

Four years later in *Gregg v. Georgia*, 428 U.S. 153 (1976), the Supreme Court announced procedural reforms and requirements calculated to remedy these violations. The Supreme Court's decision in *Gregg* did not overrule *Furman*. It strove to fix the problems which *Furman* had identified. Forty years later the question of a systemic violation of the Eighth Amendment remains. See *Glossip v. Gross*, 135 S. Ct. 2726, 2755 (2015) (Breyer, J., dissenting). As the parties' memoranda demonstrate, there is strong disagreement in this case and more generally in judicial and scholarly circles about whether the failures identified in *Furman* have been repaired by the reforms imposed by *Gregg*.

The court's consideration of these issues is likely to be enhanced by an evidentiary presentation regardless of the outcome and even if the court follows the Government in ruling that *Gregg* forecloses any further consideration of the issues. Since appellate review of a ruling in either direction will be critical for both sides, a full record may have value to the panel. At its heart, the court's purpose in scheduling a hearing is to develop the fullest possible expression of both sides' factual and empirical arguments.

The court requests that the parties appear on February 19, 2016, prepared to address the scope, length, and nature of an evidentiary hearing to be scheduled shortly after July 1, 2016.

Dated at Rutland, in the District of Vermont, this 9 day of February, 2016.



Geoffrey W. Crawford, Judge
United States District Court