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Why Joshua Komisarjevsky Must Die



Dr. William A. Petit with his family on vacation in Cape Cod: Michaela, Hayley... (Petit family photo)
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Earlier this year, the people's elected representatives almost abolished Connecticut's death penalty by stealth. Steven Hayes and Joshua Komisarjevsky would never have been executed. At the last minute, a couple of legislators flipped, imagining themselves as victims, knowing that these rapist-murderers deserved to die.

Now the people's purer representatives — the jury — decide on our behalf whether the multiple murderer Komisarjevsky shall be condemned to die, as his accomplice has already been.

Leave the government out of it, leave the death penalty out of it. Ask the people whether any sane adult who breaks into a family's house at night, finds an 11-year-old sleeping with her mother, sexually abuses her, takes cellphone photos, ties the terrified child to

her bed for hours, then pours gasoline and immolates her and the family — whether he deserves to die. My guess? Ninety percent at least feel certain these vicious monsters should be killed. If only we could trust the government.

The law now gives us the way to get there. The jury has convicted Komisarjevsky of first-degree murder. Starting today, in the penalty phase, the jurors weigh aggravating circumstances against mitigating circumstances. The crime itself supplies the aggravators. If this wasn't "especially heinous, atrocious and cruel," what is? (Oh, yes, and it was in the course of a burglary.)

What mitigators could possibly weigh against that? The defense will claim Komisarjevsky was not fully responsible, and therefore doesn't deserve to die. They already signaled the jury with expert testimony during the trial. Abused as a child, dominated as an adult, the experts claimed, Komisarjevsky did not make a free choice to rape and murder.

Here they tap into the essential paradox: How can a person be the product of genetic and biological predispositions, early childhood personality (de)formation, adult influences and pressures, and at the same time be held fully accountable for his criminal choices?

My thousands of hours interviewing convicted killers in several state prison systems over 25 years convinces me that free will exists.

The defense will desperately appeal to the jury: Komisarjevsky will behave in prison and pose no future threat. Why should we kill him, what good will it do?

He probably will behave in prison. Cowards who viciously prey on the vulnerable, once captured, readily submit to authority to make the best of their new life inside. He may behave, but I doubt he will be rehabilitated. And it's irrelevant. The jury should condemn to death the depraved murderer who did this, and not spare the person he might become. Those who ask what good it would do to kill him ask the wrong question. What bad has he done? And what does justice require?

The defense will assure reluctant jurors that life in prison is bad enough, while they soothe the enraged: If you really want to stick it to him, give him life with no hope of parole. He'll never see the light of day. He dies inside, one day at a time.

The defense will call a former warden to testify that prison is terrible. That sounds good, but it's a sham, a mockery of justice. Sentenced to life without parole and well-behaved inside, if Komisarjevsky applies for a job in, say, the kitchen, if his recreation and visiting schedules break right, within a very short time this rapist/child murderer could be out of his cell working, showering, visiting, playing eight to 10 hours a day, seven days a week.

Corrections is the last place to look for justice. Their mission statement does not even include punishment. Their public relations officer disavows punishment as no part of

their mission. Pause on that. Inside, it's nobody's job to punish. Thus convicted killers get color TV and candy bars. And if they never see the light of day, why does the commissary sell suntan lotion with an SPF factor of 30? As one warden's assistant admitted, "We make it easy for them because it's easy for us when it's easy for them."

But the past counts. Justice matters. We make and should keep covenants with the dead. Joshua Komisarjevsky and Steven Hayes must die.

Robert Blecker's pro-death penalty memoir "[Let the Great Axe Fall](#)" is available as a [Kindle Single](#). He teaches criminal law at New York Law School.