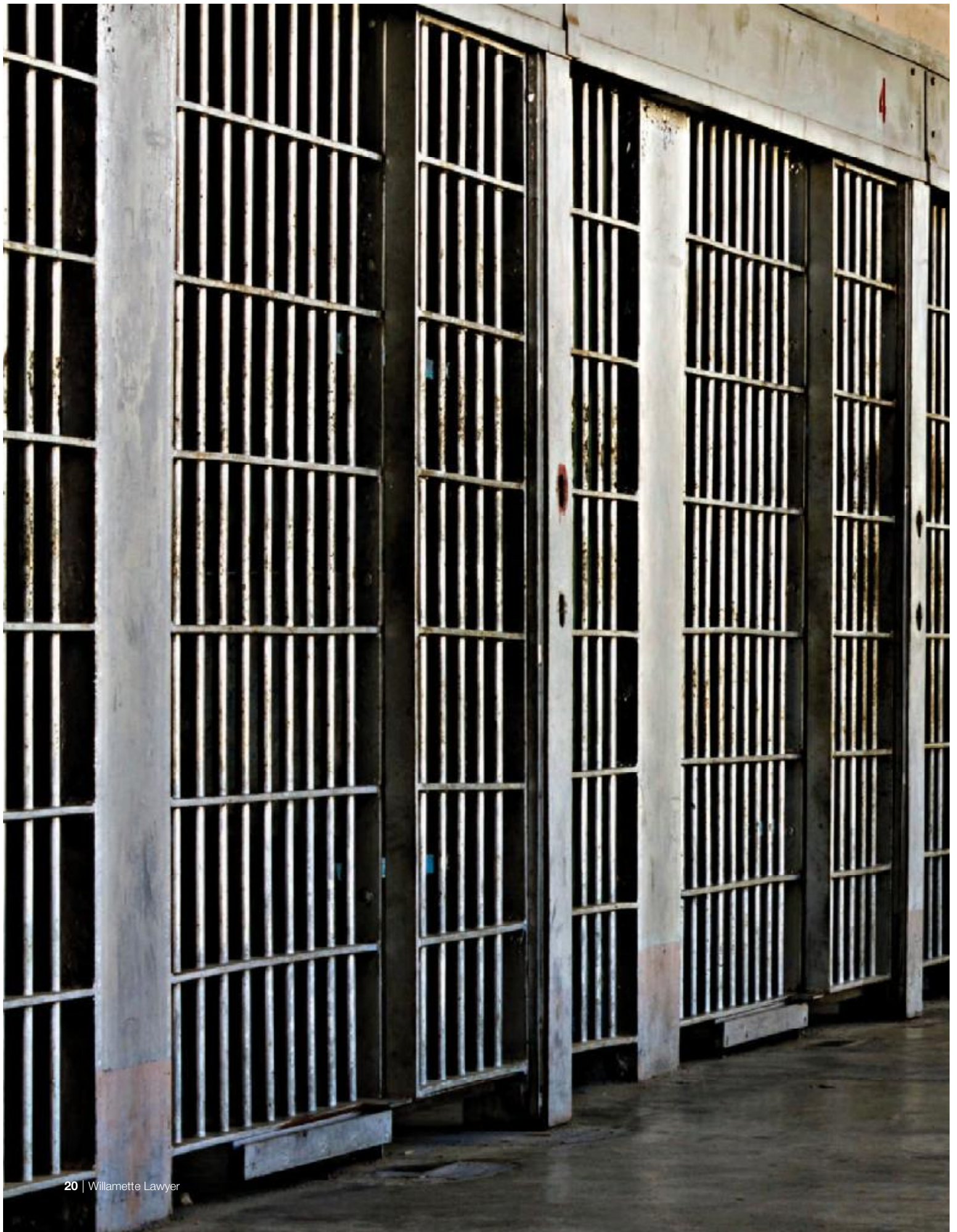


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WILLAMETTE LAWYER

Last fall, Oregon Gov. John Kitzhaber announced he would no longer carry out executions, saying that Oregonians need to have a statewide conversation about the **DEATH PENALTY.**

Steven Krasik JD'79 has that conversation every day.





