

Texas death penalty report details racial bias and prosecutorial abuse

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A report issued October 16 on the death penalty in Texas details “a thoroughly flawed system” marred by “racial bias, incompetent counsel, and misconduct committed by police officers and prosecutors.” The 200-page study—“A State of Denial: Texas Justice and the Death Penalty”—was compiled by the Texas Defender Service, a group of lawyers that helps death row inmates appeal their sentences.

Thirty-three people have been put to death in Texas this year so far, and eight more executions are scheduled before the year's end. Miguel Flores, a Mexican national, is scheduled to be put to death on November 9, just two days after the presidential election.

Since the US Supreme Court reinstituted the death penalty in 1976, 232 inmates have been put to death in Texas, far more than in any other state, and this year could mark an all-time high. George W. Bush, Texas governor and the Republican presidential candidate, has presided over 145 of these executions.

The new study by the Texas Defender Service cites a clear pattern of racial bias in the administration of the death penalty in Texas. While about one quarter of murder victims in Texas are black males, since 1976 only 0.4 percent of prisoners executed in Texas have been put to death for murdering black victims. In addition, the death penalty is disproportionately meted out to African-American defendants when convicted of murdering a white female, the least common homicide victim according to the report.

The authors of study reviewed nearly every death penalty case in the state since the restoration of capital punishment, and reported the following:

- * Poor defendants are routinely assigned underpaid, court-appointed lawyers who are inexperienced, inept or uninterested. Attorneys' behavior included sleeping,

drinking or using illegal drugs while defending their clients. Lawyers in Texas are also appointed by judges who accept campaign contributions from these same attorneys.

- * In 121 cases, prosecutors relied on what the study terms “junk science” to win convictions and death sentences, including testimony from mental health professionals who conduct very limited or no interviews with defendants. These “killer shrinks” are used to convince juries that the defendant poses a future threat to society if not put to death.

- * Texas prosecutors or police officers “deliberately presented false or misleading testimony, concealed exculpatory evidence, or used notoriously unreliable evidence from a jailhouse snitch” in 84 cases.

- * In 79 percent of death penalty appeals studied, judges handling the cases at the initial appeal stage affirmed the original verdicts without conducting hearings, but basing their decisions on “whatever documents were submitted” by the prosecution and defense. In 83 percent of these appeals the judge's findings “were identical or virtually identical” to the findings proposed by the prosecution. In nearly all cases these same findings were subsequently adopted by higher state and federal appeals courts.

Among the many documented cases of prosecutorial abuse cited in the report, the following are representative:

- * Clarence Brandley, a black supervisor of four white janitors at a Texas high school, spent nearly a decade on death row for a crime he did not commit. Brandley was convicted and sentenced to death for the 1980 rape and murder of a female student, despite evidence pointing to the guilt of one of the white workers. He was eventually freed through the efforts of civil rights organizations and the media.

* Cesar Fierro remains on death row for a 1979 murder despite evidence that Mexican and Texas police conspired to extort his confession. Fierro's family was held hostage in a Mexican jail and threatened with torture until he signed a confession in Texas. The Texas Court of Criminal Appeals ruled that this was a “harmless” police error, despite recommendations from the prosecution and trial judge that the confession be suppressed.

Texas death row inmate Miguel Flores, a 31-year-old Mexican national, is scheduled to die by lethal injection on November 9. Flores was convicted of the June 1989 rape and murder of 20-year-old Angela Tyson in Borger, Texas. Flores is one of 45 Mexican nationals on death rows across the nation. His lawyers say that the Mexican consulate was not advised of his arrest, a right guaranteed by the Vienna Convention on Consular Relations, a treaty signed by the US more than 30 years ago. Flores is one of 19 foreign nationals currently on death row in Texas.

While Flores' lawyers do not dispute his guilt, they contend that had the consulate been notified of his arrest it would have advised him of his rights in Spanish and seen to it that he was given a more competent attorney who might have avoided the death penalty. They have filed a brief with the US Supreme Court arguing that the treaty violation warrants overturning Flores' death sentence. His attorneys also charge that Flores was told at the time of his arrest that his mother was in custody as a witness and would be released if he agreed to discuss the crime. The high court has not yet decided whether to hear the case.

The US State Department reported in 1998 that approximately 70 foreigners on death row had not been advised of their right to contact their consulates when they were arrested, and 14 foreign nationals have been put to death. Texas and Virginia—the two states that have carried out the highest number of overall executions—have previously rejected requests from the State Department to delay executions of foreign nationals due to treaty violations. Since 1993, Texas has put to death four foreign nationals; Virginia, two.

In Flores' case, the Texas Attorney General's office has indicated it will file a brief with the Supreme Court next week arguing that the Vienna treaty does not grant Flores individual rights. As it has claimed in other cases, state officials insist that since the United

States—and not Texas—has not signed the treaty, the agreement is not binding upon the state!

George W. Bush has continually defended the death penalty system in Texas, contending that no innocent men or women have been put to death during his term in office. He says that two criteria must be met to insure the “fair” execution of death sentences: the guilt of the accused and full and fair access to the courts. This latest report—as have a number of earlier studies—provides damning evidence that capital defendants in Texas have been the victims of police and prosecutorial abuse and have been denied due process, pointing to the possibility of the wrongful convictions of many death row inmates.

At the October 17 presidential debate, instead of challenging Bush on the Texas death penalty, Democratic candidate Al Gore reaffirmed his support for capital punishment, reiterating his support for executions “in the most heinous cases.”



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