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Paul G. Bellus
University of Nebraska at Omaha

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**THE RHETORIC OF POVERTY AND SUPREME COURT DISCOURSE:
A CONTENT ANALYSIS OF SELECTED SUPREME COURT OPINIONS FROM 1989 - 1994**

A Thesis

Presented to the

Department of Communication

and the

Faculty of the Graduate College

University of Nebraska

In Partial Fulfillment

of the Requirements for the Degree

Master of Arts

University of Nebraska at Omaha

by

Paul G. Bellus

June, 1995

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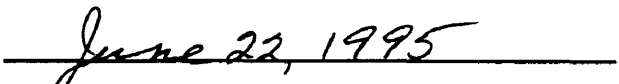
THESIS ACCEPTANCE

Acceptance for the faculty of the Graduate College, University of Nebraska, in partial fulfillment of the requirements for the degree Master of Arts, University of Nebraska at Omaha.

Committee

Name	Department
Roddall A. Rose,	Communication
Holl. F. G. G. G.,	Communication
Jerry Cederblom,	Goodrich Program


Chairman


Date

ABSTRACT

This thesis presents an analysis of 10 United States Supreme Court opinions between 1989 and 1994, and uncovers the normative assumptions which pervade and impoverish the Court's discourse on poverty. Positing two research questions, this thesis investigates the possible existence of a trend in the Court's written opinions on poverty. The statistical tests and thematic analysis depict two trends in the Court's rhetorical construction of its poverty opinions. First, the Court is more likely to label the poor petitioner as undeserving and morally deviant as opposed to deserving of preferential treatment. Second, the Court is more likely to invoke pleas of helplessness than attempt to empower itself when ruling on poverty issues.

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CHAPTER ONE

Introduction

Language critiques, which are argument-centered, can attempt to unravel the interconnections between the language policy-makers employ and the policies they enact (Edelman, 1977; Greene, 1992; Shanahan, 1993). These critiques allow the reader access to a fundamental assumption often left unexamined (Greene, 1992; Shanahan, 1993; Williams, 1991). They expose the normative assumptions which underlie the discourse engaged by policy-makers.

What role should language play in the United States Supreme Court? Clearly, rhetoric creates possibilities and restricts alternatives (Alfieri, 1992; Greene, 1992; Handler and Hasenfeld, 1991; Katz, 1989; 1993; Shanahan, 1993). The rhetoric of the Court establishes normative assumptions which govern the constitutionally permissible actions of others (Alfieri, 1992; Bezdek, 1992; Margulies, 1994; Ross, 1991). If the Court employs discriminatory language when making decisions then the likelihood of discrimination increases (Alfieri, 1992; Bezdek, 1992; Feldman, 1992; Greene, 1992; Margulies, 1994). If the way the Court speaks effects the nation, then an investigation of the Court's language should demonstrate the extent to which rhetoric and its reality extend throughout the Court (Feldman, 1992; Margulies, 1994; Ross, 1991).

Legal discourse is a significant piece of social construction because the law translates meaning into society (Alfieri, 1992; Bezdek, 1992; Greene, 1992; Margulies, 1994). The rhetoric of the Court establishes a legal consciousness which the public uses to shape its understanding and beliefs about the law's nature and operation (Bezdek, 1992; Greene, 1992). Judicial manipulation of legal discourse signals the official language which is permissible and its prescribed meaning (Alfieri, 1992; Bezdek, 1992). Personal and institutional identities are

forged from court interpretations (Bezdek, 1992; Greene, 1992; Margulies, 1994). Each ruling acts as a public announcement of the interpretation which the court accepts. This legal codification of reality is not neutral, but influenced by past scripts (Bezdek, 1992; Margulies, 1994) and the context of the court (Alfieri, 1992; Bezdek, 1992; Greene, 1992). It is due to the overarching effects of legal discourse and the Court's lack of neutrality, that an investigation into the rhetoric of the United States Supreme Court is significant and promises to elicit some insight into the value assumptions which motivated the Court's rhetoric.

One aspect of the Court's rhetoric that holds promise for gaining insight into the value assumptions of the Court relates to the rhetoric of poverty. In practice, officials have always categorized the poor (Alfieri, 1992; Bane and Ellwood, 1994; Handler and Hasenfeld, 1991; Katz, 1983; 1986; 1989; 1993; Lord, 1993; Ross, 1991). For reasons of convenience (Alfieri, 1992; Katz, 1986; 1989), of ideology (Handler and Hasenfeld, 1991; Katz, 1983; 1986; 1989; 1993; Lord, 1993; Ross, 1991), of dominance (Handler and Hasenfeld, 1991; Katz, 1983; 1986; 1989; 1993; Lord, 1993), and due to scarce resources (Bane and Ellwood, 1994; Katz, 1983; 1986; 1989; Ross, 1991) the poor have been ascribed certain characteristics and attributes that place them on a continuum of worthiness. These pragmatic assessments have nearly always been accompanied by moral criteria (Auletta, 1983; Handler and Hasenfeld, 1991; Katz, 1983; 1989; 1993; Lord, 1993). The issue becomes not only who can fend for themselves without aid, but more important, whose behavior and character entitles them to the resources of others (Auletta, 1983; Handler and Hasenfeld, 1991; Katz, 1989; Lord, 1993). This practice of grouping individuals lends itself to investigation, because, like all stereotyping, it oversimplifies human experience and may be discriminatory (Greene, 1992; Katz, 1986; 1989; Lord, 1993). In addition, an examination of the values which shape the categories in which the poor are placed should augment our understanding of the culture we live in.

The goal of this thesis is not to discover universals, not to make predictions that will

hold good over time because language is not static; but, instead, to explicate contexts and thereby achieve new insights and new understanding. Katz (1983), describes the importance of uncovering the assumptions which underline language: "we must not feel too constrained about questioning the overt content of discourse, for, after all, I have shown that in important ways it cannot be believed" (p. 181). Exploring the vocabulary of poverty discourse should reveal the meaning and value ascribed to the poor, by others and themselves, along with uncovering the assumptions which motivate the use of this language.

Review of Literature

Historical Analysis of the Creation of the "Poor"

"Poor people are different from us. Most of them are morally weak and undeserving. And, in any event, we are helpless to solve the complex and daunting problem of poverty. This is the rhetoric of poverty."

(Thomas Ross, 1991, p. 1499)

Ross (1991) offers a concise definition of the rhetoric of poverty. Alone, this definition could serve as a foundation for investigation, but to gain a fuller understanding of the abstraction of the "poor" it is necessary to discover how the concept has developed and changed over time. This aspect is easily overlooked, yet it is a powerful part of the rhetoric of poverty (Ross, 1991). Too often people speak of the "poor" without reflecting on how their definition of the "poor" has been assigned. By focusing on the commodification aspects of the term, individuals create a wealth continuum and draw a line separating "them" from "us" (Alfieri, 1992; Auletta, 1983; Bane and Ellwood, 1994; Handler and Hasenfeld, 1991; Katz, 1983; 1986; 1989; 1993; Ross, 1991). This abstraction allows the public to categorize the world around them and assign meaning to those categories (Handler and Hasenfeld, 1991; Katz, 1989; Ross,

1991). Individuals do this because to make sense of the world around them and to speak of the world in sensible ways they must resort to stereotypes (Ross, 1994; Ross, 1991; White, 1984; Williams, 1991). However, there is a danger to this process. Leaving the assumptions, which define each constructed category of the poor, unquestioned may result in the perpetuation of a distorted reality (Greene, 1992; Ross, 1994; Margulies, 1994; White, 1984; Williams, 1991). The following discussion reconstructs the historical development of the abstraction "the poor". To understand the nature and power of the rhetoric of poverty, it is essential to uncover the historical and cultural assumptions behind its basic premises (Greene, 1992; Handler and Hasenfeld, 1991; Katz, 1989; Ross, 1994; Ross, 1991; White, 1984; Williams, 1991).

Early History.

The United States has a history beginning with its formation of distinguishing those in poverty from those not in poverty (Handler and Hasenfeld, 1991; Handler and Hollingsworth, 1971; Katz, 1983; 1986; 1989; 1993; Ross, 1991). An integral component of this classification scheme is the moral censure of the poor (Handler and Hasenfeld, 1991; Katz, 1989). In the eighteenth century many communities had poor-laws (Handler and Hasenfeld, 1991; Handler and Hollingsworth, 1971; Katz, 1983; 1986; 1989). The laws imposed upon the community an obligation to assist the poor members of the community. At the time of their inscription, there was no disgrace or stigma attached to poverty; instead, the poor were classified into two distinct categories - **neighbors** and **strangers** (Katz, 1989; 1993). The community's responsibility was to assist their permanent members, defined as the neighbor category. Strangers, who might fall into need, within the community's borders should be shipped to their

places of origin (Katz, 1989). The distinction between neighbor and stranger was necessitated by the lack of resources available to the community (Katz, 1993). Due to scarcity of resources and the increased expenditures of funds meeting the needs of the community's poor, in the late eighteenth and early nineteenth centuries communities decided to limit their assistance (Katz, 1989). The burden of the poor had become too great and the solution lay in purging from the system the "undeserving," **able-bodied poor** (Handler and Hollingsworth, 1971; Katz, 1989; 1993). By the end of the first quarter of the nineteenth century, the vocabulary of poverty discourse had acquired two of its lasting features: "the division of the poor into categories of merit and the assumption that the roots of poverty lay in individual misbehavior" (Katz, 1993, p. 6-7).

The establishment of moral censure of the poor occurred in the late eighteenth and early nineteenth centuries (Handler and Hasenfeld, 1991; Handler and Hollingsworth, 1971; Katz, 1989). The old distinction between neighbor and stranger was transformed into a division of "worthy" and "unworthy" or **deserving** and **undeserving poor** (Katz, 1989). A moral assessment was made to determine who fell into which category (Katz, 1989; 1993). Poverty caused by misfortune was deemed worthy of assistance because it was an "unavoidable evil" (Katz, 1993). If poverty was a "consequence of vice" the individual was labeled a **pauper** and regarded as "morally suspect" and undeserving (Handler and Hasenfeld, 1991; Katz, 1983; 1986; 1989; 1993; Ross, 1991). Although by itself poverty still carried no social stigma, pauperism did (Katz, 1989). Despite the efforts to maintain the distinction between the two categories, the creation of a moral category for poverty had a blurring effect and tarnished all the poor (Katz, 1989). The popular attitude was to 'blame' the individual for her/his impoverished situation (Katz, 1989).

Furthermore, "housing reformers of the nineteenth and early twentieth centuries argued

that the unsanitary, congested housing of the poor bred immorality, crime, and disease" (Katz, 1993, p. 9). The members of these communities were discussed as a separate population (Katz, 1993). They were seen as embodying the worst of society, hence, were undeserving of the resources dedicated to "them". As a consequence of their own doing, the poor in these areas were destined to reproduce their own degradation (Katz, 1993). Urban poverty was linked to the **metaphor of disease**. A nineteenth century official contended: "We must deal with [pauperism], as we would with a malarial swamp, draining and purifying it instead of walling it about, or its miasma will spread and taint neighborhoods like a plague" (Katz, 1993, p. 9).

The 1870's witnessed the creation of a new category of poor (Katz, 1983). American social commentators invented the noun **tramp** to describe the "groups of men travelling from town to town looking for work" (Katz, 1983). Mobility had always been an aspect of the American working class at the time, but it was the pervasive numbers and stereotypical make-up of this new population that instilled fear into the public (Katz, 1983). The increase in number of dislocated workers was due to the depression of 1873, but it was the "increased labor militancy and the unmistakable emergence of an industrial proletariat - that prompted respectable citizens to transform unemployed, wandering, hungry, and perhaps often angry men into a new and menacing class called tramps" (Katz, 1983, p. 158). A host of "undesirable moral qualities" were attributed to tramps: laziness, heavy drinking, liars, cheaters, murderers (Katz, 1983). The homelessness of tramps appeared particularly menacing in a time when family life was thought to possess the source of moral culture (Katz, 1983). The causes of tramping were not seen in the great economic dislocation of the depression, but rooted in the individual's "weakness and immorality" (Katz, 1983). Since the tramp was stereotypically viewed as a male of "working age" and espousing the capacity to "perform productively" in the

work environment, the label of **able-bodied poor** was linked to the tramp (Katz, 1983). This label ascribed to tramps the social judgment of "unworthiness of assistance." This undeserving overtone to tramping changed society's willingness to tolerate what had been tolerated in the past (Katz, 1983). No longer was it expected of the community to be polite and service the needs of the tramp. Instead, tramps were to be treated like the "stranger" of the earlier eighteenth century - run out on the proverbial "rail" or controlled by the local constable and forced into labor (Katz, 1983).

In 1880 a "**morphology of evil**" was introduced into the vocabulary of poverty discourse (Katz, 1983). Frederic Howard Wines enumerated seven categories of the "dependent, defective, and delinquent" population in the United States (Katz, 1983). These were the blind, insane, prisoners, deaf-mutes, idiots, paupers, and homeless children (Katz, 1983). Wines began with the assumption that each group was merely a branch of the same category (Katz, 1983). They not only experienced misfortune, they were also "morally inferior" (Katz, 1983). The problems they suffered from were not only physical but also moral (Katz, 1983). Due to his emphasis on heredity, Wines viewed the members of each group as the "faulty offspring of faulty parents" (Katz, 1983, p. 135). The "morphology of evil" retained the earlier disease metaphor: "Like a malignant growth, the spread of defective types of humanity threatened to overwhelm the social body" (Katz, 1983, p.135).

The 1800s were rooted in a paradigm of social commentary that precluded its writers and policy-makers from moving beyond individualistic explanations of phenomena (Katz, 1983). This argument is employed by historians to justify the rhetorical constructions of the poor that neglect the respectable classes of poverty and allow them to be misperceived (Katz, 1983).

The Early Twentieth Century.

The increasing misery of the poor did not soften the moral definition of poverty. Even with the evidence pointing towards alternative explanations, which depicted poverty and dependence as complex social constructions, the poor received no reprieve from moral censure (Katz, 1989). So deeply embedded in United States discourse had the distinction between the **deserving** and **undeserving poor** become that writers from all ideologies employed it in their vocabulary and subsequent text (Katz, 1989). There had unquestionably become a poverty which individuals of "weak moral stature" and who lack the "work ethic" deserved (Handler and Hasenfeld, 1991; Katz, 1986; 1989).

With the turn of the century came the Great Depression. As unemployment reached catastrophic levels, the commonly held assumptions regarding the **able-bodied poor** and the unemployed lost some of their applicability. Nonetheless, the idea of relief remained "pejorative" and "degrading" (Katz, 1989; Ross, 1991). Society was unable to eradicate the social stigma and moral censure associated with an able-bodied recipient of public assistance (Katz, 1989; Ross, 1991).

Accompanying this great dislocation was a new distinction in the discourse of poverty. Another line was drawn between the poor dividing those receiving "**public assistance**" and "**social insurance**" (Katz, 1989; Ross, 1991). Katz (1989) explains how those receiving "public assistance" differed from those receiving "social insurance." "Social insurance" was thought of as a form of insurance against the natural events that impose financial hardships on all of us (e.g. Social Security). The recipients of this aid were viewed as "deserving" of this assistance, for they had "earned the right" to receive this aid (Handler and Hasenfeld, 1991; Handler and Hollingsworth, 1971; Katz, 1989; Ross, 1991). The undeserving poor relied upon "public

assistance" (Katz, 1986; 1989; Ross, 1991). They were seen as the "paupers" of that time - "lazy and morally suspect" (Katz, 1986; 1989). These categories serve to underscore the undeserving characteristic of today's recipients of "public assistance" (Katz, 1989; Ross, 1991).

Katz (1989) describes the period during World War II and the 1950s as a time when poverty received little attention. However, Katz (1989) is quick to note that the moral classification of poor people had persisted.

In the nineteenth century, asking for relief became a sign of individual failure; no label carried a greater stigma than pauper. By the second half of the twentieth century, some groups in need of help had been moved out of the pauper class. Most old people, workers disabled in accidents, and the unemployed could claim help as a right through social insurance. Others, notably women who headed families with children, remained dependent on public assistance -- morally tarred, as always, by their association with relief.

(Katz, 1989, p. 15-16)

The forties and fifties was not a time of great social change for the poor.

The 1960s War on Poverty and the Culture of Poverty.

The 1960s was marked by two key events related to the issue of poverty. One of them was motivated by the economic surge the country was experiencing, which launched the **War on Poverty**. The second feature was a new intellectual discussion about the causes and **culture of poverty**.

The 1960s witnessed a change in its societal line drawing and moral censure of the poor. The 1960s was a period of unrelenting economic growth, and the War on Poverty was the product of this "new economic prosperity" and the "unbounded optimism" about society's ability to abolish poverty without any real sacrifice that accompanied this new surge in

resources (Handler and Hasenfeld, 1991; Katz, 1986; 1989; Ross, 1991; Zarefsky, 1986). Katz (1986) depicts the eruption of a new attitude fueled by economic growth.

In the 1960s and the early 1970s, an unreflective, though brand new, assumption led to an optimistic assessment of America's future. Permanent economic growth would fuel continuous prosperity and provide the resources to absorb and resolve social problems with neither conflict nor sacrifice.

(p. 278)

As more Americans focused on the eradication of poverty and the reality of the resolution of poverty took hold, there was less interest in separating and stigmatizing the poor (Handler and Hasenfeld, 1991; Ross, 1991). In fact, society turned inward and began recanting its previous assumptions linking poverty with moral weakness (Ross, 1991). Yet, the public was unable to maintain this movement. As the sacrifice associated with caring for the poor became realized, the public rejected any further commitments to the War on Poverty and the discourse of society returned back to the theme of moral weakness (Feldman, 1992; Handler and Hasenfeld, 1991; Katz, 1986; Ross, 1991).

Although the **culture of poverty** did not mobilize an entire nation, it did impact the way in which poverty was defined during this period and has had a resonating effect in today's discourse. Motivated by the discovery that between 40 and 50 million Americans were, by any objective measure, poor, social scientists drew on a new concept to explain this phenomena: the culture of poverty (Bezdek, 1992; Feldman, 1992; Katz, 1989; 1993). Its goal was not to classify the poor, although, due to its limited application and subsequent exclusion of a large portion of those in poverty, the culture of poverty drew another line between the poor (Katz, 1989; 1993). The culture of poverty placed in one category "those whose behaviors and values converted their poverty into an enclosed and self-perpetuating world of dependence" (Katz, 1989). This new empathy for the plight of the poor could not protect them from being labeled as "different" and "inferior" (Katz, 1989). Because the culture of poverty attributed the actions

of the person as the cause of her/his poverty, it reproduced several of the old stereotypes (Katz, 1989; Ross, 1991). The culture of poverty became a euphemism for the "undeserving poor" (Katz, 1989).

The other classification of the poor was not viewed with the same moral contempt (Katz, 1989; 1993). This group was "untouched" by the culture of poverty or "escaped" it through the intervention of some sector of society which gave the impoverished person hope (Handler and Hasenfeld, 1991; Katz, 1993). The person left untouched by this pervasive culture was integrating into society through his/her own accord or with the assistance of society (Katz, 1993). They were left unscathed by the stigma associated with the culture of poverty, because they were fitting nicely into the "chauvinistic assumptions" of American society (Katz, 1989). As such, they were labeled as the "deserving poor" (Katz, 1989).

The 1970s and 1980s Underclass Debate.

The rhetoric of the 1970s and 1980s created yet another abstraction of the poor, the "underclass" (Auletta, 1983; Katz, 1989; 1993). This new category of the poor included:

(a) the passive poor, usually long-term welfare recipients; (b) the hostile street criminals who terrorize most cities, and who are often school dropouts and drug addicts; (c) the hustlers, who, like street criminals, may not be poor and who earn their livelihood in an underground economy, but rarely commit violent crimes; (d) the traumatized drunks, drifters, homeless shopping bag ladies and released mental patients who frequently roam or collapse on city streets.

(Auletta, 1983, p. xvi)

Affiliation with the "underclass" was decided by behavior, demonstrated by the individual, which was either "patently immoral" or "socially deviant" (Katz, 1993; Ross, 1991). If the "underclass" person was not a criminal, she/he was "passive" and unwilling to pull herself/himself out of

despair. This concept acted to etch deeper the division between "us" and "them" (Katz, 1993; Ross, 1991).

When this new term surfaced, it met little resistance (Katz, 1993). There was no other vocabulary to describe what had happened to the inner cities (Katz, 1993). With the emergence of a new class of poor a new label had to be affixed. Katz (1993) describes how the debate surrounding the underclass accelerated in 1977 "when Time magazine announced the emergence of a menacing underclass in America's inner cities" (p. 4). By the mid-1980s, the image of the underclass dominated poverty discourse (Katz, 1989; 1993). The term captured the feelings of hostility and alarm held by the more affluent Americans to the poverty increasingly clustered in the inner cities (Katz, 1993). The public was alarmed by the aberrant behavior demonstrated by the underclass, and hostile towards their inherent deviance (Katz, 1993).

The underclass thus was a late twentieth century form of the persistent category the "undeserving poor" (Katz, 1989; 1993; Ross, 1991). It represented society's conception of the "passive poor" willing to feed at the public trough, instead of pulling themselves up and out of despair (Katz, 1989; 1993; Ross, 1991). It reinforced the tradition of "blaming" the victim and the "moral weakness" of the poor (Katz, 1989; 1993; Ross, 1991). As a metaphor, the underclass is the perfect expression of the rhetoric of poverty. It identifies the difference between "them" and "us," connotes moral weakness and deviance in its members, and describes a hopeless situation (Ross, 1991). Perhaps that is why it has remained as part of the public discourse on poverty despite its distorting qualities (Ross, 1991).