DEATH DEFIER

By Todd Schwartz



As one of Oregon's leading capital defense counsels, **Steven Krasik JD'79** believes passionately that the means don't justify **THE END.**



THE CONDEMNED

is strapped to a gurney in a small room in the Oregon State Penitentiary. An IV is placed into each arm. Only one line will carry the drugs that will be used to execute the prisoner; the other is merely a back-up. The needles and the injection site have been carefully sterilized, which may seem odd given the situation. One reason is the possibility of a last-second stay of execution — it wouldn't do for the governor to snatch the condemned from the jaws of death, only to have him or her die from an infection.

A saline drip begins, to prime the line. A heart monitor is attached. After the curtains separating the room from the viewing chamber are opened, the condemned makes or declines a final statement. Then, a three-phase sequential injection is triggered.

A fast-acting barbiturate renders the person unconscious. Next, a powerful muscle relaxant paralyzes the diaphragm. Breathing stops. Finally, a dose of potassium chloride stops the heart. The combination and sequence are key: without the barbiturate, the muscle relaxant would cause paralysis but the person would still be awake. Potassium chloride alone, while fatal, can cause severe pain.

Death is pronounced after cardiac activity ceases. The entire process usually takes between seven and 20 minutes — although it can take as long as two hours, as it did in the case of a 265 lb. man executed in Ohio in 2007. His veins were so difficult to find that it took 10 attempts to complete the execution. He was even given a bathroom break.

This is how the death penalty would be carried out in Oregon — if the death penalty were ever again to be carried out. It has been 15 years since the last person was strapped to that gurney: Harry Charles Moore, killer of two, was executed in 1997. The year before that, the state executed Douglas Franklin Wright, killer of three. Both, in a sense, volunteered to die by giving up their rights early in the appellate process.

Those are the sole examples of capital punishment in Oregon since the death penalty was reinstated in 1978. Gov. John Kitzhaber, who was also the governor at the time of those executions, now calls Oregon's death penalty "broken," "inequitable" and "compromised." He refuses to sign any more execution orders during his term, which ends in 2015.

His decision angered a range of people, including a vocal and apparently eager-to-die resident of Oregon's death row and many of the state's prosecuting attorneys. But the governor's words — if not the realities of his action — resonated clearly with Steven Krasik JD'79, who has represented defendants in capital murder cases for more than a quarter-century. He would add several words of his own: "disproportionately applied," "random," "morally troubling" and "intellectually disconnected."

"If more people understood the stunning lack of proportionality in the application of the death penalty — and the lack of the death penalty being applied, as intended, only to the worst of the worst — they would see that the net is too broad," Krasik says. "This is supposed to be a limiting process, but in fact it is an inclusionary process. It gives the government a much larger hammer than they should have."

Krasik has served as lead or co-counsel on nearly 50 homicide cases, half of which were charged as capital murder. He has spent countless hours in the company of Oregon's most evil and most dangerous citizens, and he has never failed to discern some evidence of humanity in each of them.

"I don't actively look for that humanity," Krasik says, "but then something will happen, they will show a sense of humor, or maybe just a wry appreciation for their situation. Or it's just clear how broken they are. Rarely, some belated empathy on their part will appear. They just seem to slightly normalize, become human."

Krasik has never wavered in his passion for his work, which the onetime Navy pilot sees as nothing less than a patriotic calling.

"I'm the quality assurance branch of the government — one of the few jobs actually written into the U.S. Constitution," Krasik says. "It's remarkable, and it makes me swell with pride that such a thing is part of the structure of our system — to ensure that someone is watching on behalf of the accused."

That mindset is where Krasik always returns, whether in the presence of

cold-blooded killers, in front of a jury awash in hatred for his client, or teaching law students at Willamette. For the last decade his practice has, with the exception of defending a man who crashed his truck into the Marion County Courthouse, been exclusively limited to capital defense.

ACCUSTOMED TO STRESS

Functioning in a high-stress environment is nothing new to Krasik. Raised in Los Angeles' San Fernando Valley, he earned his civil pilot's license by age 18, flying in and out of America's second-busiest airport. "I learned to drive on the LA freeways and I learned to fly at Van Nuys, which at the time had more takeoffs and landings than almost any airport in the country. In both cases you had to pay attention," he remembers.

Krasik eventually spent a year at UC Berkeley in the mid-1960s before getting a call from the federal government.

