

UNC Chapel Hill

POLT 203: Race, Innocence, and the End of the Death Penalty

February 3rd, 2020

Secrecy and the Death Penalty

When I told my mom I would be speaking about the death penalty to a group of students, she wanted to hear about my talking points.

Normally, we avoid discussing capital punishment because it can be really upsetting for her. So I hesitated. She insisted though.

I gave her a synopsis of how secrecy laws allow state officials to hide their acquisition of lethal injection drugs. I told her about restorative justice efforts by my friend Jason, and how North Carolina laws prohibit prisoners from reaching out to the victims and their families, which makes atonement for a crime difficult.

I told her about my friend JT, who experienced receiving an execution date, getting final visits from family, then an indefinite stay of execution and the psychological toll this had on him.

Finally, I told her about how life without parole is a silent execution and the newest form of capital punishment with none of its legal protections.

When I finished, mom said "What about the condemned's family? Nobody ever talks about what they suffer." She was right.

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Family members of the condemned are victimized three times. First, by the crimes of their loved one, which brings shame, heartbreak, honor, and ostracism to the family. Unless family members publicly denounce the accused, they are thought to be complicit. Second, family members of the condemned, assuming they agree to help, are dragged through court proceedings, their backgrounds excavated and denigrated as if they were political candidates. Third, assuming they stick around after the trial, and many do not, they suffer in a way unique to unconditional love. My mom and dad have suffered through my incarceration, day-for-day, for nearly 23 years.

The state doesn't provide any special services for prisoner's families. What they do reserve are a few seats in a witness room attached to the execution chamber. They'll be in the same room as the victim's family, prosecutors, law enforcement, defense attorneys, and a single journalist to represent the public.

When my parents visited a number of years ago we talked about the possibility of my execution being carried out. I did not want them to watch. No parent should have to experience the loss of a child, nor should they witness the manner of that death like some twisted sporting event, even if it is for moral support.

I knew enough about the lethal injection to know there are other reasons they should not watch. The three drug cocktail used by

North Carolina wouldn't render me completely unconscious or unfeeling, just paralyzed and unable to vocalize being burned alive from the inside. I never told my parents that friends of mine have taken over a half hour to die once given the lethal injection. - and this was before the State ran out of sodium thiopental. I will never tell them how on my death certificate the cause of death will read: Homicide. My parents have suffered enough for me.

When talking with mom about this class she asked another question that initially aggravated me, but I understood she wanted to know.

She said, "When the vet put Alex to sleep, it only took a few minutes. Why don't they use those drugs in executions?" Alex was my dad's great dane. My immediate response was - Mom we're not animals. Then I calmed a bit and said the FDA would never allow it, different doses would be needed, and a host of other complications = like human rights violations - would present such a thing.

The lethal injection was designed in 1977 by Oklahoma medical examiner Dr. Jay Chapman. He created a three drug cocktail: 1) sodium thiopental to sedate the prisoner, 2) pancuronium bromide to paralyze and prevent any outward signs of suffering, and 3) potassium chloride to stop the heart. Clean, efficient, relatively quick and modern. Chapman didn't anticipate other states would

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adopt this method for their execution protocol, yet all of them did so without understanding its application. By medicalizing the death penalty, states hoped to further civilize the process and reduce public objections to its cruelty. If, after all, a convicted murderer drifts off to his or her final rest it's a win-win scenario. Civilized, humane "justice". Painless, peaceful death.

There are several problems Chapman never accounted for. First, doctors and nurses swear an oath to "do no harm" and they immediately balked at the use of their medical knowledge to kill. This left untrained prison guards to measure dosage, set up tubing, insert needles and administer the injection - none of which is as easy as it sounds. Under the pressure of an audience and the ultimate goal of killing another human being it becomes much harder. Small wonder human error is the leading cause of botched executions.

Second, most drug suppliers demanded states stop using their drugs in executions. As it became difficult for state officials to acquire sodium thiopental, they relied on compounding pharmacies to create the drug, which was almost always contaminated or inferior and caused the prisoner to be conscious during the execution.

Third, dwindling drug supplies led state officials to illegally import (aka: smuggle) execution drugs into the US from other countries. While doing so circumvented litigation by US

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drug makers, this is illegal. Despite the fact DEA and FDA agents have caught and seized smuggled execution drugs, no state official has ever been charged with the crime. The average citizen doing the exact same thing can receive as much as life in prison.

Finally, states turned to alternative drugs for the lethal injection. Because this involves guesswork, uncertainty, and creation of a new execution protocol, it also allows for legal challenges to what is essentially human experimentation. New litigation also means greater expense and delays for the State. To avoid this, states began passing secrecy laws to hide where the drugs come from, what they are, and who is involved in the process.

If the lethal injection was as quick and seemingly painless as euthanizing an animal it's unlikely it would have faced the same level of scrutiny. The medicalized model implies an interest in killing people quickly and quietly, but the evidence screams the opposite. It's an open secret your elected officials in the state legislature don't really care how death row prisoners are executed as long as the public acquiesces.

