



CHOOSING LIFE IN A DEATH PENALTY STATE

A Birmingham News editorial series

Embracing a culture of life

THE ISSUE *The state isn't ready to let go of the death penalty, so it must at least ensure a fair, impartial system of prosecuting those accused of capital murder.*

At one time, Alabama executed Death Row inmates at midnight in a contraption straight out of a horror movie: Yellow Mama, the state's electric chair. Even when Yellow Mama worked right, it burned and disfigured inmates; when it didn't, flame erupted from electrodes, smoke billowed from under the hood covering an inmate's head and the stench of burning flesh seeped into the witness room.

Now, the state straps inmates to a gurney at 6 p.m. and injects a poison cocktail into their veins that kills them.

These days, the killing is less gruesome. But the tidier dispatching of Death Row inmates cannot mask this truth: It is still taking a life. And it's not just the state of Alabama killing them. It is the state killing them on behalf of all its citizens.

Grantt Culliver, who as the warden of Holman Correctional Facility is the state's executioner, sums up this point best in discussing how he views carrying out executions.

"I look at it as part of the job," Culliver said. "The people of the state of Alabama, because of the way the laws are written, are as responsible as I am. I am the pawn or tool. The responsibility lies with the people of Alabama."

The people of Alabama should be alarmed at what is happening in their name. As *The News'* editorials Sunday through Thursday have shown, Alabama's capital punishment system comes nowhere close to ensuring that justice is done.

The ultimate punishment is inflicted, at best, haphazardly. The outcome of capital murder trials can be affected by arbitrary factors such as the status of the accused, the race of the victim and more than a little luck. One of the most crucial factors is the quality of legal representation; Alabama doesn't provide for an adequate defense, much less the vigorous defense a life-or-death case demands. That raises the specter of the worst failure the state's criminal justice system could ever experience: the execution of an innocent man or woman.

The Alabama system is under review by the American Bar Association, the Equal Justice Initiative of Alabama and the state chapter of the American Civil Liberties Union, among others. The people of Alabama — in the form of their state government — should conduct a thorough review of their own.

The Legislature, in the session that begins in January, quickly should pass a law suspending the death penalty while a commission examines problems with Alabama's system of capital punishment. State Sen. Hank Sanders, D-Selma, has sponsored such legislation for years running, and will again in the 2006 session, but it has not come close to passing. Next year it must.

Sanders believes the moratorium idea is already gaining momentum. He sees it in the hundreds of organizations, businesses, churches and local governments that have signed on, and in poll numbers that show close to 60 percent of Alabamians like the idea.

The July poll pointed out many people have concerns about how fairly the death penalty is applied. While more than 7 in 10 favor capital punishment, about 57 percent of those surveyed say they favor a moratorium until questions over the way the death penalty is applied can be worked out. There is even a suggestion in the poll numbers that politicians would have stronger support among voters if they support a moratorium.

That is a glimmer of hope for those of us who revere life and who believe the state should get out of the killing business.

"What it's showing is that it's an issue the public is concerned about," Sanders said. "A number of people (legislators) are afraid people may think it may appear soft on crime, but knowing they're in line with the public might help."

Even before that poll, death penalty legislation in the last session met with unprecedented success, Sanders said. A legislative committee passed Sanders' moratorium bill, a bill to strip judges of the power to impose death sentences against a jury's wishes, and bills to outlaw the execution of juveniles and the mentally retarded (in keeping with U.S. Supreme Court rulings). Although none of those bills passed the full Legislature, the success in committee gave Sanders hope.

"There is a growing understanding that there is a great injustice going on, and it's not going to be politically devastating to take a stand," he said.

Still, the political reality in Alabama is that the people of this state have a long way to go before they will accept an end to capital punishment. Politicians regularly run for office bragging of their fervor for the death penalty.

DEATH PENALTY POLL

A statewide survey of 863 registered and likely Alabama voters shows that while a majority supports the death penalty, they also believe an innocent person may be convicted and executed.

► How do you feel about the use of the death penalty in Alabama? Do you:

Support death penalty	70.8%
Oppose death penalty	19.6%
Don't know / No reply	9.5%

► Do you believe the death penalty is applied fairly in Alabama regardless of gender, race, income or age?

Yes, applied fairly	47.0%
No, not applied fairly	35.9%
Don't know / No reply	17.1%

► Do you believe an innocent person may be convicted and executed?

