On October 6, it was Ronald Ray Howard's turn. He'd spent his last days reading, sleeping, cleaning his cell, and receiving visitors. He'd requested no last meal. At 6 in the evening, guards at the prison compound in Huntsville, Texas, escorted him from a holding cell to the execution chamber, a small, stark box of a room with brick walls painted turquoise, empty but for a gurney covered by a thin mattress and a hospital pillow. Members of the "tie-down team" fastened the gurney's leather straps around Howard and secured his arms to the narrow boards that winged out to either side of the mattress. They covered his lower body with a white sheet. They stuck both his arms with IVs.

Attendants to the execution filed into three separate compartments: one small viewing room for witnesses who had been close to the murder victim, one for Howard's witnesses, and another room from which an anonymous technician would administer the poison. As a reporter, I was admitted to one of the witness rooms - the victim's room, as it happened - where I stood behind the widow and daughter and former colleagues of Bill Davidson, the man Howard had killed 13 years earlier. From the back of the room, I found myself in the odd position of
straining to get a better view of something I didn't want to see: Ronald Howard's execution.

"It's painfully surreal," a defense lawyer who had been to two executions had warned me. "The idea that you go into a room where somebody's alive and you're not going to come out until they're dead. . . . It haunts me." Through the spaces between the bodies in front of me, I could make out the warden stationed by Howard's head, the chaplain at his feet. A micro-phone descended from the ceiling over the gurney, so that he could give his last statement.

Howard was a big handsome 32-year-old black man from Houston who had shot and killed Davidson, a white state trooper, when Howard was 18. He lifted his head from the pillow and faced the barred window that separated him from our room. "To the victim's family," he said softly, "I hope this helps a little. I don't know how, but I hope it does.

"And to y'all," he added, turning to the other window, behind which his younger brother and two friends were watching, "I love y'all. You know I love you." He thanked them for locating several of his children and repeated that he loved them. At 6:12, the lethal dose began flowing. "I love you. I love you," he whispered before lying back down. One of the drugs administered, pancuronium bromide, collapses the lungs; another, potassium chloride, stops the heart from beating. Howard's last breath was a sharp intake followed by a sigh.

Linda Sue Davidson and Kimberly Karl, Bill Davidson's widow and daughter, waited before the window, just a few feet from Howard, their arms around each other. They were substantial women in heavy makeup; the widow wore a man's wedding band on a chain around her neck. After Howard closed his eyes, they turned to face each other and whispered, "I love you." Then they kissed lightly. At 6:24 Howard was pronounced dead by a doctor in a dark suit and rubber gloves.

This is the way it goes in Texas, which has executed more people than any other state and carried out more than a third of the executions in the United States since 1976. Howard was the 14th person to be executed here in 2005, the 350th since Texas reinstituted the death penalty 30 years ago. More than two-thirds of Texans support the death penalty, though it's not as if they clamor for it: The machinery of capital punishment has been grinding away steadily for so many years that another execution barely draws notice, much less outspoken approval. Although Howard's crime was notorious at the time it went to trial, most people had long forgotten about it by the time of his execution.
In truth, lately there's been more discussion of the death penalty in Massachusetts than in Texas. The last three Massachusetts governors have all supported capital punishment. In 2003, the death sentence handed down to Gary Lee Sampson - convicted under a federal death penalty statute after murdering two people in Massachusetts during car-jackings - reignited debate within the state. Then last April, Governor Mitt Romney introduced a bill that would have reinstated capital punishment, only to see state representatives reject it in November. "We knew it was an uphill battle, but it's still disappointing as I hoped the Legislature would take a second look at the protections built into my bill," he says. "My hope is that over time the members of the Massachusetts Legislature will come to believe, as I do, that there are some crimes that deserve the ultimate penalty and that just as science can free the innocent, it can also identify the guilty." Last month, in announcing he won't seek re-election, Romney said getting his death penalty bill passed with a Democratic-controlled Legislature was impossible.

The governor's critics scorned his proposal as a mere political gesture, one that would endear him to conservative voters were he to run for president. Even so, Romney's attempt to bring a "state of the art" death penalty system to Massachusetts illustrates the enduring support for capital punishment - in a 2005 State House News Service poll, two-thirds of the state's residents favored his proposal - while pointing to the same questions raised in my mind by Ronald Howard's execution: How does the death penalty help? What purpose has it served? And given the egregious flaws in existing death penalty systems, could the death penalty ever be made "fair"?

