

Careers

Death Penalty Lawyers

A Fight That Never Finishes

By Ann Farmer

“Every day I think, ‘I don’t want to do this anymore,’” says Carla Ryan, an Arizona death row lawyer whose dogged legal maneuverings have resulted in numerous inmates’ death sentences being converted to life in prison or have sustained them on death row for decades. “The hardest part is any execution,” she says, recalling the time that she was strategizing on a client’s behalf right up to the moment he was strapped down for a lethal injection. But, despite the emotional difficulties of her work, she perseveres because, she says, “I believe that what I’m doing is right.”

Faced with mountains of paperwork, protracted legal battles, low salaries, and an exacting emotional toll, death penalty lawyers have some of the toughest jobs in the legal system. Many view what they do as human rights work. Others compare their stressful careers to those of emergency room doctors charged with attempting everything humanly possible to preserve life. Even after saving a client from execution, the reward is often fleeting. “You feel real satisfied for about a day,” says Texas death row attorney Mandy Welch. “Then something happens in another case, and you have to think about them.”

It’s often the very urgency of the work that prompted these lawyers to get involved in the field in the first place. For instance, 20 years ago, Welch took on her first death row client less than a week before he was to be executed in Oklahoma. Reflecting a problem that’s endemic in the United States, the inmate was indigent and couldn’t afford to hire a lawyer to file a federal appeal on his behalf. No volunteer lawyer had stepped forward to help him either. Welch was appalled: “The idea that the judge could set an execution date without that person having a lawyer to file a post-conviction appeal was horrible to me,” she says. “It would be executing a person without knowing if the conviction was flawed.”

Determined to beat the minutes ticking down on the man’s life, she stayed up all night to write a brief and two days later attended a hearing to determine his right to a stay of execution. “It was like a kangaroo court,” says Welch, who objected to the proceeding because she hadn’t sufficient time to familiarize herself with the case. Nonetheless, she was able to keep the case rolling. And it was a roller coaster. During the next five years, she lost her habeas petition in federal district court only to win in the U.S. Court of Appeals for the 10th Circuit on the grounds that her client’s crime—in which he shot and killed his boss after he was fired and also shot his boss’s wife, who ended up losing a leg—wasn’t any more heinous, atrocious, or cruel than other murders that aren’t eligible for the death penalty. When the state appealed that decision, Welch argued again before the U.S. Supreme Court, which upheld the circuit court’s decision, setting the final stage for her client to be re-sentenced to life in prison.

Intense Commitment Required

It takes stamina to usher a capital case for years through any number of state and federal courts while seeking the overturn of a death sentence. “People don’t just pick up a case and do it casually,” says Deborah Fins, director of research and student services for the NAACP Legal Defense and Educational Fund. “It’s very difficult to do this work unless you believe in what you’re doing.” For instance, the capital litigation process requires lawyers to gain an intimate understanding of their client’s life, which usually results in their developing a very close relationship. Later, Fins says, if they’re unable to save their client’s life, “then the loss is not just a professional loss, but a personal loss as well. And that’s as intense an experience as there is in the legal practice,” she adds.

Christina Swarns, director of the Legal Defense Fund’s Criminal Justice Project, says death row attorneys used to be considered renegades, subject to hostility both within and outside the criminal justice system for defending inmates often convicted of grisly crimes. That image has shifted, in particular with the advent of DNA testing, which proved the innocence of 14 of the 117 inmates in the United States exonerated from death row since 1973.

The media also has drawn more public attention to a legal process that favors defendants who can afford effective representation.

“It became common knowledge that some lawyers were drunk and sleeping during trial, and had been disbarred or were facing disciplinary measures for their actions while trying capital cases,” says

Swarns. “As those things filtered into the public consciousness, people began to think, ‘Okay, even if this person did this horrible thing, there’s something wrong with this system.’”

Today, even mainstream organizations are coming out against the death penalty, including eight attorneys general who recently submitted an amicus brief to the U.S. Supreme Court opposing capital punishment for juveniles. Even so, death row lawyers continue to operate in an environment where, according to an October 2003 Gallop Poll, 65 percent of Americans support the death penalty. “I’ve received horrible letters from people,” says Ryan, whose mailbox has been blown up four or five times. But the biggest shock was the day she arrived home to discover her beloved German shepherd strung up in her yard. That incident occurred while she was conducting a direct appeal for a man accused of kidnapping and murdering a young girl. She figures that, in the eyes of whoever killed her dog, “I might as well have done the crime myself.”

Patience for Painstaking Detail

Even their own clients can sometimes be leery of them. “We all get used to hearing: ‘You’re a public defender. I want a real lawyer,’” says Adele Shank, who’s been doing death penalty appeal work in Ohio for the last 20 years. “They think that because your money is coming from the state, then your loyalty must lie with the state as well. But, when they see that you’re paying attention to the details and pursuing different avenues, that makes a big difference.”

These days Shank takes on a lot of direct appeals, spending countless hours sitting in an office combing through lengthy court records for even the smallest legal error on the part of lawyers, judges, or jurors that might have taken place during trial. It’s painstaking work that also requires staying apprised of every potential technical issue or change in the law that might affect the outcome of a hearing.

