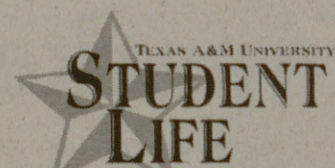
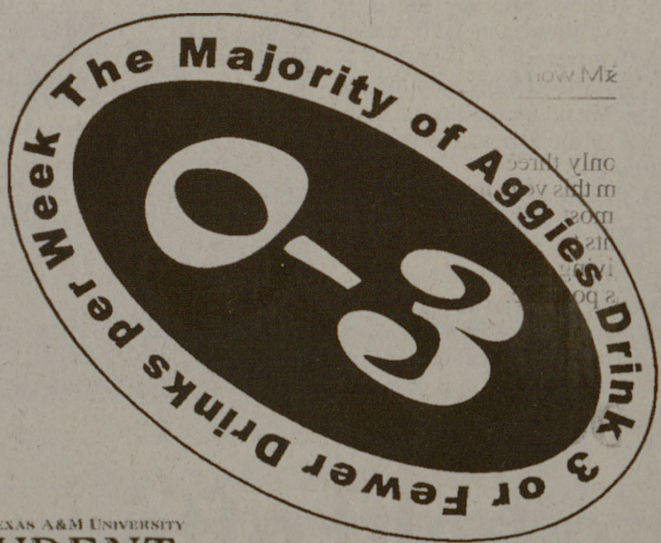


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Death row inmate's appeal reaches the Supreme Court

WASHINGTON (AP) — The Supreme Court agreed Monday to hear an appeal by a condemned killer from Texas whose lawyers say he is mentally retarded and has the reasoning capacity of a 7-year-old.

The court said it will use the case of Johnny Paul Penry to clarify how much opportunity jurors in death-penalty cases must have to consider the defendant's mental capacity.

Penry's lawyers also say prosecutors were improperly allowed to use a psychiatric exam report in violation of his right not to testify against himself.

On Nov. 16, the justices blocked Penry's execution just hours before he was to be put to death. The execution will remain on hold until the justices issue a ruling, expected by July.

Penry's lawyers describe him as having an IQ of 50 to 60 and the reasoning capacity of a 7-year-old.

However, prosecutors say he is ignorant, not retarded. Texas Attorney General John Cornyn said Penry is "a schemer, a planner and can be purposefully deceptive."

Penry was convicted and sentenced to death for killing Pamela Moseley Carpenter in Livingston,

Texas, in 1979. Carpenter was stabbed repeatedly in the chest with a pair of scissors she had been using to make Halloween decorations.

"[Penry is] a schemer, a planner and can be purposefully deceptive."

— John Cornyn
Texas attorney general

The Supreme Court threw out Penry's conviction in 1989, ruling that his rights were violated because the sentencing jury was not properly allowed to take his mental capacity into account. But the justices also decided the Constitution allows the execution of mentally retarded killers.

Penry was retried, convicted and sentenced to death in 1990. His lawyers appealed, saying the jury

again was not given enough chance to consider his mental capacity.

The jury had been told to consider mitigating circumstances in deciding whether Penry's conduct warranted the death penalty, but the court said it was unclear whether the jury was to liberate, whether he was a continuing threat to society and whether his actions were provoked by the victim.

The 5th U.S. Circuit Court of Appeals upheld Penry's conviction and death sentence last June.

In the appeal acted on Monday, Penry's lawyers said the jury instruction unfairly limited jury consideration of his mental capacity and the fact that he suffered "brutal" abuse by his mother when he was a child.

His lawyers also said prosecutors wrongly used a report on a 1977 psychiatric exam of Penry while he was being held on a rape charge. The doctor said he would be a danger if released, but Penry's lawyers said he was not warned his words could be used against him.

Prosecutors said the jury had ample chance to consider Penry's mental capacity, and that prosecutors could use the exam results to rebut psychological evidence offered by Penry's lawyers.

Two planes collide over Katy One pilot killed in crash, other lands safely at airport

KATY (AP) — One of two planes that collided over crowded Interstate 10, killing a pilot, narrowly missed the freeway's lanes as it plunged to the ground west of Houston.

Don Lee, the pilot of a Cessna 150 two-seater, died Sunday in the mid-air collision.

The pilot of the other plane, a 1979 Cessna 172 four-seater carrying two people, managed to land safely at West Houston Airport despite severe damage to one wing and one landing gear.

"About a third of the right wing was cut off and hanging down," West Houston Airport manager Woody Lesikar told the Houston Chronicle in Monday's editions. "The right landing gear was also substantially damaged. I don't know how they were able to make it here to the airport. God was with them."

Lesikar said the man and the woman, who were en route to a Baytown airport, were uninjured.

Traffic backed up for miles on the inbound lane of Interstate 10 as wreckage and debris were cleared, according to the Texas Department of Public Safety. Waller County sheriff's officers and other authorities investigated the crash.

Investigators from the Federal Aviation Administration and National Transportation Safety Board will also review data from the 5:15 p.m. impact.

A motorist, Michael Whitaker, was returning to Sam

Houston State University when the doomed plane fell within five feet of his small pickup just west of the city limits.

"It hit; it wasn't loud. As it hit, I came to a stop," said Whitaker, 18. "Thank God I'm alive."

Lee, 36, of Katy had flown from College Station en route to Westheimer Air Park in the Houston area.

A Katy hunter and his son, who were searching for deer in the area, said the planes collided about 300 to 400 feet above ground.

"I said, 'It's got to be too close,'" said the father, Gilbert L. Davila. "All of a sudden they collided — that was it. It just lost its wing, and it came straight down."

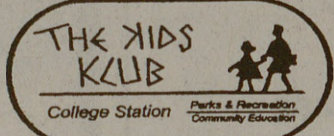
Witnesses said Lee's plane crashed into the second craft at a 90-degree angle and plunged straight to the ground, with the tail section of the doomed Cessna hitting the emergency shoulder of the freeway, which was crowded with motorists heading home from Thanksgiving weekend events.

Katy Fire Chief Alan Williams said wreckage was scattered more than 400 yards on both sides of the highway.

When the damaged plane's pilot radioed that he was able to turn in only one direction, West Houston Airport air traffic controllers cleared a runway. Lesikar said the plane landed at 5:32 p.m. on only one landing gear and slid off of the runway into grass.

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