

Ten Chairs: Nine are Leather; One's Electric. The Supreme Court's Struggle for Equal Justice in Capital Punishment.

By Jackson Spencer Wixom

America continues to struggle with the death penalty issue, with some calling it "cruel and unusual" punishment, and others asserting that it represents a sure-fire path to justice. In the context of the theme "Equal Justice Under Law," etched in stone on the U.S. Supreme Court Building, this paper considers whether the Supreme Court's increased emphasis on procedural efficiency in denying writs of certiorari and stays of execution denies equal justice based on the merits of a prisoner's case. While noting some benefits of procedural efficiency, the paper concludes that tightening the procedural process does come at the expense of substantive justice, thus making the goal of "equal justice" more illusive.

INTRODUCTION

A focal point in the courtroom of the United States Supreme Court is a polished bench of Honduran mahogany with nine stuffed leather chairs seated behind it. Each chair is labeled with a gold plate that indicates its respective Justice. The quality of these seats is a symbol of the privilege and honor associated with being a Justice of the United States Supreme Court. Coupled with this privilege, however, is a grim responsibility. The nine Justices who occupy these chairs must ultimately decide who of hundreds of condemned candidates will next sit in another, less-comfortable chair.

The "tenth" chair is not found in the Court building. It sits instead in a small, bare room within the guarded walls of a state penitentiary, either in Florida, Georgia, or one of the nine other "death penalty" states. At the flip of a switch the hard seat of wood, metal, and leather straps hums with approximately 2,000 volts of electricity (Methods of Execution 1999). All of these features guarantee that this will be the last chair its occupant will sit in.

Historically, the American people have shown a lack of agreement in determining the moral nature of the death penalty. Christians find conflicting teachings concerning the death penalty in the Holy Bible. Leviticus states, "he that kills any man shall surely be put to death" (Leviticus 24:17)

and Exodus states, "Thou shalt not kill" (Exodus 2:14 King James Version). In a legal sense, the U.S. Constitution's Eighth Amendment is debated continually as well. Does the death penalty violate the common right that, "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted?"

The ethical debate placed aside, the death penalty does revolve around one concrete fact; once human life is taken it cannot be replaced. Therefore, the Supreme Court as the ultimate decision maker in all death penalty cases, shoulders the responsibility to guarantee to the American people that every death penalty case is handled in a fair and equal manner. The motto, "Equal Justice Under Law," stretched across the front of the Supreme Court building makes this responsibility clear to all citizens of the United States, including death row inmates.

To better understand the meaning of "Equal Justice," the latter word can be divided into two key categories: substantive justice and procedural justice. Throughout history, the Supreme Court has followed a system of *Stare Decisis* (Latin for "Let the decision stand") in order to ensure procedural justice. "This refers to the legal rule that when a court has decided a case by applying a legal principle to a set of facts, that court should stick by that principle and apply it to all later cases with clearly similar facts" (Oran's 2000). The Supreme Court recognizes that imperfections and biases push our legal system away from perfect justice as, what John Rawls defines as, "The procedure adopted to bring about the correct result." A lack of absolute truth in criminal trials inhibits the possibility of universally achieving this just result. However, Rawls definition of "pure procedural justice" is what our legal system hopes to achieve, "a correct or fair procedure such that the

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outcome is likewise correct or fair, whatever it is, provided that the procedure has been properly followed" (Feinberg 1973).

Substantive justice is more subjective in nature and ensures to every American "The basic law of rights and duties" (Oran's 2000). Substantive justice measures each case individually. To ensure both aspects of justice, the Court must apply law in a general sense to create precedent and follow established procedure. At the same time, the Court must apply the law in a personal sense to individual cases in order to supply substantive justice.

The Supreme Court has and continues to encounter difficulties in covering both aspects of equal justice. Ethical questions surface that do not have clear answers. The intent of this paper is not to give answers, but to display the questions in order to better understand the Supreme Court's struggle towards equal justice. Questions such as these are what drive our country towards a better form of government.

