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Commentary: Shoop v. Twyford

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Commentary: *Shoop v. Twyford*

The death penalty is both cruel and unusual. In fact, the Supreme Court once agreed that sentencing criminal defendants to death violated the Eighth and Fourteenth Amendments.[1] Despite invalidating death as punishment for certain crimes, the Court recognized that the death penalty has historically served a crucial societal function: quelling the proverbial white mob. To them, the death penalty "satisfies the popular demand for grievous condemnation," and in turn, prevents "lynching, and attempts by private citizens to take the law into their own hands."[2] When the law doesn't afford citizens the opportunity to exact terminal justice on criminal defendants "then there are sown the seeds of anarchy," "vigilante justice, and lynch law."[3] Those sentiments, however terrifying, should serve as useful, poignant, yet damning reminders that codifying illegal methods of hate into legal ones is intrinsically American. Those chilling remarks only heighten the need to abolish the death penalty. Importantly, the Supreme Court has long recognized that the death penalty was born out of vehement racism and led to a shocking number of wrongful convictions.[4] Despite ruling that the death penalty was unconstitutional in 1972, the Court has since backtracked, upholding its constitutionality in a variety of contexts.[5] Because of this, States have constitutionally protected authority to end a defendant's life for certain crimes. Ohio is one of those states.

Exercising that authority, an Ohio jury sentenced Raymond Twyford to death for aggravated murder and other charges.[6] Following unsuccessful state appeals, Twyford sought federal relief.[7] Twyford contended, and the federal district and appellate court agreed, that if he were allowed to be transported to a nearby medical facility for neurological testing it would likely reveal mitigating evidence stemming from severe brain damage Twyford suffered as a child.[8] Tim Shoop, warden for Ohio's Department of Corrections, disagreed and petitioned the Supreme Court to overrule the federal court's finding that, by law, Twyford was entitled to this potential relief. The Court granted certiorari to prevent Twyford from ever getting off death row.

In *Shoop v. Twyford*, the Court held that a "transportation order that allows a prisoner to search for new evidence is not 'necessary or appropriate in aid of' a federal court's adjudication," specifically, "when the prisoner has not shown that the desired evidence would be admissible," under the All Writs Act and Anti-Terrorism Effective Death Penalty Act (AEDPA).[9] The All Writs Act authorizes federal courts to "issue all writs necessary or appropriate in aid of their respective jurisdictions," to properly adjudicate federal habeas cases.[10] In essence, the All Writs Act gives federal courts some limited leeway to allow defendants in habeas cases to introduce new evidence so long as that evidence would otherwise be admissible.

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[1] *See generally Furman v. Georgia*, 408 U.S. 241 (holding the death penalty violated the Eighth and Fourteenth Amendments in some murder and rape cases).
[2] *Id.*, at 408 U.S. 303 (Brennan, J., concurring).
[3] *Id.*, at 408 U.S. 308 (Stewart, J., concurring).
[4] Equal Justice Initiative, *Death Penalty* (Accessed on April 1, 2023), https://eji.org/issues/death-penalty/.
[5] Capital Punishment in Context, *Summaries of Key Supreme Court Case Related to the Death Penalty* (Accessed on April 1, 2023), https://capitalpunishmentincontext.org/resources/casesummaries.
[6] *Shoop v. Twyford*, 142 S.Ct. 2037, 2038 (2022).
[7] *Id.*
[8] *Id.*
[9] *Id.*
[10] 28 U.S.C. § 1651(a).

The All Writs Act serves as a foil to AEDPA, the most comprehensive federal statute governing death penalty cases. AEDPA is especially harsh on criminal defendants and Congress's stated purpose for its enactment was "to deter terrorism, provide justice for victims, and provide for an effective death penalty."[11] Effectively, AEDPA substitutes due process for efficiency and deliberately limits what criminal defendants sentenced to death can introduce as evidence later in the appeal process.[12] In *Shoop v. Twyford*, the Court chose efficiency over human life, using circular logic to hold that Twyford's transportation order to a medical facility for neurological testing was not necessary to adjudicate his case because he failed to adequately show why that evidence would be admissible. Opting to ignore common sense, while weakening a federal court's ability to afford a criminal defendant due process, the Court would rather see Twyford die than introduce new legitimate evidence.

The reason why Twyford asked to be transported from death row to a medical facility for neurological testing, and why it would lead to admissible evidence, is self-evident and straightforward: mitigation and mental capacity. By the age of 13, Raymond Twyford had already been a victim of repeated severe physical and psychological abuse, including rape.[13] Deciding he would rather die than endure further abuse, Twyford, aged 13, placed a gun in his mouth and pulled the trigger hoping to kill himself.[14] This wound, which has never been fully investigated or inspected, left anywhere between 20-30 metal fragments in his skull.[15] In issuing its ruling, the Court relegates this traumatic and life-altering attempted suicide to an innocuous "self-inflicted gunshot wound."[16] To this day, we do not know the location or impact of these fragments on Twyford's brain function.

In 1992, Twyford and a friend lured Richard Franks to a remote location near the West Virginia border.[17] There, they shot Franks, dismembered his body, and threw his body parts into a nearby pond.[18] Twyford contended he did this because Franks raped his girlfriend's daughter.[19] Although there is no doubt that Twyford committed the crimes he was charged with, two problems exist here: 1) denying his transportation order to get neurological testing impermissibly denies Twyford due process he is entitled to as a matter of law, and 2) denying such transportation orders severely limits a federal court's ability to extend grace to criminal defendants who have legitimate reasons for introducing new evidence. Here, the Court makes a mockery of some of the most fundamental theories that undergird criminal law: mental capacity to commit an offense. Applying circular logic, favoring expediting lethal injection over legal truth, the Court concludes – without any evidence that granting a transportation order for neurological testing is not "necessary or appropriate," when the defendant fails to show whether

[11] *See generally* 28 U.S.C. § 2254.
[12] *Id.*
[13] Laura Hancock, *U.S. Supreme Court Rules that Ohio Death Row Inmate Should Not be Transported for Neurological Testing*, cleveland.com (June 21, 2022), https://www.cleveland.com/news/2022/06/us-supreme-court-rules-that-ohio-death-row-inmate-should-not-be-transported-for-neurological-testing.html.
[14] *Id.*
[15] *Shoop*, at 2042.
[16] *Id.*
[17] Laura Hancock, *U.S. Supreme Court Rules that Ohio Death Row Inmate Should Not be Transported for Neurological Testing*, cleveland.com (June 21, 2022), https://www.cleveland.com/news/2022/06/us-supreme-court-rules-that-ohio-death-row-inmate-should-not-be-transported-for-neurological-testing.html.
[18] *Id.*
[19] *Id.*

the results of the testing would be admissible. Ironically, to determine whether the results would be admissible, a defendant would need to get the testing. Putting the cart before the horse, the Court effectively shuts the door on defendants who for one reason or another fail to develop or provide all factual evidence relevant for future federal appeals at the beginning, rather than during, their appeals process. The resulting effect is a futile charade of procedural formalities that only prolongs the inevitable. To be sure, judicial efficiency and expediency are important, but surely, surely not, more important than human life and constitutionally mandated due process of law. *Shoop v Twyford* is only another case, in a line of many, that emphasizes the Court's determination to swiftly enforce fatal injustice on those sentenced to death.