

CHOOSING LIFE IN A DEATH PENALTY STATE

A Birmingham News editorial series

When death is on the line

THE ISSUE *There is no defending Alabama's system of defending those charged with capital murder.*

When Opelika's Mike Williams was appointed to defend James Wyman Smith on a capital murder charge, Williams had little experience in criminal law, much less in defending someone whose life was on the line. A general practice lawyer who had graduated from night law school a few years before, Williams admits he hadn't fully read the death penalty statute before Smith's first trial.

"No regular, single lawyer can keep up with everything," Williams said. "The law on capital cases is so voluminous and complicated, it's like a specialty."

Smith was sentenced to death for abducting and strangling a store clerk in Lee County. The Alabama Supreme Court overturned Smith's conviction in 1991 because of improper conduct by prosecutors. A more experienced Williams defended Smith a second time, but the results were the same. Smith died on Death Row of natural causes.

Williams got on-the-job training from the case, but little else. Due to limits on state pay to indigent defense lawyers, Williams figures he earned \$4.98 an hour for the Smith case, and then only after the trials were completed.



Troy King
Defends Alabama's capital punishment system.



Bryan Stevenson
Says the system is unreliable

Williams' experience is hardly unusual. One of the most dangerous flaws in Alabama's capital punishment system is the lack of a statewide public defender system. Instead, the state offers a hodgepodge, bare-bones way of providing lawyers to defend poor suspects. These court-appointed lawyers often have little experience in capital cases, and limits on pay discourage highly qualified lawyers from taking cases. Worse, there are no guarantees after the first round of appeals that an inmate even will have legal help.

"I doubt that anybody can defend the reliability of the system," said lawyer Bryan Stevenson of the Montgomery-based Equal Justice Initiative of Alabama, a nonprofit organization that represents Death Row inmates.

Yet this system puts people to death. This newspaper's editorial board embraces a culture of life, but our system of capital punishment has created a culture of death.

Attorney General Troy King maintains Alabama's capital punishment system is as good as any in the world. Yet, considering its built-in flaws, King's assurances cannot be sustained

with even a modest degree of confidence.

Clearly, the best hope for somebody charged with a death penalty offense is a vigorous, thorough defense at the initial trial in circuit court. But the system in Alabama works hard against that obvious and basic premise.

Our inadequate system increases the chances of an innocent person being convicted and sentenced to death — a possibility a civilized society should never accept — and the chances of having to retry cases overturned by appeals courts.

That's a practical, bottom-line reason for citizens to insist on highly competent defense counsel for death penalty cases. It saves taxpayers millions of dollars on retrials and laborious appeals.

But the problem, more fundamentally, is one of justice. Alabama needs to provide proper legal representation so no one is wrongly convicted and put to death.

Most people charged with capital crimes must depend on court-appointed attorneys. For the few who can pay for a capital defense, attorney fees can be \$100,000 or more, with another \$50,000 or more for experts and investigators. Because there is no bond in capital cases, defendants often lose their jobs and cannot afford to pay private attorneys. It is imperative the lawyers who represent these suspects have the ability and experience to do a good job.

A death penalty trial actually is two separate trials: One to determine guilt and the other to decide a sentence, either death or life without parole. Attorneys appointed to such cases must prepare for both phases, which requires hours of investigation into the facts of the case, researching the background of the defendant and finding appropriate experts. The Equal Justice

Initiative's Stevenson said preparing competently for each part of a death penalty case takes at least 500 hours, but in some cases attorneys have spent fewer than 12 hours getting ready for trial.

Stevenson said in one case, one of the two attorneys appointed to defend James Harvey Callahan didn't even meet the defendant before his Calhoun County trial. After examining witnesses and sitting at the counsel table during the guilt phase of the trial, that lawyer never returned for the penalty phase. The sentence was thrown out by a federal judge, but reinstated last month by the 11th U.S. Circuit Court of Appeals. Callahan could face execution next year.

Crucial phase

With a defendant's life on the line, the penalty phase is crucial. The defense attorney must be prepared to show reasons why his client should not be put to death. This often requires mental health evaluations, learning extensive family and medical history and finding friends to speak for the defendant. Yet, there are cases where attorneys have done little to plead for their clients' lives; in some cases, they haven't even called witnesses or presented evidence during the penalty phase of the trial.

