

WHAT PRICE JUSTICE? Gary Graham case fuels debate over appointed attorneys

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Most of the hundreds of Texas death row inmates were convicted with court-appointed lawyers at their sides, but rarely, if ever, are the very best and most effective lawyers willing to take those seats for what the taxpayers will pay.

Questions have been raised across the nation about the system that appoints these attorneys, especially in Harris County, where Gary Graham was tried and sentenced to death.

Graham's execution June 22 became a lightning rod for death penalty opponents. Graham's appointed lawyer, Ron Mock, has been vilified by those opponents from coast to coast for what they considered a lackluster, if not incompetent, defense.

But Mock is simply a creation of the Harris County capital murder appointment system.

Although Mock himself hasn't taken death penalty appointments for several years, the question remains whether the current system could still create another Mock - a well-liked, frequently appointed attorney whose work doesn't always survive the intense scrutiny of the inevitable second-guessing that comes in such cases.

Until five years ago, often the only requirement for an appointment to a capital murder case was a lawyer's close relationship - either through friendship or campaign contributions - to the judge.

Judges in Harris County can now only appoint lawyers to capital murder cases who have been certified to do so after trying serious felony cases for at least five years; who have taken a three-day class sponsored by Harris County judges and who have passed a 100-question multiple choice test.

State law also requires that two lawyers be appointed. The pay is roughly \$25,000 for the first chair and \$15,000 to \$20,000 for the second chair attorney, who does not need to have experience in capital cases.

A typical murder defense with a private lawyer can cost at least five times that.

Harris County judges, prosecutors and defense lawyers acknowledge that the system has improved in the last five years but many said the system will not truly be fair unless the county makes it worth a good lawyer's while to take the case.

Although some competent attorneys accept appointments, lawyers who are called when a rich person is accused of a serious felony say they can't afford to take the \$25,000 for what can be months of work.

That may sound like taxpayers are getting a bargain. But it can up the chances that state coffers will pay for a second trial, sometimes a third, when cases are overturned on appeal. Then the county taxpayer tab will climb to more than \$2 million anyway.

And limiting the appointed attorney's pay in capital murders also doesn't quell the nagging question of fairness, when citizens are sentenced to death without having an advocate with equivalent resources to counter the formidable prosecutorial machine of the Harris County District Attorney's Office.

Prosecutors working for District Attorney John B. Holmes Jr. choose to try more cases as capital murders than in any other Texas county and many states.

"Harris County has changed some of the requirements but they haven't fundamentally changed the system. It's still a Chevrolet defense being presented. It's still low budget," said Stanley Schneider, a respected criminal defense lawyer who doesn't accept capital trial appointments.

When Mock was coming up through the ranks in the late 1970s and early '80s, courthouse appointment lists were often an informal string of each judge's friends and campaign contributors; some were competent and trained, others were not. There were no requirements for experience, no classes, no tests.

"The old-timers didn't seem to realize justice called for more than a funny guy who could make a jury smile. The attorneys taking these appointments now are more capable. But they still aren't the most capable," said Brian Wice, a Houston criminal lawyer who also does death penalty appeals.

For example, the late state District Judge George Walker, occasionally known for taking a nap on the bench, frequently appointed his good friend, the late Joe Cannon, who slept through parts of a capital murder trial.

In response to complaints, state legislators and local judges changed the capital murder appointment system in 1995.

Also, after protests that death row inmates were allowed too many appeals, the Legislature required each of the nine state's multi-county judicial districts to set their own basic requirements for capital appointments.

Harris County then created requirements for a class and test, largely in response to concerns that the capital appointment system lacked safeguards, judges said.

They said Harris County conducts the only class and test certification process for capital murder appointments.

But Tarrant County requires those accepting appointments have more experience - at least 10 years to sit first chair and at least five years to sit second chair.

How many changes?

So just how much have things changed for an indigent defendant accused of a capital crime in Harris County since 1995?

Some say the difference is significant with the days of unchecked judicial cronyism gone, replaced by logical standards. There are some well-respected attorneys taking capital case appointments, including Robert Morrow, Anthony Osso and Wayne Hill.

"Harris County changed faster and more dramatically than elsewhere in the state," said Gary Taylor, an Austin attorney who specializes in death penalty appeals.

Many in the courthouse attribute this less to the attorney requirements and more to a changing of the guard on the Harris County criminal benches.

Many long-entrenched Democrats were replaced by Republicans, many of whom are former prosecutors who had tried cases against defense attorneys not up to the task.

But could an attorney like Mock, good on his feet but not known for hitting the books, get capital murder appointments the way he did nearly 20 years ago?

He would have to pass through one fire wall that he didn't have to before - the certification process. Although county records show Mock was among the 196 who signed up for the capital murder class in 1995, he was not among the 87 who passed the test. Nor was he among the 31 others who have watched the videos and passed since 1995.

Refusing to comment

Mock is an affable man who graduated from Texas Southern University and was licensed in 1978. By the mid-1980s, he was among a pool of candidates likely to be appointed to capital murder cases, especially those of black defendants because judges favor appointing black attorneys to those cases.

Mock would not answer questions for this story. He said he has received death threats and has been advised by his lawyer, Mike Moriarty, not to talk to the media. Moriarty could not be reached for comment.

Other lawyers have many more clients on death row. Former prosecutor Jerry Guerinot, for instance, has tried about 35 cases, has more clients on death row than Mock and hears the same jokes about the "Guerinot Wing."

Although Mock is liked by most at the courthouse and there are some who defend his courtroom style, no one said he is one of the best, or most scholarly, lawyers.