Secrecy and the death penalty also has an important historical context in North Carolina, one that ties in with the Racial Justice Act (RJA) currently under consideration by the state supreme court.

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North Carolina's death penalty grew from an effort by the State to curtail lynch mobs during the Reconstruction, and continue oppressing people of color. Legal lynchings didn't lead any more rights or protections to their primary black targets. With the State firmly in control of very public executions, unruly lynch mobs became willing spectators. It wasn't until 1907 the attorney general pushed the NC General Assembly to conduct executions behind closed doors. The reasoning had little to do with civilized society. ①

White supremacist observers and their ilk worried that the increasing racial diversity of the crowds at public hangings presented a social threat. Because the condemned were usually black men and boys, and were allowed final words to the crowd, concerns grew that they would incite unrest amongst other African Americans. Those concerns arose in the late nineteenth and early twentieth centuries because women of color had entered civic life in strength. ②

As educated, middle-class black women formed networks that strengthened social and civic bonds, public hangings became places of community-building and political engagement. Working-class black women gathered to defend black men and simultaneously develop their role in the black community that so threatened Jim Crow society. Black women at public executions claimed enough civic space that it forced white supremacist state officials to conduct their legal lynchings behind closed doors at 2 am. ③

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Over the years execution methods may have changed. The amount of time between arrest and execution may have lengthened. More whites are even sentenced to death and executed. Despite this, the racist ideology governing capital punishment is the same. Except, now it impacts minorities, poor people, and anyone who falls through the cracks of society. As 2016 exonerate Anthony Ray Hinton said; capital punishment means those without the capital get punished.

In an attempt to remove racial discrimination from capital punishment and redress death sentences gained through such prejudice, the NC General Assembly passed the Racial Justice Act in 2009. The RJA allowed death row prisoners of any race to challenge their sentence by using statewide statistics that show a pattern of discrimination. To be clear, racial bias relates to three specific elements of the death penalty:

1. Race of the defendant
2. Race of the victim(s)
3. Racial make-up of the jury

Of the three, prosecutors are trained to remove potential black jurors from consideration because they are less likely to vote for death, believe prosecutors, or trust law enforcement.

Removing any potential juror from service on the basis of race is unconstitutional.

Racial jury-rigging in capital prosecutions affect every defendant, regardless of his or her race. Researchers were able to prove this by compiling a substantial amount of data that demonstrates a pattern of prejudice during your time of capital trials. In other words, North Carolina's death penalty may originate from Jim Crow society, but the cancer of its racist past continues to grow in the General Assembly, Governor's office, judicial seats, and district attorneys offices.

In 2012 a Republican controlled General Assembly gutted and repealed the RJA. The repeal was signed by then Republican governor, Pat McCrory. Four prisoners who received life sentences under the RJA were returned to death row.

Fortunately, the NC Supreme Court heard oral arguments over the RJA in 2019. They will decide if prisoners who filed under the law while it was active can still pursue relief. Needless to say we are hopeful there will be a favorable ruling in 2020.

Secrecy of any kind has no place in the criminal justice system, especially when the State make life and death decisions as an extension of public sentiment. This is why it's critical you educate yourselves about crime, punishment, the legal system, and who is elected to carry out justice. Never think you're powerless to change the minds of elected officials who carry

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out your will. Never, think these laws and circumstances don't apply to you. There have been plenty of innocent people put on death row.

As it stands today, a majority of North Carolinians believe the death penalty is unnecessary, does not deter crime, puts innocent lives at risk, and is fundamentally racist. Yet, Republican legislators and conservative southern Democrats continue to push for executions. They create secrecy laws to restart medicalized lethal experiments. They pretend there has not been eight exonerations from NC's death row. They deny their responsibility for a criminal justice system that targets minorities and marginalized citizens. There are no rich people on death row.

Before I close I'll leave you with one final thought. In 1906 Henry Bailey, a black man, was one of the last prisoners to be publicly hanged in North Carolina. In front of a large crowd he remarked on the injustices given in trials of African Americans accused of killing white victims and how, were the roles reversed, there would be no crime. He also spoke on the inequality of a jury in which none of his peers sat. These truths stirred the crowd where his peers were allowed to gather. These were the truths the General Assembly sought to silence behind closed doors. @

Over a century later we are still fighting to open those doors, but I thank God that, at least for today, I will not be silenced.

Resources

Konrad, Robin. "Behind The Curtain: Secrecy and the Death Penalty in the United States." Death Penalty Information Center. 2019

Sesuna Liliana; Roche, Jackie; "Cruel and Unusual: The History of Lethal Injection" <https://thenib.com/cruel-and-unusual-the-history-of-lethal-injection>.

1. Kitch, Seth: Lethal State: A History of the Death Penalty in North Carolina. UNC Press. 2019

2. Ibid. p. 63

3. Ibid. p. 64

4. Ibid. p. 62

5. Ibid. p. 181, 182