

## At Sidebar

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# Throw Them Back, Kill Them When They're Bigger

### OVERHEARD CONVERSATION:

"So, do you believe in abortion?" "Nope."

"Do you believe in the death penalty?" "Yep."

Typical fisherman, throw them back and kill them when they're bigger.

OK, that was a joke (or an attempt at one). But the death penalty is serious business. The frequency of DNA evidence overturning convictions has caused several states to institute moratoriums. A number of other states are reviewing whether lethal injection is cruel and unusual punishment. In September, the U.S. Supreme Court agreed to decide a case involving the three-chemical process used in Kentucky. And on Oct. 29, 2007, the American Bar Association renewed its call for a nationwide moratorium on executions.

Many of the current questions involving the death penalty, like the new U.S. Supreme Court case, involve the methodology of carrying out the penalty. Other questions are about the morality of the punishment. Still other questions are about the effectiveness of the punishment as a deterrent. Undoubtedly, the person executed will not commit other crimes, but will that execution deter others from committing similar crimes? In one study involving crime in Chicago, incidents of violent crime actually increased in the days following an execution in the area. There is also talk of disparity, comparing high-profile defendants who can afford a significant defense to those who are less fortunate and are convicted with much greater frequency. This disparity leads to the most prevalent and overriding arguments that emphasize the flaws in our system.

It is hard to disagree with individuals who advocate the use of lethal force when necessary in defense of themselves or their family. But the immediacy of killing in self-defense is significantly different from carrying out a death sentence years after the commission of a crime. The flaws in our system have resulted in a number of people who were wrongly convicted—and even wrongly executed—for crimes they did not commit. How many innocent people can be killed to serve the greater good of punishing others who may have actually committed crimes?

Looking to the flaws in the system, the ABA sanctioned a three-year study of eight states that have capital punishment (Alabama, Arizona, Florida, Georgia, Indiana, Ohio, Pennsylvania, and Tennessee). The study, released in late October, cited a number of flaws, including the following:

- spotty collection and preservation of DNA evidence, which has been used to exonerate more than 200 inmates;
- misidentification of defendants by eyewitnesses;
- false confessions from defendants; and
- persistent racial disparities that make death sentences more likely when victims are white.

Findings such as these were the reason that Illinois placed a moratorium on executions in January 2000—about the time that the *Chicago Tribune* ran a series that examined more than 300 death penalty cases in Illinois between 1977 and 2000. The *Tribune* reported that 33 death row inmates had been represented at trial by attorneys who were subsequently disbarred or suspended, and that about half of the state's capital cases had been reversed and a new trial or sentencing hearing ordered. As a matter of fact, between 1977, when the death penalty was reinstated, and 2000, 85 people had been freed from death rows nationwide. Saying that the Illinois death penalty system was "fraught with errors," the governor of Illinois, George Ryan (who now has his own problems), commuted the death sentences of 156 inmates who were then on the state's death rows and placed a moratorium on future executions.

Illinois is not alone in this response. In February 2007, Tennessee's governor, Phil Bredesen, placed a 90-day moratorium on executions while the state studied its method of lethal injection. Tennessee—which, like most states, uses a three-drug combination for lethal injection—resumed executions in May 2007. Executions were also halted in Missouri, California, and North Carolina so that these states could study the methodology of lethal injection.

In 2005, at a time when 20 states permitted the death penalty for offenders below the age of 18, the U.S. Supreme Court held that the death penalty was cruel and unusual punishment for minors. The Court may hold that lethal injection should have a comparable fate. It appears that we should not resolve how to execute offenders until we have a system that will ensure that the right person is being executed. A wrongfully incarcerated person can be given his or her freedom if a mistake is found, but death is irrevocable. Thus, when we answer the question of how many innocents can be executed in order to serve the greater good, the answer must be zero. TFL

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