## ОГЛЯД СУДОВОЇ ПРАКТИКИ ПО ЗАСТОСУВАННЮ СМЕРТНОЇ КАРИ

Х. Веліс

Capital punishment has existed in the United States even before Declaration of Independence was singed on July 4, 1776. With this extensive history, there have been many changes to and developments with the death penalty. These changes have been the result of challenges of constitutionality of capital punishment to the Supreme Court. Even with a multitude of challenges, capital punishment has not been unconstitutional by the Supreme Court and is still practiced by a preponderance of the United States.

As records indicate, Daniel Frank was the first person to be put to death in what would soon be the United States. In 1622, Frank was put to death in the Colony of Virginia for theft. In this case, the Court did not rule on the constitutionality of capital punishment, but rather on the manner in which the death sentence was being imposed (1).

The first great challenge to the constitutionality of capital punishment came with the case of Georgia v. Furman in 1972. In this case, the Supreme Court ruled that the juries' ability of sentencing death or life without any structured guidelines violated the cruel and unusual punishment clause of the amendment and the due process clause of the fourteenth amendment, therefor capital making punishment unconstitutional. This was the first time in the history of the United States that the death penalty was legally forbidden by the federal government (1).

In reaction to Georgia v. Furman, various revised capital punishment statutes hoping that these rewritten statutes would endure the inquisition of the further cases that would be brought to the Supreme Court. One such case that was presented to the Supreme Court in 1976 was Georgia v. Gregg. In this case, the Court sanctioned numerous statutes that had been revised by Georgia

to meet the new standards that were set forth in Georgia v. Furman and ruled that capital punishment was once again legal. As a result, on January 17, 1977 Gary Gilmore was executed by a firing squad in Utah. This execution of Mr. Gilmore was the first execution in the United States in over eleven years (1).

Since the execution of Mr. Gilmore in 1977, there have been over three hundred executions in the United Although this rate of executions may seem high, only a minute fraction of the most heinous criminals are put to death. Experts predict that in 1998 alone, over seventy-five offenders on death row will be executed. If this occurs, it will be the largest number of executions in the United States since the Supreme Court ruled that capital punishment was constitutional in 1976 (1). Among other statistics, table 1 is a representation of the number of executions since 1977, the number of execution in 1997, and the number of executions that have taken place so far in 1998.

Although capital punishment was ruled to be constitutional by the highest federal court, twelve state supreme courts have ruled that capital punishment violates the state constitution, and is therefor not permitted. The states in which capital punishment is unconstitutional are Alaska, Hawaii, North Dakota, Minnesota, Wisconsin, Iowa, Michigan, West Virginia, Vermont, Massachusetts, Maine, Rhode Island. Capital punishment is considered to be constitutional in the other thirty-eight states (4).

In the thirty-eight states that capital punishment is legal, it is administered in five different ways, as illustrated in table 1. As shown, electrocution is the most common means of carrying out the death penalty, with hanging and firing squad being used in only a few states. Each state has distinct ways of deciding which method

would be most cost efficient and suitable for the state economy. Commonly, however, hanging and firing squad are considered to be the most primitive means of carrying out the death penalty, and therefor, used in the fewest states.

Along with figure 1, table 1 illustrates the means used to carrying out the death penalty in each particular state. In each state, lethal injection is an alternative to the primary method. Table 5 reports the number of executions in the four regions of the United States. Obviously, the south has executed the highest number, primarily due to Texas, which has put one hundred fifty five people to death since 1976.

Capital punishment may be applied in a wide variety of cases, crimes, and circumstances. Most commonly, offenders receive the death penalty for aggravated or first-degree murder, kidnapping, contract murder, multiple murders, the murder of federal officials, the murder of children, and the murder of corrections officers, just to name a few. It is impossible to formulate all of the possible crimes for which the offender could receive the death penalty because the prosecuting attorney may request the death penalty in any case. As previously mentioned, the death penalty is carried out in only a minute fraction of the most horrific cases. Table 3 illustrates the number of executions that have taken place since 1976.

In some states, such as Mississippi, the death penalty may be applied for the murder of a corrections officer, capital rape, and several other serious violations of the law. In Texas, the state that has executed more people than any other state, the death penalty may be applied for a variety of serious crimes, such as the murder of a peace officer, a firefighter, or any murder that takes place while the offender is escaping for the prison. California law states that the death penalty may be applied when an inmate commits murder while serving a life sentence. Obviously there are many varying crimes for which the death penalty may be applied in each state, depending on each state's values and goals.

