

## Blue-ribbon death penalty panel, made of supporters and foes, issues recommendations

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A bipartisan panel of criminal justice experts including former prosecutors, prison officials, ethicists and death penalty foes Wednesday called for far-ranging reforms in the way capital murders are investigated, tried and punished.

The report came little more than a week after the botched Oklahoma execution of Clayton Lockett, whose gruesome death fueled impassioned debate over whether the ultimate punishment as practiced in 32 states, including Texas, is unconstitutionally cruel and unusual.

Among the 39 recommendations issued by The Constitution Project, co-chaired by former Texas Gov. Mark White, were calls for creating county boards to select, train and supervise capital defense lawyers, exempting foreign nationals from execution if they were not allowed to contact their nations' consulates and ensuring condemned prisoners have access to clemency reviews.

The recommendations came in "Irreversible Error: Recommended Reforms for Prevention and Correcting Errors in the Administration of Capital Punishment," the panel's third critique of state and federal death penalty procedures in 13 years.

Speaking in Washington, D.C., following the report's release, White, who oversaw 19 executions during his 1983-87 term as governor, said that, currently, "the chances are little better than a trip to Las Vegas on getting this right. Even if you implement everything in this report, that doesn't get you to a certainty that everything is right."

White, a Democrat who said he remains a death penalty supporter, has in recent years championed convicted killers he thought were wrongly executed. While stopping short of asserting that Texas has executed an innocent individual, he affirmed that it has put to death some who were "legally not guilty."

### Perry viewing report

A spokesman for Gov. Rick Perry, a staunch death penalty advocate, said the governor's staff was reviewing the report.

"The governor has great confidence in Texas' criminal justice system and those responsible for administering executions," said Lucy Nashed.

Joining White in Washington was Anthony Graves, who was freed from prison four years ago after serving 18 years on death row for a Burleson County multiple murder he did not commit.

"I witnessed the worst inhumanity and I have to live with it every day. ... I saw the system fail from top to bottom," he told the audience, which included elected officials and foreign dignitaries. "We take

things that we can never give back. Adopt this report. Make sure it gets into our system so that we can start protecting innocent lives."

#### U.S. Supreme Court

At least two of the panel's previous recommendations - sparing from execution intellectually disabled killers and those who committed their crimes as minors - later were mirrored in U. S. Supreme Court decisions. Additionally, Texas and other death penalty states now offer juries the option of assessing life without parole, an action also endorsed by the panel.

"Committee members believe that individuals who commit violent crimes deserve swift and certain punishment," Constitution Project president Virginia Sloan said in the report. "Some of the members believe that the range of punishments may include death; others do not. But they all agree that no one should be denied basic constitutional protections, including a competent lawyer, a fair trial and full judicial review of any conviction and sentence."

The new report calls on all jurisdictions trying capital cases to set up a mechanism for selection, training and oversight of defense lawyers.

"All defendants have a right to counsel," said committee member Mark Earley Jr., who oversaw 36 executions as Virginia's attorney general. "If you're having heart surgery, you don't want the right to a doctor, you want a heart surgeon, someone who was specially trained. It's the same for the death penalty. It's a highly specialized area of law, complicated, infused with science and so many procedural issues at state and federal level."

#### Burden of proof shift

Once a convicted killer has established in post-conviction proceedings that his lawyer did not meet a standard of competence, the group recommends, the burden of proof should shift to the state to prove that his defense was not adversely impacted.

In other recommendations, the group said that police interrogations of suspects should be recorded in their entirety, jurisdictions should "act with transparency in the development and administration of lethal injection protocols" and that the executive branch should ensure that clemency reviews are accessible to condemned inmates.

#### Clemency decisions

The committee also said explanations of clemency decisions should be written, including factors that were considered important. The Texas Board of Pardons and Paroles rarely recommends commutations and stays, and the governor seldom grants them.

Additionally, the committee called on states to exempt from execution foreign nationals who were not granted an opportunity to consult their countries' consulates as guaranteed under the United Nations Vienna Treaty on Consular Relations. On three occasions during Perry's tenure, Mexican nationals have been executed despite presidential pleas that the treaty be observed.

The committee also recommended the death penalty not apply to those who "suffered from severe mental disorders" at the time of their offense, including cases of drug or alcohol intoxication or failure to take prescribed medications.