Exploring Controversial Issues with the Believing & Doubting Game
(The Death Penalty and the Mentally Retarded)

Overview
In this critical thinking process, students learn to evaluate a controversial issue by examining it from all viewpoints through the three-step process of the “believing game,” the “doubting game,” and “integrating ideas.” The believing game involves students finding all possible points of agreement with an issue, and the doubting game has students reverse roles and ask probing questions, attack faulty logic, point out inadequate evidence, and provide information that rebuts. (The process was developed by Alan Shapiro for TeachableMoment.org.) Lastly, students will integrate their insights and opinions into a culminating writing assignment in which they take a final stance on the issue.

Teacher note: This process can be applied to any topic and source (article, speech, video, etc.). The following lesson is based on the topic of mental retardation and the death penalty, as set forth in two opposing articles.

Grade
10

North Carolina Essential Standards for American History: The Founding Principles, Civics & Economics
• FP.C&G.3.3 - Analyze laws and policies in terms of their intended purposes, who has authority to create them and how they are enforced (e.g., laws, policies, public policy, regulatory, symbolic, procedural, etc.)
• FP.C&G.3.5 - Compare jurisdictions and methods of law enforcement applied at each level of government, the consequences of noncompliance to laws at each level and how each reflects equal protection under the law (e.g., Department of Justice, Regulatory Commissions, FBI. SBI, Homeland Security, Magistrate, State troopers, Sheriff, City police, Ordinance, Statute, Regulation, Fines, Arrest, etc.
• FP.C&G.3.7 - Summarize the importance of the right to due process of law for individuals accused of crimes (e.g., habeas corpus, presumption of innocence, impartial tribunal, trial by jury, right to counsel, right against self-incrimination, protection against double jeopardy, right of appeal).
• FP.C&G.3.8 - Evaluate the rights of individuals in terms of how well those rights have been upheld by democratic government in the United States.
• FP.C&G.4.4 - Analyze the obligations of citizens by determining when their personal desires, interests and involvement are subordinate to the good of the nation or state (e.g., Patriot Act, Homeland Security, sedition, civil rights, equal rights under the law, jury duty, Selective Services Act, rule of law, eminent domain, etc.)

Essential Questions:
• Why is it important to view controversial issues from multiple perspectives?
• What do we have to gain by challenging our own personal beliefs on an issue?
• Why is it important to question sources of information?
• How can we continue to develop our skills as critical readers, thinkers, and writers?
• Should the death penalty be administered to murderers who are mentally retarded?

Materials/Resources:
• “The Believing & the Doubting Game,” teacher introductory article attached
• “Mental Retardation and the Death Penalty,” article attached
• “Executions Banned for Mentally Retarded,” article attached
• Writing Prompt, attached

**Duration**
60 minutes

**Teacher Preparation**
Read the attached teacher’s introductory article, “The Believing & the Doubting Game” then refer to the lesson procedures.
"If people don't obey the law, you can't have a decent society."

"But what about people like Gandhi and King? Without them, India would still be ruled by Britain and the South would still keep African-Americans from voting."

"Most people aren't Gandhis or Kings."

"Some are, though, and we need them."

The scene is a history classroom. The subject is Thoreau's essay, "Civil Disobedience," written shortly after he was jailed for refusing to pay his poll tax, a protest against the U.S. war in Mexico, 1846-1848. Student discussion is lively and combative. The debate exhausts the period, and when the bell rings, students continue to argue as they leave the room. A good class, the teacher is probably thinking.

The debate has produced strong disagreement, some reasonable arguments and lots of heat. But it has not produced a recognition of complexity; a sense of the strength and worth of a position not one's own; a movement, however, slight, in one's own position; or a desire to go on thinking.

We teachers are often better at stimulating exciting arguments than at complicating and deepening understandings; we are often better at developing critical thinking skills than at entering into another's point of view and working to experience it and find whatever truth it may contain.

The intellectual tradition of critical thinking Peter Elbow calls "methodological doubt," that is, "the systematic, disciplined and conscious attempt to criticize everything no matter how compelling it might seem—to find flaws or contradictions we might otherwise miss." To complement methodological doubt, Elbow proposes "methodological belief," which he defines as "the equally systematic, disciplined and conscious attempt to believe everything, no matter how unlikely or repellent it many seem—to find virtues or strengths we might otherwise miss."

