

Strategic Litigation regarding Death Penalty in Taiwan

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Visiting Scholar, Columbia Law School(2014~15)

Personal Profile



- Current Positions:
 - The 30th Supervisor of Taipei Bar Association
 - Board Member and CFO of Taiwan Association of Human Rights
 - Board Member of Taiwan Media Watch Educational Foundation
 - Executive Committee Member of Judicial Reform Foundation
- Fields of Practice:
 - competition law, tax law, media and telecommunication law, and financial technology regulations.
 - In addition, Chou maintains connections with NGOs. Chou has successfully obtained favorable interpretations, in whole or in part, multiple times from the Constitutional Court (Judicial Yuan Interpretations No. 670, 718, 725, 755, 756, 796, 799, 803, 812, Constitutional Court Judgments: 112 Hsien-Pan-Tzu 11, and 113 Hsien-Pan-Tzu 2), including cases on wrongful imprisonment compensation, assembly and parade rights, electoral rights, and citizens' litigation rights.
- In August 2014: Chou was invited by PILnet (Public Interest Law Network) to participate in its Public Interest Lawyering training program.
- Since July 2019: Chou is practicing as a lawyer & senior counsel at Chen & Chou Law Firm, primarily focusing on public law, and cross-border non-litigation and litigation cases.

Road Map

Background



The Issues



The Strategies



Conclusion



Background

Background 1

The Deadline for filing the Constitutional Law Suit

Implementation of Constitutional Court Procedure Act

- Art 92, Paragraph 2
 - For petitions under Article 59, Paragraph 1 concerning the constitutionality of laws and those under Article 83, Paragraph 1, **the preemptory period of six months will run from the effective date (*2022.1.4) of this Act** if the service of the relevant final court decision is made prior to the coming into force of this Act. The provision to Article 90, Paragraph 1, and Article 91 shall apply mutatis mutandis to the adjudication of such petitions.

Background 2

Almost all the death row inmates participated in this suit.

TAIWAN CONSTITUTIONAL COURT

Schedule for the Oral Arguments from April 2024 to July 2024

Date	Case Name	Issue (Summarized)	Petitioner(s) and Case No(s).	Deadline for Amicus Curiae Applications and Expert Opinions
April 23, 2024 (10AM)	Case on the Constitutionality of the Death Penalty	<ol style="list-style-type: none"> Whether the death penalty prescribed in the criminal provisions applied in the petitioners' respective cases is unconstitutional. Whether Subparagraph 1, Article 33 of the Criminal Code, which stipulated death penalty as a kind of principal punishment, is unconstitutional. Whether the decisions in J.Y. Interpretation Nos. 194, 263, and 476—which chiefly confirmed the constitutionality of death penalty—should be altered. 	<p>Main Petitioner: Hsin-Fu WANG (111-Hsien-Min-904052)</p> <p>Consolidated Petitioner(s):</p> <ul style="list-style-type: none"> 【1】 Yi-Lung CHEN (111-Hsien-Min-904063) 【2】 Min-Kuei LIAO (Hui-Tai-12487) 【3】 Hsin-Tsai HSIAO (Hui-Tai-13460) 【4】 Jen-Pao CHANG (107-Hsien-Erh-276) 【5】 Lin-Yi TANG (107-Hsien-Erh-276) 【6】 Hua-Kun LIU (107-Hsien-Erh-276) 【7】 Shu-Fan YANG (107-Hsien-Erh-276) 【8】 Kuo-Wen LIEN (108-Hsien-Erh-000160) 【9】 Wei-Chan HSU (111-Hsien-Min-904056) 【10】 Chun-Chi HUANG (111-Hsien-Min-904047) 【11】 Lin-Kai HUANG (111-Hsien-Min-904050) 【12】 Wen-Pin SHEN (111-Hsien-Min-904062) 	<p>Amicus Curiae applications should be turned in by February 16, 2024. Once permitted, Amici Curiae shall turn in their expert opinions by April 9, 2024.</p>

Background 2

Almost all the death row inmates participated in this suit.

			<p>【13】 Hung-Wei WANG (111-Hsien-Min-904060)</p> <p>【14】 Po-Ying WANG (111-Hsien-Min-904049)</p> <p>【15】 Jung-San LIU (111-Hsien-Min-904057)</p> <p>【16】 Chih-Yuan SHIH (111-Hsien-Min-904043)</p> <p>【17】 Tso-Ming LIEN (111-Hsien-Min-904058)</p> <p>【18】 Wu-Sung CHENG (111-Hsien-Min-904053)</p> <p>【19】 Wen-Sheng LU (111-Hsien-Min-904064)</p> <p>【20】 Hung-Lin SHEN (111-Hsien-Min-904040)</p> <p>【21】 Wen-Kuei CHEN (111-Hsien-Min-904041)</p> <p>【22】 Chun-Wei KUO (111-Hsien-Min-904039)</p> <p>【23】 Te-Jung LI (111-Hsien-Min-904044)</p> <p>【24】 Chia-Yao CHANG (111-Hsien-Min-904068)</p> <p>【25】 Jung OU YANG (111-Hsien-Min-904046)</p> <p>【26】 Hsi-Ching CHEN (111-Hsien-Min-904042)</p> <p>【27】 Jen-Chun HSIAO (111-Hsien-Min-904048)</p> <p>【28】 Chia-Lin LIAO (111-Hsien-Min-904045)</p> <p>【29】 Ho-Shun CHIU (111-Hsien-Min-904061)</p> <p>【30】 Yi-Chen YU (111-Hsien-Min-904059)</p> <p>【31】 Chih-Hsiao SU (111-Hsien-Min-904054)</p> <p>【32】 He-Cheng CHIU (111-Hsien-Min-904065)</p> <p>【33】 Chien-Yuan PENG (111-Hsien-Min-904051)</p> <p>【34】 Chi-Wu SHEN (Hui-Tai-13324)</p>	
			<p>【35】 Yu-Ju LIN (111-Hsien-Min-904066)</p> <p>【36】 Wang-Jen LIN (111-Hsien-Min-904067)</p>	

