



# DEATH PENALTY TESTIMONIALS



## Sandra Babcock

### **Background:**

#### **Can you talk a bit about your educational background and work experience?**

I went to law school at Harvard University and graduated in 1991. After I graduated from Harvard I went to work for the Texas Resource Center which is a non-profit organization that represents men on death row who are facing execution. I worked there until 1995 when I moved to Minnesota and became a public defender for five years. After that I went into private practice and went back to doing death penalty work. From 2000 until 2006 I was the director of the Mexican Capital Legal Assistance Program which was set up by the Mexican government to provide quality legal representation for Mexican nationals who were facing the death penalty in the United States. In 2006 I came to Northwestern University where I teach the Human Rights Clinic where we continue to do work centered on the application of the death penalty not only in the United States but also around the world.

#### **Approximately how many death penalty cases have you worked on in your career?**

In the United States I think I have worked on around fifty to a hundred cases, but I am not sure. When I worked in Texas, I worked on all sorts of death penalty cases, but since I left Texas, it has been primarily Mexican nationals.

### **Reasons for Opposing the Death Penalty:**

#### **How did you arrive at your opposition to the death penalty and your work on capital punishment? Was it an evolutionary process, or did one event crystallize your position on this issue?**

I am not aware of how I came to be opposed to the death penalty. Some things stick in my mind, but I don't know if they were deciding factors. In law school my criminal justice professor spent ten minutes discussing the death penalty, and then indicated that he wanted to move on to other things. I raised my hand and said that it seems to me that we should spend more than ten minutes discussing the death penalty. (I don't remember having any strong beliefs one way or the other, but it just seemed like a really important issue.)

When I was a second-year law student, I went to a public-interest conference where they brought together employers and students who were interested in doing public-interest work. I heard a talk by Bryan Stevenson who works at the Equal Justice Initiative in Alabama. He is an incredible speaker and terrific lawyer, and he spoke about his work with clients who were facing the death penalty in Alabama. When he was giving this talk, one of his clients had just been executed. In the midst of this speech to a room full of students who were complete strangers, he started to cry because he had just lost this client. I was blown away by his commitment to the issues and by his involvement both at an intellectual level and at a personal level, and I said to myself that I wanted to work with people like him.

In my third year of law school I heard another death penalty lawyer from South Carolina. These people were so amazing that I decided to apply for a job at one of the death penalty resource centers that had been set up around the country. That is how I wound up in Texas.

#### **Would you discuss in some detail your reasons for opposing the death penalty? What is it about the death penalty that you object to?**

There are many reasons to oppose the death penalty, but for me, personally, it is a moral issue. I think the government should not be in the business of killing its own citizens or anybody else for that matter. It is poor public policy. The death penalty is treated as an answer to violent crime and as a deterrent which can also bring closure to the families of victims. I think these are largely myths that remain unexplored because Americans are comfortable with simple answers to complex problems. It is a very simple thing for a politician to say that he is tough on crime and therefore supports the death penalty. It is much more difficult for a politician to explain to constituents that he does not support the death penalty because there are more humane and equally effective penalties.



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That is a more complicated and nuanced conversation that is more difficult, and so people don't enter into it.

Of course, there are many practical reasons why I oppose the death penalty. It is discriminatory on the basis of race and economic conditions. We still have not managed to provide quality legal representation for people facing the death penalty. There is also the risk of executing the innocent. All of these things are very important, but for me personally it comes down to the moral belief that it is wrong for the government to execute people who it believes are unredeemable deliberately and with premeditation.

