

CHOOSING LIFE IN A DEATH PENALTY STATE

A Birmingham News editorial series

No airtight case for death

THE ISSUE *The ultimate punishment deters other murders, death penalty supporters claim; if only it and other arguments for capital punishment were true.*

In his third 2000 debate with Al Gore, then presidential candidate George W. Bush said he believes in the death penalty because it saves lives. "It's the only reason to be for it," Bush said. "I don't think you should support the death penalty to seek revenge. I don't think that's right. I think the reason to support the death penalty is because it saves other people's lives."

But does the death penalty save lives? Does killing convicted killers stop other would-be killers from killing?

The opinion expressed by Bush, who as governor of Texas presided over 152 executions in six years (more than any other state since the death penalty was reinstated in 1976) finds agreement

with many politicians, including Gore. Gore, too, said he believes the death penalty deters other murders. The facts, though, don't back them up.

In looking at the most-often used arguments to bolster support for the death penalty — deterrence, justice, respect for human life, closure for victims' loved ones — what's clear is that none of them makes a clear case for using the ultimate punishment.

For those who believe in the sanctity of all life, as does this editorial board, it's another reason to wonder why governments are in the business of executing people.

The case for any state exercising its awesome power to kill ought to be airtight. It is not.

The most damning argument against capital punishment as a deterrent is that states with the death penalty generally have higher rates of murder than states without the death penalty. In 2003, for example, the murder rate in the 12 states without the death penalty was 4.1 for every 100,000 people. In the 38 states with the death penalty, the murder rate was 5.91 — 44 percent higher.

Even among death penalty states, those that carry out executions the most tend to have the highest murder rates.

Texas, with the nation's busiest death chamber, had a murder rate in 2004 of 6.1 per 100,000 people, according to FBI statistics. Alabama, with the nation's sixth-highest death penalty rate, recorded a murder rate of 5.6 in 2004. California, which has the nation's largest Death Row, had an even higher murder rate of 6.7 in 2004. And Louisiana, which has carried out the 10th-highest number of executions since 1976, had the nation's highest murder rate among all states last year at 12.7 per 100,000 people.

Conversely, Massachusetts, a state without the death penalty, had a 2004 murder rate of just 2.6. Oregon, a death penalty state that rarely uses it — only twice since 1976 — had a murder rate of only 2.5, tied for eighth lowest.

The three states with the lowest murder rates in 2004 were Maine, North Dakota and New Hampshire, each at 1.4 per 100,000. Maine and North Dakota do not have the death penalty; New Hampshire has it but doesn't use it (no execution since 1976 and no one on Death Row).

There are regional disparities as well. The death penalty is most popular in the South, accounting for more than 80 percent of all executions in the nation. Yet Southern states also have the highest murder rates, according to the FBI. In fact, in 2003, the South was the only region above the national average — with a murder rate that was about 50 percent higher than the Northeast, where the death penalty is least popular.

For the past half century, many studies by

well-respected researchers have concluded the death penalty is not a deterrent. Still, some death penalty supporters point to other studies that claim executions do prevent crime. Some of these studies conclude that each execution saves multiple lives because of its deterrent effect.

But these studies are highly controversial. Other researchers have attacked the findings because of the methods used, of results that are inconsistent, of key information that is left out, of heavy reliance on data that skew results.

Texas, for example, accounts for more than a third of all executions in the United States. Last year, it carried out 23 of the 59 executions in the country; no other state approached double figures.

Since the peak period of the 1980s and 1990s, the number of murders in Texas has decreased dramatically, which some death penalty supporters attribute to its increased use.

Misleading on murder

But murders have decreased nationwide as well, including in states without the death penalty or that haven't carried out any executions. Using Texas as proof the death penalty deters is just as misleading as using the decrease in murders in nondeath-penalty states during that time to argue the *absence* of the death penalty deters murders.

The truth is, there is no proof the death penalty deters — or that it doesn't. Deterrence supporters can argue the murder rate would be even higher in states with the death penalty if they didn't use it, just as detractors can point to high murder rates seemingly corresponding to active use of the death penalty. There's no way to show cause and effect. But most data do suggest there's plenty of reason to doubt the death penalty's ability to deter other murders.

Even those on the front lines of crime are skeptical about the deterrent effect of capital punishment. In a 1995 study of 386 randomly selected police chiefs, two-thirds of them said the death penalty didn't significantly reduce the number of homicides.

A 1996 survey of criminology experts — past and current presidents of three criminology associations — also rejected the notion that executions deter. More than 87 percent believed the death penalty had no deterrent effect, University of Florida sociologists Michael L. Radelet and Ronald L. Akers, who conducted the survey, found.

The prospect of the death penalty doesn't deter most people because they don't expect to be caught, nor do they consider the differences between a sentence of death or life in prison, according to

Tufts University Professor Hugo Adam Bedau, author of "The Case Against the Death Penalty." Indeed, many killers commit their crimes in moments of passion or anger, or under the influence of drugs or alcohol.