The following figure (Figure 1) is a brief synopsis of the historical development of the abstraction of the poor. It describes the rhetorical changes associated with each time period. In addition, Figure 1 briefly explains and defines the vocabulary employed by society in its discourse on poverty.

Figure 1: Timeline summary of the development of the abstraction of the poor

18th Century Poor laws imposed upon the community an obligation to assist the poor members of the community. No stigma or disgrace was attached to poverty. There existed a neighbor/stranger dichotomy. Due to the lack of financial resources, strangers were run out of the community.

19th Century The vocabulary of poverty acquired two of its lasting features: the division of the poor by merit and the assumption that the individual was to blame. Neighbor and stranger were transformed into deserving and undeserving poor.

1870s A new category of poor was created. The noun "tramp" was invented to describe the groups of displaced workers roaming the country. The homelessness of tramps appeared particularly menacing when the family was thought to possess the source of moral culture.

1880s The "morphology of evil" was introduced into the vocabulary of poverty discourse. The poor not only suffered physical problems but also moral discrepancies. This disease metaphor was witnessed in earlier writings. The poor were viewed as "faulty offspring of faulty parents."

Early 20th Century Even with evidence pointing towards alternative explanations, which depicted poverty and dependence as complex social constructions, the poor received no relieve. There had unquestionably become a poverty which individuals of weak moral stature and who lacked the work ethic deserved.

The Great Depression The distinction between "public assistance" and "social insurance" is developed. Persons on public assistance were viewed as morally inferior, however, persons on social insurance were deemed worthy of assistance.

1940s-1950s Poverty received little attention. The moral classification of the poor persisted.

1960s The War on Poverty was launched. A period of unrelenting economic growth created an era of optimism about society's ability to end poverty. Once the impact of the solution took hold, society ended its quest to eradicate poverty due to the amount of resources this solution required. This era drew another line of distinction through the poor. One category labeled the poor as undeserving. Members of this group displayed behavior which enclosed them in a self-perpetuating world of dependence. The other category labeled its members as deserving poor because they strove for independence by seeking outside intervention.

1970s and 1980s The "underclass" was created. Affiliation with the underclass was decided by behavior, demonstrated by the individual, which was either patently immoral or socially deviant. If the underclass person was not a criminal, she/he was passive and unwilling to pull herself/himself out of despair.

1990s A unifying theme which runs through all of the contemporary theories is lower class people are at the bottom of an arguably legitimate hierarchy in which merit rises to the top, and socially deviant behavior defines the bottom.

Defining the Thematic Dimensions of the Rhetoric of Poverty

The purpose of this section is to describe the different thematic dimensions of the rhetoric of poverty. Ross' (1991) definition has two dimensions: (1) the deviance of the poor and (2) an assumed helplessness. A connotative description of the components under each dimension will be presented. What characteristics fall within each component, as opposed to the prescribed meaning of each component, will be supplied (Figure 2 offers a synopsis of each theme, p. 25).

The Deviance of the Poor.

The division of poor people into moral categories represents one of the enduring abstractions of poverty discourse (Handler and Hasenfeld, 1991; Handler and Hollingsworth, 1971; Katz, 1983; 1986; 1989; 1993). These categories are social constructions, choices made against the backdrop of many alternatives, which represent the physical characteristics, behavior, and interaction of people (Katz, 1993). How those categories were created and the characteristics they employ to define the members of a categorical group demonstrates as much about the observer as they do about the members (Katz, 1983). Deviance in particular offers insight into the individual who constructs this label (Katz, 1983). It is an evaluative as much as a descriptive concept, which implies the inferiority as well as the difference associated with the stigma of being labeled deviant (Katz, 1983; 1993). The values associated with the classification of the poor are reciprocal; identity is relational and not only personal (Bezdek, 1992; Margulies, 1994; Ross, 1994). We ascribe meaning to rationalize particular actions and justify authority and status (Handler and Hasenfeld, 1991; Katz, 1989; Margulies, 1994; Ross, 1994). Thus, it is important to understand the full range of construction of the thematic

dimensions of deviance.

"Deserving vs Undeserving Poor".

The distinction between the "deserving" and "undeserving" poor is one of the driving forces behind welfare policy (Handler and Hasenfeld, 1991; Handler and Hollingsworth, 1971; Katz, 1989). The core concept is whether or not the individual is excused from work (Handler and Hasenfeld, 1991).

The most persistent attempt at resolution is the effort to distinguish the deserving from the undeserving poor. The deserving poor possess attributes that could readily justify public protection and care without challenging dominant cultural, economic, and political norms. The undeserving poor, mostly the able-bodied, are those whose behavior and attributes challenge such norms.

(Handler and Hasenfeld, 1991, p. 37)

Most of the history surrounding poverty discourse can be seen as attempts to draw distinctions between the worthy poor and the undeserving (Bane and Ellwood, 1994; Handler and Hasenfeld, 1991; Handler and Hollingsworth, 1971; Katz, 1983; 1986; 1989; 1993; Lord, 1993). These boundaries represent the make-up of the poor and the dominant ideology at the time (Handler and Hasenfeld, 1991; Katz, 1986; 1993). The common theme through each of these periods of change is the recurrent distinction between the deserving and undeserving poor (Katz, 1989).

The deserving poor are considered to be faultless (Handler and Hasenfeld, 1991; Katz, 1989). They fall into two categories: (1) helpless people who on account of age or infirmity could neither care for nor support themselves (Handler and Hasenfeld, 1991) and (2) the individual had experienced circumstances beyond her/his control (death of wage earner, seasonal layoff, or disability caused while at work, for instance) that caused dependency, and

the individual proved she/he was willing to work for whatever support the community was willing to give (Handler and Hasenfeld, 1991). This second category required that the individual meet both criteria before she/he was placed into it (Handler and Hasenfeld, 1991). However, the deserving poor still remained suspect because they had failed to save for the inevitable periods of dependence that are experienced in a capitalist system (Handler and Hasenfeld, 1991; Katz, 1989). Programs for the deserving poor are marked by their inclusiveness; they reach out and try to bring in members (Handler and Hasenfeld, 1991).

The programs for the undeserving poor are exclusive (Handler and Hasenfeld, 1991). They are motivated by the need to socially control the behavior of their recipients (Bane and Ellwood, 1994; Handler and Hasenfeld, 1991; Katz, 1986; 1989). This category of the poor is considered deviant (Auletta, 1983; Bane and Ellwood, 1994; Handler and Hasenfeld, 1991; Handler and Hollingsworth, 1971; Katz, 1983; 1986; 1989; 1993; Lord, 1993). They are not morally excused from work. As such, they violate the basic tenet of the dominant culture--the work ethic (Katz, 1989). As able-bodied persons capable of work, the moral weakness and deviance associated with their dependent behavior is perceived as threatening society (Handler and Hasenfeld, 1991; Katz, 1989; 1993).

Along with the marginalization and control aspects of the undeserving poor, there exist two other categories. First, the undeserving poor represent a particular socioeconomic stratum of society--the "lower class" (Katz, 1989). Members of a class are people who share attitudes, values, and modes of behavior (Katz, 1989). A person who is "lower class" is likely to be poor and unskilled, but it does not follow that the poor and unskilled are "lower class" (Katz, 1989). This class of persons has been described as: (1) impulsive, the needs for immediate gratification take precedence over work; (2) irresponsible and unwilling to take control over their lives; (3) suffers from feelings of self-contempt and inadequacy; (4) espouses a hostile and

aggressive nature; (5) lacks the ability to maintain a stable relationship with family or the community; and (6) has no interest in participating in society (Katz, 1989). This lifestyle is depicted as abnormal and deviant (Katz, 1989). Synonymous with the "lower class" concept are terms like troubled, culturally-deprived, hard to reach, chronically, and multiproblem (Katz, 1989). All the problems of the "lower class" are attributed to their outlook and style of life.

The second category defines the undeserving poor based upon their receipt of public assistance (Handler and Hasenfeld, 1991; Katz, 1989; 1993). The passivity of this group is viewed as reprehensible by the public (Handler and Hasenfeld, 1991; Katz, 1989; 1993). Willingness to stay dependent upon and drink from the public trough is deemed unworthy behavior (Katz, 1993). This is not to say that all people who draw from public funds are undeserving, only those who are able-bodied, yet still remain dependent on the state are unworthy of relief. The stigma associated with receiving public assistance is used to define the recipient of this aid--"undeserving" (Katz, 1989). In contrast to this concept, the deserving poor receive "social insurance" (e.g. Social Security and Medicare are two examples); the distinction being, one is an earned right (social insurance) and the other creates dependency (public assistance) (Alfieri, 1992; Handler and Hasenfeld, 1991; Katz, 1989; 1993; Margulies, 1994).

The Work Ethic.

Another component which comprises the construction of the deviant poor is the work ethic (Handler and Hasenfeld, 1991; Katz, 1989). The dominant culture in American society is underscored by the assumptions of a capitalist market economy (Handler and Hasenfeld, 1991). "The normative order justifies itself by providing for the well-being of its citizens in exchange for work" (Handler and Hasenfeld, 1991, p. 16). The moral contract between the state and its citizens is premised on the work ethic (Handler and Hasenfeld, 1991). If a person

is unable to work then the state has an obligation to provide relief, or if the person has earned the right of relief through work the state has an obligation to provide it (Handler and Hasenfeld, 1991). The passive, able-bodied poor who lack the work ethic and receive public assistance are viewed in violation of this contract (Handler and Hasenfeld, 1991; Katz, 1989). They are labeled immoral because they are outside of the market (Handler and Hasenfeld, 1991; Katz, 1989). Their lack of participation and productive contribution to society is viewed as a threat to society (Handler and Hasenfeld, 1991).

The connotation and make up of this group is underscored by the concept of idleness (Handler and Hasenfeld, 1991; Katz, 1989). The deviant poor's idleness is perceived as an offense against all social laws (Handler and Hasenfeld, 1991; Katz, 1986; 1989; 1993). It breeds crime and dependency (Auletta, 1983; Bane and Ellwood, 1994; Handler and Hasenfeld, 1991; Handler and Hollingsworth, 1971; Katz, 1983; 1986; 1989; 1993; Lord, 1993; Margulies, 1994; Ross, 1991). As such, their behavior mandates control and they are not worthy of preferential treatment (Handler and Hasenfeld, 1991; Katz, 1986; 1989; Ross, 1991). In addition to the perceived increased potential for criminal behavior, the idle-poor are seen as wasting scarce resources (Handler and Hasenfeld, 1991; Handler and Hollingsworth, 1971; Katz, 1993; Ross, 1991). Because they do not contribute to society but drink and eat from its troughs, the resources that are made available to them are given in violation of the social contract and are subject to limitations (Handler and Hasenfeld, 1991). Social control, moral degradation, and restricted access to resources are used by the state to reinforce the work ethic (Handler and Hasenfeld, 1991).

The Rhetoric of Choice and Blame.

The issue of choice powerfully influences the rhetoric of poverty (Greene, 1992;

Williams, 1991). Individuals who invoke the language of choice argue that the poor can choose not to be poor (Greene, 1992; Ross, 1991; Williams, 1991). The implication of using this type of language is that it places blame on the victim of poverty. It acts to divorce the agent, who passes this judgment, from any responsibility (Ross, 1991; Williams, 1991). Williams (1991) describes the frequency with which the rhetoric of choice is used to preclude public debate and to shield the state from public scrutiny. Her discoveries are even more relevant when those forced to choose are poor and lack the ability to escape state power (Williams, 1991). Underlying this rhetoric is the concept of the passive poor unwilling to work (Greene, 1992; Williams, 1991). The individual's behavior is also attributed as a cause of his/her current economic state (Greene, 1992; Williams, 1991). In addition to their own failure, the poor are blamed for the failure of government programs (Handler and Hasenfeld, 1991; Katz, 1989). This aspect is motivated by the fear of dependency. A program designed to induce the poor out of poverty is perceived as actually rewarding their behavior, and indeed may attract others who would not otherwise have chosen to engage in this behavior (Handler and Hasenfeld, 1991). Hence, the rhetoric of choice and blame contends: (1) unless programs for the poor are coercive in nature then they should not exist, or (2) the state is helpless to aid the undeserving poor (Handler and Hasenfeld, 1991).

The Family Symbol.

Poverty discourse and the labeling of the poor as deviant is not just concerned with categorizing individuals but includes the creation of ideal family stereotypes. Handler and Hasenfeld (1991), in their book The Moral Construction of Poverty, testify to the importance of the family symbol.

The family is pivotal in regulating sexual relations and procreation,

in socializing children to adult roles, and in defining adult gender roles especially in relation to the labor market. Welfare policy is family policy because it defines what is a "deviant" family, sanctions "inappropriate" adult gender and work roles, penalizes "undesirable" sexual relations, and regulates the family's responsibilities to its children. By constructing welfare recipients as deviant families, the state symbolically institutionalizes the image of the "good" family to the nonpoor and the poor alike.

(p. 22)

Thus poor mothers are caught in a central contradiction. Capitalists, indifferent to gender roles of the lower socioeconomic rung of society, consider poor women to be part of the labor force (Alfieri, 1992; Handler and Hasenfeld, 1991). Poor women are suppose to work to provide the necessary income to pull their family out of poverty. Yet, participation in the labor force represents a violation of the domestic code (Handler and Hasenfeld, 1991). Women not only then are stigmatized because of the kinds of work they do, but because they have to work (Alfieri, 1992; Handler and Hasenfeld, 1991; Katz, 1986; Lord, 1993). Images of alcoholic, immoral, incompetent mothers unfit to raise their children fall into this category (Bane and Ellwood, 1994; Handler and Hasenfeld, 1991; Lord, 1993). They have to work outside of the home to survive, but the definition of child neglect is the lack of supervision. So, by definition poor women who work are deviant (Handler and Hasenfeld, 1991; Lord, 1993). Because of their poverty they are also suspect (Alfieri, 1992; Bane and Ellwood, 1994; Lord, 1993). Society condemns them for working and labels them deviant. Control of reproduction and child rearing practices of the poor are the result of this language (Handler and Hasenfeld, 1991; Lord, 1993).

Charity.

The final category of deviance that will be described is charity. Our nation has a long history of charitable contributions to its poor (Handler and Hasenfeld, 1991; Handler and

Hollingsworth, 1971; Katz, 1983; 1986; 1989). It dates back to the original thirteen colonies and continues today.

How can a benevolent act, such as charity, ascribe a label of deviance? Simply, charity defines the relationship between donor and recipient (Handler and Hasenfeld, 1991). It creates a distinction between "them" and "us". Charity does little to alleviate the problem of poverty, it does act to entrench the division between the "haves" and "have nots". This bipolar distinction accentuates beliefs already held by the donor, and only perpetuates the constructed reality of the difference of the poor (Handler and Hasenfeld, 1991).

Assumed Helplessness.

The other dimension of Ross' (1991) definition of the rhetoric of poverty is helplessness. This dimension is expressed in two ways. First, poverty is depicted as an inevitable result of social structures that we are helpless to solve (Auletta, 1983; Bane and Ellwood, 1994; Handler and Hasenfeld, 1991; Handler and Hollingsworth, 1971; Katz, 1983; 1986; 1989; 1993; Lord, 1993; Ross, 1991; Williams, 1991). Second, unique to the rhetoric of the court, judges purport to be helpless in their role (Bezdek, 1992; Greene, 1992; Feldman, 1992; Margulies, 1994; Ross, 1991; Williams, 1991). Their helplessness places the subject at hand beyond their power to influence. Using this aspect of helplessness the judge usually concedes that the problem of poverty is capable of solution, but beyond the power of the court. They usually defer to some other agency as having power and jurisdiction over the issue (Ross, 1991).

In cases dealing with poverty, the rhetoric of judicial helplessness is often interwoven with the premise of moral weakness (Alfieri, 1992; Bezdek, 1992; Feldman, 1992; Margulies, 1994; Ross, 1991). After all, if poverty is caused by an individual's behavior, then the individual

must go through a transformation process to change his/her situation, what can the judge do to alleviate the problem (Ross, 1991)? This attitude has a long historical foundation (Ross, 1991). Society creates horrific conditions in which the poor live, these constructions help society imagine that the poor will do whatever is necessary to avoid this type of life (Ross, 1991). When the poor do accept these conditions, it feeds the argument of helplessness. "If the poor are unwilling to change their behavior and values in response to the strongest of incentives, the horror of life in poverty, what else can we do?" (Ross, 1991, p. 1510).

Another argument of helplessness extends from the social structure of society (Bane and Ellwood, 1994; Handler and Hasenfeld, 1991; Katz, 1986; 1989; 1993; Lord, 1993; Williams, 1991). This argument depicts social structures as obstacles to the alleviation of poverty which make its continued existence inevitable. Adherents of this view of the origins of poverty either see no realistic solution to poverty or else see a solution that threatens the very fabric of our society (Handler and Hasenfeld, 1991; Katz, 1989; 1993; Ross, 1991).

This particular line of reasoning may be problematic for two reasons. First, it assumes that the persistence of poverty lies at the heart of the politics of distribution (Ross, 1991). Alleviation then of the problem would just require a redistribution of goods. Alternatives to the present system have been advocated that claim to solve this problem (Ross, 1991). This argument of helplessness does not then seem to explain how the choice not to distribute wealth makes society helpless. Second, it assumes that there are not enough resources to be distributed. This certainly has been a contested assumption. In fact, feminization of welfare advocates contend their alternatives would require fewer resources than are being distributed by the present system (Lord, 1993; Ross, 1991).

The special plea of judicial helplessness or deference has been noted in several court cases (Ross, 1991). This argument asserts that the judge does not possess the power to act (Ross, 1991). It is a very influential aspect of the rhetoric of poverty, for the court determines

the boundaries of power for each branch of government (Ross, 1991). When the court chooses to render itself helpless, arguing that the case fails to fall within the court's jurisdiction, it is an assertion of power that defines the relationship between the claimant and the state (Ross, 1991). By invoking this language of helplessness, the court establishes the claimant's position in relation to the power structure of the government, and avoids public scrutiny (Ross, 1991).

Assessment of the Literature

As evinced by the literature reviewed, the moral categorization of the poor has dominated poverty discourse throughout history (Bane and Ellwood, 1994; Handler and Hasenfeld, 1991; Handler and Hollingsworth, 1971; Katz, 1983; 1986; 1989; 1993). It has had a lasting effect on the vocabulary of contemporary society, limiting its available scripts.

The preoccupation with classifying poor people persists. Contemporary politicians, moralists, and editorial writers still frequently refer to the deserving and the undeserving poor. Social scientists who prefer more neutral language refer to the culture of poverty or the underclass. All these terms serve to isolate one group of poor people from the rest, and to stigmatize them.

(Katz, 1989, p. 10)

The rhetoric of poverty acts to create the abstraction of the poor, and influences the way society views poverty (Handler and Hasenfeld, 1991; Handler and Hollingsworth, 1971; Katz, 1989; 1993; Margulies, 1994; Ross, 1994; Ross, 1991; White, 1984). The reduction of poverty to individual causation and the failure to either probe into social constructions of poverty or to link governmental agencies with social conditions may be a cause of the way society views poverty today. How individuals are subordinated by the social construction of individualist thought, and this subordination's relative dominance of discourse may highlight the underlying assumptions which define society's conceptions of the poor. An explanation of this phenomena may arise out of an assessment of the resonating effects of the historical development of the

abstraction of the poor.

As early as the eighteenth century, society started to acquire its lasting scripts on poverty. By dividing the poor into categories of merit and assuming that the roots of poverty lay in an individual's moral weakness, the earlier construction of the neighbor/stranger dichotomy is represented in contemporary society's discourse. Although the term "pauper" may not be widely used, the terms "underclass" and "able-bodied poor" represent groups of poor persons who, like the "pauper" and "stranger" of the eighteenth century, are regarded as morally suspect and to blame for their situation.

Furthermore, the nineteenth century discussions of inner cities also sound similar to contemporary debates. Invoking the similar "metaphor of disease," urban poverty has been linked to crime, today's drug plague, and AIDS. In addition, the 1980s anti-homeless legislation resonates with the nineteenth century's assumption of the moral weakness of the "tramp." Included in this list are similar groupings of individuals labeled "dependent, defective, and delinquent" in Wines' (1880) "morphology of evil."

Once society accepts the arguments and symbols of moral deviance and helplessness, the actions available to it are restricted by this constructed reality (Edelman, 1977; Handler and Hasenfeld, 1991; Katz, 1989; White, 1984). If society sees the welfare mother as morally deviant, as opposed to a woman struggling to keep her family together, it is more likely to sanction and control her life (Lord, 1993; Margulies, 1994; Ross, 1991). If society views itself as helpless and continues to blame the individual, it is likely to continue ineffective policies (Handler and Hasenfeld, 1991). If courts continue to choose not to act or to defer to other branches of government jurisdiction over poverty, the poor shall never be guaranteed equal protection (Ross, 1991). Society's conception of the poor consists of stereotypes and what the language of its discourse invites it to infer. Thus, the power of the rhetoric of poverty extends not from the evidence that is available, but from the reality it creates.

