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Defending the Death Penalty

Some Texas attorneys general regarded a U.S. Supreme Court argument as an assignment best filled by subordinates or special counsel. My reaction was the opposite. The prospect of arguing a case before the high court stimulated my competitive instincts as much as the Super Bowl fires the ambitions of a National Football League coach or player. I viewed the challenge of matching wits with—and probing the intellects of—nine of our nation's preeminent legal thinkers for thirty tension-filled minutes as a most treasured opportunity.

I was fortunate to have five such opportunities. They included two disputes with other states—Louisiana, over the state boundary extension into the oil-rich Gulf of Mexico, and California, over the right to tax the estate of Howard Hughes—and three others: a complex natural gas federal regulatory issue, a challenge to our ballot access requirements for minority parties, and the death penalty case.[1]

Although all the cases were important and a privilege to present, the death penalty case posed the most drama and sense of urgency. It was the most significant oral advocacy experience of my life.

The defendant in this case was Jerry Lane Jurek.[2] At stake was not only his life but also the fate of our state's new death penalty statute as well as the fate of death penalty laws in thirty-four other states and the lives of 527 persons sentenced to death in all thirty-five states that had reinstituted the death penalty.[3] The Jurek case was among five the court set for a two-day consolidated hearing with the ultimate purpose of deciding whether to forever outlaw the death penalty in the United States.

The hearings on March 30–31, 1976, occurred at a pivotal time in our nation's uneasy history of capital punishment. Numerous previous court challenges had culminated in death penalty opponents scoring a far-reaching victory in 1972 that unexpectedly wiped all state laws from the