His defenders have included judges. State District Judge Debbie Mantooth Stricklin said that as a prosecutor she tried a capital murder case against Mock and found him effective in front of a jury, though hardly bookish.

State District Judge Ted Poe said there are still cases for which Mock is the best attorney to appoint. He said it's the "worst of the worst," the defendants who can't get along with or communicate with other attorneys, to whom Mock can still get through.

County records indicate that Mock was appointed on capital murder cases just a few years out of law school. Mock bloomed in the period of judicial cronyism in Harris County.

A benefactor was state District Judge Thomas Routt, one of the first black district judges in the county. Routt used Mock on different cases, including capital murders.

Routt favored Mock so much that in 1986, when Anthony Leroy Pierce was to be tried a third time on a capital case, the judge forced Galveston attorney Anthony Griffin, noted for civil liberties appeals, to accept Mock as second chair in the case.

Griffin objected and used his money to pay another attorney to sit with them.

Courthouse experts said it is unlikely, because of the scrutiny capital murder cases have come under in the past few years, that a judge would force a crony onto a death penalty case now as Routt did with Mock in the Pierce case.

Disciplined 5 times

Mock has been disciplined by the bar five times, but most incidents and both serious incidents were after he had stopped taking capital murder appointments.

State bar records show Mock was publicly reprimanded and fined three times in 1993 and 1994 for failing to respond to bar inquiries on client grievances. But he was also later suspended twice from the practice of law.

In 1995, he was barred from practice for one year after a question about his handling of client funds and for failing to respond to the bar in another.

In 1997, he was suspended for another year because of more questions about client funds and because Mock accepted a court appointment in June 1995 from state District Judge Doug Shaver to represent a habitual felon while Mock was on suspension the first time.

Shaver, who retired from the bench and sits as a visiting judge in Harris County, said he did not know Mock was on suspension when he appointed him. Although courts should check an attorney's bar status, it is seldom done with lawyers like Mock, who are well known.

Other accusations

Appellate attorneys also have accused Mock of ineffectively assisting his clients in trial.

However, this is done in virtually every death penalty case and is one of the few post-conviction avenues for making claims that a death row inmate's constitutional rights were violated.

In one of Mock's capital cases in which he's attacked as ineffective, he sat with now state District Judge George Godwin. In 1987, the pair, with Mock as first chair, defended Roger Wayne McGowen, accused of many robberies and convicted of killing a bar owner. McGowen is on death row.

Mock and Godwin filed affidavits in McGowen's pending post-conviction writ explaining why their counsel was not ineffective. The vilified lawyer and the sitting judge swore to the validity of their work and the validity of their concerns about witnesses not called.

But Austin lawyer Taylor has been handling the writ in the McGowen case and characterized Mock's first chair work as lazy. A supporter of the Harris County appointment standards, Taylor said he expects the current system, just by requiring lawyers to go through the course and test, weeds out some of the laziest lawyers.

Poe said the ineffective-lawyer argument is made so frequently that the Texas Resource Center, a defunct federally funded defense group, attacked Guerinot for failing to let James Emery Paster's mother and sister testify for him in his 1983 capital murder trial.

"For God's sake, the last time they saw him, he raped his mother and sister," Guerinot said. "These aren't good people and there's often not a lot to work with. Everyone accused of capital murder deserves a full defense but just because the jury votes for death, doesn't mean there was something wrong with the defense."

But another thing that has changed in Harris County courts is that mitigation testimony in the punishment phase of trials has been on the increase in capital murder cases, lawyers said. Most importantly, it may be impressing Harris County juries.

In Harris County last year, prosecutors asked for the death penalty in 17 cases but juries voted for life sentences in eight of those cases. In 1999, prosecutors only won death sentences an unusually low 53 percent of the time they sought one.

District attorneys' statistics show that from 1994 through 1998 the death penalty was obtained an average of 75 percent. The lowest percentage during this period came in 1997, when the death penalty was sought 16 times in Harris County and obtained 11 times for a 69 percent death penalty rate.

Although the courthouse cronyism that helped create Mock's practice has been subdued and standards are in place for capital murder appointments, some said this all still doesn't change things significantly for the defendants.

"Judges don't want to appoint people who will just roll over (without a fight) anymore. But on the same token, they don't want someone who will build in error and get them reversed," Schneider said.

Can't afford the losses

Houston's best criminal lawyers, including those like Schneider, Mike Ramsey and George Tyson, said they can't afford the loss of time and money in accepting appointments in capital murder cases.

The three worked together in 1998 to get an acquittal for capital murder defendant Robert Angleton, a former bookie accused of killing his wife. He paid "hundreds of thousands" for the defense, Ramsey said.

Schneider said the county won't tolerate the same costs. He cited a recent uproar over a psychiatrist's \$63,100 bill for work done on behalf of convicted killer Angel Maturino Resendiz, who admitted killing nine people on a cross-country rampage.

In the world of privately paid defense lawyers, that is reasonable; in the world of court appointments, the request was staggering and the judge asked the expert to pare it down.

There are those on both sides of the bar who believe that because the capital murder cases filed are not generally complicated ones, that no amount of money and even the best lawyers could have changed the fates of most of the death row inmates in Harris County cases.

Holmes, criticized for being willing to ask for the death penalty in so many cases, said he thinks the cases are so sufficiently screened that the appointment system doesn't make much difference.

"I don't think it makes a hill of beans what kind of lawyer you are on these cases," Holmes said. "These crimes are so horrible Clarence Darrow's not going to help these guys."

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