

The Dallas Morning News  
Published: March 8, 1992

Executions cost Texas millions  
Study finds it's cheaper to jail killers for life

Christy Hoppe | Austin Bureau of The Dallas Morning News

AUSTIN -- By the time the appeals are over -- if they ever are -- it will take the combined efforts of county, state and federal governments, plus the fuel of about \$4 million in taxpayer dollars, to execute Robert Excell White. Almost 18 years ago, Mr. White entered the Hilltop Grocery near Princeton to rob and kill 73-year-old Preston Broyles. Twice, separate Collin County juries sentenced him to death.

As unworthy as those juries found him, Mr. White and his crime are still costing Texas.

Mr. White's case represents the death penalty system at its most costly and inefficient. His protracted case was extended again in 1988 when he won a new trial because statements he unknowingly made to a psychiatrist were used against him.

But winning a new trial is not unusual in capital cases. Nationally, almost half the initial convictions in capital cases are overturned on appeal. In Texas, it's a little easier on prosecutors: Only one of every four convictions are reversed, according to the U.S. Department of Justice.

A study by The Dallas Morning News found that even when those verdicts are upheld, it's cheaper to lock someone up for life than to try to execute him.

The study shows that trials and appeals take 7.5 years and cost taxpayers an average \$2.3 million per case in Texas. To imprison someone in a single cell at the highest security level for 40 years costs about \$750,000.

If the Texas system sounds expensive, it's actually tightfisted compared with that of other states. A 1982 study in New York estimated that the first level of appeals alone would cost \$1.8 million, and a 1988 series in The Miami Herald showed that the death penalty costs Florida \$3.1 million per execution.

"There's some things that a modern American city and state have got to have," said Dallas lawyer Vincent Perini, chairman of the Texas Bar Association's committee on representation for death row inmates. "You have to have police and fire and public safety protection. You have to have a criminal justice system. You do not have to have a death penalty."

Strictly optional

Indeed, 14 states have no death penalty. Of the 36 states that do, 19 have not executed anyone since the penalty was reinstated by the U.S. Supreme Court in 1976. In the past decade, New York and Kansas considered enacting a death statute but decided against it in light of studies that showed that it would be too costly.

"The death penalty in criminal justice is kind of a luxury item. It's an add-on; it's an optional item when you buy your criminal justice vehicle," Mr. Perini said.

But the "frill" is far from gone in Texas.

With 351 condemned men and four women, Texas leads the nation in both death row population and the number of executions -- 46 since 1977, which includes five in 1991 and four already this year.

Assistant Attorney General Bob Walt, one of six state lawyers who work to see that the death penalty is carried out, said the problem is the delaying tactics used by defense attorneys on appeal.

But even with the expense, the death penalty is worth the effort, Mr. Walt said.

"We have no shortage of violent characters in this state,' he said. "The death penalty is something Texans want. They think the death penalty is an appropriate punishment.'

Other supporters of capital punishment said they are re-thinking it.

Janie Wilson of VOTERS, Victims Organized to Ensure Rights and Safety, said she and other victim advocates, except in rare circumstances, support life without parole over the death penalty.

Ms. Wilson said the death penalty is such a long, difficult process that the nightmare is re-lived by the family of murder victims at each appeal, each hearing, each scheduled execution date.

"The pain and the anger and the heartache and the frustrations and the fears, they have to be dealt with every time,' Ms. Wilson said.

At great cost

She said the death penalty is not cost-effective, and survivors are not lobbying for it as they are for life without parole.

"They want justice; they don't necessarily want retribution,' Ms. Wilson said.

Norman Kinne, Dallas County's first assistant district attorney, said he also thinks that a new law passed by state lawmakers last year might be adequate for many cases.

The statute orders a capital murderer who receives a life sentence to serve a minimum of 35 years before being considered for parole.

"I think even though I'm a firm believer in the death penalty, I also understand what the cost is,' Mr. Kinne said.

"If you can be satisfied with putting a person in the penitentiary for the rest of his life . . . I think maybe we have to be satisfied with that as opposed to spending \$1 million to try and get them executed,' Mr. Kinne said.

Eleven of the 36 states with the death penalty have life-without-parole statutes. Six others, like Texas, require a minimum time served.

Until the law passed last year, a person charged with capital murder could get a life sentence that allowed for parole in 15 years, and because of that, Mr. Kinne said, he sought the death penalty in a number of cases.

Dallas County in fiscal 1991 spent an average of \$112,400 for the defense of five capital murder offenders. If the costs of the court personnel, prosecutors, investigators and juries are added in, the average price tag for each capital murder trial hits \$265,640, according to The News' study.

Then Dallas pays for the state appeals before it moves into federal court -- an average of \$64,000 each.

"I think we could use (the money) better for additional penitentiary space, rehabilitation efforts, drug rehabilitation, education, especially devote a lot of attention to juveniles,' Mr. Kinne said.

Question of priorities

The expense in money and resources is also becoming a national focus, said James Exum, chief justice of the North Carolina Supreme Court, who is chairman of an American Bar Association committee studying the costs and added

burdens of the death penalty. The study should be completed within a year.

"All social policies ultimately come down to a question of cost because you're dealing with alternatives,' Mr. Exum said.

"I think those of us involved in prosecuting these cases have this uneasy notion that gosh, these cases are very time-consuming and very troublesome and take a lot of resources that might be better spent on other kinds of crimes -- like drug offenses, rapes and other kinds of assaults.'

