July 2015

Death Penalty; Cruel and Unusual Punishment; Individualized Sentencing Determination; Lockett v. Ohio; Bell v. Ohio

James C. Ellerhorst

Please take a moment to share how this work helps you through this survey. Your feedback will be important as we plan further development of our repository.
Follow this and additional works at: http://ideaexchange.uakron.edu/akronlawreview

Part of the Conflict of Laws Commons, Constitutional Law Commons, Criminal Law Commons, Criminal Procedure Commons, State and Local Government Law Commons, and the Supreme Court of the United States Commons

Recommended Citation
Available at: http://ideaexchange.uakron.edu/akronlawreview/vol12/iss2/11

This Article is brought to you for free and open access by Akron Law Journals at IdeaExchange@UAkron, the institutional repository of The University of Akron in Akron, Ohio, USA. It has been accepted for inclusion in Akron Law Review by an authorized administrator of IdeaExchange@UAkron. For more information, please contact mjon@uakron.edu, uapress@uakron.edu.
v. Virginia. That theory still has viability but the contemporary view is that it refers to the states' power to regulate use of natural resources within the confines of constitutional guarantees. Hicklin sets forth a standard to guide courts in reviewing cases in the natural resource area when state legislation is challenged under the Privileges and Immunities Clause of Article IV.

DONNA N. KEMP

---

CRIMINAL LAW

Death Penalty • Cruel and Unusual Punishment • Individualized Sentencing Determination


In Bell v. Ohio and Lockett v. Ohio the United States Supreme Court found the sentencing provisions of the Ohio capital punishment statute to be incompatible with the eighth and fourteenth amendments which prohibit cruel and unusual punishment. These two opinions represent the most recent attempt by the Supreme Court to explain what elements must be included in a constitutionally valid capital punishment statute.

The two cases, almost identical factually, were reviewed together. In Lockett, the defendant was the driver of the getaway car in an aggravated robbery. While Lockett waited in the car, the owner of the pawn shop being robbed was accidentally killed. It was shown at trial that while defendant Sandra Lockett freely participated in the robbery she had no idea that the pawn shop owner would be shot. Apparently, none of the participants in the robbery planned to kill the owner. However, Lockett, as an accomplice

1 98 S. Ct. 2977 (1978).
3 OHIO REV. CODE ANN. §§ 2929.03, 2929.04 (Page 1975).
4 U.S. CONST. amend. VIII provides: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted." Robinson v. California, 370 U.S. 660 (1962), explicitly held that the eighth amendment applies to the states through the fourteenth amendment.
5 98 S. Ct. at 2965.
to the crime, was charged with aggravated murder\(^6\) under the Ohio complicity statute which imposes culpability on an accomplice equal to that of the principal offender.\(^7\)

Similarly, in *Bell* the defendant was charged with aggravated murder as an accomplice.\(^8\) Bell drove the car used in a kidnapping which resulted in the victim's death. As in *Lockett*, Bell did not take part in the actual killing, nor was he aware that his partner planned to kill the victim. He was found guilty of aggravated murder by a three judge panel. Subsequently, at the sentencing hearings both defendants were given the death sentence, Bell in front of the three judge panel and Lockett before the trial judge. Lockett was sentenced to die despite information in the pre-sentence reports which revealed no prior convictions for major offenses and a psychologist's report that gave her a favorable prognosis for rehabilitation. The sentences withstood the review of the Ohio Supreme Court, but were reversed by the Supreme Court of the United States as violative of the eighth and fourteenth amendments which prohibit cruel and unusual punishment.\(^9\)

These two death penalty cases were the first to be reviewed by the Supreme Court in which the defendants were only accomplices to the crimes resulting in their being sentenced to death. This fact was not the sole reason for the Court's declaring the Ohio provisions unconstitutional, but it reinforced the conclusion by the plurality that the sentencing body should be allowed to consider a defendant's "character and record or any circumstances of his offense as an independently mitigating factor."\(^10\)

The *Lockett* and *Bell* decisions are the latest in a series of cases decided by the Supreme Court in which the Court has attempted to develop guidelines for states to use in enacting valid capital punishment statutes. An early Supreme Court opinion, *McGautha v. California*,\(^11\) held that juries were able to impose death sentences "unassisted by standards."\(^12\) This was reassuring

