

**A Special Hearing on Capital
Punishment:
Perspectives at the Death House
Door**

**Presented by the Independent Film Channel and
the University of Texas School of Law**

**Senate Committee Room E1 106
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TRANSCRIPT

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[START TAPE]

MR. ROB OWEN: Good afternoon. We'd like to get started, so those of you who haven't had a seat may want to take a seat. Thank you all so much for coming this afternoon. My name is Rob Owen. I'm a clinical professor of law at the University of Texas Law School here in Austin. Thank you again for coming. As I said, this is the program "Special Hearing on Capital Punishment Perspectives at the Death House Door." We're delighted to see so many of you have turned out on such a lovely afternoon to spend a couple of hours with us talking about this critically important national issue, which has spawned, I think, a powerful and moving film. This afternoon, you won't see all of that film, but we will see a few selections from it and perhaps equally interesting, you'll get to hear the responses of people who have been intimately connected to the events of the film, which touch on many important issues and questions surrounding the practice of capital punishment. What I would like to do first is play the trailer for the film as a way of setting the stage to give you all an idea of the overview of the subject that we're going to be addressing this afternoon. Before I do that, I do want to thank the people whose participation in this event has made it possible. In particular, Eden Harrington from the University of Texas Law School, my colleague Maury Lavin [phonetic] from the Capital Punishment Center at UT. Also Senator Rodney Ellis from the Texas State Senate who unfortunately can't be with us in person this afternoon. We are lucky to have him on speakerphone and at one point or another during our conversation, we'll certainly invite his reaction and response to some of the clips this afternoon, but without his assistance in organizing and getting us the opportunity to

put on this hearing here at the state capitol, we certainly would not have been able to do so, and we're very grateful to Senator Ellis for his support of our efforts. If we could please roll the trailer, that would be great.

[VIDEO CLIP PLAYED]

MR. OWEN: I'd like to remind all of you that the film "At the Death House Door" will be premiering during the South by Southwest film festival beginning in a day or so here in Austin, and if you keep an eye out for it then and soon coming to a theater near you. We're fortunate today to have Peter Gilbert and Steve James, the filmmakers responsible for "At the Death House Door" to anchor our program. I cannot do justice to their track record of awards for the films that they have made on any number of important issues to contemporary American society, ranging from racial integration to the Vietnam War, the Iraq War, poverty in the inner city. They are filmmakers who take on tough issues, controversial points of view and they give them sensitive treatment in an evocative and moving setting. I think we are really fortunate to have them here with us today. Before we turn to our panel discussions of the film, we want to give them an opportunity to talk a little bit about how they came to make this film and what role they see it playing in our national conversation about capital punishment.

MR. PETER GILBERT: Thank you, Rob, and thanks to everyone that put together this really terrific event today and for all of you that have come out to see it. I'll just say a few words about how we came to make tie film. It really started with the Chicago Tribune and with Maury and Steve, the reporters. They had been working on an investigative story about Carlos DeLuna and whether his execution had been proper and whether he had been actually guilty when he was executed back in 1989. The Tribune came to us at - - Films in Chicago and said that they thought it would make an interesting potential film about this story. We were fascinated by that story. In the course of telling us about Carlos, they happened to mention one other part of their story, which was the pastor who spent Carlos' last day with him and who had presided over 95 executions at his time at Huntsville Prison in Texas, and that would be Carol Pickett, here to my right. I remember Steve specifically saying this really interesting thing about Pastor Pickett. He would come home in the evenings after the

execution and as a way of dealing with it, he would get out his little cassette recorder and record what happened that day for that last day of that inmate's life. At that point, I remember saying we'd love to do a film on this, and what we decided was that we wanted to make the primary focus of this film the story of Pastor Pickett's journey through the prison system and through this role of being the death house chaplain, starting with the fact that he was the very first lethal injection done anywhere in the world, which was done here in Texas, Charlie Brooks. Carol was there for that and ministered to him. That became the foundation for our story, and yet as you see in the trailer, Carlos's story was also a very big part of this, because Carlos, I think it's fair for us to say from our spending two years wit Carol, Carlos of 95 was the inmate that probably haunted him most, and the fact that the Tribune was doing this important investigation and bringing this story back into the public eye also brought it very much back into Carol's life, and so that's sort of what our film became.

MR. STEVE JAMES: I was lucky enough to meet Reverend Pickett actually through his wonderful book, "Within These Walls," which is, if you haven't read it, I hope you do go out and get a copy and read it. I think what Steve and I hope to accomplish with this film is to bring the issues that Reverend Pickett told us so much about in the film to life and to get them out into the public. He helped us discover the experience firsthand from what he lived through and how the death penalty puts pressure on society and on everyday people's lives. Reverend Pickett, as he informs us, when the state puts someone to death, it affects so many people from its employees to the families on both sides of the issue, and I just hope the film broadens the discussion and makes an impact on the nation.

MR. GILBERT: And the film premiers on March 9 at 4:00 p.m. at the Paramount. If you can't see it then, it plays again on Wednesday at the Civic Center.

MR. OWEN: I'll definitely make a note. My experience with South by Southwest is the premiers are often difficult to get into, and this film is certainly going to pack the house, so I think take note of multiple showings, because it may make it easier for you to get a look at this movie before your friends and neighbors do. Thank you both. We're again luck

to have you here, because I think you bring special insight about the film and how it was assembled, why you thought the particular story you were telling was compelling and important and I hope that as we proceed through the conversation to the extent that you have comments to make about our views of the film that you'll feel free to let us know what you think as well. Thank you both. Before we show our first clip and proceed to our actual substantive panel discussion, I'd like to take this opportunity to introduce the remaining members of our panel just briefly. Again, their biographies are set out in some detail in the program. I hope you'll take a look at them so you can fully appreciate what a dramatic range of experience and knowledge about the subject we have assembled this afternoon. To give you a quick introduction, from your right to left--first, Paula Kerent [phonetic], a well-known victims' advocate here in the state of Texas who has regularly appeared here in the Texas legislature to speak on behalf of the interests of crime victims. Next to her, Dr. David Oshinski from the department of history here at the University of Texas at Austin. Dr. Oshinsky, as many of you know, is a Pulitzer prize winning author. He has written a number of terrific and intensely moving books, including one that really changed my life, his book about the Parchment Prison in Mississippi, and I recommend it to you all if you haven't read that. You've met Steve James, and next to him Carol Pickett. As you heard Steve say, Reverend Pickett was for many years the chaplain of Texas' death house. He ministered to the men on death row in the hours and days before they were put to death and he even before that has led a lively and interesting career as a man of God in the East Texas area. I'm looking forward especially to hear Reverend Pickett's reminiscences and reactions to some of these bits of his life that we are going to share with you. Next to him, the Honorable Craig Watkins, district attorney of Dallas County, the first African American to hold that position. He has been a study in dynamic reform since he took office in Dallas, leading a number of terrific, innovative investigations into the possibility of wrongful conviction, streamlining that office, improving its performance and I think really taking an office whose reputation had fallen on hard times through the last few years and is working hard to restore it to one of excellence. We're honored to have District Attorney Watkins with us today as well. Peter Gilbert you know. Next to me

is Maury Posley [phonetic], investigative reporter from the Chicago Tribune. Like our filmmakers, he has received any number of prizes and awards for his writing, and I invite you to review those in detail. Next to him is Steve Mills, also of the Chicago Tribune. They are here together because of their investigation into the case of Carlos DeLuna. You saw an introduction about that. We'll see more about Carlos DeLuna's case in just a moment. I think it raises deeply troubling questions about the reliability of the conviction at least in that case and, by extension, in the criminal justice system generally where similar circumstances might be presented. We're lucky to have both of them with us here today. Next to Steve is Ginger Anders. Ginger is an attorney from Washington, D.C. from the firm of Jenner and Block. She is counsel for one of the prisoners whose case is presently before the U.S. Supreme Court on the issue of the constitutionality of lethal injection as a method of execution. She also represents a number of other prisoners from other jurisdictions on similar issues and she has a high-powered legal career with a high-powered legal firm. We are delighted that she can be with us today to talk a little bit about the lethal injection problem in the American death penalty. Next to her is Andrew Reeves of the Texas Catholic Conference, a long time intimate of the U.S. Conference of Catholic Bishops and a leader of helping them transform their concerns about capital punishment into advocacy on a number of fronts for various kinds of reform. One of the themes of our film, as you'll see from the clips that we're going to share this afternoon, is the relationship of religion to people's personal experience of being involved with the death penalty and we invited Mr. Reeves to be with us to bring the perspective of institutional organized religion, in particular, the Catholic Church, but other churches as well, and we look forward to his comments on that. Also with us is Rodney Ellis' Chief of Staff, whose name I have forgotten. Not chief. Tina Tran with us from Senator Ellis' office and as we said, Senator Rodney Ellis, long time powerful force in Texas politics for the reform of our criminal justice system is joining us by speakerphone, and we will have an opportunity to hear from Senator Ellis later on in the program. The first clip that we're going to show this afternoon is on the theme of wrongful conviction, and as we said and as you saw in the trailer, this film raises disturbing questions about whether Carlos DeLuna, who was

executed in 1989 after being convicted in Corpus Christie of a robbery murder was in fact the guilty party in that crime. With that brief introduction, I'd like to roll the first clip, and then we'll invite our panelists to respond.

