Oklahoma's ACLU, issued a statement Tuesday evening decrying the execution saying, "In Oklahoma's haste to conduct a science experiment on two men behind a veil of secrecy, our state has disgraced itself before the nation and world."

He continued, "This evening we saw what happens when we allow the government to act in secret at its most powerful moment and the consequences of trading due process for political posturing."

On Wednesday morning, the Oklahoma Coalition to Abolish the Death Penalty issued a statement saying, "We demand that the state halt all executions and carry out an independent investigation. The death penalty is clearly untenable and cannot continue."

The Roman Catholic Archbishop of Oklahoma City issued a statement saying, "How we treat criminals says a lot about us as a society. We certainly need to administer justice with due consideration for the victims of crime, but we must find a way of doing so that does not contribute to the culture of death, which threatens to completely erode our sense of the innate dignity of the human person and of the sanctity of human life from conception to natural death."

The Most Rev. Paul S. Coakley concluded, "The execution of Clayton Lockett really highlights the brutality of the death penalty, and I hope it leads us to consider whether we should adopt a moratorium on the death penalty or even abolish it altogether."

House Minority Leader Scott Inman said, while noting the Democratic caucus will not meet until Monday, said he endorses an independent investigation.

Attorney General Pruitt, who had refused to reveal the drugs to be used and their price, called for "transparency and impartiality in the fact-finding surrounding this execution" saying that "will give Oklahomans confidence and lend credibility to the state's most solemn of duties: carrying out the sentence of death."

Other comments included a statement from Justice At Stake, a nonpartisan non-profit group in Washington D.C.: "The governmental train wreck in Oklahoma, where a court-ordered stay of execution was overturned amid pressure to impeach the justices, resulted in a disgraceful outcome last night. Political tampering with the courts led to a state torturing one of its prisoners to death. Our

courts were created to protect rights and force deliberation, and this rush to execution reinforces how important it is for us to be vigilant about protecting courts' authority."

Gov. Fallin has said she will hire an independent pathologist to examine Lockett's body. Attorney Cohen had already said, "We will be demanding an independent autopsy." Whether Lockett's and Warner's legal team is willing to accept an autopsy by someone hired by the governor who ordered the execution remains to be seen.

Asked if she agreed with the state's conclusion that the pain suffered by Lockett was due to his vein exploding, Cohen said, "No, I'm not accepting that."

Before the execution, Cohen was asked if the killings could be considered political, considering that Fallin issued a dueling stay in opposition to the one granted by the Supreme Court amid discussion of impeaching the justices if they further delayed the executions. Cohen said, "We've certainly seen a lot of politics at play these last few days."

When Supreme Court Judge Stephen Taylor addressed the appeal which sought information about the drugs to be used and their efficacy, he declared that "The plaintiffs have no more right to the information they requested than if they were being executed in the electric chair, they would have no right to know whether OG&E or PSO were providing the electricity; if they were being hanged, they would have no right to know whether it be cotton or nylon rope; or if they were being executed by firing squad, they would have no right to know whether it be by Winchester or Remington ammunition. I hope that this case ends any thought of future journeys down this path that has led this court to this day."

Given Lockett's disastrous execution, the relevance of the drugs might now become a relevant issue in the death penalty discussion.

Before his ghoulish death, Lockett was told that his last meal request exceeded the budget, an irony given the thousands of hours and the extraordinary expense that Pruitt, Fallin and the DOC had invested battling for and preparing for these executions.

Now, Fallin has set her appointees to the task of investigating the incident in which two of them took part. She is asking the public to accept the findings of a pathologist who will be an "at will" hire of her administration. Just how well their findings will be embraced by the public remains to be seen.

It also remains to be seen how far the Lockett death will advance the death penalty debate or where that debate will go next. Fallin and Pruitt said they wanted to hasten Lockett's death in order to hasten justice. Perhaps it will,

just not the type they expected.

Warner is still waiting execution in 14 days.

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Finding a Way to Execute

In a Red State like Oklahoma, the death penalty is politically popular, especially among Republican politicians looking over their shoulders at possible Tea Party challengers. So the state government is taking no chances that a couple of inmates escape execution, writes Richard L. Fricker.

By Richard L. Fricker

For the second time in less than a month Oklahoma's Republican Gov. Mary Fallin and Attorney General Scott Pruitt have suffered a judicial smackdown in their attempts to execute two inmates. This time the state legislature also took the hit as another "ideologue law" was struck down by the courts.

Oklahoma County District Court Judge Patricia Parish ruled Wednesday that the 2011 state law making execution protocol secret was unconstitutional because it denied inmates access to the courts. The law in question deprives the public access to any information as to how executions are carried out specifically the types of drugs used on inmates, suppliers, amounts paid, or names of doctors and pharmacists.