SUBSTANTIVE JUSTICE OR AN ABUSE OF FEDERALISM

Capital Punishment has traveled a bumpy road in the latter part of the twentieth Century. In 1971, the Supreme Court affirmed its blessing of capital punishment in *McGautha v. California*, when it "rejected petitioners' common claim that permitting the jury to impose the death penalty without any governing standards violated due process" (Lockhart et. al 1991).

The issue caught fire one year later when the Supreme Court delivered its opinion in the case of *Furman v. Georgia*. Capital punishment in the United States ground to a halt with the Furman decision. A slim five to four majority, (Justices Stewart, White, Douglas, Brennan, and Marshall) wrote a basket of separate concurring opinions that together constituted the Court's majority opinion. The five justices backing *Furman* basically felt that the death penalty violated the "equal protection" and "cruel and unusual punishment" clauses of the Fourteenth and Eighth Amendments, but each justice wanted to say this in his own way. For example, Justice Douglas concluded that the death penalty was given disproportionately to poor and socially disadvantaged defendants and was therefore a violation of "equal protection." Justice Stewart concluded that since Congress had failed to create a mandatory death sentence for certain types of capital crime, capital punishment occurred too randomly not to be considered "cruel and unusual" (*Furman v. Georgia* 1972).

At the time of *Furman*, the Court was also reviewing petitions from cases in which juries had issued the death penalty for crimes other than homicide, crimes such as rape. The Court was also examining the constitutionality of capital sentencing that was carried out without any procedural clarification from the trial judge to the respective sentencing juries. The *Furman* majority decided that this form of free-for-all capital punishment sentencing was way out of hand.

Justice Stewart felt the randomness of the death sentence under *McGautha* made it much like being "struck by lightning" (Hall 1992).

In a majority of capital punishment cases, the defendant is sentenced to death in a state trial court. The case usually follows a designated state appeals process to the state Supreme Court. The case can then be appealed to the federal judiciary if the defendant can find a violation of his or her constitutional rights in the judicial process. In such a scenario, the case moves first to the Federal District Court, then to the Federal Circuit Court, and finally, to the United States Supreme Court; which makes the final determination in the case.

When the Supreme Court issued its *Furman* decision, the Justices built a dam at the end of the previously explained appellate system. States continued to issue the death penalty and those convicted continued to follow the appeals process; however, *Furman* did not allow the death sentence to be carried out. Ironically, the Supreme Court's anti-death penalty sentiment lasted only five years before returning to the jurisprudence that drove *McGautha*. The death penalty dam was broken with the execution of Utah inmate Gary Gilmore.

Gilmore was convicted on multiple counts of first-degree murder, the result of a one-night armed robbery rampage through Provo, Utah. For years, the State of Utah was unable to execute Gilmore because of the Supreme Court's decision in *Furman*. However, a little before noon on the January 17th, 1977 the Utah authorities were given the green light to execute Gilmore. The condemned man was led to a warehouse behind the Utah State Penitentiary; strapped into a chair and shot with one bullet through the chest. Gilmore's execution by firing squad became the first use of capital punishment in the United States since 1967.

Gilmore's execution was legal due to the Supreme Court's decision in *Gregg v. Georgia*. With this decision, the Court's majority, (Justices Stewart, Powell, Stevens, White, Burger, and Rehnquist), reaffirmed the constitutionality of the death penalty. The Court rejected its earlier *Furman* claim that the use of the death penalty was too random and ungoverned to be constitutional. In the *Gregg* case, the Justices ruled that, "the concerns expressed in *Furman* that the penalty of death not be imposed in an arbitrary or capricious manner can be met by a carefully drafted statute that ensures that the sentencing authority is given adequate information and guidance" (*Gregg v. Georgia* 1976).

Gregg, of *Gregg v. Georgia*, was originally convicted and sentenced to death on two counts of armed robbery and two counts of murder. Under the Georgia capital sentencing statute, the jury was properly informed on how to issue the death penalty. They were instructed to consider any mitigating circumstances related to *Gregg's* crimes, such as his young age, his cooperation with police, and his emotional state at the time of the offense. The jury could then use any of these circumstances as justification for lessening the degree of *Gregg's* punishment.