[VIDEO CLIP PLAYED]

MR. OWEN: That first clip from the film introduces us to two different stories. One of them is the story of a murder, and it's a terrible story about a woman being terribly injured and dying alone and frightened with the police on their way but unable to stop it, and that's the kind of crime that routinely we feel anguish and fury at when it happens in our communities. But there's a second story as well that this clip introduces, and that's the story of Carlos DeLuna, a kid from a troubled background who was in trouble with the law from time to time throughout his brief time on the streets and who, when he was found on that night of the crime, cowering underneath a pickup truck with no shirt and no shoes seemed like an obvious candidate to be the guilty party. I think it's fair to say, though, that every innocent person wrongly accused looks guilty when they're first brought in by the authorities, and I'm sure that was probably true of each of the 127 condemned prisoners in this country who have been released from death row as wrongly convicted since 1973. This is also not a concern that's uniquely Texan, even though Texas comes in for and I think justifiably a lot of criticism in the administration of the death penalty. Nevertheless, Texas has only produced eight known exonerations, which is fewer than many states, and the number of exonerations from death row around the country touches 26 different states. This isn't just a Texas centric problem. Nor, apparently, is it a problem the criminal justice system is moving swiftly enough to correct, because although the number of exonerations varies a little from year to year, it has run at a pretty steady average of between three to four death row cases per years since about the mid 1990s. There definitely is a steady trickle of exonerations despite the best efforts of people in the criminal justice system to identify those cases. Perhaps the most troubling fact about those exonerations is that it takes an average or has taken an average of nine and a half years to exonerate each of the innocent men who was wrongly convicted of capital murder and sent to death row in this country. Here in Texas, the

average death row stay is right now about ten years, and there is a lot of advocacy for reform that would likely shorten that stay to something significantly shorter than ten years, which does start to raise the question whether we will be increasing the risk of wrongful executions if we streamline the process much further of reviewing these cases post trial. Just to give you one example, I represented along with a number of other lawyers a man on Texas' death row who was fortunately exonerated and released without being executed. His name was Ernie Willis, and Mr. Willis was on death row for 17 years before he was conclusively exonerated and set free. He was lucky because he beat those averages. That's just by way of giving you a sense of how common this problem is in the administration of capital punishment around the country. With that introduction, I want to ask the following questions to some of our panelists. First of all, I'd like to ask Maury and Steve to help me understand what actually led to the conviction of Carlos DeLuna. You all heard Maury say in the excerpt from the film that this case had all the indicators that something might have been wrong, and I'm curious about why those indicators were apparently invisible to the police officers who investigated this case, the prosecutors who decided to charge it, the jurors who convicted Mr. DeLuna and indeed the defense lawyers who represented him since we hear from his family member that she felt his own lawyers were ineffective in failing to see that he was exonerated. That is the first question I want to pose. Second, I want to turn to District Attorney Watkins and ask him to comment on what role he thinks the prosecutor's office can responsibly play in improving the criminal justice system to try and avoid the possibility of wrongful conviction. Obviously, it's not solely the responsibility of the prosecutor, but I'm curious about what can the prosecutor do to try and insure that when we put someone to death, we can be confident that that person committed a terrible crime. Last, and I'll give you a direct cue for this, Senator Ellis, as you listen in on the phone, I'll want to hear from Senator Ellis about the prospects for legislative reform that might, again, bring us closer to our aspiration of reducing to zero the chances of convicting an innocent person in a death penalty case. With that, if I could ask Maury and Steve to open the discussion?

MR. MAURY POSLEY: I think that in the case of Carlos DeLuna, when you listen to the police tapes, they're chasing people all over the place. They're citing people. He got found first, and it was within 45 minutes of the crime and within a couple of blocks of the station, and he was hiding under a truck. They brought him back and they had him handcuffed in the back of a squad car and a couple of people identified him. We now know from talking to those folks that this was not just a suggestive lineup but there were suggestive things said to them that prompted them to believe, well, they got the guy. The case was solved. The case was solved in 50 minutes with that. You look and see some of the crime scene photographs, and the lead detective is standing in blood. There's sort of a sloppy casual manner that this case was handled because I think they just figured they had it sewn up, so there was no looking any further. The case was closed. One of the things that's interesting that you learn about in this case is that on the way to the station, he says if you will help me, I can help you. I know who did it. And they just blew him off. They just ignored him. The police developed I think tunnel vision and didn't investigate any other leads because they felt that they had the right person. You see that in a lot of cases.

MR. STEVE MILLS: There are a number of assumptions made beside the fact that if somebody's found so quickly after the crime that they're probably the one. They assumed that it was a robbery and we went back and looked at that issue. There was no evidence at all that it had been a robbery. When you started peeling back the layers, you could see that the store had no way to account for the money, and the guy who did the inventory afterwards said that he didn't think it was a robbery.

MR. POSLEY: And no one had ever interviewed him.

MR. MILLS: Right. The prosecutor assumed that Carlos Hernandez was in fact a phantom as he told the jury when, as Maury points out in the film, his second chair knew well that he wasn't--that he was a violent man who used a knife on women frequently. I think they got--it was tunnel vision with those very easy to make assumptions and you sort of lost that intellectual curiosity to second guess yourself and say do we really know what we're doing here?

MR. POSLEY: And then every question that might be raised by a defense lawyer or an outsider--instead of it being viewed as well, how do we answer this question, the immediate reaction is we're going to knock it down and make it not fit with this case. One of the things that attracted us to this case in particular from the beginning was that we saw the pictures. The violent nature of this crime, and in fact, one of the eyewitnesses who pulled into the station when the struggle was going on looked through the window saw the assailant had her by the hair and was trying to drag her into a storage room. So there was just a lot of movement in that this guy could be caught that quickly and not have--you know that if they could find one drop of the same type of blood, they would have presented it. They couldn't find one single speck of blood on this guy's clothes or his skin. To me, that was just defying logic that that could be the case.

MR. OWEN: Before I ask District Attorney Watkins to comment, I want to follow up with one question. This goes back to what I was asking earlier about whether this is a Texas centric problem. You two have both investigated and written about criminal justice issues in other places like Illinois and in death penalty cases in particular, and I wonder whether you have an opinion about whether this is different from, worse than, the same as other cases that you've seen in other places and if there is anything special about the way our system responded to this case that seems different from what you've encountered in reviewing other cases of questionable convictions.

MR. MILLS: Well, you mentioned the time that inmates typically spend on death row, and Carlos DeLuna was on death row for seven years, which was very fast. I don't know that there was necessarily any inclination to look skeptically at the conviction in the first place. I don't think anything was going to change. He could have been on death row for 15 years and I don't think it would have changed. The things that make Texas unique really aren't that unique. You find them everywhere--the same flaws or frailties in the system are present pretty much everywhere else. I don't know that it is so special in the frequency.

MR. POSLEY: I think for a while Illinois had a lot of DNA exonerations, and people would ask do we have more wrongful convictions in Illinois? Why do we have so many? My feeling

was I thought we were more aggressive in trying to root them out and do something about them, even though that train chugs pretty slowly most of the time. I think because of the sheer volume--it's like Willy Sutton. You rob banks because that's where the money is. You want to find a wrongful conviction in a death case, you come to Texas because that's where they kill the most people. The odds are that that's where it's going to be. I think that it's not unique to Texas, though. I think it's something that occurs across the country. It's the same justice system and the same type of flaws occur with the use of snitch witnesses and bad forensics and coerced confessions.