"If you were out of school for more than four microseconds in those days you got a draft notice," Krasik recalls. "I found a program in the Navy that would allow me to stay in school, send me to officer training and then on to flight training. It sounded like a good deal, and everyone knew the Vietnam War would be over in a year or two."

Krasik flew his missions from an aircraft carrier in the South China Sea, pathfinding for air strikes, providing maritime surveillance and support, mostly trying not to get shot down.

Eventually the war did end, and Krasik became a flight instructor and test pilot.

Based in San Diego, he spent his evenings taking the college courses he'd dodged as an undergrad: physics, calculus and more. Then a friend invited Krasik to join him taking the LSAT.

"I did the sample questions and got every one of them wrong," Krasik says. "But I took the test anyway, which seemed more like reading comprehension than law, and did very well."



Krasik took a year of law school night classes in San Diego and left the Navy in 1977. He wanted to move to the Northwest, so he transferred to Willamette.

"I loved the school; I loved Salem," he says. "I never regretted my choice."

Certified as an aircraft crash investigator, Krasik performed investigations during school to pick up a few bucks, then began clerking for the Salem City Attorney's office. He prosecuted trial after trial as a law student, and his love for criminal law was born.

Chain of Events: The Death Penalty in Oregon Source: Oregon Blue Book



1864
Death penalty for first-degree murder is adopted by statute.

1903
Oregon Legislature requires the death penalty to be carried out at the State Penitentiary in Salem.

1904
H.D. Egbert becomes the first man to be hanged at the State Penitentiary.

1912
Four men are executed at the State Penitentiary, the most in one day.

1914
Oregon voters repeal the death penalty. The amendment becomes Article I, Section 36 of the Oregon Constitution.

After passing the bar, Krasik opened a solo criminal defense practice in the same second-floor Salem office he occupies today, 32 years later. Model airplanes cover most of the shelves, a giant image of the earth as seen from space adorns one wall, and a six-foot-tall slide rule leans in the corner. Emblematic, perhaps, of Krasik's nature: adventurous, given to taking the long view, and always doing the math on behalf of his clients.

The first capital case Krasik defended came to him by default in 1987. *State v. Farrar*, Marion County's first aggravated murder case since the return of capital punishment in Oregon, was scheduled for trial, and the presiding judge realized there was no one experienced in capital defense. So he called Krasik.

"I'd defended some 'ordinary' murders, and I guess that the judge had been watching up-and-coming lawyers," Krasik says. "I was fairly precocious. I said 'Sure, I can handle it.' We kind of invented the process."

From 1859 until 1903, executions were carried out at the county level, and "necktie parties" were popular spectator entertainments.

SHIFTING ATTITUDES

The death penalty in Oregon has been an on-and-off-and-on affair from the beginning. The first official execution under the Oregon territorial government was in 1851, although it is likely that horse thieves and others had been hanged prior to that. The original Oregon Constitution of 1857 had no provision for the death penalty, so a statute was added in 1864 making it legal for what was then called first-degree murder.

From 1859 until 1903, executions were carried out at the county level, and "necktie parties" were popular spectator entertainments, with the press bribing guards for better access to the last moments of the condemned. Two particularly carnival-like public hangings in Portland in 1902 prompted the Oregon Legislature to rule that executions be removed from public sight and taken inside the Oregon State Penitentiary in Salem.

An initiative petition in 1912 was the first effort to abolish Oregon's death penalty. Sixty percent of voters opposed it. But a run of executions in 1913–14 spurred then-Gov. Oswald West, who had vowed never to execute anyone under his watch, to lead an initiative to repeal the death penalty. By the slimmest of margins, 50.04 percent, the measure passed and the Constitution was amended.

In 1920, voters brought back the death penalty. The method of execution changed in 1931 from hanging to lethal gas, but no repeal efforts resurfaced until the late 1950s, when the staunchly anti-death-penalty Gov. Mark Hatfield BA'43 took office. He authorized what would be the last execution for more than three decades

when he refused to intervene in a 1963 case. In 1964, an initiative petition to end capital punishment passed by a 60–40 vote and Hatfield quickly commuted the sentences of three death row inmates.