Murder rates

Per 100,000 population in 2004.

DEATH PENALTY: YES NO

Top five states

State	Murder rate
Louisiana	12.7
Maryland	9.4
New Mexico	8.9
Mississippi	7.8
Nevada	7.4

Bottom five states

Maine	1.4
New Hampshire	1.4*
North Dakota	1.4
Iowa	1.6
Utah	1.9

▶ NATIONAL AVERAGE — 5.5

Nondeath-penalty states

Michigan	6.4
Alaska	5.6
West Virginia	3.7
Wisconsin	2.8
Hawaii	2.6
Massachusetts	2.6
Vermont	2.6
Rhode Island	2.4
Minnesota	2.2
Iowa	1.6
Maine	1.4
North Dakota	1.4

* New Hampshire has carried out no executions since death penalty was reinstated in 1976.

Source: FBI Uniform Crime Reporting Program

A BIRMINGHAM NEWSCHART

Dampening deterrence

Some death penalty supporters argue the long wait between conviction and execution dampens whatever deterrent effect the death penalty has. The Alabama attorney general's office lays the blame for delays on Death Row inmates and their lawyers.

"Why raise five claims (on appeal) ... when you can raise 50 and the courts have to review every claim?" asked Clay Crenshaw, chief of the attorney general's capital litigation division. "I think there's a motivation on the part of the lawyers who represent these inmates to delay."

Crenshaw has announced he is running for the Alabama Criminal Court of Appeals, with a top priority of preventing capital murder cases from dragging on. Capital appeals "need repair because it takes too long for a capital case to go through the long appeals process," he told The Associated Press.

But lawyers for Death Row inmates say the state's lack of a defense system for poor inmates contributes to the delay because inmates often have to find new lawyers during the appeals process.

Of course, dissuading would-be killers isn't the only argument capital punishment supporters offer. Attorney General Troy King cites exacting justice, not deterrence, for his strong support for the death penalty. "Certain crimes are so heinous, savage and brutal, there's only one punishment that suits them," King said. "The death penalty is a strong statement that we value life. I think it

cheapens life when (a life is) taken, and it doesn't get the sentence it deserves.

"Seeing justice carried out means the killer's life is required."

Prosecutors like King say the execution of a killer offers closure for families of victims. But does it? Some victims' families say yes; others no. At the very least, an execution marks the end of what is often a wrenching ride through the legal system. Because of the intense scrutiny death cases demand, victims' families almost always endure multiple appeals. Because of the errors that too often occur in the trial of death cases, it's not uncommon for a case to be overturned and retried, starting the whole process over.

So it's no wonder victims' families greet execution days with a measure of relief. "I'm relieved that he's got it over with, and I don't have to deal with it anymore," said Bill Choron of Bon Secour, whose sister's killer was executed by lethal injection in September.

But carrying out the death sentence doesn't do the one thing families want most: to undo what happened to their loved ones.

Taking a life for a life doesn't make things even. Nor does it increase respect for life.

For years, Catholic bishops have espoused a culture of life, opposing both abortion and capital punishment. "Respect for all human life and opposition to the violence in our society are at the root of our long-standing opposition to the death penalty," said a 1999 statement by the National Conference of Catholic Bishops.

"We cannot teach that killing is wrong by killing. We oppose capital punishment not just for what it does to those guilty of horrible crimes, but for what it does to all of us as a society. . . The death penalty offers the tragic illusion that we can defend life by taking life."

Even if one accepts the view that capital punishment shows the ultimate respect for life, why are there so few executions?

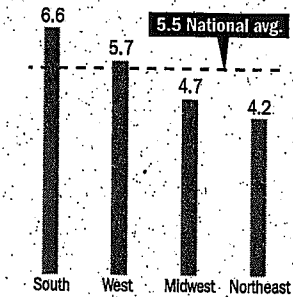
Since the U.S. Supreme Court reinstated capital punishment in 1976, about 7,000 people have been sentenced to die. But that's only about 2 percent of convicted killers. Fewer than 1,000 of those sentenced to death actually have been executed.

The fact that such a small percentage of killers wind up on Death Row is itself an argument against the death penalty. It says some murderers deserve to die, but the vast majority don't. We, in essence, pick and choose which lost lives should be avenged — an eye for an eye — and which lives don't merit that degree of justice.

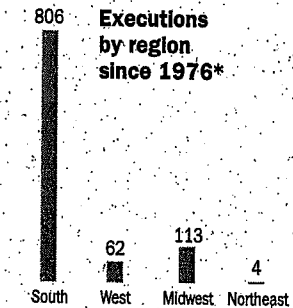
Murders vs. executions

Southern states have highest murder rates despite carrying out more executions.

