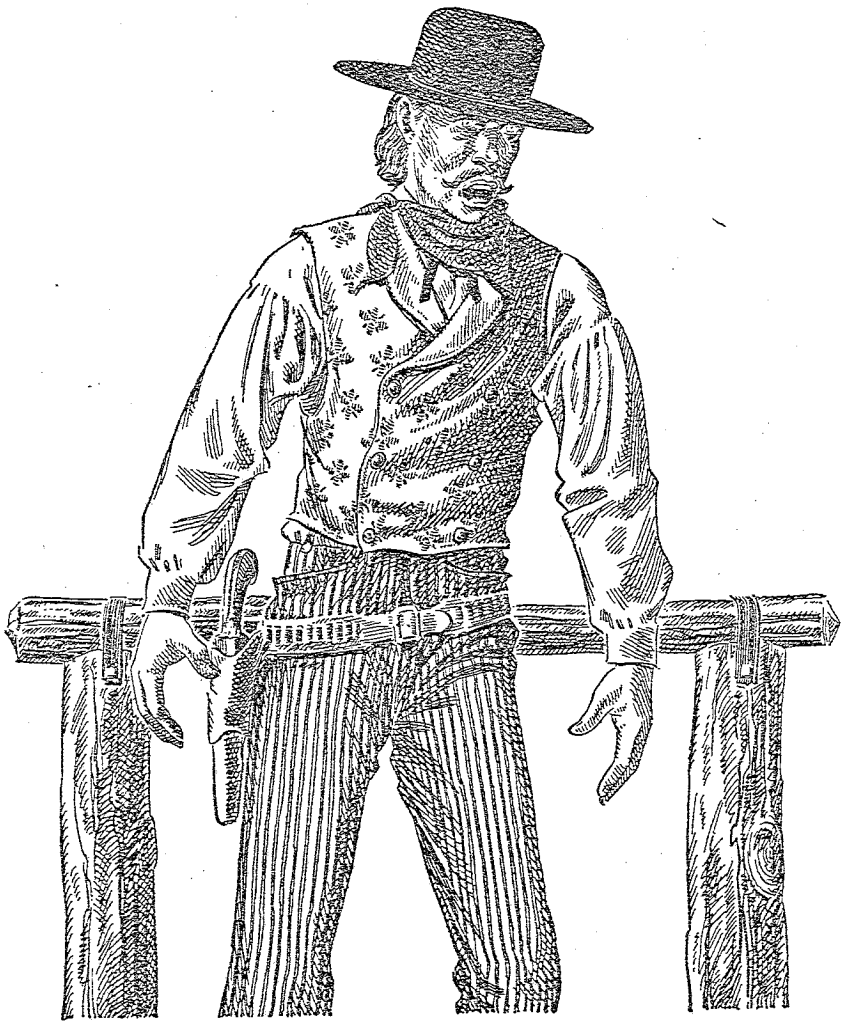

I'LL DIE BEFORE I'LL RUN

The Story of the Great Feuds of Texas

★

C. L. SONNICHSEN

illustrated with drawings by José Cisneros

Photographs

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The Devin-Adair Company
NEW YORK 1962

An earlier, shortened version of this book was published in 1951 by Harper & Brothers, New York.

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by H. Wolff, New York

This book is dedicated with deep respect to the sons and grandsons of the feuding clans of Texas who have built good lives for themselves in spite of the troubles of yesterday.

big fight. He too was courageous, but it is charged against him that he was quarrelsome in his cups. "He was brave," said Colonel Peareson on the witness stand, "but a cruel and dangerous man." [13]

So they lined up: cousin against cousin; uncle against nephew; friend against friend. For years their dislikes and suspicions piled up, like water behind a dam, without any open outbreaks, but on the second of July, 1888, the dam began to crumble.

It was a bright Monday morning, and the town was getting ready for a busy day. Wagons and carriages were coming in. Children's eyes were glued in fascination to the gorgeous uniforms visible here and there as the Peareson Guards, best-dressed drill company in the state, began to turn out. There were a few solemn faces, but it was a happy occasion for most—this was organization day: The Young Men's Democratic Club of Fort Bend County was being born. The Jaybirds were at last closing their ranks and mustering for battle.

About the middle of the morning they marched forth to parade. A long train of wagons and buggies rolled down the main street and came to a halt before the residence of Miss Adeline Booth. At the gate they were met by Miss Charlie Woodall of Huntsville carrying a beautiful silk banner, made by her own hands, and emblazoned with the words *Young Men's Democratic Club of Fort Bend County*. As the Richmond *Democrat* reported the event, Mr. Jeff D. Bryant made the acceptance speech, which concluded: "And should it be the fate of any of us to fall under this banner, may the hand that bedecks our grave be as pure and lovely as the hand that painted these emblems of truth."

Mr. Bryant had no serious notion at the moment of falling heroically under this or any other banner, but a little more than a year later he was facing a charge of murder for his activities in the cause.

In the South in those days one speech was just an appetizer. There was more oratory at the club rooms over Frost's saloon where the constitution of the new political organization was read to thunderous applause.

The object of the club, read the secretary, was "to secure a wise, impartial, economical and unselfish administration of the affairs of our county"; to give all taxpayers a voice in "supervision over appropriations and expenditures"; and to loosen the grip of the "arbitrary and selfish minority that has so long disregarded the consent of the governed."

There were 225 signatures beneath the document on the front page of next Saturday's *Democrat*. There would have been more, but the space ran out.

Even now the spirit of democracy was not exhausted. At eleven o'clock there was still another procession; another mass meeting with speeches; still more delirious applause. Colonel P.E. Peareson, the town's finest orator and president of the Straight Democratic organization, admonished them: "Every man present must do his duty and show to the world that the Democratic party is at last waking up from its long slumber and is by no means dead."

That was how the young Jaybirds went into action. Most of the white people of Richmond felt that it was about time.[14]

★

The First Murder

On the second of August, one month to the day after the organization of the Young Men's Democratic Club, an event occurred which showed how right the Jaybirds were in feeling alarm. The event was a murder.

David Nation noticed it in the "Richmond Rustlings" next day:

> Mr. J.H. Shamblin, son-in-law of Mr. W.D. Fields, while sitting on his gallery at his home about seven miles below here at 9 o'clock last night, was shot in the right side by some unknown party, who rode up to the gate and fired and rode away.

Almost all the details of David's account were wrong, but in one respect he was quite correct—J.H. Shamblin had been shot and killed.

It was a hard blow to the Jaybirds, for Shamblin was one of their bitterest and most active partisans. Handsome and aristocratic in appearance, connected with the first families of the county, and a man of strong personality, he swung plenty of weight and used all of it in the Jaybird interest. All through July and August he had made speeches, talked privately with Negro voters, and stretched his patience to the limit trying to win support for his party. Some say he turned the scale against himself by running a bunch of electioneering darkies off his plantation with a cowhide whip. A better explanation comes from J.A. Ziegler, who was a cotton buyer in those days. Shamblin walked into Ziegler's office one morning and identified a stolen bale of cotton which had been brought in by a Negro named Hudson Caldwell. Ziegler asked Shamblin to have the man arrested on his return to Richmond and he promised to do so, but the thief got wind of it and disappeared for good. "Two other negroes, however, were found who were involved in the theft; and one of them turned state's evidence. En route to the trial, as he passed by Caldwell's home, the wife of Caldwell gave him a cup of coffee. In it she had placed a liberal dose of strychnine. Drinking it, the negro was stricken but managed to crawl over to Mr. Shamblin, then Justice of the Peace, and gave him his dying declaration of the poisoning and cotton theft. This evidence Shamblin brought to the court in Richmond." [1] Naturally, somebody was interested in suppressing Shamblin's testimony.

All this took place in July. On August 2, a Sunday, just between darkness and moonrise, Mr. Shamblin was sitting in his living room reading. His daughter was playing on the floor beside him. Laying his book aside, he got up from his chair and started to walk across the room. At that moment somebody fired a charge of buckshot through the window and stretched him on the floor, mortally wounded. His father-in-law, Mr. W.D. Fields, heard the shot at his home a mile away and hurried over. As soon as the moon came up he searched the grounds; and on the gatepost he found a piece of paper—a crazy, badly spelled blast against Shamblin, concluding with these words:

> . . . the Republican parties is going to hold up their heads if they die hard we will have no democrate to mislead the ignent negro Race astray. You are a man to lead them a stray and then cut their throats and suck their blud. I am a republican and have no use for a dam democrat this is a lesson to all dam cut throat democrats to hold noe more meetings with the ignorent negro race of people.

Mr. Shamblin was still alive and conscious when this document was found. He looked at it and said it was written by William Caldwell, one of the men implicated in Hudson Caldwell's cotton stealing. Sheriff Garvey found William hiding in the woods, matched the writing paper, the gun wadding, and the buckshot picked up at the scene of the murder with similar articles in the Caldwell house, and accumulated other scraps of incriminating evidence. By the time Shamblin drew his last breath Caldwell was on his way to Richmond, where he was held until he could be transferred to a safer lodging in the Houston jail.[2]

While he was there the young Jaybirds had serious thoughts of lynching him. Some of them told H.H. Frost, "If we had had you to lead us and tell us what to do, we

would have done it." So at least Mr. Frost said in a letter to his brother which was published in the Houston *Post*.[3]

It was due to Sheriff Garvey's firmness and coolness that nothing regrettable happened. When the boys began to collect in front of the jail, he told them they couldn't have Caldwell without killing the sheriff and his deputy first. "Garvey and Dickenson kept so cool," said Caldwell in an interview, "it sort of gave me courage." He got safely off to Houston, was not molested when he was brought back for his preliminary trial, and eventually took his case (in 1891) to the United States Supreme Court. Turned down by the highest authority, Caldwell was hanged at last, and it is said that the Jaybirds who went to witness the execution came home with little pieces of rope in their lapels.[4]

All this came later. At the time of Shamblin's death most people were wondering if the Negro had planned his own crime. The Jaybirds printed a proclamation in the Houston and Galveston papers resolving that "the assassination of J.M. Shamblin is laid at the door of the Republicans of Fort Bend County." The indignant Republicans, in two proclamations of their own, declared that the accusation was the result of "blind partisanship and the outgrowth of narrow-minded prejudice." [5]

Not a Jaybird in the whole county believed a word of this denial. It was impossible for anyone to think reasonably of the political situation, and all that was needed was an incident to set fire to the powder keg. The big barbecue at Pittsville on August 16 was as good an excuse as one could ask for.

N. H. Rose

Creed Taylor as an Old Man

His Sources:

① Houston Chronicle 10/11/1936; Zeigers Wave of the Gulf pp 152-58
Houston Post Aug. 3, 7, 8, 1888

② Galveston News 8/3/1888

③ Houston Post 8/8/1888

④ Houston Post 8/23 & 8/25/1889

⑤ Houston Post 8/7 & 8/22/1888

FACT SHEET

The Death Penalty: Texas and the USA

- The USA is the only NATO country which currently executes its citizens.
- Since the 1976 Supreme Court decision allowing the reintroduction of the death penalty, over 160 people have.been executed in the USA.
- Texas has executed 46 people since 1982, more than any other state since the resumption of executions in the USA in 1977.
- There are over 360 people on death row in Texas (more than any other state), four of them women.
- The United Nations, the Council of Europe, the Organization of American States, and the World Council of Churches have declared themselves in favor of the abolition of the death penalty.

The death penalty does not deter, but may aggravate, crime

- No credible study in the world has ever shown that the death penalty is a deterrent.
- Homicide rates from 1907-1963 in NY state (which carried out more executions than any other state during this period) showed an average of two additional homicides in the month following an execution.
- In Michigan, a state without the death penalty, of 400 inmates paroled between 1938 and 1972 who had served an average of 22 years, not one had committed another murder at the conclusion of a study done in 1976.

The death penalty is racist and discriminates against: the poor, the mentally ill, and the mentally retarded

- A *National Law Journal* study states that in the South, the resources of public defenders are grossly inadequate and in many cases the lawyers themselves are incompetent.
- Several states place a $1,000 cap on the defense of individuals on trial for their lives; others give these cases to the lowest bidder.
- Dallas County spends an average of $115,000 in the prosecution of a capital case.
- In Texas, a black convicted of killing a white is 6 times more likely to receive the death penalty than in the reverse case.
- Since 1976, 1 white has been executed for killing a black.
- Texas allows for the execution of people with mental retardation, a condition indicated by an IQ of 70 or below. Johnny Ray Anderson, executed in 1990, had an IQ within this range and was unable to tell the months of the year. Johnny Paul Penry has an IQ between 51 and 63 (based on the results of three separate examinations) and is on death row.
- Larry Robison (Texas death row) was diagnosed with paranoid schizophrenia long before he committed the murders for which he was convicted, but his family was unable to convince state authorities he was a danger. The state of Louisiana has gone to the Supreme Court in order to forcibly medicate David Owen Perry, who is severely mentally ill, so that he might be temporarily competent enough to be executed.
- Dallas psychiatrist, James Grigson, MD, publicly referred to as "Dr. Death", has - in over 130 cases - attested to the future dangerousness of the defendant, even without having "examined" him or her. The American Psychiatric Association has stated: "Psychiatrists should not be permitted to offer a prediction concerning the long-term future dangerousness of a defendant in a capital case..." Grigson has been reprimanded by the APA for his actions.

Juvenile offenders are executed

- International law prohibits the execution of people under 18 at the time of the crime.
- The USA stands with only six other countries that have executed juvenile offenders in the past decade. The other six are Bangladesh, Pakistan, Barbados, Nigeria, Iran, and Iraq.
- The first execution of a juvenile offender in the USA in 20 years occurred in Texas in 1985. Since then, there have been four other executions of juvenile offenders, including two other Texans.
- As of March 1, 1992, 30 juvenile offenders remain on death row in the USA; 24 of the 36 US states with the death penalty have laws allowing the imposition of death sentences on juveniles. In June 1989, the US Supreme Court ruled that the execution of offenders as young as 16 was permissible under the Constitution.

Innocent people may be executed

- In a 1987 study covering a period between 1900 to 1985, it was found that 350 people were wrongly convicted and sentenced to death; 23 of these people were executed.
- In 1989 and 1990, Texas released three men from death row because their convictions were overturned and the state did not have sufficient evidence to retry them: Randall Dale Adams (served 13 years), Clarence Brandley (9 years), and John Skelton (7 years).

The death penalty is costly

- A 1982 NY study found that the first stage of appeals costs taxpayers $1.8 million. This figure does not include the cost of the federal appeals process where 50% to 70% of the death sentences are overturned. - A 1988 Florida study concluded that taxpayers pay over $3.1 million per execution. In 1990, the state of Kansas rejected reinstatement of the death penalty due to the cost of building and maintaining a death row facility.

FOR MORE INFORMATION, WRITE: **Amnesty International Texas Satellite Office**
4209 McKinney Ave., Suite #114
Dallas, Texas 75205

or CALL: **(214) 521-2489**
or FAX: **(214) 521-3733**

2/28/92

TEXAS ELECTRIC CHAIR

Electric chair has seen its share of pain, death

Billy Porterfield

The man who brought the electric chair to Texas was a humane public servant who came to despise capital punishment. He was T.K. Irwin, a Dallas lawyer and state legislator.

During the 1923 session of the Texas Legislature, Irwin teamed with J.W. Thomas, a senator from Belton, to author the bill that made the electric chair the legal instrument of capital punishment. Irwin argued in the House, and Thomas in the Senate, that the chair was more humane than hanging.

In those days, each county was responsible for executions, and hangings were rampant and often vigilante affairs. The last public hanging in Texas was held in Waco on July 30, 1923, when confessed murderer Roy Mitchell swung by the noose at the county courthouse.

The chair itself was built by inmates of the Huntsville unit of the Texas Department of Public Corrections. They immediately dubbed it "Sparky."

The chair was first used on Feb. 8, 1924, when five black men, convicted of murder, were electrocuted in the new death chamber off a new Death Row, the first centralized collection of the condemned in Texas.

Charlie Reynolds was the first to

See Electric, B4

Electric chair has seen its share of death

Continued from B1

sit in the heavy oak chair, which, over a 40-year period, would take the lives of 361 men. Thick leather straps were placed about his wrists, upper arms and ankles. Copper electrodes were fastened to his left ankle and to the shaved crown of his head. A leather mask with a hole for the face was clinched about his skull.

At nine minutes after midnight, an executioner behind a wall pulled a lever, sending a charge of 2,500 volts into Reynolds. Reynolds' body jerked and strained at the straps. It took three charges to kill him. At the last charge, a geyser of smoke and blood shot out of the top of his head. A horrible odor of burned flesh, blood and excrement filled the chamber, crowded with official observers for this historic occasion. Among them was Rep. Irwin.

Reynolds' body was laid out in a hall.

Ewell Morris was next. It took but one charge. His body was placed beside Reynolds'.

George Washington was third. Again, three charges.

It was the same agonizing repetition for Mark Matthews and Melvin Johnson. They died hard. It was over at 1:07 a.m., having taken less than a hour. Irwin, watching the bodies being loaded for burial, could not help but note, with irony and anguish, the greatness that the parents of George Washington and Mark Matthews had appended to their names. Those who witnessed the executions said the drama was the most ghastly they had ever been cursed to see. Shaken by the ordeal, Irwin cried out: "I'm going before the next session of the Legislature with a bill to abolish capital punishment!"

He did. And, of course, he failed, as did others over the years. From the beginning of their several statehoods, Texans have held an "eye for an eye, and a tooth for a tooth" attitude toward crime and punishment. It took the 1964 Supreme Court decision to stop the executions at Huntsville. The last man to die in the chair was Joseph Johnson, a murderer from Houston, whose life was taken on July 30, 1964.

The man who pulled the lever on Johnson was the last executioner of record (now they keep them secret) at Huntsville: Capt. Joe Byrd. He was already up in years when I knew him, a thin and toothless old bird who took it upon himself to keep up the prison cemetery, Peckerwood Hill. That sounds ghoulish, doesn't it, tending the graves of men he guarded and executed? But Capt. Byrd was not what you might suspect. He did not believe in the death penalty as it was administered, but he reasoned that someone had to act in the name of the law, and in his case, fate had decreed that he had to pull the lever for us all, in the name of the state. He did his duty with a great reverence for life.

I found this true of many of those at the walls who were charged with taking the condemned to the chair.

Jack Heard, then the assistant director and later the sheriff of Harris County, refused to set foot in the death chamber. So far as I know, Heard, in his years at the prison, never saw the electric chair. And no man ever questioned Jack Heard's toughness.

The late Don Reid, longtime editor and publisher of *The Huntsville Item*, took it upon himself to be friend and confidant to the men on Death Row. For 44 years, he embraced, without prejudice and preconception, the men that society had deemed as incorrigible rejects. They were our ultimate outcasts, and Reid offered them a last draught of humanity before they sat in the electric chair.

It is incredible to imagine, but Don Reid witnessed more than 180 executions — he lost count after a while. These were not faceless criminals to him, but men he had sought out when they arrived on Death Row, men who sometimes were barely more than boys, men who came to depend on him to stand by them in their last hour. Reid made a point of not reading crime news, not even in the newspaper he edited for so long. "I don't want to make up my mind about these fellows before I meet them," he said to me one time. "I want to be able to see them as human beings, not as killers or whatever. It is the least I can do for them."

When the Supreme Court of the land stopped the executions in 1964, Reid felt redeemed. In his own quiet way, he had helped bring it about as secretary of the Texas Society To Abolish Capital Punishment. After 12 years, it would come back, the death penalty, with the instrument being a needle of poison instead of "Old Sparky," but Don Reid never saw another prisoner die. We, the people and the system, seemed a little reluctant to follow through the way we had, for it was another six years before an inmate on Death Row would receive the first lethal injection. That was in December of 1982. Reid had died the year before.

What of Capt. Byrd? He died shortly after pulling the switch on Joe Johnson. Technicalities kept authorities from burying him in the prison cemetery where he wanted to be laid. They did change the name from Peckerwood Hill to Joe Byrd Cemetery.

And what of T.K. Irwin? He left the Legislature and returned to Dallas, where he distinguished himself as a lawyer. In 1952, at the age of 65, he and his four sons — T.K. Jr., George, Ivan and Lee J. — were admitted to practice before the U.S. Supreme Court in a single ceremony. He died 14 years later.

AUSTIN (TEX.) AMERICAN-STATESMAN
FRIDAY, OCT. 26, 1990

STATE OF TEXAS
OFFICE OF THE GOVERNOR
AUSTIN, TEXAS 78711

ANN W. RICHARDS
GOVERNOR

October 15, 1991

Michael [redacted]
[redacted]
Austin, Texas 78727-4409

Dear Mr. [redacted]:

I received your letter of October 2, 1991 in which you expressed your opposition to the death penalty. In each instance in which an execution is pending, I carefully review the legal status of the inmate. As you are aware, my office receives correspondence and telephone calls from many persons expressing their positions on the imposition of the death penalty in general and on its applicability in a given situation.

While I appreciate that you are opposed to this state law, I am sworn to uphold the laws of Texas. The United States Supreme Court has established the constitutionality of the manner in which the death penalty is applied in Texas. Therefore, it is my duty to abide by the law. As you know, my discretion to grant clemency is limited to a 30-day reprieve. Before exercising this discretion, I must determine that despite the exhaustion of legal remedies, new information has been provided that convinces me that a court will likely alter its earlier determination.

Sincerely,

Ann W. Richards

ANN W. RICHARDS

LETTER RECEIVED By MEMBER OF AMNESTY INTERNATIONAL IN TEXAS

NO EXECUTIONS IN 3½ YEARS

Nov. 26, 1967

Death Row Population Is Growing

By BILL FREELAND
Standard-Times Austin Bureau

AUSTIN — Texas hasn't used its electric chair now for nearly 3½ years. But it keeps trying.

On Nov. 16, a man convicted of armed robbery was supposed to die. Another one, convicted of murder, was to have his turn four days later.

The Department of Corrections at Huntsville was ready. The complicated electrical equipment was tested and found in perfect working order. The death house was prepared. But nobody died.

At the last moment, both men found federal judges who gave them a stay of execution. No one should have been surprised. The state presently has 24 men under sentence of death, the largest number in its history. But only one has a date. All the rest have a federal stay. Some law enforcement officials complain that its the penalty that's being put to death.

It hasn't always been this way in Texas.

According to federal statistics, which cover the last 37 years, Texas ranks third in total executions behind Georgia and New York. Texas' 43-year-old chair has put 362 people to death.

From 1960 to the present, a period when the numbers of executions have seen their greatest decline, Texas has placed second behind California with 29 electrocutions — nearly one out of every six in the country.

In 1964, however, there were only 15 executions in the nation, but five of them were in Texas. No state has had a year like that since. Ever since, Texas has ranked number one.

While the executions in Texas have stopped, the juries have kept on imposing the sentence. As a result of the eight-cell death row at Huntsville had to be expanded to 12, and when that wasn't enough, the condemned began to be jailed on the Ellis Prison Farm; 20 miles outside the main walls, as well.

All this has left Texas in a curious position. Up until 1964, when the state had its last execution, Texas had five times more executions than the national average. But since the federal judges began stopping the execution, the state has accumulated a group of men it cannot electrocute which is three times larger than the national average.

One solution proposed has been to abolish the penalty. The Texas Society to Abolish Capital Punishment has supported in a bill in the legislature which would substitute for death, a long prison term and a reduced chance for parole. Another bill, which the Society has not supported, asks that the penalty be replaced with a literal life term and no chance for parole. Both bills have consistently been defeated, but support for some alternative to the present statute seems to be building.

Another possible solution is that the U. S. Supreme Court will kill the penalty as a "cruel and unusual punishment," which would make it a violation of the Eighth Amendment.

Meanwhile there are still 24 men in this state waiting to die. Word from the state attorneys' offices is that more soon will be on their way.

Write

An Empire for Slavery

. . . . . .

THE PECULIAR INSTITUTION IN TEXAS, 1821–1865

. . . . . .

Randolph B. Campbell

LOUISIANA STATE UNIVERSITY PRESS

BATON ROUGE AND LONDON

harboring or concealing runaways drew only a $100 to $500 fine, but repeat offenders could be sentenced to three to ten years in the penitentiary. The first conviction for aiding or advising bondsmen to run away merited a similar sentence.[11]

Unauthorized trading with slaves was defined as a criminal offense in February, 1840. Throughout the remainder of the antebellum period, any person who bought valuable produce or articles from a slave without the written consent of his or her owner was liable to a fine of as much as $200. Liquor dealers who sold or gave their wares to bondsmen without written approval from their masters were subject to the same penalty.[12]

Aiding or inciting a slave insurrection was not defined specifically as a crime until surprisingly late in the development of Texas' slave code. An act of December, 1837, provided the death penalty for free blacks found guilty of "insurrection, or any attempt to excite it," but no law encompassing whites as well as blacks and specifying aiding, planning, or inciting a *slave* rebellion was passed until 1854. The crime was punishable by death until a revision of the state's penal code in 1858 reduced the penalty to a prison sentence of ten years to life. "Insurrection of slaves" was defined as an "assemblage of three or more, with arms, with intent to obtain their liberty by force." After 1858 the law also provided a penalty of five to fifteen years in prison for any person who tried to render a slave "discontented with his state of slavery."[13]

A good many Texans ran afoul of one or the other of these laws against criminal interference with slaves. The Texas State Penitentiary in 1856–57, for example, had eighteen inmates serving sentences for "Negro Stealing" or "Enticing Away Negroes." State supreme court reports indicate that others escaped prison only through technicalities. James Cain, "yeoman" of Fayette County, had his conviction for slave stealing reversed because the word "feloniously" was omitted from his indictment. Samuel Lovett of Upshur County was convicted of enticing away a slave on the testimony of individuals who overheard him talking to the bondsman in December, 1856, about the possibility of leaving the following spring. Justice Royal T. Wheeler reversed the district court on the grounds that such a discussion so far before the fact did not constitute an actual effort or an attempt by Lovett to commit the offense in question.[14]

11. Gammel (comp.), *Laws of Texas*, II, 46–47, 650; Oldham and White (comps.), *Digest of the General Statute Laws*, 541.

12. Gammel (comp.), *Laws of Texas*, II, 345–46; Oldham and White (comps.), *Digest of the General Statute Laws*, 542.

13. Gammel (comp.), *Laws of Texas*, III, 1511; Oldham and White (comps.), *Digest of the General Statute Laws*, 539. Oliver C. Hartley (comp.), *A Digest of the Laws of Texas* (Philadelphia, 1850), the most recent digest made before a general revision began in the mid-1850s, had no law specifying penalties for inciting slave insurrection.

Records of the various district courts across Texas also reveal case after case arising from violations of the laws against interfering with slaves, especially the offenses of selling liquor to bondsmen or buying from them without the consent of their owners. Thomas Kerchoff of Red River County, for example, was found guilty in 1860 on three counts of selling liquor to a slave and fined $20 on each charge. J. and N. Alexander of Smith County were each fined $25 for buying corn from one of D. R. Jeffries' slaves without his written consent. Convictions of this sort were also appealed at times to the supreme court, which showed the same concern for procedures that it demanded in cases involving more serious offenses. When S. M. Kingston of Gonzales County appealed a conviction for buying five chickens from a slave, Justice James H. Bell, noting that the eighteen-year-old son of the bondsman's owner was present at the transaction and that the indictment did not specify "written" permission, remanded the case to the lower court. John M. Allen won a similar reversal on a charge of selling liquor to a slave when Chief Justice Hemphill ruled that, since no money had changed hands, the whiskey was a gift, and gifts of liquor from whites to blacks were not illegal.[15]

Laws governing the conduct of bondsmen were also an essential part of Texas' slave code. An act of December, 1837, made insurrection, poisoning, rape of a white female, assault on a white with intent to kill, maiming a white person, arson, murder, and burglary into capital offenses if committed by a slave. All other crimes and misdemeanors "known to the common law of England" committed by slaves could be punished at the discretion of county courts "so as not to extend to life or limb." These lesser offenses did not require grand jury action, but a jury trial was mandatory. Any slave who used "insulting or abusive language" to a white person could be arrested by a justice of the peace and punished by twenty-five to one hundred lashes. In 1840 Congress provided that slaves could not carry a gun or deadly weapon without the written per-

14. *Report of the Directors, Superintendent and Agent of the Texas Penitentiary for the Years 1856 and 1857* (Austin, 1857), 44; *Cain* v. *The State*, 18 Tex. 387 (1857); *Lovett* v. *The State*, 19 Tex. 174 (1857).

15. Red River County District Court Minutes, Book F; Smith County District Court Papers, Case #706; *Kingston* v. *The State*, 25 Supp. Tex. 166 (1860); *Allen* v. *The State*, 14 Tex. 603 (1855).

mission of their owners. Any white person could take such weapons away from a bondsman who did not have the proper authorization.[16]

After 1845 the Texas legislature simply built upon the republic's laws defining criminal conduct by slaves and setting the penalties for those crimes. By 1860 the state's penal code provided only two punishments for bondsmen: death and whipping. Death by hanging was the punishment for those who committed murder, insurrection, or arson; rape or attempted rape of a white woman; and robbery, assault with the intent to commit murder or robbery, or assault with a deadly weapon on a white person. Lesser offenses such as petty larceny, public drunkenness, and insolence to a white person were punishable by whipping. All capital offenses were tried in district courts while lesser crimes went to justices of the peace. In any case involving an offense greater than the theft of property worth less than twenty dollars, slaves had the right to a jury trial. Slaves could not be held as accessories to crimes committed by their masters, and they were not responsible for offenses occurring while they were under their owner's supervision or control. Anytime, however, that bondsmen acted outside the immediate custody of their masters they were legally responsible for their acts.[17]

Undoubtedly many slaves were punished by their masters without regard to the law, especially in cases of minor violations, but it was not uncommon for bondsmen to be tried in court. Justice of the peace courts heard cases involving lesser offenses and at times handed out severe penalties. A Polk County slave, for example, accused in 1856 of stealing a bell and rope worth two dollars and injuring a mare, was found guilty of the first charge and innocent of the second. His punishment, set by the justice, was thirty lashes by the county sheriff. A Hunt County jury in January, 1856, directed that a slave found guilty of larceny be given "76 stripes well laid on." In one Smith County justice court, a slave named Charles received a jury trial because he was accused of stealing property valued at more than twenty dollars. He was found guilty and sentenced by the jury to be given "three hundred lashes on his bare back to be well laid on

16. Gammel (comp.), *Laws of Texas*, I, 1385–86, II, 346.

17. Oldham and White (comps.), *Digest of the General Statute Laws*, 482, 559, 562; *Guffey* v. *Moseley*, 21 Tex. 408 (1858); *Ingram & Wife* v. *Atkinson & Wife*, 4 Tex. 270 (1849). It must be remembered that laws concerning offenses by slaves gave masters a great deal of latitude in punishing their slaves without going to any other authority. This will be dealt with below in chapter 7.

with a leather strap in such manner as not to inflict great bodily injury." It is difficult to imagine just how the sheriff complied with this order. In a similar case in 1860, Governor Sam Houston intervened to abate the severity of punishment. E. V. Stanley's slave, Abe, found guilty of burglary, was sentenced to 750 lashes to be administered at stated intervals over a period of time, but Houston pardoned him before the full penalty was exacted.[18]

Bondsmen who committed more serious offenses against whites often were dealt with by lynch law. The Austin *Texas State Gazette* expressed approval of this form of "justice" in October, 1860. "A negro has been arrested for a rape on a respectable white lady," the editor wrote. "We expect he has been hung up a tree before this." Lynchings were common enough that Texas newspapers reported at least three in 1859 alone. At Smithfield, Tarrant County, in May, one of James Roper's slaves, angered because his master did not buy his wife in Alabama and bring her to Texas, killed Roper and burned his body. Local whites forced the slave to confess and then burned him on the same spot. A similar incident occurred in Polk County during May or June. In Hopkins County, after a slave was arrested for the attempted rape of a white woman, a mob broke into the jail and hanged him.[19]

Lynch law did not always prevail, however. Two slaves who murdered their owner, William Gaffeney, near Clarksville in April, 1853, were duly tried, sentenced, and executed according to the law. The two were valued at $1,879.16 by the jury that sentenced them to death. When three of Richard S. Bostick's slaves killed him in January, 1858, they met the same fate as Gaffeney's bondsmen. Following their execution in October, the administrator of Bostick's Jackson County estate subtracted $3,100, the appraised value of the three males aged forty-six, thirty-five, and twenty-five, from the property under his control. Peter, a sixteen-year-old boy from Red River County, also received a procedurally correct, albeit very swift, application of the law in early 1859. Accused of killing his mistress,

18. Polk County Justice of the Peace Records, JP Book, Precinct 4; Hunt County Commissioners' Court Minutes, Book A-1, pp. 96–97; Smith County Justice of the Peace Papers, Case #25; Amelia W. Williams and Eugene C. Barker (eds.), *The Writings of Sam Houston* (8 vols.; Austin, 1938–43), VIII, 3.

19. Austin *Texas State Gazette*, October 20, 1860; Enda Junkins, "Slave Plots, Insurrections, and Acts of Violence in the State of Texas, 1828–1865" (M.A. thesis, Baylor University, 1969), 50–51; Matagorda *Gazette*, July 23, 1859.

he was indicted on January 6, tried and found guilty on the twelfth, sentenced on the seventeenth, and hanged on the twenty-eighth. The jury that found Peter guilty fixed his value at $800.[20]

The case of Dave, a Smith County bondsman accused of assault with intent to commit murder, demonstrates a concern for procedures that was not uncommon when slaves committed serious offenses. A grand jury sitting at Tyler on June 4, 1861, indicted Dave for an April 15 assault on the son of his master, William C. Gober. Dave had stabbed Young Gober, who was "then and there a free white person," three times "with a certain knife then and there being held in the hands of him the said . . . slave." The attack with a deadly weapon had so injured its victim that "the life of him the said Gober was despaired of." Dave had a court-appointed attorney and entered a plea of not guilty. District Judge R. A. Reeves conducted his trial and at the conclusion charged the jury as follows:

> If the jury believe from the evidence that the defendant assaulted Young Gober with a knife as charged in the indictment and that it would have been murder if death had been the result, the assault is deemed in law to have been made with intent to commit that offense and the punishment is death. And if you find the defendant guilty as charged in the same indictment, return a verdict accordingly. If you find him not guilty so say by your verdict. If you have a reasonable doubt of his guilt, he is entitled to the benefit of such doubt and to an acquittal. If you find him guilty of the assault to murder you will also assess his value and state whether his owner has attempted to evade the law against the negro.

The jury found Dave guilty and set his value at $1,000. Dave's attorney appealed for a new trial, but Judge Reeves denied the motion and imposed the death sentence. Dave was hanged on July 11, 1861, on a gallows erected within the Smith County jail. In April, 1862, William C. Gober collected $500 from the state comptroller.[21]

20. Clarksville *Northern Standard*, April 9, June 4, 11, 1853, January 29, 1859; San Antonio *Herald*, October 20, 1858; Estate of Richard S. Bostick, Jackson County Probate Records (Final Estate Record); Red River County District Court Minutes, Book F.

21. Smith County District Court Papers, Case #754. The voucher for $500 paid to Gober is in the Papers of the Comptroller of Public Accounts, Texas State Library and Archives, Austin. Young Gober was twenty years old in 1860. He survived the attack and still lived in Smith County at the census of 1870. Eighth Census, 1860, Schedule 1 (Free Inhabitants); Ninth Census of the United States, 1870, Schedule 1 (Inhabitants), National Archives, Washington, D.C.

Although a strong presumption of guilt was apparent, slaves charged with offenses against whites were not always found guilty and punished. The case of Elizabeth, who belonged to James Threatt of Robertson County, provides a good example. When her owner's young son disappeared in June, 1863, Elizabeth and another slave named Ned were beaten with a rope to extort information or confessions. Ned claimed that Elizabeth had put the child in a well, whereupon she said he was lying and took witnesses to the child's badly bruised body in a pond of water near the master's home. Ned and Elizabeth were indicted for murder. He, having met his death shortly thereafter (another lynching?), was not tried, but Elizabeth was convicted. Her court-appointed lawyer appealed to the Texas supreme court and won a new trial. Justice Moore ruled that the evidence obtained after coercion was admissible in court but concluded that it did not sustain a murder verdict. Elizabeth's cognizance of the child's murder and the body's hiding place "does not prove that she killed it," he wrote, "or was an accomplice in its being done." Once the case was remanded to Robertson County and then moved to Falls County on a change of venue, she was found not guilty. Pompey, a slave in Wharton County, won an acquittal on charges of attempting to poison his master after telling the jury how harshly he had been treated. A Burleson County bondsman received a full pardon from Sam Houston in 1860 after "sundry Citizens" petitioned the governor to explain that the assault which led to a death sentence had taken place "under peculiar and aggravated Circumstances" and left "no permanent injury."[22]

There were also cases in which slaves were prosecuted for capital offenses against their fellow bondsmen. When, for example, Jack was accused of killing his wife Nicey in Guadalupe County, a jury convicted him and imposed a death sentence. His case was appealed to the state supreme court in 1861 on several grounds, including the failure of the jury to set his value. Justice James H. Bell, however, denied the validity of the appeals and confirmed the district court's decision. Nels and Calvin were more fortunate than Jack. Nels, convicted of murder in Red River County in 1846, won a reversal because the jury in his trial had not been

22. *Elizabeth, A Slave* v. *The State*, 27 Tex. 329 (1863); Falls County District Court Minutes, Book B, Case #288; Annie Lee Williams, *A History of Wharton County, 1846–1961* (Austin, 1964), 106; Williams and Barker (eds.), *Writings of Houston*, VIII, 86–87.

sworn. Calvin, a Rusk County bondsman, was convicted in 1858 after his indictment was altered during the trial to clarify ownership of the victim and how she had died. Justice Bell found this procedure too improper to support a conviction. "The law of the case," he wrote, "is precisely the same as if the accused were a free white man, and we cannot strain the law 'in the estimation of a hair,' because the defendant is a slave."[23]

Many offenses by slaves against fellow blacks probably went without formal prosecution because owners feared the loss of valuable property to criminal punishment. This possibility is suggested in an interesting case that came to the supreme court in 1866, the year after emancipation in Texas. Mary and Maria, who belonged to B. D. Arnold of McLennan County, had quarreled in October, 1863, over the need to punish Maria's child, who supposedly had told a lie on Mary. According to witnesses, Mary smacked the child, whereupon Maria screamed: "You whip my child, God drast your eyes! I will kill you!" and stabbed her with a butcher knife. Mary lived for a month after the attack but died on November 29, 1863. Maria was not indicted for any crime for two years, probably, in the words of the statement of facts presented when the case finally came to the supreme court in 1866, because her master "was unwilling to incur the additional loss of punishing the murderer by law." A similar case apparently occurred in Washington County during 1857. The administrator of the Elisha D. Little Estate informed the probate court that a man named Anderson was unmanageable and had committed an offense "which if prosecuted would have forfeited his life." This report did not specify that Anderson's offense was against another black, but that was likely.[24]

Laws concerning runaways constituted a fourth aspect of Texas' slave code. An act of February, 1841, gave all Texans the lawful right and responsibility to apprehend runaway slaves and take them before a local justice of the peace. The runaway was then returned to his owner, if known, or jailed. If, after six months, during which time notices were to be placed in local newspapers, the slave had not been claimed, he was to

23. *Nels, A Slave* v. *The State*, 2 Tex. 280 (1847); *Calvin, A Slave* v. *The State*, 25 Tex. 789 (1860); *Jack, A Slave* v. *The State*, 26 Tex. 1 (1861).

24. *Maria, A Freedwoman* v. *The State*, 28 Tex. 698 (1866); Estate of Elisha D. Little, Washington County Probate Records (Final Record, Book G). The law providing compensation for owners who lost their property due to capital punishment by the state also indicated an awareness that masters might attempt to evade such punishment and losses. As noted above, compensation depended on the owner's having made no attempt to evade the law.

be sold at auction. However, if the original owner appeared and proved title to his property within the next three years, he was to receive the amount paid for the slave. By 1844, when the number of bondsmen escaping to Mexico had become troubling to slaveholders, the state congress made it legal for anyone capturing runaways west of the San Antonio River to demand a fifty-dollar reward for each plus two dollars for every thirty miles traveled to return them to the rightful owner.[25]

Laws established under the republic concerning the capture and disposal of runaways remained in effect through the statehood period, as did the system of special rewards for the capture of slaves west of the San Antonio River. In 1858 the state legislature, upset at the number of slaves escaping to Mexico and the Mexican government's refusal to respond to the situation, passed a measure entitled "An Act to Encourage the Reclamation of Slaves Escaping Beyond the Limits of the Slave Territories of the United States." This act entitled any person who captured a slave attempting such an escape and delivered his captive to the sheriff of Travis County at Austin to a payment from the state treasury amounting to one-third of the slave's value. The state would recover its costs either from the slave's master when the property was reclaimed or from the sale of the slave. The wording of this measure was such that it did not call for capturing slaves who had escaped to Mexico—only those who were "escaping." But this was a nicety that might easily have been overlooked by zealous slave catchers.[26]

In May, 1846, the Texas Legislature took an important step toward stronger enforcement of the various laws protecting slavery—those dealing with criminal interference by free persons and with runaways as well as those regulating slave conduct—by creating a formal slave patrol system. The law directed county courts to appoint a patrol consisting of a captain and as many as five privates for each "district or division" in the county. One-half of the members of a patrol were to be slaveholders. Their period of service was three months, and they were required to patrol their district at least once a month "and as much oftener as the tranquility thereof may require." Patrols were empowered to search suspected places for harbored or runaway slaves. If they captured a runaway, patrol members divided the fees that would have come to any in-

25. Gammel (comp.), *Laws of Texas*, II, 345–46, 950–51.

26. *Ibid.*, IV, 1074–75; Oldham and White (comps.), *Digest of the General Statute Laws*, 407–409.

whelming from plantation journals, probate records, and slave narratives that serious illnesses and injuries were treated by doctors. Julien S. Devereux regularly paid physicians for treating slaves, as did James F. Perry. The latter sent one favorite house servant to a clinic in Houston when she developed breast cancer. From there, she was transferred to a hospital in New Orleans and surgery performed. All the attention was in vain, however, as the woman died several years later. Estate administrators and guardians made annual reports showing large sums spent on doctors and medicines. The estate of Sarah Droddy in Milam County paid doctors $48 for treating a thirty-year-old woman in 1845 and $55 for the woman and her child in 1846. The administrator of John G. Rives's estate in Cass County, which had forty slaves, paid $140.65 in doctors' bills for the first ten months of 1846. William J. Blocker's family owed a Harrison County doctor $335 in 1864, nearly all as a result of attention to their slaves. Estate after estate reported paying doctors and midwives to assist in the delivery of slaves' babies. Bondsmen themselves remembered being visited by doctors. They had no illusions as to the role of self-interest as well as humanity in their treatment. Armstead Barrett of Walker County said: "Old Massa have doctor for us when us sick. We's too valuable." William Byrd was more succinct: "We too valuable to die." [17]

Slaves did not lack for medical attention; the problem was the state of medical science in antebellum Texas. Physicians, regardless of their educational backgrounds, simply did not know very much. Some still used treatments such as bleeding, cupping, and blistering, and most were powerless against many of the diseases and internal injuries that afflicted slaves. Inadequate medical science obviously took its toll on whites as

17. Curlee, "Texas Slave Plantations," 271–73; Maddox, "Slavery in Texas," 67–69. Lucadia Pease told her sister in 1851: "I practice physic without having received a diploma." Pease to Augusta N. Ladd, March 18, 1851, in Pease-Graham-Niles Family Papers. Winfrey, *Julien Sidney Devereux*, 75; Estate of Sarah Droddy, Burleson County Probate Records (Probate Minutes, Book 1); Estate of John G. Rives, Cass County Probate Records (Final Record Probate Court, Book 1); Estate of William J. Blocker, Harrison County Probate Papers. Examples of estates reporting doctors and midwives assisting in the delivery of babies include: Estate of Joseph Stevens, De Witt County Probate Records (Final Record, Book C); Estate of C. N. Breen, Williamson County Probate Records (Probate Minutes, Book 3R); Estate of Charles H. Whitaker, McLennan County Probate Records (Probate Records, Book B); Estate of G. W. Hadnot, Jasper County Probate Records (Probate Minutes, Book C); *Am. Slave, Supp.*, Ser. 2, II, 197 (Armstead Barrett), III, 578 (William Byrd), II, 146 (Henry Baker), V, 1910–14 (Nancy Jackson). It was possible to obtain life insurance on slaves. James Morgan insured a sixteen-year-old boy for $800 with the British Commercial Life Insurance Company in 1853. The policy, which cost $33.25, is in Morgan Papers.

Table 13. Distribution of White and Slave Populations According to Age, 1850 and 1860

	Slaves		Whites	
Ages	*Number*	*Percent*	*Number*	*Percent*
1850				
0–9	19,061	32.8	50,158	32.6
10–14	8,243	14.1	19,802	12.9
15–49	28,093	48.3	75,449	50.0
50–65	2,080	3.6	6,610	4.3
65+	684	1.2	2,015	1.3
1860[1]				
0–9	59,474	32.7	136,880	33.0
10–14	24,782	13.6	52,913	12.8
15–49	88,614	48.8	199,606	48.1
50–65	6,459	3.6	19,412	4.7
65+	2,289	1.3	5,727	1.4

[1]In 1860 the total population figures included 948 slaves and 6,353 whites who were the result of estimates by census takers. No ages were available for these individuals.

well as blacks, but slaves generally had less adequate material conditions, did heavier work, and therefore suffered from more diseases and injuries. Still, their life expectancy, as it can be measured roughly from census reports, was only slightly lower than that of whites. In both 1850 and 1860, the proportions of the slave and white populations that fell into five age categories ranging from childhood (0 to 9 years) to old age (65 and over) were very comparable (see table 13). Whites who lived to be fifty or older were less than 2 percent more of the whole white population (5.6 percent in 1850 and 6.1 percent in 1860) than were similarly aged blacks as a part of its slave population (4.8 percent in 1850 and 4.9 percent in 1860).[18]

Every bondsman in Texas knew that the material conditions of servitude were vitally important; for many, punishment and cruel treatment held nearly equal significance. The constitution of the republic had no provi-

18. For examples of treating slaves with bleeding, blistering, etc., see Estate of Sarah Droddy, Burleson County Probate Records (Probate Minutes, Book 1). Age distributions are in DeBow (comp.), *Statistical View of the United States*, 52–53, 89–90; U.S. Bureau of the Census, *Population of the United States in 1860*, 482–83.

sions concerning physical abuse, but in February, 1840, congress provided that anyone who "shall unreasonably or cruelly treat, or otherwise abuse any slave" could be punished, upon conviction, with a fine of $250 to $2,000. Any person who murdered a slave or caused death through cruel treatment was to be tried for a felony, as in any case of murder. District judges were to enforce these provisions, but they were undoubtedly hampered by a law of December, 1836, that provided that blacks and mulattoes could not be witnesses "in any case whatsoever, except for and against each other." This was taken to mean that slaves could not testify against whites, so cases involving the mistreatment of slaves depended solely on the willingness of whites to protect slaves against other whites.[19]

The Constitution of 1845 permitted the legislature to pass laws requiring slaveowners "to treat them [slaves] with humanity" and to pass laws requiring slaveowners "to abstain from all injuries to them extending to life or limb." It also contained a section providing that "any person who shall maliciously dismember, or deprive a slave of life, shall suffer such punishment as would be inflicted, in case the like offense had been committed upon a free white person, and on the like proof—except in case of insurrection of such slave." On the basis of these constitutional provisions and the 1840 law protecting slaves from physical cruelty and murder, the Texas legislature developed a code defining the power of masters to punish their bondsmen and the points at which punishment became cruel treatment.[20]

At the close of the antebellum period, Texas slaves could be punished by their masters (or anyone such as an administrator or hirer having lawful control of them) according to the following general principles:

> 1ST. The right of the master to the obedience and submission of his slave, in all lawful things, is perfect, and the power belongs to the master to inflict any punishment upon the slave, not affecting life or limb, and not coming within the definition of cruel treatment, or unreasonable abuse, which he may consider necessary for the purpose of keeping him in such submission, and enforcing such submission to his commands; and if, in the exercise of this right, with or without cause, the slave resists and slay his master, it is murder.
>
> 2ND. The master has not the right to kill his slave, or to maim or dismember him, except in cases mentioned in Article 564 [cases of insurrection or forcible resistance to a white] of this Code.
>
> 3RD. A master, in the exercise of his right to perfect obedience on the part of the slave, may correct in moderation, and is the exclusive judge of the necessity for such correction; and resistance by the slave, under such circumstances, if it results in homicide, renders him guilty of murder.

19. Gammel (comp.), *Laws of Texas*, I, 1265–66, II, 346. The willingness of whites to protect slaves against other whites will be discussed in detail below.

20. *Ibid.*, II, 1296, III, 29. In 1848, the fine for cruel treatment or unreasonable abuse was lowered from $250–$2,000 to $20–$500. During the 1850s, however, the penalty would be increased to $100–$2,000.

In addition to these powers of punishment legally accorded masters, any white man, when faced with "insolence" on the part of a slave, could inflict "moderate chastisement, with an ordinary instrument of correction." Also, any free white person could give a bondsman a "moderate whipping" for any one of seven different offenses, such as using "insulting language or gestures" toward a white or being drunk and making a disturbance in public.[21]

The penal code also attempted to define the points at which punishment became unreasonable abuse or cruel treatment and provided fines of $100 to $2,000 for offenders. "Unreasonable abuse" was the inflicting of punishment "greatly disproportionate to the nature of the offense" or beating with "unusual implements." "Cruel treatment" was "to torture or to cause unusual pain and suffering" or to punish severely enough to injure a slave's health or "depreciate his value." If a slave was maimed or disfigured, the person responsible could be charged with unreasonable abuse and cruel treatment. If mistreatment resulted in the death of a slave, the offence was murder. Finally, the code provided fines of as much as $100 for any person who, "without sufficient provocation," whipped or struck a slave that was not his property or under his lawful control.[22]

Slaveholders, in exercising their right to "obedience and submission" from their bondsmen, inflicted a variety of punishments. Whipping was most common, and the instruments used varied from switches to sticks to leather whips. Some owners also used jails, chains, clogs (leg weights),

21. Oldham and White (comps.), *Digest of the General Statute Laws*, 560–61.

22. *Ibid.*, 542–43.

and other special devices. Gus Johnson, for example, remembered that his mistress jailed her slaves in a hole dug in the ground with a weighted "drop door" to close it. The driver on the Kit Patton place forced workers to drag a chain as they worked in the field, and J. S. Devereux bought a fifteen-pound clog "to put on negro man Ben" in 1850.[23]

Slaves were whipped for many reasons, including running away, stealing, fighting, insolence, and failure to complete their work on time and to their masters' satisfaction. Jacob Branch's mother was whipped for letting flies speck the clothes she washed; Fannie Brown, for her slowness in learning how to spin. Others were whipped for poor cooking, for not keeping their row up with the other slaves' rows, and for letting livestock escape. Efforts to determine the proportion of all slaves who suffered whippings and how frequently they were punished are futile. Some masters never whipped or permitted it on their places. Others were like the master in Limestone County, who, in the words of one of his slaves, "had to beat somebody every day." Clearly, many slaves were whipped, and the practice was common enough that all were aware that they could be so punished. Every slave did not have to receive a whipping in order to be impressed with the frightening possibility that it could happen to him. One woman who ran away and was later caught expressed what was likely the typical bondsman's view on this form of punishment. When asked by her owner if she had not been afraid of wild animals, she replied: "I'm more scared of you than the animals, they don't whip."[24]

Slaveowners tended to view whippings as a necessary disciplinary measure, not as cruel treatment. For example, John Bauer, Ashbel Smith's overseer, in his annual report for 1842, wrote: "I am from principle disinclined to ill treat a beast far less a human being." He also reported that when Albert tried to run away he had been caught and given a "sound whipping." Regardless, however, of what masters and overseers such as Bauer thought, nearly any whipping was painful enough to border on

23. Curlee, "Texas Slave Plantations," 126–27; Winfrey, *Julien Sidney Devereux*, 73; *Am. Slave, Supp.*, Ser. 2, II, 226 (Harrison Becket), VI, 1992 (Gus Johnson), III, 629 (Richard Carruthers).

24. *Am. Slave, Supp.*, Ser. 2, II, 146 (Henry Branch), II, 410 (Jacob Branch), II, 462 (Fanny Brown), VII, 2767–68 (William Moore), VII, 2641 (Susan Merritt). *Ibid.*, II, 352 (Harrison Boyd), III, 475 (James Brown), are examples of the many slaves who said they were never whipped. William Moore (*ibid.*, VII, 2767), said his owner had to whip someone every day; Walter Rimm (*ibid.*, VIII, 3314), told about the woman who was more afraid of her owner than of wild animals. Roemer, *Texas*, 163–64, told of a slave blacksmith who had never been whipped.

cruel treatment. Moreover, severe beatings were not uncommon. The LaGrange *True Issue* in July, 1860, described how a master in Coryell County whipped a girl from sunrise until noon. One observer said the slave, who was accused of stealing, was the most inhumanely whipped creature he had ever seen, including horses and oxen. Mollie Dawson of Navarro County remembered her horror at the first whipping she ever saw. She was visiting her father who lived on a neighboring plantation when she saw a man with his feet and hands tied stripped naked and lying on the ground.

> This white man was whipping him and the blood was all over this nigger and he was saying "o, master, o, master, I pray you not to hit me any more. Oh, Lordy, oh, Lordy, has mercy on me. Master, please has mercy on me, please has mercy." But this man wouldn't stop a minute and spits tobacco juice and cuss him and then starts in whipping him again. This nigger was jumping around on the ground all tied up, just like a chicken when you chops his head off when this man was whipping him and when the white folks would stop awhile this nigger would lay there and roll from side to side and beg for mercy.
>
> I runs off a good piece when this white folks started whipping him and stopped and looks back at him, I was so scared that I just stood there and watched him till he quit. Then he tells some of the slaves to wash him off and put salt in the cut places and he stood there to watch them to see that they did. He was chewing his tobacco, spitting and cussing that nigger and when they gets him washed off and puts salt in the raw places he sure did scream and groan.
>
> But when he groaned they just keeping putting the salt in to the wounds on his poor old beat up body.
>
> The first thing that I know my father was patting me on the back and said, "Honey, you better run along home now," and I sure did and I didn't go back over there any more. That was the only slave I ever saw get a whipping.

Another bondsman, Andy Anderson, never forgot or forgave the first whipping he received. For accidentally breaking part of a wagon while gathering firewood, he was tied to a stake and given ten lashes every half hour for four hours. "I have that in my heart until this day," he told his WPA interviewer during the 1930s. Jacob Branch said that when his mis-

tress beat his mother with a cowhide whip, it "look like she cut my mama in two."[25]

Some whippings were fatal. In 1861, for example, William R. Wilson of Harris County killed a slave named Ned by inflicting six hundred lashes with a "gutta percha strap." The manager of Andrew M. Echols' sawmill in Burleson County whipped a hired slave to death in 1856. The *Texas State Gazette* of October 7, 1854, carried an account of an overseer's administering a fatal beating to a slave woman.[26]

Cases of unreasonable punishment and cruel treatment, sometimes to the point of death, that did not involve whipping also were reported. When, for example, Eda Rains fell asleep while fanning a baby of the family to whom she was hired, her mistress struck her with the turkey wing fan and scarred her forehead for life. David Chandler of Travis County killed a slave belonging to David Conner because the bondsman, for some unspecified reason, "raised his hand" against Chandler. J. D. Nix of Harris County assaulted a slave woman and cut her with a knife. John Farrett was indicted in Red River County for assault with intent to murder after he wounded a slave girl named Catherine. James H. Callihan of Guadalupe County attempted to take a pistol away from a hired slave and then, when he ran away, shot and killed him. Thomas Presley, in the words of an Anderson County indictment, "did . . . without just provocation, inflict unusual pain . . . upon . . . a negro slave . . . the property of Millings, . . . murdering him." Charles U. Brady, an overseer in San Augustine County, shot and permanently disabled a slave as the result of an altercation stemming from the latter's having said something "impudent." The overseer on William T. Scott's Harrison County plantation killed a slave who physically resisted discipline. Another planter in the same county informed his son in 1859: "Dr. Stewart shot his man John for insubordination but it is thought he will not die." In April, 1852, Benjamin E. Roper, Ashbel Smith's overseer, cut a slave named Lewis with a knife. Roper informed Smith that the slave would remain with a doctor "until he is able to bear punishment when I shall bring him home

25. John Bauer to Ashbel Smith, December 26, 1842, in Smith Papers; La Grange *True Issue*, July 5, 1860; *Am. Slave, Supp.*, Ser. 2, IV, 1120–21 (Mollie Dawson), II, 52 (Andy Anderson), II, 410 (Jacob Branch). Advertisements for runaways sometimes testified to permanent scars left by whippings. See, for example, San Augustine *Red-Lander*, September 9, 1841; Marshall *Texas Republican*, March 10, 1865.

26. *Wilson* v. *The State*, 29 Tex. 240 (1867); *Echols* v. *Dodd*, 20 Tex. 191 (1857); Austin *Texas State Gazette*, October 7, 1854.

and give him a *very severe whipping*." If "*any* negro . . . should ever give me the like provocation," Roper wrote, "I will deliberately take his life."[27]

At some point then, punishment and the exercise of whites' power over slaves went beyond discipline and became abuse, cruel treatment, and even murder. Slaves were supposed to have the protection of the law in such cases, but relatively few actions were brought against masters for cruel treatment or murder of their own slaves. Perhaps this was because only a small minority of owners subjected their own valuable property to extreme mistreatment. On the other hand, few white witnesses probably were available or willing to bring charges and testify against a master for what he did to his own bondsmen on his own farm or plantation, and blacks could not testify in court for each other or against whites.[28] Under these circumstances, legal actions against masters for mistreatment of their own slaves appear to have been brought only in especially aggravated cases.

One such case involved the Steen family of Smith County. Thomas Steen was indicted in 1847 for cruel treatment of three young slaves by denying them adequate food or clothing, exposing them to inclement weather, and whipping them with unreasonable severity. He was acquitted, but the next year his son James Steen was indicted on identical charges. At the trial in 1850, witnesses testified that they had seen two of the slaves, an eleven-year-old boy and a thirteen-year-old girl, working naked in the fields and had seen them, in the words of one witness, "whipped and whipped pretty badly." Thomas Steen, testifying in his son's behalf, claimed that the children had "always been part of his family," were well cared for, and worked very little. They had been whipped some, he said, "but not as much as they deserved." District Judge Lemuel D. Evans, in his charge to the jury, explained the law on food and clothing and provided some interpretation of his own on cruel treatment. "Whipping," he said, "or infliction of punishment not required in order to enforce obedience to the master's commands or to keep

27. *Am. Slave, Supp.*, Ser. 2, VIII, 3222 (Eda Rains); *Chandler* v. *The State*, 2 Tex. 305 (1847); *Nix* v. *The State*, 13 Tex. 575 (1855); *State of Texas* v. *John Farrett*, Red River County District Court Minutes, Book E; *Callihan* v. *Johnson*, 22 Tex. 597 (1858); *Presley* v. *The State*, 30 Tex. 160 (1867); *Brady* v. *Price*, 19 Tex. 285 (1857); Houston *Telegraph and Texas Register*, December 5, 1851; Levin Perry to Theophilus Perry, June 20, 1859, in Person Family Papers, Perkins Library, Duke University, Durham, N.C.; Benjamin E. Roper to Ashbel Smith, May 3, 1852, in Smith Papers.

28. In the case of *Doty* v. *Moore*, 16 Tex. 591 (1856), a district court decision was reversed because a slave was allowed to testify, in effect, against a white.

the slave in proper subjection to the master is cruel treatment." Steen was found guilty and fined $118. His lawyer filed a list of exceptions, appealed, and had the conviction reversed and remanded for further action. A second trial in Smith County resulted in another conviction and a much larger fine of $262.49.[29]

Legal actions for abuse and cruel treatment were much more common in cases involving slaves that did not belong to the person indicted. James Bumpus of Upshur County, for example, was tried in 1856 for laying "violent hands on a negro slave" belonging to Jacob Fisher and proceeding to "unmercifully whip and abuse said boy." Erwin Chancey of Smith County was accused of unreasonable abuse and cruel treatment and whipping another master's slave without due provocation because he beat William Kelley's man George with a stick. In 1855, John Stephenson was indicted in Washington County for assault and battery after he whipped Malissa who belonged to Linsay P. Rucker. In the other cases of abuse, cruelty, and murder mentioned above, Wilson, Chandler, Nix, Farrett, and Presley all faced legal action. All had in some way mistreated or attacked someone else's slave.[30]

The decisions in these cases suggest that juries were willing to give slaves protection of the laws against unreasonable abuse and cruel treatment, at least to the point of assessing fines against violators. But in general they were unwilling to convict whites of more serious offenses against bondsmen. William R. Wilson, for example, charged with murder and with cruel and unusual punishment for whipping a slave to death, was acquitted on the first charge but found guilty on the second and fined $2,000. Thomas Presley's case had exactly the same result, although his fine was only $240. Eventually both convictions were overturned by the Texas supreme court on the grounds that, according to the law, cruel treatment resulting in death had to be considered murder. Wilson and Presley could not be found guilty of the lesser offense when it had obviously led to a more serious one. Bumpus was found guilty of assault and battery and fined $40. In Chancey's case, the jury found him not guilty of

29. Smith County District Court Papers, Case #3 (Thomas Steen); Case #43 (James Steen). The James Steen case papers include the indictment, testimony, and Judge Evans' charge to the jury, plus all the information on the aftermath of the case.

30. *Bumpus* v. *Fisher*, 21 Tex. 561 (1858); Smith County District Court Papers, Case #705 (Erwin Chancey); *State* v. *Stephenson*, 20 Tex. 151 (1857). The Wilson, Chandler, Nix, Farret, and Presley cases are cited above in notes 26 and 27.

cruel treatment, an offense with a minimum fine of $250 at the time, but convicted him of whipping William Kelley's slave without due provocation and fined him $25.[31] Chandler was found guilty of manslaughter, a felony carrying a minimum penalty of one year in prison. Nix was convicted of assault and battery, for which he was fined $25 and sentenced to ten days in jail. Stephenson won an acquittal on assault and battery charges. Chandler and Nix appealed to the supreme court primarily on the grounds that they had not been charged with violating any specific provisions of the laws protecting slaves against abuse, cruelty, or murder. Chandler's lawyers argued, for example, that there was no law concerning manslaughter of a slave. The supreme court ruled, however, that, since slaves had always been treated as "persons" in the application of criminal law, the common law extended to offenses against blacks as well as whites when no special rules existed for bondsmen. As Justice Royal T. Wheeler wrote in the Chandler case: "It seems especially to have been the intention of our legislation . . . to throw around the *life* of the slave the same protection which is guaranteed to a free man." The convictions of Chandler and Nix were affirmed. Stephenson's acquittal was appealed by the state, whereupon the supreme court reversed the district court and remanded his case for further action. A slave is not, said Justice Oran M. Roberts in his decision, "property only, as a horse or any other domestic animal." Instead, bondsmen have personal rights, and every white person does not have the right to whip any slave.[32]

Laws against abuse, cruelty, and murder and the supreme court's willingness to extend the common law to bondsmen thus provided Texas slaves with some protection from extreme physical mistreatment, especially if offenses against them were committed by someone other than their own masters. Constitutional and legislative protections represented general public disapproval of cruelty, and the possibility of legal action may have restrained some whites. Nevertheless, courts were unwilling to convict masters or other free men of murdering slaves and extremely reluctant to interfere with what Justice James H. Bell of the supreme court called "the delicate and responsible relation of master and slave." Legiti-

31. All these cases are cited above in either notes 26, 27, or 30.

32. The penalty for manslaughter at the time of Chandler's conviction is in James Wilmer Dallam (comp.), *A Digest of the Laws of Texas* (Baltimore, 1845), 167. The Chandler, Nix, and Stephenson cases are cited above in notes 27 and 30.

mate punishment was so common and the line between it and cruel treatment so imprecise that legal protections for slaves were minimal at best. "Much," according to Justice Bell, "is left to the master's judgment, discretion, and humanity."[33] Those qualities varied, as every slave well knew, from master to master.

33. *Callihan* v. *Johnson*, 22 Tex. 597 (1858).

EIGHT

Family, Religion, and Music

"THE STRENGTH TO ENDURE"

His wife having been sold, and facing punishment himself, a slave who belonged to Irving Jones in Anderson County committed suicide. He "stood it as long as he could," said the bondsman who told the story. Slave suicides were not at all common, however.[1] Bondsmen, although most faced a lifetime of manual labor with at best adequate material conditions while subject to punishment largely at the whim of their masters, very seldom took their own lives. Their instinctive will to live was threatened by the harshness and hopelessness of bondage, but at the same time it was encouraged by several institutions that mitigated the psychological conditions of servitude. What aspects of Texas slaves' lives contributed to the mental and emotional strength to endure, and what behavioral adjustments did bondsmen make in order to survive? These questions serve as a focus for the next two chapters.

Sizes of slaveholdings affected the psychological as well as physical conditions of servitude. Approximately one-third of Texas bondsmen belonged to small holders, whereas the great majority were on farms and plantations having at least ten slaves. Those who lived in smaller holdings, especially the few who resided in towns, benefited mentally and emotionally from having greater control over their own working and living conditions than did their plantation counterparts. Some may have had an advantage also in that closer daily contact with their masters led to greater recognition of their humanity. At the same time, these bonds-

1. *Am. Slave, Supp.*, Ser. 2, VI, 2140 (Steve Jones), VII, 2578 (Adeline Marshall, who told of an old man who was whipped until he committed suicide).

PHIL GRAMM
TEXAS

United States Senate

WASHINGTON, D.C. 20510

October 11, 1991

Ms. [redacted] Martin
[redacted]
Richardson, Texas 75080

Dear Ms. Martin:

Thank you for contacting me concerning the death penalty. I appreciate having the benefit of your views on this matter.

I am working to ensure that our country is made safe from vicious criminals who kill people or commit other heinous crimes; and I believe that the best way to accomplish this is to ensure that the punishment coming from our judiciary is both swift and just.

I have consistently supported the death penalty for capital crimes. In the omnibus drug bill signed into law in 1988, I cosponsored a provision that provides for the imposition of the death penalty for the intentional killing of a law enforcement officer. This bill also authorizes of capital punishment for drug kingpins who commit or order the murder of another person.

You will be pleased to know that on July 11, 1991, the Senate passed the Biden-Thurmond Violent Crime Control Act of 1991, which includes provisions to curtail the current, endless series of appeals permitted death-row inmates and to make the death penalty applicable for an additional 51 particularly vicious federal crimes. Provisions in this bill also make the death penalty applicable punishment for murder with a firearm or for major drug dealers. You can be sure that I will continue to work with my colleagues in the Senate to make our courts tougher on the criminals brought before them and our country safer for the law-abiding citizens who live in it.

I appreciate having the opportunity to represent you in the United States Senate. Thank you for taking the time to contact me.

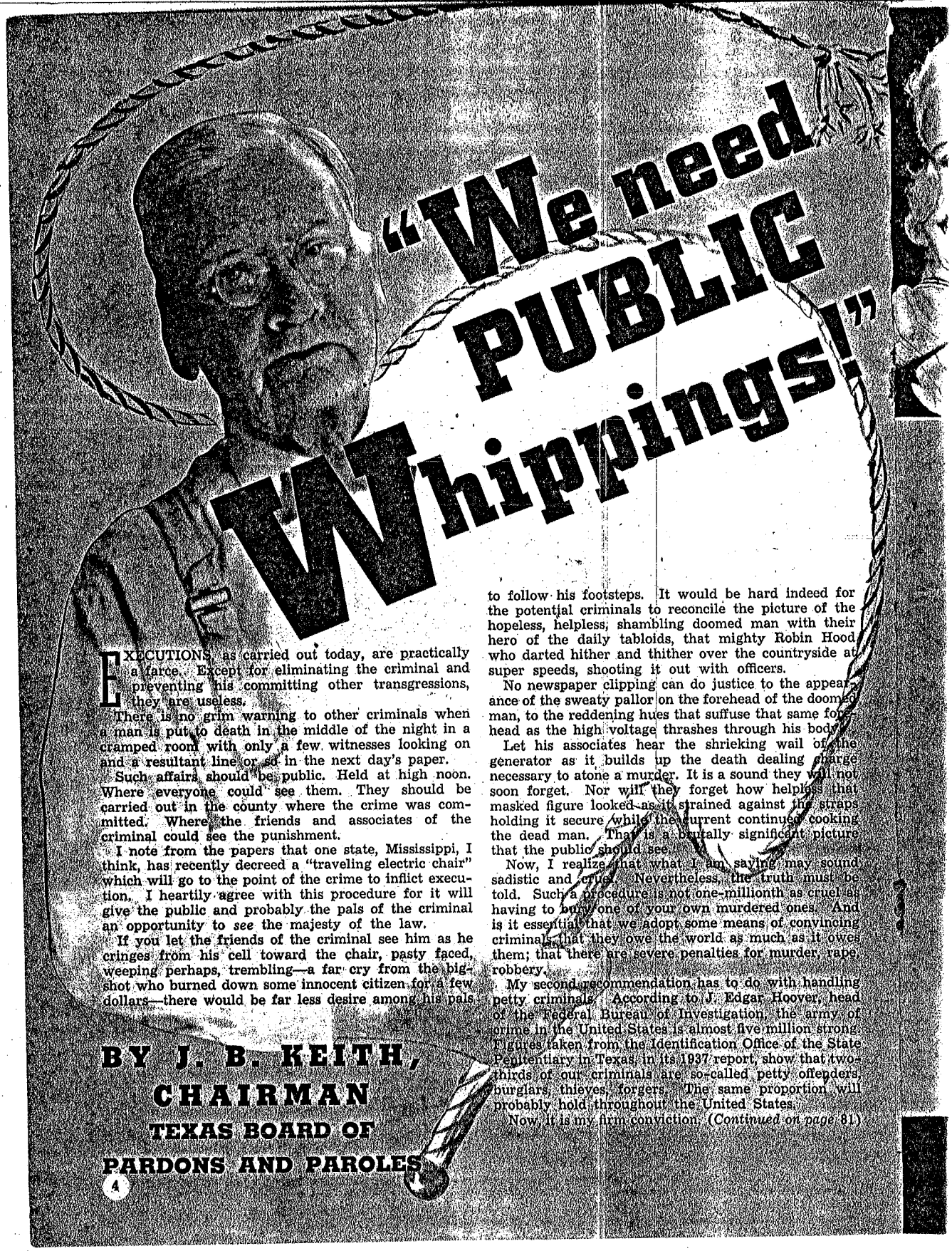
Yours respectfully,

Phil Gramm

PHIL GRAMM
United States Senator

PG/mljs

NOTE: Ms. MARTIN IS A MEMBER OF AMNESTY INTERNATIONAL IN TEXAS AND IS A STRONG OPPONENT OF CAPITAL PUNISHMENT.



"We need PUBLIC Whippings!"

BY J. B. KEITH,
CHAIRMAN
TEXAS BOARD OF
PARDONS AND PAROLES

EXECUTIONS, as carried out today, are practically a farce. Except for eliminating the criminal and preventing his committing other transgressions, they are useless.

There is no grim warning to other criminals when a man is put to death in the middle of the night in a cramped room with only a few witnesses looking on and a resultant line or so in the next day's paper.

Such affairs should be public. Held at high noon. Where everyone could see them. They should be carried out in the county where the crime was committed. Where the friends and associates of the criminal could see the punishment.

I note from the papers that one state, Mississippi, I think, has recently decreed a "traveling electric chair" which will go to the point of the crime to inflict execution. I heartily agree with this procedure for it will give the public and probably the pals of the criminal an opportunity to *see* the majesty of the law.

If you let the friends of the criminal see him as he cringes from his cell toward the chair, pasty faced, weeping perhaps, trembling—a far cry from the big-shot who burned down some innocent citizen for a few dollars—there would be far less desire among his pals to follow his footsteps. It would be hard indeed for the potential criminals to reconcile the picture of the hopeless, helpless, shambling doomed man with their hero of the daily tabloids, that mighty Robin Hood who darted hither and thither over the countryside at super speeds, shooting it out with officers.

No newspaper clipping can do justice to the appearance of the sweaty pallor on the forehead of the doomed man, to the reddening hues that suffuse that same forehead as the high voltage thrashes through his body.

Let his associates hear the shrieking wail of the generator as it builds up the death dealing charge necessary to atone a murder. It is a sound they will not soon forget. Nor will they forget how helpless that masked figure looked as it strained against the straps holding it secure while the current continued cooking the dead man. That is a brutally significant picture that the public should see.

Now, I realize that what I am saying may sound sadistic and cruel. Nevertheless, the truth must be told. Such a procedure is not one-millionth as cruel as having to bury one of your own murdered ones. And is it essential that we adopt some means of convincing criminals that they owe the world as much as it owes them; that there are severe penalties for murder, rape, robbery.

My second recommendation has to do with handling petty criminals. According to J. Edgar Hoover, head of the Federal Bureau of Investigation, the army of crime in the United States is almost five million strong. Figures taken from the Identification Office of the State Penitentiary in Texas, in its 1937 report, show that two-thirds of our criminals are so-called petty offenders, burglars, thieves, forgers. The same proportion will probably hold throughout the United States.

Now, it is my firm conviction (*Continued on page 81*)

CRIME DETECTIVE
DECEMBER, 1940

Nine out of ten fellows under thirty years of age who get into the Army find themselves enjoying it all after a few weeks. But there are always some who are not fitted for the life. Since the first American draft back in the Civil War days there have been numerous attempts to evade serving, and now that men are again being called to prepare to defend their country, those same old draft grafts are being tried.

More than one man has been known to dose himself with aspirin or some similar drug that affects the heart, just before going up for his physical examination. Sometimes it has worked, but any old-time Army physician is able to detect that dodge by the phony symptoms.

There's the town drunk who believes that chronic alcoholism may get him off. He usually finds out before he's through that for every hour he spends while drunk there'll be 24 hours in the guard house.

Another gag that was pulled during the last draft, and is sure to be revived, is the placing of a sack of tobacco or a cake of soap under the left arm pit, then lying on that side in the hope that the pressure will affect the heart. It frequently will, but the effect will be only temporary.

In every camp you will find men with their heads full of schemes for getting out of active participation in the long marches and drills. These fellows frequently sell their "ideas" to the new recruits, only to turn around and sing to the officer higher up once they've collected from the suckers.

But one of the most vicious of all the parasites within the ranks is the company loan shark. Every company has at least one and he's frequently the pay master or some minor commissioned officer who knows he can make it plenty tough on any debtor who fails to come through on pay day. Of course, the officer will work through one of the enlisted men.

And coming through on pay day means kicking in with anywhere up to a hundred per cent on the loan each week! There's only one thing for the recruit to do if he once finds himself in the clutches of one of these sharks. That's to put in a complaint in the right place—go to the captain and tell him the whole story. It's the one thing an Army man can squeal about without losing the respect of his buddies.

Around every Army encampment there are a certain number of young, apparently unattached women lying in wait for the simple country boy who's on the make for a "good girl."

I remember the case of Memphis Mae. She was a good-looking little broad with a southern accent and all of that—the kind who "just loved to be seen with a man in uniform." God knows she must have been seen with enough of them before it was all over. For when her racket was finally exposed it was learned she'd married half a dozen fellows, using as many aliases. And from each she was drawing a few dollars monthly as well as holding their government insurance policies.

Mae said later she "just loved them all," but the government thought it more likely that it was their few dollars a month that she loved mostly. Mae went to the clink for a long time, and she's probably too old to get into the racket now that there's a new crop of suckers in uniform coming up. But there'll be others like her.

The War Department has announced plans for putting official hostesses in the camps, and insofar as that plan goes it's probably a good one. There were certainly plenty of entertainers for the boys during the last big call to arms.

But there's something about Army life that leaves a man unsatisfied with all that kind of thing. He wants to *take a chance*. Maybe it's because he's aware that he may soon never get another opportunity. Maybe it's the old desire to show off a little before the other boys. But whatever it is you can depend upon it that every chiseler and shrewd dealer both inside and outside the camp is playing on that instinct for all it's worth.

THE commissioned officers are fully aware of at least nine-tenths of all this petty thievery that goes on. They know all about the girl camp-followers—and in some instances have openly admitted encouraging it—and they know there's cheating in the crap games and at the card tables. But they know also that it would be futile to try to stop it. They might throw one man or a dozen in the guard house, but others would spring up to take their places.

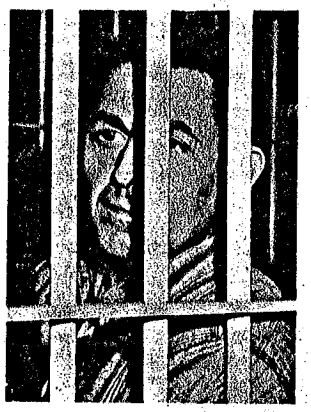
When a man joins the Army he's supposed to be of age and have all his apples. He's supposed to be able to take care of himself under far more dangerous conditions than those confronted across a dice spread, and it has long been the unwritten law in every armed force in the world that even the raw recruit must look out for his own interests.

There's only one way to do that:

If you must play the other guy's game, learn how it's played before you risk your roll on the turn of a card or the toss of the dice.

Keep away from those naughty-but-nice little gals that start asking questions about insurance and pay, and when you play around with the other kind—if you must—beware!

KIDNAPER



Shown behind bars, William Muehlenbroich, German alien, confessed to kidnaping 3-year-old Marc de Tristan for $100,000 ransom.

CRIME DETECTIVE

"WE NEED PUBLIC WHIPPINGS!"

CONTINUED FROM PAGE 4

based on a lifetime spent in dealing with criminals as prosecutor, judge and in my present position, that if these petty crimes were suppressed at their roots, they would practically cease.

I think that no stronger hindrance to such crimes could be found than the erection—and use—of good, strong whipping posts erected in every county in every State of our Union.

Then, when a petty criminal is caught, let his sentence consist of a public whipping, where everyone can see. Certainly, this should act to strip the false glamour from his deeds and let him see them in their true light. Never pamper the criminal.

This method works in New Jersey, they tell me, where such crimes have shown an almost miraculous decrease. I know that a stiff dose of the leather—we Texans refer to it as "the bat,"—is the best means we have of controlling our hardest prisoners.

Give the leather to the petty offenders in public and let that be their penalty. If they come back for more, give them a whipping as well as the penitentiary sentence.

In that way, crime will not only be suppressed, but the punishment will serve as a public warning to those at home.

Today, as I look out of the window of the pardon board office here at the State Penitentiary, I see a "chain" of 20 new prisoners coming in. They are nearly all ratty-looking, filthy, syphilitic young law-breakers.

But they themselves can't see it that way. In their own minds they are heroes—written up in the tabloids, their pictures in the papers, idolized by their friends as martyrs of cruel police officials and hardened judges.

Further, too many of them—before they committed their crimes—were assured of the fact that prison was "an easy jolt with football games, rodeos, moving pictures, magazines

and little work to do." Besides, there's always (they feel) the possibility of serving a few short months and then being "sprung" by crooked or friendly politicians.

In some points they're right—most prisons today are too easy. In fact, many of them are schools where the criminal gets additional information on how to commit his next crime in fool-proof fashion. Also, they're thrown with hardened companions; they contract filthy diseases—if they haven't already got them—and become habituated to vicious anti-social practices. Many of them become perverts—physically, mentally and morally.

Thus, I sound a warning. We've got to do something to stop the crooks from coming to the penitentiary! Too many of them are being allowed to take the rocky route unknowingly. Three years ago there were only 5,214 prisoners in the Texas Prison System. Today there are 6,400. Millions of dollars are being thrown away by taxpayers in keeping and supporting this increasing army of undesirables.

The people—you and I—must be taught the power of the law and the terrible stain its impress leaves, through demonstrations of its strength.

And, what more effective way of "killing two birds with one stone" can be devised than by giving these ignorant journeymen of crime a lesson before it's too late?

Whip 'em, I say, where their associates can see it; where they can hear the swish of the lash and the cries of the offender.

Execute them, I say, where everybody can hear that generator whining and see that tortured body cooking.

Not a pleasant sight, that, but neither is the picture of a murdered man's unmoving form or of a violated child's corpse.

So, something's got to be done to make law-abiders of these errant men and their associates even if you have to take it out of their hides, which, as I've tried to show, is where the punishment strikes deepest.

Let's get to the root of this matter, thereby putting an end to it.

CRIME DETECTIVE

THE SCHOOLMASTER RUNS AMOK

CONTINUED FROM PAGE 31

alive with a bullet lodged close to his heart. When the alarms and sirens of the departing ambulances faded off, the police got down to work.

There were at least eight witnesses who saw Spencer during the "twenty minutes of doom" that brought such unprecedented tragedy. There was not the least shadow of doubt that Spencer was the killer. But city officials had a job on their hands that was in many ways as serious and far-reaching as the police would have had if the killer was still at large. The confidence of the community had been shaken.

Striking at the most sensitive spot in the life and well-being of the people, a murderer had plunged the whole town into nervous apprehension. And to make matters worse, the murderer was none other than a man, who, in occupying a position of honor and respect, had the solemn duties of shaping the morals of youth and guiding it along the road of clean living and good citizenship. That Verlin Spencer should have snuffed out several lives was deplorable. That he should have poisoned the well-springs of community life was heinous.

AN investigation into Spencer's record was begun and some ghastly facts brought to light. Mayor E. O. Porter, having apprised himself of these facts, called the school board to account. "Why," he thundered, "was Spencer employed as Principal of the South Pasadena Junior High School when his record showed he had been removed from at least one school position for immoral actions toward girl students?"

This news broke like a bombshell. Parents looked at the slim, young bodies of their daughters aghast with the horrible thoughts of what might have happened. Every day, this fiend who was the Principal of their school might have stared hungrily at the bare brown legs and the adolescent breasts starting forth under the tightly fitting sweaters and gay girlish dresses. Every day may have brought him the hunger and the torture of unfulfilled desire toward the throng of laughing innocent girls soon to blossom into the first stage of young womanhood. Was it the frustration of unsatisfied hunger that drove him to this horribly bloody outburst?

While the news of the killings flashed across the country with shocking effect, and the District Attorney's office cleared the way for grand jury investigation, the police kept constant vigils at the bedsides of the assassin and the two survivors of the grim homicidal attack. Dortha Talbert lay in the deep shadow of death, a bullet lodged in her spine, uncertain of recovery which at best would leave her a hopeless paralytic. Ruth Sturgeon lapsed fitfully between consciousness and blessed unconsciousness that dimmed her pain.

Spencer—at first thought to be close to death—was not found to be in serious danger. He lay looking up at the ceiling, his gaunt face and haunted eyes in sharp relief against the white of the hospital pillow. On order of District Attorney Buron Fitts, he was removed from the Huntington Memorial Hospital to the prison ward of the General Hospital.

For two days, he preserved a grim, ghostly silence. His room was charged with tenseness. The "Why?" that was on everyone's lips occupied the minds of every detective on the case. Why did he kill? Was there a sex motive? Was there a money motive? The faith and tranquillity of a large community demanded an answer.

Softly but insistently the questions were repeated to him but he continued to gaze at the ceiling, his eyes distant, his thin lips locked in impenetrable silence. Instead of the words and visions that had pursued him, came the incessant question: Why did you kill? If the question pierced the haze that hung over him, he took no notice of it. Late on May 8th, two days after the mad slaughter, he stirred and seemed to react to the question:

"Why did you shoot Bush?" Detectives, nurses, physicians, held their breaths.

"I don't know," Spencer moaned. "He was my friend."

"Why did you shoot Alman? Speer? Vanderlip?"

"I can't remember why. . . ."

"Why did you shoot Mrs. Sturgeon?" His face twisted in a sudden grimace of hatred.

"That woman is no good."

"Why did you shoot Miss Talbert?" At that his lips quivered. He was visibly moved; a sob racked his body.

