

**Inland Valley Chapter of Death Penalty Focus
Essay Contest 2010**

First Place in High School Division:

“The Death Penalty: Learning from the Legend of Thurgood Marshall” by NICHOLAS MORTON, High School Center for Independent Studies, Altadena, CA

The criminal justice system in America was designed to do three things: Deter, punish and rehabilitate. It is clear to me that the death penalty does none of these three.

On June 29, 1972, almost 38 years ago, the U S Supreme Court in the case of *Furman vs. Georgia*, held by a five to four vote that imposing and carrying out the death penalty constituted a cruel and unusual punishment in violation of the eighth and fourteenth amendments. Thurgood Marshall the first African American justice on the U S Supreme Court wrote a concurring opinion with which I not only agree but now cite as support for my own opinion on this topic:

"At times a cry is heard that morality requires vengeance to evidence society's abhorrence of the act, but the eighth amendment is our insulation from our baser selves. The cruel and unusual language limits the avenues through which vengeance can be channeled. Were this not so, the language would be empty and a return to the rack and other tortures would be possible in a given case.

Retaliation, vengeance and retribution have been roundly condemned as intolerable aspirations for government in a free society. Punishment as retribution has been condemned by scholars for centuries and the eighth amendment itself was adopted to prevent punishment from becoming synonymous with vengeance.

In striking down capital punishment, this Court does not malign our system of government. On the contrary it pays homage to it...In recognizing the humanity of our fellow beings we pay ourselves the highest tribute."

Beyond ethics, emotions, history, politics and philosophy Marshall's concurring opinion in *Furman* challenges and overcomes two of the main arguments usually put forth by death penalty proponents: cost and deterrence. The cost is more on average to execute than not, once all usual and customary appeals are taken into consideration. Regarding deterrence effect, government and non- government data suggests the death penalty has had no impact on the American homicide rate.

In addition there are two more compelling reasons why the death penalty is fundamentally wrong. Data shows that the death penalty as a tool of discrimination has been more greatly applied to poor and/or people of color (particularly blacks) than whites, for virtually the same crimes under the same circumstances in the same jurisdictions (as noted at length by Marshall in his opinion in *Furman*). Secondly, modern times are punctuated with stories about how DNA has proved in multiple cases how the innocent have died in vain due to the death penalty.

In closing, four years later the US Supreme Court would reverse itself in *Gregg vs. Georgia*. Judge Marshall dissented, saying in part, "...the taking of life because the wrongdoer deserves it surely must fail, for such punishment has at its very basis the total denial of the wrongdoer's dignity and worth."

Regardless of how heinous and seemingly aberrational the crime, because we are human, there is some presence, or at least potential for "dignity and worth" as Justice Marshall states in his dissent. In other words, there is the potential to change in all of us. A quality that speaks of and about humanity, and our nation as a people, a potential the death penalty can never realize.

Equally important, what does the death penalty say about us as a society, and the way adults role model for our children? All our lives we are told that to kill is the most severe of all crimes and life is the most precious of all. Yet when our government "legally kills" the contradiction and the hypocrisy seem obvious.

These are the reasons that I urge all Californians to end the death penalty in our state. Change the laws to make life with the possibility of parole the most serious punishment used in our courts. Change the sentences of current death row inmates to life without the possibility of parole.