Decisions on applying the death penalty are usually made in a state court that is comprised of a defense attorney, a prosecuting attorney, a judge, and a jury. For cases in which the offender could possibly receive the death penalty, the jury mist be unanimous in their decision and on the punishment. If the jury is not unanimous, then the jury is considered to be undecided and the case will most likely be appealed to a higher court by the state. If the jury is unanimous and the offender receives the death penalty, however, the defense will most likely appeal the case to a higher court.

When a case is appealed by the defense, it is first appealed within the states system under the pretense of either habeas corpus or wrongful imprisonment. If the state court rules that the death penalty should be applied, then the defense will appeal to a federal district court under the claim that capital punishment violates the eighth and fourteenth amendments of Constitution. If the defense is not satisfied with the ruling of the federal district court, then the defense will most likely appeal to a federal court of appeals. After this federal court, the Supreme Court is the last and highest court that has jurisdiction over the case. This process of appealing the cases usually takes several years, and most offenders who are on death row die of natural causes before they are executed.

Each time a case is appealed to a higher court there is a chance that the death sentence will be reduced to a life sentence, usually without the possibility of parole. Since each case is different and involves different circumstances and facts, the judge will rely on state law, precedent, and his or own interpretation of the case to formulate a final decision.

Although there are many courts in which cases may be appealed, it is usually becomes more difficult to have a decision overturned as the case is taken to a higher court. For example, each year, the Supreme Court receives thousands of letters from lawyers and asking the Court to hear certain cases. Most of the cases that the Supreme Court receives are left unheard simply because there is not enough time for the Court to hear them all. The cases that are chosen to be heard involve special circumstances or specific details that potentially violate the Constitution.

There have been several recent decisions by state and federal courts that involve capital punishment. One of the most notorious cases is the Oklahoma City bombing trial of Timothy Mc Veigh. Mc Veigh received the death penalty for his role in the bombing of a federal building in Oklahoma City in which hundreds of people were killed and injured. Oklahoma's means of carrying out the death penalty is electrocution. Recently, Texas executed the first woman since the Civil War, which was over a hundred years ago. The method of execution in Texas is lethal injection.

People everywhere have different opinions and thoughts regarding the death penalty, and it is often difficult to know exactly what people assume. The opinions of those in power, though, are usually noted. For example, President Clinton is considered to not be a supporter of the death penalty. Likewise, Governor Engler, the governor of Michigan, is also not in favor of the death penalty, hence, capital punishment is not permitted in Michigan. The opinions of Supreme Court justices are also apparent in the case briefs that are written after each case is complete and decided.

The late Justice William Brennan made his opinion of capital punishment clear in his dissent of the 1985 case of Glass v. Louisiana. In his opinion, capital punishment is nothing more than legalized torture. In his dissent of the case he state: "The evidence suggests that death by electrical current is extremely violent and inflicts pain and indignities far beyond the 'mere exstinguishment of life'. Witnesses routinely report that, when the switch is thrown, the condemned prisoner 'cringes', 'leaps', and 'fights the straps with amazing strength'. 'The hands then turn red, then white, and the cords of the neck stand out like steel bands'. The prisoner's limbs, fingers, toes, and face are

severely contorted. The force of the electrical current is so powerful that the prisoner's eyeballs sometimes pop out and 'rest on [his] cheeks'. The prisoner often defecates, urinates, and vomits blood and drool" (2).

Although Justice Brennan radically liberal views of the death penalty, the majority of the justices on the Supreme Court are in favor of capital punishment, therefor, capital punishment is legal in the United States today. On June 20, 1996 in the case of Gray v. Netherland, ward of Virginia, the Supreme Court refused to overturn a death sentence of Coleman Wayne Gray. In this case, Gray argues that he was ambushed by the prosecuting attorney when the prosecution presented surprise evidence in the penalty phase of his trial. In a 5 - 4 decision, the Court ruled that Cray could not bring a state court conviction to a federal court of appeals (3). Since the Court is so closely split in the issue of capital punishment, often their decisions rely on minute facts and personal opinions that sway justices to one side or the other.