Between the time of Howard's initial conviction in 1993 and the present, the death penalty has come under greater scrutiny around the country, in large part because of the number of exonerations from death row - 122 people have been released since 1973, 54 of them since 1997. DNA testing of evidence has accounted for some of those cases, but only a fraction. Almost 90 percent of exonerations have resulted from other developments, such as the recanting of witness testimony or refinements of forensic techniques, according to the Death Penalty Information Center. These cases highlight not only the risk of convicting and killing an innocent person (an act that has almost certainly happened) but also the broader flaws and inequities of the process. Still, the executions continue. Since 1977, an average of one person every 10 days has been put to death in the United States - more than 1,000 total - and another 3,400 sit on death row in the 38 states that have capital punishment.
The flaws in death penalty systems have convinced many to support state moratoriums, most prominently George Ryan in 2000, when he was governor of Illinois. Before Romney sent his bill to the Legislature, he both acknowledged the widespread criticism of existing systems and challenged the assumption that they couldn't be fixed by convening a commission to come up with a better system for Massachusetts. The state needs a death penalty, he says. Although there's little research evidence that the death penalty serves as a deterrent to crime, in an interview with me shortly before his bill was voted down, he insisted that it would. "Studies can show whatever you want them to show," he says. "Punishment has an impact on action, and the idea that a more severe punishment would have an impact on action is obvious to even a schoolchild. There's absolutely no question but that the death penalty would reduce a certain number of heinous crimes."

In December 1923, after Texas legislators voted to replace locally administered hangings with state electrocutions, an electric chair (soon to be known as "Old Sparky") was installed in the Huntsville prison. Captain R.F. Coleman quit his job as the Huntsville warden a month later. "It just couldn't be done, boys," he told reporters. "A warden can't be a warden and a killer, too. The penitentiary is a place to reform a man, not to kill him."

The record of Texas's capital punishment system, likened to a lottery by Texas Monthly magazine after a 2002 investigation, suggests how difficult it is to impose a death sentence justly. The Texas system's shortcomings - among them court-appointed defense lawyers napping during a trial and inept crime labs - have been widely publicized.

It is indigent defendants who end up with narcoleptic legal representation - and who end up on death row. "Most of the people that are sentenced to death are the underprivileged and the poor," says James Marquart, a professor of criminology at the University of Texas at Dallas and coauthor of a history of the state's capital punishment. "We define them as being different from the rest of us, and when somebody is defined as different, you can treat them in some pretty harsh ways."

Back in 1972, in part because of evidence that the death penalty was meted out disproportionately to poor and minority defendants, the Supreme Court ruled that capital punishment as it had been practiced was unconstitutional. To resume executions, state legislatures had to draw up stricter sentencing guidelines for
juries to follow. In Texas, that meant making only certain kinds of murders eligible for capital punishment and requiring that juries find the defendant to be a continuing threat to society. Since the change in the law, the racial bias in death sentencing has been reduced in Texas, but black defendants still make up the highest percentage of the state's death row.

Take Ronald Howard, who grew up in Houston's South Park ghetto and started stealing cars and dealing drugs as a teenager. The DA who prosecuted him portrayed him as a ruthless gang member; his own attorney maintained that gangsta rap had prompted him to kill Davidson. No one disputed that on the night of April 11, 1992, Howard was driving a stolen GMC Jimmy down a highway in Jackson County south of Houston when Davidson pulled him over for a broken headlight. As the officer approached, Howard grabbed a 9mm pistol his mother had bought at a pawnshop. He rolled down the window, took one shot, then drove off. Other officers took up the chase, and Howard slammed the car into a house before being caught. Davidson died a few days later.

Murder of a law enforcement officer is a capital crime in Texas; whether to seek the death penalty in a capital case is up to the district attorney. "We get all the information we can and find out about mitigating and aggravating factors," explains Lyn McClellan, a prosecutor for the Harris County district attorney's office. "Is this a first offender? Does he have mental disabilities? Does he have drug problems? This is all taken into consideration on whether or not we'll seek death or try it as a non-death capital."