"Oh, my God," he cried, "did I shoot Dortha?" The occupants of the room froze, rigid with excitement. "She was my best friend," he gasped. This was the kind of angle the newspapers were waiting for. Here was a possible love interest. But it proved to be false. Dortha Talbert, when she seemed strong enough to undergo her first questioning, said:

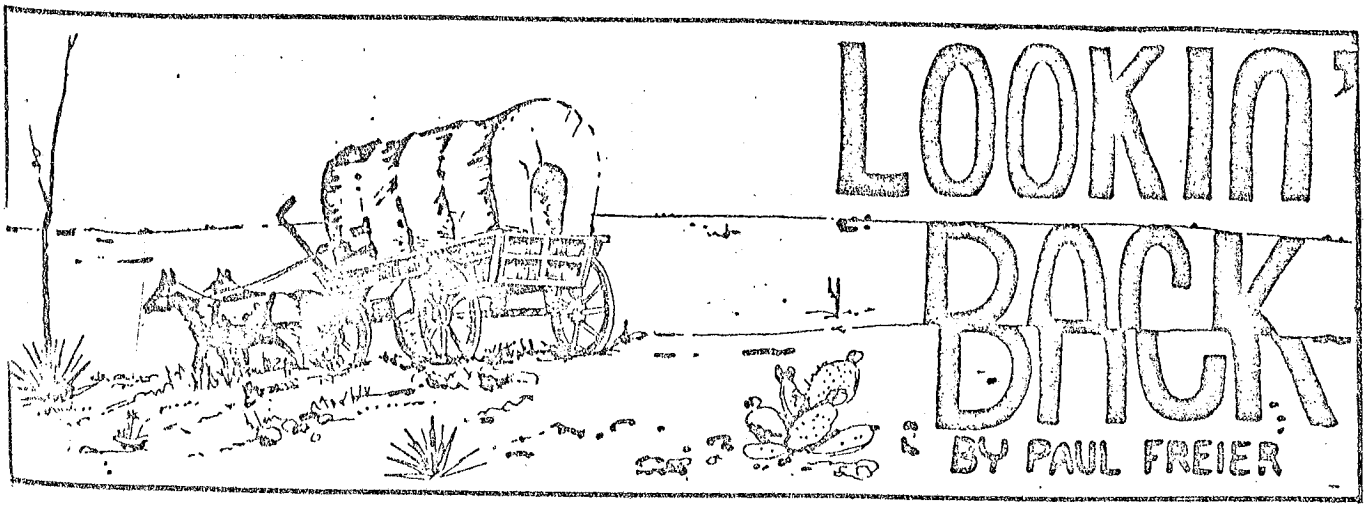
"I know of no reason for his referring to me that way, except that realizing that he was mentally distressed I always went out of my way to be pleasant to him when he came to see Mr. Bush."

If this was a contradiction to the angle that the newspapers wanted, it considerably aided the psychiatrists and alienists who had been called in on the case. It would be their duty to determine Spencer's sanity. Had the keenly trained mind of the school principal cracked under the strain of his responsibilities? Had the frayed nerves finally been shattered by the constant dosage of insanity-producing drugs? Or was Spencer innately vicious, a murderer with a dark and evil mind that had been steeped in learning and covered with a veneer of culture and higher education?

THE alienists began to dissect the man's personality, knowing that justice for this ghastly crime weighed in the balance of their findings. As they were attempting to disentangle the horrible complexities of Spencer's character, the awful news seeped out.

The Public Defender's office was preparing to enter a plea of not guilty. This meant that the murderer might go free, yet this would be a justifiable consequence if, indeed,

LYNCHING.



'Best Shot in Texas' Hanged Here

Every self-respecting town in Texas sported a "hanging tree" in the early days. The City of Matagorda was entered from the river by passing under a "hanging" oak, Victoria had a hanging tree seen on Moody street today, and Refugio used a huge mesquite on the courthouse lawn that grows there today for its gallows. The Goliad hanging oak on the square has been dignified with a state historiacal marker, but Columbus, Texas, was better noted for having two hanging trees -- one for black people and one for the whites.

Port Lavaca was not without a hanging tree, identified by some old-timers on Linn's Bayou, while other believed that the huge trees that grew in David Montier's back yard 124 years ago on Guadalupe Street served the purpose.

The editor of the Indianola "Bulletin" reported on April 8, 1852, that a "murder in Port Lavaca" brought it about: "We are deeply pained to announce that Mr. James P. Fulkerson, the sheriff of this county, was murdered in Port Lavaca last Sunday April 4, by a man named Sharkey, a stranger in this country.

"Mr. Fulkerson lived in an early day in Missouri, and afterwards at Cape Giradeau, and since 1838, mainly on this bay. Knowing him as one of the best and most honorable of men, we cannot conceive how anyone could find a pretext for an attack upon him.

"He leaves an interesting family, consisting of his wife and daughters to lament his cruel fate. We feel sure in saying that in 13 years residence in this county he made not one enemy. His family is of high standing.

"We have learned the particulares: Augustus Sharkey, the murderer, is a late emigrant from Mississippi. He provoked a quarrel with a citizen of Lavaca, and attacked him with a sling shot. The weapon was wrested from him by a bystander, and placed in Sheriff Fulkerson's hands, who had just arrived and commanded the peace. Sharkey demanded the sling shot with a threat he would "have it or him."

(NOTE: The sling shot is a lethal weapon according to law to this day, a leather pouch tied to two cords whirled by hand and releasing the missile. With a sling shot David slew Goliath. Abraham Lincloln became famous in Illinois as a lawyer in a sling-shot murder case. Cougars were hunted and killed in the river bottoms of Matagorda County with sling shots as the only weapon in the 1850's.)

"Sheriff Fulkerson went to Justice Maulding for a warrant, and Sharkey immediately got his rifle, went to Maulding's office, and without warning shot Fulkerson in the heart, remarking that he "was the best shoft in Texas."

"He then made an attempt to escape on horseback, but was seized and ironed. A town meeting was called to consider the matter, and determined to let the law take its course. During its sitting, and throughout the day, while intense excitement prevailed, Sharkey manifested the most reckless spirit -- he told them how he had killed three men in Mississippi and had gotten away, and that he would kill four more in Lavaca. In every way he defied an indignant people in a community where the deceased was loved by all.

"The sequel to this bloody deed should not be surprising although deplored. During the night following, the guilty man was seized and dragged from the hands fo the officers and in the morning was found suspended to the limb of a tree.

"Over this sad affair we would fain draw a veil of oblivion, but it is accomplished. Extreme cases arise. Here we have a guilty, bloody man, butchering in cold blood his fourth victim, hurling threats at four more peacable men, the court just adjourned for six months, no prison or jail in this

continued

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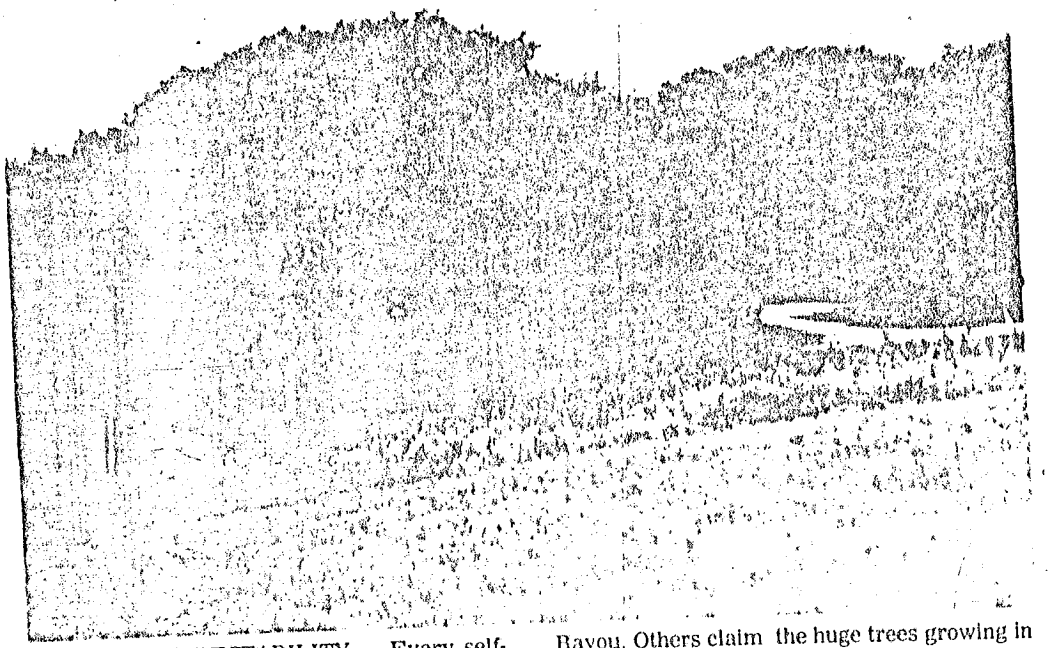


MARK OF RESPECTABILITY — Every self-respecting town in Texas had a "hanging tree" in the early days. Some old-timers claim Port Lavaca's tree was among these oaks on Linn's Bayou. Others claim the huge trees growing in a backyard on Guadalupe Street 124 years ago served the purpose. (Wave photo)

or neighboring counties, the sheriff slain, with his wife and children sinking into the grave — how galling their hard fate, with a certainity that 'ere the law be enforced he could escape. These are the facts that palliate mob law; let it serve as a warning to those who regard human life lightly."

Thus ended John Henry Brown's account of this murder. An election notice for a new sheriff was called by Chief Justice Jefferson Beaumont with ballot boxes at the Brower House in Lavaca, in the home of William Miller at Green Lake, in the office of John H. Brown in Indianola and in the home of S.K. McCreary in Saluria.

On April 29,1852, the Indianola "Bulletin" announced that the wife of the deceased sheriff had indeed "sunk into the grave," the estimable wido of the late Sheriff Fulkerson had died in Port Lavaca during the past week.

On May 6, 1852, the three Miss Fulkersons (Mary, 16, Frances, 14, and Mariah, 7), and Master James Fulkerson, Jr., aged 12, were registered into the Eberly House in Indianola awaiting a steamer on which to leave Texas and return to the East. In the meantime, Alexander Cold had won the sheriff's race with 52 votes, Almond Reed with 40, and William Reed with 12.

However, before August 19, 1852, the "Bulletin" reported "In consequence of the death of the sheriff-elect Alexander Cold of this county, before qualification, a new election has been ordered for August 28, 1852."

Willis Chamberlain was the first to file for the office.

In the election of August 2, 1852, when it was voted to move the county seat to Indianola from Port Lavaca, it was also voted that a "work-house" or jail be constructed by a vote of 104-3, probably as a result of there being no jail for Sharkey after his murder of the Calhoun County sheriff.

STATE CAN'T TRACK THOUSANDS OF FELONS

Former Death Row inmates granted parole

This is a selection of paroled killers and rapists – originally sentenced to death – who committed new crimes or broke conditions of their parole. After being returned to prison, many were quickly granted parole again.

(Note: All Death Row inmates listed had their sentences commuted to life in prison after the U.S. Supreme Court outlawed the death penalty in 1972. Until then, Texas and other states routinely handed out death sentences in cases of rape, even if the victim was not killed.)

Parole dates indicate when an inmate is next eligible for release.

Kenneth McDuff

■ **Age:** 45

■ **Home:** Temple

■ **Capital offense:** With an accomplice, McDuff attacked three teenagers parked on an isolated country road off U.S. Highway 81 in Tarrant County, Aug. 5, 1966. After locking Robert Bran, 17, and Mark Dunnam, 16, in a car trunk, McDuff and the accomplice raped Louise Sullivan, 16. The boys were fatally shot as they tried to escape from the trunk. Sullivan fled on foot, but was caught and strangled. McDuff was sentenced to death for murder with malice, Nov. 15, 1966.

■ **Paroled:** Oct. 11, 1989, after serving 23 years.

■ **2nd offense:** Terroristic threat. Returned to prison, Sept. 26, 1990.

■ **Paroled:** Dec. 18, after serving two months.

■ **Reports:** Once a month.

Earlando Williams

■ **Age:** 42

■ **Home:** Fort Worth

■ **Capital offense:** Raped Dallas woman, 26, at knifepoint in front of her two small children, Aug. 2, 1965. Sentenced to death for rape, March 14, 1966.

■ **Paroled:** May 7, 1980, after serving 14 years.

■ **2nd offense:** Failed to report to parole officials for eight years 1983 through 1990. Returned to prison, Sept. 6, 1990.

■ **Paroled:** March 6, 1991, after serving six months.

■ **Reports:** Once a month.

James Edward Antwine

■ **Age:** 40

■ **Home:** Ellis I Unit

■ **Capital offense:** With two accomplices, fatally shot Harold McBride, 59, during the holdup of the Payless Liquor Store in Dallas, Feb. 6, 1970. Sentenced to death for murder with malice, May 18, 1971.

■ **Paroled:** March 20, 1984, after serving 13 years.

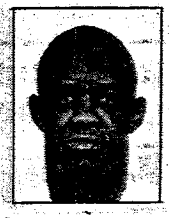
■ **2nd offense:** Assaulted his wife during a domestic disturbance in Dallas. Returned to prison, Oct. 26, 1989.

■ **Paroled:** Feb. 26, 1990, after serving five months.

■ **3rd offense:** Assaulted his brother-in-law whom he accused of burglarizing his home with a baseball bat. Returned to prison, March 7, 1991.

■ **Parole date[1]:** June 1992

Eddie Lee Grant



■ **Age:** 50

■ **Home:** Ellis II Unit

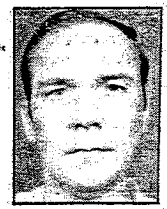
■ **Capital offense:** Fatally shot man, 42, in Houston because "he owed me $3.40" for a bottle of wine, March 15, 1963. Sentenced to death for murder with malice, March 20, 1968.

■ **Paroled:** Sept. 19, 1985, after serving 17 years.

■ **2nd offense:** Robbed Redline Grocery Store in Angelina County, Dec. 4, 1989. Sentenced to life in prison, 1990.

■ **Parole date[1]:** 2004

James Roger Farris



■ **Age:** 43

■ **Home:** Kentucky State Reformatory

■ **Capital offense:** An escaped armed robber from Kentucky, Farris and an accomplice fatally shot Fred Wright, 45, owner of Fred's Food Market in Dennison and stole $1,000 in checks and cash, May 25, 1970. Sentenced to death for murder, Sept. 23, 1970, and 99 years for armed robbery, Oct. 13, 1970. Later escaped with three other prisoners from Grayson County jail by sawing bars with a smuggled hacksaw; captured in Louisville, Ky.

■ **Paroled:** Oct. 27, 1986, after serving 16 years.

■ **2nd offense:** Robbery, wanton endangerment and possession of a handgun, Kentucky. Sentenced to life in prison, July 1990.

■ **Parole date[1]:** 1998

Ralph C. Powers

■ **Age:** 48

■ **Home:** Ellis I Unit

■ **Capital offense:** Fatally shot Morris Weldon Renfro, 19, once in the chest during an argument in a San Antonio parking lot, 1965. Sentenced to death for murder with malice, Jan. 27, 1966.

■ **Paroled:** Feb. 8, 1984, after serving 18 years.

■ **2nd offense:** Kidnapped man at gunpoint, forced him to drive from Arlington to Dallas where the man escaped and alerted police, Feb. 19, 1985. Powers forced his way into a trailer home, where police found him. Sentenced to life in prison, 1985.

■ **Parole date[1]:** February 2005

Melchor Ortega

■ **Age:** 45

■ **Home:** Coffield Unit

■ **Capital offense:** Broke into a Houston home, threatened woman, 29, with a knife and raped her repeatedly in front of her husband and 2-year-old daughter, Sept. 15, 1967. Sentenced to death for rape, Dec. 13, 1968.

■ **Paroled:** April 17, 1987, after serving 18 years.

■ **2nd offense:** With an accomplice, robbed a string of Houston beauty shops of cash and jewelry, forcing patrons to strip naked to facilitate his escape, spring 1988. Sentenced to life in prison, 1988.

■ **Parole date[1]:** June 2003

SOURCE: Texas Department of Criminal Justice records

Whereabouts unknown

This is a list of former Death Row inmates who are now missing:

Thomas Caraway

■ **Age:** 40

■ **Last known address:** Houston

■ **Capital offense:** Strangled man, 35, with a rope during an attempted robbery in Houston, Dec. 29, 1968. Sentenced to death for murder with malice, Dec. 15, 1969.

■ **Paroled:** Feb. 17, 1984, after serving 14 years.

■ **Status:** Granted annual reporting status, May 1989, Caraway did not report as scheduled in April 1991. Parole officials did not notice the delinquency until alerted on June 19 that Caraway is no longer living at his last known address. Parole officials are investigating. No warrant has been issued.

Johnny Armstrong

■ **Age:** 42

■ **Last known address:** Dallas

■ **Capital offense:** Shot Dallas service station attendant, 59, in the chest during a robbery attempt, Dec. 16, 1970. Sentenced to death for murder with malice, May 26, 1971.

■ **Paroled:** Aug. 14, 1986, after serving 16 years.

■ **2nd offense:** Failure to report.

■ **Status:** Armstrong stopped reporting in April 1990 and was declared an absconder July 20, 1990. Due to an oversight, an arrest warrant was not issued until April 18, 1991, a year after he disappeared.

Elmer Branch

■ **Age:** 44

■ **Last known address:** Sargent

■ **Capital offense:** Raped woman, 65, at her home near Vernon, May 9, 1967. Sentenced to death for rape, 1967.

■ **Paroled:** Jan. 16, 1986, after serving 18 years.

■ **2nd offense:** Failure to report.

■ **Status:** Reported to Dallas after his release, then transferred to South Texas and his paperwork was lost. Officials noticed his disappearance and issued a warrant for his arrest on May 22, 1991, more than five years after he vanished.

Jackie Vance Lowery

■ **Age:** 47

■ **Home:** McKinney

■ **Capital offense:** Fatally shot Morris J. Patterson during armed robbery of Dallas cigarette vending company where Patterson worked, Oct. 26, 1970. Sentenced to death for murder with malice, 1970.

■ **Paroled:** May 31, 1984, after serving 14 years.

■ **2nd offense:** Possession of marijuana, Dallas, May 1990.

■ **Paroled:** From Dallas County jail, Oct. 9, 1990, after serving five months.

■ **Status:** Lowery was declared an absconder on June 28, 1991, when a warrant was issued for his arrest. The warrant was withdrawn, however, when parole officials were alerted that Lowery had been found at home with his mother.

Larry Lane

■ **Age:** 53

■ **Last known address:** Lubbock

■ **Capital offense:** Fatally shot ticket agent, 50, while robbing her of $100 at the Baytown Continental Bus Depot, Jan. 23, 1968. Sentenced to death for murder with malice, March 3, 1972.

■ **Paroled:** March 7, 1984, after serving 12 years.

■ **2nd offense:** Failure to report.

■ **Status:** A warrant was issued for Lane's arrest on June 17, 1986.

Roy Davis

■ **Age:** 50

■ **Last known address:** Houston

■ **Capital offense:** With accomplice, killed and robbed Robert Farley, 52, in Houston, April 11, 1967. Sentenced to death for murder with malice, Aug. 28, 1970.

■ **Paroled:** Oct. 3, 1985, after serving 15 years.

■ **2nd offense:** Possessed marijuana, weapons. Returned to prison Feb. 20, 1987.

■ **Paroled:** Dec. 18, 1989, after serving 2 years, 10 months, on mandatory supervision.

■ **3rd offense:** Felony credit card abuse, misdemeanor possession of drugs. Arrested Nov. 26, 1990. Released on $2,000 bond Jan. 17, 1991.

■ **Status:** Davis bonded out of jail after parole officials declined to issue a no-bond warrant. He disappeared after his release and was declared an absconder three months later, on April 10, 1991, when a warrant was issued for his arrest.

HOUSTON CHRONICLE
HOUSTON, TX
4-30-1987

RACE ISSUE IN TEXAS

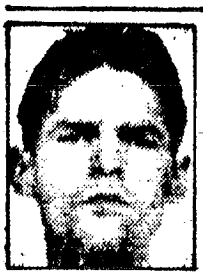
The executions of four black Texas inmates have been stayed in the past several months based on claims by the defendants that they were discriminated against during sentencing because of race. A white man, whose execution is pending, also has cited the race issue:

RAYMOND RILES: Stayed Sept. 16, 1986, by the U.S. Supreme Court. Sentenced to death for the 1974 murder and robbery of a Houston used car salesman, John Henry.

CALVIN WILLIAMS: Stayed Nov. 10, 1986, by the U.S. 5th Circuit Court of Appeals. Convicted of the June 2, 1980, killing of Emily Fields Anderson, 28, during a break-in at her Houston home.

ELLIOT ROD JOHNSON: Stayed Feb. 10, 1987, by the U.S. Supreme Court. Convicted in the 1982 robbery-murder of Beaumont jeweler, Joe Angel Granado, 67.

ANTHONY CHARLES WILLIAMS: Stayed April 13, 1987, by the 5th U.S. Circuit Court of Appeals. Convicted of the 1978 rape-murder of Vickie Lynn Wright, 13, in Houston.



JOHN R. THOMPSON: Scheduled to be executed July 8. Granted a chance to appeal his case on the issue by the U.S. 5th Circuit Court of Appeals. Convicted in the May 1977 slaying of Mary Kneupper during an attempted robbery in San Antonio.

Source: Attorney General

THE AUTHOR.

GLAMOROUS DAYS

BY

FRANK H. BUSHICK

FIRST EDITION

THE NAYLOR COMPANY
SAN ANTONIO, TEXAS
1934

the Garzaites fled and scattered. After the fiasco at Camargo, Garza lived the life of an outlaw, fleeing from the Mexican authorities on one hand and dodging the United States troops on the other.

Garza finally got out of Texas, being driven in a light, one-horse vehicle from his father-inlaw's ranch to Yoakum, where he caught a train and went to Nicaragua where he joined a revolutionary party and was killed in a fight near Blue Fields.

The story of Garza's escape from Texas was related to me by the late newspaperman and Congressman, Hon. Jeff: McLemore, who obtained the facts from Sheriff Wash Shely of Starr County and his brother, Captain Joe Shely, a ranger captain, who knew Garza intimately and had first hand information of all his movements.

Mr. McLemore said that an account of the death of Garza was related to him in the winter of 1908 in Mexico City by Will Percy, a Mississippi lawyer and orator. Mr. Percy told McLemore he was present when Garza was killed and had no trouble in establishing Garza's identity by letters and souvenirs which were found on his person. Among the souvenirs was the flattened winchester bullet which Garza wore as a charm on his watch chain and which was shot into his body by Victor Sebree years before in the fight at Rio Grande City.

Garza was a forerunner of the later communistic revolutionaries, Madero, Carranza, Obregon and Calles, but his revolution failed to get going. He started too soon. He tried to play in a big game with small a stack of chips.

CHAPTER XXI

VIGILANTES AND DESPERADOES

MAN has been defined as a combination of chemicals temporarily inhabiting an insignificant planet floating in the cosmos. Especially temporary was his mundane existence if he happened to be in Texas, a generation or so ago. At that time our fair state offered exceptional facilities as a place where it was easy for a person to get killed.

The St. Louis Globe-Democrat used to run in its daily edition a standing column of "Texas Killings." The business men of Texas got so indignant at this reflection on law and order in the Lone Star State that they sent a letter to the editor threatening to lynch any representative of the paper that showed up in the state unless the offensive column was discontinued.

The outside world looked upon Texas as the haunt of the savage and the refuge of the lawless. A man was caught red-handed in the commission of a crime. His lawyer told him that his case was hopeless and that he had better escape and run away. "For Heaven's sake," exclaimed the culprit, "Where can I go to? Ain't I already in Texas?"

The worst Texas desperado seldom killed a man without weapons in his hands. Compared to the present day Chicago racketeers and big shots of New York gangsterdom, they were all perfect gentlemen and ornaments to society. And you might say, what else could a spirited boy do in those days but be an outlaw? Plow corn or lay around the house all his life? There was hardly any other way to gain distinction or make any dough.

Many of the bad men were off-hand good hombres. When one of them stepped up to the bar and

asked everybody in the house to have sumpin with him, it was best to be polite and accept the invite. It was worse than an indiscretion not to do so. It was a good way to go to Heaven in a precipitate and unannounced manner with all your sins on your head. All hands felt they just had to humor these boys. Why be nawsty?

The code exacted that every man should be game, or at least be able to "stand his ground." The law didn't count for much. Now and then the prim and orderly folks retaliated against the outlaws and decorated the native cottonwood trees with a particularly bad specimen, whose body dangling from a rope's end served as a gentle hint to others of the same stripe to vamoose.

The Vigilance Committee was a regular institution during the 60's and early 70's. One of these vigilante leaders, who was a man of religious convictions and a sort of lay preacher, used to go about with a rope coiled up in his hat, it is said. It is related that while delivering a sermon one Sunday morning in church, the parson reached into his hat for his handkerchief to mop his perspiring brow and brought out instead the significant coil of rope which he had used at the Vigilante neck-tie parties.

Shortly before the Civil War, Bill Hart cut high jinks hereabouts. He was as hard a man in real life as the modern Bill Hart acts in the reel life of the movies. Bill and his gang were a rollicking bunch of hard eggs. Dropping in on a Mexican dance on Market street in San Antonio one night in May, 1858, they got drunk on mescal and feeling gay and festive, shot up the place and killed an inoffensive Mexican woman named Señorita Concepcion de Tarin. Hart and his gang rode boisterously through the streets and took up quarters on South Alamo street, near the present corner of Market street. Re-

fusing to surrender to the sheriff, "Big Henry," the officers attacked the house.

In the posse were Sheriff Henry, City Marshal Field Stoup, Captain W. G. Tobin, Captain Edward Stevens, and Assistant Marshal Taylor. Stoup was shot at the door, Taylor also was shot and Tobin was wounded.

The house was rushed and captured and Hart was taken. He said, "Kill me, I'm already wounded." Taylor said, "Let me kill him. He shot me." Taylor caught Hart around the neck, placed his pistol against the desperado's head and fired. Hart fell to the floor a corpse and Taylor dropped and died by his side. Miller, another outlaw with Hart, was killed by Stoup. Sally Brewer, sweetheart of Hart, was in the house and helped Hart load his cap and ball pistols. His body was exhibited in the old market house and funerals with public honors were accorded the two slain officers.

"Big Henry" was afterwards killed in front of the old Plaza House, a pioneer hotel on the north side of Main Plaza, in an altercation with Captain Adams over which should command a company of Confederate troops then being organized for service against the Yankees.

Bob Augustine was a DeWitt County cowboy who stepped off into space at San Antonio during the Civil War. His taking off was due to an organized effort on the part of the citizens. He had come to town to enlist in a company being made up for the Confederate Army, but got too much tarantula juice under his belt. Cavorting around on his cow pony, he overturned a lot of chile con carne stands on the Plaza. While waiting at the old Bat Cave city prison to be tried by the Recorder, Fritz Schreiner grabbed him and the Vigilantes took him and hanged him to a cottonwood tree growing in the Catholic

priest's yard on the north side of Military Plaza. Bob was suspected of the habit of picking up loose ropes tied to other men's horses. It was a dastardly crime to steal a horse. A good saddle pony was worth at least fifteen dollars.

The tree which Augustine was hanged on died. As it was used more than once for hanging men, the priests cut it down. They didn't like the fruit it bore.

A Vigilance committee headed by Jack Helms operated principally in Gonzales and DeWitt counties. It extended its activities so promiscuously as to call forth much resentment against them throughout that region, and almost an open state of war raged for awhile. The Taylor-Sutton feud grew out of these operations. Several men were killed on both sides.

Mat Woodlief was an early day terror who was well-known in this section. He ran a bucket of blood dump in Luling when that town was the terminus of the old Sunset Railroad and a live sporting town. After being wounded in a fight with City Marshall Erichson at Houston, Woodlief was finally killed at Lake Charles.

Bill Longley, another notorious man with a record of thirty-two killings, was finally hanged at Giddings. A story was rife for years that Longley's execution was a fake, he being saved by a harness under his clothes, through collusion with Jim Brown, the sheriff, who was his friend, but the story is probably the only fake about it. He hasn't been seen since. Jim Brown, the sheriff who hanged him, was also a man of iron nerve who never quailed before an outlaw or an enemy. A few years later Brown was killed on a Chicago race track, having first sent two policemen ahead of him to herald his coming. He had turned turfman and was

BILLY THE KID, SAM BASS, JOHN WESLEY HARDIN AND JESSE JAMES.

partner of Luke Short, a Fort Worth sporting man of wide reputation as a gun fighter.

* * * *

"Rowdy Joe" Lowe and Joel Collins, who conducted a variety show and gambling hall in San Antonio, on the northeast corner of Main Plaza, both turned bandits. They left Uvalde in 1877 with a drove of cattle for the Black Hills. Young Sam Bass, who had been hanging out in San Antonio with his racing mare, strung along with them and turned outlaw. They went on a big spree and got broke gambling in Deadwood. Collins had bought his cattle on a credit and owed most of this cattle money to Texas friends.

They attempted to recoup themselves by robbing the Union Pacific train at Big Springs, near Ogallalla, Nebraska. Masked and heavily armed, they entered the express car and ordered the messenger to open the safe. The messenger said the safe had a time lock and could only be opened at the end of the route.

One of the bandits began to beat the messenger over the head with a six shooter, declaring he would kill him unless the safe was opened. Bass, always of a kindly nature, said he believed the messenger and prevented the robber from killing him.

As the robbers were about to leave the car without booty, one of them espied three stout little boxes piled near the safe. Seizing a coal pick he knocked off the lid of the top box—and there uncovered $20,000 in bright gold coins. Each of the other boxes held a similar mount. Not content with this rich haul, the robbers went through the train and held up the passengers. securing $5,000 additional.

While railroad officials, United States marshals

and sheriff's posses were scouring the country for them, the train robbers were in Ogallalla where they went after hiding their precious booty.

The story of the discovery and capture of the bandits details some clever detective work on the part of a salesman in the general store at Ogallala, where Collins traded and reveals the robbers dividing up the coin and planning their escape. The money was stacked up in six piles, each man receiving $10,000 in $20 gold pieces. Collins and Bill Heffridge were slated to return to San Antonio together; Sam Bass and Jack Davis going to Denton county and Jim Berry and "Old Dad" to Mexico, Missouri.

A few days after separating Collins and Heffridge were apprehended at Buffalo station, Kansas. Within a few hundred yards of the town were camped a lieutenant of the United States Army and a squad of ten soldiers who were scouting for the train robbers. Collins and Heffridge having been identified by the station agent he ran to the camp and pointed out the departing bandits to the lientenant, exlaiming:

"There go two of the Union Pacific train robbers!"

Collins and Heffridge when overtaken sought to laugh the idea away, claiming to be cattlemen returning to their Texas homes. The officer insisted on their returning with him. Reluctantly the bandits complied, but after riding a few hundred yards held a whispered consultation.

Suddenly they jerked their pistols in a wild effort to hold up the soldiers. The robbers were promptly shot and killed.

In the legs of a pair of overalls in their packs, the soldiers found tied up $20,000 in gold—new 1877 mintage. Not a dollar had ever been used and the robber's identity was indisputable.

Bass and his companions returned to Denton and robbed the fair in broad daylight. After a fight with a posse, they headed for Austin. Sam gave it out boastfully that he intended to draw "a sight draft on the State Treasury, payable on demand."

They decided to rob the bank at Round Rock on the way down. With Bass were Frank Jackson, Barnes, Arkansaw Johnson and Jim Murphy.

Murphy was a traitor and tipped off the Adjutant General Steele at Austin. Two squads of rangers, one under Lieutenant N. O. Reynolds and another under Captain Lee Hall, were sent galloping to Round Rock. Local officers were also on the qui vive. The robbers rode into town on July 21st, 1878, to reconnoiter for the raid on the following day. They were not recognized, but while buying some tobacco in Copprell's store, Deputy Sheriff Moore, taking Bass for a country boy and seeing a pistol on him, asked what authority he had to carry it. "That's my authority," said Bass, whipping out his gun and killing Moore.

The fireworks opened up promptly. Sheriff Grimes came running up and was also killed. Barnes, one of Bass's gang, was killed. Bass himself was shot by Ranger Dick Ware, standing behind a telegraph pole, but with the assistance of Jackson, as brave a lad as ever stood in shoe leather, Bass made it to his horse and escaped. Jackson literally carried his chief across the street and set him on his horse, all the while being under fire. They dashed out of town together. The Rangers pursued and found Bass six miles from town suffering from a mortal wound. Bass died game, refusing to furnish any information about his companions. Jackson, who had accompanied Bass, reluctantly left him on Bass's insistence, escaped to Mexico and never came back. He still lives somewhere out West.

A doctor told Bass there was no chance for his life. Bass refused to tell anything about his family. As to his pals he said it would do him no good to give any of them away—that he was not built that way. He said, "If I am going to hell myself I won't take any of them with me."

This wound up the Bass gang. Collins had been killed in an attack upon a train in Colorado, and Rowdy Joe having been killed by an officer in an attempt to arrest him.

The young outlaw was buried in the village burying ground at Round Rock, with a crude headboard bearing the name, "Sam Bass." Several years afterwards a woman, of modest bearing and refinement, came to the town and without having much to say to anybody about herself or her business, sought out the grave of the dead outlaw, which she visited and put in good condition. She was Sam Bass's sister and the wife of a prominent physician in a northern city. Her love for her wayward brother survived his career of crime and dissipation and followed him beyond the grave.

* * * *

It was said that John Wesley Hardin, the preacher's bad boy who went wrong and killed twenty-seven men, shot six of them because he objected to their snoring. But Hardin told Captain Gillette of the Rangers that that story was all wrong. He said he had killed only one man for snoring. Hardin's brother was shot down because he was brother to the outlaw, and not because of any crime he had committeed. And eventually John Hardin himself, after being pardoned by the governor and released from prison, was shot down from behind in El Paso in 1895.

All the sporting and border characters dropped into San Antonio at one time or another. Frank and Jesse James, the notorious bandits, spent a winter here. After the Missouri Pacific train robbery in Missouri they headed for Texas. With them were Charly Pitts, Clell Miller and Bill Chadwell. The Youngers, Cole and Bob, who were cousins of the James boys, joined them down here later.

They killed a bunch of cowboys down near Brownsville and drove into Mexico the herd of cattle the cowboys were driving and sold them. They wound up in Matamoros, where the gambling and free life of the old Mexican town offered congenial diversion. One night a fandango was held in the plaza.

Around the square stood rows of orange and china trees. Beneath were stalls for the sale of sweetmeats and pulque and tequilla. Gambling was going on at tables set out for the purpose. Spanish monte was the most popular game and money changed hands freely.

In an open space in the center of the plaza some two hundred couples were dancing to the music of a band consisting of an accordion, a guitar, a harp and a cornet. Waltzes were the favorite dance, for the Mexicans, both men and women, are adept and graceful dancers.

These bold, bad Americanos were short of social graces, but they did not propose to be left out of the fun. They secured partners and ambled into the herd of swaying figures, but they awkwardly stepped on the toes of the graceful señoritas and made such a ludicrous attempt at dancing as to provoke laughter and slanting remarks from the Mexican gallants. The men were jealous and didn't like for the gringoes to dance with their women.

It didn't take long for a fight to break out.

Spanish silettoes flashed and American pistols smoked up the scene.

Clell Miller and Jim Younger were both stabbed, but the gringo outlaws killed four Mexicans and succeeding in reaching their horses and escaping in the darkness to the American side of the Rio Grande. They knocked over and played havoc with several monte tables in the getaway.

They reentered Mexico the next day higher up the river and before leaving the land of God and liberty robbed a caravan of carettas owned by Mexican merchants engaged in the overland trade. They escaped back to Texas by way of Piedras Negras. In the guise of cowmen and gamblers they spent several months in San Antonio carousing and living easy off their booty.

On their return from the Rio Grande Jesse and his gang passed a party of poor immigrants traveling along the road. Later they saw Indian signs and figuring that the redskins would attack the immigrants they backtracked and reached the scene just in time to fight off a band of Apaches, Jesse himself rescuing a woman and two children who had already fallen into the hands of the redskins.

The next exploit of the James gang in Texas was the holdup of the Austin and San Antonio stage at a point between the present towns of Kyle and Buda. Among the passengers were Colonel Geo. W. Brackenridge, the San Antonio banker, Bishop Gregg of the Episcopal diocese, and several women. The men folk were made to fork over their valuables, but the women were gallantly returned their valuables by these chivalrous road agents.

Luke Short was a noted race track man and short card player, a quiet, genteel sort of man of steel nerves and large operations in the sporting realm. He was raised up about Gainesville and spent his

youth on the cow trails of the northwest and fighting Indians, having rendered the government great service as a scout in its campaigns in the 70's against the Sioux and Ute Indians in the Black Hills country.

Afterwards he was one of the noted sporting men and gun fighters which made Dodge City famous in the days of the big cattle drives from Texas. In 1884 he returned to Texas and settled down in For Worth, where he gained almost national notoriety by killing Jim Courtwright, another western character of almost national reputation as a scout and gun fighter.

This encounter took place on the stairway leading up to the White Elephant gambling rooms in Fort Worth. Though his antagonist was at the head of the stairs shooting down at him, Short steadily advanced upstairs, shooting as best he could. It was a test of cool nerve and accurate shooting and Short proved himself the possessor of both these qualities, for Courtwright was next seen at the undertaker's parlors wearing a new black suit and a stiff white shirt with a geranium in his hand.

For several years Short was a partner of Jim Brown of Brenham in race track operations. Short was an authority on sporting matters and a great lover of a fine horse. One of the noted sons of the famous horse Longfellow, with a fine record on many race courses, was named for Luke Short.

Short's offer of $20,000 to Sullivan and Jackson to fight at Fort Worth was bona fide and he offered the pugilists the best of New York references that the money was in the bank and that he meant what he said. He was always a player for high stakes and during the old fairs in San Antonio ran a partido game, which was a monte game extended on a long

table where any number of players could bet, and the ceiling was the limit.

There was nothing short about Short's game. He would turn for any sized bet, no matter how big, and he paid and took the big bets with as much aplomb and insouciant indifference as if they had been goober peas.

* * * *

Life in LaSalle and McMullen counties had many thrills during the days of the Altito pasture gang along in the 80's. There was considerable trouble over cattle, as well as politics concerning the sheriff's office in LaSalle county. Sheriff Charley McKinney was killed by Jim McCoy, for which the latter was hanged in the jail at San Antonio on August 23rd, 1889.

Green McCullough, one of the Altito gang, had four notches on his pistol handle and added another one day by killing an inocent third party while engaged in a duel with Charley Bragg on the streets of Cotulla.

Such bad marksmanship deserved popular execration. It was a very bad example to the youth of the country. A hastily formed mob put a rope around Green's neck and stood him on a goods box under a tree.

"D—n it, boys, ye ain't goin' to hang me are ye," asked Green, who knew most of the crowd. He was told that that was exactly the program. As the rope was thrown over a limb and tightened, McCullough said, "Well. if I've got to be hung. I'm glad I'm going to be hung by my friends," and these were his last words as he swung clear of the box.

Alfred Allee, who lived on a ranch in the wildest part of LaSalle county, gained for himself the

reputation of being a fearless and dangerous man. He was born in DeWitt County, May 31, 1855, but lived and ranched in Karnes County up to 1882.

In those days whiskey and six shooters were part of a man's appurtenances. Allee attended a country dance near the village of Runge and became involved with a man named Word and killed him. For this he was tried and acquitted in the courthouse at the old county seat of Helena, but as new settlers began to move in and crowd up the country about that time, Allee gathered up his little stock of cattle, about five hundred head, and moved over to LaSalle county further west.

In 1886 he and a Frio county stockman named Frank Rhodes had an altercation on the streets of Pearsall and Rhodes was shot and killed, for which Allee was indicted, tried and acquitted.

Allee's next exploit which gained him considerable reputation or notoriety was his slaying of Brack Cornett, a refugee train robber and outlaw, at his ranch.

Cornett and his associates had pulled several big affairs in South Texas in 1888. They withdrew $25,000.00 in funds from a Cisco bank at high noon one day without the formality of writing a check, and stopped a train one night at the little tank station of McNeill, out of Austin a few miles, and took $20,000.00 from the express messenger.

Associated in these high finance and railroad operations were John Barbour, an outlaw from Indian territory, Bud Powell, another of the same ilk, another passing under the name of Charley Ross and another known robber named Bill Whitley.

The officers were pretty well wised up to this gang by this time, and a big price was on the head of the leader, Brack Cornett. This gang attempted a hold-up of a Southern Pacific train at Harwood on

September 22, 1888, but this attack was frustrated by deputy U. S. Marshals. The deputies were riding in the express car armed for bear, and when the robbers attempted an entrance the officers opened fire and drove them off. One of these deputies was a young man named Duval West of San Antonio, who afterwards became United States Federal Judge for the Western District of Texas.

A few days after the Harwood attempt Bill Whitley was killed at Floresville by United States Marshall John Y. Rankin and posse, Whitley being betrayed by a member of the gang who was really a spy for Rankin and who kept the Marshal advised of the gang's doings. Barbour got back to Oklahoma and was killed there by officers December 7th, 1889. Powell was captured in Montana and brought back to Texas and given a fifty year sentence at Leavenworth.

After the Flatonia attempted robbery, Cornett headed west through the chapparal. He intended to make his escape and get out to Arizona, but on his way stopped to hide out and rest a few days at the Allee ranch in LaSalle county. He and Allee had been raised in the same part of the country and knew each other well. He showed up in Allee's camp one morning at breakfast time, but instead of extending hospitality, as the story goes, Allee attempted to arrest Cornett and in an exchange of shots, Allee killed Cornett. Allee collected the reward of $3,800.00 which an express company had offered for Cornett's detention.

Alfred Allee boarded a train one day at Pearsall and taking offense at the manner of the negro train porter, shot and killed him. Shortly afterward he was written up severely in a paper published at Cotulla, and sent word to the editor, J. W. Bowen, that he intended to kill him. Bowen was seated in a

train at Pearsall on another day, in the year 1891, when Allee boarded the train and entered the same coach. Bowen tried to shoot, but Allee shot him first. Allee was acquitted in the courts on all the charges returned against him. He later went to Laredo where he expressed his intention of staying out of trouble. He was regarded as a dangerous man and was killed in a saloon there, August 19, 1896, by City Marshall Joe Barthelow. In the personal encounter, Barthelow grappled Allee and almost cut his head off.

A brave and unusual man, combative to a degree which filled his own life with trouble, Alfred Allee had friends of a lifetime who found him likeable and dependable with those he chose to call his friends. He had a certain personal magnetism which marked him as an unusual character of great personal force.

Ben Kilpatrick, the "tall Texan," bank and train robber, who operated with Black Jack Ketchum's gang of robbers in Colorado, Arizona, New Mexico and Texas, was captured in San Antonio in 1912. His detection was due to his attempt to pass some unsigned bank notes which had been taken in a train robbery near Wagner, Montana, by the Hole-in-the Wall gang. His boots were full of this money when he was captured. Kilpatrick made his escape.

Bill Carver, alias G. W. Franks, was killed at Sonora, Texas, April 2, 1901, by Sheriff Ed Briant, of Sutton county, Texas. Carver at one time was a leading member of Tom Ketchum, alias "Black Jack" gang, and was in all but the last train robberies of the Ketchum gang. He was also in the big fight of July 16, 1899, near Cimaron, New Mexico, at which time Sheriff Ed Farr was killed. At the break-up of the Ketchum gang, August 1899, Carver

joined the Butch Cassidy crowd, and was in the bank robbery at Winnemucca, Nevada, September 19, 1900, when $32,640, all in gold coin, was taken. Carver killed Mr. Oliver M. Thornton, near Eden, Texas, Concho county, just two or three days before he was killed at Sonora.

George Kilpatrick, a brother to Ben, was with Carver when he was killed, and was badly wounded but recovered. It is said that Carver's first wife, not being true to him was the cause of him turning outlaw. He then left home and joined Tom and Sam Ketchum in the train robbing business.

Ben Kilpatrick was killed near Sanderson, Texas, March 13, 1912, during an attempted hold-up of a Southern Pacific train. He was caught off guard and hit in the head with an ice mallet in the hands of a nervy express messenger, David A. Truesdale. (Ole Beck was also killed in this same hold-up. He and Beck had been cell-mates in the penitentiary.) Ben Kilpatrick had been out of the Federal Penitentiary at Atlanta, Ga., just one month, where he served from November 1901, to February 1912, being in the Wagner-Montana train robbery July 3, 1901 on the Great Northern Pacific. He was captured at St. Louis, Missouri, November 5, 1901, with a large amount of unsigned bank notes in his grip, or suit case.

Laura Bullion, a woman who had been Bill Carver's common law wife in Texas, was captured with Kilpatrick at this time. She came from Knickerbocker, Texas, and was given five years in prison.

Harvey Logan, alias Kid Curry, was the most blood-thirsty member of the Cassidy gang. He was given credit for killing George Scarborough near San Simon, Arizona, April 4, 1900. George Parker, Harry Longbaugh and Harvey Logan left the country and went to the Argentine Republic, South America.

For awhile they contented themselves on a cattle ranch, but later began robbing mines and banks and were finally attacked by soldiers and killed out at their ranch.

Comelio Hanks, another robber, was killed in a west side honkytonk in San Antonio by Pink Taylor and other police officers April 16th, 1902. Hanks shot police patrolman Walter Harvey, but a heavy buckle on his belt stopped the bullet and saved Harvey's life. Hanks was another product of DeWitt county, a very quiet youth, until he turned outlaw.

Pat Garrett, the famous slayer of the notorious outlaw Billy, the Kid, in New Mexico, after that killing and a defeat for reelection as Sheriff of Lincoln County, came to Texas and spent five years as a resident of Uvalde County, from 1891 to 1896. He bought land and was in the horse business and was fairly well-liked in Uvalde. At the request of New Mexico's governor, he accepted an appointment as Sheriff again and returned to New Mexico to deal with some other outlaws in the same manner that he despatched the Kid.

When Roosevelt was elected President he appointed Garrett Collector of Customs at El Paso. During Garrett's term of office, President Roosevelt visited San Antonio and was given a dinner at the Menger Hotel. He invited a few of his friends to the dinner as his guests, including Garrett. Pat in turn invited his friend, Tom Powers, to whom he had presented the six-shooter with which he had killed Billy the Kid, and Tom accepted the invitation and was presented to the President. Powers was proprietor of El Paso's well known Coney Island Saloon, and had some notoriety in keeping with the character of the place he conducted.

When Roosevelt learned that Garrett had brought a saloon man to his dinner, he asked for Garrett's

resignation as Collector of Customs and that ended Pat Garrett's career as a Federal official. Garrett was later killed in New Mexico.

That the latter day or modern bad men are more desperate than those of the past is shown by the exploits of "The Newton Gang." These Texas boys made the James boys and Al Jennings look like pikers. Joe, Willie and Jess Newton lived near Crystal City thirty years ago where they started out and were known as the meanest boys in the county. They robbed and looted for twelve years, pulling a bank robbery at Winters, Texas, in 1921, for $20,000, one at Hondo ,the same year for $150,000, another at Houston in broad daylight for $30,000, one at Boerne for $150,000, one at New Braunfels in 1892 for $15,000, San Marcos in 1924, for $50,000. They pulled train robberies at Dennison, Bells, and Texarkana, and a big mail train robbery at Chicago on June 12, 1924, which netted them a half million or more.

J. S. McMillan, alias Joyce Holliday, now dead, and Herb Holliday were also members of the Newton gang. Holliday was killed by members of the gang near Tulsa, for tipping off the officers, his death carrying out the law of banditry that whoever squeals must die. The officers finally trailed down these robber barons. Jess was arrested in Del Rio and the others were wounded and captured and sent to prison in Chicago. They used gas and machine guns, the first bandits to adopt World War methods. These Texans set the pace in modern methods, afterwards adopted by the gangsters of Chicago and other large cities.

Nearly all the outlaws and desperate men came to tragic ends, proving that outlawry doesn't pay in the long run. Most of them died with their boots on in mortal combat, some on the gallows by the

due process of law, others dangled from a rope's end at the hands of mobs.

Their exploits are not recorded on the sedate pages of history. Their desperate encounters and futile lives will fade from recollection in the perspective of passing years.

He who would fain follow their example may expect to verify the words of the psalmist, "Man that is born of woman is of few days and full of trouble. He goeth forth in the morning full of hop, and yea in the evening he is cutteth down with a winchester ball."

TEXAS-GENERAL
GOV. O. B. COLQUITT — PRISON POLICIES

HAVE FAITH in MAN

By

Hon. O. B. COLQUITT

Member of

The U. S. Board of Mediation

NOTE: Mr. Colquitt, former Governor of Texas and now a member of President Hoover's Board of Mediation, has a remarkable record in the adjudication of controversies between Labor and Capital. His understanding and eminent fairness have made him unusually successful, and it is these same qualities which have inspired his deep interest in the betterment of prison methods and prison conditions throughout the country. We asked him for a personal message to T. D. M. readers on this subject, and it here follows.—Ed.

WE have made great strides in this country in our treatment of convicts but there is still room for improvement. And one of the greatest steps forward would be a change in our general attitude toward punishment for the criminal.

I have always felt that prosecutors should look beyond the facts of punishment to the day when the prisoner is to end his sentence and be ready to assume again his duties and responsibilities as a member of society.

It is upon this day that the real test is made which determines whether or not the punishment has been effective, that is, whether both the prisoner and society have been benefited.

If a released convict returns to his family and friends embittered and broken, with a grudge against the law and all its agents, then the punishment has been a very bad thing indeed. This man is in extreme danger of becoming a "repeater".

But if he emerges with his sense of fair play and justice intact, realizing that his punishment fitted his crime and was administered with understanding and firmness, yet kindly, he may still become a valuable member of society.

When I went into the Governor's office in Texas in 1911 the penitentiary management, as it always had been, was a sore spot in that state's affairs.

The system of leasing the "surplus" convicts was then in vogue, the unfortunate prisoners being leased out to planters, lignite miners and railroads. This system I abolished, and confined all convicts to state farms except the incorrigible ones who were kept inside the prison walls.

The mode of punishment of convicts at this time was to strip them and whip them unmercifully on their bare backs. This was excruciating torture. It was barbaric. I ended all that by directing the prison board, who were my appointees, to abolish use of "the bat", as it was called. This was a leather strap fixed to a handle, made of thick rawhide, about three inches wide and three and a half to four feet in length. Milder forms of punishment were substituted and resulted in (*Continued on page* 106)

TRUE DETECTIVE MYSTERIES
July, 1932


O. B. Colquitt

Have Faith in Man

(*Continued from page 5*)

better discipline and more satisfactory results in the work of the convicts. The change was especially noticed in the morale of the prisoners. I built sanitary camps, which were substantial modern homes for them on the "convict farm".

As Governor I was criticised by my enemies for what they termed my free use of the pardoning power. During my two terms I granted about twelve hundred pardons. Under our law then, one of the penalties upon the conviction of crime was the forfeiture of "citizenship", and many of these pardons were to those who had completed their terms in prison and a pardon was necessary to restore citizenship. But out of all the pardons I granted, *ninety per cent were conditional pardons*, and I rarely ever issued any other kind. I found this the better plan for the reason that if I made a mistake I could correct it by cancelling the pardon.

My plan worked admirably, for out of the twelve hundred pardons I granted in this way I had to cancel only eight. I frequently meet men in Texas now who express their gratitude for this clemency and thank me for giving them a chance. These experiences have served immeasurably to strengthen my faith in man.

After I abolished the leasing system, several counties applied to me to parole convicts to them to work on the roads, and so I had the Attorney-General draw a contract with the county commissioners, stipulating they were to feed and clothe the convicts and pay me fifteen dollars per month for each man. Half of this money I turned into the state treasury to the credit of the penitentiary, and the other half I sent every month to the family of the convict. In my contract with the various county commissions, I required that the men be in their camp by 9 o'clock at night, that they attend religious services on Sunday, and wear no stripes or shackles.

The experiment was a success. In our penitentiaries, as a result of sympathetic treatment of convicts, we brought about better discipline and fewer escapes. I found that the men responded in a wholehearted manner to fair treatment.

I took the men into my confidence. I promised them if they behaved I would help them. They respected this attitude, and of the hundreds I turned out, only eight failed me.

The effort to help the criminal rehabilitate himself has other ramifications. Always, from the beginning to the end of my term, I endeavored to instill in the convict a feeling that he had a chance; and if he would only behave himself he could depend upon me to help. And I succeeded.

Every form of cruel and inhuman treatment of convicts ought to be obliterated from the penal institutions of our country. The wardens and guards should be men of sympathetic understanding of the real reason underlying the purposes of punishment.

And when this understanding finally comes to those whose business it is to punish the convicts, then this country will have made great strides toward a final and satisfactory solution of her crime problem.

The Line-Up

Quarterly Fugitive Summary Chart

(*Continued from page 69*)

ADAMO, Frank.....Dec. '31 5 U 3
17 Ua 15

*AIKEN, Sam F.....Feb. '32 15 R 00 17
17 R 0 16

BAILEY, Bill.....July '32 9 U 00 4
6 U 00 10

BARKER, Fred.....April '32 29 I 20
20 O 32

BARNETT, Mose....Sept. '31

BEALE, Ethan Irvin, Oct. '31

BEHAM, Harry.....July '32 W RL UL W UL
W WUL WUL

BERNSTEIN, William, Nov. '31 1 R OI 5
17 R II 12

BIMBO, Annie.....July '32 17 M 10
1 IO

BROWN, Paul.....Oct. '31

*BURKE, Fred.....Oct. '30

BURRIS, Robert.....May '32 13 U 00 13
22 U 00 14

CARSON, Willard....Nov. '31

CELLURA, Leo.....Feb. '32 9 R 0 13
27 - 0

CERDA, Rafael de la, May '32

COREA, Frank.....May '32

*DACON, Leonard....Jan. '32 31 IIO Amp.
28 OIO 16

**DAY, Douglas T.....Nov. '31 1 U II 18
1 U IO 11

DEITZ, Granville A...April '32 1 A aaa
1 A aaa

DOLL, Edward.....Mar. '32 32 IM 0
32 OI

DUNBAR, Dillon F...Mar. '32

EDWARDS, Homer....July '32 17 - IO 10
25 U OO 9

ELLMAN, Roy .....Sept. '31

EWING, Willard.....Sept. '31

FAIR, Fred E.....Feb. '32 1 a U a 7
1 a A 2a 6

**FILKOWSKI, Joseph Aug. '31

FITZPATRICK, Ed C. Mar. '32 1 U 13
1 aT

FLEISHER, Harry....June '32 29 I
8 O

FLOYD, Charles.....May '32 1 U 000 20
1 U 000 16

GLASS, Ed.....Jan. '32 1 U OI
5 U OI 14

HAGAN, James R....Mar. '32 9 R II 9
1 U IO 12

HARRIS, John Wesley. Jan. '32

HART, Jack.....Dec. '31 1 R IO 10
1 R IO 7

HERDER, William....June '32 31 IO
32 II 15

HIGHLEY, Glen.....Aug. '31

HILL, James C.....Mar. '32 1 00 13
3 0

HINES, Emory.....May '32 9 U II 3
1 U II 1

HOWARD, Roy H....July '32 1 Ra 3
1 aA2a

JOHNSON, Roy.....Feb. '32

JOHNSTON, William L. July '32 1 U II 15
17 U IO

JORDAN, Arthur F., Jr. July '32

KARPIS, Alvin.....April '32 1 Rr 5
1 U 8

**KINGSLEY, Clarence Edwin.....Oct. '31

LEE, John.....June '32 13 OI 14
19 O 15

LESSIEURS, Fred.....May '32 1 A 21
1 A 10

*LINDSAY, Everett Frank Aug. '31

LINEBERRY, Sam...June '32 15 R OO 0
24 - IM

*McCHRISTON, Edgar Nov. '31 1 R 000 9
17 U 000 17

MALDONADO, Felix. June '32

**MANGRATORDI, Michael Oct. '31

MARKOVITZ, James. April '32 13 R 0 16
28 0 16

MARSH, Glen.....Dec. '31 9 A 3
1 Ra 2

**MAXEY, Robert E. L. Dec. '31

MILLER, Russell Leroy Jan. '32 13 R 0 20
28 - 0 15

*MILLER, William J..Feb. '32 9 U 00
22 U 00

***MOORE, Frank....Nov. '31

MOORE, Milo.....Jan. '32

*MUMBY, Loyall L...Mar. '32

O'CONNOR, Thomas..Dec. '31 9 R II 17
1 U OI

*OLISON, Joseph.....April '32 5 Rr OI 20
19 - O 16

PARKER, Joseph C...Jan. '32

*PEEPLES, Fred.....Aug. '31

*PERRY, Geo. W. E..June '31

ROA, Bernardo.....Jan. '32 9 U 00 M
6 U 00

RODRIQUEZ, Pedro Alvarez .....May '32

ROLLINS, Wade.....June '32 13 R II 15
17 R II

SAVAGE, John.....Dec. '31

SINGH, Narain.....April '32 9 U II 20
2 U IO 16

SKIDMORE, George C. July '32

SMITH, Glenn.....June '32 1 U OI 10
1 U 00

SMITH, Jim.....May '32

*SNYDER, Herman...Sept. '31

SOUTHARD, Mrs. Lyda Dec. '31 27 IM 19
28 OI 17

SPENCER, James.....Mar. 32 1 U 17
1 T

STAGGS, Alvin.....April '32 1 U III 6
1 U IIO 6

**STEIN, Joseph L....Nov. '31

**STEWART, Carl V..Dec. '31 9 U 00
6 U 00 17

STODDARD, Joseph..Mar. '32 9 U II 16
1 R IO

TAGGART, Walter S..Jan. '32 1 A 7
1 aA2a 3

**TARKINGTON, Willard Feb. '32 9 U OO 12
2 R IO 10

UHLS, Dr. Kenn B...June '32 1 A 9
1 R 10

VAUGHAN, Guy L...Aug. '31

WEINER, Daniel.....Dec. '31

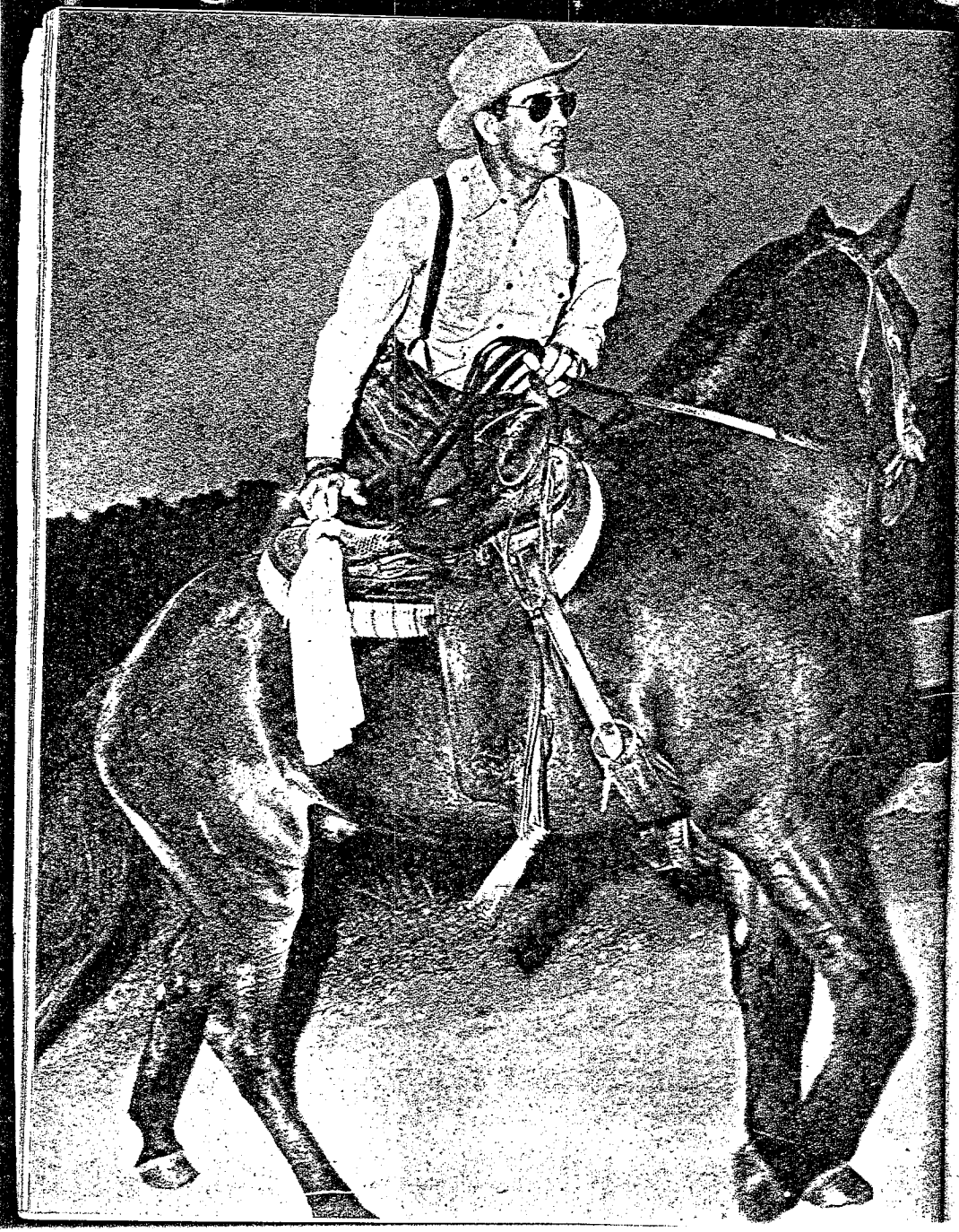
WHITTEN, Bernard..April '32 17 - I
1 U II

**YANCY, D. A.....Dec. '31 1 R IOI 13
1 U OII 13

YANCY, L. C.....Dec. '31 1 U 00 00 14
1 R 00 00 11

*YOUNG, George.....Feb. '32

*Captured through TRUE DETECTIVE MYSTERIES.
**Reported in custody.
***Dead.



a TD double length feature

BY STAN REDDING

TOP GUN OF THE TEXAS RANGERS

Ranger Captain Johnny Klevenhagen, a throwback to an earlier era, made the fabled gunslingers of the Old West look like pantywaists. For sheer guts in the face of staggering odds, he has few—if any—equals in the annals of American lawmen

THEY WERE THROWBACKS, both of them, to an era of the West that had vanished with the dust of the last trail herd and the fencing of the prairies. It is doubtful that two more dangerous men ever faced each other in the heyday of the frontier. Had they met 75 years earlier, they would in all probability have settled their differences quickly, with little formality. The finish would have been echoed in the harsh cough of a Colt's revolver and etched in the dust in blood.

Now, the natural impulse of the one shackled by the stern code of his calling, that of the other by a cunning caution, they sat in a modern motel room and fenced with words as sharply-honed as skinning knives.

One was dressed in a cowman's garb—soft expensively-tooled boots, hard-weave suit and crimp-brimmed Stetson that would have seemed affected on many another man, but which he wore easily and naturally. He was tapered like a wedge, with the legs of a horseman, and there was an Indian cast to his features, heightened by the darkness of his skin and eyes.

The other wore sports clothes that obviously had been selected in the best shops. He was fair of skin, brown of hair, and handsome, his good looks accentuated by the smile that seemed perpetually to frame his even white teeth. He was altogether a personable man—until you looked into his eyes.

They were blue, the blazing blue of St. Elmo's fire, and they crackled now with baleful lights. "I understand you're pretty good, Ranger," he said softly. "But you're just another cop to me. You've got nothing on me and you know it!"

The Texas Ranger was unperturbed. "I've got all I need on you, as far as I'm personally concerned, Norris," he said evenly. "I know you gunned down all those people up there around Fort Worth. I also know you're not going to get by with it down here. If I hear of anyone being shotgunned in my district, I'm going to be looking for you. Now, you get out of Houston and you stay out. This is all the warning you get."

Jene Paul Norris shrugged. "Why not? I just came down to see Pete. But don't think you're roasting me. My business here is finished."

TRUE DETECTIVE MAGAZINE, FEBRUARY, 1963.

"I've been told of your brags that you'll kill me," the Ranger snapped. "Well, I've got a shotgun, too. If you want some of it—come on!" He strode away.

"I'll be seeing you . . ." Norris called after him.

Texas Ranger, Captain John Joseph Klevenhagen once "stayed glued" to the back of a wildly plunging horse while a desperate gunman, standing on the ground, fired five shots at him from a distance of less than 20 feet.

Klevenhagen coolly got his horse under control. Holding the panicky animal steady with the tensile steel strength of his legs, he raised his short-barreled, 12-gauge shotgun and, in his own words, "shot that S.O.B. loose from his pistol."

Had he worn the badge of any other law enforcement agency, much might have been made of that incident. But he was a Texas Ranger, and Texans expect nothing less than iron courage in the men who wear the silver star superimposed on a blue disc.

And because the Ranger was Johnny Klevenhagen, editors generally dismissed the incident with three paragraphs on the inside pages. For Johnny Klevenhagen, as they say of that fellow on television, was a legend in his own lifetime.

It is said of the Texas Rangers that they "ride like Mexicans, trail like Indians, shoot like Tennesseans, and fight like the very devil." Johnny Klevenhagen did all those things and, an experienced pilot, he also "flew like a hawk." In addition, he was an authority on ballistics, fingerprints and advanced criminology, well-versed in photography, law and psychology. But it was his grim tenacity on the trail of killers and other outlaws that made his name a byword in the Lone Star State.

When the history of the famed corps is rewritten, Klevenhagen undoubtedly will rate detailed mention, for it is doubtful that any other lawman, before or since, ever brought in as many killers as did Ranger Klevenhagen in his 29 years behind a badge.

Like most Rangers down through the history of the organization, Klevenhagen respected no sanctuary for a murderer, accepted no limitations to his authority, state, national or international, once he had taken a trail. He tracked down killers all over Texas, confronted them in a score of other states, hauled them out of Canada on airliners, and brought them on horseback out of the mountains and deserts of Mexico.

Once he faced them, they had their choice of three alternatives—either accompany Klevenhagen peacefully, or incur extensive medical treatment for miscellaneous anatomical perforations —or be buried where he found them.

Johnny Klevenhagen never considered himself a gunfighter. He always regretted having to "go to the pistol." But circumstances forced him to become as adept with rifle, pistol and shotgun as one of his early-day predecessors who, in a written report on a border scout, noted:

"The other day we run on some horsebackers (Mexican raiders) and one of them thought he would learn me how to shoot, so I naturalized him —made an American citizen out of him."

It actually grieved Klevenhagen that so many men tried to "learn" him how to shoot. Outlaws who would have surrendered to a small-town constable, if braced, felt compelled for some reason or other to take a crack at Johnny Klevenhagen.

Possibly as a concession to his conscience, Klevenhagen invariably accorded his opponents the privilege of the first shot, and sometimes several. He was frequently criticized for this. "One of these days, Johnny, you're going to buck up against a man with a gun, and he won't miss with that first shot," a friend once told him gloomily.

John Joseph Klevenhagen was born to die a Ranger. For the past 27 years, the elite police corps has hand-picked the members who serve in the small group. The Texas Legislature, last September, authorized the Ranger corps to be increased to 62 men—six captains, six sergeants and 50 Rangers. But Johnny Klevenhagen, while still a fuzzy-cheeked boy, picked the Rangers in which to serve.

Klevenhagen was born June 2, 1912, the son of Comal County rancher Frank Klevenhagen. Comal County is north of San Antonio, in the mesquite country of Texas. As soon as he could walk, Johnny—in common with most Texas ranch kids—began trying to ride "anything with hair on it that was big enough to carry me."

Those were the days when cattle rustlers and horse thieves were still active in the mesquite country. Young Klevenhagen never met any of the outlaws or raiders, but he did meet many of the Rangers. They were big men, mounted on fine horses. More often than not, they were armed with two six-shooters, a rifle, sheath knife, and sometimes a shotgun.

"They became my heroes," Klevenhagen reminisced later. "Every kid in Texas wanted to be a Ranger, but I made up my mind I would be one."

Young Johnny followed the Rangers around as they scouted the ranges for thieves, visited them in their lonely camps, and persuaded them to teach him to shoot, read trail sign, and live off the land. Before he reached his teens, the boy was a top rider and a crack shot.

At 16, young Klevenhagen was ready to be a Ranger, but then as now the group wanted only experienced men—men who had proved themselves of outstanding ability in the field of law enforcement.

If the Rangers wanted only crack officers, he'd be the best, Johnny Klevenhagen decided. But the San Antonio Police Department, the Bexar County and Comal County sheriff's departments, and all the constables in the two counties all felt the would-be officer was too young to pack a heavy .45 and a badge.

So Johnny got a job as a lineman with the San Antonio light company while he looked over the situation. He was tall enough—almost six feet—and heavy enough—150 pounds. And tough enough. Many a young bully could testify to the punching power in his wiry frame. So what was all the fuss about age?

But if it was age they wanted, age they'd get. He grew a heavy black mustache. It made him appear several years older, and he bought a poll tax. Every person in Texas over 21 is required to pay a poll tax. He gave his age as 22.

Armed thus with indisputable proof that he was of voting age—an important qualification for cops in Texas—Klevenhagen made an application with the San Antonio Police Department in 1929, and was hired as a motorcycle officer. He was actually 17.

"I went out and bought myself an old thumb-buster (Colt single-action), the cheapest thing I could find, and started riding patrol," he said. "I took to those motorcycles like a duck to water. Hell, it wasn't much different than riding a horse."

Prohibition was still in force in those days, and Mexico gushed a steady stream of illicit liquor northward. "When you jumped a car at night, you didn't know whether you were chasing a speeder or a bootlegger," Johnny said.

One night he was parked on the outskirts of San Antonio when a large Packard hearse roared by, crowding 90 mph. "I could see the coffin through the glass windows," Klevenhagen related. "I figured they were in too big a hurry to get that fellow to the graveyard, though, so I lit out after them.

"I drew up alongside and shouted for the driver to pull over. Damned if he didn't stick a gun as big as a cannon out the window and cut loose."

The young officer slammed on the brakes, miraculously unhit by the splatter of shot. He hauled out his .45, poured the gas to the motorcycle again and quickly overtook the hearse.

"I shot both tires off the rear," he said matter-of-factly. "When it wobbled to a stop, I took the two men prisoner. Of course, the hearse was loaded with whiskey."

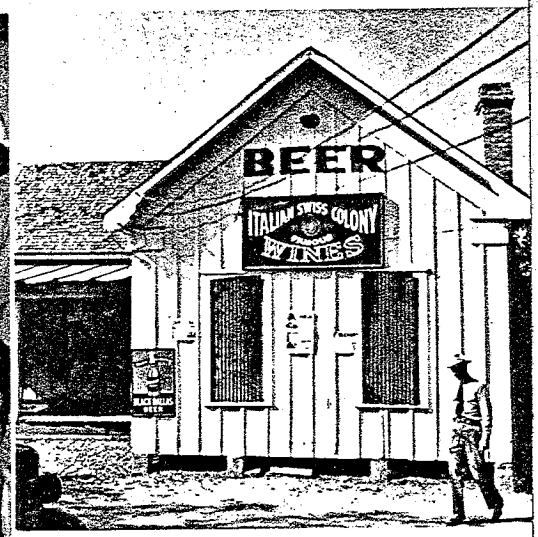
Early in his career, Klevenhagen began cultivating underworld sources of information. With his dark coloring and fluent command of Spanish, he was particularly successful among the Latin-American population. He built a reputation as a scrupulously fair man who never broke his word, never breached a confidence, and never revealed the name of an informant.

His high record of arrests, his coolness and courage under fire, and his uncanny knack of being at the right place at the right time soon attracted the attention of Constable Will Woods, of San Antonio's Precinct I. Woods persuaded Klevenhagen to become his chief deputy.

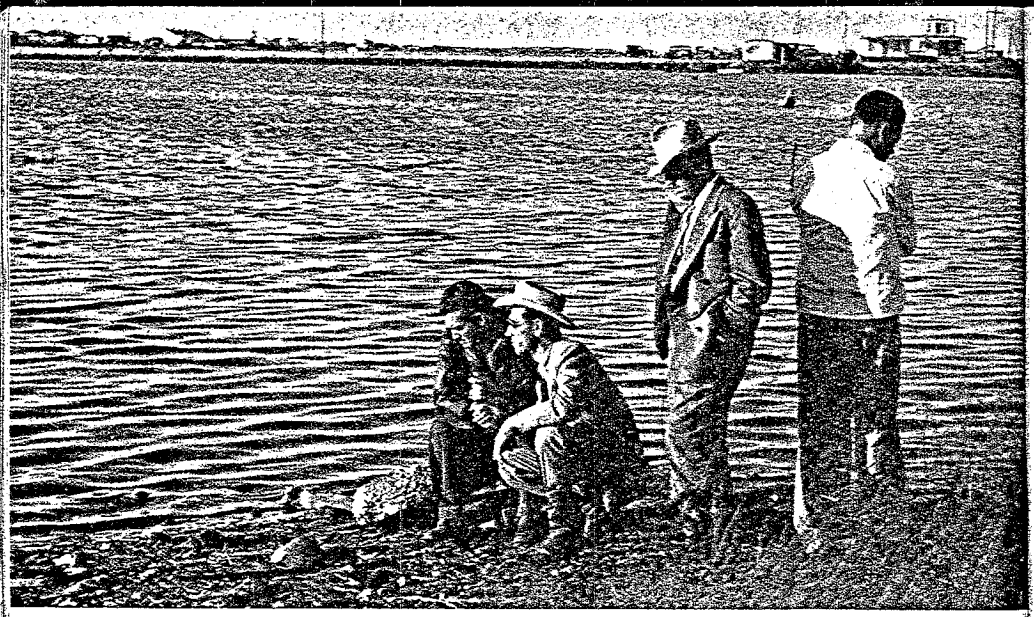
When Woods became sheriff of Bexar County in 1936, he took Klevenhagen with him, giving the young officer almost a free hand. In the next five years, Klevenhagen established an awesome record as a manhunter.

He brought in a former deputy sher-

Norris, credited with 40-odd killings, shot it out with Klevenhagen—and lost



"At least two of Ball's waitresses had been 'gator bait," Klevenhagen said, when parts of women's bodies had been dug up near the tavern operated by "the alligator man"



It took Klevenhagen 26 months to track down "Man from Mars" (*l.*), a Houston student wanted for the holdup-murder of a grocer

Ranger Klevenhagen and Capt. Walters brought in Jung (*r. rear*), captured in Indianapolis, and Shaw (*seated*), run to earth in Chicago, who had murdered and robbed a Texas rancher 3 months before

iff of adjoining Wilson County, on a charge of murdering Jesus Quintero. He supplied the information and led the posse that tracked a notorious cowboy bandit to his hideout in Gladewater. He arrested John W. Vaughn, the killer of San Antonio Policeman A. A. Edwards, and he was the man who brought in Selanes Canedo, the killer of John Daly. Both men received death sentences.

He broke the puzzling "train murder" of Jose Dorantes, nailing the killer. He took Jesse Polanco, a cop killer, and Carlos Fernandez, who murdered a bus driver, to Huntsville, where they were executed, after a trial.

In August of 1937, Klevenhagen took the trail of the notorious bandit-killer Lawrence Rea, a hunt that was to have a significant effect on his life. Rea, an escapee from San Quentin, and his gang had staged a series of robberies in Houston and San Antonio in a period of weeks that netted him over $90,000.

Deputy Klevenhagen trailed him to Houston, where a member of Rea's gang "put him on the spot." Told Rea was holed up in a gambler's house on the outskirts of town, Klevenhagen enlisted the aid of Houston officers and the house was surrounded.

Among the Houston officers was a tall, lanky detective named C. V. "Buster" Kern. He and Klevenhagen cottoned to each other immediately. The friendship born that night of August 15, 1937, was to last 21 years, and cost the Texas underworld dearly.

The first payment was made that night. Detective Lieutenant Cecil Priest shouted for Rea to surrender. When the outlaw didn't answer, Priest ordered two tear-gas grenades fired through the windows of the house. From inside, came the muffled sound of a shot, followed almost at once by the opening of the door and the surrender of two members of the gang. But Rea was still inside.

Kern and Klevenhagen donned gas masks and led the charge into the house. On the bed of an upstairs bedroom, they found Rea. He had shot himself to death with a sawed-off shotgun.

"Well, that saves the state some money," Klevenhagen said laconically, and went back to San Antonio.

It was during this period that Klevenhagen took flying lessons, undoubtedly with an eye toward the day when he'd pin on a Ranger badge. He had not forgotten his ambition, despite his success under Sheriff Woods, who named him chief deputy sheriff.

Every so often, he went to Austin and put in another application for the Rangers. On one occasion, the young deputy met grizzled Bob Coffee, the "old man" of the Rangers, known as a man "who can make it all day on nothing more than a cup of coffee and a cigarette for breakfast."

"I've heard a lot about you, sir," said the young deputy respectfully.

"We've heard some about you, too, son," replied the tough old Ranger, extending a horny hand.

The Rangers heard more about Klevenhagen in 1938, when the whole state was shocked by the case of Joe Ball, the "Bluebeard of Elmendorf."

Elmendorf is a small community in Bexar County. Joe Ball was the town bully, a tough, pistol-packing bootlegger, tavern-keeper, and alligator-fancier with an eye for the dolls. He kept several huge alligators in a tank at the rear of his tavern "to draw trade."

Johnny Klevenhagen suspected the tavern-keeper of being a cow-thief who "moonlighted" beef, butchered it on the spot, and sold the meat to unscrupulous storekeepers. But he never had been able to obtain any evidence against Ball.

One day an informant disclosed that Ball had been seen carrying a barrel into the shed behind a relative's home. The man said there was a strong odor coming from the big, heavy barrel.

With Deputy Sheriff John Gray, Klevenhagen went out to the house. If they could find the barrel and it had a branded hide in it, the tavern keeper might soon be out of business.

When they arrived there, however, the relative said Ball had removed the barrel when she complained of the odor.

Klevenhagen and Gray decided to take Ball in and hold him until they could trace the barrel. They returned to Ball's home.

"All right, take me in. But I'd like to stop by the tavern and count my cash and close out the day's receipts, if you don't mind," Ball said with a shrug.

The three men drove to the tavern. Deputy Gray remained in the car while Klevenhagen escorted Ball to the door. The deputy leaned against the door jamb while Ball walked to the register, opened it and began counting his money.

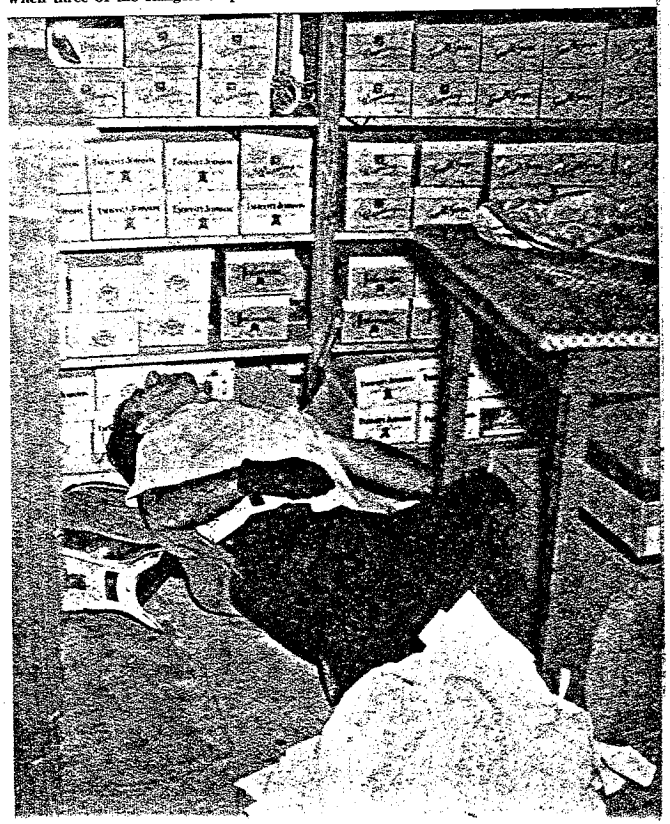
Ball reached for a small metal cash box beneath the counter, set it beside the cash register, and opened it with a key. Suddenly he whirled, and the startled deputy saw the glint of a heavy .45 automatic in the bartender's hand.

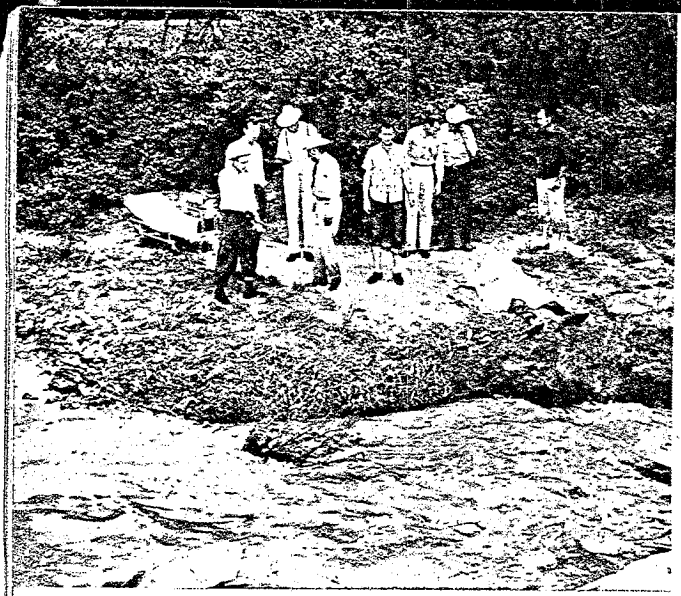
As Klevenhagen told it: "As he raised it, I went for my pistol. But instead of shooting me, he shot himself."

That was a matter of opinion. Deputy Gray, who had stepped up behind Klevenhagen, witnessed the lightning-swift action. "I thought Johnny was a goner," said Gray. "I went for my own gun, but Klevenhagen drew and shot so fast, I couldn't see him move."

Ball's shot and the officer's shot sounded as one. Ball's own bullet en-

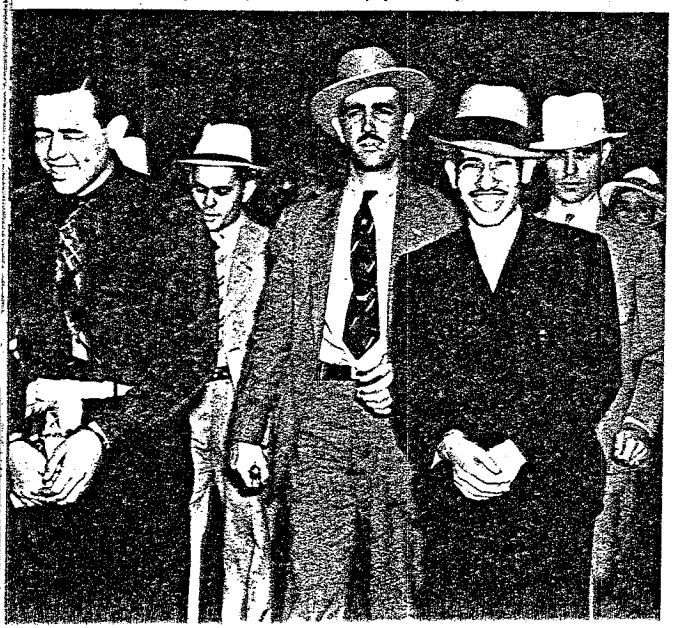
When three of the Rangers surprised safecracker Giacona, he missed—they didn't





At Jene Paul Norris' final meeting with the Rangers, Lady Luck kissed him off. Hit 16 times in a violent exchange of gunfire, he fell on the bank of a stream

Fernandez (*l.*), who murdered a bus driver, and cop-killer Polanco (*r.*) grinned when Klevenhagen brought them in. They quit smiling when the switch was thrown



tered beneath his chin and ranged up into his brain. Klevenhagen's bullet struck Ball in the throat, and passed through the back of his neck.

Had Ball actually shot himself? Or had Klevenhagen's bullet, hitting him, caused his hand to jerk up, and his pistol, discharging, sent the bullet meant for Klevenhagen into his own head?

A coroner puzzled the question, evaluated the evidence, and arrived at a verdict. "Suicide," he ruled. "Either way."

From that day, John Klevenhagen was marked as a fast gun.

Ball's death did not end the probe into the tavern-keeper's affairs. The officers succeeded in locating the barrel. It did not contain the remains of a cow. It contained part of a butchered corpse—that of a woman. A terrified employe led the officers to the bank of the San Antonio River and showed them where Ball had made him burn the woman's head. Then he took them to an isolated beach near Ingleside, where the officers unearthed parts of the body of another woman.

The victims were identified as Hazel Brown and Minnie Gotthardt, women Ball had employed as waitresses. This naturally brought up the question of what had happened to other waitresses who had worked briefly for the "Bluebeard of Texas." An examination of the giant alligators kept by Ball partially answered the question. A pathologist said the saurians had been fed on human flesh!

"Never did know whether more than two girls had been fed to those damn 'gators," said Klevenhagen. "But we pretty well satisfied ourselves that at least two of Ball's waitresses had been 'gator bait."

If Klevenhagen expected the Rangers to summon him immediately, he was disappointed. They didn't. But that he was their kind of man, he demonstrated soon afterwards. Campaigning for the reelection of his boss, Sheriff Woods, Klevenhagen got into an altercation with a rival candidate's "ward heeler," and his temper got the best of him. He knocked the man down.

"That wasn't called for, Johnny," protested the political worker, overlooking the fact that he'd used some dubious language to describe Klevenhagen's ancestors.

"You're sure as hell right," growled the deputy, and wheeling around, he stalked into the nearby office of a justice of the peace and filed a complaint of simple assault against himself. He then pleaded guilty and paid a $5 fine. It wasn't to be the last fine he'd shell out for throwing temper-triggered punches.

