

Professor Dow's book "The Autobiography of an Execution" is reviewed in the latest edition of the New York Times Book Review.

The Life of a Death Penalty Lawyer

By DAHLIA LITHWICK
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Toward the beginning of "The Autobiography of an Execution," David Dow relaxes after a speech with the celebrated death penalty abolitionist Sister Helen Prejean. ("It was the first time I went drinking with a nun.") Prejean tells Dow, who has represented more than 100 death row inmates over 20 years, that "support for the death penalty is a mile wide, but just an inch deep." Dow responds: "Well, Sister, I believe you can drown in an inch of water." This book is Dow's effort to drain the puddle.

Statistics from the Death Penalty Information Center show that the death penalty in America is dying. In 2009, the number of death sentences dropped for the seventh consecutive year; it's now the lowest since the Supreme Court reinstated the death penalty in 1976. Eleven states considered abolishing the death penalty last year, citing high costs and lack of measurable benefits. New Mexico just became the 15th state to abolish it. A recent study from Duke University concluded that North Carolina could save almost \$11 million annually by doing away with capital punishment. And the prestigious American Law Institute, which devised the framework for the modern system of capital punishment, recently abandoned the whole project "in light of the current intractable institutional and structural obstacles to ensuring a minimally adequate system for administering capital punishment."

Beyond the high costs, lengthy appeals processes and racial biases that infect the capital system lies a growing public uneasiness that we are sometimes executing the wrong people. According to the Innocence Project, 17 people on death row have been exonerated by DNA evidence.

Still, David Dow is in Texas, drowning in the death penalty. As he explains: "I understand the death penalty supporters. I used to be one. I can relate to the retributive impulse. I know people I want to kill." But he devotes his life to fighting for his clients — many of whom he dislikes enormously, and all but seven of whom he believes to be guilty — because he's certain that what Justice Harry A. Blackmun called the American "machinery of death" is broken. Cops fudge the truth. They coerce false testimony. Court-appointed lawyers sleep through trials. They miss deadlines. They fail to put on exculpatory evidence. Juries believe every word uttered by "expert" witnesses who opine on defendants they have never met. Jurors evade responsibility by hiding behind the other jurors. Judges evade responsibility by hiding behind jury verdicts, and appeals courts hide behind the trial courts. The Supreme Court can hide from a case by refusing to take it. Elected judges, particularly in Texas, must deliver convictions. Federal judges named to the federal bench because they are pals with a senator overlook deeply flawed trials. And by the time Dow comes into a case, the law will sometimes not permit him to help his client. As he explains: "Prosecutors and judges kowtow to family members of murder victims who demand an

eye for an eye, and the lonely lawyer declaiming about proper procedures is a shouting lunatic in the asylum.”

Dow is a far cry from a shouting lunatic, and the farthest thing from a bleeding-heart abolitionist. He has a pickup truck, a taste for bourbon and a dog. “I do not want my clients to be killed, and I can’t stand them,” he writes. You’ll find Dow at least three stops past the Clint Eastwood mile marker on the Flinty Guy Highway. He is so bare-bones he won’t even use quotation marks.

Throughout the book, Dow toggles back and forth between his capital cases and life with his wife and 6-year-old son in Houston. They have certain expectations of him: SpongeBob, T-ball practice, trick-or-treating. Sometimes he misses these things to witness another execution. Then he launders his clothes (always in a wash of their own) and joins the family for dinner. Readers who don’t care about his son’s T-ball practices or his wife’s dance classes may find this background distracting, but for Dow his family is a lifeline back from the death chamber. It can’t be a coincidence that in a book about the brutal reality of capital punishment there is — in addition to the bourbon and cigars — a piece of steak, a rare hamburger, a piece of grass-fed sirloin or a roasted chicken on just about every other page. Dow isn’t doing high constitutional theory here; this is pure red meat. What Dow exposes in this dark, raw memoir is not just a dispassionate machinery of death that cannot be slowed, reversed or mediated by truth, logic or fact. He also exposes the inner life of a man who, in the face of all that, cannot give up the fight.

Nobody but Dow could have told Dow’s story. The problem is, he cannot fully tell it either. As he explains in an author’s note at the start of the book, the demands of attorney-client confidentiality have forced him to use pseudonyms, attribute procedural details of certain cases to other cases, and alter the timing of some events, though he insists that the “basic chronology” is correct — and that he never changed the facts of the crimes. His publisher appends a letter explaining why this was done and a memorandum from an ethics professor explaining the legal basis for this choice. Whatever the legal issues, the result is a book that is less an autobiography of an execution than a powerful collage of the life of a death penalty lawyer.

In describing the fraught relationship between law and truth, Dow laments the fact that when it comes to the law, “the facts matter, but the story matters more.” But having created a brilliant, heart-rending book that can’t be properly fact-checked, Dow almost seems to have joined the ranks of people who will privilege emotion over detail, and narrative over precision.

For those who already oppose the death penalty, Dow’s book provides searing confirmation of what they already know to be true: the capital system is biased, reckless and inhuman. But had a prosecutor written a book arguing that the machinery of death is fantastic, just trust him, Dow himself would weep for strict adherence to facts, however ungainly. We’ve seen too many books lately suggesting that facts and sourcing matter little. It isn’t a trend to which lawyers should contribute.

Perhaps Dow just doesn’t care. He describes the impotence of witnessing the last breath of an innocent client: “I stood there. I was idle. I was a man making phone calls, a wordsmith, a debater, an analyst.” His book — not quite fact but not quite fiction — may be another lifeline back from a kind of helplessness that is its own death chamber.

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