In *Carey v. Musladin*,[208] the Court noted that it had previously held that "the State cannot, consistently with the Fourteenth Amendment, compel an accused to stand trial before a jury while dressed in identifiable prison clothes,"[209] but that it had never ruled on the effect on a defendant's fair trial rights of *spectator* conduct. In *Carey*, the spectator conduct that allegedly affected the defendant's right to a fair trial consisted of members of the victim's family wearing buttons with the victim's photograph. Given the lack of holdings from the Court on the question of spectator conduct, the Court in *Carey* found that "it cannot be said that the state court unreasonabl[y] appli[ed] clearly established Federal law" in denying the defendant relief.[210] Consequently, the Antiterrorism and Effective Death Penalty Act of 1996 precluded *habeas* relief. Similarly, because the Supreme Court has never ruled on whether, during a plea hearing at which the defendant pleads guilty, defense counsel's being linked to the courtroom by speaker phone, rather than being physically present, is likely to result in such poor performance that the *Cronic* standard for ineffective assistance of counsel should apply, the Court again could not say "that the state court 'unreasonabl[y] appli[ed] clearly established Federal law.'"[211]

The Court has also ruled that a death row inmate has no constitutional right to an attorney to help prepare a petition for state collateral review.[212]

Proportionality

In *O'Neil v. Vermont*,[213] Justice Field argued in dissent that, in addition to prohibiting punishments deemed barbarous and inhumane, the Eighth Amendment also condemned "all punishments which by their excessive length or severity are greatly disproportionate to the offenses charged." In *Weems v. United States*,[214] the Court adopted this view in striking down a sentence in the Philippine Islands of 15 years incarceration at hard labor with chains on the ankles, loss of all civil rights, and perpetual surveillance, for the

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[208] 549 U.S. 70 (2006).

[209] Estelle v. Williams, 425 U.S. 501, 512 (1976).

[210] 549 U.S. at 77 (quoting from 28 U.S.C. § 2254(d)(1)).

[211] Wright v. Van Patten, 128 S. Ct. 743 (2008) (per curiam), quoting Carey v. Musladin, 549 U.S. 70, 77 (2006) (under the Antiterrorism and Effective Death Penalty Act of 1996, 28 U.S.C. § 2254(d)(1), defendant not entitled to *habeas* relief).

[212] Murray v. Giarratano, 492 U.S. 1 (1989) ("unit attorneys" assigned to prisons were available for some advice prior to filing a claim).

[213] 144 U.S. 323, 339–40 (1892). *See also* Howard v. Fleming, 191 U.S. 126, 135–36 (1903).

[214] 217 U.S. 349 (1910). The Court was here applying not the Eighth Amendment but a statutory bill of rights applying to the Philippines, which it interpreted as having the same meaning. Id. at 367.