## **What do you say to those who believe that execution of a perpetrator brings closure to the family of the victim?**

While I can't speak for the victims of violent crime, I have heard victims speak, in particular, people who have had family members killed, and they have refuted this idea that executions bring closure. They have made the point that every crime victim is different in how they respond to violent crime and how they cope with its aftermath. There have been some very interesting and innovative studies lately that have looked at restorative justice as a way of bringing healing to victims' families. They have focused more on bringing together offenders and victims so that victims can confront offenders and seek explanation and offenders can explain what happened. A lot of people have reported that this brings them more inner peace than witnessing the execution or having the knowledge that someone has been punished for his crimes. But it is hard for someone like me to speak for victims of violent crimes, and it is also quite possible that some victims' relatives feel a sense of relief when the legal proceedings are over and a person is executed for his crime. Nevertheless, it is not a one-shoe-fits-all situation. We should devote more resources to counseling victims and to exploring with them what their needs are outside the criminal justice system.

## **What particular problems does the United States pose for opponents of the death penalty? Why is it the only leading industrialized nation in the West that has not abolished the death penalty?**

I think the United States is a very punitive country and society. We have largely given up on the idea of rehabilitation. There are many reasons for that, but I think that is something that distinguishes us from a number of other countries that still believe that the principal purpose of incarceration is to rehabilitate people and not to simply throw them away.

Another issue is that we have a very localized approach to crime and punishment. We have a legal system in which the states punish people who commit crimes within those states. Even within the states it is divided up into counties in most places, and so there is a very local sense of control over how people are punished for their crimes. That makes it more difficult to set national policy. The president of the United States cannot abolish the death penalty which is what happened in France with President Mitterrand. The federal system of government in the United States poses an additional obstacle as well.

## **International Institutions and The Death Penalty:**

### **What should the role of international institutions be in helping to bring an end to the death penalty?**

International institutions can educate and inform people about alternatives to the death penalty very effectively. For example, I was just in Morocco at a conference with members of the Moroccan judiciary and Justice Ministry, including prosecutors, to talk about alternatives to the death penalty. This was a conference that was organized by the Centre for Capital Punishment Studies of the University of Westminster in London with funding from the British Foreign & Commonwealth Office. This is a really good example of what the international community can do – starting a dialogue about the death penalty, bringing the experience of other countries to bear, and demonstrating that Europe and Latin America do not have the death penalty, and yet violent crime has not spiked after abolition. In fact, the crime rates in Europe are lower than in the United States. They have successfully implemented alternatives to the death penalty like longer prison sentences that allow for some rehabilitation of offenders and are perfectly able to insure the safety of people in the community and in prison and are also more humane alternatives to the death penalty.

### **What, specifically, do you think the International Court of Justice can do?**

International courts and human rights bodies can examine individual cases as well as the practices of countries relating to the death penalty and can issue judgments that recommend changes in how the death penalty is applied. That is what happened in the Avena case [Case Concerning Avena and Other Mexican Nationals, 2004 I.C.J. 12], which was not about the death penalty. It was about consular rights and the fact that the United States had violated the right of consular notification under the Vienna Convention on Consular Relations [of 1963] of fifty-one Mexican nationals who had been sentenced to death. Of course, Avena is related to the



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death penalty because it involved 51 Mexican nationals on death row. One of the reasons that the United States hasn't yet complied with this ruling is that Texas, where many of these men have been sentenced, has refused to respect the decision of the International Court of Justice in *Avena* – even though the decision merely required the courts to hold hearings to determine whether or not and to what extent the consular rights violations prejudiced these men in their capital murder trials.

There are limits to what the international community can do. The International Court of Justice is the highest court in the world; it is the judicial arm of the United Nations. The United States was instrumental in creating it. The United States has signed treaties that require it to abide by the Court's decisions. The United States Supreme Court and Bush Administration and even the state of Texas agreed that the United States has an international legal obligation to comply with the ICJ's decision in *Avena*. But even though our leaders agree that the United States has an obligation to abide by this ruling, but the United States is not doing so. The fact is that there is very little that the international community can do about that except to issue resolutions condemning the United States and exhort the United States to comply with the judgment. But that is the limit. There is no effective enforcement mechanism when countries refuse to comply.

