

Justice in Nebraska

Law officials unsure what Hunt decision means for state

defendant's identity. Certainly, any killing has the effect of rendering the victim incapable of identifying the perpetrator; that truism, however, does not satisfy the requirement that the murder be committed 'to conceal the identity of the perpetrator.'

Further, the Supreme Court said, the murder was cruel, but not "especially so, for any forcible killing entails some violence toward the victim. 'The evidence establishes that the victim was rendered unconscious within a short time of the defendant's intrusion into her home.'

Even after reading the Supreme Court's opinion, Brown still argues that aggravating circumstances existed.

"My reaction to the Hunt decision is kind of 'Boy, if this doesn't strike us as especially heinous, then we are living in a very dangerous environment,'" Brown said. "This should be bad enough to make us think this is especially heinous."

In explaining why four of the justices had a view different than his own, Brown said only that this type of decision is a subjective one, one that comes from "the gut."

"In deciding whether something is especially heinous there is no yardstick, no calipers you can lay down on a set of facts and say 'Well, this crosses the line and this doesn't.'"

Chief Justice Krivosha, one of those who joined in the majority opinion, gave a similar analysis. While speaking to a UNL journalism class, Krivosha drew a line on the blackboard. One end represented "heinous" crimes, he said, the other "especially heinous."

These two ends are easy to determine, Krivosha said. As simple as night and day, he said. The chief justice then pointed to a spot midway between the two points.

"But can anyone tell us at which moment twilight began?" he asked.

Krivosha made these statements in September. Since then, the justices have declined to publicly comment on the decision.

During the class period, however, Krivosha expanded on the majority's opinion.

The majority decided Hunt's crime failed the "especially heinous" test, he said, because Rampott was dead soon after Hunt entered the mobile home. Thus, any of Hunt's subsequent actions could not be part of the high court's consideration, he said.

Martin Gardner, a law professor at UNL, said this type of interpretation is a "pretty strict" reading of the law.

"But in criminal statute that's a requirement," Gardner said.

While the minority opinion didn't go as far as to state the subsequent actions were "especially heinous," the three judges did say the method by which Rampott died was "especially heinous."

In the minority opinion, the justices stated: "That Beverly K. Rampott had physical suffering is inferable (sic) beyond a reasonable doubt from the evidence of the strangulation method used by the defendant."

Thomas Delay, the Norfolk attorney who defended Hunt, disagreed with the minority opinion. Under the law, he said, the courts must weigh each new case against past decisions and sentence accordingly.

In the Hunt decision, Delay said, the Supreme Court compared the facts in the Hunt crime to cases such as State v. Reeves and State v. Roewert.

The Reeves case helped define the "especially heinous" circumstance. In this instance Randolph Reeves entered his cousin's home in Lincoln and proceeded to rape her and stab her several times. Reeves later stabbed another woman who was staying at the home.

The second victim died soon after she was stabbed, but Reeves' cousin lived long enough to relay the ordeal to police that same night. This, the high court said, established the fact that the victim suffered excessively.

Going the other way, Ricky Roewert was sentenced to life in prison rather than death by the District Court of Platte County.

Roewert committed a robbery. In the process of the robbery, he slit a man's throat, cut off the victim's head and then mutilated the body.

Using comparisons such as these, Delay said, the Supreme Court ruled appropriately that Rampott did not suffer for a great length of time.

Two pathologists testified that the victim died quickly either after Hunt stuffed the panties down her throat or after he strangled her. With this in mind, Delay said, the murder was not "especially heinous and cruel."

"Especially heinous means in that particular case comparing it to other first-degree murders. Not to Joe Public or Suzy," he said. "It's not your

gut reaction... It's not black and white, two and two equals four."

In reviewing the Hunt case according to the statutes, Delay said, the high court has not set a precedent for weighing aggravating and mitigating circumstances. What it perhaps has done is better define "especially heinous."

Past cases established that murders in which the victim did not suffer failed to meet Nebraska's criteria for capital punishment, he said. Hunt simply reiterates that ruling.

Brown agrees that the Hunt case could be used to define life sentences. But if Hunt sets a precedent, he said, the state could face serious problems in the future.

As an example, Brown cited the John J. Joubert case, which soon goes before the Supreme Court on an automatic appeal. Joubert, a former Offutt Air Force Base airman, confessed to abducting, torturing and repeatedly stabbing two Bellevue boys to death in 1983.

The lower court that reviewed the case sentenced Joubert to the electric chair in part because of the "especially heinous" circumstance. But the Supreme Court's recent decision

situation.

Peterson, who represents the Norfolk area, will propose a bill during the next legislative session. The bill, written in conjunction with Don Stenburg, a Lincoln resident running for attorney general on the Republican ticket, allows the death penalty in cases where the motive as well as the act is especially heinous, atrocious or cruel. The bill also would make murder committed in connection with or for the purpose of sexual gratification an aggravating circumstance.

