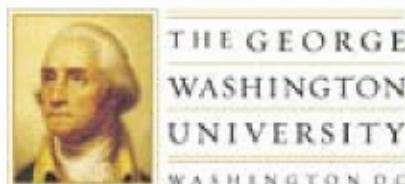


# The Burger Court Opinion Writing Database

*Jurek v. Texas*

428 U.S. 262 (1976)

Paul J. Wahlbeck, George Washington University  
James F. Spriggs, II, Washington University in St. Louis  
Forrest Maltzman, George Washington University



To: The Chief Justice  
Mr. Justice Brennan  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist  
Mr. Justice Stevens

NO. 75-5394, JUREK v. TEXAS

From: Mr. Justice Stewart  
JUN 10 1976

Circulated

Recirculated

MR. JUSTICE STEWART, MR. JUSTICE POWELL,  
and MR. JUSTICE STEVENS:

The issue in this case is whether the imposition  
[redacted] of the sentence of death for the crime of murder under  
the law of Texas violates the Eighth and Fourteenth Amendments  
to the Constitution.

I

The petitioner in this case, Jerry Lane Jurek, was  
charged by indictment with the killing <sup>1/</sup> of Wendy Adams "by  
choking and strangling her with his hands, and by drowning her  
in the water, by throwing her into a river . . . in the course of  
committing and attempting to commit kidnapping of and forcible  
rape upon the said Wendy Adams."

<sup>2/</sup>  
The evidence at trial consisted of certain statements  
made by the petitioner, the testimony of several people who saw  
the petitioner and Wendy during the day, and the technical evidence.  
This evidence established that the petitioner, 22 years old at the

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7/23

**1st DRAFT**

**SUPREME COURT OF THE UNITED STATES**

**No. 75-5394**

Jerry Lane Jurek, Petitioner, | On Writ of Certiorari to  
v. | the Court of Criminal  
State of Texas. | Appeals of Texas.

[July 2, 1976]

Opinion of MR. JUSTICE STEWART, MR. JUSTICE POWELL,  
and MR. JUSTICE STEVENS announcing the judgment of  
the Court, delivered by MR. JUSTICE STEVENS.

The issue in this case is whether the imposition of the  
sentence of death for the crime of murder under the law  
of Texas violates the Eighth and Fourteenth Amend-  
ments to the Constitution.

**I**

The petitioner in this case, Jerry Lane Jurek, was  
charged by indictment with the killing of Wendy Adams  
"by choking and strangling her with his hands, and by  
drowning her in the water, by throwing her into a  
river . . . in the course of committing and attempting to  
commit kidnapping of and forcible rape upon the said  
Wendy Adams."<sup>1</sup>

<sup>1</sup> At the time of the charged offense, Texas law provided that  
"[w]hoever shall voluntarily kill any person within this state shall  
be guilty of murder. Murder shall be distinguished from every  
other species of homicide by the absence of circumstances which  
reduce the offense to negligent homicide or which excuse or justify  
the killing." Texas Penal Code, Art. 1256 (1973).

Under the new Texas Penal Code (effective January 1, 1974),  
murder is now defined by § 19.02 (a):

"A person commits an offense if he:

"(1) intentionally or knowingly causes the death of an individual;

No. 75-5394 — Jurek v. Texas

To: The Chief Justice  
Mr. Justice Brennan  
Mr. Justice Stewart  
~~Mr. Justice Marshall~~  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist  
Mr. Justice Stevens

From: Mr. Justice White

Circulated: 6-17-76

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MR. JUSTICE WHITE, concurring.

Following the invalidation of the Texas capital punishment statute in Branch v. Texas, decided with Furman v. Georgia, 408 U.S. 238 (1972), the Texas legislature reenacted the death penalty for five types of murder, including murders committed in the course of certain felonies and required that it be imposed providing that, after returning a guilty verdict in such murder cases and after a sentencing proceeding at which all relevant evidence is admissible, the jury answers two questions in the affirmative -- or three if raised by the evidence:

"(1) whether the conduct of the defendant that caused the death of the deceased was committed deliberately and with the

To: The Chief Justice  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist  
Mr. Justice Stevens

STYLISTIC CHANGES THROUGHOUT.

From: Mr. Justice White

Circulated:

Recirculated: JUL 1 1976

**1st DRAFT**

**SUPREME COURT OF THE UNITED STATES**

No. 75-5394

Jerry Lane Jurek, Petitioner, | On Writ of Certiorari to  
v. | the Court of Criminal  
State of Texas. | Appeals of Texas.

[June —, 1976]

MR. JUSTICE WHITE, with whom MR. JUSTICE REHN- |  
QUIST joins, concurring in the judgment.

Following the invalidation of the Texas capital punishment statute in *Branch v. Texas*, decided with *Furman v. Georgia*, 408 U. S. 238 (1972), the Texas Legislature re-enacted the death penalty for five types of murder, including murders committed in the course of certain felonies and required that it be imposed providing that, after returning a guilty verdict in such murder cases and after a sentencing proceeding at which all relevant evidence is admissible, the jury answers two questions in the affirmative—and a third if raised by the evidence:

"(1) whether the conduct of the defendant that caused the death of the deceased was committed deliberately and with the reasonable expectation that the death of the deceased or another would result; (2) whether there is a probability that the defendant would commit criminal acts of violence that would constitute a continuing threat to society; and (3) if raised by the evidence, whether the conduct of the defendant in killing the deceased was unreasonable in response to the provocation, if any, by the deceased."

The question in this case is whether the death penalty imposed on Jerry Lane Jurek for the crime of felony murder may be carried out consistently with the Eighth and Fourteenth Amendments.

To: The Chief Justice  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Powell  
Mr. Justice Rehnquist  
Mr. Justice Stevens

From: Mr. Justice Blackmun

Circulated: 6/29/76

Recirculated: \_\_\_\_\_

No. 75-5394 - Jurek v. Texas

MR. JUSTICE BLACKMUN, concurring.

I concur in the result. See Furman v. Georgia, 408 U.S.

238, 405-414 (1972) (Blackmun, J., dissenting), and id., at 375,

414 and 465.

To: The Chief Justice  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Powell  
Mr. Justice Rehnquist  
Mr. Justice Stevens

From: Mr. Justice Blackmun

Circulated: \_\_\_\_\_

Recirculated: 6/30/76

3rd DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 75-5394

Jerry Lane Jurek, Petitioner, | On Writ of Certiorari to  
v. | the Court of Criminal  
State of Texas. | Appeals of Texas.

[June --, 1976]

MR. JUSTICE BLACKMUN, concurring.

I concur in the result. See *Furman v. Georgia*, 408 U. S. 238, 405-414 (1972) (BLACKMUN, J., dissenting), and *id.*, at 375, 414, and 465.

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

June 29, 1976

Re: No. 75-5394 - Jurek v. Texas

Dear Byron:

Please join me in your concurring opinion.

Sincerely,

WW

Mr. Justice White

Copies to the Conference