MR. MILLS: But it's also, I think, the willingness to look at those cases. Mr. Watkins' office is much more open, it seems, than other offices to take a step back and see what convictions are made of and to listen to challenges to them.

MR. OWEN: That actually leads to transition, I think, to your comments, which is that one of the things that Maury identified as a problem in these cases is what he called tunnel vision, which I take him to mean a reluctance to reexamine one's assumptions about a case. It does seem to be that your office is working very hard now to try to avoid that concern and be open to the idea of reexamining things. That's one thing I'd like to have you address in all the other things you want to tell us about.

MR. CRAIG WATKINS: Thank you. This position as district attorney's very unique and somewhat different than another elected official because there's so much power in this position. I don't really believe that individuals really understand how much power a district attorney has. Unfortunately, it's political, and district attorneys are elected within a party and a lot of times as a result of that, you find individuals, and I truly believe that most people that are fortunate enough to become DA wherever they are go in with good intentions, but I think what they do is gauge the mood and the climate of the area that they're living in and the folks that voted for them, and I say that's unfortunate because in this position, you have to look at leadership, and that leadership has got to be timeless. What I do today 20 years from now you will still consider it the right decision, and we haven't had that in the DA's office in Dallas or somewhat in this state for a long time. It's a

very emotional issue, crime and punishment, and the difficulty for us is to try to take the emotion out and to do what we were elected to do. There has been this impression that you all have been given of what a district attorney is and his responsibilities, and for the last year in Dallas, we have pretty much been going on an educational mission to reeducate the public as to what the job of a DA is. Most people really think that the DA is there to seek convictions and put you in jail. That's not his responsibility. In fact, in the code of criminal procedure here in Texas, they give a definition of a DA, and it specifically says that he is not to seek convictions. He is to seek justice. Because this is a political position and the mood at the time in Texas had been this whole theory of being tough on crime and as a result, those DAs would stay in office for a long time because they appeared to have been tough on crime. They just threw their whole ideology of seeking justice out the window because it wasn't something that the constituents were interested in. For the last year, we have gone on this educational mission, and as a result of that, some of the things that we are doing in Dallas when it comes to ensuring that individuals will be treated fairly--you see a different mood and you get a different response than I would have when I first took office. Those people understand now, especially when they see someone being exonerated every other month out of Dallas County, and as a result of that, people are really starting to understand that it's not about punishment or seeking a conviction. It's about justice, and justice is black and white. We go in and I am in a position to make a decision on what's going to happen to an individual--if I'm going to seek life in prison or the death penalty. If I'm going to take someone's right to freedom away from them and as a result of that, I think you have to really be in tune emotionally with who you are, what you are and what all this means, and I think for the longest time, those individual that served in this capacity really didn't take a good look at the purpose and the reason that they were in this position. They looked at what was most expedient and what would keep them elected. My philosophy is basically I think that at the end of the day, if we are putting forth that whole issue of justice, then the citizens that we represent really can't argue against what we're trying to do. It's really a tough argument for someone to argue that we are not protecting the citizens in our county because of all the

exonerations. They may say that we appear to be soft on crime. Well, that's not the case. We are tough on crime. We convict those that need to be convicted and we make sure that those people that come through the system that don't need to be there are out of the system. This issue--you talk about the religious aspect of all this, too. It's an issue that's very difficult, and I think that DAs, and I think that in order for this system to change, it's going to change from within. I don't think it's going to change from some defense attorney or some reporter uncovering all this stuff. I think it will have to change within. It will change from the elected district attorney's position and if they take their responsibility and they police themselves, then I think we will see things change. It will start here in Texas. For obvious reasons, you look at history and you look at all the failures of our society and how the change happens, and I like to correlate it to the civil rights movement. You would think that the civil rights movement would have started in New York or Chicago. No, it started in the worst place. It started in Alabama, and so here we are in Texas, what's considered the worst place when it comes to seeking justice, and so this is where I believe that all this reform in our system will start and hopefully people will consider Dallas County as a model as we go forward in what we're trying to do.

MR. OWEN: It seems to me, Attorney Watkins, like a lot of what you are telling us is that it's as much a matter of creating a culture of a certain attitude in the prosecutor's office as it is of policies. It's less a matter of policy because the policies really aren't that different, but it's more about imbuing your associates with an attitude about these cases that, as you say, acknowledges the tremendous power that they possess and understands that with that great power, there's a lot of added responsibility.

MR. WATKINS: Yeah, that's exactly right. I've been in office for a year. Initially when I came in, I had this impression of all prosecutors. I had never been a prosecutor. That they weren't concerned with doing the right thing, but when I got there, I saw that all these people were just like me. They were concerned with doing the right thing and seeking justice but all that kind of got lost because of the culture in that office, and the culture was you have to do this many trials

to be considered a good lawyer. You have to get this many convictions to be considered one of the top lawyers in the office, and so you have to change that culture. It's not about convictions. It's not about how many trials that you do. It's about looking at that individual case and what's the result is best served for everyone, not just the defendant or the victim. If a person commits a crime, they come through. If sending that person to prison is best for everyone, then that's what we'll do. If giving that person probation with some restrictions, then that's the option that we need to look at. We need to look at what's best for the general public, not just for that victim. Victims come in all the time, and you have to sympathize with the victims when they come in and cry. You look them in the eye and you want to do everything that they ask of you, but you cannot go down that road, because you have to take the emotion out of it. Being in government and a leadership role, you have to look at the broader picture. Are we going to be in the position as the government of this country to continue to commit homicide, and that's a question that we have to ask ourselves. Do we want to continue that? Is that beneficial to us as Americans? I think the mere fact that we're even having this is going to open that debate up and I struggle with it also. I struggle with the death penalty. If I'm sitting there talking to a victim and looking at autopsy photos, then yeah, that person--they need to pay the ultimate punishment, but the other side of it is when I go home and I go to church on Sunday, my religion tells me you should not be for the death penalty. I think you have to be honest about it. I think the leaders that you put in these positions have to be honest with you. I struggle with this whole idea, and even though we in certain cases since I've been there have sought the death penalty, I think it's a process. At some point, I guess I'll have a point of view that would be for it or against it, but at this point, it just really depends on when me ask me or what I'm dealing with at the time, and I think that most of us, if we really sat down and thought about it, would have that same response.

MR. OWEN: I think that ambivalence is really common to a lot of people who have frequent contact with the issue of capital punishment for sure. I think I'd like to turn now to Senator Ellis, who's been patiently waiting with us on the phone listening to the comments of our panelists, and the question

I'd like to pose to him is what role does the legislature play, and what further reforms, in additions to the ones Senator Ellis has advocated to date does he think will improve the chances of reliability in our criminal justice system in minimizing the risk of executing innocent people?

SENATOR RODNEY ELLIS: Thanks. First, I want to welcome you all to the Texas state capitol. When - - called me some months ago to ask if we could reserve a hearing room to have this event, he nor I or anyone in the room, I suspect, thought that the Texas election would be a player in the presidential primary process, and so I was fired up and ready to go until about 4:00 a.m. this morning, and now it looks like I'll have to go to Pennsylvania if I want to help my candidate. So I'm sorry I couldn't be there, but I'm glad you're there. A couple of points. One I want to mention is that the press does play a very critical role. So does the religious community and the activist community. I think what brought about a good number of the reforms in Illinois, which has the record, in my judgment in terms of recent legislative action reforming criminal justice death penalty issues. Clearly, the media played an important role in it. The legislature in Texas obviously is pivotal in this process. It's a very conservative body, a very difficult body to move. I chair the board of the - - project out of New York, and we have taken the position that at any time we have an exoneration, we ought to use it as an opportunity to make some policy pronouncement to get those policy initiatives on the table. Last session as an example--we meet 140 days every other year, so we are not in session this year. We'll be in session again beginning next January for 140 days. After the recent exoneration in Dallas County, I decided in order to get some traction on my bill to increase the compensation for the wrongfully convicted, I would bring the recent exonerees from Dallas County on the floor of the Texas Senate to honor them and to apologize to them and to have my colleagues be in a position where they had to look into the eyes of those men in these particular cases and know that we wrecked their lives. I think it's helpful when we point out that our criminal justice system, the death penalty system is a government program, and nobody's ever accused us of getting a government program right in any other sphere of public policy all the time. The government makes mistakes. I suggest that the best way to have a discussion in any legislative body