As was previously stated, citizens have many different opinions regarding the death penalty, and there are many supporters for both sides of the issues. Supporters of the death penalty argue that capital punishment provides means for heinous criminals to receive justice and pay their debt to society. Supporters may also argue that if an offender commits any crime for which the death penalty may be applied then he or she deserves to die because the crime that was committed was so awful. Offenders are often viewed as a detriment to society, and that their lives are worthless. Supporters also argue that these offenders are simply rotting in prison and costing tax payers millions of dollars each year. Some supporters also believe that the death penalty is a deterrent for others who are thinking of committing similar crimes.

My personal opinion of the death penalty is radically different and totally opposite. I believe that the death penalty is a crude and inhumane means by which to punish an offender for his or her crime. I am not arguing that offenders should not be punished; I believe quite the opposite. I do believe, however, that fundamental basis of capital punishment is extremely hypocritical. As the death penalty is applied now, the majority of the states in the United States punish an offender for a heinous crime by killing them. If it was wrong for the offender to commit murder, then why is it not wrong for the United States to do exactly the same?

It has also been proven that capital punishment is not a deterrent for future criminals. If an offender is willing to commit a heinous murder, then he or she consider is likelv to not consequences of the actions. When a person commits a heinous crime, that person is not thinking rationally, and therefor, is unable to predict the rational consequences. If people thought rationally and logically before they committed crimes, then they would not commit the crime, because in most cases, committing the crime will lead to more trouble than not.

Another argument against the death penalty is the increased cost to tax payers. Table 2 compares and illustrates the cost of both a capital trial and a regular trial in Los Angeles County. Due to the drawn out process of capital trials, it typically costs a county three times as much to execute an offender than it would to simply keep the offender in prison until he or she dies of natural causes.

Other issues concerned with the abolishment of the death penalty include racism, the execution of wrongly accused persons, and the execution of the mentally incompetent. For example, in the past century, four hundred innocent people have been executed in the United States (7). These issues are very complex

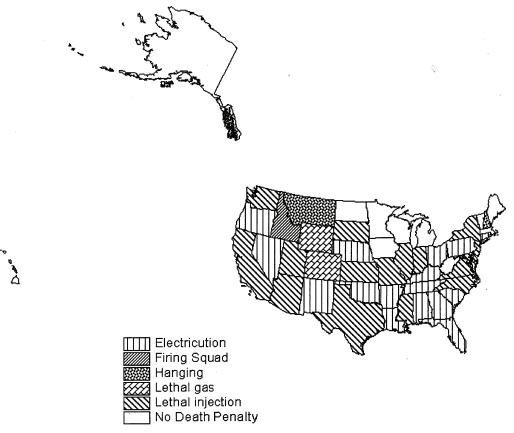


Figure 1. Execution methods by state

and detailed, and require much more investigation then is possible in this publication.

Although everyone has their own opinion concerning capital punishment, it does not change the fact that capital

Table 1. State trends in capitol punishment (4).

punishment is permitted in the majority of the United States. Experts predict that in 1998 there will be seventy-five executions, the highest number of executions since the Supreme Court

