



Stevens: Risk of wrongful sentences higher

Updated 3h 51m ago

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By David Banks, AP

Retiring Supreme Court Justice John Paul Stevens speaks Monday during the annual meeting of the 7th Circuit Bar Association & Judicial Conference of the 7th Circuit, in Chicago.

COLUMBUS, Ohio — Modern pressures on the judicial system have raised the chance a defendant could be wrongly sentenced to death, Supreme Court Justice [John Paul Stevens](#) said Wednesday, explaining his changed view on the constitutionality of capital punishment.

"The risk of an incorrect decision has increased," he told an audience of hundreds of lawyers and judges at a judicial conference here, responding to a question about his 2008 assertion that the death penalty should be abolished. He said that because of advances in DNA testing, which have led to the freeing of some innocent convicts, "we're more aware of the risk than we might have been before."

In a lethal-injection dispute from [Kentucky](#) two

years ago, Stevens concluded for the first time that "the death penalty represents the pointless and needless extinction of life with only marginal contributions" to society.

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Stevens, who will retire this summer after nearly 35 years on the bench, offered both substantive views and lighthearted thoughts (why the bow ties?). He recalled an unpopular decision he wrote while he was a lower court judge that led him to believe he could "kiss goodbye" any chance of ever becoming a Supreme Court justice.

Stevens said capital juries are dominated by people who favor the death penalty, alluding in part to the Supreme Court's 1986 decision that allowed prosecutors to exclude from capital cases jurors who say they would be reluctant to vote for a death sentence. Stevens said the brutality of the murders that often lead to a capital trial can put pressure on prosecutors.

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"The dynamics of the litigation," Stevens said, raises

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the risk of "incorrect decisions" regarding who should be sentenced to die.

Stevens, 90, was elevated from a Chicago-based federal appeals court when President [Gerald Ford](#) appointed him in 1975. He recalled that he dissented in 1971 when the appeals court upheld a Wisconsin State Assembly sanction of civil rights leader and anti-war activist Father James Groppi for disorderly conduct on the floor of the Legislature.

"I remember thinking: I have life tenure," Stevens recalled, expressing some relief that he would face no political repercussions for a view unpopular in its day. "I also thought I could kiss goodbye the idea of ever going on the Supreme Court."

That, of course, turned out to be wrong.

Stevens mused that when he went before the Senate Judiciary Committee for his confirmation hearing, no senators asked about [Roe v. Wade](#), the 1973 decision that made abortion legal nationwide. It would be a few more years before that ruling generated an anti-abortion movement and the issue became a staple of Supreme Court confirmation hearings.

[Stanford University](#) law professor Jeffrey Fisher, a former Stevens law clerk who questioned him Wednesday, asked how he might feel on the first Monday in October, when his colleagues take the bench without him.

"I really don't know," Stevens said softly. He said his worry these days is cases yet to be resolved this term. "We're a little behind in some of our output."

Teresa Wynn Roseborough, another ex-Stevens clerk and senior chief counsel for Metropolitan Life Insurance, asked about his signature neckwear: Why bow ties?

"The truth is I can't tie a four in hand," Stevens said of the knot on the more commonly worn tie.

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