Figure 2: Rhetorical Themes of the Rhetoric of Poverty

Deserving The core concept is whether or not the individual is excused from work. The deserving poor are ascribed attributes that justify protection and care without challenging the dominant cultural, economic, and political norms. The deserving poor are seen as faultless. They fall into two categories: (1) helpless people who on account of age or infirmity could neither care for nor support themselves and (2) the individual had experienced circumstances beyond her/his control, and the individual proved a willingness to work for whatever support the community was willing to give.

Undeserving The undeserving poor are not excused from work, as such, their deviance mandates social control. The undeserving poor have been described as: (1) impulsive, (2) irresponsible, (3) suffering from feelings of self-contempt and inadequacy, (4) espouses a hostile and aggressive nature, (5) unable to maintain a stable relationship, and (6) no interest in participating in society. As able-bodied persons, the undeserving poor are viewed as passive and morally weak. Other labels used to describe the undeserving poor have been: lower class, homeless, tramps, troubled, culturally-deprived, hard to reach, and chronically poor.

Work Ethic The connotation and make up of this group is underscored by the concept of idleness. The able-bodied poor are labeled immoral because they are outside of the market. Their lack of participation is viewed as a threat to society. As such, their behavior mandates control and they are not worthy of preferential treatment. Their behavior is perceived to breed crime and dependency, and waste scarce resources.

Rhetoric of Choice and Blame Individuals who invoke the language of choice argue that the poor can choose not to be poor. The implication of using this type of language is that it places blame on the victim of poverty. The individual's behavior is also attributed as a cause of her/his current economic state and the failure of government programs. Hence, the rhetoric of choice and blame contends: (1) unless programs for the poor are coercive in nature then they should not exist, or (2) the state is helpless to aid the undeserving poor.

Family Symbol Public assistance programs are centered on the family symbol. They define what is a deviant family structure, sanction inappropriate gender and work roles, penalize alternative sexual relations, and regulate the family's responsibilities to its children. Poor mothers are condemned for working, and this language is used to control their reproduction and child rearing practices.

Charity Charity defines the relationship between donor and recipient. It creates a distinction between "them" and "us". Charity does little to alleviate the problem of poverty, it does act to entrench the division between the "haves" and "have nots". This bipolar distinction perpetuates the constructed reality of the difference of the poor.

Helplessness This theme has two dimensions. First, the Court shifts the burden of resolution on another agent by: (1) empowering another branch of government to handle poverty, (2) upholding the actions of a specific agency as Constitutional, (3) requiring the poor person go through a transformation process. Second, the Court perceives poverty as inescapable because: (1) poverty is a natural extension of our social structures and no real solutions exist or, (2) the envisioned solution threatens the very fabric of society.

Statement of Purpose

How does communication research augment the understanding of legal theory? Not all the research that falls under the study of communication fits neatly into the communication model. Nor should it. For those interested in communication and the law a number of approaches are productive (Cohen and Gleason, 1990).

The difficulty lies in creating an intersection that links the two fields (Cohen and Gleason, 1990). There exists disparity between the two fields of research, but through identification of similarities, roads can be created that allow the communication researcher to travel on the highways of legal discourse (Cohen and Gleason, 1990). The law is concerned with how to best serve the rights of the citizenry, maintenance of social stability, and the just resolution of conflicts (Cohen and Gleason, 1990). Communication science, on the other hand, is not concerned with creating conceptual frameworks of governing a population (Cohen and Gleason, 1990). Instead, communication research informs society about phenomena, not jurisprudence (Cohen and Gleason, 1990). But, because communication science does seek to understand the process of governing there exist roads that lead into legal territory (Cohen and Gleason, 1990). Whatever road the researcher takes into this territory, there are two recurring questions for the investigator to ask:

- 1) What are the goals of the research--that is, what is it that we hope to learn; and
- 2) What is the function of the research design--that is, what can the type of research contemplated tell us?

(Cohen and Gleason, 1990, p. 106)

The phenomenon of the rhetoric of poverty is underlined by normative issues. It

creates a world view for society and makes moral judgments about the poor (Ross, 1991). The goal of this thesis is to better understand the language of the United States Supreme Court and how it is applied to the poor. The information gathered through investigating the following two research questions should establish a conceptual understanding of how the Court functions in deciding poverty cases.

RQ1: Does the vocabulary of the United States Supreme Court's discourse on poverty, as exemplified in its written decisions, embrace the morality dimensions of the rhetoric of poverty?

RQ2: Does the vocabulary of the United States Supreme Court's discourse on poverty, as exemplified in its written decisions, embrace the helplessness dimension of the rhetoric of poverty?

CHAPTER TWO

Methodology

Cohen and Gleason (1990) established a model of inquiry that links communication and the law. The researcher, to meet the requirements of this model, must be able to clearly articulate her/his goals and the function of the research design must enable the researcher to accomplish those goals (Cohen and Gleason, 1990). With these limitations in mind, the research design for the present inquiry shall be a content analysis.

A content analysis functions to determine the major trends in a particular discourse or set of discursive acts (Babbie, 1992). As such, a content analysis of legal discourse concerning the poor should be able to uncover any dominant themes in the Court's rhetoric. This is a mandatory component for discovering the answer to the two research questions posited by this investigation. RQ1 asks if the language employed by the current United States Supreme Court embraces the morality dimension of the rhetoric of poverty. RQ2 investigates if the current Court employs the argument of judicial helplessness in contemporary poverty cases. To ascertain an answer to both questions, it is necessary to determine if any major trends exist in the language of the Court, and if any of these trends fall into one of the dimensions of the rhetoric of poverty.

Defining the Themes of the Rhetoric of Poverty to be coded

The language of poverty discourse emphasizes the classification of the poor, in accord with chauvinistic assumptions measured by middle-class values (Katz, 1989). This language draws arbitrary lines of distinction that act to stigmatize and discriminate among one group of

poor from others.

There are two main methods of classification within the language of poverty. First, classifying poor people by merit represents the schema society utilizes to determine who should receive public funds (Katz, 1989). Due to the finite resources available to the community, distribution of resources requires separating individuals into distinct categories. Underscoring these categories are moral distinctions (Katz, 1989; Ross, 1991). Moral assessments are ascribed to each category to determine "whose behavior and character entitle them to the resources of others" (Katz, 1989, pp. 10). Second, due to the magnitude and severity of the problem of poverty, the community perceives its available actions as limited (Katz, 1989; Ross, 1991).

The Morality Dimension of the Rhetoric of Poverty.

The morality dimension of the rhetoric of poverty is difficult to define. For the purpose of this thesis, the morality dimension of the rhetoric of poverty was operationally defined as any categorization or abstraction which labels the poor as morally weak, or undeserving -- due to their economic status.

Labeling the poor as morally weak connotes the Court's perception of the poor's greater likelihood to be socially deviant (Ross, 1991). The language of the Court describes the actions of the poor as violating social norms and requires regulation. The Court divides the poor, by labeling them, into able-bodied poor and deserving-poor (Ross, 1991). The Court labels the able-bodied poor as undeserving of public assistance because it attributes to that group of poor the ability to maintain an adequate level of sustenance (Ross, 1991). The Court defines the able-bodied poor person as passive and unwilling to pull herself/himself out of despair (Katz, 1989; Ross, 1991). The deserving-poor, as defined by the Court, are the aged, disabled, or

children who are, by their nature, unable to fend for themselves and require government intervention to satisfy their needs of sustenance (Ross, 1991). The effect of labeling able-bodied vs. deserving-poor creates a division and places the able-bodied poor into a category which does not allow for preferential treatment, such as is received by the deserving-poor. This distinction limits the resources available to the perceived able-bodied poor based upon their merit ascribed by the Court (Katz, 1989; Ross, 1991). The morality dimension of the rhetoric of poverty then has two features: (1) the undeserving poor and (2) the deserving poor. Each is mutually exclusive in a given situation.

The Helplessness Dimension of the Rhetoric of Poverty.

Judicial helplessness embodies the Court's plea of impotence. The impotent Court is overwhelmed by the daunting and complex problems of poverty (Ross, 1991). Operationally, this classification divides into two categories. First, the Court shifts the burden of resolution to another agent. This component of the rhetoric of poverty has three features: the Court may (1) empower another branch of government to handle the pressing problems of poverty, (2) uphold the actions of a specific agency as Constitutional, or (3) profess that the individual(s) need(s) to go through a transformation process to pull herself/himself/themselves out of despair (Ross, 1991). The second category depicts poverty as an inescapable societal tragedy (Ross, 1991). The Court perceives the persistence of poverty is inevitable. This category includes two distinct features: (1) poverty is a natural extension of our social structures and the Court sees no real solution or (2) the Court envisions a solution that threatens the very fabric of society (Katz, 1989; Ross, 1991).

Sampling and Procedures

The units of analysis used in this thesis are the two themes of the rhetoric of poverty. The morality and helplessness dimensions of the rhetoric of poverty were coded using the categorization process described in Appendix A. Three coders were utilized. They each were given a copy of the operational definitions and asked to place into each category corresponding statements (see Appendix A for specific coder instructions).

Based upon the information made available from the review of literature, nine categories were constructed. For the morality dimension, two distinct categories were defined - **deserving** and **undeserving**. The "deserving" label identified statements which define the poor as deserving of preferential treatment; while the "undeserving" label identified statements which defined the poor as undeserving of preferential treatment based on the poor's moral weakness or perceived deviance. The helplessness dimension embodied five categories. The label **deference** described statements which empower another branch. The label **constitutional** described statements which uphold the action(s) taken by an agency as constitutional. **Transition** described statements which profess the individual needs to go through a transition to bring herself/himself out of despair. Statements which contend the solution to poverty threatens the very fabric of society were labeled as **No solution**. Although it was constructed as a category based on Ross' (1991) previous analysis of the Court's discourse on poverty, the label **Inevitable** which describes statements claiming poverty is inevitable was never employed. The labels **No Deference** and **Unconstitutional** were created to guarantee that statements which empower the Court would be coded. "No Deference" described statements which empower the Court to act on the question brought before the Court. "Unconstitutional" described statements which deem the action taken by an agency as unconstitutional.

The specific procedures for coding are important to note. Each coder was required to read an unmarked copy of each of the 10 opinions selected. Coders were instructed to underline statements which they perceived as representing one of the categories of the two dimensions of the rhetoric of poverty. The underlined statement was labeled by placing along side it a selection from the predetermined list of identification terms (see Appendix B for an example of coded statements).

The criterion for selecting agreement is also important to describe. Since there were no predetermined statements for the coders to select from, each underlined statement could potentially be different in length and identification. As such, a criterion for establishing agreement was devised.

Coded statements were found to be in agreement as long as all three coders identified the underlined portion in an identical manner. If the length of the underlined statement differed from coder to coder, agreement was still considered to have been achieved. For example, agreement would have been established if one coder underlined an entire paragraph and identified it as "deserving," while the other two only underlined the first portion of the paragraph and identified it as "deserving."

Lack of agreement for underlined statements occurred if a single coder failed to identify an underlined statement utilizing the exact same term as the other coders. Also, lack of agreement was established if one coder's underlined portion of a statement overlapped with one or more of the other coders and was identified differently. For example, lack of agreement occurred if two coders underlined an entire paragraph and identified it as "deserving," and the other coder underlined the first half of the paragraph and identified it as "deserving" but underlined the second half and identified it as "unconstitutional." No agreement would have been found for either underlined portion, and the statements discarded.

The units of observation were the poverty opinions of the United States Supreme Court,

which were decided after December 31, 1988 up to October 15, 1994. Poverty cases were conceptualized as having any reference to the poor in the written opinion of the Court. This was determined by performing a key word search, using the terms poor or poverty in the US category of the GENFED library of Lexis, a computerized data base that contains a listing of legal opinions and the complete text of judicial opinions. After the initial list of cases was found, a key-word-in-context (KWIC) command was performed to determine the applicability of the text to this thesis. All of the opinions using either of the two key word search terms in reference to human beings were placed on a list.

A total of 76 opinions were found to contain the word poor or poverty in them. Of that 76, 31 opinions were determined to use the terms in reference to human beings. A random selection of the cases which comprise this list was then performed. Using Babbie's (1992) table of Random Numbers, 2 of the 31 cases were chosen to be coded in a pre-test and 8 additional cases were chosen after sufficient levels of reliability were reported. Overall, 10 of the 31 cases were coded by each coder and the results evaluated in this study. This represents approximately one-third of the available sample of cases. One case, Lewis v. Jeffers (1990), was found not to be applicable bringing the number of Court cases coded and discussed to nine.

Inter-coder reliability was determined, in the pre-test, by giving each coder the same two opinions and testing the results. Two reliability tests were employed. Using Holsti's (1969) formula with a goal of obtaining $r \geq .85$, inter-coder reliability coefficients were measured for both the morality dimension ($r = .90$) and the helplessness dimension of the rhetoric of poverty ($r = .87$). The overall inter-coder reliability was found to be $r = .88$ (see Table 1 for results). As a redundancy measure, Scott's pi (Holsti, 1969) was calculated. Scott's pi is a formula which corrects for inter-coder agreement which may result from chance (Holsti, 1969). For the

morality dimension of the rhetoric of poverty $\pi = .87$; for the helplessness dimension of the rhetoric of poverty $\pi = .82$. Although π for the helplessness dimension fell slightly below the goal of $\geq .85$, the overall reliability figures for the pre-test were sufficiently high to proceed with the study.

Holsti's Formula

$$\text{Coefficient of Reliability} = \frac{3M}{N1 + N2 + N3}$$

M = the number of coding decisions on which the coders are in agreement
N1, N2, and N3 = the number of decisions made by each coder

Scott's π Formula

$$\pi = \frac{\% \text{ observed agreement} - \% \text{ expected agreement}}{1 - \% \text{ expected agreement}}$$

% expected agreement = find the proportion of items falling into each category of a category set, and adding together the square of those proportions.

% observed agreement = the coefficient of reliability measured by Holsti's formula.

Table 1
Inter-coder Reliability (Pre-test)

	Des	Und	Mor	Def	Con	Trn	No S	No D	Unc	Hlp
1N	8	6	14	10	10	3	0	1	1	25
2N	8	5	13	10	12	3	0	1	1	27
3N	7	6	13	10	10	2	0	1	1	24
Agree	7	5	12	10	8	2	0	1	1	22
Holsti	.91	.88	.90	1.0	.75	.75	0	1.0	1.0	.87
Pi			.87							.82
Des = deserving				Def = deference			No S = no solution			Hlp = helplessness
Und = undeserving				Con = constitutional			No D = no deference			
Mor = morality				Trn = transition			Unc = unconstitutional			

Analysis

RQ1 was analyzed in two ways. First, the frequency of statements that fell into each category were compared using a chi-square test. The two categories are: (1) statements that label the poor as undeserving and (2) statements that label the poor as deserving. This measurement determined the rhetorical trend of the Court and what morality dimension dominated the Court's rhetorical construction of the abstraction "the poor." Second, the types of statements and the abstractions that they create were qualitatively compared to one another. This comparison described the connotations of the coded statements and their implications in respect to the moral superiority, inferiority, or equality of the poor. This aspect uncovered the Court's perception of the poor's moral position in each case.

RQ2 was answered by measuring the frequency of statements that fell into each of the categories and subcategories. These rates were compared to one another and the dominant trend was determined using a chi-square test. In addition, the rhetoric of the Court was analyzed to determine how the Court perceives the problem of poverty. The connotations of the coded statements were evaluated to determine the Court's interpretation of its role for dealing with the problems of poverty and the poor. This analysis uncovered the normative assumptions underlining the arguments invoked by the Court and the reality they depict.

CHAPTER THREE

Results

Inter-coder Reliability

Inter-coder reliability was determined by calculating the agreement of coded statements for the three coders. Two reliability tests were employed. Using Holsti's (1969) formula, inter-coder reliability coefficients were measured for both the morality dimension ($r = .89$) and the helplessness dimension ($r = .86$) of the rhetoric of poverty. Overall inter-coder reliability was found to be $r = .88$ (see Table 2 for results). As a redundancy measure, Scott's pi (Holsti, 1969) was calculated. Scott's pi is a formula which corrects for inter-coder agreement which may result from chance (Holsti, 1969). For the morality dimension of the rhetoric of poverty $\pi = .84$; for the helplessness dimension of the rhetoric of poverty $\pi = .50$.

Table 2
Inter-coder Reliability (Post-test)

	Des	Und	Mor	Def	Con	Trn	No S	No D	Unc	Hlp
1N	61	28	89	39	42	3	2	28	19	133
2N	59	26	85	40	47	3	4	32	20	146
3N	62	29	91	39	44	2	3	29	17	134
Agree	55	24	79	36	38	2	2	26	15	119
Holsti	.91	.87	.89	.92	.86	.75	.67	.88	.80	.86
Pi			.84							.50
Des = deserving			Def = deference			No S = no solution				Hlp = helplessness
Und = undeserving			Con = constitutional			No D = no deference				
Mor = morality			Trn = transformation			Unc = unconstitutional				

Results of Difference Statistics for RQ1

RQ1 was concerned with the vocabulary of the United States Supreme Court's discourse on poverty, as it applied to the morality dimensions of the rhetoric of poverty. The statistical test used to compare the coded statements for the morality dimension was a chi-square test.

Calculations of chi-square demonstrated that a significant difference exists between the two categories of the morality dimension in the majority's opinions (see Table 3). With significance set at $p < .05$, the resulting frequencies demonstrated that a trend exists in the opinion of the Court. There were 37 statements coded for the morality dimension in the majority opinions of the Court. 13 of the statements reflected the category of a deserving class of poor, and 24 statements were coded as depicting the poor as undeserving. Clearly, in the opinion of the Court, there exists a trend to label the poor as undeserving.

This contention is further supported upon analysis of the reported difference between the number of statements depicting the poor as undeserving in the opinion of the Court and in the dissent's opinion. Zero statements were coded for this category in the written opinions of the dissent. While, 24 statements were coded for the majority. The difference between the two sets of opinions was found to be significant ($p < .001$). This difference supports the contention that the majority opinion of the Court is more likely to find the poor undeserving than the opinion of the dissent.

A similar trend is reflected in the coded statements of the dissent labeling the poor as deserving (see Table 3). A significant difference exists between the 42 coded statements of the dissent labeling the poor as deserving and the absence of statements labeling the poor as undeserving ($p < .001$). Also, a significant difference exists between the dissent's 42 coded statements labeling the poor as deserving and the majority's 13 coded statements labeling the poor as deserving ($p < .001$). Upon review of the statistical difference and the frequency of statements in the dissent's opinions, it can be reported that the dissent is more likely to label the poor as deserving than is the majority opinion of the Court.

Table 3
Results of chi-square test for the Morality Dimension of the Rhetoric of Poverty

	Deserve	Undeserve	Value of (p)
Opinion			
Observed freq.	13	24	$\chi^2 = 21.86; p < .001$
Theoretical freq.	(26)	(11)	
Dissent			
Observed freq.	42	0	$\chi^2 = 18.83; p < .001$
Theoretical freq.	(29)	(13)	
Value of (p)	$\chi^2 = 12.33; p < .001$	$\chi^2 = 28.36; p < .001$	

With d.f. = 1, χ^2 of 40.69 is associated with $p < .001$.

Results of Difference Statistics for RQ2

In the instances of the helplessness dimension of the rhetoric of poverty and RQ2, no significant difference was found ($p > .05$ in all comparisons; see Table 4). This indicates that no unexpected phenomena occurred in relation to the distribution of coded statements. Although, on their face, the statements visibly imply that a trend exists. All that can be reported is that the majority opinion of the Court has more reported statements which invoke the helplessness dimension of the rhetoric of poverty than does the dissent. Helplessness inherently dominates the opinion of the Court.

Table 4
Results of chi-square test for the Helplessness Dimension of the Rhetoric of Poverty

	Def	Con	Trn	No S	Inev	Value of (p)
Opinion						
Observed freq.	33	30	2	2	0	$\chi^2 = .402, p > .25$
Theoretical freq.	(31)	(33)	(2)	(2)	(0)	
Dissent						
Observed freq.	3	8	0	0	0	$\chi^2 = 2.6, p > .25$
Theoretical freq.	(5)	(5)	(0)	(0)	(0)	
Value of (p)	$\chi^2 = .929$	$\chi^2 = 2.073$	$\chi^2 = 0$	$\chi^2 = 0$	$\chi^2 = 0$	($p > .25$ in all instances)

With d.f. = 4, χ^2 of 3.002 is associated with $p > .25$.

"No deference" and "unconstitutional" were coded to guarantee that statements which act to nullify the Court's plea of helplessness would be evaluated and calculated. Like the helplessness dimension, these statements which empower the Court had no reported significance ($p > .05$ in all comparisons; see Table 5). Although the statements tended to dominate the dissent's opinions, the rate of frequency of the coded statements fell within calculated expectations. The plea to empower the Court perceptually is inherent in the language of the dissent.

Table 5
Results of chi-square test for Statements which Empower the Court

	No Deference	Unconstitutional	Value of (p)
Opinion			
Observed freq.	3	4	$\chi^2 = .583, p > .25$
Theoretical freq.	(4)	(3)	
Dissent			
Observed freq.	23	11	$\chi^2 = .128, p > .25$
Theoretical freq.	(22)	(12)	
Value of (p)	$\chi^2 = .295, p > .25$	$\chi^2 = .416, p > .25$	

With d.f. = 1, χ^2 of .711 is associated with $p > .25$.

