

## **US juries are increasingly reluctant to deliver death sentences**

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The last part of a death penalty trial, the part where the jury decides whether the defendant will live or die, is a sort of referendum on capital punishment.

A significant majority of Americans support the death penalty in the abstract, as an idea. But checking a box in a public opinion survey is not the same as voting to send a particular man to his death. In the polls that count, the ones that follow testimony and tears, jurors are increasingly rejecting the death penalty.

At the Cook County Criminal Courthouse in Chicago on Thursday, the same jury that had convicted Juan Luna Jr. of mass murder, of the brutal and terrifying killings of 7 people at a fast-food restaurant in 1993, deadlocked on his sentence and thus let him live.

By the time jurors reach the penalty phase of a capital trial, they have been convinced beyond a reasonable doubt that the defendant has done something unspeakable. Now the legal system asks them to move beyond logic and evidence and toward moral intuition.

In his closing argument Thursday, one of Luna's lawyers, Clarence Burch, was yelling and stamping his feet. "This is serious," he shouted. "I'm pleading with you to consider mercy. Sometimes we can temper justice with mercy."

The jury - or, more precisely, one holdout juror - sided with mercy and in doing so joined a national trend.

In the mid-1990s, juries sentenced about 315 people to death every year. The number has been dropping ever since, and last year the number of death sentences barely broke 100. Those numbers say something profound about public attitudes toward capital punishment - not in the abstract but in the concrete circumstances of particular cases.

There was more to Burch's argument than his plea for mercy, but not much more.

He begged the jury, for instance, to consider the balance of his client's relatively unblemished life.

"That was 40 minutes of his life," Burch said of the massacre at Brown's Chicken restaurant in Palatine, Illinois. "He's been living for 33 years."

That argument mystified and angered the prosecutor, Richard Devine.

"You don't get one bad day to do anything you want," he told the jury.

Burch also argued that life without the possibility of parole was a suitably harsh punishment. In public opinion polls, support for the death penalty drops to about half when life in prison is an option.

"It's not some picnic he's going to," Burch said.

To back up that point, Luna's lawyers recruited a former warden of one of Illinois's maximum security prisons to talk about how tough life was inside.

"Life can be tolerable," the warden, Roger Cowan, testified. "I certainly wouldn't paint it any nicer than tolerable."

A forensic psychologist named Bruce Frumkin also testified for the defense on how tough prison can be.

"In some ways it is excruciatingly psychologically painful," Frumkin said.

The prosecution had commissioned Robert Blecker, a professor at New York Law School, to visit 3 maximum security prisons in Illinois and prepare a video documentary of life on the inside. He compiled 19 hours of footage. The lifers he talked to did not seem to be in excruciating psychological pain.

"I watch my soap operas," said one.

There is basketball, soccer, volleyball, chess, dominoes, cards.

The prison library is pretty nice, too, judging from the video, with a big true-crime section. The commissary has most of what can be found in a convenience store.

In the end, prosecutors decided not to show the videotape, concerned, perhaps, that Blecker's support for the death penalty would become an issue. Devine summarized the essential facts, though - the cable TV, the library, the commissary, the visits with family and friends.

"Not the existence, perhaps, that we would all choose," Devine said. "But

you have things to do. You have a life to lead."

Luna was not arrested until 2002. He got a bonus decade in which to make a life, and he did all right. He married and had a son, Brian, who is now 10.

On Wednesday, the jury was shown a heartbreaking videotaped interview with Brian. The boy recalled going to the movies with his father. Fishing. Bumper cars at a carnival.

"He's nice," Brian said of his father. "He's funny. He runs fast."

"I want to hug him so badly," the boy said.

Like the jury, members of the victims' families were divided over what was fit punishment for Luna. Some said only an execution would do, while others said nothing worthwhile would come from another death.