Peterson said the bill is tailored to prevent another Hunt from killing and then receiving a life sentence.

"I find it hard to believe we have four judges who made the decision," he said. "But they did and now we have to change the law."

Because of Hunt, Peterson said, "We may not see very many people put to death under the death penalty. I guess that would be my greatest concern."

Proposals for new legislation have been met with mixed reactions.

For instance, Brown said Peterson's proposal

reasoned legislation. And I'm not sure that makes good legislation."

Dennis Rasmussen, the former senator who sponsored Nebraska's current legislation, said there is no need to redraft his law. The law covered Hunt, he said, the Supreme Court simply failed to apply it appropriately.

"Anyone with a common knowledge knows what a heinous crime is. (Hunt) was very definitely a heinous crime," Rasmussen said. "I think it boils down to whether you're for or against the death penalty. The (Supreme) Court, in my view, is against it, and they were searching for an out."

When Rasmussen made his first pleas for capital punishment 12 years ago, Sen. Ernie Chambers of Omaha was his greatest foe. Today, Chambers still is fighting legislation — new and old — imposing the death penalty.

But, Chambers said, his objection to the death sentence has not shaped his favorable opinion of the Hunt decision. The Court simply followed the law, he said.

"Remember," Chambers said, the phrase "especially heinous" has a meaning. And it means exceptional, out of the ordinary, unusual, not run-of-the-mill.

"What these four judges did was look at this case and understand they were going to make a decision that was very unpopular, that would be condemned. But based on their understanding of the law they made the decision they had to make. There was nothing they could gain by what they did."

It is not the decision that is wrong, Chambers said, it is public and legislative reaction that is inappropriate. Proposals such as Peterson's are motivated by publicity, he said, and they will only make a "bad law" worse.

"When you enact a law because a case occurs that you don't like, you're always a step behind... And in the future it may turn out to be a very bad, inappropriate law for the majority of the cases that will be dealt with it."

In addition to the legislative proposals, Chambers said, public outcry could affect the high court's future decisions, but for reasons different from those mentioned by Brown.

While Brown said death sentences could be overturned inappropriately because of Hunt, Chambers said the Supreme Court may have difficulty going against public sentiment in cases that should be reduced to life.

"I would hope that it wouldn't," he said. "But we have people sitting there as judges who are human beings, and they are influenced by external circumstances and happenings. I hope they're strong enough not to be swayed, but I really don't know."

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— J. Kirk Brown

could affect Joubert's sentence, Brown said.

Both Joubert's and Hunt's crimes are equally heinous, Brown said, "but the Supreme Court seems to have built the fence right up against Mr. Hunt... If Mr. Hunt isn't especially heinous, who the hell is? What is left. What behavior is on the far side of Mr. Hunt?"

While the high court's definition of "especially heinous" concerns Brown, he said the ruling that Hunt did not commit the murder to conceal his identity bothers him even more. Hunt shoplifted rather than bought the BB gun, panties and nylons, he wore gloves and "when he got done with the woman" he picked up after himself, Brown said.

"You can only kill a person once, no matter how many purposes that serves. And certainly Mr. Hunt went there with the intention of killing the woman and then engaging in some sexual activity with the corpse," he said. "But it seems to me that the (Supreme) Court then concludes that having decided he was going to kill her anyway that he didn't kill her to conceal his identity."

If this was the high court's logic, Brown said, he disagrees with it. Hunt had finished his sexual fantasy when he checked Rampott's pulse. Yet when he assumed his victim was still alive, he shoved her head into the bathtub, Brown said.

"Now at that point in time, he wasn't attempting to kill her as part of his sexual fantasy," Brown said. "He was attempting to kill her to tidy up... the scene of the crime."

The justices who wrote the minority opinion shared this view. In their opinion, the three dissenting justices said that these activities can only lead one to conclude "Rampott was murdered to conceal the identity of the defendant... The evidence establishes this beyond a reasonable doubt."

Brown argued that Hunt's cleanup job should have fallen under precedents such as State v. Peery.

Wesley Peery robbed a coin shop in Omaha in 1975. During the robbery, Peery tied up the store owner's wife, later murdering her. Because the victim was bound, the high court ruled the woman posed no threat to her assailant. The murder was done simply to conceal a crime, the court stated.

"It seems to me that what Mr. Hunt did was to a great extent similar to that," Brown said. "Before, we said killing someone who was tied up really shows a lack of respect for human life."

Now, he said, it is difficult to say where the Supreme Court stands on the concealment circumstance.

Delay dismissed this argument, saying the circumstance just didn't apply to Hunt. The high court ruled appropriately, he said.