about criminal justice reforms would be to push a simple measure to create an innocence commission. A good analogy, I think, would be when an airplane goes down. We don't take the position in America or anywhere on the globe--well, it happens. You put together a top notch of panel of independent scientists, experts, people on both sides of an issue so you have balance so they can see what went wrong and what lessons you can learn. Now, I know there are certain lessons that would come out in the DeLuna case. I think initially there was a court appointed attorney that had no capital case experience, but had assistance from an attorney with some death penalty experience. In a lot of ways, the die was cast with that court appointed attorney, and even later on when another attorney was hired, the die was cast. In so many instances in Texas and around the country, somebody's income is what determines whether or not they're innocent, and that's just not right. The notion of an adequately public defender--you take an example. There was a report that came out last year from the Texas task force of negligent defense. We spent \$619.00 per capita on - - defense in '05. That amount was less than 42 other states in the country. It would rank Texas last out of the top ten most populous states in the country. Another way to explain it would be in '05, the state of Colorado spent almost two and a half times as much on - - as Harris County. Houston's in Harris County. The state of Colorado is only 18 percent larger than Harris County. I mention Harris County because when you think of the death penalty statistics--you take Harris County, my county, from '82 to '07. Harris County alone had 283 death sentences and 99 executions. If you look at the state's figures, there have been 1,099 executions in this country since '76. 405 of those executions occurred in the Lone Star state of Texas. Virginia was the second highest with 98. In '07 alone, Texas executed 27 people. Oklahoma and Alabama tied with the second highest number of executions at three each. In '06, the Texas murder rate was 5.9. The average for states with the death penalty--for states without the death penalty, the average under rate was 4.22 percent, which begs the question whether the executions help or not. I think the most important thing legislatively that they ought to try to pass in Texas or any other state is an innocence commission so you have a blue ribbon panel independent group of experts to look at cases where there's been an actual exoneration, and I say an actual exoneration

because politically, even in a conservative body, that's easy to pass. If there's no question that the wrong person was executed or the wrong person went to jail and they've been exonerated. We ought to take each of those cases and see what can be learned in terms of whether or not you out to put some restraints on snitch testimony, whether or not you ought to tape interrogations. It protects both sides, the prosecutor, the police officers and the individual. Whether or not you adequately fund legal representation for poor people. And then when you have a wrongful conviction, even in the state of Texas, we give them what the federal government is, which is better than most states. We might be about the third or fourth most generous. If it's a wrongful conviction and you're on death row, you get \$100,000.00 a year. Non-death row wrongful conviction \$50,000.00 a year. We took the caps off that we had in Texas since '01, but even that's not enough. Someone went to prison and they lost an opportunity to get free college tuition. Should you go back and help them put their life in order? You ought to make sure that there are provisions to give them decent mental health insurance coverage. Do something to make up for the devastation to the family and the loved ones and more than anything when the government makes a mistake, the government just as we would expect individuals to ought to apologize for what it did and do as much as it can to put someone's life back in order. In terms of moving us in a legislative body, in Texas in particular, I think if all of our prosecutors in Texas had the conscience of Craig Watkins, I'd take the position it'd be easier to bring about reform, but I'm not sure all of them quite get it. I think prosecutors in Texas have too much power. We know the old saying that absolute power corrupts absolutely. What has kept me from passing an innocence commission bill all these years has been the prosecutors, and they don't even have to testify against the bill in committee. They quietly kill it, and if they don't kill it, they can get it so that the bill essentially ends up being meaningless. Most of these reforms--creating a public defender office. We're going to make a big push for that here in Harris County. Initially, we're going to say a public defender office period. Instead of having a system where the judges appoint the person that represents the - - and their incentive is to plea it out if they want to get any more appointments. That is fraught with conflicts of interest. The notion that a legislator, a governor or any

public official ought to have so much unchecked power simply goes against everything that we consider good about our democracy. We don't even have checks and balances on what prosecutors do with proceeds from property that someone forfeited that you seized because it was illegal property. Nobody even asks questions. We're about to have hearings on that. The media's role cannot be in any way overstated, and I think by having this session during the South by Southwest Festival in Austin in the capitol--I think you have to go to the place where laws are made. I hope that you'll do a showing in Harris County somewhere and see if we can book a courthouse to do it in or commissioner's quarter or city council chambers, but all around the state and the country, I think it's important to mix the two. These films have a powerful impact on educating the public on things that are wrong in our system, so I commend you for what you're doing and I'm honored to be a part of it.

MR. OWEN: Thanks, Senator Ellis. I think that you've given us all a long legislative to do list for the next session to try and bring some of these reforms into existence. Steve, are there other screenings like this one that will serve as a public vehicle for discussion?

MR. JAMES: Yeah, we've got a lot of really great things going on. Seth's organization is doing screenings in other states, number one, and then also just within Texas, the film is going to play at the Dallas Film Festival at the end of the month. It's going to have two screenings there, and we're in the process of trying to organize some activities in connection with that and then we are in the beginning stages of planning--we will absolutely be doing a screening in Houston with some kind of panel discussion similar to what we've got going on here. We're really very conscious of trying to get the word out in Texas and also around the country through festivals and special screenings.

MR. OWEN: I think that's important, because in that way, it would work hand in hand with the efforts of someone like District Attorney Watkins to encourage a different attitude on the part of all the participants in the system about the need to be careful with this extraordinary power that the state can wield.

MR. GILBERT: Can I just say one thing, too, to follow up on Representative Watkins was saying about the feeling of being conflicted about feelings about the death penalty. I think this is a film for people who feel that way. It's a film to see if whatever your position is on the death penalty because a big part of what this film is about through Carol's story is about how one grapples with that very question morally, ethically and emotionally.

MR. OWEN: I think the place that that moral, ethical and emotional dilemma, if you want to call it that, arises acutely is in the moment of execution, and our next clip is going to raise some of the questions about the lethal injection process that are being debated around the country. Could we roll the second clip?

[VIDEO CLIP PLAYED]

MR. OWEN: The second clip, as you saw, opens with Reverend Pickett describing how a Texas prison official has often claimed to him that Texas has never had a botched execution, yet Reverend Pickett's gripping description of Carlos DeLuna's last moments raises serious questions about whether Carlos DeLuna in fact suffered in being executed or, as Reverend Pickett said, was trying to let him know that something wasn't right. Since about 2005, there has been a growing recognition in the United States that there is a real risk in every lethal injection execution, employing the so-called three drug cocktail method that something may not go right--that there may be suffering when we intend that person to die essentially painlessly. I imagine you all are aware that the U.S. Supreme Court right now is considering a case from Kentucky raising these questions about the constitutionality of this particular three-drug combination as a means for execution. That case raises a bunch of really intricate and interesting legal questions, none of which we are going to require you to listen to. Instead, the questions that we are interested in hearing from our panelists on are first, how do we get to the point of using lethal injection as a means of execution anyway? As Steve remarked earlier, the first lethal injection in a criminal justice case in the world was here in Texas in 1982. The switch to lethal injection by most executing states took place in the late 1970s, early 1980s and today it is the uniform method around the country for executing convicts,

even though for generations, our country got by with a real diverse menu of means of execution, including hanging, shooting, gassing, electrocuting and so on. One question I wanted to ask our esteemed historian, Dr. Oshinski, is how did we get to the point of using lethal injection? Then I want to turn to Ginger Anders, who, as I mentioned earlier, is one of the attorneys handling the U.S. Supreme Court case on lethal injection and I want her to give us a primer, if you will, on how the lethal injection protocol actually works. What are these drugs and what is the risk that they will cause suffering in their use in executions because I think that you know some people I know have said of this if it goes wrong, what's the worse thing that can happen and I'm interested in hearing from an informed person what the answer to that question would be. So if I could start with you Professor Oshinski, that would be great.