The ruling came as the result of a lawsuit filed by death row inmates Clayton Derrell Lockett and Charles Fredrick Warner, originally slated to die by lethal injection this month for separate murders committed in the 1990s. The pair challenged the state's protocol because drugs previously used are unavailable and earlier executions had been marked by claims of pain by inmates as they died and by prolonged struggles during the death process.

Attorney General Pruitt issued a statement on Wednesday saying the decision would be appealed. Members of his staff have openly vowed the pair would be executed, eventually.

The debate began five years ago as manufacturers of pentobarbital, the execution drug of choice, began refusing to supply states using the drug for executions.

Most of the manufacturers are owned by European corporations where the death penalty is banned. Participating in an execution at any level could result in serious sanctions and fines.

As sources for the drug began to become scarce, various states including Oklahoma and Missouri turned to "compounding pharmacies." These outlets mix designer drugs not commonly manufactured by mainline pharmaceutical companies. Compounding pharmacies are largely unregulated and were able to substitute untested combinations of drugs to induce death. In general these pharmacies were paid in secret and in cash.

The Oklahoma legislature passed HB 1991 during the 2011 session in an attempt to protect these pharmacies and to conceal the type of drug cocktail being administered, the monies paid and the regimen for testing and maintaining the drugs. HB 1991 was enacted after a pharmaceutical supplier called Oklahoma administrators twice to say the drug would no longer be made available.

The portion of the law under challenge says, "The identity of all persons who participate in or administer the execution process and persons who supply the drugs, medical supplies or medical equipment for the execution shall be confidential and shall not be subject to discovery in any civil or criminal proceedings. The purchase of drugs, medical supplies or medical equipment necessary to carry out the execution shall not be subject to the provisions of the Oklahoma Central Purchasing Act."

State Sen. Constance Johnson, one of only three senators to vote against the act, said Wednesday, "They rushed this thing through; it was fast-tracked. I doubt many of the senators even knew what they were voting on."

Sen. Johnson, an ardent death penalty opponent, said abolitionists were celebrating the ruling. "It's wonderful" the Democrat said. "They only passed this to keep the conservative agenda going."

When the bill was introduced on Feb. 15, 2011, she said, "we didn't know all the behind-the-scenes shenanigans they were pulling." After passage, Oklahoma began substituting statute-prescribed drugs for cocktails from compounding pharmacies.

ACLU Executive Director Ryan Kiesel said Judge Parish's ruling was "a tremendous victory for both the abolitionists and the champions of transparency."

AG spokesman Aaron Cooper said in a prepared statement, "The entire reason for Oklahoma's confidentiality statute is to protect those who provide lethal injection drugs to the state from threats, coercion and intimidation."

Cooper did not address why the types of drugs, amount and source of payment

should also remain secret. It is known that Oklahoma has paid out nearly \$50,000 for death drugs since HB 1991 passed from what is termed "petty cash."

Early this month, the Court of Criminal Appeals granted a stay of execution by a 5-0 vote, noting they doubted that Attorney General Pruitt would be able to secure proper drugs within the original execution timeframe. Just this week, the state announced it had changed the execution protocol, but declined to say how it intended to carry out the executions.

Judge Parish said it is precisely the unwillingness to disclose such information that deprives the inmates of access to the courts because they have no information on which to file appeals and must accept death at the hands of the state by whatever means the state chooses.

In a state that has passed several "sanctity of life" laws against abortion and contraception, Oklahoma has shown itself vigorously up to the task of killing convicts and even installed a back-up plan if the drug scheme was rejected by the courts.

HB 1991 provides that "B. If the execution of the sentence of death as provided in subsection A of this section is held unconstitutional by an appellate court of competent jurisdiction, then the sentence of death shall be carried out by electrocution.

"C. If the execution of the sentence of death as provided in subsections A and B of this section is held unconstitutional by an appellate court of competent jurisdiction, then the sentence of death shall be carried out by firing squad."

Lockett and Warner remain under a death sentence with their execution set for April 22 and 29, respectively. In the meantime, politics is the backdrop of this death struggle in a state said to value life. The governor and attorney general wait nervously to see if they draw a Tea Party primary opponent who will accuse them of being soft on crime.

Filing deadline for state offices ends April 11 11 days before Lockett is currently set to meet his death, by whatever means the state shall choose, or maybe not. But the decision whether Lockett and Warner live or die rests not with Gov. Fallin or AG Pruitt but with the courts.

Richard L. Fricker lives in Tulsa, Oklahoma, and is a regular contributor to The Oklahoma Observer. His latest book, The Last Day of the War, is available at <https://www.createspace.com/3804081> or at www.richardfricker.com. A version of this story appeared at okobserver.net.

