



# Crime & Punishment

James Alan Fox on criminal behavior and the justice system

## No gain in death penalty for Sampson

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It is the criminal justice version of déjà vu.

Two years ago, the death sentence previously given to serial killer Gary Lee Sampson was appropriately overturned because of juror misconduct during his 2003 trial in federal court. So now, U.S. Attorney Carmen Ortiz must prepare a recommendation for Attorney General Eric Holder on whether the death penalty should be sought in this case, just as former U.S. Attorney Michael Sullivan did a decade ago for then Attorney General John Ashcroft.

Consistent with federal rules, the families of Sampson's victims must be consulted in reaching a recommendation on whether to pursue the death penalty. At least some of the family members are insistent that nothing less than death will serve the interests of justice. But let's also consider what is in the best interest of society.

Gary Lee Sampson is now 54-year-old and will be locked up for life, or what's left of it. After all, incarceration tends to shorten one's life expectancy. The food, medical care, and living conditions are hardly ideal for maintaining the best health, not that I'm particularly concerned about his level of comfort. The point is that, should Sampson be given a death sentence in his penalty hearing do-over, he may not live long enough to see the executioner's gurney. And even if he does become one of the small handful of prisoners put to death by the federal government, how many years of breath are we actually taking from him?

Legitimate concern has been expressed over having to subject the victims' families to the emotional ordeal of once again testifying in court, sitting face-to-face with Sampson in order to give a victim impact statement. Of course, they are free to decline the opportunity, but why put them in the position of choosing between their comfort and Sampson's discomfort?

Without question, those directly impacted by crime should have input to the criminal justice process. Their wishes in terms of sentencing may be a consideration, but not a main consideration. Sure, they want justice for their loved one; however, basing sentencing decisions on what victims want only works against the concept of equal justice.

Whether families are for or against capital punishment, and the strength and persuasiveness of their argument in front of the jury should not influence what objectively is the fair and just result. Punishments for crimes should not vary based on victim preference, ideology or eloquence.

It is, of course, standard practice for courts to permit input from victims prior to imposing sentence. These victim impact statements do serve important functions: They provide victims the cathartic opportunity to describe in open court their pain and loss; they force the defendant to confront the full gravity of the crime; and, particularly in murder trials, they help to humanize the victim, who otherwise is present in the courtroom in name only. In the Sampson case, the families have had that opportunity already.

Gary Lee Sampson is locked away for the remainder of his life. What is to be gained by pursuing the death penalty all over again, and is it really worth the emotional and financial toll?