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August 14, 2009

COPY

Via E-Mail

Mr. John J. (Mike) McKetta III
Graves Dougherty Hearon & Moody
401 Congress Avenue, Suite 2200
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State Commission on Judicial Conduct
FILED
Clerk of the Commission

Re: *The Honorable Sharon Keller*

Date 8/14/09 In Re Judge No. 96
By [Signature]

Dear Mike:

Enclosed please find Respondent's Objections to Examiner's proposed Exhibits Nos. 26, 26.01-26.70, which is being filed with the Commission today. A copy of this document is being delivered to Judge Berchermann.

Should you have any questions regarding the above, please do not hesitate to contact me.

Very truly yours,

[Signature]
Kurt Schwarz

KAS
Enclosures

cc: Seana Willing *Via E-mail*
The State Commission on Judicial Conduct
P.O. Box 12265
Austin, Texas 78711-2265



FILED

Clerk of the Commission

INQUIRY CONCERNING JUDGE
NO. 96

Date 10/1/09 In Re Judge No. 96
By [Signature]

IN RE:
HONORABLE SHARON KELLER,
PRESIDING JUDGE OF THE TEXAS
COURT OF CRIMINAL APPEALS,
AUSTIN, TRAVIS COUNTY, TEXAS

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BEFORE THE
COMMISSION ON
JUDICIAL CONDUCT

COPY

**THE HONORABLE SHARON KELLER'S OBJECTIONS TO EXAMINER'S
PROPOSED EXHIBITS NOS. 26, 26.01 – 26.70**

TO SPECIAL MASTER, THE HONORABLE DAVID J. BERCHELMANN, JR.:

Respondent, the Honorable Sharon Keller (hereafter "Respondent") respectfully makes the following objections to proposed Exhibits Nos. 26 and 26.01 through 26.70 (collectively, "Exhibit 26"), offered by Examiner Seana Willing (the "Examiner"). Exhibit 26 comprises 71 media reports concerning Respondent and the events of September 25, 2007, which gave rise to this formal proceeding. A copy of Exhibit 26 is attached hereto at tab A. As demonstrated below, Exhibit 26 is inadmissible under Texas Rules of Evidence 401, 402, 403, 404, 407, 602, 701, 702, 703, 801, and 802.¹

In urging these objections, Respondent is acutely aware that she is not entitled to a trial by jury in this proceeding, and normally would defer to the Court, as trier of fact, to decide which items of evidence to rely on in deciding the case. But this is not a normal

¹ The hearing of this matter is governed by the Procedural Rules for the Removal or Retirement of Judges. Those Rules provide that the hearing "shall proceed . . . as nearly as may be according to the rules of procedure governing the trial of civil causes in this State" and "legal evidence only shall be received as in the trial of civil cases[.]" P. R. Ret. & Rem. Jud., R. 10(d)(1), (e).

Given the large number of exclusionary rules of evidence applicable to the Examiner's proposed Exhibit 26, Respondent shall not attempt to list each rule which is applicable to each proposed exhibit in the argument below, but rather refers the Special Master to Respondent's Objections to the Examiner's Hearing Exhibits, which is attached at tab B.

case; it is an extraordinary proceeding. Judge Berchermann, as Special Master, is to make findings of fact, based on the admissible evidence, for consideration by the State Commission on Judicial Conduct, and that Commission is not comprised solely of judges – in fact, most of its members are not judges, and five members are not lawyers.² In other words, this proceeding is more like a jury trial than it might initially appear. Respondent accordingly urges the Special Master to apply the Texas Rules of Evidence strictly and exclude Exhibit 26.

I. INTRODUCTION.

Respondent is the Presiding Judge of the Texas Court of Criminal Appeals (“CCA”). The issue in this formal proceeding is whether Respondent acted improperly on the afternoon of September 25, 2007, when she responded to a question from the CCA’s General Counsel, Edward Marty, about keeping the CCA’s Clerk’s office open past 5:00 p.m. so attorneys for Michael Wayne Richard could request a last-minute stay of execution based on the grant of certiorari in *Baze v. Rees* that morning. Cognizant of the facts that (1) Texas Rule of Appellate Procedure 9.2 allows parties to file documents directly with a judge, and (2) Judge Cheryl Johnson was the Judge to handle matters relating to Mr. Richard’s execution and was at the CCA, Respondent told Mr. Marty that the Clerk’s office closes at 5:00 p.m. Although the Examiner alleges that the request to keep the Clerk’s office open was prompted by computer problems experienced by Mr.

² Article 5, Section 1-a(2) of the Texas Constitution provides as follows:

The State Commission on Judicial Conduct consists of thirteen (13) members, to wit: (i) one (1) Justice of a Court of Appeals; (ii) one (1) District Judge; (iii) two (2) members of the State Bar, who have respectively practiced as such for over ten (10) consecutive years next preceding their selection; (iv) five (5) citizens, at least thirty (30) years of age, not licensed to practice law nor holding any salaried public office or employment; (v) one (1) Justice of the Peace; (vi) one (1) Judge of a Municipal Court; (vii) one (1) Judge of a County Court at Law; and (viii) one (1) Judge of a Constitutional County Court[.]

Richard's lawyers, it is undisputed that no one informed Respondent of any such problems. Mr. Richard's lawyers did not file anything with the CCA that evening, and Mr. Richard was executed after his requests for a stay of execution with the United States Supreme Court were denied. Subsequent executions, in Texas and elsewhere, were subsequently stayed because of *Baze*.

In the first couple of days after the execution, Mr. Richard's lawyers at the Texas Defender Service ("TDS") did not mention any computer or e-mail problems as having played a role in their failure to file anything on behalf of Mr. Richard. Indeed, in a *Houston Chronicle* article on September 27, 2007, David Dow of TDS did not mention either computer problems or Judge Keller; in another *Houston Chronicle* article on September 28, "defense lawyers" said "they had too little time to prepare their appeals."

Once it became clear that *Baze* had caused a de facto moratorium on executions nationwide, TDS began blaming Judge Keller for their failure to obtain a stay of Execution for Mr. Richard, and in so doing ignited an explosion of media outrage. It is that firestorm of outrage and contumely that the Examiner now seeks to have admitted in evidence. The perversity of having ginned-up scorn used as evidence of the underlying facts should be enough to bar Exhibit 26 from evidence. But, as shown below, there are many legal reasons why the evidence should be excluded, as well.

Although identified by the Examiner as "media articles" in her Exhibit List, Exhibit 26 does not contain just journalistic articles – that is, factual descriptions of events which are independently fact-checked before publication. Rather, Exhibit 26 mostly comprises *expressions of opinion* by editorial and op-ed writers – indeed, as summarized by Examiner in her First Amended Notice of Formal Proceedings (the

"Amended Notice"). Exhibit 26 consists of little more than expressions of scorn and abuse about Judge Keller:

31. Journalists throughout Texas and the nation have weighed in on the Richard case, and the response has been overwhelmingly negative. Examples include:

- The *Houston Chronicle* began an editorial this way: "The events of Sept. 25 have put a stain on Texas justice that can only be cleaned by the removal of Chief Justice Sharon Keller from the Texas Court of Criminal Appeals." The editorial went on to describe Judge Keller's actions as "legally inexcusable," "mind boggling," and a "miscarriage of justice."
- Describing the event as "unconscionable," an editorial in the *Dallas Morning News* concluded this way: "Hastening the death of a man, even a bad one, because office personnel couldn't be bothered to bend bureaucratic procedure was a breathtakingly petty act and evinced a relish for death that makes the blood of decent people run cold."
- An editorial in the *Austin American Statesman* said, "Keller's court has consistently failed its duty to ensure the integrity of capital trials and death sentences." Referring specifically to the Richard incident: "That cold-hearted response drew international criticism of Keller and the court." And, "it is abundantly clear that Keller and her court have been more concerned with process than justice."
- The Waco newspaper said this: "Sharon Keller, presiding judge of the Texas Court of Criminal Appeals, shamed the state by deciding that 20 minutes of her time was more important than a last minute appeal for a man on death row."
- The *Fort Worth Star-Telegram* noted that the Texas Court of Criminal Appeals under Judge Keller had been "derided" and "scolded" in the past. "But for sheer myopia, it's hard to top Keller's refusal to keep the court open long enough to accept an emergency appeal from a Death Row inmate about to be executed."
- Michael Hall, writing for *Texas Monthly*, said this: "When a man's life is on the line — to say nothing of the

U.S. Constitution — our top criminal judge should behave like one: with prudence, fairness, and a calm hand. It's time for Keller to go.”

- National reporters too have taken note of the controversy. Ralph Blumenthal of the *New York Times*, commented that Judge Keller, “is the target of a rising national outcry after turning away that last appeal of a death row inmate because the rushed filing was delayed past the court’s 5 p.m. closing time.” In *USA Today*, Kevin Johnson wrote about the Richard case, describing the “frenzied, behind-the-scenes legal fight that led to intense criticism of Texas courts and confusion about the actions of the nation’s highest court.”

Amended Notice ¶ 31, at 5-6.

Admission of Exhibit 26, or any of its components, into evidence would clearly be error. Nothing in Rule 26 is relevant; it contains impermissible character evidence; none of it is based on personal knowledge; the entire exhibit is hearsay; the opinions expressed are not based on personal knowledge, nor are they based on reliable data; the prejudice of Exhibit 26 far outweighs its probative value; and some of the proposed exhibits contain evidence of subsequent remedial measures.

II. ARGUMENT AND AUTHORITIES.

A. Exhibit 26 is Neither Material Nor Relevant.

This is not a popularity contest, nor should it be treated as one by the Examiner. The issue before the Special Master is not whether editors and op-ed writers in San Antonio, Houston, Austin, Dallas, or Waco – not to mention New York City or Australia – like Judge Keller or approve of her performance as Presiding Judge of the CCA. Yet, in large measure, that is what Exhibit 26 is: a collection of opinions, uniformly negative and often scathing in tone, of individuals from around the state, the nation, and the

world.³ Respondent does not deny that those editorial writers and media pundits have a right to publish their opinions. But Respondent does deny that those opinions are admissible in evidence under the Texas Rules of Evidence.

In addition, some of the articles contained in Exhibit 26 purport to be “straight journalism;” that is, they appear to simply relate facts. To the extent the article are journalistic in tone, however, they misrepresent and ignore the facts. Thus, as shown in the examples cited below,⁴ the articles say things like: Respondent spoke to Richard’s lawyers, which she did not; Respondent “closed the courthouse,” which is untrue; and Richard’s lawyers delivered documents to Respondent’s office, which is false.

Exhibit 26 fails the first test of evidence, materiality, because the contents of the opinion pieces do not concerns a pleaded element of the case against Judge Keller.⁵ *See Group Hosp. Servs., Inc. v. Daniel*, 704 S.W.2d 870, 879 (Tex. App. – Corpus Christi 1985, no writ) (“material” refers to “a pleaded element of a case or other provable

³ *See, e.g.*, Examiner’s proposed Exhibits 26 (Keller’s action “unconscionable”); 26.02 (“Keller Shames Texas Again”); 26.03 (“Keller proves how unjust . . . the highest criminal court in the state can be.”); 26.12 (“Justice in Texas? Not on her watch”); 26.14 (“Keller’s refusal to keep the court open for even a few more minutes was the height of callousness and a perversion of justice.”); 26.24 (“chief justice’s unethical, outrageous blocking of a death row appeal merits the most severe legal sanction”); 26.25 (“Keller should be held accountable for her shocking behavior.”); 26.26 (“justice has dropped to a new low”); 26.29 (“The events of Sept. 25 have put a stain on Texas justice that can only be cleansed by the removal of” Keller); 26.31 (“Keller has nickname of ‘Killer Keller’”); 26.38 (“Keller’s judgment is morally offensive”); 26.40 (“Keller disgrace”); 26.43 (“Hello? Hello?! Criminal Justice”); 26.44 (“Protest hits home for Texas judge who refused to hear appeal”); 26.45 (“Hello? Hello?! Criminal Justice”); 26.56 (“Keller . . . slammed the door shut on Richard’s life”); 26.68 (“It is time for Sharon Keller to go.” “Impeach Sharon Keller”).

⁴ *See, e.g.*, Examiner’s proposed Exhibits 26.10 (“Keller refused to keep her courthouse open”); 26.14 (“Keller took the [attorneys’] call and turned down the request”); 26.18 (Keller “refus[ed] to keep her court open”); 26.42 (“Richard’s lawyers didn’t get the filings to Keller’s office until 5.20 p.m.”); 26.47 (“judge denied a death-row inmate’s lawyers a few more minutes to file an appeal”); 26.48 (“the presiding judge . . . closed [the court’s] doors”); 26.50 (“Keller decid[ed] . . . not to keep the-court open”); 26.52 (“Keller’s action denied Richard the ability to file a proper request for a stay of execution”); 26.67 (Keller “closed the courthouse . . . and turned back an attempt to file appeal papers”); 26.69 (Keller “made the final decision that resulted in Richard’s-execution”).

⁵ To the extent that the pieces in Exhibit 26 purport to report facts, they must be excluded as hearsay and as not based on personal knowledge, as Respondent explains below.

matter”). Here, the popularity of Judge Keller among journalists and editors is simply not at issue. No doubt the Examiner will argue that Exhibit 26 is material because it bears on her allegation that Judge Keller violated Canon 2A of the Code of Judicial Conduct and Article 5, Section 1-a(6) of the Texas Constitution, which provide as follows:

A judge shall comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

Tex. Code. Jud. Conduct, Canon 2A.

Any Justice or Judge of the courts ... may, subject to the other provisions hereof, be removed from office for . . . willful and persistent conduct that . . . casts public discredit upon the judiciary or the administration of justice.

Tex. Const. Article 5, §1-a(6).

Neither of these provisions requires, or allows, evidence of editorial opinion about a Judge. First of all, these provisions concern *conduct*, not opinion. They do not say that a judge may be disciplined for being unpopular; rather, they allow discipline for wrongful conduct.⁶ Second, even assuming that “public confidence” and “public discredit” are elements of the Examiner’s charges, editorial writers in New York, Austin, or Houston are not “the public” (as much as they may dream themselves to be). Accordingly, their musings and philippics are not material to the charges against Respondent.

Likewise, Exhibit 26 is not material – that is, it does not make the existence of a material fact “more probable or less probable than it would be without the evidence.” Tex. R. Evid. 401. What journalists and pundits say, after the fact, does not make more or less likely any fact bearing on whether Judge Keller acted improperly on September

⁶ And if they did allow the removal or discipline of a judge for mere unpopularity, they certainly would be unconstitutional under the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

25, 2007, and that is all that is at issue here. Nor do the opinions of editorialists make more or less probable any fact whatsoever (for how can an opinion bear on the likelihood of a fact?). Likewise, to the extent the media reports purport to be journalistic accounts of facts, they do not tend to make any fact alleged by the Examiner more likely true, because simply repeating an allegation in print does nothing to prove its veracity.

Exhibit 26 must be excluded under Texas Rules of Evidence 401 and 402.

B. Exhibit 26 Contains Inadmissible Character Evidence.

Much of Exhibit 26 comprises an assault on Judge Keller's character; it is largely an uninformed rant about her supposed unfitness for office, *see* footnote 3, above, and many of its constituent articles call her names and argue that she must have acted wrongfully on September 25, 2007, because such conduct would be in conformity with her alleged character. Thus, for example, proposed Exhibit 26.12 includes the following:

Keller and this state's highest court for criminal cases have a well-earned reputation for tolerating egregious abuses in capital trials and appeals. This record of indifference to the right to effective defense counsel and for judicial precedent has put them at odds with the U.S. Supreme Court numerous times.

... Keller's court has consistently failed in its duty to ensure the integrity of capital trials and death sentences.

...

[I]t is abundantly clear that Keller and her court have been more concerned with process than justice.

Proposed Exhibit 26.43 states:

During Presiding Judge Sharon Keller's tenure, the Texas Court of Criminal Appeals has been derided for seeing no harm when lawyers commit obvious errors. In its zeal to uphold convictions come what may, the court has been scolded by the U.S. Supreme Court for not following precedent.

Other examples of impermissible character evidence are set forth in the footnote below.⁷

The character testimony of Exhibit 26 is barred under Texas Rule of Evidence 404, which provides in pertinent part as follows:

Evidence of a person's character or character trait is not admissible for the purpose of proving action in conformity therewith on a particular occasion, except:

by a party accused in a civil case of conduct involving moral turpitude, or by the accusing party to rebut the same[.]

Tex. R. Evid. 404(a)(1)(B).

Under Rule 404(b), evidence that has “no relevance apart from character conformity” is “inadmissible.” *Massey v. State*, 933 S.W.2d 582, 586 (Tex. App.–Houston [1st Dist.] 1996, no pet.). Accordingly, “[t]he threshold inquiry is whether the evidence is relevant to prove a material issue other than character.” *Simpson v. State*, 975 S.W.2d 364, 367 (Tex. App.–Waco 1998, no pet.); accord, *Camp v. State*, 925 S.W.2d 26, 32 (Tex. App.–Tyler 1995, writ ref'd). As already demonstrated, the character smears collected in Exhibit 26 have no relevance to any other issue in this proceeding. Furthermore, the “moral turpitude” exception to Rule 404 does not apply because Respondent is not accused of such conduct. See *Duncan v. Board of Disc. Appeals*, 898 S.W.2d 759, 761 (Tex. 1995) (for purposes of attorney discipline, “crimes involving moral turpitude are those that involve dishonesty, fraud, deceit, misrepresentation, deliberate violence, or that reflect adversely on a lawyer's honesty, trustworthiness, or

⁷ See, e.g., Examiner's proposed Exhibits 26.20 (“Keller . . . has never shown much sympathy towards death row inmates”); 26.22 (“Judge Keller let her personal bias in favor of the death penalty trample the right of Richard”); 26.23 (“Keller . . . has a reputation as a hard-liner when it comes to upholding convictions.”); 26.31 (“Keller has nickname of ‘Killer Keller’”); 26.38 (“Keller's judgment is morally offensive”); 26.56 (“This is hardly the first time Keller has sacrificed fairness for toughness.”); 26.64 (Keller “allowed her personal views on the death penalty to interfere with justice”), 26.65 (“Since first elected to the Court of Criminal Appeals in 1994, she has cultivated a distinct profile – tough on crime.”).

fitness as a lawyer in other respects”); *Hutson v. State*, 843 S.W.2d 106, 107 (Tex. App. – Texarkana 1992, no writ) (“Generally, moral turpitude means something that is inherently immoral or dishonest.”); *Polk v. State*, 865 S.W.2d 627, 630 (Tex. App. – Fort Worth 1993, writ ref’d) (“Moral turpitude has been defined to include acts which are base, vile, or depraved.”).

Exhibit 26 includes impermissible character evidence and, as such, the Exhibit must be excluded.

C. Exhibit 26 is Unduly Prejudicial.

Exhibit 26 is offered in evidence for no reason other than to smear the character of Respondent and to prejudice the Special Master and the Commission against her. The sole purpose of Exhibit 26 is to prejudice the finders of fact.

Texas Rule of Evidence 403 provides as follows:

Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, or needless presentation of cumulative evidence.

Tex. R. Evid. 403.

Exhibit 26 must be excluded under Rule 403, because, as already demonstrated, Exhibit 26 does not contain any relevant evidence; it is mostly a collection of character attacks on Respondent which do not tend to prove any of the facts underlying the charges against her, and, to the extent the articles purport to relate facts, they merely restate, in published form, second-hand allegations which have no probative value. In other words, the probative value of Exhibit 26 is zero.

In contrast, the degree of prejudice of Exhibit 26 is extreme: these are, after all, publications uniform in both their ignorance of facts and the ferocity of their malice. The

cases are clear that evidence, even if relevant – which Exhibit 26 is not – should be excluded if there is a “clear disparity between the degree of prejudice of the offered evidence and its probative value.” *Connor v. State*, 67 S.W.3d 192, 202 (Tex. Crim. App. 2001). Under this test, Exhibit 26 must be excluded.

D. Exhibit 26 is Not Based on Personal Knowledge.

Texas Rule of Evidence 602 reads in its entirety as follows:

A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may, but need not, consist of the testimony of the witness. This rule is subject to the provisions of Rule 703, relating to opinion testimony by expert witnesses.

It should go without saying that none of the journalists, editors, and op-ed pundits who composed the pieces constituting Exhibit 26 has personal knowledge of any of the facts relevant to this proceeding. No facts set forth in those pieces is admissible, and Exhibit 26 must be excluded.

E. Exhibit 26 is Inadmissible Hearsay.

Hearsay is an out-of-court statement offered as evidence to prove the truth of the matter asserted. *See* Tex. R. Evid. 801(d).

Generally, Texas courts consider newspaper articles inadmissible hearsay. When a party offers a statement simply to show that it was made rather than to show its truth or falsity, however, the hearsay rule does not bar its admission. Further, newspaper articles not offered for the truth of the matters asserted but used merely to show notice of those matters are not hearsay. The hearsay rule also does not bar the admissibility of news reports used to show public perceptions of the subject matter covered by the articles.

City of Austin v. Houston Lighting & Power Co., 844 S.W.2d 773, 791 (Tex. App. – Dallas 1992, writ denied).

While the Examiner has indicated that she intends to use Exhibit 26 for a limited purpose, Exhibit 26 does not fall into any of the hearsay exceptions listed in *Austin*. The Examiner cannot proffer Exhibit 26 “simply to show that [a statement] was made” because, as already demonstrated, the statements of editorial writers are not relevant or material. The Examiner cannot proffer Exhibit 26 “to show notice” because the public’s notice of editorials and op-ed pieces is neither material nor relevant to this proceeding. And the Examiner cannot proffer Exhibit 26 to show “public perception” of reported matters, because the pieces do not reflect the public’s perceptions, but only the opinions of the writers. All Exhibit 26 shows is that the public was exposed to various pundits’ opinions and articles written by journalists with no personal knowledge of the facts, which is neither material nor relevant to this proceeding.

Not falling into any exception to the hearsay rule, Exhibit 26 must be excluded from evidence under Texas Rule of Evidence 802.

F. Exhibit 26 is Inadmissible Lay Opinion Evidence.

As already noted, Exhibit 26 is largely a collection of *opinion* pieces – those pieces are not journalism, but pontification. Such pontification is, of course, protected speech under the First Amendment, but that doesn’t make it admissible as evidence.

None of the authors of the pieces comprising Exhibit 26 has been designated as an expert by the examiner, so if they are to express their opinions in this proceeding, their testimony must comply with Rule 701, which provides:

If the witness is not testifying as an expert, the witness’ testimony in the form of opinions or inferences is limited to those opinions or inferences which are (a) *rationaly based on the perception of the witness*, and (b) helpful to a clear understanding of the witness’ testimony or the determination of a fact in issue.

Tex. R. Evid. 701 (emphasis added).

Exhibit 26 is not admissible as lay opinion testimony for the simple reason that it does not comply with Rule 602; that is, Rule 701 allows a lay witness to express an opinion only if the opinion is based on personal knowledge. *See Fairrow v. State*, 943 S.W.2d 895, 898 (Tex. Crim. App. 1997) (holding that the “witness must establish personal knowledge of the events from which his opinion is drawn”); *Lopez v. Andrews*, 404 S.W.2d 300, 305 (Tex. 1996) (opinion testimony not based on personal knowledge is not permitted unless it is offered by an expert). None of the opinions expressed in Exhibit 26 is based on personal knowledge of facts, so they must be excluded.

G. Exhibit 26 Is Not Admissible as Expert Opinion Testimony.

Since none of the authors of Exhibit 26 has personal knowledge of the events at issue in this proceeding, their opinions are admissible, if at all, only under Texas Rules of Evidence 702 and 703. *See Lopez*, 404 S.W.2d at 305. Those Rules provide as follows:

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise.

Tex. R. Evid. 702.

The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by, reviewed by, or made known to the expert at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence.

Tex. R. Evid. 703.

A two-part test governs whether expert testimony is admissible: (1) the expert must be qualified, and (2) the testimony must be relevant and be based on a reliable foundation. *See E.I. du Pont de Nemours & Co. v. Robinson*, 923 S.W.2d 549, 556 (Tex. 1995). These standards apply to non-scientific testimony. *Gammill v. Jack Williams*

Chevrolet, Inc., 972 S.W.2d 713, 726 (Tex. 1998) (“All expert testimony should be shown to be reliable before it is admitted.”). Exhibit 26 fails both of these tests.

To be qualified, “those who purport to be experts [must] truly have expertise concerning the actual subject about which they are offering an opinion.” *Gammill v. Jack Williams Chevrolet, Inc.*, 972 S.W.2d 713, 719 (Tex. 1999). The Examiner has not, and cannot satisfy this basic test. Pundits and journalists are not qualified to opine about court procedures or judicial conduct.

Expert testimony must be both “relevant and reliable.” An expert’s foundational data must be reliable; absent reliable facts, his testimony “is unreliable and, legally, no evidence.” *Merrell Dow Pharms., Inc. v. Havner*, 953 S.W.2d 706, 714 (Tex. 1997), *cert. denied*, 523 U.S. 1119 (1998). The “data” relied on by the authors of Exhibit 26 was hearsay and multiple hearsay, much of it demonstrably false, and virtually none of it came from someone with actual knowledge of the facts. Because the pundits’ “data” – principally Prof. Dow’s self-serving version of events – is wholly unreliable, the opinions expressed in Exhibit 26 must be excluded.

H. Parts of Exhibit 26 Contain Evidence of Subsequent Remedial Measures.

Certain articles in proposed Exhibit 26 concern the CCA’s decisions, in November and December 2007, to permit after-hour electronic filings and to reduce to writing the CCA’s execution-day procedures. *See, e.g.*, Exs. 26.51, 26.52, 26.53, 26.54 (e-filing), 26.57, 26.58, 26.59, 26.60 (written procedures), 26.69 (both). In addition to other reasons for excluding this fact evidence, discussed at length above, these proposed exhibits must be excluded under Rule 407, which provides:

When, after an injury or harm allegedly caused by an event, measures are taken that, if taken previously, would have made the injury or harm less likely to occur, evidence of the subsequent measures is not admissible to prove negligence, culpable conduct, a defect in a product, a defect in a product's design, or a need for a warning or instruction. This rule does not require the exclusion of evidence of subsequent remedial measures when offered for another purpose, such as proving ownership, control, or feasibility of precautionary measures, if controverted, or impeachment.

Tex. R. Evid. 407(a). Rule 407 applies to the procedural changes enacted by the CCA following the Richard episode. See *Penley v. State*, 2 S.W.3d 534, 540 (Tex. App. – Texarkana 1999, pet. ref'd) (“Subsequent remedial measures can take many forms: repairs, installation of safety devices, changes in policy, design changes, providing or modifying warnings, or the firing of an employee.”). Accordingly, the portions of Exhibit 26 containing evidence of subsequent remedial measures should be excluded.

III. CONCLUSION.

Exhibit 26 consists of a collection of editorials and op-ed pieces attacking Judge Keller, and a set of reports purporting to relate facts about the events of September 25, 2007. The opinions in Exhibit 26 must be excluded under Texas Rules of Evidence 701, 702, and 703, because they do not meet the standards for either lay or expert opinion testimony (including not being based on personal observations (Rule 602)); in addition, they are irrelevant and immaterial (Rules 401 and 402), and unduly prejudicial (Rule 403). The “facts” in Exhibit 26 must be excluded as irrelevant and immaterial (Rules 401 and 402), unduly prejudicial (Rule 403), impermissible character evidence (Rule 404), impermissible evidence of subsequent remedial measures (Rule 407), not based on personal knowledge (Rule 602), and hearsay (Rule 801 and 802).

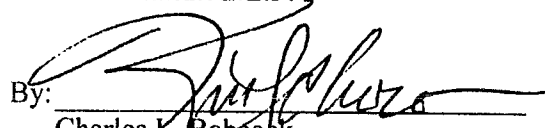
As already noted, it appears that the Examiner believes that the public's opinion of Judge Keller is relevant to this proceeding. Although Respondent contends that she

cannot be removed from office (other than by election) for being unpopular, if the Examiner wants to prove public opinion, she must do so by competent expert testimony and a reliable survey.⁸ The Examiner elected not to obtain admissible evidence about the public's opinion of Judge Keller. That choice does not entitle the Examiner to introduce uninformed articles and character attacks instead.

For the reasons set forth above, Respondent respectfully requests that the Special Master sustain her objections and exclude the Examiner's proposed Exhibit 26, and all its component parts, from evidence in this formal proceeding.

⁸ If the universe surveyed is relevant, if the sample questioned is representative of the relevant universe, if the questions are in a form appropriate to obtain unbiased answers within a reasonable margin of error, and if the pollster is qualified, the weight of authority supports the admission of a public opinion survey tending to prove a fact relevant to a material issue. See *Zippo Mfg. Co. v. Rogers Imports, Inc.*, 216 F. Supp. 670, 682 et seq. (S.D.N.Y. 1963). See also *Asaff v. State*, 799 S.W.2d 329, 330-34 (Tex. App. – Dallas 1990, writ ref.) (error to exclude properly conducted survey which went to element of charge against defendant).

Respectfully submitted,
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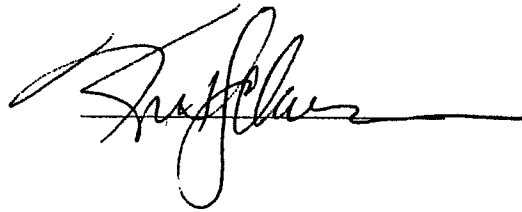
**ATTORNEYS FOR RESPONDENT
THE HONORABLE SHARON
KELLER**

CERTIFICATE OF SERVICE

This is to certify that on this 4th day of August, 2009, a true and correct copy of the foregoing document was served via electronic transmission:

Ms. Seana Willing
State Commission on Judicial Conduct
P.O. Box 12265
Austin, Texas 78711
Facsimile #512-463-0511

Mr. John J. McKetta, III
Graves Dougherty Hearon & Moody
401 Congress Ave., Suite 2200
Austin, Texas 78701

A handwritten signature in black ink, appearing to read "John J. McKetta, III", with a long horizontal line extending to the right.



'We Closed at 5'

06:40 AM CDT on Tuesday, October 2, 2007

What's 20 minutes to you? Two miles on the expressway during rush hour? Time to slurp a latte on the way back to the office? About the time it takes to scan the newspaper you're reading now? To Michael Richard, 20 minutes was probably the difference between life and death.

The Texas death-row inmate's lawyers petitioned for a stay of execution after the U.S. Supreme Court's decision to review the constitutionality of lethal injection. Irving killer Carlton Akee Turner won a last-minute stay from the high court. Mr. Richard's lawyers were working on his petition when their computer crashed. They phoned the Texas Court of Criminal Appeals, informed its personnel of the computer problems and asked them to stay open long enough to accept the paperwork.

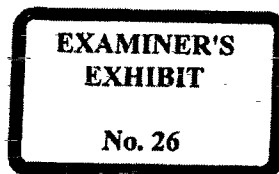
Forget it, replied the court. Time thus ran out for Mr. Richard, who died on the gurney. A court official later said, "I advised the parties that called that we closed at 5." Just like that.

That is unconscionable.

You might not lose sleep over the fact that the court wouldn't stay open for 20 minutes to help a convicted rapist-murderer's attempt to evade the needle a bit longer. You should think again.

When the state takes the life of a condemned criminal, it must do so with a sense of sobriety commensurate with its grave responsibility. Hastening the death of a man, even a bad one, because office personnel couldn't be bothered to bend bureaucratic procedure was a breathtakingly petty act and evinced a relish for death that makes the blood of decent people run cold.

EXHIBIT 2-15



000073

<http://www.dallasnews.com/sharedcontent/dws/dn/opinion/editorials/stories/DN-richardd...> 12/27/2007

SCJC 000078



Chronicle

Oct. 3, 2007, 9:44PM

Judges angered by colleague's decision to close offices at 5 p.m.

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AUSTIN — Judge Cheryl Johnson said she was dismayed when she first learned from a newspaper report that a colleague closed the doors of Texas' highest criminal court at 5 p.m. as attorneys for a death row inmate rushed to file an appeal.

