

Letters

'Capricious' Infliction of the Death Penalty

To the Editor:

The dramatic nature of the last-minute rescue of James David Autry from execution in Texas should not be allowed to obscure the increasingly capricious way in which the death penalty is being inflicted in this country.

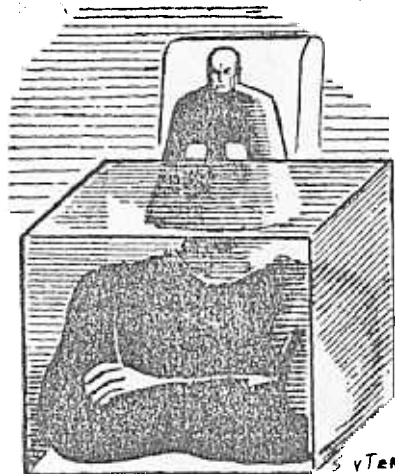
Consider the record of the last year in Texas cases alone:

Last December, Charlie Brooks Jr. was executed in the same room from which Justice White's stay snatched Mr. Autry this week. The prosecution alleged that Mr. Brooks and an accomplice had kidnapped a used-car salesman for no visible reason, and that one of them — the chief prosecutor in the case admitted he did not know which — shot the victim. Mr. Brooks was sentenced to death. The accomplice, after gaining a reversal of his conviction on grounds unrelated to guilt or innocence, received a 40-year sentence as a result of a plea bargain.

When Mr. Brooks challenged this disproportionality, the Court of Appeals refused to stay his execution for long enough to allow a full appeal of the issue. When he argued in the Supreme Court that the Court of Appeals had acted in undue haste and had been wrong in its conclusion that the disproportionality question was unworthy of plenary consideration, the Supreme Court replied that neither issue was worthy of review. Within months after Mr. Brooks had become the first inmate to be exe-

cuted by lethal injection, the Court changed its mind on both counts.

In February, Thomas Barefoot of Texas, who had been convicted of the murder of a policeman, was denied a



stay pending appeal by the same Court of Appeals which had denied one to Mr. Brooks. This time, the Supreme Court granted a stay of execution, and months later came down with a lengthy opinion setting forth the legal standards that the Courts of Appeals should follow in ruling on stay applications.

In Mr. Autry's case, Justice White ruled that his execution for the murder of a shopkeeper and a customer should not proceed until the Court had

heard his challenge to the absence of any proportionality review in the Texas system. That challenge is a weighty one, since the Court upheld the Texas system in 1976 on the stated expectation that the courts in that state (like those in Georgia, Florida and elsewhere) would conduct such reviews, and they have failed to do so.

All of this both raises serious doubts as to the propriety of Mr. Brooks's execution and teaches a broader lesson.

Our society rightly demands that no one be put to death in the name of us all until he has been afforded the most exacting due process. Yet not only are fallible humans incapable of assuring that no mistakes will be made in any of the thousands of such cases seeking review, but immense resources — of dedicated and often unpaid defense attorneys, of harassed prosecutors overwhelmed by the amount of crime which they must let escape without any punishment at all, and of overworked judges — are expended on these cases and diverted from genuine crime control.

Murderers should pay the price of their crimes. But, particularly when it is not applied to the worst criminals in our society or even to those with the weakest legal claims, the death penalty is simply not worth its cost.

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Washington, Oct. 6, 1983

The writer was one of the attorneys who represented Charlie Brooks Jr.