

Life v. Property: Do We Value the Taking of Property More Than Human Life In This Country?

December 19, 2009 – [Terry Lenamon's Death Penalty Blog](#)

Earlier this month, the United States Supreme Court heard argument in the case of [Beach Renourishment v. Florida \(08-1141\)](#), a controversy surrounding the application of the Fifth Amendment's prohibition that "...private property [shall not] be taken for public use, without just compensation," otherwise known as the "takings clause." It's an interesting situation because the real issue before the highest court in our land is whether or not the highest court in our state can essentially impose a judicial taking of some beautiful beach property.

It seems that the beautiful beach property was created when the State of Florida literally pumped tons of sand onto existing beaches in an effort to stop erosion and to protect the pretty beachfront vacation homes that dotted the shoreline. The big brouhaha started when that land – the newly created beach formed by the pumped-in sand – was claimed by the State of Florida as Florida land. Voila! A takings clause argument argued by the landowners that's gone all the way to the Supreme Court.

And that's good.

Having the Florida Supreme Court's papers graded by the United States Supreme Court on whether or not federal constitutional provisions are being respected is how our system is supposed to work. Eminent domain cases are expensive to litigate, and they're expensive to appeal – and that makes sense, because usually there is a significant amount in controversy. That strip of Florida beach being fought over in *Beach Renourishment* isn't cheap, and its impact on neighboring property values isn't cheap, either.

Bottom line, our nation is governed by laws originating from only four different sources: the Constitution; statutes enacted by either the U.S. Congress or the state legislatures; administrative decisions established by agencies within the executive branch; and finally, case law precedent arising out of federal and state courts. It's extremely important to have a hierarchy within this system of laws, as well as within this system of governing – and having the U.S. Supreme Court

decide whether or not the Florida Supreme Court is correct regarding the taking of this pumped-in sandy beach under the takings clause of the federal Constitution is right and just and proper.

Which brings us to the question for today: does our nation value the taking of property more than the taking of human life?

In 1972, the United States Supreme Court halted all executions in this country with the case of [*Furman v. Georgia*, 408 U.S. 238 \(1972\)](#). The High Court ruled that the death penalty was “arbitrary and capricious,” violating the Eighth and Fourteenth Amendments to the Constitution because of a variation between state laws and the application of the punishment itself. Four years later, [*Gregg v. Georgia*, 428 U.S. 153 \(1976\)](#) changed all that; the Supreme Court once again allowed United States citizens (as well as [foreign nationals](#)) to be killed by the government as punishment for the commission of certain crimes. The death of the death penalty was short lived.

The Cost of the Death Penalty

On its website, the [Florida Bar provides the following as public information](#):

Florida state courts are in crisis. Two years of budget cuts have undermined adequate and equitable funding of the court system, forcing layoffs and hiring freezes. In addition, by legislative formula, filing fees paid by court users do not directly go to fund the courts. On top of budget cuts and restricted revenue, caseloads have ballooned as the economy faltered.

A lot of additional information is provided at the Florida Bar’s site, and it’s periodically updated. However, the Florida Bar website appears to be primarily concerned with civil disputes, and the delays that civil litigants are experiencing in getting into a courtroom and achieving resolution of their lawsuits. Still, the financial crisis in Florida’s state courts is not in dispute, nor is the tremendous expense that each state undertakes when it chooses to punish a citizen with death. Indigent defense of those accused of capital crimes is in particular crisis in this state.

This week, the [Death Penalty Information Center published an opinion piece](#) that initially appeared in the *Virginian-Pilot*. There, the argument is made that it makes economic sense to end capital punishment in this country, as the authors explain (quoting from the DPIC site):

"Doing away with the option of a death sentence makes sense on several levels....It would save the state from having to pay fees associated with lengthy trials and years of appeals. It would end the agony of repeated court hearings for the families of victims. It would eliminate the four perpetually understaffed capital defender's offices, whose attorneys handle appeals automatically generated when people are sentenced to death row.... Is the cost of an execution really worth it when, for less than half the price, we could put a killer in a prison cell, locked away from society for life?"

Elephant in the Room and on the Beach: Lack of Funding for Indigent Capital Defense Counsel in this Country

Still, within thirty days before the United States Supreme Court heard oral argument in the Florida eminent domain case, it had issued its opinion [in Bobby v. VanHook, \(09-144, November 9, 2009\)](#), finding that there was no legal grounds for stopping the execution of Mr. VanHook although they did stop the execution of an elderly Florida man, 77 year old veteran George Porter in [Porter v. McCollum \(08-10537, November 30, 2009\)](#). While [Professor Linda Greenhouse opined in the New York Times](#), questioning the "selective empathy" of the High Court in the reading of VanHook and Porter side by side, [it is clear that the opinions were founded upon the summary conclusion](#) that one man had effective assistance of counsel and the other did not.

When Will the Reality of Money Be Considered in Capital Punishment Cases?

All of which leads us to this: men (and women) die in this country at the hands of state and federal government because the death penalty is recognized as a valid form of punishment. Floridian George Porter can attest that this ultimate punishment in all likelihood depends upon the abilities and efforts of defense counsel at trial. Even the most avid supporter of capital punishment has to

acknowledge the financial expense of the death penalty in this country. It is extremely expensive to execute someone in this country, as the Virginian-Pilot estimates \$2,000,000/inmate for Virginia. [DPIC studies show that this country has spent two billion dollars \(\\$2,000,000,000.00\) executing people since 1976. The Palm Beach Post has estimated that Florida has paid \\$51,000,000/year since 1976 for the luxury of having the death penalty.](#)

Still, the crisis in criminal defense of the indigent accused of capital crimes escalates each year. The [American Bar Association has an online collection](#) on studies done by the various states on the extent of this crisis going back 15 years.

There is not enough money to properly finance capital defense cases for indigent defense counsel. Yet millions of dollars are spent each year in the prosecution of capital punishment cases – nationally, the total is in the billions. And while the United States Supreme Court sends its message that because of the effectiveness of defense counsel or lack thereof, Porter lives and VanHorn dies, with the Court moving on to decide who gets paid what for some sandy oceanfront beaches, we have to ask -- do we value the taking of property more than human life in this country?

Sadly, it appears that we do.