Shortly afterwards, Bexar District Attorney John R. Shook hired Klevenhagen as his chief criminal investigator at a substantially higher salary. This was not the deciding factor in his taking the job, but it helped. Johnny had been a family man since 1935, the year he met and married blonde Viola Wolff, one of the switchboard operators at the Bexar County courthouse. He also had a new son, John Joseph Klevenhagen Jr., who was already toddling around in hand-tooled cowboy boots and sporting a deputy's badge on his diaper. Johnny frankly admitted he was raising the boy to be a "pistol-toter."

Klevenhagen had been a D.A.'s man only six months when, in August, 1941, he received a call from Colonel Homer Garrison, director of the Department of Public Safety and chief of the Texas Rangers.

"How do you like your new job, John?" asked Garrison.

"I like it fine," replied Klevenhagen. "But it's hardly a new job. I've been here some time."

"Wasn't talking about that job," said Garrison dryly. "I meant your new job as a Texas Ranger."

Klevenhagen whooped and banged the phone down. Then he snatched it up again and dialed his wife. "Start packing," he shouted exuberantly. "We're moving! I don't know where we're going, but I guess they'll tell us in Austin."

Then he stalked into Shook's office and grabbed his hat. "I'm resigning!" He grinned. "I've just been appointed to the Rangers." He grabbed Shook's hand, pumped it hurriedly and all but ran out the door.

Shook stepped to the door and watched his ex-investigative ace bound off. "Shave off that blasted mustache, Johnny," Shook called out to the departing Klevenhagen. "Or no one will believe you're a Ranger!"

Klevenhagen was sworn in at Austin on August 14, 1941. He reported to Captain Hardy Purvis, commanding Ranger Company A in Houston, on September 1st. Purvis, a salty, terse-spoken bantam of a man out of the Big Thicket in East Texas, inspected the lean-flanked recruit critically, striding around Klevenhagen with a slight limp. The limp was the result of a bullet picked up in a gunfight with a Piney Woods outlaw, 15 years past.

"Little puny, wouldn't you say?" Purvis commented, looking at State Trooper Eddie Campbell.

Campbell also inspected Klevenhagen gravely. "Depends on whether you aim to work him or show him," commented Campbell, poker-faced.

Purvis aimed to work him, Klevenhagen learned in short order. He had taken a drastic cut in pay when he pinned on a Ranger badge (privates then drew $245 a month), and he soon found he had to reshape his working habits.

Then, as now, the Rangers were trouble shooters. Their primary purpose is to go in and do a job local officers can't or won't do. They like to be invited, and generally are, but a Ranger may step into any situation involving a major violation of Texas state laws. There is never a lack of "invitations," for most rural law enforcement agencies in Texas lack the facilities to cope with canny criminals, and need help when confronted by a puzzling murder, burglary or holdup. Many of them are "one-man police departments."

A light week for a Ranger is 60 hours, the average week 75 hours. Klevenhagen, like every other Ranger, found himself covering an area larger than the State of Connecticut, for Company A's district encompassed 46 counties.

Being "city Rangers," the men of Company A did not keep horses on hand at headquarters, but Klevenhagen learned—as does every Ranger—that he was expected to have a sound mount available for use in areas inaccessible by automobile. Rangers handle most cattle theft investigations in Texas, often conduct manhunts on horseback, and sometimes "comb" cattle herds and stage roundups to check for and single out stolen animals.

Since most of the state's penal farms —and a whole hell of a lot of its ranches—are located in the 46-county district to which he was assigned, Klevenhagen figured rightly there'd always be a good horse within shouting distance that he could borrow or commandeer.

But like all good cowboys, he had a penchant for sitting his own saddle. He carried his riding gear—including lariat, spurs, brush jacket and chaps (which most Texans refer to as "leggin's")—in the trunk of his car.

The car itself was a rolling arsenal and crime laboratory. The three-way radio-equipped vehicle was crammed with rifles, shotguns, riot guns, tear gas guns, grenades, gas masks, fingerprint kits, cameras, and equipment for making casts of tires, tool marks, death masks, and other devices to gather and preserve evidence.

Rangers wear no uniform, nor is any special type of gun prescribed for the force. Some Rangers wear business suits, but because they are often in the field, most wear gabardine or other hard-weave trousers, a short, Western-style jacket, medium-brim Stetsons and cowboy boots. Most carry a .45 single action, .357 Magnum, a .45 Automatic, a .44 Smith & Wesson, or a .38, in hand-tooled leather holsters or shoved down in their waistband. There are only a few "two-gun" Rangers on the force, although any man may pack two pistols if he desires, and most of them have at one time or another, when on a particularly hazardous mission, tucked an extra pistol in their belts.

Klevenhagen's garb rarely varied in his years in the Rangers—a tan or brown single-breasted suit, tan Stetson, tooled boots, white or tan shirt and tie. He carried a .45 automatic rammed into the waistband of his trousers on

After 30 harrowing minutes in the air, Ranger Klevenhagen was given his wings

the left side, butt forward. The weapon was carried cocked, ready to fire.

It is ascertained before they're selected that Rangers are crack shots. After pinning on the coveted badge, a Ranger doesn't reach for his gun unless he intends to use it. Just how fast they can "shuck" a gun, an adversary must find out for himself—and that can be painful or fatal.

"Rangers ain't much on fast, but they're hell on sure," a border rancher once commented. There are men in Texas prisons who will swear that's a rank understatement.

One of the principal duties of a Ranger is to assist in the apprehension of escaped felons from the various Texas prison farms. Klevenhagen hadn't been a Ranger two months when he had the first of many brushes with an escaped convict.

He had been up in northeast Texas with State Trooper Eddie Campbell, who often worked with Rangers on criminal investigations. He was returning to Houston when he and Campbell received word via their radio that a notorious outlaw of the 30s, had escaped from Eastham. He had stolen a car in Lovelady, and was reported headed for Normangee on a back road. He had run a blockade at Riverside.

"Hell, we can intercept him," exclaimed Klevenhagen, and tromped the accelerator of the souped-up Ford he was driving. Klevenhagen was on a farm road that intersected the Riverside Road.

As the Ranger's car approached the intersection, just above the Trinity River Bridge, Trooper Campbell spotted the outlaw's car roaring toward the bridge from the left. "Don't try to block him, Johnny," he shouted. "He'll kill us all if he hits us!"

Klevenhagen had already blocked the highway with his car. But he realized Campbell was right—the fugitive wasn't going to stop and would hit them broadside. He jammed the car in reverse and backed up, barely in time. The stolen car whooshed past the Ranger car's front bumper.

Klevenhagen growled, and sped after the fleeing convict. The old-model Chevrolet was easily overtaken, but the outlaw refused to stop and the road was too narrow to risk curbing him. Trooper Campbell leaned out the window and started shooting.

Klevenhagen unlimbered his .45 with his left hand, stuck it out the window and started shooting, too.

All of a sudden the Chevrolet burst into flames. It veered, wobbled, stopped. The outlaw leaped out, hands holding his rump, voice raised in a howl of anguish. "Don't shoot, don't shoot, I'm hit already," he screamed.

Campbell put the cuffs on him and shoved him into the car, after inspecting his wound. It was more embarrassing than serious—a raw welt down one cheek of his posterior, red and blistered.

The convict looked at his burning car, wide-eyed. "What the hell were you shooting at me, anyway?" he growled.

Klevenhagen grinned. "Tracers," he said. "They work, don't they?"

When the Japanese attacked Pearl Harbor, Klevenhagen drove to San Antonio and volunteered for the U.S. Air Force.

Experienced pilots were needed at the time, and taking the Ranger at his word that he could fly, Randolph Field officials checked him out in the cockpit of a P-40, and let him take the sleek fighter upstairs. After a harrowing 30 minutes—for both Air Force officials and the Ranger—he got the fighter back on the ground.

"Which side do you intend to fight on?" asked a major gravely.

Actually, Klevenhagen was rejected on grounds he couldn't meet pilot physical standards. Before he could make up his mind which of the ground forces to join, he was "frozen" in his job as a peace officer.

If he couldn't take a crack at the Germans and Japs, the Ranger wasn't to lack for action during the war. And when you're under fire, it doesn't make much difference whether the bullets fired at you come from the gun of an enemy soldier or one held by an enemy within your own society.

With the young men away in the armed forces, guard duty in the state's prisons were performed mostly by oldsters, who found it difficult to hold the restless, surly prisoners in their charge. Klevenhagen was often pulled off burglaries, murders, black market cases, and other major crimes to chase down escaped cons.

On one occasion, he and Ranger Eddie Oliver tracked down a pair of escaped long-termers from Ramsey. The fugitives had made their way to Houston, obtained money and clothing, and had armed themselves.

Acting on information, Klevenhagen and Oliver took one of the men in a shoddy rooming house, and learned from this man that his partner was to meet him on a certain street corner at 6:30 p.m.

The escaped con was indeed on the street corner, waiting, at the appointed time. The Rangers stopped their unmarked car half a block away, and began strolling toward the escapee, one officer on each side of the street.

Two things happened simultaneously. A bus pulled up behind the convict and disgorged a horde of passengers. And the convict spotted the officers and guessed they were Rangers.

He pulled a revolver, took aim at Klevenhagen, and fired. Both Rangers drew their pistols, but could not fire because of the press of people around the convict. The convict shifted his aim to Oliver and fired. A bullet hummed past the Ranger's ear. He fired again at (*Continued on page 68*)

Deputy John Joseph Klevenhagen Jr., 22, (*below*) takes pride in following the footsteps of his famous father (*above*)

Arsenic and Old Love

(*Continued from page 23*)

which returned the indictment exactly two years and two days after the date of Walter Merrill's death, could have held Mrs. Norris only for first-degree murder. The statute of limitations on any lesser charge had expired 48 hours before that jury concluded its probe and returned the true bill against her.

Describing his brother as he had last seen him several months before he died, Robert Merrill told the jury: "Walter was in excellent health and spirits when I talked with him a few weeks before he went to the senior citizens' dance at which he met Mrs. Norris. Although in his mid-seventies, he boasted that he'd never been seriously ill a day in his life."

Referring to a civil suit which he had instituted in an attempt to break the will that was to have been probated in Orange County six months after Walter's death, the witness said:

"At the very time he was suffering from stomach trouble because of the poison that was slowly accumulating in his system, Walter made out a will naming Mrs. Norris the executrix as well as the sole beneficiary of his estate. When she later appeared in court to have the will probated, Mrs. Norris swore that my brother had no close relatives."

Robert Merrill told the jurors that it would have been impossible for anyone who was in his late brother's confidence not to have learned of the existence of living relatives. Photographs of Walter's brothers and their families were in his home. Until a few weeks before his death, he had been in constant communication with them all.

Only a short time after the former shipbuilder moved from Orlando to St. Augustine and bought an oceanfront home on Anastasia Island, Mrs. Norris had followed him to the coastal resort city, the evidence revealed. Shortly afterward, Walter moved out and left the newly purchased house to his uninvited guests. But Effie Norris continued to see him almost daily, calling at the Sanchez Street apartment to which he had moved.

L. E. McEldowney, a chemist for the Florida State Board of Health, was called as one of the final witnesses for the prosecution. Before hammering home his case against the accused woman, Prosecutor Warren first laid the groundwork for McEldowney's testimony by delving into Effie's personal history.

The defendant's first husband, Carl Rickard, a miner, had died in 1931 following a sudden illness, it was brought out. The cause of death was not revealed. Shortly after Rickard passed away, his widow remarried.

The second marriage, to Earl D. Norris, an Orlando engineer, lasted for eight years. In 1952, Norris died suddenly in Bartow, Florida. After Effie's arrest for the murder of Merrill, investigators for the Florida Sheriff's Bureau had obtained a court order for the exhumation of the second husband's body. Tests performed on his body, according to the testimony of McEldowney, revealed "quantities of arsenic."

The corpse of another Orlando man, Vinton M. Pace, for whom Effie had acted as housekeeper following the death of her second husband, was later exhumed for examination by the state chemist. "We also found traces of arsenic in this body," McEldowney testified.

But the testimony was cut short before Prosecutor Warren could get an answer to his question as to the cause of death in the cases of both Norris and Pace. Defense Attorney Howatt protested strongly that his client was not on trial for the murder of either her second husband or the man for whom she once kept house.

Other witnesses were called to describe the death of Pace in 1953, only a few months after he hired Effie to cook and keep house for him. They testified that although Pace was supposed to have been suffering from "a fatal attack of kidney trouble," he had exhibited every indication of being in perfect health until shortly after his newly-hired housekeeper started preparing his meals.

Every available seat was filled and scores of persons unable to find seats stood for hours to hear the evidence of the State's final witnesses as the trial entered its fourth and last day. It was rumored that Effie Norris would take the stand in her own defense. No witnesses had been subpoenaed to appear in her behalf.

But after Prosecutor Warren abruptly concluded his case with the evidence that two other men in the defendant's life had died after ingesting arsenic, the defense made the startling announcement that it had neither evidence nor testimony to offer.

Defense Attorney Howatt had plenty to say, however, as he attempted to convince the all-male jury that the State had failed in its attempt to prove Effie Norris administered deadly poison to the deceased.

"The prosecution's whole case is based on nothing but theory," Attorney Howatt argued. "You are being asked to convict an innocent woman on suspicion and possibility."

Taking up the testimony of the witnesses who had been called to the stand to tell of the meeting of the elderly couple at a senior citizens' dance and the whirlwind courtship that followed, Attorney Howatt stressed the point that at no time had anyone seen his client in possession of poison. In fact, no one had ever seen Effie Norris give Walter Merrill anything to eat or drink.

Prosecutor Warren, in his final argument to the jury, contended that "the footprints of guilt are written all over the facts in this case." He said that the State had shown conclusively that Walter Cleveland Merrill died of arsenic poisoning, that the sworn testimony of witnesses indicated Effie administered that poison over a period of four months, after her victim made a will leaving her everything he possessed in this world.

The prosecutor demanded a verdict of guilty of murder in the first degree. But he refrained from asking for the death penalty, and Judge Melton in his charge to the jury made no reference to the possible sentence should they find Effie Norris guilty as charged.

Seven hours after the 12 men who held Effie's fate in their hands began their deliberations at dusk on Thursday evening, October 18th, the members of the panel filed back into the courtroom. After warning the spectators that no demonstration would be tolerated, Judge Melton inquired, "Gentlemen, have you arrived at a verdict?"

When the foreman stepped forward and handed a slip of paper to Court Clerk Oliver Lawton, for the first time in four days the woman on trial, betrayed an indication of her emotions. Leaning toward the attorney at her side, she whispered a few words and her lawyer rose and went toward the bench.

After a brief exchange, the Court announced that because of the defendant's years, she would not be required to stand to hear the decision of the jury.

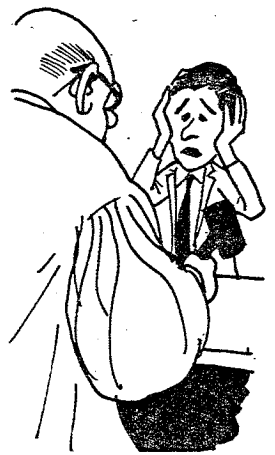
A moment later, Clerk Lawton read the words written on the slip of paper handed him by the jury foreman: "We, the jury, find the defendant, Effie Norris, guilty of murder in the first degree, and the majority recommends her to the mercy of the Court."

Still outwardly calm, the woman in black turned toward the middle-aged jurors who had found her guilty, and bowed smilingly. As a wave of whispering broke out from the spectators' benches, Effie's two daughters by her first husband rushed forward to comfort her.

Judge Melton announced that sentence—a life term is mandatory in Florida when the jury finds the defendant guilty of first-degree murder and recommends mercy—would be passed at a future date.

A moment later, Mrs. Effie Norris was led from the courtroom back to the jail cell she had occupied during the 18 months since her arrest. Told by Mrs. Louise Cook, the deputy sheriff who accompanied her, that she probably would be removed to the Women's Prison at Raiford before the month was out, the prisoner blinked her myopic brown eyes and stifled a sob. But she spoke no word.

♦♦♦



TROUBLE ENOUGH

In San Antonio, Texas, a young man was haled into court, charged with punching a neighbor in the nose. It was brutal, unprovoked assault, the complainant asserted.

"But I was assaulted first, your honor," the accused youth explained. "For three days and three nights he has been playing his guitar and singing loudly . . ."

The judge nodded understandingly. "Case dismissed," he said.

—Dwight Evans

Top Gun of the Texas Rangers

(*Continued from page 60*)

Klevenhagen, then at Oliver, then at Klevenhagen.

"All the time, I was yelling at that so-and-so bus driver to get the hell out of there," Klevenhagen said later. "Finally, he did, and the people melted away, and we shot that sonofagun loose from his pistol."

The convict was not wounded or killed. The Rangers "shot him loose from his pistol" simply by placing bullets through his jacket. The heavy slugs threw him off balance and before he could recover, the Rangers were on him and subdued him.

Someone later mentioned to the Rangers that they would have been justified in shooting the prison escapee. Klevenhagen spoke for both himself and Oliver when he replied, "A star is no license to kill. No officer should ever kill another man unless he's forced."

Klevenhagen, on being assigned to Houston, had immediately looked up Buster Kern, who had risen to the rank of Inspector of Detectives, and the two men worked closely together on many cases. So adept were they as a team that they acquired the nickname, "The Gold-dust Twins of the Law." Often with the inspector and the Ranger, also, was a handsome, laughing, dark-faced detective, J D. Walters, who was as deadly as he was amiable.

During the war, the three accumulated an awesome record of arrests and convictions, smashing black market rings, nabbing bandits and burglars, rapists and killers, breaking up gambling rings and narcotics rings that preyed on servicemen.

Once, in a shoot-out with armed bandits, Walters saved Klevenhagen from death or wounding with a snap shot that missed but flustered the gunman and caused him to miss the Ranger. Later, Klevenhagen presented Walters with a beautiful, chrome-plated .12-gauge shotgun.

"If you ever miss with that thing, I'll take it back," Klevenhagen warned the detective in jest.

Less than six months later, on the night of August 23, 1945, Klevenhagen, Kern and Walters were together in a police car, cruising on 67th Street, when they spotted two men entering an alley. The night light of a store illuminated the face of one of the men as they passed through the area of light.

"That's Sam Giacona!" exclaimed Walters. "I'll bet he's on a job."

Giacona was a notorious safecracker and thug, a three-time loser with a police record dating back to 1927. He had been arrested seven times since his release from prison only the year past, and it was the last arrest Kern, Klevenhagen and Walters were recalling. Captain of Detectives B. E. Williams had nabbed Giacona loitering near a loan company office late at night.

Captain Williams took Giacona in for questioning, and on his release, Giacona turned to Williams and snarled: "Don't any of you cops ever mess with me again. I'm not going to be brought in again, understand? If you ever walk up on me again, come a-shooting!"

Now, here was Giacona with a companion in a dark alley that ran between a large department store and a hardware store. The officers circled the block, but the men had not emerged on the other street.

"Turn off the lights, and let's pull up in front of the department store," Kern suggested. The officers sat quietly in front of the store. They heard a faint hammering from inside.

"They're knocking the safe," Kern whispered, and the three piled out of the car.

"Take the back door, J. D.," Kern said softly. "I'll take the front here. Johnny, hit the roof. That's probably where they went in, on top."

Klevenhagen sprinted down the alley, found the heavy drainpipe leading to the roof gutter, and climbed to the roof. Slipping across the top of the building, he came to the skylight and saw it had been broken out.

His pistol in one hand, the Ranger leaned over the aperture and turned on his powerful flashlight. Giacona and his companion jumped back from the safe, in front of which they had been crouching, and then sprinted for the back door.

"Hold it!" Klevenhagen shouted, but the two men faded from sight down an aisle of the store. "The back, J. D.!" Klevenhagen roared, alerting the detective.

Walters was already at the back door, which had a heavy wire screen locked from the outside by a wooden bar. The inside door suddenly opened and Giacona began hammering on the wire screen. Walters recognized the second man as a young "junkie" who had never been convicted of a felony, but had been arrested scores of times.

Walters stepped forward, his new shotgun leveled. "Drop what you've got," he snapped.

Giacona cursed and hurled himself back and to the side, fading from sight. The young junkie snarled and lunged at the door, his hand sweeping upward.

The detective fired from the hip. The youth was hurled backwards, and Walters smashed the bar off the screen and leaped into the store, his eyes sweeping the aisles.

Klevenhagen had heard the shot, leaning over the skylight. Now, in the beam of his light, Giacona, his face distorted in fury, suddenly appeared. He held a metal object in his right hand.

"Drop it and surrender!" shouted the Ranger.

Giacona screamed and threw his hand upwards. Klevenhagen dodged back, and a sudden thunder of shots echoed in the store. Cautiously, the Ranger leaned forward and played his light downward.

Giacona lay on his back, his head on the bottom shelf of a tier of shoe shelves, his gloved right hand on his chest. He was dead from the full blast of a shotgun charge in the left side.

The Ranger dropped through the skylight to meet Walters, who was calmly reloading his shotgun. Near Giacona lay a six-pound sledge hammer, two heavy punches and an automatic pistol.

The junkie was still alive, but unconscious. The buckshot had all but torn off his right leg. Doctors later amputated the limb. Near his right hand was a heavy jimmy bar.

Walters looked at the jimmy bar and grimaced. "I thought he had a gun," he said, a note of regret in his voice.

"He called the tune, so don't worry about it," said Klevenhagen. "Besides, he'll live."

The coroner, called to the scene, added the final note of irony. The safe that Giacona and his young pal had paid so dearly to open and loot contained but $10.

Each Ranger is required to make a weekly written report to headquarters on his activities, indicating total hours worked, with whom and why, how many miles he had traveled, and names of places visited.

His first four years in the Rangers, Klevenhagen once figured out, he worked on 974 criminal cases in 62 counties, including seven bank jobs, 144 murders, 349 burglaries, three kidnapings, 109 armed robberies and a host of lesser crimes.

Little wonder, then, that his reports were sometimes terse and to the point. Like the time he and another Ranger were sent to investigate an alleged gambling house in an adjoining county.

After three days, the Rangers returned and Klevenhagen made his report. "No gambling. House of prostitution. Closed it down," said the entire report.

There were also times when Klevenhagen did not feel it necessary to make a report in writing. Like the time he and Ranger Oliver were sent to Columbus, at the request of the sheriff there, to assist in the probe of a farm wife's death. She had been found face down in a pond on the farm where she lived with her husband, a surly German-speaking man shunned and feared by his neighbors. She had been shot in the head. Her husband claimed she had committed suicide, and produced two notes, allegedly written by her several days earlier.

Other people in the community thought differently and openly accused her husband of murder. The Rangers accompanied a deputy to the man's house and arrested him, and he confessed after two polygraph tests indicated his guilt. The tests were given in Austin. En route back to the Columbus jail, the farmer asked to be allowed to stop off at his house and pick up some personal papers.

The request was granted. At the farm, Klevenhagen and Oliver waited out front, while the deputy and the farmer went inside.

There was a shout, a commotion, and the Rangers ran around the house in time to see the deputy fire at the fleeing farmer, who was nearing a dense thicket of brush which would have offered him refuge.

The farmer fell, wounded only slightly.

"He grabbed a knife and slashed at me, then bolted," the deputy explained. The farmer was taken to a hospital, where, to the amazement of doctors, he died of the minor wound.

"Actually, he just willed himself to die," said one doctor. "That wound wasn't bad enough to cause death in any average person."

Klevenhagen and Trooper Campbell were often paired on cases, and the Ranger, to his surprise, learned Campbell had been offered a Ranger appointment and had turned it down. "Would you turn down an appointment again?" asked Klevenhagen.

"Haven't been asked again," replied Campbell.

It wasn't long before he received a second invitation.

In San Antonio, late in 1945, a woman was raped, robbed and beaten to death by a brute named Rufe Lucas, a truck driver from Galveston. A statewide hunt was launched, and a few days later, a Galveston officer recognized Lucas and arrested him as he sat in a cafe. Getting into the squad car, however, the cop got careless, and Lucas overpowered him, took his gun, and fled.

Galveston, an island connected to the mainland by a mile-long causeway, was sealed off and a massive manhunt ensued. Trooper Campbell, his partner, Alec Wier, and Ranger Klevenhagen were all drawn into the hunt.

It was Campbell and Wier who jumped Lucas, driving a car he had acquired by the simple expedient of shooting the driver. The wounded man lay on the floorboards of the car's front seat when the officers spotted Lucas. A wild chase ensued out Broadway, the officers and the killer exchanging erratic pistol fire. As other patrol cars—Klevenhagen's among them—closed in on the killer, alerted by radio, Lucas abandoned his vehicle.

He took to his heels in a rundown section of the city, near the open bay, and in an effort to elude his pursuers, crawled under a house. But Klevenhagen's keen eyes picked out his footprints, and Lucas was tracked to his lair. A dozen guns ringed the shanty.

"I surrender . . . I surrender," Lucas screamed, and a pistol came sailing from beneath the house.

Klevenhagen picked up the weapon and tucked it in his belt. "Come on out," ordered the Ranger.

Lucas crawled from beneath the house and came to his knees in front of the tall Ranger, who cradled a .30 caliber Remington in the crook of his right arm.

Someone spoke to Klevenhagen, and he lifted his eyes for a split second. Lucas' hand, brushing at dirt on his shirt, suddenly dipped inside the garment and came out with a .44 Colt. Only Campbell, who had holstered his weapon, saw the pistol as Lucas picked Klevenhagen as his target and tilted the gun, firing point-blank.

"Look out, Johnny!" Campbell screamed, as Lucas squeezed off his shot, and Campbell's hand flashed to his own pistol.

Klevenhagen reacted like a scalded cat. He swayed to the left, swiveling the rifle and firing from the hip. He felt the heat of Lucas' bullet as the Remington cracked, and the rifle shot was echoed by the spat of Campbell's .38 and the boom of Wier's .45 revolver.

But Lucas was dead when Campbell's bullet passed through his chest, right to left, and Wier's slug slammed into the killer's stomach. The Ranger's bullet had shattered his heart.

"What happened?" demanded a reporter, who ran up as Klevenhagen ruefully fingered a bullet tear in the inside sleeve of his coat.

"He missed me," the Ranger replied tersely.

There were others who also "missed" the cold-eyed Ranger. Many of Texas' underworld characters are illiterate, or of mediocre education, and such people are superstitious. Because of Klevenhagen's seeming immunity to bullets, the outlaws of Texas feared the lean-bellied Ranger above all other lawmen, and many, when they heard he was on their trail, simply gave themselves up to the nearest officer.

But there were those whose warped pride made them face Klevenhagen.

"I had two shots at him," recalls one reformed gunman. "Then I threw down my gun. What the hell's the use of shooting at a man you can't hit?"

Said another, now serving time: "He came at me and I pulled my gun and threw down on him. He didn't stop, jump aside, or slow down. He just drew his pistol and kept walking. Then he told me to fish or cut bait (shoot or drop the gun), and I cut bait."

Jedidiah Brown elected to "fish," having less to lose. Brown was a lifer on Ramsey State Prison Farm, chopping cotton and hoeing beans in atonement for two murders that originally had netted Brown an invitation to sit down in the state's electric chair.

The death sentence had been commuted, and Brown became a field hand. But the psychopathic outlaw "jumped" his hoe squad one afternoon and lit a shuck for the Brazos River bottoms, borrowing a horse from a "high rider" (mounted guard) whom he knocked from the saddle.

A posse of prison guards chased him, led by Captain Joe McGill, but the horsemen drew up at the roiling Brazos River, 200 yards wide and a treacherous trough of down-pulling currents and hungry quicksands. The prison mount was found on the east bank, and Brown's footprints led to the water.

Captain McGill boldly put his horse to the crossing and made it, learning that Brown also had reached the opposite shore safely. The guard captain picked up the convict's tracks and began following.

Klevenhagen, hearing of the escape, had sped to the scene from the west side of the river. He joined Captain McGill as the officer walked his weary horse across a pasture, headed for a lonely farmhouse on the edge of a stand of timber.

Brown had stopped at the farmhouse. A hysterical woman told them the outlaw broke in, knocked her down and

Do you praise police for a good job, or seize on any excuse to complain about them?

TRUE DETECTIVE

took her absent husband's .30-30 Winchester. "He took off down the branch," the woman said, pointing out a small stream that flowed into the timber.

Klevenhagen sprinted in the direction indicated. Captain McGill hastily gave the woman orders to call the sheriff and have other men sent to the scene. Then he took off after the Ranger.

McGill was too far behind Klevenhagen to take part in what followed, but he saw it all. Brown stepped out from behind a tree as the Ranger, picking out Brown's trail, stepped along the bank of the little rivulet. McGill started to shout, but instinct warned Klevenhagen. He looked up as Brown raised the stolen rifle to his shoulder.

"Don't be foolish, boy!" the Ranger shouted, dropping into a crouch and whipping up his own rifle.

Brown shot, and slapped the lever on the saddle gun. He never got to seat his second cartridge in the chamber. Klevenhagen shot him between the eyes.

"There's your prisoner, Joe," said Klevenhagen as McGill trotted up. "He won't be present tonight at head count, but he's damned sure accounted for." The Ranger started to walk off.

"Wait, Johnny!" McGill shouted. "I can't take him back across the river on that horse. You got to drive us."

Reluctantly, Klevenhagen aided in propping the dead convict in the back seat of the Ranger car, and started for Ramsey. Noting that he was low on gas, he pulled into a service station and told the attendant to "fill 'er up."

The attendant started to fill the tank, and then noticed the corpse in the back seat. He jumped back, startled.

"Don't worry about him," the Ranger said grimly, recalling the two innocent people Brown had killed. "He's already had his windshield wiped!"

Oddly enough, the incident received no mention in the newspapers, but other exploits of the hawk-faced Ranger did. And, to give him credit, only rarely was violence or gunplay involved. For every case Klevenhagen wrapped up in gunsmoke, he cleared hundreds through perseverance, wit, and his own brand of shrewd sleuthing.

Raymond Shaw and Arthur Jung, two 20-year-old adventurers out of Chicago, for instance, will ponder for the rest of their lives as to how Klevenhagen and Kern caught up with them. Shaw and Jung met on a pipeline job in Jordanton, Texas, and, one week end, decided to rob a local rancher, Warren Rhodes, 61, of nearby Hockley.

They quit their jobs and went to Houston, and on the night of April 15, 1950, they went to Hockley, where Rhodes was living in a trailer house while his own home was occupied by relatives.

The boys bludgeoned Rhodes to death, getting $45, and fled, leaving behind a bloodstained shovel handle they had used as a weapon. They left no clue at all to their identities, and since they had been unknown in the Hockley area, felt secure as they drove west to New Mexico.

They worked their way through Arizona, across Nevada, and made their way in a roundabout route back to Chicago. Jung stayed only a short time, then went on to Indianapolis. Shaw soon found a job as a painter, and was a good worker, earning a good salary. His conscience bothered him at times, but not enough to make him give himself up. And he felt that was the only way he'd ever be known as a killer.

One day in June, he was painting the wall of a basement in a downtown building. He was on a ladder, and from his perch, he looked out through a basement window to the street outside. Shaw could see only the legs of people passing, and the legs only from the knees down. He noticed the different shoe styles on the feet of the passing pedestrians.

Suddenly, his heart constricted. He was looking at a pair boots not often seen in this part of the country. The man who had stopped outside the window wore handsome, needle-toed cowboy boots. One pant leg had caught in the curved top of one boot, and Shaw noticed the intricate, hand-tooled designs in the upper leather of the boot, the carved likeness of a longhorn steer, and the five-pointed star. Then the wearer of the boots moved on.

But Shaw's heart didn't stop pounding. And he wasn't surprised when he heard steps on the basement stairs and turned to see a man step into the room.

The man was dressed in a well-worn brown suit, crimp-brimmed Stetson, and a tan shirt, over the left pocket of which a round blue disc bearing a superimposed silver star was partly visible. The man had a gaunt, travel-worn look about him.

"Are you Raymond Shaw?" the man asked softly.

Shaw nodded, gulping.

"I am Klevenhagen, of the Texas Rangers," the man said calmly. "I want you for the murder of Warren Rhodes."

Shaw sighed and threw down his brush, stepping off the ladder. "When I saw those boots, I knew Texas had caught up with me," the boy said. "I killed him. Me and Art."

That same afternoon, in Indianapolis, an equally implacable lawman, Sheriff C. V. Kern, arrested Jung.

On May 23, 1951, the youths were given life sentences, after a jury acceded to a plea of mercy on the part of their lawyer, and took into account their previously unblemished records.

Kern and Klevenhagen had traveled 7,000 miles on the trail of the pair. How did they know whom to look for? "Well, I opened some mail I shouldn't have," Klevenhagen said. He didn't elaborate further.

No one actually knows—not even Kern himself—how many major crimes the Ranger and the sheriff solved, although the murder cases they wrapped up, and the number of killers they brought in, can be pretty well estimated.

The tally runs right at 125. While many of these cases were "cut and dried," the killer known and all that was necessary was to find him, most were real brain twisters. The "Man From Mars" murder of grocer Marvin L. Clark, for instance, found slain in April, 1949, with a weird rubberized mask clutched in his dead hand.

The mask had several hairs inside, obviously those of the holdup-killer of Clark. It took 26 months, but Klevenhagen and Kern pinned the murder on a 26-year-old University of Houston student. He confessed and was convicted.

Kern and Klevenhagen also tracked a 22-year-old hitchhiker to Newark, New Jersey, in 1953, to arrest him for the slaying of Texas A. and M. student Jan Broderick, who had picked him up on the road. The hitchhike-slayer drew life.

The bleak-eyed Ranger was most dedicated in tracking down the killers of peace officers. He went without sleep for 80 hours while hunting down and arresting Merle Wayne Ellisor, killer of State Highway Patrolman Robert Crosby in Houston. It was a masterpiece of deduction, surmise and actual tracking—where dogs had failed. Ellisor died in the chair.

On July 7, 1956, Somerville Constable Milton Lewis stopped a suspicious man loitering around a closed business firm in that city, and asked his name. The man's answer was to whip a .38 from a paper bag, and after putting three bullets in the surprised constable's stomach, the man fled.

Ranger Klevenhagen arrived shortly to head the massive search for the gunman, who had fled into the thickly-brushed Yegua Creek bottoms. For three days, dogs, low-flying planes manned by Rangers, possemen on horseback, and officers on foot sought the gunman in the brakes and hilly thickets. At times, the posse numbered over 150 men.

"Why couldn't you tie me up like you do everyone else?"

Klevenhagen received word on July 10th, while searching on one side of the creek, that the man—identified now as Tillman Halson Jr., 20—had been sighted near Green Mountain south of Somerville. The Ranger sped to the scene to find possemen squatting atop the hill, and surrounding, at a prudent distance, a thick stand of brush at the base of the misnamed "mountain"—actually a high hill.

"Where is he?" asked the Ranger.

A posseman gestured. "Down there, but he's brushed up, and heavily armed. Man that goes in after Halson will get his head shot off."

Klevenhagen looked around, spotted a citizen posseman sitting a big bay horse on the farm road shoulder. "Lemme have that pony, pardner," Klevenhagen drawled. He swung up in the saddle, reached down and took the shotgun from the open-mouthed officer who had pointed out Halson's brush fort, and spurred down the slope.

He galloped directly up to the stand of brush, choked with heavy deadfalls which gave Halson added protection, and set the cowpony down on his haunches. "Ranger talking, boy—come out with your hands up and you won't be hurt," Klevenhagen shouted.

There was no answer for a moment. Then a tall youngster stood up from behind a log 15 feet away, shadowed by the dense brush, his hands behind his head. "Here I am, Ranger," he said, and stepped over the log.

"Let me see those hands," Klevenhagen snapped.

Halson's hands separated. His right hand held a pistol. He fired at Klevenhagen. The hasty shot missed the Ranger, but spooked the horse, which began to pitch and plunge. Halson continued firing, while Klevenhagen fought the horse. Finally the animal quieted, and the Ranger's shotgun boomed twice. Halson, who had been stepping back over the log, fell dead beside the loaded shotgun and fully-loaded rifle he had stashed behind the log.

Klevenhagen's report to his superiors was characteristically terse: "Searched on foot, horseback and in cars. After 75 hours, located subject in Yegua Creek bottom. Subject resisted and fired on Ranger Klevenhagen. Subject was killed." That was the full report.

It was only natural that when Captain Purvis retired a month later, Klevenhagen should be named to succeed him as captain, promoted over several other Rangers with much longer service. Most of them recommended him.

And it was axiomatic that Ranger Captain John Klevenhagen's trail should cross that of Jene Paul Norris, a young Oklahoman with chestnut-brown hair, chill blue eyes, a permanent smile and a ready trigger finger—the latter two distinctive qualities earning Norris his sobriquet in Texas as "Oklahoma's Smiling Bed Boy."

Only time will determine Norris' niche in the hierarchy of Southwest badmen, but not since the days of Raymond Hamilton and Clyde Barrow had a desperado of his ilk plagued Texas and Oklahoma. In fact, if crammed police dossiers on his activities are only half-correct—and many have since been fairly well authenticated—Norris was on a par with Texas' most famed gunslinger, John Wesley Hardin, for Texas police generally agree that Norris was responsible

for upwards of 40 slayings.

Yet, until he hatched a fantastic plot that shook even the most shock-proof of his adversaries, he was the most anonymous criminal in the annals of Southwestern crime—as far as the general public was concerned.

Norris had cut his criminal teeth on a shotgun, using such a weapon to break his brother—Public Enemy No. 1 Pete Norris—out of Ferguson Prison on March 16, 1942, and the shotgun ever afterwards was his forte. It was an open secret that he hired out his sawed-off 12-gauge to the highest bidder among Texas gangland chieftains, while on the side he preyed on gamblers, bootleggers, and other illicit operators, on the theory that none of these victims would squawk to the cops.

Few of his victims made official complaints. Even fewer appeared in court against him. Several simply disappeared and only one was ever found. That is, the bones of James Black were found, but the bones couldn't testify. Other bones have since been found, but that's now a moot point.

Rangers knew—but couldn't substantiate it in court—that Jene Paul masterminded the $248,000 robbery in 1952 of two Cuban gun-runners; that he killed Leroy "Tincy" Eggleston for money; that he killed another Texas gambler and married his wife; that he killed Frank Cates—and others too numerous to list.

Norris generally confined his activities to North Texas and Oklahoma, but in the spring of 1957, he drifted south. Among the things he had in mind, it was said along the grapevine, was "taking care" of a certain Ranger captain. Norris didn't have to look up Captain Klevenhagen—Johnny braced the outlaw in a motel court after a series of robberies of Houston and Galveston gambling spots. Their meeting—as described at the beginning of this story—was brief and to the point, and when the two men separated, each knew their next encounter would be final for one or the other.

Several weeks later, gambler Johnny Brannan and his wife, an invalid, were brutally bludgeoned to death in their home. Of the officers who investigated, Klevenhagen was not the only one who recalled that Brannan once had been the principal witness against Pete Norris, and that Jene Paul had sworn revenge.

Klevenhagen did some fine sleuthing. He learned a green car had been seen before Brannan's home the night before. Later, he learned a squad car had unsuccessfully tried to catch a green Chevrolet speeding in the Brannan neighborhood, and that the occupants had tossed out something during the chase. Several days later, two boys found two guns in a vacant lot. One belonged to a gambler, who admitted he had been robbed of the gun and cash by Jene Paul. The other had belonged to the slain gambler whose wife Norris married.

To cap it all, the Ranger learned that William Carl Humphrey—Norris' running mate of recent weeks—had been arrested in Temple a few days after the murder, on a drunk charge, and that Humphrey had been sporting a large white gold and diamond "horseshoe ring" which was Johnny Brannan's "lucky piece." It had been stripped from his finger after his murder.

Captain Klevenhagen stuck a pair of murder warrants in his hip pocket—naming Jene Paul and Humphrey—and headed north. He checked in with Ranger Captain Jay Banks, in Fort Worth—a man who, as far as reputation and ability went, might have been cut from the same pattern as Klevenhagen.

"I'm looking for Jene Paul Norris," said Klevenhagen.

"I figured you were," Captain Banks said. "We've got him staked out."

Earlier that month, Fort Worth police, FBI agents and Rangers had been tipped to a fantastic plot being hatched by Norris—the robbery of the Carswell Air Force Base branch of the Fort Worth National Bank. The haul—if he pulled it off—would net $500,000. And had not officers been tipped to the plan, Norris might very well have succeeded.

He had hatched a foolproof plan, the key to which was a female employe who possessed both a key to the bank and a car with a windshield sticker allowing her to pass freely onto and off the base. Norris intended to kidnap the woman and her child—hit the bank disguised as a woman—and escape with the woman and her daughter as hostages. He intended to kill both hostages afterwards.

"That's a new decision he made," said Banks. "We had intended to take him on the try—but now we've decided to nail them tomorrow, although we won't have as much on them. But we can't risk the woman's life, although she's been filled in and is with us all the way. Humphrey and Norris are making a dry run tomorrow, according to our inside man in the plan. Norris threatened to kill this man's wife and kids if he didn't help set up the robbery, and he came to us."

And so, on the morning of April 29, 1957, the two Ranger captains, Fort Worth Chief of Police Cato Hightower, Tarrant County Sheriff Harlon Wright, and Detective Captain O. R. Brown—all in Captain Banks' unmarked car—took up a position near Meandering Road a short distance from the woman bank employe's home, and two miles from the Jacksboro Highway.

Ranger Ernest Daniel and Sheriff's Captains George Brakefield and Robert Morton were spotted two miles south, on Jacksboro Highway near Carswell A.F.B. Ranger Sergeant Arthur Hill, Rangers Jim Ray and Bob Badgett, and Fort Worth Chief of Detectives Andre Fournier were stationed near the entrance of Meandering Road from the Jacksboro Highway. FBI agents were spotted at intervals along the highway from Oklahoma, to act as spotters.

Shortly after noon, an FBI agent broke radio silence: "Norris and Humphrey are stopped at the corner of Northwest 28th and Main. They are in a 1957 Chevrolet. Now Norris and Humphrey are driving down 28th."

The FBI agents pinpointed Norris' progress toward the Rangers' positions, until Sergeant Hill reported he had the outlaws in sight. "Take over, Rangers, we are out of it, now," said an FBI agent.

Then Hill's voice shattered the radio receiver in Captain Banks' car: "They've bugged us . . . They're cutting out!"

"Get after them!" barked Banks, floorboarding his own accelerator.

The Ranger cars moved in on Jene Paul and Humphrey from three sides. Banks' car intercepted Norris' car—Humphrey driving—as it skidded off Meandering Road onto the Jacksboro Highway. As his car flashed across in front of Banks' car, Norris leaned out the window, his teeth bared in a wide smile, and opened up with a .12-gauge shotgun.

Klevenhagen poked his .45 out the window and commenced firing. Wright and Hightower, too, leaned out and cut loose with their pistols—and a wild, fiery, running gunbattle was on.

The two cars roared down the highway, gun flashes winking from both cars. Frightened motorists bound in both directions took to the ditches as the duelists rocketed down the highway.

The chase went on, through the small town of Azle, then through La Junta, and the speedometer in Banks' car read 120 mph. Five miles from Springtown, Humphrey took to a side road paralleling Walnut Creek, and Lady Luck kissed them off.

Attempting to make a sharp curve, Humphrey lost control of his car, and it careened off the road, ripped through a fence and smashed into a small tree. Unhurt, the pair spilled from their car and turned a vicious, concentrated fire on Captain Banks' car as it skidded to a stop. The five officers leaped out, guns roaring, miraculously unhit.

"Give up, Norris!" shouted Banks who, like Ranger Klevenhagen, had exhausted his pistol ammo and had switched to a shotgun.

Norris smiled and fired at Klevenhagen. Humphrey, shaking but game, fired wildly with a pistol as the gunmen backed up and into the creek, Humphrey turning downstream and Jene Paul retreating straight across.

Humphrey was staggered by a slug—then another and another. Still, he staggered on, bullets kicking up angry geysers of water about him. He reached a small island, before he was cut down, falling dead with 23 bullet holes pumping blood.

Klevenhagen had never stopped walking toward Norris. He had already wounded the outlaw several times, but Norris grimly stayed on his feet and edged backward until he reached the far bank. Banks, Wright, Hightower and Brown turned their guns on him, too. Bullets bored into his body, ripped into his arms and legs, slashed gashes in his scalp. The shotgun dropped from his hands, and he tugged a pistol from his belt and savagely fought back. Then a chunk of lead smashed into his head, and another bullet pierced his skull. Hit 16 times, he sank to the bank of the stream.

But he was still alive. As Klevenhagen stepped into the water, Jene Paul attempted to rise, to pull a second pistol from his belt. Then his head fell back, the pistol slipped from his fingers.

Under other circumstances, had he been a different man, his would have been an heroic stand. Klevenhagen turned away, no elation in his eyes, and walked to the car where he sheathed his shotgun—the shotgun Jene Paul had not been able to match.

Johnny Klevenhagen never pulled the trigger on that shotgun again. Or had to "go to the pistol." Although he led his men in the final cleanup of Galveston—completely smashing gambling and vice operations in that city—and solved a score of other sensational crimes, Klevenhagen had had his last gunfight.

Late in 1957 he suffered a heart attack—a seizure that burst his heart like a ruptured tube—but he survived to return to work. He could not comply with the doctor's edict to stay in bed and away from crime-busting. He died with his boots off on November 26, 1958, and, as his boss, Ranger Chief Homer Garrison, director of the Department of Public Safety, said: "The State of Texas has suffered an irreparable loss."

The underworld breathed a sigh of relief.

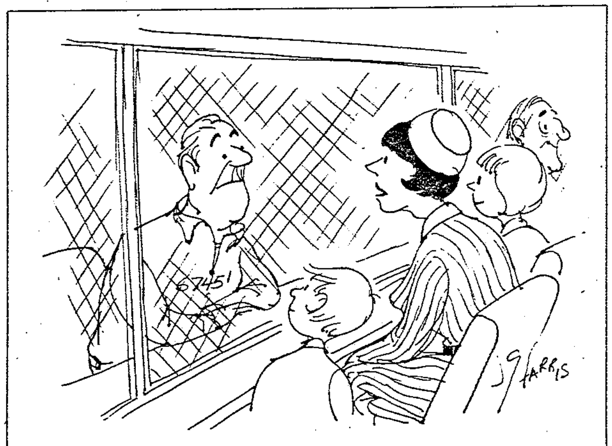
But a shudder of fear swept the state's criminal world earlier this year.

An outlaw, being pursued by state troopers, approached a roadblock manned by a tall young deputy sheriff of Harris County (Houston) who stood coolly in the path of the oncoming car and signaled the driver to stop.

The outlaw twisted the wheel and roared down on the deputy, plainly intending to kill the youngster.

But the boy leaped back, dropped to his knee and whipped a .30-caliber war surplus carbine to his shoulder. The weapon bucked and roared, again and again. The outlaw's car, riddled with bullets, all four tires shot off, careened to a stop in a ditch. The youthful officer ran down the slope and yanked the driver from the car. If another presence seemed to hover about the kid deputy as he calmly handcuffed the outlaw, a fugitive wanted by the FBI, it is understandable.

The kid deputy was John Joseph Klevenhagen Jr., age 22, an announced candidate for the Texas Rangers. ♦♦♦



"We're changing our names to protect the innocent."

Clean record is denied for Randall Dale Adams

By Anne Belli
Staff Writer of The Dallas Morning News

A judge on Thursday denied Randall Dale Adams' request to erase all records of his 1977 capital murder conviction, which was overturned on appeal in March.

State District Judge Larry Baraka said he denied the "motion for expunction" because Mr. Adams' attorneys did not prove that he was wrongfully indicted — a requirement for granting a request to have records expunged.

Judge Baraka said attorney George Preston would have had to prove that "the basis of the indictment was false."

"And they didn't prove that up," Judge Baraka said. "We don't know if he did or didn't do it."

A Dallas County jury convicted Mr. Adams of fatally shooting Dallas police Officer Robert Wood, 27, in 1976 after he stopped a car on North Hampton Road. The jury sentenced Mr. Adams to death, but the sentence later was commuted to life. He spent 12 years in prison.

Mr. Adams has maintained

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Clean record denied for Randall Adams

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that he is innocent and has said that the real killer was David Ray Harris, the man who pointed the finger at Mr. Adams.

In a hearing before Judge Baraka last November, Mr. Harris withdrew his accusation and provided so many details about the crime that the judge declared his testimony a virtual confession.

In March, the Texas Court of Criminal Appeals ordered a new trial for Mr. Adams after reviewing information obtained primarily through Errol Morris, who investigated the case for his movie *The Thin Blue Line*.

The appeals court ruled that prosecutors supressed evidence favorable to Mr. Adams and allowed perjured testimony against him. Shortly after the ruling, Dallas County District Attorney John Vance dismissed the capital murder charge, saying that his office lacked sufficient evidence to prosecute Mr. Adams in a new trial.

Judge Baraka's denial of the expunction motion Thursday means that Mr. Adams' arrest, indictment, conviction and case dismissal will remain a matter of public record.

Law enforcement agencies nationwide, among others, will have access to the records. Mr. Preston said that is unfair to Mr. Adams because the weight of evidence in the case shows he is not guilty of shooting Officer Wood.

"Right now, if he were even stopped on a traffic violation, his arrest, charge and conviction of capital murder would be accessible by the officer," Mr. Preston said.

Mr. Preston said he did not introduce evidence during Thursday's hearing because "the evidence in this case had already been introduced in a weeklong habeas corpus hearing" in Judge Baraka's court last November.

"The court is entitled to take judicial notice of its court records and the judge is entitled to take note of what he has heard," Mr. Preston said.

Randall Dale Adams . . . was convicted of capital murder in 1977 in the slaying of a Dallas police officer.

"I didn't want to eat up three days proving the indictment was founded on a mistake."

He said that he likely will file a motion for a new trial asking Judge Baraka to reconsider.

DALLAS MORNING NEWS FRI. OCT. 6, 1989

Saturday, October 7, 1989 The Dallas Morning News

Adams seeking prison-related job

He intends to use death row expertise

By Anne Belli
Staff Writer of The Dallas Morning News

Randall Dale Adams, freed six months ago after spending 12 years in prison before his conviction was overturned, says he's ready to go to work using his expertise as a former death row inmate.

Although he hopes to continue making periodic public appearances, Mr. Adams said Friday that he is in the process of negotiating employment with the Ohio Public Defender's Office.

Possible jobs include investigating death penalty cases, counseling death row inmates and their families and conducting seminars on behalf of the public defender.

In a telephone interview from his Columbus home, Mr. Adams also said he would like to educate the public on living conditions within the state prison system, and possibly become an advocate for prison reforms.

"I'm not going to slander the state, because I believe prisons are a necessary evil, so to speak," Mr. Adams said. "But I would much prefer to use the past few years of my incarceration to help in that area."

More than anything, Mr. Adams said, "I want to help other families, but hopefully I will never meet any in the position my family was in."

Mr. Adams was sentenced to death in 1977 for the murder of Dallas police Officer Robert Wood. The sentence later was commuted to life.

Mr. Adams insisted he was innocent, and his attorney continued to fight for his freedom.

Armed with information film maker Errol Morris obtained in making his "docudrama" *The Thin Blue Line*, attorney Randy Shafer persuaded state District Judge Larry Baraka to recommend that the state appeals court order a new trial in the case.

During a hearing in Judge Baraka's court, Mr. Adams' chief accuser, David Ray Harris, all but admitted he was the one who killed Officer Wood.

In March, the Texas Court of Criminal Appeals set aside Mr. Adams' conviction, citing prosecutorial misconduct. Less than a month later, Dallas County District Attorney John Vance dismissed the charges for lack of evidence.

Since he was released, Mr. Adams has spent most of his time on the national lecture circuit, evolving from a rough-around-the-edges former inmate to a savvy media personality with polished speaking skills.

Undoubtedly, each time he recounts his story, he convinces more people that he was falsely

Please see ADAMS on Page 36A.

Adams seeks job using death row expertise

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accused and convicted.

Ohio Public Defender Randy Dana is among those who have heard Mr. Adams speak and who feel strongly that he unjustly lost the best years of his life.

Mr. Dana said he met Mr. Adams last month at a death penalty conference where Mr. Adams was the keynote speaker. Mr. Dana was so impressed by Mr. Adams' life story that he offered him a job.

"I told him I thought society owed him something back and that I would hire him in my office here," Mr. Dana said.

He said Mr. Adams could be hired soon as a case investigator or as a liaison between prisoners and public defenders.

But Mr. Dana also said he is negotiating with the state government to gain clearance for Mr. Adams to work within the prison system.

> "I'm not going to slander the state, because I believe prisons are a necessary evil, so to speak. But I would much prefer to use the past few years of my incarceration to help in that area."
>
> — Randall Dale Adams

"The ideal place for him to work would be with the Department of Corrections," Mr. Dana said. "I think's he's qualified, and he certainly is familiar with the criminal justice system. . . . Yes, we're either going to hire him or get him a job doing what he wants to do in state government."

Mr. Dana said the paperwork on Mr. Adams' employment may be complete in as little as a week. He said he's eager to offer Mr. Adams a job because "somebody needs to do something to help him get situated again."

Mr. Dana criticized the Texas prosecutors who handled Mr. Adams' case. And he had harsher words for state officials for not offering to compensate Mr. Adams when they found that he had been wrongfully convicted.

"I think the guy spent 12 years in prison for something he didn't do," Mr. Dana said.

"It was your great state of Texas that wrongfully convicted him, not Ohio," he said. "But Texas apparently isn't going to do anything about it. So we feel like we owe it to him."

Until he's on the Ohio payroll, Mr. Adams said, he will continue making public appearances — the next one of which may be in Italy.

He said he doesn't hold any grudges and he simply wants to remain in Columbus, close to his family, and continue to use his incarceration to his benefit.

He said he wants to continue to warn law students about the evils of the win-at-any-cost prosecution style that sent him to prison. And he said he would like to help others who have been or may be wrongfully convicted.

"I'm very pleased with the way my life is headed," Mr. Adams said. "I'm very pleased."

Legal crisis on death row

Out-of-state lawyers step in to fill void

By William J. Choyke
Washington Bureau of The Dallas Morning News

WASHINGTON — When Washington lawyer Emmett Lewis was asked to represent a Texas death row inmate in post-conviction hearings, he had no idea the effort would entail nearly 2,700 hours of work.

"I guess I was a little naive," said Mr. Lewis, reflecting on his nearly 18 months as an attorney for convicted Harris County murderer Phillip Tompkins. "I don't think I had any conception of the amount of work that was involved when I took on the case."

Mr. Lewis, whose client lost his appeal before the U.S. Supreme Court this month, is among the lawyers from 30 out-of-state law firms responding to an urgent call from a patchwork of advocates seeking free legal services for scores of indigent Texas killers appealing their convictions or sentences.

As the death row population grows nationally by about 250 per year, the mostly Northern lawyers have been descending on Texas and the South to offer legal assistance.

But the cases offer little material payoff. And with Texas' death row the nation's largest — more than 300 inmates — and many Texas lawyers reluctant to take these grisly, lengthy and costly cases, legal observers say the situation has reached a crisis stage.

"The American Bar Association, in surveying disaster areas which needed the most emphasis, Texas has always

Please see LEGAL on Page 48A.

Legal crisis confronts inmates on death row

Continued from Page 45A.

been at the top of our list as the area in most desperate need of volunteer lawyers and a new system," said Ronald Tabak, a New York lawyer active in attorney-recruiting projects.

The U.S. Supreme Court dealt the bar's drive a major setback Friday, ruling in a 5-4 decision that states do not have to provide taxpayer-funded counsel for death row inmates after their initial appeals. The decision, in a Virginia case, spares Texas and at least nine other states among the 37 that have capital punishment statutes the expense of paying for attorneys for these convicted killers during state post-conviction hearings.

Besides Texas, the states of Alabama, Georgia, Mississippi, North Carolina and Florida are targeted as having the most acute need for attorneys to represent many of the 2,300 inmates on death row nationally. And with the court's decision Friday, the job of finding counsel for many of them will still fall to the ABA, new federally-funded resource centers in Texas and a dozen other states, and a loose coalition of individual lawyers nationwide.

"It is like giving aid to a Third World country," said David Lane, a Denver lawyer who has helped steer seven Colorado colleagues to Texas.

Traditionally, a few solo practitioners and lawyers from small Texas firms have handled the bulk of these capital cases. But as the population on Texas' death row exploded — it has nearly tripled in the past seven years — the need for lawyers has far outdistanced the supply.

There are now 15 Texas death row inmates without legal representation, said a spokesman for the Texas Resource Center.

Texas lawyers are shirking their duty, said Will Gray, a longtime Houston lawyer who typically handles 18 death row cases at any one time. "They won't accept the responsibility of the bar."

These habeas corpus cases — appeals based on constitutional defects in the process of justice — have not proven trivial. Studies have shown that on the federal level, nearly half the cases have been returned to lower courts for review.

Moreover, research by The Spangenberg Group, a consulting firm in Newton, Mass., indicates that taking a typical capital case through the state and federal appeals process requires 1,850 hours, or roughly the equivalent of a year's work for one lawyer.

Much of the work is done free — or *pro bono*, Latin for "the public good." In other instances, reimbursement in public monies of around $75 per hour is usually well below regular billing rates.

"It's a tough assignment for the law is hard, most of the time the lawyers represent a prisoner who has actually committed the offense he is charged with, and the lawyer's role is to ensure the system operates in a constitutional manner," said retired Chief Judge John Godbold of the Atlanta-based 11th U.S. Circuit Court of Appeals.

In Texas, the situation has slightly improved during the past 18 months. Federal funds helped establish the Austin-based resource center, which recruits and assists lawyers in death penalty cases. And the Texas Bar Association, criticized by out-of-state lawyers for generally ignoring the problem in recent years, finally began mounting its own campaign last fall.

James B. Sales, president of the Texas Bar and head of the litigation department at the Houston firm of Fulbright and Jaworski, wins much of the credit for the change in attitude of the state bar.

Still, many of the state's larger law firms have resisted the bar's urgings.

"There is a natural reluctance by some — quite a few, frankly — to take on a major *pro bono* matter representing the type of people who are on death row," Mr. Sales said.

At the root of the problem is the conflict between the canons of the legal profession and the difficulties posed by these unpopular cases.

The ABA urges lawyers not to decline representing a client because he is unpopular, as well as to provide services when asked by the bar, even though a client cannot pay. The bar association also believes that a convicted defendant should be provided counsel "at every stage of the proceedings, including sentencing, appeals and post-conviction review."

Congress, as part of the 1988 omnibus anti-drug law, directed that death row petitioners be provided counsel at taxpayer expense in federal habeas corpus cases, a point noted by Justice John Paul Stevens in his dissent Friday. But the majority declined to go beyond its prior rulings that required states to provide indigent defendants counsel only at trial and for direct appeal of their conviction.

"There is, however, significant evidence that in capital cases what is ordinarily considered direct review does not sufficiently safeguard against miscarriages of justice to warrant this presumption of finality," Justice Stevens said.

With many of these cases now taking up to 10 years to be resolved, U.S. Chief Justice William Rehnquist, who authored Friday's majority opinion, has urged the streamlining of the federal courts' review. Last year, he appointed retired Justice Lewis Powell to direct a five-member committee to recommend reforms in the habeas process, and a report is due this fall.

"The focus of the committee is the idea that if you can assure competent counsel all up the line, that would make for a cleaner record and there then would be less possibility of error subject to reversal along the line," said U.S. District Judge Barefoot Sanders of Dallas, a member of the Powell panel.

The ABA's 2-year-old death row project, which is recruiting lawyers and seeking long-term solutions to the problem, has targeted Texas and three other Southern states with growing death row populations.

Lawyers from Boston, Chicago and Philadelphia are directed to Alabama; Ohio attorneys represent Mississippians; and Washington bar members assist Virginia inmates.

Others from the nation's capital, as well as attorneys from Colorado, are matched with Texans.

Furthermore, the large New York City bar, which has a long history of *pro bono* work, operates independently. At one point recently, 42 New York law firms involving 83 attorneys were handling 56 capital cases in 11 states, including the appeals of five inmates in Texas.

"I think most lawyers around the country have no enthusiasm whatsoever to represent people who are under sentence of death in post-conviction remedies," said Jay Topkis, a New York attorney with a long history of volunteer work in the death penalty field.

Mr. Lewis, a partner in the Washington firm of Miller and Chevalier, first responded in fall 1987 to a two-page form letter sent by former U.S. Attorney General Benjamin Civiletti, then chairman of the ABA litigation section, to every member of that section.

A short time later, he received a call from a lawyer affiliated with a capital punishment project at the University of Texas. Within a matter of days, boxes of materials arrived in Mr. Lewis' Washington office.

He had 30 days to prepare for Mr. Tompkins' appeal of his conviction to the Supreme Court.

"I had never done a death penalty case," said Mr. Lewis, whose client lost his appeal earlier this month when the court divided 4-4.

Mr. Lewis could be just starting his involvement with the Tompkins case. His appeal was based on both the judge's instructions to the jury and whether the prosecutor had legitimate reasons in striking three prospective black jurors. The defendant is black.

Mr. Tompkins still has habeas claims, and those could take several years to litigate. Now, Mr. Lewis is looking for help in Texas. While a few firms have expressed sympathy, none has volunteered to share the load.

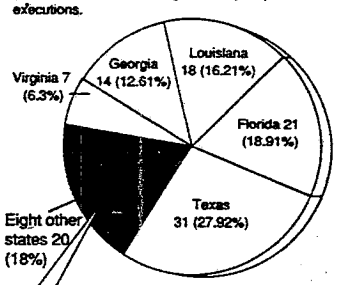
Without help, Mr. Lewis' firm may spend so many hours on this case that if he were charging a fee, it could run nearly $1 million. The firm already has expended the equivalent of more than $400,000 in legal time defending Mr. Tompkins, some of which will be reimbursed.

"This is a Texas problem," said Jonathan Lang, who is active in recruiting New York City attorneys for out-of-state work. "I mean, if somebody wants to earn their living in the state of Texas as an attorney they've got to take that state as they find it. If they find it with a lot of poor people on death row because the state wants to have a death penalty, I think they ought to be representing these death row inmates."

"New York lawyers, as they have always done, shouldn't have to get on their horses and go down and take these unpopular cases."

CAPITAL PUNISHMENT: A SOUTHERN PHENOMENON

Since the Supreme Court reinstituted capital punishment in 1976, 111 prisoners have been put to death—with just five Southern states accounting for nearly 82 percent of those executions.



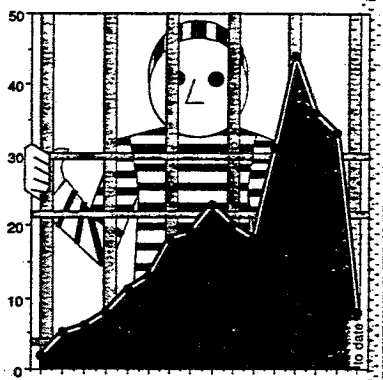
The eight other states with executions since 1976:

Alabama	4 (3.6%)	Nevada	2 (1.8%)
North Carolina	3 (2.7%)	South Carolina	2 (1.8%)
Utah	3 (2.7%)	Indiana	2 (1.8%)
Mississippi	3 (2.7%)	Missouri	1 (1.8%)

SOURCE: NAACP Legal Defense and Educational Fund Inc.

TEXAS' DEATH ROW POPULATION KEEPS GROWING

Here are the number of new inmates sent to Texas' death row each year since 1974.



Current population: 302, composed of 296 men and four women. Executions since 1976: 31

SOURCE: Texas Department of Corrections

The Dallas Morning News: Karen Dent

Reviewing a Murder

by Akwasi Evans

Nine years ago next week a brutal rape and murder of a child occurred in Conroe, Texas. A man was arrested, convicted and sentenced to death, but he isn't dead. The man, Clarence Lee Brandley, has been the recipient of a nationwide campaign to save his life by people who are thoroughly convinced that he is innocent. Some of those people are his family members, some are general citizens who believe the compelling evidence points to a different suspect and most (including a retired district judge) are patriotic Texans who don't want to be embarrassed by having their state execute another innocent inmate.

On August 23, 1980, some man or some men violated 16 year old Cheryl Dee Ferguson and then cowardly killed her to try and hide his, or their, crime. The blonde teenager from Bellville went to the Conroe High School gymnasium with a bus load of female volleyball players and cheerleaders for a game that faithful Saturday morning. Ferguson was the team manager. Sometime during the game Ferguson left the gym to go to the bathroom. The next time anyone saw her she was dead.

When the girls in the volleyball game realized that Ferguson hadn't returned from the bathroom they became frightened and began searching for her. The police were called and Clarence Brandley was instructed to join the search. He instructed his only assistant still working that day (he had dismissed the others at noon), Henry "Icky" Peace to search the auditorium. No one found the girl so they resumed the search, this time with more diligence. This time Peace discovered the dead body of Cheryl Ferguson in the loft of the Conroe High auditorium. Except for socks, the child was naked.

Clarence Lee Brandley and Henry "Icky" Peace were both questioned, searched and released. When Peace's car was searched police found a loaded .25-caliber Baretta pistol, two knives, a wooden club, a pair of handcuffs, a fake drug agent's identification card and a lewd drawing. The three other janitors (Martinez, Sessums and Acreman) who had been released early by Brandley weren't questioned, neither was James Dexter Robinson, the janitor fired three weeks earlier. School was scheduled to start in less than two weeks and parents were expressing fear of sending their children to the school with a murdering rapist on the loose. The Friday following the molestation/murder Clarence Lee Brandley was arrested. Brandley professed innocence, but the Montgomery County authorities felt their circumstantial evidence was strong enough to pick up and charge their man, Clarence Lee Brandley.

The state argued that Brandley came down the hallway headed toward the girls bathroom with toilet paper in his hands when some girls told him that there was a girl in the bathroom. Brandley, the state claimed, told them he wasn't going in the girls bathroom. Then, they say, he told the four janitors working under him to go across the street and begin cleaning the vocational building. The state claimed that Brandley attacked Ferguson and strangled her with his belt. Expert witnesses, Tony Arnold, testified that a hair found on the girls socks could have been negroid.

The defense contended that when Brandley sent his crew to the vocational building he went to his office where he sat, smoking cigarettes, waiting for the men to complete their task. Two of the men went to the store while Brandley was waiting and one, Gary Acreman, came back to the main building, according to counsel for the defense. Caucasian hairs that had been "forcibly implanted" in the girl pubic area were not explained even though test showed that the hairs didn't come from either Brandley or Ferguson. Furthermore, argued the defense, on the day of the murder Clarence Brandley was not wearing a belt. Although Brandley was the only janitor with keys to the auditorium the defense proved that some of the doors to the auditorium didn't lock securely. In fact, they showed that Brandley was not the only employee with keys to the auditorium. The trial ended in a hung jury. Eleven of the white jurors thought Brandley was guilty, but one "nigger lover" was sure.

Clarence Brandley's second trial was more decisive. The defense brought forth a witnesses ,Brenda Medina, who testified that she had been James Dexter Robinson's common-law wife at the time of the murder. The woman told the court that on the night of the rape and murder Robinson came home and told her he had to get out of town because he had killed a girl. Robinson was questioned and given a polygraph. David Glenn Raney who administered the lie detector test pointedly asked Robinson if he had, "caused the death of Cheryl Ferguson." He testified under oath that Robinson hesitated for about three and a half minutes before uttering, "Well, I don't remember. I could have done it and forgotten. No, I'm not that kind of person."

Edward Lynn Payne, the father-in-law of janitor Gary Acreman testify that Acreman came home shaky the morning of the murder and told him that he had to "go back to the school and get the girls clothes out of the dumpster before the police find them." Acreman denied the claim, but admitted seeing James Dexter Robinson at the school that morning. The state countered with a student, Danny Taylor, who Brandley had confronted two weeks prior to the murder when the boy pulled a knife on another employee, who testified that he had heard Brandley say "if he got one of them alone, ain't no telling what he might do." The all white jury found Brandley guilty on February 14, 1981, and sentenced him to death.

The defense automatically appealed, but the third trial yielded the same results. The state had some how "lost" all the evidence that pointed toward the other suspects and they wanted Brandley executed. The pictures taken of the dead girls body by Montgomery County police "didn't come out," because officer Woody Allen "miscalculated," his camera. Judge Lynn Coker set January 16, 1987, as Brandley execution date.

Clarence Lee Brandley has won three last minute "stays of execution."

A retired visiting judge hearing all the evidence in the Brandley case argued last year that Brandley was clearly innocent and should be given a new trial and released. The Court of Criminal Appeals is empowered to grant Brandley a new trial, but for nearly a year they have patiently put off making a decision in this highly publicized case. While they wait, Clarence Brandley waits at the Ellis Unit of the Huntsville prison system on death row. He waited there for nine years now. Nine years of constant torment and fear, in a dehumanized position, suffering for a crime he claims, and most believe he didn't commit.

NOKA
(AUSTIN, TEXAS)
FRI. AUG. 11,
1989

Death Penalty Dumb

by Akwasi Evans

The state of Texas should outlaw the death penalty immediately. Every state in the United States should immediately outlaw the death penalty and examine more innovative ways of handling people convicted of committing unpardonable crimes like murder.

When someone kills another human being that person, or persons should be punished and they will have to answer for their sin. When the state kills and incarcerated convict, we the taxpayers, become accomplices in a cycle of killing that will keep revolving until someone (hopefully the state) displays the wisdom to stop the executions and finds other ways to deter this kind of crime. After all, the criminal is under the total control of the state after he or she has been caught, charged, tried and convicted.

Ignoring the cliche arguments like killing the criminal won't bring the victim back, the fact is that more often than not we let the criminal off the hook when we execute them. Anyone, except the state, who has taken a life has to live with a fact, day in and day out. They, no doubt, carry their victim with them everywhere and many are internally tormented by the realization of what they have done. When the state executes them their suffering is over. When the state learns that they have executed an innocent person, as the state often has, should the state be charged with murder and executed. That notion is a preposterous and the notion that killing a killer make society safer or saner. The death penalty is a reflection of our fear and ignorance. We are afraid the person we have locked up and we haven't discovered how to effective deal with him or her, so we react in the archaic ways of our ancestors.

An enlightened state in a peace loving democracy doesn't need to take life to save life. We need to teach love and take the time to find new solutions to old problems that have previously been addressed with an old testament mentality.

There are also men and women on death row who are definitely guilty of the crime they are accused of committing. The people, I believe, should be punished and that punishment should last a very long time, even forever. They should not, however, be absolved of paying for their crime by having a representative of the taxpayers emulate their crime by putting them to death. That is nor a wise or religiously appropriate thing for the state to do.

High court refuses 8 Texas cases

Death row inmates are denied appeals

United Press International

HUNTSVILLE, Texas — The U.S. Supreme Court refused Monday to hear appeals from eight Texas death row inmates, including a man convicted of killing four people in an airplane hangar near Sherman.

None of the condemned killers involved in the rulings has a pending execution date. They were:

■ Lester L. Bower, sentenced to death for the Oct. 8, 1983, murders of Bobby Glen Tate, Ronald Mays, Philip Good and Jerry Mack Brown. The four men each suffered multiple gunshot wounds from a .22-caliber pistol after they met Bower at a hangar on Mr. Tate's B&B ranch near Sherman. Authorities said the motive for the slayings was the theft of a $4,000 ultralight aircraft.

■ John Fearance, convicted twice in the December 1977 death of Larry Faircloth, who was stabbed repeatedly after Mr. Fearance broke into his Dallas home.

■ Pamela Perillo, who was convicted twice and sentenced to die for the February 1980 robbery and murder in Houston of Bob Skeens, 26, of Houma, La.

■ Troy Kunkle of San Antonio, who was sentenced to die for the Aug. 12, 1984, fatal shooting of Steven Horton, 30, of Corpus Christi.

■ Calvin Williams, convicted of the June 2, 1980, rape-strangulation of Emellie Fields Anderson, a Houston travel agent.

■ Ricardo Guerra, who was sentenced to death for the July 13, 1982, murder of a Houston police officer.

■ Walter Bell was sentenced to die for the July 1974 shooting of Ferd Chisum, 50, who had hired Mr. Bell to work in his Port Arthur appliance store. The inmate also is serving a life sentence for killing Mr. Chisum's wife, Irene.

■ Carl Kelly was sentenced to die after admitting that he took part in the robbery of a Waco convenience store in 1980 and the abduction and

Conviction of Texas Death Row inmate overturned

By Richard S. Dunham
TIMES HERALD WASHINGTON BUREAU

WASHINGTON — The Supreme Court, citing improper testimony from a prosecution psychiatrist, Monday unanimously overturned the conviction of Texas Death Row inmate David Lee Powell.

The court found that Powell's constitutional right against self-incrimination was violated when he was examined by a psychiatrist, Dr. Richard Coons, and a psychologist, Dr. George Parker, without being informed of his right to remain silent.

Coons and Parker testified against Powell at his sentencing hearing, saying he was likely "to commit future acts of violence that would constitute a continuing threat to society."

The Texas Court of Criminal Appeals had twice rejected Powell's appeal, concluding any violation of his constitutional rights was a harmless error.

But the Supreme Court, in an unsigned opinion released on the final day of its 1988-1989 session, said Powell's attorney "should have been informed that he was to be examined on the issue of future dangerousness."

Also on the final day of the court session, the court overturned death sentences handed down to three Texas murderers — Miguel Richardson, Gary Graham and Clifford Boggess — and ordered their cases to be reviewed by the Texas Court of Criminal Appeals in light of the high court's decision last week in the case of mentally retarded murderer John Paul Penry.

In the Penry case, the Supreme Court held that Texas' method of instructing juries in capital murder cases did not permit defendants to present mitigating evidence.

Betty Beets may get execution date

■ **GATESVILLE, Texas** — Betty Lou Beets, whose murder conviction was recently upheld by the U.S. Supreme Court, could become the first woman to be executed by the state of Texas. Mrs. Beets, 52, was convicted of capital murder in the 1983 slaying of her fifth husband, former Dallas Fire Capt. Jimmy Don Beets, and indicted on murder charges in the killing of her fourth husband, Doyle Wayne Barker. The bodies of the men, both shot in the back of the head, were unearthed in her yard near Payne Springs in 1985. She was scheduled for a sentencing hearing June 27, but it was postponed until after the Supreme Court ruled on her appeal. Last week, the high court rejected her claims of an unfair trial, and Henderson County District Attorney Bill Bandy said he expects to reschedule her sentencing date soon.

Treason

In my opinion, desecration of the American flag is an overt act of treason and should be treated as such.

I think it deserves the death penalty.

ELDRED J. ROBINSON,
Dallas

ALL ARTICLES TUES. JULY 4, 1989

DALLAS TIMES HERALD + MORNING NEWS

Cook murder appeal undecided

Court recesses without ruling on case that earlier was delayed 8 years

By David Hanners
Staff Writer of The Dallas Morning News

The Texas Court of Criminal Appeals adjourned for its summer recess Wednesday without ruling in the case of death row inmate Kerry Max Cook, adding yet another delay to a case that has set records for delays.

The court heard new arguments in Mr. Cook's 1977 capital murder case on Jan. 18, and attorneys on both sides said they had hoped the judges would hand down a ruling before taking their summer break.

"We can't rush the court to do it, but obviously, we want it resolved," said Michael Sandlin, assistant Smith County district attorney.

"Every week that goes by is incredibly frustrating and incredibly hard on Kerry and his attorneys. It's not fair to anybody at all in this case," said Scott Howe, who is representing Mr. Cook.

But Mr. Cook is not unaccustomed to his case being delayed by the state's highest criminal appeals court. His initial appeal sat before the court for nearly eight years before it was ruled upon, the longest such delay in the nation's history, legal experts believe.

The court will hand down rulings once a month for the next two months, but it will not return in session until Sept. 13, said court clerk Thomas Lowe.

Mr. Cook was sentenced to die for the 1977 mutilation-slaying of a Tyler woman, a crime he says he didn't commit. Although a 1988 investigation by *The Dallas Morning News* raised serious questions about Mr. Cook's guilt and the fairness of his trial, Tyler police and Smith County District Attorney Jack Skeen Jr. have refused to re-examine the case.

The Texas Court of Criminal Appeals upheld Mr. Cook's conviction and death sentence in December 1987, setting the stage for Mr. Cook's execution by lethal injection. But last fall, the U.S. Supreme Court stayed the condemned man's execution and ordered the state appeals court to review the case.

Kerry Max Cook . . . was sentenced to die for a 1977 mutilation-slaying, a crime he says he didn't commit.

The review focused on the narrow legal issue of whether the judge at Mr. Cook's trial was right in allowing jurors to hear testimony from a prosecution psychiatrist who had interviewed Mr. Cook without reading him his rights.

The court of appeals said the judge erred in allowing the testimony but that it was a "harmless error." The U.S. Supreme Court, ruling in the case of Texas death row inmate John T. Satterwhite, whose case paralleled Mr. Cook's on the issue, said a constitutional error is never harmless.

The state appeals court has heard arguments in two other cases involving the Satterwhite issue. In them, decisions were handed down in 119 days and 154 days. The court has had Mr. Cook's case 161 days.

Mr. Cook's initial appeal was argued before the court on Feb. 13, 1980; a decision was handed down Dec. 9, 1987. The delay: 7 years and 10 months.

Court records show that Mr. Cook's case was one of five death penalty cases argued before the appeals court on the same day. Of the four others, one was decided in 27 days, another in 41 days. A third case was decided in four months, while the fourth was decided in seven months.

The nearly eight-year delay in Mr. Cook's case may itself be cause for overturning the conviction, said Mr. Howe, who is with the Texas Resource Center, an Austin-based group that assists death row inmates in their appeals.

"It's beyond anything I've ever seen as a lawyer," said Mr. Howe. "There is no reason I can imagine why a case would have taken so long."

Mr. Howe said a federal appeals court in New York last month overturned an inmate's conviction and ordered the man freed from prison because of a six-year delay in that man's case. The court wrote that the delay was a "mockery of justice."

Mr. Howe said that if the state appeals court doesn't reverse Mr. Cook's conviction on the Satterwhite issue, "the delay will be an issue that will be raised in the federal courts."

But John F. Onion Jr., the appeals court's retired presiding judge, said he doesn't believe that inmates should go free just because courts are swamped.

"That a person should go free, regardless of the crime he committed, just because the court has a heavy caseload, that doesn't sound right to me," said Mr. Onion, who wrote the 8-1 majority opinion that upheld Mr. Cook's conviction and sentence.

BOTH ARTICLES FROM DALLAS MORNING NEWS

THURS. JUNE 29, 1989

Review ordered of murder conviction

■ **AUSTIN** — The Texas Court of Criminal Appeals on Wednesday directed a trial judge to further review a Dallas County capital murder conviction to determine whether Ronald Curtis Chambers was denied a fair trial because black people were excluded from the jury. In May, after the first court-ordered review of the case, the trial court ruled for Mr. Chambers, who is black. But the Court of Criminal Appeals said the judge was wrong not to consider a prosecutor's testimony in deciding whether the state had a valid, race-neutral explanation for using its legal discretion to exclude three black people from the jury. Mr. Chambers was sentenced to death in 1985 for the April 1975 beating death of Mike McMahon, a 22-year-old Texas Tech University engineering student who was abducted outside a Dallas nightclub.

Monsters must be kept off streets

LEE WALKER

My feelings are of frustration, anger and, yes, hate. Frustration of the muddled haphazard shape our criminal justice system is in here in Texas. Anger at our society for what happened to Amy Thatcher and for all the other Amys who have been raped, sexually assaulted and, yes, killed. My hate is for the abusers — the animals that our society keeps on and on turning loose on the Amys of the world when they should be in prison — or even better yet, executed!

My heart goes out to the families of these little girls — they will never be the same again. After this, the word rape will take on a new meaning. After this, the violence on television shows will not be so well tolerated.

All of us want to lash out at the police departments and sheriff departments when bad things like this happen in our society. I want to tell you, though, that we are venting our anger in the wrong direction. There are always people out there who say they just don't believe in the death penalty. I know, because I was one of them. There are always going to be people in our society who are so concerned about the rights of the killers, but not over the rights of the victims. That is the way things are today.

Today, the victim or victims are felt very sorry for, and we the public wear almost a guilty look when a discussion comes up about someone who has been murdered. We can't help it, because these things make us uncomfortable. We don't really want to face the fact that we are not safe in our homes any more, or that our little girls are being raped and killed on the streets. Why? Because in most cases it hasn't happened to us yet. It did to me, though — my daughter was raped and murdered 10 years ago.

If you are a parent, think of one of your daughters, think of how much you love her, think of all the plans you have for her. Imagine the devastation in your world if she didn't come home tomorrow. Think of her being raped and strangled. Picture going to her funeral. It is very hard, but a lot of us have been down that path. I answered the doorbell one graduation night, and was told that my little 17-year-old daughter Jeana had been killed.

There is no easy way for a sheriff's deputy to break that news to a parent. The agony of the next few days will always be with me. The talking with my husband about how can we tell our other children, the anger of who would do something like this. You see, she was raped and strangled. Our community of Lewisville, Flower Mound and surrounding areas was devastated.

Somehow, our family survived the next few days; we had her funeral, and our church in Lewisville was full. We buried her at the little Flower Mound Cemetery. I go out there from time to time to visit her grave. Even after all these years, it is still hard to accept — you never really do.

Darren Hankins/for The Dallas Morning News

Let me tell you something of Jeana's killer. He was convicted and sent to prison in 1973 for burglary. He served some time, but was released. Then in 1978 he killed our Jeana. He was tried at the cost of over $100,000 to Denton County as an indigent in a change-of-venue trial at Wichita Falls. He was found guilty and sentenced to death. He spent the next five years on death row — no execution, even though a jury assessed the death penalty. After five years on death row, his conviction was overturned on a technical error during this arrest. He was then sent back to Denton County for a retrial.

During all this time, our district attorney kept us informed on what was going on. He had the choice of either retrying the killer or working out a plea bargain. We agreed to the plea, and it was for 30 years. Last Christmas, 10 years after Jeana's death, this monster was released from prison. He had "served his time," I was told. Four months later, on a Friday night, our sheriff called me at my home and said he had arrested him again for sexual abuse of a minor. He is again in the Denton County jail.

Our problems are not with our police or sheriff's people. Our problems are in our laws; they need to be changed. If we have the death penalty on the books, let's execute killers; if they receive 20 years in prison, let's keep them in prison for 20 years. Let's quit trying to lock up the world. That is why these killers are falling through the cracks and are free to kill again. Our jails and prisons are full to over capacity, and the keepers of these institutions are only trying to do their jobs without enough space.

Where we need to go with our ideas of prison and criminal justice reform is to our judiciary and to our legislators to get some real justice reform — not gripe at the parole board. It is just trying to move people through the system.

Do you know how many thousands and thousands of outstanding traffic warrants there are out there right now just in Denton County? And do you know that if a person does not pay that traffic ticket in a period of time, a warrant is issued for his arrest? This person did not steal or kill, but if he is picked up on that warrant, he is put in jail. Why can't the laws be changed so that the person has his driver's license taken away for a period of time? Then the counties might have room to keep the rapists and murderers in jail. I cannot understand why some things that make sense can't be done to alleviate our prison problem.

I don't know where I can go from here, but if you care as I do, let's please try to do something to make it safe in our state once again for little girls to walk to school and go to graduation parties.

Lee Walker is a Denton County commissioner.

When Innocent People Are Sentenced to Die

To the Editor:

I have read many letters in your columns on capital punishment. I'm a death-sentenced citizen, so you might expect me to say I am against the death penalty. However, no matter what your views on capital punishment, I haven't heard anyone advocating it for innocent citizens. Those who favor it would not favor it for themselves or any member of their own families.

I have written to New Jersey politicians (State Senators John F. Russo and Chuck Hardwick, and Assemblymen Thomas J. Shusted and Dennis L. Riley) and asked them to consider compensating the innocent citizens who are wrongly sentenced to die.

If you favor capital punishment for the guilty, you should also favor capital compensation for the innocent. If you don't, you're a hypocrite!

If New York State does bring back the death penalty, I hope that the Legislature considers a clause to compensate wrongly convicted innocent citizens. Remember Isadore Zimmerman. He was wrongly sentenced to die for crimes that he didn't commit. Although he's forgotten when the subject of capital punishment comes up, he lives on in the Guinness Book of World Records. Who's next? Maybe someone in your family? Maybe you? RONALD E. LONG SR.
Trenton, Aug. 4, 1989

N.Y. TIMES
FRI. AUG. 25, 1989

Lawyer's ploy could get client death in old case

By Mark Potok
OF THE TIMES HERALD STAFF

John McCrory was paroled after serving 10 years in state prison for raping and murdering a Denton County commissioner's 17-year-old daughter. But now, because of a legal maneuver by his defense attorney on another charge, he may face the death penalty — for the same murder.

After McCrory was charged with a sex crime in April, prosecutors sought a heavier penalty than normal based on his previous convictions for the murder and a theft charge.

Tom Whitlock, McCrory's court-appointed defense attorney, looked into the previous convictions and found prosecutors in the murder case never filed the required paper work on McCrory's 1978 murder of Jeana Walker. So he asked a state judge to void the conviction, reasoning McCrory would face a lesser punishment on the sex charge if convicted.