The fact that lawyers and even justices disagree on how the Hunt case should have been interpreted concerns State Sen. Richard Peterson. And he plans to do something to remedy the

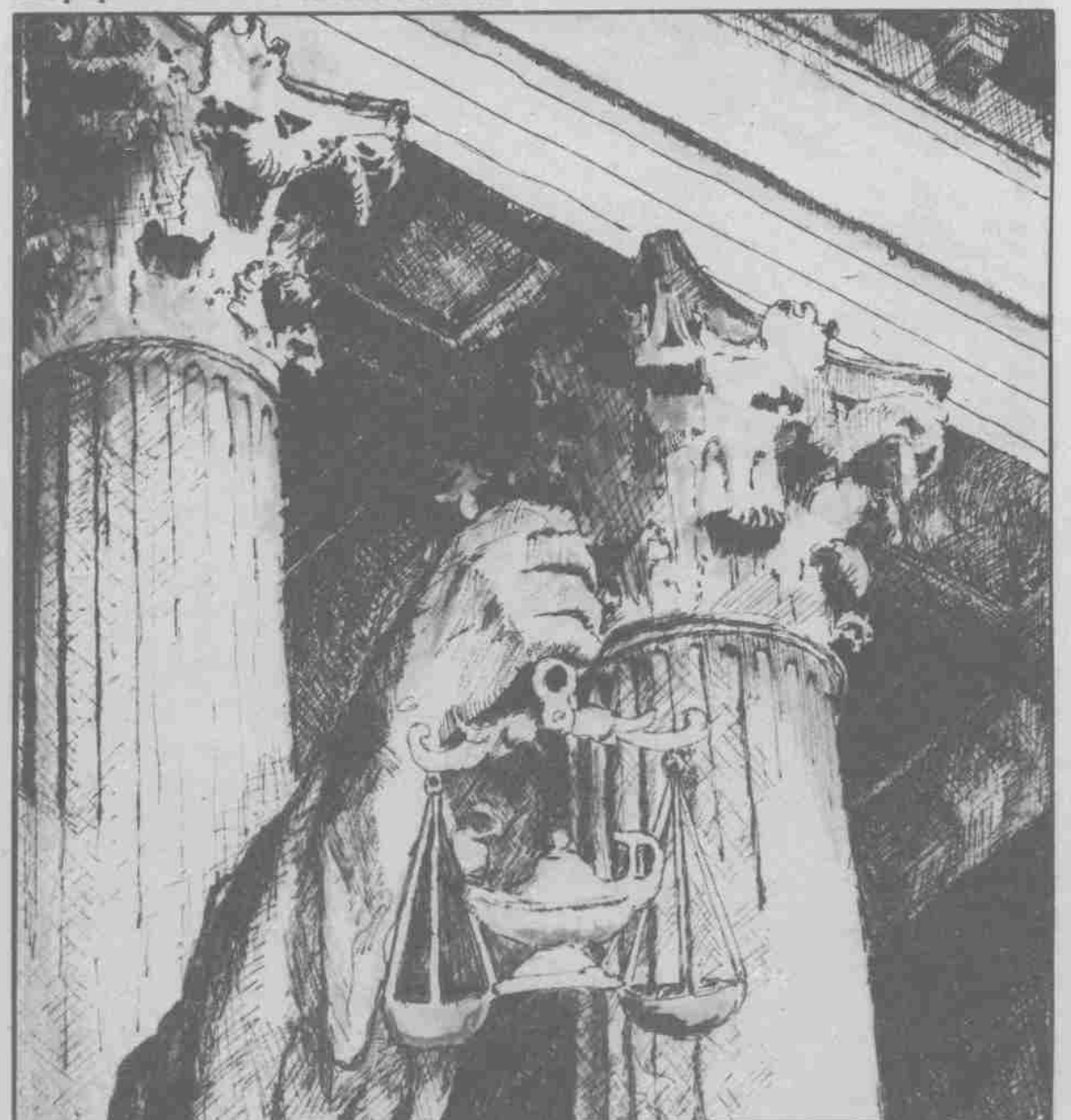
to add sexual motivation to the list of eight aggravating circumstances may have merit. But more problems would be created than solved if the law was redrafted, he said.

"If history proves anything," he said, "the bad people are a heck of a lot more creative in what bad they're going to commit than we, the decent people who try to draft these laws, are likely to dream up."

In an attempt to cover these future crimes, Brown said, legislators could wipe out every precedent the state has re-established since 1973.

In 1973, Nebraska formed its current capital punishment laws as dictated by a 1972 U.S. Supreme Court decision. The U.S. Supreme Court ruled all laws governing capital punishment were unconstitutionally vague and arbitrarily applied. Thus Nebraska has had to re-establish precedents under the 1973 law, Brown said.

Like Brown, Delay hesitates to support new legislation. With the uproar over Hunt, Delay said proposals tend to be "reactive rather than



Kurt Eberhardt/Daily Nebraskan