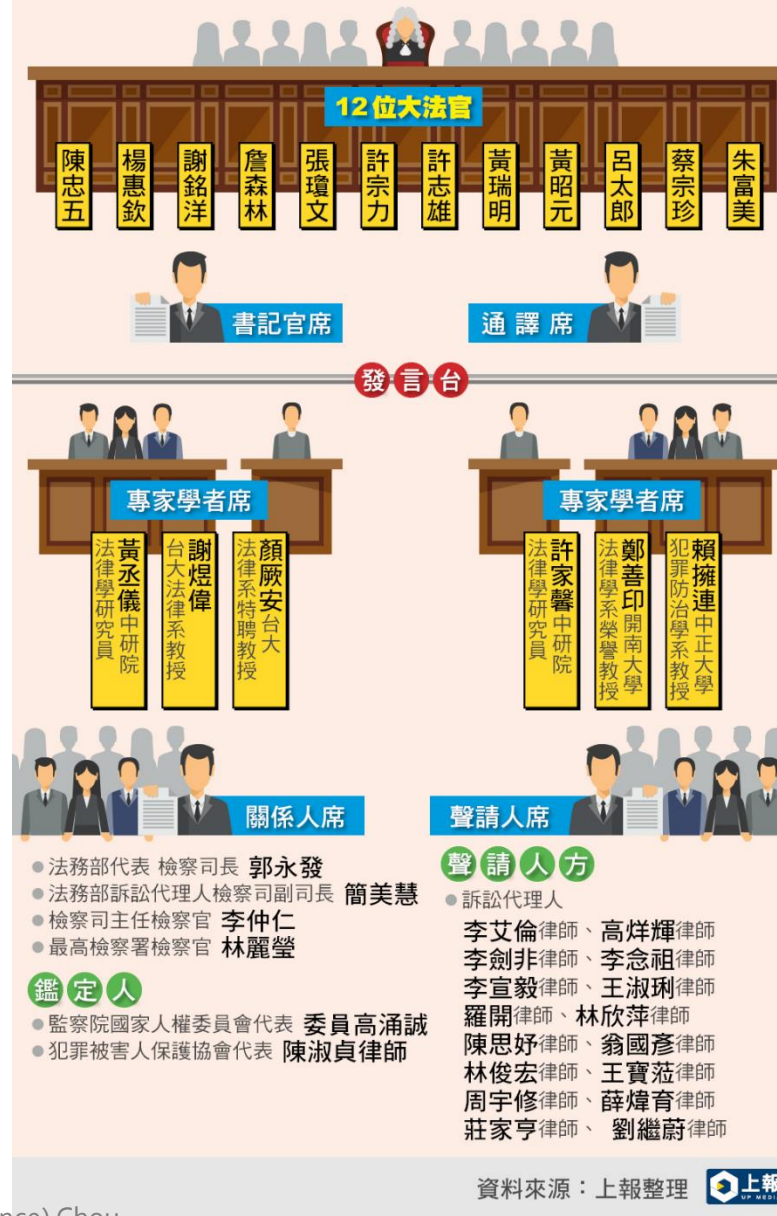
Background 3

- 12 of 15 Justices
- 6 scholars
- 2 expert witness
- 20 litigators

attended the oral arguments

Ministry of Justice as the defendant

憲法法庭言詞辯論席位圖





The Issues

The Issues

- **I. Whether the death penalty as a statutory punishment is unconstitutional:**
 1. Does the death penalty, apart from depriving the right to life, also interfere with other constitutional rights, such as the right to be free from torture, human dignity, etc.?
 2. What are the objectives pursued by the death penalty system? Are these objectives constitutional?
 3. Is the use of the death penalty as a means to achieve the aforementioned objectives, which results in the deprivation of constitutional rights, permissible under the Constitution of our country? If the death penalty is deemed unconstitutional, what alternative criminal sanctions could replace it? Or what accompanying measures should be implemented?