Presiding Judge Sharon Keller closed the Texas Court of Criminal Appeals offices at the regular time Sept. 25, preventing attorneys for inmate Michael Richard from filing an appeal seeking to halt Richard's execution hours after the U.S. Supreme Court said it would consider a Kentucky case questioning the constitutionality of lethal injection.

Richard was executed that night after the U.S. Supreme Court refused to grant him a reprieve.

The Austin American-Statesman reported Tuesday that Keller made the decision to close without consulting any of the Texas Court of Criminal Appeals' eight other judges or later informing them about the decision — including Johnson, who was assigned to handle any late motions in Richard's case.

"And I was angry," she said. "If I'm in charge of the execution, I ought to have known about those things, and I ought to have been asked whether I was willing to stay late and accept those filings."

Johnson said her first reaction was "utter dismay."

Johnson said she would have accepted the brief for consideration by the court. "Sure," she said. "I mean, this is a death case."

News of the court's refusal appeared in newspapers, and critical editorials, around the world.

The Supreme Court had accepted the lethal injection case earlier that day, and Richard's lawyers argued that the extra time was needed to respond to the new circumstances and to address computer problems that delayed the printing of Richard's motion.

Since then, two executions have been blocked in Texas, signaling a temporary halt to the busiest death penalty state in the nation.

At least three judges were working late in the courthouse that evening, and others were available by phone if needed, court personnel said.

None of the judges was informed of Richard's request by Keller or by the court's general counsel, Edward Marty, who had consulted with Keller on the request.

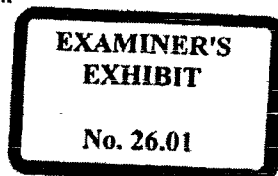
Keller defended her actions, saying she was relating the court's long-standing practice to close on time.

EXHIBIT C-15

<http://www.chron.com/disp/story.mpl/front/5186420.html>

000074

10/27/2007



SCJC 000074

Judges angered by colleague's decision to close offices at 5 p.m. / [Continued](#)

"I got a phone call shortly before 5 and was told that the defendant had asked us to stay open. I asked why, and no reason was given," Keller said. "And I know that that is not what other people have said, but that's the truth. They did not tell us they had computer failure."

"And given the late request, and with no reason given, I just said, 'We close at 5.' I didn't really think of it as a decision as much as a statement."

Judge Cathy Cochran questioned whether or not justice had been served in the Richard case.

"First off, was justice done in the Richard case? And secondly, will the public perceive that justice was done and agree that justice was done?" Cochran said. "Our courts should be open to always redress a true wrong, and as speedily as possible. That's what courts exist for."

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strategizer wrote:

Actually, I DO agree that life is precious. So precious is life that when you decide to extinguish one in a felonious act, the price should be the highest. You should pay with your own life. Isn't setting a high price (death penalty) letting the world know you put a high value on the innocent life he took? Guess it is just a matter of WHICH life you find precious. The death penalty foes think the life of the perpetrator is more precious than that of the victim. I don't.

10/4/2007 12:50:50 AM

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changa45 wrote:

DING-DONG THE FREAK IS DEAD!!!

10/4/2007 12:49:46 AM

[Recommend \(2\)](#)

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strategizer wrote:

Judge playing God? She closed her court doors at 5:00pm. The system did the rest. The judge deserves re-election.

10/4/2007 12:47:25 AM

[Recommend \(3\)](#)

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EXHIBIT *2-5*

000075

<http://www.chron.com/disp/story.mpl/front/5186420.html>

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Document 44 of 46.

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The Houston Chronicle

October 7, 2007 Sunday
3 STAR EDITION

SECTION: B; Pg. 1 MetFront

LENGTH: 749 words

HEADLINE: Keller shames Texas again

BYLINE: RICK CASEY, Staff

BODY:

**EXAMINER'S
EXHIBIT**

No. 26.02

SHARON Keller, Texas' top judge on criminal matters, may have shocked much of the nation last week when she ordered a clerk not to stay open an extra 20 minutes to accept a last-minute appeal for a man on death row.

But she didn't shock those who know her.

After all, this is the same judge who nine years ago responded to DNA evidence indicating the innocence of a man who had been in prison for years on a rape charge by writing that he may have used a condom.

More on that below.

Now Keller, the presiding judge of the Texas Court of Criminal Appeals, put us on the front page of the New York Times and into the foreign press by refusing to allow the court clerk's office to stay open an extra half-hour to take the last-minute appeal of a Michael Richard, who raped and killed a Harris County mother of seven in 1986.

A deadly computer crash

Richard was executed that evening. It's not as though the appeal was frivolous or even

http://www.lexis.com/requester/document?_ansset=Z-WA-A-VZ-VZ-MsSWYZW-UUA-U-U-U-U... SCJC 001120
7/1/2009

unexpected.

Several of her colleagues on the court stayed late, assuming that an appeal would be filed.

Earlier that day the U.S. Supreme Court had accepted a Kentucky case challenging lethal injections as often being so painful as to constitute cruel and unusual punishment, which is barred by the Constitution.

University of Houston Law Center Professor David Dow and others working on Richard's case scrambled to seek a stay of Richard's execution, scheduled for 6 p.m., since Texas uses basically the same method as Kentucky.

But their computer crashed, making it impossible to print out and deliver 11 copies of the 108-page petition by 5 p.m. They figured they could make it by 5:20 or 5:30 and called the clerk's office about 4:30 to ask them to stay open until then.

Colleagues angered

Someone from the clerk's office called Keller, who said no. She said she wasn't told that a computer failure was the problem, as if that made any difference. It was obvious from the Supreme Court's action that a legitimate issue would be raised.

In fact, in the week since Keller's callous closing, the U.S. Supreme Court has blocked one Texas execution and the Court of Criminal Appeals another, based on basically the same facts as Richard's.

Some of Keller's colleagues on the Court of Criminal Appeals were angered by her bureaucratic approach, especially since she didn't bother to inform them that an extension had been requested.

Judge Paul Womack told the Chronicle he stayed until 7 p.m.: "It was reasonable to expect an effort would be made with some haste in light of the Supreme Court (action). It was an important issue. I wanted to be sure to be available in case it was raised."

Judge Cheryl Johnson, who was assigned to handle any late motions in the Richard case, learned about the request from a story in the Austin American-Statesman, to her "utter dismay."

She told the paper: "And I was angry. If I'm in charge of the execution, I ought to have known about those things, and I ought to have been asked whether I was willing to stay late and accept those filings."

Judge Cathy Cochran told the Chronicle: "I would definitely accept anything at any time from someone who was about to be executed."

A flexible theory

Not Keller. She has shown herself capable of extraordinary mental gymnastics to avoid overturning a conviction.

Back in 1990, Roy Criner was convicted of raping a 16-year-old girl and sentenced to 99 years. She was murdered, apparently in connection with the rape, but the evidence wasn't strong enough to try Criner with the murder.

In fact, the evidence was so weak that a Beaumont appeals court ruled that "no rational trier of fact could have found beyond a reasonable doubt all of the essential elements of the offense charged."

The Court of Criminal Appeals, however, overruled the lower appeals court.

When DNA tests, unavailable at the time of the trial, later showed that semen found on the girl was not Criner's, both the trial judge and the Beaumont appeals court ruled he deserved a new trial. Again, the Court of Criminal Appeals disagreed.

This is when Keller came up with her "he might have worn a condom" theory, arguing that he may have raped her after she had sex with someone else.

She even callously put into a footnote that the girl "loved sex," a piece of "evidence" that was never presented to the jury nor tested under cross-examination.

As it turned out, Keller's "theory" was proved to be nonsense. After 10 years in prison, Criner was finally released when more sophisticated DNA evidence showed that the semen belonged to the rapist.

NOTES: You can write to Rick Casey at P.O. Box 4260, Houston, TX 77210, or e-mail him at rick.casey@chron.com

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NewsRoom

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10/7/07 Ft. Worth Star-Telegram E1
2007 WLNR 19635921

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October 7, 2007

Section: E

Things to remember about executions

Bob Ray Sanders, Star-Telegram Staff Writer

Remember the names Michael Richard and Carlton Turner.

One is dead; one is alive.

Both had been given the death penalty in Texas and were scheduled to die within two days of each other last month.

Again, one is dead; one is alive.

Their cases once again prove the arbitrariness of the death penalty in Texas and the pure absurdity of capital punishment in the United States.

While you concentrate on those two names -- Michael Richard and Carlton Turner -- also remember the name of Sharon Keller, presiding judge of the Texas Court of Criminal Appeals.

Keller proves how unjust (or at the very least how insensitive) the highest criminal court in the state can be.

And once again, Lady Justice ought to be hiding her head in shame in the Lone Star State.

The U.S. Supreme Court announced Sept. 25 that it would take a Kentucky case to decide if the method of lethal injection used by many states, including Texas, constitutes cruel and unusual punishment.

It seemed only natural that states that use that form of punishment would call a moratorium on executions until the high court rules on the matter. But not Texas, which already had put 26 people to death this year.

On the very evening of the Supreme Court's announcement, the state executed Richard after one of the most surreal actions by an appeals court justice that one

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**EXAMINER'S
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No. 26.03

SCJC 001269

could imagine.

Richard's lawyers were busy preparing an appeal for their client when their computer crashed late that afternoon. They called the Texas Court of Criminal Appeals, explained the problem and requested that the court stay open long enough for them to file the motion, according to The Associated Press.

"We close at 5," Keller responded, according to the Austin American-Statesman.

"I got on a phone call shortly before 5 and was told that the defendant had asked us to stay open. I asked why, and no reason was given," the judge told the newspaper.

It already was close to 5 p.m., so there was no time for the attorneys to meet that deadline.

Keller reportedly made her decision without consulting any other judge -- and at least three were still in the building after 5 p.m. that day -- and not bothering to inform the one judge who was assigned to review Richard's case.

Judge Cheryl Johnson, who was assigned to handle Richard's motions, was quoted as being very angry that she had not been notified that the chief judge basically was locking the doors on a case in which attorneys were trying to file a last-minute appeal.

The Texas appeals court didn't rule on the case at all that evening, so the Supreme Court couldn't step in and issue a stay of execution for Richard.

The state killed him.

Two days later, however, after the Texas court had refused to grant a stay in Turner's case, the Supreme Court stopped his execution that Thursday evening. Turner, who had admitted killing his parents in Irving in 1988, was lucky that his appeal got to Austin before the doors closed at 5.

Last week, the Court of Criminal Appeals did grant a stay for another Death Row inmate, Heliberto Chi, convicted of the 2001 murder of an Arlington man. He was set to be executed Wednesday.

This execution business is out of whack in Texas. Killing a man in the name of the state should not depend on luck or an impatient appeals judge who is more interested in when the courthouse closes than in an individual's life.

Texas has three other executions scheduled between now and Feb. 21. I can only presume that those will not be carried out. Based on the state appeals court's action in Chi's case and the Supreme Court's action in Turner's case, I hope that we have at least a de facto moratorium on executions --for a little while, anyway. Keep in mind that the issue the Supreme Court will consider is not abolishing cap-

ital punishment, but whether one method of execution is unconstitutionally cruel.

After the court rules, Texas will be back in the killing business again, I assure you -- unless we demand that our politicians end this immoral act altogether.

It is long past time to put a stop to this insanity.

If you still have doubts about that, just remember those two names: Michael Richard and Carlton Turner. Remember, too, Judge Sharon Keller.

And as you contemplate the judge's name, also remember that members of the Texas Court of Criminal Appeals are elected.

---- INDEX REFERENCES ----

NEWS SUBJECT: (Legal (1LE33); Judicial (1JU36))

REGION: (USA (1US73); Americas (1AM92); North America (1NO39); Texas (1TE14))

Language: EN

OTHER INDEXING: (Michael Richard; Carlton Turner; Michael Richard; Carlton Turner; Sharon Keller; Lady Justice; Cheryl Johnson; Michael Richard; Carlton Turner; Sharon Keller) (COURT OF CRIMINAL; KELLER; KENTUCKY; LONE STAR STATE; SHARON KELLER; SUPREME COURT; TEXAS; TEXAS COURT OF CRIMINAL; US SUPREME COURT) (Carlton Turner; Cheryl Johnson; Chi; Heliberto Chi; Justice; Michael Richard; Richard; Things; Turner) (Texas; Texas; United States; Kentucky; Texas; Texas; Texas; Texas; Austin; Texas; Texas; Texas; us; usa; na; us.tx; us.tx.frtwrt; nam; us.ky; us.tx.austin)

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The Associated Press State & Local Wire

October 10, 2007 Wednesday 10:10 PM GMT

SECTION: STATE AND REGIONAL

LENGTH: 489 words

HEADLINE: Attorneys file complaint over court closing before execution

DATELINE: AUSTIN

BODY:

**EXAMINER'S
EXHIBIT**

No. 26.04

Twenty lawyers filed a judicial conduct complaint Wednesday against Texas Court of Criminal Appeals Presiding Judge Sharon Keller, accusing her of violating the rights of a condemned man by cutting off appeals once office hours ended.

The complaint to the State Commission on Judicial Conduct says Keller improperly cut off appeals that led to the execution of Michael Richard on Sept. 25 despite the fact the U.S. Supreme Court earlier that day accepted a case on the propriety of lethal injection.

The lawyers said the case the Supreme Court accepted had direct implications for Richard's execution.

"Judge Keller's actions denied Michael Richard two constitutional rights, access to the courts and due process, which led to his execution," the complaint states. "Her actions also brought the integrity of the Texas judiciary and of her court into disrepute and was a source of scandal to the citizens of the state."

Lawyers signing the complaint included former State Bar President Broadus Spivey, Houston criminal defense lawyer Dick DeGuerin, University of Houston law professor Mike Olivas, former appellate Judge Michol O'Connor, Democratic state Rep. Harold Dutton of Houston and former Nueces County Attorney Mike Westergren.

The lawyers are being represented in the complaint by Jim Harrington, director of the Texas Civil Rights Project. Harrington said Keller's actions were "morally callous, shocking and unconscionable for an appellate judge."

The judicial conduct commission's proceedings are secret. The commission can dismiss a complaint without making it public; publicly reprimand a judge; or recommend to the Texas Supreme Court that the judge be removed from office.

Richard, 49, was executed for the 1986 rape and fatal shooting of Marguerite Dixon, a Hockley mother of seven.

Lawyers for Richard had called the court's clerk, asking that the office stay open an extra 20 minutes so a stay of execution request could be filed. Even if the stay was denied by the Texas court, that state request was procedurally necessary to get a stay from the Supreme Court.

Keller last week voiced no second thoughts about her actions. Instead she suggested that Richard's lawyers should have filed their request on time. She didn't immediately a phone call to her office from The Associated Press on Wednesday.

Though other judges at the Texas appeals court were waiting for Richard's appeal, Keller ordered the clerk to close promptly at 5 p.m. Richard's appeal was not filed, and he was executed later that evening.

Judge Cheryl Johnson was the appeals court jurist in charge of Richard's case. She said she never heard anything about the clerk's office closing off the appeal until the following day.

She said her understanding was that in a death penalty case court officials remain at the office until the time of execution and accept filings until the execution is under way.

Information from the Houston Chronicle: <http://www.chron.com>

LOAD-DATE: October 11, 2007

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Judge's actions in death case draw formal complaint

Web Posted: 10/10/2007 02:20 PM CDT

R.G. RATCLIFFE
AUSTIN BUREAU

AUSTIN -- Twenty lawyers from across Texas today filed a formal judicial conduct complaint against Texas Court of Criminal Appeals Presiding Judge Sharon Keller, accusing her of violating a condemned man's constitutional due process rights.

The complaint to the State Commission on Judicial Conduct says Keller improperly cut off appeals that might have stayed the execution of Michael Richard on Sept. 25. The U.S. Supreme Court earlier in the day had accepted a case on the propriety of lethal injection, which had direct implications for Richard's execution.

Judge Keller's actions denied Michael Richard two constitutional rights, access to the courts and due process, which led to his execution," the complaint states. "Her actions also brought the integrity of the Texas judiciary and of her court into disrepute and was a source of scandal to the citizens of the state."

Those lawyers signing the complaint included former State Bar President Broadus Spivey, Houston criminal defense lawyer Dick DeGuerin, University of Houston law professor Mike Olivas, former appellate Judge Michol O'Connor, state Rep. Harold Dutton, D-Houston, and former Nueces County Attorney Mike Westergren.

The lawyers are represented in the complaint by Jim Harrington, director of the Texas Civil Rights Project. Harrington said Keller's actions were "morally callous, shocking and unconscionable for an appellate judge."

The judicial conduct commission's proceedings are secret. The panel can dismiss a complaint without making it public; publicly reprimand a judge or recommend to the Texas Supreme Court that the judge be removed from office.

At issue is the sequence of events leading up to the execution of Richard, 49, for the 1986 rape and fatal shooting of Marguerite Dixon, a Hockley mother of seven.

Lawyers for Richard had called the court's clerk, asking that the office stay open an extra 20 minutes so a stay of execution request could be filed. Even if it was denied by the state court, that request was procedurally necessary to get a stay from the Supreme Court.

Keller last week voiced no second thoughts about her actions.

"You're asking me whether something different would have happened if we had stayed open," Keller said, "and I think the question ought to be why didn't they file something on time? They had all day."

Although other judges at the Texas appeals court were waiting for Richard's appeal, Keller ordered the clerk to close promptly at 5 p.m. Because of that, Richard's appeal was not filed and he was executed later in the evening.

EXHIBIT *CC-14*

000187

Judge Cheryl Johnson was the appeals court jurist in charge of Richard's case. She said she never heard

<http://www.mysanantonio.com/global-includes/printstory.jsp?path=/news/metro/stories/MYSA1...> 10/10/2007

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No. 26.05

SCJC 000187

anything about the clerk's office closing off the appeal until the following day.

"I wasn't consulted," Johnson said. "I have been here almost nine years. My understanding was that on a death case we were here up until the time of the execution and we would take filings that came in up until 6 o'clock and the execution is underway."

Johnson said Richard's guilt was not the question but whether he had the right to appeal.

r.g.ratcliffe@chron.com

Online at: <http://www.mysanantonio.com/news/metro/stories/MYSA101007.txcourtceller.en.1594f18f3.html>

EXHIBIT

210-14

000187

<http://www.mysanantonio.com/global-includes/printstory.jsp?path=/news/metro/stories/MYSA1...> 10/10/2007

SCJC 000188



Attorneys file complaint over court closing before execution

10/10/2007

Associated Press

Twenty lawyers filed a judicial conduct complaint Wednesday against Texas Court of Criminal Appeals Presiding Judge Sharon Keller, accusing her of violating the rights of a condemned man by cutting off appeals once office hours ended.

The complaint to the State Commission on Judicial Conduct says Keller improperly cut off appeals that led to the execution of Michael Richard on Sept. 25 despite the fact the U.S. Supreme Court earlier that day accepted a case on the propriety of lethal injection.

The lawyers said the case the Supreme Court accepted had direct implications for Richard's execution.

"Judge Keller's actions denied Michael Richard two constitutional rights, access to the courts and due process, which led to his execution," the complaint states. "Her actions also brought the integrity of the Texas judiciary and of her court into disrepute and was a source of scandal to the citizens of the state."

Lawyers signing the complaint included former State Bar President Broadus Spivey, Houston criminal defense lawyer Dick DeGuerin, University of Houston law professor Mike Olivas, former appellate Judge Michol O'Connor, Democratic state Rep. Harold Dutton of Houston and former Nueces County Attorney Mike Westergren.

The lawyers are being represented in the complaint by Jim Harrington, director of the Texas Civil Rights Project. Harrington said Keller's actions were "morally callous, shocking and unconscionable for an appellate judge."

The judicial conduct commission's proceedings are secret. The commission can dismiss a complaint without making it public; publicly reprimand a judge; or recommend to the Texas Supreme Court that the judge be removed from office.

Richard, 49, was executed for the 1986 rape and fatal shooting of Marguerite Dixon, a Hockley mother of seven.

Lawyers for Richard had called the court's clerk, asking that the office stay open an extra 20 minutes so a stay of execution request could be filed. Even if the stay was denied by the Texas court, that state request was procedurally necessary to get a stay from the Supreme Court.

Keller last week voiced no second thoughts about her actions. Instead she suggested that

<http://www.dallasnews.com/sharedcontent/APStories/stories/D8S6KSMO>

EXAMINER'S
EXHIBIT

No.26.06

SCJC 001133
6/23/2009

Richard's lawyers should have filed their request on time. She didn't immediately a phone call to her office from The Associated Press on Wednesday.

Though other judges at the Texas appeals court were waiting for Richard's appeal, Keller ordered the clerk to close promptly at 5 p.m. Richard's appeal was not filed, and he was executed later that evening.

Judge Cheryl Johnson was the appeals court jurist in charge of Richard's case. She said she never heard anything about the clerk's office closing off the appeal until the following day.

She said her understanding was that in a death penalty case court officials remain at the office until the time of execution and accept filings until the execution is under way.

Information from the Houston Chronicle: <http://www.chron.com>

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Austin American-Statesman (Texas)

October 11, 2007 Thursday
Correction Appended
Final Edition

SECTION: METRO; Pg. B01

LENGTH: 547 words

HEADLINE: Criticism grows for **judge** over execution

BYLINE: Chuck Lindell AMERICAN-STATESMAN STAFF

BODY:

Nineteen **Texas** lawyers filed an ethics complaint Wednesday claiming that **Sharon Keller**, presiding **judge** of the state's highest criminal court, has discredited the judiciary and subjected **Texas** to worldwide ridicule.

Keller, the lawyers argue, should be removed from office or otherwise disciplined for refusing to accept an after-hours appeal from death row inmate Michael Richard on Sept. 25. They say Keller's actions violated her legal obligations and deprived Richard of his constitutional right to court access. Richard was executed that night.

"The whole scenario is shocking and unconscionable," said Jim Harrington, director of the **Texas** Civil Rights Project and one of the lawyers filing the complaint.

Richard's lawyers had asked the **Texas** Court of Criminal Appeals to stay open 20 to 30 minutes past 5 p.m. to accept an appeal based on that morning's news that the U.S. Supreme Court would determine whether lethal injections violate the U.S. Constitution's ban on cruel and unusual punishment. Defense lawyers said computer problems had delayed their filing.

Keller refused without consulting or alerting others on the nine-member court, including at least three **judges** who were working late in case of a last-minute appeal. Her decision made

<http://www.lexis.com/requester/document?ansset=Z-WA-A-VZ-VZ-MsSW>

**EXAMINER'S
EXHIBIT**

No. 26.07

SCJC 001112
/1/2009

headlines around the world and drew rare public criticism from several judges, who typically don't discuss the Austin-based court's internal workings.

By not accepting the late filing, the Texas court did not allow Richard access to the U.S. Supreme Court, which could have stayed his execution. Two days later, the Supreme Court blocked the execution of another Texas inmate whose appeal, similar to Richard's, was filed on time with the Texas court.

Had Keller accepted the after-hours filing - common practice among appeals courts across the nation - Richard would not have been executed, Harrington said.

Keller did not return a phone call seeking comment Wednesday. Previously, Keller said she was merely enforcing the court's longstanding practice of closing at 5 p.m. and had not been told about computer troubles.

The complaint, filed Wednesday afternoon with the State Commission on Judicial Conduct, included signatures from Houston defense lawyer Dick DeGuerin and Austin lawyers Broadus Spivey, James George Jr., Joe Crews and Chuck Herring Jr. .

"Justice should be both fair and competent, and here it was not," said Herring, author of "Texas Legal Malpractice and Lawyer Discipline."

The complaint accuses Keller of violating four sections of the Texas Code of Judicial Conduct:

Canon 1, which requires judges to preserve the integrity of the judiciary.

Canon 2, which directs judges to act in ways that promote public confidence in judicial integrity.

Canon 3B(8), which requires judges to ensure that interested parties "be heard according to law."

Canon 3C(1), which requires judges to run courts without bias and "cooperate with other judges and court officials in the administration of court business."

The State Commission on Judicial Conduct is an independent agency that investigates allegations of misconduct in Texas judges.

If a complaint is confirmed, the 13-member commission can issue private sanctions and public reprimands or request that the Texas Supreme Court issue a suspension.

clindell@statesman.com; 912-2569

CORRECTION-DATE: October 17, 2007

CORRECTION:

<http://www.lexis.com/requester/document?ansset=Z-WA-A-VZ-VZ-MsSWYZW-UUA-U-U-U-U...> SCJC 001113
7/1/2009

* A story on Thursday's Page B1 and an editorial on Sunday's Page G2 misstated the number of lawyers who signed a complaint against Texas Court of Criminal Appeals Presiding Judge Sharon Keller. Twenty lawyers signed the complaint.

LOAD-DATE: October 17, 2007

Client ID: A19223.2

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The Associated Press State & Local Wire

October 11, 2007 Thursday 9:46 AM GMT

SECTION: STATE AND REGIONAL

LENGTH: 537 words

HEADLINE: News briefs from around Texas

BYLINE: By The Associated Press

DATELINE: AUSTIN

BODY:

Twenty lawyers have filed a judicial conduct complaint against Texas Court of Criminal Appeals Presiding **Judge Sharon Keller**, accusing her of violating the rights of a condemned man by cutting off appeals once office hours ended.

The complaint to the State Commission on Judicial Conduct says Keller improperly cut off appeals that led to the execution of Michael Richard on Sept. 25 despite the fact the U.S. Supreme Court earlier that day accepted a case on the propriety of lethal injection.

The lawyers said the case the Supreme Court accepted had direct implications for Richard's execution.

Keller last week voiced no second thoughts about her actions. Instead she suggested that Richard's lawyers should have filed their request on time. She didn't immediately a phone call to her office from The Associated Press on Wednesday.

TXU officially turned over to private investors

DALLAS (AP) TXU Corp., the biggest power generator in Texas, officially passed from public to private ownership Wednesday and got a new name as investors closed the \$32 billion buyout.

<http://www.lexis.com/requester/document?ansset=Z-WA-A-VZ-VZ-MsS>

**EXAMINER'S
EXHIBIT**

No. 26.08

SCJC 001115
7/1/2009

The new owners are investors led by private-equity firms Kohlberg Kravis Roberts & Co. and TPG, formerly Texas Pacific Group.

TXU changed its name to Energy Future Holdings Corp.

Donald L. Evans, former U.S. commerce secretary, has been named non-executive chairman for Energy Future Holdings and will lead the company's board of directors.

"This transaction is not only good for TXU shareholders, but also for employees, customers and residents across the state of Texas," he said in a release.

Critics say the sale will lead to higher prices for consumers to pay off \$24.5 billion in new debt that the buyers put on TXU.

Southwest CEO gives cautious outlook for fall travel demand

DALLAS (AP) The chief executive of Southwest Airlines Co. said Wednesday that he is cautious about the economy and demand for air travel this fall but has no immediate plans to cut back on expansion.

Southwest and other carriers packed their planes with vacation travelers this summer, but fall is traditionally a slower time for airlines.

"We're a little cautious about the economy and some of the weakness that we saw early in the year," Southwest CEO Gary Kelly said. "We were concerned that after we got past the summer months that we might see some softening again."

Occupancy levels on Southwest fell from record levels over the summer but were slightly higher than in September 2006. Kelly called it "a solid month."

Hispanics wary of effort to regulate home colors in Dallas suburb

FARMERS BRANCH, Texas (AP) Some residents of this Dallas suburb that tried to ban apartment rentals to illegal immigrants now want the city to regulate which colorful hues people can paint their homes.

Although the City Council hasn't decided whether to consider any house paint restrictions, Hispanic leaders say it's yet another effort to target Latinos in the city.

"I believe controlling the color you paint your house is basically profiling the Hispanic community," said Elizabeth Villafranca, whose family owns a Mexican restaurant in Farmers Branch. "We all know who paints their homes tropical colors."

Two residents requested the council discuss mandatory exterior color standards for buildings.

LOAD-DATE: October 12, 2007

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10/11/07 Hous. Chron. (Pg. Unavail. Online)
2007 WLNR 19923280

Houston Chronicle (KRT)
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October 11, 2007

Lawyers say judge violated executed man's rights
R.G. Ratcliffe and Polly Ross Hughes
Houston Chronicle

Oct. 11--AUSTIN -- Twenty lawyers from across Texas filed a formal judicial conduct complaint Wednesday against Texas Court of Criminal Appeals Presiding Judge Sharon Keller, accusing her of violating the constitutional due process of a condemned man.

The complaint to the State Commission on Judicial Conduct says Keller improperly cut off appeals that preceded the execution of Michael Richard on Sept. 25, even though just hours earlier the U.S. Supreme Court had accepted two Kentucky cases on the constitutionality of chemicals used for lethal injection.

Meanwhile, two of his predecessors raised questions about whether Attorney General Greg Abbott should have intervened to stop Richard's execution. The attorney general represents the state in death penalty appeals. Abbott's office declined requests for comment.

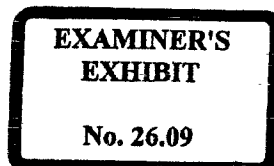
The lethal injection issue before the Supreme Court had direct implications for Richard's execution because Texas uses the same chemicals as Kentucky. The Supreme Court has since stayed one Texas execution because of the Kentucky cases. The state appeals court halted the next one.

"Judge Keller's actions denied Michael Richard two constitutional rights, access to the courts and due process, which led to his execution," the complaint states. "Her actions also brought the integrity of the Texas judiciary and of her court into disrepute ... "

Lawyers signing the complaint include former State Bar President Broadus Spivey, Houston criminal defense lawyer Dick DeGuerin, University of Houston law professor Mike Olivas, former appellate Judge Michol O'Connor, state Rep. Harold Dutton, D-Houston, and former Nueces County Attorney Mike Westergren.

The lawyers are being represented in the complaint by Jim Harrington, director of the Texas Civil Rights Project.

Harrington said before filing the complaint that it was "shameful" for Keller



to "short-circuit" Richard's rights by ordering the courthouse door locked at 5 p.m. even though fellow appellate judges said they were prepared to stay late to consider defense arguments.

"I think it's probably reflective of her own personal bias in this case about capital punishment and her lack of respect for the rights of defendants, the rights they have under the constitution," he said.

Keller did not return several phone calls seeking comment.

Proceedings are secret

Along with denial of due process and access to the courts, the complaint cites canons of the Texas Code of Judicial Conduct. Those canons say judges should promote public confidence in the judicial system and act without prejudice.

"Justice should be both fair and competent. Here it was not. The result is a man was killed on a day he should have lived," said Chuck Herring, an Austin lawyer who joined in the complaint and who has written on professional ethics and responsibility.

The judicial commission's proceedings are secret. At the end, the commission can dismiss a complaint without making it public, issue a public reprimand or recommend to the Texas Supreme Court that the judge be removed from office.

At issue is the sequence of events leading to the execution of Richard, 49, for the rape and shooting death of Marguerite Dixon, a Hockley mother of seven, in 1986.

Lawyers for Richard had called the court's clerk, asking that the office stay open an extra 20 minutes so a stay of execution request could be filed. Even if it was denied by the state court, that request was procedurally necessary to get a stay from the Supreme Court.

Keller last week voiced no second thoughts.

"You're asking me whether something different would have happened if we had stayed open," Keller said, "and I think the question ought to be why didn't they file something on time? They had all day."

Abbott also criticized

Keller, a Republican, was not the only state elected official criticized Wednesday in connection with the Richard execution.

Former Gov. Mark White and former Attorney General Jim Mattox, who both fought to enforce the state's capital punishment laws during their terms as attorney general, said Abbott, as the state's top lawyer, has a duty to halt executions when they appear to violate an inmate's due process rights.

White said Abbott is an officer of the court and he "should have been obligated to ask for a stay" in the Richard execution.

Mattox said the attorney general may lack actual legal authority to stop an execution, but the state prison system will follow an attorney general's order.

Mattox, who witnessed more than 30 executions, said he once ordered an inmate off the execution gurney over prison system protests because he knew the man would receive a stay.

