

## **Court seeks to ensure death penalty is fair**

11/30/01

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The Tennessee Supreme Court indicated yesterday it will try to improve the future accuracy of a murder database it created to ensure the fairness of death sentences.

But one justice said more substantial changes are needed to ensure fairness, which was required when the death penalty law was adopted in 1977.

A *Tennessean* investigation published in July found that the court's murder database was riddled with errors and omissions. The database, which the court uses as a research tool, is a compilation of reports from first-degree murder cases filed by trial judges. The justices use it to compare the specifics of first-degree murder cases.

*The Tennessean* found that 20% of the death penalty cases were missing from the database and that 60% of the other first-degree murder cases were missing as well. At the time, the court said in a statement it was following the law by examining the facts in every death case, among other things.

In its decision yesterday in the Bobby Godsey case, the majority said: "While reports have not been filed in every case, this court and trial judges across this state are working together to ensure that these reports are being filed in current cases and will be filed in future cases."

"That's at least a tacit admission there was a problem," said Nashville lawyer David Raybin, author of the 1977 state death penalty law that requires comparative review. "I'm happy they're trying to fix them for future cases. But it does not address previous cases."

In his dissent yesterday, Justice Adolpho A. Birch called on the court to do more. He said the majority's assertion that "reports have not been filed in every" first-degree murder case is "at best, a substantial understatement."

"The fact that life (sentence) cases are much more likely to be omitted from the database than death cases suggests that defendants are placed at a significant disadvantage in their effort to locate" similar cases that might help prove a death sentence is too harsh, Birch wrote.

"Errors and omissions in the database, whether many or few, inject into this court's proportionality review a real possibility of error."