No	14.3%
Yes	79.6%
Don't know / No reply	6.1%

► There have been cases in which someone sentenced to be executed was found not guilty based on new evidence, usually DNA testing. How do you feel about suspending the death penalty in Alabama until questions about the fairness and accuracy of the death penalty have been studied and confirmed? Do you:

Support suspension	57.1%
Oppose suspension	30.3%
Don't know / No reply	12.6%

► How do you feel about the use of DNA testing in cases where it might prove a person's innocence or guilt? Do you:

Support use of DNA	95.8%
Oppose use of DNA	1.4%
Don't know / No reply	2.9%

► Would you be more or less likely to support a candidate for public office who supports the use of DNA testing in cases that involve the death penalty?

Much more likely	54.5%
Somewhat more likely	33.0%
Somewhat less likely	3.0%
Much less likely	1.9%
Don't know / No reply	7.6%

► Would you be more or less likely to support a candidate for public office who supports a suspension of the death penalty until questions about the use of DNA testing have been answered?

Much more likely	32.2%
Somewhat more likely	30.2%
Somewhat less likely	12.8%
Much less likely	12.5%
Don't know / No reply	12.2%

Source: Poll of 863 registered Alabama voters. Margin of error is +/- 3.5 percentage points. Conducted July 12-21 by Gerald W. Johnson, Capital Survey Research Center.

Fairest system

Until Alabama is ready to embrace a culture of life, the state at the very least must ensure the fairest possible system of prosecuting those accused of capital murder. Just as those who support life in the abortion debate try to attack and eliminate the worst problems (such as partial-birth abortions), the state at least must fix the worst of what ails its system of capital punishment.

Here are ways that can happen:

► The Legislature must establish a statewide indigent defense system that ensures qualified lawyers are available to poor defendants through trial and every appeal. The public defender

system should have resources comparable to local district attorneys and the state attorney general's offices. In addition, lawyers who handle death penalty cases should be required to undergo intensive training in the special circumstances and demands of a capital trial.

► Take away the power of circuit judges to impose death sentences when a jury recommends a sentence of life in prison without parole. Alabama is one of only a handful of states that grant judges this power and the only state where it is used liberally. Political pressure can be (and has been) used to urge judges, who are elected, to resort to the override power. The state should remove that temptation.

► Establish a uniform system with state oversight to guide prosecutors in deciding when to seek the death penalty. The system should include a process of review, so that defendants can challenge a prosecutor's decision on the front end.

► Require prosecutors in a capital case to turn over every bit of evidence — helpful or not — to the defense. They already are required to turn over helpful information; but sometimes, disputes occur over whether a particular piece of information would aid the defense. Some prosecutors already have discovered it's easier to turn

over everything than to quibble later over what wasn't made available to the defendant. North Carolina has passed a law requiring open-file discovery in all felony cases; Alabama should at least do so for death penalty cases.

► Put safeguards in place to address chronic problems that crop up in death penalty cases with regard to eyewitness testimony, the use of jailhouse snitches and police interrogation procedures. In Illinois, state lawmakers created a pre-trial hearing to determine the credibility of jailhouse informants, improved police lineup procedures and required the use of audio- or videotapes in most homicide interrogations or confessions. Alabama should do the same.

► Reduce the number of crimes that qualify for a death sentence, taking care to reserve the ultimate punishment for the most serious crimes and to remove senseless distinctions — such as the one making it a death penalty crime to shoot someone to death from your car, but not necessarily while outside the car or in a home.

► Set up reasonable guidelines about what constitutes mental retardation, in keeping with the U.S. Supreme Court decision striking down executions of the retarded.

► Pass laws outlawing the execution of people for crimes they committed as juveniles, in keeping with another U.S. Supreme Court ruling.

► Make sure evidence in capital cases is preserved to allow for DNA testing where it could determine guilt or innocence, and ease the way for the testing to take place. Prosecutors routinely resist postconviction DNA testing, but what do they have to lose? If it proves someone is guilty, the prosecution should feel better. If it proves someone innocent, the prosecution should feel relieved. Other states already have made provisions to make DNA testing more readily available.