Texas death penalty trials are divided into two phases: the guilt-innocence phase and the punishment phase. It's this second phase that charges 12 ordinary people with weighing another person's worth. They consider whether the offender is likely to pose a future threat to society and whether any mitigating factors might merit sparing him or her. Thus the decision about death depends a great deal on the temperament of the jury and the quality of the storytelling in the punishment phase of the trial. Jurors who have just found someone guilty of a brutal murder are not typically disposed toward lenience, but the defense attorney's job is to try to explain "what were the influences that went into making this person who they are, be they societal problems or issues, mental health issues, family issues," says John Niland, director of the Texas Defender Service's Capital Trial Project.

In Howard's case, tried a year after the crime, the Jackson County DA, Robert E. Bell, sought the death penalty. Since Howard admitted guilt, the only
question at issue was whether he would live or die. Trying to persuade the jury to let him live, defense lawyer Allen Tanner explained that Howard had lived all his years in a neighborhood where relations between residents and police were poor and in a city where two people had been killed in confrontations with law enforcement officers in recent years. He said that Howard felt Davidson had pulled him over just because he was black. He said that Howard had been to jail before and hadn't wanted to go again and that Howard thought by wounding Davidson he might get away. Tanner said Howard hadn't intended to kill Davidson and didn't pose a risk to society. And he said that Howard had been listening to albums that advocated violence against cops, like Tupac Shakur's 2Pacalypse Now. He even played rap recordings for the jury. (One wonders whether this helped or hurt Howard's cause.) Bell, on the other hand, characterized the murder as "a coldblooded execution" of a husband and father just doing his job. After six days of deliberation, during which two of the jurors held out for life, the jury agreed with the prosecution and voted unanimously for death.

In the view of prosecutors like McClellan, death sentences result from the horrible facts of the crime itself, not the quality of the lawyers. "People think, 'These Texas juries, they'll kill you,'" McClellan says. "Well, these Texas juries are about 60 percent people from up north. I defy you to find one that's not. People think everybody here was born and raised Texan with a six-shooter on their side, and that's just not the way it happens."

But without belittling the seriousness of Howard's crime, even a death penalty supporter might question whether the 18-year-old should be sentenced to die for it. Or whether we ought to execute those who murder impulsively in the course of a robbery. Are they "the worst of the worst"? Marquart, a capital punishment supporter, maintains that the death sentence has undergone something like mission creep. When legislators designed the new law in the 1970s, he says, "you had to be a continuing threat to society, with a sustained history of violence and pathology in your background. It was Ted Bundys and people like that - that's what they wanted in the beginning. To me, the death penalty has just been overused for crimes that I don't think meet that kind of criteria."

So what would a "better" death penalty system look like? Enter Mitt Romney, who pledged during his 2002 campaign for governor that he would attempt to reintroduce capital punishment in Massachusetts. In 2003, he appointed an 11-member commission to develop recommendations for "a new kind of death penalty," one that would be narrowly applied and require the highest possible standard of evidence. The Massachusetts Governor's Council on Capital
Punishment, which included scholars, lawyers, and forensics experts, did not consider whether capital punishment should be reinstated - only how a better law might be written - and its members pledged to set aside their opinions about the morality and desirability of the death penalty.

"I actually deliberated for months before accepting the appointment, in part because I work at a hospital, where our mission is to alleviate pain and suffering," says Frederick Bieber, a forensic DNA expert and associate professor of pathology at Harvard Medical School who served as cochairman of the council. "And I wondered, quite frankly, whether it might be an inherent conflict to have any role in a discussion of taking a life." But in the end, he accepted "with enthusiasm," he says, "because 38 states and the federal government and the US military all have legislation allowing the death sentence, and many are beginning to reevaluate their existing laws, and I felt if we did a good job, we could have a positive influence on other groups."

In contrast to the reform commission called for by then-governor Ryan in Illinois, the Massachusetts group was not constrained by a death penalty law already on the books, with its associated institutions and vested political interests. The commission operated free of practical concerns. What a capital punishment system would cost and how it would be implemented were outside its purview, a great advantage, according to Joseph Hoffmann, an Indiana University law school professor and a cochairman of the commission. "The governor said, 'Give us the gold standard; tell us the best we can do,' and that's the reason I got involved," Hoffmann says. "It was an opportunity to go places nobody had gone before and put together something better than anything that exists today."