A comparison between the reported frequencies of Table 4 and Table 5 support the contention that a dominant trend is inherent in the language of both sets of opinions (see Table 6). First, the majority had a reported total of 67 coded statements for the helplessness dimension of the rhetoric of poverty and only 7 statements were coded which empowered the Court. The difference between the two was found to be significant ($p < .001$). In addition, the difference between the frequency of coded statements for the categories of helplessness and empowerment in the opinion of the Court and the dissent was found to be significant ($p < .001$). These results support the inference that there exists a dominant trend in the language of the

Court. As such, the statistics indicate that the United States Supreme Court's discourse on poverty embraces the helplessness dimension of the rhetoric of poverty. The dissent, on the other hand, invokes a language which assumes to empower the Court ($p < .001$).

Table 6
Results of chi-square test comparing Helplessness and Empowerment

	Helplessness	Empower	Value of (p)
Opinion			
Observed freq.	67	7	$\chi^2 = 19.572, p < .001$
Theoretical freq.	(49)	(25)	
Dissent			
Observed freq.	11	34	$\chi^2 = 31.422, p < .001$
Theoretical freq.	(29)	(16)	
Value of (p)	$\chi^2 = 17.784, p < .001$	$\chi^2 = 33.21, p < .001$	

With d.f. = 1, χ^2 of 50.994 is associated with $p < .001$.

Results of Difference Statistics Comparing the overall Frequency of Statements

The purpose of this calculation was to determine if a significant difference exists when all three of the categories of coded statements are combined. Results indicate there exists a significant difference in every comparison ($p < .001$) except one. The existence of these differences support the results discussed above.

When the morality dimension was compared across the two sets of opinions no difference was found ($p > .25$). This indicates that in each set of opinions the Court is likely to invoke language which creates moral categories of the poor (see Table 7). Although this is an important discovery, it is also important to reiterate that the calculation of the frequency of coded statements for the individual components of the morality dimension of the rhetoric of poverty reported a significant difference (see Table 3). The majority opinion of the Court is more likely to morally censure the poor than is the dissent.

Table 7
Results of chi-square test for the overall frequency of statements

	Morality	Helplessness	Empower	Value of (p)
Opinion				
Observed freq.	37	67	7	$\chi^2 = .24.267, p < .001$
Theoretical freq.	(44)	(44)	(23)	
Dissent				
Observed freq.	42	11	34	$\chi^2 = 31.181, p < .001$
Theoretical freq.	(35)	(34)	(18)	
Value of (p)	$\chi^2 = 2.514, p > .25$	$\chi^2 = 27.582, p < .001$	$\chi^2 = 25.352, p < .001$	

With d.f. = 2, χ^2 of 55.448 is associated with $p < .001$

Thematic analysis employing the content categories

The purpose of this section is to describe the ten Court opinions which were coded in this thesis. Specifically, a brief introduction will be provided which outlines the history of the case and explains the Court's ruling. In addition, examples of the different types of statements coded will be provided, along with an explanation of how they are interpreted meaning for each example reflects one or more of the themes described in the review of literature. All ten opinions are classified by subject matter (see Table 8 [pp. 71 - 74] at the end of this section for a summary of each opinion).

The Death Sentence and the Rhetoric of Poverty

Lewis v. Jeffers

On June 27, 1990 the Court reversed and remanded the Court of Appeals decision to vacate Jeffers' death sentence. Using the "rational factfinder" as the standard for review, the United States Supreme Court found the reasoning of the Court of Appeals in error. The "rational factfinder" test constrains the Court's ability to evaluate evidence. The federal court must view the evidence in the light most favorable to the prosecution. Determining whether any

rational trier of fact could have found the elements of the crime beyond a reasonable doubt, the Court concluded that a "rational factfinder" could have found that Jeffers both relished his crime and inflicted gratuitous violence. Given the evidence of Jeffers' conduct toward the victim's body, the Court viewed Jeffers' actions as heinous and depraved.

The question before the Court concerned the constitutionality of Arizona's death sentence and its application to Jeffers. Neither question raised the issue of poverty. The instance of poverty was raised only once and that was in a footnote citing a previous case. Poverty was neither germane or intrinsic to the question addressed by the Court. Further discussion on this issue will occur in Chapter Five, Conclusions, Recommendations, and Limitations.

McCleskey v. Zant

On April 16, 1991, the Supreme Court affirmed the decision of the Court of Appeals. The petitioner, a death row inmate in Georgia, appealed his sentence by invoking a Massiah challenge. A Massiah claim alleges that the state induced a defendant to make incriminating statements without the assistance of counsel. The particulars of this case concern McCleskey's ability to raise this challenge in his second appeal. The question before the Court was procedural in nature and had little bearing on the topic of this thesis. Although, the Court did recognize in its written disposition that McCleskey's contention concerning his "depraved and impoverished" childhood was not grounds for constitutional review. In upholding the Court of Appeals' rejection of this argument, the Court labels McCleskey's previous economic status as undeserving of "preferential treatment." Poverty, in this instance, was not found to be a mitigating circumstance.

Housing and the Rhetoric of Poverty

Spallone v. United States

In 1985, in a suit brought by the United States, the city of Yonkers and its community

development agency were held liable for intentionally violating Title VIII of the Civil rights Act of 1968 and the Equal Protection Clause of the Fourteenth Amendment. The District Court remanded the defendants and others acting in concert with them to take extensive affirmative action to disperse public housing throughout Yonkers. Failing to exact any change, the District Court entered an order requiring the city to enact a resolution desegregating housing in Yonkers. The city's failure to do so would result in contempt citations, escalating daily fines for the city, and daily fines and imprisonment for recalcitrant individual councilmembers.

On January 10, 1990, the United States Supreme Court passed judgment. The Court held the public housing policy of Yonkers in violation of Title VIII of the Civil Rights Act of 1968 and the Equal Protection Clause of the Fourteenth Amendment. Citing the actions of the city as patently discriminating, the Court refused to stay the imposition of escalating daily fines on the city of Yonkers. The city has since enacted legislation which desegregates public housing. However, the Court reversed the District Court's and the Court of Appeals imposition of fines on the councilmembers. Concluding that this action represented an abuse of discretion. Since the councilmembers were not found to be individually liable for any of the violations upon which the District Court's order was based. In addition, the Court found the fines to be in violation of "traditional equitable principles."

The deservedness of the poor, particularly the minority make-up of the poor, resounds throughout the opinion and the dissent. The majority's and minority's written opinion reflect the rhetorical theme of a "deserving poor." For example, the dissent writes:

Starting in 1949, city officials initiated a series of low-income housing projects designed to serve the housing needs of this growing population; but city officials concentrated 96.6% of these projects in or adjacent to the southwest section, preserving east and northwest Yonkers as overwhelmingly white communities. At the same time, city officials manipulated the public school system -- e.g., altering attendance zone boundaries, opening and closing schools, assigning faculty and administrators to schools based on race -- creating and maintaining racially segregated schools, with the predominantly minority schools being educationally inferior.

(Spallone v. United States, 1990, p. 32-33)

Although, on face, this statement may reflect a theme more complimentary of racial equality, the fact that the Court agreed subsidized public housing must be integrated into the city of Yonkers compliments the ideals espoused within the theme of a deserving class of poor.

An important component of the Court's ruling is that the poor, who happen to be of minority status, cannot afford housing in the east and northwest sections of Yonkers and that they are deserving of being integrated. Even though the individual's affected by this ruling are minorities, they are also poor. The Court's acknowledgment of the instance of poverty in this case and not utilizing this fact as a reason for precluding the integration of the races represents an acceptance of poverty. The Court's language is very inclusive. Poor minorities are deserving of preferential treatment and special consideration. They have a right to be integrated into society and to have equal access.

The opinion, using a minimal means test, ruled the District Court's imposition of contempt sanctions and fines on the councilmembers as an "abuse of discretion." Although the Court did recognize "the District Court was entitled to rely on the axiom that courts have inherent power to enforce compliance with their lawful orders through civil contempt" (Spallone v. United States, 1990, p. 20), the majority held the lower court in error. The Court perceived a significant difference between fining the city and imposing sanctions on individual legislators, "since the latter course causes legislators to vote, not with a view to the wishes of their constituents or to the fiscal solvency of the city, but with a view solely to their own personal monetary interest, and thereby effects a much greater perversion of the normal legislative process" (Spallone v. United States, 1990, p. 4). Thus, in view of the fact that holding elected officials in contempt for the manner in which they vote is "extraordinary," the Court concluded that the District Court ought to have "proceeded with sanctions first against the city alone in order to secure compliance with the remedial order" (Spallone v. United States, 1990, p. 4).

Only if that approach failed should the question of imposing contempt sanctions even have been considered. "This limitation accords with the doctrine that, in selecting contempt sanctions, a court must exercise the least possible power adequate to the end proposed" (Spallone v. United States, 1990, p. 5). This set the tone for the majority's opinion.

Viewing that the "least possible" means available should be exercised, the Court ruled that greater deference should have been accorded to the councilmembers. Failure to do so "violated traditional equitable principles." Although the Court recognized that no deference should be given in cases which compliance is not obtained, the Court did not find that to be the case in this instance. Having held the actions of the legislators as constitutional and the District Court in error, the Court viewed the lower court's action as no solution. "This sort of individual sanction effects a much greater perversion of the normal legislative process than does the imposition of sanctions on the city for the failure of these same legislators to enact an ordinance" (Spallone v. United States, 1990, p. 29). This statement explicitly states that the imposition of sanctions on the individual councilmembers risked greater disadvantages than advantages. This reflects the theme of "no solution" which requires the Court to view the solution as a threat to the social fabric. In addition, it implicitly forms the assumption which the Court invoked to deem the action of the District Court as unconstitutional. The Court labeled the action of the lower court as "extraordinary" in nature and utilized this assumption as its rationale for reversing the lower court's decision. This reflects the assumption that the imposition of sanctions is unjustified in this instance.

The dissent took an opposing view point to that expressed in the majority's opinion. Finding the actions of the District Court constitutional, the dissent urged the Court to accord the lower court a greater amount of deference. For example, in response to the fears articulated by the majority the dissent wrote: "Deference to the court's exercise of discretion is particularly appropriate where, as here, the record clearly reveals that the court employed extreme caution

before taking the final step of holding the councilmembers personally in contempt" (Spallone v. United States, 1990, p. 48). This represents the dissent's recognition that the "district court has first hand experience with the parties and is best qualified to deal with the 'flinty, intractable realities of day-to-day implementation of constitutional commands'" (Spallone v. United States, 1990, p. 47-48).

In its call for greater deference to be accorded to the lower court, the dissent depicted an equally horrific scenario to that of the majority's opinion if too much deference was accorded to the legislators of Yonkers. "If Yonkers can defy the orders of a federal court in any case, but especially a civil rights case, because compliance is unpopular, and if that situation is tolerated, then our constitutional system of government fails" (Spallone v. United States, 1990, p. 31) In this instance, the rhetoric of the Court reflects an assumption that the integrity of the Constitution is put at risk. Both, the dissent's call for deference and its plea for no deference, are premised on upholding the legitimacy of the Constitution. In its call for greater deference to be accorded to the lower court, the dissent envisions the District Court as the best gauge to determine if "extraordinary" means are necessary to "secure compliance" with constitutional demands. As for its plea to accord the councilmembers no deference, the dissent depicts the council's actions as threatening to unravel "our constitutional system of government."

In the instances of labeling the District Court's actions constitutional, the dissent argued that the councilmembers had an obligation to legislate within the parameters prescribed by the Constitution. "Local legislators, for example, may not frustrate valid remedial decrees merely because they or their constituents would rather allocate public funds for other uses" (Spallone v. United States, 1990, p. 64). Once the council acknowledged the fact that the city's housing project was in violation of the Fourteenth Amendment and Title VIII of the Civil Rights Act of 1968 they had a duty to correct the error. "Public officials sworn to uphold the Constitution may not avoid a constitutional duty by bowing to the hypothetical effects of private racial prejudice

that they assume to be both widely and deeply held" (Spallone v. United States, 1990, p. 65). Failure to do so prompted the lower court's sanctions. The dissent contended that the lower court should be empowered, in this instance, to levy sanctions against legislators who fail to correct a constitutional violation. The dissent's rationale, in this case, represents a plea for an empowered court.

Immigration and the Rhetoric of Poverty

Reno v. Flores

The respondents were a class of alien juveniles arrested by the Immigration and Naturalization Service (INS) on suspicion of being deportable. Respondents contended that they have a right under the Constitution and immigration laws to be routinely released into the custody of other "responsible adults." The current regulation provided for release of detained minors only to their parents, close relatives, or legal guardians, except in unusual circumstances. Juveniles who are not released must be placed in juvenile care facilities that meet or exceed state licensing requirements. The District Court invalidated this regulatory scheme on "unspecified due process grounds," ordering that "responsible adult parties" be added to the list of persons to whom a juvenile must be released and required that a hearing before an immigration judge be held automatically, whether or not the juvenile requests it. The Court of Appeals, in an unanimous decision, affirmed the lower court's judgment.

On March 23, 1993, the United States Supreme Court reversed and remanded the Court of Appeals' earlier decision in Reno v. Flores. Because this was a facial challenge to the regulation, respondents were required to establish that no set of circumstances exists under which the regulation would be constitutionally valid. The state, in this instance, only has to prove that there exists an interpretation of the regulation which is constitutional. The respondents are required to prove that under no circumstances does a constitutionally valid interpretation exist. The Court held the INS's regulation, on face, as constitutional.

Both the majority's opinion and the opinion written by the dissent embodied the rhetorical theme -- "deserving poor." This theme is reflected in the normative assumptions which underlined the language of the Court. In both opinions of the Court, the respondents have a right to be free from restraint of liberties. Alien juveniles are deserving of being placed in the homes of their parents or relatives. In addition, the Court held that all holding facilities must meet or exceed required safety standards. This rationale reflects the Court's view that the alien juvenile is deserving of freedom from cruel and unusual punishment. Furthermore, the Court placed the rights of the juvenile ahead of the rights of the adult. Arguing that the safety of children is as "paramount as the issue of national security," the Court held the child's wish to be placed with an appropriate custodian outweighed the adult's concern. The adult cannot refuse the child's desired placement. Both opinions espoused the value of ensuring the child's welfare, and the language of the Court reflected the deservedness of the alien juveniles.

However, the rationale for the majority's conclusion that the alien juveniles have no right to be placed with a "private custodian rather than a government-operated or government-selected child-care institution" (Reno v. Flores, 1993, p. 3) reflects the rhetorical theme of an undeserving class of poor. For this argument to be coherent, the state must have a legitimate interest in detaining the alien juvenile. When the argument is broken down in this fashion, the implicit theme of deviance and moral weakness is easier to see. The argument takes its rhetorical punch from the stereotypical image of the illegal alien as a threat to society and the family symbol. The Court acknowledged the alien juveniles' actions, suspicion of entering illegally, as "patently deviant" and warranting control. Furthermore, the Court ruled that the alien juvenile is more likely to act irresponsibly, by upholding the INS's contention that the "alien juvenile posed a greater risk of flight and threat to society" (Reno v. Flores, 1993, p. 10). This language reflects the moral weakness of the alien juvenile. In addition, the child's lack of family creates a theme of undeservedness. The state is not obligated to place the child in a secure

home environment rather than a state institution, especially since the child allegedly left home. This language draws a line between the alien juvenile who has family members in the United States and "those" alien juveniles which do not. For the Court, "aliens suspected of being deportable, a class that can be detained, and over which Congress has granted the Attorney General broad discretion regarding detention" (*Reno v. Flores*, 1993, p. 3), are undeserving of special consideration.

The opinion of the Court reflects a dual message of helplessness. The precise nature of the Court's choice to become helpless in matters of alien juvenile detention is revealed in the thematic dimensions of upholding another agency's action constitutional and invoking a plea of helplessness by deferring to the jurisdiction of another branch of government. Instead of acknowledging the respondents' construction of the regulation which violated the Due Process Clauses, the Court chose to demand only the formality of a facial challenge. This test restricts the choices available to the Court to remedy the incidences of harm articulated by the respondents, since the Court found the Attorney General's construction of the regulation constitutional. The Justices also argued the helplessness of the Court by concluding that the detainment of alien juveniles does not "exceed the scope of the Attorney General's discretion" and is an issue for legislative review. The majority of Justices chose to defer to the authority of the Attorney General and the legislative branch of government.

The dissent is unwavering in its opinion about the deservedness of the alien juvenile defenders. Liking release to a responsible person versus detention to the "difference between imprisonment and probation or parole," the dissent categorized the juvenile alien as deserving. For example: "They are children who have responsible third parties available to receive and care for them; many, perhaps most, of them will never be deported" (*Reno v. Flores*, 1993, p. 56). This passage constitutes a reflection of the deservedness of the alien juvenile.

In addition, the dissent explicitly stated that a difference exists between the two

solutions offered the Court and that the aliens are deserving of "special consideration" in all instances. "Special consideration" in this instance means that the aliens have a fundamental right to private custodians. Although the dissent recognized that both solutions could be described as "legal custody," the Justices described the difference of the "constitutional dimensions of individual liberty" which separates the two as the "great divide." In the dissent's vision, this case was about the "wholesale detention of children who do not pose a risk of flight, and who are not a threat to either themselves or the community" (*Reno v. Flores*, 1993, p.56-57). Even though care-facilities meet the minimum required standards, the dissent contended that release is always preferable to detention in these cases. This assumption underlines the dissent's classification of the alien juveniles as a deserving class of poor.

Interconnected with the assumption that the aliens should be free from restraint are the arguments which call for the Court to accord no deference to the Attorney General and the claim that the construction of the regulation violates the Constitution. Referring to the history surrounding the facts of the case and the "uncertainties inherent" in the regulation, the dissent concluded that the regulation is an "unwarranted government intrusion" on the rights of the alien juveniles. The dissent wrote:

The Court glosses over the history of this litigation, but that history speaks mountains about the bona fides of the Government's asserted justification for its regulation, and demonstrates the complete lack of support, in either evidence or experience, for the Government's contention that detaining alien juveniles when there are "other responsible parties" willing to assume care somehow protects the interests of these children.

(*Reno v. Flores*, 1993, p. 59)

This statement reflects both dimensions of helplessness coded. Explicitly, it represents the dissent's contention that there existed no "justification" for the government's detainment of the juveniles. Without the evidentiary support necessary to prove a "compelling state interest," the dissent ruled that no deference should be accorded to the government. The rights of the aliens outweighed the need of the INS to detain them. And in an attempt to empower the Court with

the ability to protect those rights, the dissent concluded that no deference should be accorded the Attorney General in this instance. In addition, this statement implies that no justification existed for the constitutional claims presented by the state. Ruling the regulation and detention of juvenile aliens as unconstitutional, the dissent upheld the rights of the child over the interests of the state.

Abortion and the Rhetoric of Poverty

Rust v. Sullivan

On May 23, 1991 the Court upheld the constitutionality of the restrictions placed upon Title X projects by the Secretary of Health and Human Services. The Secretary conditioned funding of Title X projects on the basis of the project's policy concerning abortion. A project would only receive government funds if it ceased referring and counseling women on abortion. Because § 1008 was found to be ambiguous in that it did not speak directly to the issues of abortion counseling, referral, and advocacy the Secretary's interpretation was accorded substantial deference by the Court. As the agency charged with administering the statute, the Court ruled so long as the HHS's interpretation was a plausible construction of the statute's plain language and does not conflict with the expressed intent of the law, the Secretary's actions are constitutional. The Secretary's interpretation became known as the "Gag Rule".

The opinion of the Court makes a single reference to the undeservedness of the poor. "We recently reaffirmed the long-recognized principle that the Due Process Clauses generally confer no affirmative right to governmental aid, even where such aid may be necessary to secure life, liberty, or property interests of which the government itself may not deprive the individual" (Rust v. Sullivan, 1991, p. 50). The Court in this instance chose not to give the poor preferential treatment and secure the women's right to an abortion. An alternative was available to the Court, to grant affirmative protection, yet the Court chose to incorporate a past script which denied the poor preferential treatment and excluded poor women from exercising

their Fifth Amendment right to an abortion. The rhetorical theme "the undeserving poor" is premised on the assumption the poor should not be given preferential treatment. Denying the poor an affirmative right to governmental aid mirrors this assumption.

In addition, the Court's perception of no obligation to ensure the individual's ability to exercise a constitutional right is reflected in the coded statements of the helplessness dimension. Specifically, the transformation category. This category professes that the individual(s) need(s) to go through a transformation process. The Court wrote: "The financial constraints that restrict an indigent woman's ability to enjoy the full range of constitutionally protected freedom of choice are the product not of governmental restrictions on access to abortion, but rather of her indigency" (Rust v. Sullivan, 1991, p. 55).

This aspect of the Court's opinion potentially has two implications. First, it facilitates the Court's perception it has no obligation to extend affirmative protection to the poor. The woman's inability to secure her right to an abortion is no fault of the government, but rather of her indigency. There is no government obligation to aid the individual, in fact, "even these Title X clients are in no worse position than if Congress had never enacted Title X" (Rust v. Sullivan, 1991, p. 54-55). This seems to exonerate the government. Second, the above statement acts to place blame on the indigent woman. It is the fault of the woman's poverty she can not exercise her right to an abortion; it is not the lack of government aid. This implies the woman needs to "pull herself up by her bootstraps" to enjoy this freedom. Blame is placed on the fact she is poor. Either interpretation shields the government from accepting any responsibility for the indigent woman's inability to secure her right to an abortion.

