

Death by Good Intentions

Advertisement

By David R. Dow

Sunday, October 15, 2006; B07

In two weeks the National Coalition to Abolish the Death Penalty, the nation's premier abolitionist organization, will meet to celebrate its success in reducing popular support for the death penalty and to discuss tactics for continuing the effort. There is something its members ought to know, however: The tactic that has eroded popular support for the death penalty is at the same time making it easier to go ahead with executions.

Many death penalty abolitionists operate in the belief that as soon as they identify one innocent execution victim, the death penalty will die a sudden and convulsive death. This belief is chimerical. We already know the names of a number of wrongly executed people, for all the good it's done.

An investigation by the Chicago Tribune revealed that Cameron Willingham, executed in Texas on Feb. 17, 2004, was almost certainly innocent. An investigation by the Houston Chronicle demonstrated that Ruben Cantu, executed in Texas on Aug. 24, 1993, was innocent. Professor Sam Gross of the University of Michigan has identified more than a hundred innocent men who have ended up on death row.

Proponents of the death penalty nevertheless continue to say that no one has yet proved innocence in these cases because none of them involved DNA. So the abolitionists search for DNA. One day they will find it, and when they do, we will add one more name to the list, and some district attorney will apologize and say regretfully that mistakes happen. And the machine will grind on.

It will grind on because the focus on innocence has insidiously distracted the courts. When I represent a client in a death penalty case, judges want to know whether there is any chance that client is innocent. If he isn't, then they are not much concerned about anything else I have to say.

Oh, so blacks were excluded from the jury? So what, he's guilty; any jury would have convicted him. Oh, so police hid evidence? Big deal, there was plenty of other evidence that he did it. Oh, so his lawyer slept through trial? Why does that matter? Clarence Darrow himself couldn't have kept him from the gallows.

This past week the Supreme Court agreed for the second time to hear the appeal of LaRoyce Smith, a death row inmate in Texas, because the Texas courts, convinced of Smith's guilt, believed they could therefore ignore the fact that his right to a fair trial was violated. Yet the Supreme Court itself is partly to blame. In the recent case of *Kansas v. Marsh*, Justices Antonin Scalia and David Souter engaged in an extraordinary debate over the persuasiveness of Gross's study and whether any innocent person has been executed in the modern death penalty era.

Of course, only the most naive person -- or perhaps the most disingenuous -- would think that we miraculously identify everyone who is innocent just in the nick of time. But what was even more astonishing about this debate was that the arcane legal issue in *Marsh* had absolutely nothing to do with the question of whether Marsh was innocent or even with the issue of innocence in general.

Innocence is a distraction because most people on death row are not in fact innocent, and the possibility of executing an innocent man is not even remotely the best reason for abolishing the death penalty.

The best reason is that killing is wrong. The second-best is that the death penalty is unfair: the system favors white skin and devalues dark; it favors the wealthy and penalizes the poor. The third-best reason is that it tempts the government to cheat, and the government does cheat routinely; police lie and prosecutors withhold evidence. The fourth is that it is economically unsound; we have failing public

schools, citizens without adequate health care and potholes in our streets, yet we squander a billion dollars carrying out unnecessary executions.

Innocence is important, but death penalty opponents, of all people, should beware of diminishing the best and more powerful reasons for abolition and in the process, making the execution of the guilty acceptable -- because it is not.

The writer, university distinguished professor at the University of Houston Law Center, has represented more than 75 death row inmates. His most recent book is "Executed on a Technicality: Lethal Injustice on America's Death Row."

© 2006 The Washington Post Company

Ads by Google

[Mystery Guild ® Book Club](#)

Get 6 Mystery Books for \$.99. Get 60% off others. Official Site.

www.MysteryGuild.com

[Free Nancy Drew PC Game](#)

100% Free Nancy Drew Adventure Game Solve Your Own Cases. Get It Today!

NancyDrew.musthavefreegifts.com

[Free Children's Books](#)

Avid reader? Trade books for free! Request 2 books of your choice now.

www.FrugalReader.com