

Fighting for clients' lives: the impact of the death penalty on defence lawyers



Introduction

To understand the social impact of the death penalty, we need to examine how the practice affects those most closely involved with it. Each death sentence affects an array of people in addition to the prisoner facing execution: the prisoner's family, the victim's family, prison staff, the team that will carry out the execution, and defence lawyers. They too are crucial stakeholders in the process, particularly post-conviction lawyers who come in after a death sentence has been issued and try to stop the execution. At this final stage, need is acute, resources are especially scarce, and the difference between capital defence and other kinds of criminal defence can feel especially stark. For a post-conviction capital defence lawyer, the stakes are as high as can be: loss of a case means loss of a client's life.

What is it like to have this tremendous responsibility, or to lose a client to execution? How does capital defence affect the emotional and physical lives of the lawyers who practice it?

Challenging conditions

Overturing a death sentence is generally understood to be harder than preventing that sentence from being issued in the first place. For post-conviction lawyers, the looming threat of execution makes every client's need for representation extremely urgent, and the enormity of that need in relation to the number of lawyers who are experienced and knowledgeable in this area can place great demand on any individual lawyer. A lawyer from the USA describes it this way: 'I'm already juggling too many things, and yet there is so much need. There's so many people saying "help, help, help" ... That is the thing I'm haunted by: the people I cannot help.'¹

Lawyers at this stage are also working under great time pressure, sometimes because of the limits the law has placed on when a petition can be filed and sometimes because prisoners are unaware of their right to seek relief at such a late stage and do not contact a lawyer until the execution is imminent. With more urgent work to do than can be easily done in the available time, lawyers can become overwhelmed

by an acute stress that they describe as 'paralyzing, feeling like you're going to come out of your skin, feeling like you're losing it, or screaming'.²

'Most death row prisoners are illiterate and extremely poor. They have no access to knowledge about rights, remedies, etc, and no real access to lawyers. Their families, already impoverished and defeated, have long given up hope or abandoned the prisoner to his fate ... They usually only manage to reach me just a few days or hours before the execution. It is in this very small window of time that I have to devise some way of getting an interim stay on the execution on the grounds of breach of rights or due procedure.'

Lawyer from India

'There are several challenges to being a death penalty lawyer here: a judicial and justice system that stacks the deck against you and your client, especially, God save you, if they are poor/indigent, and the fact that over 90% of convictions in all criminal matters are substantially based on confessions, mostly secured under torture. Also other legal and constitutional rights are ignored or abused without remedy.'

Lawyer from Nigeria

Strong public support for the death penalty and a corresponding lack of respect for lawyers who represent people on death row are additional challenges. Working without much cultural approbation and sometimes under outright threat from their government puts further pressure on lawyers who specialise in capital defence.

The weight of the responsibility

Lawyers describe the responsibility of trying to prevent an execution as a tremendous weight that is with them constantly, making it difficult to do or think about anything else. The feeling is very personal: 'His life is in your hands', 'You feel like you're the only thing between your client and him getting executed'.³ Some lawyers compare it to seeing someone tied to the tracks as a train approaches; their job is to stop

1 Quoted in Susannah Sheffer, *Fighting for Their Lives: Inside the Experience of Capital Defense Attorneys*, Nashville: TN, Vanderbilt University Press, 2013. The American Bar Association's Death Penalty Representation Project estimates that there are hundreds of prisoners on death row in the United States of America without representation.

2 Quoted in *Fighting for Their Lives*.

3 Quoted in *Fighting for Their Lives*.

the train, or untie the knots, in time to prevent the fatal collision.

Knowing exactly when an execution is scheduled to occur creates one kind of burden. Being taken by surprise, as happens in countries where executions are not announced ahead of time, is devastating in another way.

'The lack of information, lack of transparency about the death penalty and execution process, is a big challenge. When a client of mine was executed, I only learned about it after it happened, when I heard the Ministry of Justice announce it at a press conference that morning. That was very hard.'

Lawyer from Japan

'When a client gets an execution date, it's like the big dark cloud for many weeks or months. It's a really hard thing to live with, the rising panic ... It's always present. It's hard to live your life ...'

Lawyer from the USA

'His life is on my shoulders. It's terribly stressful and burdensome. It is, for me, almost unbearable.'

Lawyer from the USA

'Taking a death penalty case is a huge responsibility of course and the realization that a life hangs in the balance can motivate you at some times and scare you at others.'

Lawyer from Nigeria

'I specialise in end-stage death cases ... I dread these cases, and shudder every time a new one comes my way. Having taken it on, I feel I am living with a coffin tied to my back. It takes over my life, dominates my thoughts during the day, corrupts all pleasure and invades my dreams at night. I habitually have nightmares of executions, some of which I imagine are taking place in my apartment or just on the ledge outside the balcony where a scaffold has been erected, and the prisoner is being dropped from the balcony ledge with a rope tied to his neck. While preparing the case, I sometimes get so afraid that I am unable to work, and have to curl up under a blanket and go to sleep. Alcohol has a soothing effect on my nerves, and I have to stop myself from having more than one drink in the evening, or beginning the day with a gin and tonic. Ever since I started doing this work, people have been telling me that I age six years in six months.'

