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Death sentences imposed arbitrarily

By Seymour Simon
Retired Illinois Supreme Court Justice

The 1995 execution of convicted murderer Girvies Davis is a powerful rationale for commuting all death sentences in Illinois to life imprisonment.

Davis, 37, was no choir boy. He was sentenced to die for the 1978 murder of Charles Biebel, 89, during a robbery in Biebel's home near East St. Louis. Davis also was convicted of three other murders. Still, his case demonstrates that who is put to death, and who is allowed to live the remainder of his days in a penitentiary, is a matter of chance, and that the Illinois capital-punishment law cannot be imposed uniformly and consistently.

U.S. Supreme Court Justice Potter Stewart once said that who receives the death sentence in the U.S. is as freakish as who gets hit by a bolt of lightning. In a striking way, the Davis case proves that death-sentence hearings in Illinois are based on the discretion and proclivities of the hundreds of people who have occupied the 102 offices of state's attorney in Illinois.

Under the Illinois statute no death-sentence hearing can be held unless it is requested by the state's attorney's office in the county where the prosecution took place. Davis' death-sentence hearing was requested by the state's attorney in St. Clair County.

The Illinois Supreme Court reversed Davis' death sentence and remanded his case for a new capital-punishment hearing. Following the remand, the St. Clair state's attorney filed a petition requesting a resentencing hearing, stating that the state was waiving its request for the death penalty and instead would seek a term of natural life. Before the court acted on the petition, a new state's attorney took office and withdrew the petition. The new state's attorney requested a death-penalty hearing for Davis.

Thus it was the fortuitous circumstance of the replacement of the state's attorney that resulted in the request for the imposition of death on Girvies Davis and his eventual execution.

Even more significant is what the Illinois Supreme Court said about Davis' argument on appeal. Davis said that the switch in the state's attorneys' capital-punishment decisions made the death penalty arbitrary and capricious in its application and would be cruel and inhuman punishment. The court swiftly disposed of this argument, pronouncing that the decision by the successor state's attorney "to seek the death penalty ... was based on the prosecutorial discretion of a new state's attorney."

With numerous state's attorneys in Illinois during the past 23 years in which the death penalty has been imposed, and with each of them exercising his or her own discretion in deciding whether to ask for capital punishment, how could the death sentence have been imposed uniformly and consistently? Under some state's attorneys few, if any, death sentence hearings are requested. Others request a death sentence hearing in nearly every murder case. The Davis case demonstrates that even in the same county, different state's attorneys can take different views on the same case on the propriety of a capital sentence.

This demonstrates succinctly how administration of the death sentence in Illinois has depended on the individual proclivities of countless individuals.

Who should be prosecuted is, of course, a decision of the local prosecutor. But the death sentence is such a different type of punishment and so irreversible and severe that it should not be based on the discretion of 102 county prosecutors who serve for a time and then are replaced.

This is precisely the point made by U.S. Supreme Court Justice Harry Blackmun in a dramatic and eloquent dissent delivered shortly before he retired from the court. He said he would no longer support the death penalty because, after 20 years of affirming death sentences, he had come to the conclusion that the death penalty was being meted out arbitrarily and discriminatorily and that deciding which murderers should live or die was so subjective it could not be imposed consistently and fairly. Because of the lack of uniformity and fairness in the imposition of the death sentence and because, no doubt, there are prisoners on Death Row who are no more, perhaps less, deserving of death than others serving life sentences for murder, all death sentences in Illinois should be commuted to imprisonment for life.

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