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Twenty-five years on death row

While officials try to fix a 'broken' system, the author's friend still waits for resolution in a 'twisted dark place'

By Amy Runge Gaffney

Nearly two years have passed since I wrote about my friend Andre Burton, with whom I have been corresponding for three years, for the *Chico News & Review* ("In the Shadow of Death," cover story, April 13, 2006). At that time he had been on San Quentin's death row for 23 years; now it's been a quarter-century.

Little about his immediate life has changed in that time, but in the larger arena of death-penalty politics outside the walls of San Quentin, there have been significant developments. Some could have a bearing on Andre's situation.

Arrested while still a teenager, Andre Burton was convicted at age 20 of a single count of murder. Because that charge had the special circumstance of occurring in the commission of a robbery, he was eligible to be sentenced to death.

He has maintained his innocence these 25 years, and still hopes to have his sentence and conviction overturned. A year ago, however, the California Supreme Court denied his last state appeal. Within the next year or so, his case will go once again to federal court.

In the meantime, the years are taking their toll. He wrote the following in his most recent letter to me:



FRIEND ON THE OUTSIDE

The photo on the left is of author Amy Runge Gaffney, who is shown with some of the letters and artwork she has received from death row inmate Andre Burton (inset), with whom she has been corresponding for three years.

Photo By Meredith J. Cooper

Death-penalty practices:
Fourteen states and the District of Columbia do not have the death penalty. Interestingly, the murder rate in New York (4.8 per 100,000), which does not have capital punishment, is *lower* than that of any of the four states with the highest death-row populations.

I've been frustrated as well with how my case appeal has been moving and unfolding—with the long appeals process—while my youth and lifeline are being drained [and while] family out there in the world of struggles are dying off, not to mention my struggles surrounded by all the negativity here. I sometime just feel furious in this twisted dark place ...

Andre is not the only prisoner who has spent 25 years or more on death row as his appeals have inched along in California's backlogged system of justice. Most of the prisoners on the row have been there at least 10 years and often 25 or more years.

While they wait, state officials are increasingly acknowledging that our death penalty system is broken. This was evident at a State Capitol hearing Jan. 10, when the chief justice of the California Supreme Court, Ronald George, and several other officials said as much.

Speaking at the first of three scheduled hearings on the death penalty held by the California Commission on the Fair Administration of Justice, a group that advises the Legislature, George admitted that the court simply couldn't deal with the backlog of cases.

"We have inadequate funding and staffing to process capital appeals," he said, adding that the backlog was also making it difficult for the court to handle its other cases. In November 2007, George had recommended that legislation be passed that would allow the court to shift some capital cases to three-person panels of appeals court judges. The change would require a constitutional amendment.

Another expert on the subject, Gerald Kogan, the former chief justice of the Florida Supreme Court and co-chairman of a national review of the death penalty, told the commission that the problem is insuperable. "We [in the United States] will never have the money we need to handle death penalty cases sufficiently—the way they should be handled—because the costs to taxpayers would be so great," he said.

Critics of the death penalty agree with Kogan. The hearing was held on the very day Gov. Arnold Schwarzenegger unveiled plans to slash a \$14.5 billion budget shortfall, so it was obvious no money was available to speed up the process.

"The alternative is clear: Sentence people to die in prison," Natasha Minsker, of the American Civil Liberties Union of Northern California, said in a statement issued outside the hearing room.

Americans have an aversion to executing innocent persons, and as a result death-penalty cases have a greatly extended appeals process that costs taxpayers several times as much as cases in which defendants are sentenced to life without parole. In part because of the interminable slowness of this appeals process in California, the state has executed just 12 men since 1977.

Interestingly, Florida and California are among the four states with the largest death row populations. California has by far the largest number, with close to 670 men and women condemned to death. (The women are housed at Chowchilla State Prison.) The closest to California is Texas, with a death row population of 393, though Texas far exceeds all other states in the number of people it executes.

A major reason why California has so many prisoners on death row, Kogan said, is that the Legislature has created a high number of "special circumstances" under which a defendant can

receive the death penalty. Short of getting rid of the death penalty altogether, he recommended that California greatly reduce its number of special circumstances so that death sentences might be meted out only for “the worst of the worst” crimes involving a “high degree of brutality or depravity.”

He recommended that the 33 special circumstances be reduced to five: the killing of a police or correctional officer; multiple or previous homicides committed by the same defendant; intentional murder involving torture; the killing of a witness; and contract killings. In addition, it was recommended that the death penalty be restricted to those who have killed intentionally rather than by accident, and to the actual killers, not accomplices.

Under these five special circumstances, Andre would not have been eligible for the death penalty.

Not discussed during the hearing, but nonetheless important to know, are the conditions under which San Quentin’s death row inmates are kept, usually for decades.

Built in 1851, the prison is deteriorating and has long been judged unsafe for prisoners and guards alike. Death row itself is the ghetto within. No vocational, educational or recreational programs are available to prisoners.

Prisoners are confined to 6-by-8-foot cells on tiers that are infested with vermin and littered with trash. They can go weeks without being given fresh laundry. Although they are responsible for cleaning their own cells, cleaning supplies are often hard to come by. Shower-water spills over the tiers down to the cell block’s first tier, at ground level. The showers smell of mold and mildew. Areas immediately outside the showers are filthy with dirty water, scum and hair.

Such conditions inevitably take their toll. Untreated mental illness festers; suicides are common. Even the most determined prisoners weaken. Andre writes:

I don't write songs and poems like I once [did], probably because my surroundings, and all I'm feeling or suffering, is eating at my will to do what I most enjoy. I'm really tired, not of existing or struggling, just tired of waking up looking at death in its raw form all around me. I'll be fine, though.

Regardless of the brokenness, arbitrariness or cruelty—one might even say the futility—of California’s death penalty system, Andre Burton is inching closer to execution. Meanwhile, depression and numbness are growing harder to resist. The isolation of imprisonment is intensified by the difficulty of staying in touch with family and friends on the outside.

He ends his letter with a plea:

Whatever makes you happy, I want for you. Just don't ever forget about me.