

# Marquis, Portland defense attorney debate death penalty

## Forum looked at ultimate punishment

By PETER WONG  
Portland Tribune

Most Oregon lawyers never deal with cases involving the death penalty.

But as part of their requirement by the Oregon State Bar for continuing legal education, a group of them heard from two lawyers experienced in it during a session last Thursday at bar offices in Tigard.

Josh Marquis has been a county prosecutor for four decades, the past 23 years as the elected district attorney of Clatsop County.

Jeff Ellis is a Portland lawyer who specializes in criminal defense, and as director of the Oregon Capital Resource Center, has been involved in cases in Oregon and other states.

Oregon is among the 31 states, plus the federal government, with the death penalty. Oregon is also one of four states where the governor has called a temporary halt to executions.

Thirty-three men and one woman await execution in the Oregon State Penitentiary. Two men were executed by lethal injection most recently 20 years ago; both waived further appeals.

Oregon voters have gone back and forth on the death penalty since the state took over responsibility for executions in 1903. A repeal measure may appear again on a statewide ballot, although death penalty opponents have not advanced it.

### 'Rare sentence'

When Oregon voters reinstated the death penalty in 1984, it applies to aggravated murder — circumstances are specified by law — and it is exempt from the state constitutional ban on vindictive justice.

"It is a rare sentence, and very few murderers deserve it," Marquis said. "But there are some people who I believe are beyond redemption."

He described them as "people who have such deep sociopathic, antisocial personalities that either they do not care about anybody — or worse, they actually like to inflict pain, particularly on vulnerable people."

Despite his outspoken support for the death penalty, Marquis said he has sought it for only two offenders during 40 years as a prosecutor.

He sought it three times for Randy Lee Guzek, who was convicted of a double murder in Terrebonne in 1987, when Marquis was chief deputy district attorney in Deschutes County.

The Oregon Supreme Court upheld Guzek's death sentence in 2015; Guzek's

appeal is pending in federal courts.

"I suspect that Mr. Guzek will probably outlive me on death row," said Marquis, who is 17 years older. "I will probably die of natural causes before he dies of natural causes."

He also sought it for Anthony Scott Garner, convicted in 2001 of the 1997 murder of an informant in Warrenton. But the jury sentenced Garner to life imprisonment without parole.

"That is really what the death penalty process attempts to do," Marquis said. "It allows 12 jurors to decide whether a person has any possibility of either being redeemed or redeeming himself."

Under current procedure, jurors must first decide an offender's guilt, then in a separate penalty phase, answer "yes" to four questions before imposing the death penalty.

### 'Morally wrong'

Ellis, who has taken part in Guzek's case, also has a strong belief on the death penalty.

"I think it is morally wrong. I think the state should not be in the business of killing individuals in our name," he said.

"But that does not get us very far, because reasonable people can disagree about that position."

He took issue with Marquis' argument that Oregon's death penalty should apply only to criminal offenders beyond redemption.

"I guess he has a vision of an Oregon death penalty system that is not the system that has been operating since the mid-1980s in Oregon. Instead we have a system that is chock-full of problems," Ellis said.

Of the offenders sentenced to death, Ellis said, the only two actually executed waived appeals — and no other case (until Guzek) has moved on to federal appellate review.

"Eventually we will have a small and random group of individuals who were sentenced to death, who lost on appeal and in post-conviction, and lost in (federal) habeas corpus," he said. "Are these people the worst of the worst? Absolutely not."

### Penalty is final

According to the Death Penalty Information Center, 1,442 executions have taken place since the U.S. Supreme Court allowed the death penalty to resume in 1976. Marquis said that number is a fraction of about 600,000 murders during that period.

Texas leads with 538 executions, and according to the center's definition of the region, the South accounts for a total of 1,175. (Ten of the 11 states in the former Confederacy are in the top 14 states for executions; the exception is Tennessee.)



The Daily Astorian/File Photo

District Attorney Josh Marquis is an advocate of the death penalty for criminals who are "beyond redemption." He has been a county prosecutor for 40 years.