The commissioners limited death-eligible crimes to a short list of highly aggravated murders: murder committed as political terrorism or to obstruct justice; murder following prolonged torture; multiple murders; or murder committed by someone who had already been convicted of first-degree murder.

Some of the commission's other recommendations, incorporated into Romney's bill, required the use of scientific evidence and a "no-doubt" standard of guilt to avoid false convictions, established a system of capital-case-qualified defense lawyers to represent the accused, and incorporated multiple layers of review that would detect bad cases or wrongful convictions. To have a fairer death penalty, Hoffmann says, the state would have to implement all of the proposals, not pick and choose. "These are not in isolation, and one of the real dangers is to think that if we just do one, five, and seven, we'll be all right,
"he says. Like Bieber, Hoffman hopes the commission's work will influence reform in other states, even if a death penalty bill never passes in Massachusetts.

Problems with capital punishment elsewhere, however, are directly linked to a state's unwillingness to pay the high price of strong capital defense. "How many on death row get executed because of a failure of their lawyer?" asks David Dow, director of the Texas Innocence Network at the University of Houston Law Center. "Almost everybody. Getting death is only distantly related to what he did. Proximately, it's that he had a bad lawyer, a corrupt prosecutor, corrupt police - that is what lands people on death row. We still have lawyers abandon their clients at various stages of the legal proceedings." Ronald Howard's lawyer, Dow contends, failed to file a final appeal with the US Supreme Court. And while the state can require that death penalty cases go to more experienced lawyers, as Texas did in 2001, "what you can't guarantee is an adequate defense, because the state is not willing to pay the lawyers enough," Dow says.

That's not a problem only in Texas. Massachusetts lately has had trouble assigning lawyers to poor defendants in criminal cases because of the low fees paid by the state. Last year, Romney denounced lawyers' refusal to take such cases and, initially at least, resisted calls for raising the pay scale. But Romney brushed away questions about the cost of his proposal. "This is not a measure based on cost. This a measure based on life, the preservation of life through the deterrent of the death penalty," he told me. "In my view, those people who oppose the death penalty on moral grounds have an understandable and fair posture, but those who try to manufacture other reasons are ducking."

The last time Massachusetts came close to passing a death penalty law was in 1997, after Jeffrey Curley, a 10-year-old Cambridge boy, was abducted, sodomized, and murdered by two men. The crime received heavy media coverage, and in the Legislature, the 10-vote margin opposing passage of a death penalty bill dissolved overnight. The Senate adopted one version, and the House voted 81-79 to pass another, and only in a second House vote did the bill fail, because one legislator changed his mind. Since then, the state's Republican governors have continued to support the death penalty while the margins against it have widened in the House and Senate (the House vote on Romney's bill was not even close, 99-53, and the Senate has no plans to even consider it). Most anti-death-penalty activists feel fairly secure that Massachusetts will not reinstate capital punishment. "We've had leadership in the Legislature who are opposed to the death penalty, which means that no one's pushing it from within," says Norma
Shapiro of the Massachusetts ACLU. Still, the activists admit, another crime as gruesome as the Curley murder could tip the balance back the other way.

Two weeks before his execution, Ronald Howard granted me an interview. We spoke by prison phone, seated on opposite sides of a window in the visiting room at the Polunsky Unit, where Texas death row is housed. He'd been saying his goodbyes, preparing for his "date," but at the same time he was trying not to worry too much about it. He was soft-spoken and reflective. "To be real, I feel like if somebody did something to your little one, your loved one, you want revenge," he said. "I want to say no, because I feel like all people can change, but I find myself being conflicted when I think about my own loved ones. All in all, if I was to have to say, a punishment of life probably would be fine. That's more of a punishment anyway. Who wants to grow old in prison?"

Speaking of his own case, he continued, "I'm in trouble for having killed a police officer. That one instance labels me for the rest of my life. Is that fair? It's not a process that you really get the worst of the worst, there's no way to ever do that. On Texas death row, you have a lot of people who were between 18 and 22 years old when they got into trouble. Ten years later, are they the same person? Some of them may still be, but a lot of us grew up. A lot of us did things we weren't proud of when we were kids. Do we need to be killed now?"

