

# Texas judge on trial for refusing to hear death row inmate's appeal

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Judge Sharon Keller is currently on trial facing five counts of judicial misconduct in the state of Texas. Keller is the presiding judge on the Texas Court of Criminal Appeals and a well-known figure to opponents of capital punishment.

The charges faced by Keller in the current trial originate with events surrounding the 2007 execution of Michael Wayne Richard. On September 25, the day of Richard's execution, his attorneys sought to file a last-minute appeal with Keller's office. Computer troubles had delayed completion of an appeal, and they called Keller's office to inform them of the problem and asked if the office would remain open to receive the appeal upon its completion.

Keller had left her office earlier in the day in order to meet a repairman who had been scheduled to arrive at her home. At approximately 4:45 p.m., she received a phone call from general counsel Ed Marty, who had been informed of the situation by the office, telling her of their request. She responded, "We close at five." Richard was executed three hours later.

The level of contempt exhibited by Keller's behavior, both for human life and the system of appeals over which she presides, is truly appalling. The very fact that Keller had chosen to leave her office early is itself troubling considering the US Supreme Court had, that very morning, consented to hear an argument on the constitutionality of lethal injection, making an appeal from Richard's attorneys all but guaranteed.

Keller's conduct has drawn protests from anti-death penalty advocates, who have dubbed the judge "Sharon Killer," as well as her own colleagues in the Texas criminal justice system. Judge Cheryl Johnson testified at Keller's trial this week, telling the court she believed Keller had violated procedure. Johnson was on call the

night of Richard's execution, meaning she was available to hear appeals from his attorneys if necessary, but maintains she was not informed by Keller or her office about any attempt to appeal until four days after the execution had taken place. "[I] would have told them they could file," she told the courtroom, "It's an execution. They might be valid pleadings. I have no other way of knowing."

As Keller's trial has proceeded, she has continually denied any wrongdoing. She told the court on Wednesday that, given the opportunity to do things over, she would not change anything. Telling the court that the "no" she gave Ed Marty by phone was ultimately of no consequence, Keller stated, "the clerk's office closed at five, regardless of what I said." This testimony ignores statute 658.005 of Texas Government Code, which gives administrators of state agencies, in this case Keller, authorization to keep their agency operating after closing hours if necessary.

If Keller is found guilty of misconduct, the State Commission on Judicial Conduct has the option to either censure the judge or remove her from the bench altogether.

The case of Michael Richard is yet another nightmare scenario in the long history of capital punishment in the United States, and in Texas in particular. The US has carried out 1,173 executions since the reinstatement of the death penalty in 1976. Texas has presided over 439 of these, making it the leading state in executions. At the time of his death in 2007, Michael Richard was the 405th prisoner to be executed in that state.

At least nine inmates with mental retardation have been executed in Texas, all of them since 1990. No less than 13 inmates have been executed in Texas for crimes committed when they were juveniles. The capital punishment system in Texas, to say nothing of the

system as a whole, has been shown time and again to be used disproportionately against African-American and Latino offenders. Victims of the death penalty are overwhelmingly poor and working class. Foreign nationals are routinely denied their consular rights and sent to their deaths.

For many, Sharon Keller has come to personify the ugliness of this barbaric practice, a practice defended by both Republicans and Democrats, including President Barack Obama.



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