In order for Gregg's jury to issue the death penalty, they were required to find him guilty of at least one, of a possible ten aggravating circumstances that intensified the nature of his crime. These factors included other felonies such as armed robbery and rape. Also under Georgia law, Gregg's death penalty conviction was guaranteed review by the Georgia Supreme Court to assure that the trial courts followed three specific guidelines: (1) "No arbitrary factor can tamper the decision of the jury." (2) "The evidence proves the existence of an aggravated circumstance in connection with the crime." (3) "The penalty is not excessive or disproportionate in relation to similar cases" (Lazarus 1998). The Supreme Court agreed with this Georgia statute and justified the jury's decision to give Gregg a death sentence.

Here the first question about death penalty equality arises. The *Furman* decision showed the Justice's apprehension that the death penalty was not being issued according to equal procedural justice. Gregg showed that death penalty sentencing could be considered equal justice, when regulated with specific sentencing guidelines. The Court, however, decided not to specify any federal guidelines in its *Gregg* decision.

Woodson v. North Carolina, which was issued the same day as *Gregg* in 1976, made the justice's decision against federal sentencing guidelines quite clear. "The two crucial indicators of evolving standards of decency respecting the imposition of punishment in our society—jury determinations and legislative enactments—conclusively point to the repudiation of automatic death sentences" (*Woodson v. North Carolina* 1976). The reasoning behind *Woodson* is the Supreme Court's desire to uphold the idea of federalism, which is defined as, "a system of political organization with several different levels of government coexisting in the same area, with the lower levels having some independent powers" (Oran's 2000). Thus, with respect for the separation of powers, the Supreme Court must leave the creation of federal sentencing guidelines to Congress.

The Supreme Court has also indicated the need for state legislatures to maintain power in making capital punishment decisions. A set of federal sentencing guidelines in *Gregg* might have appeared to be an excess of nationalism and judicial activism on the Court's part. On the other hand, this lack of any universal guide was bound to cause inconsistencies in substantive justice, due to varying precedents among states. Under *Woodson*, the most heinous crimes can be committed in non death-penalty states without the defendant worrying about receiving a death sentence. Precedent varies even among state legislatures in death penalty states. The *Gregg* opinion does not establish standards on how to determine aggravating and mitigating circumstances, but it suggests that variables such as these must exist to provide equality in sentencing. *Gregg* also fails to explain to what degree aggravating and mitigating circumstances should affect a jury in making its decision, or how a jury should determine whether or not any special circumstances even exist.

According to figures from year-end 1997, the death penalty statutes in participating states are all over the map. In Tennessee, Wyoming, and North Carolina, the defendant only needs to be convicted of first-degree murder in order to receive the death penalty; only a conviction of capital murder, which is defined as "something more than intentional killing," is needed for a person to be executed in New Hampshire (*Sawyer v. Whitley* 1992). On the flip side, eighteen aggravating factors must be found for a death sentence in Alabama and thirteen for a death sentence in Nevada. Most death penalty states require the jury to find at least one aggravating factor in addition to the capital crime in order to issue the death penalty. However, the lists of possible factors vary among these states, from as many as fifteen to as few as eight (Snell 1998).

To resolve these inconsistencies, the Court would need to create federal sentencing guidelines; something *Woodson* forbids them from doing. The Tenth Amendment guarantees the states the right to create laws not already guaranteed in the constitution, as it proclaims: "the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people" (Lockhart et. al 1991).

Since the Court has no universal guidelines to govern death penalty sentencing, they must evaluate the justice of each death penalty case according to different sentencing guidelines depending on the respective state. This creates a great deal of additional work for the Court and opens the door for inequality.

Weeks v. Angelone 2000 is a recent example of the many death penalty cases the Court must evaluate individually. The *Weeks* case was heard in oral argument on December 6th, 1999. Lonnie Weeks was sentenced to die in Virginia for gunning down a highway patrolman during a late night traffic stop. He was on probation at the time for a 1992 drug conviction and had recently participated in a burglary and car theft. He was also driving a stolen car at the time of the shooting. The sentencing jury was informed of these aggravating factors in the *Weeks* case and they were told that the factors could be used in justifying a sentence of death. They were also told of a mitigating factor that pointed to Weeks's religious upbringing. The jury felt confused and wanted to ask the judge before deliberations if they were required to issue the death penalty to Weeks because the prosecution had proven without a doubt the existence of more than one aggravating factor.

