

Policy in Practice



State Appellate Court Organization: A Matter of Life or Death?

A national shortage of the drugs used by states to execute prisoners sentenced to die by lethal injection led to what was described by Bert Brandenburg, executive director of Justice at Stake, as a three-branch “governmental train wreck” in Oklahoma in 2014.^a Oklahoma came up with its own experimental lethal drug cocktail but insisted that the composition and source be kept secret. This frightened Clayton Lockett, a death row inmate with an imminent execution. He challenged the state’s secrecy.

The problem was that Oklahoma has two high courts, one for criminal matters and one for civil matters, and his issue appeared to fall right through the cracks. The Oklahoma Supreme Court wanted to handle the civil issue about the state’s secrecy laws but thought that only the Oklahoma Court of Criminal Appeals could stay Lockett’s execution. Seeing things differently, the Oklahoma Court of Criminal Appeals found that it had no jurisdiction to issue a stay when the concern didn’t have anything to do with the petitioner’s underlying conviction.

The two courts fought over this hot potato and, finally, the Oklahoma Supreme Court granted a stay of execution, angering both the justices on the court of criminal appeals and the governor, Mary Fallin, who said that the supreme court was acting outside its constitutional authority and she would ignore its stay of execution. Instead, she said that she would be guided only by the court of criminal appeals. Piling on, the legislature introduced articles of impeachment for the five justices who stayed the execution. In the midst of this intense political pressure, the state supreme court appeared to cave and, in a brief legal decision, dissolved its own stay 2 days after granting it.

The state moved quickly to execute Lockett, but the new lethal drugs led to a botched execution that drew intense national attention. Thirteen minutes after receiving the injection, Lockett appeared to regain consciousness and experience great pain. State officials called off the execution, but he died 27 minutes later of a heart attack.

Sources: Adapted from Ziva Bransetter, “Gov. Mary Fallin Issues 7-day Stay for Inmate’s Execution,” *Tulsa World*, April 23, 2014, http://www.tulsaworld.com/news/government/gov-mary-fallin-issues—day-stay-for-inmate-s/article_3743eedd-b94e-5971-be11-6bf773ea9eb6.html; Andrew Cohen, “Oklahoma Just Neutered Its State Supreme Court,” *The Week*, April 29, 2014, <http://www.theweek.com/article/index/260632/oklahoma-just-neutered-its-state-supreme-court>; Andrew Spiropoulos, “Strategies Leading Up to the Botched Execution of an Oklahoma Death Row Inmate,” *Jurist*, June 9, 2014, <http://jurist.org/forum/2014/06/andrew-spiropoulos-oklahoma-death.php>.

^aPeter Hardin, “‘Disgraceful Outcome’ in Oklahoma Botched Execution, JAS Says,” *Gavel Grab* blog, Justice at Stake, Washington, DC, April 30, 2014, <http://www.gavelgrab.org/?p=71248>.