

2010

David R. Dow, *The Autobiography of an Execution* (2010)

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Recommended Citation

38 J. Psychiatry & L. 619 (2010) (book review).

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Book section: ESSAYS AND REVIEWS

The Autobiography of an Execution, by David R. Dow
(New York, NY: Twelve, 2010), 273 pp., \$24.99.

REVIEWED BY
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An execution is an intimate event. As to the condemned inmate, the intimacy seems obvious: The state is killing him. But an execution also profoundly affects all those involved in the execution process—from the family members of the victim or the condemned, to the warden or guard who has known the condemned inmate for many years, to the attorney for the state who is pushing to end the prisoner’s life, to the defense lawyer who is fighting to prevent that end. David Dow’s *The Autobiography of an Execution* provides a powerfully honest memoir of one defense lawyer’s attempt to grapple with not only the legal labyrinth of what one Supreme Court justice described as the “machinery of death,”¹ but also with the enormous personal and psychological toll that Texas’ execution of his clients takes on him. In this genuine and beautifully written narrative, Dow unflinchingly shares his drama and allows the reader into his life, his costs, and his reckoning with the death penalty.

David Dow is the University Distinguished Professor of Law at the University of Houston Law Center² and the litigation director of the Texas Defender Service.³ Since the late 1980s, Dow has represented more than 100 individuals who have been condemned to death in Texas. His legal representation begins after the state has convicted and sentenced someone to death. He works on cases during state and federal appeals and habeas review, including last minute appeals to the United States Supreme Court. As Dow details, victory at this stage of capital litigation is difficult although not impossible, and he

loses cases that, by all accounts, justice would dictate that he should win. One of the captivating aspects of the book is Dow's honest exploration as to why he would take on such thankless and often doomed work. In this regard, Dow reveals his wife's observation that he does this work out of guilt and because no other work would provide him as much fulfillment.⁴ And Dow's selfless dedication to his work certainly demonstrates the compelling hold his representation of his clients has on him. Yet, as Dow recounts his cases, the ordeals of his clients, and his own struggles with his cases, it becomes evident that there is something in the humanity and dignity of this struggle that keeps him engaged.

Dow's book opens with an account of the final hours of Winston, one of his clients who is facing execution; it should be noted that Dow has changed the names and some of the particulars of his clients to protect their anonymity and to remain consistent with his ethical and professional obligations to his clients. As Dow writes:

The warden at the Walls was holding a judicial order instructing him to execute Winston after 6:00 p.m. He would carry it out unless the Supreme Court intervened. Winston had been pacing for two hours in the tiny holding cell, three steps one way, three steps back. He had requested a cigarette in lieu of a final meal. Prison officials informed him that tobacco products were not permitted on prison grounds. But the three guards who would escort Winston to the gurney gave him a pack of cigarettes and one match. He lit each new cigarette with the dregs of the old one.

Our phone rang. The clerk at the Supreme Court wanted to know what time we would be filing additional papers. I hadn't planned to file anything else. The four of us working on the case had already written our best argument and sent it to the Court. It had been there since five o'clock. In nearly twenty years of representing death row inmates, this had never happened to me before. Was the clerk telling me to file something else? I told him I'd call him right back. . . .

Two minutes later the phone rang again. Kassie answered. The clerk was calling to tell us never mind, that we had lost. I went into my office, closed the door, and called Winston to let him know. He was declared dead at twenty-seven minutes past nine.⁵

Dow weaves together stories of several of his clients, including, most poignantly, the story of a Quaker who appears to be almost certainly innocent of the horrific crimes for which he is sentenced to death. There are many reasons why a jury might impose a death sentence in a particular case, but some themes seem to recur. The condemned are almost always poor,⁶ and experience all the attendant problems and shortcomings that poverty brings, including poor legal representation at trial.⁷ Many condemned prisoners suffer from mental illness, limited intellectual capabilities, or severe head trauma.⁸ The school and social welfare records of many capital defendants often reveal a grotesque history of child abuse, neglect, or trauma.⁹ Like in so many death penalty cases, these characteristics and tragic life histories permeate many of the death penalty cases Dow handles.