Turning to the petitioners' Fifth Amendment challenge, the Court rejected it on the grounds: "the government may validly choose to favor childbirth over abortion and to implement that choice by funding medical services relating to childbirth but not those relating to abortion" (Rust v. Sullivan, 1991, p. 17). In addition to being a plea of helplessness, the Court's ruling

morally censures the poor. Upholding the actions of the Secretary of HHS as constitutional allows the government to fund one activity to the exclusion of another. By making a value judgment favoring childbirth over abortion and implementing that judgment by the allocation of public funds, the Secretary of HHS symbolically labels abortion as morally deviant in comparison to childbirth. The actions of the Court in this instance compliment the Court's perception it has no obligation to affirmatively protect the right of the indigent mother. Greater value is placed upon childbirth than on abortion, hence, the Court has no duty to guarantee the free exercise of that right. Perhaps this offers an explanation why the Court perceives the indigent mother as undeserving and places blame on her indigency.

The petitioners' claim the Secretary of HHS violated the original intent of @ 1008 was rejected by the Court. Presumption rested with the validity of the Secretary's interpretation. Because the agency of HHS is charged with administering the statute and abortion funding is a political issue the Court deferred to the expertise and prevailing ideology of the time.

The Secretary's view, that the requirements are necessary to ensure that Title X grantees apply federal funds only to authorized purposes and avoid creating the appearance of governmental support for abortion-related activities, is not unreasonable in light of @ 1008's express prohibitory language and is entitled to deference.

(Rust v. Sullivan, 1991, p. 3-4)

By deferring to the dominant ideology of the time, the Court places itself in a position of helplessness and sends a strong signal to future litigants. The Court's submission to the political whims of the current administration exemplifies its lack of desire to be activist.

In addition to deferring to the Secretary's expertise and the prevailing ideology, the Court enunciated two other reasons for deference. First, to declare an act of Congress unconstitutional "is the gravest and most delicate duty that this Court is called on to perform" (Rust v. Sullivan, 1991, p. 32). When there are two competing interpretations of an Act, the Court views its duty to adopt whatever action will save the Act. This is out of respect for

Congress, which the Court assumes legislates in light of constitutional limitations. This explains why the Court rejected the petitioners' constitutional interpretation of the Secretary's new regulations. Second, "a revised interpretation deserves deference because an initial agency interpretation is not instantly carved in stone" (*Rust v. Sullivan*, 1991, p. 24). The Court views a statute as a living, breathing document and "an agency is not required to establish rules of conduct to last forever" (*Rust v. Sullivan*, 1991, p. 25). Ample latitude must be given to allow an agency to adapt its rules and policies to the demands of changing circumstances. In essence, the Court is helpless to act on an interpretation of a statute unless it is a facial violation of the constitutional test applied. Yet, if these tests are subject to change than the Court must choose to be impotent, for the Court could act in these instances if it wished. This does not imply the Court should act only that the Court could act, hence, its impotence is self-imposed in this instance.

The dissent takes a different approach to resolving the questions posed by this case. The rhetorical themes exemplified in the dissent are three-fold. First, the Court views the restrictions placed upon the Title X project as unconstitutional. Utilizing the past scripts of the two Courts of Appeals which have rejected the constitutionality of the Secretary's interpretation, the dissent justifies its opinion.

The regulations impose viewpoint-based restrictions upon protected speech and are aimed at a woman's decision whether to continue or terminate her pregnancy. In both respects, they implicate core constitutional values. This verity is evidenced by the fact that two of the three Courts of Appeals that have entertained challenges to the regulations have invalidated them on constitutional grounds.

(*Rust v. Sullivan*, 1991, p. 58-59)

An implication of this statement which can be extracted is that the dissent assumes it's their obligation to protect the indigent woman's right to choose from affirmative government intrusion. This assumption directly contradicts the statements posited by the majority.

Also, the dissent contends that no deference should be accorded the government.

Because a plainly constitutional construction of @ 1008 is not only "fairly possible" but entirely reasonable, the dissent urged reversal of the judgment on this ground without having to have to decide the constitutionality of the Secretary's regulations. Furthermore, the dissent pointed to the potential danger of deferring to ambiguous statutes. "Indeed, it would appear that our duty to avoid passing unnecessarily upon important constitutional questions is strongest where, as here, the language of the statute is decidedly ambiguous" (Rust v. Sullivan, 1991, p. 61). The rhetoric of the dissent, in this instance, clearly articulates a need for the Court to empower itself. The issues of power and jurisdiction are inconsequential to the dissent. They pale in comparison to the constitutional questions at hand.

The dissent is also based on the rhetorical theme of the deserving poor. The argument takes its rhetorical punch from the ideograph of freedom. "It cannot be that an otherwise unconstitutional infringement of choice is made lawful because it touches only some of the Nation's pregnant women and not all of them" (Rust v. Sullivan, 1991, p. 83-84). The dissent contends, if the Secretary's regulations were applied across the board they would be found unlawful. Just because the regulations only affect indigent women seeking abortion does not legitimize them. The dissent explicitly indicates the worthiness of indigent women, by placing them on an equal playing field with all women.

Additionally, the dissent writes about the poor woman's right to expect her physician not to withhold relevant information. "To suggest otherwise is to engage in uniformed fantasy" (Rust v. Sullivan, 1991, p. 70). The dissent places this aspect of the theme "the deserving poor" in the context of the petitioners' Fifth Amendment challenges. "The Fifth Amendment right asserted by petitioners is the right of a pregnant woman to be free from affirmative governmental interference in her decision" (Rust v. Sullivan, 1991, p. 77-78). The dissent held the regulations implemented by the Secretary of HHS in violation of a woman's self-determination. As demonstrated in its rhetoric, the dissent makes clear the need to protect

the poor from ideological viewpoint-based speech restrictions. The dissent views the indigent pregnant woman as deserving of the right to be free to determine her own actions, and funding decisions based upon an ideological viewpoint as repugnant. Through its arguments, the dissent attempts to offer the poor reprieve from the moral censure of the restrictions placed upon Title X programs.

The Right to Counsel and the Rhetoric of Poverty

Mallard v. United States District Court

On May 1, 1989 the Court was called upon to decide whether 28 U. S. C. @ 1915(d) authorizes a federal court to require an unwilling attorney to represent an indigent litigant in a civil case. The Court ruled that it does not.

The question before the Court did not raise any constitutional issues. Instead of questioning the constitutionality of compulsory assignments, it merely asked for an interpretation of @ 1915 (d). Mallard's motion contended that the court exceeded its jurisdiction when it mandated his assignment to the inmates' case. Basing his argument on the language of the statute, Mallard called for a reversal of the two previous courts' decisions.

The petitioner Mallard, an attorney recently admitted to practice before the District Court, was selected to represent indigent inmates in their suit against prison officials. He filed a motion contending that forcing him to represent the inmates in a complex action requiring trial skills he did not possess would compel him to violate his ethical obligation to take only those cases he could handle competently and would exceed the court's authority under @ 1915 (d). After a Magistrate denied his motion to withdraw, he appealed to the District Court which upheld the Magistrate's decision. The Appellant Court concurred with the District Court's opinion. The United States Supreme Court overturned the lower courts' decisions.

In the opinion, the Court accepted Mallard's claim that forcing him to represent the indigent inmates exceeded the court's authority. The opinion's rhetoric is a combination of the

plea of judicial helplessness and the familiar idea that because the poor have no lawful claim to representation in civil suits, the government is free to structure and condition the scheme in which the poor receive legal aid in almost any way it chooses. The opinion says to the undeserving poor:

Congress' decision to allow the federal courts to do no more than "request" attorneys to serve, in full awareness of more stringent state practices, seems to evince a desire to permit attorneys to decline representation of indigent litigants if in their view their personal, professional, or ethical concerns bid them do so.

(Mallard v. United States District Court, 1989, p. 15)

The Court, by conceding to the language of the @ 1915 (d) and refusing to rule on the constitutionality of compulsory assignments, invoked a plea of helplessness. The Court chose its helplessness; it was not imposed from without. For the majority concluded that there are times in which the word "request" may mean "order," but chose to subject itself to the most common meaning of the word. The Court disempowered itself.

The second rhetorical theme in the Court's Mallard opinion is the theme of the undeserving poor, which is expressed through the idea that the poor have no legal claim to representation in civil actions. After all, if the Court has ruled that the government has no obligation to guarantee legal representation in civil suits, on what constitutional grounds may they force an attorney to represent indigent litigants? This point is expressed in the Court's distinction between criminal and civil actions. "Congress' decision to depart from prior usage in fashioning a rule for civil cases involving indigent litigants might be taken to display a reluctance to require attorneys to serve" (Mallard v. United States District Court, 1989, p. 17-18). This argument is solid, given the Court's interpretation of @ 1915 (d). It is also, however, an expression of the theme of the undeserving poor who have no claim to the guarantee of public assistance in defense of their actions.

The dissent, in this case, decidedly took a different approach interpreting @ 1915 (d).

Insisting "the court's interest in making sure that a litigant is adequately represented and that the orderly prosecution of the lawsuit is not disrupted is paramount to a lawyer's personal interest" (Mallard v. United States District Court, 1989, p. 38), the dissent chose to empower the federal courts with the ability to assign attorneys to indigent litigants in civil cases. The rhetoric of the dissent embodies a rejection of the theme of judicial helplessness and reflects the theme of a deserving poor.

First, the dissent contended that the majority's interpretation of statute @ 1915 (d) was without merit and departs from past judicial interpretations of the statute. "Every contemporary decision uses the word 'assign' to describe the judge's authority to secure counsel for parties under @ 1915 (d)" (Mallard v. United States District Court, 1989, p. 38). In the opinion of the dissent Congress gave its endorsement to these judicial "requests," assuming that it would be unthinkable for a lawyer to decline. Therefore, the dissent construed the word "request" in @ 1915 (d) as meaning "respectfully command." If that is not what the Congress intended, the statute is virtually meaningless, since the Court already had the power to ask an attorney to represent an indigent litigant. Deference should not be accorded to the attorney's ability to decline the "request." Instead, the Court should envision the meaning of @ 1915 (d) as empowering the Court with the ability to "assign" attorneys to in forma pauperis cases.

Second, the dissent's expressed rejection of the theme judicial helplessness is interconnected with the theme of the deserving poor. The dissent concluded it had an obligation to guarantee the poor's claim to representation in civil suits. "To be faithful to the congressional design of ensuring the poor litigant equal justice whether the suit is prosecuted in federal or state court, the statute should be construed to require counsel to serve, absent good reason, when requested to do so by the court" (Mallard v. United States District Court, 1989, p. 34-35). The intention of the dissent to keep open the federal courts to impoverished litigants reflects the theme of a deserving poor and a rejection of the theme of judicial helplessness.

The dissent viewed the poor as deserving of public assistance in defence of their actions. They saw it not only as an obligation of the lawyer to fulfill the request of the Court, but as an obligation on the part of the Court to guarantee equal access to federal courts for both the rich and the poor. Because the issue of fairly dispensed justice is paramount, the dissent labels the poor deserving of preferential treatment -- free legal aid. Based on this interpretation the dissent urged the Court to reject deferring to the common meaning of the term "request" in @ 1915 (d).

Murray v. Giarratano

On March 22, 1989, the United States Supreme Court heard arguments for the case Murray v. Giarratano. The respondents, a class of indigent Virginia death row inmates, brought suit against various state officials, alleging that the Constitution required they be provided with counsel at the State's expense for the purpose of pursuing collateral proceedings related to their convictions and sentences. The District and Appellant courts upheld the inmates' contention as constitutionally valid. The courts reasoned that the case was not controlled by Pennsylvania v. Finley -- which held that the Constitution does not require the State to appoint counsel for indigent prisoners seeking postconviction relief -- since Finley was not a meaningful access case, since it did not address the rule enunciated in Bounds, and since it did not involve the death penalty.

On June 23, 1989 the United States Supreme Court reversed the lower court's judgment. Invoking the reasoning in Finley, the Court ruled that "neither the Due Process Clause or the Fourteenth Amendment nor the equal protection guarantee of 'meaningful access' required the State to appoint counsel for indigent prisoners seeking state postconviction relief" (Murray v. Giarratano, 1989, p. 11). The Court recognized the indigent prisoner's right to counsel at trial and for an initial appeal, but found no justification to mandate assignment of counsel during postconviction proceedings.

The opinion of the Court embodies the assumptions of an undeserving poor in two ways: the opinion states the assumptions explicitly, and it implicitly incorporates the assumptions by making arguments that invite the reader to supply them. On an explicit level, in an effort to justify the Court's conclusion that indigent prisoners have no claim to a "right to counsel," the majority writes: "the fundamental fairness mandated by the Due Process Clause does not require that the state supply a lawyer" (Murray v. Giarratano, 1989, p. 12-13). Unlike the lower courts, the Supreme Court decided not to extend "preferential treatment" to indigent death row inmates. Interconnected with the Court's explicit explications of the undeserving poor are implied assumptions. The rationale for the Court's conclusion is premised on the fact the prisoners have been found guilty of a crime and are undeserving of any further relief. For example, the majority invites the reader to supply the assumption of undeserved poor when they conjured up the specter of the inmates' appeal for an attorney "not as a shield to protect him against being 'haled into court' by the State and stripped of his presumption of innocence, but rather as a sword to upset the prior determination of guilt" (Murray v. Giarratano, 1989, p. 12).

Besides joining in the majority's opinion that there is nothing in the Constitution or the precedents of the Court that requires a State to provide counsel in postconviction proceedings, the concurring opinion demonstrates that past precedents allow the States "considerable discretion." For example: "Beyond the requirements of Bounds, the matter is one of legislative choice based on difficult policy considerations and the allocation of scarce legal resources. Our decision today rightly leaves these issues to resolution by Congress and the State legislatures" (Murray v. Giarratano, 1989, p. 23). This type of statement espouses the plea of judicial helplessness. Instead of extending preferential treatment to the indigent inmates, as did the previous two lower courts, the Supreme Court in this instance deferred to Virginia's legislature. Although the Court acknowledges that Virginia's procedures are not as "far reaching and

effective as those available in other States," it is unable to exact a judgment for the indigent prisoners. Because the law under question meets, at least, the minimal constitutional obligations of the state, the Court views its options as limited. The decision of the Court empowered the legislature with the ability to assess the situation and choose its own solution from the range of options available to it. This reflects the theme of judicial helplessness due to upholding the actions of an agent as constitutional.

Finding the situation of the death row inmate as unique, the dissent argued for preferential treatment to be accorded to the inmates. In terms of labeling the inmates as deserving, the dissent evaluated the situation the inmates have found themselves in and determined that they deserved "special consideration." "It is fundamentally unfair to require an indigent death row inmate to initiate collateral review without counsel's guiding hand" (Murray v. Giarratano, 1989, p. 35). The theme of a deserving poor is reflected in two separate contentions posited by the dissent's finding.

First, the dissent argues that past precedents are not applicable and history supports the respondents' claim. "These respondents, like petitioners in Powell but unlike respondents in Finley, have been condemned to die" (Murray v. Giarratano, 1989, p. 35). Since Finley only confers counsel for the initial review of a case and cases concerning the death penalty often require several appellate stages before errors are corrected, the dissent contended the test in Finley does not apply. "There is, however, significant evidence that in capital cases what is ordinarily considered direct review does not sufficiently safeguard against miscarriages of justice to warrant this presumption of finality" (Murray v. Giarratano, 1989, p. 40). This invokes an image that the unique situation of being sentenced to death overwhelms the applicability of the test established in Finley. The dissent urged the Court to accord the indigent inmate sentenced to death "special consideration." The dissent's call for preferential treatment reflects the theme of a deserving class of poor.

Calling upon the historical fact, "legislatures conferred greater access to counsel on capital defendants than on persons facing lesser punishment even in colonial times" (Murray v. Giarratano, 1989, p. 35), the dissent attempted to find legitimacy for its arguments in the past scripts of policy-makers. In addition to the past scripts of policy-makers, the dissent reiterates the opinions of a majority of the Justices to support its claim that the indigent inmate is deserving of the right to counsel in postconviction processes. "The Court, as well as the separate opinions of a majority of the individual Justices, has recognized that the qualitative difference of death from all other punishments requires a correspondingly greater degree of scrutiny of the capital sentencing determination" (Murray v. Giarratano, 1989, p. 38). Both statements reflect a qualitative difference between the sentence of death and a sentence of imprisonment. In order for the imposition of the death sentence to appear to be based on reason rather than caprice or emotion, imposition of the sentence "warrants protections that may or may not be required in other cases" (Murray v. Giarratano, 1989, p. 38). This special concern is a natural consequence of the knowledge that execution is the most "irremediable and unfathomable of penalties; that death is different" (Murray v. Giarratano, 1989, p. 38). It is this qualitative difference that underscores the dissent's assumption the respondents are deserving of representation throughout their appeals.

Second, the dissent accentuates the assumption that the death penalty is a unique sentence. "Given the irreversibility of capital punishment," the defendant should be accorded "special consideration." Because there exists no room for a margin of error, the opinion of the dissent calls for adversarial scrutiny at every level. Counsel is necessary to protect the constitutional rights of the prisoner, since the procedures of Virginia do not allow all claims to be heard on direct review. Given the finality and stringency with which the Court adheres to procedural rules, the dissent argues that "it is of great importance to the prisoner that all his substantial claims be presented fully and professionally" (Murray v. Giarratano, 1989, p. 47).

Contrasting the process discussed in Finley with that contemplated by Virginia's legislature, the dissent found justification for further safeguards. This rationale not only questions the applicability of Finley in this instance, but it also serves to invoke an image of the deserving poor.

In relation to the rhetorical theme of no deference, the assumption of "special consideration" is reflected. "The District Court's findings unequivocally support the conclusion that to obtain an adequate opportunity to present their postconviction claims fairly, death row inmates need greater assistance of counsel than Virginia affords them" (*Murray v. Giarratano*, 1989, p. 52). Using the value of fairness and the assumption that capital crime litigation is markedly different from ordinary litigation, the dissent contended it was the "duty of the Court" to assign counsel on request. For postconviction litigation to fulfill the standard of "meaningful access," the Court ought to defer to the inmates request and give little discretion to Virginia's claims. Because Virginia's postconviction appellate procedures are limited in scope and these limits interfere with the defendant's ability to petition relief, the "Court should error on the side of the defendant." Not only does the dissent call for no deference to be accorded to Virginia's procedures, but it also based its arguments on the assumption that the death penalty deserves preferential treatment.

Complimenting the rhetorical theme of no deference and the poor as deserving, the rhetorical theme of unconstitutional actions reflects the assumption of preferential treatment for the indigent death row inmate. Citing "the trend in most States to expand legal assistance for their death row inmates further dilutes Virginia's weak justifications for refusing to do so" (*Murray v. Giarratano*, 1989, p. 54), the dissent concluded that these respondents have a fundamental right to counsel. The basis for the dissent's opinion, the State's failure to "assert any interest that outweighs respondents' right to legal assistance" (*Murray v. Giarratano*, 1989, p. 52), reflects the assumption that the prisoners should be free from any governmental

interference and should be accorded "special consideration."

Rule 39.8 and the Rhetoric of Poverty

In re Amendment to Rule 39

On April 29, 1991 the Court ordered an amendment to Rule 39 respecting proceedings filed in forma pauperis. Citing an incumbered docket, the Court sought control over the apparent abuse exhibited by prolific filers of "frivolous" petitions. Perceiving a lack of deterrent for in forma pauperis filers, the Court amended Rule 39 to read: "If satisfied that a petition for a writ of certiorari, jurisdictional statement, or petition for an extraordinary writ, as the case may be, is frivolous or malicious, the Court may deny a motion to proceed in forma pauperis" (In re Amendment to Rule 39, 1991, p. 3). This amendment is referred to as Rule 39.8.

The opinion of the Court is based on the rhetorical theme of the deviance of the poor. Viewing the actions of the frivolous filer as threatening, the Court ruled such actions mandate control. Rule 39.8 reflects the construction of a deviant class of poor because it is the "abusive" action of the petitioner that is sanctioned not the poor's argument. Furthermore, the Court's action creates an "invidious distinction" between the rich and the poor, and draws a line between the deserving poor and undeserving poor. By only sanctioning the actions of the poor, the Amendment to Rule 39 has the effect of granting access to the Court based upon monetary ability. In addition, Rule 39.8 has no objective criterion. The application of the rule is based solely upon the discretion of the Court. Only when the Court perceives the petitioner as "abusive" will the Court invoke the rule. In essence, there exist a class of "frivolous" filers whose actions merit in forma pauperis status and a class of "frivolous" filers whose actions merit control. Both themes are displayed in the Per Curiam opinion of the Court.

It is vital that the right to file in forma pauperis not be incumbered by those who would abuse the integrity of our process by frivolous filings, particularly those few persons whose filings are repetitive with the obvious effect of burdening the office of the Clerk and other members of the Court staff. In order to preserve meaningful access to this

Court's resources, and to insure the integrity of our processes, we find it necessary and advisable to promulgate this amendment to Rule 39, to provide us some control over frivolous or malicious in forma pauperis filings.

(In re Amendment to Rule 39, 1991, p. 1-2).

By singling out "those few persons" whose actions are perceived as threatening, the Court creates a deviant and undeserving category of poor -- "whose filings are repetitive with the obvious effect of burdening" the Court.

