

LAW ENFORCEMENT MANAGEMENT INSTITUTE

CAPITAL PUNISHMENT IN TEXAS. CURRENT PERSPECTIVES

A LEARNING CONTRACT
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BY

KEITH FLETCHER

MARSHALL POLICE DEPARTMENT

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Legal execution, society's ultimate sanction, has existed as long as human culture. One of the first written codes of law, composed by Hammurabi of Babylonia and carved on a stone column nearly four thousand years ago, includes death as an appropriate punishment. In most cultures this sentence is reserved for the most severe crimes. These include murder, violent sexual assault, and treason.¹

Today more than one-half of the world's nations use capital punishment. Iran, for example, has been the site of more than five thousand legal executions since 1979. China recently held public mass executions by firing squad in an effort to reduce violent crime. Both of these countries use capital punishment for political crimes also. Japan prescribes the death penalty for thirteen different crimes. In Ireland, capital punishment is legal, but the last state sanctioned execution was in 1954.²

In the United States, capital punishment is authorized in thirty-eight of the fifty states. Approximately two-hundred persons are currently on death row across the nation. Texas, one of the thirty-eight states that allows capital punishment has three hundred twenty-six prisoners awaiting their appointment with death by lethal injection. This count includes three hundred twenty-two men and four women.³ Texas death penalty is imposed only for acts of deliberate murder as defined in the Texas Penal Code, Section 19.03.

(1) the person murders a peace officer or a fireman who

- acting in the lawful discharge of an official duty and who the person knows is a peace officer or fireman.
- (2) the person intentionally commits the murder in the course of committing or attempting to commit kidnapping, burglary, robbery, aggravated sexual assault or arson,
 - (3) the person commits the murder for remuneration or the promise of remuneration or employs another to commit the murder for remuneration or the promise of remuneration,
 - (4) the person commits the murder while escaping or attempting to escape from the penal institution,
 - (5) the person, while incarcerated in a penal institution, murders another who is employed in the operation of the penal institution, or
 - (6) the person murders more than one person:
 - (A) during the same criminal transactions, or
 - (B) during different criminal transactions but the murders are committed pursuant to the same scheme or course of conduct.
- (b) An offense under this section is a capital felony
- (c) If the jury does not find beyond the reasonable doubt that the defendant is guilty of an offense under this section, he may be convicted of murder or of any other lesser included offense. 4

Further, Articles 1.14 and 37.071 of the Code of Criminal Procedure states no one can be convicted of capital murder or sentenced to death without the benefit of trial by jury.

Upon a finding that the defendant is guilty of a capital offense, the court conducts a separate sentencing proceeding to determine whether the defendant shall be sentenced to death or life imprisonment. The proceeding is conducted in the trial court before the trial jury as soon as practicable. In the proceeding, evidence may be presented as to any matter that the court deems relevant to sentence. The state and the defendant or his counsel are permitted to present argument for or against sentence of death. On

conclusion of the presentation of the evidence, the court submits three issues to the jury. They are:

- (1) whether the conduct of the defendant that caused the death of the deceased was committed deliberately and with the reasonable expectation that the death of the deceased or another would result,
 - (2) whether there is a probability that the defendant would commit criminal acts of violence that would constitute a continuing threat to society, and
 - (3) if raised by the evidence, whether the conduct of the defendant in killing the deceased was unreasonable in response to the provocation, if any, by the deceased
- (c) The state must prove each issue submitted beyond a reasonable doubt, and the jury shall return a special verdict of "yes" or "no" on each issue submitted
- (d) The court shall charge the jury that:
- (1) it may not answer any issue "yes" unless it agrees unanimously, and
 - (2) it may not answer any issue "no" unless 10 or more jurors agree.
- (e) If the jury returns an affirmative finding on each issue submitted under this article, the court shall sentence the defendant to death. If the jury returns a negative finding on or is unable to answer any issue submitted under this article, the court shall sentence the defendant to confinement in the Texas Department of Corrections for life. ⁵

Why has the State of Texas adopted this method to determine when the death penalty will be administered in a capital murder case? To understand why this method was adopted, one has to look back at the recent history of capital punishment law and its constitutional problems. Although capital punishment is not unconstitutional, the punishment scheme in use by Texas and other states came under question in 1972.

Prior to 1972, capital punishment was a possible penalty for a number of offenses and left totally to the discretion

of the jury. A number of states, including Texas, provided for the death penalty in non-murder cases of rape and kidnapping. *

The United States Constitution does not exclude the penalty of death in criminal cases asserting in both the Fifth and Fourteenth Amendments that government cannot deprive an individual right to life, liberty, or property, without due process of law. Because of the arbitrary and capricious manner in which the states meted out capital punishment, the United States Supreme Court invalidated all existing capital punishment statutes in the 1972 case of Furman vs. Georgia, citing them as cruel and unusual, and contrary to the Eighth and Fourteenth Amendments.⁷ In response to this decision the state legislatures rewrote the death penalties to conform with the Supreme Court ruling. Basically two approaches were used. One was the mandatory sentence structure like those in Louisiana and North Carolina, and the second the guided discretion approach like those in Florida, Georgia and Texas. Under the Louisiana and North Carolina scheme, the death penalty became mandatory upon conviction and left the jury without discretion and provided for an automatic appeal procedure. The guided discretion statutes also provided for automatic appeal in a death sentence but instead of a mandatory sentence after conviction, a separate hearing on the punishment was introduced. The second hearing allows the

particular mitigating and aggravating circumstances of the case to be weighed but still limits the discretion of the jurors.