Together, these two processes offer us an opportunity to think rigorously without polarization and to embrace contradictions that normally divide us. They can help us recognize that, as Elbow writes, "the truth is often complex and that different people often catch different aspects of it." They can also help us see that "certainty is rarely if ever possible and that we increase the likelihood of getting things wrong if we succumb to the hunger for it." (Peter Elbow, "Methodological Doubting and Believing: Contraries in Inquiry," in Embracing Contraries: Explorations in Learning and Teaching, N.Y., Oxford University Press, 1986.)

What follows is an approach to teaching critical thinking that includes a "methodological belief" process (the believing game) and a "methodological doubt" process (the doubting game). Attached are two articles regarding whether executions should be banned for murderers who are mentally retarded (one pro and one con), which will be the take-off point for an outline of how the two games might be used with students as they study any controversial issue.
Procedure

Step 1: The Believing Game

"Everyone agrees in theory that we can't judge a new idea or point of view unless we enter into it and try it out, but the practice itself is rare." --Peter Elbow

1. Introduce the believing game by explaining:

You have probably noticed that when we consider controversial issues like <mention past controversial issues you have addressed in class>, what may start as a discussion quickly can become a debate. We argue eagerly for our own opinions, we listen to opposing arguments mainly to find flaws and, when we do, interrupt and attack those arguments. We are more interested in proving ourselves right and winning the argument, than in seriously considering another viewpoint and deeply exploring an issue. The idea behind the believing game is to suspend judgment, promote continued thought, open oneself to the strengths and values of a perspective with which one does not agree in part or in whole, and work at believing that perspective.

The believing game is the first step in a critical thinking process. In the second step, the doubting game, we can ask probing questions, attack faulty logic, point out inadequate evidence, and provide information that rebuts. The third step is to work toward forming a sound judgment by integrating the insights gained throughout believing and doubting with your own opinion.

2. Introduce the controversial topic the class will be focusing on (in this case, students will read an article discussing whether execution should be banned as a form of punishment for the mentally retarded). It can be useful to ask students to write a short paragraph as an initial record of their thinking on the issue to be considered.

Teacher note: As soon as the topic of mental retardation is introduced, teachers should address use of the word “retarded” with their students. Young people often view this word as humorous, or use it as an insult to others. It is important that students understand that this word refers to a mental/medical condition, and thus should not be viewed or used in an abusive manner.

3. Another kinesthetic option is to post numbered signs in a line (1-10) along a wall or across the floor of the classroom. Tell students that you are going to pose several statements, and that they are to place themselves within the line according to their current opinions (1 being strongly disagree, 5 being neutral or “don’t know”, and 10 being strongly agree). This will create an initial visual representation of class opinions on the issue being considered. Examples of statements to be used on the topic of mental retardation and the death penalty may include:

- People who are mentally incompetent (meaning they have IQs below 70, which officially establishes mental retardation) have a harder life than people who are mentally competent.
- People who are mentally retarded often experience teasing, unfair treatment, and persecution.
- People who are mentally retarded have a difficult time leading a normal civilian life.
- I have sympathetic feelings for people who are mentally handicapped.
- I believe that people who are mentally retarded can overcome their disability, lead a normal life, and effectively participate in society.
- People who are mentally retarded and commit crimes may not be fully aware of or understand the crime they committed.
- Mentally retarded people who commit crimes should be placed in mental institutions rather than prison.
- The death penalty is a fair punishment for citizens who are mentally competent.
- People who are mentally retarded and commit murder should be subject to the death penalty.
4. Ask students to read the viewpoint they are to “believe” (in this case, either the attached article for or against executions for mentally retarded murderers). Explain to students that their first task in this process is to work as hard as they can at believing as much of the argument as they can, even if they hold a differing opinion. This phase will be easy for students who already agree with the views presented. However, even those that disagree must challenge themselves to find common ground. Tell students to ask themselves as they read:
   - What is the author saying that is interesting or intriguing?
   - What does the author see that I don't?
   - How could this argument possibly be right? What scenario can I consider that would make this view viable?
   - What can I agree with?
   - If this person were my close friend, how could I defend his/her beliefs as described here?*

*Asking students to imagine that the author is their good friend can assist them in finding ways to support the argument presented. Admittedly, many times young people will support and defend their friends even when they are wrong. Remind students of this, and tell them to assume this role during this activity.

5. Instruct students to highlight/underline text that presents an interesting view, sentences that allow them to see where the author is coming from, snippets they can relate to and agree with, etc. Also instruct students to note their statements of agreement and “belief” along the margins of their reading.