The Issues

- **II. If the death penalty system is deemed constitutional:**
 - 1. Types of crimes eligible for the death penalty:**
 1. Under our Constitution, should the types of crimes eligible for the death penalty be restricted? Or should it be applicable only to specific types of crimes?
 2. Are the specific criminal offenses applied in the final judgments of the cases that led to each petition in this matter, including Article 226-1, Paragraph 1 of Article 271, Paragraph 1 of Article 332, and Paragraph 1 of Article 348 of the Criminal Code (effective April 21, 1999: death penalty only; amended July 1, 2006: death penalty or life imprisonment), unconstitutional? What are the reasons?
 - 2. Scope of criminal defendants eligible for the death penalty:**
 1. Under our Constitution, should the scope of criminal defendants who can be sentenced to death be restricted?
 2. Article 19 of the Criminal Code distinguishes between offenders with "mental disorders" and "intellectual disabilities" based on the degree of "cognitive ability at the time of the act," with provisions for "exemption from punishment" (Paragraph 1) or "mitigation of punishment" (Paragraph 2). Is this distinction unconstitutional when it comes to the imposition of the death penalty?

The Issues

- **II. If the death penalty system is deemed constitutional:**

...

- 3. Procedural safeguards for the death penalty:**

1. Under our law, what procedural safeguards should be in place during the trial process and after the sentencing to meet the constitutional requirements for due process? (For example, mandatory defense in the third instance, oral arguments, unanimous decision in deliberation, extraordinary remedies after the judgment is final, and other procedural guarantees.)
2. In this regard, are Article 388 of the Code of Criminal Procedure and related procedural provisions unconstitutional? Or are the current provisions already constitutional and do not require changes or amendments? What are the reasons for each?

The Issues





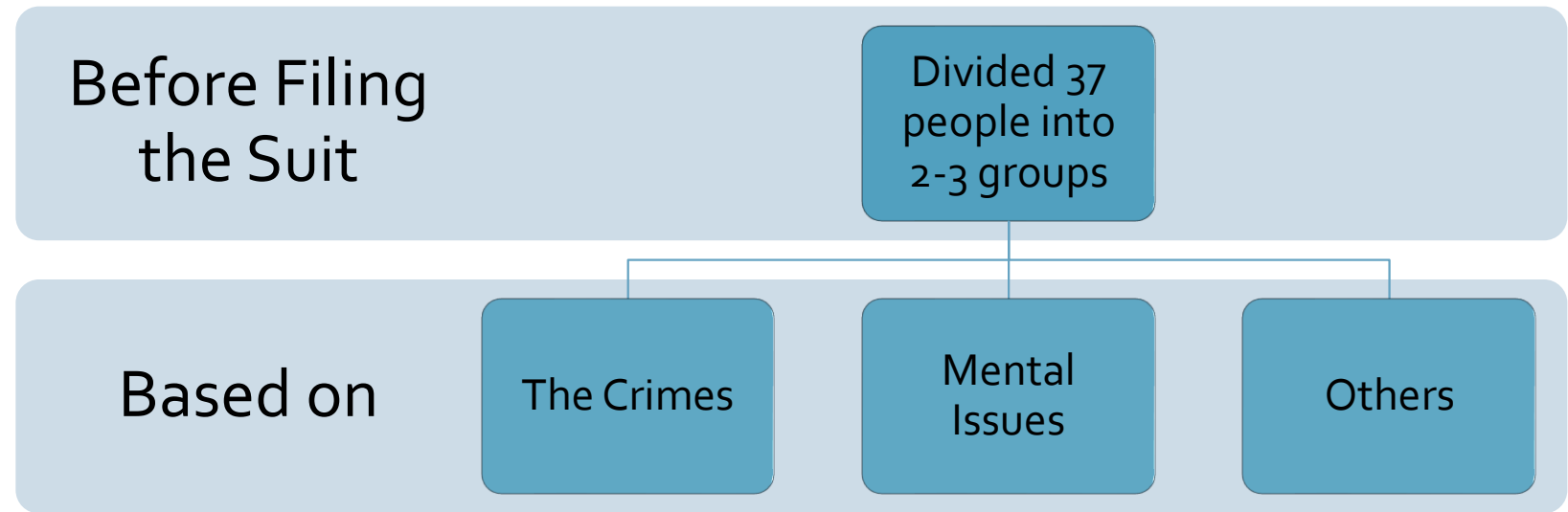
The Strategies



The Strategies

Shall We
Answer All
the matter
in issues ?

The Strategies



The Strategies

Who speaks first?

Attorney Lee Hsuen-yi (李宣毅) in his opening statement said that his grandmother was killed in a robbery and he had a strong desire to kill the perpetrator himself, but eventually realized he should explore the reasons that cause people to commit crimes.

The death penalty is the government's way of avoiding taking care of victims, he said.





Conclusion



當你在不正義的情況裡保持中立，代表著你已選擇了與壓迫者站在一起。

If you are neutral in situations of injustice, you have chosen the side of the oppressor.

南非人權運動先鋒——屠圖大主教
(Desmond Tutu)



OFFICIAL SITE



PERSONAL
PROFILE



FACEBOOK



Thanks for Your Listening!

Please contact yschou@chenandchou.com if you need