

Tuesday, December 19, 2006

Justice Scalia chillingly calls it "sanctimonious criticism of America's death penalty."

In mid-2006, a 5-4 majority of the the United States Supreme Court chillingly upheld Kansas's requirement to issue a death sentence where the jury unanimously finds beyond a reasonable doubt that aggravating and mitigating circumstances for a death sentence are in equipoise, rather than finding that the aggravating circumstances outweigh the mitigating circumstances. *Kansas v. Marsh*, ___ U.S. ___, 126 S. Ct. 2516 (2006). Â Justice Scalia -- to whom I presented an anti-death penalty petition in 1988 -- in a chilling concurrence, refers to voices of death penalty abolitionists as "sanctimonious criticism of America's death penalty." *Kansas v. Marsh*, 126 S. Ct. at 2532. Fortunately, the four dissenters stand firmly against such hyperbole that prefers to trust the democratic will over the Bill of Rights' limits on the tyranny of the majority. *Id.* at 2539 and 2541.Â Thanks to the National Law Journal for printing this responsive open letter to Justice Scalia against the continued execution of innocents that will continue under the Supreme Court's current death penalty jurisprudence. Thanks to Capital Defense Weekly for covering this National Law Journal opinion piece. Jon Katz.

Posted by Jon Katz in Criminal Defense at 03:00