

Reports, polls, court ruling point to thorny death penalty questions

WASHINGTON – Two high-profile executions scheduled for July and one capital sentence blocked by the Supreme Court in June provide examples of the range of issues surrounding the death penalty in the United States.

Combined with data from recent studies that show increasing public doubts about capital punishment and pointing to persistent racial disparities in how the federal death penalty is applied, and topped off with analyses of several states' uses of it, all of these pieces reflect a conflicted populace and a sometimes messy judicial system.

South Dakota carried out its first execution in nearly 60 years July 11, using lethal injection to kill Elijah Page, 25. Page confessed to helping torture and murder Chester Allen Poage in 2000 to cover up a robbery.

Although Page's defense attorneys pointed to a childhood of brutal abuse as an extenuating circumstance worth a reduction of his sentence to life imprisonment, he had given up on his appeals. Observers noted the case puts the state in the odd position of getting back into the business of executions just as other states are backing away from it.

The Philadelphia Inquirer newspaper July 1 reported that 50 death sentences have been overturned in Pennsylvania in the last seven years. The only three state executions since 1962 have been of people who gave up their appeals, leading one district attorney to say that for all practical purposes "there is no death penalty in Pennsylvania."

In Tennessee, a June report on capital cases where the defendant is indigent found prosecutors had at least twice the financial resources that were available to the defense.

"When even the most capable and hard-working attorneys lack adequate resources to do their job, there is an increased risk that innocent people will be incarcerated, guilty people may never be prosecuted, and other defendants will receive unfairly excessive sentences," said Bill Redick, director of the Tennessee Justice Project, according to the Death Penalty Information Center.

Even in states where executions are common, such as Georgia, which executes an average of three or four people a year, questions are being raised. Local, national

and international figures have tried to intervene to stop the execution of Troy Davis, scheduled for July 17, citing serious doubts about whether he's guilty.

Seven of nine key witnesses against him have changed their statements or recanted their testimony, which they said was coerced by police. Several people have implicated another man, who reportedly bragged about killing off-duty police officer Mark MacPhail in 1989.

Davis has consistently maintained he is innocent of killing the Savannah, Ga., policeman who broke up a fight at a Burger King where he moonlighted as a security guard. No physical evidence linked Davis to the crime.

However, the 1996 Antiterrorism and Effective Death Penalty Act limits Davis' appeals because new information was not brought out using the right procedure.

Former FBI Director William Sessions, now a federal judge who supports the death penalty, argued for clemency in an Op-Ed column in the Atlanta Journal-Constitution newspaper. "It would be intolerable to execute an innocent man. It would be equally intolerable to execute a man without his claims of innocence ever being considered by the courts or by the executive."

In North Carolina, a report by the Charlotte School of Law found problems with the way the system there treats defendants with mental illness, either because they are allowed to represent themselves at trial or because juries apparently treat mental illness as an aggravating factor in murder trials rather than as a mitigating factor as provided by state law.

The U.S. Supreme Court weighed in on the mental illness question on the last day of the term, sending a case back to a Texas court to reconsider Scott Panetti's death sentence using a broader standard for whether he is mentally incompetent. Previous Supreme Court rulings said a person must be competent enough to understand the connection between his execution and his crime.

Those not-so-simple issues may explain the recent findings of a nationwide opinion poll conducted for the Death Penalty Information Center.

Sixty-two percent in the poll of 1,000 adults said they support the death penalty in a straight yes-or-no question. But when given another option, only 47 percent chose the death penalty over the alternative of life in prison with no chance of parole. Forty-three percent said they would prefer life imprisonment for convicted murderers.

In the early 1990s, 80 percent of Americans said they support the death penalty, the

highest level in recent polls. In the mid-1990s, shortly after the Oklahoma City federal building bombings, just 29 percent of Americans favored life imprisonment over execution.

In the latest poll, fewer than 40 percent of the people questioned expressed confidence that only guilty people are sentenced to death. Fifty-nine percent said they had only some, very little or no confidence that only guilty people receive the death penalty.

Another nationwide report released in June by the American Civil Liberties Union found evidence of racial disparities in how the federal death penalty is applied and recommended a moratorium on federal capital prosecutions and executions.

Thorny questions of race in capital cases will come to the fore in one case the Supreme Court has agreed to hear for the next term.

In *Snyder v. Louisiana*, the prosecutor eliminated all African-Americans from the jury pool and equated the case with the trial of former football star O.J. Simpson. He exhorted the all-white jury not to let the defendant “get away with it” as he said Simpson had. Simpson, who is black, was acquitted of murdering his ex-wife and her friend, who were both white.