Some may not know better. In Alabama, a defense counsel for a death penalty case is only required to have five years' experience in criminal law, but the experience can be in defending petty crimes such as shoplifting or writing bad checks. According to court filings by Stevenson, a circuit judge refused to allow a lawyer to remove himself from a capital case in Colbert County, even though the lawyer knew he didn't have the relevant criminal law experience. The defendant, John Forrest Parker, was convicted in 1989 and sentenced to die. His appeal is pending in federal court.

Alabama's weak standards for appointing capital defense attorneys fall far below the American Bar Association's guidelines. The guidelines call for "substantial knowledge and understanding of the relevant state, federal and international law, both procedural and substantive, governing capital cases," including familiarity with "common areas of forensic investigations, including fingerprints, ballistics, forensic pathology and DNA evidence," and even "skill in the investigation, preparation and presentation of evidence bearing upon mental status."

STATS

YOU'RE MY STATE APPOINTED ATTORNEY? HOW MANY CAPITAL PUNISHMENT CASES HAVE YOU DEFENDED?

ALABAMA DEATH ROW

NONE, BUT I DID STAY AT A HOLIDAY INN EXPRESS LAST NIGHT...



The guidelines also call for lawyers appointed to death penalty cases to complete a "comprehensive training program... in the defense of capital cases," which Alabama doesn't require.

Conversely, a district attorney's office, which prosecutes individuals charged with capital crimes, may have highly experienced attorneys who deal with homicide trials regularly. The DA's office also often has in-house investigators, easy access to state forensics experts, and the cooperation of police departments, their homicide detectives and evidence specialists.

Those kinds of resources aren't available to court-appointed attorneys. That's because Alabama does capital defense on the cheap.

The great majority of today's Death Row inmates were convicted before 2000. Yet until 1999, court-appointed lawyers were paid \$20 an hour for out-of-court work and \$40 an hour for in-court work; until 2000, they got \$30 an hour out of court and \$50 an hour in court. Also until 2000, the court-appointed lawyers were capped at \$1,000 for out-of-court fees, meaning they were limited in the pretrial hours they could work on a case, unless they worked for free.

Today, court-appointed attorneys receive \$60 an hour for in-court work and \$40 per hour for out-of-court work, which is still low.

Until this year, court-appointed defense lawyers could at least bill (on average, \$29 an hour)

THE SERIES | WHAT'S NEXT

Wednesday: Will the state kill Anthony Ray Hinton, who makes a compelling case for his release from Death Row?

Thursday: The reasons death penalty supporters use to make the case for the ultimate pun-

ishment, such as deterring other crimes, don't hold up.

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

for overhead costs — that is, for expenses such as rent, insurance and office staff necessary to run a competent law firm. Attorney General King banned that practice in February. In September, a judge ruled the payments must be reinstated, but the issue of overhead expenses is likely to remain part of the indigent defense debate.

In a system like Alabama's that does not pay for or guarantee a high-quality, aggressive defense at trial for each death penalty case, it's even more important the trial get a close examination on appeal. But the death penalty appeals process is stacked heavily against somebody fighting for his life.

Serious errors

The first appeals are automatic, called "direct appeals," and generally focus only on serious errors made by the trial judge. Again, court-appointed lawyers usually handle these appeals — but there is a \$2,000 limit on fees the lawyer can collect for each automatic appeal. Even at the far-below-market rate of \$60 an hour, the appointed lawyer is getting paid for just 33 hours of work, yet he is expected to investigate the case from scratch, review thousands of pages of trial transcripts and evidence. How else can he competently represent his client?