The jury wasn't sure if they were allowed by law to ignore the aggravating factors and instead show mercy on Weeks because of the one mitigating factor. The prosecution objected to the question and the judge sustained their objection. Instead of answering, the judge ordered the jury to re-read the state's sentencing instructions. The jury moved to deliberations and returned Weeks a sentence of death.

All of Weeks's original appeals were denied at the state and federal level. He later petitioned the 4th District Court

for *habeas corpus* relief claiming that the judge's failure to explain to the jury how to use the state sentencing statute violated both his Eighth and Fourteenth Amendment rights. The appeal eventually reached the Supreme Court who stayed Weeks's execution and granted his petition of certiorari.

The Court delivered its *Weeks* opinion on January 19, 2000. A five-to-four majority, consisting of Justices Rehnquist, O'Connor, Scalia, Kennedy, and Thomas, felt that the judge used the best method of explanation possible for the jury and the sentence of death should stand. As stated by the Court, "Given that petitioner's jury was adequately instructed, and given that the trial judge responded to the jury's question by directing its attention to the precise paragraph of the constitutionally adequate instruction that answers its inquiry, the question becomes whether the constitution requires anything more. We hold that it does not." (*Weeks v. Angelone* 2000). The thin five-to-four margin on the *Weeks* decision further emphasizes the fact that death penalty cases coming before the Court have legitimate arguments on both sides.

Thus, the Court is in a no-win situation. In this dilemma, the justices must either risk usurping the role of the states in a federal system and engaging in judicial activism by laying down uniform sentencing guidelines, or if the status quo persists, they must prepare themselves for a greater amount of difficult cases. The more each case is measured independently and compared to different, state-legislated criteria, the greater the possibility of substantive inequality creeping into the death penalty sentencing process.

THE PROCEDURAL TRAP

Creating substantive justice among death penalty cases is not the Court's only obstacle. Questions also arise concerning the Court's procedure when handling habeas petitions of certiorari and stays of execution. The writ of habeas corpus was designed to grant relief to convicted felons whose constitutional rights have been violated in the judicial process, "It is most often used to get a person out of unlawful imprisonment by forcing the captor and the person being held to come to court for a decision on the legality of the imprisonment" (Oran's 2000). The stay of execution, defined as "A stoppage or suspension of Judgment," gives the Supreme Court and lower appellate courts the right to keep a state from executing an inmate while the inmate's case is being reviewed and decided (Oran's 2000).

In 1983, the Court ruled in *Barefoot v. Estelle* that federal appeals courts could treat death-sentenced habeas petitioners to a special shortened version of the usual appellate process. This decision was monumental for the Court in developing a tight appeals procedure. The Court instructed the Federal Circuits not to grant stays of execution unless there was a "substantial showing" of a violation of federal law (*Barefoot v. Estelle* 1983). Also, in the case of *Sawyer v. Whitley* any indication that a habeas petition could have been

included in an earlier appeal and was not; constituted an "abuse of writ" and resulted in an automatic denial of habeas relief (Schrader 1996). These new rules made granting certiorari or receiving a stay of execution much more difficult for death row inmates because their petitions were compared to the ideal standard of *Sawyer* and *Barefoot*. Petitions that were considered late or mediocre were now automatically thrown out.

A perfect example of possible inequality in the new, tighter process came to the Court in 1984. The case involved James Hutchins, a man convicted of murdering three police officers, who was sentenced to death in 1979. While awaiting his execution, Hutchins's attorneys filed a petition for federal habeas relief that was full of new misconduct claims against the state, none of which ever emerged at Hutchins's original trial. The habeas petition was also filed right before Hutchins's scheduled execution. The federal district judge denied the petition, but never gave an explanation as to why. As a last ditch effort, Hutchins attorneys appealed to Circuit Judge James Phillips and received a stay of execution with only days to spare before Hutchins's execution. This contradictory move by the Circuit Judge infuriated the Supreme Court's pro-death penalty majority and the Court promptly vacated Judge Phillips's stay. A few hours after the Court handed down its decision to vacate the stay, James Hutchins died in the electric chair.