The United States Supreme Court held that with regard to the *Avena* judgment itself, the President was powerless to compel states like Texas to comply with the decision. Instead, the Court held that Congress needed to pass legislation to transform our international legal obligation to comply with the judgment into binding federal law. So far, Congress has failed to do that, and neither the Bush Administration nor the Obama Administration have encouraged Congress to pass legislation, so there has been a stalemate which resulted in the execution of one Mexican national, José Medellin, who was never advised of his consular rights and who was never provided the remedy mandated by the ICJ.

We now have another five Mexican nationals in Texas who are probably going to be facing execution within the next six months to a year, none of whom have received review and reconsideration. They are at risk of facing the same fate as José Medellin. The question is how will the Obama Administration respond (so far it has done nothing) and how will the international community respond if those executions are carried out?

## **Can international law be an effective tool against the death penalty in the United States in the future?**

International Law is an effective tool and has been helpful in cases like *Roper v. Simmons* which eliminated the death penalty for juveniles and *Atkins v. Virginia*, the case that eliminated the death penalty for mentally retarded people. The Supreme Court cited international law in both of these cases as helpful in reaching its decisions. In that sense International law will continue to be relevant, informative and helpful as long as the composition of the Supreme Court doesn't change dramatically. We currently have five justices who believe in the relevance of international law and four who don't.

There is no question that the world is headed toward abolition. The pace of abolition in the international community is astounding. Only fifty-eight countries retain the death penalty. Of those only twenty-five countries continue to carry out executions, and of those twenty-five, five countries carry out 88% of all executions in the world. Only a very small number of countries actively impose death sentences and carry them out. These include Saudi Arabia, Iran, Iraq, China and the United States. It is clear that we should not be proud of being lumped together with those countries. The majority of the world has come to believe that the death penalty is an outmoded and barbaric form of punishment.

Once only a couple of dozen countries have the death penalty, and it is increasingly apparent that the number of countries who do are authoritarian, undemocratic and human rights violators, that will make a difference in the United States.

## **The Malawi Project:**

### **Can you say a little about your work in Malawi? How long have you and your students been going there?**

Our work in Malawi has mostly involved death penalty cases, specifically murder cases, which are eligible for the death penalty in Malawi. I have taken teams of students and a couple of other lawyers to Malawi to interview prisoners who are charged with murder, to review their case files and to assess whether or not there is sufficient evidence that they are guilty of murder, whether they have a defense, whether there is sufficient evidence that they committed a crime at all or whether there are mitigating circumstances that would justify reducing the charge to one that is not eligible for the death penalty. We have been doing that for three years – since 2007.

We are going back in November. We have actually gotten twenty-five people out of prison as a result of that work. We have interviewed at least 100 to 125 people in prison in Malawi.



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We work with both prosecutors and defense lawyers. We usually divide up into teams. The team working with the prosecution will spend time reviewing files and writing memos for review by the prosecutor. The team working with the defense lawyers will go into the prisons, interview prisoners and then assist the public defenders who are handling those cases.

Usually around four students go to Malawi and they are accompanied by me and another lawyer or law professor. This November I am taking one student and one recent law school graduate. In the fall we usually go for a week and in the spring for two weeks.

Our focus is to try to get people released from prison because even being in prison in Malawi for a few years can be a death sentence because the conditions are so awful. People don't get enough to eat. There is a lot of disease, and the prisoners don't get medical care. People are literally dying in prison.

We try to be very collaborative, as opposed to confrontational, with the Malawian government. When you go into a foreign country, it is very difficult to parachute in and pronounce your views on the death penalty. One has to take a lot of time getting to know the culture and building trust before people will even listen to you.

This project got started because of an article about prison overcrowding in Malawi that I read in the New York Times. This was just as I was coming to Northwestern, and I was looking for projects to be involved in in other countries. This seemed to be an issue that needed some attention.

I contacted an organization called Penal Reform International that was working in Malawi that was working in Malawi at the time. They had formed an organization of trained lay people/paralegals from Malawi who would go into prisons and educate the prisoners about the legal system through skits and role-playing. They teach the prisoners to advocate for themselves in court. Through this organization we were able to conceive this project. We continue to work with this group of Malawian paralegals.