But Denton County District Attorney Jerry Cobb, faced with the possible voiding of the murder conviction, responded by asking a grand jury to reindict McCrory for the killing — this time on capital murder charges. On Thursday, a Denton County grand jury complied.

If the original murder conviction is voided, then prosecutors apparently would be free to try McCrory again without violating guarantees against double jeopardy, the legal principle that prohibits trying someone twice for the same crime. If not, prosecutors say they plan to go for a life sentence on the sex offense charge.

McCrory originally was sentenced to death for raping and strangling Jeana Walker, the daughter of Al and Lee Walker, who is now a Denton County commissioner. But an appeals court struck down the conviction in 1983 because a written confession and another he made verbally to a psychiatrist were ruled inadmissible. Instead of retrying the case, a plea bargain was reached whereby McCrory pleaded guilty and was sentenced to 30 years.

He served 10 years and was paroled last December.

If McCrory is tried again for the murder, Cobb says he has compelling new evidence — the confession McCrory made to a judge as part of his plea bargain. He said that even if Whitlock withdraws his motion for a voided conviction, he'll now insist that it be ruled on.

If the original murder conviction were voided, the most prosecutors could get on the sex crime charge would be two to 20 years. If it stands, prosecutors could seek a minimum penalty of 25 years and up to life in prison because of the earlier convictions.

Whitlock said both he and his client understood the risk in seeking a voiding of the murder charge. But he added that he is confident the state will not be able to try McCrory again because the plea bargain amounts to a contract between McCrory and the state.

"John took the punishment and he fulfilled his end of the contract with the state, and I think they will be held to their agreement," Whitlock said.

"There's no such thing" as such a contract, Cobb retorted. He said the conviction "is void or it isn't void, and the fact that he spent 10 years in [prison] has nothing to do with it."

McCrory's attorney may now be forced to argue the opposite of what he planned to — that his client was convicted of the murder charge, so he can't be tried again. But Whitlock still hopes to convince a judge to void the case and also rule out a new murder trial.

"Maybe I can't have my cake and eat it, too," he said. "But we're going to try for it."

DALLAS TIMES HERALD
SAT. AUG. 26, 1989

Supreme Court to review Texas death penalty case

By Steve McGonigle
Washington Bureau of The Dallas Morning News

WASHINGTON — The U.S. Supreme Court agreed Tuesday to review the death sentence of a Harris County man to determine whether the Texas death statute unfairly excluded testimony about his mental illness from his trial.

The court accepted for review the case of John Henry Selvage, who was sentenced to die in February 1980 for the murder of Harris County Sheriff's Deputy Albert Garza during a 1979 Houston jewelry store robbery.

Appellate attorneys for Mr. Selvage contend that his trial attorneys were improperly prevented by the Texas death penalty law from introducing evidence to the jury of Mr. Selvage's long-term mental illness.

In accepting the case, the Supreme Court limited the issue to whether there is a procedural prohibition to Mr. Selvage's claim that resulted in a "fundamental miscarriage of justice" in his case.

The decision to hear the case provides the court with a vehicle for defining the scope of its decision in June in another Texas death case involving John Paul Penry, a mentally retarded inmate. The court ruled in Mr. Penry's case that a retarded person could be executed if the jury that sentenced him was provided with evidence of his retardation and allowed to consider it while deciding punishment.

In a second case related to the Penry decision, the Supreme Court sent the death sentence of Johnny James of Winnie back to the Court of Criminal Appeals for further review. Mr. James was convicted in 1986 of the murder of Barbara Mayfield, a High Island tavern operator.

The court also barred Ruben R. Montemayor, a member of the Texas Board of Corrections from 1975 to 1981 and for three months in 1984-85, from practicing before the U.S. Supreme Court. Mr. Montemayor, a prominent San Antonio immigration lawyer, was accused of "intentionally neglecting" the cases of 10 immigration clients. He agreed in March to accept a three-year probated suspension of his law license by the Texas Supreme Court and repayment of about $10,000 in legal fees.

DALLAS MORNING NEWS

WED. OCTOBER 11, 1989

Pace of Executions Rising Since '83 Court Ruling

By ROBERT REINHOLD
Special to The New York Times

HOUSTON, Aug. 18 — So many convicted murderers were scheduled to die last week in Texas that the state prison director has asked the courts to avoid scheduling more than one execution a day.

While all those to be put to death received stays of execution, the move was a dramatic sign of the acclerating pace of executions in Texas and across the country since two years ago when the Supreme Court upheld speedier handling of appeals from people awaiting execution.

Already this year 15 people convicted of murder have been put to death, five of them here in Texas, more than in any other state. And Attorney General Jim Mattox has said he expects the state to be executing one convict a month by the end of this year.

Texas has 211 condemned convicts on death row, more than any other state except Florida, which has 221. Florida has executed 3 so far this year. Southern states have generally been more likely than others to impose the death penalty.

Executions Become Routine

Executions have become so routine in Texas that they draw little public attention. When Texas executed Charlie Brooks in December 1982, the first execution in the state after the Supreme Court reauthorized the death penalty, scores of reporters from all over the country and demonstrators for and against capital punishment were drawn to the prison system's headquarters in Huntsville, where all Texas' executions take place.

This year's executions have drawn only minor notice from the press, and few demonstrators.

Lane McCotter, director of the Texas Department of Correction, asked the courts to coordinate executions better after he learned that four convicts had been scheduled to die on two days last week. All but one of them, Jay Kelly Pinkerton, received stays after Mr. McCotter's request, and Mr. Pinkerton was granted a stay by the Supreme Court less than 30 minutes before his scheduled execution Thursday by lethal injection for raping and mutilating an Amarillo woman.

United Press International

Charlie Brooks, whose execution in 1982 was the first in Texas since the Supreme Court reauthorized death penalty. His execution was the focus of demonstrations and extensive media coverage.

Opponents of the death penalty, acknowledging the overwhelming public, political and legal support for the death penalty, are altering their tactics, saying they expect it to be a long time before public attitudes can be changed.

"We'll have it with us for a generation," said Henry Schwarzchild, director of the death penalty project for the American Civil Liberties Union in New York. "There is almost no likelihood of our abolishing it by litigation or in the arena of public policy."

'The Right Battle to Fight'

He added that opponents would nonethless try to keep the issue alive because it is "the right battle to fight," and he predicted that, like slavery, the death penalty would ultimately be abolished, "in the long run, when crime is not so fear-producing."

As of Aug. 1, there were 1,540 men and women on death rows in the United States, according to an A.C.L.U. tally.

Only six convicts were executed from 1976, the year the Supreme Court permitted the states to resume executions, to the end of 1982. The pace quickened in 1983, with 5 executions, and then quadrupled to 21 last year. Mr. Schwarzchild estimates there will be as many as 50 this year. Of the 47 executions since Gary Gilmore was shot to death by a firing squad in Utah Jan. 17, 1977, 13 have been in Florida and 9 in Texas.

Even with the acceleration, the number of executions has come nowhere near the 250 or so people a year who are sentenced to death. While some will presumably have their sentences reduced on appeal, this raises the question of how the states are going to cope with the increasing load.

"The backlog will continue to grow — I have no scenario of how society will resolve this," said Mr. Schwarzchild.

He said it would take six executions a day nationwide to clear up the backlog, if all were to be executed by the end of the year.

The logjam began to break with the Supreme Court ruling on July 6, 1983, that held that a Texas inmate could be executed even though a constitutional challenge to his murder conviction was still technically pending. That inmate, Thomas Andy Barefoot, was executed Oct. 30, 1984, for killing a police officer.

Since then judges in Texas and other states have been trying to clear up the backlog and there has been little opposition from the political leadership. Here in Texas, Gov. Mark White has so far refused all pleas for clemency or stays.

Attorney General Mattox, something of a liberal on many other matters, has been equally firm. "The Legislature in Texas has decided they wanted the death penalty, so we are just trying to enforce the law," said his spokesman, Elna Christopher.

Debate Shifts to Moral Grounds

Given the prevailing view, the A.C.L.U. and other opponents no longer seek publicity for each case, feeling that this tactic often evokes public sympathy for the victim of the crime. Rather, they seek to pursue the debate on moral grounds.

"The individual execution no longer commands public attention," said Mr. Schwarzchild. "But the issue of the penalty is a high-profile issue."

Accordingly, opponents say they have begun to lose interest in candlelight vigils at prisons and other protests of executions.

"How many times are our people going to run up from Houston to Hunstville to hold a candle in the middle of the night?" asks Mr. Schwarzchild. "Like newspaper editors, our people get tired if it happens that often, particularly if there is no obvious change in the outcome"

The Dallas Morning News
Wednesday, August 25, 1993

Texas' death penalty dilemma

JIM MATTOX

Should Gary Graham die without a clemency hearing before the Texas Board of Pardons and Paroles?

I'm hearing that question a lot these days from reporters, lawyers and members of the public.

As the attorney general of Texas from 1983-1990, I was the man responsible for 36 executions in the state.

I did not prosecute those inmates at trial. That was done at the county level in district courts.

I did not shoot the lethal injections into their veins. An executioner did that.

But the attorney general is responsible for defending the state's death penalty law in the courts when inmates seek to stay alive by legal challenges to the system. I defended Texas' death penalty statute, and I was very successful at it.

In that role, I witnessed most of those 36 inmates die.

So don't think I'm soft on the death penalty. I'm not.

But Gary Graham's case clearly reminds me of another high-profile death penalty case, that of Clarence Lee Brandley, who was wrongly convicted of raping and murdering a high school cheerleader in Conroe. Mr. Brandley is free now, but he almost lost his life before justice came through.

Just like Mr. Graham, Mr. Brandley's conviction and sentence were upheld by the courts. And just like Mr. Graham, new evidence was discovered too late to be presented to the courts.

But instead of pushing ahead full-throttle to execute Mr. Brandley, my office did not object to his receiving a hearing on the new evidence. That was done in the courts, and the issue was resolved before it went as far as Mr. Graham's case.

I don't know whether Mr. Graham is guilty or not. I do know he's a bad character with a history of violent crimes. But what if he's telling the truth, and the state kills him for a crime he did not commit?

The new evidence in Mr. Graham's case should be heard, and the proper forum in Texas at this stage is the Texas Board of Pardons and Paroles.

But the unelected board, appointed by the governor of Texas, has no procedures in place to guide them as to how and when to conduct such a hearing.

Now, Judge Pete Lowry in Austin has ordered the board to hold a clemency hearing, saying that is "the only fail-safe" available to someone who may be able to prove his innocence.

And Judge Lowry's order does not ignore the rights of victims' families and loved ones. His order plainly states that the family of the victim may present testimony at any such hearing, along with the prosecution.

> Life without parole could save millions of dollars. It currently costs three times as much — more than $2 million per inmate — to carry out the death sentence than to keep an inmate in prison for 40 years.

I agree with Judge Lowry. Is the trouble of holding one more hearing more important than making absolutely certain there has been no mistake?

I think not.

Moreover, maybe it's time Texans considered changing our death penalty law to do what many other states have done. Give juries the option of sentencing a murderer to death or life in prison without parole. That way, if mistakes were made in the prosecution of a case, it wouldn't wrongly cost a life. And if the inmate was guilty but technical mistakes were made at the death penalty punishment portion of trial, there would be less chance of a murderer being set free because his death sentence was overturned. Clemency could be granted, changing from death to life in prison, but the public would not have to worry that a violent criminal would get out of prison.

Life without parole could save millions of dollars. It currently costs three times as much — more than $2 million per inmate — to carry out the death sentence than to keep an inmate in prison for 40 years.

In other words, it's a lot cheaper to lock 'em up and throw away the key — something that Texas law does not currently allow.

As violent crime continues to escalate, it's something to consider.

Jim Mattox, a former Texas attorney general, is practicing law in Austin.

Watt

Texas

DEATH ROW LIST AUGUST 18,1995

EX#	NAME	DOB	*RACE	REC'D	COUNTY	DATE OF CRIME	PRIOR TDCJ-ID
511	White, Excell	03/14/38	W/*	08/26/74	Collin	05/11/74	No
524	Bell, Walter	12/09/53	B/U	05/20/75	Jefferson	07/19/74	No
533	Granviel, Kenneth	08/04/50	B/U	11/21/75	Tarrant	11/11/76	No
539	Chambers, Ronald	01/11/55	B/*	01/08/76	Dallas	04/11/75	No
541	Riles, Raymond	06/01/50	B/W	02/04/76	Harris	12/10/74	Yes
550	Felder, Sammie	09/23/45	B/W	06/29/76	Harris	02/26/75	Yes
552	Woods, Billy	12/20/46	W/U	07/30/76	Harris	10/10/75	No
556	Hughes, Billy	01/28/52	W/W	09/17/76	Matagorda	04/04/76	No
560	Vanderbilt, Jimmy	11/25/52	W/U	12/01/76	Potter	04/01/75	No
575	Muniz, Pedro	09/25/56	H/W	10/07/76	Williamson	12/20/76	No
577	Earvin, Harvey	04/07/58	B/U	10/26/77	Angelina	12/12/76	No
580	Faulder, Joseph	10/19/37	W/U	12/09/77	Gregg	07/09/76	No
581	Green, Randy	09/12/55	W/U	12/22/77	Harris	06/28/76	No
587	Pierce, Anthony	07/20/59	B/B	03/20/78	Harris	08/04/77	No
591	Lackey, Clarence	08/03/54	W/W	04/17/78	Tom Green	07/31/77	Yes
600	Cook, Kerry	04/05/56	W/W	07/18/78	Smith	06/10/77	Yes
609	Jordan, Clarence	04/09/56	B/U	09/12/78	Harris	10/14/77	Yes
612	Powell, David	01/13/51	W/H	10/06/78	Travis	05/20/78	No
614	Davis, William	04/24/57	B/U	10/10/78	Harris	06/02/78	Yes
615	Smith, Jack	12/23/37	W/U	10/10/78	Harris	01/06/78	Yes
627	Cass, Mark	07/27/55	W/*	01/05/79	Harris	01/24/78	No
633	Johnson, Carl	03/05/55	B/B	05/04/79	Harris	10/06/78	No
634	Cannon, Joseph	01/13/60	W/W	05/09/79	Bexar	09/30/77	No
636	Aranda, Arturo	05/12/48	H/U	05/18/79	Webb	07/31/76	Yes
638	Vigneault, Donald	02/24/50	W/B	07/03/79	Wharton	04/26/78	No
640	White, Larry	03/10/50	W/W	08/06/79	Harris	03/03/77	No
642	Reed, Jonathan	10/19/51	W/U	09/06/79	Dallas	11/01/78	Yes
650	Fierro, Cesar	10/18/56	H/H	02/26/80	El Paso	02/27/79	No
651	Satterwhite, John	12/29/46	B/U	02/28/80	Bexar	03/12/79	Yes
652	Selvage, John	08/07/50	B/U	03/17/80	Harris	07/30/79	No
654	Penry, Johnny	05/05/56	W/W	04/09/80	Trinity	10/25/79	Yes
660	Hogue, Jerry	09/26/50	W/W	06/06/80	Tarrant	01/13/79	No
663	Moore, Bobby	10/29/59	B/U	07/24/80	Harris	04/25/80	Yes
665	Perillo, Pamela	12/03/55	W/W	09/04/80	Harris	02/24/80	No
669	Session, James	06/29/57	B/U	10/10/80	Smith	01/08/80	Yes
671	Banks, Delma	10/30/58	B/U	10/15/80	Bowie	04/12/80	No
673	Barber, Danny	05/08/55	W/W	10/31/80	Dallas	10/08/79	No
675	Dunn, Kenneth	10/03/59	B/W	12/19/80	Harris	03/17/80	No
679	Gardner, David	09/23/54	W/U	03/06/81	Parker	08/26/80	No
684	Jenecka, Allen	11/03/49	W/W	06/08/81	Harris	07/05/79	Yes
685	Soffar, Max	12/15/55	W/*	06/21/81	Harris	07/14/80	No
689	Meanes, James	06/08/56	B/H	08/31/81	Harris	04/04/81	No
691	Richardson, Miguel	07/07/54	B/W	09/24/81	Bexar	03/31/79	Yes
692	Burns, William	07/04/58	B/W	10/12/81	Bowie	12/11/78	No

Received from TX Dept of Criminal Justice (Public Info).

EX#	NAME	DOB	*RACE	REC'D	COUNTY	DATE OF CRIME	PRIOR TDCJ-ID
696	Graham, Gary	09/05/63	W/W	11/10/81	Harris	05/13/81	No
704	Alexander, Caruthers	09/07/48	B/U	02/15/82	Bexar	04/23/80	Yes
706	Cordova, George	03/26/59	H/H	03/04/82	Bexar	08/04/79	No
708	Carter, Robert	02/10/64	B/U	03/12/82	Harris	06/24/81	No
709	Nichols, Joseph	09/08/61	B/U	03/12/82	Harris	10/13/80	No
710	Thomas, Danny	08/30/55	W/W	04/01/82	Harris	07/18/81	Yes
711	Briddle, James	04/07/55	W/W	04/15/82	Harris	02/24/80	No
717	Callins, Bruce	02/22/60	B/U	07/05/82	Tarrant	06/27/80	No
720	East, Wayne	10/28/55	B/U	09/02/82	Taylor	11/23/81	Yes
721	Rector, Charles	04/16/54	B/W	09/02/82	Travis	10/17/81	Yes
724	Pyles, Johnny	12/30/57	W/W	10/21/82	Dallas	06/20/82	Yes
727	Guerra, Ricardo	04/03/62	H/U	12/02/82	Harris	07/13/82	No
728	Miller, Donald	06/12/62	W/U	12/04/82	Harris	02/02/82	Yes
731	West, Robert	12/12/61	W/U	02/03/83	Harris	08/24/82	No
734	Lamb, John	07/24/57	W/W	04/12/83	Hunt	11/06/82	No
735	Perez, Manuel	03/23/45	H/H	04/19/83	El Paso	05/02/82	No
736	Williams, Arthur	10/05/59	B/W	05/06/83	Harris	04/28/82	No
740	Sharp, Michael	04/24/54	W/W	06/03/83	Crockett	06/11/82	Yes
741	Moreland, James	05/15/60	W/*	06/17/83	Henderson	10/09/82	No
745	Lane, Harold	08/30/45	W/W	07/28/83	Dallas	11/20/82	No
747	Ross, James	09/02/59	B/U	09/01/83	Harris	09/25/82	Yes
748	Robison, Larry	08/12/57	W/W	09/09/83	Tarrant	08/10/82	No
753	Morrow, Ricky	04/29/51	W/U	12/08/83	Navarro	01/19/82	Yes
758	Burdine, Calvin	04/08/53	W/U	02/03/84	Harris	04/18/83	Yes
760	Gentry, Kenneth	01/28/61	W/W	03/05/84	Denton	09/10/83	No
764	Bower, Lester	11/20/47	W/*	05/10/84	Grayson	10/08/83	No
767	Trevino, Joe	07/25/62	H/W	07/10/84	Tarrant	01/17/83	Yes
768	Martinez, Raymond	07/02/46	H/H	07/18/84	Harris	07/13/83	Yes
770	Castillo, David	07/11/64	H/H	09/12/84	Hidalgo	07/14/83	Yes
772	Ransom, Kenneth	04/15/64	B/*	09/13/84	Harris	07/21/83	Yes
773	Spence, David	07/18/56	W/*	10/11/84	McLennan	07/13/82	Yes
777	Tucker, Karla	11/18/59	W/*	12/18/84	Harris	06/13/83	No
778	Sosa, Pedro	12/27/51	H/W	01/07/85	Atascosa	11/04/83	No
780	Moddon, Willie	04/16/48	B/W	01/31/85	Angelina	07/29/84	Yes
784	Kunkle, Troy	05/27/66	W/W	03/02/85	Nueces	08/12/84	No
785	Beathard, James	02/23/57	W/*	03/05/85	Trinity	10/09/84	No
786	Davis, James	02/08/63	B/*	03/22/85	Travis	03/03/84	No
788	Little, William	10/25/60	W/W	04/15/85	Liberty	12/03/83	No
790	Purtell, Robert	05/14/59	W/W	04/23/85	Palo Pinto	02/07/84	Yes
793	Barrientes, Antonio	04/19/55	W/H	05/03/85	Cameron	04/20/84	No
795	Wills, Bobby	01/28/67	B/W	05/31/85	Orange	01/17/85	No
796	Duhamel, Emile	03/23/46	W/W	05/20/85	Cameron	07/01/84	No
797	Westley, Anthony	07/18/60	B/W	05/23/85	Harris	04/13/84	Yes
798	Losada, Davis	04/28/65	H/H	06/20/85	Cameron	12/23/84	Yes

EX#	NAME	DOB	*RACE	REC'D	COUNTY	DATE OF CRIME	PRIOR TDCJ-ID
799	Lucas, Henry Lee	08/23/36	W/W	06/21/85	Tom Green	10/??/79	No
800	Hathorn, Gene	09/17/60	W/*	07/03/85	Trinity	10/09/84	No
802	Livingston, Charlie	02/14/62	B/W	07/25/85	Harris	08/10/83	No
805	Green, Norman	11/07/60	B/U	09/27/85	Bexar	02/13/85	Yes
807	Hernandez, Rodolfo	11/18/49	H/H	12/13/85	Comal	03/07/85	Yes
810	Beets, Betty Lou	03/12/37	W/W	10/14/85	Henderson	08/06/83	No
811	Deblanc, David	01/15/56	B/W	10/18/85	Liberty	02/19/83	Yes
812	Bennett, Baby Ray	05/20/61	B/W	11/18/85	Newton	04/23/85	No
813	Robinson, William	02/05/58	B/W	11/25/85	Harris	06/11/85	Yes
814	Rosales, Mariano	07/02/39	W/U	12/27/85	Harris	03/30/85	No
815	Foster, Richard	08/16/52	W/U	01/07/86	Parker	04/05/84	Yes
816	Rogers, Patrick	01/06/64	B/W	01/20/86	Collin	09/21/85	No
817	Mata, Ramon	04/24/49	H/B	02/11/86	Madison	06/03/85	Yes
821	Jackson, Tommy	11/15/56	B/W	02/28/86	Williamson	11/17/83	Yes
822	Madden, Robert	09/27/63	W/*	02/28/86	Leon	09/15/85	Yes
823	Knox, James	07/12/51	W/H	03/11/86	Galveston	11/10/82	No
825	Gibbs, David	03/17/61	W/W	03/21/86	Montgomery	07/01/85	Yes
826	Hafdahl, Randall	06/17/53	W/W	04/08/86	Randall	11/11/85	No
827	Harris, David	03/22/50	W/W	04/30/86	Zapata	09/01/85	No
828	Hernandez, Rogelio	10/19/60	H/H	05/09/86	Jefferson	02/03/86	Yes
830	Emery, Jeff	06/25/59	W/W	05/27/86	Brazos	10/12/79	No
831	Farris, Troy	02/26/62	W/W	06/03/86	Tarrant	12/04/83	No
834	Miller-el, Thomas	04/16/51	B/W	06/26/86	Dallas	11/16/85	Yes
835	Jackson, Jimmy	01/20/67	B/B	07/03/86	Harris	07/06/85	No
837	Soria, Juan	05/15/67	H/W	07/08/86	Tarrant	06/20/85	No
838	Mitchell, Gerald	12/27/67	B/U	07/24/86	Harris	06/04/85	No
840	Kitchens, William	04/27/63	W/W	09/02/86	Taylor	05/17/86	No
841	Belyeu, Clifton	06/30/58	W/W	09/03/86	McLennan	12/10/85	Yes
842	Gosch, Lesley	07/08/55	W/W	09/18/86	Victoria	09/18/86	No
843	Lauti, Aua	06/18/54	O/O	09/18/86	Harris	12/19/85	No
844	Barefield, John	03/30/64	B/W	09/26/86	Harris	04/21/86	No
845	Rivera, Angel	10/01/57	H/W	10/01/86	El Paso	10/15/84	No
846	Drinkard, Richard	07/11/57	W/*	10/16/86	Harris	11/15/85	No
847	Montoya, Irineo	07/03/67	H/W	10/20/86	Cameron	11/17/85	No
849	Teague, Delbert	11/11/62	W/W	11/11/86	Tarrant	04/28/85	Yes
850	Johnson, Dorsie	03/10/67	B/W	11/20/86	Scurry	03/23/86	No
851	Riley, Michael	05/09/58	B/*	11/25/86	Wood	02/01/86	Yes
853	Boyle, Benjamin	07/22/43	W/W	12/05/86	Potter	10/15/85	No
854	Cockrum, John	12/28/59	W/W	12/09/86	Bowie	05/29/86	No
855	Baldree, Ernest	03/27/42	W/*	12/10/86	Navarro	08/??/86	Yes
856	Washington, Willie	01/12/59	B/U	12/11/86	Harris	12/18/85	Yes
857	Sattiewhite, Vernon	09/01/55	B/B	12/16/86	Bexar	06/19/85	Yes
859	Moreno, Jose	04/13/67	H/U	01/14/87	Bexar	01/22/86	No
860	Tennard, Robert	11/15/62	B/B	01/15/87	Harris	08/??/85	Yes
861	Elliott, John	03/25/60	H/H	01/20/87	Travis	06/13/86	Yes
862	Long, David	07/15/53	W/W	02/17/87	Dallas	09/27/86	No
863	Banda, Esequel	12/19/63	H/W	03/25/87	Hamilton	08/03/86	Yes
864	Gunter, James	02/28/65	W/W	03/31/87	Harris	02/22/86	No

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866	Lewis, David	05/31/65	W/U	04/15/87	Angelina	11/30/86	Yes
867	Richardson, James	09/07/67	B/W	05/01/87	Navarro	12/17/86	Yes
868	Mooney, Nelson	08/19/55	W/U	05/07/87	Liberty	08/18/84	No
869	Thomas, Kenneth	02/24/61	B/*	05/14/87	Dallas	03/16/86	Yes
870	Allridge, James	11/14/62	B/W	06/09/87	Tarrant	02/04/85	No
871	First, Kenneth	01/12/60	W/W	06/10/87	Lubbock	05/30/86	Yes
873	Norris, Michael	04/18/58	B/*	06/25/87	Harris	11/12/86	Yes
875	McFadden, Jerry	03/21/48	W/W	07/15/87	Bell	05/05/86	Yes
876	Jacobs, Bruce	10/13/46	W/U	07/20/87	Dallas	07/22/86	No
877	Lewis, Andre	09/22/66	B/W	07/30/87	Dallas	11/21/85	Yes
878	Draughon, Martin	08/31/63	W/H	07/31/87	Harris	11/23/86	No
879	Goodwin, Alvin	12/27/63	W/W	08/10/87	Montgomery	11/30/86	Yes
880	Napier, Carl	10/09/45	W/U	08/26/87	Harris	02/20/86	Yes
881	Willis, Ernest	09/17/45	W/W	08/28/87	Pecos	06/11/86	No
882	Jones, Richard	04/09/60	W/W	08/31/87	Tarrant	02/19/86	Yes
884	Washington, Terry	09/12/63	B/W	09/28/87	Brazos	01/15/87	Yes
885	Nobles, Jonathan	08/27/61	W/W	10/16/87	Travis	09/13/86	Yes
886	Roberson, Brian	10/08/63	B/W	10/22/87	Dallas	08/30/86	No
887	Boggess, Clifford	06/11/65	W/W	10/27/87	Clay	07/23/86	Yes
888	Crane, Alvin	05/06/58	W/U	11/13/87	Denton	03/28/87	No
889	McGowen, Roger	12/23/63	B/U	11/18/87	Harris	03/11/86	No
890	Richards Michael	08/24/59	B/U	11/20/87	Harris	08/18/86	Yes
891	Boyd, Charles	08/17/59	B/W	12/03/87	Dallas	04/13/87	Yes
892	Stoker, David	01/25/59	W/W	12/07/87	Hale	11/09/86	No
893	Blackmon, Ricky	11/21/57	W/W	12/07/87	Shelby	03/28/87	Unk
895	Turner, Jessell	06/07/60	W/U	01/12/88	Harris	02/10/86	No
897	Wilkens, James	07/20/61	W/W	02/19/88	Smith	12/27/86	Yes
898	Johnson, Eddie	07/31/52	B/W	04/19/88	Aransas	09/29/87	No
899	Brimage, Richard	12/05/55	W/U	04/20/88	Kleberg	10/05/87	Yes
900	Delk, Monty	02/24/67	W/W	05/11/88	Anderson	11/29/86	No
901	Harris, Kenneth	08/08/62	B/U	05/13/88	Harris	06/07/86	No
902	Joiner, Orien	10/27/49	W/W	05/26/88	Lubbock	12/17/86	No
903	McBride, Michael	01/03/62	W/W	05/26/88	Lubbock	10/21/85	No
904	Vuong, Hai Hai	09/20/55	O/O	05/27/88	Jefferson	12/07/86	No
905	Earhart, James	04/29/43	W/W	05/27/88	Lee	05/??/87	No
906	Cole, Ted	07/27/56	W/U	06/08/88	Tom Green	12/17/87	Yes
907	Valdez, Alberto	08/29/55	H/U	06/16/88	Nueces	09/09/87	Yes
908	De La Cruz, Jose	04/26/68	H/U	06/16/88	Nueces	06/01/87	Yes
909	Kemp, Emanuel	09/19/65	B/*	07/06/88	Tarrant	05/28/87	Yes
910	Rabbani, Syed	06/12/65	O/O	07/25/88	Harris	11/01/87	No
911	Johnson, Gary	10/17/50	W/W	08/19/88	Walker	04/30/86	No
912	Goss, Cornelius	05/25/61	B/*	08/26/88	Dallas	05/29/87	Yes
913	Nelson, Marlin	07/13/68	W/*	09/25/88	Harris	08/25/87	No
914	Behringer, Earl	01/03/64	W/W	09/27/88	Tarrant	09/14/86	No
915	Richardson, Damon	12/22/63	B/B	10/07/88	Taylor	09/10/87	No
917	Lockhart, Michael	09/30/60	W/U	10/26/88	Bexar	03/22/88	No
920	Miniel, Peter	06/23/64	H/W	11/09/88	Harris	05/09/86	No
921	Clayton, James	11/30/66	B/W	11/14/88	Taylor	09/17/87	No

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922	Newton, Francis	04/12/65	B/B	11/17/88	Harris	04/07/87	No
923	Narvaiz, Leopoldo	03/13/68	H/W	11/22/88	Bexar	04/15/88	No
924	Cantu, Domingo	06/07/68	H/W	12/22/88	Dallas	06/25/88	Yes
925	Butler, Steven	04/05/62	B/U	12/22/88	Harris	08/27/86	Yes
926	Amos, Bernard	12/22/61	B/B	12/19/88	Dallas	01/14/88	Yes
927	Cooks, Vincent	07/26/64	B/W	12/22/88	Dallas	02/26/88	Yes
928	Rivers, Warrent	03/31/67	B/U	12/29/88	Harris	05/03/87	No
929	Gribble, Timothy	08/27/63	W/W	01/11/89	Galveston	09/09/87	Yes
930	Hicks, David	01/15/62	B/B	02/07/89	Freestone	04/25/88	Yes
931	Sterling, Gary	07/25/67	B/W	02/09/89	Navarro	05/13/88	No
932	Vega, Martin	10/17/46	W/U	02/16/89	Caldwell	07/27/85	Yes
933	Moody, John	10/17/52	W/W	03/06/89	Taylor	07/03/88	Yes
934	Fuller, Tyrone	08/01/63	B/W	04/01/89	Lamar	01/20/88	Yes
935	Barnes, Willis	08/13/48	B/U	04/04/89	Harris	02/11/88	Yes
936	Rudd, Emerson	08/09/70	B/B	04/13/89	Dallas	09/02/88	No
938	Caldwell, Jeffery	03/01/63	B/B	04/28/89	Dallas	07/25/88	Yes
939	Hughes, Preston	12/24/65	B/B	05/17/89	Harris	09/26/88	No
940	Adanandus, Dwight	02/19/56	B/U	05/24/89	Bexar	01/28/88	Yes
941	Mines, Charles	08/10/49	B/U	06/08/89	Ellis	05/07/88	No
942	Rousseau, Anibal	11/27/40	H/U	07/11/89	Harris	10/27/88	Yes
943	Blue, Michael	02/22/62	B/U	07/13/89	Liberty	01/21/88	Yes
944	Medina, Javier	06/17/69	H/U	07/27/89	Dallas	12/13/88	No
946	Madison, Deryl	08/29/58	B/U	09/13/89	Harris	04/30/88	Yes
947	Miller, Garry	11/02/67	W/W	09/22/89	Jones	11/11/88	Unk
948	Alexander, Guy	08/20/59	W/U	09/27/89	Harris	01/24/89	No
949	Burks, John	01/18/56	B/H	10/05/89	McLennan	01/20/89	Yes
950	Cardenas, Francisco	04/30/65	H/W	10/05/89	Fort Bend	03/21/88	No
952	Tucker, Jeffery	01/01/60	W/W	10/19/89	Parker	07/11/88	Yes
953	Smith, Charles	02/24/66	W/W	11/01/89	Pecos	08/20/88	No
954	Cruz, Oliver	05/18/67	H/W	11/10/89	Bexar	08/07/88	No
956	Jennings, Robert	12/03/57	B/B	11/11/89	Harris	07/19/88	Yes
957	Wilson, Jackie	02/12/67	H/W	11/21/89	Dallas	11/30/88	No
958	Garcia, Fernando	04/26/61	H/H	12/20/89	Dallas	08/30/87	Yes
959	Jones, Raymond	01/01/60	B/W	12/21/89	Jefferson	06/17/88	Yes
960	Chappell, William	09/26/36	W/U	01/23/90	Tarrant	05/03/88	No
961	Hill, Mack	08/12/53	W/W	01/28/90	Lubbock	03/03/87	Yes
962	Hernandez, Juan	10/02/64	H/H	02/06/90	Nueces	03/29/88	Yes
963	McFarland, Frank	10/07/63	W/W	02/12/90	Tarrant	02/01/88	No
964	Fuller, Aaron	08/26/67	W/W	02/15/90	Dawson	03/18/89	Yes
965	Riddle, Granville	06/17/69	W/W	02/22/90	Potter	10/09/88	Yes
966	Bradford, Gayland	07/18/68	B/W	02/23/90	Dallas	12/29/88	Yes
967	Jenkins, Leo	10/12/57	W/W	03/02/90	Harris	08/29/88	Yes
968	Coleman, Clydell	10/01/36	B/B	03/01/90	McLennan	02/24/88	Yes
**969	Corwin, Daniel	09/13/58	W/W	04/06/90	Montgomery	02/15/87	Yes
970	Gutierrez, Jose	10/14/60	H/W	04/27/90	Brazos	09/05/89	Yes
972	Camacho, Genaro	09/14/54	H/B	05/09/90	Brazos	05/28/88	No
973	Aldridge, Rulford	01/06/54	B/*	06/05/90	Harris	01/03/90	Yes
974	Smith, Roy	08/04/58	B/U	06/07/90	Harris	10/08/88	Yes
975	Patrick, Jessie	02/23/58	W/*	06/15/90	Dallas	07/08/89	Yes
976	Coble, Billie	09/09/48	W/W	06/14/90	McLennan	08/29/89	No

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977	Zimmerman, Kevin	05/17/61	W/W	06/19/90	Jefferson	10/23/87	No
978	Hernandez, Adolph	09/01/50	H/H	06/28/90	Lubbock	09/30/88	Yes
979	Ogan, Craig	12/18/54	W/W	07/11/90	Harris	12/09/89	No
980	Jones, Claude	09/24/40	W/*	08/13/90	San Jacinto	11/14/89	Yes
981	Hittle, Daniel	03/01/50	W/W	08/16/90	Dallas	11/15/89	No
982	Hood, Charles	08/20/69	W/*	09/11/90	Collin	11/01/89	No
983	Flores, Miguel	06/07/69	H/W	09/14/90	Hutchinson	06/29/89	No
984	Green, Ricky Lee	12/27/60	W/W	10/05/90	Tarrant	12/27/86	No
985	Garcia, Hector	05/10/61	H/H	10/10/90	Hidalgo	08/25/89	No
986	Etheridge, Gary	01/03/64	W/W	11/11/90	Brazoria	02/02/90	Yes
987	Arnold, Jermarr	09/27/58	B/H	12/20/90	Nueces	07/15/83	No
989	Murphy, Ivan	01/10/65	W/*	01/24/91	Grayson	01/09/89	Yes
990	Lookingbill, Robert	07/22/65	W/W	02/21/91	Hidalgo	12/05/89	Yes
992	Robertson, Mark	05/28/68	W/W	02/27/91	Dallas	08/19/89	No
993	Buntion, Carl	03/30/44	W/W	03/06/91	Gillespie	06/27/90	Yes
994	Clark, Jack	07/20/63	W/H	03/19/91	Lubbock	10/16/89	No
996	Barraza, Mauro	05/05/72	H/W	04/30/91	Tarrant	06/14/89	No
997	Bigby, James	04/08/55	W/W	05/10/91	Tarrant	12/24/87	Yes
998	Barnes, Odell	03/22/68	B/U	05/17/91	Lubbock	11/29/89	Yes
999	Cantu, Andrew	12/05/67	H/U	06/04/91	Taylor	06/11/90	Yes
999000	Brewer, Brent	05/26/70	W/W	06/04/91	Randall	04/26/90	No
999001	Powell, James	08/23/46	W/W	06/10/91	Newton	10/06/90	No
999002	Rodriguez, Lionell	02/01/71	H/O	06/13/91	Harris	09/05/90	Yes
999003	Herman, David	11/07/57	W/W	06/21/91	Tarrant	12/20/89	No
999004	Moore, Eric	03/04/67	B/W	06/28/91	Collin	12/10/90	No
999005	Sigler, Dale	05/10/67	W/W	07/26/91	Tarrant	04/07/90	No
999006	Staley, Steven	07/30/62	W/W	08/02/91	Tarrant	10/14/89	No
999007	Smith, Laroyce	04/23/71	B/U	07/07/91	Dallas	01/07/91	No
999008	San Miguel, Jessy	09/05/71	H/U	08/21/91	Dallas	01/26/91	No
999009	Chambers, Tony	12/20/67	B/B	09/06/91	Smith	11/19/90	No
999010	Summers, Gregory	03/14/58	W/U	09/26/91	Denton	06/11/90	No
999011	Wilkerson, Ponchai	07/15/71	B/U	11/12/91	Harris	11/28/90	No
999012	Kelly, Alvin	03/14/51	W/U	11/14/91	Gregg	04/30/84	Yes
999013	Casey, Gerald	01/15/55	W/W	11/15/91	Montgomery	07/10/89	Yes
999014	Heiselbetz, Earl	04/01/51	W/*	11/22/91	Sabine	05/30/91	No
999015	Goff, David	01/09/60	B/U	12/27/91	Tarrant	09/01/90	Yes
999017	Nelson, Billy	11/15/68	W/W	12/31/91	Howard	02/23/91	No
999018	Garcia, Gustavo	09/27/72	H/W	01/08/92	Collin	12/09/90	No
999019	Jones, Shelton	11/24/67	B/W	01/09/92	Harris	04/07/91	No
999020	Wheatfall, Daryl	12/20/65	B/*	01/28/92	Harris	12/13/90	Yes
999021	Rey, Johnny	04/27/73	H/W	02/11/92	Randall	05/11/90	No
999022	Dinkins, Richard	09/29/62	W/*	02/26/92	Jefferson	09/12/90	No
999023	Bruce, Kenneth	10/21/71	B/W	02/28/92	Collin	12/10/90	No
999024	Clark, Kenneth	09/17/55	B/W	03/17/92	Tarrant	05/10/91	Yes
999025	Hines, Bobby	07/07/72	W/W	04/16/92	Dallas	10/20/91	Yes
999026	Martinez, Miguel	08/06/73	H/*	05/01/92	Webb	01/18/91	No
999027	Alba, John	06/26/55	H/H	05/08/92	Collin	08/05/91	No
999028	Rodriguez, Steve	10/01/66	H/W	05/08/92	Bexar	07/04/90	Yes
999029	Vaughn, Roger	10/11/54	W/U	05/28/92	Wilbarger	10/16/91	Yes

EX #	NAME	DOB	*RACE	REC'D	COUNTY	DATE OF CRIME	PRIOR TDCJ-ID
999030	Lim, Kim Ly	04/05/71	O/U	06/22/92	Harris	05/29/91	No
999031	Goodman, Spencer	10/28/68	W/W	07/07/92	Fort Bend	07/02/91	Yes
999032	Campbell, Robert	09/10/72	B/U	07/10/92	Harris	01/03/91	Yes
999033	Smith, Robert	11/11/67	B/U	07/10/92	Harris	05/15/90	Yes
999034	Van Alstyne, Gregory	01/29/66	B/W	07/13/92	Potter	04/17/90	Yes
999035	Mason, Thomas	12/31/51	W/W	07/14/92	Smith	10/02/91	No
999036	Davis, Brian	08/28/68	W/W	07/17/92	Harris	08/10/91	Yes
999037	Hopper, George	10/06/55	W/U	07/23/92	Dallas	10/04/83	No
999038	Morris, Lorenzo	09/25/52	B/U	08/03/92	Harris	08/05/90	Yes
999039	McGinnis, Glen	01/11/73	B/W	08/03/92	Montgomery	08/01/90	No
999040	Mason, William	01/30/54	W/W	08/12/92	Harris	01/17/91	Yes
999041	Willingham, Cameron	01/09/68	W/W	08/12/92	Navarro	12/23/91	No
999042	Greer, Randolph	05/13/73	B/U	09/10/92	Harris	06/27/91	No
999043	Briseno, Jose	05/04/57	H/W	09/11/92	Webb	01/05/91	Yes
999044	Broxton, Eugene	02/27/55	B/U	09/18/92	Harris	05/16/91	Yes
999045	Colella, Paul	09/27/68	W/W	09/22/92	Cameron	09/12/91	No
999046	McFarland, George	08/25/60	B/U	09/29/92	Harris	09/12/91	Yes
999047	Dowthitt, Dennis	06/20/45	W/W	10/30/92	Montgomery	06/13/90	No
999048	Goynes, Theodore	11/27/52	B/B	12/02/92	Harris	10/07/90	Yes
999049	Rhoades, Rick	05/10/64	W/W	12/31/92	Harris	09/13/91	Yes
999050	Ransom, Cedric	08/18/73	B/W	01/11/93	Tarrant	12/07/91	No
999051	Wood, David	06/20/57	W/W	01/14/93	El Paso	05/30/87	Yes
999052	Barley, Nathaniel	09/27/64	B/A	03/03/93	Harris	05/14/91	Yes
999053	McCosky, Jamie	10/05/64	W/W	03/05/93	Harris	11/13/91	Yes
999054	Sonnier, Derrick	10/26/67	B/*	03/05/93	Harris	09/16/91	No
999055	McDuff, Kenneth	03/21/46	W/W	03/09/93	Harris	03/01/92	Yes
999056	Rachal, Rodney	04/29/70	B/U	03/11/93	Harris	10/25/90	No
999057	Carr, Darrell	10/07/69	B/H	03/11/93	Harris	07/23/91	Yes
999059	Chiles, Theron	10/14/66	W/W	04/08/93	Jasper	08/10/92	No
999060	Matchett, Farley	11/19/62	B/U	04/30/93	Harris	07/12/91	No
999061	Cruz, Javier	09/13/57	H/*	04/30/93	Bexar	06/07/91	Yes
999062	Ramos, Robert	05/23/54	H/*	05/06/93	Hidalgo	02/07/92	No
999063	Gurule, Martin	11/07/69	W/*	07/01/93	Nueces	10/12/92	No
999064	Broussard, Windell	03/05/60	B/*	07/02/93	Jefferson	04/24/92	Yes
999065	Patterson, Kelsey	03/24/54	B/*	07/07/93	Anderson	09/29/92	No
999066	Lawton, Stacey	07/10/69	B/W	07/23/93	Smith	12/24/92	Yes
999067	Cockrell, Timothy	12/14/63	B/W	08/03/93	Bexar	08/09/92	Yes
999068	Green, Dominique	05/13/74	B/U	08/17/93	Harris	10/14/92	No
999069	Howard, Ronald	07/22/73	B/W	08/25/93	Travis	04/11/92	No
999070	Miles, Laquan	03/12/74	B/*	08/26/93	McLennan	08/23/91	No
999071	Dillingham, Jeffery	03/06/73	W/W	08/31/93	Tarrant	03/12/92	No
999072	Knight, Patrick	01/12/68	W/W	09/22/93	Randall	08/27/91	No
999073	Green, Edward	03/05/74	B/*	10/08/93	Harris	08/31/92	No
999074	Garza, Juan	11/18/56	H/*	10/13/93	Cameron ***	**/**/**	No
999075	Ford, Tony	06/19/73	B/H	10/14/93	El Paso	12/18/91	No
999076	Moody, Stephen	07/16/57	W/U	10/22/93	Harris	10/19/91	Yes
999077	Matamoros, John	05/18/63	H/U	10/29/93	Harris	07/19/90	Yes
999078	Titsworth, Timothy	03/08/72	W/W	11/02/93	Randall	07/23/93	Yes
999079	Wolfe, Bryan	06/07/60	B/B	11/02/93	Jefferson	02/15/92	No

999080	Curry, Alva	03/22/69	B/H	11/03/93	Travis	10/16/91	No

EX#	NAME	DOB	*RACE	REC'D	COUNTY	DATE OF CRIME	PRIOR TDCJ-ID
999081	Alvarado, Steven	08/11/74	H/*	11/10/93	El Paso	09/22/91	No
999082	Walker, Tony	04/15/56	B/*	11/19/93	Morris	05/23/92	Yes
999083	Lagrone, Edward	03/03/57	B/*	12/07/93	Tarrant	05/30/91	Yes
999084	Anderson, Robert	05/29/66	W/W	12/07/93	Potter	06/09/92	No
999085	Trottie, Willie	09/08/69	B/*	12/15/93	Harris	05/03/93	No
999086	Shannon, Willie	06/12/73	B/H	12/15/93	Harris	07/19/92	No
999087	Vickers, Billy	07/30/45	W/W	01/04/94	Collin	03/12/93	Yes
999088	Smith, Clyde	08/31/73	B/U	01/14/94	Harris	02/06/92	No
999089	Martinez, Johnny	11/20/72	H/W	01/28/94	Nueces	07/15/93	No
999090	Gallamore, Sam	02/15/71	W/*	02/14/94	Comal	03/29/92	No
999091	Carter, Robert	03/07/66	B/U	02/23/94	Harris	06/24/81	No
999092	Lane, Doil	04/15/61	W/H	02/25/94	Hays	03/20/80	No
999093	Cantu, Peter	05/27/75	H/*	03/18/94	Harris	06/24/93	No
999094	Cook, Bobby	12/03/61	W/W	04/26/94	Henderson	02/06/93	Yes
999095	Clark, James	05/13/68	W/W	05/04/94	Denton	06/07/93	Yes
999096	Soriano, Oswaldo	01/26/75	H/W	05/06/94	Randall	11/17/92	No
999097	Lewis, Ricky	07/21/62	B/W	05/06/94	Smith	09/17/90	Yes
999098	Wilson, Marvin	01/05/58	B/B	05/09/94	Jefferson	11/10/92	Yes
999099	Tigner, Gerald	12/27/72	B/*	05/24/94	McLennan	08/31/93	No
999100	Flores, Andrew	08/09/72	H/H	05/25/94	Bexar	07/26/93	No
999101	Hopkins, Bobby	02/23/67	B/*	06/01/94	Johnson	07/31/93	No
999102	Rivera, Jose	12/23/62	H/H	06/02/94	Cameron	07/09/93	Yes
999103	Thacker, Charles	09/18/68	W/W	06/03/94	Harris	04/07/93	Yes
999104	Rowell, Robert	04/08/55	W/U	06/03/94	Harris	05/10/93	Yes
999105	Henderson, James	03/12/73	B/U	06/08/94	Bowie	10/29/93	No
999106	Doughtie, Jeffery	10/03/61	W/*	06/10/94	Nueces	08/02/93	Yes
999107	Dickerson, James	09/07/73	W/U	06/24/94	Harris	06/30/93	No
999108	Eldridge, Gerald	03/04/64	B/*	06/24/94	Harris	01/04/93	Yes
999109	Raby, Charles	03/22/70	W/W	06/30/94	Harris	10/15/92	Yes
999110	Brown, Arthur	08/14/70	B/*	06/30/94	Harris	06/20/92	No
999111	Pondexter, Willie	03/05/74	B/W	07/25/94	Bowie	10/29/93	No
999112	Taylor, Elkie	12/14/61	B/B	07/26/94	Tarrant	04/02/93	Yes
999113	Aldrich, Donald	11/06/64	W/W	08/10/94	Smith	11/30/93	Yes
999114	Walbey, Gaylon	07/08/74	B/B	08/12/94	Galveston	05/04/93	No
999115	Coulson, Robert	03/11/68	W/*	08/13/94	Harris	11/13/92	No
999116	Smith, Richard	01/12/56	W/U	09/02/94	Harris	12/03/92	Yes
999117	Morris, Kenneth	03/04/71	B/W	09/02/94	Harris	05/01/91	Yes
999118	Chandler, David	12/19/52	W/U	09/16/94	Mont.,AL***	**/**/**	No
999119	Reeves, Reginald	04/21/74	B/W	10/07/94	Red River	09/09/93	No
999120	Lave, Joseph	10/17/64	B/*	10/07/94	Dallas	11/25/92	No
999121	Massey, Jason	01/07/73	W/*	10/14/94	Ellis	07/27/93	No
999122	Blair, Michael	06/10/70	O/W	10/18/94	Midland	09/05/93	Yes
999123	Guy, Joe	10/05/71	B/W	10/26/94	Hale	03/25/93	Yes
999124	Styron, Ronford	08/23/69	W/W	10/28/94	Liberty	10/26/93	No
999125	Villarreal, Raul	09/25/75	H/*	11/03/94	Harris	06/24/93	No
999126	Moore, Michael	09/16/63	W/U	11/04/94	Coryell	02/26/94	No
999127	Graves, Anthony	08/29/65	B/*	11/07/94	Brazoria	08/18/92	Yes
999128	Monterrubio, Jose	08/26/76	H/H	11/09/94	Cameron	09/05/93	No
999129	Henry, Robert	09/26/62	W/	11/15/94	San Patricio		

999130	Tamayo, Edgar	07/22/67	H/W	11/18/94	Harris	01/31/94	No

EX#	NAME	DOB	*RACE	REC'D	COUNTY	DATE OF CRIME	PRIOR TDCJ-ID
999131	O'Brien, Derrick	04/05/75	B/*	11/18/94	Harris	06/24/93	No
999132	Perez, Efrain	11/19/75	H/	12/09/94	Harris	06/24/93	
999133	Jones, T.J.	11/01/76	B/	12/16/94	Gregg	02/02/94	
999134	Medellin, Jose	03/04/75	H	01/06/95	Harris	06/24/93	
999135	Johnson, Lonnie	03/19/63	B/	01/27/95	Harris	08/15/90	
999136	Dudley, Marion Bulter	05/13/72	B/	02/10/95	Harris	06/20/92	No
999137	Wardlow, Billy Joe	11/25/74	W/W	02/13/95	Morris	06/14/93	No
999138	Dixon, Tony	11/07/76	B/W	03/03/95	Harris	05/15/94	No
999139	Johnson, Kia	12/23/64	B/	03/17/95	Bexar	10/29/93	Yes
999140	Santillo, Jose	03/08/62	H/	03/14/95	Kerr	08/22/93	No
999141	Beazley, Napoleon	08/05/76	B/	03/21/95	Smith	04/19/94	
999142	Demery, Gregory Wayne	12/06/58	B/	03/31/95	Harris	08/15/92	
999143	Skinner, Henry Watkins	04/04/62	W/	03/31/95	Tarrant	12/31/93	
999144	Sheppard, Erica Yvonne	9/01/73	B/?	04/25/95	Harris	06/30/93	
999145	Ruiz, Roland	07/04/72	H/	05/04/95	Bexar	07/14/92	
999146	Dickens, Justin Wiley	07/28/76	W/	05/17/95	Randall	03/12/94	
999147	Jones, George Alarick	04/10/74	B/	05/18/95	Dallas	04/13/93	
999148	Henderson, Cathy	12/27/56	W/	06/01/95	Travis	01/21/94	
999149	Prieto,Arnold	06/09/73	H/	06/02/95	Bexar	09/11/93	
999150	McGinn, Ricky	03/11/57	W/	06/09/95	Brown	05/22/93	
999151	Blue, Carl	01/09/65	B/	06/14/95	Brazos	08/19/94	
999152	King, Calvin Eugene	10/31/53	B/	06/30/95			
999153	Duncan, Richard	05/19/42	W/	07/12/95			
999154	Williams, Jeffrey	10/15/71	W/	07/14/95			
999155	Bernal, Johnnie	08/20/76	H/	07/12/95			
999156	Ortiz, Oscar	05/03/76	H/	07/19/95			
999157	Baker, Stanley	12/03/66	W/	08/01/95			
999158	Nuncio, Paul	10/20/68	H/	08/02/95			
999159	Varelas, Santiago	07/23/75	H/	08/10/95			
999160	Amador, John	05/28/75	H/	08/11/95			

***INMATE/VICTIM RACE (Ex: W/*) denotes more than 1 victim.**

**#969 Corwin, Daniel convicted under serial killer statute. Other crime dates are 07/10/87 and 10/13/87.

***Federal death row inmate being housed by TDCJ-ID under contract with Federal Bureau of Prisons.

EXECUTION INFORMATION

TEXAS DEPARTMENT OF CRIMINAL JUSTICE
INSTITUTIONAL DIVISION
PROCEDURES FOR THE EXECUTION OF INMATES SENTENCED TO DEATH

Male inmates sentenced to death will be housed at the Ellis I Unit of the Texas Department of Criminal Justice Institutional Division located approximately 16 miles northeast of Huntsville, Texas. Female inmates sentenced to death will be housed at the Mountain View Unit located in Gatesville, Texas.

*Visitors at the Ellis I/Mountain View Units:

Persons provided for in Vernon's Ann. C.C.P., Article 43.17.

MEDIA - Press interviews of condemned prisoners shall be scheduled by the Public Information Office and conducted at the Ellis I Unit and Mountain View Unit each Wednesday during the hours of 9:00 - 11:00 a.m. Any media requesting an interview with death row inmates at Ellis I or Mountain View should submit names to the Public Information Office prior to the Wednesday interview date. Requests will not be accepted at the Ellis I/Mountain View Units on the day of the interview. The number of inmates requested to be interviewed should be kept within reason.

An inmate scheduled for execution shall be transported from the Ellis I/Mountain View Unit to the Huntsville Unit prior to the scheduled execution. Transportation arrangements shall be known only to the unit Wardens involved, and no public announcement to either the exact time, method, or route of transfer shall be made. The Director's Office and the Public Information Office will be notified immediately after the inmate arrives at the Huntsville Unit.

During transportation and after arrival at the Huntsville Unit, the inmate shall be constantly observed and supervised by security personnel.

The inmate may have the following visitors at the Huntsville Unit:

T.D.C.J. Institutional Division Chaplain(s)
Minister(s)
Attorney(s)
Family member(s) and friend(s) on list of approved visitors.

All visits must be approved by the Warden. With the exception of Chaplain's visits, all visits will be terminated by 6:00 p.m., on the day immediately prior to the execution date. No media visits will be allowed at the Huntsville Unit.

The last meal will be served at approximately 6:30 - 7:00 p.m.

Prior to midnight, the inmate will shower and dress in clean clothes.

The Huntsville Unit Warden's Office will serve as the communications command post and only operations personnel will be allowed entry to this area. All

other individuals, including witnesses to the execution, will assemble at approximately 11:45 p.m. in the lounge adjacent to the visiting room. All necessary arrangements to carry out the execution shall be completed at a predetermined time. Shortly after midnight, the door will be unlocked, and the inmate will be removed from the holding cell.

The inmate will be taken from the cell area into the execution chamber and secured to a gurney. A medically trained individual (not to be identified) shall insert an intravenous catheter into the condemned person's arms and cause a neutral saline solution to flow.

At a predetermined time, the witnesses shall be escorted to the execution chamber. Witnesses shall include:

Persons proved for in Vernon's Ann. C.C.P., Article 43.20.

MEDIA - One Texas bureau representative designated by the Associated Press, one Texas bureau representative designated by the United Press International, one representative of the Huntsville Item, and one representative each from established separate rosters of the Texas print and broadcast media will be admitted to the execution chamber as witnesses, provided those designated agree to meet with all media representatives present immediately subsequent to the execution. No recording devices, either audio or video, shall be permitted either in the unit or the execution chamber.

The Warden shall then allow the condemned person to make a last statement. Upon completion of the statement, if any, the Warden shall state, "We are ready." At this time, the designee(s) of the Director, shall induce by syringe, substance and/or substances necessary to cause death. This individual(s) shall be visually separated from the execution chamber by a wall and locked door, and shall also not be identified.

The inmate will be pronounced dead. An inquest will be held by a Walker County Justice of the Peace. The physician, as well as any chaplain accompanying the inmate in the execution chamber, shall stand with any other witnesses present.

After the inmate is pronounced dead and the J.P.'s inquest is finished, the body shall be immediately removed from the execution chamber, taken to an awaiting ambulance, and delivered to a local funeral home. Arrangements for the body, to be concluded prior to the execution, shall be made per Vernon's Ann. C.C.P., Article 43.25.

The Director of the Texas Department of Criminal Justice Institutional Division in accordance with Article 42.23 shall return the death warrant and certificate with a statement of any such act and his proceedings endorsed thereon, together with a statement showing what disposition was made of the dead body of the convict, to the clerk of the court in which the sentence was passed.

DEATH ROW INFORMATION

Death Row is a regular cell block on the Ellis I Unit of the Texas Department of Criminal Justice Institutional Division. It was moved from the Huntsville Unit in 1965. Each cell on Death Row is 5 ft. X 9 ft. Death Row inmates receive a regular diet, have access to television, magazines, books and legal materials. The same mail rules apply to them as to the general population. Inmates on Death Row do not have regular TDCJ-ID numbers, but have special Death Row numbers.

Death Row was located in the East Building of the Huntsville Unit from 1928 to 1952. Two men have escaped from death row. The electric chair, "Old Sparky," was located behind the chapel.

From 1952 until 1965, Death Row and the electric chair were located in a special building by the East Wall of the Huntsville Unit.

One of the most notorious inmates to be executed was Raymond Hamilton. He was sentenced from Walker County and executed on May 10, 1935 for murder. He was a member of the "Bonnie and Clyde" gang.

In 1974, the State of Texas amended it's Criminal Code, adopting death by lethal injection as the new method of execution. On December 7, 1982, the first inmate in Texas was executed using the lethal injection method. (Charlie Brooks)

There has never been a woman executed by the State of Texas.

Lethal injection consists of:

Pancuronium Bromide (muscle relaxant)
Potassium Chloride (stops the heart beat)
Sodium Thiopental (lethal dose)

*As of the Spring of 1993 there were 2,729 inmates on death row across the nation.

White	1,381	50.60%
Black	1,072	39.28%
Hispanic	193	7.07%
Native American	48	1.76%
Asian	20	.73%
Unknown	15	.55%
Male	2,687	98.46%
Female	42	1.54%

States with the largest number of prisoners on death row are Florida, Texas, and California.

Fifteen states do not have Capital Punishment, they are: Alaska, District of Columbia, Hawaii, Iowa, Kansas, Maine, Massachusetts, Michigan, Minnesota, New York, North Dakota, Rhode Island, Vermont, West Virginia, and Wisconsin.
*Source: "Death Row U.S.A." published by the NAACP.

METHODS OF EXECUTION

Alabama	Electrocution
Arizona	Lethal Injection or Gas Chamber
Arkansas	Lethal Injection or Electrocution
California	Lethal Injection or Gas Chamber
Colorado	Lethal Injection
Connecticut	Electrocution
Delaware	Lethal Injection or Hanging
Florida	Electrocution
Georgia	Electrocution
Idaho	Lethal Injection or Firing Squad
Illinois	Lethal Injection
Indiana	Electrocution
Kentucky	Electrocution
Louisiana	Lethal Injection
Maryland	Gas Chamber
Mississippi	Lethal Injection or Gas Chamber
Missouri	Lethal Injection
Montana	Lethal Injection or Hanging
Nebraska	Electrocution
Nevada	Lethal Injection
New Jersey	Lethal Injection
New Mexico	Lethal Injection
North Carolina	Lethal Injection or Gas Chamber
Ohio	Electrocution
Oklahoma	Lethal Injection
Oregon	Lethal Injection
Pennsylvania	Lethal Injection
South Carolina	Electrocution
South Dakota	Lethal Injection
Tennessee	Electrocution
Texas	Lethal Injection
Utah	Lethal Injection or Firing Squad
Virginia	Electrocution
Washington	Lethal Injection or Hanging
U.S. Military	Lethal Injection
U.S. Government	Lethal Injection

MEXICAN NATIONALS EXECUTED IN TEXAS

Name	County	Crime	Date Executed
Agapito Rueda	El Paso	Murder	01/09/26
Emeliano Benevidez	Schleicher	Murder	08/08/42
Ramon Rodriquez	Dallas	Murder	03/25/93

CAPITAL PUNISHMENT INFORMATION

The electric chair, which was used in Texas from 1924 through 1977, was the original chair built from oak in 1923-24.

The electric chair was first used on February 9, 1924. Five men died on that date in the following order:

Charles Reynolds	Black	Red River County	Murder
Ewell Morris	Black	Liberty County	Murder
George Washington	Black	Newton County	Murder
Mack Matthew	Black	Tyler County	Murder
Melvin Johnson	Black	Liberty County	Murder

Between February, 1924 and July, 1964, a total of 506 men and women were placed on Death Row in Texas; of those, **361 died in the electric chair**.

Black	229	Murder	259
White	108	Rape	97
Mexican American	23	Armed Robbery	5
TOTAL	361	**TOTAL**	361

The last man to die in the electric chair in Texas was Joseph Johnson (Black male, Harris County, Murder) on July 30, 1964.

When capital punishment was declared "cruel and unusual punishment" by the U.S. Supreme Court on June 29, 1972, there were 45 men on Death Row in Texas and 7 in county jails with a death sentence. All of the sentences were commuted to life sentences by the Governor of Texas, and Death Row was clear by March, 1973.

The Texas Legislature revised the Texas Penal Code effective January 1, 1974, and once again, Texas courts began assessing the death penalty. The first man placed on Death Row under the new statute in February, 1974 committed suicide on July 1, 1974.

On August 29, 1977, the method of execution in Texas was changed from the electric chair to death by injection. Charlie Brooks Jr. was the first man to be executed using this method on December 7, 1982.

DRUGS USED IN LETHAL INJECTION

SODIUM THIOPENTAL	$13.90 per kit (approximately 2 kits per execution)
PANCURONIUM BROMIDE	$ 8.32/amp (approximately 5 amps per execution)
POTASSIUM CHLORIDE	$ .21/amp (approximately 10 amps per execution)

TOTAL APPROXIMATELY $71.50

TEXAS PENAL CODE, Acts 1992, 72nd Legislature, Chapter 12 effective January 1992.

PC Sec. 19.03. Capital Murder. (a) A person commits an offense if he commits an offense in which he intentionally or knowingly causes the death of an individual and:

(1) the person murders a peace officer or fireman who is 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 premise 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 the 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 transaction; or
    (b) during different criminal transactions but the murders are committed pursuant to the same scheme or course of conduct.

Under the present law, a person convicted of capital murder may be sentenced to one of two sentences - death or life imprisonment. (A person must serve at least 35 calendar years of a life sentence.)

If the jury answers three questions with yes, the sentence is death. The questions are:

(1) Did the defendant act intentionally and should he have known someone might be killed?

(2) Is there a probability that the defendant would in the future commit criminal acts of violence that would constitute a menace to society?

(3) Was the conduct of the defendant in killing the deceased unreasonable in response to the provocation, if any, of the deceased?

CODE OF CRIMINAL PROCEDURE

Art. 43.14 - Execution of Convict

Whenever the sentence of death is pronounced against a convict, the sentence shall be executed at any time before the hour of sunrise on the date set for execution not less than thirty days from the day of sentence, as the court may adjudge, by intravenous injection of a substance or substances in a lethal quantity sufficient to cause death and until such convict is dead, such execution procedure to be determined and supervised by the Director of the Texas Department Criminal Justice.
Acts 1992, 72nd Leg., vol 3, p., 414, ch. 43.

Art. 43.15 - Warrant of Execution

Whenever any person is sentenced to death, the clerk of the court in which the sentence is pronounced, shall within ten days after sentence has been pronounced, issue a warrant under the seal of the court for the execution of the sentence of death, which shall recite the fact of conviction, setting forth specifically the offense, the judgement of the court, the time fixed for his execution, and directed to the Director of the Department of Criminal Justice at Huntsville, Texas, commanding him to proceed, at the time and place named in the sentence, to carry the same into execution, as provided in the preceding Article, and shall deliver such warrant to the sheriff of the county in which such judgement of conviction was had, to be by him delivered to the said Director of the Department of Criminal Justice, together with condemned person.
Acts 1992, 72nd Leg., vol. 3, p. 415, ch. 43.

Art 43.16 - Taken to Department of Criminal Justice

Immediately upon the receipt of such warrant, the sheriff shall transport such condemned person to the Director of the Department of Criminal Justice and shall deliver him and the warrant aforesaid into the hands of the Director of the Department of Criminal Justice and shall take from the Director of the Department of Criminal Justice his receipt for such warrant, which receipt the sheriff shall return to the office of the clerk of the court where the judgement of death was rendered. For his services, the sheriff shall be entitled to the same compensation as is now allowed by law to sheriffs for removing or conveying prisoners under the provisions of Section 4 of Article 1029 or 1030 of the Code of Criminal Procedure of 1925, as amended.
Acts 1992, 72nd Leg., vol 3, p. 415, ch. 43.

Art. 43.17 - Visitors

Upon the receipt of such condemned person by the Director of the Department of Criminal Justice, he shall be confined therein until the time for his execution arrives, and while so confined, all persons outside of said prison shall be denied access to him, except his physician and lawyer, who shall be admitted to see him when necessary to his health or for the transaction of business, and the relatives, friends, and spiritual advisors of the condemned person, who shall be admitted to see and converse with him at all proper times, under such reasonable rules and regulations as may be made by the Board of Directors of the Department of Criminal Justice.
Acts 1992, 72nd Leg., vol 3, p. 416, ch. 43.

Art. 43.23 - Return of Director

When the execution of sentence is suspended or respited to another date, same shall be noted on the warrant and on the arrival of such date, the Director of the Department of Criminal Justice shall proceed with such execution; and in case of death of any condemned person before the time for his execution arrives, or if he should be pardoned or his sentence commuted by the Governor, no execution shall be had; but in such cases, as well as when the sentence is executed, the Director of the Department of Criminal Justice shall return the warrant and certificate with a statement of any such act and his proceedings endorsed thereon, together with a statement showing what disposition was made of the dead body of the convict, to the clerk of the court in which the sentence was passed, who shall record the warrant and return in the minutes of the court.
Acts 1993, 72nd Leg., vol 3, p. 416, ch. 43.

Art. 43.24 - Treatment of Condemned

No torture, ill treatment, or unnecessary pain, shall be inflicted upon a prisoner to be executed under the sentence of the law.
Acts 1992, 72nd Leg., vol 3, p. 417, ch. 43.

Art. 43.25 - Body of Convict

The body of a convict who has been legally executed shall be embalmed immediately and so directed by the Director of the Department of Criminal Justice. If the body is not demanded or requested by a relative or bona fide friend within forty-eight hours after execution, then it shall be delivered to the Anatomical Board of the State of Texas, if requested by the Board. If the body is requested by a relative, bona fide friend, or the Anatomical Board of the State of Texas, such recipient shall pay a fee of not to exceed twenty-five dollars to the mortician for his services in embalming the body for which the mortician shall issue to the recipient a written receipt. When such receipt is delivered to the Director of the Department of Criminal Justice, the body of the deceased shall be delivered to the party named in the receipt or his authorized agent. If the body is not delivered to a relative, bona fide friend, or the Anatomical Board of the State of Texas, the Director of the Department of Criminal Justice shall cause the body to be decently buried, and fee for

embalming shall be paid by the county in which the indictment which resulted in the conviction was found.
Acts 1992, 72nd Leg., vol 3, p. 417, ch. 43.

Currently there are 10 men on death row that committed capital murder at the age of 17:

(1) **JOSEPH JOHN CANNON #634**

DOB: 01/13/60 **Rec.** 05/09/79 **Date of Offense:** 09/30/77 (Bexar Co.)

Convicted of the murder of Anne C. Walsh, sister of Dan Carabin, Cannon's court-appointed attorney on a burglary charge. Cannon shot Walsh seven times, tried to sexually assault her, then stole her daughter's car, several firearms, etc.

(2) **CURTIS PAUL HARRIS #637** EXECUTED 7-1-93

DOB: 08/26/61 **Rec:** 06/07/79 **Date of offense:** 12/11/78 (Brazos Co.)

Convicted of the beating death of Tim Merka of Mumford. . Murka was killed after he stopped to help Harris and three others on a Brazos County road where their car had stalled. Harris beat Merka to death with a tire tool, then the group stole Merka's wallet and his pickup truck.

(3) **EFREN CASTRO IBANEZ #681**

DOB: 10/17/62 **Rec:** 03/23/81 **Date of offense:** 01/29/80 (El Paso Co.)

Convicted of the strangulation death of his 38 year old homosexual lover, William Morris. Ibanez strangled Morris with a shirt after objecting to Morris' request that he be sodomized. Ibanez stole Morris' car after the killing and drove it to Juarez, Mexico.

(4) **GARY GRAHAM #696**

DOB: 09/05/63 **Rec.** 11/10/81 **Date of offense:** 05/13/81 (Harris Co.)

Convicted of the shooting death of Tucson, Arizona resident Bobby Grant Lambert, 53, who was robbed and killed in the parking lot of a Safeway store. Graham, also known as Kenneth Stokes, was sentenced to an additional 20 years when he pleaded guilty to robbing and assaulting 10 people all over the city in a six-day May crime spree.

(5) ROBERT A. CARTER #708

DOB: 02/10/64 Rec. 03/12/82 Date of offense: 06/24/81 (Harris Co.)

Convicted of the shooting death of Sylvia Reyes, 18, a convenience store clerk during a robbery, Carter was also connected with the shooting death of R.B. Scott, 63, during a robbery at a beauty supply store in Lockwood.

(6) BOBBY JOE WILLS #795

DOB: 01/28/67 Rec. 05/17/85 Date of offense: 01/17/85 (Orange Co.)

Convicted for the aggravated robbery and shooting death of convenience store clerk Judy Bracewell.

(7) GERALD L. MITCHELL #838

DOB: 12/27/57 Rec. 07/24/86 Date of offense: 06/04/85 (Harris Co.)

Convicted of the shooting death of Charles Marino, 20, during a drug buy. (Mitchell also shot Marino's brother-in-law, but he survived.) Mitchell stole Marino's car and approximately $25 when he fled the scene.

(8) MAURO MORRIS BARRAZA #996

DOB: 05/05/72 Rec. 07/24/86 Date of offense: 06/14/86 (Tarrant Co.)

Convicted of the robbery and murder of 73 year old Valorie Nelson after entering her home through a broken window. She was struck in the head with a pair of shrubbery shears and then was trounced by Barraza, resulting in her chest being crushed. Her throat was also cut.

(9) JOHNNY LEE REY #999021

DOB: 04/27/73 Rec. 02/11/92 Date of offense: 05/11/90 (Randall Co.)

Convicted of the robbery and murder of 72 year old Hilton Raymond Merriman Sr. of Canyon. Rey and five codefendants forced their way into Merriman's trailer home. When he confronted the intruders, he was beaten to death.

10) MIGUEL ANGEL MARTINEZ #999026

DOB: 08/06/73 Rec. 05/01/92 Date of offense: 01/18/91 (Webb Co.)

Convicted in connection with the brutal murders of three persons inside a Laredo residence. The three were stabbed or hacked with an axe while they slept.

In addition, four death row inmates (age 17 at time of offense) had their sentences commuted to Life:

LEE ROY BARROW #416013 was sentenced to death for the July 27, 1980 robbery/beating death of Lynn Sternberg, 70. Barrow robbed Sternberg for money to go to a massage parlor, where he was later arrested.

VICTOR RENAY BURNS #438179 was sentenced to death for the March 28, 1981 shooting death of Johnny Lynn Hamlett, 20. Hamlett was shot 14 times with a .22 caliber rifle and robbed of an indeterminate amount of money. Burns testified that he waited in the car while his brother, William Burns and accomplice Danny Ray Harris went inside.

BILLY JOE BATTIE #511415 was sentenced to die for the robbery/murder of Peggy Hester, 19, a convenience store clerk at the IN-N-OUT Food Store in Fort Worth. Customer, John Howard Robinson, was also killed. Both victims were shot with a .410-gauge shotgun. Battie netted $52.72 from the robbery.

JOHN D. MATSON JR. #626762 was convicted of the kidnapping of a 34 year old black female, who he took to Kirkwood and Bellaire in Houston and robbed and stabbed to death.

The following inmates were 17 at the time of offense and have since been executed:

JAY KELLY PINKERTON #686
DOB: 02/14/62 Rec. 06/29/81 Date of offense: 10/26/79 (Nueces Co.)

Executed 05/05/86 for the murder of Sarah Donn Lawrence during a robbery with intent to rape. Lawrence was stabbed more than 30 times. Pinkerton was also convicted of capital murder in the stabbing death of Sherry Welch in Amarillo. Welch was stabbed approximately 30 times and raped.

CHARLES FRANCIS RUMBAUGH #555
DOB: 06/23/57 Rec. 08/25/76 Date of offense: 04/04/75 (Potter Co.)

Executed 09/11/85 for the murder of Michael Fiorillo, 58, during a jewelry store robbery.

JOHNNY FRANK GARRETT #729
DOB: 12/24/63 Rec. 12/15/82 Date of offense: 10/31/81 (Potter Co.)

Executed 02/11/92 for the murder of Sister Tadeo Benz, 76, a nun at Francis convent in Amarillo. Sister Benz was raped, strangled, and beaten.

WOMEN ON DEATH ROW

Before capital punishment was declared "cruel and unusual punishment" by the U.S. Supreme Court on June 29, 1972, there were three women on death row:

Emma Oliver #340	(B/F) DOB: 09/23/10 Rec. 04/01/51 Bexar County - Murder Commuted to Life: 06/29/51 Deceased 02/06/53
Maggie Morgan #427	(B/F) DOB: 09/14/12 Rec. 06/01/61 Harris County - Murder Commuted to Life: 07/25/63
Carolyn Lima #443	(W/F) DOB: 02/23/42 Rec. 01/16/61 Harris County - Murder Retried and received again 03/13/64 with a sentence of five years for murder without malice. Discharged 04/03/65.

Velma Barfield was the last woman legally executed in the United States. She died by lethal injection November 2, 1984 in North Carolina's execution chamber.

From 1930 to 1962, 30 women were put death for committing murders, one for kidnapping, and one for espionage.

There has never been a woman executed by the State of Texas.

The following women were sentenced to death after capital punishment was reinstated in 1974, four (4) are still on Death Row in Texas:

MARY LOU ANDERSON	(W/F) DOB: 09/16/43 Rec. 09/06/78 Commuted to Life: 10/31/78
LINDA MAE BURNETT	(W/F) DOB: 02/03/48 Rec. 03/23/79 Commuted to Life

The following women are currently on Death Row:

PAMELA LYNN PERILLO #665

(W/F) DOB: 12/02/55 Rec. 09/11/80 (Harris Co.)

Sentenced to death for robbing and strangling to death Bob Skeens of Houma, LA.

KARLA FAYE TUCKER #777

(W/F) DOB: 11/18/59 Rec. 12/18/84 (Harris Co.)

Convicted of capital murder in the 06/13/83 pickax murder of Jerry Lynn Dean, 26.

BETTY LOU BEETS #810

(W/F) DOB: 03/12/37 Rec. 10/14/85 (Henderson Co.)

Sentenced to death for killing her fifth husband, Dallas Fire Captain Jimmy Don Beets, as part of a scheme to collect as much as $100,000 in life insurance and pension benefits.

FRANCIS ELAINE NEWTON #922

(B/F) DOB: 04/12/65 Rec. 11/17/88 (Harris Co.)

Convicted in the April 1987 slayings of her husband, Adrian, son, Alton, 7, and daughter, Farrah, 21 months, for insurance money.

Houston Chronicle

Vol. 91 No. 224 Sunday, May 24, 1992 $1.25 ★★★★

TEXAS: NO. 1 IN EXECUTIONS

Harris County leads in sending blacks to death row

By KATHY FAIR
Houston Chronicle

HUNTSVILLE — Harris County juries have sent nearly twice the number of black inmates to death row as whites, accounting for 40 percent of all Texas black prisoners facing death by injection.

That fact puts the Houston area far out of step with all other counties in Texas and with what many researchers have found in their studies of racial disparity in capital punishment.

Harris County has sent 51 black murderers to death row — almost four times as many as Dallas County. The 14 condemned killers from Dallas County represent the second highest number of black death row inmates from a single county.

Questions about who is being sentenced to die — and why — are being raised as Texas marks another milepost in its criminal justice system: the death of the 50th prisoner since the state resumed executions 10 years ago.

Since December 1982, Texas has outpaced all of the 34 other states that can impose capital punishment. And with eight executions in the first five months of the year, state officials are predicting they will eclipse the 1986 record of 10 executions.

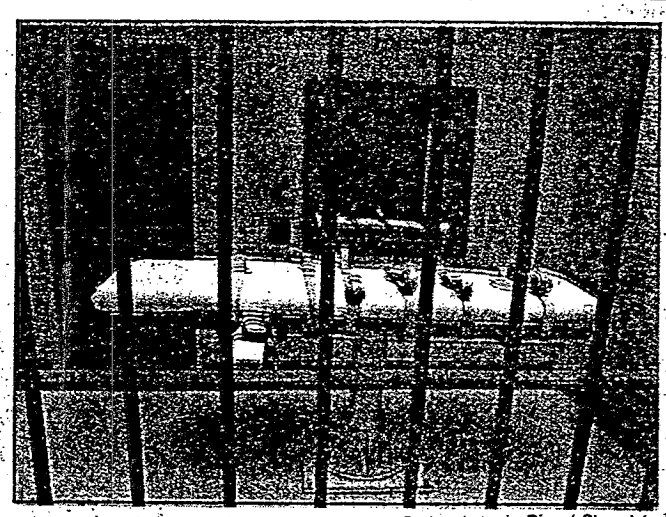
Leigh Dingerson, executive director of the National Coalition to Abolish the Death Penalty, said the large percentage of blacks sent from Harris County is "not out of line with what we see across the country."

But, she added, "It is disturbing because of what it says about our society and what it says about our criminal justice system."

Diann Rust-Tierny, executive director of the American Civil Liberties Union's Capital Punishment Project, said it's difficult to analyze what might be happening in Harris County without having all the data, "but there is certainly enough there to raise some questions

See EXECUTIONS on Page 19A.

Roll call of executed: Page 18A.
Evolution of executions: Page 19A.
Minister has become the confidant of killers on death row: State, Page 1D.



Carlos Antonio Rios / Chronicle

On this table in the death chamber at the Department of Corrections' Walls Unit at Huntsville, the state has lethally injected 50 convicted killers since capital punishment was reinstituted in 1973.

(OVER)

Executions

Continued from Page 1A.

and take a closer look."

She added Harris County "may fit into a pocket of discrimination," one of several some experts have identified in the country.

Overall, the racial makeup of death row is nearly half white. According to state prison records, 168 of the 356 prisoners under a death sentence are Anglo; 125 are black; 59 are Hispanic; and three are of another race.

Based on studies that two Texas researchers have conducted on racial makeup of Texas' death row, the Harris County figures suggest that something may be amiss.

Comparisons of the racial makeup of Harris County death row inmates with all prisoners from Harris County are not readily available, prison officials said, because of different manners in which those figures are collected.

But some comparisons can be made with the total number of new prisoners that Harris County sent to the Texas Department of Criminal Justice in fiscal year 1991. For example:

- Black felons represented 57 percent of the 4,679 sent to prison from Harris County last year.
- Whites represented 21 percent of prisoners.
- Hispanics made up 20 percent of the Harris County contingency in prison.
- Asians, American Indians and other groups accounted for less than 1 percent of those in prison.

Capital punishment foes have long argued the death penalty is discriminatory because a disproportionate number of blacks and poor people are executed.

Racial discrimination against offenders being sent to the death chambers was one of the reasons the U.S. Supreme Court abolished capital punishment in 1972. The Texas Legislature rewrote the death penalty statute in 1973 to eliminate that potential bias, and the Supreme Court upheld the new law in 1975.

Nearly all the research being done nationwide shows the original discrimination against black offenders has been wiped out with the newer statutes, says James Marquart, a criminal justice professor at Sam Houston State University.

Some research suggests that Texas law "has not met its legal objectives in reducing or eliminating arbitrariness and discrimination in capital punishment," Marquart said.

"Despite the Supreme Court's efforts to assure fair and non-discriminatory imposition of capital punishment, racial factors still influence the capital punishment process in Harris County."

But Marquart cautions that statistical analyses "mask what's going on in the real world. You can't draw any global conclusions from the studies."

For example, Marquart's own study of racial disparity in Harris County death sentences between 1980 and 1988 indicates that Anglos in Harris County are nearly twice as likely to be sentenced to death as black defendants and nearly five times as likely as Hispanics, he said.

The differences in the conclusion that Marquart's study makes and those suggested by the raw data can be explained by other factors that juries take into consideration when sentencing a killer to die, experts say.

Marquart said his study took into account such factors as brutality of crime, prior record of the defendant and whether the murder victim also was raped, robbed or burglarized.

When those issues are taken into account, they explain away a lot of what initially appears to be racial bias, some experts say.

The raw figures represent racial disparity, Marquart said, but they do not mean that black defendants are being discriminated against by Houston-area juries.

Nearly all the research being done nationwide, Marquart and others say, shows that the original concern over discrimination against black offenders has been wiped out with the newer capital sentencing statutes.

Victims' race a factor

Marquart and a researcher at the University of Texas, Sheldon Ekland-Olson, contend that the discriminatory aspects of the death penalty show up in the race of the victims, particularly when whites are murdered by blacks.

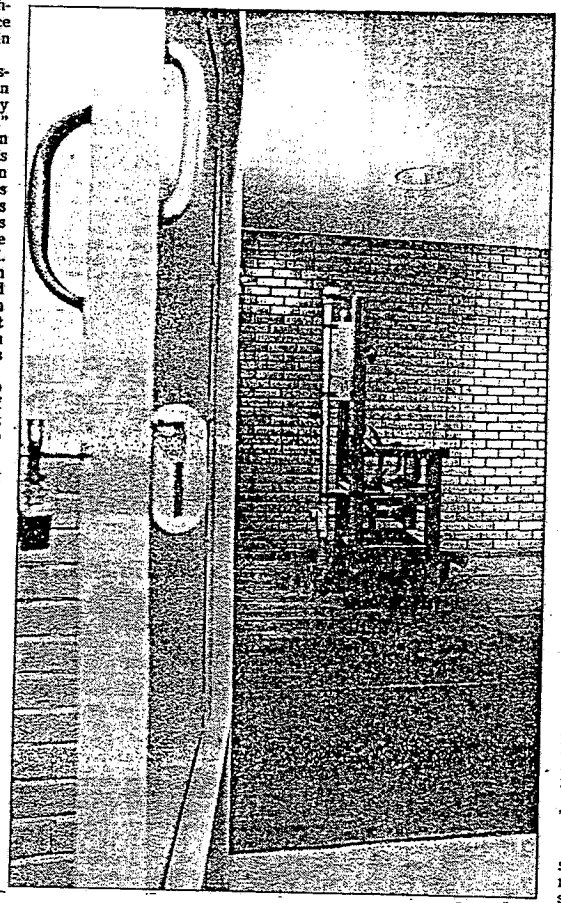
Texas law does "little to check the discretion of prosecutors in determining if the case will be tried as a capital murder and if plea bargaining will be utilized," Marquart said.

"Prosecutors in Texas still have the power to reduce a capital murder charge to murder or a lesser charge, and they have significant bargaining power throughout the entire capital punishment process," he added. "That's the black box. That's where the discrimination is going to enter."

Harris County District Attorney John Holmes bristles at the suggestion there's any racial bias — either with offenders or victims — in Harris County capital cases.

He said he alone determines which felony murder cases to seek death sentences in and which to try as lesser offenses.

"In no case am I told or advised or know the race of the victim or defendant," he said.



Chronicle file

The Texas electric chair was used 361 times from 1924 to 1964. Since the state resumed executions 10 years ago, Texas has put 50 prisoners to death by lethal injection.