DR. DAVID OSHINSKI: Well thank you I'll try to be as brief as I can, just speak for a few minutes. It is true that over its history the United States has always sought more humane ways to carry out the death sentence meaning that the death penalty required death but it didn't always require or shouldn't require torment or agony and I think that what we see over the course of American history are certain elements coming to the fore in dealing with capital punishment. Professionalization is one, privatization is another and by these I mean the following.

I'll talk a little about hangings in a minute but over time the idea of doing capital punishment sort of went from the local sheriff to professionals who were supposed to deal with this issue using the latest science and they were supposed to do it essentially in one place, they weren't supposed to do it in individual counties. In the 19th century hanging and shooting were the two most common methods. Hangings took place all over the United States and they were done locally. There was a very strong sense that the criminal should be tried, sentenced and executed in the locality in which the crime was committed and therefore what you really had were local sheriffs who had very, very little ability or sense in how to carry out this procedure who were doing it so that they would get the length of the rope wrong or they would not understand the weight involved and you would have these sort of gruesome hangings in which heads would come off or

individuals would not be killed the first time. And I saw instances in Mississippi where when someone was lying on the ground half dead the people at the hanging actually took a vote on whether to hang this guy a second time. The answer was yes, they would.

Hangings were also almost carnivals in the sense that thousands of people showed up. There was food, there was drink, and there was a ritual to it meaning that generally the person who was about to be hanged would get up there and make some sort of speech about what he had done wrong and why others should not follow in his path and it really was seen as a kind of deterrence in that respect. The problem over the century is that as the crowds get bigger and more unruly there is a sense that the decorum and the alleged dignity of this process is really being compromised and that what you really begin to see are states now, even states that are using hanging - - in one place and doing it privately with a certain number of witnesses but not these enormous crowds.

Now the other alternative which was used in Utah and Nevada was really the firing squad. And the reason they seem to be used in these two states is that they were Mormon states where the concept of blood atonement was in play meaning that what the offender had done was so heinous that only his own blood could wipe away this crime. The problem I think both with hangings and shooting was that to a large degree they involved the mutilation of the body as well and I think over time particularly with foreigners but many Americans were looking for other alternatives and science begins to provide that alternative.

The first electrocution occurs in 1889 and it really is the bringing together of two words, electricity and execution and the word electrocution comes from that. The first one is done in New York State. And actually it is botched. It is not a particularly good job. And the way this is carried out without trying to be too gruesome is that a very, very heavy shock of very high voltage is given which supposedly makes the person unconscious and then smaller amounts of electricity are applied until essentially the heart stops and stops pumping blood. So the first volt ends the pain and then what you have after that is simply a series of smaller shots that actually end the person's life. The Supreme Court rules this to be constitutional as early as the 1890's and

again in 1915 that this is not cruel and unusual punishment particularly in relation to what had happened in the past with hangings. What is very interesting is that you have, sort of the two giants of electricity, Westinghouse and Edison one with direct and one with alternating current and they're sort of battling not to have their process used. Indeed they are actually funding ways to make sure that the State of New York does not use electrocution 'cause they don't want electricity to be seen as dangerous which is an interesting concept.

By the early 1920's most states have gone to electrocutions and what they are doing are using people who are professionals. They generally are in one jail like Sing Sing in New York State and you have one person who has become adept at this professional and this will hopefully will make the process right.

What you begin to have in the west coast for reasons we really don't understand is the beginning of the gas chamber. And the gas chamber as you know is just pellets of sodium cyanide dropped into a vat of sulfuric acid. What is interesting is that early on in California they wanted to make this as painless as possible and what they actually thought about was a chamber that was large enough so that you would bring the condemned in, the person and the person would fall asleep and when the person was asleep then you would begin the process. The problem was you needed a very large chamber with a bed, had to be airtight and you were going to get a prisoner who was going to try to stay awake for as long as possible and this process might go on for a very, very long time. So what they went to simply was the gas chamber where the person would sit there, the pellets would be dropped, and hopefully in a matter of minutes the condemned would be dead.

By the 1960's executions in the United States had virtually stopped for all kinds of reasons, I can't go into them now. But very, very few people were being executed. Those who were being executed were being executed with gas and with electricity but when *Ferrum* [phonetic] v Georgia is decided in the early 1970's which temporarily ends capital punishment there are very, very few executions. Now what historians have always tried to figure out is as executions began again why they stopped using gas, why they stopped using

electricity, and why they went to the process, the needle that we have now. And the best reasons we can come up with is that the lethal injection was seen as cheaper and it was also seen at this time as more painless. In other words there were a number of botched executions using both gas and using electricity and the hope was that this would really solve the problem.

The other problem was as more and more states began to execute in larger numbers it was very expensive. The gas chamber hadn't been used in 15, 20, 25 years. To get it up and running again would be a state expense. The same thing with the electric chair so this was seen as safe and it was seen as cheap and it was seen as largely painless. The biggest problem that appeared to occur was first that there was a closeness, a physical closeness between the executioner and the prisoner that had never been there before. You literally had to touch the prisoner now and that was something that many people were wary of. And the second was that needles, this type of thing had generally been done by physicians and therefore you were going to raise an entirely new issue. On the other hand these issues obviously, in the eyes of various states including Texas, have been overcome. And right now virtually every execution in the United States is done by lethal injection.

MR. OWEN: Thank you David. It does sound like from your survey that at least to some extent, I realize you identified a couple of other influences on the selection of lethal injection like cost and maybe just sort of general efficacy but it sounds like the painlessness of the method wasn't important-

DR. OSHINSKI: [Interposing] It was.

MR. OWEN: -that it - - conscious part of the choice.

DR. OSHINSKI: It was and you know in sort of a bizarre way that has always been a major element in the evolution of capital punishment in the United States that causing the least torment to the prisoner and also quite frankly less visual exposure to the public itself were the two elements that I think were most important.

MR. OWEN: Well with that introduction, Ginger I'm curious about, is it in fact so painless? What are the risks of pain that are involved with the method that's so commonly in use.

GINGER: Well I think what we're seeing around the country as evidence starts coming out in litigation is that this method is not the painless method that it was first heralded to be and it was not to be for a long time after its adoption. There are three drugs that are used by all 36 states that currently use lethal injection. The first is sodium thiopental, the second is pancuronium bromide, and the third is potassium chloride and they're administered in that sequence. So the first thiopental is a barbiturate that's intended to induce deep anesthesia. The second, pancuronium is a neural muscular blocking agent which means that it paralyzes all of the voluntary muscles including the diaphragm so a person who is given pancuronium is unable to breathe but at the same time pancuronium doesn't effect consciousness or awareness of pain so if you were given it, you would simply experience conscious suffocation until you died. You wouldn't be able to move or indicate that you were in any distress. The last drug given is the one that's actually intended to cause death, potassium and that stops the heart but as it travels through the veins towards the heart and through the lungs it causes excruciating pain. So because the second two drugs in this procedure are so dangerous the administration of the first drug, the anesthetic is really the critical element of this process. So if the anesthetic isn't efficiently delivered, then the inmate could be partially conscious or entirely conscious during the execution and if he were, what he would first feel would be the suffocation and the paralyzes of the pancuronium but he wouldn't be able to indicate that anything was wrong because he wouldn't be able to move. And then he would feel the burning pain of the potassium but again wouldn't be able to give any evidence of that.

So with this procedure a humane execution is not going to look very much different from an inhumane execution and that is one of the key problems that we have in looking at these executions and engaging what's actually going on. It's very difficult to tell in this procedure whether the execution is humane or not. But the risk of inhumane executions is real here. This is what we're seeing in litigation around the

country that this is an incredibly complex process. It's very hard to induce anesthesia properly and maintain it. There's a reason that anesthesiologists have to go to medical school and then do a residency in order to do this. But the procedure as used in executions is generally administered by people who don't know anything about anesthesia, who may have EMT training or nurses training but often don't know what drugs they're administering, don't know what they do and haven't even read the list of instructions that the State may have guiding them through the process.

The drugs are also generally administered from another room. This is the separation issue that executioners generally are more comfortable administering the drugs through the long sort of snaking line of tubing because it goes to the gurney but they're in a separate room where they can't be seen and where they can't see the inmate very well and they also can't see the IV tubing or where the IV goes into the vein so we have a lot of errors that can arise because of that setup.

