Richard Allen Davis: Safe on death row

by Debra_J_Saunders

When a jury found Richard Allen Davis guilty of the murder of Petaluma's 12-year-old Polly Klaas in 1996, Davis puckered his lips and extended a middle finger to TV cameras. Later, Davis was sentenced to death, and outraged California voters passed a three-strikes sentencing law.

From death row now, Davis still is puckering up and extending his finger at the public â€” and the public is paying for it. It's 2009, yet it was only this month that Davis' first appeal was argued before the California Supreme Court.

"Who would think it would take almost as long for this guy to get his hearing after he was sentenced to death than my daughter was on this Earth and she didn't reach her 13th birthday?" Polly's father, Marc Klaas, told me Tuesday.

Expect a ruling on that appeal within 90 days. Then there's a state habeas corpus appeal. Then Davis has a federal habeas corpus appeal. Before it's over, Davis, now 54, probably will have died of boredom. Or from another opium overdose, like the one for which he was treated in 2006, despite the fact that he was inside San Quentin.

How did it take this long? Davis was sentenced to death in September 1996 for the 1993 crime. Then it took the California Supreme Court office that handles appellate attorneys until mid-2001 to appoint attorney Phillip Cherney to represent Davis. As I've reported before, five years is not an unusual hiatus.

Then it took Cherney until July 11, 2005 to file an opening brief. Producing the appeal took longer than the prosecuting of Davis.

After another four years of delay and back and forth with the California attorney general's office, voila, there was a hearing in March.

"I have no issue with the careful consideration of death penalty appeals or that it is an automatic process," said Klaas, and he wants a system that prevents the execution of an innocent man.

But the last 13 years were not dedicated to a hunt to find the real killer. Davis confessed on videotape. He led authorities to Polly's body.

So the basis of the appeal was legal contortion. Cherney argued that the trial should have been moved from Sonoma County, not to San Jose, but to San Diego. Also, while police had advised Davis about his right to remain silent and consult a lawyer, they did not do so before one pre-confession talk. As if a man with an 11-page rap sheet might be unaware of his rights.

According to The Associated Press, Cherney even complained that California's inability to quickly carry out executions has forced Davis "to endure the uncertainty and ever-present tension on death row for such an extended time constitutes cruel and unusual punishment."

Shameless. "I was expecting some kind of brilliant argumentation," Klaas told me afterward. After all, the five-year process to appoint an attorney is supposed to limit the pool to highly qualified specialists. Instead, Klaas watched "some guy with a ponytail making pretty weak arguments."

In Cherney's defense, weak arguments were all he had. How much has this exercise cost taxpayers? No one knows. That information is restricted. Ron Matthias, the supervising deputy attorney general handling the case, told me, "The frustration that you are describing is shared widely."

Here's the worst part: If Davis said tomorrow that he wanted "the big jab," the state could not comply. In 2006, U.S. District Judge Jeremy Fogel suspended all California lethal injections. Later, the U.S. Supreme Court upheld lethal injection. Didn't matter, because a Marin County judge had ruled that there must be public comment on the new Fogel-inspired lethal injection protocol before it is adopted.

When will the public comment occur? "I don't know," a California Department of Corrections and Rehabilitation spokesperson answered.

It's funny how the folks who want to parole criminals to pare the state budget never look at the high cost of glacial appeals. Klaas believes that the decades-long delays are the result of "a silent protest against the death penalty by the defense bar, abolitionists and other death-row apologists." If there ever is an innocent person on death row, he'll die before the courts find out.

Copyright 2009 Creators Syndicate, Inc.

Richard Allen Davis: Safe on death row by Debra_J_Saunders