The reason the Supreme Court vacated Judge Phillips's stay had nothing to do with the substance of Hutchins's habeas petition. No federal judge, including the nine Justices, ever actually ruled on the petition itself. Instead, the issue which decided Hutchins's fate was procedural: the proper filing of his habeas petition according to the process established. The Court refused to even consider the claims of misconduct only because the defendant had not made them earlier in his trial and appeals process, thus making them contrary to *Sawyer*.

Granted, the justices must find ways of protecting themselves from the procedural burdens of baseless petitions that are filed only as a desperate act by death row inmates to avoid execution. However, the possibility still exists that the claims of James Hutchins may have been legitimate. The Supreme Court does not grant equal justice when it considers some habeas petitions and refuses to consider others based only on a procedural factor such as a filing deadline. The time for setting strict guidelines should be when the cause for the eventual certiorari petition is being formed, i.e. during the sentencing process. The Court sends conflicting messages when its ambiguity in sentencing allows for more petitions, but then its tight appeals procedures kill these petitions without proper consideration of their content.

A NUMBERS GAME

In 1981, a more moderate Justice Stewart retired and was replaced by the first woman to ever sit on the Supreme Court, Justice Sandra Day O'Connor. The conservative Justice

O'Connor gave the Court a pro-death penalty majority when dealing with the certiorari petitions and writs of habeas corpus of those sentenced to die.

According to the Supreme Court rules of conduct, when issuing a stay of execution, the justices are required to have a majority, (five votes) to grant the stay. In order to give the minority of the court a voice in the acceptance of petitions of certiorari, only four votes are required to accept the petition. This practice is commonly known as "the rule of four" (Lazarus 1998). The Court must be careful not to indicate prematurely the outcome of a case. If the Court's acceptance of certiorari petitions required a five-person majority vote, its acceptance or denial of a certiorari petition would insinuate the direction the Court was planning to rule.

In a majority of cases, trial courts in the individual death penalty states sentence the defendant to die on a certain date. After the trial court's ruling, unless a state or federal appellate court grants a stay of execution, the death sentence is carried out on its scheduled date. When the defendant's case reaches the Supreme Court, the justices in the anti-death penalty minority must recruit members of the pro-death penalty majority in order for a petition of certiorari to truly be considered.

Even if the Court's anti-death penalty minority is able to collect the necessary four votes to grant review of a defendant's petition, unless the case receives the majority fifth vote to stay execution, the defendant will die with his or her case pending on the Court's docket. The Supreme Court's acceptance of a petition of certiorari will not stop a state from carrying out an execution. Only the vote of five Justices to grant a stay of execution can force a state to not flip the switch.

Just such a scenario became reality in the case of Alpha Stephens. Stephens was a black man sentenced to die in Georgia for killing a white man. The case received the attention of the Legal Defense Fund (LDF) and the National Association for the Advancement of Colored People (NAACP). Both organizations had just sponsored an in-depth investigation into the 2400 post-*Furman v. Georgia* homicides occurring in Georgia. The investigation, labeled the Baldus study (after its author David Baldus of the University of Iowa,) concluded that Georgia's system for death penalty sentencing established by *Gregg v. Georgia* was not necessarily biased against black defendants, but biased against those who committed crimes against whites. In the book *Closed Chambers*, Edward Lazarus writes, "The study further revealed that the victim's race played an especially powerful role in 'mid-range' cases...For these cases, in which prosecutors and juries wielded the most discretion, a defendant who killed a white person faced odds of receiving the death penalty as much as 30 percent higher than if the victim were black" (Lazarus 1998).

Stephens's attorneys wanted to use the study as part of their second federal habeas petition. The petition claimed that Stephen's sentence was racially motivated. The Eleventh Circuit Court ruled that Stephens's lawyers should have used the Baldus study on their first federal habeas peti-

tion. The judge felt that to accept such a study on the second petition would be what *Sawyer* considered an obvious abuse of the habeas writ. The judge decided not to consider the nature of Stephens's claim, and he immediately denied Stephens's petition and vacated his stay, based on this "abuse of writ" doctrine.