A trend in rape cases

Holmes said he intentionally designed the summary forms used in all potential capital cases in 1979 so the race factor would be omitted. "I didn't want anyone to accuse me or this office of this," he said.

Ekland-Olson is skeptical.

"I hope that's true," he said. "But it strains believability."

"The only strong case for saying the death penalty operates in racist patterns is in rape cases," said Ekland-Olson, who conducted his own study of death sentences in Harris County. "Cases involving white victims are much more likely to result in a death sentence than those involving either blacks or Hispanics."

He examined 468 felony murders (murders during the commission of rape, robbery or burglary) that occurred in Harris County between 1980 and 1988. He found that death sentences were five times more likely to occur with white victims than black victims, and 3.1 times more likely to occur with white than Hispanic victims.

"Going all the way back to 1924," Marquart says, "Texas has never executed anyone for the rape or rape-murder of a black victim."

But Ekland-Olson acknowledges that his research indicates that factors other than racial bias could explain why felons who murder white victims are more likely to be sentenced to death.

"It may be that the race differential, especially in rape cases, comes not so much from racial considerations as it does from the 'stranger' factor," he said.

That means rape-slaying cases in which the victim did not know her assailant are much more likely to result in a death sentence than are cases in which the victim knew her attacker, Marquart said. And that disparity can be further explained by the fact that felons are more brutal with victims they do not know.

Holmes gets some support in his insistence that there are no patterns of racial discrimination from Stephen Klein, senior research scientist for the Rand Corp., a California-based think tank.

Klein conducted an independent study of racial patterns in capital cases at the request of the California attorney general and testified about such issues last year before a Congressional subcommittee.

"Race of victim is not a factor for the lion's share of the cases that are subject to the death penalty," he told lawmakers. And where it does occur it occurs in such small numbers it is not statistically significant, he said.

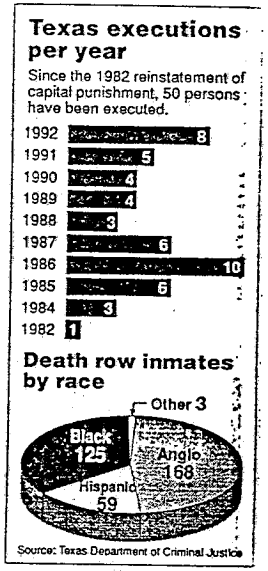
Too many variables

"The problem with anyone's research in this area is that you can never identify all the variables," he said in an interview last week. "All research in this area is suspect, even mine. It's a substantial problem."

The appearance of racial discrimination in rape-slayings that Ekland-Olson found can also be explained, Klein said, by research indicating that rape occurs more often within racial groups.

"It is unusual to have inter-racial rape, contrary to popular thinking," he said. Cases of white men raping black women are "pretty unusual," he added, and that factor would explain why researchers like Ekland-Olson have found more cases of white rape-slaying victims resulting in a death sentence.

Appearances of racial bias in death sentences disappear when researchers examine all the other factors that juries take into consideration when deciding whether a capital murderer should live or die, Klein said.



Chronicle

For example, juries are more likely to return death sentences in cases where the victims were tortured, in cases involving mom-and-pop grocery store killings or in cases where the defendant has a prior criminal record. None of those factors, he said, is related to racial bias, yet they may show up in cases of black-on-white crime.

"There is racial disparity, and nobody's denying that," Klein said. But research just doesn't support the notion that the disparity exists because of racial discrimination.

"The disparity exists, and it is a large and pervasive difference," he said. "But it's never going to go away. It exists in almost every area of society," including education and income.

Nonetheless, Klein said, continued research into racial bias and death sentences is worthwhile.

"There's a value (in the research) if people have a perception that the system is unfair," he said. "If it is unfair, then we ought to examine the reasons why. That's a reasonable goal. The problem is research will never be able to put the issue to rest."

HOUSTON CHRONICLE

24 MAY 1992

(OVER)

Evolution of executions: Texas and the death penalty

By KATHY FAIR
Houston Chronicle

HUNTSVILLE — When Charlie Brooks became the first man in the United States to be executed by lethal injection on Dec. 7, 1982, he died a celebrity, although an ignoble one.

With the attention of the nation's news media, Brooks went to his death in the glare of television lights and newspaper headlines — and the glow of dozens of candles carried by capital punishment foes.

In stark contrast, on Friday, when Robert Black became the 50th Texas killer put to death, there were few television cameras, scant headlines and the flicker of a lone candle raised by the remaining stalwart in local Amnesty International ranks.

Since Brooks' death, Texas has become the national leader in the number of prisoners put to death — a record that earns kudos from law-and-order conservatives and castigations by Amnesty International and the National Association for the Advancement of Colored People's Legal Defense Fund.

The only execution in the past few years to garner much press attention was the Feb. 11 death of Johnny Frank Garrett, convicted of the rape-slaying of an Amarillo nun. But his case grabbed the media spotlight briefly only after Gov. Ann Richards granted a 30-day reprieve in his case at the behest of Pope John Paul II.

Execution statistics paint an alarming picture of Texas and the felons who shot and stabbed, pummeled and poisoned their way to infamy:

- Of the 50 prisoners executed thus far, 40 percent killed during a robbery; 18 percent during a rape; 10 percent during a burglary; and 8 percent during an abduction. Thirteen percent killed a law enforcement officer.
- Four prisoners were put to death for murder for remuneration and one each for murder during an escape and multiple murders.
- Seven prisoners volunteered to be put to death, abandoning appeals of their cases.

NAACP Legal Defense Fund records reveal Texas has executed 26 Anglo, 13 black and 11 Hispanic defendants. The vast majority of the victims of these heinous crimes were Anglos — 21, or 42 percent, were Anglo males and 19, or 37 percent, were Anglo females.

Six of the victims, or 10 percent, were Hispanic women. Only two of the victims in these cases were black men, two were Hispanic men, one was a black female and one was an Asian male.

Guns were used in 36, or 72 percent of the capital murders. Eight victims were stabbed, three were strangled, three were beaten and one was poisoned and another buried alive.

Even more disturbing — at least to Houston-area residents — is that 36 percent of these men committed their crimes in Harris County and an additional 19 percent in adjacent counties.

Those facts alone, experts say, explain the particularly hard-nosed approach that Harris County has taken in prosecuting capital crimes — and following through to get the defendants executed.

Harris County has 96 killers awaiting execution. That figure constitutes 27 percent of the 358 Texas murderers under death sentences and gives Harris County a larger death row population than all but seven states.

In comparison, Dallas County has sent 34 prisoners (9.5 percent of the total) to death row, Tarrant County 24 (6.7 percent) and Bexar County 18 (5 percent).

Why has Texas been able to carry out capital punishment more often than any other state?

The credit — or blame, depending on where you stand — lies with a number of factors, experts say: a climate conducive to capital punishment, aggressive prosecutors, state and federal judges who no longer shy away from deciding such cases and the sheer size of Texas' death row population.

"Right now there is a judicial climate that is complementary to the public opinion climate," said Assistant Attorney General Bill Zapalac. "It's not that the 5th Circuit (Court of Appeals, the federal judicial region that includes Texas) is bloodthirsty, but they have three states with large death row populations, and those states have statutes that have withstood constitutional challenges."

Many death penalty advocates, including officials from other states, credit former Assistant Attorney General Paula Offenhouser, now an assistant U.S. attorney in Houston, with the foresight to have carefully chosen cases to push through the federal courts in the early 1980s.

That selection process helped build a solid basis of case law on which the state continues to rely.

As part of that process, said Zapalac, Texas judges, as well as federal judges in the 5th Circuit — which also includes Louisiana and Mississippi — simply have become more at ease resolving life-and-death issues in an expeditious manner.

"Nobody wants to be involved in a process that results in someone's death," he said. "But they understand why it's OK to do these things that run against human nature."

In the late 1970s and early 1980s, the Texas Court of Criminal Appeals overturned about a third of the death sentence convictions because of various problems the court found in the cases, said court administrator Rick Wetzel.

"Once those areas were cleared up, it was like a road map for prosecutors: Here's what you must avoid if you want your conviction upheld," he said. Now, he said, 90 per cent of trials are being upheld.

Along the way, the 5th Circuit has also developed internal procedures on how capital cases are processed, Zapalac said.

"The result is that they don't spend a whole lot of time with each case trying to decide what the law of the circuit is."

In contrast, federal judges in the 9th U.S. Circuit Court of Appeals have been more inclined to block executions.

That circuit includes California, which last month executed its first prisoner in a quarter century. But even that prisoner's death didn't come until the U.S. Supreme Court issued a unique — and to some, frightening — reprimand prohibiting the judges from blocking Alton Harris' death again without the high court's permission.

"There definitely is a philosophic opposition (to the death penalty) among a great number of 9th Circuit judges," said Dane Gillette, an assistant California attorney general and president of the Association of Government Attorneys in Capital Litigation.

Gillette said California judges also are more leery of pushing through capital cases than are Texas judges.

Between 1977 and 1986, Gillette said, the California Supreme Court ruled on only 68 capital cases, and only four of those were upheld, he said.

Some state judges, he added, "are deathly afraid of making a mistake."

Eden Harrington, director of the Texas Resource Center — a federally funded organization that provides lawyers for death row prisoners, agrees the Texas court system is the key to explaining the frequency of executions.

Rather than crediting judges with the ability to make tough decisions under pressure, though, she said the system is stacked against the center's capital defendant clients.

"I think the system, the process whereby habeas petitioners (death row clients appealing in the federal courts) often do not have legal counsel to represent them, contributes" to the large number of executions, she said.

Death penalty litigation in Texas, she said, is fueled by the arbitrary setting of execution dates without regard to whether the prisoner has a lawyer to represent him.

Texas is the only state in the nation, she added, where there is no appellate deadline system spelled out either in law or by mutual agreement with prosecutors.

Another key factor explaining the state's execution record, experts say, is the length of time its capital sentencing statute has been on the books.

Texas became one of the first states to re-enact the death penalty after the landmark 1972 decision in which the U.S. Supreme Court declared capital punishment unconstitutional because of the arbitrary and discriminatory manner in which it had been imposed.

By 1976, its law had passed constitutional muster. That early jump from the legislative starting block, notes Mike McCormick, presiding judge of the Texas Court of Criminal Appeals, simply has given Texas and the 5th Circuit more experience than most other states.

"I think we've probably hashed out every (legal) issue that has been raised," he said.

Most experts also say politics play a role in these cases, especially from prosecutors who aggressively respond to what the Texas Resource Center's Harrington describes as the public's "great hysteria over crime."

Wetzel, the appeals court administrator, agrees:

"The vast majority of the public wants these executions to take place, and prosecutors go for them," he said. "And I think that helps their campaigns. State judges are influenced by the same factors."

But in some cases, prisoners simply have been on death row for so many years that time is running out for them.

"Time is on your side for a while, but then time becomes your enemy," Wetzel said. "(Prisoners) more or less get a free ride for about 10 years."

The result has been a conflicting image of the Lone Star State around the country.

Nearly 30 percent of all executions that have been carried out in the nation since 1976 have occurred in Texas, notes Karima Wicks, research director of the Capital Punishment Project of the NAACP Legal Defense Fund.

"It has the reputation of being a well-oiled killing machine," she said.

"Texas is definitely viewed as a world in itself," said Harrington. But it is also viewed as a state in chaos, not only because of the number of death sentences carried out but also because of the large number of scheduled executions, she said.

This month, Texas had a record 13 executions pending. While only three have been carried out thus far, the schedule kept prosecutors, defense lawyers and judges scurrying to handle the paperwork involved in the appellate process.

The figures that foes contend tarnish Texas' image are viewed by officials in other states as boosting the state's reputation, at least in the circle of death penalty lawyers.

"Texas has the image of people who can get the job done," said Joan Byers, who handles capital litigation as an assistant attorney general in North Carolina. "It has the image of having highly competent lawyers in a circuit willing to expedite cases."

In contrast to Texas' execution pace, Mississippi, which also is in the 5th Circuit, has not put a prisoner to death since 1989.

"The Mississippi Supreme Court is reluctant to move on these cases," assistant attorney general Marvin L. White said, adding that Mississippi's statute has had several constitutional problems.

"We've done a lot of fine-tuning of the law," he said. "We've had to go back to square one several times.

"In Mississippi, you have some prosecutors reluctant to go after the death penalty and more likely to plead out cases. On the whole, you think of Texas as kind of a free-wheeling, gun-toting last frontier."

County-by-county convictions

Convictions by county to Texas' death row as of May 8:

County	No.	County	No.	County	No.
Anderson	1	Hamilton	1	Newton	2
Angelina	3	Hardin	1	Nueces	7
Aransas	1	Harris	96	Orange	1
Atascosa	1	Henderson	2	Palo Pinto	1
Bell	1	Hidalgo	3	Panola	1
Bexar	18	Howard	1	Parker	3
Brazoria	2	Hunt	1	Pecos	2
Brazos	7	Hutchinson	1	Potter	3
Bowie	3	Jefferson	9	Randall	3
Caldwell	1	Johnson	2	Sabine	1
Cameron	7	Jones	1	San Jacinto	1
Chambers	1	Kaufman	1	Scurry	1
Collin	7	Kleberg	1	Shelby	1
Comal	1	Lamar	2	Smith	5
Crockett	1	Lamb	1	Tarrant	24
Dallas	34	Lee	1	Taylor	7
Dawson	1	Leon	1	Tom Green	4
Denton	4	Liberty	4	Travis	5
El Paso	6	Limestone	1	Trinity	3
Ellis	1	Lubbock	8	Victoria	1
Fort Bend	2	Madison	1	Walker	3
Freestone	1	Matagorda	1	Webb	2
Galveston	4	McLennan	7	Wharton	1
Gillespie	1	Milam	1	Williamson	2
Grayson	2	Montague	1	Wood	1
Gregg	2	Montgomery	4	Zapata	1
Hale	1	Navarro	5	Total	358

Source: Texas Department of Criminal Justice

Chronicle

HOUSTON CHRONICLE

24 MAY 1992

Slaying trials take big toll on witnesses

Reputations are put on line, some claim

By KATHY FAIR
Houston Chronicle

Some of the first casualties in capital murder trials are likely to be witnesses rather than defendants.

"You put your professionalism and reputation on the line every time you're on the stand," said James Marquart, one of the "hired guns" in several Texas death penalty cases.

But Marquart, a criminal justice professor at Sam Houston State University, said he's quitting because being a professional witness for the defense is taking its toll.

"People think you're a mouthpiece for the defense just because they're paying you," he said. "It's not fun getting up on the witness stand and having someone tear your head off."

Marquart has been a frequent witness in capital murder trials in Texas and a few other states since he published his 1988 study challenging the notion that psychiatrists or psychologists could accurately predict whether a defendant was likely to rob, rape, maim or murder again.

Until that time, Dallas psychiatrist James Grigson had earned the moniker of "Dr. Death" after testifying for the state at dozens of trials. In virtually every case, he had testified that the defendant undoubtedly would commit acts of violence in the future.

Such testimony is offered to help jurors answer the question of whether the defendant is likely to commit acts of violence in the future. That's one of two questions posed in the punishment phase of every capital case.

After studying 47 former Texas death row prisoners whose sentences were commuted when the U.S. Supreme Court ruled capital punishment unconstitutional in 1972, Marquart concluded that predictions that those inmates were a substantial threat to society had not proven true.

"A lot of people think you're a sleazeball because you testify for the defendant," he said.

Windel L. Dickerson, a Bryan psychologist often called the "daddy of defense," agrees that expert witnesses for the defense often suffer the wrath of prosecutors, jurors, authorities and courtroom

See WITNESSES on Page 4D.

Witnesses

Continued from Page 1D,

observers because of the message they convey.

Many prosecutors, Dickerson added, "make me out to be a liar and common whore."

"When I started out doing this, I promised myself I would stay right down the middle," he said. "I may be wrong in some of my conclusions, but I'm no whore."

Prosecutors like Walker County District Attorney David Weeks, however, say expert witnesses for the defense have lost credibility because the same experts show up at virtually every trial and hearing.

Many other prosecutors argue that the testimony of defense psychiatrists and psychologists has become so predictable it's almost as if the witnesses' testimony has been scripted.

Dickerson, who has testified for the state in a few cases, said such criticisms are sometimes founded but also could be leveled at the state.

"Some folks feel they're obliged to try to steer the outcome of a case based on who's paying them," he said.

But he also believes that many people are distrustful of psychiatric testimony at trials.

"First, it's an inexact science," he said. "Second, many of the assumptions of psychiatrists and psychologists do not mesh with a lot of people's religious beliefs.

"And finally, there are just enough crackpots running around in all professions who come up with assertions that (cause) people (to) laugh up their sleeves."

lethal justice

Roll call of the executed

Fifty murderers have died at the hands of the state since Texas reinstituted its Supreme Court-sanctioned executions 10 years ago. Law-and-order advocates applaud the speed with which the state executes – three have been killed this month and a fourth is scheduled to die this week – but death penalty critics decry Texas as a "killing machine." In Texas, capital crimes are defined as murders that occur during the commission of a rape, robbery, burglary, abduction or other felony.

Charlie Brooks, 40
Executed: Dec. 7, 1982
Offense: Shooting, Dec. 14, 1976
Victim: David Preston Gregory, 26
County of Conviction: Tarrant

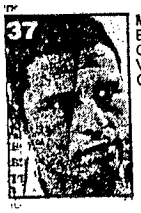
Jesse de la Rosa, 24
Executed: May 15, 1985
Offense: Shooting, Aug. 22, 1979
Victim: Masoud Ghazali, 27
County of Conviction: Bexar

Jay Kelly Pinkerton, 24
Executed: May 15, 1986
Offense: Stabbing, Oct. 26, 1979
Victim: Sarah Donn Lawrence, 30
County of Conviction: Nueces

Michael Wayne Evans, 30
Executed: Dec. 4, 1986
Offense: Shooting, June 26, 1977
Victim: Elvira Guerrero, 38
County of Conviction: Dallas

John R. Thompson, 32
Executed: July 8, 1987
Offense: Shooting, May 21, 1977
Victim: Mary Virginia Knepper, 70
County of Conviction: Bexar

Stephen McCoy, 40
Executed: May 24, 1989
Offense: Strangulation, Jan. 1, 1981
Victim: Cynthia Darlene Johnson, 18
County of Conviction: Harris



Mikel Derrick, 33
Executed: July 18, 1990
Offense: Stabbing, Oct. 11, 1980
Victim: Edward Sonnier, 32
County of Conviction: Harris

Joe Angel Cordova, 39
Executed: Jan. 22, 1992
Offense: Shooting, Feb. 27, 1982
Victim: Masel Williams, 32
County of Conviction: Harris

(OVER)

James David Autry, 29
Executed: March 14, 1984
Offense: Shooting, April 20, 1980
Victim: Shirley Drouet, 43
County of Conviction: Jefferson


2


3

Ronald Clark O'Bryan, 39
Executed: March 31, 1984
Offense: Poisoning, Oct. 31, 1974
Victim: Timothy O'Bryan, 8
County of Conviction: Harris

Thomas Andy Barefoot, 39
Executed: Oct. 30, 1984
Offense: Shooting, Aug. 7, 1978
Victim: Carl LeVin, 31
County of Conviction: Bell


4


5

Doyle Skillern, 49
Executed: Jan. 16, 1985
Offense: Shooting, Oct. 23, 1974
Victim: Patrick Allen Randal, 40
County of Conviction: Lubbock

Stephen Peter Morin, 34
Executed: March 13, 1985
Offense: Shooting, Dec. 11, 1981
Victim: Carrie Marie Scott, 21
County of Conviction: Jefferson


6

Charles Milton, 34
Executed: June 25, 1985
Offense: Shooting, June 24, 1977
Victim: Minaree Denton, 54
County of Conviction: Tarrant


8


9

Henry Martinez Porter, 43
Executed: July 9, 1985
Offense: Shooting, Nov. 29, 1975
Victim: Henry Paul Mailloux, 28
County of Conviction: Tarrant

Charles Rumbaugh, 28
Executed: Sept. 11, 1985
Offense: Shooting, April 4, 1975
Victim: Michael Fiorillo, 58
County of Conviction: Potter


10


11

Charles William Bass, 30
Executed: March 12, 1986
Offense: Shooting, Aug. 16, 1979
Victim: Charles Henry Baker, 51
County of Conviction: Harris

Jeffery Allen Barney, 28
Executed: April 16, 1986
Offense: Strangulation, Nov. 24, 1981
Victim: Ruby Mae Longsworth, 52
County of Conviction: Harris


12

Rudy Ramos Esquivel, 50
Executed: June 9, 1986
Offense: Shooting, June 8, 1978
Victim: Timothy Hearn, 28
County of Conviction: Harris


14


15

Kenneth Brock, 37
Executed: June 19, 1986
Offense: Shooting, May 20, 1974
Victim: Michael Sedita, 31
County of Conviction: Harris

Randy L. Woolls, 36
Executed: Aug. 20, 1986
Offense: Stabbing, June 16, 1979
Victim: Betty Stotts, 43
County of Conviction: Tom Green


16


17

Larry Smith, 30
Executed: Aug. 22, 1986
Offense: Shooting, Feb. 2, 1978
Victim: Mike Mason, 26
County of Conviction: Dallas

Chester Wicker, 37
Executed: Aug. 26, 1986
Offense: Buried alive, April 4, 1980
Victim: Suzanne Knuth, 23
County of Conviction: Galveston


18

Richard Andrade, 25
Executed: Dec. 18, 1986
Offense: Stabbing, March 20, 1984
Victim: Cordelia Guevara, 28
County of Conviction: Nueces


20


21

Ramon Hernandez, 44
Executed: Jan. 30, 1987
Offense: Shooting, June 20, 1980
Victim: Oscar Martin Fraire, 30
County of Conviction: El Paso

Elseo H. Moreno, 27
Executed: March 4, 1987
Offense: Shooting, Oct. 11, 1983
Victim: Russell Boyd, 25
County of Conviction: Fort Bend


22


23

Anthony C. Williams, 27
Executed: May 28, 1987
Offense: Bludgeoning, June 12, 1978
Victim: Vickie Lynn Wright, 13
County of Conviction: Harris

Elliot R. Johnson, 28
Executed: June 24, 1987
Offense: Shooting, April 8, 1982
Victim: Joseph Granado, 67
County of Conviction: Jefferson


24

Joseph Starvaggi, 34
Executed: Sept. 10, 1987
Offense: Shooting, Nov. 19, 1976
Victim: Carl Denson, 48
County of Conviction: Montgomery


26


27

Robert Streetman, 27
Executed: Jan. 7, 1988
Offense: Shooting, Dec. 17, 1982
Victim: Christine Baker, 44
County of Conviction: Hardin

Donald Franklin, 37
Executed: Nov. 3, 1988
Offense: Stabbing, July 25, 1975
Victim: Mary Margaret "Peggy" Moran, 27
County of Conviction: Nueces


28


29

Raymond Landry, 39
Executed: Dec. 13, 1988
Offense: Shooting, Aug. 6, 1982
Victim: Kosmas Pritis, 33
County of Conviction: Harris

Leon Rutherford King, 44
Executed: March 22, 1989
Offense: Bludgeoning, April 10, 1978
Victim: Michael Clayton Underwood, 26
County of Conviction: Harris


30

James Paster, 44
Executed: Sept. 20, 1989
Offense: Shooting, Oct. 25, 1980
Victim: Robert Edward Howard, 38
County of Conviction: Harris


32


33

Carlos Deluna, 27
Executed: Dec. 7, 1989
Offense: Stabbing, Feb. 4, 1983
Victim: Wanda Jean Lopez, 24
County of Conviction: Nueces

Jerome Butler, 54
Executed: April 21, 1990
Offense: Shooting, June 17, 1986
Victim: Nathan Oakley, 67
County of Conviction: Harris


34


35

Johnny Anderson, 30
Executed: May 17, 1990
Offense: Shooting, Oct. 1, 1981
Victim: Ronald Gene Goode, 22
County of Conviction: Jefferson

James Smith, 37
Executed: June 26, 1990
Offense: Shooting, March 7, 1983
Victim: Larry D. Rohus, 44
County of Conviction: Harris


36

Lawrence Buxton, 38
Executed: Feb. 26, 1991
Offense: Shooting, Sept. 19, 1980
Victim: Joel Slotnik, 40
County of Conviction: Harris


38


39

Ignacio Cuevas, 59
Executed: May 23, 1991
Offense: Shooting, Aug. 3, 1974
Victim: Julia Standley, 43
County of Conviction: Harris

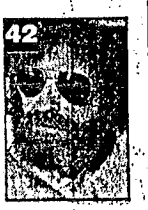
Jerry Joe Bird, 54
Executed: June 17, 1991
Offense: Shooting, Jan. 11, 1974
Victim: Victor Harrell Trammell, 65
County of Conviction: Cameron


40


41

James Russell, 42
Executed: Sept. 19, 1991
Offense: Shooting, March 19, 1974
Victim: Thomas Stearns, 24
County of Conviction: Fort Bend

G.W. Green, 49
Executed: Nov. 12, 1991
Offense: Nov. 19, 1976
Victim: Johnny Denson, 44
County of Conviction: Montgomery


42

Johnny Frank Garrett, 28
Executed: Feb. 11, 1992
Offense: Stabbing, Oct. 31, 1981
Victim: Sister Tadea Benz, 76
County of Conviction: Potter


44


45

David Michael Clark, 32
Executed: Feb. 28, 1992
Offense: Clubbing, stabbing, shooting, Feb. 18, 1987
Victim: Charles Geare, 21; Beverly Benninghoff, 25
County of Conviction: Brazos

Edward Ellis, 38
Executed: March 3, 1992
Offense: Strangulation, Feb. 27, 1983
Victim: Bertie Elizabeth Eakens, 74
County of Conviction: Harris


46


47

Billy White, 34
Executed: April 23, 1992
Offense: Shooting, Aug. 23, 1976
Victim: Martha Laura Spinks, 65
County of Conviction: Harris

Justin Lee May, 46
Executed: May 7, 1992
Offense: Shooting, June 27, 1978
Victim: Jeanetta Murdaugh, 43
County of Conviction: Brazos


48

49

Jesus Romero Jr., 27
Executed: May 20, 1992
Offense: Beating, stabbing, Dec. 23, 1984
Victim: Olga Perales, 15
County of Conviction: Cameron

50

Robert Black Jr., 45
Executed: May 22, 1992
Offense: Shooting, Feb. 21, 1985
Victim: Sandra Black, Age 36
County of Conviction: Brazos

WORKED TO DEATH IN TEXAS

Texas has the biggest death row in America. Over 370 prisoners in the state await execution. For a select few there is an alternative to being locked up: working in the prison garment factory. What do they feel about living and working in the shadow of execution?

by KATE MUIR

FOR A SWEATSHOP, it all looks pretty normal. There is the whirr of industrial sewing machines and a lower note of chatter. Rows of men in white overalls, some wearing matching caps backwards, are sewing trouser shapes and pockets from grey material. The rest are trimming threads with giant tailor's scissors, adding piping, finishing seams. In the office, someone is doing the books. There is some larking around by the coffee machine, and copious cigarette breaks. More shop talk than sweat.

But at the far end of the factory there is a man on a platform in a cage. He looks bored and depressed, on show in a zoo-like way. You begin to feel sorry for him, until you realise that he is the prison guard, and that the men wandering freely around the room carrying the sharp metal objects of the clothing trade are convicted wife-murderers, armed robbers and serial killers.

To complete the through-the-looking-glass feel of the experience, the factory manager says that production has never been better, although over seven years he has lost 41 of his "expert tailors to execution by lethal injection. Replacements are not hard to come by in Huntsville, Texas. The state has the biggest death row – 373 prisoners – in America. Its prosecutors take a certain pride in that. As lawyer John B. Holmes, also known as 'the Deadly DA' for his record numbers of death-row convictions, puts it: 'I say without apology that if you murder someone here, the State of Texas is going to kill you.'

The State of Texas, in its infinite wisdom but limited mercy, has pumped poisonous potassium chloride into the veins of 71 of its death row inmates since it reinstated execution in 1982. Judges are showing increased zeal. Last year, more inmates were killed than ever before, and prisoners' legal advisors at the Texas Resource Centre are saying again and again: 'In the rush to execute our clients, innocent people may be dying.' Innocent or guilty, the 120 death-row prisoners on the two shifts at Huntsville's Ellis One factory, making belts, bags and trousers with the natty TCI logo – for Texas Correctional Industries – feel their work proves that they are productive, stable people in the prison; that their now civilised behaviour shows that execution is a thoroughly unnecessary step. Life would be just fine with them.

'It's an opportunity for me to better myself,' says 29-year-old Ivan Murphy Jr, convicted of robbing and killing a pensioner (as in many of these cases, he alleges his co-defendant was the murderer). 'I can get out of myself, not sitting in the unit all day. I get some peace of mind at work – it keeps me from thinking about my problems.'

Through reinforced glass, another prisoner says the factory has brought him friendship and a sense of worth. 'How can anyone say I can't function within prison? I'm a reliable worker, but that means nothing in a court of law,' says William 'Billy' Mason, who has been in and out of prison – mostly in – for murder since 1974. He has almond-brown eyes and a charming demeanour. In 1991, according to his record, he killed his wife with a rock after an argument over loud ▸

FRIENDS FOR LIFE: work at Huntsville's Ellis One factory gives inmates the chance to make deep friendships

radio music and got the death sentence. Now 40, he trained as a tailor in his teens. 'It's not a question of "I have a weapon available" – it's a tool of my trade. We are tailors, making clothes.'

That comforting fantasy will only last until their execution dates are set and the prisoners are removed from the factory, about a month beforehand, 'to prepare'. They are sent to the town prison about 15 miles away; 36 hours before execution time they are put on 'death watch', where their every activity is carefully logged. Some receive a stay of execution, and are back at the machines within five days – alongside the colleagues they said goodbye to for the last time.

'They know it's coming,' says Charles Duff, the factory manager, a friendly man with a cigarette permanently between finger and thumb. 'They know more about when a man's going to get executed than we do. But it's accepted when the time comes. It's accepting, but it's kind of quiet, especially if the guy was well liked. After there has been an execution and they're lining up to be counted in the morning, someone asks for a moment of silence while they stand there.'

Unlike other death-row prisoners, who are isolated in their cells for most of the day, the factory workers form deep friendships. Here, unlike the rest of death row, whites, blacks and Latinos all mix easily together, making the sudden disappearance of the pattern-cutter or the stacker all the more painful. Tyrone Fuller, a smart, bespectacled 30-year-old who works four hours a day in the sweatshop, says he was very close to three friends who left the production line for execution. 'The way I approach it is that day I don't eat, whether I knew the person or not, because I think there should be some dignified way of marking the loss.' But despite the sudden disappearances, the see-saw between life and death, what strikes you most about the factory is the utter normality of it, and indeed some of the men say it becomes oddly like the outside world – they work hard Monday to Friday and find themselves looking forward to the weekend.

'Nobody thought it would work,' says Duff. 'At first a lot of people said it would be too dangerous; the prisoners would be uncontrollable. The scissors are razor sharp – they've got to be – and people thought it would be a big mess. But after a month it was clear the men were committed: they wanted to work.' One inmate has been working at the factory for 18 years. A similar scheme is being tried on Tennessee's death row with computer work. In the Huntsville factory, they work not for money, you understand, but for *the love of the job*. Up to 20 men volunteer for the factory every month, but the selection board only takes a few with good behaviour records. The rest are left to rot 21 hours a day in their cells.

Here is an average day for a prisoner on the death row segregation wings – those classified as the most violent and dangerous. Those who are considered by the authorities to have behaved like animals are certainly treated like animals. Breakfast is officially at the cruel and unusual hour of 3.30am (although some ex-segregation prisoners claim 3am is more like it). Recreation

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STITCHED UP: after an execution has taken place, someone asks for a moment's silence in the workshop

starts at 7am and is either three hours in an outside chicken run or an indoors room with a television, seats and a punchbag. Lunch is at 9.30 or 10am. Supper is at 3.30pm. Visits to the shower are made in handcuffs with two guards. When families come to visit (though many disown death row inmates), the men on segregation are put on wooden chairs in one of seven blue double-mesh cages and handcuffed, their relatives slightly hazy on the other side of a perspex screen.

By working in the factory, all these extra restrictions can be avoided; the men can associate freely with their friends on the wing, serve their own meals and, of course, drink endless cups of coffee at work. 'It's about not being humiliated, not being strip searched every time you leave your cell and having to lift up your genitals so the guards can look,' says Murphy. 'And you don't have to be seen by your family in handcuffs.'

The segregation cells are three storeys high, with sky blue bars topped with extra-thick metal mesh. Small objects can still be thrown, so prisoners being moved down the corridor to their cells walk with two guards behind a perspex shield to avoid attack. Gang feuds abound. 'Think about it,' says Mason, who started out on segregation like all the factory workers. 'Some days you're locked in that cage for 23 hours if they can't organise recreation properly. They feed you meals in your house on a tray. It's six by eight feet. Your toilet is two feet from your bed. There's no stool or table, so you sit on the bed to eat. You do what you can, but the smell in there has just built up over the years.'

It is a 70-degree February day on this visit, but the summer in the swampy Texas bayou must be 100 degrees of hell. In the cells, tempers fray because there is no air conditioning, but public areas like the factory and recreation rooms are cooled.

'When I was on segregation, I realised that in some way they had to prove to themselves and us that we were not even good enough for a prison environment,' says Mason. 'That's why they really try to dehumanise you on segregation. Everything you do there, every little movement out of the ordinary, is taken as a threat. You're even a threat to the society within prison.'

Captain Bill West, head of death row security, in his net and nylon baseball cap with TDC – Texas Department of Corrections – on the front, says he is still amazed by the variety of weapons created by people who have 24 hours a day to exercise their ingenuity. His haul thus far includes sharp spikes made from fencing wire, typewriter rods, plastic, wood, and even pork chop bones until the kitchen felt it safer to go boneless. 'There are feuds. A lot of them have a lot of enemies; there are dozens of gang members here.' Last October, one death-row prisoner was stabbed in the throat with a long metal spike. His attacker, also on death row, was thought to have cut a hole in the chain fence adjoining their outdoor recreation yards, attacked, and then thrown the weapon to another inmate.

In contrast, the 120 inmates who work on the factory save Captain West a great deal of trouble. He needs far fewer guards for them, and trouble is rare. There have been four inmate fights in the seven years of the factory's existence. No weapons were used, no blood was drawn, and three were broken up by other prisoners. 'These inmates want to work, they want the little privileges. And they do good work. They're manageable. They put pressure on each other because they don't want to lose this programme,' says Captain West.

When their appeals come up some prisoners elect to leave the factory – and lose their privileges – so they can dedicate the whole day to legal work. Textbooks abound, and there is much legal talk in the clothing factory. The men are experts on seams, darts, the Supreme Court and habeas corpus appeals. They have to know the law. ▸

F. CARTER SMITH

SELF IMPROVEMENT: 'It's about not being humiliated'

because there is no legal aid after the first appeal against the death penalty; *pro bono* attorneys are rare, and often an execution date is set without the prisoner having any legal representation.

Fuller found himself with an execution date set for 25 January this year, without a lawyer to appeal it. He managed to get organised five days before he was due to die, and the date was postponed. The chaplain had already been to speak to him. 'I wrote a last letter to my family to let them know everything I'd done in life, instances of when I'd done right, and when I'd done wrong.' Fuller admits he committed various burglaries, and stole credit cards, but he claims he is innocent of the crime of which he was accused – rape and murder of a hospital assistant during a robbery at her apartment. Certainly, he was present during the attack, but his record notes that one of his co-burglars reportedly received a life sentence as part of a plea bargain. Fuller claims he has been offered a life sentence, but he refuses to plead guilty to the murder and rape charges.

Understandably, with unreliable witnesses and layers of appeals which may take up to 10 years, few lawyers are willing to take on death row legal work. At the same time, sentencing is speeding up. Why does Texas, of all states, see so much capital punishment? A spokeswoman for legal aid says, 'We've all wondered that. Maybe it's just a big state. Maybe it's the combination of the frontier and southern mentality. Whatever it is, judges in every district can set execution dates, and we're often trying to fight three on one day without the lawyers to cover.' The National Coalition Against the Death Penalty has singled out Texas for a special campaign. Last year, the US House Subcommittee on Civil and Constitutional Rights issued a report on the death penalty which noted that over the past 20 years, 48 people nationally have been released from death row because appeal courts found them innocent. In the Huntsville factory alone, 37 men have had their sentences commuted to life. Even though critics complain that a few of the releases have been on technical grounds, or due to legal loopholes, the committee's declaration that the justice system has 'failed to offer sufficient safeguards' seems reasonable. If 48 were released, how many innocent people stayed behind to die?

Innocent or guilty, the efficient, production-line attitude towards an act of sheer barbarism is chilling. The men are sent to die in the Walls Unit, originally built for Civil War prisoners, in downtown Huntsville. The redbrick building opposite the Dairy Queen milk bar looks like a school apart from the rifle towers on the corners, and the huge white clock on the front. Executions are in the early hours of the morning. The men wait out their last minutes in one of the eight cells adjoining the death chamber. The bars are painted Day-Glo orange. The cells are double locked. Behind a metal door at the end is a hospital trolley bolted to a white pedestal on the floor. Fat, tan leather straps lie across the padded bed.

On these mornings when a man's arm receives the slow intravenous drip of death, the tailors' sewing machines are silent for one minute at the start of the shift. Then they whirr again. □

511 Excell White
524 Walter Bell
533 Kenneth Granviel
538 Edwin E. Corley
539 Ronald Chambers
541 Raymond Riles
550 Sammie Felder
552 Billy J. Woods
556 Billy G. Hughes Jr.
560 Jim Vanderbilt
572 James Demouchette
575 Pedro Muniz
577 Harvey Earvin
580 Joseph Faulder
587 Anthony L. Pierce
590 Samuel G. Hawkins
591 Clarence Lackey
600 Kerry Max Cook
603 Paul Rougeau
609 Clarence Jordan
612 David Powell
615 Jack Harry Smith
616 Emmitte Holloway
626 John Fearence Jr.
633 Carl Johnson
634 Joseph J. Cannon
636 Arturo Aranda
637 Curtis P. Harris
638 D.L. Vigneault Jr.
639 Edward Payne Jr.
640 Larry W. White
641 Charles County
642 Jonathan Reed
647 Jeffery L. Griffen
649 Cesar R. Fierro
651 John Satterwhite
652 John M. Selvage
653 Roger L. Degarmo
654 Johnny P. Penry
658 Clifton Russel
660 Jerry L. Hogue
663 Bobby J. Moore
664 Darryl E. Stewart
665 Pamela L. Perillo
668 Warren E. Bridge
669 James Session
671 Delma Banks
673 Danny L. Barber
674 Noble D. Mays Jr.
675 Kenneth D. Dunn
676 Andrew Mitchell
677 Willie Williams
679 David A. Gardner
683 Harold A. Barnard
684 Alan W. Janecka
685 Max A. Sofar
688 Carl E. Kelly
689 James R. Meanes
691 Miguel Richardson
694 Markhum Duff-Smith
695 Carlos Santana
696 Gary L. Graham
698 Steven Nethery
699 Joseph P. Jernigan
700 Antonio Bonham
702 Leonal T. Herrera
703 Michael Goodman
704 Caruthers Alexander
705 Fletcher T. Mann
706 George Cordova
708 Robert A. Carter
709 Joseph P. Nichols
710 Danny D. Thomas
711 James M. Briddle
715 Herman Clark Jr.
717 Bruce E. Callins
719 David McKay
720 Wayne East
721 Charles Rector
722 Walter K. Williams
723 Clifford Phillips
724 Johnny Pyles
725 Maurice Andrews
727 Ricardo A. Guerra
728 Donald A. Miller
731 Robert W. West Jr.
733 Larry N. Anderson
734 John Michael Lamb
735 Manuel J. Perez
736 Arthur L. Williams
737 Raymon Montoya
740 Michael E. Sharp
741 James Moreland
742 John C. Sawyers
745 Harold J. Lane
747 James Ross
748 Larry K. Robison
751 Billy C. Gardner
653 Ricky E. Morrow
755 Robert N. Drew
756 Richard Wilkerson
757 James Wyle III
758 Calvin J. Burdine
760 Kenneth E. Gentry
761 Curtis L. Johnson
762 Jewel R. McGee
764 Lester L. Bower
768 Raymond D. Martinez
770 David Castillo
771 Frederico M. Macias
772 Kenneth R. Ransom
773 David W. Spence
776 Mario Marquez
777 Karla Faye Tucker
778 Pedro S. Sosa
779 Daniel R. Garrett
780 Willie M. Modden
781 Randall Dale Mayo
785 James L. Beathard
786 James C.L. Davis
787 Bonnie B. Erwin
788 William H. Little
789 Jeffery D. Motley
790 Robert M. Purtell
792 Muneer Deeb
793 Antonio Barrientes
794 Terry N. Sterling
795 Bobby Wills
796 Emile P. Duhamel
797 Anthony Westley
798 Davis Lozada
799 Henry Lee Lucas
800 Gene Hathorn
802 Charlie Livingston
803 Denton A. Crank
804 Ruben Cantu
805 Norman E. Green
806 Toby L. Williams
807 Rodolfo Hernandez
808 Raymond Kinnamon
810 Betty Lou Beets
811 David DeBlanc
812 Baby Ray Bennett
813 William Robinson
814 Mariano Rosales
815 Richard Foster
816 Patrick Rogers
817 Ramon Mata Jr.
818 Ronald Allridge
820 David Holland Sr.
821 Tommy R. Jackson
822 Robert Madden
823 James Roy Knox
835 David E. Gibbs
826 Randall Hafdahl Sr.
827 David Ray Harris
828 Rogelio Hernandez
830 Jeff Emery
831 Troy Dale Farris
832 Kavin Lincecum
833 Jackie W. Upton
834 Thomas J. Miller-El
835 Johnny R. Carter
836 John Dee Matson Jr.
837 Juan S. Soria
838 Gerald D. Mitchell
839 Johnny James
840 William Kitchens
841 Clifton Belyeu
842 Lesley L. Gosch
843 Aua Lauti
844 John K. Barefield
845 Angel Rivera
846 Richard D. Drinkard
847 Irineo Montoya
848 Freddie J. Webb Sr.
849 Delbert Teague Jr.

TEXAS DEATH ROW INMATE LIST BY NUMBER (OVER)

850 Dorsie Johnson Jr.
851 Michael L. Riley
853 Benjamin Boyle
854 John W. Cockrum
855 Ernest Baldree
856 Willie Washington
857 Vernon Sattiewhite
858 Carlos Ramirez
859 José A. Moreno
860 Robert J. Tennard
861 John W. Elliott
862 David M. Long
863 Esequel Banda
864 James Lee Gunter
865 Karl Hammond
866 David Lee Lewis
867 James D. Richardson
868 Nelson Mooney
869 Kenneth D. Thomas
870 James V. Allridge
871 Kenneth W. First
872 Jesse D. Jacobs
873 Michael Norris
875 Jerry McFadden
876 Bruce C. Jacobs
877 Andre A. Lewis
878 Martin Draughon
879 Alvin U. Goodwin
880 Carl Napier
881 Ernest Ray Willis
882 Richard W. Jones
883 Tony Rice
884 Terry Washington
885 Jonathan Nobles
886 Brian K. Roberson
887 Holt Boggess
888 Alvin Wayne Crane
889 Roger McGowen
890 Michael W. Richards
891 Charles A. Boyd
892 David Stoker
893 Ricky Don Blackmon
894 Thomas Ellason
895 Jesel Turner
896 Mark Fronckiewicz
897 James J. Wilkens Jr.
898 Eddie J. Johnson
899 Richard Brimmage Jr.
900 Monty Allen Delk
901 Kenneth B. Harris
902 Orien C. Joiner
903 Michael L. McBride
904 Hai K. Voung
905 James O. Earhart
906 Ted Calvin Cole
907 Alberto Valdez
908 José DeLa Cruz
909 Emanuel Kemp
910 Syed M. Rabbani
912 Cornelius Goss
913 Marlin Nelson
914 Earl R. Behringer
915 Damon J. Richardson
916 Richard Beavers
917 Michael Lockhart
918 Anthony Cook
919 Michael Jones
920 Pedro Miniel
921 James Clayton
922 Francis Newman
923 Leopoldo Narvaiz
924 Dominga Cantu
925 Steven Butler
926 Bernard Amos
927 Vincent Cooks
928 Warren Rivers
929 Timothy Gribble
930 David Hicks
931 Gary Sterling
932 Martin Vega
933 John Moody
934 Tyrone Fuller
935 Willis Barnes
936 Emerson E. Rudd
937 Noe Beltran
938 Jeffery Caldwell
939 Preston Hughes
940 Dwight Adanandus
941 Charles Mines Jr.
942 Anibal G. Rousseau
943 Michael Blue
944 Javier Medina
945 Gilbert Urbano
946 Deryl Madison
947 Garry Miller
948 Guy Alexander
949 John Albert Burks
950 Francisco Cardenas
951 Joe Rios Jr.
952 Jeffery Tucker
953 Charles Smith
954 Oliver David Cruz
955 Peter Nelson
956 Robert Jennings
957 Jackie Nelson
958 Fernando Garcia
959 Raymond Jones
960 William Chappell
961 Mack O. Hill
962 Juan Hernandez
963 Frank McFarland
964 Aaron Fuller
965 Granville Riddle
966 Gayland Bradford
967 Leo Jenkins
968 Clydell Coleman
969 Daniel Corwin
970 José Gutierrez
971 Jesse Gutierrez
972 Genaro Camacho
973 Rulford Aldridge
974 Roy G. Smith
975 Jesse Patrick
976 Billie W. Coble
977 Kevin Zimmerman
978 Adolph Hernandez
979 Craig Ogan Jr.
980 Claude Jones
981 Daniel Hittle
982 Charles D. Hood
983 Miguel Flores
984 Ricky Lee Green
985 Hector Garcia
986 Gary Etheridge
987 Jermarr Arnold
988 John Yarborough
989 Ivan Murphy
990 Robert Lookinbill
991 Jesus Munoz
992 Mark Robertson
993 Carl W. Buntion
994 Jack Clark
995 Larry McPherson
996 Mauro Barraza
997 James Bigby
998 O'Dell Barnes Jr.
999 Andrew Cantu
1000 Brent Brewer
1001 James R. Powell
1002 Lionel Rodriguez
1003 David Herman
1004 Eric Moore
1005 Dale Sigler
1006 Steven Staley
1007 LaRoyce Smith
1008 Jessy San Miguel
1009 Tony Chambers
1010 Gregory Summers
1011 Ponchai Wilkerson
1012 Alvin Kelly
1013 Gerald Casey
1014 David Heiselbetz
1015 David L. Goff
1016 Charles Sonion
1017 Billy Nelson
1018 Gustavo J. Garcia
1019 Shelton Jones
1020 Daryl K. Wheatfall
1021 Johnny Rey
1022 Richard Dinkins
1023 Kenneth E. Bruce
1024 Kenneth R. Clark
1025 Bobby L. Hines
1026 Miguel A. Martinez
1027 John A. Alba
1028
1029 Roger D. Vaughn

TAKING LIVES: THE DEATH PENALTY

Huntsville enshrines Ol' Sparky, embraces prisons

BY JAMES ROWEN
of the Journal Sentinel staff

Huntsville, Texas — The men and women of this small town are quite pro-prison.

Little wonder: The eight prisons and the administrative offices of the Texas Department of Criminal Justice in this East Texas county seat provide more than 6,000 jobs. And the ubiquitous, gray-suited prison guards buying gas and groceries offer Huntsville a sense of security.

Some residents, however, acknowledge that there's a downside to the prison staff and to the 10,000 inmates often seen working at trusty jobs near the prisons or riding through town in fleets of white prison trucks.

But even Huntsville's status as execution capital of the world has an upside for local boosters: This town of 27,925 has learned that prisons bring tourists.

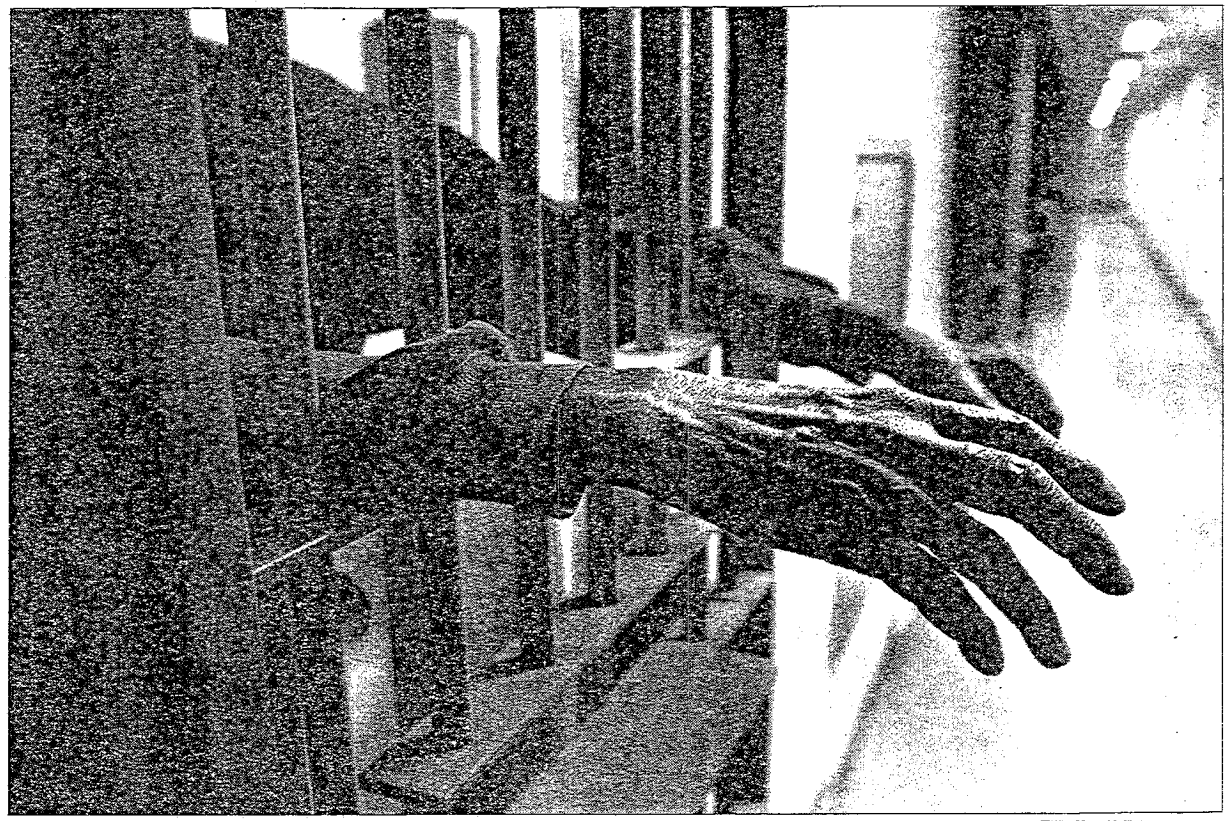
At the core of Huntsville's unique image are two basic facts: Texas leads the nation in executions, and every one takes place at The Walls unit in the heart of Huntsville, about three blocks from the Walker County Courthouse Square downtown.

"We had 21,000 people through here last year," said the receptionist at the Huntsville-Walker County Chamber of Commerce office, about a half-mile from The Walls. "And you'd be surprised at how many ask, 'Where are the prisons?' "

One tourist brochure offers a four-page "Prison Driving Tour," complete with a map, prison descriptions and trivia, such as: "Youngest inmate was a 9-year-old boy sentenced in 1884 for robbery."

Another glossy booklet had color snapshots of several tourist attractions, including The Walls, with this teaser:

"Excite your senses. Huntsville is famous for its *Texas Prison System*. You can still hear the 'prisoner-count' whistle blow every day. No one should leave without visiting the *Prison Museum*, home of the original electric chair, Ol' Sparky."



ERWIN GEBHARD/STAFF PHOTOGRAPHER

The hands of West Cole, 70, rest on his death row cell at Parchman State Penitentiary in Mississippi. Cole, convicted in 1983 in the murder of a small-town grocer, is the oldest inmate on Mississippi's death row.

JOURNAL-SENTINEL
Milwaukee, WI
5-4-1995

The Texas Thunderbolt

The museum is tucked between a shoe shop and a jewelry store across the street from the courthouse.

The storefront museum, which is privately run, displays dozens of photographs, prison uniforms, items from the prison farms and factories, prisoner-made arts and crafts, contraband weapons and Bonnie and Clyde's rifles. Admission is $2.

And the museum centerpiece, "Ol' Sparky," is also known as "The Texas Thunderbolt."

Ol' Sparky is an highly polished oversized oak chair, a killing machine complete with its metal skullcap and electrode bolted in place. It was built by a condemned prisoner later reprieved. Ol' Sparky is now retired, enshrined under bright lights in a glassed-in viewing room.

"It was used to kill 361 men," said Mary McClain, the museum manager.

McClain said she and most other Texas residents had long supported capital punishment.

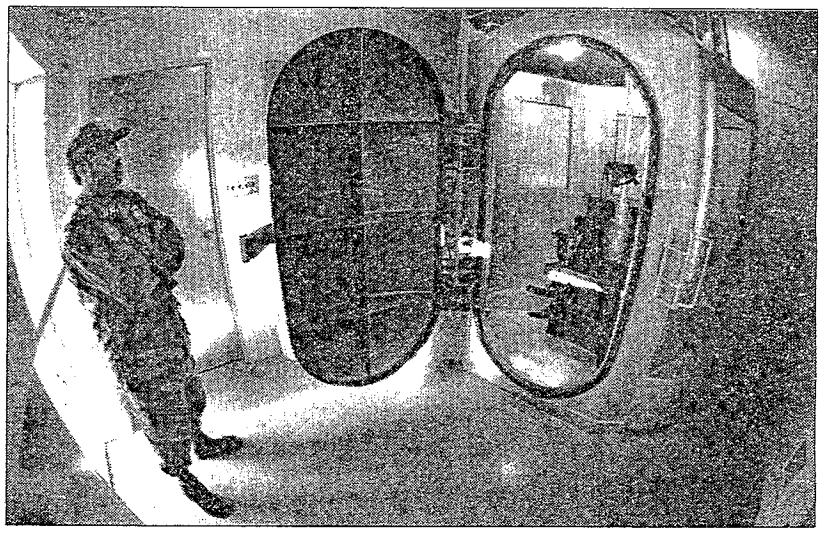
"Texans are pretty vocal," she said. "We're fed up with the criminal element."

But McClain didn't want Huntsville misunderstood.

"We're not a hard-hearted town," she said. "It's just the way it is."

William Green, mayor of Huntsville, talks up the town's close ties to the legacy of former resident and legend Sam Houston, whose grave is here. The town's No. 2 employer, Sam Houston State University, is named after him.

"There are a lot of fine people here," Green said.



ERWIN GEBHARD/STAFF PHOTOGRAPHER

Mississippi's gas chamber at Parchman State Penitentiary, dormant since 1989, has been used 35 times since its installation in 1954. Cyanide pellets are mixed with acid in a bowl below the chair in which the inmate is strapped. The pellets create a poisonous vapor, which suffocates the sealed-in inmate. The vapor must be hosed off with water and chemicals before the body is retrieved by guards, who wear protective clothing and oxygen tanks to prevent coming into contact with lethal residue. A 1987 full-dress rehearsal to test the execution procedure nearly killed then-Parchman warden Don Cabana and six prison employees when real cyanide pellets accidentally fell into a bowl with acid, Cabana said. "It's very, very antiquated . . . very dangerous," said Barry Parker, Parchman security chief. Officials said a new lethal injection system for recently convicted murderers had yet to be used, and five inmates are still eligible for execution in the gas chamber.

Just a Job

Just a few hours after Texas prison authorities put Clifton Russell and Willie Williams to death on the last day of January, a waitress running the cash register at the downtown Texas Cafe quietly grumbled that capital punishment gave Huntsville a bad name.

She would not give her name, and she advised against interviewing the breakfast crowd, many of whom worked at area prisons, including The Walls unit.

"To them it's a job," she said. "They don't want to talk about it. Not today."

The woman said she wished the executions took place elsewhere.

Brister

But Keith Brister, pastor at Huntsville's historic First Baptist Church, wanted a visitor to know that Huntsville had made its peace with The Walls unit.

Tall and prematurely gray, the gracious 37-year-old Brister said that like most local residents, he had chosen not to dwell on the executions.

"They don't want to think about it," Brister said. "I don't want to hear about it."

He said he did not minister to inmates at The Walls and had never set foot inside its doors, even though its brick exterior came to within a block of the church.

"So many of our people work in the (prison) system, there's not a whole lot of compassion for the inmate in this community," he explained.

Even though he was troubled by capital punishment, and did not think it deterred crime, Brister said he had never delivered a sermon on the death penalty.

"I'm not going to change their minds with my opinion," he said. "I don't think it's an issue at all in this community."

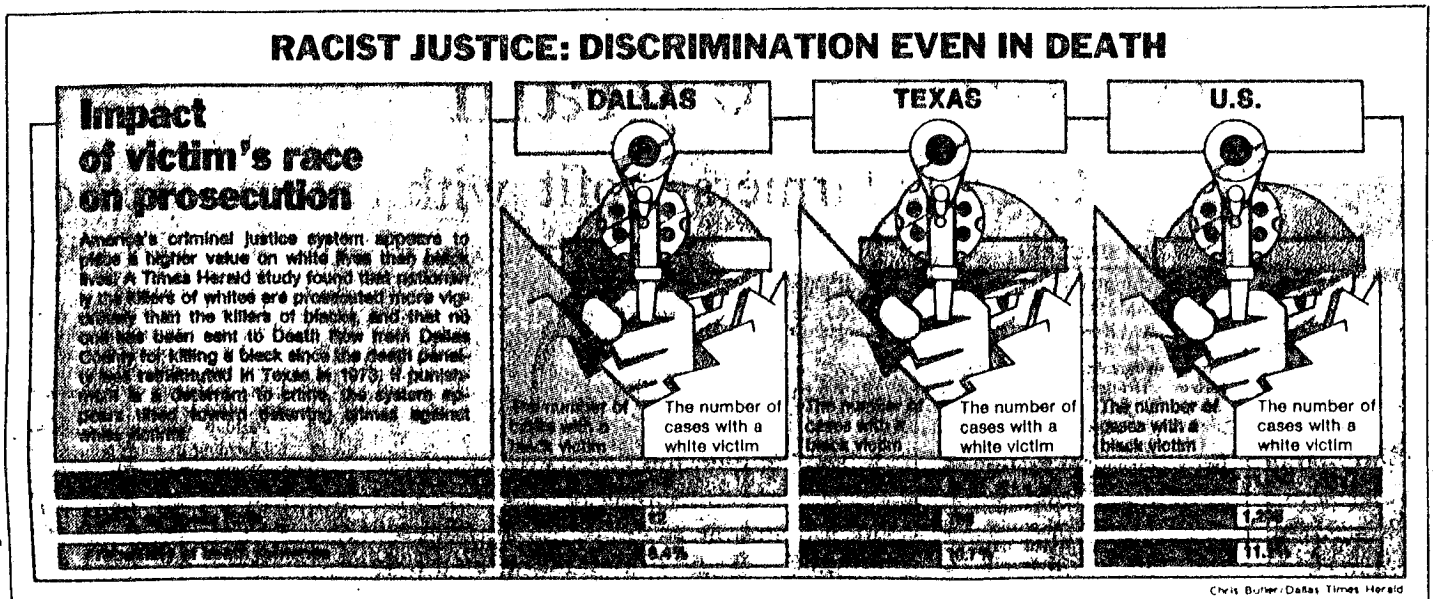
ERWIN GEBHARD/STAFF PHOTOGRAPHER

The retired Texas electric chair, "Ol Sparky," is on display at the Texas Prison Museum in downtown Huntsville, Texas.

Dallas Times Herald

SUNDAY, NOVEMBER 17, 1985 12 Sections 75 Cents

RACIST JUSTICE: DISCRIMINATION EVEN IN DEATH

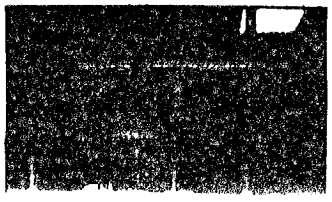


Chris Butler/Dallas Times Herald

Killers of Dallas blacks escape the death penalty

By JIM HENDERSON and JACK TAYLOR
Staff Writers

In the late summer of 1977, Stanley [illegible], a 16-year-old black man, [illegible] a house on Adelaid Drive in Dallas and beat the occupant to death with a hammer. The victim was Ulyss



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Dallas and beat the occupant to death with a hammer. The victim was Uhlee Charles Rogers, a 70-year-old white man.

Burks was charged with capital murder, indicted, tried and convicted of capital murder, and sentenced to die for his crime.

The condemnation of Burks was an increasingly common denouement to an increasingly common occurrence. Violent deed, violent reproof.

Criminologists refer to punishment as a "sanction for crime," retribution as a measure of intolerance. But America's criminal justice system is not always so intolerant.

In the nine years since the Supreme Court allowed executions to resume in the United States, there has been mounting evidence that a subliminal racism still influences the life-and-death decisions that flow from the nation's courthouses.

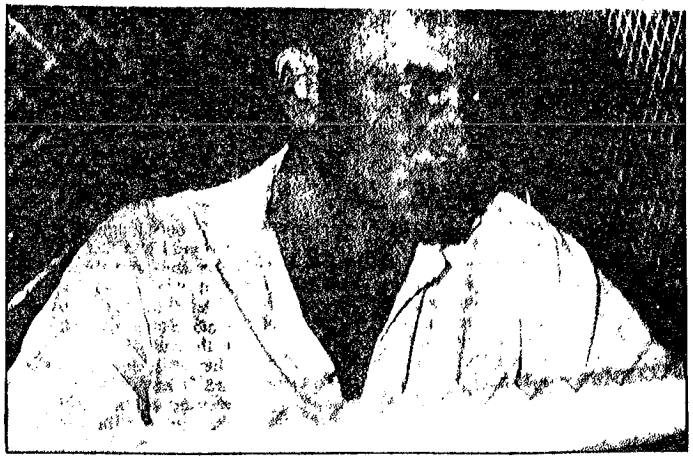
Burks got death for killing a white victim. When the victim is black, the system usually imposes a far lesser sanction.

In the spring of 1980, two Dallas police officers on a routine patrol smelled a peculiar odor coming from some weeds in a Pleasant Grove park. In the weeds, they found the body of Marion Vance Kirby, a 26-year-old man. His hands and feet had been bound and his body was wrapped in a pink blanket. He had been stabbed to death in the back.

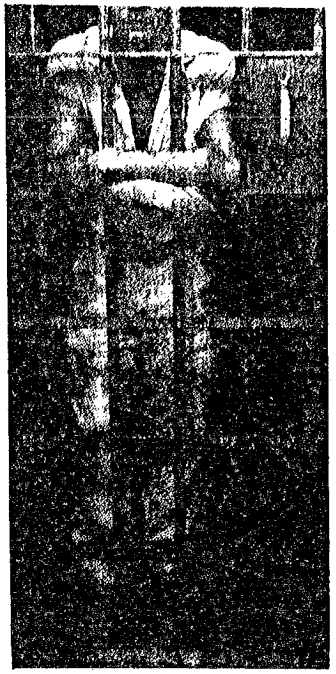
Four days later, 25-year-old Frank Thorpe, who is also black, was arrested in Des Moines, Iowa. He was driving Kirby's car and was carrying Kirby's wallet.

Like Burks, Thorpe had committed murder during another felony — robbery. His offense, like Burks', qualified him for the death penalty under Texas law.

Police charged him with capital murder, but he eventually was indicted on a second-degree murder charge and plea-bargained for a two-year prison sentence. His victim was black.



John Keeling/Dallas Times Herald



Two Dallas killers: One who'll die, one who won't

Jonathan Bruce Reed, above, was sentenced to death for the 1978 rape and murder of a Braniff flight attendant. Michael Dale Ferguson, right, was sentenced to only 30 years for killing a gas station attendant and expects to be paroled in 1993.

Originally, both were charged with capital murder, but Dallas prosecutors reduced the charge against Ferguson to simple murder.

Reed's victim was white; Ferguson's black. **Case studies, Page 16-A.**

A Times Herald survey of capital murder and capital punishment in the United States for the past eight years shows that a death sentence is still a random punishment and appears to be reserved largely for the killers of whites.

New state laws, enacted in response to a 1972 Supreme Court decision that struck down capital punishment laws in 42 states as arbitrary and discriminatory partly because they were used disproportionately against black defendants, greatly restricted the application of the death penalty but did not remove a racial bias that can be detected statistically.

The Times Herald's study, the first nationwide survey focusing on the race of the victim, found that the killers of whites are prosecuted more vigorously than the killers of blacks and are being put to death at 11 times the rate of those who kill blacks.

In Maryland, for example, the killer of a white is eight times more likely to receive the death penalty than the killer of a black. In Arkansas, the likelihood is six times greater. In Texas, five times greater. In Dallas, the district attorney has not sought the death penalty in the murder of a black since the new statute was enacted in 1973, but has sent 27 killers of whites to Death Row.

Nationally, experience shows that the killer of a white is nearly three times more likely to be sentenced to death than the killer of a black in the 32 states where the death penalty has been imposed.

A comparison of the capital murders committed in those states and the sentencing patterns reveals that the killer of a white has an 11.1 percent chance

See DALLAS on Page 16

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Colombians panic, fear more eruptions

RACIST JUSTICE: DISCRIMINATION EVEN IN DEATH

Dallas murders of minorities draw lighter sentences

DALLAS — From Page One

of reaching Death Row. For the killer of a black, the chance is 4.5 percent.

"The pattern is well-documented, statistically and anecdotally," says Julian Epstein, an aide to Michigan Rep. John Conyers, an ardent capital punishment opponent. "It has always been discriminatory, always been arbitrary. Last October, a black man was executed in Louisiana for murdering a white store owner (during a robbery). About the same time, in the same parish, three white men were given 75-year sentences for the rape and dismemberment of a black teenager.

"If there's any pattern in the process, race is the only pattern that can be distinguished."

Most capital murders involve killers and victims of the same race. But when the crime is interracial, even greater disparities exist in the sentencing. In Texas, for example, a white is 12 times more likely to get the death penalty for killing another white than for killing a black.

The Times Herald study examined the race of the killer and the victim in capital murders from January 1977 through December 1984 in states that are imposing the death sentence. The crimes were compared with the racial patterns of death sentences in those states. Hispanics were counted as "white" because that is the way they were recorded in FBI data before 1980.

The survey identified 11,425 cap-

Similar crimes, motives, and violence: different punishment

Dallas County's criminal justice system exacts no uniform payment for the debts owed to it. Some killers may die for their crimes. Others will soon be paroled.

Statistics point to a latent bias in the system, a bias that leads to harsher punishment for the killers of whites than for the killers of blacks. No two crimes are identical, and other factors come into play, but race appears to be the most consistent characteristic for distinguishing one case from another.

Under Texas law, all of the following murders were committed in circumstances that could have landed the killers on Death Row. Three with white victims are awaiting execution. Three with black victims are serving time.

Two robberies

Case 1

Larry Smith

■ **The crime:** On Feb. 3, 1978, Michael Dean Mason, 26, was the night clerk at a 7-Eleven store at 1004 W. Camp Wisdom Road. At 3:15 a.m., two men wearing ski masks and carrying small caliber pistols robbed the store, taking the cash tray and its contents.

Mason apparently offered no resistance, and the two men left the store. Suddenly, one of them returned and shot Mason once in the back, just below the left shoulder blade. Mason died 30 minutes later.

■ **The charge:** Capital murder. Property taken and value: One human life; $234.02 in U.S. currency and $65 in food stamps.

The gunman was later identified as Larry Smith, 22, of 1614 East Woodin St.

■ **Prosecution:** On Sept. 22, 1978, after a lengthy jury trial, Smith was found guilty of the capital murder charges brought against him.

■ **The sentence:** The jury that had found Smith guilty sentenced him to die for the murder.

The victim was white.

Case 2

Michael Dale Ferguson

■ **The crime:** January 15, 1983, was supposed to have been Ricky Carroll's day off from his job at a Shell gas station at 17088 Preston Road. Instead, another attendant called in sick and Carroll, 18, agreed to work the overnight shift.

A few minutes before 4 a.m., he was found lying on his back in shrubbery beside a sidewalk near the gas station, shot three times in the chest and once in the stomach.

Michael Dale Ferguson, also 18, was arrested for the robbery-murder. The police prosecution report — the formal filing of charges with the district attorney's office — was terse and familiar.

■ **The charge:** Capital murder. Property taken and value: One human life; $43 in U.S. currency.

■ **Prosecution:** On Feb. 2, 1983, Ferguson was indicted on a reduced charge of non-capital murder, a charge to which Ferguson pleaded guilty six months later.

■ **The sentence:** Ferguson was sentenced to 30 years in prison. He will be eligible for parole in 1993.

The victim was black.

was originally indicted on a charge of capital murder. Later, the charge was reduced to first-degree murder and a jury sentenced him to life in prison.

James Daniel Nelson, a 27-year-old black man, was charged with capital murder in the June 1980 slaying of another black man, 20-year-old Christopher Johnson, at Johnson's home on Grand Avenue. A witness heard Nelson demand Johnson's wallet just before shooting him with a shotgun. A grand jury reduced the charge to first-degree murder and Nelson pleaded guilty. He received a five-year prison sentence.

In those two examples of relatively routine robbery and burglary homicides — routine in the sense that they involved lone offenders and lone victims and there was little to distinguish them from dozens of similar crimes — the one with a white victim resulted in a life sentence and the one with a black victim resulted in a five-year prison term.

Not all defense lawyers believe, however, that the system is discriminatory.

"It (race) is not a factor," says Mel Bruder, a veteran of many capital cases. "It is almost irrelevant. To say that there is no basis for selecting people for capital punishment requires shutting your eyes to reality."

Bruder argues that Texas' 9-year-old death penalty statute, which restricts the circumstances under which capital punishment may be sought, has "eliminated the possibility of arbitrariness" by narrowing

because that is the way they were recorded in FBI data before 1980.

The survey identified 11,425 capital murders involving white victims and 4,748 with black victims.

Of the current Death Row inmates whose crimes were committed during that period, 1,265 had white victims and 212 had black victims.

Therefore, the killers of whites had an 11.1 percent chance of being sentenced to death and the killers of blacks had a 4.5 percent chance.

Ultimately, the criminal justice system measures society's horror of various crimes not only by the punishment demanded for them, but by the vigor with which retribution is sought.

The statistics suggest that throughout the system — from district attorneys and grand juries to the courts and trial juries — there is evidence of greater public horror when the murder victim is white.

Of the capital murders identified during the eight-year period, 30.0 percent involved black victims. But only 14.4 percent of the Death Row inmates were killers of blacks. Seventy percent were white-victim murders, but 85.6 percent of the inmates were killers of whites.

The killers of blacks, then, are being punished at less than half the rate at which black-victim crimes occur, while the killers of whites are punished at a rate that is 15 percentage points above the white-victim crime rate.

"What we've got to do is rechallenge the issue of capriciousness and discrimination," Conyers said. "The '72 decision, in which the Supreme Court struck down capital punishment as arbitrary, really hasn't changed anything. There has just been a fast shuffle in the law. The same terrible things are still happening."

In only seven of the 32 states that have imposed the death penalty does the race of the victim appear to have no influence on the odds of getting the death penalty. Colorado, Delaware and Nevada had so few capital murders and such small Death Row populations

■ **The sentence:** The jury that had found Smith guilty sentenced him to die for the murder.

The victim was white.

Two burglaries

Case 1

John Fearance Jr.

■ **The crime:** Shortly after 2 a.m on Feb. 23, 1977, Dallas police responded to a burglary report at 6935 Santa Fe Ave. When they arrived, they found the occupant, 32-year-old Larry Faircloth, in critical condition.

He had been stabbed several times in the chest by an intruder he had caught burglarizing his home.

Based on physical evidence at the scene and the testimony of witnesses, police arrested 23-year-old John Fearance Jr. At first he was charged with attempted capital murder. Then Faircloth died from the stab wounds.

■ **The charge:** Capital murder.

■ **Prosecution:** Fearance, who had previously been arrested for robbery, was represented by a court-appointed attorney. In June of 1978, he went to trial and was ultimately found guilty.

■ **The sentence:** Fearance was sentenced to death and awaits his punishment on Death Row in the State Penitentiary at Huntsville.

The victim was white.

Case 2

■ **The crime:** At 3:30 p.m. on Jan. 27, 1983, Jackie Patrick, 29, telephoned a friend from her home at 6120 Concerto Lane and told him some "girls and some guys from across the street are trying to break in." The friend called the police, who did not respond for more than 30 minutes. When they reached the house, they found Patrick lying in a pool of blood on the kitchen floor.

She had been stabbed to death and her house, which she shared with her mother, had been ransacked.

Patrick had graduated from Bishop College and taught biology and coached track at Lincoln High School before beginning a new career selling mail order jewelry. Early in 1983, she had been making plans to move out of her Oak Cliff neighborhood, where burglary and vandalism were increasing.

After she was found dead, witnesses from a house across the street told police that Gerald Leon Higgins, 22, and Ronnie Louis Jones, 22, had gone to Jackie Patrick's house, armed with knives, screwdrivers and wrenches, to break in and had returned fifteen minutes later with blood on their clothing.

■ **The charge:** Capital murder.

■ **Prosecution:** A grand jury reduced the charges against Jones to second degree murder, and Higgins was allowed to plead guilty to a lesser charge, too.

■ **The sentence:** Ferguson was sentenced [illegible] will be eligible for parole in 1993.

The victim was black.

Two rapes

Case 1

Jonathan Bruce Reed

■ **The crime:** In the middle of the day in the middle of the week, Jonathan Bruce Reed raped and killed Wanda Jean Waddle, an airline flight attendant, in the bedroom of her apartment at 7222 Fair Oaks Ave. He bound her hands with telephone cord, slashed her breast and abdomen with a knife and strangled her with a bedsheet and a plastic bag.

Reed, 27, was still in the apartment when Waddle's roommate returned home from work. He also assaulted the roommate, strangling her with a belt and leaving her for dead after taking $20 from her purse. She lived to testify against him.

He was arrested six weeks later, on Dec. 16, 1978.

■ **The charge:** Capital murder.

■ **Prosecution:** Jonathan Bruce Reed was tried on charges of capital murder and was found guilty as charged.

■ **The sentence:** On Jan. 3, 1979, the jury sentenced Reed to death.

The victim was white.

Case 2

■ **The crime:** Some neighbors watched as 83-year-old Emma McKee was assaulted by a young man in her home on Lawrence Street in April of 1982. One finally called police, who found the woman dead in her bedroom. Her gown had been pulled above her waist and, according to a police prosecution report, she had been raped.

"I had been trying to get her to move down here and stay with me," says Lucille Daniel of Kilgore, the murder victim's daughter. "But she didn't like East Texas. She wanted to stay in Dallas."

McKee had grandchildren in Dallas and had close friends in the neighborhood. Despite her age, she was content to live alone.

She was alone the night Kenneth Ray Briscoe burglarized her house.

Neighbors told police they had seen an assailant drag McKee through her house, into the back yard and into the house again, beating her with his fists. She died from the beating. A screen torn from a side window indicated that Brisco had broken into the house.

■ **The charge:** Murder. Although the murder involved a rape and possibly a burglary, police did not file capital murder charges.

■ **Prosecution:** Briscoe eventually was tried for burglary of a habitat.

■ **The sentence:** Because Briscoe was a three-time loser, he

sought, has "eliminated the possibility of arbitrariness" by narrowing the death punishment process to a small pool of cases most worthy of it.

"What has evolved is a highly selective process that is incredibly constitutional," he says. "Being very selective means you are not being arbitrary."

The Dallas County district attorney's office is widely known for its selectivity in pursuing the death penalty and claims a perfect conviction rate. Out of the 198 capital murder cases filed by the Dallas Police Department from 1977 thru 1984, 12 cases were prosecuted and 12 convictions were obtained — all resulting in death sentences.

"We have never asked for the death penalty that the jury didn't give it," District Attorney Henry Wade says.

In part, Wade says, the selection process is governed by the time and expense associated with a capital murder case, as well as the circumstances of the case, the credibility of the witnesses and the background of defendants.

Too, there is a reluctance of prosecutors to try cases they perceive as risky.

"We can tell pretty well what a jury will do. If there is any weakness in a case ... if a witness has a criminal record or may be lying, we don't go for it (the death penalty)," Wade says. "A jury is trying to find a reason not to give death. I don't think there is any situation where we wouldn't ask for death because the defendant or the victim is black."

Wade says some cases involving minorities are simply more difficult to prosecute. Black-victim cases are not necessarily among them, he says.

"We get testimony of blacks rather freely," he says. "The Mexican-American cases are the most difficult to try. We have more trouble getting (Mexican-American) witnesses to testify. Some of them (witnesses) are illegals, and we can't find them."

Defense laywers who have observed Wade's prosecution practices

odds of getting the death penalty. Colorado, Delaware and Nevada had so few capital murders and such small Death Row populations that they are almost statistically insignificant. New Jersey, North Carolina, Ohio and Pennsylvania had substantial numbers of capital murders and sizable Death Rows, but there was little disparity in sentencing in those states — either in the chances of receiving the death penalty or in the proportions of convictions in each victim-race category.

In each of the other 25 states, however, the pattern was consistent.

■ **The charge:** Capital murder.
■ **Prosecution:** A grand jury reduced the charges against Jones to second degree murder, and Higgins was allowed to plead guilty to a lesser charge, too.
■ **The sentence:** Jones was sentenced by a jury to 60 years in prison. Higgins plea-bargained for an eight-year sentence and was released on parole last month.

The slain woman's mother, Louise Patrick, who still lives in the house on Concerto Lane, says she still doesn't know why her daughter's killer did not receive harsher punishment. "I still don't know," she says. "I guess I'll never know."

The victim was black.

■ **The charge:** Murder. Although the murder involved a rape and possibly a burglary, police did not file capital murder charges.
■ **Prosecution:** Briscoe eventually was tried for burglary of a habitat.
■ **The sentence:** Because Briscoe was a three-time loser, he was sentenced to life in prison under the Texas habitual offender statute.

Lucille Daniel never understood why her mother's killer did not receive the death penalty.

"I thought he should have," she says, "but, you know, the laws are not really like they're supposed to be."

The victim was black.

Kelly Frankpay / Dallas Times Herald

Life and Death In Dallas

Killing a white in Dallas can be punishable by death, but nobody dies for killing a black, and rarely is anyone put to death for killing a Mexican-American.

From the time a charge is filed until a final disposition is rendered, the criminal justice system appears to place a higher premium on white lives than on black and Hispanic lives.

The Times Herald's Dallas survey, which traced 198 capital murders from offense to jury verdict, indicates that the killers of blacks are treated far more leniently than the killers of whites. Black-victim homicides are derailed from the Death Row track at each phase of the system at a much higher rate than white-victim homicides.

Where the death penalty is not imposed, those who kill blacks receive substantially lighter prison terms, and those who kill Hispanics are punished even less severely.

"There has always been a perception that black and Mexican-American lives were cheaper than white lives," says Frank Hernandez, a Dallas attorney and former district court judge. "That perception stems from the failure of the district attorney to prosecute those kinds of crimes. It is fostered in the community at large."

Most of the 198 Dallas murders included in the Times Herald study occurred during the commission of another felony, such as robbery, rape, burglary, arson or kidnapping. A few involved the killing of a police officer or were murders-for-hire. All qualified for the death penalty.

Hispanics were counted as "white" in the overall statistics, but in calculating average prison sentences, Hispanics were treated as a separate group. Because only one Hispanic-victim case resulted in a death penalty, the average prison sentence gave a broader measurement of the disparity in the outcome of the cases. With death and life sentences counted as 99 years, killers of Hispanics received average sentences of 41.3 years; killers of blacks, 50.2 years; killers of whites, 63.7 years.

In tracing the 198 capital murder cases filed by Dallas police, the Times Herald found that grand juries, which are guided by the district attorney's office, reduced the charges in 57 percent of the cases in which the victim was black, and in only 43 percent of the cases with white victims.

The grand juries declined to indict in 12.5 percent of the black-victim cases, compared with 8.4 percent of the white-victim cases. After indictment, the district attorney's office plea-bargained and reduced the charges in a higher percentage of cases with black victims (88.2 percent) than with white victims (67.6 percent).

Where blacks killed whites, the grand jury returned indictments in 61 percent of the cases. Where whites killed blacks, no capital murder indictments were returned, and none was prosecuted as capital murder.

Although white-victim crimes were 49 percent of the total identified from the eight-year period in Dallas, killers of whites received 100 percent of the death sentences handed down, a statistic that suggests to some attorneys that the system is at best arbitrary or at worst irrational.

"There is no rationality to it," says Dallas defense attorney Tom McCorkle, who frequently represents defendants in capital cases. "It's a lottery ... (deciding) who's going to pay for crime and who is not."

The term "lottery" often is used by critics of capital punishment.

An analysis of how cases proceed through the justice system indicates that arbitrariness still exists in death sentencing. And if the system is a "lottery," it appears that the game is rigged along racial lines.

For example:

✓ William Thorneberry, a 19-year-old white man, was charged with capital murder in the September 1981 slaying of Elizabeth Nelson Jay, a 74-year-old white woman, during a burglary of her home on Tremont Street. A diamond and ruby ring, worth $850, was missing from the house. Jay was beaten to death with a hammer. Thorneberry getting (Mexican-American) witnesses to testify. Some of them (witnesses) are illegals, and we can't find them."

Defense laywers who have observed Wade's prosecution practices over the years agree that the district attorney's staff seeks death in only the strongest cases.

"A capital murder case in Dallas County," lawyer Arch McColl says, "is one that has three fingerprints, three eyewitnesses and three confessions. They (prosecutors) don't gamble."

McColl describes the statistical evidence of racial bias as a "marketplace phenomenon," in which prosecutors ask for no more than they believe juries are willing to give.

The fact that the district attorney's office has never sought death in a black-victim case, he says, reflects the perception on the part of prosecutors and police that juries do not take black-victim crimes seriously enough to warrant the maximum punishment.

"If that is an accurate perception," McColl says, "then we have a racist system."

The perception may not be accurate.

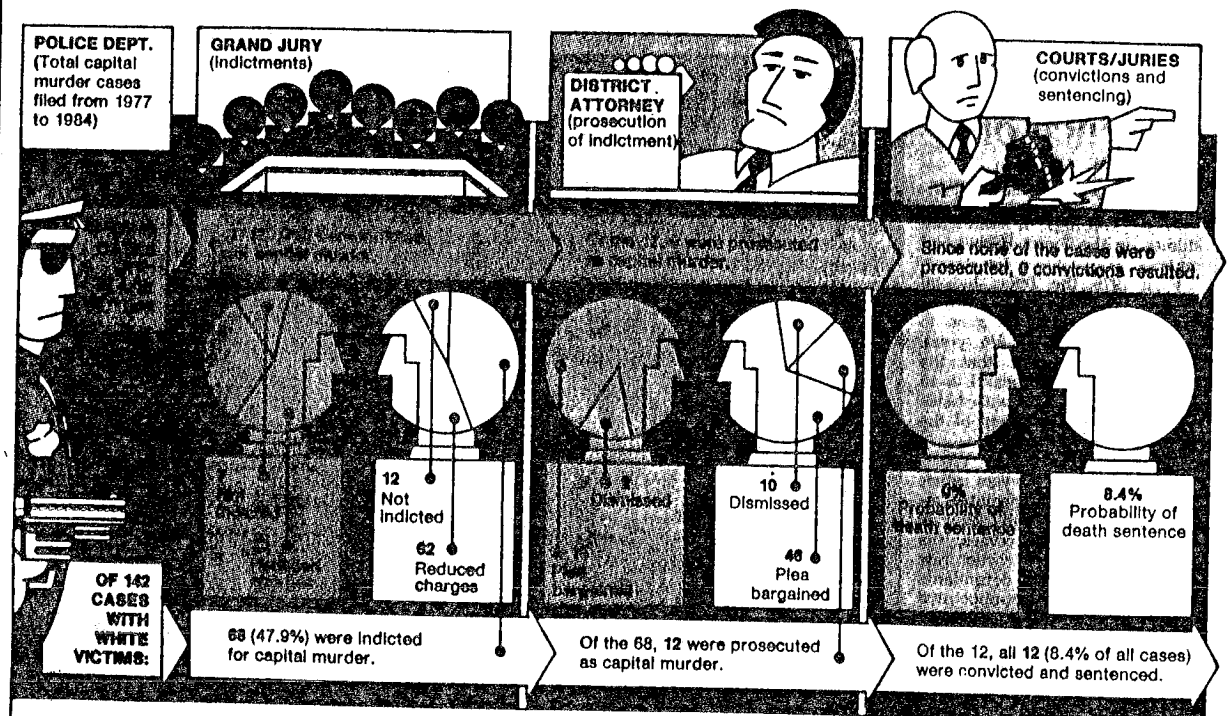
Roy Harrison, who was foreman of the jury in the 1980 murder trial of Robert L. Burage, a 31-year-old black charged with killing a 65-year-old black during a robbery, says the jury wanted to impose the death penalty.

