

# DEATH PENALTY BASICS

## Key Terms, Quick Facts

### Key Terms—

- **Abolition:** The cessation of executions and the removal of the death penalty as a sentencing option from the criminal code.
- **Aggravating Circumstances:** The factors that the prosecution presents in the sentencing phase in favor of the death penalty for the defendant (criminal history, heinous nature of the crime, etc.).
- **Bifurcated Trial:** A trial with two stages in which guilt is determined in the first phase and the penalty is determined in the second.
- **Capital Crime:** A crime for which the death penalty may be imposed, usually murder plus another felony, such as rape, burglary, or kidnapping.
- **Clemency:** The power of a governor or a government official to nullify a criminal conviction, to reduce a criminal sentence, or to delay an execution. Mental problems and doubts about the guilt of the defendant are often cited as reasons for granting clemency.
- **Commutation of Sentence:** A reduction in a sentence that has already been imposed (e.g. from the death sentence to life imprisonment).
- **Exoneration:** To be cleared of a charge, responsibility or blame.
- **Felony:** The classification of a crime that is punishable by imprisonment for more than one year or by death.
- **Future Dangerousness:** The second question posed in the sentencing phase of a capital trial which requires jurors to consider “whether there is a probability that the defendant would commit criminal acts of violence that would constitute a continuing threat to society.”
- **Habeas Corpus:** (Latin: “that you have the body”) Allows an inmate to challenge the legality of his / her detention.
- **Ineffective Assistance of Counsel:** To claim ineffective assistance, a defendant must show that his/her lawyer was deficient in his/her performance, that he or she (the defendant) was prejudiced because of the lawyer’s deficiency and that the outcome of the trial would have been different with better counsel.
- **Law of Parties:** Section 7.02 of the Texas Penal Code outlines the following: A person is criminally responsible for an offense committed by the conduct of another if “acting with intent to promote or assist the commission of the offense he solicits, encourages, directs, aids or attempts to aid the other persons to commit the offense” or “If, in the attempt to carry out a conspiracy to commit one felony, another felony is committed by one of the conspirators, all conspirators are guilty of the felony actually committed, though having no intent to commit it, if the offense was committed in furtherance of the unlawful purpose and was one that should have been anticipated as a result of the carrying out of the conspiracy.” Article 37.071(b)(2) of the Code of Criminal Procedures permits the infliction of the death penalty only if the jury believes beyond a reasonable doubt that the defendant “intended to kill the deceased or another or anticipated that a human life would be taken.”
- **Lethal Injection:** A method of execution involving the insertion of certain chemicals into an inmate’s body, thereby causing a halt to vital functions.
- **Mitigating Circumstances:** The evidence the defense presents in the sentencing phase of a capital trial in order to provide reasons why the defendant should not receive a death sentence (e.g. lack of prior criminal record, abusive childhood, mental problems, remorse, etc.).
- **Moratorium:** A period of time in which executions or capital prosecutions are temporarily halted; can be officially enforced by a governmental entity or can be informal as officials await clarification in the law.
- **Pardon:** A release from punishment or penalty by a governing power without indicating exoneration from guilt. In some cases, a pardon allows the inmate to be released from prison.
- **Reprieve:** A form of clemency in which a death sentence or other criminal sentence is delayed.
- **Stay of Execution:** A court order to temporarily suspend an execution. A stay may occur in light of new evidence that will exonerate the convicted person or on procedural grounds.

## Quick Facts—

### ***Legality***

#### **Is the death penalty legal in the United States?**

After being suspended in 1972 because of a lack of national standards, the death penalty was declared constitutional (legal) again in 1976 with the provision that rigid statutes be used as a guide. Each state determines whether to permit the sentence of the death penalty. Thirty-five states currently have the death penalty. In 2007, New Jersey became the first state in 40 years to legislatively abolish the death penalty. In 2009, New Mexico and 2011, Illinois legislatively abolished the death penalty. The federal government and the U.S. Military also allow for the death penalty for certain crimes. (DPIC)

#### **Is it legal to execute juveniles, the mentally retarded, or the mentally ill in the United States?**

In 2002 the U.S. Supreme Court declared it illegal to execute defendants with mental retardation, and it struck down the death penalty for juveniles in 2005. The state of Texas has not yet set standards for determining mental retardation. The Supreme Court has declared it unconstitutional to execute those deemed “insane,” but there are no laws preventing the execution of people with other forms of severe mental illness.