The death penalty returned to Oregon about the time Krasik entered Willamette; this time the method was lethal injection. The Oregon Supreme Court subsequently struck down the law on the grounds that it denied defendants the right to be tried by a jury of their peers. Voters in 1984 overwhelmingly approved a new amendment based on Texas capital punishment law. A second statute, passed in the same year, required a separate sentencing hearing before a jury in cases of aggravated murder.

Today there are 37 people, including one woman, on Oregon's death row. Recent polls seem to indicate a swing back toward repeal. The number of people executed in the U.S. has dropped by half in the past decade. It's safe to say that the public has a complicated relationship with the death penalty.

It is this uncertain terrain that Krasik must carefully navigate. His most effective courtroom strategy is both simple and challenging: be real. Talk to the jury person-to-person. Don't be slick.

"Steve Krasik is a tribute to his profession as evidenced in part by his tightly held moral beliefs and sense of fairness and justice," says Rod Underhill, chief deputy district attorney for Multnomah County. "Even as adversaries, we can work together as colleagues. Steve can always be trusted to tell it like it is."

1920

Oregon voters restore the death penalty by repealing Article I, 36 and replacing it with Article I, 37–38.

Emmet Bancroft is the first inmate to be hanged since re-enactment of the death penalty. He was convicted of murdering the Umatilla sheriff during a jailbreak.

1925

L.W. Peare, convicted of murdering his wife and another man, is executed at age 67 — the oldest inmate ever to be executed in Oregon.

1931

James Kingsley, who murdered a police officer in Jackson County, is the last death row inmate to die by hanging. The state switches to lethal gas.

1942

John Anthony Soto, who murdered two men and one woman in Umatilla County, is executed at age 17 — the youngest inmate ever to be executed in Oregon.

Source: Death Penalty Information Center

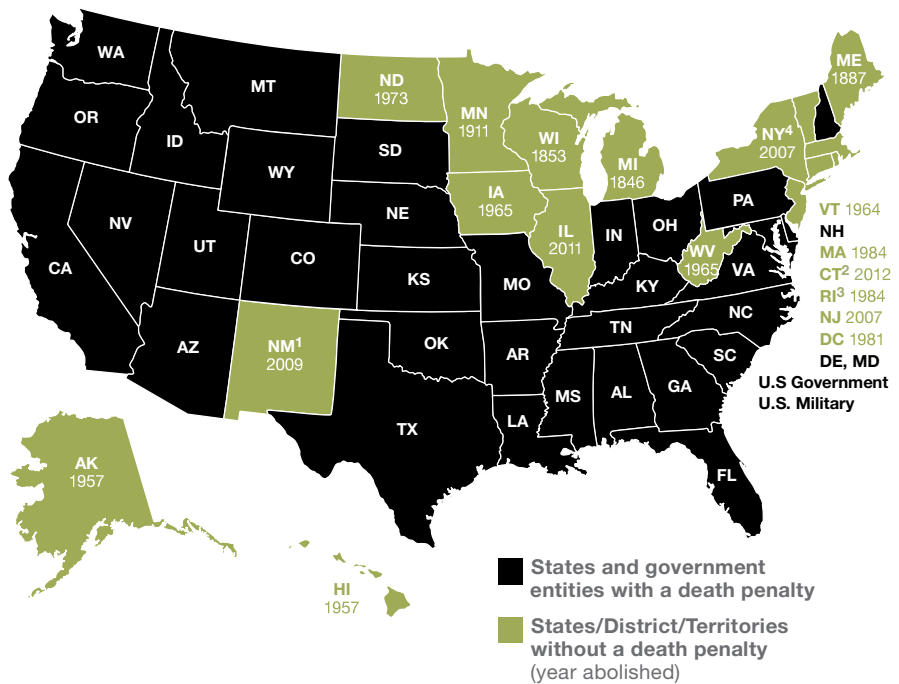
A CHALLENGING CAREER

Beginning in 1987, with his rookie outing as lead counsel in State vs. Farrar, Krasik has been involved in just about every highly publicized capital murder trial in Oregon, including those of Christian Longo, who killed his wife and three children; Joel Courtney, who confessed to killing OSU student Brooke Wilberger; Bruce and Joshua Turnidge, who bombed a Woodburn bank and who are the only cop killers on Oregon's death row; Angela McNulty, who tortured and starved her 14-year-old daughter to death; and inmate Gary Haugen, who is lobbying to have his sentence carried out.