"The judge wouldn't let us," he says. "We felt like it should have

See DOUBLE on Page 17

RACIST JUSTICE: DISCRIMINATION EVEN IN DEATH

Dallas rate of conviction in black victim crimes



Major findings of the Times Herald survey of 198 capital murder charges filed by Dallas police from 1977 through 1984:

■ The killer of a white in the city of Dallas has an 8.5 percent chance of being sent to Death Row. The killer of a black has zero chance.

■ Since the death penalty was reinstituted in Texas in 1973, no one has been sent to Death Row from Dallas County for killing a black. Twenty-seven defendants have been sentenced to death for killing whites.

■ Of the capital murder charges filed, grand juries returned capital murder indictments in 30.4 [illegible] in 69.6 percent of the cases, compared to 52 percent of white-victim cases.

■ When capital murder indictments were returned, the district attorney's office plea bargained for lesser charges or reduced the charges prior to trial in 100 percent of the black-victim cases, as opposed to 64.7 percent of black-victim cases. Only one of 40 Hispanic-victim cases identified in the study resulted in a death penalty.

■ Average sentences imposed through trial conviction or plea bargaining also showed a disparity based on the race of the victim. With life and death sentences counted as 99 years, the Times Herald found that the av-

Nature of crime makes exception to Death Row rule

On its face, it was the kind of commonplace crime Americans have become accustomed to reading about: A man walks into a convenience store in Bay City, Texas, robs the clerk, kidnaps her, rapes her, shoots her with .45 caliber pistol and leaves her dead on a deserted road.

But nothing about the murder of Loretta Jones was ordinary. The degree of violence was extraordinary. That she was killed by Donald Lee Vigneault was extraordinary. That he was sentenced to die for the crime was extraordinary.

Loretta Jones was black. Her killer was white. That alone made it a relatively unusual murder. The fact that her killer received the death penalty made the case an even greater rarity.

Statistics compiled by the Times Herald indicate that whites face odds of roughly one in 17 of being sentenced to death for killing blacks and, so far, virtually no chance of that sentence being carried out. Since the U. S. Supreme Court ended in 1976 what amounted to a four-year ban on executions, 13 blacks have been put to death for killing whites, but no white has been executed for killing a black.

According to FBI records, 2.5

Donald Lee Vigneault

After robbing the 7-Eleven store where Loretta Jones worked on April 26, 1978, Vigneault kidnapped her, took her to his [illegible]

chance of being sent to Death Row. The killer of a black has zero chance.

- The death penalty is pursued in fewer than 10 percent of the homicides that qualify for capital murder prosecution, but it is never sought when the victim is black.
- Of the capital murder charges filed, grand juries returned capital murder indictments in 30.4 percent of the cases with black victims and 47.9 percent of cases with white victims.
- Where the victims were black, the grand jury declined to indict, or indicted on reduced charges, charges prior to trial in 57.7 percent of the black-victim cases, as opposed to 64.7 percent of white-victim cases.
- Trial juries imposed the death penalty in 85.7 percent of the white-victim cases that were prosecuted, and in none of the cases with black victims. With life and death sentences counted as 99 years, the Times Herald found that the average sentence for those who killed whites was 63.7 years; for the killers of blacks, 50.2 years; for the killers of Hispanics, 41.3 years.

Chris Butler / Dallas Times Herald

Double standard on proof of bias

Courts reluctant to accept evidence about victim's color

DOUBLE — From Page 16

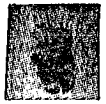
been capital murder, but the judge told us the most we could give him was life."

Burage was charged with capital murder by the police. He was indicted on capital murder, but shortly before his trial, prosecutors, in an agreement with defense lawyers, reduced the charge to first-degree murder.

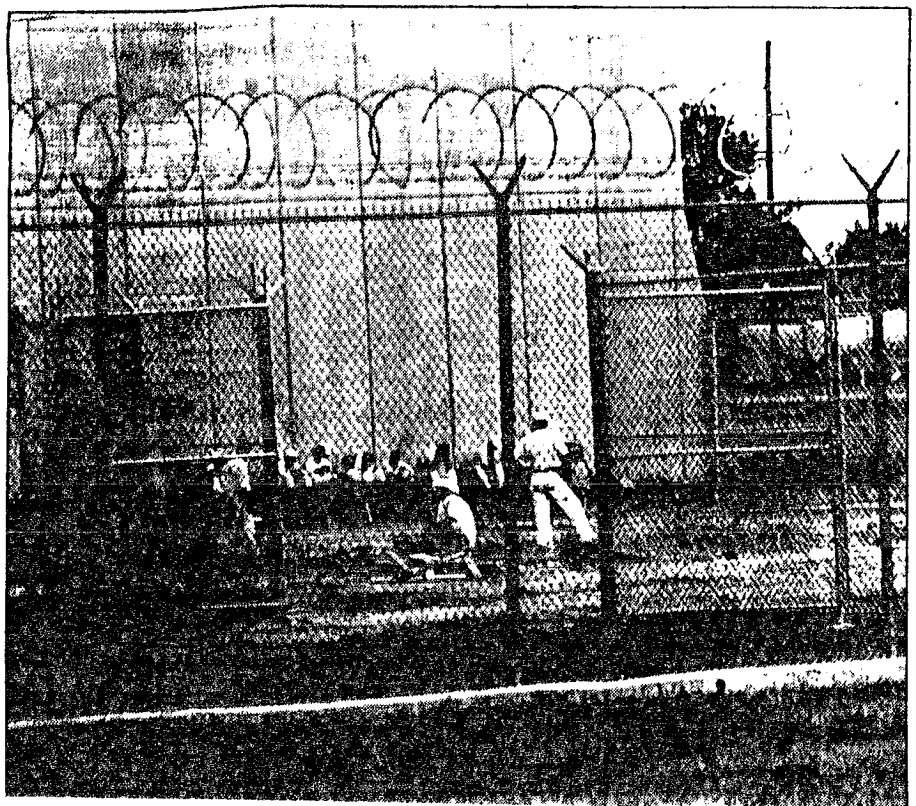
It was one of only three black-victim homicides that nearly got through the system as a capital murder. Most others are "downgraded" long before a trial date is set.

"We've been saying this for years," says John Wiley Price, a Dallas County commissioner and civil rights activist. "The value of life should be the same regardless of race of the victim or the defendant."

The Burden of Proof



"There is a long history of race being a factor (in capital punishment), and of the Supreme Court saying it should not be a factor," says Atlanta attorney Robert Stroup, who is currently fighting the major legal battle to convince the high court that racism still underlies the system by which convicted killers are condemned. "There is no doubt this is going on. The question is whether this court is going to do anything about it."



for killing a black.

According to FBI records, 2.5 percent of the "capital" murders solved by police agencies between January 1977 and December 1984 involved a white killer and a black victim. But only 1.6 percent of the Death Row inmates whose crimes occurred during that period were whites who murdered blacks.

Conversely, 25.8 percent of the solved "capital" murders — and 29.4 percent of the Death Row inmates — involved black killers of white victims.

Whites who kill blacks, then, are prosecuted and sent to Death Row in proportionately lower numbers than blacks who kill whites.

Fourteen states — Arkansas, Colorado, Delaware, Indiana, Kentucky, Louisiana, Maryland, Montana, New Jersey, New Mexico, Ohio, Tennessee, Virginia and Washington — had identifiable white-on-black capital murders during the eight-year period, but none resulted in the death penalty. Statistically, therefore, whites who kill blacks in those states have no chance of being sentenced to die.

Even in states where whites have been condemned for killing blacks, the risk is relatively low. In California, it is 1.8 percent, compared with 6.1 percent for a black who kills a white. In Texas, it is 1.4 percent, compared with a 20.4 percent chance for a black who kills a white.

The numbers and percentages sketch only a portion of the picture.

The 24 cases of whites on Death Row nationwide for killing blacks reveal that the death verdict results only when the most extreme aggravating circumstances are involved.

In that sense, Loretta Jones' murder was typical.

"That woman died a horrible death," says Doug Holland, a Matagorda county investigator who who worked on the case.

her, took her to his house and raped her, drove her to a secluded spot outside of town, raped her again and shot her between the eyes with a .45 caliber pistol.

In Texas, a homicide is capital

demn whites to death for killing blacks was demonstrated in the case of Henry F. Hays, a member of the Ku Klux Klan, who was convicted of kidnapping a 19-year-old man off a street in Mobile, Ala., and driving him to an adjoining county, where he beat and strangled him to death. Hays returned the body to Mobile and hung it from a tree.

The jury imposed a life sentence. Judge Braxton Kittrell increased the sentence to death and received hate mail accusing him of being "white trash" and a "traitor" to his race.

A white who kills a black in the United States has a 6 percent chance of receiving the death penalty, higher than the 4.3 percent chance for a black who kills a black. But, the statistical picture may be distorted and the chances much less. Some of the 24 white inmates awaiting execution for killing blacks also killed whites:

- Michael Travaglia and John Lesko killed a black police officer in Apollo, Pa., as part of a five-day killing spree that included three other victims, all of whom were white. They shot the officer with .38 pistol has he approached their car after stopping them for a traffic violation. They were driving the car of a white man they had kidnapped, tortured and drowned two hours earlier.
- Norman Lee Newstead was convicted of killing a black taxi driver in Tulsa, Okla. The driver

no doubt this is going on. The question is whether this court is going to do anything about it."

Stroup and the NAACP Legal Defense Fund have petitioned the Supreme Court to hear the appeal of Warren McCleskey, a black man on Georgia's Death Row for the 1978 killing of a white Atlanta police officer during the robbery of a furniture store.

The appeal is based largely on McCleskey's claim that statistical evidence shows that white-victim homicides are more likely to result in a sentence of death than black-victim homicides and, thus, the system is discriminatory.

The appeal is supported by evidence developed by David Baldus, a University of Iowa professor, who tracked murder indictments in Georgia for a seven-year period (1973-1979) and, with a complex computer program that took into account 230 variables ranging from the quality of evidence to the IQ of the defendant, concluded that in mid-range cases, those with moderate aggravating circumstances, the killers of whites were five times more likely to receive the death penalty than the killers of blacks.

The Times Herald study, which looked at capital murders and Death Row populations in all of the states using the death penalty, found that the killers of whites were nearly three times more likely to be sentenced to death than the killers of blacks.

John Keeling / Dallas Times Herald

Death Row inmates in Huntsville, surrounded by fences, take a break

The trial judge in the McCleskey case rejected Baldus' statistical evidence, and a majority of the 11th Circuit Court of Appeals concurred. Writing for the majority, Justice Paul H. Roney of St. Petersburg, Fla., did not deny the credibility of the Baldus statistics but rejected the use in a trial of such social science research as "beyond the legitimate uses for such research."

"In evidentiary terms, statistical studies based on correlation are circumstantial evidence," Roney wrote. "Where intent and motivation must be proved, the statistics have even less utility.

"A successful ... challenge would require proof that the race factor was operating in the system in such a pervasive manner that it could fairly be said that the system was irrational, arbitrary and capricious."

But Roney went on to say that McCleskey had failed to prove that prosecutors, jurors and judges had intentionally discriminated.

McCleskey's lawyers argued that showing a discriminatory result, rather than intent, should be sufficient to show that the system is racially biased. Some 11th Circuit Court judges agreed.

"McCleskey does not have to prove intent to discriminate in order to show that the death penalty is being applied arbitrarily and capriciously," wrote Justice Frank M. Johnson of Montgomery, Ala., in a dissenting opinion. "Reliance on the race of the victim means that the sentence is founded in part on a morally and constitutionally repugnant judgment regarding the relative low value of the lives of black victims."

Judge Joseph W. Hatchett of Tallahassee, Fla., in a separate dissenting opinion, stated flatly: "The Georgia system of imposing the death penalty is shown to be unconstitutional. Two types of racial disparity are established — one based on the race of the victim and one based on the race of the defendant. One can only conclude that in the operation of this system the life of a white is dearer, the life of a black cheaper.

"To allow the death penalty under such circumstances is to approve a racial preference in the most serious decision our criminal justice system must make."

In its 1972 ruling in the Furman vs. Georgia case, the Supreme Court struck down the existing capital punishment statutes partly on statistical evidence that blacks were disproportionately targeted for the death sentence more often than whites. The five justices who supported the decision stated their belief that the statutes were not administered equitably and three of them, Thurgood Marshall, William O. Douglas and Potter Stewart, specifically stated that the laws were being used to discriminate against racial minorities.

"If any basis can be discerned for the selection of those few to be sentenced to die, it is the impermissible basis of race," Stewart wrote.

When that opinion was written, evidence that the system discriminated against black offenders had been accumulating for decades. Attempts to show the discrimination persists — based on the victim's race — is a relatively new endeavor, and

See BLACK on Page 18

who who worked on the case.

In Texas, a homicide is capital murder if it occurs during the commission of any one of five felonies — robbery, rape, kidnapping, burglary or arson. Vigneault's crime involved three of them.

After robbing the 7-Eleven store where she worked on April 26, 1978, Vigneault kidnapped Jones, took her to his house and raped her, drove her to a secluded spot outside of town, raped her again and shot her between the eyes with a .45 caliber pistol.

Vigneault is currently the only white Texas Death Row inmate whose victim was black.

Whites are awaiting execution for the murder of blacks in only 14 states, and in each case there were high levels of what the law refers to as "aggravating circumstances." Sometimes there were multiple victims, including whites. Often the victims were children or police officers. In two cases, and in spite of extreme aggravating circumstances, the juries returned life sentences, and the death penalty resulted only after the trial judge exercised his authority to increase the sentence to death.

The reluctance of juries to con-

✓ Norman Lee Newstead was convicted of killing a black taxi driver in Tulsa, Okla. The driver was having difficulty finding the address Newstead gave him. They stopped at a church and apparently got into an argument. Newstead refused to pay the fare. He grabbed the victim by the neck and shot him twice in the back of the head. Newstead had previously killed three white people in Utah and had a prior conviction for kidnapping and robbery in Las Vegas.

✓ Donald "Peewee" Gaskin, a diminutive killer described by prosecutors as having a "cantaloupe-size head with a lemon-size brain," murdered about 35 individuals, including babies, before he landed on Death Row in South Carolina with 10 murder convictions. An ardent racist, he once killed a white woman for having sex with a black man. While on Death Row, he carried out the murder-for-hire of a black Muslim. He rigged a bomb in the victim's cell and detonated it by manipulating wires strung across a corridor. James Anders, a state prosecutor, said he once called Peewee a "back-stabbing, baby-killing, mangy cur" only to have Peewee reply, "That's the nicest thing anybody ever said about me."

RACIST JUSTICE: DISCRIMINATION EVEN IN DEATH

'77-'84 capital murders and death sentences

		White killer/ black victim		Black killer/ black victim		White killer/ white victim		Black killer/ white victim	
Alabama	Totals		%		%		%		%
Capital murders	342	3	0.9%	97	28.4%	120	35.1%	122	35.6%
Death Row inmates	83	2	2.4%	12	14.5%	27	32.5%	42	50.6%
Arizona									
Capital murders	197	7	3.5%	3	1.5%	167	85	20	10
Death Row inmates	48	1	2%	0	0%	42	87.5%	5	10.5%
Arkansas									
Capital murders	205	7	3.4%	46	22.4%	99	48.3%	53	25.9%
Death Row inmates	19	0	0%	1	5.3%	13	68.4%	5	26.3%
California									
Capital murders	3,392	57	1.7%	668	19.6%	1,872	55.2%	797	23.5%
Death Row inmates	186	1	.5%	18	9.8%	118	63.4%	49	26.3%
Colorado									
Capital murders	125	2	1.5%	12	9.7%	87	69.6%	24	19.2%
Death Row inmates	1	0	0%	0	0%	1	100%	0	0%
Delaware									
Capital murders	49	1	2.1%	11	22.4%	29	59.2%	8	16.3%
Death Row inmates	5	0	0%	2	40%	2	40%	1	20%
Florida									
Capital murders	1,128	43	3.8%	249	22.1%	504	44.7%	332	29.4%
Death Row inmates	203	6	2.9%	19	9.4%	121	59.6%	57	28.1%
Georgia									
Capital murders	377	8	2.1%	147	39%	118	31.3%	104	27.7%
Death Row inmates	93	1	1.1%	12	12.9%	49	52.7%	31	33.3%
Idaho									
Capital murders	37	0	0%	0	0%	37	100%	0	0%
Death Row inmates	14	0	0%	0	0%	14	100%	0	0%
Illinois									
Capital murders*	1,469	9	.6%	786	52.5%	343	23.5%	341	23.4%
Death Row inmates	84	1	1.1%	23	26.6%	41	43.6%	27	28.7%
Indiana									
Capital murders	360	7	1.9%	70	19.4%	201	55.9%	82	22.8%
Death Row inmates	31	0	0%	4	12.9%	17	54.8%	10	32.3%
Kansas									
Capital murders	277	7	2.6%	35	12.6%	185	66.8%	50	18%
Death Row inmates	28	0	0%						

Factors that lead to Death Row

Study found evidence of racial bias

Major findings of statewide studies by the Times Herald and others:

✓ In 1976, the Texas Judicial Council examined the 74 capital murder cases that had gone to trial in the previous 2½ years. The council reported that the death penalty was assessed in 16 percent of the cases with black victims, but in 86 percent of the cases with white victims.

✓ Defendants who can afford to hire their own lawyers rather than rely on court-appointed attorneys ran substantially less risk of dying for their crimes, the council found. The conviction rate for capital murder defendants represented by court-appointed attorneys was 93 percent, while the corresponding rate for those represented by retained counsel was 65 percent.

✓ Once convicted of capital murder, defendants represented by court-appointed attorneys received the death sentence in 79 percent of the cases while defendants represented by retained counsel received the death sentence in 55 percent of the cases."

✓ A Times Herald analysis of capital murder and capital punishment in Texas from 1977 through 1984 found that a person who kills a white is five times more likely to receive the death penalty than a person who kills a

John Keating / Dallas Times Herald

An unidentified Death Row inmate talks with his family recently in Huntsville

crimes involved white victims, but nearly 95 percent of the Death Row population was sentenced for white-victim murders.

✓ In the past 11 years, nearly 300 death sentences have been

police homicides reports for 1977-1984, the Times Herald study identified 479 white-victim capital murders and 166 black-victim capital murders in Houston. During that same period, Harris

year period of 1975-1978 and also found that the race of the victim appeared to be a key factor in the prosecutor's decision to seek the death penalty. Police had charged capital murder in 115 cases, Sher-

Capital murders	277	7	2.5%	35	12.6%	185	66.8%	50	18%
Death Row inmates	26	0	0%	1	3.8%	20	76.9%	5	19.3%
Georgia									
Capital murders	510	15	2.9%	173	33.9%	146	28.6%	176	34.6%
Death Row inmates	38	0	0%	8	21%	18	47.4%	12	31.6%
Illinois									
Capital murders	451	10	2.2%	196	43.5%	119	26.3%	126	28%
Death Row inmates	20	0	0%	2	10%	7	35%	11	55%
Mississippi									
Capital murders	179	4	2.2%	61	34.1%	55	30.7%	59	33%
Death Row inmates	40	2	5%	3	7.5%	18	45%	17	42.5%
Nebraska									
Capital murders	25	1	4%	0	0%	23	92%	1	4%
Death Row inmates	4	0	0%	0	0%	3	75%	1	25%
Missouri									
Capital murders	480	21	4.4%	243	50.6%	123	25.6%	93	19.4%
Death Row inmates	34	1	2.9%	7	20.6%	16	47.1%	10	29.4%
Nebraska									
Capital murders	53	1	1.8%	6	10.9%	36	65.5%	12	21.8%
Death Row inmates	13	1	7.7%	0	0%	10	76.9%	2	15.4%
Nevada									
Capital murders	110	0	0%	11	10%	73	66.4%	26	23.6%
Death Row inmates	28	0	0	3	10.7%	20	71.4%	5	17.9%
New Jersey									
Capital murders	722	49	6.8%	200	27.7%	209	28.9%	264	36.6%
Death Row inmates	15	0	0%	5	33.3%	9	60%	1	1.2%
New Mexico									
Capital murders	50	3	6%	2	4%	42	84%	3	6%
Death Row inmates	5	0	0%	0	0%	4	80%	1	20%
North Carolina									
Capital murders	460	7	1.5%	123	25.6%	181	37.7%	169	35.2%
Death Row inmates	44	1	2.4%	11	25%	16	36.4%	16	36.4%
Ohio									
Capital murders	864	12	1.8%	221	33.3%	260	39.2%	171	25.7%
Death Row inmates	48	0	0%	15	31.2%	25	52.1%	8	16.7%
Oklahoma									
Capital murders	242	6	2.5%	24	9.9%	173	71.5%	39	16.1%
Death Row inmates	41	1	2.4%	2	4.9%	31	75.6%	7	17.1%
Pennsylvania									
Capital murders	970	27	2.8%	299	30.8%	417	43%	227	23.4%
Death Row inmates	50	2	10%	15	30%	23	46%	10	20%
South Carolina									
Capital murders	448	8	1.8%	122	27.2%	151	33.7%	167	37.3%
Death Row inmates	39	3	7.7%	4	10.3%	14	35.9%	18	46.1%
Tennessee									
Capital murders	388	7	1.8%	118	30.4%	145	37.4%	118	30.4%
Death Row inmates	43	0	0%	7	16.3%	30	69.8%	6	13.9%
Texas									

penalty than a person who kills a black.

✔ Nearly 21 percent of the capital murders committed during that period involved black victims, but only 5.3 percent of the current Death Row inmates sentenced during that period had black victims.

✔ Nearly 80 percent of the 300 death sentences have been handed down by Texas juries, but only two were for crimes involving white killers and black victims. One of those white inmates has since had his sentence commuted to life, leaving only one white killer of a black victim on Texas' Death Row.

✔ Using FBI data and Houston ing that same period, Harris County sent 78 killers of whites and six killers of blacks to Death Row. Black victim capital murders were 25.7 percent of the total, but killers of blacks made up only 8 percent of those sentenced to die.

✔ University of Texas law professor Ed Sherman studied Harris County cases for the four- capital murder in 115 cases, Sherman found, but the district attorney reduced the charge in all but 47 cases. Of those 47 cases, 65 percent involved a black or Hispanic accused of killing a white. The death penalty was sought in only 32 percent of the cases involving Anglo-on-minority or minority-on-minority murders.

Black life worth less in Texas courts

BLACK — From Page 17

the McCleskey case in Georgia would be the Supreme Court's first opportunity, if it decides to do so, to hear authoritative arguments on that point.

Road to Texas' Death Row

"There is racism in the world," says Texas Civil Liberties Union director Gara LaMarche, "and it gets reflected in the criminal justice system. I don't think overt racism plays a part in any of this, but there is something about the gross numbers that causes you to think race does play some role."

Almost from the time Texas' new capital punishment statute went into effect in mid-1973, the way it was administered was scrutinized for the kinds of flaws that caused the old statute to be ruled unconstitutional by the U.S. Supreme Court.

Is the method of choosing who will die for their crimes still arbitrary? Does it discriminate against a particular segment of society? Are there factors beyond the legal issues that guide the state's disposition of criminal matters?

Between 1977 and 1984, arrests were made in 1,890 capital murders in Texas, but only 169 of the current Death Row inmates were sentenced during that time. Does that mean that the sentencing was arbitrary?

What distinguishes one killer from another? Luck, economic status, geography and other non-legal

People executed since 1977

	Race of	
Florida	Race	Victim(s)
John Spenkelink	White	White
Robert Sullivan	White	White
Anthony Antone	White	White
Arthur Goode	White	White
James Adams	Black	White
Carl Shriner	White	White
David Washington	Black	Both
Ernese Dobbert	White	White
James Henry	Black	Black
Timothy Palmes	White	White
James Rauterson	White	White
Johnny Witt	White	White
Marvin Francois	Black	Black
Texas		
Charlie Brooks	Black	White
James Autry	White	White
Ronald O'Brien	White	White
Thomas Barefoot	White	White
Doyle Skillern	White	White
Stephen Morin	White	White
Jesse de la Rosa	Hispanic	White
Charles Milton	Black	Black
Henry Porter	Hispanic	White
Charles Rumbaugh	White	White
Louisiana		
Robert Williams	Black	Black
John Taylor	Black	White
Elmo Sonnier	White	White
Timothy Baldwin	White	White
Ernest Knighton	Black	White
Robert Willie	White	White
David Martin	White	White

	Race of	
Georgia	Race	Victim(s)
John Smith	White	White
Ivon Stanley	Black	White
Alpha Stevens	Black	White
Roosevelt Green	Black	White
Van Solomon	Black	White
John Young	Black	White
Virginia		
Frank Coppola	White	White
Linwood Briley	Black	White
James Briley	Black	White
Morris Mason	Black	White
North Carolina		
James Hutchins	White	White
Velma Barfield	White	White
South Carolina		
Joseph Shaw	White	White
Utah		
Gary Gilmore	White	White
Nevada		
Jesse Bishop	White	White
Indiana		
Steven Judy	White	White
William Vandiver	White	White
Alabama		
John Evans	White	White
Mississippi		
Jimmy Gray	White	White

479 white-victim capital murders and 166 black-victim capital murders.

During that same period, Harris County sent 78 killers of whites and six killers of blacks to Death Row. Black-victim capital murders were 25.7 percent of the total, but killers of blacks made up only 7 percent of those sentenced to die.

Harris County District Attorney John Holmes dismissed the suggestion that the system is more lenient toward the killers of blacks than the killers of whites or that his office is influenced by those factors.

"I don't even know what race they are unless I happen to look it up," Holmes said. "We don't seek death simply for the exercise. We seek it based on the facts and on the background of the defendant."

Still, the same statistical pattern emerges in study after study. One examination of capital murder cases in South Carolina during a four-year period found, according to the Atlanta-based Clearinghouse on Prisons and Jails, that prosecutors sought the death penalty in 38 percent of the cases in which a black killed a white, but in only 13 percent of the cases in which a white killed a black.

Opponents of capital punishment contend that the statistically apparent racial bias is sufficient reason to abandon executions altogether.

"It is not working to sort out the worst people in society," says LaMarche of the Texas Civil Liberties Union. "There is a lot of subjectivity involved ... (in) the most severe

Capital murders	388	7	1.8%	118	30.4%	145	37.4%	118	30.4%
Death Row inmates	43	0	0%	7	16.3%	30	69.8%	6	13.9%
Texas									
Capital murders	1,890	69	3.7%	320	16.9%	1,040	55%	461	24.4%
Death Row inmates	169	1	.6%	8	4.7%	99	58.6%	61	36.1%
Utah									
Capital murders	54	0	0%	0	0%	53	98.1%	0	1.9%
Death Row inmates	4	0	0%	0	0%	1	25%	3	75%
Virginia									
Capital murders	331	5	1.6%	116	35%	93	28.1%	117	35.3%
Death Row inmates	31	0	0%	4	12.9%	15	48.4%	12	38.7%
Washington									
Capital murders	131	7	5.3%	7	5.3%	107	81.7%	10	7.7%
Death Row inmates	5	0	0%	0	0%	4	80%	1	20%
Wyoming									
Capital murders	45	0	0%	1	2.2%	44	97.8%	0	0%
Death Row inmates	3	0	0%	0	0%	3	100%	0	0%
Totals									
Capital murders	**16,173**	**403**	**2.5%**	**4,345**	**26.9%**	**7,252**	**44.8%**	**4,173**	**25.8%**
Death Row inmates	**1,477**	**24**	**1.6%**	**188**	**12.7%**	**831**	**56.3%**	**434**	**29.4%**

Black victim homicides: 4,748 — **White victim homicides: 11,425**

Black victim inmates: 212 (4.5%) — **White victim inmates: 1,265 (11.1%)**

* Illinois figures do not include 1984 crime statistics for Chicago, because they had not been reported to the FBI's office of Uniform Crime Reports, from which this data was collected. The missing statistics, perhaps as many as 200 felony circumstance murders, affect the national totals but an analysis for the Chicago figures for the previous seven years indicates that the omission does not significantly alter the racial breakdown percentages.

Jane E. Corbellini / Dallas Times Herald

What distinguishes one killer from another? Luck, economic status, geography and other non-legal factors come into play. Some rural counties are so poor that the cost of a capital murder trial is prohibitive.

But efforts to discern the logic that sends some convicts to Death Row and others back onto the streets have invariably led researchers to racial influences and the higher value that the justice system appears to place on the life of a white victim.

A 1976 Texas Judicial Council study of the 74 capital murder cases that had gone to trial in the previous 2½ years found that the death penalty was assessed in 16 percent of the cases with black victims, but in 86 percent of the cases with white victims.

"Some disparity is tolerable when you are talking about incarceration," LaMarche says, "but it is not tolerable when you are talking about putting people to death."

The Times Herald analysis of capital murder and capital punishment in Texas from 1977 through 1984 found that a person who kills a white is five times more likely to receive the death penalty than a person who kills a black.

Nearly 21 percent of the capital murders committed during that period involved black victims, but only 5.3 percent of the current Death Row inmates sentenced during that period had black victims.

Robert Willie	White	White	**Mississippi**		
David Martin	White	White	Jimmy Gray	White	White

Dallas Times Herald

Nearly 80 percent of the crimes involved white victims, but nearly 95 percent of the Death Row population was sentenced for white-victim murders.

In the past 11 years, nearly 300 death sentences have been handed down by Texas juries, but only two were for crimes involving white killers and black victims. One of those white inmates has since had his sentence commuted to life, leaving only one white killer of a black victim on Texas' Death Row.

The Times Herald study shows that the probabilities of a death sentence in Texas by racial characteristics of the crime are:

White kills black — 1.4 percent.

Black kills black — 2.5 percent.

White kills white — 9.5 percent.

Black kills white — 13.2 percent.

The ratio of Death Row inmates to the crime rate in each category in Texas, as in most other states, is equally revealing:

The total number of identifiable capital murders in the state for 1977-1984 was 1,890. The number of Death Row inmates who were sentenced during that period was 169. This is how the crime rate, by racial category, compares with the sentencing rate:

White kills black — 3.7 percent of the crimes, 0.6 percent of the inmates on Death Row.

Black kills black — 16.9 percent of the crimes, 4.7 percent of the inmates.

White kills white — 55 percent of the crimes, 58.6 percent of the inmates.

Black kills white — 24.4 percent of the crimes, 36.1 percent of the inmates.

Harris County prosecutors have sought the death penalty more vigorously than any others in the state, and nearly half of the current Death Row population was sentenced from that jurisdiction. Therefore, that county offers perhaps the best opportunity to determine whether a statistical racial bias exists in the criminal justice system.

Using FBI data and Houston police homicide reports for 1977-1984, the Times Herald study identified

A Discriminatory Effect

In banning the death penalty in 1972, the U.S. Supreme Court did not rule it to be essentially unconstitutional, only unconstitutional in the way it had been previously applied. State legislatures were told that death penalty statutes that removed the arbitrariness could be upheld.

The new state laws, seeking to avoid arbitrariness, make murder a capital offense only under specific circumstances. Although the law varies from state to state, capital punishment becomes a possibility most often when the murder occurs during the commission of a robbery, burglary, rape, kidnapping or arson. Most of the state death penalty statutes also include murder-for-hire, killing a police officer or firefighter involved in carrying out official duties, killing a prison employee or inmate, or killing someone during an escape. A few states make murder

See UNBIASED on Page 19

RACIST JUSTICE: DISCRIMINATION EVEN IN DEATH

Evidence mounts on influence of victim's race

Prior to the Supreme Court's landmark 1972 decision striking down state capital punishment laws as arbitrary and discriminatory, the criminal justice system was demonstrably tilted against black criminals.

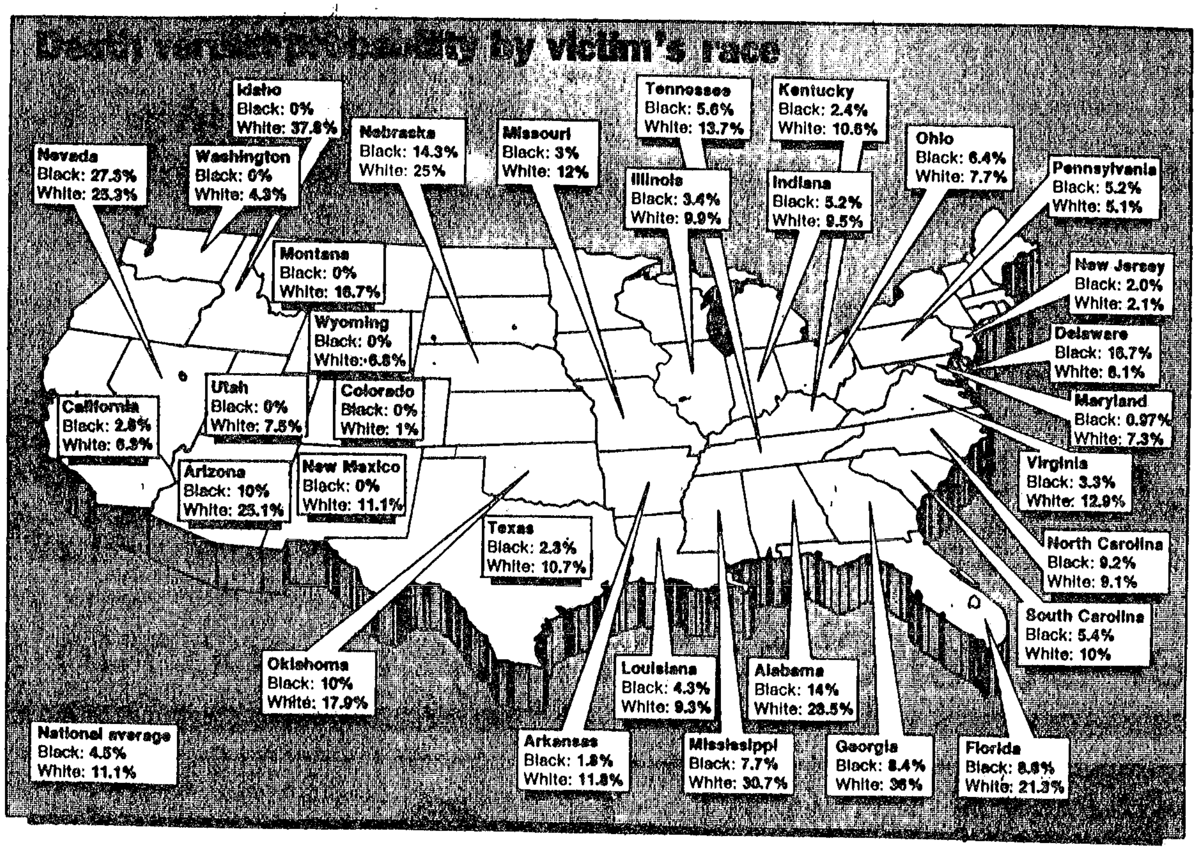
In that ruling, the court relied largely on statistical evidence, amassed over four decades, that was starkly persuasive: Between 1930 and 1972, 54 percent of the nearly 3,859 people executed were black, although blacks constituted only about 12 percent of the U. S. population. Of the 455 people executed for rape, 405 were black.

The influence of the victim's race had been detected in some of the pre-1972 studies of capital punishment, but it was not developed as a legal argument because of the inadequacy of available data.

In 1977, two attorneys for John Spenkelink, who would be executed in Florida two years later, discovered a racial pattern that had not previously been argued in the federal courts: 94 percent of Florida's Death Row inmates had killed whites; four percent had killed blacks; two percent had victims of both races.

Spenkelink's attorneys failed to convince the courts that the pattern proved racial discrimination, but researchers began probing the question, and in six years since Spenkelink virtually every study focusing on the victim's race has produced the same result:

✓ In 1980, William Bowers and Glenn Pierce, criminologists at Northeastern University in Boston published findings from a



Jane E. Corbettini / Dallas Times Herald

fendant was 84 times more likely to be sentenced to death if his vic-

percent of blacks arrested for killing whites reached Death Row.

ties. "Among black victims, 2.1 percent were death penalty cases,

the imposition of the death penalty appears mythical. . ."

counted for the fact that the killers of white victims received a death sentence five times more often than the killers of blacks. The race of the victim, he determined, was two and a half times more valid than any other variable in predicting the outcome of a capital murder case.

✓ University of California law professor Samuel Gross and Robert Mauro, a doctoral candidate in psychology, reported in 1983 that their study of crimes and sentencing in eight states (Arkansas, Florida, Georgia, Illinois, North Carolina, Mississippi, Oklahoma and Virginia) found racial disparities consistent with other studies. "The discrimination that we found is based on the race of the victim and it is a remarkably stable and consistent phenomenon." Their research centered on more than 17,000 homicides in the eight states between 1976 and 1980.

✓ More recently, Michael Radelet and Glenn Pierce focused their research on the role of "prosecutorial discretion" in homicide cases. It is at that point in the system — where police hand over cases to prosecutors — that the funnel narrows most sharply. Examining 1,419 cases in Florida between 1973 and 1977 and comparing initial police reports with actions taken by the district attorney, they found that black-on-white homicides are more likely to remain classified as capital murder, and cases with black victims are the least likely. Cases with white victims are more like-

Northeastern University in Boston, published findings from a study of sentencing in Texas, Florida and Georgia. "By far the most substantial and consistent extralegal basis of differential treatment ... was race ... and race of victim was a more prominent basis of differential treatment than race of offender." In Texas, they reported, a black defendant was 84 times more likely to be sentenced to death if his victim was white than if his victim was black. In Florida, the ratio was 37 to 1 and in Georgia it was 33-1.

✔ University of Chicago law professor Hans Zeisel published a report in the Harvard Law Review in 1981 showing that in Florida, during 1976 and 1977, 47 percent of blacks arrested for killing whites reached Death Row. For whites who killed whites, it was 24 percent; for the black who killed blacks, 1 percent; for whites who killed blacks, 0 percent.

✔ Also in 1981, University of Florida sociologist Michael Radelet reported on his study of 637 homicide case in 20 Florida counties. "Among black victims, 2.1 percent were death penalty cases, whereas 9.4 percent of the cases with a white victim resulted in a death sentence," he wrote. "Both white and black defendants have a 12 percent higher probability of receiving the death penalty if they are accused of killing a white instead of a black." Radelet concluded: "Relative equality in the imposition of the death penalty appears mythical..."

✔ University of Iowa law professor David Baldus, an authority on the legal uses of statistics, conducted the most exhaustive study of the question in 1983. Weighing 250 variables in the facts surrounding thousands of Georgia homicides, Baldus concluded that race was the only factor that actually made a difference in who got the death penalty. Cases with white victims are more likely to be "upgraded" — the death penalty sought despite a lower police classification — than black victim cases. Black-on-white homicides are "significantly" less likely to be "downgraded" — prosecuted as less than the capital murder charge filed by police — than black on black cases.

Unbiased justice 'more of a goal than a reality'

UNBIASED — From Page 1B

by explosive or poison a capital offense.

In each state, the prosecutor is allowed to argue "aggravating circumstances," such as the brutality involved or the defendant's prior convictions, and the defense is allowed to offer "mitigating circumstances," such as a defendant's youth or mental competency.

Some researchers contend that the skin color of the victim has become a latent mitigating or aggravating circumstance in the minds of prosecutors and jurors.

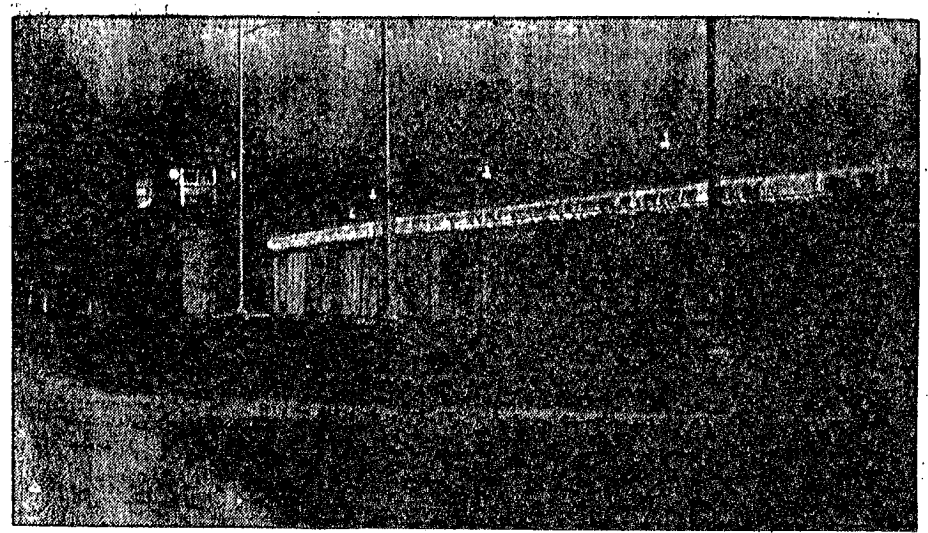
Michael Radelet, a University of Florida sociologist, and Glenn Pierce, a criminologist at Northeastern University, recently completed a study of prosecutors' decisions in several Florida counties and found evidence that murders involving white victims tended to be "upgraded" for more serious treatment than the original police report recommended, and cases with black victims were often "downgraded" to charges less than capital murder.

That data, Radelet and Pierce wrote, demonstrate that "a criminal justice system based on equality in a society marked by vast inequality racial disparity, they also reflect the disparate values the criminal justice system places on the life of the murder victims. They show, particularly in southern states, that black-on-black capital murder is treated less seriously than white-on-white capital murder.

In Arkansas, a white who kills a white has a 13.1 percent chance of reaching Death Row. For a black who kills a black, the chance is 2.2 percent. In Tennessee, a white who kills a white has a 20.7 percent chance of getting the death penalty. A black who kills a black has only a 5.9 percent chance.

In Georgia, 31.3 percent of the capital murders were white-on-white, but 52.7 percent of the Death Row inmates were convicted of white-on-white crimes. Thirty-nine percent of crimes were black-on-black, but only 12.9 percent of the inmates were sentenced for black-on-black murders.

Showing such a discriminatory effect has been sufficient to sway the courts in a number of civil rights areas — school and housing segregation, for example. But in life-and-death matters, the lower courts so far have been unconvinced.



John Keating / Dallas Times Herald

Tall, wire fences topped by barbed wire keep prisoners in at the Huntsville prison

a white (in Georgia) has a 25 percent chance of getting death and a white who kills a black has a 5 percent chance."

A Handful to Die

Until Gilmore's death before a Utah firing squad, executions had been dormant in the nation's criminal justice system for a decade. The last execution had taken place in 1967 — five years before the Supreme Court officially outlawed the practice — and the United States seemed to be joining most of the other Western nations in but no one has been executed for killing a black. Under the new statute, six prisoners have been executed. Five were blacks who had killed whites and one was a white who had killed a white.

According to the latest tally by the NAACP Legal Defense Fund, there are 1,590 inmates on Death Row in the United States. Because only about 10 percent of the capital murders in the United States result in death sentences, that leaves nearly 16,000 others who could have been sent to Death Row but were not. Many are serving time; others already have been paroled.

David Brunk, a Columbia, S.C. [illegible] do-well, is serving life in Texas for killing a black child in Lubbock County in 1978 for no apparent reason.

It is that selectivity that makes the racial factor, whether it pertains to the offender or the victim, troublesome to death penalty opponents.

"Sure, the people on the Row committed horrible crimes," Broady says. "But there are people off the Row (serving life or lesser sentences) who committed crimes that were just as horrible. This is not something the courts can continue to ignore or something society can continue to ignore. When we are talk-

How survey was done

For its nationwide study of capital murder and capital punishment, the Times Herald relied on two primary sources of information — the Supplementary Homicide Reports of the FBI and rosters of Death Row inmates provided by each state.

The FBI data, on computer tapes, included the age, race and sex of the killers and victims, as well as the circumstances involved, in 179,759 homicides that occurred in the United States between Jan. 1, 1977 and Dec. 31, 1984.

A computer program, developed by Times Herald systems analyst Larry Boyd, identified 16,173 murders that would qualify for capital punishment in states that employ it.

Each of those states allows the death penalty for homicides that occur during the commission of a specific felony, such as burglary, robbery, rape or arson. Some, such as Florida, California and Kentucky, allow executions for murders involving sniper attacks, poison or or explosive devices.

The FBI data give a distinct picture of crime in America during the eight-year period studied.

commended, and cases with black victims were often "downgraded" to charges less than capital murder.

That data, Radelet and Pierce wrote, demonstrate that "a criminal justice system based on equality in a society marked by vast inequality remains more of a goal than a reality."

Some prosecutors argue candidly that the statistics show a racial disparity simply because the murders of whites are, per se, more heinous than the slayings of blacks.

"There are more serious aggravating circumstances when the victim is white, and more mitigating circumstances when the victim is black," says Arizona Assistant Attorney General Crane McClennan, who rejects the statistical evidence of racism in the system.

He posed a challenge to the researchers: "Describe one case anywhere where the decision to go for the death penalty was based on race. They have never shown one single case where the outcome depended on race. There have been 22 cases that addressed that issue. In only two cases have the courts allowed hearings on it. The courts have always said that the statistics do not show discrimination."

As McClennan claims, the studies showing discrimination based on the race of the victim may not prove conscious or intentional discrimination at any step in the criminal justice process, but they do reveal a discriminatory effect.

Not only do the numbers reveal

Showing such a discriminatory effect has been sufficient to sway the courts in a number of civil rights areas — school and housing segregation, for example. But in life-and-death matters, the lower courts so far have been unconvinced.

"Unless we show that there was a racist intent, we are out of court," says Henry Schwartzchild, director of the American Civil Liberties Union. "It is not enough to show the results."

Schwartzchild, like many other capital punishment opponents, believes the courts are reading the public opinion polls and are not likely to change directions on the issue.

"Given the mood of the culture," he says, "they are not going to deal with it differently."

Over the years, as violent crime has ascended in the United States, polls have shown a growing public acceptance of the death penalty. A Harris poll early in 1977 — one month after Gary Gilmore was executed in Utah — found that 67 percent of Americans favored capital punishment. By autumn of 1982, the favorable response had grown to 77 percent, according to a Gallup poll. Last January, a poll by Media General and the Associated Press found an 84 percent favorable rating.

"That is conceding justice to the mob," says Richard Broady, research director for the National Association for the Advancement of Colored People Legal Defense Fund. "True justice is even-handed justice. It is not even-handed if a black who kills

justice system for a decade. The last execution had taken place in 1967 — five years before the Supreme Court officially outlawed the practice — and the United States seemed to be joining most of the other Western nations in abandoning death as a punishment for crime.

Even after Gilmore's execution, the death chambers of state prisons were reactivated slowly. Eleven men were executed in the first seven years after the Supreme Court, in 1976, allowed death sentences to be carried out under new guidelines.

But by 1984, with legal barriers cleared and public opinion supporting the practice, the country's Death Row populations were growing by more than 200 a year. Electric chairs, gas chambers and lethal injection halls were revving up with a fury unmatched since the early 1960s.

There have been 38 executions in the past 23 months, bringing the total to 49.

Judging by the race of those executed, it would appear that the pre-1972 practice of discriminating against black offenders has been eliminated. Thirty-two of the 49 were white, 17 were black.

However, when viewed according to the race of the victim, the discriminatory effect remains. Forty-five of those put to death had killed whites and only four had killed blacks.

In Georgia, 45 percent of the capital murders involved black victims, murders in the United States result in death sentences, that leaves nearly 16,000 others who could have been sent to Death Row but were not. Many are serving time; others already have been paroled.

David Bruck, a Columbia, S.C., attorney who handles many capital murder cases and has published articles about the influence of race on the criminal justice system, believes that rather than eliminate discrimination, the highly selective system only amplifies it.

The selection process, Bruck points out, begins when the arresting officer can decide whether to file a homicide as capital murder or something less. The grand jury has options in how it indicts; the district attorney has discretion in how to prosecute. A jury can acquit. It it convicts, a higher court can reverse the verdict. If the verdict stands, the governor can commute a death sentence to life.

"In the end," he says, "a mere handful are left to die."

That handful is chosen with a high degree of subjectivity. The state may take the life of a criminal who kills during a robbery, but it does not take the life of most criminals who kill during a robbery. Sometimes the most heinous murderers are spared, and lesser villains are put to death. John Spenkelink, a white drifter, was executed in Florida in 1979 for killing another white drifter who had sexually assaulted him. Phillip Brasfield, a white ne'er-

Row (serving life or lesser sentences) who committed crimes that were just as horrible. This is not something the courts can continue to ignore or something society can continue to ignore. When we are talking about which people we are going to kill, society has a greater obligation to decide on some basis besides the flip of a coin."

In state after state, the statistics suggest that race is the dominant basis on which the decision is made.

Bruck also believes the Supreme Court may reject the argument that the victim's race influences punishment, at least until public opinion changes.

"This is something the American people are going to have to make a decision about," he says. "The court is not going to save us from our own folly."

Many lawyers agree, even those who support capital punishment. Says Dallas attorney Mel Bruder: "It is not a legal question. It is a moral question that involves the law."

To death penalty opponents, the arbitrariness revealed in the racial statistics makes the best argument against death as public policy.

"The government is a very inappropriate agent to decide who ought to live and who ought to die," says the ACLU's Schwartzchild. "We cannot demonstrate that it (capital punishment) does us any good. It can be demonstrated that we do it very badly."

Kentucky, allow executions for murders involving sniper attacks, poison or or explosive devices.

The FBI data give a distinct picture of crime in America during the eight-year period studied. To compare the crime and punishment patterns, the Times Herald compiled the first nationwide survey of Death Row that identified not only the race of the convicted killers, but the race of their victims as well.

Although the Death Row populations do not reflect all death sentences handed down (some sentences are reversed, commuted, overturned or otherwise set aside each year) several experts said they do provide a statistically valid sample of sentencing in each state.

To determine the race of the victim of each Death Row inmate, a variety of sources was used: local police and sheriff's offices, medical examiners' records, court documents and interviews with lawyers, prosecutors and others familiar with the cases. In some instances, the NAACP Legal Defense Fund and the American Civil Liberties Union provided information on the victims.

For the Dallas study, FBI data and Dallas police homicide reports were used to identify 198 murders that could have been prosecuted as capital crimes. Essential facts on each case were entered in the computer and compared.

a prominent man and property owner in Weatherford, who was hanged by unknown men during the Civil War because of political prejudice.

The hanging of four negroes was another heartless case, which occurred during the Civil War, just after Lincoln's proclamation giving them freedom. The report is that a negro was found in some young ladies' room—perhaps trying to steal something. The feeling against the negro was fervent. A mob took him and three others and hanged them to the cross beam over the public well in the court yard; then dropped them one after another from the beam into the well, so reported W. R. Turner, for many years a prominent citizen of Weatherford. The well, being public, many citizens of the town got water there. It was soon found that there was an obstruction in the well and people could not get drinking water. The negroes' bodies could have been removed but some of the most fastidious would not have relished the water, so the well was filled up and another dug nearby.

Some 35 years ago, people with fine taste discovered that the public well had "mineral water" in it, thought to be of healing qualities, and because thereof used it freely. Later it was discovered that the sewer pipe leading from the jail to Town Creek across the court yard had sprung a leak. After a thorough examination by expert tasters, the health officers pronounced it unsanitary and not good for drinking purposes. The Commissioners' Court took the matter under advisement and after much deliberation decided that cleaning out the well would not remedy the matter as the earth was so saturated that it could not be gotten rid of, so they filled up the second well and had another dug, the water of which was pronounced wholesome. It, too, has been abandoned, and our water supply now comes from cased-off wells, 400 feet deep down to the Trinity sands.

FIRST LEGAL EXECUTION IN COUNTY

The first legal execution in the county was in the spring of 1869. A negro, Joe Williams, was hanged for murdering a peddler about one mile southeast of Weatherford. For lack of better conveyance, a farm wagon was pressed into service, to which was hitched a mule and gray horse. The negro was placed atop his own coffin beside the sheriff, and they drove one mile west to the place of execution, followed by a long procession of curious men and boys of town and county. The improvised scaffold consisted of two green forks set firmly into the ground with a pole across between them, such as farmers use in the present day in butchering hogs. The farm wagon was driven under the pole, the hangman's knot was adjusted about the negro's neck, the rope drawn over the beam, and at the command of the sheriff, "Get up, Gray," the negro was suspended in the breeze. The boys not only saw the negro as he dangled there then, but saw him in their dreams at night for many months later. T. U. Taylor, now of the University of Texas, was an 11-year-old boy witness to the scene.

William Burton was given a death sentence in the early part of

1880 for murdering Jack Rush, growing out of a dispute over the city election. Two days prior to the date set for his hanging, his sentence was commuted to life imprisonment. After serving seven years, he was pardoned.

The next legal execution was that of J. B. Cason for killing and robbing L. F. McLemore, about six miles southeast of Weatherford. He was hanged May 22, 1908.

Bob Stephens was given a death sentence for murdering George Steelman. A scaffold was erected, but his sentence was commute to life imprisonment, later he was pardoned. The date fixed for his execution was June 20, 1893.

Wayne Todd was also assessed the death penalty for killing Jimmie McNeal. His sentence was commuted to life imprisonment. (Date for execution was fixed June 21, 1923. Commuted June 19, 1923). He was paroled, later violated the parole and was returned to the penitentiary.

CITIZENS PETITION TEXAS GOVERNOR TO MAKE LYNCHING LEGAL.

New York Times
10-7-1905 Penalty - Espy

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The new assistant to the Attorney General, M. D. Purdy, successor of William A. Day, who had charge of the investigation made by the Department of Justice last Spring, will be placed in charge of the prosecution. The United States District Attorney at St. Louis, Col. Dyer, has made a report on the situation to the Attorney General, and taken steps to bring about indictment of the terminal company officers by a Federal Grand Jury.

The traffic situation at St. Louis has no parallel in this country. Under manipulation of the bridges by the Morgan, Gould, and other interests powerful in the railroad and business world, every passenger that enters St. Louis over the Mississippi pays tribute to the extent of 25 cents, and every car of freight about $5 to the Terminal Company.

Two years ago the St. Louis Merchants' Association appealed to Mr. Root, then Secretary of War, to revoke the charter of the Merchants' Bridge Company on the ground that the company had violated the provision of the act of Congress directing that it should not acquire a controlling interest in any competing bridge. Mr. Root made an investigation, but did not take action, and when he retired from the War Department the case was still pending.

Secretary Taft last June decided that the method proposed by the business men of St. Louis for breaking up the monopoly was impracticable and recommended that the Department of Justice start a prosecution. Meanwhile President Roosevelt had been put in possession of the facts and held conferences with Secretary Taft and the Attorney General relative to the most effective steps to be taken. Secretary Taft suggested mandamus proceedings or a prosecution under the Inter-State commerce law.

It was said to-day that a prosecution similar to that in the Northern Securities merger had been decided upon for the reason that the Attorney General is of the opinion that it can be shown that the two bridges are controlled by the same holding company, in violation of the Inter-State commerce law. Whatever course may be followed, there is no doubt that a great battle in the courts will result.

The business interests of St. Louis, in the brief of Attorney General Crowe of Missouri, alleged that the monopoly had throttled business, prevented the growth of the city, and wrought hardship to every person engaged in business there. Attorney General Moody already has obtained facts relating to the character of the various companies in the Terminal Association, the relations between them, the amounts of stocks and bonds outstanding, and the hands in which they are held, as well as the manner in which the various properties involved are manipulated.

RATE BILL FIRST—TOWNSEND.

President Practically for Last Year's Measure, He Declares.

Special to The New York Times.

WASHINGTON, Oct. 6.—The Esch-Townsend bill, which was passed by the House last session and is pigeonholed in Senator Elkins's desk in the room of the Senate Committee on Inter-State Commerce, is almost the rate measure that the President desires to have passed this Winter.

After a long conference with the President last night, Representative Townsend of Michigan, joint author of the bill, by agreement with the President to-day gave out a statement reaffirming the sufficiency of the House bill. He said:

"The President's language in his last message on rate legislation was clear and explicit, and he stands on the same ground to-day that he did when he sent his message to Congress. He not only said it in his message, but on every prop-

lin, arrested here to-day by United States Marshal Chandler on the charge of being in the country illegally, is said by the Federal authorities to be an Anarchist of international reputation and a leader of one of the largest bands of Anarchists in this part of the country. The officials say that Czolgosz, who assassinated President McKinley, was a member of the band.

Several boxes of rabid Anarchist literature were found in the apartments occupied by the woman. She is said to be a native of Brünn, Moravia, and the wife of an Anarchist editor. It is charged that she was convicted of perjury in her native town several years ago and that she fled to America to escape punishment.

For about two years Secret Service agents have been searching for her with a view to having her deported. She is said to be known as Anna Najeday, and it is asserted that Anarchistic circles the world over are familiar with her. A number of persons who have attended meetings addressed by her were examined by the authorities to-day.

Washington officials have been notified and the local officials are awaiting word from them before making any further move.

WANT LYNCHING LEGALIZED.

Texans Appeal to the Governor—He Refuses to Support the Policy.

Special to The New York Times.

HOUSTON, Texas, Oct. 6.—A petition from a number of citizens has been presented to Gov. Lanham, asking that the State permit mob punishment of negroes guilty of assaulting women.

The communication sets forth that it is dangerous for white women to live in sparsely settled sections unless constantly guarded; that the tendency to commit these frightful crimes is increasing among the blacks, and must be stopped, even if it is necessary to wipe out the race; that suspicion may be entertained against every male negro, and that wholesale slaughter will ensue if the crimes are not checked.

The Governor is asked to indorse the proposals that negroes guilty of assault receive no sort of protection, that no legal inquiry be held, and that they may be instantly hanged when apprehended. He is advised that every community will hold a mass meeting and adopt resolutions in accordance with the foregoing.

Gov. Lanham's response is principally directed to the legal phase of the proposition. He sets forth that it is an impossibility for him to countenance the policy in view of his oath of office.

PUGNACIOUS SUMMIT

Tears Down a Railway Bridge Which Orange Councilmen Opposed.

Special to The New York Times.

ORANGE, N. J., Oct. 6.—Pugnacious Summit completed the job yesterday of tearing down the brand-new iron and masonry bridge of the Rahway Valley Railroad Company which spanned Ashwood Avenue. The job was done neatly and unostentatiously by a gang of workmen, with the assistance of the steam road roller.

The bridge was torn down because the company had put it up without permission and an injunction could not be secured. The City Councilmen got together in secret session and agreed to tear the bridge down.

A massive chain was passed around the iron work of the bridge and secured to the road roller, which was then started full speed astern. The bridge tumbled down into the street and was gradually pulled over to a vacant lot, where, if the railroad company wants any scrap iron, it

But the boys didn't come on. They fell back in disorder, Maher with them. For as they made a rush into the vestibule they were almost suffocated by the fumes of ammonia. All of them gasped for breath.

"What is it?" Maher managed to ask, breathing hard and rubbing his eyes.

"We're pizened, sure," sputtered O'Rourke, one of his patrolmen, stuffing his handkerchief into his mouth and retreating down the stairs.

The others followed suit. Tears were streaming down their faces and their breath came in gasps.

In the meantime some of the men in the alleged poolroom had gathered at the front windows upstairs, and they had fun with the police.

"Ten and the count; you're out," cried one.

"Take 'em to the Morgue," called out another.

"Ring for the Fire Department. Turn on the hose," was another's taunt.

Maher, however, was determined and quickly recovered himself. "Come on, boys," he cried again, "we'll get 'em yet."

He ran to the adjoining house and upstairs to the roof. Then, followed by his patrolmen, he climbed down the fire-escape to the back windows of the room, and after a moment's work with axe and hammer he got in. There he found the two detectives with their revolvers drawn holding a crowd of eighty men huddled in one of the big rooms.

The police on investigating found that the door which had been smashed was only the first of a series of four. It was discovered that while the outside barrier was being demolished an employe of the place had opened the other three and had emptied a gallon demijohn of ammonia upon the floor. The game was to cause delay by repulsing the police until every one had escaped through the rear. Had not the two detectives been inside the room the scheme would have worked.

Six men were arrested. They gave their names as Edward Carroll, 225 Sixth Street; William McManus, 289 Second Street; Jacob Wolf, 51 First Street, William O'Connor, 311 East Thirty-fourth Street; Abraham Gabriel, 56 East 118th Street, and Frank Cosgrove, 8 Hall Place. Among other things the police confiscated several signs about the place. One of them read:

Selling Stakes for Platers.
McAdoo Wins.
Schmittberger, the Place.
Dooley on the Limb.

Capt. Eggers's men also raided an alleged poolroom in Barclay Street, the raid being made over the head of Capt. McNulty of the Church Street Station. There were sixty-five men in the room, the doors of which were battered down. Charles Smith of 22 Hubert Street, John Thomas of 48 Sullivan Street, and Andrew Brennan of 22 Hester Street were held as the managers of the place. A similar raid was made in Cortlandt Street by detectives on Inspector Hogan's staff. Those held as managers were Frank Reynolds of 108 West Eighty-ninth Street, John Coleman of 185 Liberty Street, John Mallory of 402 Greenwich Street, and James Wilson of 55 Whitehall Street.

JUSTICE WRIGHT BEATEN.

Dead-Lock Broken, with Nomination of I. R. Devendorf—145 Ballots.

Special to The New York Times.

OSWEGO, Oct. 6.—The long dead-lock in the Fifth Judicial District Republican Convention was broken to-night and Judge Irving R. Devendorf of Herkimer was nominated for the Supreme Court on the one hundred and forty-fifth ballot.

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"DOCTOR DEATH."

THE INSANITY PLEA

William J. Winslade, Ph.D., J.D.
and Judith Wilson Ross

CHARLES SCRIBNER'S SONS
New York

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tic and Statistical Manual a statement about the difference between psychiatric and legal concepts of mental illness. If juries are to be permitted to hear psychiatrists, they should also be instructed about those differences.

If racial motives lay behind Robert Torsney's insanity acquittal, the jury was at least able to hide behind a belief that the acquittal would result in "hospital punishment." Had they voted an insanity acquittal in the face of testimony by the state department of mental hygiene psychiatrists that Torsney needed no treatment, was not dangerous, and would be immediately released, they still might have voted for the insanity acquittal. But then, there would be no question of their motives. The insanity defense provides a shield for jurors to hide behind in such instances.

The inconsistent and conflicting concepts of the insanity defense also provide easy excuses and exits for defendants like Robert Torsney. He went home after two and a half years of legal involvement. His plan was to go to court in order to appeal his dismisal from the police force, to recover his back pay, and to be granted a $15,000-a-year medical disability pension. He had learned how to use the legal system and, like anyone with a surprise jackpot, he was right back for another try to beat the odds—and to defeat justice.

JAMES GRIGSON

The "Hanging Psychiatrist"

OVER THE PAST ONE HUNDRED YEARS, PSYCHIATRISTS, PSYchoanalysts, psychologists, and others in the mental health field have been thrust further and further into every aspect of our public and even our private lives. If they are not the principle decision makers, they are likely to stand next to the presiding officer, making official recommendations. Because life is hard, society has designated mental health practitioners as the experts on all of life's problems.

You want a divorce? The court or your attorney will refer you to "counselors" who can decide whether yours is a truly hopeless case and where you went wrong. Does someone think you've been acting a little unusual lately? A psychiatrist, in a brief exam, will decide whether you are likely to be dangerous to yourself or someone else or perhaps whether you just need treatment. Do you want to be a policeman? Liberals urge you to have a psychiatric exam. Do you want to run for president? Senate? Congress? Many in the therapeutic community urge that all candidates for public office have psy-

chiatric exams and that the results be made public prior to elections.

It would seem to be an impressive safeguard to have these mind specialists (33,000 psychiatrists in the United States, with Los Angeles and New York City having more than their share) checking out our character, personality, and rationality, and making sure that things stay on an even keel. But it doesn't work.

Both within the field of psychiatry and within the medical profession, there is continuing argument and disappointment about psychiatry's failure to be sufficiently scientific. Occasionally, a well-known, highly respected psychiatrist will acknowledge that the practice of psychiatry not only is but should be more an art than a science. But that is not a popular point of view among members of the profession. The development of new drugs and the hope and belief that mental disorders will be controlled eventually by physiological-chemical intervention have given new hope for the scientific status of psychiatry. But initial discoveries have not led to accurate and predictable treatment models, and drug treatment, in most cases, is trial and error, often with regard both to a specific drug and specific dosage.

But if psychiatrists have had difficulty gaining the respect they feel they deserve from the medical community, as well as from society, they have been eminently successful in gaining access and decision-making power in many social institutions and legal forums. In many public settings, the psychiatrist is viewed as the expert on sanity and responsibility. Psychiatrists, however (and allied mental health professionals), while not reluctant to offer themselves as official societal problem solvers, have begun to backtrack in at least one area.

Lawyers and psychiatrists, more often than not, have been at war with one another, but they have made some temporary alliances in order to try to keep psychiatrists from presenting their opinions in some criminal trials. The American Psychiatric Association has decided it should withdraw

some of its aid to the courts. It has done so while admitting and insisting on its inability to know enough about the human mind to offer proper or justifiable expertise. It is a new sound of humility. Some have suggested that this retreat acknowledges a new realization by psychiatrists that they had overstepped the boundaries of their knowledge; others suggest that it is a single-issue retreat bound up with the fact that most psychiatrists oppose capital punishment; still others—more cynical psychiatrists—argue that it is an economic action of self-interest in which psychiatry is prepared to give up its role in one small area in order not to be held legally liable and financially responsible for the same role in a much larger area.

The focus of these concerns is a Texas psychiatrist named James Grigson and the case of *Estelle* v. *Smith*. One night in September 1973 Ernest Benjamin Smith, Jr., and Howie Ray Robinson held up a convenience store in Dallas. Both Smith and Robinson were carrying guns. During the holdup the cashier made a sudden move. Smith saw the move and fired his gun, yelling at the same time, "Look out, Howie" (or something like that). Robinson then fired his gun straight at the cashier. The cashier fell to the floor and the two robbers cleaned out the cash drawer and fled.

A short time later the Dallas police caught up with the two men and charged them both with felony-murder. Such a charge is one designed to discourage any criminal activity that might result in death. In essence, if anyone takes part in a felony, during which or because of which someone dies, that person is guilty of homicide. Thus, if three people attempt a bank robbery with a cap pistol, and a bank patron has a heart attack and dies while the robbery is going on, the robbers are all liable for homicide. Similarly, if someone drives a murderer to his victim, the driver is as guilty of the homicide as the one who did the killing—even if the driver never left the car or saw the victim. The logic of the charge is that if it had not been for the lesser crime, the death would never have occurred and, therefore (1) all the participants are as guilty of

the person's death as if they had specifically and personally caused it to happen, and (2) they are equally responsible regardless of who (or what) actively caused the death because they acted as a group or as a unit in committing the lesser crime.

Smith and Robinson were tried separately on felony-murder charges. Because a death sentence is possible on such a charge, the judge in the case ordered Smith to submit to a competency evaluation, even though no one, including Smith's lawyer, suggested that Smith was anything but competent. When the competency hearing became a problem later on, the judge explained that he ordered the hearing simply as a precaution, because he didn't want anyone complaining, especially if Smith were found guilty and sentenced to death, on appeal that the defendant was too crazy to have participated properly in the trial. He was, in his view, simply practicing a little defensive judging.

The order was made over the phone and a court-appointed psychiatrist undertook to perform a competency evaluation on Smith. The doctor appeared at the county jail where Smith was being held and spent about ninety minutes with the alleged murderer. He explained that he was a psychiatrist and had been asked by the judge to evaluate Smith's competency to stand trial. Smith was polite, pleasant, and responsive, and cooperated fully with the psychiatrist. During this time, the doctor conducted a five-part exam: (1) general appearance and behavior, (2) production of thought, (3) affect/mood, (4) content of thought, and (5) orientation to time, place, and person.

The general appearance segment, according to the doctor, was "simply observation of how the person walks into the interview room, the way they sit, the attention or lack of attention to personal appearance." In particular, the doctor used this information to determine whether the person was or seemed depressed, agitated, or anxious. The "production of thought" segment involved having Smith talk, after which the

doctor decided whether he made sense, whether his thought was linear, or, conversely, whether it was confused, circular, or obsessive. The affect/mood evaluation attempted to determine whether *how* Smith talked about something matched the subject of his talk. Thus, when talking about a pleasant experience, the person's voice and physical demeanor should reflect the positive quality of the experience. In the "content of thought" segment, Smith was asked about his past and present. The final segment, the "orientation," attempted to determine if Smith knew who he was, where he was, when it was, and whether he could focus, concentrate, and remember from moment to moment what was happening. On the basis of this five-part test, the psychiatrist sent a letter to the judge, indicating that he had conducted the examination and had found Ernest Benjamin Smith, Jr., competent to stand trial.

Smith's attorney was never informed by the court or by the psychiatrist that this competency evaluation had taken place. If he had known, he might have attempted to stop it, or he might have insisted on being present during it. Or he might have taken it at face value and let it happen just as it did. What harm could a competency hearing do to Smith? Any statements he made about the crime itself could not be introduced as evidence in the trial, and if he were found incompetent, he wouldn't have to stand trial. But the attorney knew there was no question of Smith's being found incompetent.

During the trial Smith's attorney was given a list of all the witnesses the prosecution expected to call, as was required by law. He was also given access to prosecution files on the case. It was in these files that he found a copy of the letter stating that Smith was competent to stand trial. He could not have been happy to find that the evaluation had been conducted by Dr. James Grigson, the Dallas psychiatrist the press was fond of referring to as "the hanging psychiatrist" and "the killer shrink." The attorney checked the witness list. Grigson's name was not on it, neither as a witness in the guilt phase of the trial nor in the penalty phase, so the

attorney probably thought that the competency hearing could not harm his client.

Under Texas law, a case that might result in the death penalty is tried in two parts, in what is called a bifurcated trial. During the guilt phase of the trial, the jurors decide whether or not the defendant is guilty. If they find him guilty, the penalty phase is then held, in which they decide on the basis of additional evidence whether to order the death penalty or a term of imprisonment. In order to decide for the death penalty, a Texas jury must consider three factors: (1) whether the murder was deliberate; (2) whether the defendant's conduct was unreasonable in response to the provocation; and (3) whether the defendant is likely to repeat his violent deeds in the future. If the jury answers "yes" to all three questions after they have heard the additional evidence, then the death penalty is automatic. If all three are answered *no*, then only a prison sentence can be given.

Smith was found guilty in the first phase of the trial, which was not a great surprise. His attorney's hopes were pinned on the penalty phase. Smith had several things going for him. First, his only previous conviction had been for possession of less than an ounce of marijuana. He had been charged with some other, more serious crimes, but since he was never found guilty, those charges could not be brought before the jury in this trial. Second, Smith had not done the actual shooting. Third, although he had been carrying a gun, the weapon had misfired and there was some evidence that Smith knew the gun was defective. There was conflicting testimony as to whether Smith had said, "Get him, Howie" (the "him" referring to the cashier) or "Look out, Howie." Therefore, there was a reasonable chance that they could get "no's" from the jury on all three questions.

When the penalty phase began, the prosecution offered no witnesses but requested permission to reopen, which meant that the prosecution could later request the introduction of further testimony. The court granted permission. Smith's

attorney called three witnesses, each of whom testified to Smith's good character. The testimony was brief and to the point. Once the defense rested, the prosecution wanted to exercise its request to reopen. They had only one witness. The judge agreed. Smith's attorney could hardly believe it when he heard that the one witness they wished to call was Dr. James Grigson.

He objected. He objected strenuously and lengthily. First of all, he had never requested a mental examination of Smith; second, the examination had been conducted without his being informed; third, the results of the exam had not been made available to him; fourth, the purpose of the exam was a competency evaluation, not a penalty recommendation; fifth, Smith had not been told that his statements to Grigson could be used against him at the trial; sixth, Smith had been denied counsel during this evaluation; and seventh, the prosecuting attorney had concealed his plan to have Grigson testify at the trial by omitting his name from the witness lists.

The judge listened to his long list of objections and overruled them all with the warning that Grigson was not to testify to any of the specific statements that Smith had made, and that he could only testify to his opinion on the matter at hand, an opinion that Grigson had come to as a result of listening to Smith's statements. The primary focus of Grigson's testimony to the jury was whether the defendant was likely to repeat his violent deeds in the future. This was not an easy question, since there was no record of previous violent deeds, but Dr. Grigson had little problem with the query. He stated that Smith would repeat his violent deed again and again and again, that violence was all Ernest Benjamin Smith, Jr., knew, and that Smith was now, and always would be, a psychopath, a sociopath, and a man without a conscience. The jury came back with a death sentence.

James Grigson, M.D., has a private psychiatric practice in Dallas. He is a local boy and a graduate of Baylor and Southwestern Medical School (now part of the University of

Texas Health Science Center at Dallas) who did his psychiatric residency at Parkland and Timberlawn hospitals in Dallas. Although he has been accused by a University of Texas law professor of "operating at the brink of quackery," his credentials are in order. He is certified by the American Board of Neurology and Psychiatry and was for some years on the medical faculty of Southwestern Medical School. He has been conducting examinations of criminals since the mid-sixties and, after fifteen years, he estimates that he has interviewed over 8,000 men and women charged with crimes. He has participated in numerous trials and is respected by defense lawyers who have reason to know him to be a formidable witness.

Physicians, including psychiatrists, are often uncomfortable in the courtroom. One physician has suggested this is because the doctor is not in control of the situation. This may be at least part of the explanation. The psychiatrist frequently bristles or becomes defensive under the harsh cross-examination that the adversary method of the courtroom requires. Often, he sounds as if he believes he is being picked on unduly by the attorneys, and he begins to react emotionally, frequently claiming far more certainty than his knowledge genuinely allows. If the opposing attorney is able to provoke him sufficiently, the psychiatrist sooner or later will leap out on the proverbial limb and the lawyer will obligingly cut him down.

An additional cause of psychiatrists' discomfort in the courtroom may be that juries are generally thought to be hostile to them. The psychiatrist often speaks a technical language or a jargon that the juror does not understand. He often appears to be patronizing the jurors, and may be from a different social class than that of the jurors. One criminal defense attorney pointed out that psychiatrists will come into court in weird clothing—for example, a suit, no tie, and tennis shoes—setting themselves apart from and frequently alienating the jury. But none of that is typical of James Grigson.

At forty-eight, Grigson is a tall, soft-spoken witness. He always dresses appropriately, like a business or professional man. He is affable, at ease, and confident about his opinions. He explains the examination he gives to the defendant in simple ordinary language, which is appropriate because it's a simple ordinary examination. He states his conclusions with a minimum of psychiatric jargon. He is a model of humility and sincerity. The jury responds very positively to him, since he is not a hired gun, available at a price to mouth any opinion. Jim Grigson really believes what he testifies to, and what he testifies to in more and more cases is that the defendant should receive the death penalty because he is, in Grigson's own language, a sociopath, a man without conscience who will go on throughout his life performing violent acts in his own self-interest. The defendant, Grigson frequently says, is as bad a sociopath as one can be and therefore can't get any worse; but he won't get better either, for psychiatry has nothing to offer the sociopath.

Jim Grigson has testified to the sociopathic personality of the defendant in about sixty capital murder cases in Texas. With one or two exceptions, the jury sentenced the defendant to death, primarily and often exclusively on the basis of Grigson's testimony.

In 1974, when Ernest Benjamin Smith, Jr.'s, attorney objected to Dr. Grigson's testifying during the penalty phase, Grigson had not yet acquired the reputation he has today. But it was well known even then that having Jim Grigson against you was bad news. Grigson says that he doesn't testify *for* anyone. He just tells what he believes to be the truth. He has been hired by federal judges; attorney generals; U.S. attorneys; judicial district judges from Texas, Arizona, and Alaska; district attorneys; and defense attorneys. The defense attorneys who hate to see him on the other side would love to have him on their team because he is such a formidable, unflappable witness. Having Grigson for your witness is like having the only wild card in a poker game; he makes you look like a sure winner.

Grigson's reputation with the press is as a prosecution witness, but he himself points out that in about one-third of the death penalty examinations he conducts, his judgment is not useful to the prosecution because he believes there is hope for the defendant. Newspaper accounts stress that he always testifies to the unredeemable nature and character of the defendant, but of course if he were not prepared to testify to that, the prosecution would not call him to the stand.

His testimony in all these cases is remarkably similar. He describes the five-part, all-purpose examination he conducts and then states his opinion that, based on that exam, the defendant is a sociopath. He then describes and defines sociopathy and explains that it is (a) incurable and (b) not a mental illness of any sort. He postulates a scale of one to ten and places the victim at ten. He speaks with certainty. When asked by the defense lawyer if he is ever wrong about such judgments, he acknowledges that he is sometimes wrong, "but," he continues, "in this case I'm not."

He was absolutely certain about his judgment of Ernest Benjamin Smith, Jr. After explaining that Smith was a severe sociopath (up there at ten on the scale), the prosecuting attorney asked whether Grigson thought Smith felt any guilt or remorse, whether, in effect, Smith had any conscience.

A. No. He has none.
Q. Now. Dr. Grigson, what is your prognosis in this case?
A. Oh, he will continue his previous behavior—that which he has done in the past. He will do it in the future.
Q. All right. So, were he released into society, I take it, then, you would not expect his behavior to differ from what it has been?
A. No. If anything, it would only get worse.
Q. Now, Dr. Grigson, this sociopathic personality that Smith has—is this a condition that will improve with time? I guess what I'm asking you is this: Is this a stage that he is passing through that he will grow out of?
A. No. This is not what you would consider a stage. This is a way of life. Just as you work every day, well, his personality comes out in his behavior, but it is not a stage he is going through. It's only something he will continue.
Q. You said get worse?
A. Yes.
Q. If it can?
A. Right . . . It's my opinion that really, Mr. Smith does not have any regard for another human being's property or for their life, regardless of who it may be. This is what makes him such a very severe sociopath. He has complete disregard for another human being's life.
Q. Dr. Grigson, does the field of medicine—perhaps psychiatric treatment and/or hospitalization of some sort—does that have anything beneficial to offer someone like Ernest Benjamin Smith?
A. We don't have anything in medicine or psychiatry that in any way at all modifies or changes this behavior. We don't have it. There is no treatment, no medicine, nothing that's going to change this behavior.
Q. Now, Dr. Grigson, do you have an opinion as to whether or not there is a possibility that the defendant, Ernest Benjamin Smith, will commit criminal acts of violence that will constitute a continuing threat to society?
A. Yes sir, I have an opinion as to that.
Q. And what is that opinion?
A. That certainly Mr. Smith is going to go ahead and commit other similar or same criminal acts if given the opportunity to do so.
Q. Now, Dr. Grigson, I believe you have stated that this man has no remorse or sorrow for what he has done?
A. No. He has none.

Grigson is always sure. He is difficult to cross-examine because of his certainty, even though much of what he says is scientifically questionable or purely speculative. When defense witnesses know he is to testify in the penalty trial, they

can counter with their own psychiatrists who argue that the defendant is not likely to continue to be violent. Except, of course, it's hard to get a psychiatrist to be as certain as Grigson, since most psychiatrists are not convinced that their psychiatric licenses also qualify them to act as fortune-tellers.

As a result, Grigson is often asked no questions at all by the defense counsel. He has acknowledged that he thinks they are somewhat afraid of him and that doubtless pleases him.

After the jury returned with the death penalty in the *Smith* case, the decision was appealed. Smith went to prison in Huntsville, Texas, to wait out the months while the slow appeals process moved along. In 1976 the Texas Court of Criminal Appeals affirmed Smith's conviction and sentence, and in 1977 the U.S. Supreme Court refused to consider the case. Later in 1977 the U.S. District Court for Northern Texas agreed to hear the case and the judge vacated the death sentence on grounds that Smith's attorney had raised during the penalty phase of the trial—namely, that Grigson's failure to inform Smith or his lawyer that information gained during the competency hearing would be used during the trial was a violation of due process, of Smith's right to effective counsel, and of his right to introduce complete evidence. This was, of course, a victory for Smith, and Estelle, or rather the State of Texas (Estelle was the head of the Texas Department of Corrections against whom the original suit had been filed), requested a new trial, but that motion was denied.

Next, Texas-Estelle appealed the U.S. District Court's ruling to the U.S. Court of Appeals for the Fifth Circuit and, in 1979, five years after the original jury verdict, that court upheld the U.S. District Court's judgment for Smith. Texas was not about to give up so easily, however, and in 1980 the U.S. Supreme Court agreed to hear arguments and to make a final ruling on the case during its 1980–1981 season.

By 1981 Smith had spent seven years in the Huntsville prison. He had, so far, failed to live up to Dr. Grigson's billing

of him as a man whose life would be dedicated to violence, unless one counted the fact that he had been knifed by another prisoner while at Huntsville. As Smith himself said, during his time in prison, the "only violent act [he'd] been involved in, [he] was the victim." During those seven years Dr. Grigson testified in many more cases in which the defendant stood a chance of execution. About one-third of the men awaiting execution in Texas prisons had had the "benefit" of Dr. Grigson's testimony. Also during those seven years, University of Texas Law Professor George Dix had begun seriously to study Dr. Grigson's testimony. In 1978 he published his study entitled "Participation by Mental Health Professionals in Capital Murder Sentencing." Dix was appalled by what he had found: Grigson was using a diagnostic category (sociopath) that the American Psychiatric Association had stopped using ten years earlier. Beyond that, Dix thought that the current evidence about psychiatrists' ability to predict violent behavior over the long-run conclusively disproved Grigson's views, and that Grigson's willingness to hinge these life-or-death judgments on a single ninety-minute interview was shocking.

Professor Dix had some considerable support on these issues, including the American Psychiatric Association. The APA is a national professional organization with 26,000 of the 33,000 psychiatrists in the United States as members, including Dr. Grigson. It is also the professional organization that sets the ethical standards for psychiatric practice and determines the officially sanctioned psychiatric diagnoses and mental illnesses. In the Smith case, the APA decided to file a legal brief in support of Smith and in opposition to its own member, Dr. Grigson. They filed their *amicus curiae* (friend of the court) brief with the Fifth Circuit Appellate Court, and when the U.S. Supreme Court agreed to hear *Estelle* v. *Smith*, they filed a second brief with that court.

The APA explained its willingness to be involved in the case by pointing out that it

> has monitored the administration of capital punishment statutes and the role of psychiatric testimony in that process. The instant case specifically involves the use of psychiatric testimony in Texas on the capital sentencing issue of whether a defendant is likely to commit criminal acts in the future. As such, it raises significant issues concerning the role of psychiatrists in capital cases. Resolution of those issues will have an important impact not only on the administration of capital punishment, but also on the quality and integrity of forensic psychiatry. . . . The Association is uniquely qualified to advise this Court as to the reliability of psychiatric predictions of long-term future criminal behavior, which is a key issue under the Texas capital sentencing statute. The Association is also qualified to discuss the potential impact of any restrictions as to such testimony on other criminal law issues concerning competency and sanity determinations. These factors are critically relevant to this Court's consideration of this case, and the American Psychiatric Association believes that they will not be adequately briefed either by petitioner or by respondent.

In its brief to the Supreme Court, the APA argued three major points. First, they argued that psychiatrists should be forbidden to testify in penalty phases of trials if their testimony was given with respect to predicting future dangerous behavior of the defendant. Second, they urged that if the court chose to permit psychiatrists to testify in the penalty phase of trials, it should require psychiatrists to give notice to the defendant that any statement he made in the interview could be used against him in the trial and that, further, he had the right to remain silent. Third, they urged that attorneys be given full notice of such examinations and of the possibility that testimony would be given as a result of the interview.

Although the APA chose to make its stand with *Estelle* v. *Smith*, its position applied to many more cases than this one. The use of psychiatric testimony in capital case-penalty

trials was common in Texas and in several other states, with Virginia's procedures being most comparable to those of Texas. Grigson had proffered the same kind of testimony that the APA wanted outlawed in many Texas cases (eighteen of the Texas cases were specifically criticized by the U.S. District Court decision in *Estelle*). But, although Grigson figured prominently in these cases, he was not the only psychiatrist who was providing this kind of testimony. The APA was not apparently on a witch hunt against one of its own members. It did, however, seem to be in the unusual position of arguing that a limit should be placed on its own members' professional activities as a matter of principle. Even Jim Grigson didn't think they were out to get him, but he disagreed entirely with the APA's view of what principle was being defended in the case.

According to the APA, psychiatrists should not testify about probable future violence by defendants because scientifically conducted studies had repeatedly shown that psychiatrists had no particular expertise in making such predictions. In fact, some of the studies showed that psychiatrists were considerably less accurate than other groups, including policemen. Psychiatrists, it turned out, not only tended to overpredict dangerousness, expecting it a lot more frequently than it turned out to exist; they also tended to be fairly inaccurate in their selection as well. For example, suppose a group of one hundred people were to be evaluated for future dangerousness and the fact was that ten of them would actually be violent in the future. Psychiatrists might be likely to predict that twenty members of the group are dangerous (overprediction, since they have included at least ten "false positives," i.e., people who they say are dangerous but are not), and within that twenty that they have specified, only five of the actual dangerous groups of ten are included (thus, an inaccurate selection of 50 percent).