The capital murder statute and penalty scheme of Texas enacted by the legislature in 1974 was presented for review by the Supreme Court of the United States in the 1975 term on appeal in the case of Jurek vs. Texas [®]. On July 2, 1976 the Supreme Court announced its decision on the newly enacted statute. The Capital murder statutes of Texas, Florida, and Georgia were found constitutional within the guidelines established by Furman vs. Georgia [®] and were affirmed. Although the Texas statute meets the requirements set by the Supreme Court there is continuing debate over its effectiveness.

Usually, evidence needed to find an affirmative answer to questions one and three has been established during the guilt phase of the trial, leaving question two the focus of attention and controversy. The first question is nothing more than a restatement of the intentional element required for conviction. Question three, if raised by the evidence would have also been answered during the guilt phase of the trial. If a "no" answer could be given to question three, it would no doubt have prevented the jury from finding guilt to capital murder. This leaves the question of finding without a reasonable doubt the probability of future danger to society as individual poses to determine whether he is to live or die.

Society has the right to protect itself from future acts of violence. A sentence for life imprisonment does not protect society from the individual's future conduct because there is the possibility of violent acts against the employees of the prison and the possibility of escape or parole. Henry Janette, a convicted murderer, was sentenced to life instead of execution. He escaped from prison and two days later he raped a sixteen year old girl and murdered another teenager while stealing a car. David Peterson had his death sentence commuted and ordered to fifteen years. Less than two years after his release Peterson murdered two more people in California and was again sentenced to death until the Supreme Court ruled California's death penalty unconstitutional. Had the death penalty been imposed and carried, these senseless crimes would never have occurred.¹⁹

Opponents to the question of future danger argue against it because they entered predictions of future conduct are not reliable enough to justify imposition of an irreversible punishment. Although predictions of future conduct are made routinely throughout the criminal justice system, their use is limited to short term considerations that minimize the intrusion of the individual rights guaranteed by the United States Constitution. An individual accused of a serious crime may be held in custody until his trial if sufficient proof shows he may threaten or harm a witness. Or, the deliberation of the sentence length of a convicted

individual may include the probability of future conduct. What these decisions on future conduct have in common is the ability to rule out error.¹¹

According to Charlie Brown, who works in the Public Relation office for Texas Department of Corrections, the average time a person spends on death row is 6.3 years. The longest period was served by Donald Franklin. He spent twelve and one half years on death row before he was executed on November 3, 1988. The shortest sentenced served was Richard Andrade. Mr. Andrade spend two point ten years on death row before his execution on December 12, 1986. The most recent execution was Johnny Anderson. He was executed on May 17, 1990. His intake date was February 15, 1983.¹²

Texas statute does not provide for a life sentence without parole. If a person is convicted of murder they may be eligible for parole in twenty to twenty-five years. If the death penalty is pronounced at trial, the person will spend several years on death row fighting the sentence through appeal. This is a very costly process. Texas law makers should consider passing a law for an automatic life sentence without parole for a person convicted of murder. This would help in the plea-bargain stage before trial. The death penalty is not a deterrent to a person addicted to crack cocaine who will do anything to get another rock. Although, capital punishment may be a deterrent to someone thinking of murder for revenge or insurance purposes. Plea-bargaining may not seem acceptable to society for

people who have been arrested for murder, however, it is sometimes necessary. For instance, a young boy goes into a convenience store and during the commission of the robbery he kills the attendant. He may be allowed to plead guilty to murder and save the expense of a trial. It is unlikely the jury would pass sentence of the death penalty if the person did not have a violent past. The question of future conduct could also hurt the case.

In some instances one party of an offense is used to testify against another. This type of testimony is used when it is the only way to convict both parties. It is better to have all persons guilty of an offense such as murder convicted by using this type of testimony than to have one of them walk away.

Although criminologists have never established a direct relationship between the death penalty, and the murder rate, murder is a continuing evil in today's society. U. S. citizens must come to understand that violent crimes like murder, will not be tolerated in society. Those who commit such crimes may pay with their life.

END NOTES

¹ David L. Bender and Bruno Leone, The Death Penalty, Greenhaven Press, Inc. (1986).

² Ibid

³ Charlie Brown, Texas Department of Corrections Public Information Officer, Personal Interview. May 1990

⁴ Texas Penal Code, Chapter 19 sec.19.03. Capital murder, 1990 Edition, Page 30, Texas Department of Public Safety.

⁵ Texas Code of Criminal Procedure Article 37.071. Procedure in Capital Case, 1990, Page 274, Texas Department of Public Safety.

⁶ Rick Berry, Harrison County District Attorney, Personal Interview. May 1990.

⁷ Furman vs. State of Georgia, 408 U. S. 238(1972).

⁸ Jurek vs. Texas, 428 U. S. 262(1976).

⁹ Furman vs. State of Georgia, 408 U. S. 238(1972).

¹⁰ Norval Morris and Marc Miller, "Predictions of Dangerousness in the Criminal Law." Texas Police Journal, December 1987 15-21.

¹¹ Ibid.

¹² Charlie Brown, Texas Department of Corrections Public Information Officer, Personal Interview. May 1990

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