## **Ending the Death Penalty in the United States:**

### **What strategies might be effective in bringing an end to the death penalty in the United States?**

It has to be a multi-tiered strategy. It can't focus just on litigation or legislative advocacy. There has to be a lot of public education which can be done by exposing the systemic problems in the application of the death penalty and in the injustices of individual cases. There needs to be a lot of very careful work with the media. There has to be educational work in the communities and outreach to legislative bodies. We have to continue to litigate and to challenge the application of the death penalty both in individual cases and systemically. We have a very long road ahead of us.

There are organizations that campaign against the death penalty in the United States. These include the National Coalition against the Death Penalty, the American Civil Liberties Union, Human Rights Watch and Amnesty International which has a United States division. AI is probably the most active organization against the Death Penalty. There are also a lot of smaller organizations. There is one in California called Death Penalty Focus that does a lot of good work there. There are smaller organizations like that the Advocates that do a lot of good work both in the area of education and in supporting litigation.

People used to be much more focused on domestic politics and domestic litigation strategies, but now people are much more attuned to international law and the international community and the interplay between international law and domestic law. This was not the case twenty years ago.

**In response to a request Professor Babcock forwarded information about two cases which she believes illustrate some of the problems with the death penalty. A brief summary of each of these two cases follows.**

### **Cesar Roberto Fierro Reyna**

Cesar Fierro was a Mexican national who was sentenced to death for murder in 1980. Because there was no physical evidence linking Fierro to the crime, the prosecution relied on the testimony of a psychologically-disturbed juvenile thief and Fierro's coerced confession. Fierro signed a written confession after the police informed him that his mother and stepfather had been arrested by a Mexican police commandant who was known to torture detainees. Fierro was told that his parents would only be released if he confessed. Even though he later recanted this confession, it was still admitted at trial when El Paso police falsely testified at a pre-trial hearing that the confession had not been coerced. Further, Fierro was never informed of his right to contact the Mexican Consulate



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for assistance. The lawyer who prosecuted Fierro at his trial has joined defense lawyers in calling for a new trial. In 1994, an El Paso district judge recommended a retrial after finding that Fierro's confession was coerced, but a Texas appeals court refused to follow that recommendation, calling the error "harmless".

## **Joseph Stanley Faulder**

Mr. Faulder was a Canadian citizen who was convicted of murder in 1977 on the basis of an illegally obtained confession although the physical evidence pointed to another, unidentified, suspect. In 1979, the Texas Court of Criminal Appeals overthrew the conviction and threw out the tainted confession. The prosecution then considered a plea bargain with Mr. Faulder, but the victim's son hired two private attorneys to prosecute him. Because of the lack of any physical evidence, the attorneys relied on the testimony of two highly dubious witnesses (a former prostitute and Faulder's accomplice) and her husband who were paid "travel expenses" to testify. The accomplice claimed to have witnessed the murder, and the husband corroborated her testimony, without admitting to involvement that would make him an accomplice. It was later found that he had been heavily involved in planning the crime, contradicting the testimony of both the husband and wife at trial. During the sentencing phase of the trial, Mr. Faulder's jury based its decision on the false testimony of Dr. James Grigson, who is notorious for his eagerness to testify for the prosecution in capital cases and who was later expelled from the American Psychiatric Association for his unprofessional and unethical testimony in death penalty cases. At trial, Grigson described Mr. Faulder as a "sociopath."

Finally, Mr. Faulder was never informed of his right to seek the assistance of Canadian consular officials in preparing his defense. The Canadian government did not learn until 1992 that Mr. Faulder had been charged, convicted and sentenced to death. Had they been informed as required by the Vienna Convention, Canadian consular officials could have influenced the state's willingness to plea bargain as well as the quality of the defense asserted at trial. Despite all of these flaws in the prosecution of the case, Mr. Faulder was executed in 1999.