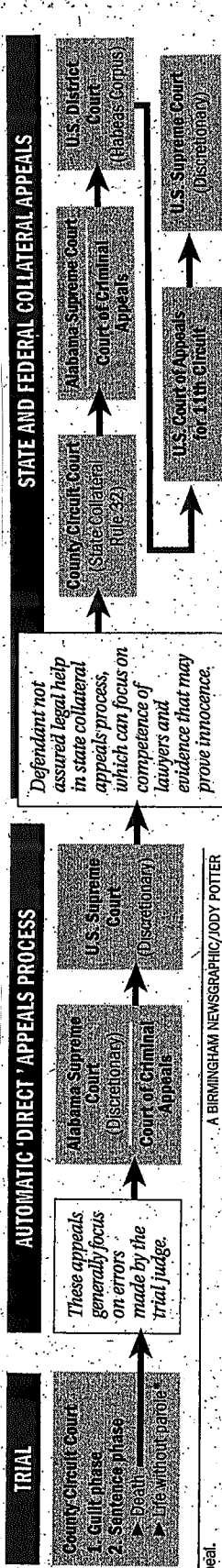
But it gets worse. The second round of appeal is known as the state "collateral" appeal, and every state provides for this last shot at the state courts. This appeal is a chance for the condemned to raise issues such as the competence of his lawyers or to present evidence that shows the death sentence was wrongly given or proves the defendant's innocence.

Unlike all surrounding states, the condemned person in Alabama isn't assured legal help to prepare for this crucial appeal, which is very technical and must include specific information in a certain form, or it will be denied outright, regardless of the merits. Adding to the pressure, these petitions must be filed within 12 months after the state Supreme Court has affirmed a death sentence. Unless certain deadlines are met, the inmate also forfeits access to some federal appeals. Yet today, more than a dozen Death Row inmates do not have lawyers to help them file these appeals. This is unacceptable.

There is not an endless pool of money to pay for defending the poor. Alabama, however, has the resources — and the responsibility — to do much more than it does. Indeed, it must ensure a decent legal defense if it is going to embrace and encourage death for those who commit the most serious crimes against society.

Anything less unconscionably devalues life.

CAPITAL MURDER THROUGH THE COURTS



A BIRMINGHAM NEWSGRAPHIC/JODY POTTER

*Not an automatic appeal.

Poor system can mean poor results

An unfortunate byproduct of a hodgepodge system of courts appointing lawyers for defendants charged with capital crimes, especially without strong standards for doing so, is that some inmates get less-than-excellent results. Some examples:

► **George Daniel** was tried, convicted and sentenced to death in Russell County for shooting a police officer. His trial lawyers asked Daniel's mother for his last paycheck, supposedly for evidence, but cashed it and kept the money for themselves.

Daniel had become severely mentally ill after a car wreck that caused brain damage. His bizarre behavior in the wreck's aftermath led to the confrontation with the officer. But an "expert" from the state had declared Daniel mentally fit, and his trial lawyers never questioned the expert's qualifications. The "expert," it turns out, was a high school dropout with no degree, training or credentials.

A U.S. district court judge granted Daniel relief, and he was removed from Death Row and sent to a mental hospital.

► In 1986, a Talladega County jury convicted **Judy Haney** of capital murder and sentenced her to death for hiring someone to kill her allegedly abusive husband in 1984.

At her original trial, Haney's court-appointed lawyer, Gould Blair, "was so drunk during the trial... that he was held in contempt and sent to jail," according to a 1995 report by the Death Penalty Information Center, an anti-capital punishment group.

Blair maintained Haney got good representation. "I would affirm to anybody the fact that I had a bad day in court does not in these circumstances mean this woman was other than more than adequately represented," he said.

On appeal, Haney argued Blair had not adequately represented her. Blair "had a severe drinking problem at the time of the trial" and "appeared intoxicated in court during the trial on other occasions," the filing said.

Talladega Circuit Court Judge Jerry Fielding reduced Haney's sentence to life without parole in 1997.

► In 1998, **David Hocker** lured his boss to a rural area near Dothan, stabbed him to death and stole his truck.

The mentally ill man was convicted in a trial that lasted one day. Hocker's defense lawyer, Michael Crespi, called no witnesses on his behalf, saying his client didn't want his family embarrassed by his troubled background.

Jurors never heard about the defendant's mental illness, his abusive upbringing or his father's mental illness and suicide. Hocker was sentenced to death.

Despite clear signs of mental illness — he mutilated himself on Death Row, including removing his testicles — Hocker was allowed to abandon his appeals before courts could determine whether he was competent and had received an adequate defense.

Hocker was executed in 2004.

Sources: Equal Justice Initiative, Death Penalty Information Center, news archives.

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