A Death-Row Drama in Georgia

Georgia's planned execution of Troy Davis, set for Wednesday, is drawing protests from around the world because of grave doubts that he actually committed the murder of an off-duty policeman 22 years ago. Dennis Bernstein explores the case in an interview with the NAACP's Benjamin Todd Jealous.

By Dennis Bernstein

Georgia's planned execution of Troy Davis, set for Wednesday, is drawing protests from around the world because of grave doubts that he actually committed the murder of an off-duty policeman 22 years ago. Dennis Bernstein explores the case in an interview with the NAACP's Benjamin Todd Jealous.

If the State of Georgia has its way, Troy Anthony Davis will be executed for a murder that a growing mountain of evidence suggests he did not commit. Davis is set to be executed on Wednesday unless the Georgia Board of Pardons and Parole votes to commute his sentence.

The Georgia Board heard testimony from the government and the defense on Monday during a formal clemency hearing, and will announce the results on Tuesday.

Davis was convicted on the basis of witness testimony in which seven of the nine original witnesses have recanted or made major changes in their testimony. Other witnesses have also come forward casting doubt on Davis's guilt. Davis has faced down three previous execution dates.

At last count, over 800,000 people have signed a petition calling for Davis's death sentence to be commuted.

The following is an interview I conducted last Thursday with Benjamin Todd Jealous, president and CEO of the NAACP, about the potential Georgia state slaying of a man who appears to be innocent. Jealous has also served as president of the Rosenberg Foundation, and Director of the U.S. Human Rights Program at Amnesty International.

DB: You said recently, after reviewing the evidence that you were convinced that Troy Davis is an innocent man. You said: "It is appalling to me that with so much doubt surrounding the case, Mr. Davis is set to be executed." Well, Troy Davis is set to be murdered by the state, in a few days, and there remains very little time. You say you are appalled by the situation. What do you find most appalling, why do you believe that the state is about to murder an innocent man?

BTJ: Twenty-two years ago, there was a tragedy in the state of Georgia. An off duty officer, trying to do his duty and keep the community safe was killed as he tried to protect a homeless man.

There were multiple suspects, but eventually nine people came forward and said that one man did it. They said that Troy Davis did it. And those nine voices put him on death row. There was no physical evidence. Troy maintained his innocence, as he has for over two decades. There were lots of rumors in the community. But the nine folks who came forward all pointed to Troy.

Fast forward to where we are today, seven of those folks now say that they lied. The folks who were there, of those seven the ones who were actually there, who weren't just coerced into saying what they said by the cops as three of them claim to have been, or just lied outright.

But the ones amongst those seven who actually said that they saw the killer, they said that the killer is one of the two suspects who have not recanted. Some of the seven say that they lied because they were afraid of him. This man's name is Sylvester Coles.

And so here we are, twenty years later, Troy has had three execution dates, this is now his fourth. This one appears to be his final. It goes to the Board of Pardons and Parole on Monday.

In front of them are letters from not just Archbishop Tutu, or the Pope himself, or from former President Jimmy Carter, sort of favorite son of Georgia, but also from Bill Sessions, former head of the FBI, Roy Thompson, number two in the Department of Justice, under George W. Bush, Tim Lewis, former U.S. court of appeals judge appointed by President Bush one, and so forth.

And so this is not about sort of what's left or right, it's about what's correct. And what's correct is that when it appears that our justice system is about to execute somebody who is innocent, we all stand up and say "No."

DB: Let's go back to the seven out of nine witnesses that recanted. You said Mr. Sylvester Coles was one of the two witnesses that did not recant, and tried to intimidate others into silence

BTJ: Yes.

DB: Now how does a prosecution tolerate a situation where you have a witness intimidating other witnesses? What do we know about the prosecution's process here in terms of how a witness, who may well have been the murderer, can get away with intimidating other witnesses in a state murder case. Help us understand more about that.

BTJ: Let's go to the psychology of the moment. In cases like this where an officer has been killed there is often a lot of pressure to find the killer quickly, at any cost. And so once a mindset developed, it was very quickly, within a day amongst Savannah P.D. that Troy Davis was it..

They quickly made the facts fit that conclusion, rather than make the conclusion fit the facts. And so you see a very kind of, powerful rush to judgment.

When you listen to the witnesses who have come forward, recanted their testimony, or folks who were silent at the time, some of them minors still in their parent's house, and the parents wouldn't let them talk. They say that people were afraid of Sylvester Coles.

You know that it was very clear to people that they needed to lie on his behalf, and they say that they did because they feared him. Or in some cases, they did, like in three cases, they said they lied because the cops coerced them.

All in all, that's Savannah of that era, it's that is and really today is a very problematic law enforcement culture. Savannah is one of 159 counties in Georgia. And yet about three out of ten death row exonerations in the state come from that county. All of them black men. This is a county in which it seems, that in some instances, any black man will do.