6. After students have read and made their notes, divide the class into small discussion groups for 10-15 minutes. In their groups, students are to discuss the reading as “believers”, making only statements that support the author. Explain to students that they are not pretending or role-playing. They are finding and speaking from places in themselves that connect with anything the author noted. Tell students that while this might be a difficult task depending on their personal views, they should not make any negative or even challenging statements. Students should discuss their thoughts to questions such as:
   - What's interesting about this view?
   - How might this view be helpful and to whom might it be helpful?
   - In what sense, or under what conditions might these ideas be true?
   - What values underlie this view?
   - Which of the ideas posed can I acknowledge as valid and/or as important?
   - How can this point of view possibly be right?

7. Teachers may want to assign the following three roles within each group, letting students know what their responsibility is:
   - Conversation Guide: Encourage everyone to participate; keep everyone civil and on track
   - Believe Police: Remind the group that they are working to “believe” only and find any point of agreement with the author; bring group members back to the believing questions to consider when discussion wanes; if anyone begins to contradict the author, or moves into the “doubting game”, kindly bring them back to believing
   - Reporter: Be prepared to report back to the class regarding your groups discussion and all the points of “belief” or agreement you noted

8. When discussion comes to an end—and it may after a short time the first time students play the believing game—the teacher should stop the discussions and ask one student (or the Reporter if the above roles were assigned) from each group to report back to the class on the aspects they were able to “believe”, or agree with. Encourage the class to listen to one another for thoughts that were not necessarily discussed in their own groups.

9. After groups have reported on their discussions, allow students to debrief the “believing game” by discussing:
• Was the “believing game” challenging for you? Why or why not?
• How did this experience feel? (Ensure students who initially agreed and disagreed with the author respond.)
• What success did your group have? What did you do well with?
• What difficulties or problems did you experience? How did you deal with them?
• Did this experience affect your point of view at all? Explain.
• What do we have to gain from trying to find points of agreement with an issue, even if we initially disagree personally or politically?

Teacher Notes: Students will probably have difficulty in their first experience with the believing game. It may seem artificial, perhaps uncomfortable, even threatening. Under some circumstances, playing the game may challenge deeply held beliefs and the security that goes with them. If methodological belief, almost certainly an unfamiliar process for students, is to take hold and have a chance to produce worthwhile results, students need to experience it with some frequency.

Have students play the believing game when a significant disagreement occurs in any class session. Play it when a student is reporting to the class or reading an essay on a controversial subject. Play it after students hear an outside speaker. Play it when a student offers a view that others find peculiar or even stupid. The teacher can interrupt the session for ten minutes’ worth of “believing.” What does the student feel and see? Am I sure I understand? What values underlie this view? Which do I acknowledge as valid, as important? How can this point of view possibly be right?

Entering into and really experiencing unfamiliar or irritating points of view takes time and effort. But it invites listening, instead of arguing; it fosters empathy rather than antagonisms. It encourages an understanding that there can be competing truths, each of which has some value; as Elbow writes, "Certainty is rarely if ever possible and we increase the likelihood of getting things wrong if we succumb to the hunger for it."

Step 2: The Doubting Game

"Knowing and questioning, of course, require one another. We understand nothing except in so far as we understand the questions behind it." - I. A. Richards

10. A necessary complement to the believing game is the doubting game. Just as the former asks for a systematic, disciplined effort to believe a point of view no matter how unfamiliar or ridiculous it may seem, so the latter invites students to engage in a systematic, disciplined effort to inquire into or doubt a point of view no matter how familiar and reasonable it may seem. The doubting game involves learning how to ask and to analyze questions. The subject may be an issue discussed in a history text, a novel, a bill being debated in Congress, or any controversial issue. In this case, it will again be the chosen article on mental retardation and the death penalty.

11. The teacher can begin by inviting students to return to their groups and consider the pieces of the article they doubted, or the points of the author’s view they disagreed with. Instruct students to compose these thoughts into questions. These questions, if answered well, might lead to a better understanding of the issue; these questions can also test its worth.