---

\(^6\) She was charged with aggravated murder under the aggravating specifications (1) that the murder was "committed for the purpose of escaping detection, apprehension, trial, or punishment," for aggravated robbery, and (2) that the murder was "committed...while committing, attempting to commit, or fleeing immediately after committing or attempting to commit aggravated robbery." *See Ohio Rev. Code Ann. § 2929.04(A) (Page 1975).*

\(^7\) *Ohio Rev. Code Ann. § 2923.03(A)(2) (Page 1975).*

\(^8\) He was charged under the specification that the murder was "committed...while committing, attempting to commit, or fleeing immediately after committing or attempting to commit kidnapping." *See Ohio Rev. Code Ann. § 2929.04(A) (Page 1975).*

\(^9\) *Lockett* v. Ohio, 98 S. Ct. 2967 (1978); *Bell* v. Ohio, 98 S. Ct. 2981 (1978). The United States Supreme Court reviewed the judgments of the Ohio Supreme Court on Lockett and Bell and remanded the cases for further proceedings.

\(^10\) 98 S. Ct. at 2966.


\(^12\) *Id.* at 221.
to the states which had enacted discretionary capital punishment statutes. *Furman v. Georgia* destroyed that security. *Furman* held that the eighth and fourteenth amendments, forbidding cruel and unusual punishment, were violated because the state statute permitted the jury undirected discretion in the imposition of the death penalty. Since *Furman* was a five to four decision with each justice writing a separate opinion, the rationale of *Furman* was very unclear to many states that were forced to rely on it. Most states did agree that the Court had effectively overruled their decision in *McGautha*, and discretion in sentencing could no longer be tolerated. As a result, the provisions for capital punishment in thirty-nine out of forty states were invalidated.

A number of new capital punishment statutes were enacted in an attempt to eliminate the discretion that was renounced in *Furman* as unconstitutional. Some of these statutes made the death sentence mandatory for certain crimes, eliminating all discretion from the sentencing process. Other states preserved some discretion by creating guidelines to be used in the determination of sentence. These statutes evidenced the uncertainty left by the *Furman* opinion.

---

13 Id. Justice Douglas found that statutes under which blacks had a conviction/execution rate of 88.4%, while that of whites was only 79.8%, were "not compatible with the idea of equal protection of the laws that is implicit in the ban on 'cruel and unusual' punishment." (Douglas, J., concurring). Id. at 250 & 257. Justice Stewart concluded that "the Eighth and Fourteenth Amendments cannot tolerate the infliction of a sentence of death under legal systems that permit this unique penalty to be so wantonly and so freakishly imposed." (Stewart, J., concurring). Id. at 310. Justice White called for "more narrowly defined categories" for capital crime. (White, J., concurring). Id. at 310. Justices Brennan and Marshall went further, finding capital punishment unconstitutional per se.


15 Nine state legislatures have passed statutes which required mandatory death sentences: Indiana, Louisiana, Mississippi, Nevada, New Hampshire, New Mexico, Oklahoma, Tennessee, and Wyoming. Of the states which preserved some discretion, the legislatures of Texas, Georgia, and California had created statutes which required that one of a number of aggravating circumstances had to be shown before a death sentence could result. Eight other state legislatures had enacted statutes which allowed the showing of mitigating circumstances as well as requiring proof of aggravating circumstances: Arizona, Florida, Illinois, Montana, Nebraska, Ohio, Pennsylvania, and Utah. For a complete discussion of the makeup of these statutes, see Note, 35 OHIO ST. L.J. 651 (1974). For a complete discussion of the Ohio statute, see Lehman and Norris, Some Legislative History and Comments on Ohio's New Criminal Code, 23 CLEVE. ST. L. REV. 15 (1974).

Four years later the Supreme Court responded to the uncertainty when it ruled on the constitutionality of capital punishment statutes in Gregg v. Georgia, Proffit v. Florida, Jurek v. Texas, Woodson v. North Carolina, and Roberts (Stanislaus) v. Louisiana. The Court, stating in Gregg that "each distinct system must be examined on an individual basis" and that "capital punishment is not per se unconstitutional as cruel and unusual," upheld the death penalty under the Georgia, Florida and Texas statutes, and rejected as unconstitutional the mandatory capital punishment statutes of North Carolina and Louisiana. It became clear that many states had misinterpreted Furman. It was not until Gregg that the Court explained that Furman mandates that discretion afforded a sentencing body "must be suitably directed and limited so as to minimize the risk of wholly arbitrary and capricious action," but not that all discretion be eliminated.