The APA claimed that, because there had been continuous requests for psychiatrists to make predictions about dan-

can counter with their own psychiatrists who argue that the defendant is not likely to continue to be violent. Except, of course, it's hard to get a psychiatrist to be as certain as Grigson, since most psychiatrists are not convinced that their psychiatric licenses also qualify them to act as fortune-tellers.

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gerousness both in civil and criminal matters, it had conducted a lengthy survey regarding violence and psychiatric understanding of "evaluation, management, and prediction of psychiatric behavior." The conclusion of the 1974 study was that psychiatrists had not been able successfully to predict violence at any high rate of reliability except in those instances where the individual had committed a significant number of violent acts over a period of time (for example, a parent who regularly abused a child). But, in those cases in which psychiatrists were fairly accurate, so were other people. It didn't appear that there was any psychiatric expertise that was required to make the prediction. College students had been able to predict it as well as psychiatrists. It was likely that jurors also could do it as well. It was probably a function of common sense.

The APA task force report concluded that "psychiatric expertise in the prediction of 'dangerousness' is not established and clinicians should avoid 'conclusory' judgments in this regard." It was just this kind of "conclusory" judgment that the APA particularly worried about in the testimony of psychiatrists like Grigson, for Grigson and others almost always testified that the defendant was certain to continue to be a danger to society. They spoke without doubts, without uncertainties, without any sense of probabilities in their judgments. The APA was convinced that psychiatry did not have this capability, and, if Grigson had it, it was not by virtue of his being a psychiatrist. They believed he should stop testifying under that heading, because it gave his views a dishonest cloak of greater expertise.

Many APA members, and particularly those involved in the preparation of the *amicus* briefs to the Appellate Court and the Supreme Court, were also appalled at other aspects of Grigson's testimony. But the nature of a legal brief is such that matters not specifically legal often are lost. As a result, the other serious objection about Grigson was cursorily mentioned in a footnote. What many psychiatrists found most

outrageous about Grigson's behavior was his complete disregard for the authorized views of psychiatry, which were promulgated by the APA. In particular, they were offended by Grigson's repeated use in trial after trial of the term *sociopath*. Psychiatry had cast off that diagnosis in 1968. Grigson was, in effect, dragging up a part of their past they would just as soon forget.

To understand the importance of the sociopath issue, one must first understand something about how psychiatry, as a profession, developed. Early in the history of the field, psychiatrists were generally called alienists, a term borrowed from the French and indicating a specialist in diseases of the nervous system. "Psychiatrist" was a word the Germans used and it had unpleasant associations for Americans in the field because in Germany the term had heavy metaphysical associations, particularly relating to the soul or the mind (as opposed to the brain). These American doctors thought of themselves as scientists and as physicians to the body no less than other physicians, but physicians concerned with the nervous system. Around the turn of the century, however, there was a separation within the field and it was divided between two groups who became known as neurologists and psychiatrists. The neurologists took over the nervous system and the psychiatrists (no longer alienists) inherited "mental illness." The problem was, however, defining mental illness. No other medical specialist had ever had to face such a problem. With a fine sense of practicality and some sense of *hubris*, the psychiatrists decided that the only way to decide what was and was not a mental illness was for them to sit down and decide, which they did. The results were published in the first edition of the psychiatric blue print, the *Diagnostic and Statistical Manual*, or *DSM I*. This was published in 1952, drawing primarily upon the work of army psychiatrists during World War II. The American Psychiatric Association describes their initial effort as "the first official manual of mental disorders to contain a glossary of descriptions of the

diagnostic categories." *DSM I* told practicing psychiatrists what was a mental disease and what was not (if it was not included, it was not a mental disease), what were the symptoms of particular diseases, and what were the prognoses. It was, in fact, a vitally important and extremely significant initial effort in classification and description of mental illness, but like any early work of that sort, it had many problems and errors. However, the problems that *DSM I* had were unlike the errors of other classification schemes.

Perhaps the diagnostic alteration best known to the public was the APA's decision that homosexuality was not a mental illness. Such an action seriously undercut public appreciation of psychiatry's positive work by suggesting that either psychiatrists' judgments were arbitrary or they had no standards at all. Americans were used to thinking of diseases as fixed entities. They could scarcely imagine doctors deciding that pneumonia, for example, wasn't a disease any more.

Reactions like these were related to the deeply ingrained connection and confusion between mental illness and sin. It was once widely believed that the mentally ill were in the devil's grip and many people still believe that, though their belief takes a somewhat altered form. Homosexuality, seen as a sin, had been caught up by psychiatrists as a mental disease. Then, when they decided that, if anything, it was merely a sin, they dropped it from their categories. From the public's point of view, it suggested that psychiatry thought homosexuality was neither sinful nor a mental illness. Psychiatry, on the other hand, was in the awkward position of having to renounce its belief in the mental illness part of homosexuality and at the same time divorce itself from religious or moral ideas about sinfulness. They didn't care what homosexuality was, as long as it wasn't considered a mental disease.

The story of sociopathy is not unlike that of homosexuality as *DSM I* evolved through *DSM II* and *DSM III*. Up until 1968 the APA included sociopath as a category of mental illness. Then, with the publication of *DSM II* in 1968, the

term sociopath was dropped and a new classification, "antisocial personality disorder," was introduced. In *DSM III*, published in 1980, antisocial personality disorder continues to be listed as a mental illness and requires for diagnosis "a broad range of the patient's behavior." In the footnote in their brief in *Estelle*, the APA objected to Grigson's use of sociopath as a diagnosis because they don't use it any more, and even more so because his diagnosis was based on a brief examination in which the defendant evinced no remorse.

Grigson's use of the sociopath diagnosis as well as his willingness to be very certain about his judgments of future dangerousness are far more closely related to the idea of mental illness as sin than to the idea of mental illness as disease. And it is perhaps this aspect of his testimony that offended the APA the most.

Grigson, in fact, defended himself against his many critics as handily out of court as in. He finally began to refuse interviews to journalists, giving as his reason that he was tired of seeing himself referred to as "the hanging shrink," "Doctor Death," "the Doctor of Doom," and "the prosecution's hired gun." But in a 1978 interview with a reporter from a Texas magazine, Grigson allowed that the APA's disapproval of his actions was of little concern to him.

> I have been doing this since 1960, and in that time I've examined more murderers and more rapists than the combined number examined by the people who wrote the APA diagnostic manual. And based on my experience, here's *my* definition of a sociopath. First, a sociopath doesn't have a conscience. He feels no remorse about his crime. I say to him, "Hey, how did you feel about killing these people?" And he doesn't hang his head, his cheeks don't flush, he doesn't have any of the normal reactions you or I would have. Two, he repeatedly breaks the rules of society. Three, he cons and manipulates, lies, steals and cheats for the pleasure of it. Most of the district attorneys only prosecute a very specific type of person for these

> death cases. . . . If they prosecute a death case . . . then that guy has already been identified as bad, bad, bad. I think you could do away with the psychiatrist in these cases. Just take any man off the street, show him what the guy's done, and most of these things are so clear cut he would say the same things I do. But I think the jurors feel a little better when a psychiatrist says it—somebody that's supposed to know more than they know.*

Grigson suggests that he is willingly doing exactly what the APA is unwilling to have him do and is accusing him of doing: using the mantle of psychiatric authority to validate opinions that ordinary people would have anyway. But behind Grigson's words lies a more serious objection that the APA might have: that Grigson is using psychiatric authority to talk about sin, and that is really what Grigson is thinking of when he uses the term sociopath. Sociopaths are simply what a more religious culture knew to be unregenerate sinners, and they knew it with no less certainty than Jim Grigson knows it. And what could save a sinner? Not a psychiatrist, surely. That is why there is no treatment. Only God's grace can save a sinner, and grace is not a regular part of psychiatry or of prison rehabilitation.

Grigson is careful in defining the sociopath (or psychopath—he uses the terms interchangeably) to make sure that no one thinks that what he is talking about is a mental illness. If it were a mental illness, then perhaps some sympathy might appropriately be shown to the defendant. Furthermore, he counsels, a sociopath cannot be cured. The language begins to fall apart a little here, and the jury, unless they are totally spellbound by Grigson, might begin to wonder why something that isn't an illness even might be cured. But Grigson is simply covering all his bases. The defendant is not sick, cannot be cured, and will only get worse. If it were a riddle (what does a

* (*Texas Monthly Reporter*, "Killers and Shrinks," John Bloom, July 1978, pp. 64, 66, 68. Quote from p. 68.)

person have who is not sick, cannot be cured and will only get worse?), the only answer would be "sin."

It is perhaps this about Grigson that organized psychiatry hates the most. He drags psychiatrists backward into the semireligious quagmire from which they have struggled for so long to remove themselves. Grigson, on the other hand, thinks they're out to get him and others who testify as he does because he believes establishment psychiatrists want to eliminate the death penalty. If APA could prevent psychiatrists from testifying in the penalty phase of capital trials, jurors might be too soft-hearted to vote for the death penalty. Grigson is willing to testify because he believes in the death penalty and thinks that the small group at the APA that determines its public positions opposes him in order to oppose the death penalty.

The Supreme Court handed down its decision in *Estelle* v. *Smith* on May 18, 1981. The victory went to Smith. The APA got part of what it wanted, in that Grigson's style of witnessing was not approved. The Court ruled, first, that Smith's death sentence be vacated and a new penalty trial held. Second, in ruling on the procedures of the case, they held that psychiatrists may testify about future dangerousness where such testimony is permitted (an earlier Supreme Court decision on that question had pointed out that although such predictions were extremely difficult to make, someone, nevertheless, must make them). However, the court also ruled that the defendant must be informed of the purpose of any examination wherein his statements might later be used against him; that the defendant be permitted to invoke the Fifth Amendment; and that the defendant's lawyer be apprised of any such interview and testimony and have the opportunity to advise his client about answering questions.

Jim Grigson can continue to testify in the penalty phase of capital offense trials in Texas (or Idaho, Oklahoma, Virginia, Washington, or wherever else such testimony is allowed). He will have to tell the defendant the purpose of the

interview and lawyers will doubtless urge their clients to be silent. Grigson will no longer be able to testify (as he has in the past) that the very refusal of defendants to answer a single question was evidence of their lack of remorse and of their severe sociopathy. Theoretically, if they will not speak to him, he cannot testify about them.

However, in at least one trial, Grigson had not interviewed the defendant but took the stand anyway. He was asked by the prosecution about a hypothetical case. "Suppose you interviewed a person who . . ." began the prosecuting attorney, who then proceeded to give a run down of the defendant's life. Grigson did not find any difficulty in making a judgment about this hypothetical person. He was a sociopath . . . extreme . . . no hope of change . . . only get worse. The defense attorney, on cross-examination, offered Grigson a second and different hypothetical case. Grigson listened, judged, and said yes, that hypothetical person was another sociopath, with no hope of change, and so on. The defense attorney then explained with subdued pleasure to Grigson and the jury, his hypothetical case was the life history to age nineteen of a well-known, very successful major league baseball player, Ron LeFlore.

Where there is no question of mental illness, there is no need for expert psychiatric witnesses. Doctors like Grigson provide us with excuses for not having to make decisions about capital punishment. To make such a decision is surely one of the hardest choices life can bring, but to make the decision on the basis of false premises or by hiding behind false expertise is immoral. If we cannot bear to make these decisions because they are so hard, then we should learn to get along without executions until we can accept the responsibility for the decision. Someone, says the Supreme Court, has to make these decisions. But it should not be Jim Grigson or psychiatrists; it should be us.

House bill exempts killers' accomplices from death penalty

By ANNE MARIE KILDAY
Houston Chronicle Austin Bureau

AUSTIN — A bill that would shield murder accomplices from the death penalty, unless they participated in the killing, was approved by voice vote Wednesday in the Texas House.

The bill by Rep. Larry Evans, D-Houston, now goes to the Senate for consideration.

The bill was prompted by the case of Doyle Skillern, who was executed in January 1985, for a murder he did not commit while the trigger man was sentenced only to life in prison.

Trial testimony showed that Skillern was waiting in a stolen car in 1974 when Charles Sanne shot an undercover narcotics officer six times. Both Skillern and Sanne were convicted of first degree murder, but Skillern was given the death penalty and Sanne drew a life sentence.

The bill would shield accomplices in capital murder cases by requiring juries to decide whether the defendant caused the death of the victim if another person had been charged in the case.

The bill does not apply to murder-for-hire, and it does not apply to accomplices who actually cause a murder by urging someone else to commit the crime.

Source: Attorney General

Siff's killer gets stay of execution

By BILL COULTER and FRANK KLIMKO
Houston Chronicle 4-30-87

A federal judge in Houston Wednesday granted a last-minute stay of execution to Clifford X. Phillips, convicted in the 1982 strangulation of Alley Theater director Iris Siff.

Phillips, who was to die by lethal injection before sunrise today, won a reprieve by submitting an eight-page, handwritten petition to U.S. District Judge Gabrielle McDonald.

He had already chosen a last meal — fish, french fries, peas, bread and milk — and four personal witnesses in preparation for the execution.

Phillips claimed attorneys Jim Skelton and Robert Pelton, who persuaded U.S. District Judge Norman Black to stay his execution previously, never informed him that the judge later denied an appeal of his conviction.

Phillips said the lawyers never discussed Black's decision with him or told him of his right to appeal to higher courts.

Skelton said he and Pelton were retained only to obtain a stay of execution for Phillips, and that they appealed the conviction strictly for this purpose.

"We told Phillips from the very beginning that our only function was to get him a stay so he can finish a book," Skelton said.

Skelton said Black issued the stay one day before Phillips' scheduled execution in August. Skelton said he believes Black denied the conviction appeal in January.

McDonald ordered the attorneys and Phillips to appear before Black on Monday for a hearing on the inmate's allegations.

"My reaction is, in a word, it's absurd," said Joseph Siff, one of Iris Siff's twin sons. "It's the criminal injustice system for victims, not the criminal justice system."

The son, vice president of investments for Prudential-Bache Securities in Houston, said Phillips has received more than the automatic appeal to which he was entitled.

He cited Phillips' previous conviction for killing his 3-year-old son and remarked: "The man is not a human being. He's an animal. He doesn't deserve to live."

Phillips served part of a nine-year prison sentence in Attica, N.Y., for the 1969 killing of the boy, whose body was found in a suitcase discarded in a vacant lot.

"He doesn't deserve the support of society," Joseph Siff said of Phillips. "He doesn't deserve what you and I and the rest of society are paying for."

An assistant to Attorney General Jim Mattox, Bob Walt, said if Phillips had filed the appeal any earlier than Tuesday, the courts would have probably rejected it and let the execution proceed.

Walt said the state decided not to immediately appeal the stay because of the highly technical nature of the appeal and the fact that the judge's order was handed down just eight hours before the scheduled execution.

Phillips, 52, spent most of the day reading the Koran, the holy book of the Moslem faith, and meeting with visitors.

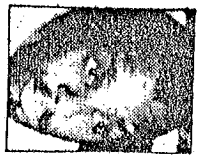
Phillips has said he was innocent of capital murder because he killed Siff in self-defense after sneaking into the theater, where he worked as a security guard, late Jan. 12 or early Jan. 13.

When Phillips confronted Siff at the theater and demanded money, she fought him for about 15 minutes, he told police. He said he strangled her with his hands.

"I realize it was a pretty gruesome thing I had done," Phillips told police. "In my heart I was only defending myself. I felt I was fighting for my life."

RACE ISSUE IN TEXAS

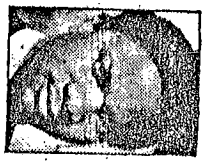
The executions of four black Texas inmates have been stayed in the past several months based on claims by the defendants that they were discriminated against during sentencing because of race. A white man, whose execution is pending, also has cited the race issue:



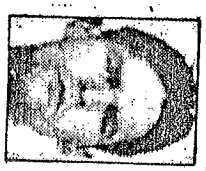
RAYMOND RILES: Stayed Sept. 16, 1986, by the U.S. Supreme Court. Sentenced to death for the 1974 murder and robbery of a Houston used car salesman, John Henry.

CALVIN WILLIAMS: Stayed Nov. 10, 1986, by the U.S. 5th Circuit Court of Appeals. Convicted of the June 2, 1980, killing of Emily Fields Anderson, 28, during a break-in at her Houston home.

ELLIOT ROD JOHNSON: Stayed Feb. 10, 1987, by the U.S. Supreme Court. Convicted in the 1982 robbery-murder of Beaumont jeweler, Joe Angel Granado, 67.



ANTHONY CHARLES WILLIAMS: Stayed April 13, 1987, by the 5th U.S. Circuit Court of Appeals. Convicted of the 1978 rape-murder of Vickie Lynn Wright, 13, in Houston.



JOHN R. THOMPSON: Scheduled to be executed July 8. Granted a chance to appeal his case on the issue by the U.S. 5th Circuit Court of Appeals. Convicted in the May 1977 slaying of Mary Kneupper during an attempted robbery in San Antonio.

County executions deadly distinction

Opponents lament 'frontier justice'

By Gaynell Terrell
and Bryan Denson 12-11-19
Of The Houston Post Staff

HUNTSVILLE — Count Harris County as a state, and it would rank second in the nation in modern-day executions, following Texas and leading Florida.

If the scheduled execution of Raymond Carl Kinnamon is carried out shortly after midnight on Sunday, he will become the 35th man sent to his death by Harris County juries since the U.S. Supreme Court upheld the death penalty in 1976.

Kinnamon would be the seventh put to death by Harris County this year. And if he does not get a last-minute stay, Texas will have executed its 85th prisoner since resuming capital punishment in 1982.

Florida, which ranks No. 2 in executions, has put to death 33 prisoners.

Kinnamon was convicted of shooting a man in the back at a bar. He is to be the second Harris County convict to die by lethal injection within a week, having avoided execution for 10 years.

Serial rapist Herman Clark Jr. was put to death Tuesday after 13 years on death row, his mother weeping softly as Clark made a final statement. He had exhausted numerous appeals.

A third inmate scheduled to die last week, convicted killer Samuel Hawkins, won a reprieve Tuesday eight hours before he was to be put to death.

The average death row stay is 8.5 years.

Texas will likely reach 100 executions in 1996, prison officials estimate. The very pace of executions here has earned

Please see PENALTY, A-45

(OVER)

Post, Houston Tx dec. 11, 1994

HARRIS COUNTY, Texas

PENALTY: County earns tag of 'Execution Capital of America'

From A-43

Harris County the nickname, "Execution Capital of America." Insiders disagree on what that means.

"It says nothing about Texans. It speaks about the court system," said Ron Dusek with the Texas Attorney General's Office. "The U.S. Supreme Court has cleared up a number of issues that have allowed executions to go forward."

But Leigh Dingerson of the National Coalition to Abolish the Death Penalty said she believes, "It's a sign to the public that the death penalty is becoming very real."

"There seems to be a fervor, a fever now, for executions," said the Rev. Edward Ducree of the Indiana NAACP, a death penalty opponent. "It's something that seems to permeate society."

National polls show four of five Americans support the death penalty. Nebraska, Idaho and Maryland this year held their first executions in decades. Proponents in New York, Iowa and Massachusetts are lobbying for reinstating the death penalty.

With executions in Texas performed at least once a month, with almost assembly-line efficiency, authorities are looking for ways to cut the time inmates spend on death row — and the expense to keep them there.

The Texas death row, with a population of 400, is the largest in the nation. It includes at least 111 inmates from Harris County, and four women convicts.

Kinammon's execution Sunday was set by District Court Judge Ted Poe to coincide with the 10-year anniversary of the day Kinammon murdered 41-year-old Ronald C. Longmire in a northwest Houston saloon.

"I wanted to try to bring some significance to the time that it takes from the time of the crime to the time the sentence is carried out," said Poe.

Only three of the 10 persons Poe has sentenced to death in 13 years on the bench have been executed.

A 1992 study found it cost the state an average of $2.3 million over seven years of appeals to execute someone. The cost of imprisoning the same person for life was $750,000.

Harris County District Attorney John B. Holmes Jr. insists streamlining the appeals process would cut costs.

"To me, that's like the kid who killed his mommy and daddy and now he wants probation because he's an orphan," says Holmes. "The whole process is our process, and we can change it to make it less costly."

State Attorney General Dan Morales, who occasionally attends executions, is pushing to sharply limit the number of appeals for death row inmates.

"We are proposing the legislature speed up the appellate process. We think everyone has the right to go through the appellate process — one time. But repeated and frivolous appeals are costly, time-consuming and they must be limited," said Dusek.

Limiting appeals makes sense to people like Pat Teer of Houston, whose son Mark Alan Frederick, a state highway patrolman, was slain 19 years ago. The killer, Billy George Hughes, is still on death row.

"It is cruel and unusual punishment to go through 19 years," said Teer. "The laws become a joke if we don't enforce them."

Critics of the death penalty say Harris County has become the last bastion of frontier justice in Texas.

Opponent Jimmy Dunne, a spokesman for Houston's Death Penalty Education Center, fears public passion for revenge has speeded the process. He was horrified recently when the county courthouse held several capital murder trials in a week.

"It was like an assembly-line death machine," he said.

Even officials in second-ranked Florida are surprised at the expediency of the Texas death squad.

"You kill on Sunday? You're open seven days a week," observed Joe Bizzaro, public information officer for the Florida Attorney General's office.

The pace is certainly quickening.

In 1981, when Houston logged a record 701 homicides, juries here sent 11 men to death row. In 1991, when the city logged 671 homicides, juries here condemned 16.

Critics also point to the growing disparity between blacks and whites condemned to die here as a regrettable vestige of the Old South.

The county has sent 16 blacks, 14 whites and four Hispanics to their deaths (Kinnamon would make that 15 whites). But since 1985, county juries have condemned nearly twice as many blacks to death row as whites, a disparity that mirrors death-sentence patterns prior to the Civil Rights Era.

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TEXAS CAPITAL SENTENCING PROCEDURES: THE ROLE OF THE JURY AND THE RESTRAINING HAND OF THE EXPERT

PEGGY C. DAVIS*

It has been held that the level of our civilization precludes imposition of the death penalty without an individualized judgment that it is "appropriate".[1] Thus, "in capital cases the fundamental respect for humanity underlying the Eighth Amendment . . . requires consideration of the character and record of the individual offender and the circumstances of the particular offense as a constitutionally indispensable part of the process of inflicting the penalty of death."[2] It follows that capital sentencing procedures must "allow consideration of particularized mitigating factors,"[3] for

> [a] process that accords no significance to relevant facets of the character and record of the individual offender or the circumstances of the particular offense excludes from consideration in fixing the ultimate punishment of death the possibility of compassionate or mitigating factors stemming from the diverse frailties of humankind. It treats all persons convicted of a designated offense not as uniquely individual human beings, but as members of a faceless, undifferentiated mass to be subjected to the blind infliction of the penalty of death.[4]

Death sentences are imposed in Texas whenever a jury determines that the defendant (a) was convicted of a capital crime committed deliberately and unreasonably (in view of any provocation) and (b) is dangerous.[5] In *Jurek v. Texas*,[6] the United States Supreme Court considered the constitutionality of this sentencing scheme. The Court could not approve a scheme, which sent to death all persons guilty of deliberate and unreasonable capital crimes. (Indeed, it is arguable that all contemporary capital crimes, by Texas' definition or another, are deliberate and unreasonable.[7]) Furthermore, in a society which, by the use of an insanity defense, protects many of its most dangerous members even from judgments implying blameworthiness, the Court apparently could not rule that a finding of dangerousness necessarily took sufficient account of "the character and record of the offender"[8] to qualify as an individuating judgment that the death penalty was "appropriate."[9] It was able, however, to uphold the Texas statute on the theory that the Texas Court of Criminal Appeals had construed the dangerousness question such that the defendant could bring to the jury's attention whatever mitigating circumstances he could show. The Court recognized that:

> In determining the likelihood that the defendant would be a continuing threat to society, the jury could consider whether the defendant had a significant criminal record. It could consider the range and severity of his prior criminal conduct. It could further look to the age of the defendant and whether or not at the time of the commission of the offense he was acting under duress or under the domination of another. It could also consider whether the defendant was under an extreme form of mental or emotional pressure, something less, perhaps, than insanity, but more than the emotions of the average man, however inflamed, could withstand.[10]

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[1] Woodson v. North Carolina, 428 U.S. 280, 304 (1976). (Powell, Stevens & Stewart, J. J., plurality opinion).

[2] *Id.*

[3] Jurek v. Texas, 428 U.S. 262, 272 (1976).

[4] 428 U.S. at 304.

[5] (b) . . . the court shall submit the following issues to the jury:

(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. . . .

(f) If the jury returns an affirmative finding on each issue submitted under this article, the court shall sentence the defendant to death.

TEX. CODE CRIM. PROC. ANN. art. 37.071 (Vernon Supp. 1978).

[6] 428 U.S. 262.

[7] *See* BLACK, CAPITAL PUNISHMENT: THE INEVITABILITY OF CAPRICE AND MISTAKE 57–62 (1974).

[8] 428 U.S. at 287 n.7.

[9] *Id.* at 304.

[10] 428 U.S. at 272–73 (quoting Jurek v. State, 522 S.W.2d 934, 939–40 (Tex. Crim. App. 1975)).

The determination of dangerousness therefore developed a mixed use: it was to satisfy the legislative requirement that only dangerous offenders be executed, and it was to satisfy the constitutional requirement that the sentencing decision involve "consideration of particularized mitigating circumstances."[11]

Since the jury is to consider "whatever mitigating circumstances [the defendant] may be able to show,"[12] we must assume that it may act upon mitigating evidence which is neutral or positive on the question of future dangerousness. To assert the contrary, one must be willing in effect to preclude individualized judgments and to preordain execution of any capital offender who does not appear innocuous.[13] There is an irresistible speculation that the mixed use is forced and that only a forthright granting of authority to preclude execution on the basis of mitigating evidence will meet the constitutional need. Nonetheless, if the *Jurek* Court's refusal to approve the Texas statute on its face and its commitment to particularized capital sentencing judgments are to have meaning, we must assume that the dangerousness determination affords flexibility. We must assume that dangerousness is a relative concept, better understood perhaps by the phrase "*intolerable* threat," so that mitigating evidence might lead a jury to find the risk of declining to execute acceptable to a humane and advanced society.[14]

If this flexibility is necessary to the constitutionality of the statute, there is danger in any practice which inhibits the jury from voting consistently with its ethical and social judgment. The delegation to psychiatric experts of the function of determining dangerousness is such a practice.

A Description of the Practice

In its decision upholding the Texas statute, the *Jurek* Court noted that the highest criminal court of Texas had, in *Smith v. State*,[15] based affirmance of a death sentence upon factors revealed during the trial and "the conclusion of a psychiatrist that he [the defendant] had a sociopathic personality and that his patterns of conduct would be the same in the future as they had been in the past."[16] Analysis of capital cases reviewed by the Texas Court of Criminal Appeals suggests that the State frequently introduces psychiatric evidence at the penalty phase of a capital trial,[17] and that the expert typically presents a diagnosis of sociopath[18] or an equivalent term[19] and an unqualified characterization of dangerousness.[20] Particular experts appear to testify regularly for the State in these matters.[21] The psychiatric evidence at times con-

[11] *Id.* at 272.

[12] *Id.*

[13] Statutory and case law leave it altogether unclear how dangerous an offender must be before execution is permissible under art. 37.071 (b) (2) of the Texas statute. See discussion at notes 30–41 and accompanying text infra.

[14] The alternative notion that the presentation of mitigating evidence is to invite jury nullification presents its own constitutional problems. *See* 428 U.S. at 302–03.

[15] 540 S.W.2d 693 (Tex. Crim. App. 1976).

[16] 428 U.S. at 273. Smith was a non triggerman in a robbery convicted under the felony murder rule. He had been intermittently unemployed since a conviction for marijuana possession, which had been his first offense. There was evidence that he did, and evidence that he did not, attempt to kill the victim himself. For full accounts of the case, see Dix, *The Death Penalty, "Dangerousness," Psychiatric Testimony, and Professional Ethics*, 5 Am. J. Crim. L. 151, 153–68 (1977); Black, *Due Process for Death: Jurek v. Texas and Companion Cases*, 26 Cath. U. L. Rev. 1, 14–16 (1976). Smith's death sentence was vacated by a federal district court on the grounds that he was denied due process, effective assistance of counsel, the right to present evidence and the right not to incriminate himself by circumstances surrounding the presentation of psychiatric testimony at the sentencing hearing. Smith v. Estelle, No. CA 3-77-0544-F, sl (N.D. Tex. Dec. 30, 1977).

[17] Shippy v. State, 556 S.W.2d 246, 253 (Tex. Crim. App. 1977); Granviel v. State, 552 S.W.2d 107, 114 (Tex. Crim. App. 1977); Battie v. State, 551 S.W.2d 401, 406–07 (Tex. Crim. App. 1977); Moore v. State, 542 S.W.2d 664, 675–76 (Tex. Crim. App. 1977); Livingston v. State, 542 S.W.2d 655, 661–62 (Tex. Crim. App. 1976); Gholson v. State, 542 S.W.2d 395, 399–401 (Tex. Crim. App. 1976); Smith v. State, 540 S.W.2d 693, 696 (Tex. Crim. App. 1976).

[18] Battie v. State, 551 S.W.2d at 407; Moore v. State, 542 S.W.2d at 676; Livingston v. State, 542 S.W.2d at 661; Gholson v. State, 542 S.W.2d at 399; Smith v. State, 540 S.W.2d at 696.

[19] Granviel v. State, 552 S.W.2d at 123 (antisocial personality).

[20] In *Shippy* the psychiatric expert was unable to assert "a reasonable medical probability" of dangerousness. 556 S.W.2d at 256. However, in *Moore*, the defendant was termed "an absolute threat," 542 S.W.2d at 676; in *Livingston* the testimony was that the defendant "would remain a continuing threat to society," 542 S.W.2d at 661; and in *Gholson* the experts' conclusion was that both defendants "would continue to be a danger to society," 542 S.W.2d at 399.

[21] Granviel v. State, 552 S.W.2d at 114 (Dr. Holbrook); Moore v. State, 542 S.W.2d at 676 (Drs. Grigson and Holbrook); Livingston v. State, 542 S.W.2d at 661 (Drs. Grigson and Holbrook); Gholson v. State, 542 S.W.2d at 399–400 (Drs. Grigson and Holbrook); Smith v. State, 540 S.W.2d at 696 (Dr. Grigson).

Even before the enactment of the present Texas capital sentencing procedure with its requirement that the jury determine dangerousness, the State had used Dr. Grigson's testimony that the defendant was a sociopath with

stitutes the State's entire presentation at sentencing.[22] Prior convictions are, of course, introduced, and on occasion testimony is presented that the defendant's reputation for being a peaceable and law abiding citizen is "bad."[23]

There is no indication in the appellate opinions that defense counsel in capital cases have made use of psychiatric experts at the penalty phase, but the Texas Court of Criminal Appeals has reversed a capital conviction for the trial judge's failure to permit the defense to present a psychiatric witness.[24] There is evidence that the resources of the defense are so limited that the use of such evidence might be foreclosed.[25] The introduction of other kinds of mitigating evidence may also be significantly limited. For example, as the Court of Criminal Appeals held in *Hovila v. State*, the statute "allows a trial judge broad discretion in determining just what constitutes 'relevant [and therefore admissible] evidence' at the punishment stage."[26]

In upholding the Texas statute, the Supreme Court in *Jurek* seemed to rely upon the ability of the Texas Court of Criminal Appeals to provide, by a process of review, "a means to promote the even-handed, rational, and consistent imposition of death sentences under law."[27] However, the sufficiency of the evidence supporting a death sentence has been reviewed only in those cases in which the issue has been raised by counsel[28] and the evidence has never been found wanting. More than ten capital convictions have been affirmed with only cursory appellate review of the issue.[29] These results have occurred even though members of the court have twice expressed the view that findings of dangerousness may not rest exclusively upon psychiatric evidence of the kind typically offered by the state,[30] and Judge Phillips has announced his belief that a review of the sufficiency of the evi-

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"no regard for societal rules, familial rules, moral rules and legal rules" and could not be rehabilitated, to influence a jury sentencing decision. The testimony was offered to counter testimony at the penalty hearing by defendant's mother and sister that they thought he could be rehabilitated. The jury sentenced him to death. Armstrong v. State, 502 S.W.2d 731, 735 (Tex. Crim. App. 1973). In Bruce v. Estelle, 536 F.2d 1051 (5th Cir. 1976), a homicide conviction, upheld in the district court by reliance upon the testimony of Dr. Grigson that the defendant was a sociopath and had been competent to stand trial, was reversed. The circuit court declared the "finding that Bruce is a sociopath clearly erroneous" and noted:

> Except for Dr. Grigson, all the physicians who examined Bruce detected an underlying schizophrenic disorder. . . . [T]he only dissenting expert, Dr. Grigson, conducted his first examination three and one-half years after trial. . . . Nor did Dr. Grigson keep Bruce under lengthy observation. . . . When asked how it was possible that the other experts who had examined Bruce over a nine-year period had arrived at a radically different diagnosis, Dr. Grigson's sole explanation was that he was better qualified than they to determine Bruce's condition, a fact not established in the record.

Id. at 1060-61.

[22] Moore v. State, 542 S.W.2d at 676; Livingston v. State, 542 S.W.2d at 663.

[23] Shippy v. State, 556 S.W.2d at 256; *see* Jurek v. Texas, 428 U.S. at 267.

[24] Robinson v. State, 548 S.W.2d 63, 66 (Tex. Crim. App. 1977) ("Testimony to the contrary on behalf of the State has been held admissible at the punishment stage of the trial. A good rule of evidence works both ways.").

[25] Freeman v. State, 556 S.W.2d 287, 303 (Tex. Crim. App. 1977) (upholding a $500 expense limit for investigation and experts in the case of a defendant charged with two counts of capital murder).

[26] Hovila v. State, No. 56, 989, slip op. at 9 (Tex. Crim. App. Feb. 8, 1978) (quoting Robinson v. State, 548 S.W.2d at 65). Hovila's death sentence was affirmed despite the trial judge's refusal to permit his mother to testify that after his mistaken release from custody pending trial he had returned to her home and had stayed out of trouble and that four days later "when he discovered his release was a mistake he returned to Dallas with the intention of surrendering to the authorities." *Id.*

> The evidence . . . that Hovila did not murder or commit other criminal acts during a four-day period would not show that he probably would or would not be a continuing threat to society—the trial court's error, if any, in refusing to admit this evidence was not so harmful as to require us to reverse.

Id. at 10.

[27] 428 U.S. at 276.

[28] Shippy v. State, 556 S.W.2d 246, 256 (Tex. Crim. App. 1977); Burns v. State, 556 S.W.2d 270, 281 (Tex. Crim. App. 1977); Brock v. State, 556 S.W.2d 309, 3[illegible] (Tex. Crim. App. 1977); Granviel v. State, 552 S.W.2d 107, 123 (Tex. Crim. App. 1977); Smith v. State, 548 S.W.2d 693, 696 (Tex. Crim. App. 1977); Moore v. State, 542 S.W.2d 664, 676 (Tex. Crim. App. 1976).

[29] These include Denney v. State, 558 S.W.2d [illegible] (Tex. Crim. App. 1977); Freeman v. State, 556 S.W.2d 287 (Tex. Crim. App. 1977); King v. State, 553 S.W.2d 105 (Tex. Crim. App. 1977); Battie v. State, 551 S.W.2d 401 (Tex. Crim. App. 1977); Collins v. State, 548 S.W.2d 368 (Tex. Crim. App. 1977); White v. State, 543 S.W.2d 104 (Tex. Crim. App. 1977); Woodkins v. State, 542 S.W.2d 855 (Tex. Crim. App. 1976); Boulware v. State, 542 S.W.2d 677 (Tex. Crim. App. 1976); Livingston v. State, 542 S.W.2d 655 (Tex. Crim. App. 1976); Gholson v. State, 542 S.W.2d 395 (Tex. Crim. App. 1976).

[30] Livingston v. State, 542 S.W.2d at 663 (Roberts, dissenting). *See also* Smith v. State, 540 S.W.2d at [illegible] (Odom, J., dissenting), withdrawn before publication, reproduced in part in Dix, *The Death Penalty, "Dangerousness," Psychiatric Testimony, and Professional Ethics*, 5 AM. CRIM. L. 151, 163-65.

dence supporting a death sentence is constitutionally required.[31]

The Court of Criminal Appeals has declined to refine the rather vague statutory language setting forth the concept of dangerousness. Instead, the jury is typically asked to determine "whether there is a probability that the defendant would commit criminal acts of violence that would constitute a continuing threat to society."[32] For instance, in *King v. State*,[33] the court was asked to set aside a death sentence for the trial judge's refusal to define the terms "deliberately," "probability," "criminal acts of violence," and "continuing threat to society."[34] The court noted that "the definition of common terms and phrases" is not required in a charge to the jury and that "[i]n *Jurek v. Texas*, . . . the Supreme Court of the United States concluded that the submission of the issues provided by Art. 37.071, *supra*, constitutionally guided the jury's determination of the punishment issues. No special definitions of the terms of that statute were required."[35] The court therefore held "that [it] . . . need not provide special definitions for these terms in its charge to the jury during the punishment stage of a capital murder trial."[36] The court had dealt similarly with regard to the term "probability" and defined it as follows:

> "Likelihood" is one of the definitions for "probability" in Webster's Unabridged Dictionary, 2d Ed. (1948). Other definitions of the word probability include "reasonable ground for presuming," "true, real, or likely to occur," "a conclusion that is not proof but follows logically from such evidence as is available," [and] "in the doctrine of chance, the likelihood of the occurrence of any particular form of an event."[37]

Relying upon the *King* judgment that the language of the statute is "simple" and uses terms the jury is "supposed to know,"[38] the Texas court has held that the defense has no right to inform its judgment regarding the use of peremptory challenges by asking prospective jurors such questions as whether they would deem a crime against property an "act of violence."[39]

The jury which must decide the dangerousness question, and with it the fate of the capital defendant, is purged of individuals unable to swear that "the mandatory penalty of death or imprisonment for life *will not affect* [their] deliberations on any issue of fact."[40] It is, then, to a jury sworn to dispassionate objectivity that the medical expert presents testimony that the defendant is a sociopath and the ominous conclusion that he will "constitute a continuing threat to society."

This expert testimony is suspect on three grounds. First, mental health professionals are notoriously bad at predicting dangerousness and invariably err on the side of overinclusion.[41] Al-

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[31] King v. State, 553 S.W.2d 105, 108 (Tex. Crim. App. 1977) (Phillips, J., concurring). Judge Phillips reviewed the evidence here and found it sufficient; he has not conducted such a review in subsequent capital cases affirmed by the court.

[32] TEX. CODE CRIM. PROC. ANN. art. 37.071 (b) (2) (Vernon Supp. 1978).

[33] 553 S.W.2d 105.

[34] *Id.* at 107.

[35] *Id.*

[36] *Id.*

[37] Granviel v. State, 552 S.W.2d at 117 n.6. The failure to narrow these terms presents independent constitutional problems. The United States Court of Appeals for the District of Columbia has noted that "when a determination of 'dangerousness' will result in a deprivation of liberty, no court can afford to ignore the very real constitutional problems surrounding incarceration predicated only upon a supposed propensity to commit criminal acts." Cross v. Harris, 418 F.2d 1095, 1101 (D.C. Cir. 1969) (emphasis added). The court found it necessary to construe a statute requiring commitment of dangerous sex offenders to "provide an analytical framework to guide lower courts in applying the conclusory term 'dangerous to others'." For,

> [w]ithout some such framework, "dangerous" could readily become a term of art describing anyone whom we would, all things considered, prefer not to encounter on the streets. We did not suppose that Congress had used "dangerous" in any such Pickwickian sense. Rather, we supposed that Congress intended the courts to refine the unavoidably vague concept of "dangerousness" on a case-by-case basis, in the traditional common-law fashion.

Id. at 1099.

[38] Battie v. State, 551 S.W.2d at 404.

[39] *Id.* at 405.

[40] TEX. PENAL CODE ANN. tit. 3, § 12.31 (Vernon 1974). The Court of Criminal Appeals regards inability to take this oath an independent ground for exclusion of a prospective juror. This would seem to violate the principle, established in Witherspoon v. Illinois, 391 U.S. 510 (1968), that exclusion of a juror opposed to the death penalty is constitutionally impermissible absent an unmistakably clear expression of an inability to follow the law. Freeman v. State, 556 S.W.2d at 297; Burns v. State, 556 S.W.2d at 275-79; Shippy v. State, 556 S.W.2d at 251; Moore v. State, 542 S.W.2d at 667-72.

[41] The evidence is reviewed in STONE, MENTAL HEALTH AND LAW: A SYSTEM IN TRANSITION 25-40 (1975), with the conclusion that "[t]he mental health professionals . . . simply have no demonstrated capacity to generate even a cutting line that will confine more true than false positives." *Id.* at 33. *See also* Ennis & Litwack, *Psychiatry and the Presumption of Expertise: Flipping Coins in the Courtroom*, 62 CALIF. L. REV. 693 (1974); Dershowitz, *The Law of Dangerousness: Some Fictions About Predictions*, 23 J. LEGAL EDUC. 24 (1970).

though it has seemed a necessity in the maintenance of a system of involuntary mental health care, and a reasonable incident to the multidimensional process of making sentencing decisions in non-capital cases, psychiatric prediction of dangerousness is conceded to be highly unreliable by virtually every student of the problem. And, while the point has been made frequently and conclusively, the concessions of several mental health professionals bear repeating. It is admitted that "the longer one works in [the mental health] field, the more one is impressed with the problem of deciding the question of danger . . . ."[42]

It is also conceded that:

> We cannot predict even with reasonable certainty that an individual will be dangerous to himself or to others. Thus the question as to what extent we can exercise control over dangerous individuals must be considered . . . . We can make an educated guess, but what right does society have to act upon a guess?[43]
>
> [W]e need to examine the important ethical problems that are a direct result of the present level of knowledge in identification of violence-prone individuals. Concern about violence will inevitably lead to the development of special treatment programs, but the majority of persons placed in such programs must be false positives . . . . Confidence in the ability to predict violence serves to legitimate intrusive types of social control. Our demonstration of the *futility* of such prediction should have consequences as great for the protection of individual liberty as a demonstration of the *utility* of violence prediction would have for the protection of society.[44]

There can be little doubt that "[t]he judge or juror who relies on the opinion of the expert [on the question of dangerousness] acts less rationally than he thinks he does. Actually he relies on a judgment into which personal insights and experiences are bound to enter so importantly that it cannot be called scientific."[45]

The difficulty with the expert testimony presented in the Texas capital sentencing proceeding is that the sociopath[46] diagnosis is the most controversial and perhaps the least precise in psychiatric nomenclature.

> The term "psychopath" is probably the most abused word in the whole psychiatric vocabulary. Etymologically, the word itself is nonspecific; it merely means a sick mind. Such ambiguous terms are readily subject to misuse. When a vague term is employed, it usually means that the concept which it represents is vague, and, unfortunately, this is true of psychopathy.[47]

There are some who think the term without scientific meaning[48] and many who think it excessively and irresponsibly used.[49] The following characteristics were identified by Cleckley and are, with

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[42] Johnston, *Releasing the Dangerous Offender*, in THE CLINICAL EVALUATION OF THE DANGEROUSNESS OF THE MENTALLY ILL 29, 34 (J. Rappeport ed. 1967).

[43] Usdin, *Broader Aspects of Dangerousness*, in Rappeport, *supra* note 42, at 43.

[44] Wenk, Robison & Smith, *Can Violence Be Predicted?*, 18 CRIME & DELINQUENCY 393, 402 (1972).

[45] van der Kvast, *Can the Psychiatrist Foretell Criminal Behavior?*, 20 INT'L J. OFFENDER THERAPY & COMP. CRIM. 148, 151 (1976).

[46] The terms sociopath, psychopath and antisocial personality are used interchangeably in psychiatric and psychological journals and will here be deemed to have the same referent.

[47] M. GUTTMACHER & H. WEIHOFEN, PSYCHIATRY AND THE LAW 86 (1952).

[48] "[D]oubts are frequently expressed as to whether the concept has a substantive referent." Blackburn, *An Empirical Classification of Psychopathic Personality*, 127 BRIT. J. PSYCH. 456 (1975). Blackburn concluded, however, after empirical study, that the convergence of traits usually attributed to the sociopath occurred with sufficient frequency to justify use of the term. *Id.* at 460. Robins calls the diagnosis a "psychiatric wastebasket," but, in the view of Lewis and Balla, "[ignored] his own warning [and] proceeded to conceptualize 'an illness or syndrome that included such a variety of behaviors . . . as to become meaningless.'" Lewis & Balla, *"Sociopathy" and Its Synonyms: Inappropriate Diagnoses in Child Psychiatry*, 132 AM. J. PSYCH. 720 (1975).

> A minority has maintained that the psychopathic personality, as a distinct clinical syndrome, does not exist. One of these dissenters, psychiatrist Olof Kinberg, commented . . . "[the concept] should be abrogated as theoretically unsatisfactory, practically misleading and destructive to scientific thinking." And Dr. Leo Kanner has commented, "A psychopath is somebody you don't like."

W. MCCORD & J. MCCORD, THE PSYCHOPATH 2 (1964) (citations omitted).

> [A] substantial number of psychiatrists do not believe there is any such condition. Many other clinical psychologists who, somewhat reluctantly, recognize its existence, nevertheless regard the psychopathic group as a dumping ground for unclassified mental disorders. Psycho-analysts view the term with an equally jaundiced eye, and indeed rarely use it, preferring their own characterological nomenclature, which however is . . . far from adequate. Even forensic psychiatrists . . . although readiest of all to accept the term, are not agreed as to its exact connotation.

E. GLOVER, THE ROOTS OF CRIME 118 (1960).

[49] *See, e.g.*, W. MCCORD & J. MCCORD, *supra* note 48, at 20; Blackburn, *supra* note 48, at 456; Lewis & Balla, *supra* note 48, at 720; S. HALLECK, PSYCHIATRY AND THE DILEMMAS OF CRIME 101 (1967).

variations among investigators, commonly associated with sociopathy:

1. Superficial charm and good "intelligence."
2. Absence of delusions and other signs of irrational thinking."
3. Absence of "nervousness" or psychoneurotic manifestations.
4. Unreliability.
5. Untruthfulness and insincerity.
6. Lack of remorse or shame.
7. Inadequately motivated antisocial behavior.
8. Poor judgment and failure to learn by experience.
9. Pathologic egocentricity and incapacity for love.
10. General poverty in major affective reactions.
11. Specific loss of insight.
12. Unresponsiveness in general interpersonal relations.
13. Fantastic and uninviting behavior with drink and sometimes without.
14. Suicide rarely carried out.
15. Sex life impersonal, trivial, and poorly integrated.
16. Failure to follow any life plan.[50]

There is strong disagreement as to whether the term identifies a discreet clinical state or a tendency toward a mode of acting out conflicts common to a range of personality types.[51] The absence of a satisfactory or agreed upon clinical definition or an identifiable intrapsychic dynamic has led researchers to "classify" sociopaths in terms of their behavior,[52] with the result that frequently the classification either explains nothing or sweeps too broadly. On the other hand, objective classification systems which attempt to take account of things other than behavior are demonstrably unreliable.[53]

The causes of sociopathy are also disputed. The onset of the disorder tends to occur between the ages of ten and thirteen.[54] Yet, rejection, emotional starvation and parental hostility in the first or first three years of life have been advanced as its causes,[55] as have early institutionalization,[56] inconsistent parental responses[57] and defective neurological structures.[58]

The strong correlation between parental rejection and the sociopath diagnosis makes plausible the dynamic hypothesis that the sociopath is an individual engaged in a "search for a painless

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[50] H. CLECKLEY, THE MASK OF SANITY 355-56 (1950 ed.) The classification accepted by the American Psychiatric Association is:

"Antisocial personality.

This term is reserved for individuals who are basically unsocialized and whose behavior pattern brings them repeatedly into conflict with society. They are incapable of significant loyalty to individuals, groups, or social values. They are grossly selfish, callous, irresponsible, impulsive, and unable to feel guilt or to learn from experience and punishment. Frustration tolerance is low. They tend to blame others or offer plausible rationalizations for their behavior. A mere history of repeated legal or social offenses is not sufficient to justify this diagnosis. *Group delinquent reaction of childhood (or adolescence)* (q.v.), and *Social maladjustment without manifest psychiatric disorder* (q.v.) should be ruled out before making this diagnosis."

AMERICAN PSYCHIATRIC ASSOCIATION, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS 43 (1968).

[51] "In current literature the term "psychopathy" is defined vaguely and because of arbitrary usage tends to assume multiple meanings. . . . [T]wo major usages predominate. There are those persons who would agree . . . that psychopathy is a personality disorder, a discernible clinical entity which can be isolated from other disorders and which is clearly diagnosable. There are others who see . . . psychopathy as a hypothetical rather than an absolute condition. They would view psychopathy as a response to the same kinds of conflicts that produce neurosis but would recognize that some individuals have a tendency to develop hypertrophied alloplastic behavioral patterns. Psychiatrists who support this proposition argue that one does not see real psychopaths, only individuals who are more or less psychopathic.

S. HALLECK, *supra* note 49 at 101.

[52] *See, e.g.*, Campagna & Harter, *Moral Judgment in Sociopathic and Normal Children*, 31 J. PERSONALITY & SOC. PSYCH. 199, 200 (1973). *Cf.* W. MCCORD & J. MCCORD, *supra* note 48, at 44, on the problem of diagnosis ("the observer should possess more than the usual amount of knowledge of his patient; he cannot depend, as with many other disorders, on the overt behavior symptoms, or complaints of the subject at the time of contact").

[53] Psychological testing of adolescent delinquents and volunteers (ministers, psychologists, social workers, correction officers, psychiatric residents and graduate students) in a mental health collective identified more than fifty percent *of each group* as psychopathic. Hawk & Peterson, *Do MMPI Psychopathic Deviancy Scores Reflect Psychopathic Deviancy or Just Deviancy?*, 138 J. PERSONALITY ASSESSMENT 362 (1974).

[54] Campagna & Harter, *supra* note 52, at 200.

[55] W. MCCORD & J. MCCORD, *supra* note 48, at 83; H. GUTTMACHER & M. WEIHOFEN, *supra* note 47, at 107-08.

[56] Humphrey, *A Study of the Etiology of Sociopathic Behavior*, 35 DISEASES OF THE NERVOUS SYSTEM 432 (1974).

[57] Campagna & Harter, *supra* note 52, at 203.

[58] W. MCCORD & J. MCCORD, *supra* note 46, at 70 ("more psychopaths seem to have defective neural structures than would be expected in a normal population, and it seems likely that such defects have some causative importance"). Recent research has focused upon the possibility of atypical responses to stimuli which preclude or inhibit avoidance learning. *See* SCHACHTER, EMOTION, OBESITY AND CRIME 152-83 (1971).

freedom from object relations" which serves as "a defense against the intolerable experience of helplessness."[59] Nevertheless, no explanation of the convergence of symptoms has won a concensus. In sum, the diagnosis tells us little more than that a subject exhibits, for unknown reasons, a cluster of characteristics which may or may not suggest an identifiable intrapsychic dynamic.

The third difficulty involved in the use of psychiatric testimony indicating that a Texas capital defendant is a sociopath is that despite the fact that the criminal or antisocial conduct is seen as an identifying symptom of sociopathy, there is, surprisingly, no reason to hope that pyschiatric predictions of dangerousness will be significantly more reliable within the universe of persons diagnosed as sociopaths. Whether because the diagnosis is meaningless,[60] or difficult to make,[61] or broader than the behaviorist referent,[62] it does not permit a reliable prediction of dangerousness.

A search of the literature reveals only one study of the dangerousness of severe sociopaths. All of the sociopaths in this study had been convicted of at least one crime, and all had been diagnosed primary psychopaths. One quarter were convicted of *no* additional crimes during a fifteen year follow-up:

> For some 15 years we . . . have followed the subsequent convictions of 70 prisoners . . . who were picked out as undoubted examples of psychopathic personality of a severe grade. We have compared them with nonpsychopathic prisoners. Although most of them have became very serious recidivists and have been in prison for much of the time, a quarter of them, to our surprise, have never been reconvicted. In the last 5 years of the 15 follow-up just completed, the psychopaths who have been at liberty during this period have hardly been reconvicted more often than a control group.[63]

The ability of psychiatrists to predict *serious assaultive crimes* among offenders who had committed at least one criminal act and fit identical with the "classical stereotype of the criminal or antisocial psychopath,"[64] has been tested in an effort in Massachusetts to identify and treat dangerous sexual offenders.[65] Of the thirty patients found to be dangerous after thirty months of treatment and evaluation,[66] less than thirty percent committed serious assaultive crimes.[67]

If psychiatric experts in Texas capital sentencing proceedings believe, as they seem to,[68] that all "severe" sociopaths are dangerous, they may then overpredict simple recidivism in one out of four cases. If they were to conduct extensive analyses

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[59] S. HALLECK, *supra* note 49, at 103-04. A clinical example is presented in which a sociopath recalls that at the age of nine, abandoned by his father, he was helpless to avoid being left alone for long periods by his mother. He thought of pleading with his mother, and stated:

> Then suddenly it came to me that no matter what I did, no matter how much I cried or pleaded, it wouldn't make any difference, she would leave anyway. At that moment somehow or another, I was a free person. I didn't need her and I didn't need anybody. I stopped worrying and I started having fun. Since that time life has been easy, and I can be happy even though I am in prison.

Id. at 105.

[60] *See* note 48, *supra.*

[61] *See* notes 49-53, *supra* and accompanying text.

[62] Halleck and others maintain that "the psychopath is not necessarily a criminal. He certainly need not be an unsuccessful criminal. If a really pure psychopath could exist, his success in the world would probably preclude his ever coming to the attention of a psychiatrist." S. HALLECK, *supra* note 49, at 101. Indeed, criminal or violent acting out is seen as a failure of the defense. *Id.* at 108-14. Cleckley recognizes in some apparent sociopaths an ability to commit, and sometimes repeat, violent, antisocial acts, but finds such conduct so atypical as to warrant modification of the diagnosis:

> The [typical] psychopath, as I have seen him, usually does not commit murder or other offenses that promptly lead to major prison sentences. This is true of the disorder as I present it in what I consider a pure culture. A large part of his antisocial activity might be interpreted as purposively designed to harm himself if one notices the painful results that so quickly overtake him. Of course I am aware of the fact that [many] persons showing the characteristics of those here described do commit major crimes and sometimes crimes of maximal violence. There are so many, however, who do not, that such tendencies should be regarded as the exception rather than as the rule, perhaps, as a pathologic trait independent, to a considerable degree, of the other manifestations which we regard as fundamental.

H. CLECKLEY, *supra* note 50, at 290. The task of identifying an independent pathologic trait leading to violent behavior may be no easier when the subject is a diagnosed sociopath than when he is not.

[63] Gibbens, Briscoe & Dell, *Psychopathic and Neurotic Offenders in Mental Hospitals*, in THE MENTALLY ABNORMAL OFFENDER 143-44 (de Reuck & Porter eds. 1968).

[64] Kozol, Baucher & Garofalo, *The Diagnosis and Treatment of Dangerousness*, 18 CRIME & DELINQUENCY 371, 379 (1972).

[65] Kozol, Baucher and Garofalo, *supra* note 64.

[66] Evaluations were by a team including psychiatrists, psychologists and a social worker and drew upon "clinical examinations, psychological tests, and a meticulous reconstruction of the life history elicited from multiple sources." *Id.* at 383.

[67] *Id.* at 391.

[68] *See* Dix, *supra* note 16, at 157.

and they do not,[69] they might overpredict serious assaultive behavior by as much as seventy percent. Yet, their pronouncement that there is a probability that the defendant will commit future acts of violence because he is a sociopath must skew the sentencing process away from a balancing judgment reflecting contemporary morality and toward a rigid process of classification. Analogous conflicts between the factfinder's tendency to label at the direction of psychiatric experts and its duty to make an independent judgment are instructive.

Lessons from Analogous Uses of Psychiatric Evidence

The moral, social and legal judgment made by a jury deciding the appropriateness of a death sentence is much like that of a jury deciding the culpability of a defendant who raises an insanity defense. Here too the psychiatric expert may inhibit jury deliberation:

> With the relevant information about the defendant, and guided by the legal principles enunciated by the court, the jury must decide, in effect, whether or not the defendant is blameworthy. Undoubtedly, the decision is often painfully difficult, and perhaps its very difficulty accounts for the readiness with which we have encouraged the expert to decide the question. But our society has chosen not to give this decision to psychiatrists or to any other professional elite but rather to twelve lay representatives of the community.[70]

It has been determined that "in view of the complicated nature of the decision to be made—intertwining moral, legal and medical judgments—the insanity defense is peculiarly apt for resolution by the jury."[71] And, it has been required "that trial judges and appellate judges ensure that the jury base its decision on the behavioral data which are relevant to a determination of blameworthiness,"[72] rather than the conclusions and classifications of experts. Psychiatric experts have therefore been discouraged from stating a simple conclusion as to whether an alleged crime was a product of a mental disease or defect where that determination is essential to a determination of insanity.[73] They have been asked instead to give "the kind of opinion you would give to a family which brought one of its members to your clinic and asked for your diagnosis of his mental condition and a description of how his condition would be likely to influence his conduct."[74] It has also been required that the charge to the jury admonish it against excessive reliance upon the expert's conclusions.[75]

Conclusory psychiatric testimony has also been found to inhibit intelligent decision-making where civil commitment is authorized for the dangerous. In words that ring truer, perhaps, in this context than in that for which they were written, the United States Court of Appeals for the District of Columbia Circuit has said:

> It is particularly important that courts not allow this second question to devolve, by default, upon the expert witnesses. Psychiatrists should not be asked to testify, without more, simply whether future behavior or threatened harm is "likely" to occur. For the psychiatrist "may—in his own mind—be defining 'likely' to mean anything from virtual certainty to slightly above chance. *And his definition will not be a reflection of any expertise, but * * * of his own personal preference for safety or liberty.*" Of course, psychiatrists may be unable or unwilling to provide a precise numerical estimate of probabilities, and we are not attempting to so limit their testimony. But questioning can and should bring out the expert witness's meaning when he testifies that expected harm is or is not "likely." Only when this has been done can the court properly separate the factual question—what degree of likelihood exists in a particular case—from the legal one—whether the degree of likelihood that has been found to exist provides a justification for commitment.[76]

It is also significant that in the insanity defense context, the diagnosis of sociopath—once thought to imply too much rationality and too little compulsion to warrant mitigating treatment—is increasingly thought to present a challenge to the presumption of responsibility which only the jury

[69] *See* Dix, *id.*, at 155, 159; Battie v. State, 551 S.W.2d at 407.

[70] Washington v. United States, 390 F.2d 444, 453–54 (D.C. Cir. 1967).

[71] Adams v. United States, 413 F.2d 411, 416 (D.C. Cir. 1969) (quoting King v. United States, 372 F.2d 383, 388 (D.C. Cir. 1967)).

[72] Washington v. United States, 390 F.2d at 447.

[73] *Id.* at 455–56.

[74] *Id.* at 458. The modification of the *Washington* rule in United States v. Brawner, 471 F.2d 969 (D.C. Cir. 1972) eliminates the prohibition of "ultimate fact" testimony, but in no way reflects a diminished concern that the proper role of the jury be maintained; under existing procedures, the court is to make it clear to the jury, by its instructions, that "[t]he experts add to perspective, without giving decision. The law looks to the experts for input, and to the jury for outcome." *Id.* at 1007.

[75] *See* 471 F.2d at 1006–07.

[76] Cross v. Harris, 418 F.2d at 1100–01 (citations omitted) (emphasis added).

may resolve. The Ninth Circuit has held, in a case involving testimony by a government witness that the defendant was a sociopath who could distinguish criminal and legal conduct, but could not "appreciate the morality of his conduct,"[77] that the trial judge committed reversible error in failing to instruct the jury that " . . . for purposes of the insanity defense, 'wrongfulness' means moral wrongfulness rather than criminal wrongfulness."[78] Moreover, the Fourth Circuit has held that the diagnosis that a defendant "is an Antisocial Personality and was so at the time of the alleged offenses, at which times he was able to appreciate the criminality of his act, but he was not able to conform his conduct to the requirements of the law,"[79] is evidence which entitles the defendant to take the question of insanity to a jury.[80] The Fourth Circuit has also maintained that "[t]here is enough doubt about a sociopath . . . to call for an exercise of the jury's moral judgments."[81] Finally, appellate opinions affirming convictions of diagnosed sociopaths occasionally have expressed, however indi-

[77] United States v. Fresonke, 549 F.2d 1253, 1255 (9th Cir. 1977) (quoting the testimony of Dr. H. Kaufman, a psychiatrist who testified as an expert witness for the Government).

[78] *Id.*

[79] United States v. McGirr, 434 F.2d 844, 846 (4th Cir 1970).

[80] *Id.* at 849. The conviction was reversed because the defendant's motion to withdraw his guilty plea in light of the diagnosis had been denied. The psychiatric report stated:

> The patient did state that he felt that he was not able to control the actions leading up to the commission of this crime and although this is said with the same glib facile manner, nonetheless the staff is of the opinion that he is correct that the commission of these crimes is part and parcel of his sociopathic personality. He will so be reported to the Court.

Id. St. Elizabeth's Hospital, the examining agency, had decided in 1957 "to treat sociopathic personality disturbance as a mental illness." United States v. Brawner, 471 F.2d 969, 1017 n.18 (D.C. Cir. 1972) (Bazelon, J., concurring in part and dissenting in part).

[81] United States v. Wilson, 399 F.2d 459, 463 (4th Cir. 1968). The evidence here was reminiscent of that typically presented in a Texas capital sentencing proceeding with, of course, conclusions of blameworthiness rather than dangerousness. Significantly, Judge Sobeloff said, dissenting from affirmance of the conviction and the jury determination that the defendant was not legally insane:

> When psychiatrist and counsel fail to provide sufficient underlying information to the jury, the judge, I maintain, has some responsibility to help elicit this vital information. Although ours is indeed an adversary system, a criminal trial is not a game. It is a solemn proceeding in which moral judgment is pronounced. As the governor of the trial, and not a mere moderator, the judge has an affirmative duty to do all that is feasible to assure that these judgments are based upon all the relevant evidence. The judge should not hesitate to prevent the distortion of the jury's perspective by counsel's deficient exploration of the underlying, determinative facts. In some cases, the court may feel obligated to suggest that additional witnesses be called. At the very least it should ensure that the psychiatrists who do testify describe the investigations, observations, reasoning and medical theory which led to the ultimate opinion, as voiced on the witness stand.
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> Professor McCormick has declared that the "core" of the opinion evidence rule would be preserved by a rule "prescribing that the trial judge in his discretion may require that a witness before giving testimony in terms of inference or general description shall first give the concrete details upon which the inference or description is founded, so far as feasible." The need for judicial supervision is particularly urgent in insanity cases, where the adversary system may malfunction because of the inexperience of counsel, the complexity of the issue, or both. Most criminal defendants are represented by court-appointed lawyers with little experience in criminal law or even other areas of trial work. These lawyers must master new fields of law and new skills. When, in addition, it becomes their task to present a defense of insanity, which involves elusive medical, legal and moral problems, they are often understandably overwhelmed. In these circumstances, intervention from the bench may be absolutely essential for a fair trial.
>
> In the instant case, the trial judge did play more than a passive role. On several occasions he commendably required the expert witness to clarify his opinions. But he never demanded that the psychiatrist present the factual basis for his opinions. Thus the jury never obtained a complete unfolding of defendant's emotional and mental processes. If they had, they might have acquitted by reason of insanity.

Id. at 465 (footnotes omitted). The opinion of the court further commented upon the "factual sparsity of the record," *id.* at 462, indicating that had the trial occurred after the more recent announcement of judicial rules for the presentation of psychiatric testimony on the issue of sanity, it would have remanded "for a retrial on the issue of mental responsibility." *Id.*

> [T]he expert witness was allowed and encouraged to state his conclusionary appraisal of the defendant. Conclusionary answers were given to questions which called for them and which, most frequently, were attempted to be cast in terms of ultimate inferences. 'Does the defendant know the difference between right and wrong?' 'Has he the capacity to refrain from doing what he wants to do if he wants very much to do it?' These are summary paraphrases of a barrage of questions that ultimately elicited in considerable detail the psychiatrist's summary description of the defendant. No one, however, asked the witness about the bases of his judgment. . . The deficiencies of the record here seemingly result from an elementary preference for the unexamined

rarely, a mix of reservations about the verdict and speculation that it was dictated by the form of the legal test or of the expert testimony.[82]

There is at least one case of acquittal despite a finding of sociopathy:

> The report of the psychiatrist representing the court was, with the consent of the prosecution and the defense, admitted into evidence. In it he said, "On the basis of the existing Maryland law, this patient must be considered a responsible agent, since he has the capacity to distinguish right from wrong and to realize the consequences of his act. Yet, he has not even the ability to conform to society's demands that many insane individuals possess."
>
> The defense psychiatrists all maintained that he did not know right from wrong. Following somewhat the line of reasoning of Jerome Hall, a distinguished American law professor, they asserted that knowing did not denote intellectual cognition alone but included an ability to make use of such knowledge. Being greatly affected by the tragedy of the youth's aged parents and having the court's assurance in answer to a specific question of the foreman that on no condition would he be at large to prey upon the community, the jury found him not guilty by reason of insanity. This was the first instance in Maryland law in which a psychopath was found not guilty by reason of insanity. As such, it attracted attention even outside the state. The *Baltimore Sun* called it a victory for the common sense of the jury in that it disregarded the "peculiarly backward definition of insanity" under Maryland law and brought "the definition into full accord with the latest findings of psychiatry."[83]

And, the McCords have reported a case in which the Governor of Maryland, "question[ing] the validity of sentencing a man because of a prediction concerning his peril to society,"[84] commuted the sentence of a sociopath condemned to die.[85]

Two conclusions may be drawn from these cases involving similar decisionmaking or similarly diagnosed criminal defendants. The first is that a fair hearing on a question which involves a measurement of culpability requires that the factfinder be given all "data relevant to blameworthiness"[86] and bolstered against reliance upon conclusory expert testimony which fosters the delegation of its role to the psychiatric expert. The second is that the very diagnosis which has led to the condemnation of Texas capital defendants may be deemed mitigating where decisions are free of rigid formulae (sociopath = not psychotic = able to distinguish right and wrong = able to conform to the requirements of law) and decisionmakers are able to see the data, and the individual, behind the labels.

Texas has traditionally thought sentencing judgments best made by juries.[87] It has, moreover, been on guard lest the proper role of the jury be usurped by psychiatric experts

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conclusions of the expert witness over their factual predicates. It was only by happenstance that the witness testified that there was very little violence in Wilson's history, and the paucity of other basic information is proclaimed by the fact that we know nothing else about him except that he was forty-six years old, white and divorced. The doctor testified that Wilson had been a failure in everything he ever attempted, but the jury and we know nothing of anything Wilson ever attempted except marriage, and that is entirely unelucidated.

[82] *See* note 81 *supra*; Apgar v. United States, 440 F.2d 734, 734 (8th Cir. 1971) ("we feel compelled to say that the defendant's] life . . . demonstrates the tragically inadequate response of our institutions—mental, penal and judicial—to an individual whose acts, time and again, constituted a plea for assistance to overcome severe personal inadequacies"); Adams v. United States, 413 F.2d 411, 415 (D.C. Cir. 1969) ("whatever evil may be, it is uncommonly difficult to discover it in the squalid life of this man").

[83] M. GUTTMACHER & H. WEIHOFEN, *supra* note 47, at 98–99.

[84] W. MCCORD & J. MCCORD, *supra* note 48, at 200.

[85] The sentencing judge had said:

> [The defendant] is a mentally abnormal person, and I knew him to be so when I sentenced him to hang. There is something very ugly about that bald statement. Even a judge who believes in capital punishment would hesitate a long time before he imposed the death sentence upon a person known to be mentally irresponsible. I do not believe in capital punishment . . . society confesses its own failure every time it exacts a life for a life.

Id. at 174.

> The Governor (Albert C. Ritchie) had this response: What I cannot understand is how the Court could first decide—as it did—that [the defendant's] mental disorder should be considered in mitigation of punishment, and that he should not be hanged; and then sentence him to be hanged anyhow, not for his crime, but because the penitentiary is the only place to which he could be committed.

Id.

The McCords themselves said, of the execution of sociopaths, that "[s]ince execution precludes the possibility of better treatment, spontaneous 'conversion,' or correcting mistaken diagnoses, it hardly seems a just solution to society's problem." *Id.* at 188–89.

[86] Washington v. United States, 390 F.2d at 447.

[87] The first legislature of the State of Texas passed a statute requiring that the jury assess punishment in criminal cases (1 Laws of Texas 161 (Gammel 1898)); the practice has not been significantly altered. *See* LaFont, *Assessment of Punishment—A Judge or Jury Function?*, 38 TEX. L. REV. 835 (1960).

> The conclusion to be reached in matters of this sort is for the jury. It is not the province of an expert to give his opinion as to how a party accused of crime shall be punished in case of a conviction. He may say that the party is sane or insane, but it has not been held, nor do we believe it could be rightfully held, that the expert could express his opinion as to the amount of punishment that the jury should assess in case they found that the accused was not insane.[88]

Yet, the Texas Court of Criminal Appeals has met the charge that psychiatric testimony of the kind typically used by the State in capital sentencings was "speculative and constituted an invasion of the province of the jury" with the response that: "[t]he judge, on the basis of common knowledge, impliedly found that the behavior patterns of a sociopath were beyond the knowledge of laymen and that the witness' knowledge and experience in this field would assist the jury. The evidence was properly admitted."[89] The court did not consider the relevancy of sociopathy to the questions before the jury, nor did it exhibit any inclination to articulate standards to assure that the expert testimony would inform rather than dictate the judgment.[90]

One can advance compelling justifications for permitting conclusory expert testimony and for permitting expert testimony as to the ultimate fact at issue.[91] But there is a constitutional need to assure that the Texas capital sentencing jury will understand and exercise its discretion to "consider . . . not only why a death sentence should be imposed, but why it should not be imposed."[92] It would seem, therefore, that courts supervising the Texas capital sentencing process have "an affirmative duty to do all that is feasible to assure that these judgments are based upon all the relevant evidence,"[93] and that the life-death decision rests, de facto, with "twelve lay representatives of the community."[94] Texas courts have taken no step to control the impact of conclusory psychiatric testimony. Moreover, the jury is not told of its authority to respond to mitigating evidence but sworn to objectivity.[95] The terms defining the concept dangerousness have not been narrowed to exclude even trivial threats or remote possibilities.[96] The trial judge has discretion to exclude apparently relevant mitigating evidence,[97] and the sufficiency of the evidence of dangerousness is, as a rule, unreviewed.[98]

Professor Dix has suggested that the psychiatric profession has an obligation in situations of this kind to insist that the jury not listen to its expertise without a frank statement of psychiatric limitations.[99] The circumstances surrounding and exacerbating the problem of the expert who appears but is not qualified (1) to know what dangerousness is[100] and (2) to identify it,[101] suggest a legal remedy as well. They suggest that the Texas death penalty laws have failed in their operation to allow those meaningful considerations of particularized mitigating circumstances[102] which are "a constitutionally indispensable part of the process of inflicting the penalty of death."[103]

[88] Duke v. State, 61 Tex. Crim. 441, 444, 134 S.W. 705, 707 (1911). *See also* State v. Nickens, 403 S.W.2d 582, 587 (Mo. 1966).

[89] *See* Battie v. State, 531 S.W.2d at 407. *See also* Moore v. State, 542 S.W.2d at 676.

[90] The only hint the Texas Court of Criminal Appeals has given that it disfavors the form and effect of psychiatric evidence of this kind in capital sentencing is its statement in reviewing the sufficiency of the evidence presented in Burns v. State, 556 S.W.2d 270 (Tex. Crim. App. 1977), to support a death sentence. The court stated that "[w]e find the facts adduced at the guilt stage of the trial in the instant case to furnish greater probative evidence to support the jury's answer than an opinion which may be gleaned by a brief psychiatric examination." *Id.* at 280.

[91] *See* FED. R. EVID. 704, Notes of Advisory Committee on Proposed Rules (1975).

[92] Jurek v. Texas, 428 U.S. at 271.

[93] U.S. v. Wilson, 399 F.2d at 465 (Sobeloff, J., dissenting).

[94] Washington v. United States, 390 F.2d at 454

[95] *See* note 40, *supra* and accompanying text

[96] *See* notes 30–39, *supra* and accompanying text

[97] *See* notes 24–31, *supra* and accompanying text.

[98] *See* note 31, *supra* and accompanying text.

[99] Dix, *supra* note 16, at 151.

[100] *See* notes 30–39, *supra* and accompanying text.

[101] *See* notes 41–45, *supra* and accompanying text.

[102] Jurek v. Texas, 428 U.S. at 272.

[103] Woodson v. North Carolina, 428 U.S. at 304.

Mess with Texas!

TEXAS DEATH PENALTY FACT SHEET

Background: In 1972 the U.S. Supreme Court banned the death penalty nationwide because of its "freakish and arbitrary" application. States rewrote their guidelined, and in 1976 Texas' revised death penalty statute was accepted by the Court (Jurek v. Texas). In 1982 Charles Brooks became the first Texan to be executed under the statute.

Death Row: Texas' death row poulation currently stands at 385, the largest death row in the United States and 25 persons more than all of South Africa. Of the 36 states which currently have death penalty statutes, only three (Texas, California and Florida) have death rows larger than 200 people. The majority of death penalty states (21) have death rows with or under 50 residents.

Executions: Texas stands out not only in number on death row but also in number executed. Texas alone accounts for over one-fourth (32%) of the nation's executions (77 out of 241) since 1976. Less than 11% of the nation's executions (25) have taken place outside of the South.

Racial Factors: Of the 385 on Texas' death row , 43% are white, 39% black, 16% Latino, 2% Asian or Arab. Almost 90% were convicted of the murder of White victims.
A November 1985 study by the Dallas Times Herald showed that in Texas, killers of whites are five times more likely to face capital charges than killers of blacks.Blacks who kill whites are 13 times more likely to face capital charges than whites who kill blacks.

Legal Representation: Most of those death row are poor, did not have money for legal representation at their trials and had to be appointed attorneys by the court. A study by the Texas Judicial Council showed that defendants with court-appointed attorneys in tcapital trials were twice as likely to receive death as those with the resources to retain private counsel. Those on death row are forced to rely on volunteer attorneys to represent them on appeal, and many are currently without lawyers.

Texas, It's Like a Whole Other Country.

Special Issues: Three of the 77 people executed in Texas were juveniles (under 18 at the time of their crime). From 1982-88, juvenile executions occurred in only five countries: Rwanda, Barbados, Bangladesh, Pakistan and the U.S.
Texas' death row population also includes the mentally retarded. Johnny Penry with an estimated IQ between 50 and 60 and the reasoning of a 6 or 7 year old sits on death row despite having his death sentence thrown out by the U.S. Supreme Court.
The innocent are also among those on death row. In September 1987, a Texas judge ruled that Clarence Brandly's 1980 conviction was wrongful and had been motivated by racism. Brandly sat on death row awaiting decision for nearly 10 years until the appeal decision finally allowed him to go free. In March 1989, a Randall Dale Adams was released after serving 12 years for a crime he did not commit. And in May 1993, Leonel Torres Herrera was executed despite the fact that evidence existed that he was not guilty of the crime he was accused of. The court's ruling stated that innocence was not grounds to stop the execution as long as the process was adhered to. Process seems to be much more important than people's lives, especially if you're black or Latino. Many other questions have been raised about the innocence of various persons now on Texas' death row.

Crime Rate: The death penalty has never proven effective in deterring crime. To the contrary, states that have reinstated the death penalty have shown an Increased rete of criminal homicide. Texas not only leads the nation in executions, but since 1983 has had the highest per capita homicide rate in the country (FBI Crime Reports).

Cost: Extensive legal process in a capital case drives the cost execution to far beyond that of life imprisonment. In 1987, it was estimated that the death penalty had already cost the state $183.2 million, $80 million more than the cost of non-capital trials with extended life sentences.

The National Coalition to Abolish the Death Penalty is ready to

July 1994

TO: *All* NCADP Members
FROM: Ricardo Villalobos, Organizing Coordinator
RE: A *Special Campaign* in Texas

Almost incredibly, the department of tourism in the nation's most prolific death factory has come up with a winning slogan for the anti-death penalty movement:

"Texas -- *it's like another country.*"

Yup, Texas *is* like another country -- perhaps Iran or Iraq, or China, where they shoot prisoners in the back of the head without the benefit of appeals or clemency. Texas has developed a death machine that grinds away day after day with incredible precision.

This is a special letter to our membership asking for your help in a very special campaign to throw more than a few kinks into the machinery of death in the Lone Star State.

At the end of this month, during our annual conference in Little Rock, Arkansas, the **NCADP will launch a "Mess With Texas" campaign** -- a chance for abolition activists around the country to engage in a little warfare. The campaign will have several components.

Within Texas, we're already working with a broad range of activists, attorneys, religious leaders and others to bring together, coordinate and strengthen the state's abolitionist community. With them, we're beginning to develop **a nuts and bolts education and organizing campaign to take the sheen off the Texas death penalty.**

● We will focus primarily on Harris County, Texas, a county that has sent more men to death row than the rest of the state combined. In fact, more *Harris County* prisoners have been *executed* than total prisoners executed in any other state.

● We're making contacts with social service providers and those fighting for a share of the state's limited resources for programs in education, child abuse and drug abuse prevention, while Texas spends **over $15 million annually on the death penalty**.

● We're discussing ways to curb the rampant legal errors so evident in the Texas death process -- errors that have allowed Texas to send unprecedented numbers of **innocent men** to death row.

Outside Texas, we're answering requests from many of you for ways **you can help** fight against the slaughter. Our national campaign will combine efforts to support our Texas colleagues in their legislative, educational and organizing work, with some spirited efforts to direct a national spotlight on the problem and enlist the public's support in condemning the devastating Texas death machine.

● We'll help **pressure the Texas Board of Pardons and Parole** to hold hearings in death penalty cases.

● We'll **bird-dog Texas Governor Ann Richards**, challenging her anti-crime program which consists almost exclusively of abetting executions while the state has climbed to #3 in homicide rates.

● We'll lobby to end the execution of prisoners in Texas with mental retardation.

● We'll direct the attention of the international justice community on this other *country*, and ask for their help.

● We'll pressure the U.S. Justice Department to **investigate race discrimination** in Texas' death penalty.

One of our first steps in messing with Texas is the production of an organizing packet for individuals who want to be part of the Texas campaign. We hope to have that packet available at our national conference in July.

Our "Mess with Texas" campaign is part of our budget and planning for this year. But so is special fundraising to help cover the extra costs. As we prepare some proposals for foundation support for our overall Texas effort, **we're asking you to help get our organizing packets prepared.**

The packets will include:

** mock "tourism brochures"

** a comprehensive report on the death penalty in Texas

** organizing tips and action ideas, plus

** a potpourri of stickers, information and organizing tools.

We're estimating the production costs to be about $7,000.

Here is what *you* can do!

● ***Your gift of $25.00 will pay for 1,000 of our full-color printed "tourist brochures" which can be tucked into the seat pocket of the plane that carries you home from the national conference or any other trip you take this summer!***

● ***A gift of $50 will cover the costs of 1,000 special "Mess with Texas" stickers, which look great when adhered to appropriate places at the cowboy bar nearest you which serves "Lone Star Beer".***

● ***A gift of $250 will provide 50 activists with the comprehensive report, "A Texas-Sized Crisis," (by the Death Penalty Information Center), a 20-page compendium which is chock-full of useful information about the death penalty.***

So think about it. The executions in Texas continue, day after day. It's time to focus a national spotlight on Texas. Our campaign is serious and we mean business. But we're not too dour to have a little fun as well.

Help out with this special campaign!! Send us your gift today.

P.S. If you send us $25 or more, I'll send you one of our new "Mess with Texas" key-chains for FREE!

-Leigh Dingerson

Texas - It's Like Another Country.

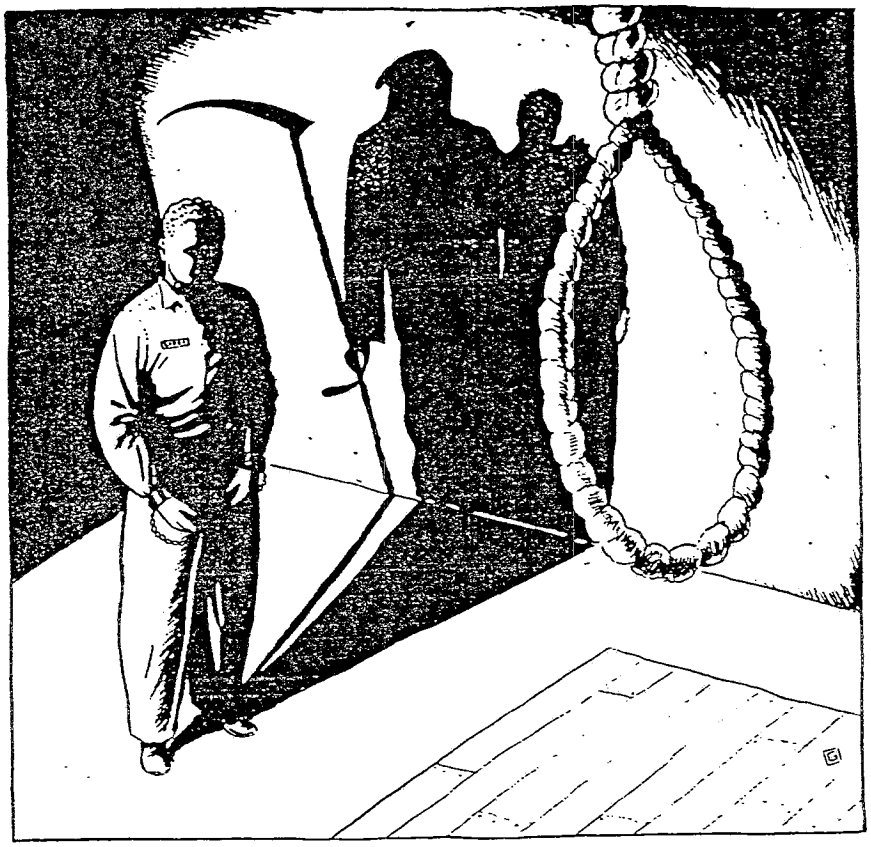
EXCELLENT ARTICLE:

RE: GOV. ANN RICHARDS + 1993 TEXAS DEATH PENALTY

Judging the Executioners

Progressive Leaders and the Death Penalty

by Jordan Steiker



There are televisions on death row, and it seems likely that many of them were tuned to election coverage on the night in 1990 when Texas voters chose Ann Richards as the state's 42nd governor. Richards had campaigned as a staunch death penalty supporter, but given her well-documented liberal background, it was not unreasonable to hope that her administration might exercise more judiciousness—and greater moral responsibility—in deciding just which people the state would and would not kill. Halfway through Richards' first term, it hasn't worked out that way. Indeed, Richards has almost completely abdicated her constitutional role in the review process.

The campaign leading to her victory had been hard fought, and in an era of unseemly tactics, the early stages of the Texas gubernatorial race had marked a new low. During the Democratic primary, former Texas Governor Mark White and former Texas Attorney General Jim Mattox trumpeted their personal involvement in the enforcement of the death penalty, with White going so far as to appear in a television ad that included larger-than-life-sized photographs of inmates who had been executed during his stewardship. At one point during the campaign, Richards was the embarrassed recipient of an endorsement by *Endeavor*, the Texas Death Row newsletter. Although Richards did not embrace the endorsement ("I don't know what possibly could have engendered it") and repeatedly stated her support for the death penalty ("My view on the death penalty is that it's the law and the law should be carried out"), progressive Texans had reason to believe that a Richards administration would be different from those of her predecessors. Before Richards took office, Texas led the nation in executions (37 since 1976), and Texas could surely do no worse with Richards than with White and Mattox, on the one hand, who seemed to view imposition of the death penalty as the highest function of state government, and Republican candidate Clayton Williams, on the other, whose sole contribution to the criminal-justice debate was a rehabilitation plan under which first-time drug offenders would be sentenced to hard labor "bustin' rocks."

Two years into Richards' term, Texas remains the death penalty capital of the United States, carrying out about a third of the executions nationwide – 18 of 52 since Richards took office. If the current pace of executions continues, Richards will preside over more executions than has any other governor (Texan or otherwise) during the past 30 years. During Richards' term, the State has executed two retarded inmates, an inmate with severe brain damage, an inmate paralyzed by a stroke a week before his execution, a juvenile, two inmates who did not themselves kill (but who participated in felonies with others who killed), and an arguably innocent inmate. Over half of the inmates executed were black or Latino, and the victims of all but two of the executed inmates were white. Few death row inmates received adequate representation at trial (there is no coordinated criminal defender service), and the state does not provide indigent inmates with post-conviction counsel.