Under the before mentioned *Sawyer v. Whitley* opinion: the federal judiciary can deny all cases that involve; (1) "successive claims covering the ground of earlier petitions," (2) "new claims which were not raised earlier through inexcusable neglect," or (3) "procedurally defaulted claims in which the petitioner failed to comply with state procedural rules." The federal judiciary can now automatically deny all petitions that fall under these three categories. An exception is only made if the petition proves that the case contains a "fundamental miscarriage of justice" (*Sawyer v. Whitley* 1992).

At the point of desperation, Stephens's attorneys appealed to the Supreme Court to overturn the Eleventh Circuit's denial and grant a temporary stay of execution. The Eleventh Circuit Court was currently in the process of deciding the case of *McCleskey v. Zant* 1991. *McCleskey* also dealt directly with the Baldus Study, and Stephens's attorneys wanted to convince the Supreme Court that the *McCleskey* outcome would determine whether the statistics brought forth in the Baldus Study were valid in proving racial bias.

On the vote of five Justices (Brennan, White, Marshall, Blackmun, and Stevens), the Supreme Court granted Stephens a stay of execution. The justices felt that the pending decision on the validity of the Baldus study in *McCleskey* would directly apply to Stephens's case as well. With a stay in place, Stephens filed a certiorari petition that asked the Court to ignore the "abuse of writ" decision by the Circuit Court and to hear his habeas petition. Something odd happened when the Justices met in conference to consider Stephens's petition. Justice's White and Blackmun voted to deny the certiorari petition even though they had just voted to grant Stephens a stay.

The change in opinion of White and Blackmun left Stephens's certiorari petition one vote short of the four necessary votes to be accepted by the Court. When the Court announced its denial of the certiorari petition, the stay was automatically lifted and Stephens was again moving toward his scheduled execution.

Stephens's attorneys appealed to the Court one last time with a third federal habeas petition that challenged the jury instructions at Stephens's original trial. The Court's anti-death penalty minority was eventually able to convince Justice Blackmun to change his mind and vote to grant the certiorari petition. However, these four votes were still not enough to re-instate a stay of execution; a stay would require Justice White to change his mind as well. However, Justice White stuck to his decision to deny the stay. On December 11th, the day of Stephens's execution, Stephens was put to death in the electric chair with the Supreme Court never hearing the certiorari petition they had voted to accept.

In the capital punishment appeals process, the minority

of the Court appears to have lost its voice. In all Supreme Court cases, criminal and civil, a significant minority (at least four Justices) has reserved some power in the acceptance of certiorari petitions. With the death penalty, however, the power to stop a state from carrying out the execution rests only in the hands of the Court's majority at this stage. This procedure may hinder the Court's ability to grant procedural equality since the anti-death penalty minority has no voice. The case of Alpha Stephens alone is sufficient proof that some degree of inequality exists. The Court is so tightly bound by the rules for accepting habeas petitions and granting stays of execution that inmates' pleas may not receive the adequate substantive consideration they deserve.

A TRICK TO STAY ALIVE

The Court's desire to standardize the appeals process is not without good reason. On November 9, 1999, an article by Joan Biskupic appeared in the *Washington Post* announcing the Court's refusal to accept certiorari petitions dealing with claims that housing inmates on death row for extended periods of time violated their Eighth Amendment rights (Biskupic 1999). The Court did not issue a formal reason as to why it denied certiorari on these particular cases, but Justice Thomas issued a statement in the *Washington Times* to clarify his position. He wrote, "I am unaware of any support in the American constitutional tradition or in this Court's precedent that a defendant can avail himself of the panoply of appeals and then complain when his execution is delayed" (Murray 1999). Justice Thomas went on to say that the United States Supreme Court develops "Byzantine death penalty jurisprudence," by permitting several levels of appeals to occur in the first place (Greenhouse 1999).

Justice Breyer disagreed with the reasoning of Justices Thomas. He wrote in his dissent, "A growing number of courts outside the United States-courts that accept or assume the lawfulness of the death penalty-have held that lengthy delay.... renders ultimate execution inhuman, degrading, or unusually cruel" (Greenhouse 1999).

