parison with the penalties imposed in similar cases.[89] The Court later ruled, however, that proportionality review is not constitutionally required.[90] *Gregg*, *Proffitt*, and *Jurek* did not require such comparative proportionality review, the Court noted, but merely suggested that proportionality review is one means by which a state may "safeguard against arbitrarily imposed death sentences."[91]

The Court added a fourth major guideline in 2002, holding that the Sixth Amendment right to trial by jury comprehends the right to have a jury make factual determinations on which a sentencing increase is based.[92] This means that capital sentencing schemes are unconstitutional if judges are allowed to make factual findings as to the existence of aggravating circumstances that are prerequisites for imposition of a death sentence.

Implementation of Procedural Requirements.—Most states responded to the 1976 requirement that the sentencing authority's discretion be narrowed by enacting statutes spelling out "aggravating" circumstances, and requiring that at least one such aggravating circumstance be found before the death penalty is imposed. The Court has required that the standards be relatively precise and instructive so as to minimize the risk of arbitrary and capricious action by the sentencer, the desired result being a principled way to distinguish cases in which the death penalty should be imposed from cases in which it should not be. Thus, the Court invalidated a capital sentence based upon a jury finding that the murder was "outrageously or wantonly vile, horrible, and inhuman," reasoning that "a person of ordinary sensibility could fairly [so] characterize almost every murder."[93] Similarly, an "especially heinous, atrocious, or cruel" aggravating circumstance was held to be unconstitutionally vague.[94] The "especially heinous, cruel, or depraved" standard is cured, however, by a narrowing interpretation requiring a finding of infliction of mental anguish or physical abuse before the victim's death.[95]

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[89] Gregg v. Georgia, 428 U.S. 153, 195, 198 (1976) (plurality); Proffitt v. Florida, 428 U.S. 242, 250–51, 253 (1976) (plurality); Jurek v. Texas, 428 U.S. 262, 276 (1976) (plurality).

[90] Pulley v. Harris, 465 U.S. 37 (1984).

[91] 465 U.S. at 50.

[92] Ring v. Arizona, 536 U.S. 584 (2002).

[93] Godfrey v. Georgia, 446 U.S. 420, 428–29 (1980) (plurality opinion).

[94] Maynard v. Cartwright, 486 U.S. 356, 363–64 (1988). *But see* Tuilaepa v. California, 512 U.S. 967 (1994) (holding that permitting capital juries to consider the circumstances of the crime, the defendant's prior criminal activity, and the age of the defendant, without further guidance, is not unconstitutionally vague).

[95] Walton v. Arizona, 497 U.S. 639 (1990). *Accord*,Lewis v. Jeffers, 497 U.S. 764 (1990). *See also* Gregg v. Georgia, 428 U.S. 153, 201 (1976) (upholding full statutory circumstance of "outrageously or wantonly vile, horrible or inhuman in that it in-