As these executions have been carried out, Richards has not been just a reluctant overseer of the state criminal justice system. By refusing to provide any meaningful executive review of individual cases, she has allowed executions to go forward with little public scrutiny. She has failed to establish regular procedures that would even permit review in compelling cases. As it stands, the clemency process in Texas consists of a series of *ex parte* communications between Richards' office, defense counsel, and the state attorney general's office, almost invariably culminating in a private communication from Richards' legal counsel that the governor declines to be involved.

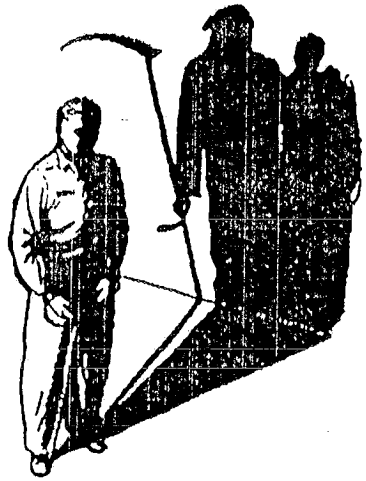
Richards' uncompromising position that *all* condemned prisoners should be executed – regardless of age, mental status, or failures in the judicial process – must rest on a view that any executive involvement in capital punishment will inevitably appear obstructionist or abolitionist. This political judgment, even if accurate, cannot justify Richards' continued abdication of responsibility for Texas' current death penalty practices.

When to Intercede

Texas law does not grant broad clemency powers to the governor; it permits the governor to stay an inmate's execution for a single 30-day period, and to direct the Board of Pardons and Paroles to consider whether commutation to a life sentence would be appropriate. If a majority of the Board so recommends, the governor may commute a capital

continued on p. 14

Executions, *from p. 11*



sentence to life imprisonment.

Virtually every inmate facing execution approaches the governor seeking a stay and review before the Board of Pardons and Paroles. Counsel for the second inmate executed during Richards' term, Ignacio Cuevas, presented such a petition on the ground that the jury which had sentenced him to death was unaware of his mental retardation. At the time of Cuevas' sentencing, the now-repealed Texas sentencing scheme did not permit a jury to consider mental retardation as a basis for withholding the death penalty. Rather, a defendant's mental retardation offered an *affirmative* basis for the extreme sanction, because the Texas sentencing scheme focused the inquiry almost exclusively on a defendant's "future dangerousness." In another case, the United States Supreme Court had held the Texas sentencing scheme invalid as applied to a mentally retarded defendant: although the Constitution's prohibition against "cruel and unusual" punishment does not preclude executing the mentally retarded, the Court ruled that a state must give the sentencer an opportunity to reject the death penalty by considering the defendant's limited mental capacity as a mitigating circumstance. The courts reviewing Cuevas' conviction in light of this decision held that Cuevas could not benefit from the ruling because of his attorney's failure to develop evidence of his mental retardation at trial.

Despite the fact that no actor within the system had ever considered whether Cuevas' extremely limited mental capacity reduced his responsibility for his crime, Richards refused to direct the Board of Pardons and Paroles to consider whether Cuevas' retardation warranted a sanction less severe than death. Richards has been consistent in this position: Billy White, another retarded inmate whose jury did not (and could not) consider his retardation at sentencing, was likewise executed after Richards declined to seek review; so was Justin May, whose jury did not learn of his brain damage at trial because of the Texas scheme.

The Texas scheme similarly restricted capital sentencing juries from considering a defendant's youth at sentencing, and the Supreme Court is presently considering whether such a restriction also violates the Constitution. Just before the Supreme Court agreed to address this issue, Jesus Romero, a teenager at the time of his crime, argued that his sentence was invalid because his jury was unable to reject the death penalty on the basis of his youth. Richards rejected Romero's plea, and he was executed just weeks before a similarly situated defendant, Gary Graham, obtained review (and a stay of execution) from the Supreme Court. Both the Supreme Court and the governor's office were fully aware that Graham's case might be heard, and Justices Stevens, Blackmun, and Kennedy, dissenting from the denial of Romero's request for a stay of execution, argued that it was unjust to let Romero die before the Court ruled on his legal claim.

In a bizarre and unsettling case, another Texas inmate, Leonel Herrera, sought relief in the state courts when his attorneys discovered new evidence that cast doubt on his guilt (including evidence from a former Texas judge that Herrera's deceased brother had confessed to the murder). The Texas courts refused to consider Herrera's evidence because of a state procedural rule that bars bringing newly-discovered evidence claims more than 30 days after trial. The Federal Court of Appeals likewise dismissed Herrera's claim on the ground that the federal courts are reserved for constitutional claims and that the execution of an "innocent" defendant, absent prosecutorial misconduct or error at trial, does not constitute a constitutional violation. The Supreme Court agreed to hear Herrera's claim but refused to stay his execution (four votes are required to hear a case; five are needed to stay an execution). Herrera sought a reprieve from Richards, who declined to issue a stay to permit thorough review of the evidence by the Board of Pardons and Paroles. Herrera would have been executed (and his case dismissed as "moot") but for the last minute grant of a stay by the Texas Court of Criminal Appeals.

If the current pace continues, Richards will preside over more executions than has any other Governor (Texan or otherwise) during the past 30 years.

The Supreme Court has recently rejected Herrera's claim. Ironically, the Court's central justification for refusing to address claims of innocence is that "[e]xecutive clemency has provided the 'fail safe' in our criminal system." According to the Court, "[h]istory shows that the traditional remedy for claims of innocence based on new evidence... has been executive clemency." Recent history, in Texas anyway, suggests otherwise.

Of the numerous requests for executive intervention, Richards has temporarily stayed only one execution. Johnny Garrett, who at the age of 17 raped and murdered a nun, was himself repeatedly raped and abused as a child by various members of his family. Garrett developed a multiple personality disorder and experienced auditory and visual hallucinations both before and after his murder conviction. Although the Constitution requires that a defendant be sane at the time of his execution, the Texas courts had made the required finding on the ground that at least one of Garrett's personalities understood why he was being executed. Pope John II, members of the victim's religious order, and members of the victim's own family called on Richards to commute Garrett's sentence. Richards directed the Board of Pardons and Paroles to consider Garrett's case but the resulting proceeding was a sham. At the hearing, the district attorney falsely informed the Board that Garrett had committed an additional murder while in prison (a claim which Garrett's counsel was not permitted to rebut). During the Board's subsequent deliberations, the state assistant attorney general communicated privately with the Board. The Board unanimously recommended against com-

continued on p. 16

10 Questions for the Curious:

• In 1973, the Texas House of Representatives House Bill 200 reinstated capital punishment in the state for certain crimes. In 1976, the U.S. Supreme Court upheld HB 200, effectively reinstating capital punishment for the entire United States. Here are a few facts about death row:

• There are 372 people on death row in Texas. Four are women. Nationwide, there were 2676 people on death row at the end of 1992, including 43 women.

• Texas death row prisoners are 48% white, 35% black, 16% Hispanic, and 0.3% other. Nationwide, those figures are 51% white, 39.6% black, 7% Hispanic, and 1.4% other.

• There have been 197 executions nationwide since capital punishment was restored in 1976; 55 of those have been in Texas. Only one woman has been executed.

• On the day of their scheduled death, a condemned prisoner is allowed visitors from 8am-6pm, is then given a last request (normally interpreted as a last meal), and sees a spiritual advisor of his/her own choice.

• In Texas, the only legal style of execution is lethal injection. In other states, however, prisoners have requested other specific styles.

• The "final solution" is composed of three lethal mixtures, separately injected into an IV attached to the prisoner: Pancurium Bromide, Potassium Chloride, and Sodium Thiotental.

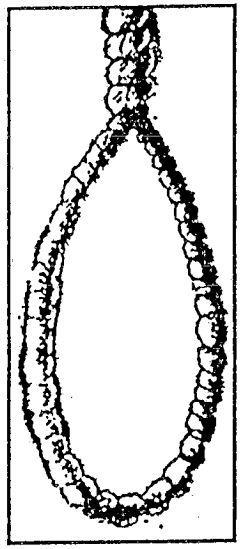
• Sterile equipment is always used, and a physician is present to pronounce the prisoner dead, but does not attend the execution.

• The Texas Department of Criminal Justice Institutional Division does not disclose the names or titles of the persons who perform the executions, but officials did say all are prison staff members and most have some background in the area. None are put through training, and they do not get a fee.

• If the body is claimed by the family, it can be removed and buried privately. If it is not claimed, the state takes charge of the body and provides a burial site in the prison's cemetery. Officials of the Texas Department of Criminal Justice would not comment on the cost of execution or burial.

Sources: Bureau of Justice Statistics, Texas Department of Criminal Justice, Texas Legislative Library.

Executions, *from p.14*



mutation (with one abstention), and Garrett was executed 30 days after the initial stay.

What Richards Could Do

Richards' central failing in her approach to the death penalty is her unwillingness to examine in a careful and public way the claims that come before her. It is simply not enough to say that the death penalty is "the law, and the law should be carried out" when the executive power of clemency is *also* the law and *must* be appropriately exercised. Indeed, much of the Supreme Court's recent jurisprudence limiting federal court review of state convictions rests on the premise that state courts and state executives will independently review death sentences to ensure that they are just. When the Court rejected categorical bans on the execution of 16-year old defendants and the mentally retarded, the decisions were premised on the promise that state criminal justice systems will carefully review individual cases on their merits and winnow out the least culpable and most vulnerable defendants from those who are selected for execution.

To this end, Richards should establish the criteria that she regards as relevant to the clemency process. She could, for example, insist on a searching review of cases involving juveniles, the mentally retarded, or abused defendants. She might screen cases for potential racial bias, lack of adequate counsel, prosecutorial misconduct, or other breakdowns in the adversary process. To fulfill her legal role, she need not review sentences on the basis of *all* of these variables, but her willingness to stand by as a parade of young, retarded, and minority defendants are led to execution because the courts have shut their doors, often for procedural reasons, is inconsistent not only with her avowed political commitments, but also with her legal obligations as the state's chief executive. Fundamental notions of due process require Richards to conduct her own inquiry (with sufficient procedural safeguards to ensure that the decision rests on adequate information), and to issue a public statement explaining the grounds of her ruling. Currently, Texas clemency procedures are the same under Richards as they were under former Republican Governor Bill Clements. As in Clements' reign, Richards' "blackbox" decisions, communicated during a flurry of last-hour phone calls, are both unreviewable and unaccountable.

Political Consequences?

The political costs of exercising such a role are uncertain. Undoubtedly, a decision by Richards to prevent the execution of an inmate convicted of a notorious crime will be understood as weakness (perhaps even as civil disobedience) by some segment of the population, regardless of the surrounding circumstances. But Richards need not blindly assume that popular support for capital punishment as an available mode of punishment entails popular support for each particular execution. Polls in Texas reveal that support for capital punishment drops precipitously if the sentencing alternative is life imprisonment without possibility of parole. Polls likewise reveal public ambivalence regarding the execution of juveniles and the mentally retarded. That Texas juries have sent so many juveniles and mentally retarded defendants to death row does not reliably indicate public opinion, given that Richards has inherited a regime that systematically deprived jurors of the opportunity to consider age and mental status as mitigating evidence bearing on the choice of punishment. Indeed, Richards can justify undertaking searching review of particular cases on the ground that some of those currently on death row were sentenced under procedures which have since been declared unconstitutional.

When the Supreme Court rejected bans on the execution of minors and the mentally retarded, they were counting on state criminal justice systems to review individual cases and winnow out the least culpable and most vulnerable.

In fact, Richards is uniquely situated to exercise her clemency powers responsibly. In most states, most notably California, the rarity of executions transforms each one into a popular referendum on the appropriateness of the penalty. The political stakes of scrutinizing (much less opposing) any execution in such states are thus inevitably high. The increasing number of executions in Texas, however, makes any particular case less noteworthy, with reports of executions often relegated to one-paragraph, back-page summaries in the state newspapers. Historically, when executions have been commonplace in the United States, commutations were also relatively common. As executions become ordinary occurrences in Texas, Richards' policy of abdication becomes much less defensible.

Ultimately, we cannot expect the death penalty to disappear any time in the near future. And partly for that reason – because the national debate is not *whether* to have the death penalty but under what circumstances it should be imposed – progressive leaders may have more latitude today than in the past 20 years to speak out against particular executions.

Assuming, though, that Richards faces real political costs by exercising any independent judgment in reviewing capital cases, should progressives insist that she accept those costs? One perspective would defend Richards' record on the ground that we should not allow all progressive political leaders to be "Willie-Horton-ed" from office. After all, politics requires compromise, and "flexibility" on the issue of capital punishment may enable progressive politicians to secure important victories in other, perhaps more pressing, areas, such as health-care reform, insurance regulation, reproductive freedom, and civil rights generally. Bill Clinton, on this model, gained office in part by his enthusiastic support for the death penalty, at one point rushing back to his home state during a primary to demonstrate his personal involvement in one of the executions.

If we accept this model, we should at least recognize that there are special costs of having a "progressive" leader administer decidedly unprogressive policies. If Clayton Williams were governor, much more national attention would be paid to the grisly execution of Texas' young, retarded, and insane inmates. But the national image of Texas has surely changed. In the wake of Clinton's victory, progressives outside of the state are likely to identify Texas politics with Richards' colorful and folksy barbs directed at George Bush. Given Richards' national persona, non-Texans may also assume that a greater measure of procedural scrupulousness pervades Texas' capital punishment practices. Just as Richards has insulated capital sentencing decisions from local review by refusing to formalize executive clemency proceedings, she has also insulated such decisions from national review by projecting a progressive, albeit misleading, image of Texas outside of the state. But in terms of capital punishment, the "new" Texas is much like the "old." When Richards runs for re-election, she will be able to parade in front of a great many more photographs of executed inmates than her predecessors. ■

A version of this piece will appear in Reconstruction *magazine.*

AUSTIN (TEXAS) CHRONICLE

The Dallas Morning News Sunday, December 6, 1992

Texas executions no longer marked by vigils outside prison

By Michael Graczyk
Associated Press

HUNTSVILLE, Texas — A half dozen people trudge up a brick stairway just a few minutes before midnight. A lone man with several lighted candles stages a quiet vigil about 100 yards down the deserted street.

The air is still. Rose-colored floodlights tint a fog that has started to descend. The only sound comes from an occasional car driving along a street a block away.

The state of Texas is to execute a convicted killer.

The solitude of the moment last month outside the Walls Unit of the Texas Department of Criminal Justice marked a stark turnaround from the near chaos and frenzy in the same spot and under the same circumstances where 10 years ago Monday, Charlie Brooks became the first man in America to be put to death by injection for killing another human being.

Mr. Brooks, 40, was executed for killing a mechanic at a Fort Worth used car lot.

"When we found out Charlie Brooks was dead, our hearts fell. We were scared and disgusted," fellow inmate Jeffery Griffin said. "I don't want to die, but if I do, then that's it."

Mr. Griffin, convicted of killing the manager of a Houston convenience store, was the man executed last month in relative obscurity.

In the decade since the state resumed the death penalty on Dec. 7, 1982, Texas has been the most active state in carrying out executions. Mr. Brooks was No. 1; Mr. Griffin, the 11th this year alone, No. 53.

Four reporters covered Mr. Griffin's last moments. Spectators outside the prison could be counted on one hand.

Mr. Brooks' execution attracted worldwide media attention and hundreds of people who crowded around the prison headquarters to await the outcome.

"There were a lot of media and a lot of spectators, both pro and con," recalled Charles Brown, an assistant director of the prison system who has seen virtually every execution in the state.

"We didn't know what to anticipate. We were overwhelmed by the crowd of media and spectators. After that, we started putting up the police lines and security forces in place."

Now, however, the novelty has worn off. The national execution count is approaching 200. Inmates in Texas don't mark the passing of a colleague by requesting TVs and radios be turned off for the evening or by holding prayer vigils. One officer patrols the street in front of the prison on execution nights.

The population growth on Texas' death row still far exceeds the number of punishments carried out. In 1991, 29 inmates arrived. The same year, five inmates died. This year, more than 30 people have been sentenced and 11 have been put to death, although their prison time ranged from 4½ years to more than

Please see 1ST U.S. on Page 65A.

1st U.S. execution by injection occurred 10 years ago in Texas

Continued from Page 64A.

15 years.

Prison officials are considering a second death row at a new prison near Livingston to ease crowding pressure at death row at the Ellis I Unit, about 15 miles east of Huntsville.

But more important for both the state and inmates alike, since the Brooks case showed that Texas could execute convicted killers, the capital punishment law has undergone a decade of scrutiny by the highest courts of the land, making it more likely the punishment actually will be carried out.

"The vast majority of issues have been pretty well decided," said Bill Zapalac, one of seven assistant attorneys general who handle Texas death penalty cases. Four of them work at it full time.

"It's never been real easy. I think to some extent, things have gotten a little easier as time has gone by because the courts have gotten comfortable dealing with the death penalty issue. It was a real teaching experience to persuade the courts that it's OK to execute these people because there were no constitutional violations. And once the courts got more familiar with the issue and got more comfortable with seeing things happen, it obviously got a little bit easier."

Death row inmates agree.

"There is less security now about whether I might be executed," said Jim Vanderbilt, who's been on death row since 1975 for a killing in Amarillo. Only nine other inmates among the 367 on death row in Texas have served more time waiting to die.

"The feeling before (Brooks) was that they hadn't killed anybody yet," he said. "It was an absolute shock he was executed. You certainly can't have that feeling now."

Many inmates say they never were aware of the death penalty until their own case went to court. And they are nearly unanimous in their sentiment that capital punishment is no deterrent to crime, although polls repeatedly have shown public support for it despite the estimated $2.3 million it costs before an inmate is belted to the death chamber gurney.

"Is there one person out there who can sleep safer at night or work in a 7-Eleven store at night or one person who now sleeps without a door locked at night because of the death penalty?" asked Jim Beathard, an eight-year death row veteran. "The death penalty is revenge but not a satisfying one."

One case that could break a logjam of sorts on death row involves Texas inmate Gary Graham, whose appeal is before the U.S. Supreme Court. Mr. Graham's attorneys are arguing that a jury that sentenced him to death should have been allowed to consider his age at the time of his crime — he was 17 — and a troubled family history.

"There's always something that happens in any case that you can point to and say this was wrong," Mr. Zapalac said, noting that the big question is whether the problem "ultimately gets you relief or not."

"You're never going to find a perfect case tried. It's not hard to find something that at least will get you into court."

But Mr. Zapalac said he thinks the law as it exists now is probably the best.

"It takes care of problems that the Supreme Court identified as being constitutional issues and provides for everything the defendant is entitled to," he said.

(OVER)

Death row inmate says his defense attorneys want him executed

Associated Press

HOUSTON — Kenneth Dwayne Dunn is convinced that his attorneys want to see him dead.

The Texas death row inmate, who faces execution Dec. 17, says his lawyers are conspiring to have him put to death.

Mr. Dunn, 33, told State District Judge Curt Steib on Friday that Texas Resource Center attorneys Mandy Welch, Anthony Haughton and Richard Burr have been behaving very politely in court to mask their real intentions of costing him a stay of execution.

"They're part of the conspiracy," Mr. Dunn said.

His attorneys dispute the allegations.

"We think Mr. Dunn is seriously mentally ill," Ms. Welch told the *Houston Chronicle* after Friday's hearing.

Mr. Dunn was convicted of killing teller Madeline Peters, 21, while robbing a bank in Houston on March 17, 1980.

Witnesses testified that Mr. Dunn held cocked pistols in each hand as he went down a row of tellers, collecting money in a bag.

Ms. Peters reportedly was on the telephone at the time and was unaware of the robbery until Mr. Dunn reached her window. When she said, "What?" to his demand for money, she was shot in the head, witnesses said.

Mr. Dunn's 1980 conviction was overturned because the court reporter lost notes of the case. At his retrial in 1988, Mr. Dunn refused the help of court-appointed attorneys and insisted on representing himself.

The Texas Resource Center lawyers had asked Judge Steib to recuse State District Judge Charles Hearn from presiding over the case on grounds of bias against the defendant. But Mr. Dunn had contended repeatedly that Judge Hearn isn't biased.

Judge Hearn, who postponed a Nov. 17 execution date, now must rule on a writ challenging whether he made the right choice when he allowed Mr. Dunn to act as his own attorney.

During his final arguments, Mr. Dunn did not dispute that he robbed the bank or that he was holding the pistol that fired the fatal shot. His sole point was that he didn't mean to shoot anybody.

Mr. Dunn said he doesn't want Judge Hearn removed from further action in the case, but he told Judge Steib he thinks that Judge Hearn has been conspiring with Harris County Jail and prison officials to thwart Mr. Dunn's bid to represent himself on appeal.

LETHAL INJECTIONS IN TEXAS

Here are the 53 convicted killers to receive lethal injection in Texas, their age, execution date and county of conviction. Jerry Joe Bird, No. 40, spent the most time on death row, 6,114 days, or 16.75 years; Richard Andrade, No. 20, spent the least time, 769 days, or 2.1 years.

1. Charlie Brooks, 40, Dec. 7, 1982, Tarrant.
2. James David Autry, 29, March 14, 1984, Jefferson.
3. Ronald Clark O'Bryan, 39, March 31, 1984, Harris.
4. Thomas Andy Barefoot, 39, Oct. 30, 1984, Bell.
5. Doyle Skillern, 49, Jan. 16, 1985, Lubbock.
6. Stephen Peter Morin, 34, March 13, 1985, Jefferson-Nueces.
7. Jesse de la Rosa, 24, May 15, 1985, Bexar.
8. Charles Milton, 34, June 25, 1985, Tarrant.
9. Henry Martinez Porter, 43, July 9, 1985, Tarrant.
10. Charles Rumbaugh, 28, Sept. 11, 1985, Potter.
11. Charles William Bass, 30, March 12, 1986, Harris.
12. Jeffery Allen Barney, 28, April 16, 1986, Harris.
13. Jay Kelly Pinkerton, 24, May 15, 1986, Nueces-Potter.
14. Rudy Ramos Esquivel, 50, June 9, 1986, Harris.
15. Kenneth Brock, 37, June 19, 1986, Harris.
16. Randy L. Woolls, 36, Aug. 20, 1986, Tom Green.
17. Larry Smith, 30, Aug. 22, 1986, Dallas.
18. Chester Wicker, 37, Aug. 26, 1986, Galveston.
19. Michael Wayne Evans, 30, Dec. 4, 1986, Dallas.
20. Richard Andrade, 25, Dec. 18, 1986, Nueces.
21. Ramon Hernandez, 44, Jan. 30, 1987, El Paso.
22. Eliseo H. Moreno, 27, March 4, 1987, Fort Bend.
23. Anthony C. Williams, 27, May 28, 1987, Harris.
24. Elliot R. Johnson, 28, June 24, 1987, Jefferson.
25. John R. Thompson, 32, July 8, 1987, Bexar.
26. Joseph Starvaggi, 34, Sept. 10, 1987, Montgomery.
27. Robert Streetman, 27, Jan. 7, 1988, Hardin.
28. Donald Franklin, 37, Nov. 3, 1988, Nueces.
29. Raymond Landry, 39, Dec. 13, 1988, Harris.
30. Leon Rutherford King, 44, March 22, 1989, Harris.
31. Stephen McCoy, 40, May 24, 1989, Harris.
32. James Paster, 44, Sept. 20, 1989, Harris.
33. Carlos DeLuna, 27, Dec. 7, 1989, Nueces.
34. Jerome Butler, 54, April 21, 1990, Harris.
35. Johnny Anderson, 30, May 17, 1990, Jefferson.
36. James Smith, 37, June 26, 1990, Harris.
37. Mikel Derrick, 33, July 18, 1990, Harris.
38. Lawrence Buxton, 38, Feb. 26, 1991, Harris.
39. Ignacio Cuevas, 59, May 23, 1991, Harris.
40. Jerry Joe Bird, 54, June 17, 1991, Cameron.
41. James Russell, 42, Sept. 19, 1991, Fort Bend.
42. G.W. Green, 49, Nov. 12, 1991, Montgomery.
43. Joe Angel Cordova, 39, Jan. 22, 1992, Harris.
44. Johnny F. Garrett, 28, Feb. 11, 1992, Potter.
45. David M. Clark, 32, Feb. 28, 1992, Brazos.
46. Edward Ellis, 38, March 3, 1992, Harris.
47. Billy White, 34, April 23, 1992, Harris.
48. Justin May, 46, May 7, 1992, Brazoria.
49. Jesus Romeo Jr., 27, May 20, 1992, Cameron.
50. Robert Black Jr., 45, May 22, 1992, Brazos.
51. Curtis L. Johnson, 38, Aug. 22, 1992, Harris.
52. James DeMouchette, 37, Sept. 22, 1992, Harris.
53. Jeffery Lee Griffin, 37, Nov. 19, 1992, Harris.

Capital Punishment, Texas Style

Texas has come a long way since that early morning in February of 1924 when, within a little more than 90 minutes, five convicts were put to death in assembly-line fashion.

By Brian Wice

At 12:01 a.m. on Sept. 19, 1991, James "Sugarman" Russell was taken from a holding cell in the death house of the state penitentiary in Huntsville and strapped to a hospital gurney in the brightly-lit, cobalt-blue execution chamber. Russell, 42, had been convicted of the execution-style slaying of a witness who was to testify against him at his armed robbery trial in March of 1974. Russell had marched Thomas Stearns, 24, into a deserted field south of Houston at gunpoint, sexually abused him, and then shot him in the head twice at point-blank range.

For the past 14 years, Russell had seen the population on Texas Death Row grow from 13 to 348. He had waited for his own time to come. Forty inmates before him had been put to death on the gurney. He had eaten his final meal, an apple, at 5:21 p.m. and said goodbye to his family and friends moments earlier.

Although his case had taken more than eight years to originally clear the federal courts, his second and final request for a reprieve was denied in less than eight hours. At 10:10 p.m., as Russell sat in the holding cell, he received word from Warden Jack Pursely that the United States Supreme Court had refused his request for a stay of execution.

The witnesses filed into the death chamber at 12:10 a.m. Russell, clad in a blue shirt, black slacks and black loafers, rambled through a final statement that thanked his family, friends, and supporters. He mentioned he was going to take their love with him "beyond all this madness." With that, the intravenous tubes were inserted in Russell's arms. The tubes led to a room shielded by a one-way mirror, the 20th century's version of the hooded executioner.

"We are ready," said the warden.

As the lethal mixture of sodium thiopental, pancuronium bromide, and potassium chloride coursed in his veins, Russell breathed deeply, snored loudly and shut his eyes. For a few moments, the only sounds in the death chamber were pens on paper as the media witnesses chronicled the life that was being extinguished before them. Russell was pronounced dead at 12:20 a.m. "The only pain he likely felt," a prison official said later, "was the prick from the insertion of the needle."

Texas has come a long way since that early morning in February of 1924 when, within a little more than 90 minutes, five convicts were put to death in assembly-line fashion. "Old Sparky," the sturdy, oaken electric chair named by the inmates who had built it, was kept warm in those days. The chair, ironically located behind the prison chapel, would claim another 356 men in the next 40 years before Joseph Johnson became the last inmate to be executed in the electric chair.

While the method employed by the Lone Star state to put its most vicious killers to death has changed over the last six decades, two things have not. Texas juries continue to sentence more defendants to death and more of those sentences have been carried out than in any other state in this country. Says one East Texas district attorney, "I guess we just think that some folks are so bad, they just deserve killing."

While most states with capital sentencing statutes on the books limit imposition of the death penalty to first-degree murder, Texas had no such limitation. Under the old Texas Penal Code, a defendant charged with either rape or armed robbery risked being placed on death row. From 1924 to 1962, Texas executed 97 inmates convicted of rape and five who had been found guilty of armed robbery. Then in 1972, a series of cases (from a number of states including Texas) led the U.S. Supreme Court to rule that capital punishment, as it was then being administered, violated the Eighth Amendment's prohibition against "cruel and unusual punishment." In the wake of the supreme court's decision, the 45 men on death row in Texas, and another seven with death sentences in county jails across the state, had their sentences commuted to life in prison. By March 1973, death row was empty. It wouldn't stay that way for long.

In an effort to revamp its decidedly antiquated penal code, the Texas Legislature drafted a statute that it hoped would pass constitutional muster in the supreme court. Section 19.03 of the revised penal code defined a new offense, capital murder, and provided death as a possible punishment for anyone convicted of: murdering a police officer or fireman acting in the lawful discharge of their duties; murder committed during the course of committing or attempting to commit kidnapping, burglary, robbery, aggravated rape, or arson; murder for hire; murder committed while attempting to escape from a penal institution; or, murdering an employee of a penal institution while incarcerated within that institution.

A decade later, the legislature would amend this provision to include serial killers or anyone who committed multiple murders during the same criminal transaction.

A defendant convicted of capital murder would then face a separate hearing before a jury that would hear additional evidence from both sides on any matter deemed relevant to sentencing. At the conclusion of this penalty hearing, the jury would then be asked a trio of questions:

Did the defendant act deliberately in causing the victim's death?

Was there a probability that the defendant would commit criminal acts of violence that would constitute a continuing threat to society?

And, if raised by the evidence, did the defendant act unreasonably in killing the victim in response to the latter's provocation?

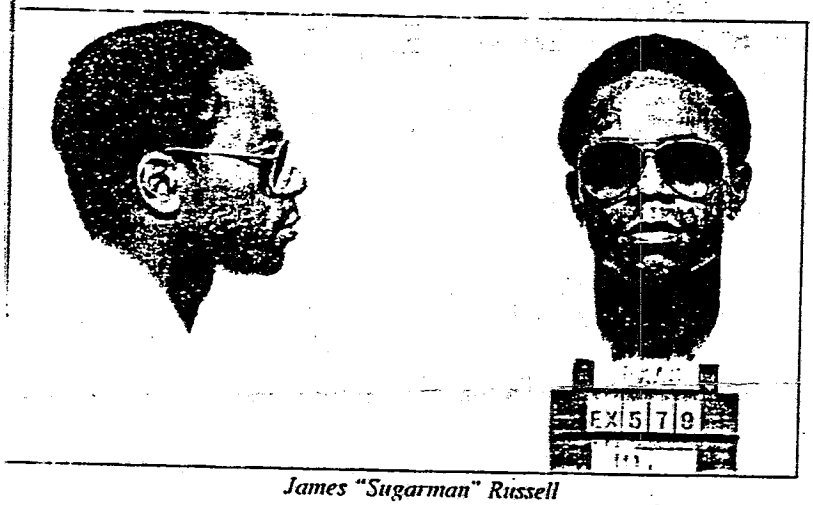
If the jury answered yes to all these questions, the judge had no choice but to sentence the defendant to death. If the jury answered no to any question, or was unable to answer all of them, the defendant received a life sentence. These new provisions took effect Jan.

1, 1974. Just weeks later, John DeVries became the first man sentenced to die under the new statute. The first to arrive at death row in February 1974, DeVries was also the first to cheat the executioner when he committed suicide five months later.

Fifteen months later the Texas Court of Criminal Appeals upheld the constitutionality of the Texas death penalty statute when it affirmed the capital murder conviction of Jerry Lane Jurek. Jurek was sentenced to death for the kidnapping and murder of a 10-year-old girl. The court found that nothing in the Texas capital sentencing statute was at odds with what the supreme court had held some three years before. Yet given the novelty of the issue, it came as no shock when the U.S. Supreme Court decided to review Jurek and four other cases involving a variety of capital sentencing statutes.

On July 2, 1976, the supreme court upheld the Texas, Georgia, and Florida statutes while striking down the statutes in Louisiana and North Carolina. In upholding the Texas statute, the court noted that it "guide[d] and focus[ed] the jury's objective consideration of the particularized circumstances of the individual offense and the individual offender before it can impose a sentence of death."

Although he lost in the supreme court, Jurek's death sentence was eventually set aside when the fifth circuit court of appeals tossed out his confession five years later on the grounds that it had been involuntarily obtained. Because the victim's family did not want to undergo the rigors of a retrial, Jurek was permitted to plead guilty in exchange for a life sentence. Texas became the second state in the United States to change the mode of execution from electrocution to lethal injection in 1974. Death row inmate Kenneth Granviel quickly sought to have his death sentence set aside on the grounds that the new mode constituted cruel and unusual punishment. The Texas Court of Criminal Appeals rejected Granviel's claim in February 1978 after concluding that death via lethal injection was not only a more humane but decidedly less



James "Sugarman" Russell

spectacular mode of execution than electrocution. But Granviel, who has been on death row for 17 years, longer than all but two other inmates, has yet to keep his date with the executioner.

Texas' 18-year hiatus on executions finally ended shortly after midnight Dec. 7, 1982, when Charlie Brooks, 40, became the first convict in the United States to die by lethal injection. Brooks and his cousin, Woody Loudres, had been convicted for the December 1976 robbery-murder of a Fort Worth used-car dealer. Although the evidence was unclear as to whether Loudres or Brooks fired the fatal shot, both were sentenced to death. After Loudres' conviction was reversed in 1980, he was permitted to plead guilty in exchange for a life sentence. Although Loudres eventually admitted that he had fired the fatal shot, his admission was too little and too late to save Brooks.

Charlie Brooks spent 4.62 years on death row before his execution, well below the 7.04 years that the average inmate will spend there. The "Dean of Death Row" in Texas is Excell White, 53, who has been there since Aug. 26, 1974, for the robbery-murder of three people in McKinney, just north of Dallas. Prior to his execution in June of 1991, the longest stay on death row had been the 16.73 years spent by Jerry Joe Bird. The quickest trip to the executioner was made by Richard Andrade who spent just more than two years before being put to death in December of 1986.

Texas has tried to fashion some remedies to curb the sometimes interminable delay that has stymied the state's efforts at carrying out the jury's mandate in capital cases. Court reporters are under strict timetables to transcribe trial records as are lawyers when it comes time to filing briefs. Although there are some exceptions, the Texas Court of Criminal Appeals has attempted to give death penalty cases the highest priority in its decision-making process. Still, it takes the court an average of more than two years to fashion an opinion in the death penalty appeal.

The bulk of the delay in the appellate process occurs not in the state system, but in the federal system where death row inmates are entitled to take their claims. Already overburdened federal district judges in Texas have, in the words of a former federal judge, treated capital cases with "benign neglect." In the Texas judicial system, political pressure is often placed on appellate judges to take action on a capital case. No such pressure can be brought to bear on their federal counterparts. Therefore, the federal district courts become a black hole where capital cases linger for years and years.

Three times in the past decade, the U.S. Supreme Court has handed down decisions involving the Texas capital sentencing statute. As a result, scores of jury verdicts in capital cases have been reversed. In 1980, *Adams v. Texas* held that Texas' method for excluding prospective jurors in capital cases was unconstitutionally broad. The following year in *Estelle v. Smith*, the high court held that a defendant had to be apprised of his Miranda rights by a psychiatrist who would testify as to the defendant's future dangerousness. These two decisions resulted in a startling number of new trials or commutations for some of the most vicious individuals on death row. In 1989, the supreme court handed down *Penry v. Lynaugh*. It noted that Texas' capital sentencing scheme was unconstitutional because it failed to take into account evidence of a defendant's diminished moral culpability. Because evidence as to mental retardation and childhood abuse fell outside the three special issues, the jury could not "give effect" to such mitigating evidence. Already, a number of inmates have received new trials as a result of the *Penry* decision with a dozen or more expected to follow suit.

Seventeen is the minimum age a defendant may be sentenced to death in Texas and nine inmates on death row committed capital crimes at that age. Two inmates, Charles Francis Rumbaugh and Jay Kelly Pinkerton, were executed in 1985 and 1986 respectively. Each committed capital murders at the age of 17, and another three 17-year-old capital murderers have had their death sentences commuted to life.

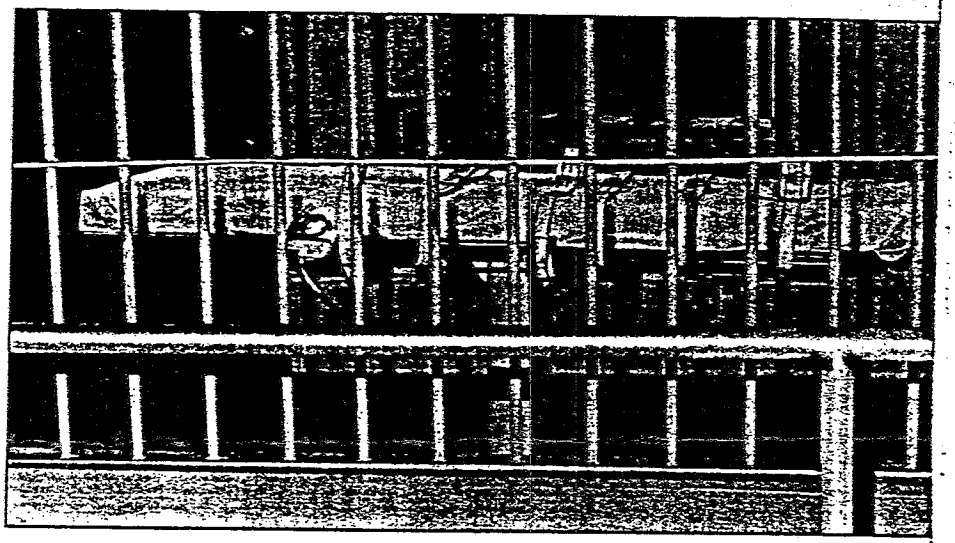
There are four women on death row. Another two were temporary residents in the late '70s before their death sentences were commuted to life. While a woman has never been put to death since the state took control of executions from the counties in 1924, legal experts predict that will change in the next several years as the condemned women begin to exhaust their post-conviction appeals in the federal courts.

If her original conviction and death sentence for strangling a man during the course of a robbery had not been set aside in June of 1983, Pamela Lynn Perillo, 39, would more than likely have been the first woman executed in Texas. Perillo was retried and the

Texas Court of Criminal Appeals upheld her death sentence in September 1988. With over a decade on death row, Perillo had been there longer than any woman in Texas.

The most likely candidate to be the first woman executed in the Lone Star State is Karla Faye Tucker. In 1984 Tucker was convicted of the grisly pick-axe murder of a Houston man. On a tape played for jurors during her trial, Tucker admitted she achieved sexual climax every time she "picked" the victim. Tucker's case is now in federal district court in Houston. A decision is expected within the next year.

The other two women on death row are Frances Newton, 26, convicted of the slayings of her husband and two children for their life insurance proceeds, and Betty Lou Beets, 54, sentenced to death for killing her fifth husband as part of a scheme to collect more than $100,000 in life insurance and pension benefits. Beets' conviction and death sentence were recently set aside by a federal district judge on the grounds that her trial lawyer's over-eagerness to sell the book and movie rights based upon her case was an impermissible conflict of interest. The state of Texas has appealed the federal judge's decision to the fifth circuit court of appeals.



Prior to the supreme court's decision in *Furman*, there had been a trio of women on death row: Emma Oliver, Maggie Morgan, and Carolyn Lima. The sentences of Oliver and Morgan were commuted, and they both died in prison. Lima came within hours of being executed in 1963 before her death sentence was set aside by a federal appeals court. After being convicted of a lesser offense at her retrial and receiving a five-year sentence, Lima walked out of prison on April 3, 1965.

There is, however, a dark side to predilection of Texas juries to assess the death penalty. Innocent men have been exonerated of crimes within days of being executed. While distinguished Judge Learned Hand once said that the specter of an innocent man being executed was an unreal dream, try telling that to Randall Dale Adams and Clarence Brandley.

Adams was sentenced to death by a Dallas County jury for the November 1986 slaying of police officer Robert Wood. After coming within 72 hours of being executed, Adams' death sentence was reversed by the U.S. Supreme Court in 1980. But Adams spent another nine years in prison before filmmaker Errol Morris' classic documentary *The Thin Blue Line* graphically showed Adams had been framed by the state's star witness, David Harris. The court of criminal appeals finally set aside Adams' conviction in March 1989 after finding prosecutor Doug Mulder not only failed to turn over exculpatory matters to Adams' counsel, but had knowingly utilized perjured testimony to obtain Adams' conviction and death sentence. "When deceit produces court rulings that have the effect of denying the accused a fair trial," wrote the court, "the conviction cannot be permitted to stand."

Clarence Brandley, a black man, was sentenced to die by an all-white jury for the 1980 rape-murder of a white teenager in Conroe, 30 miles north of Houston. Brandley's conviction was upheld in 1985 and like Adams, he came within days of being executed. Brandley's lawyers were finally able to prove, during an extensive post-conviction hearing, that law enforcement conducted an investigation that had a "blind focus" to convict Brandley while ignoring other credible evidence. In December 1989, the court of criminal appeals agreed that the state's investigative techniques compromised Brandley's right to a fair trial by creating false testimony and inherently unreliable testimony. Brandley was released from death row several months later and the state declined to re-try him.

It would be easy to view the Adams and Brandley cases as compelling evidence that the Texas capital sentencing scheme — like those in the other 34 states with death penalty laws on the books — has the potential to produce a miscarriage of justice that is irrevocable in nature. But what happened in those cases calls to mind Cassius' pronouncement: "The fault, Dear Brutus, is not in the stars, but in ourselves." Indeed, the fault may not be in Texas' capital sentencing scheme, but in those few involved in its administration who lost sight of their oaths.

Brian Wice is an attorney and freelance writer living in Houston. This article is reprinted here with his permission.

A Bridge or A Ferryboat?

The question is pretty easy to answer. Why waste resources recruiting volunteers on a case-by-case basis, a ferryboat approach, when we know we need a bridge? Appointment of lawyers should be required at the third stage, 11.07 state habeas corpus.

By Vincent W. Perini

Why was I surprised at State Bar President-Elect Jim Parson's remark?

I was a member of the State Bar board of directors. We were writing goals for the forthcoming year and we had come to that perennial favorite — condemned prisoners without lawyers.

We were about to repeat the obligatory exhortation about recruiting volunteers. Why not? After all, during his 1988-89 tenure as State Bar president, Jim Sales had distinguished himself by recruiting lawyers both inside Texas and out for the burgeoning inhabitants of death row. With the largest death row population in the country, Texas had become fashionably notorious. Lawyers from as far away as Wall Street were volunteering to explore these darkest wilds of Texas jurisprudence.

"I don't want to spend my year recruiting lawyers," Jim Parsons said. "I want a solution."

The problem was less than a decade old, and I had been ready to give it permanent status. To his credit, Jim was not.

That was the beginning of what should lead to a bridge of the gap. Inspired by Parson's leadership, the State Bar committee on death row, then chaired by Clifton L. "Scrappy" Holmes of Longview, obtained a grant from the Texas Bar Foundation. We convinced chair Jim Branton and the trustees to finance a study. The first questionnaires were sent to judges and lawyers in 1990. The completed study, by the highly regarded Spangenberg Group, is expected by the end of this bar year.

My life would be more hectic but for the efforts of the Texas Young Lawyers Association, whose own committee actively recruits lawyers.

What is the "gap"? What is the problem?

Death penalty litigation is in four stages: trial, appeal, state writ, and federal writ of habeas corpus. There are problems up and down the line, but what Jim Parsons was talking about, and what we seek to solve, is the gap at stage three: the state writ.

The U.S. Constitution guarantees counsel at trial and on appeal, but there is no right to counsel in post-conviction litigation. Because it cannot imprison (or execute) an indigent defendant without first providing him a free lawyer at trial and on direct appeal, Texas law (Art. 26.04, Code of Criminal Procedure) obliges, and the counties reluctantly do their part by paying the fees ordered by the district judges. For most of the state it remains a rudimentary

system of court appointment by the trial judge and remuneration at rates that fail even to cover counsels' office overhead for the time invested in representation.

11.07 Writ of Habeas Corpus

Post-conviction habeas corpus in Texas is governed by Article 11.07 of the Code of Criminal Procedure. It is similar to habeas corpus provisions in other states. It provides for the collateral attack of a conviction where Texas or federal constitutional infirmities are perceived, not the least of which may have been insufficient assistance of counsel at the two preceding stages (one of the problems in Texas' death penalty procedure is the absence of any minimum standards concerning trial counsel, whose only qualification besides the trial judge's favor is a current law license).

This process is controversial even when applied to non-capital felonies. Some think that one review is enough. That argument sounds good, but statistics suggest there is more to the story. In Texas and across the land, a shockingly high percentage of death penalty convictions are overturned *after* direct appeal. The national figure is 40 percent (which includes both the state and federal writ stages).

Despite the obvious efficacy of 11.07 post-conviction litigation (which, incidentally, is a prerequisite to the federal habeas corpus process), Texas district judges rarely appoint lawyers at the 11.07 stage since it is not required.

Finding lawyers to do this work out of the goodness of their hearts is not easy, even on Wall Street. Today in Texas there are about 25 condemned inmates who have cases to litigate but no lawyers to litigate them. Recruiting lawyers is a constant and continuing struggle. The representation is as nerve-wracking as it is sophisticated. No matter how smug we may be from afar, becoming the champion of a person actually in line for lethal injection is serious business. It is as numbing as it is exhilarating.

Federal Habeas Corpus

If the condemned inmate's claims are rejected in state habeas corpus, his own spirits may be on the descent. For his lawyer, however, passage to another forum is like bumping up to pavement from a gravel road. The federal courts appoint lawyers for this last stage of the post-conviction process, usually the same lawyer who has handled the state writ. Thanks in large measure to the American Bar Association's stalwart lobbying, Congress has generously provided for counsels' remuneration. Fees from $75 to $125 per hour are routinely approved.

Although reaching the federal process provides a breath of economic fresh air for the lawyer, it is hardly good enough to justify *no* remuneration during the state court process, which may be long and arduous. Besides, what if the advocate is successful in state habeas corpus? Must virtue be counsel's only reward?

Ferryboat or Bridge?

The question is pretty easy to answer. Why waste resources recruiting volunteers on a case-by-case basis, a ferryboat approach, when we know we need a bridge? Appointment of lawyers should be required at the third stage, 11.07 state habeas corpus.

Now the fun begins. Who pays for the bridge: counties (as they now do for *all* indigent defense at all levels) or the state? Or the lawyers?

Should lawyers undertake this burden for the common good? A lot of non-lawyers think so. We have learned we must periodically wage war at Sunset and fight skirmishes over taxes on lawyers, the threat of sales taxes, or mandatory pro bono.

Have building contractors offered to construct much needed Texas prisons for free? Do utility companies offer electric current to prisons and jails free of charge because it is for the public good? Do stalwart grocery chains stand as one in their resolve to feed Texas prisoners in the interest of public safety? Are prison vehicles fueled at no cost by public-spirited oil companies?

Not hardly. And asking the legal profession to do this difficult and important work as if it were an avocation is absurd.

Should trial judges continue to name the lawyer for the condemned inmate? Without standards? If standards, what standards, and who decides? For that matter, what about criteria for selection of trial and appellate counsel as well as 11.07 third stage lawyers? That might do a lot to eliminate the problems that make the post-conviction writ process today so fruitful.

Both California and Florida, other major death penalty states, fund elaborate public defender offices which do nothing but state habeas corpus litigation in death penalty cases. Not surprisingly, their budgets are in the millions of dollars.

Can Texas Afford the Death Penalty?

A recent poll by the *Dallas Morning News* shows Texans overwhelmingly support capital punishment. But can post-boom Texas afford it? Consider three ideas.

First, a death penalty is not an essential part of modern life. Many would disagree, arguing we *should* have it. My point is that it is not indispensable. Jails and prisons are indispensable: modern society must have the wherewithal to isolate dangerous persons. The death penalty is a criminal justice option.

Second, the death penalty is extremely expensive. The forthcoming debate over funding 11.07 habeas corpus in Texas will stimulate discussion of capital punishment's cost to Texans from indictment to lethal injection. This will address the popular misconception that death is cheaper. It isn't. (A *Dallas Morning News* analysis, March 8, 1992, estimates the average cost of putting someone to death in Texas at $2.3 million, three time the cost of 40 years in prison.)

Third, the *Dallas Morning News* survey also shows that support

The *Bar Journal* spoke with several attorneys who have volunteered time on capital cases. Their perspectives appear throughout this special section on post-conviction representation.

Michael Tigar, professor at the U.T. School of Law, chairman of the board of the Texas Resource Center, and former chair of the ABA's litigation section, routinely volunteers time in capital cases. He says that lawyers are always needed to help with post-conviction representation.

"The resource center has grown enormously in the past year and I have been very impressed with the quality of young lawyers that have been volunteering. But the fact remains that the resource center is just a resource. Without the help of private lawyers the burden cannot be met. These are exciting cases to be involved with. You have to get over your initial fears, but any good lawyer can meet the challenge. It is the lawyer's creed that no one should be subject to any punishment of our society unless the process is fair."

Playing For Keeps

No matter how hard and cynical the lawyer, it is gut-wrenching when a tough, multiple-murder convict who is about to die thanks you for being nice to his mother.

By Tom Moran and Stanley G. Schneider

In asking lawyers to represent death row inmates, recruiters often pitch that it is just another lawsuit.

Nothing could be further from the truth.

Our firm represents more than a half dozen death row inmates. In the past three years, two of our clients have been executed. Some of our clients are likely to get new trials, and others have tough cases where it is hard to guess the outcome.

Post-conviction death penalty litigation is the highest stakes litigation in the world. In the Texaco-Pennzoil lawsuit, the only thing at stake was *filthy lucre*. Admittedly, it was a lot of money, but it was just money. In the normal criminal case, all that is at stake is liberty.

In death penalty litigation, the state wants to kill your client. It is a different ballgame, and the emotional stress on everyone involved is higher than in any other type of litigation.

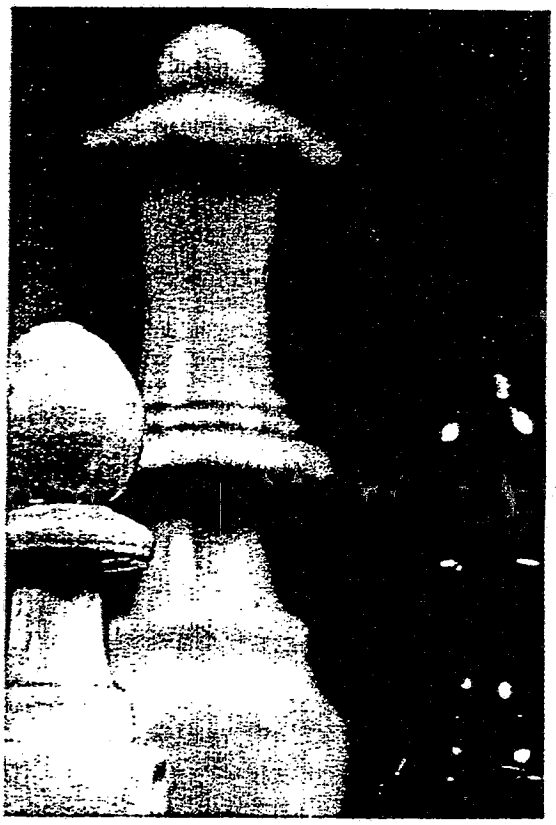
Courtrooms take on a special aura during every proceeding, no matter how ordinary, whenever a person's life is at stake. When a court sets an execution date, the normal bustling courtroom becomes deafeningly silent. Apparently hardened, heartless judges become emotional and moist-eyed during these extraordinary proceedings.

District Judge Sam Robertson of the 14th Court of Appeals, a tough ex-prosecutor, left the bench with a tear in his eye after setting an execution date for a young man. He later made special efforts to help commute that death sentence to life.

Judge Mike McSpadden recalls that it was a very solemn occasion when he set the final execution date for Ronald Clark O'Bryan, the Pasadena optician convicted of killing his son with poisoned Halloween candy to collect the child's life insurance. He let O'Bryan use the telephone in his chambers to make funeral arrangements after the date was set.

The effect that the proceeding had on the judiciary has now caused the rules to change, allowing judges the impersonal ability to set a date for a person's death without looking that person in the eye. The judge simply sends a certified letter to the inmate telling the convicted person when he is going to die.

For an attorney handling a death penalty writ of habeus corpus, the case starts slow and builds as the execution date nears.



Lawyers representing people on death row must understand and accept the political reality that the death penalty is popular, and that Texas judges are elected and want to be re-elected. Hopes for a stay of execution often lay in the federal courts.

With the assistance of the resource center, even a sole practitioner is able to effectively handle capital cases. Alex Bunin of Houston is an example. He represented Michael Goodman, a mentally retarded man convicted in 1981 of murder and sentenced to death. Goodman received a stay six hours before his scheduled execution in 1987 pending the outcome of *Penry v. Lynaugh*.

The U.S. Supreme Court reversed Penry's conviction in 1988 because Texas' capital sentencing statute prevented jurors from giving weight to mitigating evidence of Penry's mental retardation, which was beyond the scope of the "special questions" considered in a capital sentencing hearing. The Texas Court of Criminal Appeals reversed Goodman's conviction in 1991 based on the *Penry* ruling.

"Considering this is the ultimate sentence you can impose upon someone, they should at least have adequate representation. The experience has strengthened my belief that such representation must be forthright and vigorous. I received great mental and moral benefit."

For years, it was traditional for federal judges to grant death row inmates stays of execution while deciding their first federal writs of habeas corpus. Now, the stays are no longer almost automatic.

Last year, we helped another attorney prepare an application for writ of habeas corpus. As soon as relief was denied by the court of criminal appeals, the trial court set an execution date. At that point, the race to stop the execution was on.

The federal writ ended up in Judge David Hittner's court. Judge Hittner and his staff took only a couple of days to prepare a well-reasoned, well-written opinion denying the defendant a stay of execution and relief. In three days, the case went through the fifth circuit and the U.S. Supreme Court with all relief denied. The defendant was executed on schedule.

That case is an example of how the federal courts are gearing up to expedite even first writs of habeas corpus with pending death dates. The fast pace keeps the pressure on and emotionally drains everyone involved in the case.

Waiting for a judge to decide whether to grant a stay of execution is perhaps the most nerve-wracking part of death penalty litigation. In one recent case, we sweated out a Friday afternoon waiting for a telephone call from a federal judge's clerk to tell us whether our client would die Sunday night. Not much work got done that afternoon. When the stay was granted, it was like the weight of the world had been lifted off our office.

Even when a stay is granted, it is tough and getting tougher to win a death penalty case. A decade or more ago, Texas prosecutors pushed every advantage they could get, and all too many judges helped the state at trial to ensure a death sentence. It was not uncommon for the prosecutor or the judge to step over the line and commit reversible error. Those days appear to be gone.

Now, at least in Harris County, most of the judges and almost all of the prosecutors have figured out that they can kill a defendant with kindness. In one capital murder case we are handling at trial, the prosecutor has not only opened his entire file to us, he is doing everything he can to guarantee that we have everything we could possibly need to put on the best defense possible. He figures that a death sentence is a foregone conclusion, and he does not want anything to mess it up.

Many of the legal issues that once were the hallmarks of post-conviction are gone. Jury selection, once the bread and butter of reversals in death penalty cases, often caused a case to be reversed quickly because a veniremember was improperly excused for opposition to the death penalty. Today, it is almost impossible to get a new trial based on jury selection because of supreme court rulings from the 1980s.

Ineffective assistance of counsel, again one of the mainstays of death penalty litigation, is an almost impossibly hard sell to an appellate court. It is not enough to show that the trial lawyer was incompetent. You also have to show that the outcome might have been different had he been competent. Since many prosecutors are now picking and choosing their death penalty cases carefully, it often would not have made any difference if Perry Mason had represented the person at trial.

The worst part of death penalty litigation may be the last part — execution night. It is the end of a flurry of activity, with FAX machines spewing papers to various courts.

Different lawyers handle execution night differently.

We know of one lawyer, Karen Zellars, who sat with her client the evening before his execution and literally held his hand a few hours before he was executed. We do not attend executions. We stay in our offices until it is over because we do not feel it is a time to be at home with our families.

The toughest single moment is usually the telephone call to the client a few hours before the execution to tell him that the supreme court has finally turned down a stay of execution. There are no further avenues for a stay and he is about to die.

No matter how hard and cynical the lawyer, it is gut-wrenching when a tough, multiple-murder convict who is about to die thanks you for being nice to his mother.

Tom Moran, a graduate of South Texas College of Law and The University of Texas at Austin, is associated with the firm of Schneider & McKinney in Houston. He formerly was the legal writer for the Houston Chronicle.

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Surviving The System

The victim of a crime in a capital punishment case is dead. Another group of victims — those left behind — is often overlooked: the family and friends of the murdered loved one, the family and friends of the accused.

By Melinda Smith

Justice, swift and sure. If only that could be. If only we could guarantee that the accused is guilty, that no rights are violated, that justice is served.

Our judicial system is undeniably one of the best in the world. Unless, of course, you happen to be caught up in it. Your opinion may change when encountering interminable delays, an unfathomable process, and even, some charge, downright abuse.

Our system is not perfect and ensuring the rights of our citizens often becomes a slow, laborious process. A capital punishment case, by necessity, becomes even more ponderous.

Parties on both sides — prosecution and defense — often come away battered and bruised after years of litigation. The victim of a crime in a capital punishment case is dead. Another group of victims — those left behind — is often overlooked: the family and friends of the murdered loved one, the family and friends of the accused. These individuals frequently end up feeling brutalized again — this time, by the system.

"My first thought after hearing about the man who committed the Luby's murders [in Killeen] was, 'Thank God he killed himself. Now the families of the dead won't have to go through what my family has in the courts,'" said Robert Stearns. Stearns' son Tom, 24, was shot and killed in 1974 by James "Sugarman" Russell. Russell was executed 17 years after committing the crime. He spent 14 years on death row.

"The system ignores the pain it inflicts on the survivors," Stearns said. "The way the appeals process is handled is a disaster. Our case sat on a federal judge's desk for 10 years. We were scared to death that if Russell went up for another trial the evidence would be so cold we would not be able to get another conviction."

A retired chemical engineer for DuPont, Stearns said what he felt during the process was not so much anger as sheer frustration.

"The case took three and a half years to go to trial — the D.A. was afraid to try it. I never got a chance to talk to him about it although I repeatedly tried," he recalled.

Stearns said his entire family lived in Houston when the crime was committed. Within 15 months none of them lived in the state.

"The day Russell's wife called my wife to find out where we lived...well, that was what did it for us. I only knew Russell's personality through what the police told us but it was enough to make us worried. I was particularly anxious for Tom's wife."

By 1981 the Stearn family was again living in Texas. They had been gone six years.

"At least, many things that happened in the criminal justice system then don't happen now," Stearns said. "When we moved back in 1981, there was nothing in the statutes that gave instructions to the prosecutors to make sure they minimized the damage done to survivors. The victim was totally ignored — if [a member of the victim's family] was needed to testify, that person was called like any other witness. I'm a pretty pushy guy...it's not easy to intimidate me. I got treated fairly well because I *am* pushy and not emotional. Of course, I was angry and emotional, just not with them."

Stearns became a charter member of People Against Violent Crime (PAVC) and served as state chair from 1983 to 1988. PAVC set about developing guidelines that would provide requirements for law enforcement to minimize the trauma inflicted on victims and their families. The legislature adopted a statute in 1989, after much lobbying from PAVC and other victim rights groups, that recognizes victims' rights. The statute requires that a person be assigned to explain the process to victims and keep them apprised of what is happening with their cases.

When Stearns talks to survivors going through trial he tells them, "You better pray that the defense attorney does a thorough and proper job. Otherwise you are going to be in for trouble. And after all, even the worst of us deserves a fair trial."

Before Tom's death, Stearns never objected to the death penalty — he said he never really had reason to consider it. After enduring some long hard years, he has come to the conclusion that the system needs reforms.

"Not until Tom was killed did I really understand the reason for the death penalty. It is the only alternative we have in Texas to giving them life in prison and releasing them in 15 years on parole."

Though not against the death penalty, Stearns believes that it is used too often and too arbitrarily. A criminal, he said, can commit many violent acts without actually committing capital murder and the system needs alternatives besides the death penalty that provide a broader range of protection. He favors the sentence of life without parole, particularly for violent repeat offenders.

Stearns is relieved that a bill was recently passed in the Texas House requiring those who are found guilty in capital punishment cases — but not sentenced to death — to serve 35 years instead of 15 before becoming eligible for parole.

When the long saga ended and Russell was executed, Stearns said he did not really feel a strong sense that justice had been done or the satisfaction of revenge.

"I just felt a deep relief that he would not get out of prison and kill Tom's wife. I worried deeply about how the execution would affect me as far as feeling guilty or that I was to blame for his death. After all, I had bugged them to do it for 17 years. But I didn't feel that either," he said. "My family and I have improved considerably in the last six months. The lack of strain and waiting, the fear...the whole family is doing much better."

According to Stearns, the victims' rights movement is here to stay. He hopes that society will find a way to work for changes in the judicial system that will improve the future.

"What everyone is working on now are simply Band-aids to heal society's wounds...we are not attacking the base problem: drugs and the erosion of the family unit. Maybe if we guide juveniles in the right direction — and notice warning signs even before they start school — it will help. Russell spent all but 10 months of his juvenile life in a detention center. For now, I guess we'll just have to keep those prison beds open."

Attorney and former Texas Legislator Frances "Sissy" Farenthold is also an advocate of reform. She, like Stearns, speaks from experience: her stepson was murdered in 1972 and another son disappeared nearly three years ago.

"The legal process is in very serious need of being looked at," she said. "I have always been opposed to the death penalty but I thought the process was being properly followed. Lately, some capital cases were brought to my attention that really distressed me about the lack of proper procedure. Often it is not a question of evidence but a question of due process."

Though she has reviewed some capital punishment cases and traveled to Huntsville to meet a death row prisoner, Farenthold stressed that she is merely an outsider looking in. She is concerned, however, that the eagerness to push executions through seems to be permeating all political offices just as — in her opinion — it has permeated D.A.'s offices for years.

"There is now a tremendous political burden," she said. "People who want to get elected cannot speak out in opposition to capital punishment.

"I cannot advocate the death penalty simply because [of what happened to my family]. I have been there before and may be there again," she continued slowly. "Violence begets violence. What happened to my stepson...it was a terrible murder. I can't even talk about it. But it has not altered my feelings about the death penalty. I am afraid I just don't believe in vengeance."

> I know the pain that I brought to my victims' family. I know their loss, their anger, their frustration, hatred, and despair. I know their feelings of helplessness and hopelessness. I know these emotions as they, the families of my friends who have been executed, and my family and friends do — a twisted cycle of continuing violence, loss, pain, grief, and helplessness.
>
> —From *Letters from Hell*

The fear of vengeance has kept Marjorie Powell awake nights for more than a decade. Her son, David, was convicted of killing an Austin policeman 17 years ago and has been on death row for 14.

"Families of death row inmates are often ostracized, villified, fired from their jobs, sometimes even thrown out of their churches," said Jude Filler, executive director for Texas Alliance for Human Needs and an Amnesty International volunteer. "Their feelings of anxiety, guilt, and anger are extremely debilitating — it decimates families."

"Fourteen years of sheer torture" is how Powell describes her experience. When David was arrested, she said, she raced around desperately trying to help thinking, "This can't be happening." Now she is simply waiting for the axe to fall.

"I had a happy, ideal childhood, marriage, and children," Powell

recalled. "We had problems, of course, but nothing we could not solve. We were all law-abiding citizens and were brought up to do right. I marched along like a good little soldier and believed everything I was told. Now I have been exposed to what the law is really like. If you don't have any money, forget it."

Powell is the owner of a lawn and garden business in Dallas. When she was informed of her son's arrest, she recalled frantically trying to determine where she could raise $5,000, the approximate sum she assumed would be required to hire defense counsel. When a defense attorney informed her that it would cost $100,000 she was appalled. According to Powell, the attorney appointed to defend David had no real experience other than defending DWIs. Not only was counsel inexperienced, Powell contends, but she was not given enough money to prepare an adequate defense.

"What can an attorney do without money? Everything costs money, even making copies. So the court-appointed lawyer does nothing. The prosecutors have enough money to do what they can to get a conviction."

According to Powell, the prosecution's attack was unneccessarily vile. Much of what they said was exaggerated and even at times untrue, she charged.

Parker recounted that David was an ideal child with a bright future when he graduated valedictorian from a four-year high school in just three years. He moved to Austin to attend U.T. and there the trouble started: within six weeks he was hooked on drugs. At the time of his arrest he was shooting amphetamines every two hours and convinced that the CIA was beaming rays into his house. His mother said she had no idea he was using drugs though she suspected something was wrong.

"It is the classic story of the country bumpkin going to the big city and falling in with the wrong crowd," said Dr. James Marquart, a criminal justice professor at Sam Houston State University. Marquart testified as an independent expert witness at David's trial that he would not pose a threat to society in the future.

David was recently retried because the prosecution had a psychiatrist interview him without a Miranda warning shortly after his arrest; it was used against him in the punishment phase.

Powell inherited some money from her father before the second trial began and this time hired counsel.

"I paid that lawyer $177,000 and in the middle of the trial the lawyer informs us that he is not putting up any defense. We were completely flabbergasted. We are not in the law...but we hired an attorney to defend our son. David had all these witnesses lined up — none were subpoened. If the courts are really after the truth then they should let everything come in."

Powell feels badly about the death of the policeman.

"I tried to talk to his widow at the first trial — she just shoved me out of the way. We were not given a chance," she said. "At both trials we were treated like enemies of the police...but we are really both on the same side. We are not enemies."

Powell has become completely disillusioned with the process in which she used to believe. She said that it has destroyed her entire family and any chance for peace. She often awakens two or three times a night sure that someone is in the house, trying to kill her or her family.

"It would have been better to have shot David and me on the courthouse steps," she said. "That would have saved us both a lot of agony. To kill someone in a fit of anger is bad — terrible — but to cold-bloodedly plan it for years...

"When it is over for David it is over for me, too" she faltered. "It would be different if he was bad...if I had tried to straighten him out and couldn't. I can never accept this."

Louis Salinas, a partner in the trial section of Butler & Binion, was involved in one of the first cases overturned on the merits of the *Penry* decision. The experience, he said, fortified his firm's concern that the death penalty, if there is to be one, be administered fairly. Salinas and 11 other attorneys in the firm handled the appeal of Hermon Clark, who received the death sentence in 1982 for felony murder. The U.S. District Court, Southern District of Texas, granted relief on the merits of a *Penry* claim.

"I am opposed to the death penalty. I became interested in assisting when the ABA began recruiting volunteers. Many of the attorneys involved are not necessarily against the death penalty. We were all concerned that important issues such as those found in the Penry decision deserve the best legal arguments available on both sides in order for justice to be properly administered. We prevailed on some sound legal reasons. The issues being litigated are extremely important to the criminal justice system, and it was gratifying that they were briefed in a fashion that the defendant, as well as the state, deserved."

A Personal Perspective

Slowly, gradually, I stopped viewing habeas corpus appeals by death row inmates as an abuse of process and began to see it as an important and necessary constitutional safeguard.

By Rick Strange

My first exposure to the death penalty came as a high school senior when the sheriff of a neighboring county was murdered. The district attorney was our debate coach. Over the next few months he discussed the case with us and allowed us to observe him. What I saw made me wonder how equitable the system was. The county, already facing financial difficulty, was forced to borrow to pay for both the prosecution and defense of the suit. The D.A. eventually paid part of the prosecution expenses himself.

The trial resolved few of my concerns. The jury found the defendant guilty and he received a death sentence. This sentence, however, was overturned on appeal because of something I believed was a mere technicality. Neither the county nor the D.A. could afford a second trial so the defendant was allowed to plead guilty in exchange for a life sentence.

I viewed the death penalty as an inequitable system abused by obviously guilty defendants. To me their appeals seemed both endless and frivolous. Reform, I believed, meant stopping the endless appeals, and speeding the administration of justice.

My second exposure to the death penalty came during a TYLA board meeting. Mitzi Turner of El Paso discussed the Texas Resource Center and a program designed to encourage Texas attorneys to handle post-conviction death row representation. I heard for the first time the other side of the story: that capital punishment was oftentimes for defendants who had no capital; that defendants were often represented by attorneys seriously lacking in skill or resources; and that a large percentage of death sentences are overturned during habeas corpus proceedings.

My curiosity aroused, I read her material and talked to current and former district attorneys in my area. I was surprised to learn that a fair percentage of them privately do not favor our current system because of the financial and emotional costs it imposes. For example a three day murder trial became a six week trial if the death penalty was sought. I was also surprised to learn that these D.A.s supported the Texas Resource Center and its volunteer attorney program.

Slowly, gradually, I stopped viewing habeas corpus appeals by death row inmates as an abuse of process and began to see it as an important and necessary constitutional safeguard. I also decided that I would become involved. Two other attorneys in my firm, Rick Fletcher and Kristi Hyatt agreed to participate. Our section head gave us permission to take a case. We called Mitzi and signed up.

Our first introduction to our new client, Bobby Moore, came when Mitzi and two attorneys from the Texas Resource Center brought his file. They discussed how to file a post-conviction habeas corpus appeal, and reviewed the facts of Moore's case. We learned that he was a young African American man who, along with two friends had held up a grocery store. Moore had a shotgun and during the robbery it went off, killing a store employee. We learned that Moore had been arrested and signed a confession admitting to killing the employee but claiming the gun had accidently fired.

We also discovered what made Moore's case so special in the eyes of the Texas Resource Center. Moore was represented at trial by two attorneys. One has since been disbarred. His attorneys told him that if he testified at trial that the shooting had been unintentional he would receive the death penalty. The attorneys devised an alibi defense claiming Moore had been in Louisiana the day of the shooting. They convinced Moore and his sister to testify this way, because it was the only way to save his life. The defense didn't work.

At first Moore's case was similar to a law school moot court competition. We had a written packet of information which we were to review and draft an application. I knew the stakes were much higher, but the reality of the task at hand didn't set in at first.

Reality came in the form of a trip to death row. The Ellis Unit is a strange paradox. It is at once both high tech and primitive, maximum security and relaxed operations. The prison itself looked like I expected: a very old brick structure surrounded by electric fences, barbed wire and guard towers. To see a prisoner an attorney simply calls ahead and notifies the prison staff. At the gate you yell your name and the prisoner you wish to see to the guard in the tower (there's no intercom or phone). He lowers a bucket on a rope and asks you to produce your bar card. After confirming your identity the outer gate is unlocked. I expected that at some point we would be searched, but that never happened. In fact nobody even looked in our briefcases.

The visiting room is a large area composed of a room within a room separated by a glass wall with an opening covered by heavy wire mesh for talking to each other. Visitors are allowed to freely move around in the outer room and prisoners in the inner room. In the outer room there are vending machines and crafts made by the prisoners for sale. You can give cokes, papers, etc. to the prisoners by using the push through box. This is a simple wooden drawer on one wall. Open it, drop in your materials, and push it through.

During the visit Bobby Moore became more than a moot court problem. He became our client. There was now a face to go with the file. His case was no longer simply another statistic, but the case of a man in desperate need of legal assistance.

I find myself looking differently at not only his case, but at all capital punishment cases. When an execution is stayed or carried out I see Bobby Moore's face and I wonder whether we'll be able to make a difference for him, or if some day I'll hear the news announcer relay the story of his execution in the same simple detached tones used to describe tomorrow's weather forecast.

Rick Strange, a member of the Texas Young Lawyers Association board of directors, is an attorney with the Midland law firm Cotton, Bledsoe, Tighe & Dawson.

Prosecuting Capital Cases

The death penalty remains society's highest penalty for heinous crimes, and deserves the highest consideration by those who play a role in its execution.

By Greg Gilleland and John Garner Gilleland

The imposition of the death penalty as a sentence for a violation of societal mores in Texas undoubtedly dates back to man's earliest presence within the territory. The utilization of the death penalty as a military and governmental sentence continued throughout the settlement of the new world. Early Texas Rangers protected settlements under the Spanish, Mexican, and Texas Republic governments, and then later from numerous outlaws whose philosophical descendants still victimize the citizenry of Texas.

Attorney prosecutors (as distinguished from military prosecutors) have applied the death penalty with considerable zeal against dangerous criminals since the days of the Republic of Texas. Since 1836, the crimes classified as capital, the method of the imposition of the sentence, and the post-conviction appellate proceedings have been subject to extensive modification and limiting. Today, the death penalty is available for use in only the most heinous of crimes after exhaustive appellate review.

Understandably, many prosecutors have strong feelings about the past, present, and future use of capital punishment in Texas. For this article, we spoke with several prosecutors with capital trial experience to obtain their views on a variety of issues relating to the death penalty.

Fred Felcman, first assistant district attorney of Fort Bend County, has prosecuted and defended capital cases. Felcman was a member of the prosecution team that convicted James "Sugarman" Russell for the brutal abduction, sexual assault, and murder of Thomas Stearns. Stearns had been previously robbed at gunpoint by Russell in Houston, and the day before Russell was to accept a seven-year plea bargain for this crime he brutally assaulted and murdered Stearns. Earlier this year, Russell was put to death, after more than 14 years of appeals.

Felcman believes the death penalty is a viable punishment option today: "There are some people who are so mean, and whose criminal acts are so vicious, that we as a society can never risk the possibility that this defendant, through parole or escape, might ever reenter society and kill again."

Gordon White, a former Harris County and Wichita, KS assistant district attorney, currently an assistant district attorney in Fort Bend County, is a prosecutor with capital trial experience who has a supportive yet tempered view of capital case prosecution.

"I don't know if I possess the traditional prosecutorial perspective on the death penalty," says White. "I believe some people should die for the things they have done. Obviously, some have done things so bad that they have forfeited their right to live. However, I think the death penalty is unfairly applied. While some people deserve to die, unless we kill everybody that deserves to die, then who gets to choose which unfortunate few forfeit their lives?"

Jack Stern, the D.A. of Fort Bend County, agrees that the death penalty is necessary and says it is the "best deterrent there is to future criminality by a certain offender."

Although Felcman feels that a sentencing option in Texas such as a life sentence without any possibility of parole might be an alternative in some cases to the imposition of the death penalty, he expressed concern about the possibility of future prison violence committed by such an inmate incarcerated for a life sentence without parole.

"What has a defendant got to lose when placed in prison for life and he knows he is never, ever getting out?" asked Felcman.

White added, "There is that occasional inmate who, even if put in the penitentiary for life without any possibility of parole, would place the other inmates at risk."

While employed as an assistant district attorney in Kansas, White tried a case where the defendant received a sentence which would not allow the defendant to be eligible for parole for 137 years. White utilized a Kansas statute that allows other convictions to be stacked upon a conviction, and was quite satisfied with this sentence, "the great grandchildren of the current parole board will probably not have been born when this defendant is eligible for parole."

Thus, although White favors a sentencing option such as life without parole in Texas, he said, careful evaluation of the individual's propensity for future violence should weigh heavily in determining whether to pursue the death penalty in any particular case.

All prosecutors interviewed for this article felt that the most difficult aspect of a capital trial is the jury selection portion. Felcman feels that a capital murder jury should be impanelled using peremptory strikes and further feels that a capital case should be so airtight, so strong, that the jury will not have to question whether or not the defendant committed the act after hearing the evidence. With regard to the pre-filing screening of potential capital cases, Felcman said "there shouldn't be any issue as to whether the defendant deserves the death penalty for the crime. If this issue arises, the case should be tried as a murder case to save the state time and money."

White agrees, and states that most prosecutors recognize a capital case when it is brought to them. Certain factors, such as prior criminal history of the defendant, whether the act was deliberate, whether the act was in response to any provocation by the victim, the continuing threat that this defendant poses to society, and any other mitigating evidence are factors considered by prosecutors when filing a capital case.

Stern, Felcman, and White agree that the current post-conviction capital appeals process affords the defendant "super due process." D.A. Stern favors reform regarding habeus corpus relief so that all errors would have to be raised at one time, thus limiting the appellant's right to file multiple writs over the course of his appeals process. Felcman favors a five-year time limit to hear and decide capital case appeals.

If lawyers have time tables they must follow, why shouldn't

judges have time tables that they must follow?" asked White. "It takes just as much time to research the law and to put it in articulate fashion as it does to read that and render a decision. The judge's job is no more difficult than the lawyer's in preparing the briefs. Why should judges be given 100 times more time than the lawyer?"

Many critics of the death penalty cite economic reasons, contending that the trial and appellate proceedings in capital cases are far more expensive than the cost of incarcerating a defendant for life.

"Money can be saved in other areas of government," reasoned Felcman. "The simple fact is, I'm willing to spend my taxpayers' money for capital case defendants to be convicted and receive the death penalty. There are many other areas of government and in the process of the trial and appeals of capital cases where costs could be reduced to counter these economic concerns." Felcman opined, "The same people who cite economic reasons to oppose the death penalty are against it — period. Those critics use economic reasons to justify their moral beliefs."

"Certain functions of the state, such as prosecuting and housing criminals," says White, "are the responsibility of the state."

Felcman instituted the "round table" decision making process in Fort Bend County upon being appointed first assistant in January 1991. The round table process involves presenting the case to all 18 prosecutors. The prosecutors then debate the relative factors involved in major cases such as capital cases, and discuss their concerns. In this way, the philosophy that "two heads are better than one" is utilized to the maximum extent possible.

Fort Bend County prosecutors also consider the opinions of the victim's family and the law enforcement officers involved in the investigation. The D.A.'s office attempts to use all its legal and intellectual resources to their fullest extent.

Most prosecutors in Texas do not revel after the pronouncement of a guilty verdict in a capital case. Most prosecutors attack capital case litigation with the solemn and serious attitude it demands. The death penalty remains society's highest penalty for heinous crimes, and deserves the highest consideration by those who play a role in its execution.

Greg Gilleland is the chief prosecutor of the Felony Intake and Grand Jury Division of the Fort Bend County District Attorney's Office. He received his law degree from Thurgood Marshall School of Law at Texas Southern University in 1989, and formerly served as a police officer in Houston. He is a member of the State Bar of Texas President's Task Force on Thurgood Marshall School of Law.

John G. Gilleland is a 1963 graduate of the South Texas College of Law. He served as an assistant district attorney in Harris County until 1968 when he opened his private practice in Houston, concentrating in criminal and civil trial and appellate litigation.

Lawyers Speak from Experience

Many Texas lawyers have volunteered to represent indigent prisoners on death row through the appeals process. In addition to comments included in the special section, the following lawyers discussed their experiences and perspectives on the process with Bar Journal *writer John Sirman.*

James McCarthy of Hughes and Luce in Dallas, said his firm saw this as a good way to get members involved in interesting and meaningful pro bono work. Both attorneys and paralegals with the firm contributed on the appeal of Richard Foster, who was convicted of a robbery/murder in 1985. The case is currently in state habeas proceedings.

"I thought we should supplement our firm's more conventional pro bono work with this more specialized pro bono contribution. Darrell Jordan, who was then State Bar president, and Jack Williams, now a law professor in Georgia, agreed with my appraisal and we embarked on this effort. It gives firm lawyers a chance to work on interesting issues of consequence. That [kind of] experience always makes good lawyers into better lawyers."

Alan Wright, an appellate practice partner with Haynes and Boone in Dallas, feels that the current appeals system increases the range and scope of appellate and habeas corpus proceedings in capital cases because there is no way of ensuring that defendants are represented competently from the beginning. Wright represented Wille Mack Modden, beginning with a petition for writ of certiorari to the U.S. Supreme Court in 1987. Habeas corpus relief was granted in February of this year by the court of criminal appeals on the basis of *Penry v. Lynaugh*.

"If the state of Texas is truly serious about limiting the so-called "interminable" duration of capital appeals and habeas corpus proceedings, it seems to me that we could start by assuring that all death row inmates, whether indigent or not, are represented by experienced and competent counsel at the trial level. I learned a great deal about our criminal justice system and its operation in capital cases from my representation of Mr. Modden. In addition, the case has generated a great deal of interest both among lawyers in the firm and among clients of the firm. This has been an extremely positive, although time consuming, experience.

It appears to me that the absence in many counties in Texas of any "public defender" system providing for competent trial representation causes severe problems on appeal and in habeas corpus proceedings. The current practice of the State of Texas to provide appointed counsel to indigent capital defendants only during trial and for the first appeal to the Texas Court of Criminal Appeals is wholly inadequate from any reasonable due process perspective. At a minimum, it seems to me that any just system should provide that appointed counsel represent capital defendants through at least the preparation and filing of a petition for writ of certiorari to the U.S. Supreme Court."

David Dow, an assistant professor at the University of Houston Law School whose main academic interest is death penalty law, is concerned that many state-appointed lawyers at the trial and direct appeal stage are inexperienced and incompetent. Those that are competent are often under financial constraints which make the assembly of an adequate defense difficult. He believes the system should be improved so that capital defendants have high quality representation from the beginning. He has been involved at various levels in several capital cases.

"I consider the work very rewarding because these people we're representing have tended to receive rather shoddy representation, and it's a shame that people scheduled to die should be in that position."

Dow noted in a 1990 article in *The Texas Observer* that "Lawyers who enter the cases at the later stages in petition for writ of habeas corpus are often extremely talented attorneys and they are almost always volunteers who represent the inmates on a pro bono basis. They spend a great deal of their time doing what the trial lawyers should have done earlier. Ironically (and unfairly), the habeas lawyers are the ones who incur the wrath of the courts for their alleged countenance of delay. . . .

If states that have the death penalty want to speed up the pace of executions, then they need to fix their own systems from the ground up. This means that the first thing they need to do is figure out a way to provide indigent capital defendants with qualified lawyers, and that means, among other things, paying the lawyers enough to do a credible job. For irrespective of one's position on the death penalty, the one thing everybody ought to agree upon is that no one should be executed just because he was too poor to afford a decent lawyer and an adequate defense."

Prater Monning, head of the trial section of Gardere & Wynne in Dallas finds these cases interesting and challenging, though he believes that the long, drawn-out process is extremely wasteful of time and money. The firm is currently handling two appeals: David McKay, reversal of homicide conviction secured, scheduled for trial in August 1992; and, Kenneth Gentry, 1983 homicide conviction, now pending state habeas appeal.

"It's kind of like getting to go to law school and study criminal law again. Capital defendants and their trial counsel lack the resources and experience necessary for a fair trial. There is great personal satisfaction in handling these cases."

(Dunn, Continued from page 332)

But some agreement emerges among those I have consulted:

• The process is too long and too encumbered with way stations and "way-ting."

• Funding — *adequate* funding — from the already overtaxed public must be part of the solution — if the death penalty is to continue as a controversial deterrent to heinous crimes. Perhaps the best solution would be to create an indigent defense fund administered by the Texas Court of Criminal Appeals.

• Involvement of our profession is overdue. Years ago when Jim Sales was president of the State Bar, he called for more volunteers to represent those on death row. I renew that call.

• The need for a public defender system — at least for those death penalty cases where the defendant is indigent and has exhausted state remedies pre-*habeas corpus*.

The human brain is the most incredible of all nature's wonders. I am told it weighs three pounds, uses 20 percent of all available body oxygen, and contains 200 billion neurons with 10 to 50 times that many support cells and trillions of connections between these cells. A typical neuron, a pyramidal cell, has up to 100,000 specific connections to other cells. Remarkable!!!

Our human brain has conquered diseases, prolonged life, improved most aspects of the human condition, and solved a great many problems on this earth — while admittedly creating others. The brain is the most significant, tangible miracle we possess.

Somehow, it must provide a solution for this dilemma, as well.

The public has a right to a more expeditious criminal justice process. Of course, the rights of an accused must be protected, as well. However, maintaining death row is not cheap — and cruel and unusual punishment is not limited to physical torture.

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1. I'd like to express my thanks to those who helped educate me about the issues and problems involved in death row representation: Chief Judge Mike McCormick of the Texas Court of Criminal Appeals; Eden Harrington, executive director of the Texas Resource Center; V. Perini of Dallas; and Sam Davis of Houston.

Is Innocence Irrelevant?

As the *Bar Journal* was going to press, a seemingly clear-cut issue regarding the imposition of the death penalty received national attention. The U.S. Supreme Court will consider the extraordinary question later this year.

Attorneys for Raul Herrera, Jr., who was scheduled to be executed Feb. 19, presented new evidence that they believe shows their client, who was convicted of killing two police officers, is innocent. A federal judge granted a stay in order for the new evidence to be considered, but it was lifted by the U.S. Fifth Circuit Court of Appeals on the grounds that claims of "actual innocence" are constitutionally irrelevant. The court did not consider the new evidence.

In Herrera's last-minute appeal to the supreme court, the justices split 5-4, with five justices refusing to stay the execution. The fact that four justices dissented, however, allowed Herrera's lawyers to request a petition for *certoriari*, which was granted. The *Austin American Statesman* reported recently that "[the dissenting justices] noted that [Herrera's] case raised an important legal issue: Does the Constitution require 11th-hour evidence of "actual evidence" be fully considered before an execution proceeds?" Even after the petition was granted, five justices again refused to stay the execution.

State officials were prepared to go ahead with the execution. Texas Court of Criminal Appeals judges granted a stay after hearing of the supreme court's action. Herrera's case will be heard by the supreme court this fall.