So just to give a few examples of what we've seen going on. In Missouri we had a doctor who was in charge of the process who admitted that he had started varying the dose of anesthesia arbitrarily, for his own reasons we don't really know. He'd given at most maybe half of the intended dose but he also admitted that he didn't know how much he'd given in part because he didn't keep records but also because he was dyslexic he said and he had trouble calculating doses and this is someone that the court later found shouldn't have been in charge of anesthesia at all, he couldn't do the necessary calculations.

In California we had a registered nurse actually who became so confused when she was mixing the anesthetic that she wasn't sure whether she'd given a 10th of the intended dose which wouldn't have been enough for the execution. We also had the room where the executioners had to work so crowded with officials that the executioners couldn't see each other so the way the nurse described it was that a hand would come out from between officials from Sacramento and she would put a syringe into that hand, it would be retracted, and then an empty syringe would come at here. She had no idea what was going on besides that.

So I think in many states it's unsurprisingly we have evidence of executions actually have been botched. The execution of Hajel [phonetic] Diaz [phonetic] in Florida was botched in an obvious manner. It took 35 minutes for him to die. In California we had data suggesting that six out of eleven executed inmates may not have been sufficiently anesthetized. And in Oklahoma there's toxicology data showing that the anesthetic levels were too low for sufficient anesthesia. But what I think what we have more often actually because of the way this process is setup is just uncertainty about how the execution went. And I think this what we have with the Deluna execution as well that because the state uses pancuronium the inmate will be paralyzed and so it's very, very difficult to tell what's going on during the execution process. Often states aren't keeping meaningful medical data, they don't collect the data that they would need to collect in order to determine after the fact whether the execution was humane or not.

So with this process we just have an incredible amount of uncertainty and uncertainty is really created by the state and how they designed the execution procedure as it's currently used. So I think that's one of the most troubling features of this entire debate that with such an important State function we really don't know how the State is administering the process and whether executions are humane or not.

MR. OWEN: It sounds like there's an unfortunate sort of crosscurrent between the trend that David identified of privatizing by which I mean enclosing the execution away from public view and these potential problems that arise because then nobody sees those things except the other professionals who may or may not recognize that anything is going on that is problematic.

GINGER: That's right, there's an incredible amount secrecy that surrounds the entire process and there's an also a lot of division of responsibility that you wouldn't see in say a hospital or you know a medical environment where doctors have figured out how to administer drugs in a way that prevents error but here you have one person handling the syringes, another person mixing the medication, and yet a third who's always a lay person actually administering the drug. So you

do have you know much more opportunity for errors than you would in any other procedure.

MR. OWEN: Thank you both for those very illuminating comments. Our final clip actually it I think it deserves a comment to introduce it which is that I think that the film's central theme is the transformation that Reverend Pickett underwent as a result of being close to these men who were executed over this long period of time and being so intimately connected to their lives and their deaths. But I think one of the things I didn't appreciate until I had an opportunity to see the film in preparing for our program was that it's not just the inmates and Reverend Pickett who are you know part of this event, part of this relationship, there are any number of employees of the prison system, correctional officers, administrators, other staffers who are intimately connected to every execution and who find that experience to be transformative in ways that are either you know for good or ill. It is not something that leaves you unmarked. And what I came to realize watching the film is that in addition to serving as a spiritual resource for the condemned Reverend Pickett also had the extraordinary responsibility of serving as spiritual resource for his coworkers, that in fact he was part of the team, the team of people who were responsible for carrying out our instructions to put a particular person to death. And it's with that relationship in mind not between the Reverend and the condemned but between him and the other participants in the process that this clip deals. Can we you roll the third clip please?

MALE VOICE: When we started executions I was the warden at - - convict I think we need to have upper level officers who are trained and who will stay there the whole day. Fred was one of the ones. He was in the death house 120 times.

MALE VOICE: I was a very strong supporter of the death penalty. This individual did that crime, the courts issued out the punishment, I was back there to carry out the final phase of it, and I wanted to work back there so I could help him but I always tried to be that inmate and let him know there isn't nothing wrong with walking there, all you got to do is follow me. I'll make sure your okay. All I can do is that get you on that gurney. 'Cause I can't take care of you from that point on.

MALE VOICE: He jump on a gurney, we strap them down and it'd just be the Chaplin and the Warden and the inmate.

MALE VOICE: That'll be my job until it was over with and the doctor come in there and he pronounced death and then my job begin again. And then I have to take this individual that I talked to for the past 10 or 12 hours off the gurney onto another gurney for a funeral home. I did what a man does, go home sleep, go to work the next day, put it behind you, gets pretty hard when you do two or three a week. The only time it got changed was right at the - -

[Music]

MALE VOICE: Without appeal tonight Carla Tucker will be executed at midnight for the 1983 pig axe murders of Jerry Dean and Deborah Thornton.

MALE VOICE: It was so big the media hyper up.

[Crowd sounds]

MALE VOICE: I've always believed that the death penalty will deter death. I am confident that we're executing the worst of the worst.

[Crowd sounds]

MALE VOICE: That lady right there come in there with her dignity. She know what she did was wrong but she was saved. I seen it in that person. My strong belief that just to prove a point that they could do a female, the didn't have to do her.

MALE VOICE: Carla Faye Tucker pronounced dead at 6:45, that was about - -

MALE VOICE: I was just in my shop and the news came on and then they brought her back. All the other inmates, it brought all them back and there was just utter [long pause].

MALE VOICE: Sherry commented, she said Fred's sick. I said okay I'll be there. He was sitting on the back porch just looking. And he said "I can't do this anymore." But he could not, could not get - - the Wardens what he was going through and so they just chopped him to pieces. And they made fun of him, gave him weird - - weird hours. And then he, one time he said "I think I'll just quite," said "I'd rather die - - I'd rather die then keep on with this."

MALE VOICE: It hurts inside but I believe that this allowed me to grow. We all need to grow, we're never too old to.

[Music]

MALE VOICE: When the guard unlocks the cell they rattle and rattle and nobody talks. It is hard to tell anybody, even the meanest person it is time to go, we're ten steps away from the gurney. Many of the inmates who were strapped down with their arms spread out said I feel like I'm on a cross. I had to be tough you know I had to be strong. My guards are throwing up and my Warden is going to be sick tomorrow, I know that so I couldn't let my weaknesses show in there. Weakness is not being my Father's son because to me I would be a failure, I would be a failure.

MALE VOICE: I think Reverent Pickett's job was extraordinarily difficult but his job is partly to get Carlos Deluna onto the gurney without a fight and you know at the same time he is ministering to him. I think that's part of what Reverent Pickett struggles with. Who was he serving? Was he serving God there or was he serving the State. And maybe some of them should have been fighting. Maybe Carlos Deluna should have been fighting and protesting saying you know I'm an innocent man, don't put me up here.

MALE VOICE: When you're in the death house you're going to get killed one way or another. It is ridiculous to encourage somebody to fight even though they're innocent. To fight even though innocent will just bring about more suffering.

FEMALE VOICE: He's not afraid of death. I've been around ministers that are afraid of death and they may want to come in and comfort you and then they leave. I think it was the same way with the inmates. Those men had him.

MALE VOICE: This is a man who was out on death row waiting for his execution. He had a stroke and they flew him down to the prison hospital in order to treat him to get him well enough to be killed. When it came time to have his last meal he couldn't feed himself so this was the first man that I physically, with a spoon, feed Jerry his last meal. And this one particular guy, we took him and as soon as the executioners came in and they began to try to put a needle in his arm and they couldn't find a vein. They tried for about 30 minutes. Finally the inmate says I can help you guys. So

they took the straps off and he leaned back and he showed them with his hands back here and it worked.

The last year till I retired I was with 19 men who were executed which was a lot. There was one of them we did two people the same night and one said "I want to leave this one with you and whenever you feel like he's ready, you be the one to decide when we go ahead." This was the only time where I started the death process, where I picked up the phone and called and said we'll ready right now, let's kill him now. And they did. [Music]

Many times I get away from the inmate and I go sit over were the shower is where nobody could see me and I would pray for strength to get through this one because I doubted my faith, I doubted the fairness of God, and I asked why me.