In each of these cases, perhaps Krasik's greatest challenge in defending against the death penalty is the very thing hardest to overcome: human nature.

"Our notion of victory is not necessarily a walk-away acquittal, because there are certainly defendants who are guilty," Krasik says. "But when you get to the moral issues of the death penalty, I think the whole equation changes. There you have juries who are being enraged by horrible acts, and it's often very clear that the defendant has done terrible things. We as the capital defenders are very hard put to defend against the government showing that the defendant is scary ... but scary doesn't mean dangerous. All the research, in fact, is to the contrary — it shows that homicide convictions are less likely to be violent in prison than property criminals. Their violence rate, in fact, is almost identical to the streets of Salem.

"The state must show future dangerousness, and in my personal opinion they fail to do that



¹ In March 2009, New Mexico voted to abolish the death penalty. However, the repeal was not retroactive, leaving two people on the state's death row.

² In April 2012, Connecticut voted to abolish the death

penalty. However, the repeal was not retroactive, leaving 11 people on the state's death row.

³ In 1979, the Supreme Court of Rhode Island held that a statute making a death sentence mandatory for

someone who killed a fellow prisoner was unconstitutional. The legislature removed the statute in 1984.

⁴ In 2004, the New York Court of Appeals held that a portion of the state's death penalty law was unconstitutional. In

2007, it ruled that its prior holding applied to the last remaining person on the state's death row. The Legislature has voted down attempts to restore the statute.

in most cases," Krasik says. "There's a tremendous tendency, even if it's unconscious, to demonize the defendant and frighten the jury."

One of the most egregious examples of that in Krasik's mind is in the McNulty case.

"Yes, she should be locked up for life," Krasik says. "What she did is one of the most horrible things I've ever seen. But in terms of true remorse and demonstrated

nonviolent behavior — the idea that this woman, who was the meekest person during two years in prison, constitutes a dangerous future threat — is irrational. But the jury wasn't rational and sentenced her to death. This wasn't an explosive act of violence; it was a low-speed collision, a long-term torture. The idea that this woman presents a future danger is beyond comprehension to me."

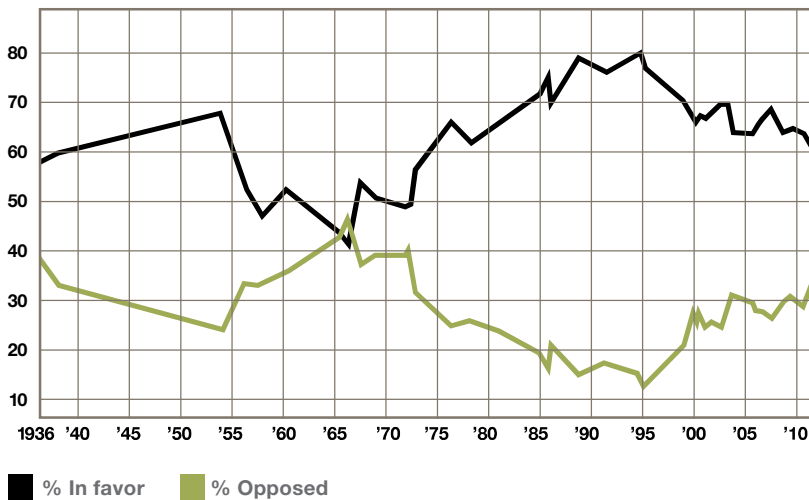
1964

Oregonians repeal the death penalty. Two days later, then-Gov. Mark Hatfield BA'43 commutes the sentences of three death row inmates, including the only woman ever to be sentenced to death in Oregon.

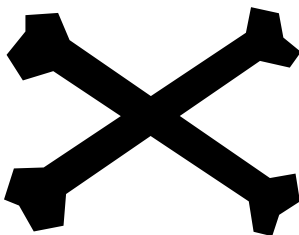
1978

Oregonians approve Ballot Measure 8, which brings the death penalty back to Oregon. This time it's in statute rather than the Oregon Constitution. The trial judge, not a jury, determines the death penalty sentence.

Public opinion about the death penalty Source: Gallup (1936-2011 trend)



“The only question is whether that client poses an uncontrollable future danger to society.”