In its most notable opinion written in "the Gregg series" the Court upheld the Georgia capital punishment statute in Gregg v. Georgia. In response to Furman the Georgia legislature had narrowed the classes of murders for which death may be imposed by creating ten aggravating circumstances. The statute additionally provided discretion for the sentencing body. In the pre-sentence report required for each defendant found guilty of a capital offense, the Georgia procedure requires that the sentencing authority must consider any "additional evidence in extenuation, mitigation and aggravation of punishment," including prior record or lack thereof. In examining the evidence in extenuation, mitigation and aggravation of punishment, the jury is required to consider the circumstances of the crime and of the criminal before it recommends a sentence. Discretion is given to the jury but it is limited by "clear and objective standards so as to produce non-discriminatory application."

The Court approved the Georgia provisions for appellate review as necessary "check[s] against the random or arbitrary imposition of the death
Effective appellate review eliminates the possibility that a person will be sentenced to die by an aberrant jury. It was also suggested by the plurality in Gregg that the concerns of Furman "are best met by a system that provides for a bifurcated proceeding." It is not conclusive that a bifurcated proceeding is necessary to have a valid capital punishment statute, however, it is clear that one distinction between the statutes upheld and those struck down in "the Gregg series" is that the latter did not provide for a separate sentencing hearing.

Attempting to examine "each distinct system on an individual basis" the Court looked as closely at the Florida sentencing procedure as they did at that of Georgia. Florida had created a statute allowing for eight aggravating circumstances and seven mitigating circumstances. Under the statute, the sentencing authority, in that case the judge, is required to review and weigh the aggravating and mitigating factors. These eight aggravating factors were found to be specific enough to eliminate the possible imposition of "freakish" death sentences. So too, the mitigating factors which, inter alia, allow the judge to consider the defendant's age, prior history of criminal activity, and degree of involvement in the murder, were found to ensure that the defendant's character and individual record will be considered in assigning the "unique and irreversible penalty of death," assuring that the death penalty will not be imposed in an arbitrary and capricious manner. Furthermore, it was found that the Florida system of appellate review was a sufficient check to ensure that aberrant decisions did not result in unwarranted death sentences.

The Court later upheld the Texas capital punishment statute in Jurek v. Texas. That statute required the imposition of the death penalty upon those convicted of "capital murder" if the jury finds at a subsequent sen-

---

32 Id. at 195.
33 402 U.S. at 220.
34 The Supreme Court, 1975 Term, 90 Harv. L. Rev. 63, 73 n.71 (1976).
36 The Supreme Court "has pointed out that jury sentencing in a capital case can perform an important societal function," Witherspoon v. Illinois, 391 U.S. 510, 519 n.15 (1968), but it has never suggested that jury sentencing is "constitutionally required." See 428 U.S. 242, 252.
37 408 U.S. at 310.
38 428 U.S. 280, 296.
41 "Capital murder" is defined as malice aforethought under any of five specified conditions. See Tex. Penal Code Ann. § 19.03 (Vernon 1974).
tencing hearing that three conditions are met. The capital murder can only be found under five specific offenses which are "narrowly defined and particularly brutal offenses." In measuring the statute against the standards advanced in Gregg, the Court concluded that the second of the three mitigating circumstances allowed the directed and limited discretion sought by Furman. Asking "whether there is a probability that the defendant would commit criminal acts of violence that would constitute a continuing threat to society," the second mitigating consideration was not explicit as to what it allowed. After examining the interpretation given to this language in the Texas courts, the Court concluded that this mitigating consideration had given defendants the freedom to bring in whatever evidence of mitigating circumstances they could produce. This was found to be a valid procedure to guide and focus the jury's "objective consideration of the particularized circumstances of the individual offender before it can impose a sentence of death." This Court also noted the importance of the Texas review procedures.