Lawyer from India

The execution and its aftermath

Lawyers who do have an opportunity for a last visit or phone call with a client before the execution say that those final conversations are extremely wrenching, as they are forced to explain to the client that there is nothing else that can be done. Having to explain this to the client's family members and witness their anguish is also painful and difficult.

'The hardest thing, the crux of it, is what happens in those half hours of the last visit. That's the most emotional stuff for me, the most loaded, the stuff that puts me over the edge, the stuff that's the hardest to talk about ... You're trying to offer solace to somebody who's about to die. It's unbelievable. No one can be adequate in that situation. How could you possibly?'

Lawyer from the USA

'[I was outside the prison with my client's mother], who's hunched over, and she is just – broken down. Sobbing, delirious, you know, she's just said goodbye to her son for the last time. That was one of the hardest moments. And, you know, that's the thing about the death penalty that people don't see. It was just brutal. I remember that scene so vividly. What can you do? You can't leave, and you can't change anything. You can't do anything for her.'

Lawyer from the USA

Many lawyers are prohibited from witnessing a client's execution. Even when witnessing is allowed, some lawyers opt not to do it, either because witnessing would make them feel complicit with the process or because they worry that it would make it harder for them to carry on as a capital defence lawyer. Lawyers who choose to witness the execution generally do so out of a personal commitment to the client and a desire to stick with him or her through to the end.

Whether or not lawyers witness the execution itself, however, the impact of losing a client in this way is significant and sometimes long lasting. Following the event, lawyers may experience numbness, sadness, anger, panic reactions, flashbacks, and feelings of dissociation or depression that can last for days, weeks, even months or years.

'It stayed with me for months. It would come on you unbidden, in the same way that all kinds of really bad trauma do, in that you wouldn't even be thinking about it, and suddenly it would intrude on your thoughts, and you couldn't get it out of your thoughts.'

Lawyer from the USA

'After my client was executed, I was always thinking of what else I could have done or what I could have done differently. For a few months, I could not sleep well, and I sometimes dreamed of my client. I could not eat much and lost weight. I was depressed for a long time.'

Lawyer from Japan

'When I am not successful and a client is executed, it is very sad and upsetting, especially when I know the details about the person and how he or she got involved in this situation. I never forget the face of the person who was executed.'

Lawyer from Iran

'I felt incapacitated for a while, after each execution. I couldn't move. My body felt very heavy.'

Lawyer from the USA

'I think when executions have gone through, what I've felt is a devastating numbness. A complete sapping of energy.'

Lawyer from the USA

As significant as the impact of their work may be, lawyers do not always feel able to talk about that impact with others. Legal training doesn't reliably prepare lawyers for the emotional impact of their work and the social norms of the profession don't encourage this kind of self-disclosure.⁴ As well, capital defence lawyers are accustomed to focusing on the trauma and suffering that their clients experience and are not inclined to focus similar attention on themselves. Cultural support for the death penalty and misconceptions about capital defence lawyers can make lawyers wary of seeking help or support for their own struggles.

Continuing to fight and to teach

Lawyers who choose to take these challenging and high-stakes cases do so because they believe so strongly in the need to advocate for individuals who are facing the harshest of penalties. Fighting for their clients' lives, and coming face to face with the reality of the death penalty and execution process, can also intensify a lawyer's desire to work to end the death penalty entirely. But for capital defence lawyers, the daily work will always be particular and specific. Their immediate focus remains on the individual client whose life is threatened, on maintaining their own ability to keep working, and on trying to pass on what they have learned.

'I need to be refreshed in order to fight other cases. I need to have energy to fight again. Other people still need my help. I also try to use my experience to educate other attorneys and students.'

Lawyer from Iran

'If all else fails, what you're doing is making a record for the future. When I see something that I think is particularly egregious, just a real injustice that upsets me because it is so wrong, I feel like it needs to be made known, and that making it known is an accomplishment ... That keeps me going no matter what.'

Lawyer from the USA

'I do this work because I have a deep abhorrence of the idea that the state can be allowed to kill a person in a premeditated and cold blooded way in our names. I feel personally defiled by each execution and therefore compelled to strain every sinew to thwart it.'

Lawyer from India

Sources for statements from lawyers throughout: All quotations from lawyers from the United States are from *Fighting for Their Lives*. Iran: Interview with Hossein Raeesi. India: Interview with Yug Mohit Chaudhry. Japan: Interview with Maiko Tagusari. Nigeria: Interview with Ja'afaru Adamu.

⁴ See, for example, Susan A. Bandes, 'Repression and Denial in Criminal Lawyering', *Buffalo Criminal Law Review*, Vol. 9, No. 1, February 2006. Bandes writes: 'There may be no other profession whose practitioners are required to deal with so much pain with so little support and guidance.'

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