Reacting to horror and fear with rationality isn't the strong suit of the average human, and often the prosecution — consciously or unconsciously — uses that to great effect, Krasik claims.

“The idea when the death penalty was brought back in the '80s was that prosecutors would be very circumspect and only bring capital charges against the worst of the worst, those who presented a lasting threat of future dangerousness,” he says. “That was a fantasy. If prosecutors have the budgets and the staffing they charge what they can charge. It's a tremendous lever to generate pleas, but should that plea not happen, they go for the whole enchilada and leave it to the jury. I'm troubled by that kind of ad hoc application of the death penalty.”

That's why selecting a jury is such an important part of the process, Krasik says.

“Part of our job is very delicate — to make sure that the people who are not automatic death penalty supporters understand that they can be against it but still serve on one of these juries — if they agree that there is some case somewhere in which you could meaningfully consider capital punishment,” Krasik says.

“So we get poetic in court and talk about Hitler and Eichmann. What we need to find in order to balance the jury are the people who say 'I oppose the death penalty, but I can conceive of a case that would lead me to consider it.' They must understand that no matter the evidence, they don't have to impose the death penalty — the system gives them an opportunity to make a moral judgment. Well-meaning anti-death penalty people refuse to take part in these cases, which has the opposite of their intended effect. It abandons the system to those who are willing to impose the death penalty.”

FINDING HUMANITY

Krasik says one improvement would be to have separate juries for the trial and the penalty phase. He has often filed motions requesting just that, though they are rarely granted. Occasionally, on appeal, the court will let the verdict stand and overturn only the penalty phase, which will result in a new jury. Not that a new jury will be immune to the horrors of the case, but they won't have been steeped in the weeks of awful photos and testimony and the agony of the survivors as the first jury was.

Granted, these convicted killers are very hard people for the public to care about —



1981
The Oregon Supreme Court strikes down the death penalty statute, saying defendants are being deprived of the right to trial by a jury.

1984
Oregonians approve Measure 6, amending the constitution to legalize the death penalty; and Measure 7, which requires a separate sentencing hearing before the trial jury.

1988
The U.S. Supreme Court reverses a Texas death penalty sentencing, saying it violates the Eighth Amendment prohibiting cruel and unusual punishment. The justices say the character, record and nature of the offense must be considered before imposing a death sentence. The decision impacts Oregon because Oregon's death penalty is based on Texas law.

1989
The Oregon Legislature requires juries to be asked whether the character, background or circumstances of the offense would justify a lesser sentence than death.

or to want to feed and water for the next 40 or 50 years. But that isn't what the death penalty is about, Krasik says. No matter how evil and horrifying his clients may be, the only question is whether that client poses an uncontrollable future danger to society.

"There is humanity in every defendant I've met," Krasik reaffirms. "Part of the mission is bringing that out for the jury. It's not easy. I've had clients with demonic aspects that were very dangerous people. I'm very aware of their ability to suddenly harm someone — to grab a pencil and run it into my eye. They are very damaged people, usually with a life history of making the worst conceivable decisions, and there's no reason to believe they won't be doing that at every possible moment. But the death penalty is disproportionate, overly emotional in its application, and rarely connected to the evidence of future uncontrollable dangerousness.

"In a perfect world, the right people would be caught for crimes, they would be treated properly and constitutionally, everyone charged with a crime would be guilty, everyone would be convicted with the right evidence with no exceptions, the jury would be smart and fair and get it right, and the defense would have nothing to do," Krasik says. "The fact that those things don't always happen makes what we do a vitally important job. It just ain't a perfect world." ■



**"THERE IS HUMANITY
IN EVERY DEFENDANT I'VE MET."**

1996, 1997

Douglas Franklin Wright and Harry Charles Moore, who waive their appeals, are the last men to be executed in Oregon during the 20th Century.

2011 April

Death row inmate Gary Haugen says he wants to end his appeals and be executed. His lawyers challenge his mental competence.

May

A Marion County judge grants Haugen's request.

November

Gov. John Kitzhaber, a former emergency room doctor, announces he will no longer carry out executions while he's governor.

2012 August

A judge rules Haugen can reject Kitzhaber's reprieve and continue his efforts to die by lethal injection.