

## OPINION

# What Did Jeffrey Landrigan's Execution Teach Us About Respect?

By Larry A. Hammond

Those who argue about the death penalty often focus on the concept of respect. Respect for victims and their families is sometimes included as a factor either in favor of capital punishment or against it. Respect for all human life is sometimes also used as an argument both by proponents and opponents. What about respect for our judges? A snapshot of the two weeks before Mr. Landrigan's execution told us a lot about public respect for the judicial branch. Whether judges deserve respect or not, they were afforded none.

When the trial judge appeared before the clemency board and expressed her concern about executing Mr. Landrigan, many criticized her personally. She must have gone soft; she must be trying to amend her reputation. Anyway, it didn't matter. The board split 2-2, so no recommendation was made, and higher courts were already well beyond questions of guilt and sentencing. The only question now was the manner of execution, and specifically the drugs used to accomplish lethal injection.

The Arizona Supreme Court seemed to have no problem with this issue. Since no serious reason of principle seemed evidently to support their decision to permit the execution to go forward as scheduled, many death penalty opponents expressed views disrespectful of the justices. On the other hand, many

of those who disparaged the trial judge who had expressed her reservations about the execution now praised the wisdom of the Supreme Court. But it did not take long for disrespect to begin anew at a new location. A United States District Court judge granted an injunction halting the execution. Now, many who spoke well of the courts hours earlier expressed exasperation, while those who opposed execution seemed to think a little better of our judges.

The tide of disrespect for judges rose to even greater heights later that night and the next morning as the Ninth Circuit upheld the lower court and then the en banc Ninth Circuit declined to reverse. If the process had ended at that moment we can all be sure that criticism would have rained down on all of the judges involved in this process. Conservative talk shows, victim advocate spokespersons, and my friends at Fox would have beaten the drum against a judiciary without principle.

That avalanche was stemmed within a few hours when the United States Supreme Court reversed the Ninth Circuit. The 5-4 decision allowed some to argue that the judges were getting it right. For others, the chaos of the last days and the split decision demonstrated that judges are not guided by precedent or neutral principle.

Now—as lawyers who should believe it

important that the courts enjoy public respect—I challenge any of us to explain what happened in any way consistent with maintaining that public respect for our judges. Jeffrey Landrigan was executed. Is his case any more deserving of that punishment than literally thousands of other cases? Is he really the “worst of the worst” for whom the ultimate punishment is reserved, as our courts tell us? Was he denied the resources and the qualified lawyers we now say we demand in every case? Why was he never sentenced by a jury? Why did the Board of Executive Clemency split 2-2? Why did the Arizona Attorney General refuse to disclose information about the drug administered to Mr. Landrigan to eliminate pain?

These are all questions we might, as lawyers, wish to address, but my point is this: too few care about these questions or the

answers that might be offered. When people stop respecting the judges, they stop caring about the reasons they might offer. This is not just the isolated lesson of this case. It is a lesson we can see in every death penalty case. We simply have failed to devise a legal system that can ensure just results and, as a consequence, fewer and fewer of our citizens really think our judges are trying, or are worthy of respect. This should be reason enough for members of our profession to wish to bring an end to the death penalty. ■

*Larry Hammond is a practicing criminal defense lawyer with Osborn Maledon. He is also a former president of the American Judicature Society, an organization devoted to merit selection of judges and to Article III of the United States Constitution. The Landrigan execution causes him to wonder whether time spent on these issues is time well spent.*

*“He who has gone, so we but cherish his memory, abides with us, more potent, nay, more present than the living man.”*

*- Antoine de Saint-Exupéry*

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