Woodson v. North Carolina and Roberts v. Louisiana decided the constitutional validity of capital punishment statutes requiring mandatory death sentences for certain crimes. Responding to Furman, the North Carolina and Louisiana legislatures had taken all discretion away from the jury but failed to eliminate the possibility of arbitrary and capricious death sentences. Three constitutional infirmities were cited as applicable to both statutes. First, the Court noted that "even in first-degree murder cases juries with sentencing discretion do not impose the death penalty with any degree of frequency." That juries have been unwilling to return death sentences on first degree murder cases in one hundred percent of the cases, suggests that mandatory death sentences are not acceptable by society's contemporary standards of decency as reflected by the juries. In light of the hesitancy of

42 The questions the jury must answer are these: (1) whether the defendant acted deliberately and with reasonable expectation that a death would result, (2) whether there is a probability that the defendant would constitute a continuing threat to society, and (3) whether the conduct of the defendant was unreasonable in response to the provocation, if any, by the deceased. The death penalty is imposed if and only if all three are answered affirmatively. Tex. Code of Crim. Proc. Ann. art. 37.071 (Vernon Supp. 1978-1979).
44 428 U.S. 262, 270.
45 It has been suggested that such a prediction is nearly impossible for experts to make and even more difficult for a jury. See The Supreme Court, 1975 Term, 90 Harv. L. Rev. 63, 71 (1976).
46 428 U.S. 262, 274.
47 Id. at 269.
48 428 U.S. 280.
49 428 U.S. 325.
50 See 428 U.S. 280, 295 (citing H. Kalven and H. Zeisel, The American Jury (1966)).
sentencing juries in the past to return death penalties in over twenty percent of the cases," it appears that requiring mandatory death sentences would only force juries to become more reluctant to find guilt at trial, effectively causing arbitrary and capricious sentencing. Finally, the Court rejected mandatory sentencing because it fails "to allow the particularized consideration of relevant aspects of the character and record of each convicted defendant before the imposition upon him of a sentence of death."

In Lockett and Bell, the Court has struck down the Ohio statute as not allowing enough discretion to the sentencing body. Prior to the Furman decision, the Ohio statute provided death as a punishment under specific crimes unless the jury recommended mercy. In 1972 a bill was passed by the Ohio House of Representatives which proposed modifications of this statute. In its original form the bill provided a list of aggravating and mitigating circumstances in determination of the death penalty. In mitigation the sentencing body was allowed to consider any circumstances "tending to mitigate the offense, though failing to establish a defense." While the bill was being examined by the Judiciary Committee of the Ohio Senate, the Furman decision was announced. Uncertain about the rationale of Furman, the Ohio Senate decided to limit the factors to be considered in mitigation so as not to create too much discretion. The statute reviewed by the Court in the Lockett and Bell decisions resulted.

This resulting statute under which Lockett and Bell were sentenced was reviewed by the plurality in terms of the statutes upheld in Gregg, Proffit, and Jurek. The Ohio statute, listing seven specific aggravating circumstances and allowing three mitigating circumstances, is very similar to the approved statutes in Gregg and Proffit. Additionally though, Georgia allowed the

51 428 U.S. 280, 295 n.31.
52 Juries would find it convenient in their duty to eliminate the possibility of a death sentence by refusing to find guilt at the trial determination. Without guidelines or standards the elimination would be arbitrary and unfair. See 428 U.S. at 302-03.
53 Id.
54 OHIO REV. CODE ANN. § 2901.01 (Page 1954).
55 Sub. H.B. 511, 109th Ohio General Assembly, OHIO REV. CODE ANN. § 2929.03. See Lehman and Norris, supra note 16.
57 OHIO REV. CODE ANN. § 2929.03 (Page 1975).
58 The Court also addressed a few other challenges made by Lockett but would not admit that any represented a valid reason to set aside her sentence. See 98 S. Ct. at 2959. In Bell's case the Court would not reach any of Bell's contentions other than the question of constitutionality and the eighth and fourteenth amendments. See 98 S. Ct. at 2980-81.
jury to consider “any aggravating or mitigating circumstances” and similarly Florida, although only listing the mitigating factors, had been found by the Court to allow consideration of any mitigating factor.

In Ohio, after a finding of guilt at trial under one of the aggravating circumstances, the death penalty was precluded by statute when, considering the nature and circumstances of the offense and the history, character and condition of the offender, one or more of the following was established by a preponderance of the evidence:

1. The victim of the offense induced or facilitated it.
2. It is unlikely that the offense would have been committed, but for the fact that the offender was under duress, coercion, or strong provocation.
3. The offense was primarily the product of the offender’s psychosis or mental deficiency, though such condition is insufficient to establish the defense of insanity.

