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# Recent Developments: Atkins v. Virginia: Imposing the Death Penalty on Mentally Retarded Offenders Is Cruel and Unusual Punishment Prohibited by the Eighth Amendment

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***Atkins v. Virginia:***  
**Imposing the Death Penalty on Mentally Retarded Offenders is Cruel and Unusual Punishment Prohibited by the Eighth Amendment**

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By: Supriya M. McMillan

In a six-to-three decision, the United States Supreme Court held imposing the death penalty on mentally retarded offenders was cruel and unusual punishment prohibited by the Eighth Amendment of the United States Constitution. *Atkins v. Virginia*, 122 S.Ct. 2242 (2002). The Court found a national consensus indicating that the death penalty should not be imposed on less morally culpable people. Furthermore, the Court conducted an independent evaluation and found that mentally retarded persons had diminished culpability and, therefore, the reasons underpinning the death penalty did not apply and mentally retarded persons faced a special risk of execution.

In August 1996, Daryl Renard Atkins (“Atkins”) and William Jones abducted Eric Nesbitt. They robbed him and then took him to an isolated location where he was shot and killed with a semi-automatic handgun.

The jury convicted Atkins of abduction, armed robbery and capital murder. At the penalty phase of Atkins’ trial, the defense relied on testimony of a psychiatric expert who concluded that Atkins was mildly mentally retarded.

The jury sentenced Atkins to death. The Supreme Court of

Virginia affirmed the decision in the resentencing hearing and relying on the Supreme Court’s *Penry* holding, rejected Atkins’ argument that he was mentally retarded and could not be sentenced to death. Because of the issue’s gravity and the dramatic shift in state laws in the past thirteen years, the Supreme Court granted certiorari to revisit the issue. The Court reversed and remanded for further proceedings.

The Court began with a summary of the standard of review used to decide whether a punishment is excessive under the Eighth Amendment. *Id.* at 2246-48. The Court noted that for there to be justice, it was mandatory that the level of punishment for crimes be equivalent to the level of the offense. *Atkins*, 122 S.Ct. at 2246 (citing *Weem v. United States*, 217 U.S. 349 (1910)). The Court stated that instead of using past history to judge whether a punishment was excessive, it was necessary to look at the “evolving standards of decency” that reflected a maturing society. *Id.* at 2247 (citing *Trop v. Dulles*, 356 U.S. 86, 100-101 (1958)). The Court further held that objective factors should be used in conducting the proportionality review under the evolving standards of decency, the most reliable and objective being the legislation

enacted by state legislatures. *Id.* In addition, in cases involving a consensus, the Court explained that it must complete an independent evaluation to determine if there is any reason to disagree with the judgment reached by the legislatures. *Id.* at 2247-48.

The Court then discussed how laws passed by state legislatures indicated strong public policy against the imposition of death on mentally retarded offenders. *Id.* at 2248-50. After *Penry*, many state legislatures passed laws preventing imposition of death on mentally retarded defendants. *Id.* at 2248. The Court stated that many states passed laws limiting imposition of the death penalty, indicating the direction of the change in the overall views in society. *Atkins*, 122 S.Ct. at 2249.

The Court explained that legislatures passed laws forbidding execution of mentally retarded offenders, even though anti-crime legislation was more popular, which indicated society viewed mentally retarded offenders as less culpable. *Id.* The Court found further evidence that the legislation was passed by an overwhelming majority of each legislature. *Id.* The Court explained that a final indicator of a national consensus against execution of mentally

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retarded offenders was that many states that allow execution of mentally retarded offenders made the practice uncommon. *Id.*

The Court then conducted an independent evaluation to decide whether the popular and legislative consensus was proper. *Id.* at 2250-52. Although deficiencies of mentally retarded offenders did not exempt them from criminal sanctions, the deficiencies did limit personal culpability. *Id.* at 2250-51. The Court provided two reasons why the legislative consensus was proper and mentally retarded offenders should be excluded from execution because of those deficiencies. *Atkins*, 122 S.Ct. at 2251.

First, justification for the death penalty would not apply to mentally retarded offenders. *Id.* The Court explained that justifications for the death penalty were retribution and deterrence. *Id.* In regard to retribution, the severity of punishment was dependent on the culpability of the offender. *Id.* According to the Court, an exclusion for the mentally retarded was appropriate because mentally retarded offenders were less culpable due to their diminished capacities. *Id.* The Court also stated the death penalty was used as a deterrent to reduce the chance that a criminal would carry out murderous conduct as a result of the increased severity of punishments. *Id.* The Court held that mentally retarded offenders were less likely to be deterred by the possibility of the death penalty for a crime because of their diminished

capacities. *Atkins*, 122 S.Ct. at 2251.

Another reason given by the Court for approving the consensus was that mentally retarded offenders face a special risk of wrongful execution. *Id.* at 2251-52. The Court noted the possibility of false confessions due to the diminished capacity of mentally retarded offenders. *Id.* at 2252. In addition, the Court explained that a mentally retarded offender would not be able to make a persuasive showing of mitigation when faced with evidence of one or more aggravating factors used to impose the death penalty. *Id.*

The United States Supreme Court decision in *Atkins v. Virginia* further limits imposition of the death penalty by States because it is now unconstitutional to impose the death penalty on mentally retarded offenders. The decision will lead to appeals by many convicts on death row who will claim to be mentally retarded in order to overturn their sentence. In addition, the decision limits the power of a judge or jury to make a proper sentencing decision because mental retardation will no longer be a mitigating factor, but will be an absolute factor in prohibiting the death penalty. The decision by the United States Supreme Court gives offenders of heinous crimes one more loophole to avoid the death penalty.

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