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SUPREME COURT DECLARES EXECUTION OF PERSONS WITH MENTAL RETARDATION UNCONSTITUTIONAL

Ruling Reflects Growing National Consensus on Issue

WASHINGTON, DC - The Supreme Court issued a landmark ruling today ending the execution of those with mental retardation. In *Atkins v. Virginia*, the Court held that it is a violation of the ban on cruel unusual punishment to execute death row inmates who have mental retardation. The decision reflects the national consensus which has formed on this issue.

"Thirty states have either banned the death penalty altogether or stopped the execution of those with mental retardation," said Richard C. Dieter, Executive Director of the Death Penalty Information Center. "There is no doubt that there is now a national consensus on this issue. Concerns remain about many other aspects of the death penalty, but at least today we have stopped a practice that most Americans and the rest of world finds abhorrent."

In 1989, when the U.S. Supreme Court decided *Penry v. Lynaugh*, only two states - Maryland and Georgia - prohibited execution of the mentally retarded. At that time, the Supreme Court held that executing persons with mental retardation was not a violation of the Eighth Amendment because a "national consensus" had not developed against this practice. Since then, 16 more states and the federal government have enacted laws prohibiting the execution of those with mental retardation.

In addition to the increasing number of states banning the execution of those with mental retardation, a number of prominent national organizations have urged similar action. In 1989, the American Bar Association established a policy opposing the execution of those with mental retardation. The ABA held that execution of such individuals is unacceptable in a civilized

society, irrespective of their guilt or innocence. The ABA joined a number of other national organizations - including veteran diplomats of the American Foreign Service, the United States Catholic Conference, the American Association on Mental Retardation, the American Psychological Association, and the American Civil Liberties Union - in filing amicus briefs with the Supreme Court on behalf of Daryl Atkins, a Virginia death row inmate with an IQ of 59.

While the exact number of inmates affected by today's ruling is not certain, the decision will require changes in the 20 states that have not yet banned the execution of those with mental retardation. In the past, some inmates with mental retardation, like Earl Washington of Virginia, even confessed to crimes they did not commit. Washington was sentenced to death and later given an absolute pardon when DNA testing revealed his innocence. Currently, there are more than 3,700 inmates on death row in the United States.

Professor James Ellis, a national expert on mental retardation and the death penalty, can be reached at (505) 277-4830. Gerald Zerkin, who represented Earl Washington on appeal, can be reached at (804) 565-0880.

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