"When the state is all powerful, the state has got to be cautious in how it uses its power," he said. "Sometimes you do things not to protect the individual but to protect the system itself."

Mattox and White are Democrats. White served as attorney general from 1979 to 1982, and Mattox from 1983 to 1990.

U.S. Sen. John Cornyn, R-Texas, as state attorney general in 2001 asked the U.S. Supreme Court to overturn a Texas inmate's death sentence because race had been used to determine "future dangerousness." Cornyn said Texans must have faith that the criminal justice system is fairly administered.

"In a way it shows that the system works because that's part of my job, to derail these trains that are chugging along," he said then. He couldn't be reached Wednesday.

r.g.ratcliffe@chron.com

polly.hughes@chron.com

---- INDEX REFERENCES ----

NEWS SUBJECT: (Legal (1LE33); Government Litigation (1G018); Judicial (1JU36); Prisons (1PR87); Economics & Trade (1EC26); Major Corporations (1MA93))

INDUSTRY: (Pharmaceuticals Regulatory (1PH03); Pharmaceuticals & Biotechnology (1PH13))

REGION: (Americas (1AM92); North America (1NO39); Texas (1TE14); Kentucky (1KE38); USA (1US73))

Language: EN

OTHER INDEXING: (GOV; HOCKLEY; MARGUERITE DIXON; OCT 11; STATE BAR; STATE COMMISSION; SUPREME COURT; TEXAS; TEXAS CIVIL; TEXAS CODE OF JUDICIAL; TEXAS COURT OF CRIMINAL APPEALS PRESIDING; TEXAS SUPREME COURT; US SUPREME COURT) (Abbott; Broadus Spivey; Chuck; Cornyn; Dick DeGuerin; Greg Abbott; Harold Dutton; Harrington; Jim Harrington; Jim Mattox; John Cornyn; Keller; Mark White; Mattox; Michael

Richard; Michol O'Connor; Mike Olivas; Mike Westergren; Richard; Sharon Keller;
Texans; White)

Word Count: 1111
10/11/07 HSTNCHRON (No Page)
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Judge: 'We Close at 5'

Texas Judge's Decision To Close On Time Lead to Immediate Execution

Oct. 12, 2007—

Four words -- "We close at 5" -- enforced by Texas judge Sharon Keller led to the almost immediate execution of convicted murderer Michael Richard.

Three hours after Keller refused to keep her courthouse open past closing time to receive the condemned killer's request to stay his execution, Richard was executed.

"If Sharon Keller had not slammed the door, Mr. Richard would still be alive," said Jim C. Harrington, director of Texas Defender Service.

Richard's attorney's computer broke down, and when they called the courthouse asking for a little more time, just 20 minutes more, Judge Keller ordered the court clerk not to wait for the appeal that could have at least temporarily stopped his execution.

After the execution, prominent defense attorneys from across Texas signed an official complaint against Keller, asking the Texas Commission on Judicial Conduct to disciplined or fire her.

"This execution proceeded because the highest criminal court couldn't be bothered to stay an extra 20 minutes on the night of an execution," said Andrea Keilen, executive director of Texas Defender Service.

It's not just the attorneys complaining. In a rare development, other judges on the appeals court - three of whom stayed late in the courthouse waiting to rule on Richard's motion -- have criticized Keller's decision.

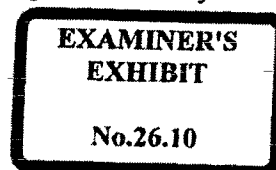
Judge Cheryl Johnson, who was expecting to rule on the case, told the Austin American-Statesman she was dismayed by Keller's decision. "And I was angry," she told the paper. "If I'm in charge of the execution, I ought to have known about those things & I mean this is a death."

Richard's appeal was not a surprise because the U.S. Supreme Court has let it be known that it would soon decide if lethal injection is cruel and unusual punishment. Until the Supreme Court rules, the death penalty is practically on hold in the United States.

Keller refused several ABC News requests for comment, but the judge did defend her actions in a Texas newspaper.

"I think the question ought to be why didn't they file something on time. They had all day," she

<http://abcnews.go.com/print?id=3724883>



SCJC 001137
6/18/2009

Texas Court's Closing Leads to Execution

Page 2 of 2

told the Houston Chronicle.

Or at least until 5 p.m. and not a minute more -- even when life depended on it.

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10/12/07 ABC WORLD NEWS TONIGHT (Pg. Unavail. Online)
2007 WLNR 20208514

ABC World News with Charles Gibson
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October 12, 2007

WORLD NEWS WITH CHARLES GIBSON

[SHOW: ABC World News with Charles Gibson] [AIRDATE: 10/12/07] [AIRTIME: 18:30]
[ANCHOR LOCATION: NEW YORK, NY USA] [STORY: WORLD NEWS WITH CHARLES GIBSON]

TOPIC:

CONTENT:

CHARLES GIBSON (ABC NEWS): Welcome to 'World News.' Tonight, the man who almost won the White House did win the most coveted award on the planet. So might Al Gore go back to politics?

GRAPHICS: COLD SHOULDER

CHARLES GIBSON (ABC NEWS): Cold shoulder. Russia's president delivers an icy message to the US and gives the cold shoulder to visiting US cabinet members.

GRAPHICS: FATAL DELAY

CHARLES GIBSON (ABC NEWS): Fatal delay. Did a judge's refusal to keep the courthouse open cost this man his life? The difference between life and death was minutes.

GRAPHICS: PERSON OF THE WEEK

CHARLES GIBSON (ABC NEWS): And our 'Persons of the Week.' The man who says a marching band saved his life and the people who are now playing his tune.

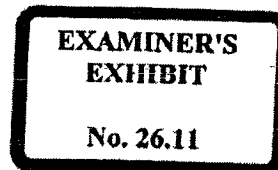
ANNOUNCER: From ABC News headquarters, this is 'World News with Charles Gibson.'

GRAPHICS: WORLD NEWS WITH CHARLES GIBSON

REPORTER LOCATION: WASHINGTON, DC USA

TOPIC:

CONTENT: AL GORE JR, OLE DANBOLT MJOS, NOBEL PEACE PRIZE, GLOBAL WARMING



GRAPHICS: LIFE AND DEATH

CHARLES GIBSON (ABC NEWS): (Off-camera) There's an uproar in Texas tonight about a judge who refused to keep her courthouse open to receive a condemned killer's request to stay his execution. And three hours later, the man was executed. 20 of the state's most influential defense attorneys have now asked the Texas Commission on Judicial Conduct to fire the judge. Here's our senior law and justice correspondent, Jim Avila.

JIM AVILA (ABC NEWS): (Voiceover) Four words, "We close at 5:00," enforced by this woman, Texas judge Sharon Keller, led to the almost immediate execution of convicted murderer Michael Richard.

JAMES HARRINGTON (DIRECTOR: If Sharon Keller hadn't slammed the door of the courthouse that night, then Mr. Richard would still be alive today.

JIM AVILA (ABC NEWS): (Voiceover) Richard's attorney's computer broke down. And when they called the courthouse asking for a little more time, just 20 minutes more, Judge Keller ordered the court clerk not to wait for the appeal that could have at least temporarily stopped his death. Prominent defense attorneys signed an official complaint against Judge Keller, asking that she be disciplined or fired.

ANDREA KEILEN (EXECUTIVE DIRECTOR: This execution proceeded because the highest criminal court in the state of Texas couldn't be bothered to stay an extra 20 minutes on the night of an execution.

JIM AVILA (ABC NEWS): (Voiceover) It's not just the attorneys complaining. In a rare development, other judges on the appeals court, three of whom stayed late in the courthouse waiting to rule on Richard's motion, have criticized Judge Keller's decision.

GRAPHICS: STATEMENT BY JUDGE CHERYL JOHNSON

JIM AVILA (ABC NEWS): (Voiceover) Judge Cheryl Johnson, who was expecting to rule on the case, reacted with, quote, "Utter dismay. And I was angry. If I'm in charge of the execution, I ought to have known about those things. I mean, this is a death case."

JIM AVILA (ABC NEWS): (Off-camera) Richard's appeal was not a surprise because that was the day the Supreme Court let it be known it would soon rule on whether lethal injection is cruel and unusual punishment. And until the court rules, the death penalty is practically on hold nationwide.

JIM AVILA (ABC NEWS): (Voiceover) ABC News asked Judge Keller for comments several times. She declined, but the judge did defend her actions in a Texas paper, quote, "I think the question ought to be why didn't they file something on time?"

They had all day," or at least until 5:00 and not a minute more even when life depended on it. Jim Avila, ABC News, New York.

GRAPHICS: STATEMENT BY JUDGE SHARON KELLER
GRAPHICS: NEXT

CHARLES GIBSON (ABC NEWS): (Off-camera) And still ahead on this broadcast, a David and Goliath battle on the coast of Scotland, the local farmer taking on Donald Trump.

COMMERCIAL BREAK

REPORTER LOCATION: BALMEDIE, SCOTLAND

TOPIC:

CONTENT: MICHAEL FORBES, DONALD TRUMP

CHARLES GIBSON (ABC NEWS): (Off-camera) On the coast of Scotland, David and Goliath, a battle between Donald Trump and a small Scottish farmer. Now, Trump wants to build what he calls the world's greatest golf course and a five-star hotel along a remote stretch of Scottish coast prized for its salmon fishing.

GRAPHICS: MAP OF SCOTLAND

CHARLES GIBSON (ABC NEWS): (Voiceover) In the middle of Trump's plan, a patch of land and a man who refuses to give up his family's legacy. ABC's Jim Sciutto reports from Balmedie, Scotland.

GRAPHICS: FIGHTING DONALD TRUMP

JIM SCIUTTO (ABC NEWS): (Voiceover) Wandering his land on the windswept Scottish coastline, he cuts a less than intimidating figure. But to many here, Michael Forbes is a heroic David to an American Goliath.

CLIP FROM "THE APPRENTICE"

DONALD TRUMP (DEVELOPER): My name is Donald Trump and I'm the largest developer in New York.

JIM SCIUTTO (ABC NEWS): (Voiceover) With characteristic flair, Trump says he's going to turn these quiet dunes into the greatest golf course in the world. Forbes is standing in the way, scoffing at Trump's \$750,000 offer for his land.

MICHAEL FORBES (LANDOWNER): My grandfather fished here. My father fished here. All my uncles fished here. And I'm last in line and I'd like to see it out here.

JIM SCIUTTO (ABC NEWS): (Off-camera) Hard to put a price on that.

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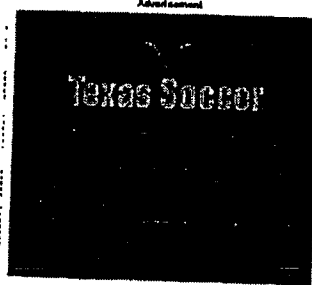
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 - Other Voices
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 - Top Editorial

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- Two bazars too bizarre even for Austin?
- White House rubbish crosses threshold
- Smarter teachers leave sooner
- More stories .

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 - City Beat
 - Design Notebook
 - Golden's Nuggets
 - Horseshoe
 - Jane Foo
 - Kelsu's Cranky Corner
 - Life Guide



TOP JOBS

- Sales Representative
- Financial Analyst
- Project Manager
- City Manager
- Construction
- Vol Telecom Group
- Project Manager
- Professional
- Project Manager
- Community, LLC
- SALES
- KUT 90.5
- Ophthalmic Technician
- Not Listed

VIEW ALL TOP JOBS

000079

EXHIBIT 215

EXAMINER'S EXHIBIT
No. 26.12

12/26/2007 9:28 AM

SCJC 000079

- Of Sacred and Secular
- Plugged In
- Postcards
- Public Capital
- Saraa Verde
- ShortCuts
- Statesman Business Blog
- Statelessmen Watch
- Talk of Austin
- The 12th Word at A&M
- The Blotter
- The Border Line
- The Editorial Board
- The Front Line
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Justice in Texas? Not on her watch

By The Editorial Board | Saturday, October 13, 2007, 04:02 PM

Sharon Keller, presiding judge of the Texas Court of Criminal Appeals, has never shown much sympathy toward death row inmates.

Keller and this state's highest court for criminal cases have a well-earned reputation for tolerating egregious abuses in capital trials and appeals. Their record of indifference to the right to effective defense counsel and for judicial precedent has put them at odds with the U.S. Supreme Court numerous times.

Texas executes more inmates than any other state by far, and too many of those condemned men and women had poor legal representation from the initial trial through the final appeal. Keller's court has consistently failed in its duty to ensure the integrity of capital trials and death sentences.

One of the most appalling examples of Keller's judicial philosophy was her refusal to accept an appeal from condemned prisoner Michael Richard on Sept. 25. Keller wouldn't keep the court open past 5 p.m. to receive Richard's appeal, and she didn't inform other judges working late about the request. Richard was executed that night.

That cold-hearted response drew international criticism of Keller and the court. It was particularly outrageous because the U.S. Supreme Court had earlier that day accepted a death penalty appeal challenging the constitutionality of lethal injections, used by Texas and other states.

Last week, Keller's "We close at 5" response resulted in an ethics complaint filed with the State Commission on Judicial Conduct by 19 Texas lawyers. The complaint came from some highly respected attorneys, including Austin lawyers James George Jr., Bradus Spiway and Chuck Tierney Jr.

They are asking the commission to remove Keller from office, or otherwise discipline her, for violating the Texas Code of Judicial Conduct. The complaints are firmly grounded and the commission should give them careful consideration.

The judicial cautions themselves are subjective - judges must preserve the integrity of the judiciary and promote public confidence in judicial integrity, for instance. Most lawyers can argue about that wording as long as they can draw breath.

But whatever the commission decides, it is abundantly clear that Keller and her court have been more concerned with process than justice. They have repeatedly ignored the fundamental right of a defendant to competent counsel.

EXHIBIT C-15

000080

Reporting by the American Statesman's Chuck Lindell has highlighted the court's indifference to glaringly inept defense attorneys in capital cases.

Keller's callous response in the Richard case may have been the last straw that prompted the ethical complaint, but the appeals court has been grinding on legal sensibilities for years.

Finally, an important part of the legal community said it has had enough and moved to have Keller disciplined, and possibly removed from the bench. That is an important step in guarding the integrity of criminal justice in Texas.

Permalink | Comments (16) | Post your comment Categories: Second Editorials

Comments
By Bill from Temple

October 13, 2007 7:10 PM | Link to this

STILL HAVE NOT GOTTEN AN ANSWER TO THIS:

By bill October 7, 2007 1:08 AM | Link to this

Where and how was this caution given???? When the Supreme Court agreed to consider the constitutionality of lethal injections, the states that impose it were cautioned to stop a procedure that may be found illegal. Texas should heed that caution and suspend executions until the Supreme Court determines whether that method of execution is allowable.

STILL HAVE NOT GOTTEN AN ANSWER TO THIS EITHER: By bill October 13, 2007 8:40 AM | Link to this

Why has the paper NOT started a hue and cry about the lawyers who did not do what they should have done? This was a last minute appeal just to cause delay. Which is the best and sometimes the only tactic that might work.

Who has been crying out for the lawyers to be disbarred?

Judge Keller should be commended for following the set rules.

By Bill from Temple

October 13, 2007 10:00 PM | Link to this

You have got to love!!!!

The same group of lawyers who spend most of their time obstructing justice with false and misleading appeals are complaining about a judge following the rules.

Every one who signed the complaint (including one friend) should resign immediately.

By Dear Bill

October 13, 2007 11:44 PM | Link to this

How did you get from the job that Judge Keller has done to "blame it on the lawyers?" She has done her job well and the lawyers are trying to do a thankless and difficult job- without short-sighted folks like you mentioning the "disbarment" word. By the way, Judge Keller is a lawyer, too.

By Sharon Kille

October 14, 2007 12:11 AM | Link to this

Any concerned Texan can sign a complaint against Judge Sharon Keller by going to <http://sharonkille.com>

By Bill from Temple

October 14, 2007 8:38 AM | Link to this

TO DEAR BILL: I am not sure why I am wasting time responding. It is very simple. IF the lawyers had done their job properly in the first place, there would never have been a problem. "Thankless and difficult", yes, it is especially so since most defense lawyers spend their time trying to throw up smoke screens to prove their guilty party deserves special consideration and not be executed. "short-sighted" not a chance! If a few dollar lawyers were disbarred for filing appeals that they know were a fraud then conversations like this would not be necessary. They hide behind a statement that they are only doing what their client wants, most appeals lawyers never see their clients more than once or twice. Judge Keller followed the rules of the court and deserves to be commended not condemned. I am truly glad you were able to figure out she is a lawyer, by some of your earlier comment I was not sure you could figure that out. I only have about 30 years experience in the field. How about you?

By Bill from Temple

October 14, 2007 8:43 AM | Link to this

TO SHARON KILLER Have you noticed how much more difficult it is to file a complaint against a lawyer than it is to file one against a judge???

By Mark from Nacogdoches

October 14, 2007 3:56 PM | Link to this

Take a good look at Justice Charles Holcomb's (on the TX Court of Criminal Appeals also) State Bar profile where he tells the last case of his last case in ABO, TX in which he convicted an innocent man. Holcomb tells the Bar he won a "conviction" but does not tell the Bar that in fact the conviction was overturned by the 12th Court of Appeals in Tyler. The defendant was released 5 years into his life sentence. Keller is just following a smoke and mirrors tactic of feigning conservatism while blaming the Tyler Court of Appeals for shutting the door on Richards. You people need to look at these Justice's past.

By Joe Lynch

October 14, 2007 4:46 PM | Link to this

EXHIBIT *215*

000081

12/26/2007 9:28 AM

SCJC 000081

10/13/07 Augusta Chron. A02
2007 WLNR 20348412

Augusta Chronicle, The (GA) (KRT)
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October 13, 2007

Section: News

THE NATION

Bush wants Congress to pass trade pacts

MIAMI - Trying to jump-start his stalled trade agenda, President Bush pleaded with lawmakers Friday to pass free trade pacts with four nations and warned against protectionism taking root in America.

In Miami, a city known as the "gateway to the Americas," Mr. Bush urged Congress to approve free trade agreements with Peru, Panama and Colombia in Latin America plus another with South Korea.

The deals face uphill battles given five consecutive years of record U.S. trade deficits that critics say played a major role in the loss of more than 3 million manufacturing jobs since Mr. Bush took office in 2001.

Mr. Bush said he was disturbed that trade agreements have been passing by only slim margins in Congress. He said he also was troubled that when discussing trade as he travels across the nation, there is a trend toward economic isolationism and talk that free trade is bad for U.S. workers.

Ex-general slams Iraq choices

ARLINGTON, VA. -The U.S. mission in Iraq is a "nightmare with no end in sight" because of political misjudgments after the fall of Saddam Hussein that continue today, a former chief of U.S.-led forces said Friday.

Retired Lt. Gen. Ricardo Sanchez, who commanded coalition troops for a year beginning June 2003, cast a wide net of blame for both political and military shortcomings in Iraq that helped open the way for the insurgency - such as disbanding the Saddam-era military and failing to cement ties with tribal leaders and quickly establish civilian government after Saddam was toppled.

He called current strategies - including the deployment of 30,000 more forces earlier this year - a "desperate attempt" to make up for years of misguided

policies in Iraq.

"There is no question that America is living a nightmare with no end in sight," he told a group of journalists covering military affairs. He avoided pointing his criticism at any single official or agency.

Boot camp guards acquitted

PANAMA CITY, FLA. - Seven former boot camp guards and a nurse were acquitted Friday of manslaughter in the death of a 14-year-old boy who was hit and kicked by drill instructors in a videotaped altercation.

The jury took about two hours to decide whether the guards were responsible for the death of Martin Lee Anderson. They had to sort through complicated and conflicted medical opinions of why he died.

After the verdict, the civil rights division of the U.S. Justice Department announced it was opening a federal investigation.

In other news

WAL-MART STORES Inc. has stopped online sales of a Simplicity Inc. bassinet that is under investigation by federal safety officials after an infant death, though the bed is still available in the retailer's stores. Wal-Mart did not explain why the "Simplicity 4-in-1 Winnie the Pooh" bassinet was dropped from walmart.com. Wal-Mart is the only retailer that carries the bassinet, according to Simplicity. It is not part of a recall last month of 1 million cribs from Reading, Penn.-based Simplicity that were sold at several retailers, including Wal-Mart.

A LAWYER FOR ONE of O.J. Simpson's co-defendants in an armed robbery case said Friday that his client will plead guilty Monday to a reduced charge and testify against the others. Charles Cashmore is accused of being one of five men who joined Mr. Simpson in a hotel-room confrontation with two sports memorabilia dealers. He will testify that two of the other men who entered the room with the former football star were armed, his lawyer said.

HIGH-PROFILE LAWYERS are accusing a Texas state judge of violating the rights of a condemned inmate by cutting off appeals once office hours ended, leading to his execution. Convicted killer Michael Richard was put to death the evening of Sept. 25 after Sharon Keller, the Texas Court of Appeals' presiding judge, ordered a clerk to close the office promptly at 5 p.m.

SEN. EDWARD M. KENNEDY, 75, underwent surgery Friday to repair a partially blocked artery in his neck, which was discovered during an examination of a decades-old back injury. A carotid endarterectomy, the formal name for the operation, is performed on more than 180,000 people a year to prevent a stroke.

CHIPMAKER QUALCOMM INC. dueled Friday in federal court with its attorneys over who

shoulders the blame for what a judge called "gross misconduct on a massive scale" at a past trial. U.S. Magistrate Judge Barbara Major is considering sanctions against 19 attorneys who represented Qualcomm in a patent suit against rival Broadcom Corp.

- Edited from wire reports

---- INDEX REFERENCES ----

COMPANY: WAL MART STORES INC; WAL MART; QUALCOMM INC; BROADCOM CORP; ALTOCOM INC

NEWS SUBJECT: (Legal (1LE33); Technology Law (1TE30); Government (1GO80); Judicial (1JU36); Economics & Trade (1EC26))

REGION: (Americas (1AM92); North America (1NO39); Texas (1TE14); Latin America (1LA15); Middle East (1MI23); USA (1US73); Gulf States (1GU47); Florida (1FL79))

Language: EN

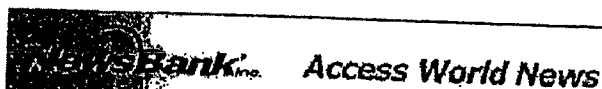
OTHER INDEXING: (AMERICAS; BROADCOM CORP; CHIPMAKER QUALCOMM INC; CONGRESS; LAWYER; MAGISTRATE; QUALCOMM; SIMPLICITY; SIMPLICITY INC; TEXAS COURT OF APPEALS; US JUSTICE DEPARTMENT; WAL MART; WAL MART STORES INC) (Barbara Major; Bush; Charles Cashmore; Convicted; EDWARD M. KENNEDY; Lee Anderson; Michael Richard; O.J. Simpson; Retired Lt.; Ricardo Sanchez; Simpson)

EDITION: GEORGIA

Word Count: 906

10/13/07 AUGCHRON A02

END OF DOCUMENT



Paper: Corpus Christi Caller-Times (TX)

Title:

Justice's refusal to consider late filing inexcusable Man executed after appellate judge refused to accept documents after 5 p.m.

Date: October 13, 2007

The Texas Court of Criminal Appeals is the highest court for criminal cases in the state and purports to dispense justice. But only by the 5 p.m. closing time, without exceptions, even if it's a case of life and death.

And it was a case of life and death on Sept. 25 when attorneys for condemned Texas inmate Michael Richard sought to file an appeal to his execution the same day. But the attorneys experienced computer problems and couldn't print out the 11 required copies of the 108-page petition to the Texas Court of Criminal Appeals by the court's normal closing time of 5 p.m.

They made a phone call to the court to plead for a few more minutes so they could file their request. Chief Justice Sharon Keller took the call and turned down the request and, according to press reports, told the court clerks to close down at 5 p.m. Richard was executed that evening.

Keller's refusal to keep the court open for even a few more minutes was the height of callousness and a perversion of justice. This was no frivolous motion from a death row inmate. That same day the U.S. Supreme Court had agreed to hear a case from Kentucky challenging the constitutionality of execution by lethal injections. That effect of the nation's high court acceptance of the case was to call into question the execution process in all states that use lethal injection, including Texas, and that was the argument that Richard's attorneys were in the process of making when Keller slammed the door shut on Texas justice.

Since then, two other Texas death row inmates have had their executions blocked and it's likely that there will be no other executions in Texas until the nation's high court decides the Kentucky case. Nueces County District Attorney Carlos Valdez has announced his office will not seek the death penalty in any case until the Supreme Court decides on the constitutionality question.

But all of this is too late for Richard. He was executed at 6 p.m. on Sept. 25, without ever getting a chance to have his appeal filed or heard by the highest criminal appeals court in the state. This is not to say that Richard merits any sympathy. He was convicted of a brutal and senseless crime, the 1986 rape and murder of a 53-year-old nurse, Marguerite Lucille Dixon of Hockley, the mother of seven who had invited Richard into her home to get a drink of water on what was a hot day. He returned with a gun, sexually assaulted her, and killed her, and then took two television sets.

But this is not so much about Richard, but about what Texans should expect from their judges. Respect for due process, for one, and upholding the integrity of the justice, for another. The quality of justice dispensed by its courts is a reflection of the public. The Texas Court of Criminal Appeals is the final say in Texas on capital cases and those cases should receive the court's most thoughtful review, not a curt dismissal by putting up the "Closed" sign.

In fact, another judge, Justice Cheryl Johnson, was assigned to the Richard case, not Keller, but she was never consulted by Keller. And neither did Keller consult with any of the other seven justices on the court, three of whom were working late that evening. Johnson said her reaction on hearing of the refusal was "utter dismay."

Keller says she didn't know the attorneys had computer problems. But she did know that Richard's was a capital case. She did know that his execution was scheduled for that evening. She didn't have to know more to hold the doors of justice open for a few more minutes.

Elections of judges to the Court of Criminal Appeals rarely draws much voter interest. But Keller's refusal of justice has likely raised that profile. A group of attorney and judges, including retired Nueces County district judge Michael Westergren, are seeking to have Keller disciplined. Whatever the success of that approach, Texas voters shouldn't forget the shame Keller has brought on Texas justice.

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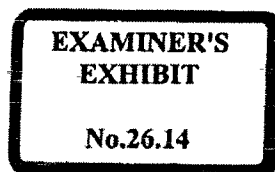
Section: Opinion

Page: 10

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Document 36 of 46.

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The Associated Press

October 13, 2007 Saturday 2:55 AM GMT

SECTION: DOMESTIC NEWS

LENGTH: 472 words

HEADLINE: Judge's refusal to keep office open violated rights of inmate later executed, attorneys argue

DATELINE: AUSTIN Texas

BODY:

High-profile lawyers are accusing a state judge of violating the rights of a condemned inmate by cutting off appeals once office hours ended, leading to his execution.

Convicted killer Michael Richard was put to death the evening of Sept. 25 after Sharon Keller, Texas Court of Appeals presiding judge, ordered a clerk to close the office promptly at 5 p.m.

Keller last week noted to the Houston Chronicle that Richard's lawyers did not file their request on time, saying they had all day. She did not return a phone call to her office from The Associated Press this week.

Twenty lawyers, including a state representative and a former appellate judge, on Wednesday filed a complaint against her with the State Commission on Judicial Conduct. They say Keller improperly cut off appeals even though the U.S. Supreme Court had earlier in the day accepted a case on the propriety of lethal injection.

The case the Supreme Court accepted had direct implications for Richard's execution, the lawyers argued.

Richard, 49, was executed for the 1986 rape and fatal shooting of a mother of seven.

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**EXAMINER'S
EXHIBIT**

No. 26.15

SCJC 001102
7/1/2009

His lawyers called the court's clerk the day he was to be executed, asking that the office stay open an extra 20 minutes so a request to delay the execution could be filed.

Even if the stay were denied by the Texas court, that state request was needed procedurally to get a stay from the Supreme Court. But Keller ordered a clerk to close the office, and Richard was executed later that evening.

Richard's lawyers did not file their appeal during business hours because of computer trouble and pressure in responding to the Supreme Court ruling, Jim Harrington, director of the Texas Civil Rights Project, said Friday night. The project is representing the lawyers who filed the complaint.

Judge Cheryl Johnson, the appeals court jurist in charge of Richard's case, said she heard nothing about the clerk's office closing off the appeal until the next day.

She said she understood that in a death penalty case, court officials remain at the office until the time of execution and accept filings until the execution is under way.

The lawyers' complaint also argues that Keller's action "brought the integrity of the Texas judiciary and of her court into disrepute and was a source of scandal to the citizens of the state."

The lawyers included former State Bar President Broadus Spivey, University of Houston law professor Mike Olivas, former appellate Judge Michol O'Connor and Democratic state Rep. Harold Dutton of Houston.

Keller's actions were "morally callous, shocking and unconscionable for an appellate judge," Harrington said.

The judicial conduct commission's proceedings are secret. The commission can dismiss a complaint without making it public, publicly reprimand a judge or recommend to the Texas Supreme Court that the judge be removed from office.

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Document 37 of 46.

Copyright 2007 Associated Press
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Associated Press Worldstream

October 13, 2007 Saturday 2:20 AM GMT

SECTION: INTERNATIONAL NEWS

LENGTH: 575 words

HEADLINE: Judge's decision to close office violated rights of inmate later executed, attorneys argue

DATELINE: AUSTIN Texas

BODY:

High-profile lawyers are accusing a state judge of violating the rights of a condemned inmate by cutting off appeals once office hours ended, leading to his execution.

Convicted killer Michael Richard was put to death the evening of Sept. 25 after Sharon Keller, Texas Court of Appeals presiding judge, ordered a clerk to close the office promptly at 5 p.m.

Keller last week noted to the Houston Chronicle that Richard's lawyers did not file their request on time, saying they had all day. She did not return a phone call to her office from The Associated Press this week.

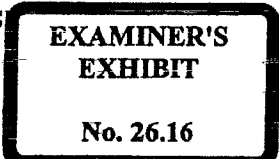
Twenty lawyers, including a state representative and a former appellate judge, on Wednesday filed a complaint against her with the State Commission on Judicial Conduct. They say Keller improperly cut off appeals even though the U.S. Supreme Court had earlier in the day accepted a case on the propriety of lethal injection.

The case the Supreme Court accepted had direct implications for Richard's execution, the lawyers argued.

Richard, 49, was executed for the 1986 rape and fatal shooting of a mother of seven.

<http://www.lexis.com/requester/document?ansset=Z-WA-A-VZ-VZ-MsS>

SCJC 001104
7/1/2009



His lawyers called the court's clerk the day he was to be executed, asking that the office stay open an extra 20 minutes so a request to delay the execution could be filed.

Even if the stay were denied by the Texas court, that state request was needed procedurally to get a stay from the Supreme Court. But Keller ordered a clerk to close the office, and Richard was executed later that evening.

It was not clear why Richard's lawyers did not file their appeal during business hours, though reports have suggested computer trouble and pressure in responding to the Supreme Court ruling were responsible. Messages were left Friday night with Jim Harrington, director of the Texas Civil Rights Project, which is representing the lawyers who filed the complaint.

Judge Cheryl Johnson, the appeals court jurist in charge of Richard's case, said she heard nothing about the clerk's office closing off the appeal until the next day.

She said she understood that in a death penalty case, court officials remain at the office until the time of execution and accept filings until the execution is under way.

The lawyers' complaint also argues that Keller's action "brought the integrity of the Texas judiciary and of her court into disrepute and was a source of scandal to the citizens of the state."

The lawyers included former State Bar President Broadus Spivey, University of Houston law professor Mike Olivas, former appellate Judge Michol O'Connor and Democratic state Rep. Harold Dutton of Houston.

Keller's actions were "morally callous, shocking and unconscionable for an appellate judge," Harrington said.

The judicial conduct commission's proceedings are secret. The commission can dismiss a complaint without making it public, publicly reprimand a judge or recommend to the Texas Supreme Court that the judge be removed from office.