The dissent's opinion accentuates the divisions created by the majority's actions. Both, the dissent written by Justice Marshall, and the dissent constructed by Justice Stevens, with whom Justice Blackmun joined, depict the divisive implications of the Court's rhetoric.

Justice Marshall wrote:

This Court's rules now embrace an invidious distinction. Under the amendment adopted today, an indigent litigant may be denied a disposition on the merits of a petition for certiorari, jurisdictional statement, or petition for an extraordinary writ following a determination that the filing "is frivolous or malicious." Strikingly absent from this Court's rules is any similar provision permitting dismissal of "frivolous or malicious" filings by paying litigants, even though paying litigants are a substantial source of these filings.

This Court once had a great tradition: "All men and women are entitled to their day in Court." That guarantee has now been conditioned on monetary worth. It now will read: "All men and women are entitled to their day in Court only if they have the means and the money."

(In re Amendment to Rule 39, 1991, p. 3-4)

Calling for the rejection of the amendment, Justice Marshall's dissent explicates a division created by the Court's action between the rich and the poor. Justice Marshall points to the lack of a reciprocal sanction of the wealthy as a symbol which draws a line along a wealth continuum placing the poor in the position of the "other". In addition, by explicitly stating the poor's worthiness "to their day in Court," Justice Marshall depicts the poor as deserving of in forma pauperis status. This special treatment of the poor compliments the rhetorical theme of desert.

Justice Stevens' dissent, although it did not explicitly mention the poor as deserving,

called for equal access and mitigated the threat the majority contended exists from "frivolous" filings of the poor. First, Justice Stevens wrote about the lack of experience associated with a perceived threat. "During my years of service on the Court, I have not detected any significant burden on the Court, or threat to the integrity of its processes, caused by the filing of frivolous petitions" (In re Amendment to Rule 39, 1991, p. 4). He turned the assumptions of the Court by writing: "Moreover, the cost of administering the amended rule will probably exceed any tangible administrative saving" (In re Amendment to Rule 39, 1991, p. 5). Both statements underscore Justice Stevens' belief that the poor do not offer a threat to the Court in this instance. Furthermore, Justice Stevens' coded statement called for renewed access to the Court for the poor. "Transcending the clerical interest that supports the rule is the symbolic interest in preserving equal access to the Court for both the rich and the poor. I believe the Court makes a serious mistake when it discounts the importance of that interest" (In re Amendment to Rule 39, 1991, p. 5). This statement urged the Court to place the poor's entitlement "to their day in Court" above the clerical needs of the Court. Even if the poor's actions threaten the clerical operations of the Court, the poor are still deserving of equal access to the processes of the Court.

Zatko v. California

This case is the first invocation by the Court of Rule 39.8 pertaining to denial of in forma pauperis status to "frivolous" petitions. Citing the petitioners' history as prolific filers of "frivolous" petitions, the Court denied the petitioners leave to proceed in forma pauperis in pursuit of their cases. "The petitioners respective 73 and 45 petitions over the last ten years [resulted] in an extreme abuse of the system" (Zatko v. California, 1991, p. 1).

The opinion is based on the morality dimension of the rhetoric of poverty. Specifically, the majority's language constructs an undeserving class of poor petitioners.

Because in forma pauperis petitioners lack the financial disincentives --

filing fees and attorney's fees -- that help to deter other litigants from filing frivolous petitions, we felt such a rule change was necessary to provide us some control over the in forma pauperis docket. In ordering the amendment, we sought to discourage frivolous and malicious in forma pauperis filings, "particularly [from] those few persons whose filings are repetitive with the obvious effect of burdening the office of the Clerk and other members of the Court staff."

(Zatko v. California, 1991, p. 1-2)

This single statement espouses three rhetorical themes. First, the Court labels the poor petitioner as potentially deviant -- lacking financial disincentives. Perceiving an imminent threat from this behavior to its processes, the Court adopted Rule 39.8 to control this patently deviant behavior. In addition, the Court blames the individual's status as the motive for this lack of incentive. Because poor petitioners do not have to concern themselves with "filing fees and attorney's fees" they are not deterred from filing "frivolous" petitions. The Court implies that poverty generates this patently immoral behavior. Finally, by singling out "those few persons whose filings are repetitive," the Court makes a distinction between the deserving poor petitioner and the undeserving poor petitioner. This distinction is made very explicit in the opinion of the Court.

In order to advance the interests of justice, the Court's general practice is to waive all filing fees and costs for indigent individuals, whether or not the petitions those individuals file are frivolous. As the dissent recognizes, for example, well over half of the numerous in forma pauperis petitions filed since the beginning of this Term are best characterized as frivolous ... But "it is vital that the right to file in forma pauperis not be incumbered by those who would abuse the integrity of our process by frivolous filings." For that reason we take the limited step of censuring two petitioners ...

(Zatko v. California, 1991, p. 3-4)

The Court chose to exact a judgment against the petitioners which ordinarily it does not invoke. This fact underscores the dichotomy the Court constructs between the deserving petitioner and the undeserving petitioner. When the Court chose not to allow the petitioners to proceed in forma pauperis it drew a line between the deserving poor and undeserving poor. Because the Court had a choice between allowing the petitioners to proceed in forma pauperis

and to deny them this writ of relief, the actions of the Court have symbolic implications. Viewing a threat emanating from the actions of the petitioners, the Court censured them by denying the petitioners the ability to proceed in forma pauperis. The language of the Court labels the two petitioners as "those persons" who abuse the system and are undeserving of preferential treatment. This label is accentuated by the Court's acknowledgement that other petitioners file "frivolous" petitions but their actions do not merit censure. Articulating that some imaginary line exists that when crossed by an in forma pauperis petitioner merits the Court's control of the petitioner's actions exemplifies the line between the deserving and undeserving poor in this context of the Court's procedure.

The dissent's opinion is based on the rhetorical theme of a deserving poor. First, the dissent cites empirical evidence that no threat exist to the processes of the Court or its ability to administer justice. "In my judgment, well over half of these petitions [almost 1000] could have been characterized as frivolous. Nevertheless, under procedures that have been in place for many years, the petitions were denied in the usual manner" (Zatko v. California, 1991, p. 5). No evidence indicated the "integrity of our [the Court's] process" was compromised in the slightest by the Court's refusal to spend valuable time deciding whether to enforce Rule 39.8 against so many indigent petitioners. The dissent contended the majority's perceived threat to the system of justice was unfounded.

Second, the dissent argued: "the Court places yet another barrier in the way of indigent petitioners. By branding these petitioners under Rule 39.8, the Court increases the chances that their future petitions, ... will not be evaluated with the attention they deserve" (Zatko v. California, 1991, p. 7). The dissent called for the rejection of the label Rule 39.8 places on the poor petitioner. A label which has a significant "symbolic effect." This label draws "distinctions among the multitude of frivolous petitions" (Zatko v. California, 1991, p. 6). Not only does the censure imposed upon the petitioner create a class of undeserving poor litigants, it also

conveys the message "that the Court does not have an overriding concern about equal access to justice for both the rich and the poor" (Zatko v. California, 1991, p. 6). In essence, because the Court chose to apply a different procedure to the petitioners in these cases it branded them as undeserving. The dissent rejected this label arguing for the petitioners' right to access to the Court.

In re Anderson

Pursuant to Rule 39.8, on May 2, 1994 the Court rejected Anderson's petition for extraordinary relief and habeas corpus. Specifically, the petition related to the denial of Anderson's various postconviction motions by the District of Columbia Court of Appeals. The Court invokes two separate arguments to justify denying in forma pauperis status to Anderson. First, on the grounds that the petition was "patently frivolous", the Court found the petition to be unworthy of plenary review. In addition, the Court cites Anderson's history as a "prolific filer". Between 1991 and 1994, Anderson filed 22 separate petitions and motions. In 1994 he filed 13 petitions and motions. All 22 petitions and motions were denied without recorded dissent. Therefore, the Court concluded: "[it] has a duty to deny in forma pauperis status to those individuals who have abused the system" (In re Anderson, 1994, p. 3-4). In the end, the Court's judgement precludes Anderson from proceeding with any further petitions or motions until he has paid the requisite costs.

The opinion of the Court is based on the rhetorical theme of the undeserving poor. It would not be if the Court simply denied the petition, but the Court invokes this privilege in instances where the poor are found to "have abused the system." Although, the Court could have invoked Rule 39.8 in its past opinions concerning Anderson's previous petitions it chose not to. This implies there exists a threshold to the number of "frivolous" petitions before a petitioner is attributed to "abusing" the system. This threshold is defined as the Court's perception when the filings of a petitioner threaten the distribution of justice. Only when this

imaginary threshold is crossed does the Court sanction the "patently" deviant behavior of the petitioner. The action taken by the Court in *Anderson* underscores the construction by the Court of a deserving class of poor and an undeserving class of poor. The deserving poor petitioner is an individual who does not abuse the system. Hence, she/he is deserving of preferential treatment -- in forma pauperis status. The undeserving poor petitioner has crossed the roving threshold by filing too many frivolous petitions and is now banned from the Court until past filing fees have been paid. The Court's justification is rooted in the belief there exists one objective rationale for deciding the worth of an argument. Although, this thesis does not intend to indict the findings of the Court, only to explicate the themes which make up the discourse of the Court, the Court's rationale begs the question. Clearly the rationale utilized in evaluating the petitions of the poor is based on past social constructions which justify denying the poor access to the Court based upon the frivolousness of their arguments. There clearly exists, in the Court's opinion, a deserving and undeserving set of poor petitioners.

Justice Stevens, writing the dissent, expressed the deservedness of *Anderson* to continue in forma pauperis. "Any minimal savings in time or photocopying costs, it seemed to me, did not justify the damage that occasional orders denying in forma pauperis status would cause to the symbolic interest in preserving equal access to the Court for both the rich and the poor" (*In re Anderson*, 1994, p. 5). The rationale for Stevens' position is based upon his experience serving on the Court. "I [Stevens] have not detected any threat to the integrity of its [the Court's] processes, or its ability to administer justice fairly, caused by frivolous petitions, whether filed by paupers or by affluent litigants" (*In re Anderson*, 1994, p. 4).

Table 8
Summary of opinions

<u>Subject Case</u>	<u>Opinion</u>	<u>Frequency of Statements</u>										
		D	Und	M	T	Def	C	NS	H	NDef	Unc	Emp
<u>The Death Sentence</u>												
Lewis v. Jeffers (1990) concerned the constitutionality of Arizona's death sentence and its application to Jeffers. Holding that Jeffers both relished his crime and inflicted gratuitous violence, the Court reversed and remanded the Court of Appeals' decision to vacate Jeffers' death sentence. The issue of poverty was raised only once, and that was in a foot note citing a previous case.	maj.	0	0	0	0	0	0	0	0	0	0	0
	dis.	0	0	0	0	0	0	0	0	0	0	0
McCleskey v. Zant (1991) concerned McCleskey's ability to raise a Massiah challenge in his second appeal. The question before the Court was procedural in nature and had little bearing on the topic of study. Although, the Court did recognize in its written disposition that McCleskey's "depraved and impoverished" childhood was not grounds for constitutional review. In upholding the Court of Appeals' rejection of this argument, the Court labels McCleskey's previous economic status as undeserving of "preferential treatment."	maj.	0	1	1	0	0	1	0	1	0	0	0
	dis.	0	0	0	0	0	0	0	0	0	0	0
<u>Housing</u>												
Spallone v. United States (1990) questioned the District Court's ability to impose sanctions on the councilmembers of the city of Yonkers. The deservedness of the poor resounds throughout the opinion and dissent of the Court. Where the two opinions differ is on how much deference should be accorded to the District Court and the city of Yonkers' councilmembers. The majority, using a minimal means test, held the District Court's imposition of sanctions on the councilmembers as an "abuse of discretion."	maj.	8	0	8	0	8	9	2	19	3	4	7
	dis.	6	0	6	0	3	4	0	7	5	3	8

Table 8 (continued)
Summary of opinions

Subject Case	Opinion	Frequency of Statements										
		D	Und	M	T	Def	C	NS	H	NDef	Unc	Emp
<u>Immigration</u> Reno v. Flores (1993) involved a facial challenge to the Attorney General's interpretation of an INS regulation which prohibited alien juveniles from being released into custodial care other than a parent or relative. The Supreme Court reversed and remanded the Court of Appeals' earlier decision which upheld the juvenile's right to be placed into the custody of other "responsible adults." How to best ensure the child's welfare is where the majority and minority opinions of the Court differ. Although the majority's opinion embodies the rhetorical theme "deserving poor," its rationale for reversing the lower court's decision is based on the theme of the moral weakness of the poor and the helplessness of the Court to exact any changes.	maj.	5	4	9	0	8	11	0	19	0	0	0
	dis.	7	0	7	0	0	4	0	4	8	4	12
<u>Abortion</u> Rust v. Sullivan (1991) involved a facial challenge to the Secretary of Health and Human Services' interpretation of @ 1008 which placed funding restrictions on Title X projects. Also known as the "Gag Rule," the Secretary's interpretation conditioned receipt of funds based on a project's policy concerning referral and counseling on abortion. The Court accorded the Secretary's construction of @ 1008 a substantial amount of deference. Because the agency of HHS is charged with administering the statute and abortion funding is a political decision, the Court deferred to the prevailing ideology of the time.	maj.	0	1	1	2	10	8	0	20	0	0	0
	dis.	5	0	5	0	0	0	0	0	1	1	2

Table 8 (continued)
Summary of opinions

<u>Subject</u> Case	Opinion	Frequency of Statements										
		D	Und	M	T	Def	C	NS	H	NDef	Unc	Emp
Rule 39.8 (continued)												
Zatko v. California (1991)												
	maj.	0	5	5	0	0	0	0	0	0	0	0
	dis.	2	0	2	0	0	0	0	0	0	0	0
<p>poor as deserving, and calls for the rejection of the label Rule 39.8 places on the poor petitioner.</p> <p>The majority's language invokes three separate themes: the poor as deviant, the rhetoric of blame, and the distinction between deserving and undeserving poor. The dissent's language categorizes the poor as deserving, and calls for the rejection of the label Rule 39.8 places on the poor petitioner.</p>												
In re Anderson (1994)												
	maj.	0	4	4	0	0	0	0	0	0	0	0
	dis.	2	0	2	0	0	0	0	0	0	0	0
<p>for extraordinary relief and habeas corpus. Citing Anderson's history as a "prolific filer," the Court invoked Rule 39.8 and denied in forma pauperis status to Anderson. The Court's judgment precludes Anderson from proceeding with any further petitions until he has paid the requisite costs. The majority's decision is based on the rhetorical theme of the undeserving poor. The "patently" deviant behavior of Anderson was perceived as a threat to the integrity of the Court, hence, the Court concluded "It has a duty" to deny in forma pauperis status to Anderson.</p>												
D = Deserving Und = Undeserving M = Morality T = Transformation Def = Deference C = Constitutional		NS = No Solution H = Helplessness NDef = No Deference Unc = Unconstitutional Emp = Empowerment										

CHAPTER FOUR

Discussion

RQ1: Does the vocabulary of the United States Supreme Court's discourse on poverty, as exemplified in its written decisions, embrace the morality dimensions of the rhetoric of poverty?

The answer to this question was found to be "yes" in the instances of the cases reviewed for this thesis; although, the "goodness of fit" for each coded statement varies. For example, some statements explicitly embrace components of the morality dimensions of the rhetoric of poverty; while other statements only imply characteristics that are analogous to the prescribed definitional attributes of the morality dimensions of the rhetoric of poverty.

Even with these limits, the results of this thesis indicate that the language of the Court reflects the morality dimensions of the rhetoric of poverty. Support for this conclusion is found in the comparisons of the rate of frequency for coded statements in the morality dimensions of the rhetoric of poverty, and in the comparison of the overall frequency rate of statements in the morality dimension of the rhetoric of poverty.

Results of the descriptive tests performed on the frequency rate of statements identified a rhetorical trend in the Court's discourse on poverty. Although there was no significant difference found when comparing the overall frequency of statements in the morality dimension (see Table 7), the lack of significance implies that moral categorization is inherent in the language of the Court. Finding no significant difference indicates that the rate of observed frequency is as expected. This phenomena reflects the finding of the literature reviewed which described the pragmatic assessments of the Court being accompanied by moral criteria.

The inherent incorporation of moral assumptions in the Court's arguments may reflect a

truism. Since the Court's actions define what is constitutionally acceptable behavior, the existence of value-laden language may be intrinsic. The Court operates under the assumption that the Constitution defines what actions are "just" and what actions are "unjust." The Constitution is a moral document which establishes the norms of society, and the Court's interpretation of the Constitution reflects normative judgements. As such, it is necessary to evaluate the results of the difference tests for the individual categories of the morality dimension of the rhetoric of poverty to determine if a trend does indeed exist.

Results of the chi-square test for the individual categories of the morality dimension of the rhetoric of poverty identified a rhetorical trend in the Court's discourse on poverty. A significant difference was found between the frequency of deserving and undeserving statements when comparing the written decisions of the opinion to the written decisions of the dissent (see Table 3). This difference indicates that the vocabulary of the Court's discourse is more likely to espouse language which is characteristic of the undeserving category of the morality dimension of poverty than the deserving category in its written opinion. While, the dissent's language is more likely to reflect the deservedness of the poor. The rate of difference ($p < .001$), for each comparison tested, statistically supports the claim that a trend does exist.

Isolation of each opinion reported a significant difference between observed frequencies and theoretical frequencies for each category (see Table 3). This indicates that the Court's value-laden language did not fall within the expected distribution of categorizing the deservedness and undeservedness of the poor. Although the Court's discourse may inherently assess the morality of an action, the significant difference in the distribution of statements, in the instance of the coded cases, underscores the claim that a trend exists. Because the observed frequency of statements did not reflect the theoretically calculated frequency, support is found for the claim that the written opinion of the Court embraces the undeserving category of the morality dimension of the rhetoric of poverty and the written opinion of the dissent

reflects the deserving category. In addition, similar differences were reported when comparing each category across the two written opinions of the Court (see Table 3). The significant difference between the two sets of written opinions for each category supplies the warrant for the claim that the opinion of the Court is more likely to categorize the poor as undeserving than the dissent, and the dissent is more likely to categorize the poor as deserving than the opinion. Results of the statistical test indicate that the observed frequencies are significantly different from theoretical expectancies. These results underscore the claim that, although the Court's rhetoric may inherently invoke value-laden language, the trend exhibited by the coded statements of the Court's discourse on poverty is unexpected.

RQ2: Does the vocabulary of the United States Supreme Court's discourse on poverty, as exemplified in its written decisions, embrace the helplessness dimension of the rhetoric of poverty?

Yes, the results of the difference statistics performed in this thesis indicate that a trend does indeed exist; although, the interpreted meaning of the examples of the coded statements indicates the degree to which a statement embraces the helplessness dimension of the rhetoric of poverty varies from statement to statement. Some statements are explicitly comprised of definitional components of the helplessness dimension of the rhetoric of poverty; while other statements only imply characteristics analogous to the definitional components of the helplessness dimension.

However, the finding of a significant difference between the frequency of coded statements for the helplessness dimension and the empowerment dimension leads to the deduction that the opinion of the Court is more likely to embrace the helplessness dimension of the rhetoric of poverty than is the dissent. And, the dissent is more likely to embrace the

empowerment dimension than is the opinion.

Albeit no significant difference was found ($p > .05$) when comparing the individual categories of the helplessness dimension (see Table 4), when helplessness was compared with empowerment, a significant difference was discovered ($p < .001$; see Table 6). These statistical tests indicate that the context of the Court's opinion may be predictive of the language it invokes in its discourse. For instance, the lack of significant difference when comparing the individual categories of helplessness between the Court's opinion and dissent ($p > .05$) reflects the intrinsicness of the vocabulary of helplessness in the opinion of the Court. Evinced in the opinion of the Court's rhetoric is the helplessness dimension of the rhetoric of poverty. This phenomena may be explained by the context of the Court's opinion.

When the Court passes judgment, it must justify its holding. Hence, when the Court is comparing two sets of constitutional arguments, the Court's ruling reflects its selection of one set over the other. As such, the opinion of the Court is constructed within these parameters. The opinion reflects the Court's interpretation that one set of arguments is constitutional. This contextual constraint inherently embodies the helplessness dimension of the rhetoric of poverty. By upholding another agent's actions as constitutional or deferring to the actions of another, the Court's opinion embraces the helplessness dimension. Furthermore, the empowerment dimension defines the context of the dissent's arguments (see Table 5). The lack of significance, in this comparison, connotes the dissent's likelihood to espouse language which mirrors the categories of empowerment. This is also explained by the purpose which the dissent must fulfill. The dissent constructs its arguments as answers to the assumptions which underscore the Court's opinion. By defining the actions of the Court's opinion in violation of constitutional interpretations, the rhetorical theme of empowerment is inherent in the language of the dissent. Each rhetorical dimension's categories fulfill the need inherent in the construction of one set of opinion's arguments. As such, the opinion is more likely to embrace

the helplessness dimension of the rhetoric of poverty than is the dissent. And, the dissent is more likely to embrace the dimension of empowerment than is the opinion (see Table 6).