For McClellan, the Harris County prosecutor, the death penalty is "society's right of self-defense." Though, unlike Romney, he doubts that it has a deterrent effect, he likens the death penalty to someone's shooting his attacker. "When you do an unpardonable act that can never ever be changed, you have to face the consequences," he says.

But what consequences? The risk of convicting and killing an innocent person is itself one argument against the death penalty, but even the sentencing of murderers who are certainly guilty raises a difficult question: Is there a systematic way of determining who "deserves" to die?

Last year, at an Indiana Law School conference convened to analyze the Massachusetts Governor's Council report, one scholar noted that requiring the prosecution to meet a "no doubt" standard of guilt would leave some of the most heinous crimes ineligible for the death penalty.

I asked Howard what he thought of the jurors who'd condemned him. "I wish
they could have had a chance to really know me instead of just sensationalism," he said. "I wasn't the person I was portrayed to be. I would never try to tell you that I was an angel, but I wasn't that horrible, the worst of people. No, that wasn't me."

The state of Massachusetts last executed a man in 1947, when convicted murderers Philip Bellino and Edward Gertson were put to death in the electric chair at Charlestown State Prison. In the 1950s and '60s, the death penalty was legal in Massachusetts, but a series of anti-death-penalty governors refused to sign the death warrants of the convicted. And in 1957, Governor Foster Furcolo appointed a commission to study abolishing the death penalty. The majority on the commission concluded that the death penalty did not offer the community more protection than did life imprisonment and recommended that it be abandoned.

The Supreme Judicial Court declared the death penalty unconstitutional in 1975 and again in 1984, but the issue of capital punishment nevertheless keeps rearing its head in political campaigns. "We're still living with the fear that rising crime instilled in people," says Boston College professor Alan Rogers, who is writing a history of the death penalty in Massachusetts. "Anyone who has aspirations of running for governor or higher political office does have to say something about the death penalty, and usually what they have to say is that they are in favor of it."

Because Romney didn't assign anyone to study the necessity, cost, or practical implementation of a death penalty statute, critics believe his proposal was never serious. "It's solely symbolic," says Franklin Zimring, a law professor at the University of California at Berkeley. "What happened in Massachusetts is the governor said: 'Look, I want to have a death penalty. Go find out for what I should have it.' And they come back and say, 'Practically nothing, but it'll be pretty safe.'"

So perhaps Romney did invent the perfect death penalty, one that would never send the wrong man to the execution chamber - a death penalty that's only the idea of the death penalty, never turned into law and therefore never liable to any of the error and injustice that actual death penalties wreak elsewhere.
SIDEBAR:

A CHRONOLOGY OF THE DEATH PENALTY

1608 In Virginia, George Kendall's execution is the first recorded in the Colonies.

1632 In Virginia, Jane Champion is the first woman executed in the Colonies.

Early 1800s States begin reducing their capital crimes and building state prisons.

1846 Michigan is the first state to ban the death penalty for all crimes but treason.

1890 New York executes William Kemmler, the first prisoner put to death by electrocution.

1907-17 Nine states abolish or strictly limit the death penalty.

1924 Cyanide gas is introduced as a method of execution.

1930s The highest level of executions in the United States is reached - an average of 167 per year.

1966 A Gallup Poll shows support for the death penalty at only 42 percent nationally - an all-time low.

1972 In Furman v. Georgia, the Supreme Court effectively voids 40 capital punishment statutes and suspends the death penalty.

1976 In Gregg v. Georgia, the death penalty is reinstated.

1977 Gary Gilmore is executed by firing squad in Utah, ending a 10-year moratorium on capital punishment.

1982 Charles Brooks, in Texas, is the first person executed by lethal injection.

1984 Velma Barfield, in North Carolina, is the first woman executed since the
death penalty was reinstated.

1986 The execution of insane persons is banned.

1998 Northwestern University holds a conference on wrongful convictions with 30 inmates who were freed from death row after being found innocent.


2005 North Carolina executes Kenneth Lee Boyd, the 1,000th execution in the United States since capital punishment was reinstated in 1976.

A GRIM MILESTONE

State-by-state executions since 1976 (at press time) On December 2, with a lethal injection administered at a North Carolina prison, convicted killer Kenneth Lee Boyd became the 1,000th person executed in the United States since capital punishment was reinstated almost 30 years ago.

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GRAPHIC: PHOTO CHART MAP

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