Meanwhile, in the state of Virginia, attorneys for a condemned inmate on Friday asked a federal appeals court to stop their client's execution scheduled for next week, claiming that the state botched its last execution.

During John Yancey Schmitt's execution last year, officials had to deliver a second dose of lethal drugs and allowed the condemned man to linger for minutes before dying. However, the state said the execution was not botched.

Christopher Scott Emmett is scheduled to die Wednesday for the 2001 bludgeoning murder of a co-worker.

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October 13, 2007 Saturday 2:55 AM GMT

SECTION: DOMESTIC NEWS

LENGTH: 472 words

HEADLINE: Lawyers: Closed Office Aided Execution

DATELINE: AUSTIN Texas

BODY:

High-profile lawyers are accusing a state judge of violating the rights of a condemned inmate by cutting off appeals once office hours ended, leading to his execution.

Convicted killer Michael Richard was put to death the evening of Sept. 25 after Sharon Keller, Texas Court of Appeals presiding judge, ordered a clerk to close the office promptly at 5 p.m.

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Twenty lawyers, including a state representative and a former appellate judge, on Wednesday filed a complaint against her with the State Commission on Judicial Conduct. They say Keller improperly cut off appeals even though the U.S. Supreme Court had earlier in the day accepted a case on the propriety of lethal injection.

The case the Supreme Court accepted had direct implications for Richard's execution, the lawyers argued.

Richard, 49, was executed for the 1986 rape and fatal shooting of a mother of seven.

His lawyers called the court's clerk the day he was to be executed, asking that the office stay

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SCJC 001107
11/2009

**EXAMINER'S
EXHIBIT
No. 26.17**

open an extra 20 minutes so a request to delay the execution could be filed.

Even if the stay were denied by the Texas court, that state request was needed procedurally to get a stay from the Supreme Court. But Keller ordered a clerk to close the office, and Richard was executed later that evening.

Richard's lawyers did not file their appeal during business hours because of computer trouble and pressure in responding to the Supreme Court ruling, Jim Harrington, director of the Texas Civil Rights Project, said Friday night. The project is representing the lawyers who filed the complaint.

Judge Cheryl Johnson, the appeals court jurist in charge of Richard's case, said she heard nothing about the clerk's office closing off the appeal until the next day.

She said she understood that in a death penalty case, court officials remain at the office until the time of execution and accept filings until the execution is under way.

The lawyers' complaint also argues that Keller's action "brought the integrity of the Texas judiciary and of her court into disrepute and was a source of scandal to the citizens of the state."

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Keller's actions were "morally callous, shocking and unconscionable for an appellate judge," Harrington said.

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CO-JUDGES CALL FOR REPRIMAND
13 October 2007
SBS 6.30pm TV World News Transcripts
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A judge in Texas has caused an uproar by refusing to keep her court open to hear a death row prisoner's request for a stay of execution. The convicted killer was put to death by lethal injection three hours later. The US Supreme Court has been asked to decide if death by lethal injection is humane or should be considered to be a cruel and unusual punishment. Four words - 'we close at 5:00' - enforced by this woman, Texas judge Sharon Keller, led to the almost immediate execution of convicted murderer, Michael Richard.

JAMES HARRINGTON, TEXAS CIVIL RIGHTS PROJECT: If Sharon Keller hadn't slammed the door of the courthouse that night, then Mr Richard would still be alive today.

Richard's attorney's computer broke down and when they called the courthouse asking for a little more time - just 20 minutes more - judge Keller ordered the court clerk not to wait for the appeal that could have at least temporarily stopped his death. Prominent defence attorneys signed an official complaint against judge Keller asking that she be disciplined or fired.

ANDREA KEILEN, TEXAS DEFENDER SERVICE: This execution proceeded because the highest criminal court in the state of Texas couldn't be bothered to stay an extra 20 minutes on the night of the execution.

It's not just the attorneys complaining. In a rare development, other judges on the appeals court, three of whom stayed late in the courthouse waiting to rule on Richard's motion have criticised Keller's decision. Judge Cheryl Johnson, who was expecting to rule on the case, reacted with:

";Utter dismay. And I was angry. If I'm in charge of the execution, I ought to have known about those things... I mean this is a death case.";

Richard's appeal was not a surprise because that was the day that the Supreme Court let it be known it would soon rule on whether lethal injection is cruel and unusual punishment, and until the court rules, the death penalty is practically on hold nationwide. ABC News asked Judge Keller for comment several times. She declined, but the judge did defend her actions in a Texas paper.

";I think the question ought to be in why didn't they filed something on time. They had all day.";

Or, at least until 5:00, and not a minute more, even when life depended on it.

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**EXAMINER'S
EXHIBIT**

No.26.18

SCJC 001139

Opinion

Justice's refusal to consider late filing inexcusable Man executed after appellate judge refused to accept documents after 5 p.m.

732 words

13 October 2007

Corpus Christi Caller Times

XCCC

10

English

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The Texas Court of Criminal Appeals is the highest court for criminal cases in the state and purports to dispense justice. But only by the 5 p.m. closing time, without exceptions, even if it's a case of life and death.

And it was a case of life and death on Sept. 25 when attorneys for condemned Texas inmate Michael Richard sought to file an appeal to his execution the same day. But the attorneys experienced computer problems and couldn't print out the 11 required copies of the 108-page petition to the Texas Court of Criminal Appeals by the court's normal closing time of 5 p.m.

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Keller's refusal to keep the court open for even a few more minutes was the height of callousness and a perversion of justice. This was no frivolous motion from a death row inmate. That same day the U.S. Supreme Court had agreed to hear a case from Kentucky challenging the constitutionality of execution by lethal injections. That effect of the nation's high court acceptance of the case was to call into question the execution process in all states that use lethal injection, including Texas, and that was the argument that Richard's attorneys were in the process of making when Keller slammed the door shut on Texas justice.

Since then, two other Texas death row inmates have had their executions blocked and it's likely that there will be no other executions in Texas until the nation's high court decides the Kentucky case. Nueces County District Attorney Carlos Valdez has announced his office will not seek the death penalty in any case until the Supreme Court decides on the constitutionality question.

But all of this is too late for Richard. He was executed at 6 p.m. on Sept. 25, without ever getting a chance to have his appeal filed or heard by the highest criminal appeals court in the state. This is not to say that Richard merits any sympathy. He was convicted of a brutal and senseless crime, the 1986 rape and murder of a 53-year-old nurse, Marguerite Lucille Dixon of Hockley, the mother of seven who had invited Richard into her home to get a drink of water on what was a hot day. He returned with a gun, sexually assaulted her, and killed her, and then took two television sets.

**EXAMINER'S
EXHIBIT**

No. 26.19

SCJC 001140

But this is not so much about Richard, but about what Texans should expect from their judges. Respect for due process, for one, and upholding the integrity of the justice, for another. The quality of justice dispensed by its courts is a reflection of the public. The Texas Court of Criminal Appeals is the final say in Texas on capital cases and those cases should receive the court's most thoughtful review, not a curt dismissal by putting up the "Closed" sign.

In fact, another judge, Justice Cheryl Johnson, was assigned to the Richard case, not Keller, but she was never consulted by Keller. And neither did Keller consult with any of the other seven justices on the court, three of whom were working late that evening. Johnson said her reaction on hearing of the refusal was "utter dismay."

Keller says she didn't know the attorneys had computer problems. But she did know that Richard's was a capital case. She did know that his execution was scheduled for that evening. She didn't have to know more to hold the doors of justice open for a few more minutes.

Elections of judges to the Court of Criminal Appeals rarely draws much voter interest. But Keller's refusal of justice has likely raised that profile. A group of attorney and judges, including retired Nueces County district judge Michael Westergren, are seeking to have Keller disciplined. Whatever the success of that approach, Texas voters shouldn't forget the shame Keller has brought on Texas justice.

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October 14, 2007 Sunday
Correction Appended
Final Edition

SECTION: EDITORIAL; Pg. G02

LENGTH: 483 words

HEADLINE: Justice in Texas? Not on her watch

BYLINE: AUSTIN AMERICAN-STATESMAN

BODY:

Sharon Keller, presiding judge of the Texas Court of Criminal Appeals, has never shown much sympathy toward death row inmates.

Keller and this state's highest court for criminal cases have a well-earned reputation for tolerating egregious abuses in capital trials and appeals. Their record of indifference to the right to effective defense counsel and for judicial precedent has put them at odds with the U.S. Supreme Court numerous times.

Texas executes more inmates than any other state by far, and too many of those condemned men and women had poor legal representation from the initial trial through the final appeal. Keller's court has consistently failed in its duty to ensure the integrity of capital trials and death sentences.

One of the most appalling examples of Keller's judicial philosophy was her refusal to accept an appeal from condemned prisoner Michael Richard on Sept. 25. Keller wouldn't keep the court open past 5 p.m. to receive Richard's appeal, and she didn't inform other judges working late about the request. Richard was executed that night.

That cold-hearted response drew international criticism of Keller and the court. It was

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SCJC 001099
7/1/2009

**EXAMINER'S
EXHIBIT**

No. 26.20

particularly outrageous because the U.S. Supreme Court had earlier that day accepted a death penalty appeal challenging the constitutionality of lethal injections, used by Texas and other states.

Last week, Keller's "We close at 5" response resulted in an ethics complaint filed with the State Commission on Judicial Conduct by 19 Texas lawyers. The complaint came from some highly respected attorneys, including Austin lawyers James George Jr., Broadus Spivey and Chuck Herring Jr.

They are asking the commission to remove Keller from office, or otherwise discipline her, for violating the Texas Code of Judicial Conduct. The complaints are firmly grounded and the commission should give them careful consideration.

The judicial canons themselves are subjective - judges must preserve the integrity of the judiciary and promote public confidence in judicial integrity, for instance. Most lawyers can argue about that wording as long as they can draw breath.

But whatever the commission decides, it is abundantly clear that Keller and her court have been more concerned with process than justice. They have repeatedly ignored the fundamental right of a defendant to competent counsel. Reporting by the American-Statesman's Chuck Lindell has highlighted the court's indifference to glaringly inept defense attorneys in capital cases.

Keller's coldblooded response in the Richard case may have been the last straw that prompted the ethical complaint, but the appeals court has been grating on legal sensibilities for years.

Finally, an important part of the legal community said it has had enough and moved to have Keller disciplined, and possibly removed from the bench. That is an important step in guarding the integrity of criminal justice in Texas.

CORRECTION-DATE: October 17, 2007

CORRECTION:

* A story on Thursday's Page B1 and an editorial on Sunday's Page G2 misstated the number of lawyers who signed a complaint against Texas Court of Criminal Appeals Presiding Judge Sharon Keller. Twenty lawyers signed the complaint.

LOAD-DATE: October 14, 2007

Client ID: A19223.2

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7/1/2009

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TEXAS LAWYER

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Missed Deadline, CCA Closure Lead to Complaint Against Judge

Mary Alice Robbins
Texas Lawyer
10-15-2007

The state executed Michael Richard on Sept. 25 after his attorneys failed to convince the Court of Criminal Appeals to keep its clerk's office open past 5 p.m. that day to receive Richard's emergency request to stay his execution. Now 20 Texas lawyers have joined in filing a formal complaint against CCA Presiding Judge Sharon Keller, who they say decided to shut the doors at the normal closing time.

In the complaint to the State Commission on Judicial Conduct, Texas Civil Rights Project (TCRP) director Jim Harrington alleges that Keller's action denied Richard two constitutional rights — access to the courts and due process — which led to Richard's execution.

"Her actions also brought the integrity of the Texas judiciary and of her court into disrepute and was a source of scandal to the citizens of the state," Harrington alleges in the complaint, on behalf of himself and 19 other attorneys.

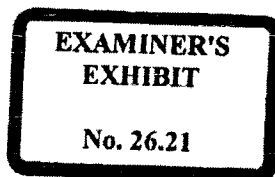
Cabrini Vianney, spokeswoman for the TCRP, says she filed the complaint with the judicial conduct commission on Oct. 11.

The complaint focuses on events that led to the closure of the CCA clerk's office three hours before the state carried out Richard's execution for the August 1986 rape and murder of Marguerite Dixon, a 53-year-old Hockley nurse. On the morning of Sept. 25, the U.S. Supreme Court agreed to consider whether execution by lethal injection constitutes cruel and unusual punishment in Baze v. Rees, a Kentucky case. Harrington alleges in the complaint that Richard's attorneys had requested on the same day that the CCA clerk's office remain open 20 minutes past the 5 p.m. closing time, because they had experienced computer problems in preparing Richard's pleading, which was based on the Supreme Court's grant of certiorari in Baze.

EXHIBIT 212-14 **000182**
"We had computer problems all afternoon," recalls David Dow, Richard's lead counsel and a professor at the University of Houston Law Center. "The Court of Criminal Appeals knew we had

<http://www.law.com/jsp/tx/PubArticleFriendlyTX.jsp?id=1192179798121>

10/12/2007



SCJC 000182

computer problems."

Dow says Richard's attorneys told Abel Acosta, the CCA's chief deputy clerk, about the computer problems around 3 p.m. on Sept. 25.

Acosta declines comment and refers calls to CCA Judge Tom Price, the court's designated spokesman for the matter. In a written statement, Price says the court's only comment is no comment. Keller also declines comment.

CCA Judge Cheryl Johnson declines comment on the complaint. Johnson says she was the judge assigned to handle late motions in Richard's case but she was not told that his attorneys had requested the court to remain open past 5 p.m. "I was out of the loop," she says.

Ed Marty, the CCA's general counsel, says he had heard from other attorneys during the day on Sept. 25 that Richard's attorneys planned to file the request for a stay but he personally never heard from Richard's attorneys.

Marty says the first time he learned that Richard's attorneys had requested the CCA to remain open late on Sept. 25 was at about 4:45 p.m. that day when he received a call from the CCA clerk's office. Marty says he told Keller of the lawyers' request to keep the clerk's office open and asked her if it was the court's policy to close at 5 p.m. She told him it was, Marty says.

Richard's lawyers did not file the emergency request to stay the execution before the deadline.

End of the Line

Harrington said at an Oct. 10 news conference that Richard's attorneys had to file a motion to stay in the CCA and get a ruling before they could file a motion to stay with the U.S. Supreme Court. He said Keller's decision short-circuited the effort to get Richard's motion before the high court.

"This is the kind of conduct that really shocks people's morality," Harrington said.

"Justice should be fair and competent, and here it was not," said Charles "Chuck" Herring Jr., who joined Harrington at the news conference. "The result was a man died on a day he should have lived," said Herring, one of the attorneys who joined in filing the complaint against Keller and a partner in Austin's Herring & Irwin.

Broadus Spivey, a former State Bar of Texas president and a partner in Austin's Spivey & Grigg, is another of the 20 attorneys who joined in filing the complaint. Spivey says in an interview that he was appalled when he read newspaper reports that Keller closed the court's office before Richard's attorneys could file the motion for a stay.

"It shows an amazing lack of sensitivity to constitutional rights," Spivey says. "No matter how guilty a person is, give him a right to be heard."

EXHIBIT *CC-14*
In their law practices, Herring and Spivey represent clients in cases involving lawyers' - 000183

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professional responsibility.

Houston criminal-defense attorney Dick DeGuerin, a partner in DeGuerin, Dickson & Hennessy, also joined in filing the complaint against Keller. "I think it's outrageous that the chief judge of the highest criminal court in Texas locked the doors on a procedural matter," DeGuerin says.

DeGuerin says that traditionally, the U.S. Supreme Court, 5th U.S. Circuit Court of Appeals and federal district courts have procedures in place to handle last-minute stays for people who are about to be executed.

Other attorneys who joined in filing the complaint include James George, a partner in Austin's George & Brothers; Michael Westergren, former judge of the 214th District Court in Corpus Christi; Michol O'Connor, former justice on Houston's 1st Court of Appeals, and Michael Olivas, a professor of immigration law at the University of Houston Law Center.

Professor Geoffrey Corn, a criminal law and national security law professor at South Texas College of Law, calls the context of the decision to close the CCA troubling, because the U.S. Supreme Court's grant of certiorari showed that it was willing to consider whether the lethal injection protocol violated the Eighth Amendment.

"[I]t did seem a little odd that under those circumstances the court would be so formalistic in denying the defense lawyers the opportunity to file their petition for review. Whether or not that's misconduct, I think that's a bit of a stretch. From what I understand, the court was closed, and they missed their deadline, and the judge just complied with the procedural rules that were well known and were applicable to all the parties."

Harrington argues in the complaint that Keller's action violated provisions of the Texas Code of Judicial Conduct by bringing the integrity of the judiciary into question, by failing to avoid impropriety or the appearance of impropriety, and by not performing the duties of her judicial office impartially and diligently.

The attorneys who joined in filing the complaint are asking the commission to take disciplinary action, including possibly removing Keller from office, Harrington said at the news conference.

Herring says the attorneys also want to call attention to the need for the CCA to have a procedure in place to handle last-minute emergencies. He said other courts allow electronic filing of documents and questioned why the CCA does not allow it with life and death matters.

EXHIBIT

CR-14

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HOUSTON CHRONICLE ARCHIVES
Paper: Houston Chronicle
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Locking justice's door / Texas Court of Criminal Appeals chief justice's unethical, outrageous blocking of a death row appeal merits the most severe legal sanctions.
Staff
THE events of Sept. 25 have put a stain on Texas justice that can only be cleansed by the removal of Chief Justice Sharon Keller from the Texas Court of Criminal Appeals.
On that day, Judge Keller let her personal bias in favor of the death penalty trample the right of now-executed prisoner Michael Richard to access the courts and have due process. In doing so, she abdicated her role as the state's chief criminal justice to become its chief executioner.
As laid out in a complaint to Texas' State Commission on Judicial Conduct signed by 20 distinguished Texas attorneys, including Houston's Dick DeGuerrin and University of Houston Law Center professor Michael Olivas, Judge Keller's actions were legally inexcusable. The plot line could be straight from a Law and Order episode, with the twist that in this case it was the justice who committed the injustice.
After the U.S. Supreme Court agreed to consider a challenge to the constitutionality of lethal injection, attorneys for Richard, a convicted murderer, had less than a day to craft an appeal for a stay of execution pending resolution of the issue before the high court. A ruling by the Texas court was necessary before the U.S. Supreme Court could consider his appeal.
Because of computer problems, Richard's lawyers requested that the Court of Criminal Appeals remain open past 5 p.m. to take the last-minute appeal. The judge assigned to the case, Cheryl Johnson, and two other judges had stayed late, anticipating that an appeal might be forthcoming before the execution scheduled later that evening. Without informing them of her decision, Judge Keller refused to allow the appeal to be filed after 5 p.m. Richard was executed hours later.
Even Keller's court colleagues expressed dismay at her actions. Justice Johnson was quoted in the complaint as angry, because "if I'm in charge of the execution, I ought to have known about these things, and I ought to have been asked whether I was willing to stay late and accept those filings." She indicated she would have accepted the brief, "because this is a death case." Justice Paul Womack told the Chronicle he waited in his office till 7 p.m. because "it was reasonable to expect an effort would be made in some haste in light of the Supreme Court. I wanted to be sure to be available in case it was raised."
Justice Keller's response to the uproar was that the lawyers should have filed the appeal on time. After all, she said, "they had all day." When an irreversible action like an execution is only hours away from occurring, Keller's adherence to a 9 a.m.-to-5 p.m. justice schedule is mind boggling. Civil judges are available at all hours to sign temporary restraining orders as are criminal judges to approve search warrants. Yet in the taking of a life, the most profound action a judge will ever be involved in, Keller wants to stick to banker's hours.
The irresponsibility of Keller's behavior was highlighted by subsequent legal developments. Two days after the Richard execution, the Supreme Court stayed the execution of another Texas prisoner, Carlton Turner. Although his appeal had been denied by the Texas court, the fact that it was heard

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http://www.chron.com/CDA/archives/archive.mpl?id=20071016000076

EXAMINER'S EXHIBIT
No. 26.22

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12/27/2007
SCJC 000076

allowed the high court to act.

Then the Court of Criminal Appeals stayed the scheduled execution of convicted murderer Heliberto Chi, effectively signaling a halt to death by injection in the state until the high court rules on its constitutionality.

Just as Turner and Chi were spared pending the resolution of the issue, so Michael Richard should be alive today. Since she will not face the voters until 2012, the miscarriage of justice perpetrated by Chief Justice Keller can only be remedied by a recommendation by the Judicial Conduct Commission to the Texas Supreme Court that she be removed from office.

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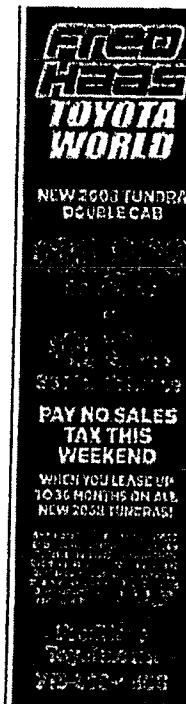


EXHIBIT C-15

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12/27/2007

SCJC 000077

Mark Stevens

From: Mark Stevens [mark@markstevenslaw.com]
Sent: Wednesday, December 26, 2007 11:28 PM
To: mark@markstevenslaw.com
Subject: Emailing: Archives.htm

Waco Tribune Herald Archives
Editorial: Texas justice closes at 5 p.m.
Published October 16, 2007

Sharon Keller, presiding judge of the Texas Court of Criminal Appeals, shamed the state by deciding that 20 minutes of her time was more important than a last-minute appeal for a man on death row.

If Keller cannot be removed from her position, she should be disciplined for her outrageous behavior.

Keller, a former Dallas prosecutor, has a reputation as a hard-liner when it comes to upholding convictions.

She outdid herself on Sept. 25 when the U.S. Supreme Court accepted a death penalty appeal challenging the constitutionality of lethal injections, used by Texas and other states.

Recognizing that the nation's highest court would determine whether lethal injections violate the U.S. Constitution's ban on cruel and unusual punishment, the lawyers for Texas death row inmate Michael Richard began preparing an appeal for their client to the Texas' highest criminal appeals court.

Richard was scheduled to be executed at 6 p.m. on the day that the U.S. Supreme Court opened an appeal opportunity for him. He had been convicted in 1986 for the rape and shooting death of a Harris County woman.

Forewarned that the last-minute appeal was on its way but would be a few minutes late due a computer crash, several other judges on the state's highest criminal appeals court stayed late so they could handle the appeal.

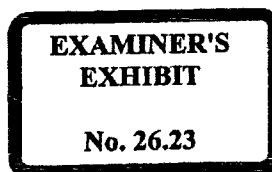
The computer malfunction made it impossible to print out and deliver 11 copies of the 108-page appeal petition by 5 p.m. Richard's attorney notified the clerk's office that the appeal would be delivered 20 minutes late.

Court of Criminal Appeals Judge Paul Womack stayed late that evening expecting an appeal from Richard's attorneys in light of the Supreme Court's decision.

Another judge on the court, Cathy Cochran, told the Houston Chronicle: "I would definitely accept anything at any time from someone who was about to be executed."

Not so with Presiding Judge Keller. Three hours after Keller ordered the clerk to accept no appeals filed

EXHIBIT 2-15
12/27/2007



000083

SCJC 000083

after 5 p.m., Richard was executed.

Because Richard's situation was nearly exactly the same as the one accepted earlier that day by the U.S. Supreme Court, it is nearly certain that Richard's execution would have been stayed.

Only two days after Richard's execution, the Supreme Court blocked the execution of another Texas inmate with a similar appeal.

Questioned, Keller cavalierly said, "We close at 5."

An ethics complaint has been filed with the State Commission on Judicial Conduct by 19 Texas lawyers asking that Keller either be removed from office or disciplined for violating the Texas Code of Judicial Conduct.

One way or another, Keller should be held accountable for her shocking behavior.

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The Houston Chronicle

October 16, 2007 Tuesday
3 STAR EDITION

SECTION: B; Pg. 8**LENGTH: 629 words**

HEADLINE: Locking justice's door;
Texas Court of Criminal Appeals chief justice's unethical, outrageous blocking of a death row appeal merits the most severe legal sanctions.

BYLINE: Staff**BODY:**

THE events of Sept. 25 have put a stain on Texas justice that can only be cleansed by the removal of Chief Justice **Sharon Keller** from the Texas Court of Criminal Appeals.

On that day, **Judge Keller** let her personal bias in favor of the death penalty trample the right of now-executed prisoner Michael Richard to access the courts and have due process. In doing so, she abdicated her role as the state's chief criminal justice to become its chief executioner.

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SCJC 001097
7/1/2009

**EXAMINER'S
EXHIBIT**

No. 26.24

Because of computer problems, Richard's lawyers requested that the Court of Criminal Appeals remain open past 5 p.m. to take the last-minute appeal. The judge assigned to the case, Cheryl Johnson, and two other judges had stayed late, anticipating that an appeal might be forthcoming before the execution scheduled later that evening. Without informing them of her decision, Judge Keller refused to allow the appeal to be filed after 5 p.m. Richard was executed hours later.

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Then the Court of Criminal Appeals stayed the scheduled execution of convicted murderer Heliberto Chi, effectively signaling a halt to death by injection in the state until the high court rules on its constitutionality.

Just as Turner and Chi were spared pending the resolution of the issue, so Michael Richard should be alive today. Since she will not face the voters until 2012, the miscarriage of justice perpetrated by Chief Justice Keller can only be remedied by a recommendation by the Judicial Conduct Commission to the Texas Supreme Court that she be removed from office.

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Editorial: Texas justice closes at 5 p.m.
16 October 2007
Cox News Service
COXNS
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If Keller cannot be removed from her position, she should be disciplined for her outrageous behavior.

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She outdid herself on Sept. 25 when the U.S. Supreme Court accepted a death penalty appeal challenging the constitutionality of lethal injections, used by Texas and other states.

Recognizing that the nation's highest court would determine whether lethal injections violate the U.S. Constitution's ban on cruel and unusual punishment, the lawyers for Texas death row inmate Michael Richard began preparing an appeal for their client to the Texas' highest criminal appeals court.

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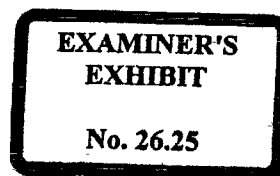
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The computer malfunction made it impossible to print out and deliver 11 copies of the 108-page appeal petition by 5 p.m. Richard's attorney notified the clerk's office that the appeal would be delivered 20 minutes late.

Court of Criminal Appeals Judge Paul Womack stayed late that evening expecting an appeal from Richard's attorneys in light of the Supreme Court's decision.

Another judge on the court, Cathy Cochran, told the Houston Chronicle : "I would definitely accept anything at any time from someone who was about to be executed."

Not so with Presiding Judge Keller. Three hours after Keller ordered the clerk to accept no appeals filed after 5 p.m., Richard was executed.



SCJC 001147

Because Richard's situation was nearly exactly the same as the one accepted earlier that day by the U.S. Supreme Court, it is nearly certain that Richard's execution would have been stayed.

Only two days after Richard's execution, the Supreme Court blocked the execution of another Texas inmate with a similar appeal.

Questioned, Keller cavalierly said, "We close at 5."

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One way or another, Keller should be held accountable for her shocking behavior.

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Rebeca Chapa: In Texas, hang 'em high justice has dropped to a new low

Web Posted: 10/17/2007 06:32 PM CDT

San Antonio Express-News

Let me see if I have this right.

Judge Sharon Keller, the presiding judge of the state's highest criminal court, doesn't see anything wrong with closing the court's doors at 5 p.m. sharp on a day when 1) the U.S. Supreme Court announces it will hear a precedent-setting lethal injection case and 2) a Texas man is set to be executed by lethal injection.

Wow. That's some Texas justice there, boy.

Let's recap.

Michael Richard was executed on the evening of Sept. 25. He had been convicted in the rape and murder of Marguerite Lucille Dixon, a 53-year-old nurse and mother of seven. He stole two televisions from the Harris County woman's home and later swapped them for cocaine.

Earlier that day, the U.S. Supreme Court had announced it would hear an appeals case out of Kentucky in which two defendants assert the unconstitutionality of lethal injection.

That announcement prompted a flurry of appeals, and at least two death row cases so far — those of Carlton Turner Jr. and Heliberto Chi — have received stays pending the outcome of the Kentucky case next year.

Richard's attorneys spent Sept. 25 preparing his appeal but weren't ready to submit it until 5:20 p.m. because of a printing problem. The court does not accept e-mailed filings.

Keller told the Associated Press she got a call from Richard's attorneys shortly before 5 p.m. asking the court to stay open, but they didn't say why their filing would be late.

"And given the late request, and with no reason given, I just said 'We close at 5.' I didn't really think of it as a decision as much as a statement."

Keller failed to notify her colleagues, some of whom stayed late or were available to receive the expected appeal. That included Judge Cheryl Johnson, the designated person for late motions in that case who read about Keller's decision the next morning in the Austin American-Statesman.

"If I'm in charge of the execution, I ought to have known about those things, and I ought to have been asked whether I was willing to stay late and accept those filings," she said in news reports.

Reached this week, Johnson was less impassioned, but perhaps no less distressed.

000163

EXHIBIT *CJC-14*
"For me, that subject has been explored fully. I'm not going to say anything more than I've already said," she

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EXAMINER'S
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told me by phone.

In the wake of Keller's disastrous judgment call, several attorneys have filed complaints with the State Commission on Judicial Conduct. Good for them. Judges like Keller need to be challenged when they mess up.

Keller declined to comment Wednesday and referred media inquiries to Judge Tom Price, who also declined to comment.

Keller, remember, is the same judge who in 1998 wrote that convicted rapist Roy Criner hadn't proved his innocence even though the semen in the victim belonged to someone else. Criner may have failed to ejaculate or could have worn a condom, she said.

Criner was pardoned in 2000 by then-Gov. George W. Bush.

Two weeks ago, I wrote that it's important for the Supreme Court to iron out the constitutionality of lethal injection because the Constitution is worthless if its tenets are only applied to some of the people, some of the time.

The same logic holds true in this instance.

Keller may have had the legal right to close the court's doors at 5 p.m. But determining whether she *should* have done so is important because the process is worthless if it's only applied to some of the people, some of the time.

Even death penalty supporters should want to see this resolved. Is it OK for a judge to refuse a legitimate death row appeal because she wants to uphold the court's hallowed tradition of closing on time?

I'm writing about this case is because it involves the death penalty, which I oppose.

But that's the point. If Richard hadn't been on death row, it wouldn't matter if Keller had closed the office at 5 p.m. or noon. Richard would still be around to file his appeal.

He's not. That may be fine with a lot of people in this state, but it shouldn't be.

rchapa@express-news.net

Online at: <http://www.mysanantonio.com/opinion/stories/MYSA101807.02O.Chapa.214077.html>

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October 17, 2007 Wednesday

SECTION: B; Pg. 6

LENGTH: 576 words

HEADLINE: Lawmaker says judge mishandled last-ditch appeal

BYLINE: JOHN MORITZ, Star-Telegram Staff Writer

BODY:

MICHAEL WAYNE RICHARD

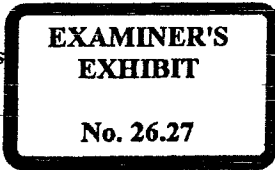
SHARON KELLER

AUSTIN -- State Rep. Lon Burnam said Tuesday that the presiding judge of Texas' highest criminal court should face disciplinary procedures that include being removed from office for closing the court to an eleventh-hour appeal from Death Row that could have prevented an execution pending a U.S. Supreme Court review of lethal injection.

Burnam, a Fort Worth Democrat, called the action last month by Judge Sharon Keller "unprofessional and unethical" and said it undermined the integrity of the Texas court system.

"I think it was horribly egregious and a gross miscarriage of justice," Burnam said one day after lodging a formal complaint with the State Commission on Judicial Conduct and asking the agency to investigate Keller's actions. "Her job is to uphold the law, and she failed in that responsibility."

Keller's office referred questions about the matter to Judge Tom Price, who also serves on the criminal appeals court and has agreed to field media inquiries. Price did not return calls seeking comment.