In his dissent, Justice Breyer referred to two cases in particular that were part of those denied certiorari by the Court. The first, *Moore v. Nebraska*, involves Carey Dean Moore who has been on death row since being convicted of the 1979 murders of two cab drivers, Reuel Van Ness Jr. and Maynard Helgland. After a round of appeals, the federal courts felt that Nebraska's capital sentencing laws were too vague and granted Moore a new sentencing hearing in 1995. Moore was again sentenced to death, but these appeals and federal rulings had delayed his execution for fifteen years (Murray 1999).

The second case is *Knight v. Florida*. Thomas Knight was originally convicted of abducting and murdering a Miami couple, Sydney and Lilian Ganz in 1974. While awaiting execution by electrocution six years later, Knight fatally stabbed a prison guard. In 1995, the 11th Circuit Court of Appeals ruled that the trial jury should have considered Knight's traumatic and abusive childhood when sentencing him to death

and they ordered a re-sentencing hearing. At the new hearing, Knight was once again sentenced to death.

Thomas Knight's attorneys wrote in his petition of certiorari, "To execute someone after holding him for more than two decades in the agonizing suspense and close confinement reserved for those who are about to die is an inhuman, degrading punishment and a denial of the fundamental human dignity" (Murray 1999).

The Supreme Courts of Jamaica, India and Zimbabwe have ruled that prolonged waiting on death row violates basic human rights. Justice Breyer feels that the United States should attempt to align itself with this international trend.

In both cases referenced by Justice Breyer, the defendants were granted re-sentencing hearings due to rulings in federal courts that their original sentencing hearings were in some way unconstitutional. Justice Breyer's argument is that it was not multiple appeals that kept these inmates on death row for so long, but the fact that the federal judiciary delays in considering legitimate pleas.

The argument over whether or not an extended death-row waiting period merits "cruel and unusual punishment" is one of the strongest justifications for the Court's streamlined appeals process. With decisions such as *Sawyer* and *Barefoot*, the Court displays in a loud and clear manner its desire to move the appeals process forward and to carry out scheduled executions.

The tight procedures for the acceptance of certiorari petitions and for granting stays of execution help to remove inequality in the trial to execution period. This makes the process speedy for all death-row inmates and they are thus unable to play the "slow torture" card back against the justice system. In this sense, the Court should be commended for keeping a tight hold on the appeals system.

CONCLUSION

The Supreme Court must face many obstacles in its struggle to provide every American with "equal justice." They must consider the inequality that exists among individual cases when death penalty sentencing is governed by state legislatures. *Gregg v. Georgia* does not cover all Americans in one uniform blanket of justice. Some defendants are given softer sentences only because they commit crimes in states that object to capital punishment. At the same time, the Court must protect the legislative power of Congress and the rights of states. Federalism is a cherished part of our government and the Court must be careful not to overstep its authority.

Approximately 3,335 people currently live on death row. The U.S. executed 45 people in 1996; it executed 74 in 1997, and 96 in 1999 (Snell 1998). If this trend continues, the Court's work in regard to death penalty cases will only continue to increase and the U.S. judicial process will continue to slow down.

The Court must also examine the inconsistency that exists in granting certiorari to habeas petitions and in granting

ng death penalty stays of execution. The Court needs to reconsider rules of conduct that cause the contents of habeas petitions to go unnoticed because too much emphasis has been placed on the appeals procedure and not on the substance of the appeals themselves.

Without the ability of the Court's minority to stop an execution, the Court's acceptance of a death penalty certiorari petition is meaningless. Even when four of the nine justices feel that an inmate's federal habeas petition raises constitutional concerns, they are helpless to act without the blessing of the majority.

At the same time, the tight, established appeals procedure set down by the Court is not without its benefits. Death row inmates are trying to turn the tables on the justice system and claim that their delayed executions are a form of unjust punishment. The Court must require a quick and universal appeals process in order to combat this argument and to further sentencing equality.

The questions raised in this paper examine a major part of the reasoning behind the United States judicial system. In a country that professes to be free and equal, we need influential men and women to continually evaluate the system and work to ensure that both substantive and procedural justice are served. The system is not perfect and conclusions are not universally drawn. However, the impartial, powerful justices of the Supreme Court help to make the Constitution a living document that does its best to provide every American the "equal justice under law" that he or she deserves.

ENDNOTE

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