MR. OWEN: I think that last comment about doubting the fairness of God isn't just evocative of Reverend Pickett's experience but also of the experience of Paula Kurland [phonetic] who is now one of our final three respondents on the panel. As I mentioned earlier Paula is with us because she a victims advocate and she is herself someone who is suffered and anguished by a violent crime and I am sure that those same late night questions about the relationship of religious faith to experience of suffering and what it calls on us to do in the name of our faith are as familiar to her as they are to Reverend Pickett. And I'd like to start by asking Reverend Pickett to tell us a little bit more about what he saw the role of religion as being in his own experience of these executions and of other people's as well.

And then I'd like to ask Paula to give us the victim's perspective and let us know to the extent that you feel comfortable articulating it. I know you do this in a lot of settings. How do victims feel about the satisfaction or justice that they see in an execution as our audience may not know since 1995 here in Texas the relatives or friends or supporters of homicide victims are able to attend the execution of the person who victimized their loved one and I've always wondered whether people found that to be comforting or whether they felt that that served an important function in helping them deal with the experience or grow from it or heal the wounds that they suffered and I'd like to hear from Paula on those.

And then our final comments will come from Andy Revez [phonetic] with the Texas Catholic Conference and we'll move then from the personal to the institutional rather than talking about the personal role of religion and how it transforms individuals, we're interested in sort of the institutional role that organized religion may be beginning to play in the public discussion on capital punishment and where you see that going in the years to come. Reverend Pickett?

REVEREND PICKETT: You ask a lot of questions that are hard to answer. I'm going to roll them up into five - - difficult. We can see Fred up there, he had a very strong faith and he believed that God had called him to work with the prisoners. He had the possibility of becoming one of the greatest wardens that we ever had and being on this execution team at my request 'cause he was so great it ruined his life.

I went to California to visit with the warden out there after they had a terrible execution, on his second one and he was one of the strongest Christians I ever met. He was warden of the year the year before. We spent a week out there with him and he quit. He said his faith would not let him execute anybody else.

Many of the people in our - - team refused to touch the body. They would only go partway of their due responsibility and they would just refuse. There was no problem with some of the authorities who would let them just quit. There were some wardens and one is mentioned there, that I knew and he told me that I'm not coming to work for two more days. Said, I'm getting sick of that. He lasted another year and he retired.

We had an Attorney General couple years ago come and visit to see what it was like 'cause he claimed to be the legal official of Texas, he wanted to see exactly what took place and after he got through with the second, he took me back in the cell, after everybody had gone and says why do we have to do this, said I'm not coming back. And he was our Attorney General, he never came back.

The wardens have now, it's completely changed though. When I was there we brought them in at 6:00 or 7:00 in the morning and then we executed at midnight which made it very difficult to spend all that day. And we had a lot of responsibilities

that were - - Like one of my responsibilities was to check their veins to see where we could put a needle. I'm no doctor. I didn't know what to do. I could show them where my hands were. But that was the only, nobody ever checked. I don't know to this day if they check to see. You know they'll come in there, the executioner will come in there with 12 to 15 different sizes of needles and they'll get to try and see how long it takes, the quickest one that works. And that one that took almost 45 minutes to die, it was horrible. How many times can you have a needle stuck in you? I mean they used every type of needle you could find. And one thing that we, it's in the procedure that if they can't find it, then they were going to a cut down. You know we never had to go to cut down. We didn't want to see a cut down. From a medical standpoint that was horrible. From a personal standpoint that was horrible.

But there were so many of the men who would come back to the religious part they did not understand why Texas could kill people, to teach people to killing people is wrong. And I think I was with 95 who died, with another 150 who came in and got stays and went back out to death row. That question was asked over and over again. How can Texas say we're going to kill people to stop people from killing people?

When I started there there were 51 on death row. We executed 95 and by that time they had grown to 400. Most of them from our neighboring county, from Harris County and that was difficult. We had one public defender that was assigned 19 cases in Harris County. And I was 16 of those cases when they went to the death sentence. Of course it's all in the paper, he went to sleep during most of the trials. This causes people to think. You hear this and you listen to them like we did all day long. I had the responsibility of bringing [interposing] heir families. I brought Carlos' family in to visit at 1:00 from 1:00 to 5:00, only have two visits, two at a time. And these people are suffering. These families that we brought in were suffering. Some of the attorney's were suffering. There was just a lot of suffering. The executioners, first and major executioner we had is gone. He's not dead, he just had all he could take physically. We, during the '95 I was there, there were probably between 18 to 50 different people that - - those people suffered. The entire staff suffered.

The families, many times I met with the families of the victim. They would be across the street. When I was there they were not permitted to come and witness but I would visit with them across the street or somewhere and they would say I don't feel any closure. My grand, my children will never feel the love of a grandmother if not, this doesn't change this at all. And they you know like the last thing with Carlos was a prayer. He was a very religious person, there are many very religious persons. Some of them were Christians. Well I had to be an Islamic Eh Mahm [phonetic] several times, had to learn how to give the last rites to them. I had a Catholic priest who would come in and help me for those. I had others who believed in different things but they weren't all saved, if you want to call it saved.

They weren't all what you would call good people but they were, the majority of them had changed their lives. You stay in that prison long enough, there's man there on death row now that's as old as I am and he's been there since before I started. And that is suffering. Death row is not a happy place. And some of the people who have come into the death house, it was always my responsibility by the warden to be the first person they saw. And that became a situation because second person who was brought into the death house got a stay after we'd gone through all the process, put him on the gurney, and came up to 12:00 and he got a stay. And he went back to death row and told everybody out there exactly what took place, word for word. So from then on we had to be extremely, extremely sure we did it the right way. He came back in a year, year and a half and he said I know the routine. What a routine.

But these are people and we have not in any way done anything but bring more pain and suffering on them, not on those who are dieing there are other ones. There are more botched executions and you're going to hear about it in Texas. 'Cause I had to pull the curtain when one began to botch. I don't know what the word botch means. But I pulled the curtain and that was before the executionist new what was going on. So there's a lot of pain in this and it goes on and on you know and we'll never forget it. Fred will never forget it.

And a lot of those and I think somebody in here used the thought many of those who've been executed have been victims of the snitch system. And they did not commit the crime.

MR. OWEN: I think Reverend Pickett's comments about suffering provided a good transition Paula to me to ask you. Obviously there's a tremendously amount of suffering that we haven't talked at all about which is the suffering of the crime victims and their loved ones and I'd be interested in your response to these other comments from that perspective.

MS. PAULA KURLAND: Well first of all Rob I want to thank you and Warren for inviting me to this very sensitive and important panel. The discussion here is extremely sensitive not only for me but for everybody. Reverend Pickett I truly can empathize with your position and I do understand.

MALE VOICE: Quick.

MS. KURLAND: Okay. I empathize and I do understand how bad it was for you. I went to death row before I had the mediation with Jonathan and I got ill for two days, it's a terrible place to go even for just a tour it is something I would never want to do again and I wouldn't wish it on anyone. I think that you probably were led by God to do what you had to do because people do need to be comforted.

And Mr. Watkins, you know you were taking about taking sensitivity and emotion out of the D.A.'s office. My daughter was murdered here in Austin in 1986 and it was a really heinous crime. She and her room mate were both murdered and a third person almost died. It was really awful situation. And I thank God everyday for Ronny Earl's office because they did their job so well and they were sensitive to my needs and to my questions. I did nothing to interfere which a lot of victims can't help. They want to be in the middle of everything. The law is the law, it's all black and white and the only reason it made sense to me is because I'm pretty black and white. It either is or it isn't. I've just discovered grey areas since Mitzie's murder and it's been a really difficult thing for me to understand and to live with sometimes because I've always just been pretty black and white.

I think that the death penalty is such an important thing for everyone involved not only the victims and the victim's

families but for the offender families. Jonathan was a throw away kid from the age of eight. I learned so much history on him after he was executed. The only person who truly loved him was a foster mother, if you can imagine that. It was just really a sad situation. But it doesn't alter the fact that he murdered two people and almost killed a third. It doesn't alter the fact that he was a part of our judicial system and he got the maximum sentence which I feel was deserved.

I support the death penalty even though I had a mediation with Jonathan and we came to terms with each other and I had to forgive him and that was not an easy thing to do, I struggled with that for 12 years. But I managed to forgive him, not what he did but forgive him as a person as another child of God. And if you think that doesn't hurt what you feel and believe in your own faith, then you're sadly mistaken because it has a devastating effect on everything.