Although the results comparing the two dimensions independent from one another indicate that this trend may be what is theoretically expected ($p > .05$ in all comparisons), the results of the comparison between the two dimensions in each set of opinions, and across opinions, indicates that an unexpected trend exists (see Table 6; $p < .001$ in all comparisons). By finding a significant difference, the difference statistics depict the frequency rate of each set of opinions' statements as deviating from theoretical expectancies. It is this significant difference that supplies the warrant for the claim that a trend exists. Upon closer evaluation of the numbers, the trend becomes clear.

The opinion of the Court had an observed 67 statements in the helplessness dimension and 7 statements for the dimension of empowerment. Theoretical frequency was established as 49 for the helplessness dimension and 25 for the dimension of empowerment. With the reported value of $p < .001$, a significant difference was evinced by the frequency of statements in each dimension (see Table 6). Furthermore, a similar difference was identified in the frequency of statements for the dissent. With an observed frequency of 11 versus the theoretically set frequency of 29 for the helplessness dimension, and 34 observed statements versus the theoretically set frequency of 16 for the dimension of empowerment, the calculated value of p was reported to be $< .001$ (see Table 6). The significant difference found when comparing the dimensions across each independent opinion reflects an unexpected trend in the frequency of statements for each opinion. In addition, comparison of the observed frequency of statements for each dimension between the two sets of opinions indicates that an unexpected trend exists. Utilizing the same data as above, a significant difference was found to exist between the two sets of opinions ($p < .001$ in all comparisons; see Table 6). This significance represents the gulf between the assumptions of the Court's opinion and the dissent's opinion in

terms of the Court's plea of helplessness.

Both statistical analyzes support the contention that the vocabulary of the Court's discourse on poverty embraces the helplessness dimension of the rhetoric of poverty. Although each opinion may have an inherent bias in the language it invokes, the tests resulted in a significant difference between the dimension of empowerment and the helplessness dimension. The inevitable presence of the helplessness dimension in the rhetorical construction of the Court's opinion did not fall within expected frequencies when comparing the frequency of statements in the helplessness dimension to the frequency of statements in the empowerment dimension (see Table 6). This phenomena supports the contention that an unexpected trend of helplessness exists in the Court's discourse on poverty.

Discussion and conclusions of the reported levels of reliability

The discussion of reliability has two aspects. First, it is important to note that both dimensions were found to have sufficient reported reliability (morality = .89; helplessness = .86) using Holsti's (1969) formula for calculating the coefficient of reliability. Since this study represents the first time that these operational definitions have been tested, the high levels of reported reliability are promising. The reported high levels of reliability signify the ability of these definitions to be employed and tested by later research. In addition, the level of reliability in this study dispels the need to evaluate the mitigating factors the definitions may have on the results of the study. The definitions had no identifiable contaminating effects on the statistical results of the study. Each dimension was discernable by the coders, and the high level of agreement exemplifies each dimension's utility.

Second, the results of Scott's pi must be discussed because they fell below the

expected level of $\pi \geq .85$ (morality = .84; helplessness = .50). The disparity between the calculated level of π and the theoretical level of π for the morality dimension does not merit much concern. Considering the difference is only one-hundredth of a point and the expected level is set well above the recognized acceptable level of .70, the calculated level of π does not effect the discussion or conclusions concerning the morality dimension of poverty. Yet, the failure of the helplessness dimension represents a different problem. The reported level of π , in this instance, fell well below the expected level and the recognized acceptable level of .70 (see Table 2). A plausible explanation for this phenomena extends from the function of Scott's π and the statistical results of the categories which make-up the helplessness dimension and the empowerment dimension.

Scott's π is a formula which corrects for inter-coder agreement which may result from chance (Holsti, 1969). As such, the result reported for the helplessness dimension signifies that the high level of agreement experienced by the coders resulted by chance. On its face, this finding may cause concern. But, when the results of Scott's π are placed in the context of the results of the difference statistics no concern is needed. The statistical results of chi-square for both the helplessness dimension and the dimension of empowerment depicted a high-degree of probability that statements would fall within a predictable set of categories. In fact, the results suggested that helplessness is inherent in the language of the Court's opinion, and empowerment is inherent in the language of the dissent's opinion (see Tables 4 & 5). These statistical results mirror the value of π reported for the helplessness dimension. In fact, π further suggests that the two dimensions are inherent in the language of their respective opinion. The low level of π reported in this study reflects the degree of probability that the language of the Court embraces the helplessness dimension of the rhetoric of poverty.

Furthermore, it would be premature to discount the helplessness dimension's coefficient of reliability ($r = .86$). Even if the resulting level of reliability may extend from chance, to

disregard the high level of agreement achieved by coders would prevent discussion of this phenomena which does not rely upon the calculation of chance. For instance, the description and implications of the coded statements.

Therefore, both reported levels of reliability serve specific functions in this thesis. Holsti's (1969) formula supports the contentions that the definitions have a utility for later research, and that they did not act to contaminate the results of the statistical analyzes applied in this thesis. Scott's pi, on the other hand, signified the high level of reliability reported for the helplessness dimension resulted by chance, and supported the conclusion that the Court's embracing of the helplessness dimension is inherent in its discourse on poverty.

Discussion and conclusions of the thematic analysis of the Court's written opinions

The death sentence and the rhetoric of poverty

The two cases which represented this category of analysis offer limited insight into the Court's discourse on poverty. Lewis v. Jeffers (1990) had zero coded statements. While, McCleskey v. Zant (1991) elicited only two statements; one for each dimension. Although the Court's opinion mentioned the undeservedness of McCleskey to appeal his death sentence on the grounds of his impoverished childhood, the lack of analysis of the Court's rationale leaves little for discussion. The Court simply upheld the Appellate Court's decision to not evaluate McCleskey's claim as a constitutional challenge mandating plenary review.

The broader implications of the Court's decision for the poor is that poverty is not a defense for committing a capital crime. A person cannot invoke this defense. By expressing its opinion that the Court is helpless to evaluate the defense of poverty in this instance, the Court limits the alternatives available to the poor. The condition of poverty does not act as a

mitigating circumstance, in the instance of this case.

Housing and the rhetoric of poverty

The perception of the poor in *Spallone v. United States* (1990) was very positive. Taking a color-blind approach to resolving the inequities in the distribution of public housing in the city of Yonkers, the Court's discourse depicts the poor as deserving of preferential treatment. Acknowledging the instance of poverty in this case, and not using it as grounds to exclude the poor from areas of the city, reflects the inclusiveness of the Court's language. This suggests that the Court will not allow the instance of poverty to be used as grounds to preclude the integration of the races. In fact, the Court takes a very activist stance by upholding the lower court's remedial sanctions against the city as constitutional. These sanctions escalated daily until the city adopted a housing policy which does not discriminate against the poor minorities. In essence, the Court's actions offer the poor some reprieve from the moral censure they experienced by the housing policy of the city of Yonkers.

However, the Court also invoked a plea of helplessness. Utilizing a minimal means test, the Court restricted its discretionary power. Holding the lower court's sanctions against the councilmembers as a violation of judicial discretion, the Court deferred to the legislature's right to be free from coercion. The *Spallone* Court acknowledged that the councilmembers had declined to remedy the inherent discrimination in the city's housing policy, but refused to allow the lower court to impose contempt citations against them. Citing the councilmembers' right not to be forced to adopt a solution if their constituents were willing to risk bankruptcy, the Court constricted its ability to be an agent of change.

By invoking a narrow interpretation of the doctrine of equitable principles, the Court closes available avenues to force change in the status of the poor. Even in the instance of

racial discrimination, the Court is unwilling to extend its discretionary power to force legislatures to end this practice. Contending an unacceptable risk is posed to the democratic ideas of our nation, the Court is unwilling to empower itself with the ability to swiftly change the status of the discriminating statute. Instead, the Court's narrow construction of the doctrine of equitable principles prolongs the legislature's adoption of a policy which fits within the parameters of the Constitution.

The dissent contends that the Court should take extreme measures to ensure that the Constitution is upheld at all times. For the dissent, allowing the continued and wanton exclusion of a race of persons is a very dangerous precedent. Arguing that holding legislatures who refuse to remedy constitutional violations in contempt is not an extreme measure, the dissent depicted the contradiction inherent in the Court's opinion. For example, the opinion of the Court contended that judicial interference in policy-making would disrupt the integrity of representative government. A judicial tyranny is envisioned. Yet, the Court admits that the poor minority population of Yonkers is being discriminated against. The dissent argues that judicial intervention is necessary in all cases of wanton and continued facial violations of the Constitution. In fact, representative government ought to be limited in the case of preserving the integrity of the document that gives it meaning. The dissent envisioned a more empowered Court with the ability to swiftly dispense justice.

As such, the Spallone Court has both positive and negative implications for the poor. First, the positive aspects of the Spallone decision signify the Court's willingness to protect the fundamental right of poor minorities to be free from discrimination, and the Court's willingness to try to remedy the situation. However, on the negative side, the Spallone Court envisions its ability to be an agent of change for the poor as limited. The majority of the population, if they are willing to run the risk of bankruptcy, can refuse the Court's order. This does not seem to bode well for the poor activists who may challenge the new welfare reforms which may be

passed by our federal, state, and local legislatures. Even if the Court finds the new laws in violation of the Constitution, they can still be enforced locally so long as the population is willing to pay the fines.

Immigration and the rhetoric of poverty

In the instance of *Reno v. Flores* (1993), the Court's language complimented the historical construction of the abstraction of poor children as deserving. As discussed in the review of literature, children have historically been accorded the categorization of deservedness because of their inability to fend for themselves. This assumption is represented by the Court's conclusions that the alien juveniles have a right to be free from restraints, and if they are held in custodial care, the holding facilities must meet or exceed required safety standards. These standards were devised to guarantee the safety of the child while in custody, and reflect the Court's assumption that children should be free from cruel and unusual punishment. Both conclusions represent the paternalistic assumptions of the Court. If a child is found in a position of need, the government has an obligation to provide care for that child. Care, as the Court defines it, is best served by the juvenile's parents or relatives. But, if none are available, the Court defers to the expertise of government agents to foster the development and oversee the needs of the child as opposed to a third party.

The Court's rationale, in *Reno v. Flores* (1993), is founded upon the assumption that ensuring a child's welfare is as "paramount as the issue of national security." Placing the safety and needs of children on the same level as preservation of the nation's security reflects the Court's categorization of the alien juvenile as deserving of preferential treatment. For example, the Court held the child's wish to be placed with an appropriate custodian cannot be rejected by the custodian. The child's desires and welfare are given preferential treatment; not

even the rights of the potential adult custodian weigh against the child's. Evinced in the Court's rationale is the deservedness of the poor child to experience a traditional family setting. Not only then does the Court's discourse on immigration and poverty embrace the rhetorical themes of a deserving poor because of children's inability to fend for themselves and the assumption they are deserving of preferential treatment, but the Court's rationale mirrors the rhetorical theme of the family symbol.

However, the Court's discourse also categorized the alien juvenile as undeserving. This aspect of the Court's language reflects the deviance of the poor. By denying the alien juveniles' appeal for a right to be placed in private custodial care rather than government care, the Court's discourse signified that a legitimate state interest exists in detaining these children. Invoking the risk posed to society and the threat posed by the alien juvenile to the family symbol, the Court's assumptions mirror the deviance of the poor. Contending that the juveniles pose a risk of crime, the Court presumes that alien juveniles are morally weak and must be controlled. In addition, the Court's rhetoric on the issue of who is most capable of caring for the children espouses the theme of the family symbol. Citing the children's prior flight from their families, the Court labels their actions as morally weak and deserving of state sponsored control. The line drawn between the deserving and undeserving alien juvenile in this instance, is demarcated by the child's accompaniment by his/her parents or relatives. As such, in order to avoid the moral censure of the Court the alien juvenile should cross the border with an adult family member.

In reference to the helplessness dimension, the Court's vocabulary embraces two themes. Instead of acknowledging the respondents' claim to a right to private custodial care, the Court chose to invoke a plea of helplessness by adhering to the formality of a facial challenge. This test places the solution to the problem articulated by the juveniles beyond the power of the Court. By imposing a narrow construction of the facial challenge, the Court

upheld the Attorney General's interpretation of the regulation as constitutional and deferred to the INS's jurisdiction over the issue.

The rationale of the Court reflects the information derived from the review of literature. As the literature on helplessness indicates, if society creates horrific conditions under which the poor live in and the poor continue to exist in these conditions, the Court feels helpless to do anything to remedy the problems. Since alien children continue to immigrate to the United States without adult supervision risking detention in government institutions, the Court feels helpless to exact a change in the law. The scarcity of INS resources and perceived deviance of the alien juvenile fuel the Court's arguments it is helpless.

Also, evinced in the Court's rhetoric is an assertion of power that defines the relationship between the alien juveniles and the state. By deferring to the jurisdiction of the INS, the Court signifies to aliens that the issue of immigration is a political decision and the Court is rendered powerless to exact any changes. Deference, in this instance, symbolizes the subordination of the alien juvenile to the perceived interests of the state. Although the Court equates the child's welfare to that of national security, if a child comes to the United States without proper parental support the state is justified to assume control over the actions of the child. The juvenile's patently deviant behavior of fleeing home merits the state's intervention and detainment of the child, in this case.

Abortion and the rhetoric of poverty

The results of *Rust v. Sullivan* (1991) depict the morality dimension interwoven with the helplessness dimension. Ruling the state has no obligation to ensure the individual's ability to exercise a constitutional right, the Court categorized the poor as undeserving and invoked a plea of helplessness. The rhetorical theme the "undeserving poor" is premised on the

assumption the poor should not be given preferential treatment. Denying the poor an affirmative right to government intervention to ensure their ability to exercise the right to abortion, the Court not only ruled the poor are undeserving of preferential treatment, but also the poor's desire to have an abortion as deviant. The Court's moral censure of the poor is the basis for some of the Court's pleas of helplessness. For example, in response to the petitioners' Fifth Amendment challenge, the Court rejected this challenge on the grounds that the state has a right to choose childbirth over abortion and to implement that choice by funding one at the exclusion of the other. This not only represents a plea of helplessness, but morally censures the actions of the poor. By allowing the state to categorize the behavior of abortion as deviant, the Court's discourse reflects the undeservedness of the poor. The language of the Court places greater value on childbirth than on abortion. Perhaps, this offers an explanation why the Court places blame on the mother's indigence and invokes a plea of helplessness.

The rhetoric of choice and blame also underscores the Court's embodiment of the morality and helplessness dimensions of the rhetoric of poverty. In its statements calling for the individual to go through a transformation, the Court argues that the poor can choose not to be poor and places blame on the individual's poverty as the reason she cannot exercise her abortion right. Due to the assumption of the passivity of the poor, this language connotes the poor's moral weakness and undeservedness. In addition, this type of rhetoric allows the Court to envision itself as helpless. Envisioning the poor are unwilling to change their situation, the Court's opinion evinces the helplessness dimension of the rhetoric of poverty.

Furthermore, both dimensions are exemplified in the deference category of the helplessness dimension. By deferring to the whims of the dominant ideology, the Court places itself in a position of helplessness and allows the moral censure of the poor. According ample latitude to the Secretary of Health and Human Services' interpretation of the regulation in question, the Court submits to the political whims of the time and signals its lack of desire to be

activist in this context. By deferring to the prevailing ideology, the Court allows the moral censure of the poor to continue. Holding that it is impotent to change the way the dominant ideology chooses to aid the exercising of a right, the Court allows the state to fund one right at the exclusion of another. The lack of symbolic support by the government underscores the assumption that abortion is a deviant behavior that must be controlled.

In addition, the action of deference to the prevailing ideology offers an explanation why certain classes of poor may shift between the categories of deserving and undeserving. Allowing current political values to define which actions will be upheld by the state as legitimate and which actions will be symbolically labeled as deviant, the Court's deference to the prevailing ideology of the time accords greater power to the state to categorize the poor. For example, throughout history the homeless have experienced a number of shifts between the deserving and undeserving categories. And specifically, in the instance of this case, indigent women previously had the right to receive information about abortion from Title X projects. The initial interpretation of the regulation allowed information to be disseminated and symbolically labeled the choice of abortion as legitimate. Until there was a change in the dominant ideology, indigent women were deserving of special consideration. By allowing the regulation to be reinterpreted, the Court's decision allows a shift to occur in the status of indigent women seeking abortion information. No longer are they deserving.

The plea of judicial helplessness evinces the issue of power. By asserting it does not possess the power to enforce the past interpretation of the regulation, the Rust Court allows the status of women to be determined by the prevailing ideology. As political whims change over time, so does the relationship between women and the state. In essence, the Court's decision establishes the indigent women's position in relation to the power structure of the government, and exonerates the Court from public scrutiny. Furthermore, the power of the rhetoric of poverty extends from the reality it creates. If the prevailing ideology accepts the symbols of

moral deviance and helplessness, the actions available to it are restricted by this constructed ideology. As such, since society accepted the arguments that indigent women are not deserving of the right to be free from affirmative governmental interference, indigent women were subjugated by the ideological viewpoint-based restrictions placed upon them. The state, by reinterpreting the current regulation, sanctioned and controlled the indigent woman's life in the context of abortion information.

Right to counsel and the rhetoric of poverty

In the two cases coded under this context, *Mallard v. United States District Court* (1989) and *Murray v. Giarrantano* (1989), the Court's discourse on poverty embodied the morality dimension of the rhetoric of poverty. Both cases categorized the convicted poor person as undeserving of representation in postconviction hearings. The language invoked by both Court's opinions reflect the rhetorical themes of deviance and undeservedness of the poor.

The *Mallard* Court relied upon the historical construction of the right to counsel to justify its rationale. This compliments the assumption in much of the literature that the Court's interpretation of the law and its categorization of persons is restricted by past scripts. Ruling that the congress did not intend to extend the privilege of counsel to indigent inmates postconviction, the Court's decision underscores the poor's undeservedness to the privilege of preferential treatment. In addition, the Court reiterates that postconviction hearings are not criminal in nature, but are civil suits. The difference between the two is that the person has already been found guilty of a crime, and civil suits only question the procedures employed by the state to convict the person. As such, the presumption of innocence has been abolished. The lack of innocence of the indigent inmate is also used as grounds to exclude the compulsory assignment of counsel in this case. This argument espouses the rhetorical theme

of the perceived deviance of the poor.

In *Murray v. Giarrantano* (1989), the Court's written opinion also embraced the themes of deviance and undeservedness of the poor. Deviance is articulated in a similar manner as in the *Mallard* Court. Distinguishing between criminal and civil cases, the Court ruled the deviant behavior of the death row inmate undeserving of preferential treatment. Although the Court acknowledges the situation of the death row inmate as unique, it refused to accord the convicted inmate any special consideration. The rationale of the Court is premised on the fact the prisoners have been found guilty of a crime and are undeserving extraordinary relief. As for the theme of undeservedness, the Court's rhetoric explicitly states that the poor have no right to counsel postconviction. The state is not obligated to supply a lawyer. The state only has to guarantee access to relevant literature on the law and make guidance available. How the state chooses to implement these standards is a local decision. The Court is helpless to exact any change in state law. Just because one state assigns lawyers while another does not, does not infer that an indigent inmate is guaranteed the right to counsel in postconviction hearings.

Both Courts' interpretations of the deservedness of the poor evince the issue of power. The power of the rhetoric of the Courts' opinions restricted the alternatives available to each Court. Both Courts' categorization of the prisoners as deviant and undeserving established a relationship between the prisoners and the state which places the interests of the state above the needs of the inmate. For example, the litigants claimed they have a right to counsel in postconviction hearings to balance the power exerted by the state in the courts. Citing the lack of representation, the prisoners argued that the scales of justice are tipped in favor of the state. The Court explicitly acknowledges the issue of power when it categorized the inmates' appeal for an attorney not as a shield to protect them against abuse by the state, but rather as a sword to upset the prior determination of guilt. The poor inmate has had her/his day in court and is guaranteed no extraordinary means to upset this prior determination of guilt. The assumption

of the inmate's deviance and undeservedness fuels the Court's arguments that the state has a legitimate interest to define the access to the court available to a convicted person.

The theme of helplessness also established the prisoner's position in relation to the power structure of the government. Unwilling to divest the state of its ability to control the behavior of the convicted inmate, the Court's rhetoric further entrenches the state's power. Both opinions deferred to the state's interpretation and construction of the constitutional guarantee of fair access. By invoking the plea of judicial helplessness, the Court symbolically legitimated the principles of federalism. Upholding the jurisdiction of the state indicates the Court's willingness to allow the local legislatures to choose how to allocate the guarantee of fair access to the indigent inmate. This implies that the poor would have a greater chance to exact change by lobbying local legislatures as opposed to petitioning the Court.

The right to counsel lies at the heart of the politics of distribution. To ensure that each inmate is adequately represented by counsel would require the distribution of resources to persons who society accepts as undeserving. So long as the state categorizes the convicted person as undeserving, no reprieve for the poor inmate is foreseeable. The states which invoke this rhetoric will continue to minimally secure the prisoner's right to fair access to the court. And, if the Court continues to choose not to act or defer to other branches of government jurisdiction, the poor shall never be free from the moral censure of existing statutes.

Rule 39.8 and the rhetoric of poverty

Rule 39.8 enables the Court to silence the voice of the poor litigant by denying him/her access to the Court. By sanctioning the actions taken by the poor, the Court draws a line between the deserving poor which do not "abuse" the system and the undeserving poor whose

behavior is patently deviant with the "obvious" intent of overburdening the Court. Rule 39.8 acts as a control mechanism for the Court; it forces the petitioner to pay for past filings and all subsequent future petitions. This aspect of the rule potentially prevents the poor individual in prison from filing future complaints she/he views as legitimate.