Condemned killer Michael Wayne Richard was executed Sept. 25 for the rape and murder of a Harris County woman in August 1986. The execution came the same day that the U.S. Supreme Court announced that it would hear arguments in a Kentucky case over whether the procedure used for lethal injections violates the constitutional prohibition on cruel and unusual punishment.

Richard's lawyers had drafted a motion to have their client's execution stayed until after the high court had ruled in the Kentucky case, but they did not have it ready before the appeals court in Austin had closed for business at 5 p.m. Richard's lawyers called to ask that the court remain open an additional 20 minutes, but Keller ordered that the traditional closing time be observed.

Less than a week after Richard was put to death, the Supreme Court stayed an execution scheduled in Huntsville because of the pending review of lethal injection. A few days later, the criminal appeals court halted another execution pending the review.

Meanwhile, 20 Texas lawyers have signed a complaint filed Wednesday that accuses Keller of violating Richard's civil rights by cutting off his last-ditch appeal.

In his letter, Burnam said judges have an obligation to keep the courthouse doors open when they know a legitimate appeal from Death Row on execution night is on its way.

"It is my opinion that [Keller's] actions were unprofessional and unethical and constitute judicial misconduct," Burnam wrote. "I urge you to take prompt and appropriate disciplinary action against Judge Keller, which should include serious consideration of removal from office."

Keller, a Republican, has served on the criminal appeals court since 1995.

A spokesman for the judicial conduct commission said the 11-member panel is duty-bound to investigate all complaints lodged against judges. According to the agency's mission statement, the commission must "protect the public, promote public confidence in the integrity, independence, competence, and impartiality of the judiciary, and encourage judges to maintain high standards of conduct both on and off the bench."

If a judge is found to have engaged in misconduct, the commission is empowered by the Texas Constitution to issue sanctions, censures, suspensions or recommendations for removal.

Online: www.scjc.state.tx.us

John Moritz reports from the Star-Telegram's Austin bureau. 512-476-4294 jmoritz@star-telegram.com

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Print This Article

Lawmaker says judge mishandled last-ditch appeal

By JOHN MORTIZ
Star-Telegram Staff Writer

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"I think it was horribly egregious and a gross miscarriage of justice," Burnam said one day after lodging a formal complaint with the State Commission on Judicial Conduct and asking the agency to investigate Keller's actions. "Her job is to uphold the law, and she failed in that responsibility."

Keller's office referred questions about the matter to Judge Tom Price, who also serves on the criminal appeals court and has agreed to field media inquiries. Price did not return calls seeking comment.

Condemned killer Michael Wayne Richard was executed Sept. 25 for the rape and murder of a Harris County woman in August 1988. The execution came the same day that the U.S. Supreme Court announced that it would hear arguments in a Kentucky case over whether the procedure used for lethal injections violates the constitutional prohibition on cruel and unusual punishment.

Richard's lawyers had drafted a motion to have their client's execution stayed until after the high court had ruled in the Kentucky case, but they did not have it ready before the appeals court in Austin had closed for business at 5 p.m. Richard's lawyers called to ask that the court remain open an additional 20 minutes, but Keller ordered that the traditional closing time be observed.

Less than a week after Richard was put to death, the Supreme Court stayed an execution scheduled in Huntsville because of the pending review of lethal injection. A few days later, the criminal appeals court halted another execution pending the review.

Meanwhile, 20 Texas lawyers have signed a complaint filed Wednesday that accuses Keller of violating Richard's civil rights by cutting off his last-ditch appeal.

In his letter, Burnam said judges have an obligation to keep the courthouse doors open when they know a legitimate appeal from Death Row on execution night is on its way.

"It is my opinion that [Keller's] actions were unprofessional and unethical and constitute judicial misconduct," Burnam wrote. "I urge you to take prompt and appropriate disciplinary action against Judge Keller, which should include serious consideration of removal from office."

Keller, a Republican, has served on the criminal appeals court since 1995.

A spokesman for the judicial conduct commission said the 11-member panel is duty-bound to investigate all complaints lodged against judges. According to the agency's mission statement, the commission must "protect the public, promote public confidence in the integrity, independence, competence, and impartiality of the judiciary, and encourage judges to maintain high standards of conduct both on and off the bench."

If a judge is found to have engaged in misconduct, the commission is empowered by the Texas Constitution to issue sanctions, censures, suspensions or recommendations for removal.

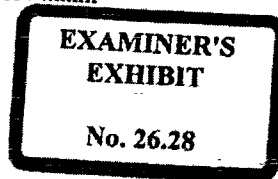
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http://www.star-telegram.com/state_news/v-print/story/270574.html

10/17/2007



SCJC 000174

Editorial

09/15/2007, 7:09PM

Locking justice's door

Texas Court of Criminal Appeals chief justice's unethical, outrageous blocking of a death row appeal merits the most severe legal sanctions.

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The events of Sept. 25 have put a stain on Texas justice that can only be cleansed by the removal of Chief Justice Sharon Keller from the Texas Court of Criminal Appeals.

On that day, Judge Keller let her personal bias in favor of the death penalty trample the right of now-executed prisoner Michael Richard to access the courts and have due process. In doing so, she abdicated her role as the state's chief criminal justice to become its chief executioner.

As laid out in a complaint to Texas' State Commission on Judicial Conduct signed by 20 distinguished Texas attorneys, including Houston's Dick DeGuern and University of Houston Law Center professor Michael Olivas, Judge Keller's actions were legally inexcusable. The plot line could be straight from a Law and Order episode, with the twist that in this case it was the justice who committed the injustice.

After the U.S. Supreme Court agreed to consider a challenge to the constitutionality of lethal injection, attorneys for Richard, a convicted murderer, had less than a day to craft an appeal for a stay of execution pending resolution of the issue before the high court. A ruling by the Texas court was necessary before the U.S. Supreme Court could consider his appeal.

Because of computer problems, Richard's lawyers requested that the Court of Criminal Appeals remain open past 5 p.m. to take the last-minute appeal. The judge assigned to the case, Cheryl Johnson, and two other judges had stayed late, anticipating that an appeal might be forthcoming before the execution scheduled later that evening. Without informing them of her decision, Judge Keller refused to allow the appeal to be filed after 5 p.m. Richard was executed hours later.

Even Keller's court colleagues expressed dismay at her actions. Justice Johnson was quoted in the complaint as angry, because "if I'm in charge of the execution, I ought to have known about these things, and I ought to have been asked whether I was willing to stay late and accept those filings." She indicated she would have accepted the brief, "because this is a death case." Justice Paul Womack told the Chronicle he waited in his office till 7 p.m. because "it was reasonable to expect an effort would be made in some haste in light of the Supreme Court. I wanted to be sure to be available in case it was raised."

Justice Keller's response to the uproar was that the lawyers should have filed the appeal on time. After all, she said, "they had all day." When an irreversible action like an execution is only hours away from occurring, Keller's adherence to a 9 a.m.-to-5 p.m. justice schedule is mind boggling. Civil judges are available at all hours to sign temporary restraining orders as are criminal judges to approve search warrants. Yet in the taking of a life, the most profound action a judge will ever be involved in, Keller wants to stick to banker's hours.

The irresponsibility of Keller's behavior was highlighted by subsequent legal developments. Two days after the Richard execution, the Supreme Court stayed the execution of another Texas prisoner, Carlton Turner. Although his appeal had been denied by the Texas court, the fact that it was heard allowed the high court to act.

Then the Court of Criminal Appeals stayed the scheduled execution of convicted murderer Heiberto Chi, effectively signaling a halt to death by injection in the state until the high court rules on its constitutionality.

Just as Turner and Chi were spared pending the resolution of the issue, so Michael Richard should be alive today. Since she will not face the voters until 2012, the miscarriage of justice perpetrated by Chief Justice Keller can only be remedied by a recommendation by the Judicial Conduct Commission to the Texas Supreme Court that she be removed from office.

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News: October 19, 2007

<http://www.austinchronicle.com/gyrobase/Issue/story?oid=551973>

Closing Time? Attorneys Call for Justice's Head

By Jordan Smith

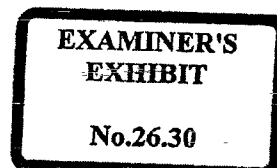
Nineteen attorneys from across Texas have signed on to a formal complaint with the state's **Commission on Judicial Conduct**, seeking the reprimand – or ouster – of Court of Criminal Appeals Presiding Judge **Sharon Keller**, who they argue violated not only the Texas Code of Judicial Conduct but also the Constitution's Due Process Clause by refusing to accept an appeal for an emergency stay filed Sept. 25 on behalf of condemned inmate **Michael Richard**. Keller's decision to close the courthouse doors before Richard's attorneys could file the 11th-hour appeal meant Richard was blocked from appealing to the U.S. Supreme Court. Instead, he was executed. "Judge Keller's actions denied Michael Richard two constitutional rights, access to the courts and due process, which led to his execution," Texas Civil Rights Project Director **Jim Harrington** wrote in the **complaint**, filed with the commission on Oct. 10. "Her actions also brought the integrity of the Texas judiciary and of her court into disrepute and was a source of scandal to the citizens of Texas."

Richard's lawyer David Dow, of the **Texas Innocence Network** at the University of Houston Law Center, was seeking a stay of execution for Richard based on the U.S. Supreme Court's decision that morning to hear an appeal filed by two Kentucky death row inmates challenging the constitutionality of the tri-chemical lethal-injection execution method currently used by 37 states. Richard was slated to be executed that night at 6pm, meaning Dow had less than a day to compose and file the appeal with the CCA – Texas' highest criminal appeals court. The court would then have the choice of either granting Richard a stay or denying it, which would allow Dow to appeal to the Supremes. But Keller refused to accept the appeal at all, meaning that Dow was, in effect, blocked from seeking high court intervention.

Keller told the *San Antonio Express-News* she refused the appeal because it wasn't filed with the court by 5pm – allegedly, the court's standard deadline. Dow told the daily that he'd had computer problems, which delayed the filing. Amazingly, the court, which has statewide jurisdiction, does not accept any e-filing – even in life-and-death cases. Dow said he called the court to explain his situation; in all, he said he would have needed just 20 additional minutes to get the appeal filed. On Oct. 4, the *Express-News* reported that Keller "voiced no second thoughts" about her decision to slam the door on Richard: "You're asking me whether something different would have happened if we had stayed open ... and I think the question ought to be why didn't they file something on time," she said.

Practically speaking, it is almost certain that "something different" would have happened had

<http://www.austinchronicle.com/gyrobase/Issue/print?oid=551973>



SCJC 001157
6/18/2009

Keller decided to wait the extra half-hour: Richard likely would have been granted a stay by the Supremes, who likely would have understood the significance of continuing to execute inmates while the legality of the execution method was in question. In fact, not 24 hours later, on Sept. 26, the high court granted a stay for condemned Texas inmate **Carlton Turner Jr.** after the CCA denied his appeal. "Justice should be both fair and competent, and here it was not," Austin attorney and legal ethics expert **Chuck Herring** told reporters last week. "And the result was that a man was killed on a day that he should've lived."

Keller claimed she was unaware that Dow had encountered computer problems and would need more time to get the appeal filed – but that's either a lie or it indicates a serious internal communication problem at the court. Although Keller and CCA general counsel Ed Marty have said that the 5pm deadline is standard for the court, it doesn't appear that the other CCA judges knew anything about the supposed rule. Several justices stayed late at work that evening in anticipation of the last-minute appeal; and Judge **Cheryl Johnson**, who was assigned to handle the Richard case, had no idea that Keller set the clearly arbitrary 5pm deadline. Johnson told the *Austin American-Statesman* that she was "dismayed" by Keller's decision. "And I was angry," she said. "If I'm in charge of the execution, I ought to have known about those things, and I ought to have been asked whether I was willing to stay late and accept those filings."

In addition to refusing last-minute appeals, Keller's office told the *Chronicle* that the judge is now declining to "accept any calls" regarding her actions in the Richard case. Similarly, Marty did not return calls requesting comment, nor did Judge **Tom Price** to whom the *Chronicle* was referred for comment. (Interestingly, Price dissented from the court's decision last month to deny Turner's stay, opining that he didn't understand why the court would be willing to allow executions to go forward when the legality of the method was in question.) As such, at press time it was unclear whether the 5pm deadline – or, perhaps, the Keller Rule – is in fact standard procedure at all; judging by Johnson's response, it's hard to imagine that it is. Indeed, it is standard practice for courts to remain ready to accept such last-minute death-penalty appeals. University of Texas Law professor **Jordan Steiker**, who teaches constitutional law and is an expert in death penalty jurisprudence, said he doesn't know of any other court handling death row appeals that claims such a deadline. "The decision by the [CCA] to close its doors follows in a long line of resistance by the court to constitutional norms," he said, "and what is often said of boxing is certainly true for this court – it is a court without an eye left to blacken."

Harrington has also filed a grievance with the Texas Bar Association, seeking a revocation of Keller's law license. And on Oct. 15, state Rep. **Lon Burnam**, D-Fort Worth, penned a separate complaint to the commission, urging the commissioners to take "prompt and appropriate disciplinary action" against Keller, including "serious consideration" of removing her from office. "It is simply unconscionable and unacceptable for any officer of the court to close the doors of the court when a pleading for a man's life is known to be on the way," Burnam wrote.

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The Daily Record (Baltimore, MD)

October 24, 2007 Wednesday

SECTION: NEWS

LENGTH: 106 words

HEADLINE: Texas Court of Criminal Appeals Presiding Judge Sharon Keller has nickname of 'Killer Keller'

BYLINE: Staff and wire reports

BODY:

The path to the nation's busiest death chamber winds through a court of last resort where the presiding judge recently refused to keep her office open past 5 p.m. to accept an last-minute appeal from an inmate about to be executed. Texas Court of Criminal Appeals Presiding Judge Sharon Keller's relentless tough-on-crime approach earned her the nickname "Killer Keller," and condemned prisoners in Texas know she is unlikely to spare them from a lethal injection. Keller, 54, cultivates her reputation, distributing campaign literature showing a shadowy figure behind bars and the headline: "He won't be voting for Judge Sharon Keller. "

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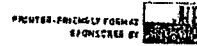
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No. 26.31

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7/1/2009

The New York Times
nytimes.com



October 25, 2007

Texas Judge Draws Outcry for Allowing an Execution

By RALPH BLUMENTHAL

HOUSTON, Oct. 24 -- The presiding judge of the Texas Court of Criminal Appeals is the target of a rising national outcry a month after turning away the last appeal of a death row inmate because the rushed filing was delayed past the court's 5 p.m. closing time.

The inmate, Michael Richard, was then executed for a 1986 sexual assault and murder -- the last person to die in Texas while the United States Supreme Court reviews the constitutionality of lethal injection.

The judge, Sharon Keller, has said she did not know that Mr. Richard's defense lawyers in Houston were having computer problems when they asked the court for 20 more minutes to deliver their final state appeal to Austin hours before the scheduled execution on Sept. 25.

Without a definitive ruling from the state court, the lawyers could not properly appeal to the United States Supreme Court to block the execution.

Judge Keller, a Republican who was elected to her second six-year term last year, declined through her office this week to comment.

The court does not accept computer filings, although one of the court's judges, Tom Price, said in an interview this week, "We're reviewing all our procedures and policies."

Other judges on the nine-member court, the state's highest for criminal appeals, have said they were in the courthouse or available by phone and would have stayed late to hear the appeal if they had known about it.

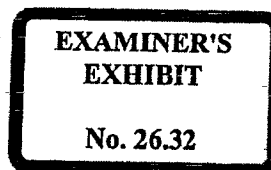
On Wednesday, the National Association of Criminal Defense Lawyers, with 13,000 members nationwide, said it had just sent a complaint against Judge Keller to the Texas Commission on Judicial Conduct, the first judicial complaint the group had ever filed, said its president, Carmen D. Hernandez, of Washington.

"Whatever else happens in the United States of America, the courts are to remain open to litigants," Ms. Hernandez said.

Also Wednesday, a petition calling for the court to accept electronic filings and signed by more than 300 lawyers -- including two former Texas Supreme Court justices and other former judges, the head of the Texas Commission for Lawyer Discipline and partners of leading Texas law firms -- was delivered in Austin by the Texas Civil Rights Project, a legal advocacy group.

This month at least 150 lawyers across Texas announced they were filing a complaint against Judge Keller with the State Commission on Judicial Conduct. Among the signers was a state district judge from Galveston, Susan Criss, who said, "The Code of Judicial Conduct requires judges to report activity by other judges that violates the code."

EXHIBIT 2-15



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The commission of six judges, two lawyers and five citizens investigates cases of judicial misconduct — defined as bringing discredit upon the judiciary or the administration of justice — and can impose sanctions ranging from additional education to suspension or a trial, but it cannot remove a judge.

The commission will not confirm that any judge is under investigation, said the group's executive director, Seana Willing.

But David R. Dow, Mr. Richard's lead lawyer, said Tuesday that a representative of the commission had interviewed him about the case several weeks ago.

Mr. Dow, a University of Houston law professor and a lawyer for the Texas Defender Service, a law clinic representing death row inmates, said, "Obviously Mr. Richard was executed more than a month ago, so none of this helps him."

But Mr. Dow added, "I am surprised that there are so many people across such a broad terrain who seem to be outraged."

The controversy stems from an expedited appeal that Mr. Dow and other lawyers rushed to file for Mr. Richard on the day of his scheduled execution — the same day the United States Supreme Court agreed to review whether lethal injection in Kentucky amounted to cruel and unusual punishment.

Mr. Dow said that in refocusing their appeal on lethal injection, they suffered a computer breakdown and tried to get the Court of Criminal Appeals to wait 20 minutes after closing time so the brief could be delivered by hand, but that they were turned down.

The Austin American-Statesman quoted Judge Keller on Oct. 3 as defending her decision to close, saying she had asked Mr. Richard's lawyers why the court should stay open "and no reason was given."

"I just said, 'We close at 5.' I didn't really think of it as a decision as much as a statement," the newspaper quoted her as saying.

Mr. Dow said they had pleaded computer failure, to no avail. Lacking a state ruling, the lawyers submitted an incomplete appeal to the United States Supreme Court, and Mr. Richard was executed. Two days later, the justices blocked another lethal injection in Texas, and there have been no executions since.

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guardian.co.uk

6.15pm BST / 1.15pm ET

Execution appeal lawyers told 'sorry we're closed'

Suzanne Goldenberg in Washington

guardian.co.uk, Thursday 25 October 2007 18.15 BST

A *luzc* / *malik*



Judge Sharon Keller of Texas, whose tough-on-crime approach earned her the nickname "Killer Keller". Photograph: Elena Grothe/American-Statesman/AP

A Texas judge today faced a widespread rebuke from her fellow lawyers for refusing to keep her courthouse open after 5pm to hear a last-minute death row appeal. The prisoner was executed hours later.

In an extraordinary protest, the National Association of Criminal Defence Lawyers filed an official complaint against Sharon Keller, the presiding judge on the Texas court of criminal appeals.

Several Texas judges have joined the protest, and more than 300 lawyers in Texas have demanded the courts accept appeals filed electronically to prevent such actions in the future.

The uproar against Ms Keller follows her refusal late last month to wait 20 minutes to receive an appeal on behalf of Michael Richard, who had been condemned for the rape and murder of a mother of seven. Richard was scheduled for execution later that night.

His lawyers had suffered a computer breakdown and were unable to file the appeal within regular working hours, and had begged Judge Keller for more time. Ms Keller refused.

Her decision might otherwise have gone unnoticed had the supreme court not announced earlier, on September 25, that it was reviewing a challenge to the legality of lethal injection.

The announcement set off a flurry of appeals from death row inmates and it is believed the Richard's execution would likely have been halted to await the supreme court decision had he been granted a hearing.

<http://www.guardian.co.uk/world/2007/oct/25/usa.suzannegoldenberg>

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6/24/2009

Two days after Richard was executed, the supreme court blocked a lethal injection in Texas. Judges in Alabama and Kentucky have also stayed executions, bringing in an unofficial moratorium on the death penalty.

"This execution proceeded because the highest criminal court couldn't be bothered to stay an extra 20 minutes on the night of an execution," Andrea Keilen, executive director of Texas Defender Service, told reporters.

Ms Keller remains unrepentant. She told the Houston Chronicle: "I think the question ought to be why didn't they file something on time. They had all day."

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'Killer Keller' rebuked over death-row plea

Suzanne Goldenberg in Washington
The Guardian, Friday 26 October 2007

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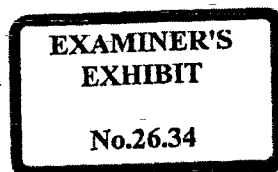
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<http://www.guardian.co.uk/world/2007/oct/26/usa.international/print>



SCIC 001171
6/18/2009

were unable to file the appeal within regular working hours. They had begged Judge Keller for more time and she refused.

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But Judge Keller told the Houston Chronicle: "The question ought to be: why didn't they file something on time? They had all day."

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The Guardian (London) - Final Edition

October 26, 2007 Friday

'Killer Keller' rebuked over death-row plea

BYLINE: Suzanne Goldenberg, Washington

SECTION: GUARDIAN INTERNATIONAL PAGES; Pg. 29

LENGTH: 328 words

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No overtime for judging a man's fate

Michael Richard's execution will be the last in Texas and the U.S. -- for a while

PATRICIA TREBLE | October 29, 2007 |

When Michael Richard's lawyers called the Texas Court of Criminal Appeals at around 4:30 p.m. on Sept. 23, they were desperate. Their client was to be put to death that evening for a 1986 murder, but earlier that day the U.S. Supreme Court agreed to consider a case challenging lethal injections, the same method to be used in Richard's execution -- providing new grounds for a stay of execution. After reworking their request and suffering a massive computer failure, the lawyers knew they wouldn't get to the courthouse before the building's normal 5 p.m. closing to file the needed paperwork, a procedural step necessary for the appeal. They asked for an extra 20 minutes. Sharon Keller, the appeal court's presiding judge, said no, and ordered the doors locked at the usual hour. Richard was executed at 8:23 p.m., after eating a last meal of fried chicken, apple pie and ice cream.

Last week, 20 Texas lawyers, including a former state bar association president, filed an official complaint with the State Commission on Judicial Conduct, arguing that Keller's decision denied Richard of his constitutional right of due process and access to the courts. Jim Harrington, the head of the Texas Civil Rights Project, called Keller's actions "morally callous, shocking and unconscionable." It turns out that Judge Cheryl Johnson, the appeals court justice charged with Richard's case, as well as several other judges prepared to work late that night, weren't informed of their presiding judge's decision to cut off Richard's last chance at a judicial appeal. "I was angry," said Johnson. "On a death case we were here up until the time of the execution, and we would take filings that came in up until the execution is underway." For Johnson, the issue wasn't a question about Richard's guilt, but his right to appeal. Keller is satisfied with her decision: "I think the question ought to be why didn't they file something on time? They had all day." Since Richard's death, all U.S. executions have been halted awaiting a Supreme Court decision -- which may come next year.

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SAN ANTONIO, TEXAS
OCTOBER 29, 2007

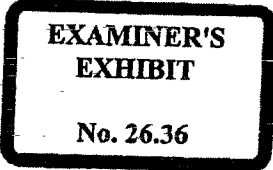


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October 29, 2007**SECTION: WORLD; Pg. 36****LENGTH: 344 words****HEADLINE: No overtime for judging a man's fate****BYLINE: BY PATRICIA TREBLE****BODY:**

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No. 26.37

SCJC 001065
7/1/2009

decision: "I think the question ought to be why didn't they file something on time? They had all day." Since Richard's death, all U.S. executions have been halted awaiting a Supreme Court decision--which may come next year.

GRAPHIC: Photo, KELLER: 'Why didn't they file on time? They had all day.'

LOAD-DATE: October 26, 2007

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OPINION

Opening Halls of Justice

04:48 AM CDT on Tuesday, October 30, 2007

It may be impossible to remove the stain that Sharon Keller, presiding judge of the Texas Court of Criminal Appeals, has placed on the state's judiciary. But two lawyer-driven actions might keep it from spreading.

More than 300 members of the Texas bar joined a petition last week asking Judge Keller's court to adopt modern procedures and allow e-mailed filings in death penalty cases. Of course it should.

Electronic filing in life-or-death cases might have avoided Judge Keller's disgraceful decision Sept. 25 in which she refused a condemned man's plea for a 20-minute extension beyond the court's usual 5 p.m. closing. The man, convicted killer Michael Richard, was executed minutes later, despite indications that he had a strong basis for appeal.

His attorneys needed the extra time because computer glitches prevented their making paper copies, as required. Such considerations should never stand in the way of appeal when a life is in the balance. Most states now have e-mail filing provisions, and the Supreme Court of Texas allows them in civil matters.

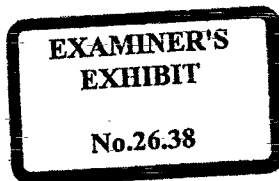
If the Court of Criminal Appeals hesitates, state lawmakers could force the issue in their 2009 session by inserting an imperative in the Code of Criminal Procedures. It would be a disappointment if things came to that.

Separately, lawyers across the state are seeking to have Judge Keller disciplined as a result of her decision to bar the courthouse door. One of the complaints filed with the State Commission on Judicial Conduct accurately states that she is a "source of scandal to the citizens of the state." It might add that she makes the nation's leading death penalty state look overeager to carry out its grim business.

Her decision is particularly hard to stomach because other judges who were working late Sept. 25 said they would have reviewed the post-deadline appeal.

Judge Keller's judgment is morally offensive. Texans deserve to know whether it also offended legal or judicial standards that seek to keep the court system open and fair.

EXHIBIT *CIC-14*



000189

http://www.dallasnews.com/sharedcontent/dws/dn/opinion/editorials/stories/DN-death_30edi.AR... 10/30/2007

SCJC 000189



Local News

Group to protest outside judge's Austin home

10:59 AM CDT on Tuesday, October 30, 2007

KVUE News

Protestors plan to demonstrate outside a judge's Austin home Tuesday night after complaints about her handling of a death row case.

Activists say Criminal Appeals Judge Sharon Keller refused to keep her office open late to receive filings from inmate Michael Richard.

He was executed the same day the U.S. Supreme Court agreed to hear a case on whether lethal injections are cruel and unusual.

Richard's lawyers didn't get the filings to Keller's office until 5:20 p.m., which is 20 minutes after it closed for the day. Activists say she told Richard's attorneys "We close at 5," and acted unethically.

Her decision sparked complaints from lawyers across the state, asking for electronic filing of motions so that doesn't happen again.

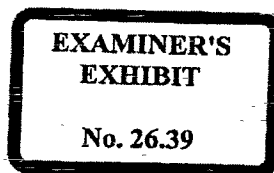
"Keller has damaged the integrity of the Texas Court of Criminal Appeals and violated the public trust placed in her by the people of Texas. She has violated several provisions of the Code of Judicial Conduct and denied a condemned man his constitutional right not to be deprived of life without due process. Because of her arbitrary decision not to stay open to accept the appeal of death row prisoner Michael Richard, which she made without consulting the other judges on the Court, Keller should resign from her office. If she refuses to resign, the State Commission on Judicial Conduct should take action to remove her from the bench", said Scott Cobb, one of the signers of the judicial complaint, in a news release.

More than 1,100 people have signed the complaint.

The American Bar Association is calling for a nationwide moratorium on executions.

KVUE's Elise Hu reports live at 6.

EXHIBIT *QC-14*



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<http://www.kvue.com/news/local/stories/103007kvuejudgeprotest1-cb.1bf7f6cae.html>

10/30/2007

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THE DALLAS MORNING NEWS**

**October 30, 2007 Tuesday
FIRST EDITION**

SECTION: EDITORIALS; EDITORIALS; Pg. 14A

LENGTH: 357 words

HEADLINE: Opening Halls of Justice Lawyers on right track after Keller disgrace

BODY:

It may be impossible to remove the stain that **Sharon Keller**, presiding judge of the Texas Court of Criminal Appeals, has placed on the state's judiciary. But two lawyer-driven actions might keep it from spreading.

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<http://www.lexis.com/requester/document?ansset=Z-WA-A-VZ-VZ->

**EXAMINER'S
EXHIBIT

No. 26.40**

SCJC 001063
7/1/2009

her decision to bar the courthouse door. One of the complaints filed with the State Commission on Judicial Conduct accurately states that she is a "source of scandal to the citizens of the state." It might add that she makes the nation's leading death penalty state look overeager to carry out its grim business.

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Judge Keller's judgment is morally offensive. Texans deserve to know whether it also offended legal or judicial standards that seek to keep the court system open and fair.

DigitalEXTRA

{WebArch} Archive: The Dallas Morning News editorial board makes its case against the death penalty. dallasnews.com/extra

GRAPHIC: PHOTO(S): Sharon Keller.

LOAD-DATE: October 30, 2007

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Local News

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Protestors call for Texas judge to resign

06:42 PM CDT on Tuesday, October 30, 2007

By **ELISE HU**
KVUE News

Protestors visited the Austin home of Texas Court of Criminal Appeals presiding judge Sharon Keller Tuesday night, as a decision she made in late September continues to draw a flurry of judicial complaints.



[Click here for larger video](#)

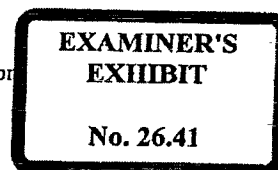
On September 25, the U.S. Supreme Court agreed to consider the constitutionality of lethal injection. As the issue is pending, every scheduled execution nationwide has been put on hold.

Except for one.

Convicted killer Michael Richard was set to die the same day the high court set its docket. His attorneys filed an appeal to Keller's court, but didn't get the filings in until 5:20pm. Keller refused to keep the court open, saying "we close at five."

"A man was executed that shouldn't have been executed that night," said Scott Cobb, who led the Tuesday protest. "He certainly was guilty, from everything we know about this case. But even the guilty are protected under the United States constitution."

<http://www.kvue.com/news/local/stories/103007kvuejudgeprotests-br>



SCJC 001176
6/18/2009

Other judges who were working late Sept. 25 said they would have reviewed the post-deadline appeal.

"It's stunning that it happened in the first place, it's amazing that it happened without the consultation of other judges," said Steve Hall, whose organization Stand Down Texas works for death penalty reform.

The protest is accompanied by an additional judicial complaint, signed now by more than 1,200 Texans. Lawmakers, lawyers and advocacy groups have filed separate judicial complaints against Keller. It's up to the State Commission on Judicial Conduct to decide whether Keller is reprimanded.

"She has violated the public trust that the people of Texas put into her when we elected her and she's also damaged the integrity of the entire Texas judicial system," Cobb said.

Keller, who was first elected in 1994 as a tough-on-crime Republican, did not comment for this story. Questions were directed to Judge Tom Price, whose office didn't return KVUE's calls as of Tuesday evening.



Local News

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10:59 AM CDT on Tuesday, October 30, 2007

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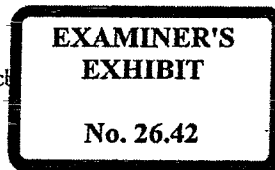
"Keller has damaged the integrity of the Texas Court of Criminal Appeals and violated the public trust placed in her by the people of Texas. She has violated several provisions of the Code of Judicial Conduct and denied a condemned man his constitutional right not to be deprived of life without due process. Because of her arbitrary decision not to stay open to accept the appeal of death row prisoner Michael Richard, which she made without consulting the other judges on the Court, Keller should resign from her office. If she refuses to resign, the State Commission on Judicial Conduct should take action to remove her from the bench", said Scott Cobb, one of the signers of the judicial complaint, in a news release.

More than 1,100 people have signed the complaint.

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KVUE's Elise Hu reports live at 6.

<http://www.kvue.com/news/local/stories/103007kvuejudgeprotest1-cl>



SCJC 001178
6/18/2009

10/31/07 Ft. Worth Star-Telegram B12
2007 WLNR 21436137

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October 31, 2007

Section: B

Hello? Hello?! Criminal justice

Star-Telegram

During Presiding Judge Sharon Keller's tenure, the Texas Court of Criminal Appeals has been derided for seeing no harm when lawyers commit obvious errors. In its zeal to uphold convictions come what may, the court has been scolded by the U.S. Supreme Court for not following precedent.