			abie 1	i. Sta	te trei	nas ir	capitol punis	nmer	u (4).				
State	DP	Met-	mini-	# of	# of	# of	State	DP	Met-	mini-	# of	# of	# of
		hod	mum	Exec-	Exec-	Exec-			hod	mum	Exec-	Exec-	Exec-
			age	utions	utions	utions				age	utions	utions	utions
				since	in	in					since	in	in
				1977	1998	1997					1977	1998	1997
Alabama	yes	Е	none	12	1	3	Kentucky	yes	Е	none	0	0	1
Alaska	no			0	0	0	Texas	yes	LI	none	155	11	37
Maine	no			0	0	0	Oklahoma	yes	Е	none	10	1	1
New York	yes	LI	18	0	0	0	Missouri	yes	LI	none	17	3	6
Hawaii	no			0	0	0	New Hampshire	yes	Н	none	0	0	0
North Dakota	no			0	0	0	Montana	yes	Н	none	2	1	0
Minnesota	no			0	0	0	Colorado*	yes	LG	18	0	0	1
Wisconsin	no			0	0	0	South Dakota	yes	LI	none	0	0	0
Iowa	no			0	0	0	Nevada	yes	Е	18	6	0	0
Michigan	no			0	0	0	New Mexico	yes	Е	18	0	0	0
West Virginia	no			0	0	0	California	yes	LI	18	3	1	0
Vermont	no			0	0	0	Oregon	yes	Е	18	0	0	1
Massachusetts	no			0	0	0	Washington*	yes	LI	none	2	0	0
Rhode Island	no			0	0	0	Idaho	yes	FS	none	1	0	0
Pennsylvania	yes	Е	none	0	0	0	Louisiana	yes	Е	none	24	0	0
Florida	yes	Е	none	36	4	1	Arkansas*	yes	Е	none	11	1	4
South Carolina	yes	Е	none	15	2	2	Kansas	yes	LI	none	0	0	0
North Carolina	yes	LI	none	8	1	0	Arizona	yes	LI	none	4	4	2
Virginia	yes	LI	none	31	6	0	Wyoming	yes	LG	none	0	0	0
Georgia	yes	Е	none	20	1	0	New Jersey	yes	LI	18	0	0	0
Mississippi	yes	LI	none	4	0	0	Maryland*	yes	LI	18	1	0	1
Tennessee*	yes	Е	18	0	0	0	Delaware	yes	LI	none	8	0	0
Indiana*	ves	LI	16	3	1	1	Utah	ves	LI	none	5	0	0
Illinois	yes	LI	18	7	1	2	Connecticut	yes	Е	18	0	0	0
Ohio	yes	Е	none	0	0		Nebraska	yes	Е	18	1	0	1
* - indicates states that do not execute the mentally retarded													
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Table 2. Cost of capital punishment versus incarceration in Los Angeles,

California (8).

Trial	Capital	Regular
Defense Attorney	\$385,998	\$160,058
Defense Investigation	\$48,523	\$5,105
Prosecuting Attorney	\$771,996	\$320,116
Prosecuting Investigation	\$48,523	\$5,105
Court	\$506,408	\$82,188
L. A. Jail	\$136,875	\$54,750
Cost of Incarceration	\$189,603	\$189,603
Total Cost to L. A. County	\$2,087,926	\$816,925

Table 3. Total number of executions by year (5).

Total Number of		Total Number of	
Executions by Year		Executions by Year	
1976	0	1986	18
1977	1	1987	25
1978	1	1988	11
1979	2	1989	16
1980	0	1990	23
1981	1	1991	14
1982	2	1992	31
1983	5	1993	38
1984	21	1994	31
1985	18	1995	56

Table 4. Total number of executions since 1976 by method (5).

Electrocution	123
Lethal Injection	179
Lethal Gas	9
Hanging	2
Firing Squad	1

Table 5. Total number of executions by geographic region (6).

South	379
West	36
Midwest	51
Northeast	2

ruled that capital punishment was legal in 1976.

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Смертна кара була в Сполучених Штатах Амеріки ще до прийняття у 1776 році Декларації про Незалежність. З того часу до цього інституту вносились зміни. Але, незважаючи на зміни у законодавстві та дискусії щодо цієї кари, Верховний Суд Сполучених Штатів не вважає сметну кару неконституційною дією і застосуває ії. Данієль Франк - то була перша людина у Америці, до якої була застосована смертна кара. Вона була призначена за крадіжки і виконана у 1622 р. Перший "поклик" щодо конституційності смертної кари бул у 1972. Верховний Суд визнав, що винесення присяжними смертної кари без необхідної аргументації є неконституційним. Після такого рішення суду у багатьох штатах переглянули законодавство щодо смертної кари. Але у 1976 році при розгляді конкретної справи Верховной Суд визнав законність сметної кари, яка була винесена судом у штаті Джоржія. Таким чином смертна кара "знову" стала констітуційною. З моменту страти у 1977 р. по теперішній час у Америці виконано 300 смертних вироків. Незважаючи на те, що ця цифра виглядає значною, то є тількт частка від тих небезпечних злочинів, що скоєні у США та кількості тих людей, що засуджені до такої кари. Експерти вважають, що у 1998 р. у США буде виконано 75 смертних вироків. Це найбільше число виконання таких вироків відповідно до 1976 року, коли Верховний Суд признав таку кару конституційною. Таблиця 1 показує кількість виконаних смертних вироків з 1977 року щодо 1997 та 1998 років. Незважаючи на те, що Верховний Суд визнав смертну кару конституційною, 12 штатів так не вважають і не дозволяють застосовувати це покарання. У той же час у 38 штатів смертна кара вважається конституційною і ії можливо застосувавати 5 способами, як показано в таблиці 1. Частіше використовується єлектричний стілець. Деяки засоби цієї кари є тільки у деяких штатах. Частіше у застосуванні того чи іншого засобу такої кари важливе значення мають економічні доводи: що простіше і дешевше для цього штату. Однак, наприклад, ростріл або повішення вважаються дуже простими видами виконання покарання. Способи скоєння смертної кари також є в таблиці 1. Коли подивитися, як застосовується ця кара у різних регіонах, то, наприклад, у південних штатах традиційний ростріл.