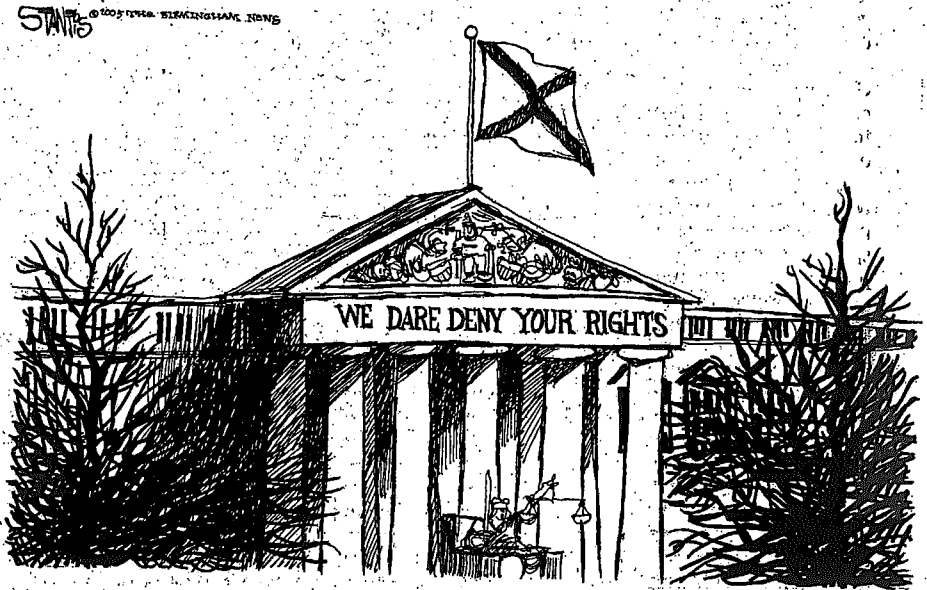
► Devise a system to review death penalty cases prosecuted before these reforms (while lawyer pay was deplorably low) to try to ensure no innocent person is executed.

► Study the correlation between race and the death penalty, and make changes to the law or in practices to try to ensure that the ultimate punishment is about the severity of the crime, not the skin color of the defendant and victim.

► Protect people with serious mental illness from being executed for crimes they committed while psychotic.

Taken together, these proposals are not an in-expensive proposition. The state already spends

\$40 million a year paying court-appointed lawyers to defend poor suspects. A statewide indigent defense system likely would cost much more. That means it's even less likely the Legislature, which every year patches together an operating budget with smoke and mirrors, will undertake these reforms.



Still not enough.

Even if all these steps were taken, they would not be enough to satisfy The News' editorial board that the death penalty is appropriate for Alabama. But these improvements would at least increase the chances only the worst of the worst among those who kill would receive the ultimate punishment. They also would lower the risk an innocent person could be killed or spend years on Death Row before earning release. The system would be more fair and reliable. But no system of justice run by humans is perfectly fair or fool-proof.

Is that standard too high to demand? Not when we're talking about a punishment that can't be undone, a sentence as final as death.

Our readers are, as always, free to disagree, and many will. But even the most ardent supporter of the death penalty shouldn't want to see the state execute the wrong person for a crime. Most of us can agree, at least in theory, that a death sentence ought to be imposed only after a diligent legal review, only in a process that is exceedingly fair, and only against those who can be held fully responsible for their actions.

To insist on that isn't to coddle criminals. It's certainly not to devalue the lives of murder victims. Our belief is that taking a killer's life doesn't add value to his victim's life.

Indeed, we believe that taking life to show how much we value life — much like destroying embryos to get life-saving stem cells — represents a contradiction in logic that cannot be reconciled.

Life has value: the life of a microscopic smattering of cells, the life of an aging person beset by Alzheimer's, even the life of someone who has killed another.

In a death penalty state, The Birmingham News chooses life.

WORTH NOTING | A correction

A photograph that accompanied the Monday editorial "Many executions, few murders" was identified as Mobile Circuit Judge Braxton Kittrell, but it was another judge.



Braxton Kittrell

DEATH SENTENCE QUALIFICATIONS

A murder qualifies for a death sentence in Alabama if:

- ▶ It's committed during a first-degree kidnapping.
- ▶ It's committed during a first-degree robbery.
- ▶ It's committed during a first- or second-degree rape or sodomy.
- ▶ It's committed during a first- or second-degree burglary.
- ▶ The victim is an on-duty law enforcement officer.
- ▶ The killer is already serving a life sentence.
- ▶ It's done for monetary gain or for hire.
- ▶ It's committed during first- or second-degree sexual abuse.
- ▶ It's committed during a first- or second-degree arson or with the use of explosives.
- ▶ Two or more people are killed in one act or one scheme.
- ▶ The victim is a state or federal official whose killing is related to his position.
- ▶ It's done while hijacking a plane.
- ▶ The killer has been convicted of any other murder in the past 20 years.
- ▶ The victim is a witness in a court proceeding and the killing relates to that role.
- ▶ The victim is younger than 14.
- ▶ The victim is inside a house and is killed by a deadly weapon used from outside.
- ▶ The victim is killed with a deadly weapon while in a car.
- ▶ The killer uses a deadly weapon from a car.

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