But for sheer myopia, it's hard to top Keller's refusal to keep the court open long enough to accept an emergency appeal from a Death Row inmate about to be executed.

Even Keller's fellow judges were dumbfounded by her rigidity.

There's no question that rules exist for a reason. And justice does demand some finality.

But condemned killer Michael Richard's attempted appeal on Sept. 25 wasn't a baseless ploy to avoid execution for raping and fatally shooting Marguerite Dixon in 1986.

The last-minute scramble was set in motion by the U.S. Supreme Court's announcement earlier in the day that it would use a Kentucky case to decide whether the three-drug execution cocktail used by 36 states, including Texas, amounts to unconstitutional cruel and unusual punishment.

Richards' attorneys pulled together a petition arguing why the court's action warranted a delay of his execution, set for 6 p.m. that day. Computer problems delayed printing of the materials, so the attorneys asked the appeals court to let them file 20 minutes after the regular 5 p.m. closing time. Keller refused.

She did it without consulting Judge Cheryl Johnson, who was assigned Richards' case and who told the Austin American-Statesman that she would have accepted a last-minute filing, given that it was a death penalty case.

Keller did it without consulting Judge Paul Womack, who told the Houston Chronicle that he stayed at the courthouse until 7 p.m. anticipating a last-minute filing, given the Supreme Court's action and the importance of the issue.

She did it even though courts often allow after-hours petitions under atypical circumstances. The Texas Supreme Court, which handles civil appeals, has stayed open for urgent filings in parental notification cases, a spokesman said.

Richard's lawyers couldn't get a stay of execution from the U.S. Supreme Court, probably because they hadn't followed proper procedure by getting a Court of Criminal Appeals ruling first. So he was executed -- the only inmate whose death sentence has been carried out since the justices said they would examine the lethal injection scheme.

Four other Texas inmates have since had their executions postponed until the Supreme Court rules.

In the meantime, the Texas Commission on Judicial Conduct will have to decide whether there's merit to three formal complaints in which lawyers say Keller undermined public confidence in the judiciary.

The court itself ought to seriously consider starting an electronic filing system, as 300 lawyers have asked.

From her few public comments, Keller doesn't appear to be soul-searching about her actions. But Texans can do it for her: Courts, she should be reminded, do justice by ruling fairly on vital issues that come to their door -- not by pretending there's no one there.

---- INDEX REFERENCES ----

NEWS SUBJECT: (Legal (1LE33); Judicial (1JU36); Economics & Trade (1EC26))

REGION: (USA (1US73); Americas (1AM92); North America (1NO39); Texas (1TE14))

Language: EN

OTHER INDEXING: (Sharon Keller's; Marguerite Dixon; Cheryl Johnson; Paul Womack) (COURT OF CRIMINAL; DEATH ROW; KENTUCKY; SUPREME-COURT; TEXAS; TEXAS COMMISSION; TEXAS COURT OF CRIMINAL; TEXAS SUPREME COURT; US SUPREME COURT) (Cheryl Johnson; Criminal; Judicial Conduct; Keller; Marguerite Dixon; Michael Richard; Paul Womack; Richard; Richards; Sharon Keller; Texans) (Kentucky; Texas; Texas; us; usa; na; us.tx; us.tx.frtwrt; us.ky)

KEYWORDS: (CT/clj.crm); (CT/clj); (NT/Law+Crime)

EDITION: Tarrant

Word Count: 611
10/31/07 FTWTHST B12
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Protest hits home for Texas judge who refused to hear late appeal

Amanda DeBard

Published: Wednesday, October 31, 2007

Updated: Friday, January 9, 2009

A group of activists opposing the death penalty rallied outside Judge Sharon Keller's home in North Austin Tuesday night.

Keller presides over the Texas Court of Criminal Appeals and refused to accept a late death penalty appeal on Sept. 25, which resulted in Michael Richard's execution.

"We came to where we think she can hear us," said Scott Cobb, president of the Texas Moratorium Network, an organization in opposition of the death penalty.

Keller told attorneys filing Richard's appeal that the office closes at 5 p.m. and would not grant them the 20 extra minutes they requested due to computer printer malfunctions. There was another attorney assigned to handle late appeals that night, who Keller did not consult with prior to her decision.

Cobb said the protest occurred at Keller's house because most members of his organization work until 5 p.m. when the Court of Criminal Appeals office would be closed.

Keller did not come out of her house at any point during the protest and did not respond to knocks on her front door.

In light of Richard's execution, Cobb said he thinks the trust in and integrity of the criminal justice system has been lost.



Bryant Haertlein

Austin anti-death penalty activist Alison Dieter protests outside of the home of Judge Sharon Keller on Tuesday evening.

**EXAMINER'S
EXHIBIT**
No. 26.44

"We're asking for her to be removed from office to restore the integrity of the system," he said. "If there is no trust in the system, then the whole thing breaks down."



About 1,200 public members have signed the judicial complaint against Keller, which will be delivered to the State Commission on Judicial Conduct Nov. 6. The complaint is sponsored by the Texas Moratorium Network.

Members of the Austin chapter of the Campaign to End the Death Penalty criticized Keller's actions in the courtroom in addition to her actions on the night in question.

In the past, Keller has allowed attorneys to sleep through capital murder trials, said Kathleen Feyh, a UT graduate student and member of the organization, referencing a capital murder trial for Calvin Burdine, whose lawyer, Joe Cannon, slept through parts of his client's trial.

"We haven't seen her treat cases with any passion, and she does not view defendants as human," she said.

Feyh said she believes the Richard case was the straw that broke the camel's back but said she wishes Keller's actions had come much sooner. After Richard's execution, no other Texas inmates have been executed.



"Any halt to executions is a good step and a step in the right direction," Feyh said.

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Mark Stevens

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To: mark@markstevenslaw.com
Subject: Emailing: Archives.htm



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Fort Worth Star-Telegram (TX)
2007-10-31
Section: Opinions
Edition: Tarrant
Page: B12

Hello? Hello?! Criminal Justice
Star-Telegram

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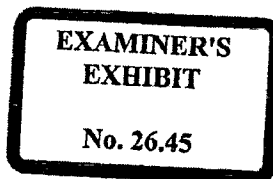
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From her few public comments, Keller doesn't appear to be soul-searching about her actions. But Texans can do

12/27/2007

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if for her: Courts, she should be reminded, do justice by ruling fairly on vital issues that come to their door — not by pretending there's no one there.



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November 4, 2007 Sunday
Bulldog Edition

SECTION: A-SECTION; Pg. A04

DISTRIBUTION: Maryland

LENGTH: 667 words

HEADLINE: Final Appeals Rarely Move Texas Judge;
Keller Cultivates a Tough Reputation in Death Row Cases

BYLINE: April Castro; Associated Press

DATELINE: AUSTIN

BODY:

The path to the nation's busiest death chamber winds through a court of last resort where the presiding judge recently refused to keep her office open past 5 p.m. to accept a last-minute appeal from an inmate about to be executed.

Judge Sharon Keller's relentless tough-on-crime approach has earned her the nickname "Killer Keller," and condemned prisoners in Texas know she is unlikely to spare them.

Keller, 54, cultivates her reputation, distributing campaign literature showing a shadowy figure behind bars and the headline: "He won't be voting for Judge Sharon Keller."

Keller is "clearly not the friend of the criminal defendant, and she is active and aggressive in espousing her view of the law, which is very often — almost always — very pleasing to the prosecutors and not to the defense lawyers," said John Wright, a Huntsville defense lawyer who has represented death row clients before the state Court of Criminal Appeals.

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**EXAMINER'S
EXHIBIT**

No.26.46

U... SCJC 001058
7/1/2009

On the night Keller refused to keep the court open, Michael Richard's lawyers had asked to file a last-minute appeal. They appealed through the federal system instead, and the Supreme Court turned down his case. Richard was put to death at about 8:15 p.m. Sept. 25 for the rape and murder of a Houston area woman.

Just hours earlier, the high court had agreed to review the constitutionality of lethal injection. Richard, 49, is the only person in the nation to have been executed since that day.

After Richard's execution, conservatives praised Keller for treating Richard as the killer he was. Civil rights activists vilified her as a cold-blooded jurist who denied a condemned man a final appeal.

Keller, who declined requests for an interview, was elected as a Republican to the Court of Criminal Appeals in 1994, becoming the first woman on the nine-member panel. Her decisions have made headlines before.

In 1998, she and four other judges on the court refused to grant a retrial to Roy Criner, who had been sentenced to 99 years for the rape and murder of a 16-year-old girl. DNA tests had determined that semen found on the victim did not belong to Criner.

In Keller's opinion, she speculated that the absence of Criner's semen may have signaled "a failure to ejaculate . . . or it may establish a condom was used." Keller also noted that the victim was promiscuous.

Fellow Republican Judge Tom Price, who ran against Keller to be the court's presiding judge, said she made the court a "national laughingstock."

"You could not deal with them on arguments that made any sense," said Mike Charlton, who represented Criner and is now an assistant federal defender in Nevada. "If you're a criminal defense attorney in Texas, you expect to lose a majority of cases. But there are some cases that you're supposed to win, and the Roy Criner case is one of those cases. He was so obviously innocent."

Then-Gov. George W. Bush pardoned Criner in 2000.

"Even a conservative governor like George Bush and his conservative staff recognized that this was an obvious miscarriage, a transparent miscarriage that nobody could explain," Charlton said.

Keller grew up in Dallas and served as a prosecutor in the Dallas County district attorney's office, working in the appellate section. Her parents own a Dallas hamburger chain.

Supporters describe her as a soft-spoken, charming woman whose decisions are well reasoned and principled.

In the Criner case, "there were a lot of issues that went back and forth," said Rob Kepple,

executive director of the Texas District and County Attorneys Association. "She came down on one side of it, but it was a principled answer. . . . She's very intellectually honest."

Because judges in Texas are elected, experts say, having a law-and-order platform is the only way to win a seat on the bench.

"What are they going to say? 'I promise to be soft on crime and let criminals go'? No, they're going to say just the opposite, and they do," said Jim Marcus, an adjunct professor in the capital punishment clinic at the University of Texas School of Law.

GRAPHIC: IMAGE; Judge Sharon Keller, nicknamed "Killer Keller," presides over the Texas Court of Criminal Appeals.

LOAD-DATE: November 4, 2007

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Texas to take emergency e-mail appeals in death row cases after criticism of Sept. execution

By APRIL CASTRO

Associated Press Writer

374 words

6 November 2007

20:30

Associated Press Newswires

APRS

English

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AUSTIN, Texas (AP) - Weeks after a judge denied a death-row inmate's lawyers a few more minutes to file an appeal, the state Court of Criminal Appeals decided Tuesday to make Texas one of the last states to allow emergency e-mail requests in death penalty cases.

Hundreds of the state's top defense attorneys filed a petition asking the court to allow the electronic appeals after the Sept. 25 execution of Michael Richard. The convicted killer was put to death after Sharon Keller, the court's presiding judge, refused to allow the court to stay open past 5 p.m., even though Richard's attorneys had called and asked for an extra 20 minutes to get their appeal to the court offices.

While other judges on the nine-member court waited after hours in anticipation of the appeal, Richard's attorneys were hit with computer problems as they prepared an appeal based on the U.S. Supreme Court's decision the same day to review the constitutionality of lethal injection in a Kentucky case. Their appeal never got to the court, and Richard was executed that evening.

Richard, 49, so far has been the only person executed in the nation since the court made its announcement.

About 300 Texas attorneys signed the petition, filed about two weeks ago, including two former Texas Supreme Court justices and two former Court of Appeals justices.

"It certainly begs the question, of course, why, if they can do this so fast -- within two weeks after we asked them to do it -- they didn't do it earlier," said Jim Harrington, director of the Texas Civil Rights Project. "It underscores the fact that Richard would still be alive if they had done it earlier."

Under the rules adopted Tuesday, attorneys still must bring the printed petition to the court by 9:30 a.m. the next morning. The Texas court had been one of the few in the nation that did not accept filings electronically.

**EXAMINER'S
EXHIBIT**

No. 26.47

SCJC 001185

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Fort Worth Star-Telegram (Texas)

November 7, 2007 Wednesday

SECTION: B; Pg. 1

LENGTH: 560 words

HEADLINE: Top criminal court to allow emergency filings by e-mail

BYLINE: JOHN MORITZ, Star-Telegram Staff Writer

BODY:

SHARON KELLER

AUSTIN – Six weeks after a Texas inmate went to the death chamber after the presiding judge of the state's highest criminal court closed its doors to his last-ditch appeal, the court has decided to allow defense lawyers to submit after-hours emergency pleadings by e-mail.

"I hope people will see this as an improvement," said Sharon Keller, the top judge at the Texas Court of Criminal Appeals.

Keller has come under fire from death penalty critics and some lawyers for refusing to keep the court open past 5 p.m. on Sept. 25, as condemned killer Michael Wayne Richard awaited execution on the same day the U.S. Supreme Court had announced that it would hear arguments over the constitutionality of lethal injection.

The background

Richard, a high school dropout from Houston, became the last inmate executed in the United States as courts around the country effectively imposed a moratorium on the death penalty until the high court decides whether the administration of lethal injection violates the Eighth Amendment ban on cruel and unusual punishment.

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**EXAMINER'S
EXHIBIT**

No. 26.48

SCJC 001052
J... 7/1/2009

"This was a long time coming," said Steve Hall, who heads an organization that has called for a moratorium on executions in Texas while all aspects of capital punishment are reviewed by the courts and the Legislature. "I think that certainly the Court of Criminal Appeals has a very painful lesson in the Richard case. It was a wake-up call for all of the judges on that court."

With a 6 p.m. execution time looming for Richard on Sept. 25, his attorneys had drafted a motion to stay his execution until after the high court ruled on the constitutionality of lethal injection. But the lawyers did not have their pleadings ready before the appeals court in Austin closed for business at 5 p.m. Richard's attorneys called to ask that the court remain open an additional 20 minutes, but Keller ordered that the traditional closing time be observed.

New system

Under the so-called instant-response system implemented Tuesday, defense lawyers can submit emergency pleadings that will be reviewed first by one of the nine judges who is on call after hours. That judge can then bring the matter to the rest of the court.

"This procedure will allow the court to begin acting on a matter before an official filing has been completed," the court said in a news release. "It will assist all attorneys and judges in responding quickly in unforeseen emergency situations."

Judge under fire

Keller, a Republican who has served on the appeals court since 1995 and has been the presiding judge since 2001, would not discuss the new procedure in the context of the Richard case. About two dozen Texas lawyers have signed a complaint accusing Keller of violating Richard's civil rights by cutting off his appeal despite the Supreme Court's decision to hear arguments in a case from Kentucky on lethal injection.

Meanwhile, state Rep. Lon Burnam, a Fort Worth Democrat, has asked the state Commission on Judicial Conduct to consider disciplinary action against Keller that could include removal from office.

"I'm glad the court is finally going to e-filing," Burnam said. "But that doesn't change the fact that that woman, Judge Keller, is guilty of malfeasance and she needs to be disciplined."

Online: www.cca.courts.state.tx.us

John Moritz reports from the Star-Telegram's Austin bureau. 512-476-4294jmoritz@star-telegram.com

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Hello? Hello?! Criminal justice

Star-Telegram

During Presiding Judge Sharon Keller's tenure, the Texas Court of Criminal Appeals has been derided for seeing no harm when lawyers commit obvious errors. In its zeal to uphold convictions come what may, the court has been scolded by the U.S. Supreme Court for not following precedent.

But for sheer myopia, it's hard to top Keller's refusal to keep the court open long enough to accept an emergency appeal from a Death Row inmate about to be executed.

Even Keller's fellow judges were dumbfounded by her rigidity.

There's no question that rules exist for a reason. And justice does demand some finality.

But condemned killer Michael Richards' attempted appeal on Sept. 25 wasn't a baseless ploy to avoid execution for raping and fatally shooting Marguerite Dixon in 1986.

The last-minute scramble was set in motion by the U.S. Supreme Court's announcement earlier in the day that it would use a Kentucky case to decide whether the three-drug execution cocktail used by 36 states, including Texas, amounts to unconstitutional cruel and unusual punishment.

Richards' attorneys pulled together a petition arguing why the court's action warranted a delay of his execution, set for 6 p.m. that day. Computer problems delayed printing of the materials, so the attorneys asked the appeals court to let them file 20 minutes after the regular 5 p.m. closing time. Keller refused.

She did it without consulting Judge Cheryl Johnson, who was assigned Richards' case and who told the *Austin American-Statesman* that she would have accepted a last-minute filing, given that it was a death penalty case.

Keller did it without consulting Judge Paul Wornack, who told the *Houston Chronicle* that he stayed at the courthouse until 7 p.m. anticipating a last-minute filing, given the Supreme Court's action and the importance of the issue.

She did it even though courts often allow after-hours petitions under atypical circumstances. The Texas Supreme Court, which handles civil appeals, has stayed open for urgent filings in parental notification cases, a spokesman said.

Richards' lawyers couldn't get a stay of execution from the U.S. Supreme Court, probably because they hadn't followed proper procedure by getting a Court of Criminal Appeals ruling first. So he was executed — the only inmate whose death sentence has been carried out since the justices said they would examine the lethal injection scheme.

Four other Texas inmates have since had their executions postponed until the Supreme Court rules.

In the meantime, the Texas Commission on Judicial Conduct will have to decide whether there's merit to three formal complaints in which lawyers say Keller undermined public confidence in the judiciary.

The court itself ought to seriously consider starting an electronic filing system, as 300 lawyers have asked.

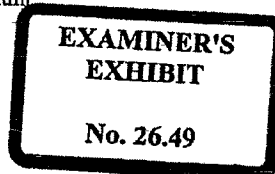
From her few public comments, Keller doesn't appear to be soul-searching about her actions. But Texans can do it for her: Courts, she should be reminded, do justice by ruling fairly on vital issues that come to their door — not by pretending there's no one there.

EXHIBIT *CJC-14*

CCC151

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11/5/2007



SCJC 000152



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Criminal appeals court creates emergency filing system

New Texas system follows recent appeal that went unheard

07:56 AM CST on Wednesday, November 7, 2007

By **CHRISTY HOPPE** / The Dallas Morning News
choppe@dallasnews.com

AUSTIN – The Texas Court of Criminal Appeals created an emergency e-mail filing system Tuesday, hoping to avoid a repeat of an execution process that has raised national alarm.

For more than a month, Presiding Judge Sharon Keller has faced withering criticism and national attention for her decision not to keep the court open for an extra 20 to 30 minutes to review an emergency death penalty appeal.

"It's about time" the court provided an e-mail filing system for such contingencies, said James C. Harrington, executive director of the Texas Civil Rights Project. "It certainly goes a long way towards solving the problem."

The problem stemmed from a Sept. 25 appeal for inmate Michael Richard. Defense lawyers called the clerk's office shortly before 5 p.m. to say they had suffered computer problems and asked the court to remain open so they could hand-deliver the appeal, as required.

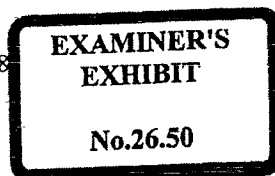
That morning, the U.S. Supreme Court had announced that it would hear a case on whether ingredients in a lethal injection might induce suffering that could be considered cruel and unusual punishment. The Texas defense lawyers were rushing to submit a new appeal based on the lethal injection question.

Judge Keller was consulted and replied that the clerk's office closes at 5 p.m. She did not inform the judge who was assigned to the case, who was working in her office, awaiting the possible appeal.

Higher courts refused to hear the appeal because it had not been reviewed first by the Court of Criminal Appeals.

Mr. Richard was executed.

<http://www.kvuc.com/news/top/stories/110707kvuemailfiling-eh.1e8>



SC JC 001186
6/18/2009

Two weeks ago, more than 300 lawyers – including four former State Bar presidents and two former Texas Supreme Court justices – signed a petition calling for an e-mail filing system for the Court of Criminal Appeals.

In addition, the Texas Criminal Defense Lawyers Association has asked that Judge Keller be sanctioned for failing in her duties and eroding public confidence in the court system.

Judge Keller said after the incident that she had not been told of the computer problems and was simply stating the court's practice of closing at 5 p.m.

Judge Tom Price, a spokesman for the criminal appeals court, could not be reached for comment.

The announcement of the new e-mail system states that lawyers can now send emergency pleadings, which will be "routed to an on-call 'duty' judge as well as the rest of the court to begin consideration of the matter."

Mr. Harrington said he believes the change in procedures was warranted but also a rebuke of Judge Keller's decision.

"When there was discretion, Sharon Keller misused it," he said. "So the rest of the court has had to step in."

CATALYST OF CHANGE

Events that led to creation of an emergency e-mail filing system by the Texas Court of Criminal Appeals:

Convicted murderer Michael Richard was to be executed after 6 p.m. Sept. 25.

Defense attorneys contacted the appeals court's clerk shortly before 5 p.m., asking that the office stay open an extra 20 minutes so a stay of execution request could be filed.

Presiding Judge Sharon Keller was informed of the request but ordered the office closed at the normal time of 5 p.m.

The Supreme Court rejected the appeal, and Mr. Richard was executed that night.

Defense lawyers last month filed a judicial complaint against Judge Keller.

More than 300 lawyers called for the appeals court to accept filings by e-mail.

SOURCE: *Dallas Morning News* research

11/7/07 Ft. Worth Star-Telegram B1
2007 WLNR 21961058

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November 7, 2007

Section: B

Top criminal court to allow emergency filings by e-mail

JOHN MORITZ, Star-Telegram Staff Writer

AUSTIN -- Six weeks after a Texas inmate went to the death chamber after the presiding judge of the state's highest criminal court closed its doors to his last-ditch appeal, the court has decided to allow defense lawyers to submit after-hours emergency pleadings by e-mail.

"I hope people will see this as an improvement," said Sharon Keller, the top judge at the Texas Court of Criminal Appeals.

Keller has come under fire from death penalty critics and some lawyers for refusing to keep the court open past 5 p.m. on Sept. 25, as condemned killer Michael Wayne Richard awaited execution on the same day the U.S. Supreme Court had announced that it would hear arguments over the constitutionality of lethal injection.

The background

Richard, a high school dropout from Houston, became the last inmate executed in the United States as courts around the country effectively imposed a moratorium on the death penalty until the high court decides whether the administration of lethal injection violates the Eighth Amendment ban on cruel and unusual punishment.

"This was a long time coming," said Steve Hall, who heads an organization that has called for a moratorium on executions in Texas while all aspects of capital punishment are reviewed by the courts and the Legislature. "I think that certainly the Court of Criminal Appeals has a very painful lesson in the Richard case. It was a wake-up call for all of the judges on that court."

With a 6 p.m. execution time looming for Richard on Sept. 25, his attorneys had drafted a motion to stay his execution until after the high court ruled on the constitutionality of lethal injection. But the lawyers did not have their pleadings ready before the appeals court in Austin closed for business at 5 p.m.

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New system

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"This procedure will allow the court to begin acting on a matter before an official filing has been completed," the court said in a news release. "It will assist all attorneys and judges in responding quickly in unforeseen emergency situations."

Judge under fire

Keller, a Republican who has served on the appeals court since 1995 and has been the presiding judge since 2001, would not discuss the new procedure in the context of the Richard case. About two dozen Texas lawyers have signed a complaint accusing Keller of violating Richard's civil rights by cutting off his appeal despite the Supreme Court's decision to hear arguments in a case from Kentucky on lethal injection.

Meanwhile, state Rep. Lon Burnam, a Fort Worth Democrat, has asked the state Commission on Judicial Conduct to consider disciplinary action against Keller that could include removal from office.

"I'm glad the court is finally going to e-filing," Burnam said. "But that doesn't change the fact that that woman, Judge Keller, is guilty of malfeasance and she needs to be disciplined."

Online: www.cca.courts.state.tx.us

---- INDEX REFERENCES ----

NEWS SUBJECT: (Legal (1LE33); Judicial (1JU36))

REGION: (USA (1US73); Americas (1AM92); North America (1NO39); Texas (1TE14))

Language: EN

OTHER INDEXING: (Sharon Keller; Michael Wayne Richard; Steve Hall; Lon Burnam) (COURT OF CRIMINAL; EIGHTH AMENDMENT; LEGISLATURE; SUPREME COURT; TEXAS; TEXAS COURT OF CRIMINAL; US SUPREME COURT) (Burnam; Keller; Lon Burnam; Michael Wayne; Richard; Sharon Keller; Steve Hall) (AUSTIN; Texas; Houston; United States; Texas; Austin; Texas; Kentucky; us; usa; na; us.tx; us.tx.ftwrt; nam; us.ky; us.tx.austin; us.tx.houstrn)

KEYWORDS: (CT/clj.lws); (CT/clj); (NT/Law+Crime); (SU/state)

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2007 WLNR 21970709

Houston Chronicle (KRT)
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November 7, 2007

Court says it will take e-filings in death cases: Lawyers' outcry over closed doors for killer's appeal leads to decision

R.G. Ratcliffe
Houston Chronicle

Nov. 7--AUSTIN -- The Texas Court of Criminal Appeals said Tuesday it will accept emergency e-mail filings in death penalty cases in an effort to avoid a repeat of the nationally controversial execution of Michael Richard.

Richard was executed Sept. 25 after Presiding Judge Sharon Keller ordered the court clerk's office to close promptly at 5 p.m., even though Richard's lawyers had asked for more time to file an appeal after having some computer problems.

Three other judges on the panel said later they were available that evening and could have handled Richard's appeal had they known about it.

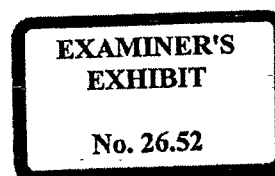
Keller's action denied Richard the ability to file a proper request for a stay of execution from the U.S. Supreme Court because the Court of Criminal Appeals had not had a chance to rule first.

As a result, more than 300 Texas lawyers petitioned the appeals court last month to adopt an e-filing system in death penalty cases so that emergency requests for a stay can be filed right up to the time of the execution. Before the new procedure was adopted, all such requests had to be filed in person.

The court said its new "instant response system," which takes effect immediately, will send emergency pleadings in death penalty cases and other extraordinary matters by e-mail to an on-call duty judge and the rest of the court so it can begin considering the matter.

The e-filing will allow the court to act before an official filing is made with the court, according to a statement issued by the court. The new procedure was described as a "stop-gap" measure until a wide ranging electronic filing system is adopted by all Texas appeals courts in 2010.

Under the procedure, an attorney filing an emergency appeal will have to notify the clerk by telephone that a late filing is in the works. The e-mail filing then



will go to the duty judge. An official paper filing will have to be given to the court clerk by 9:30 a.m. the following day.

"This system will supplement the court's current routine for these emergencies so that nothing will be left to chance or miscommunications," said the court's unsigned news release. "The court intends to have a fail-safe system."

A 'small step'

On the day of Richard's execution, appeals court Judge Cheryl Johnson was assigned his case, but she has said she never learned of Richard's efforts to file a late appeal until she read about it in the newspaper.

Judge Tom Price has been handling media calls for the court. He could not be reached for comment Tuesday.

Austin criminal defense lawyer Charles Herring, one of the leaders of the petition drive, welcomed the new rule as a "small step" toward improving the death penalty system. But he said it does not undo the "legal malfunction" that led to Richard's execution.

Herring said the court is far from creating a "fail-safe system." He said a recent State Bar of Texas study found the criminal appeals court is still designating for death penalty appeals too many lawyers who are inexperienced or who have had legal disciplinary problems.

"This court is a long, long way from achieving that goal," Herring said.

Lethal injection issue

Jim Harrington, director of the Texas Civil Rights Project, also said the new rule is a small step toward fixing the state's capital punishment system.

"The fact the court could do this so quickly after the attorneys' petition begs the question of why it had not done so earlier and underscores the sad reality that Mr. Richard would still be alive," Harrington said.

"Judge Keller's actions were but one manifestation of a system that operates capriciously and discriminates against poor and minority persons," he said.

In Richard's case, the U.S. Supreme Court on the day of his scheduled execution had agreed to decide whether the chemicals used by Kentucky for lethal injection amounted to cruel punishment. Texas uses the same chemicals.

Richard's lawyers attempted to get a stay of execution for him while the nation's high court heard the case, but computer problems at the lawyer's office meant the appeal would not be ready by the time the state appeals court clerk's office closed. His lawyers asked for more time, but Keller ordered the clerk to close at

the usual time, 5 p.m.

David Dow of Houston then filed an appeal with the U.S. Supreme Court asking for a stay for Richard and noting the appeal had not followed the proper legal chain because of the court closure.

He asked for a stay from the high court based on the Kentucky case. But the Supreme Court, without comment, turned him down.

Richard, 49, was executed for the 1986 rape and shooting death of Marguerite Dixon, a Hockley mother of seven.

r.g.ratcliffe@chron.com

---- INDEX REFERENCES ----

NEWS SUBJECT: (Legal (1LE33); Judicial (1JU36))

REGION: (Kentucky (1KE38); USA (1US73); Americas (1AM92); North America (1NO39); Texas (1TE14))

Language: EN

OTHER INDEXING: (COURT; COURT OF CRIMINAL; HOCKLEY; KENTUCKY; MARGUERITE DIXON; STATE BAR; SUPREME COURT; TEXAS; TEXAS CIVIL; TEXAS COURT OF CRIMINAL; US SUPREME COURT) (Cheryl Johnson; David Dow; Harrington; Jim.Harrington; Keller; Michael Richard; Nov; Richard; Sharon Keller; Tom Price)

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2007 WLNR 21986175

San Antonio Express-News
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November 7, 2007

Section: Metro and State News

E-mail filings now will be accepted in death appeals

R.G. Ratcliffe

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NEWS SUBJECT: (Legal (1LE33))

REGION: (USA (1US73); Americas (1AM92); North America (1NO39); Texas (1TE14))

Language: EN

OTHER INDEXING: (COURT OF CRIMINAL APPEALS; TEXAS; TEXAS COURT OF CRIMINAL APPEALS; US SUPREME COURT) (Keller; Michael Richard; Richard; Sharon Keller)

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2007 WLNR 22243201

Houston Chronicle (KRT)
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November 10, 2007

EDITORIAL: Repudiating Keller: Presiding judge slapped by rules change

Nov. 10--The Texas Commission on Judicial Conduct has yet to weigh in on the outrageous behavior of Texas Court of Criminal Appeals Presiding Judge Sharon Keller, who refused to take a last-minute death row appeal after the court's 5 p.m. closing time. In response to the complaints of more than 300 Texas lawyers, her colleagues moved swiftly to make sure the shameful episode does not recur.

In an action that took effect immediately, the court installed an instant response system that will allow appeals for stays of execution and other extraordinary legal matters to be sent by e-mail to an on-call duty judge and other members after regular hours. The new system will allow the court to consider matters before hard copies of legal papers are formally filed. Lawyers would be required to do that by 9:30 a.m. the following work day.

Had the system been in effect on Sept. 25, Michael Richard of Harris County would not have been the last person executed by lethal injection before the U.S. Supreme Court weighs a challenge to that form of execution next year. Because of computer problems, Richard's lawyers were not able to file an appeal with the Texas court before closing time, and Keller refused to allow a late filing even though several colleagues remained at the court to hear a last-minute appeal. Richard was executed within hours of the court's closing. The judge assigned the case, Cheryl Johnson, complained that Keller had not notified her of the attempted appeal and that she learned about it from news reports the next day.

A group of Texas attorneys filed a complaint with the Commission on Judicial Conduct, calling for disciplinary action against Keller. The commission could recommend to the Texas Supreme Court that she be removed from office. In a further development this week, the wife of the executed inmate filed a federal lawsuit accusing Keller of violating his due process rights and asking she be prevented from stopping emergency death row appeals from being filed. Marsha Richard also seeks financial damages and court costs.