I support also live without parole. I was here a couple years ago to testify for the passage of life without parole. I've had people ask me would I have been satisfied had Jonathan gotten life. Twenty two years ago no because life wasn't life and they say they don't get out for forty years well we know that's a fallacy as well. Had I known that he would never walk the streets again, I could have accepted that. And you being in the D.A.'s office and seeing all of the intricacies that go on between the offender and the victim families I know that you could understand what I'm talking about.

Do I feel that the death penalty should be [pause], no I think that it should stay in this State. But we now have a choice. The wrongfully convicted I think should get everything that the State has taken from them for that wrongful conviction. Senator Ellis said that they were talking about a hundred thousand dollars, they should get a hundred thousand dollars or more for every year they're wrongfully imprisoned. Prison is not a nice place and it doesn't turn you into a nice person.

When I was in Washington D.C. I met three people that were released from death row and their families. I'm up there as a supporter of the death penalty and I meet three people that escaped and it broke my heart but did it change my view on

the death penalty? No. And I don't debate the death penalty with anyone. I know victims who have had their children murdered, their husbands, parents, siblings, and it's something doesn't ever go away. And all these years everything has been about the offender and the victim for the first time is getting the voice and I thank God that being invited to participate in something like this to me is such a milestone for victims because they don't get to speak up and they don't get the compassion that they deserve.

I have two surviving children and my children are still suffering. Mitzie was murdered on her 21st birthday, she would have been 43 this year and my children are still suffering. That murder not only affected my family but it affected five families and hundreds of people were forever changed because one person made a decision one night. My life was forever changed. My kids lost their sister and their mother in the same night because I literally died. And I don't know how many of you have ever had experience with being brain dead but I can tell you it's a journey you don't want to take. It's miserable. You can't think. You think you're functioning and you're not.

I had to deal with Jonathan in my own way and it wasn't easy because my family didn't understand what I was going through. My mediation with him that was supposed to take just a few minutes lasted five and a half hours. My forgiveness for Jonathan was something that a lot of victims don't understand. I didn't do it for Jonathan, I did it for me because I had to come back to life and that's what forgiveness did for me. My faith grew stronger but my views haven't changed.

The victims that view the execution, some of them feel some sense of satisfaction. I can only speak to my own experience. It was not a satisfaction to me. I didn't want Jonathan to die just to die, just to go away. It was the only way that I could be assured that he would not be released and that he would not kill again. He was a serial rapist, he raped all of his victims at knife point and he carried one of those big hunting knives that you use for gutting animals. My daughter was 5 foot 6 and weighed about 110 pounds. Jonathan was 6'2" and weighted about 225, no contest. My daughter was stabbed 28 times; she died in a fetal position in the corner of her closet.

They're talking about the long suffering of the offender on the gurney. Took Jonathan six minutes. But you know how long it takes for a person to bleed to death? Seventeen minutes. And that's what my daughter did, she bled to death from the wounds. Do you think she suffered? I think that the law should be fair and I think it should be just but I think it should be fair and just to all parties involved not only the offender.

The offender families suffered greatly, they need to be taken into consideration. The victims families, it's been twenty two years but yet it was five minutes ago. I've seen victims grieve themselves to death because of murder. We as a society are trained and programmed to accept death as a part of life and it is. Death by accident, death by illness, we're programmed to accept that. It doesn't make it easier but we're programmed to accept it. Murder and suicide are not acceptable ways to die and I don't care who does it.

I support the reform of the constitution project because I think they're fair for all parties involved. I think each state should remember that the offender is not the only person that is involved in this situation. Yes, they're being put to death but how many other people have they put to death? My daughter died your worst nightmare on her 21st birthday. Jonathan had 12 years to get his life in order which he did thank God. He became a Catholic by the way. But he had time to make himself right with God. He had time to make himself right with whatever family and friends that he communicated with. He didn't make himself right with me but I did forgive him.

We came to terms with each other which is what I needed to do so I could put it to rest. And did I get closure from the execution? No sir I didn't. There is no such word for victims. That's a media word that is not a victim word because there is never closure. It's the end of one chapter and the beginning of another and you just pray for the chapter to get over so you can go on about your life if you can find it. I've known a lot of people that have not been able to find it. I feel truly blessed and privileged to have been able to find my brain again. Just to be able to say hey how are you and really know what I'm saying and mean it.

MR. OWEN: And Paula it's really a privilege for us to have you with us to share those thoughts 'cause I think they're an essential part of having a well rounded perspective on this issue that the film deals with. I think I'd like to have Mr. Revez close for us with, just give us your thoughts if you would Andy about what you see as the future of this sort of relationship between institutional organized relation and the questions surrounding capital punishment that we've touched on this afternoon.

MR. ANDY REVEZ: Well that's an interesting question because the role of the church with capital punishment has been an ongoing role for almost 2,000 years. Whenever I go speak to parish groups and diocesan groups I always remind them that the church as been support of the use of capital punishment since the second century and I remind them of Joan of Arc. We were very much involved in that capital punishment. And I also like to remind folks that up until World War II there was very little questioning whether or not the use of capital punishment was a good thing or not a good thing. It wasn't until the historical occurrences in Europe during World War II and prior to World War II that there was a see [phonetic] change in the mentality of how to use the ultimate sanction in criminal function.

Part of our role, the churches role and it has been since 1980 when the Bishops took the policy position to oppose the use of the death penalty in the United States is to inform, to minister, and to transform society and that's really where the institutional church is right now is to try and engage people of faith and the community at large on the realities of this issue. The church still maintains the same teaching it has had for a long, long time and that is that the use of the death penalty should be for the protection of society. And the three prong test for its use goes way back. And that test is the punishment has to fit the crime, you have to have the person who actually committed the crime, and third there is no other choice left to society in order to protect society.

Using that three prong test the church has come to the conclusion that we don't need to use the death penalty in the United States anymore specifically for two of those prongs. With the realty that there have been more then 120 people taken off death row who were found to be innocent, the

question becomes how many were not taken off death row who were possibly innocent and our criminal justice system has other means by which to punish and distribute justice.

As a community of faith we believe very, very much in justice. We're the church, it's part of what we teach but we are also very firm believers in the gift of life and that gift should never be taken away capriciously or unless you can find other ways of keeping the gift in tact so that is what the church is engaged in. And we are very grateful for the blessing of some of the folks within our church network such as Sister Helen Frazier [phonetic] who is talking about these very issues and not just for the life of those who've committed offenses but also for the families who are hurt by crime because you cannot teach justice without it being a holistic approach, justice for the entire community not just those who were committing crimes and those who were hurt by the crime but the entire community. So it'll be an intimate relationship of this issue, the church is committed to this. And currently we have a campaign to end the use of the death penalty going on. It's not a short term campaign, the church admits this is going to be a long term effort and one directed towards folks in our own pews because we have a lot to, a lot of people to talk to in order to change people's hearts on it.

MR. OWEN: Thank you Andy. It's interesting that Andy mentioned Sister Helen Frazier's book *Dead Man Walking* which I think has played a really important role in structuring and shaping our public conversation about capital punishment in the last decade. I think you may appreciate after having heard this discussion this afternoon and seeing some glimpses of this film that *At the Death House Door* is a document which may well take its place along side *Dead Man Walking* as another essential document about the practice of capital punishment in the modern United States and I have no doubt that it's going to prompt the same kind of lively public discussion that that book did and that we've had some of here this afternoon.

We really appreciate all of you taking out the time to be with us this afternoon. I want to thank again Senator Rodney Ellis and the Texas State Senate for hosting us. I want to thank the Independent Film Channel and our film makers for making the film available to us for this event. Certainly I

want to thank the remainder of our panelists particularly Reverend Pickett and Paula Kurland for sharing with us their intimate experiences with this issue in such a candid and open and sharing way.

I do have one final announcement which is that the Texas Coalition to Abolish the Death Penalty will be holding two screenings in Texas of *At the Death House Door* on May 6th and May 13th, you can get information from their website. Also please keep in mind the film will premier on the Independent Film Channel, May 29th at 9:00pm. Thank you all so much for coming and we appreciate it.

[Applause]

[END TAPE]

For more information, visit:

www.ifc.com/atthedeathhousedoor