The Ohio statute was attacked for its lack of “individualized sentencing determination” and the Court asserted that in criminal cases this concept has long been accepted in this country. In the earlier opinion of Williams v. New York, it was held that the sentencing judge’s “possession of the fullest information possible concerning the defendant’s life and characteristics is [h]ighly relevant, if not essential, [to the] selection of an appropriate sentence. . . .” The Court has maintained this policy in a progression of cases, the most recent of which is the Woodson decision. In that decision the majority concluded:

[In] capital cases the fundamental respect for humanity underlying the Eighth Amendment, Trop v. Dulles, requires consideration of the

---

62 428 U.S. 280, 206.
63 Although the Florida statute contained a list of mitigating factors, six members of the Court assumed, in approving the statute, that the range of mitigating factors listed in the statute was not exclusive. See the opinion of Justices Stewart, Powell, and Stevens, 428 U.S. at 250; and the concurring opinions of Justice White joined by Chief Justice Burger and Justice Rehnquist. Id. at 260.
64 OHIO REV. CODE ANN. § 2929.04(B) (Page 1975).
65 The term was used by the Court in “The Gregg series” to refer to the need for courts to consider the character and record of individual offenders and the circumstances of their particular offenses when determining sentence. 428 U.S. at 303-05.
66 98 S. Ct. at 2963.
69 See Williams v. Oklahoma, 358 U.S. 576, 585 (1948); Furman v. Georgia, 408 U.S. at 245-46 (1972) (Douglas, J., concurring); id. at 297-98 (Brennan, J., concurring); id. at 339 (Marshall, J., concurring); id. at 402-03 (Burger, J., dissenting); id. at 413 (Blackmun, J., dissenting); McGautha v. California, 402 U.S. at 197-203 (1971).
character and record of the individual offender and the circumstances
of the particular offense as a constitutionally indispensable part of the
process of inflicting the penalty of death.\textsuperscript{72}

The consideration of "any mitigating" factor was found by the Court
to be the critical redeeming quality of the accepted statutes. In its construction
of the language of the Ohio statute the Court found this quality to be lacking.
In making this conclusion the Court looked to Ohio's highest court to examine
the meaning that had been given to the statute.\textsuperscript{78} According to the majority,
consideration of the nature and circumstances of the offense and the history,
character and condition of the offender are only relevant if "[they] shed some
light on one of the three mitigating factors."\textsuperscript{74} Effectively, the Ohio statute
did not allow the trial court to consider the defendant's lack of past criminal
record or remote degree of involvement as mitigating factors in and of them-
selves. The impact of this defect was especially clear under the unique facts
of the cases. Lockett and Bell were sentenced to die as accomplices in crimes
resulting in murder. Neither defendant directly took part in the murder or
even intended murder as a result.

It is enlightening to examine the opinions of the various justices. Justice
Marshall affirmed his prior opinion that the death penalty was unconstitu-
tional per se.\textsuperscript{75} Justice White and Justice Blackmun could not accept a death
sentence for a mere accomplice.\textsuperscript{76} Justice Rehnquist feared that allowing the
jury to consider any mitigating factor proffered would allow too much dis-
cretion to come into the determination returning the capital punishment
statutes to pre-\textit{Furman} status.\textsuperscript{77}

Under the unique facts of the cases, Justices Marshall and White found
the Ohio statute to violate the principle of proportionality embodied in the
eighth amendment.\textsuperscript{78} Since the two defendants here were only drivers of the
vehicles used to accomplish the crimes, the two justices could not reconcile
findings by the Ohio courts that either defendant possessed a purpose to kill
or that either had the specific intent. Additionally, rejecting the possibility
of any deterrent value, the sentences were thought "grossly out of proportion
to the severity of the crime."\textsuperscript{79}

The inability of the Court to agree in their death penalty opinions has

\textsuperscript{72} 428 U.S. 280, 304.
\textsuperscript{73} 98 S. Ct. at 2966.
\textsuperscript{74} Id.
\textsuperscript{75} Id. at 2973.
\textsuperscript{76} Id. at 2969; id. at 2982.
\textsuperscript{77} Id. at 2973.
\textsuperscript{78} Id. at 2973 & 2982. The plurality found it unnecessary to consider disproportionality. Id.
at 2967 n.16.
\textsuperscript{79} Id. at 2984.
caused many inconsistencies in the line of cases and statutes reviewed in the last ten years. Now, after the Gregg series and this latest opinion, it appears that the Court has achieved some success in their attempt to develop standards for many anxious courts and legislators. Although two justices\textsuperscript{80} asserted that they cannot accept capital punishment in any form, the Court has firmly established that the death penalty is a viable means of punishment.\textsuperscript{81}