The members of the Court of Criminal Appeals who supported instituting e-mail filings should be commended for taking a necessary step to restore the image of Texas jurisprudence. That cleansing process will not be complete until the Commission on

Judicial Conduct takes strong action to sanction Judge Keller for her reckless abuse of the legal system and a defendant's rights.

---- INDEX REFERENCES ----

NEWS SUBJECT: (Legal (1LE33); Judicial (1JU36); Economics & Trade (1EC26))

REGION: (USA (1US73); Americas (1AM92); North America (1NO39); Texas (1TE14))

Language: EN

OTHER INDEXING: (COMMISSION; COURT OF CRIMINAL APPEALS; TEXAS; TEXAS COMMISSION; TEXAS COURT OF CRIMINAL APPEALS PRESIDING; TEXAS SUPREME COURT; US SUPREME COURT) (25; Cheryl Johnson; Keller; Marsha Richard; Michael Richard; Nov; Richard; Sharon Keller)

Word Count: 488

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2007 WLNR 22889688

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November 17, 2007

Section: B

Death penalty foes want top judge out

JOHN MORITZ, Star-Telegram staff writer

Death penalty opponents ratcheted up the pressure on the embattled presiding judge of the state's highest appeals court on Friday by hand-delivering letters calling on her to either resign or be removed from office for closing the court while lawyers for a condemned inmate facing death were preparing their last-ditch appeal.

About two dozen sign-carrying activists submitted the letters as the clock approached 5 p.m., which was the time Texas criminal appeals court Judge Sharon Keller closed up shop on Sept. 25 before lawyers for Death Row inmate Michael Richard could file their appeal. The lawyers were attempting to argue that Richard's 6 p.m. execution should be set aside in light of the fact that earlier in the day, the U.S. Supreme Court had agreed to hear arguments over whether lethal injection violates the constitutional ban on cruel and unusual punishment.

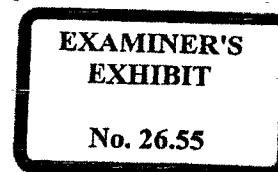
"Justice does not close at 5 p.m.," said Laura Brady, a protester from Austin. "Judge Keller has got to understand that."

Keller, who has served on the appeals court since 1995 and has been the presiding judge since 2001, has not responded to calls that she be sanctioned by the State Commission on Judicial Conduct. But last week she implemented a policy of allowing after-hours emergency appeals to be filed electronically.

That action came too late to satisfy Scott Cobb, the organizer of the protest that began outside the Texas Supreme Court building.

"We think she abdicated her responsibility as a judge," Cobb said. "She ought to remove herself from office, or the Commission on Judicial Conduct should remove her."

Richard's execution for the 1986 rape and slaying of a nurse in Harris County went forward, but it was the last one to be carried out in the United States while the high court prepares to hear arguments from a Kentucky case on whether the injec-



tion used on condemned inmates in most death-penalty states actually inflicts unseen suffering.

Online: www.cca.courts.state.tx.us

---- INDEX REFERENCES ----

NEWS SUBJECT: (Legal (1LE33); Judicial (1JU36); Economics & Trade (1EC26))

REGION: (USA (1US73); Americas (1AM92); North America (1NO39); Texas (1TE14))

Language: EN

OTHER INDEXING: (Sharon Keller; Michael Richard; Laura Brady; Scott Cobb)
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US SUPREME COURT) (Cobb; Keller; Laura Brady; Michael Richard; Richard; Scott
Cobb; Sharon Keller) (Texas; Austin; United States; Kentucky; us; usa; na; us.tx;
us.tx.frtwrt; nam; us.ky; us.tx.austin)

KEYWORDS: (NT/NEC); (SU/state)

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TEXAS MONTHLY

December 2007

SECTION: REPORTER 12.07; Pg. 45

LENGTH: 293 words

HEADLINE: Topic A: Motion to Dismiss

BYLINE: MICHAEL HALL; EDITED BY KATHARYN RODEMANN

HIGHLIGHT:

It is time for Sharon Keller to go.

BODY:

Four hours before convicted murderer Michael Richard was executed by the State of Texas on September 25, his lawyers notified the Court of Criminal Appeals that, because of computer problems, his appeal wouldn't be filed until fifteen to thirty minutes after 5 p.m.--the hour at which the court's offices closed. This was no ordinary appeal: That very morning, the U.S. Supreme Court had agreed to review the constitutionality of lethal injection as a method of execution. Still, Sharon Keller, the CCA's presiding judge, slammed the door shut on Richard's life.

"We close at five," she said. Keller's fellow judges publicly expressed their anger at her actions, as did several hundred defense lawyers and judges, who signed complaints filed with the State Commission on Judicial Conduct to discipline her and remove her from the bench. (Responding to the outcry, on November 6 the CCA announced a new "e-mail filing system for urgent pleadings.") This is hardly the first time Keller has sacrificed fairness for toughness. In 1998, in her determination to keep convicted rapist Roy Criner in prison, she turned a blind eye to DNA evidence that indicated he hadn't committed the crime; fellow judge Tom Price said the decision made the Texas court a "national laughingstock." Well, no one is laughing now. When a man's life is on the line--to say nothing of the U.S. Constitution--our top criminal judge

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EXAMINER'S
EXHIBIT

No. 26.56

SCJC 001031
7/1/2009

should behave like one: with prudence, fairness, and a calm hand. It's time for Keller to go. If the commission doesn't act quickly, we'll have to wait until January 2009, when the Legislature--which has the power to oust high judges--reconvenes, or worse, 2012, when Keller is up for reelection. The fact is, we need to do it now. Impeach Sharon Keller.

GRAPHIC: Illustration, no caption, illustration by ANDY POTTS/AGOODSON.COM

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Web Posted: 12/13/2007 2:00 CST

Actions in death case seem to conflict with policy

AUSTIN — Texas Court of Criminal Appeals Presiding Judge Sharon Keller apparently violated court policies for handling death penalty cases when she closed the court clerk's doors on Michael Richard's efforts to file a last-minute appeal before his execution.

The court, in response to a national outcry against Keller's actions, adopted written policies last month to make certain a death row inmate's appeals always go first to an assigned judge.

In response to a public information request from the San Antonio Express-News, Keller said in a letter that no written court procedures existed Sept. 25, the day of Richard's execution. The new written rules reflected the court's unwritten policies on that day, she said.

Keller was not the judge assigned to handle Richard's appeal when she decided to close the clerk's office so his lawyers could not file a late appeal. Judge Cheryl Johnson was in charge of Richard's case the day of his execution but did not learn of his lawyers' attempts to file for a stay of execution until the day after his death.

A lawyer who has been representing other attorneys in filing complaints against Keller for her handling of the case said the judge's response to the information request clearly shows she violated the court's unwritten policies in cutting off Richard's appeal.

"To me, it's a pretty stunning admission that she operated totally outside of their procedures," said Jim Harrington, who has coordinated the complaints with the Texas Commission on Judicial Conduct. "She doesn't have respect for the processes of the court, which are designed to protect due process."

Keller did not respond to a request for an interview, and her office referred calls to appeals court Judge Tom Price, who also did not respond.

On the day of Richard's execution, the U.S. Supreme Court had agreed to consider whether the chemicals used for lethal injection in the United States amounted to cruel and unusual punishment.

Richard's lawyers attempted to get a stay for him while that case was under review. But they had computer problems and asked the state appeals court clerk's office to remain open late to accept the appeal. Keller ordered the clerk to close at the usual time, 5 p.m. Richard was executed three hours later for a 1986 rape and murder.

<http://www.printthis.clickability.com/pt/cpt?action=cpt&title=Action>

EXAMINER'S
EXHIBIT

No. 26.57

SG IC 001196
c... 6/23/2009

The Supreme Court three days later halted another Texas execution based on the lethal injection appeal. The court with its action created a de facto national moratorium on executions.

Since Richard's execution, lawyers from around Texas have filed complaints against Keller with the State Commission on Judicial Conduct. Death penalty opponents have called for her to be removed from the bench.

r.g.ratcliffe@chron.com

Find this article at:

http://www.mysanantonio.com/news/MYSA2121307_05B_keller_2cfba6f_html14106.html

Check the box to include the list of links referenced in the article.

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Document 5 of 46.

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The Houston Chronicle

December 13, 2007 Thursday
3 STAR EDITION

SECTION: A; Pg. 1

LENGTH: 591 words

HEADLINE: Judge in death case violated policies;
Keller, who shut out appeal, says new written rules reflect unwritten ones on that day

BYLINE: R.G. RATCLIFFE, Austin Bureau, Staff

DATELINE: AUSTIN

BODY:

AUSTIN - Texas Court of Criminal Appeals Presiding Judge Sharon Keller apparently violated court policies for handling death penalty cases when she closed the court clerk's doors on Michael Richard's efforts to file a last-minute appeal before his execution.

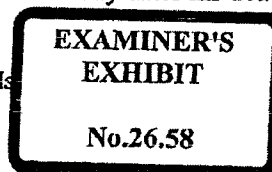
In response to a national outcry against Keller's actions, the court adopted written policies last month to make certain a death row inmate's appeals always go first to an assigned judge.

In response to a public information request from the Houston Chronicle, Keller said in a letter that no written court procedures existed Sept. 25, the day of Richard's execution. However, she said the new written rules reflected the court's unwritten policies on that day.

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Judge Cheryl Johnson was in charge of Richard's case on the day of his execution, but did not learn of his lawyers' attempts to file for a stay of execution until the day after his death.

http://www.lexis.com/requester/document?_ansset=Z-WA-A-VZ-VZ-Ms



SCJC 001028
7/1/2009

A lawyer who has been representing other attorneys in filing complaints against Keller for her handling of the Richard case said Keller's response to the Chronicle's information request clearly shows Keller violated the court's unwritten policies in cutting off Richard's appeal.

"To me, it's a pretty stunning admission that she operated totally outside of their procedures," said Jim Harrington, who has coordinated attorney complaints filed against Keller with the Texas Commission on Judicial Conduct. "She doesn't have respect for the processes of the court, which are designed to protect due process."

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Richard's lawyers attempted to get a stay of execution for him while that case was under review. But they had computer problems and asked the state appeals court clerk's office to remain open late to accept the appeal. Keller ordered the clerk to close at the usual time: 5 p.m. Richard was executed three hours later for a 1986 rape and murder.

The Supreme Court three days later halted another Texas execution based on the lethal injection appeal. The court with its action created a de facto national moratorium on executions.

In its public information request, the Chronicle asked for the state appeals court procedures for handling death penalty cases on the day of Richard's execution.

"No written policies regarding those matters existed on that date (Sept. 25)," Keller wrote. "Subsequent to that date, the court reduced to writing the unwritten policies that did exist on that date."

The written policy the court later adopted said the judge assigned to the case should stay on duty on the day of an execution until the execution occurs. The policy also said "all communications regarding the scheduled execution shall first be referred to the assigned judge."

Johnson did not respond to a request for an interview.

Two of the court's other judges, Paul Womack and Cathy Cochran, also were available to handle the appeal. They also never heard about Richard's attempt to appeal until after his execution.

Since Richard's execution, lawyers from around Texas have filed complaints against Keller with the State Commission on Judicial Conduct.

NOTES: r.g.ratcliffe@chron.com

GRAPHIC: Mug: **USUAL TIME:** Judge Sharon Keller ordered the appeals court clerk's office to close at the usual time, 5 p.m., preventing an appeal (p. 4)
AP FILE

LOAD-DATE: December 13, 2007

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12/13/07 Hous. Chron. A1
2007 WLNR 24640439

Houston Chronicle
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December 13, 2007

Section: A

Judge in death case violated policies / Keller, who shut out appeal, says new written rules reflect unwritten ones on that day

R.G. RATCLIFFE, Austin Bureau

AUSTIN r.g.ratcliffe@chron.com

AUSTIN - Texas Court of Criminal Appeals Presiding Judge Sharon Keller apparently violated court policies for handling death penalty cases when she closed the court clerk's doors on Michael Richard's efforts to file a last-minute appeal before his execution.

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Since Richard's execution, lawyers from around Texas have filed complaints against Keller with the State Commission on Judicial Conduct.

---- INDEX REFERENCES ----

COMPANY: CHRONICLE

NEWS SUBJECT: (Legal (1LE33); Judicial (1JU36); Economics & Trade (1EC26))

REGION: (USA (1US73); Americas (1AM92); North America (1NO39); Texas (1TE14))

Language: EN

OTHER INDEXING: (CHRONICLE; STATE COMMISSION; SUPREME COURT; TEXAS; TEXAS COMMISSION; TEXAS COURT OF CRIMINAL APPEALS PRESIDING; US SUPREME COURT) (Cathy Cochran; Cheryl Johnson; Jim Harrington; Johnson; Keller; Michael Richard; Paul Womack; Richard; Sharon Keller; Subsequent; Tom Price)

EDITION: 3 STAR

Word Count: 715
12/13/07 HSTNCHRON A1
END OF DOCUMENT



Web Posted: 12/14/2007 2:00 CST

Judge defends actions in execution case

AUSTIN — The Texas judge accused of improperly denying a death row inmate a last-minute appeal has asked a federal judge to dismiss the wrongful death suit filed against her by the executed man's widow.

Court of Criminal Appeals Presiding Judge Sharon Keller contends that while she ordered the court clerk's office closed promptly at 5 p.m. — one hour before Michael Wayne Richard's scheduled execution on Sept. 25 and three hours before it actually took place — the rest of the courthouse stayed open.

Three judges sat in their offices ready to handle any last-minute appeals, and it was Richard's attorneys, Keller argued in court papers filed here Thursday, who failed to contact them when they realized their appeal would be filed late.

Richard's lawyers were in Houston. The court is in Austin.

Keller has garnered national attention, almost none of it flattering, for refusing to delay the court's regular closing time on the day Richard was executed, despite urgent calls from defense attorneys alerting her office that they were having computer problems and begging for extra time.

But in her motion, Keller said Texas law "provides a clear and unambiguous avenue for litigants to file documents with the (Court of Criminal Appeals) directly through any of its judges, so Richard did not need the CCA clerk's office to stay open after hours to file his motion."

Jim Harrington, director of the Texas Civil Rights Project, called Keller's argument "shameless."

"Everyone knows that the key is the clerk's office," said Harrington, whose office is representing Richard's daughter, Doreen Anderson, as well as other attorneys who have filed complaints against Keller for her handling of the Richard appeal.

"The clerks are the ones who intercept the calls, who say, 'It's shut down,'" Harrington said. "The rules of procedure in the law are supposed to serve justice, and here you have a case where a guy's life is at stake. It's literally a matter of life or death and to fall back on some off-the-wall assertion, 'Go find a judge and file it that way,' is absurd. It makes a farce of the law."

<http://www.printhis.clickability.com/pt/cpt?action=cpt&title=Judge+def>

SCJC 001198
6/23/2009

**EXAMINER'S
EXHIBIT**

No. 26.60

Earlier this week, Keller acknowledged apparently violating her court's own unwritten policy by ordering the court closed in a case that wasn't assigned to her. Written rules have since been drawn up requiring a condemned inmate's appeals to go first to the judge assigned to the case.

The assigned judge in the Richard case, Cheryl Johnson, said she learned of Richard's appeal the day after he was executed for the 1986 rape and murder of Marguerite Dixon, a Houston-area mother of seven.

A spokesman for the Texas Attorney General, the office representing Keller, said he could not comment on the case. David Dow, the attorney who handled Richard's appeal, did not return calls for comment.

Richard was executed the day the U.S. Supreme Court agreed to review the constitutionality of lethal injection in a Kentucky case. He is the only person in the nation to be executed since that day.

Richard's widow, Marsha, filed a wrongful death suit against Keller last month.

In her motion, Keller acknowledged that as the court's chief administrator, she alone could have ordered the clerk's office to remain open past Richard's execution, but such action would have been discretionary — taken only if she considered it "necessary or advisable."

lsandberg@express-news.net

Find this article at:

http://www.mysanantonio.com/news/MYSA121507_04B_Kellerdeathpenalty_26756f9_html10407.html

Check the box to include the list of links referenced in the article.

12/15/07 Hous. Chron. B2
2007 WLNR 24823951

Houston Chronicle
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December 15, 2007

Section: B

Judge wants wrongful death lawsuit dropped / Keller says she's not to blame for not answering call in execution case

LISA SANDBERG, Austin Bureau

AUSTIN lsandberg@express-news.net

AUSTIN - The Texas judge accused of improperly denying a death row inmate a last-minute appeal has asked a federal judge to dismiss the wrongful death suit filed against her by the executed man's widow.

Court of Criminal Appeals Presiding Judge Sharon Keller contends that while she ordered the clerk's office closed promptly at 5 p.m., state law clearly gave attorneys for death row inmate Michael Wayne Richard the power to contact judges on the court directly.

In papers filed in U.S. district court in Austin, Keller said Richard's lawyers made no attempt to contact any judges on the court, even though three were available Sept. 25, the date of Richard's execution in 1986 rape and murder of Marguerite Dixon, a Houston-area mother of seven. Keller said the clerk's office was closed but the court's building remained open.

Richard's lawyers were in Houston. The court is in Austin.

Keller has garnered national attention for refusing to extend the court's closing time prior to Richard's execution, despite calls from Richard's attorneys alerting her office they were experiencing computer problems and begging for extra time. But in a motion, Keller said Texas law "provides a clear and unambiguous avenue for litigants to file documents with the (Court of Criminal Appeals) directly through any of its judges, so Richard did not need the CCA clerk's office to stay open after hours to file his motion."

This is the first time Keller has claimed Richard's lawyers could have directly gone to other judges on the court. She previously has tried to shift blame to

Richard's lawyers by saying they had all day to file.

Jim Harrington, director of the Texas Civil Rights Project, called Keller's argument "shameless."

"Everyone knows that the key is the clerk's office," said Harrington, whose office is representing Richard's daughter, Doreen Anderson, as well as other attorneys who have filed complaints against Keller for her handling of the appeal.

"The clerks are the ones who intercept the calls, who say 'it's shut down,' " Harrington said. "The rules of procedure in the law are supposed to serve justice and here you have a case where a guy's life is at stake. It's literally a matter of life or death and to fall back on some off-the-wall assertion, 'go find a judge and file it that way' is absurd. It makes a farce of the law."

A spokesman for the Texas attorney general's office, which is representing Keller, declined to comment.

---- INDEX REFERENCES ----

COMPANY: ASPYRA INC

NEWS SUBJECT: (Legal (1LE33))

REGION: (USA (1US73); Americas (1AM92); North America (1NO39); Texas (1TE14))

Language: EN

OTHER INDEXING: (CCA; COURT; COURT OF CRIMINAL APPEALS PRESIDING; CRIMINAL APPEALS; MARGUERITE DIXON) (Doreen Anderson; Harrington; Jim Harrington; Keller; Michael Wayne; Richard; Sharon Keller; Texas)

EDITION: 3 STAR

Word Count: 495

12/15/07 HSTNCHRON B2

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Judge who refused to keep court open for last-minute appeal wants lawsuit dismissed
328 words

15 December 2007

10:15

Associated Press Newswires

APRS

English

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AUSTIN (AP) - The Texas judge who prevented a convicted killer from making a last-minute appeal of his execution by not extending office hours has asked a U.S. judge to dismiss the wrongful death lawsuit filed against her by the man's widow.

Judge Sharon Keller refused to allow the court to stay open late on Sept. 25 -- even though attorneys for convicted killer Michael Richard had called and asked for extra time to file their appeal because of computer problems.

Richard was put to death hours later for the rape and murder of a woman.

Earlier that day, the U.S. Supreme Court had agreed to review the constitutionality of lethal injection in a Kentucky case. Richard, 49, is the only person in the United States to have been executed since that decision.

In her motion to dismiss, Keller acknowledges that as the chief administrator of the Court of Criminal Appeals she could have ordered the clerk's office to remain open. But she would have to make such an order only if she considered it "necessary or advisable," the San Antonio Express-News reported.

Keller's refusal to keep the court open outraged defense attorneys and civil rights activists and led to the wrongful death lawsuit filed by Richard's widow, Marsha.

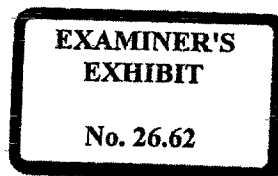
The director of the Texas Civil Rights Project, which is representing Richard's daughter and other attorneys who have filed complaints against Keller, called the judge's argument "shameless."

"The rules of procedure in the law are supposed to serve justice, and here you have a case where a guy's life is at stake," said the director, Jim Harrington.

Keller argues that the attorneys for Richard could have filed their appeal to any of the court's judges, "so Richard did not need the CCA clerk's office to stay open after hours to file his motion."

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SCJC 001200

12/17/07 Canberra Times (Pg. Unavail. Online)
2007 WLNR 24829015

CANBERRA TIMES
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Times Limited

December 17, 2007

IN BRIEF lll

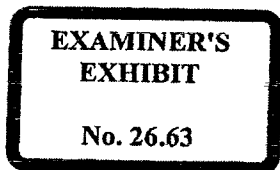
Worms happy A New Zealander who invented a toilet that used worms to produce compost had to prove the worms were not traumatised before authorities would approve his product. An Auckland Regional Council official told Coll Bell to get an expert's report on the psychological impact on the worms. "She felt that the worms were being unfairly treated, being expected to deal with human faeces, and that it could affect them in a psychological way," Mr Bell said. He said the official told him, "You have to have someone with the necessary qualifications to say the worms are happy." Mr Bell said his "wormerator" was finally approved after a vermiculture expert reported the worms were in excellent health and breeding happily. His system uses a colony of tiger worms who filter solids from toilet waste, leaving water that is filtered and disposed of in underground trenches.

I do, I do, I do, I do ...

The honeymoons are over for a 26-year-old Cuban woman who authorities say has at least 10 husbands in the United States. Eunice Lopez was charged with bigamy after US immigration authorities discovered she had married 10 men between 2002 and 2006 without divorcing any of them. A records search by a newspaper found seven additional marriages under the bride's name and birth date.

Heavy metal ban A 21-year-old heavy metal musician convicted of having sex with a 15-year-old was banned from playing in public for five years by a US judge who said he used music to win the favour of underage girls. Randall Shesto of Waukesha, Wisconsin, described in internet postings as having performed with a band called Nailwounds, was convicted in June of second-degree sexual assault of a child. He had been accused of having a sexual encounter last December with an underage girl he met through the social networking website MySpace. He was also convicted this year of having sex with another 15-year-old girl.

Huxley's wife dies Laura Archera Huxley, the widow of Brave New World author Aldous Huxley, who preserved his legacy for nearly half a century while writing her own books and continuing his exploration of human potential, has died at the age of 96. Huxley died from cancer on Thursday night at her Hollywood Hills home, Kar-



en Pfeiffer, who helps direct Huxley's non-profit foundation Children: Our Ultimate Investment, said.

De Burgh's Iran date Iranian authorities had approved a plan for concerts by Iranian pop group Arian and singer Chris de Burgh in Tehran, the group's manager, Mohsen Rajabpour, said. The concerts, set for the middle of next year, would be the first occasion since the 1979 revolution an Iranian pop band had played alongside a Western singer inside the Islamic republic, he said. Mr Rajabpour, director of Taraneh Sharghi music company, said Arian and De Burgh had recorded a song titled A Melody for Peace, which was intended "to reflect the peace-seeking spirit of the Iranian people to the world".

Makeover for Pope Italian film and opera legend Franco Zeffirelli has agreed to become an image consultant to Pope Benedict XVI. The Pope did not have a "happy image" Zeffirelli told La Stampa. "Coming after a pope as telegenic as John Paul II is a difficult task," he said. Pope Benedict, elected in 2005, "comes across coldly, which isn't suited to his surroundings", Zeffirelli said, adding the Pope's wardrobe "should be reviewed". The Pope's robes were "too sumptuous and flashy", the 84-year-old director of Jesus of Nazareth and Romeo and Juliet said. They should instead reflect "the simplicity and sobriety seen in the other echelons of the Church".

Texas ticket scam Two Texas police officers frequently made homeless people and prostitutes sign blank tickets so they could later fill them out with whatever offences they chose, according to a Dallas Police Department investigation. The city's police chief, David Kunkle, said investigators concluded the two officers had used the blank tickets as a law-enforcement tool to deal with habitual offenders. If those offenders always had unpaid tickets, then the officers could obtain arrest warrants and take people into custody at any time. Judge seeks closure The Texas judge who prevented a convicted killer from making a last-minute appeal against his execution by not extending office hours has asked a US judge to dismiss the wrongful death lawsuit filed against her by the man's widow. Judge Sharon Keller refused to allow the court to stay open late on September 25, even though lawyers for convicted killer Michael Richard had called and asked for extra time to file their appeal because of computer problems. Richard was put to death hours later for the rape and murder of a woman.

Bomber 'ignorant' The family of a suicide bomber who killed 17 United Nations staff in Algiers last week said he joined Islamist rebels after failing to get a taxi licence and was motivated by "ignorance, not poverty". "We got nothing from al-Qaeda, we are still very poor," Bechla Rabah's oldest son, Younes, said. "Ignorance, not poverty, this is what pushed my father to blow himself up."

---- INDEX REFERENCES ----

COMPANY: POPE AND TALBOT INC; POPE AND TALBOT PULP LTD; NEW ZEALAND; AUCKLAND REGIONAL COUNCIL; UNITED NATIONS (US NEW YORK NY)

REGION: (Iran (1IR40); Gulf States (1GU47); USA (1US73); Americas (1AM92); North America (1NO39); Wisconsin (1WI54); Western Asia (1WE54); Asia (1AS61); Texas (1TE14))

Language: EN

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KEYWORDS: (Environment); (General News); (Government News); (Pollution & Waste)

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12/17/07 CANBERRATM (No Page)

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12/18/07 Hous. Chron. B8
2007 WLNR 24975220

Houston Chronicle
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December 18, 2007

Section: B

LETTERS

JOHN TRUITT, HOWARD BINGHAM, WINSTON E. KILE, MICHAEL COPPENS, CHRISTIAN N. SEGER,
JACK M. SHERIDAN, CAROLYN ALFORD, GARY LANE

Culberson's missing piece

A reader's memory

U.S. Rep. John Culberson sure has a lot of gall to complain about Metro's lack of progress in Sunday's Outlook section. (Please see "TRAPPED IN TRAFFIC / Our missing mobility piece is com-muter rail," Outlook cover, Sunday.) After all, it was he and his cronies Tom DeLay and Dan Patrick who've done more to slow Metro's progress than almost anyone else. Remember how Culberson tried to throw a monkey wrench into Metro's plan for light rail on Richmond and reroute it on Westpark? I wonder if he'd enjoy walking from Westpark to the Galleria in July?

And does he think we've forgotten how he and his buddy, former AM 700 talk show host Jon Matthews, used to ridicule and joke about the "toy train"?

JOHN TRUITT Houston

...

He's a bit late

WHAT a bit of tripe from a congressman who has fought tooth and nail against any form of rail to solve Houston's transportation nightmare.

Perhaps Rep. John Culberson ought to direct his questions about Metro to former Houston Mayor Bob Lanier, who was the person who appointed most of the Metro board during the time when the Texas Department of Transportation and Harris County Tollroad Authority were secretly planning to take away the HOV lanes and replace those with the four-lane toll road now in advanced construction phases on I-10.

Given that the existing Westpark Tollroad, with its four lanes, is jammed with traffic during rush hours, I hesitate to imagine the mess created by the Katy Freeway traffic when the I-10 expansion is completed.

Culberson should have exercised his influence with county, city and Metro officials before construction was begun.

HOWARD BINGHAM passenger rail advocate and member, Texas Association of Rail Passengers, Houston

...

Other view, quoted

U.S. Rep. John Culberson states in his Outlook essay that he encouraged Metro to include a commuter rail while additional highway lanes were being added to the Katy Freeway. I attended one of the community meetings that Metro held prior to the vote for the rail expansion. I distinctly remember the question being asked about why there were no plans to leave space for a future rail line on the Katy Freeway. The answer: Culberson stated that a rail line would be added to the Katy Freeway "over my dead body."

WINSTON E. KILE Houston

...

Need system in Loop

THERE is little doubt that a city like Houston, with its vast area and bustling suburbs, needs commuter rail. However, Rep. John Culberson would like to just throw it down the "record-setting" Katy Freeway. How does this serve the people of Sugar Land and The Woodlands? Do all Katy residents work in downtown, or do they all work in the Medical Center? Without a comprehensive light rail system inside the 610 Loop, commuter rail will serve no one.

MICHAEL COPPENS Houston

...

Metro and 'fringe'

LAST Friday there was a meeting of the mayor and Houston City Council to consider whether it was prudent to build light rail on top of a 66-inch high pressure water line for a distance of 2.6 miles on Richmond Avenue. METRO management and METRO consultants spent two hours laying out the argument that there was no problem in building the rail line there.

Following METRO's lecture, three concerned private citizens offered a differing

point of view. All three of them spoke briefly, calmly and rationally about the pipeline and the dangers that they believed were inherent in building light rail on top of it.

At the conclusion of their remarks the chairman of Metro, David Wolff, took the microphone and before the mayor and City Council stated that those citizens were nothing more than "a fringe element of grenade throwers."

Wolff's outrageous remark reveals once again the arrogance that Metro assumes in dealing with citizens who disagree with them. They are a "fringe element." Maybe, just maybe, part of Metro's problem stems from such antagonistic comments from its chairman.

CHRISTIAN N. SEGER Houston

...

Teacher: Blame students, too

I AM a retired teacher, and Saturday's "Getting ready" editorial struck a nerve. I'm so tired of reading articles and editorials placing all of the blame for education's ills on schools and teachers.

Will there come a time when critics realize that the student is a big part of the equation?

No matter how hard teachers try, there always seem to be many students who insist on gliding by, making excuses and avoiding commitment. "Idiot chic" - it's not cool to be smart - remains alive and well. And often those same students then blame the system for not preparing them for college or the workplace.

JACK M. SHERIDAN Spring

...

Beaming over 'star turn'

IMAGINE! A member of my graduating class from Stephen F. Austin High School in Bryan is being portrayed in a movie by one of the biggest stars in the Hollywood heavens. (Please see "FILMS / Taking a star turn / Joanne Herring hits the Hollywood party circuit to celebrate premiere of Charlie Wilson's War," Star cover, Sunday.)

We all knew when Joanne Johnson joined us for our final two years that she was a special person, beautiful, full of enthusiasm and friends with everybody in our small school. We have followed the adventures of her life with interest over these 60 years and have been proud to say "we knew her when," but this tops it all.

CAROLYN ALFORD Bryan

...

Punishment for Judge Keller

REGARDING Saturday's article on Page B2, "Judge wants wrongful death lawsuit dropped / Keller says she's not to blame for not answering call in execution case": If Texas is to maintain any credibility, Judge Sharon Keller needs to be disbarred. She allowed her personal views on the death penalty to interfere with justice. It's pathetic that she is now squirming to avoid responsibility.

GARY LANE Houston

---- INDEX REFERENCES ----

COMPANY: IMAGINE POST PRODUCTION; METROPOLITAN FURNITURE CORP; IMAGINE; IMAGINE SA

NEWS SUBJECT: (Local Government (1LO75); Government (1GO80))

INDUSTRY: (Transportation (1TR48); Railroads (1RA98); Land Transportation (1LA43); Railroad Equipment (1RA68); Passenger Transportation (1PA35))

REGION: (USA (1US73); Americas (1AM92); North America (1NO39); Texas (1TE14))

Language: EN

OTHER INDEXING: (CHARLIE WILSONS; CULBERSON; HARRIS COUNTY TOLLROAD AUTHORITY; HOV; IMAGINE; JOHN CULBERSON; LETTERS CULBERSON; MEDICAL CENTER; METRO; METRO BOARD; PAGE; TEXAS; TEXAS ASSOCIATION OF RAIL PASSENGERS; TEXAS DEPARTMENT OF TRANSPORTATION; WOODLANDS) (Bob Lanier; CHRISTIAN N. SEGER; Dan Patrick; David Wolff; Idiot; JACK M. SHERIDAN; Joanne Johnson; JOHN; Jon Matthews; Keller; Outlook; Punishment; Rep; Sharon Keller; Tom DeLay; WINSTON E. KILE; Wolff)

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2007 WLNR 25106108

Dallas Morning News, The (KRT)
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December 20, 2007

EDITORIAL: Texan of the Year finalist: Sharon Keller : Judge said, 'We close at 5,' cast pall on justice

Dec. 20--Texas jumps off the national map in many ways, good and not so good. Not so good includes the international notoriety of a hyperactive death chamber.

