



legally SPEAKING

On Death Row

David R. Dow is a distinguished professor of law at the University of Houston. He is also an appellate attorney who has represented more than 100 death row inmates. His memoir, *The Autobiography of an Execution* (Twelve), was published in February. Dow spoke earlier this spring with *California Lawyer* Editor Martin Lasden. To listen to the full interview online, go to www.uchastings.edu/legally-speaking.



David R. Dow

Q. Of all the death row inmates you've represented over the last 20 years, how many have been executed?

Half. Maybe more than half. Maybe 60.

Does working so hard for what often turn out to be very temporary stays of execution ever make you feel that you're just prolonging the suffering of your clients?

Wow, that's an amazing question and the answer is yes, I absolutely feel that way sometimes. I've had clients who obviously don't want to be executed, but once they have an execution date and then get past that date, they are not always joyful. They know they're still going to be executed and so now what they have is another month, two months, three months where the date is circled on their calendar and they're again living the last days of their lives all over again. I think that's difficult to do.

You say in your book you're careful not to give your clients false hope. What's wrong with a little false hope in a situation like that?

I'm very straightforward with my clients. And it's not that I want to squash their hope just to make it easier on me when I call them at 20 minutes to six on the day they're going to be executed. It's because they are human beings who have lives that many of them want or need to wrap up. They have moms and

dads they want to say good-bye to, they have brothers and sisters, many of them have wives or girlfriends, sons and daughters. If someone told me that I had 30 days to live, I would want that person to be honest with me so that I could say good-bye to the people that I want to say good-bye to.

Of the 100 or so death penalty inmates you've represented, you say seven of them were people who you thought were

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factually innocent. Do you think they experienced the additional time that you were able to win for them any differently from those who made no bones about their guilt?

In one sense I think the answer to that is yes, absolutely, because clients who are innocent feel vindicated when they win in a way that clients who are guilty don't feel vindicated—even if it's not on the claim of innocence.

When George W. Bush was governor of Texas he said that he didn't think that any innocent people have ever been executed.

He did say that. He said 100 percent of the people who were executed during the time he was governor were guilty.

Was he being disingenuous?

I think he was probably saying what he actually believed. I don't think George Bush was lying about that.

In your business the standards of success seem a little odd. Like for example, if someone dies of AIDS before he's executed, that for you is a success. If someone ends up in prison for the rest of his life for a crime he didn't commit, that's a success. If someone commits

suicide before he's executed, do you consider that a success as well?

It's perverse. I realize it's perverse. But what I'm trying to do is to keep the state from killing my client, and so if the state doesn't kill my client then I've succeeded.

Didn't one of your clients commit suicide?

Yes. It's hard to commit suicide on death row. But before somebody has an execution date it can be done.

To what lengths will the state go to save the life of someone so that they can execute that person later?

To extraordinary lengths. We had an inmate we were representing a couple

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of years ago who managed to. ... I don't remember how he tried to kill himself. I think that he had somebody smuggle barbiturates into prison, which meant that it was a guard who was helping him do that. And he was taken by the prison to get emergency medical care. They pumped his stomach, they kept him in the hospital for a few days till they could restore his health. Then two weeks later they executed him.

You've acknowledged that some of the people you represent are evil. You would use that word?

Yes, I would use that word. And what I mean by that is that they can't be fixed, that they're just irreparably broken. And what that means is they need to be in prison for the rest of their lives for society to be safe. Now I don't know why they're irreparably broken, I'm not saying that they were born that way. I'm not saying that they are inherently bad people who come out of the womb already bad. I'm not saying that. I'm saying that by the time they get to the point that I know them, they can't be fixed.

You write that a good day for you is when no one dies. Even cancer doctors have days when they get meaningful remissions. The work that you do is considerably grimmer, it seems. So, having written about it, do you have a better understanding of why you continue to do this kind of work?

No. Once I tried to stop, and another time I halfheartedly tried to stop.

You make it sound like you're an alcoholic.

Well, you know I think it probably has something in common with addiction. ... There are a lot of great lawyers in Texas who do this work, and if I quit today 48 out of the 50 guys I represent would land in perfectly great hands. But two would end up with somebody who didn't care about them and didn't care about litigating aggressively. And it's this fear that makes it impossible for me to walk away. ☹