

requirement in every case, permitted the sentencing authority to be guided by and to focus on an "objective consideration of the particularized circumstances of the individual offense and the individual offender before it can impose a sentence of death." Jurek v. Texas, 96 S. Ct. at 2957.

The broad, mandatory death penalty statutes of North Carolina, Louisiana and Oklahoma were found by the Supreme Court to have failed to meet the constitutional test. Woodson v. North Carolina, 96 S. Ct. 2978 (1976); Roberts v. Louisiana, 96 S. Ct. 3001 (1976), and Green v. Oklahoma, Mem., 96 S. Ct. 3216 (1976). The principal shortcoming of these statutes lay in their failure to provide "... the fundamental respect for humanity underlying the Eighth Amendment,... [which] requires consideration of the 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." Woodson v. North Carolina, 96 S. Ct. at 2991. The fatal flaw in these statutes was that none required particularized consideration of mitigating circumstances and that they therefore failed to provide objective standards to guide, regularize and make rationally reviewable the process of imposing the death sentence.

These considerations were of paramount importance in the review of the presently existing Maryland death penalty statute conducted by the Court of Appeals of Maryland in its opinion delivered on November 9, 1976, in Blackwell v. State, 278 Md. 466 (1976) (Murphy, C.J.), cert. den., ___ U.S. ___ (May 16, 1977). The Court of Appeals found the mandatory death penalty provisions of Art. 27, §413, Md. Code Ann., unconstitutional, inasmuch as that statute did not contain any clear or precise guidelines enabling the sentencing authority to focus upon and consider particularized mitigating factors. In our argument in the Blackwell case, we were constrained to conclude reluctantly that the Maryland statute fell short of the Supreme Court guidelines, a conclusion which the Court of Appeals adopted.

The following portion of the discussion of this aspect in Blackwell v. State, supra, provides an insight into the elements of a constitutional capital sentencing statute:

"It is true, of course, that § 413 permits elements of mitigation to be presented to the jury, i.e., proof of the defendant's age and of the motive for the act in the context of resolving the question of the proximate cause of the victim's death. We are unable to conclude, however, that the presentation of these two elements requires the