#### **Has the Supreme Court considered the legality of the death penalty in recent years?**

No. In April 2008 the Supreme Court ruled in a very specific case that the “three-drug cocktail” method of lethal injection did not constitute “cruel and unusual punishment” and therefore was not unconstitutional. After this decision was rendered, a *de facto* moratorium of seven months was lifted; executions resumed in May 2008. The Court did not address the legality of the death penalty itself, although it has addressed other procedural issues. (DPIC)

#### **What is a moratorium?**

A moratorium is a halt on executions for a certain time period. During a moratorium, detailed examinations of capital punishment laws and processes can take place. In a 2007 opinion poll by RT Strategies, 58% of respondents believed it was time for a moratorium on the death penalty; many of those supporting a moratorium also were supporters of the death penalty. (DPIC)

Under Texas law, the Governor does not have the authority to call a moratorium. In order to enact a moratorium in Texas, a constitutional amendment has to be passed by the Legislature (requiring a two-thirds vote by both chambers) and the voters of the state have to approve the amendment.

#### **What is the alternative to the death penalty?**

Every death penalty state now provides for a sentence of life in prison without any possibility of parole (LWOP). In Texas, this sentencing option went into effect on September 1, 2005.

### ***Death Row and Executions***

#### **How many inmates are on death row in the United States?**

There are approximately 3,260 death row inmates nationwide, with the largest populations in California (713), Florida (393) and Texas (317).

#### **How many people have been executed in the United States?**

There have been more than 1,234 executions since 1977, with a peak in 1999 of 98 executions. Texas has carried out more executions than any other state (464 since 1982, as of January 1, 2011.)

#### **What countries are responsible for the most executions worldwide?**

In 2008, 93% of all known executions took place in five countries: China, Iran, Pakistan, Saudi Arabia, Pakistan and the United States. The United States and Japan are the only post-industrial nations that impose the death penalty. More than 130 countries have abolished the death penalty in law or practice. (Amnesty International)

### **Do most Americans support the Death Penalty?**

A May 2006 Gallup Poll found that overall support for the death penalty was 65% (down from 80% in 1994). The same poll showed that when respondents are given the choice of life without parole as an alternate sentencing option, more choose life without parole (48%) than the death penalty (47%). (DPIC)

### **How much does the death penalty cost tax payers?**

The estimated average cost of a death penalty case in Texas, according to the *Dallas Morning News* is \$2.3 million, or about three times the cost of imprisoning someone in a single cell at the highest security level for 40 years. (DPIC)

The average cost to house an inmate in Texas prisons is \$47.50 per day, which means it costs more than \$17,000 to house an inmate for a year and \$693,500 for 40 years. (*Lubbock Avalanche-Journal*)

The greatest disparities in costs are incurred in the original trial (not because of years of appeals).

## **Methods**

### **What methods of execution are currently used in the United States?**

Thirty-five states and the federal government use lethal injection as the primary method of execution, though other methods are still on the books. In 2008 the Supreme Court of Nebraska, the only state that maintained the electric chair as its only method of execution, outlawed its use. In some states, inmates who were sentenced to death before the adoption of lethal injection can “choose” an alternative method. The State of Ohio has implemented a new one-drug sedative means of lethal injection. This method was not tested before use and is not in accordance with the U.S. Supreme Court’s approved “three drug cocktail”. (DPIC)

### **What is the “three-drug cocktail”?**

The “three-drug cocktail” is a form of execution by lethal injection that involves three separate injections. The inmate is first injected with sodium thiopental—an anesthetic—which puts the inmate to sleep. Next flows Pavulon or pancuronium bromide, which paralyzes the entire muscle system and stops the inmate’s breathing. Finally the flow of potassium chloride stops the heart. Death results from anesthetic overdose and respiratory and cardiac arrest while the condemned person is unconscious. (DPIC)

### **What are the problems with lethal injection?**

Medical ethics preclude doctors from participating in executions, although a doctor will certify the inmate is dead. This lack of medical participation can be problematic because injections often are performed by inexperienced technicians or prison staff. If a member of the execution team injects the drugs into a muscle instead of a vein, or if the needle becomes clogged, extreme pain can result. Many prisoners have damaged veins resulting from intravenous drug use and it is sometimes difficult to find a usable vein, resulting in long delays while the inmate remains strapped to the gurney. (Ecenbarger, 1994 and Weisberg, 1991) Also, there is a chance that the effects of the first drug (the anesthetic) may wear off while the second drug (the paralytic agent) masks any pain or suffering that the inmate may be experiencing.

