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Edward E. Graf Jr. is consoled by Don Youngblood, a private investigator who worked with Graf's attorneys.

Staff photo
— Rod Aydelotte

Graf sentenced to life in prison

□ Onlookers crowd courtroom — Page 11A

By **TOMMY WITHERSPOON**
Tribune-Herald staff writer

Heeding defense attorneys' pleas for mercy, a Waco jury sentenced Edward E. Graf Jr. to a life prison term Friday in the death of one of his two adopted sons who perished in an August 1986 fire.

A 54th State District Court jury of 10 men and two women deliberated about 2½ hours before deciding to sentence Graf to life in prison instead of handing him the death penalty. McLennan County District Attorney Vic Feazell said he deserves.

Jurors deliberated about four hours Thursday before convicting Graf in the death of Jason Graf, 8, his adopted stepson. Graf, 35, also is charged with capital murder in the death of Jason's brother, Joby, 9, but was tried

only in Jason's death.

Feazell said he is unsure if Graf will be tried in Joby's death.

Defense attorney Lynn Malone, who called the jury's guilty verdict "the greatest travesty of justice that this courthouse has ever seen," said he was pleased that jurors spared Graf's life.

"Obviously we are relieved that the jury gave him his life at least," Malone said. "That means as long as he has life, he has hope, and as long as you have hope, you have something to live for."

Charles McDonald, Malone's partner, said he and Malone will file a motion for a new trial within 30 days. He also said they have a chance to win a new trial or have the conviction overturned because of insufficient evidence to tie Graf to the boys' deaths.

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FROM THE FRONT

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Feazell, who told jurors that the "facts of the case cry out" for the death penalty, said he was not disappointed that Graf was not sentenced to death.

"The jury did a good job listening to all the evidence and they found Ed Graf guilty because he was guilty," Feazell said. "I would have hated to be on that jury. They had a harder job than I did."

Jurors were asked to answer two questions to decide Graf's sentence: Were the boys killed deliberately and was there a probability that Graf would commit future acts of violence? Jurors answered yes to the first question but no to the second, making the life sentence automatic.

Most jurors declined comment after the trial. Juror Evelyn Jeanine Barnhill said the jury's punishment decision is "something we need to keep within the jury."

"All I want to say really is I feel like justice was served. It was very emotional, very draining and very tiring and something I never want to go through again," she said.

Clare Gerdes, Graf's ex-wife and the mother of the boys, said she is thankful that justice was served.

"All along, my prayers have been that justice would be served, and I feel like our prayers have been answered. But it still doesn't bring my precious little boys back," she said.

Jerry Don McGaughy, the boys' father, said Graf should have been sentenced to die.

"I don't agree with it. I think for the crime he committed and the punishment he deserved, he should've gotten the death penalty. However, life in prison is somewhat of a justice for the lives of my sons," McGaughy said.

During punishment phase testimony Friday morning, the president and chief executive officer of the bank where Graf worked said Graf embezzled \$72,822 from the bank during a six-year period. Graf was allowed to reimburse the bank and was not prosecuted, he said.

"I feel that had the bank prosecuted him in the first place, that my boys might still be alive," Gerdes said after the verdict.

Rick Smith of Community Bank testified that Graf worked for the bank part time while he was a Baylor University student in 1973, and began full-time employment as a teller in 1974. Graf was a vice president and cashier in October 1985, when he was asked to resign by bank officials after they discovered the theft.

When confronted with the results of an audit, Graf initially denied stealing the money, Smith said, but later admitted, "I don't know why I did it. I just started taking the money and I couldn't stop."

He said Graf agreed to repay \$72,822 plus \$2,178 in attorneys' fees in exchange for the bank's agreement not to prosecute him.

Smith said his investigation revealed that Graf stole \$743 in 1980; \$4,540 in 1981; \$12,790 in 1982; \$11,280 in 1983; \$22,030 in 1984; and \$21,439 through Oct. 8, 1985, when he resigned.

During cross-examination from McDonald, Smith said the bank allowed him to repay the money and did not seek prosecution because it did not want adverse publicity about the incident. Smith said they reported the theft to the FBI, but no charges were filed.

Malone and McDonald called Graf's mother, Sue Graf, a teacher, as their only punishment phase witness. Mrs. Graf, who cried while on the stand, said she knows her son is innocent.

During final jury summations, Feazell painted Graf as a deceitful, callous animal, like a leopard or cougar, who can blend in with his environment and fool those around him into thinking he is harmless and trustworthy.

"Even a rattlesnake at least has a rattle to warn its victims so you can at least take precautions," Feazell said. "But not Ed Graf. He crawls and walks among us with no warning. They had no idea that he was stealing from the bank."

"As long as he could get away with it, he was going to keep doing it and it kept growing and growing and growing. It was a steady progression. The more he could get away with it, the more he was comfortable doing it. You have to wonder what would have happened if somebody at that time would have put a stop to this man."

Malone and McDonald, who called the trial the most emotional of his legal career, told jurors during summations that for a three-week trial, their deliberations Thursday seemed brief.

"I submit to you that you have found an innocent man guilty," McDonald said.

After the verdict, a Graf family member who asked not to be identified said that Graf passed a polygraph test administered by an Austin firm on March 17, less than a month before testimony in his trial started. She said the results indicated that he did not kill the boys or cause the fire.

Feazell said he gave Graf an opportunity to take a polygraph test some time ago and he refused. He said defense attorneys told him of the polygraph test a few days before the trial started but added that "It didn't interest me. I considered it too little, too late," Feazell said.

"Polygraphs are only as good as the operator. I personally think that Ed Graf is a sociopath who could probably pass a polygraph test about anything," Feazell said.

Feazell declined comment when asked about reports that he will resign now that the Graf trial is over. He said he is taking "one day at a time."

"There were rumors that I was going to leave before this trial even started, but I made a promise to Jason and Joby because this case moved me so," Feazell said.

Feazell said he is leaving all his options open.