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Capital Punishment: Like anything else, you get the system you pay for

By DAVID L. RAYBIN

Some folks think the best way to "fix" our capital punishment system is to get a thicker rope.

Actually, that might not be a bad idea if we use the rope to "lasso in" the various players who participate in the investigation, trials and appeals of these cases.



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To look for solutions we must first recognize that the death penalty is big-ticket, luxury item. When I drafted Tennessee's death penalty statute in 1976, the legislature appropriated not one penny for the increased costs for the prosecution of capital cases. We have long since learned that such fiscal foolishness resulted in decades of delay and dozens of overturned verdicts.

Even though all people charged with capital offenses are indigent, we should still use the private sector model to fund the defense of these cases. Instead of begging the judge for money to hire an investigator or a fingerprint expert, the defense lawyer should be given a significant budget and the freedom to make appropriate choices how to spend the money.

The Supreme Court should not be in the business of telling the defense whether a particular expert is too expensive. Every attorney will tell you that a single, well-placed expert can make the difference. If the lawyer wants to spend a quarter of the budget on one expert, so be it. Nobody tells the government whom to hire. A significant, fixed defense budget would level the playing field and save a fortune in judicial resources.

Prosecutors should be required to share their entire case file with defense attorneys in death penalty cases. We waste years litigating whether the prosecutor turned over critical evidence. The best thing to do is require that everything be turned over at the front end. Who wants to retry a case years later, when the memory of the witnesses have evaporated?

All confessions should be tape-recorded from start to finish if the prosecution intends to use the confession in a death penalty case. Why waste days litigating whether the police gave somebody their *Miranda* rights when a \$20 tape recorder could settle the question?

I have yet to see a rigorous statistical analysis of the reason for the delays in all death penalty cases tried over the last 30 years. We demand this sort of cost-usage review before we appropriate money to build a bridge, but we rely on only anecdotal evidence to fund matters of literal life and death.

Why are there decades between the crime and the execution? Why are so many "guilty" folks freed when later DNA analysis shows we had the wrong person in prison?

These unsettling questions do not inspire confidence that we are playing fair with the victim's family or the accused. The only "value" for having a death penalty is that it expresses societal outrage for a particularly outrageous offense. But, until we treat the death penalty as a luxury item, it will remain an insult to our entire criminal justice system.

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