Imposing the will of the Court on the poor petitioner, the Court evaluates the petition without considering the petitioner's viewpoint. The Court assumes it can determine when a petition was filed with the obvious intent of overburdening the Court. This assumption subjects the arguments of the poor petitioner to a rationale of legitimacy. Perhaps the argument is frivolous, but the question is was it filed with the obvious intent to overburden the Court. If not, labeling the petitioner as "frivolous" tells more about the Court than it does about the petitioner or the argument.

Although the Court subjects the arguments of the wealthy to the same rationale, it does not have the ability to prevent further petitions from being filed by the wealthy even if the "rich" person is found to abuse the system. Rule 39.8 only effects the petitions of the poor. If a wealthy person chooses to file any number of frivolous petitions, there is no reciprocal sanction available to the Court. This aspect of Rule 39.8 draws a line along the wealth continuum distinguishing between who will have access to the Court and who will not.

The implications of these decisions for the poor petitioner filing in the Court, are two fold. First, the fact that the Court is still "flooded" with frivolous petitions from inmates and poor litigants implies that the Court is unwilling to invoke Rule 39.8 on an ad hoc basis. Instead, there exists an imaginary threshold of the number of frivolous petitions a person will be allowed to file. The language of the Court seems to indicate that its criteria encompasses the number of frivolous petitions filed in the past year and the number of frivolous petitions filed over the petitioner's history with the Court. It is important to note that no objective standard has been established, and the Court's tolerance for the number of frivolous petitions filed in a year has

diminished. Second, the Court views it necessary to control the number of petitions it evaluates. At the heart of the Court's assumption is the issue of distribution of resources. As the resources of the Court become scarce, there is a greater risk that a larger number of poor petitioners will be found "abusive" and denied in forma pauperis status. Perceiving poor petitioners as lacking financial disincentives, the Court categorizes the behavior of the poor petitioner as potentially deviant and meriting control. The Court's language blames the person's poverty as the motive for this lack of incentive. Using the poor as scapegoats, the Court envisions a solution to the ever present threat to the integrity of its resources and processes posed by the sheer volume of petitions it must evaluate each year.

Assessment of the dimensions of the rhetoric of poverty

The morality dimension

In this thesis, the coded statements which reflect the morality dimension of the rhetoric of poverty conceptually segregate the poor in various ways. When the per curiam opinion, in re Amendment to Rule 39, sanctioned the actions of "those few persons whose filings are repetitive with the obvious effect of burdening" the Court, it conceptually separated "those few persons" from others seeking in forma pauperis status. In *Rust v. Sullivan*, the Court separated recipients of Title X assistance into the undeserving, able-bodied poor who should go through a transformation. Running through the cases analyzed in this thesis is the specter of deviance, which in turns depends on the segregation of the poor into a group especially likely to be deviant.

The very act of conceptual segregation has rhetorical power. The Court's rationale in poverty cases is more than a set of discourse. The language of the Court influences the way

society views the poor. The opinions of the Court are lenses through which society views poverty. When the members of the segregated group are defined by their difference from those in a dominant position in society, the very act of segregation suggests not only difference but also deviance. The norm is defined by the dominant group; the segregated group is defined by deviance from that norm. The power of this segregation is vividly revealed in the morality dimension of the rhetoric of poverty. So long as the Court views those in poverty as "them" and not "us," it is less likely to act in favor of the poor.

The helplessness dimension

The rhetoric of helplessness implies that the problem of poverty is not the business of the Court. In the Court's perception, the individual must go through a transformation, as exemplified in *Rust v. Sullivan*. Also, the results of this thesis indicate the Court views the issues surrounding poverty as political concerns and often times defers to the jurisdiction of other agencies. In addition to deferring to the jurisdiction of other agencies, the Court allots ample constitutional latitude to those agencies which address the concerns of the poor. The effects of the Court's pleas of helplessness, in the instances of the cases coded for this thesis, restrict the Court's ability to offer the poor reprieve from the moral censure of society.

CHAPTER FIVE

Conclusions, Limitations, and Recommendations for future research

Conclusions

The results of this thesis indicate that moral evaluations of petitioners and pleas of helplessness are inherent in the rhetorical construction of the Court's majority opinion. Explanation of this phenomena is two fold. First, since the Constitution is a moral document, the Court's construction of its opinion on the constitutionality of a petitioner's argument necessarily involves evaluative moral judgments. Second, the Court's majority opinion is constructed to uphold the actions of one petitioner as constitutional and/or to justify the Court's deference to the jurisdiction of another government agency. Both, upholding the actions of another as constitutional and deference to another agency, are categories of helplessness.

However, the observed rate of frequencies of statements for the morality dimension and helplessness dimension were reported to exceed theoretical expectations. The calculation of a significant difference in each dimension demonstrates that the Court's discourse on poverty exhibits two rhetorical trends. First, the majority's opinion is more likely to characterize the poor as undeserving than deserving. Second, the majority is more likely to invoke a plea of helplessness than to empower itself.

In addition, the content analysis describes how the Court's characterization of the poor as undeserving is interconnected with the Court's pleas of helplessness. Finding the poor undeserving of preferential treatment forms the basis of the Court's rationale for upholding the actions of another as constitutional and/or deferring to the jurisdiction of another branch of government.

Limitations

Search terms

The terms utilized in this thesis for generating the sample of cases to be coded had two observable limitations. First, the search terms -- poor or poverty -- may not have been as encompassing as originally suspected. Upon evaluation and coding of the sample cases, it was observed that the Court employs the term "indigent" when speaking about the poor more often than the terms "poor" or "poverty." This suggests that a more encompassing list of terms ought to be generated by further researchers. Later lists should include, at a minimum, the terms -- poor, poverty, and indigent. Perhaps, specifying particular welfare programs may also aid in generating a list more representative of the Court's opinions on the poor. Even utilizing the terms society uses to categorize the poor, such as homeless, tramp, and able-bodied, may prove fruitful in eliciting a sample more representative than the one in this thesis.

Second, the lack of coded statements for cases which fell under the context of the death sentence indicate limitations of the search terms employed. In the case of *Lewis v. Jeffers* (1990), there was a single reference to the poor. A footnote in the Court's opinion mentioned a past case involving a poor litigant. None of the coders marked this passage. This signifies the limitation of the KWIC procedure. Future research can still employ the KWIC procedure, but should guarantee that the search term is used by the Court in the body of its text. Finding an example of a search term in a footnote does not necessarily evidence the applicability of the potential sample text to the investigation undertaken by the researcher.

Sample and sampling procedures

The search terms' lack of inclusiveness had an effect on the sample for this thesis. There were several known cases excluded from the list generated by the terms employed. For example, in 1990 the United States Supreme Court heard arguments by a group of homeless litigants appealing New York State's ban on begging in the subway system. Also in 1990, the Court held that the homeless have no right to sleep in public parks. Although neither example necessarily embraced the rhetoric of poverty, both decisions were omitted from the list of 76 opinions generated by the two search terms. On their face, both cases involved poor litigants, hence, their exclusion acts as limit both to the utility of the two search terms and the representativeness of the sample.

In addition, the sampling procedures limit the universalizability of the results. Choosing 10 of the 31 cases, for time purposes, restricted the available sample which was coded. Although the number of coded cases approximated one-third of the known available cases, future research should code all available cases.

Furthermore, the five year window which was investigated also narrows the generalizability of the results. In the instance of this thesis, the results are indicative of the Court's discourse on poverty between the years 1989-1994 and are limited by this factor. No comparison was made which included other time-frames, hence, the results only apply to the years investigated. Although the results evince the Court's language is premised on past scripts, the historical construction incorporated by the Court was not examined.

Instead of looking at a single time period, research could compare the Court's discourse on poverty employing the divisions of time outlined in this study's review of literature. Utilizing this approach would enable the researcher to comment on the rhetorical trend of the Court over the history of the Court's opinions. This approach would also allow the researcher

to test the validity of the literature's findings on the abstraction of the poor, by comparing the Court's rhetoric to that evinced by society. The conclusions reached by this approach would have greater generalizability than this study.

Also, the varying degree to which the coded cases and statements relate to the rhetoric of poverty limits the conclusions reached by this thesis. Because no differentiation between coded statements was made, the results of the quantitative analysis do not incorporate the varying strengths of the opinions. Future research should examine this potential bias.

Potential bias of the literature reviewed

Another limitation extends from the literature reviewed for this thesis. Taking either a structuralist, constructionist, or critical approach, the literature demonstrates a particular bias on the issue of poverty. The literature assumes that society labels the poor different from "us," and this assumption may have infiltrated the writing of this thesis.

Steps were taken to alleviate this bias from contaminating the results of the study. Two of the coders had very limited knowledge of the literature reviewed during construction of this thesis. This lack of knowledge protected them from coding statements based upon the assumptions articulated by the literature reviewed. And, the categories of "no deference" and "unconstitutional" were added so statements which reject the theme of helplessness could be coded. Both steps appear adequately effective in protecting the results from contamination.

Furthermore, future research can readily correct for this bias by including in its review of literature research which would balance the assumptions of the above ideologies. Not all available articles depict society as viewing the poor as different. There exists a body of literature which demonstrates society's ennobling of the poor. Assuming the poor as morally superior, this body of literature ought to be incorporated, as a balance, in future reviews of

literature. Although no literature will protect against individual biases, including a more balance account will increase the credibility of the study.

Recommendations for future research

The above discussion of limitations included several recommendations for future research. In addition, there are tangential areas of research which this thesis can serve as a foundation. Included are multidisciplinary approaches, narrowing the scope of the investigation, and the potential applicability of the definitions to policy-making.

Recommendations for multidisciplinary approaches

One suggestion for future research emanates from the results of this thesis. Finding the moral categorization of the poor as inevitable in the Court's discourse, the results imply that there does not exist an available set of language symbols which do not morally evaluate the poor. If it is true there does not exist a vocabulary on poverty that is not morally stigmatizing, an investigation into this phenomena may be warranted.

Since the United States emerged during the Enlightenment, investigation into this period may generate some answers. The Enlightenment was a backlash against the ideas of feudalism, hence, its rejection of classism may explain why the United States has not developed a morally neutral language on poverty. Future research into this question may choose to incorporate the disciplines of philosophy, sociology, and history.

Also, the results raise the question of the Court as an agent of change. As shown in this study, the Court exhibited a trend of helplessness, and this phenomena may have some implications on the effectiveness of social movements to utilize the Court as an agent of

change. Recommendation for future research on this issue involves an intra-disciplinary and multidisciplinary approach. For example, pulling from the available cross-disciplinary literature on social movements and comparing it to the literature addressing the issue of the Court as a forum for exacting change, future research can compare public opinion polls and Court initiated change. Further examination of the question of the Court as an agent of change potentially has a variety of implications for the women's movement, the civil rights movement, and activists for the poor. All three groups address the issue of poverty and its effect on the movement's cause, acceptance, and the rights of its membership.

Recommendations for narrowing the scope of the investigation

The questions posited by this thesis were very broad. Two suggested ways of narrowing the scope of investigation include: 1) trace the opinions of a single Justice, and 2) limit the context of the cases being evaluated. The first offers insight into a Justice's constructed reality. Tracing the opinions of a single Justice on the issue of poverty, or any issue for that matter, allows the research to make conclusions about the Justice's assumptions on the issue. Specifying the context of the cases which are coded allows conclusions to be made about the Court's discourse in that context. Although each of these approaches restrict the researcher(s)'s ability to generalize across a broad range of cases, both approaches potentially will lead to meaningful discoveries.

Recommendations for applying the operational definitions to policy-making

The final area of discussion addresses the applicability of the operational definitions to statements made by nonjudicial members. This question must be raised because the literature

indicates that the theme of helplessness is unique to the judicial branch (Ross, 1991). As such, the two categories of the morality dimension should readily crossover into policy-making. It is plausible to assume statements which fall within the deserving and undeserving categories will exist in the discourse on poverty outside of the court. However, doubt arises as to the applicability of the helplessness dimension. Excluding the categories of inevitability and no solution, the remainder of categories may potentially be unique to the function of the court. Therefore, future research will want to check the applicability of the operational definitions utilized by this thesis before embarking upon an investigation. A suggested topic for these tests is the current debate on welfare reform ensuing at all levels of government.

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APPENDIX A**Instruction for Coders****(Pre-test)**

Dear Participant:

I would like to take this time to thank you for volunteering to participate in this project. I am a graduate student at the University of Nebraska at Omaha, and I am pursuing a Master of Arts degree in the Communication department. The information elicited from your participation will aid my investigation of the United States Supreme Court and the language employed by the Court in its poverty decisions.

Attached, you will find two Supreme Court opinions. Each opinion has an identifying number in the upper right-hand corner of the first page. These numbers identify the specific opinions you have been given to code.

The coding procedure is very simple. There are two dimensions of the rhetoric of poverty with multiple categories (each dimension is described below). Using the information provided as a guide, you need to underline any written statements by the Court which fall under one of the defined categories of the rhetoric of poverty. To the right of the underlined statement, you need to identify the category that best defines the statement by writing down the prescribed label for each category (see Table 1 for prescribed labels).

Once you have finished this procedure, with both of the opinions you have been assigned, return this packet to me. I can be contacted by phone at 554-4854 or 334-8172.

The final results of this study will be available for review at the UNO library. Your participation is appreciated and your anonymity is guaranteed.

Thank you,

The Morality Dimension of the Rhetoric of Poverty

The morality dimension of the rhetoric of poverty is difficult to define. For the purpose of this thesis, the morality dimension of the rhetoric of poverty is operationally defined as any categorization or abstraction which labels the poor as morally weak, or undeserving -- due to their economic status.

Labeling the poor as morally weak connotes the Court's perception of the poor's greater likelihood to be socially deviant. The language of the Court describes the actions of the poor as violating social norms and requires regulation. The Court divides the poor, by labeling them, into able-bodied poor and deserving-poor. The Court labels the able-bodied poor as undeserving of public assistance because it attributes to that group of poor the ability to maintain an adequate level of sustenance. The Court defines the able-bodied poor person as passive and unwilling to pull herself/himself out of despair. The deserving-poor, as defined by the Court, are the aged, disabled, or children who are, by their nature, unable to fend for themselves and require government intervention to satisfy their needs of sustenance. The effect of labeling able-bodied vs. deserving-poor creates a division and places the able-bodied poor into a category which does not allow for preferential treatment, such as is received by the deserving-poor. This distinction limits the resources available to the perceived able-bodied poor based upon their merit ascribed by the Court. The morality dimension of the rhetoric of poverty then has two features: (1) the undeserving poor and (2) the deserving poor. Each is mutually exclusive in a given situation.

The Helplessness Dimension of the Rhetoric of Poverty

Judicial helplessness embodies the Court's plea of impotence. The impotent Court is overwhelmed by the daunting and complex problems of poverty. Operationally, this classification divides into two categories. First, the Court shifts the burden of resolution to another agent. This component of the rhetoric of poverty has three features: the Court may (1) empower another branch of government to handle the pressing problems of poverty, (2) uphold the actions of a specific agency as Constitutional, or (3) profess that the individual(s) need(s) to go through a transformation process to pull herself/himself/themselves out of despair. The second category depicts poverty as an inescapable societal tragedy. The Court perceives the persistence of poverty is inevitable. This category includes two distinct features: (1) poverty is a natural extension of our social structures and the Court sees no real solution or (2) the Court envisions a solution that threatens the very fabric of society.

Table 1
Prescribed Labels for Coding

Deserving	This label describes statements which define the poor as deserving.
Undeserve	This label describes statements which define the poor as undeserving.
Deference	This label describes statements which empower another branch.
Constitutional	This label describes statements which uphold the action taken by an agency as constitutional.
Transition	This label describes statements which profess the individual needs to go through a transition to bring herself/himself out of despair.
Inevitable	This label describes statements claiming poverty is inevitable.
No solution	This label describes statements which contend the solution to poverty threatens the very fabric of society.
No Deference	This label describes statements which empower the Court.
Unconstitutional	This label describes statements which deem the action taken by an agency as unconstitutional.

APPENDIX B

Examples of coded statements**The poor as undeserving**

In re Anderson (1994) p. 3.

"The goal of fairly dispensing justice . . . is compromised when the Court is forced to devote its limited resources to the processing of repetitious and frivolous requests. Pro se petitioners have a greater capacity than most to disrupt the fair allocation of judicial resources because they are not subject to the financial considerations -- filing fees and attorney's fees -- that deter other litigants from filing frivolous petitions."

The poor as deserving

In re Anderson (1994) p. 5.

"Any minimal savings in time or photocopying costs, it seemed to me, did not justify the damage that occasional orders denying in forma pauperis status would cause to "the symbolic interest in preserving equal access to the Court for both the rich and the poor." Ibid. Three years' experience under this Court's Rule 39.8 leaves me convinced that the dissenters in the cases the Court cites had it right. See <=8> In re Demos, 500 U.S. 16, 17-19 (1991); <=9> In re Sindram, 498 U.S. 177, 180-183 (1991); <=10> In re McDonald, 489 U.S. 180, 185-188 (1989). See also Day v. Day, 510 U.S. , (1993) (STEVENS, J., dissenting). Again I respectfully dissent.

The poor must go through a transformation

Rust v. Sullivan (1991) p. 54-55.

"Petitioners contend, however, that most Title X clients are effectively precluded by indigency and poverty from seeing a health care provider who will provide abortion-related services. But once again, even these Title X clients are in no worse position than if [**55] Congress had never enacted Title X. "The financial constraints that restrict an indigent woman's ability to enjoy the full range of constitutionally protected freedom of choice are the product not of governmental restrictions on access to abortion, but rather of her indigency." <=113> McRae, supra, at 316.

Judicial deference to another agency

Rust v. Sullivan (1991) p. 3.

¶Petitioners' contention, that the regulations are entitled to little or no deference because they reverse the Secretary's longstanding policy permitting nondirective counseling and referral for abortion, is rejected. Because an agency must be given ample latitude to adapt its rules to changing circumstances, a revised interpretation may deserve deference. The Secretary's change of interpretation is amply supported by a "reasoned analysis" indicating that the new regulations are more in keeping with the statute's original intent, are justified by client experience under the prior policy, and accord with a shift in attitude against the "elimination of unborn children by abortion." Pp. 184-187.

Upholding another agent's actions constitutional

Murray v. Giarratano (1989) p. 14-15.

While Virginia has not adopted procedures for securing representation that are as far reaching and effective as those available in other States, no prisoner on death row in Virginia has been unable to obtain counsel to represent him in postconviction proceedings, and Virginia's prison system is staffed with institutional [*15] lawyers to assist in preparing petitions for post-conviction relief. I am not prepared to say that this scheme violates the Constitution.

No solution

Spallone v. United States (1990) p. 28-30.

This sort of individual sanction effects a much greater perversion of the normal legislative process than does the imposition of sanctions on the city for the failure of these same legislators to enact an ordinance. In that case, the legislator is only encouraged to vote in favor of an ordinance that he would not otherwise favor by reason of the adverse sanctions imposed on the city. A councilman who felt that his constituents would rather have the city enact the Affordable Housing Ordinance than pay a "bankrupting fine" would be motivated to vote in favor of such an ordinance because the sanctions were a threat to the fiscal solvency of the city for whose welfare he was in part responsible. This is the sort of calculus in which [***30] legislators engage regularly.

No deference should be accorded to another agent

Mallard v. United States District Court (1989) p. 34.

Congress also intended to ensure that the rights of litigants suing diverse parties in the most liberal of these States would not be defeated by the defendant's removal of the suit to federal court. Id., at 1. To be faithful to the congressional design of ensuring the poor litigant equal justice whether the suit is prosecuted in federal or state court, the statute should be construed to require counsel to serve, absent good reason, when requested [***35] to do so by the court. The Court's niggardly construction to the contrary departs from the enlightened laws that Congress intended to track and defeats Congress' beneficent purpose. n6

Another agent's actions are unconstitutional

Spallone v. United States (1990) p. 64-65.

[*301] But once a federal court has issued a valid order to remedy the effects of a prior, specific constitutional violation, the representatives are no longer "acting in a field where legislators traditionally have power to act." <=57> Tenney, supra, at 379. n9 At this point, the Constitution itself imposes an overriding definition of the "public good," and a court's valid command to obey constitutional dictates is not subject to override by any countervailing preferences of the polity, no matter how widely and ardently shared. Local legislators, [***65] for example, may not frustrate valid remedial decrees merely because they or their constituents would rather allocate public funds for other uses. n10 More to the point here, legislators certainly may not defy court-ordered remedies for racial discrimination merely because their constituents prefer to maintain segregation: "Public officials sworn to uphold the Constitution may not avoid a constitutional duty by bowing to the hypothetical effects of private racial prejudice that they assume to be both widely and deeply held." <=58> Palmore [**646] v. Sidoti, [*302] 466 U.S. 429, 433 (1984) (quoting <=59> Palmer v. Thompson, 403 U.S. 217, 260-261 (1971) (White, J., dissenting)). Defiance at this stage results, in essence, in a perpetuation of the very constitutional violation at which the remedy is aimed. See supra, at 283-284. n11 Hence, once Judge Sand found that the city (through acts of its council) had engaged in a pattern and practice of racial discrimination in housing and had issued a valid remedial order, the city councilmembers became obliged to respect the limits thereby placed on their legislative independence. n12