"Unlike any other punishment, the death penalty is irreversible when inflicted," Ellis said.

He mentioned the case of Cameron Todd Willingham, who was executed in Texas in 2004 for the 1991 arson murder of three children.

A subsequent report disputed whether the fire was arson, although the fire agency says the report overlooked some points.

"The criminal justice system does not do a good job with claims of innocence," Ellis said.

Marquis said it is the "worst nightmare" of prosecutors to convict an innocent person.

"Innocent people have been on death row," Marquis said. "Anyone who denies that is not being honest."

But Marquis said even the most ardent opponents of Oregon's death penalty have yet to make a case for absolving any of the 34 on Oregon's death row.

Marquis cited the case of Roger Coleman, who was executed in Virginia in 1992 for the rape and murder of his sister-in-law, despite death-penalty foes raising doubts. A DNA test performed in 2006 confirmed Coleman's guilt.

"The story sank faster than

dropping a 10-pound weight into the deepest part of the Columbia River channel," he said.

### Which way?

According to a report by the Death Penalty Information Center, the past year resulted in the fewest death sentences imposed in the United States in the past 40 years, and the fewest executions since 1991.

Seven states in the past decade have abolished the death penalty. But Marquis said all of them occurred because of legislative or court actions — and when the question was put in November in California, Nebraska and Oklahoma, voters upheld the death penalty.

(In Nebraska, voters overturned a 2015 legislative repeal. In Oklahoma, second only to Texas in executions since 1976, voters approved a measure allowing any form of execution not specifically barred by the U.S. Supreme Court.)

When then-Gov. John Kitzhaber issued a temporary reprieve to Gary Haugen, who was within two weeks of execution in 2011, Kitzhaber also imposed a moratorium on executions.

Haugen won a challenge to his unsought reprieve in

Circuit Court, but the Oregon Supreme Court in 2013 upheld the governor's broad constitutional authority to grant clemency — including the reprieve.

"I think the declaration of a reprieve and a moratorium was undertaken by Gov. Kitzhaber for very serious and real reasons," said Ellis, one of four signers of a letter that Kitzhaber considered before announcing a moratorium in 2011.

The 2013 Legislature gave only a single hearing to Kitzhaber's proposed constitutional amendment to substitute life imprisonment for the death penalty.

Gov. Kate Brown continued the moratorium upon succeeding Kitzhaber in February 2015, and it will last as long as she holds office. She was elected in November to the two years remaining in Kitzhaber's term.

"If she thinks it is so wrong, that it is so egregious and she believes there are innocent people on death row, she has the power of commutation. Good luck," said Marquis, who has been an outspoken critic of the moratorium.

Were she to commute death sentences to life impris-

onment, he added, "If she stands for office in two years, I suspect she would not get re-elected."

### A ballot question?

Oregonians for Alternatives to the Death Penalty is conducting a campaign to raise awareness, but so far, the group has not petitioned for any ballot initiative to abolish it. They say they are determining lawmakers' attitudes in the 2017 session.

"I can assure you that the Oregon Legislature does not have the guts to change the Constitution — they will refer it to the voters," Marquis said, although the Legislature is required to refer any constitutional amendment to a statewide vote.

"I've been part of this conversation for the past 17 years in this state. We have talked this to death. If the voters choose to abolish the death penalty, so be it."

Voters shifted 14 years later, but Oregon in 1964 was the most recent state to repeal the death penalty by popular vote. Marquis said he remembers that at 12 years old, he put a pro-repeal sticker on the rear bumper of his father's Ford Falcon.

Although no one has been released so far under a life-imprisonment law for aggravated murder took effect in 1991, Marquis said he believes opponents would challenge it based on the federal constitutional guarantee against cruel and unusual punishment.

But Ellis said life imprisonment without parole is a good alternative to the death penalty — and he would not challenge it for adults.

"If a person is innocent and we have sentenced him to life, we cannot give back the years he lost, but we can release him and give him some compensation," Ellis said. "We can keep our communities safe with life without parole — and I think we can keep prisons safe even with individuals who have committed murder."

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