2004 murder rates by region
Per 100,000



Executions by region since 1976*



* Federal executions are listed in the region in which the crimes were committed.

Source: Death Penalty Information Center
A BIRMINGHAM NEWSCHART

It starts with the way states write laws that set out capital punishment guidelines. Alabama's death penalty laws provide 18 categories for which the ultimate penalty can be exacted. Often, there's not much separating a murder that calls for the death penalty from one that does not.

Shoot someone to death on the street and flee, and you can be tried for murder but not capital murder. Take his wallet, and you could face the death penalty. Shoot and kill someone from your car, it's a capital offense. Get out the car and shoot the person, it's not.

"If it fits the statute, we charge it. If it doesn't, we don't," Jefferson County District Attorney David Barber said of his office's philosophy in deciding whether to seek the death penalty in murder cases.

But some DAs reserve death penalty prosecution for the most heinous of crimes.

How effective can the death penalty be when its application can depend on something as arbitrary as whether a shot came from a car or in whose jurisdiction the murder took place?

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Friday: Embracing a culture of life begins with acknowledging the state's system of capital punishment doesn't work.

Costing dearly

The privilege of executing convicted murderers costs taxpayers dearly. A misperception about capital punishment is that it's cheaper than keeping killers locked behind bars for the rest of their lives. The opposite has usually proved true. Adding up the costs of trials, of providing adequate counsel for the defendant and of appeals, capital punishment can cost much more than locking up killers for life.

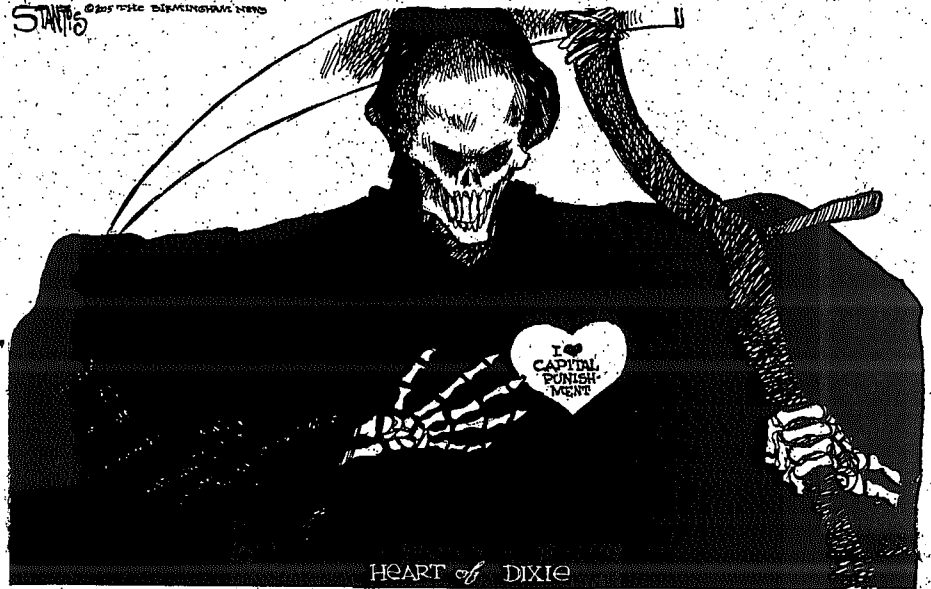
Attorney General King says the state has not studied what it costs to take the average capital murder case from investigation, through trial and appeals to execution in Alabama. In other states, however, the pricetag can surpass \$1 million.

A 2003 Kansas study, for example, found that capital cases are 70 percent more expensive than comparable nondeath-penalty cases, and that the average case all the way through execution costs \$1.26 million. A 2004 Tennessee Comptroller of the Treasury report said capital murder trials cost 50 percent more than life imprisonment trials. A North Carolina study in 1993 put the cost at \$2.16 million per execution. And a 2000 study said Florida could save \$51 million a year by sentencing capital murderers to life in prison without parole instead of executing them.

Why? Because at every step, death-penalty cases cost much more than other cases. Trials are longer, more lawyers and expert witnesses are involved, more motions are filed, appeals must go through both state and federal courts. Even housing Death Row inmates may cost more. (Alabama's condemned are kept in solitary confinement, away from the regular prison population.)

So, if the death penalty can't be shown to prevent crime, is arbitrarily applied, likely costs more than even life imprisonment and runs a real risk of taking the lives of innocent people, why use it?

It's undeniable that public support for the death penalty is strong — about 70 percent



of those polled in both Alabama and the nation back it (though support drops significantly when life without parole is given as an option). That makes the death penalty good politics, as Bush and Gore can attest.

But politics has an ugly way of putting its thumb on the scales of justice. Doing what's right, not playing good politics, ought to weigh more heavily on those scales, especially in matters of life and death.

Doing right means sifting through all and questionable reasons for supporting death penalty — and choosing life.

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