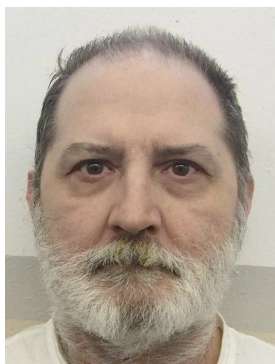


Alabama Voices: For everyone's sake, Alabama must do more for people with mental illness

Leah Nelson, Alabama Voices Published 3:00 p.m. CT June 28, 2018



(Photo: Alabama Department of Corrections via AP)

Sometime in the early hours of June 3, Jeffrey Lynn Borden, age 57, died by suicide in his death row cell in Atmore, Alabama's Holman Correctional Facility.

Borden took two other lives before he took his own. On Christmas Eve 1993, he shot and killed his estranged wife and father-in-law as their family looked on.

Mental health professionals had warned something like this might happen. In the years leading up to the shooting, Mr. Borden had been in and out of mental health facilities in Alabama and Tennessee.

With his complicated history of depression, paranoid delusions, and pain from injuries sustained at the workplace, in motor vehicle accidents, and during prior attempts to end his own life, he was described in treatment notes as one of the most intractable cases his caregivers had ever seen.

When pharmaceutical options failed, one doctor subjected him to electroconvulsive therapy, or ECT, noting that Mr. Borden was the first patient in his entire career that he'd subjected involuntarily to ECT.

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Nothing worked. On releasing him – as they had to – Mr. Borden's doctors warned that he would likely be a danger to himself or to those close to him.

When he shot his wife and her father that Christmas Eve, he did what his doctors expected he might. They were as powerless to stop him as he was to stop himself.

Alabama law allows the death penalty for people whose serious mental illnesses make it impossible for them to make rational choices.

In 2006, the American Bar Association recommended that this practice be stopped, saying that "individuals with severe mental illnesses or disabilities present at the time of the crime should not be subject to capital punishment," but should instead be sentenced to life without parole.

Both the American Psychological Association and the American Psychiatric Association also oppose executing people with serious mental illnesses.

I was a member of the last legal team to represent Mr. Borden. His medical file was the thickest I saw during my five years on that job, rich with detail about the decades of anguish and unsuccessful treatment that preceded the murders.

But his case was a difficult one. "Not guilty by reason of insanity" is a standard that predates the founding of this nation. And over the past decade, the U.S. Supreme Court has clarified that it is unconstitutional to execute individuals who are unable to understand why the state plans to kill them.

But there is no protection for people like Mr. Borden, whose crime was motivated by mental illness but who technically understood, at the time he committed it, that murder was against the law, and who remembered, until the day he killed himself, why the state was determined to execute him.

Things should not be this way. A few states have considered legislation to bar those with serious mental illness from facing execution, reasoning that if other individuals with compromised capacity to reason – for instance, juveniles and those with intellectual disability – cannot be executed even when they commit capital offenses, neither should people whose mental illnesses diminish their ability to make rational choices.

Alabama should do the same. And, as long as it chooses to maintain a death row, it must provide individuals warehoused there (and all incarcerated people) with adequate mental health care and medical treatment.

The state failed Mr. Borden on all counts. The week before he died, his lawyer sent Holman's warden a letter demanding that Mr. Borden's chronic pain – the same pain that interplayed catastrophically with his mental health when he was a free man – be adequately treated.

Meanwhile, the mental health care at Alabama's prisons is so bad that a federal judge in 2017 found it "horrendously inadequate" and ordered the state to fix it. One of the men whose testimony had undergirded that ruling died by suicide in prison not long after testifying.

The day Mr. Borden died, there was reportedly no captain on death row because it was a weekend. It's possible he hadn't seen any corrections officer in over 24 hours – if reports from my former clients on death row are to be believed, entire weekends can pass without a corrections officer coming to check on them.

Depending on how you see things, the men on Holman's death row are either helpless, locked up as they are in tiny, filthy cells, or they are most dangerous criminals in Alabama. Either way, they deserve attention.

There are people who will say that justice was served when Mr. Borden died by suicide. They will say, as one of the police detectives who worked his case did last year, that he was on death row too long and that he should have been dead long ago.

For myself, I'm glad his suffering on this earth is over and I hope he is at peace. My thoughts are with his children, who have now lost both parents to their father's mental illness.

People with serious mental illness like Mr. Borden do not belong on death row, and the Alabama legislature should bar those with serious mental illness from facing execution.

But as long as they are there, they must be cared for properly. Three people died senselessly because Jeffrey Borden's mental illness was never adequately treated. In their memories, the state of Alabama – all of us – must do better.

Leah Nelson is a researcher with Alabama Appleseed.

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