For Ryan, who often represents inmates during their state and federal habeas appeals, it can mean taking on a case 10 to 15 years down the road. By then, her client’s file has passed through the hands of many different lawyers, so documents are often lost. “You may have to recreate the whole factual thing in order to analyze and review it,” Ryan says. That hurdle is compounded with witnesses who may no longer remember what happened. And clients, often mentally ill to begin with, have spent years in prison isolation. “And they just get worse,” says Ryan, who recently got someone off death row who has an IQ of 53.

To add to those challenges, death row inmates are frequently scarred emotionally—having usually suffered some degree of abuse or neglect during their lives. Many are severely depressed. “What that means,” Fins says, “is that these clients aren’t always the easiest to get to know.” Yet, death row attorneys must convince their clients to talk about the worst things that ever happened to them in order to effectively represent them. “It can be depressing,” Shank admits. But she says if she can get the jury to look beyond the crime and see the humanity in her client, “that is often what will turn a case.”

Access to resources also plays a big part in the ability of death row attorneys to fulfill their obligations to their clients. California attorney Kathy Chavez has represented several Mexican immigrants on death row. In one instance, the California Supreme Court gave her \$25,000 to conduct her habeas investigation, an amount that fell far short of the cost of expert witnesses and the funds necessary to conduct a thorough investigation. Chavez paid some of the experts’ fees out of her own pocket, and covered the cost of several trips to Mexico to interview her client’s family and friends. “The Supreme Court says you have to do this to be effective,” she says. “It’s a hard decision to say where you draw the line, or where you end the investigation. You want to be able to say, ‘I did everything I could to save this man’s life.’”

For Chavez, who speaks fluent Spanish and often represents clients who don’t speak fluent English, her job is also providing hope and expression to the “voiceless and forgotten,” as she calls them. For instance, one client, who had killed his friend and been picked up drunk afterward, was appointed a trial lawyer who didn’t bother to introduce his blood alcohol level and blew off his request to talk to his consulate. For another case, she traveled to a remote village in Mexico to interview her client’s parents, who rode down from the fields on a donkey. Before leaving, the mother told her in Spanish, “I put my son in your hands.” Chavez recalls, “I felt so responsible. It would have been unbearable if we had not won.”

Living with Loss

Even winning has its dark side. When clients are saved from execution, it’s usually to spend the rest of their life behind bars without any chance of parole. Ryan won one case in the World Court on behalf of the German government and two German citizens convicted of first-degree murder in the United States. The Court decided that the United States had violated international law and the German citizens’ right to

due process when it ignored an international treaty that gives foreigners the right to contact their consulates when being tried in a capital case. But it was too late to save her clients, who had already been executed by the time the case was finally heard.

“Everything’s hard about being involved in the killing machine,” says Ryan, adding that defending death row inmates doesn’t diminish the empathy she feels for the victim’s family. “You also have to live with their loss,” she says. “And, for the most part,” she adds, “the client probably did do it. But there’s nothing you can do about that.” She says that, in her experience, the victim’s family members are often divided on whether to seek the death penalty. “When families don’t want to continue the killing, I respect that,” Ryan says.

Welch feels that the capital punishment process brings out the worst in everybody. “It rewards the side of us that is drawn to vindictiveness and revenge.” She’s found herself more drawn to spirituality the longer she’s done the work. She says one case in particular still haunts her, involving a client she was convinced was innocent but was unable to save from execution. “I went through a lot of turmoil and anger. To this day, I still feel angry. It brings up such a feeling of helplessness,” she says.

So many death penalty lawyers, in fact, feel burdened with guilt and frustration as a consequence of their high-stakes, high-stress profession that the Defenders Services Office in the Administrative Office of the U.S. Courts along with some representatives of Federal Defender Capital Habeas Units—of which women head the majority—made stress in the workplace a topic of discussion at a recent seminar. Swarns says she was impressed by the willingness of participants to discuss such manifestations of stress as colleague bashing, which sometimes occurs when one attorney vehemently disagrees with the legal strategy of another. “You hear people say things like, ‘That’s so stupid. You just killed your client,’” says Swarns. She adds, “We’ve only taken baby steps in terms of knowing what this job does to us.”

Fighting the Good Fight

Ryan says what keeps her going is her sense of humor and a range of hobbies, including scuba diving and running a catering business. But, when she stops to consider the low pay and other sacrifices, she’s forced to admit, “I’ve given a lot to the fight. It’s cost me dearly on a personal level.” In addition, she says, the burden spills over to her friends and loved ones. “I might be on vacation with someone, for instance, and the next thing you know, I’m on the plane heading back.”

Because death row inmates often share information about their lawyers, Shank says one of the rewards is to visit a client in prison and hear from another inmate, “Great brief you wrote for so and so.” On the other hand, she says, “You can’t do this work and not know you’re going to lose sometimes.”

In the early 1990s, Shank heard about an inmate in Texas who was on the verge of being executed and couldn’t find a lawyer to help him file a last-ditch attempt for a clemency from the governor. As an authority on clemency, Shank went to help. “I was in the office filing documents to delay his execution right up to the moment he was executed,” recalls Shank. When she and the other volunteers realized there was nothing more they could do, they stopped and sat in silence. “We fought the good fight,” she says, “but it didn’t work. When that happens, you know with absolute certainty that you’re doing the right thing, and you have to stop it next time.”

Ann Farmer is a freelance journalist who lives in New York City. She formerly produced the Court TV program, Lock & Key. Currently, she reports on crime and other local news for the New York Times and contributes to various publications, including More magazine and Women’s eNews.