Although Dow expresses compassion and even affection for some of his clients, he is, nonetheless, blunt about his clients who are, after all, convicted murderers. Dow does not flinch from expressing his occasional dislike and frustration with his clients. Yet, as you read his memoir, you soon come to understand Dow when he states: “Some days murderers steal my spirit. Most of the time, though, it’s judges.”¹⁰ The legal process of the death penalty is complicated, confusing, frustrating, and often unjust; it is also a key part of the story of an execution. Dow describes the last minute efforts to save the life of O’Neill, who is so mentally ill that the Constitution may actually forbid Texas from executing him.¹¹ In O’Neill’s case, the problem was not whether there was sufficient evidence to show his mental illness and incompetency for execution—the evidence plainly supported these claims; the problem was the federal procedural rules governing habeas proceedings threatened to foreclose O’Neill and his attorneys the opportunity to present his meritorious claims. These legal hurdles continually frustrate Dow’s efforts to obtain relief for his clients, and this post-conviction procedural morass is as much a part of the execution process as the last meal. Dow passionately and effectively weaves the

technical complexity of capital litigation into the pace of his memoir.

Further, as Dow provocatively and insightfully explores, the condemned confront their mortality in a way that no other person in society does: They will die when the state kills them. Although Dow discusses the effect of this brutal reality on his clients, he does not simply write about his clients' confrontation with death. Dow also details his own reactions to his clients' executions from those clients whom Dow knows to be guilty to those clients whom Dow knows to be innocent. Dow unflinchingly describes his struggles with himself and the toll his work takes on his family. Dow lovingly describes his wife and son and their lives, and he strongly asserts that they offer him a core foundation and refuge in which to withstand the ordeals of his life's work. His family and their normal, happy life, keep him sane in a system that is anything but sane.

Dow's stories of his clients and their harrowing journey in the criminal justice system do not always end well. Often these stories end with Texas killing Dow's clients. Then, Dow and his colleagues have to turn to the next case, the next impending execution. *The Autobiography of an Execution* offers a noble account of the life and experience of one man who has dedicated his life's work to representing the condemned. It offers insight into the realities and ugliness of the capital punishment system and it portrays the men condemned to death with honesty and dignity. Moreover, Dow's memoir offers an intimate glimpse into the effect representation of the condemned has on the attorneys who do such work and how one attorney struggles and maintains his humanity.

- Notes
- 1 *Callins v. Collins*, 510 U.S. 1141 (1994) (Blackmun, J. dissenting from denial of certiorari) (stating “[f]rom this day forward, I no longer shall tinker with the machinery of death. . . . I feel morally and intellectually obligated simply to concede that the death penalty experiment has failed.”).
 - 2 <http://www.law.uh.edu/faculty/main.asp?PID=12>.
 - 3 <http://www.texasdefender.org/>
 - 4 Dow, p. 54.
 - 5 Dow, pp. 1-3.
 - 6 Confirming Dow’s observation that poverty is an overwhelmingly common denominator in death penalty cases, see Stephen Bright, *The Failure to Achieve Fairness: Race and Poverty Continue to Influence Who Dies*, 11 Univ. Penn. J. of Const. L. 23 (2010).
 - 7 See, for example, the cases of *Wiggins v. Smith*, 539 U.S. 510 (2003); *Williams v. Taylor*, 529 U.S. 362 (2000).
 - 8 For further discussion of these factors in capital cases, see Richard Burr, *Representing the Client on Death Row: The Politics of Advocacy*, 59 U.M.K.C. L. Rev. 1 (1990). For recent Supreme Court limitations on application of the death penalty in cases where the defendant establishes he is mentally retarded, see *Atkins v. Virginia*, 536 U.S. 304 (2002).
 - 9 The case of *Wiggins v. Smith*, 539 U.S. 510 (2003), makes this point well.
 - 10 Dow, p. 248.
 - 11 See, for example, the case of *Ford v. Wainwright*, 477 U.S. 399 (1986) (finding that the state cannot execute a condemned prisoner who lacks understanding of impending execution or the reasons for the execution).