Смертна кара може буди по декількох видах небезпечних злочинів. Звичайно, це призначається за різні види тяжких вбивств. Найбільше число смертних вироків з 1976 року виконано у штаті Техас. Кожний штат може дещо змінювати види злочинів, за які може бути призначено смертну кару.

При розгляді справ, де можливо призначеня смерної кари, у процесі повинні брати участь: суддя, захисник, прокурор, присяжні та підсудний. Причому, у разі призначення смертної кари присяжні повинні бути едині у такому рішенні. Але захисники можуть звернутися з апеляцією до вищого суду. Якщо присяжні не прийдуть до єдиного рішення, ця справа буде передана до другого, вищого суду. Цей апеляційний процес продовжується декілька років і багато злочинців вмирає від якихось дослідних причин.

Для того, щоб сформулювати рішення, суддя користується кримінальними законами штату, де це видбувається, прецедентами та коментарем до них. У цілому апеляційний процес у США - дуже складна річ. У всякому разі Верховний Суд США фізічно не може розглянути усі скарги віж громадян і юристів, які до нього надходять. Він розглядає тільки такі справи, де є порушення Конституції чи інших важливих законів.

Далі аналізується, як виконуються смерні вироки у різних штатах. Смертний вирок у штаті Аклакхома здійснюється на електичному стільці, у штаті Техас — злочинцю вводиться смертна ін'єкція.

Аналізується ставлення людей до смертної кари. Тут є різні позиції. Наприклад, президент Клінтон, інші високі чиновники у США виступають проти смертної кари. Один з суддів Вищого суду США вважає, що смертна кара — то є жорстоке катування щодо злочинця. Цей висновок ілюструється подробицями фізичних змін зі злочинцем при застосування смертної кари на електричному стільці. Але більшість суддів у Вищому суді за смертну кару і не

змінюють таку кару, яка вже винесена нижчим судом.

Громадяни мають різні точки зору щодо смертної кари. Ті, хто підтримує смертну кару, вважають, що то є справедлива кара і злочинність "повертає свої борги суспільству". Також вони вважать, що злочинець повинен померти, бо він скоїв дуже небезпечний злочин. До цього приєднується аргумент, що перебування злочинця у тюрмі забирає мільйони доларів щорічно. Також ця кара є лякаючим покаранням для тих, хто схильний до таких дій. Тому у більшості штатів смертна кара є.

Але автор не підтримує цієї точки зору. Вона вважає, що смертна кара - то  $\epsilon$ дуже жорстоке і негуманне покарання. Я не вважаю, що злочинець не повинен бути покараний. Його необхідно покарати. Але вже доведено, що смертна кара не є застережуючою для злочинців. Коли людина планує скоїти тяжкий злочин, вона не дуже думає про можливості застосування такої кари. Другий довід це зростаючи витрати платників податків. Друга таблиця у доповненні показує затрати при судових процесах з винесенням смертної кари та у судових процесах, де смертная кара не виноситься. "Смертні" процеси коштують приблизно утричі дорожче "звичайних" судових процесів. Ще питання, котрі свідчать про необхідність скасування смертної кари, - це расизм, страта невинного чи неосудного.

Незважаючи на те, що в Америці йде дискусія щодо смертної кари, в багатьох штатах вона є. Фахівці підрахували, що у 1998 року у США буде здійснено 75 смертних вироків. Це найбільше число здійснення таких вироків з 1976 року.