The cost of appeals and their toll on the system have even been noted by U.S. Chief Justice William Rehnquist, who has suggested a limit on the federal appeals filed on behalf of some condemned inmates.

At the same time, the Supreme Court has repeatedly ruled that "death is different' and requires extraordinary exercises in constitutional guarantees.

"Delay is inherent,' said Mr. Walt of the attorney general's office. But he also criticized the federally financed resource centers for "dilatatory' tactics on behalf of the condemned.

There are 16 resource centers nationwide, including one in Texas, which recruit lawyers and otherwise conduct appeals on behalf of death row inmates.

Because death penalty appeals are so time-consuming and the pay is relatively small, out-of-state attorneys were found to handle 35 percent of Texas' death appeals.

"There are legitimate issues to be litigated out there, and we have no interest in railroading somebody into getting executed,' Mr. Walt said. "You obviously represent your client, but to me, (resource center lawyers) ... are representing a cause, and that is to abolish the death penalty.'

Robert McGlasson, a lawyer with the Texas Resource Center, said he is bent on defending clients from often overzealous prosecution.

"Prosecutors in this state, perhaps more so than other states, view the death penalty as a political tool for advancement in the system,' he said.

Dire consequences

Mr. McGlasson suggested that trying to speed up the system to reduce expenses could cost innocent lives.

Indeed, the discovery of new evidence or scrutiny of new media has led to freedom for three one-time Texas death row inmates since 1989.

Randall Dale Adams, Clarence Brandley and John Skelton had their sentences overturned -- all at least seven years after their convictions. Prosecutors in all three cases determined that there was insufficient evidence to re-try them on the capital murder charges.

Mr. McGlasson also said the Texas capital murder statute has been used against people who hail from a broken social system.

"If you open the doors to Texas' death row, you find a lot of mentally ill, mentally handicapped, mentally retarded, child abused, poor-background kind of people,' he said.

State prison officials said that six death row inmates are considered severely mentally retarded. In addition to those inmates, eight condemned inmates were 17 or younger at the time of their crimes. Forty inmates were teenagers.

The U.S. law that allows the executions of juveniles is equaled only in five other countries: Bangladesh, Pakistan,

Barbados, Iran and Iraq.

Texas law allows the death penalty to be used against someone convicted of murdering police, fire or prison officials, multiple murders or murder during the commission of another felony.

In February, Johnny Frank Garrett was executed. He was 17 at the time he raped and murdered an Amarillo nun, Sister Tede Benz.

Gov. Ann Richards granted a 30-day reprieve for Mr. Garrett in January after a personal appeal from Pope John Paul II to stop the execution.

During a hearing by the parole board, which took 25 minutes to decide against commuting his death sentence, evidence was offered that showed that Mr. Garrett endured beatings, sodomy and forced participation in pornographic films when he was a child. Several psychiatrists testified that they believed that Mr. Garrett was mentally ill.

'Lynch-mob mentality'

Amarillo Bishop Leroy T. Matthiesen fought Mr. Garrett's execution and said he was surprised by "a violent brutality in this state.'

"I think we're in a lynch-mob mentality in Texas at the moment because the death penalty is being handed out right and left,' Bishop Matthiesen said.

Regarding Mr. Garrett, the bishop said: "I think our criminal justice system has gone awry. We're not dealing with the problem, except to kill the product of it.'

Rick Halperin, a board director of Amnesty International USA and a Southern Methodist University professor, criticized state politicians who he said are willing to liberally spend money on the death penalty but penny-pinch when it comes to child-abuse programs.

"It's not a coincidence that this state ranks dead last in the amount of money it allots to social services. Yet Texas has got 400 people either dead or on death row. Millions, millions just wasted trying to get rid of 400 people. It's just sick,' Mr. Halperin said.

Mr. Walt said that the abused and the mentally retarded lose their rights to public sympathy once a jury finds that they are criminally responsible for their acts.

"We're losing sight of what these people did. Don't ever forget that there was a live person with human feelings that this person snuffed out for his own greed or whatever,' Mr. Walt said.

"There are victims out there, and this man robbed that family of something that is very precious. And that is permanent.'

Mr. Walt said he opposes life without parole because he believes that it would be "cruel and unusual' punishment to give someone no hope of improvement or freedom.

"I think death is a more humane sentence. I think the people on death row would say that. Some of these people give up their appeals because they don't want to sit on death row for 17 years,' he said.

Although life without parole might save millions of dollars, it would create a nightmare in the prison system, said House Corrections Committee Chairman Allen Hightower, D-Huntsville.

"From a correctional practice standpoint, if someone needs to go to prison for life, I'm for gassing them,' Mr. Hightower said.

"The end result is that with no chance or hope of getting out no matter how you behave . . . there's no reason not to stab a guard and no reason not to kill or rape another inmate.'

Mr. Hightower said he favors limiting appeals from what he calls the absurd to enough to save an innocent man.

"Will we ever convict a person in this state that's not guilty? Sure. We've done it before, and we'll do it again,' he said.  
"But our criminal justice system is the fairest system in the world.

"We may be one of the most punitive, but we're also the fairest.

-----  
CHART/ILLUS. (DMN) THE COST OF APPEALING CAPITAL MURDER PHOTOS 1.Robert Excell White  
2.(Associated Press) Robert Excell White, shown in a 1987 file photo, robbed and killed a 73-year-old man at a grocery store near Princeton. He was sentenced to death twice, and his appeals are expected to cost Texas taxpayers \$4 million.

PHOTO LOCATION: 1. - 2. White, Robert Excell.

Copyright 1992 The Dallas Morning News Company