And that's why this is such an urgent case for justice. It's why its got such wide spread attention. It is why it has caused so much doubt, again from the former head of the FBI to the Pope, and we at the NWACP who have been involved in this case for years are very clear, this is an exceptional case, and therefore we're calling the people you go to our web site nwacp.org, sign the petition.

Or simply pull out your cell phone and dial 62227, type the word "troy" and that will sign you on. And you know, right now we're about 600,000 people, we're trying to get up to over one million. We're working with Amnesty, ACLU, a bunch of other groups, change.org.

But the easiest thing you can do is pull out your cell phone, just dial 62227 type the word "troy" that will sign you on, and make sure your voice is heard. When our country is stumbling towards executing an innocent person it is incumbent on every citizen to stand up and let their voice be heard.

DB: Now I don't want to belabor the point Mr. Jealous, but if you have a witness who is able to intimidate other witnesses, in the context of a murder prosecution, it seems to pollute the process. I'd like to understand more about how this process could be allowed to go forward and how the prosecutors and the police wouldn't know that this other guy is a potential suspect.

BTJ: What is more difficult to understand is how now that it's all out there, the D.A. standing silently, signing the death warrant, even though the federal court said that the case against Mr. Troy is far from iron clad.

Even though, you know, we have reason to believe that if it came in front of the D.A. today he himself has come to the conclusion that he would not bring it to a death penalty case; why he isn't reopening the case, why he isn't saying to the judge "Vacate the death warrant, let's reopen the case and make sure we have the right person behind bars."

The reality is, those of us who are interested in justice aren't just interested in making sure the wrong person doesn't get executed. We also have to be interested in making sure that the right person is behind bars.

Too many of our poor communities are not just are far from murder free zones, they become free to murder zones. Where it's very easy for the actual killer to get away with the crime. And this is just one more of those cases, the tragic thing is in this case, we actually put somebody in for the crime.

It was the wrong person, and now he may be killed by our state and, therefore, by all of us as taxpayers, if you will, next Wednesday.

DB: And also, if in fact he is not the murderer, the murderer goes free.

BTJ: The murderer has been free for 22 years.

DB: Now in his statement to the NWACP this year, Barack Obama said "The causes that you champion are the ones that drew me to public office in the first place, and they are the ones that sustain me every day in this office." I haven't heard the President speaking out on this issue, trying to save the life of this innocent man. Has the NWACP reached out to him, why the silence?

BTJ: You know, there is nothing the President of the United States can do in a state court case. If it was federal courts, we'd be focused on him, like we're focused on the state of Georgia and the Board of Pardons and Paroles. But it's not a federal case, it's a state case.

President Obama gets these issues; one the reasons why so many people in the human rights community became fans of his when he was in the state legislature is that he championed legislation to make it illegal, and basically impossible for cops to torture witnesses and violently abuse witnesses, and put cameras into interrogation rooms.

Make sure that every interrogation entered into court had to be videotaped, and so forth. And so we have a president who gets it and we have a Department of

Justice that gets it.

DB: Alright, finally for you sir, what is at the core of this case? What does it mean, what will it mean if the United States of America, and the state of Georgia executes an innocent man. What does that say about the system and about what's happening here in this country?

BTJ: If Troy Davis is executed, no one should be ever able to lie again and say that our country does not execute innocent people. We saw it with Odell in Virginia, we saw it with Graham in Texas. We know mathematically that there have to have been many more given all of the exonerations; there is a wave of DNA, releasing people from prison and from death row that's been going on for the last decade or more.

And so, the reality is that we as a country have to come to terms with the fact that we are the only country in the West that still does this. And that we do it, quite frankly, with an unexpectedly high degree of error

DB: And poor people, and people of color, are the ones who end up you know, when you go into the prisons, when you look at death row, it's like white people don't do these kinds of things.

BTJ: Well, I mean when you go into, what you see is a disproportionate of black, you see that it's almost exclusively poor, you do see a lot of white people on death row. They are all poor white people. And the reality is that when you actually look at the exonerations they are even more disproportionately black men.

In other words, the bar that this country sets for convicting a black man seems to be much lower than it is, even for a poor white person.

And so in reality, yeah absolutely, you know, who gets executed in this country has less to do with what they did, and more to do with where they live, which side of the tracks they were born on, what color they are, even what gender they are. We are much more reluctant to execute women even when they commit the same crime.

So yeah, it's grossly unfair, but the reality is that today, and for the next several days, what we are focused on, really it doesn't matter whether you support the death penalty or not.

Everybody in this country, no matter what they feel about the issue, should be completely opposed to us executing somebody when there is such a wide shadow of doubt as there is in the Troy Davis case. That's why if you text "troy" to 62227 you are not saying how you feel about the issue, it's just saying don't execute

a man who didn't do the crime.

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