## **Wrongful Convictions and Exonerations**

### **How many people have been released from death row?**

Since 1973, 138 people in 26 states have been released from death row because of evidence of their wrongful conviction, including 12 in Texas. From 1973-1999, there was an average of 3.1 exonerations per year. From 2000-2007, there was an average of 5 exonerations per year. (DPIC)

### **Are those who have been freed from death row “actually innocent?”**

It is virtually impossible to prove beyond all doubt that someone did not play a role in a particular crime and the defendant has no burden to prove innocence; rather, it is the job of the prosecution to prove guilt. When a death row inmate’s conviction has been overturned, prosecutors usually have the opportunity to retry the defendant. If the defendant is acquitted at a re-trial, or if the prosecution decides to drop all charges, then the defendant is freed. (DPIC)

### **Is there any proof that an innocent person has been executed?**

While there is no “uncontroverted proof” that an innocent person has been executed, and no forum or legal standard exists for establishing such proof, there is considerable evidence that innocent persons have been executed. Cameron Todd Willingham, executed in 2004 in Texas, is one such case. After examining evidence from Willingham’s prosecution, four national arson experts concluded that the fire that Willingham was convicted of starting was accidental. There are many other cases where significant doubts about guilt arose after a person’s execution, such as the cases of Carlos De Luna, Ruben Cantu, and Claude Jones.

Seventeen of those who have been freed from death row in recent years were assisted in their exclusions by DNA testing. It is reasonable to infer that some of those who were executed in the 1970s and 1980s would also have been cleared if this scientific advancement had come earlier. (DPIC)

### **Has DNA evidence eliminated the possibility of convicting the wrong person?**

While DNA evidence has been used to exonerate several death row inmates, it is not a means to ensure that there are no wrongful convictions. For DNA evidence to be used it must first be found. According to the Genetic Science Learning Center at the University of Utah, a very small percent of criminal cases use DNA evidence. For those cases that do have DNA evidence, it must be properly documented, collected, packaged and preserved. Otherwise contamination can occur, making the DNA evidence unusable. After a 2003 audit of the DNA lab in Houston, Texas, 525 cases (including 17 death penalty cases) had to be reexamined because of improperly-handled evidence. The audit found “significant deficiencies.” (DPIC, CNN: Law Center)

### **Are Americans concerned about wrongful convictions?**

According to a 2005 study by the University of Cincinnati and Radford University, three-quarters of Americans believe that an innocent person has been executed within recent years and that belief is resulting in lower levels of support for the death penalty. When life in prison without the possibility of parole was offered as an alternative sentence for capital murder, less than half of all Americans who believe an innocent person has been executed supported the death penalty.

## ***Religion***

### **Do most Christians support the death penalty?**

Some of the most recent data focusing on religion and the death penalty has looked at the views of Christians, a group that comprises over three quarters of the American population. According to a 2004 Gallup Poll, individuals who self-identify as Protestants are somewhat more likely to endorse capital punishment than are Catholics and far more likely than those with no religious preference. The poll found that more than 7 in 10 Protestants (71%) support the death penalty, while 66% of Catholics support it and that 57% of those with no religious preference favor the death penalty for murder. A 2005 Zogby poll revealed that only 48% of Catholics now support the death penalty. A recent poll by NationalChristianPoll.com found that two-thirds of active Christians who oppose the death penalty are concerned about judicial error that could lead to an innocent person being executed. The poll also found that of those Christians who support the death penalty, 60% do so because of Biblical teachings. According to a 2007 Pew Forum poll, the strongest supporters of the death penalty are white evangelicals (74%).

### **What are the official stances of religious organizations on the death penalty?**

According to the American Friends Service Committee’s Criminal Justice Program, which maintains a list of faith and ethical groups that are opposed to the death penalty, many groups are officially opposed to capital punishment. These include the following: American Baptists, American Ethical Union, American Friends Service Committee, American Jewish Committee, Buddhist Peace Fellowship, Central Conference of American Rabbis, Disciples of Christ, Church of the Brethren, Episcopal Church, Evangelical Lutheran Church in America, Friends United Meeting, General Conference of General Baptists, Mennonite Church, Moravian Church in America, National Council of Churches, Orthodox Church in America, Presbyterian Church (U.S.A.), The Rabbinical Assembly, Reformed Church in America, Reorganized Church, Union of American Hebrew Congregations, Unitarian Universalist Association, United Church of Christ, United Methodist Church and the United States Catholic Conference. The General Baptists and the Church of Jesus Christ of Latter-day Saints have not taken a public position on the issue of capital punishment, while the Southern Baptist Convention and the National Association of Evangelicals maintain pro-death penalty positions. The Koran sanctions the use of the death penalty, but there is a strong tradition of mercy within the faith.

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