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OPINIONS

'The real world'

THE ISSUE *Regardless of whether the U.S. Supreme Court acts, Alabama should provide lawyers for poor Death Row inmates – not just for the sake of the inmates, but for the state and those who support capital punishment.*

Just across the Alabama border, no matter the direction, exists a perfect world, at least when it comes to Death Row inmates appealing their convictions.

Don't take our word for it. Read what the Alabama attorney general's office has to say about the state not providing lawyers for Death Row inmates who can't afford them: "Perhaps, in a perfect world, every inmate would have a lawyer at the ready at all times. But we live in the *real* world," the attorney general's office wrote in a brief defending the practice.

In that perfect world beyond our state's borders, every other death-penalty state in the nation appoints lawyers for poor Death Row inmates in state postconviction proceedings. Well, that's not exactly true; 35 of the 37 states with the death penalty appoint lawyers. The exceptions are New Hampshire and Alabama.

New Hampshire, though, has no one on Death Row and has not sentenced anyone to die under its current capital-sentencing laws.

And Alabama? Well, this is "the *real* world."

"I don't know why any state that wants to fairly administer the death penalty would want Death Row inmates unrepresented by lawyers," says Bryan Stevenson, the executive director of the nonprofit Equal Justice Initiative of Alabama, which represents poor people on Death Row.

EJI also represents a class of Death Row inmates that in 2001 sued in federal court seeking to force the state to provide lawyers for crucial, latter rounds of appeals. So far, the courts haven't been kind to the inmates. The state has prevailed in district and appeals courts.

Monday, the inmates went to the U.S. Supreme Court for relief. The inmates argue that the state's failure to provide lawyers to Death Row inmates is unconstitutional. At minimum, the inmates say, the state should provide some lesser legal help, such as paralegals, a prison law office or resource center, and also ease technical hurdles that result in many cases being thrown out of the courts.

The attorney general's office in one of its filings said Death Row inmates "almost without fail" have qualified lawyers who are "an impressive bunch and, relative to the state of Alabama (whose budgetary issues require no explanation), a well-heeled bunch, too." The attorney general's office also argues there is nothing particularly taxing about the postconviction process — even as it aggressively pursues (and often succeeds at) having inmates cases thrown out of court because of technical problems.

EJI and the American Bar Association say it is becoming much more difficult to find lawyers because Alabama's Death Row is growing — it has doubled since 1990 — and because the state caps lawyers' pay for postconviction work at $1,000. If lawyers do their job right, they will invest hundreds of hours of work reading trial transcripts and appellate filings, interviewing witnesses, researching the law and investigating, effectively earning far less than minimum wage, they say.

As persuasive an argument as EJI makes, ultimately, the case rests on the law.

In a 1977 case, the U.S. Supreme Court ruled that inmates have a right of "meaningful access" to courts so they can present postconviction petitions. In 1989, a divided court ruled that "meaningful access" doesn't require a state to appoint counsel for poor prisoners seeking postconviction relief.

Stevenson argues that so much has changed since then, such as the high court ordering states not to execute the mentally retarded and juveniles, that the court should revisit the "meaningful access" issue.

But even if the Supreme Court refuses to hear the inmates' appeal, Alabama should make sure every inmate on Death Row has a lawyer qualified in death penalty cases, not just to protect those inmates' rights, but to help protect a state that can't guarantee it dispenses the ultimate punishment justly.

As a News editorial page series in November 2005 made clear, Alabama's system of administering capital punishment is defective. The death penalty isn't applied fairly, with outcomes often hinging on race, status, the quality of the defense and even the jurisdiction. Nor are courts infallible; since 1993, five men have walked free from Alabama Death Row.

That, even though the attorney general's office refuses to acknowledge it, is "the *real* world." It is why Alabama must provide lawyers for poor Death Row inmates during their appeals.