Before the U.S. Supreme Court effectively halted capital punishment in September, Texas carried out seven of the 10 most recent executions nationwide.

That very last execution brings us a finalist for Dallas Morning News Texan of the Year, Presiding Judge Sharon Keller of the Texas Court of Criminal Appeals. The newspaper's distinction is bestowed for better or worse; this one goes in the latter column.

Judge Keller will forever be associated with four callous words that make a caricature of Texas justice: "We close at 5."

That was the judge's harsh response to defense attorneys who were trying to file a last-minute appeal in the case of convicted killer Michael Richard.

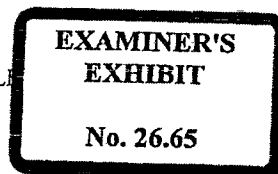
The courthouse shut its doors based on the judge's order on the afternoon of Sept. 25, and lethal drugs were pumped into the condemned man's veins a short time later. Legal experts say his appeal had a good chance of prevailing, since the Supreme Court, hours earlier, held up a Kentucky execution to weigh the constitutionality of lethal injection.

"We close at 5" can be disappointing news from an auto mechanic or bank clerk. But when it comes from the state's highest criminal jurist in a life-or-death case, it sounds downright ... criminal. Worse, other judges were working late that night and could have reviewed the appeal.

There was no doubt of Mr. Richard's guilt in the fatal shooting of a 53-year-old nurse and mother of seven in the Houston area. Death penalty supporters may think he got his just deserts, but that's not the point. The Supreme Court had clearly signaled concern over the constitutionality of lethal injection, and many states had already shut down their execution chambers in deference to the court's consideration of the matter.

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6/24/2009

Texas' brand of justice appeared stubbornly out of step. Two days after the Richard execution, Judge Keller's court decided that yet another death sentence could be carried out, this one in a Dallas County case. The Supreme Court blocked that execution, and the Texas court finally got the message and put the death chamber on hold.

Judge Keller hails from the Dallas family of Keller's Hamburgers fame. Since first elected to the Court of Criminal Appeals in 1994, she has cultivated a distinct profile -- tough on crime. The close-at-5 decision in the Richard execution, however, only perpetuates the notion that Texas is indifferent to justice.

Coming Friday: No. 7.

FINALIST COUNTDOWN

8. Sharon Keller

Judge on the Texas Court of Criminal Appeals

9. Carol Wise

Researcher at Texas Scottish Rite Hospital for Children

10. Bill Mullican

State's water planner

---- INDEX REFERENCES ----

COMPANY: STATE AND FORTIFICATION STREETS JACKSON MISSISSIPPI LLC; STATE AND LOCAL TRUSTS SERIES 1

NEWS SUBJECT: (Legal (1LE33); Judicial (1JU36))

REGION: (USA (1US73); Americas (1AM92); North America (1NO39); Texas (1TE14))

Language: EN

OTHER INDEXING: (COURT OF CRIMINAL; KENTUCKY; STATE; SUPREME COURT; TEXAS; TEXAS COURT OF CRIMINAL; TEXAS SCOTTISH RITE HOSPITAL; US SUPREME COURT) (8.; Dec; Keller; Legal; Michael Richard; Researcher; Richard; Sharon Keller)

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December 20, 2007

Section: EDITORIALS

Sharon Keller : Judge said; 'We close at 5,' cast pall on justice

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Texan of the Year

Coming Dec. 30

FINALIST COUNTDOWN

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Judge on the Texas Court of Criminal Appeals

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Researcher at Texas Scottish Rite Hospital for Children

10. Bill Mullican

State's water planner

Coming tomorrow: No. 7.

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COMPANY: STATE AND FORTIFICATION STREETS JACKSON MISSISSIPPI LLC; STATE AND LOCAL TRUSTS SERIES 1

NEWS SUBJECT: (Legal (1LE33); Judicial (1JU36))

REGION: (USA (1US73); Americas (1AM92); North America (1NO39); Texas (1TE14))

Language: EN

OTHER INDEXING: (COURT OF CRIMINAL; KENTUCKY; STATE; SUPREME COURT; TEXAS COURT OF CRIMINAL; TEXAS SCOTTISH RITE HOSPITAL; US SUPREME COURT) (8.; Keller; Legal; Michael Richard; Researcher; Richard; Sharon Keller; Texan; Texas)

EDITION: FIRST

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National Desk; SECTA
At 60% of Total, Texas is Bucking Execution Trend

By ADAM LIPTAK
1366 words
26 December 2007
The New York Times

Late Edition - Final

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This year's death penalty bombshells -- a de facto national moratorium, a state abolition and the smallest number of executions in more than a decade -- have masked what may be the most significant and lasting development. For the first time in the modern history of the death penalty, more than 60 percent of all American executions took place in Texas.

Over the past three decades, the proportion of executions nationwide performed in Texas has held relatively steady, averaging 37 percent. Only once before, in 1986, has the state accounted for even a slight majority of the executions, and that was in a year with 18 executions nationwide.

But enthusiasm for executions outside of Texas has dropped sharply. Of the 42 executions in the last year, 26 were in Texas. The remaining 16 were spread across nine other states, none of which executed more than three people. Many legal experts say the trend will probably continue.

Indeed, said David R. Dow, a law professor at the University of Houston who has represented death-row inmates, the day is not far off when essentially all executions in the United States will take place in Texas.

"The reason that Texas will end up monopolizing executions," he said, "is because every other state will eliminate it de jure, as New Jersey did, or de facto, as other states have."

Charles A. Rosenthal Jr., the district attorney of Harris County, Tex., which includes Houston and has accounted for 100 executions since 1976, said the Texas capital justice system was working properly. The pace of executions in Texas, he said, "has to do with how many people are in the pipeline when certain rulings come down."

The rate at which Texas sentences people to death is not especially high given its murder rate. But once a death sentence is imposed there, said Richard C. Dieter, the executive director of the Death Penalty Information Center, prosecutors, state and federal courts, the pardon board and the

**EXAMINER'S
EXHIBIT**

No. 26.67

SCJC 001206

governor are united in moving the process along. "There's almost an aggressiveness about carrying out executions," said Mr. Dieter, whose organization opposes capital punishment.

Outside of Texas, even supporters of the death penalty say they detect a change in public attitudes about executions in light of the time and expense of capital litigation, the possibility of wrongful convictions and the remote chance that someone sent to death row will actually be executed.

"Any sane prosecutor who is involved in capital litigation will really be ambivalent about it," said Joshua Marquis, the district attorney in Clatsop County, Ore., and a vice president of the National District Attorneys Association. He said the families of murder victims suffered needless anguish during what could be decades of litigation and multiple retrials.

"We're seeing fewer executions," Mr. Marquis added. "We're seeing fewer people sentenced to death. People really do question capital punishment. The whole idea of exoneration has really penetrated popular culture."

As a consequence, Mr. Dieter said, "we're simply not regularly using the death penalty as a country."

Over the last three years, the number of executions in Texas has been relatively constant, averaging 23 per year, but the state's share of the number of total executions nationwide has steadily increased as the national totals have dropped, from 32 percent in 2005 to 45 percent in 2006 to 62 percent in 2007.

The death penalty developments that have dominated the news in recent months are unlikely to have anything like the enduring consequences of Texas' vigorous commitment to capital punishment.

A Supreme Court case concerns how to assess the constitutionality of lethal injection protocols. While it is possible that states may have to revise the ways they execute people, executions will almost certainly resume soon after the court's decision, which is expected by June.

Similarly, New Jersey's abolition of the death penalty last week and Gov. Jon Corzine's decision to empty death-row of its eight prisoners is almost entirely symbolic. New Jersey has not executed anyone since 1963.

And while the total number of executions in 2007 was low, it would have been similar to those in recent years but for the moratorium, if extrapolated to a full year.

There do seem to be slight stirrings suggesting that other states might follow New Jersey. Two state legislative bodies -- the House in New Mexico and the Senate in Montana -- passed bills to abolish capital punishment, and in Nebraska, the unicameral legislature came within one vote of doing so.

Texas has followed the rest of the country in one respect: the number of death sentences there has dropped sharply.

In the 10 years ending in 2004, Texas condemned an average of 34 prisoners each year -- about 15 percent of the national total. In the last three years, as the number of death sentences nationwide dropped significantly, from almost 300 in 1998 to about 110 in 2007, the number in Texas has dropped along with it, to 13 -- or 12 percent.

Indeed, according to a 2004 study by three professors of law and statistics at Cornell published in *The Journal of Empirical Legal Studies*, Texas prosecutors and juries were no more apt to seek and impose death sentences than those in the rest of the country.

"Texas' reputation as a death-prone state should rest on its many murders and on its willingness to execute death-sentenced inmates," the authors of the study, Theodore Eisenberg, John H. Blume and Martin T. Wells, wrote. "It should not rest on the false belief that Texas has a high rate of sentencing convicted murderers to death."

There is reason to think that the number of death sentences in the state will fall farther, given the introduction of life without the possibility of parole as a sentencing option in capital cases in Texas in 2005. While a substantial majority of the public supports the death penalty, that support drops significantly when life without parole is included as an alternative.

Once an inmate is sent to death row, however, distinctive features of the Texas justice system kick in.

"Execution dates here, uniquely, are set by individual district attorneys," Professor Dow said. "In no other state would the fact that a district attorney strongly supports the death penalty immediately translate into more executions."

Texas courts, moreover, speed the process along, said Jordan M. Steiker, a law professor at the University of Texas who has represented death-row inmates.

"It's not coincidental that the debate over lethal injections had traction in other jurisdictions but not in Texas," Professor Steiker said. "The courts in Texas have generally not been very solicitous of constitutional claims."

Indeed, the Supreme Court has repeatedly rebuked the state and the federal courts that hear appeals in Texas capital cases, often in exasperated language suggesting that those courts are actively evading Supreme Court rulings.

The last execution before the Supreme Court imposed a de facto moratorium happened in Texas, and in emblematic fashion. The presiding judge on the state's highest court for criminal matters, Judge Sharon Keller, closed the courthouse at its regular time of 5 p.m. and turned back an

attempt to file appeal papers a few minutes later, according to a complaint in a wrongful-death suit filed in federal court last month.

The inmate, Michael Richard, was executed that evening.

Judge Keller, in a motion to dismiss the case filed this month, acknowledged that she alone had the authority to keep the court's clerk's office open but said that Mr. Richard's lawyers could have tried to file their papers directly with another judge on the court.

PHOTO: Judge Sharon Keller denied lawyers an 11th-hour attempt to file papers for Michael Richard, who was executed in September. (PHOTOGRAPH BY ELENA GROTHE/AMERICAN-STATESMAN) (pg. A22)

GRAPH: EXECUTIONS IN TEXAS: The death penalty was reinstated nationally in 1976. Texas resumed executions in 1982, and since then it has accounted for a significant percentage of all inmates put to death. (Source: Death Penalty Information Center) (pg. A22) Graph showing the number of executions across Texas and other states.

Document NYTF000020071226e3cq000ez

INQUIRY CONCERNING JUDGE,
NO. 96

IN RE:

THE HONORABLE SHARON KELLER,
PRESIDING JUDGE OF THE TEXAS
COURT OF CRIMINAL APPEALS, AUSTIN,
TRAVIS COUNTY, TEXAS

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BEFORE THE
COMMISSION ON
JUDICIAL CONDUCT

Respondent's Objections to the Examiner's Revised Exhibit List

Ex. No	Date	Brief Description	Objections
1	4/24/2008	Excerpts containing Court of Criminal Appeals Execution-day Procedures, 000041-42	TRE 402, 403 and 407. Respondent does not object to the Execution-day Procedures in the exhibit
2	8/24/2007	Email from Edward Marty to the CCA Judges re: September scheduled executions, HERVY 00255	None
3	8/30/2007	Email from Edward Marty to CCA Judges re: change to September execution assignments, HERVEY 00256	None
4	9/25/2007	Email string, Mary Anne Wiley to Judge Keller re: Baze, sent at 11:12 a.m., Judge Keller replies thanks, KELLER 000005	None
5	9/25/2007	Email string: Ed Marty to the CCA Judges re: Baze sent at 11:29 a.m.; Judge Cochran replies to Ed Marty and to the CCA Judges re: Kentucky Supreme Court's opinion, sent at 1:32 p.m., SCJC 000109	None
6	9/25/2007	Email from Edward Marty to the CCA Judges re: TDS attorney's planning to file, sent at 2:40 p.m., SCJ000110	None, Respondent's Exhibit 42
7	9/25/2007	Email string, Alma Lagarda to David Dow re: trying to have brief to you in the next 20 minutes or so, sent 2:53 P.M., TDS 000123	None, Respondent's Exhibit 15
8	9/25/2007	Dissent with handwritten note - draft on 9/25/07 waiting for Richard's Motion to Stay PRICE 000028	None
9	9/25/2007	Motion for Stay of Execution filed in Harris County, TDS 01170 - 73	None, Respondent's Exhibit 6

Ex. No	Date	Brief Description	Objections
10	9/25/2007	Petition for Writ of Prohibition filed in Harris County, TDS 01174 - 01200	None, Respondent's Exhibit 7
11	9/25/2007	Motion for Stay of Execution filed with the USSC, by Gregory Wiercioch, Dow Ex. 12	None, Respondent's Exhibit 12
12	9/25/2007	Petition for Writ of Prohibition, signed but not filed, DF 00001 - 27	None
13	9/25/2007	Motion for Stay of Execution, signed but not filed, DF 00028 - 31	None
14	9/25/2007	USSC Order, application for stay is denied, TDS 00077	None
15	9/26/2007	Email from Judge Keller to CCA Judges re: misinformation about the time we close, sent 5:28 pm., COCHRAN 00016	None
16	10/8/2007	Judge Keller's AT&T cell phone invoice, KELLER 000097-98	None
17	11/8/2007	Phone invoice for Dorinda "Rindy" Fox, SCJC 000125	None
18	12/3/2007	Letter from Judge Keller to the Houston Chronicle attaching Execution-day Procedures, SCJC 000072 - 73	None
19	5/4/2009	Respondent's Answer to Interrogatory #5	None
20	5/4/2009	Respondent's Answer to Interrogatory #6	None
21	5/4/2009	Respondent's Answer to Interrogatory #8	None
22	6/16/2009	Lethal Injection; Stays Granted, Steiker 00069-73	TRE 402, 407 and 403
23	7/15/2009	Email log provided by Judge Keller's counsel	None
24	7/10/2009	Internet America, Inc. Responses to Deposition on Written Questions	None
25	7/7/2009	Log of Judge Keller's home phone calls provided by Judge Keller's counsel	None
26		Various media articles from October 2007 - December 2007. These are SCJC documents, bates numbered as follows: SCJC 000078	TRE 401,402, 403, 404, 602, 701, 702, 703, 801, and 802. See also separately filed brief.
26.01		SCJC 000074-75;	TRE 401,402, 403, 404, 602, 701, 702, 703, 801, and 802. See also separately filed brief.

Ex. No	Date	Brief Description	Objections
26.02		SCJC 001120-22;	TRE 401,402, 403, 404, 602, 701, 702, 703, 801, and 802. See also separately filed brief.
26.03		SCJC 001269-71;	TRE 401,402, 403, 404, 602, 701, 702, 703, 801, and 802. See also separately filed brief.
26.04		SCJC 00118-19;	TRE 401,402, 403, 404, 602, 701, 702, 703, 801, and 802. See also separately filed brief.
26.05		SCJC 000187-88;	TRE 401,402, 403, 404, 602, 701, 702, 703, 801, and 802. See also separately filed brief.
26.06		SCJC 001133-34;	TRE 401,402, 403, 404, 602, 701, 702, 703, 801, and 802. See also separately filed brief.
26.07		SCJC 001112-14;	TRE 401,402, 403, 404, 407, 602, 701, 702, 703, 801, and 802. See also separately filed brief.
26.08		SCJC 00115-17;	TRE 401,402, 403, 404, 602, 701, 702, 703, 801, and 802. See also separately filed brief.
26.09		SCJC 001305-08;	TRE 401,402, 403, 404, 602, 701, 702, 703, 801, and 802. See also separately filed brief.
26.10		SCJC 00137-38;	TRE 401,402, 403, 404, 602, 701, 702, 703, 801, and 802. See also separately filed brief.
26.11		SCJC 001263-65;	TRE 401,402, 403, 404, 602, 701, 702, 703, 801, and 802. See also separately filed brief.
26.12		SCJC 000079-81;	TRE 401,402, 403, 404, 602, 701, 702, 703, 801, and 802. See also separately filed brief.
26.13		SCJC 001288-90;	TRE 401,402, 403, 404, 602, 701, 702, 703, 801, and 802. See also separately filed brief.
26.14		SCJC 000082;	TRE 401,402, 403, 404, 602, 701, 702, 703, 801, and 802. See also separately filed brief.
26.15		SCJC 001102-03;	TRE 401,402, 403, 404, 602, 701, 702, 703, 801, and 802. See also separately filed brief.
26.16		SCJC 01104-06;	TRE 401,402, 403, 404, 602, 701, 702, 703, 801, and 802. See also separately filed brief.
26.17		SCJC 001107-08;	TRE 401,402, 403, 404, 602, 701, 702, 703, 801, and 802. See also separately filed brief.

Ex. No	Date	Brief Description	Objections
26.18		SCJC 001139;	TRE 401,402, 403, 404, 602, 701, 702, 703, 801, and 802. See also separately filed brief.
26.19		SCJC 001140-41;	TRE 401,402, 403, 404, 602, 701, 702, 703, 801, and 802. See also separately filed brief.
26.20		SCJC 001099-01	TRE 401,402, 403, 404, 602, 701, 702, 703, 801, and 802. See also separately filed brief.
26.21		SCJC 000182-184;	TRE 401,402, 403, 404, 407, 602, 701, 702, 703, 801, and 802. See also separately filed brief.
26.22		SCJC 000076 - 77;	TRE 401,402, 403, 404, 407, 602, 701, 702, 703, 801, and 802. See also separately filed brief.
26.23		SCJC 000083-84;	TRE 401,402, 403, 404, 602, 701, 702, 703, 801, and 802. See also separately filed brief.
26.24		SCJC 001097-98;	TRE 401,402, 403, 404, 407, 602, 701, 702, 703, 801, and 802. See also separately filed brief.
26.25		SCJC 001147-48;	TRE 401,402, 403, 404, 602, 701, 702, 703, 801, and 802. See also separately filed brief.
26.26		SCJC 000169-70;	TRE 401,402, 403, 404, 407, 602, 701, 702, 703, 801, and 802. See also separately filed brief.
26.27		SCJC 001090-91;	TRE 401,402, 403, 404, 602, 701, 702, 703, 801, and 802. See also separately filed brief.
26.28		SCJC 000174;	TRE 401,402, 403, 404, 602, 701, 702, 703, 801, and 802. See also separately filed brief.
26.29		SCJC 000177-178;	TRE 401,402, 403, 404, 407, 602, 701, 702, 703, 801, and 802. See also separately filed brief.
26.30		SCJC 001157-58;	TRE 401,402, 403, 404, 407, 602, 701, 702, 703, 801, and 802. See also separately filed brief.
26.31		SCJC 001077;	TRE 401,402, 403, 404, 602, 701, 702, 703, 801, and 802. See also separately filed brief.
26.32		SCJC 000090-91;	TRE 401,402, 403, 404, 407, 602, 701, 702, 703, 801, and 802. See also separately filed brief.
26.33		SCJC 000985-86	TRE 401,402, 403, 404, 407, 602, 701, 702, 703, 801, and 802. See also separately filed brief.

Ex. No	Date	Brief Description	Objections
26.34		SCJC 001171-72	TRE 401,402, 403, 404, 407, 602, 701, 702, 703, 801, and 802. See also separately filed brief.
26.35		SCJC 000984;	TRE 401,402, 403, 404, 407, 602, 701, 702, 703, 801, and 802. See also separately filed brief.
26.36		SCJC 000194	TRE 401,402, 403, 404, 602, 701, 702, 703, 801, and 802. See also separately filed brief.
26.37		SCJC 001065-66	TRE 401,402, 403, 404, 602, 701, 702, 703, 801, and 802. See also separately filed brief.
26.38		SCJC 000189	TRE 401,402, 403, 404, 407, 602, 701, 702, 703, 801, and 802. See also separately filed brief.
26.39		SCJC 000190	TRE 401,402, 403, 404, 407, 602, 701, 702, 703, 801, and 802. See also separately filed brief.
26.40		SCJC 001063-64	TRE 401,402, 403, 404, 407, 602, 701, 702, 703, 801, and 802. See also separately filed brief.
26.41		SCJC 001176-77	TRE 401,402, 403, 404, 602, 701, 702, 703, 801, and 802. See also separately filed brief.
26.42		SCJC 001178	TRE 401,402, 403, 404, 407, 602, 701, 702, 703, 801, and 802. See also separately filed brief.
26.43		SCJC 001285-87	TRE 401,402, 403, 404, 407, 602, 701, 702, 703, 801, and 802. See also separately filed brief.
26.44		SCJC 001179-80	TRE 401,402, 403, 404, 602, 701, 702, 703, 801, and 802. See also separately filed brief.
26.45		SCJC 000085-86	TRE 401,402, 403, 404, 407, 602, 701, 702, 703, 801, and 802. See also separately filed brief.
26.46		SCJC 001058-60	TRE 401,402, 403, 404, 602, 701, 702, 703, 801, and 802. See also separately filed brief.
26.47		SCJC 001185	TRE 401,402, 403, 404, 407, 602, 701, 702, 703, 801, and 802. See also separately filed brief.
26.48		SCJC 001052 54	TRE 401,402, 403, 404, 407, 602, 701, 702, 703, 801, and 802. See also separately filed brief.
26.49		SCJC 000152	TRE 401,402, 403, 404, 407, 602, 701, 702, 703, 801, and 802. See also separately filed brief.

Ex. No	Date	Brief Description	Objections
26.50		SCJC 001186-87	TRE 401,402, 403, 404, 407, 602, 701, 702, 703, 801, and 802. See also separately filed brief.
26.51		SCJC 001251-53	TRE 401,402, 403, 404, 407, 602, 701, 702, 703, 801, and 802. See also separately filed brief.
26.52		SCJC 001278-80	TRE 401,402, 403, 404, 407, 602, 701, 702, 703, 801, and 802. See also separately filed brief.
26.53		SCJC 001281-82	TRE 401,402, 403, 404, 407, 602, 701, 702, 703, 801, and 802. See also separately filed brief.
26.54		SCJC 001254-55	TRE 401,402, 403, 404, 407, 602, 701, 702, 703, 801, and 802. See also separately filed brief.
26.55		SCJC 001261-62	TRE 401,402, 403, 404, 407, 602, 701, 702, 703, 801, and 802. See also separately filed brief.
26.56		SCJC 001031-32	TRE 401,402, 403, 404, 407, 602, 701, 702, 703, 801, and 802. See also separately filed brief.
26.57		SCJC 001196-97	TRE 401,402, 403, 404, 407, 602, 701, 702, 703, 801, and 802. See also separately filed brief.
26.58		SCJC 001028-30	TRE 401,402, 403, 404, 407, 602, 701, 702, 703, 801, and 802. See also separately filed brief.
26.59		SCJC 001215 - 17	TRE 401,402, 403, 404, 407, 602, 701, 702, 703, 801, and 802. See also separately filed brief.
26.60		SCJC 001198-99	TRE 401,402, 403, 404, 407, 602, 701, 702, 703, 801, and 802. See also separately filed brief.
26.61		SCJC 001218-19	TRE 401,402, 403, 404, 602, 701, 702, 703, 801, and 802. See also separately filed brief.
26.62		SCJC 001200	TRE 401,402, 403, 404, 407, 602, 701, 702, 703, 801, and 802. See also separately filed brief.
26.63		SCJC 001224-26	TRE 401,402, 403, 404, 602, 701, 702, 703, 801, and 802. See also separately filed brief.
26.64		SCJC 001227-30	TRE 401,402, 403, 404, 602, 701, 702, 703, 801, and 802. See also separately filed brief.
26.65		SCJC 001204-05	TRE 401,402, 403, 404, 602, 701, 702, 703, 801, and 802. See also separately filed brief.

Ex. No	Date	Brief Description	Objections
26.66		SCJC 001231-33	TRE 401,402, 403, 404, 602, 701, 702, 703, 801, and 802. See also separately filed brief.
26.67		SCJC 001206-09	TRE 401,402, 403, 404, 407, 602, 701, 702, 703, 801, and 802. See also separately filed brief.
26.68		SCJC 000087	TRE 401,402, 403, 404, 407, 602, 701, 702, 703, 801, and 802. See also separately filed brief.
26.69		SCJC 001234-38	TRE 401,402, 403, 404, 407, 602, 701, 702, 703, 801, and 802. See also separately filed brief.
26.70		SCJC001190-93	TRE 401,402, 403, 404, 602, 701, 702, 703, 801, and 802. See also separately filed brief.
27		Various emails reacting to the events of 9/25/07. These documents are bates numbered as follows:	
27.01		Cochran 00023	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
27.02		Cochran 00024	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
27.03		Cochran 00025-26	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
27.04		Cochran 00027	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
27.05		Cochran 00029	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
27.06		Cochran 00030-31	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
27.07		Johnson 00022	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
27.08		Johnson 00023	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
27.09		Johnson 00025	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
27.10		Johnson 00029	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
27.11		Johnson 00030	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
27.12		Johnson 00031	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
27.13		Johnson 00032	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
27.14		Johnson 00034	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
27.15		Johnson 00038	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901

Ex. No	Date	Brief Description	Objections
27.16		Johnson 00039	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
27.17		Johnson 00040	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
27.18		Johnson 00041	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
27.19		Johnson 00042	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
27.20		Johnson 00043	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
27.21		Johnson 00044	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
27.22		Johnson 00045	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
27.23		Johnson 00047	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
27.24		Johnson 00048	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
27.25		Johnson 00050	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
27.26		Johnson 00051	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
27.27		Johnson 00054	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
27.28		Johnson 00055	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
27.29		Johnson 00056	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
27.30		Johnson 00059	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
27.31		Johnson 00064	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
27.32		Johnson 00067	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
27.33		Johnson 00069	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
27.34		Johnson 00071	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
27.35		Johnson 00075	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
27.36		Johnson 00076	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
27.37		Johnson 00077	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
27.38		Johnson 00079	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
27.39		Johnson 00086	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901

Ex. No	Date	Brief Description	Objections
27.40		Johnson 00090	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
27.41		Johnson 00091-92	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
27.42		Johnson 00097	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
27.43		Johnson 0100	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
27.44		Johnson 0103	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
27.45		Johnson 0104	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
27.46		Johnson 0108	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
27.47		Johnson 0110	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
27.48		Hervey 00017	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
27.49		Hervey 00018	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
27.50		Hervey 00019	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
27.51		Hervey 00021	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
27.52		Hervey 00021	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
27.53		Hervey 00025	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
27.54		Hervey 00027	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
27.55		Hervey 00029	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
27.56		Hervey 00033	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
27.57		Hervey 00034	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
27.58		Hervey 00038	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
27.59		Hervey 00066	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
27.60		Hervey 00068	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
27.61		Hervey 00069	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
27.62		Hervey 00071	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
27.63		Hervey 00073	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901

Ex. No	Date	Brief Description	Objections
27.64		Hervey 00075	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
27.65		Hervey 00078	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
27.66		Hervey 00083	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
27.67		Hervey 00093	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
27.68		Hervey 00095	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
27.69		Hervey 00098	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
27.70		Hervey 00099	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
27.71		Hervey 00102	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
27.72		Hervey 00109	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
27.73		Hervey 00113	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
27.74		Hervey 00134	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
27.75		Hervey 00138	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
27.76		Hervey 00142	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
27.77		Hervey 00144	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
27.78		Hervey 00150	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
27.79		Hervey 00152	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
27.80		Hervey 00160	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
27.81		Hervey 00369	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
27.82		Hervey 00370	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
27.83		Hervey 00373	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
27.84		Hervey 00376	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
27.85		Hervey 00378	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
27.86		Hervey 00381	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
27.87		Hervey 00384	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901

Ex. No	Date	Brief Description	Objections
27.88		Hervey 00386	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
27.89		Hervey 00387	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
27.90		Hervey 00387	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
27.91		Hervey 00395	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
27.92		Hervey 00402	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
27.93		Hervey 00403	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
27.94		Hervey 00409-10	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
27.95		Keasler 0087	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
27.96		Keasler 0088	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
27.97		Keasler 0089	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
27.98		Keasler 0090	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
27.99		Keasler 0091	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
27.100		Keasler 0092	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
27.101		Keasler 0093	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
27.102		Keasler 0095	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
27.103		Keasler 0096	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
27.104		Keasler 0098	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
27.105		Keasler 0100	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
27.106		Keasler 0103	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
27.107		Keasler 0105-6	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
27.108		Keasler 0107	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
27.109		Keasler 0110	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
27.110		Keasler 0111	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
27.111		Keasler 0112	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901

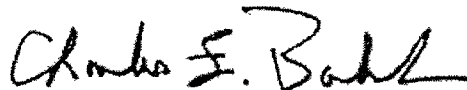
Ex. No	Date	Brief Description	Objections
27.112		Keasler 0115	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
27.113		Keasler 0116	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
27.114		Keasler 0117	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
27.115		Keasler 0119	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
27.116		Keasler 0121	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
27.117		Keasler 0126	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
27.118		Keasler 0129	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
27.119		Keasler 0130	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
27.120		Keasler 0137	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
27.121		Keasler 0139	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
27.122		Keller 000059	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
27.123		Keller 000054	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
27.124		Keller 000050	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
27.125		Keller 000047	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
27.126		Keller 000041-42	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
27.127		Keller 000040	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
27.128		Keller 000038	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
27.129		205	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
27.130		208	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
27.131		209	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
27.132		210-272	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
27.133		273	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
27.134		274-306	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
27.135		307	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901

Ex. No	Date	Brief Description	Objections
27.136		308	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
27.137		309-318	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
27.138		319-325	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
27.139		326	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
27.140		327-331	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
27.141		332	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
28		Complaints to the Commission. These documents are bates numbered as follows:	
28.01		SCJC 000001-7	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
28.02		SCJC 0000016-22	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
28.03		SCJC 0000023	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
28.04		SCJC 0000024	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
28.05		SCJC 0000025	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
28.06		SCJC 0000026	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
28.07		SCJC 0000028-31	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
28.08		SCJC 0000032-35	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
28.09		SCJC 0000036	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
28.10		SCJC 0000037-39	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
28.11		SCJC 0000040	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
28.12		SCJC 0000041-45	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
28.13		SCJC 0000046-48	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
28.14		SCJC 0000049-50	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
28.15		SCJC 0000052-56	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
28.16		SCJC 0000058	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
28.17		SCJC 0000059-64	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901

Ex. No	Date	Brief Description	Objections
28.18		SCJC 0000065	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
28.19		SCJC 0000066-71	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
28.20		SCJC 0000095	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
28.21		SCJC 00000126	TRE 402, 403, 404, 602, 701, 702, 703, 802, 805, and 901
29		Curriculum Vitae of Jordan Steiker	None

Respectfully submitted,

JACKSON WALKER L.L.P.



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**ATTORNEYS FOR RESPONDENT
THE HONORABLE SHARON
KELLER**

CERTIFICATE OF SERVICE

This is to certify that on this 11th day of August, 2009, a true and correct copy of the foregoing document was served via electronic transmission:

Ms. Seana Willing
State Commission on Judicial Conduct
P.O. Box 12265
Austin, Texas 78711
Facsimile #512-463-0511

Mr. John J. McKetta, III
Graves Dougherty Hearon & Moody
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