After the uncertainty of Furman, the Court attempted to define what it required of capital punishment statutes when it granted certiorari for Gregg and its companion cases. In Gregg v. Georgia it was intimated by the Court that the Georgia system was the correct response to Furman, yet the Court stood firm in requiring individual examination of each distinct system.\textsuperscript{82} Rejecting the North Carolina and Louisiana statutes in Woodson and Roberts, the Court helped to identify what is acceptable by explaining what is unacceptable. The unacceptability of mandatory death sentences, even under specifically defined crimes, was clearly established. A chief reason cited for the failure of the two systems was their inability to allow "individualized sentencing determination."

The question then becomes, what will "individualized sentencing determination" require? Woodson suggests that it requires "particularized consideration of relevant aspects of the character and record of each convicted defendant."\textsuperscript{83} In Gregg, Proffit, and Jurek, the Court found it critical that the capital punishment system had allowed consideration of any relevant mitigating factor before they accepted them.

Now the Court has rejected the Ohio statute because it will not allow consideration of mitigating factors outside those listed in the statute. Reflecting on the lesson of Woodson, the plurality in Lockett and Bell concluded:

\[\text{that the Eighth and Fourteenth Amendments require that the sentence, in all but the rarest kind of capital case, not be precluded from considering as a mitigating factor any aspect of a defendant's character or record and any of the circumstances of the offense that the defendant proffers as a basis for a sentence less than death.}\textsuperscript{84}

The Court has also found it important to require an adequate system

\textsuperscript{80} In "The Gregg series" Justice Marshall and Justice Brennan established that they will not accept capital punishment in any form. 428 U.S. at 227, 231, 260, 277, 305 & 336.
\textsuperscript{81} 428 U.S. 153, 169.
\textsuperscript{82} "A system could have standards so vague that they would fail adequately to channel the sentencing decision patterns of juries with the result that a pattern of arbitrary and capricious sentencing like that found unconstitutional in Furman could occur." 428 U.S. at 195 n.46.
\textsuperscript{83} 428 U.S. 280, 303.
\textsuperscript{84} 98 S. Ct. at 2965.
of appellate review. This Court expressed approval of the Georgia provision for appellate review as a safeguard against aberrant jury decisions. "If a time comes when juries generally do not impose the death sentence in a certain kind of murder case, the appellate review procedures assure that no defendant convicted under such circumstances will suffer a sentence of death." 85

Similarly the Court praised Florida and Texas systems for protecting against unfair sentences with successful appellate review. The Florida Supreme Court had notably vacated eight of twenty-one death sentences under their statute 86 and the Texas Court of Criminal Appeals had only affirmed two death sentences which it had reviewed since Furman. 87

The burden is now upon the Ohio legislature to enact a new capital punishment statute. As the earlier analysis has suggested, 88 to be constitutional the Ohio statute will have to provide specifically enumerated aggravating and mitigating circumstances which can be weighed by the judge and jury. Where the invalidated statute provides for this it may only be necessary to alter the statute to an extent to allow for consideration of additional mitigating factors that are deemed relevant to the individual defendant. This appears especially important where the Court cited the lack of individual consideration as the crucial deficiency in the statute. However, a successful statute is not the only component of an acceptable capital punishment system. Ohio must equally provide for effective appellate review. It appears from the Gregg series that an effective appellate review procedure provides a safeguard against arbitrary and capricious sentences and standards for distinguishing those cases in which the death penalty should be imposed from those in which it should not. The burden is on the judiciary as well as the legislature. For other states which have statutes that have not been tested, Ohio's experience serves as a guideline for what elements a valid statute should contain. While there is still no absolute formula to a successful capital punishment statute, the major requirements have been made apparent by the Court.

JAMES C. ELLERHORST

85 428 U.S. 280, 206.
86 428 U.S. 253.
87 428 U.S. 270.
88 See text supra at 000