12. The next step is to analyze the questions students created in their groups. Have a reporter from each group report back with the three top questions from their discussion. Compile all questions on the board (if a question is repeated, place a check beside of it). Next, explain to students that as a class they will be analyzing these questions to gain the understanding that: a) clarity is vital; b) questions are instruments of perception—the nature of a question helps to determine the nature of an answer; c) some questions are better than others ("better," in this context, meaning more helpful in leading one to a fuller understanding of the issue).
13. The class should analyze their questions using the following criteria:
   • Do any questions require a strictly factual answer? (mark these with an “F”)
     o Where can we retrieve such facts?
     o Can you get information that enables you to answer with reasonable certainty?
   • Do any questions call for an opinion? (mark these with an “O”)
   • Do any questions call for the definition of any words before they can be answered intelligently?
     o How shall they be defined?
   • Do any questions contain assumptions?
     o Are these assumptions reasonable to make?
     o If they are not, how might the question be reworded?
   • Do any questions call for a yes/no answer?
     o If so, what follow-up questions might be asked?
   • Are any questions unclear?
     o If so, how shall they be reworded?
   • Are any questions useless for the inquiry? Why?

14. Rigor in the process of question analysis is essential and obviously, pursuing answers to questions will take time. Some of the answers will be factual; others will require facts and opinions—perhaps opinions of experts. That, in turn, raises questions about experts: What makes a person an expert on a subject? How can you know if the person has these qualifications? How can you know if the person has any bias you should take into consideration as you examine the person's views?

15. Having clarified the questions and determined which are most useful, the students can begin an inquiry. The teacher has several choices about how to proceed:
   • Assign additional class readings related to the questions to be answered and then to discuss as a class.
   • Divide the class into groups, assigning each certain questions to be answered in a presentation to the class.
   • Assign questions to individual students to be answered in a presentation to the class.

16. Playing the doubting game is likely to have several byproducts: The students will find that their questions often generate still other questions. The process is likely to bring out not only information of the factual kind but also about attitudes and values. These, too, can be worth further examination and discussion. The teacher will also note what class work is necessary regarding particular critical thinking skills. Do students distinguish between factual and judgmental statements? How well do they understand the process of definition? Are they clear about assumptions? How well do they identify central issues? What help might they need in determining the relevance and reliability of evidence and sources?

17. Like the believing game, the doubting game requires repeated experiences if students are to become good questioners and inquirers. Experience with the two games need not focus only on current or historical issues. An English class can play the games with poems and novels; science classes can believe and doubt competing points of view on environmental issues; a mathematics class can do the same on the use of statistics to support differing opinions.

Step 3: Integrating Ideas

18. Having believed, doubted and investigated further, students can now work at integrating their thinking. Have students consider the following:
   • Did the believing and doubting game open possibilities for finding some common ground on the issue? Explain.
   • Are you feeling and/or thinking any differently than you were originally? Why or why not?
   • With most social issues being incredibly complex, is it possible to ever reach a level of complete certainty? Why or why not?
   • Why is it important to examine all sides of an issue, even when you feel your opinion is set?
19. Culminate the lesson with a writing assignment. Students can be instructed to write a reflective piece regarding the believing and doubting process as they experienced it, noting what their opinion was at the start of the lesson and what it is at the end, evaluating whether any change occurred and why. Students can also be assigned a writing prompt such as the one attached.
Abolitionists won a major victory in the struggle to end the death penalty when the U.S. Supreme Court reversed its former ruling and declared that executing the mentally retarded was a violation of the U.S. Constitution’s ban on cruel and unusual punishment. We welcome this ruling and see it as a step toward ending the death penalty.

The court ruled in the case of Daryl Atkins v. Virginia. Aktins was reported to have an IQ of 59. The threshold measure for mental retardation is usually an IQ of 70 or below. The ruling means that death sentences for as many as 300 retarded death row inmates in 20 states will be commuted to life. Mental health experts have estimated that about 10 percent of the 3,700 prisoners on death row across the country are mentally retarded.

But this is also a bittersweet victory for some. "It came two years too late," said Yolanda Cruz, whose son Oliver Cruz was executed in Texas in 2000. Her son had an IQ of 64. But she added, "In a way, I’m happy. I’m happy there’s going to be mothers who won’t go through what I went through. People are changing, people are thinking differently about the issue."

The United States, a country that touts itself as a leader in human rights around the world, stood virtually alone in killing the mentally retarded. This barbaric practice was routinely criticized by the international community. Executing prisoners with significant cognitive impairments has always been cruel and unusual. It is about retribution and revenge against the most vulnerable in society.

As Larry Marshall, legal director of the Center on Wrongful Convictions, said of the decision, "It didn’t start to be cruel and unusual today, and yet we have killed scores of people."

Who are the mentally retarded who were put to death? One of them was Louis Mata. Mata was born with brain damage. He was one of 15 siblings, and he often went hungry and was viciously beaten by his alcoholic father when he was growing up. At age six, Louis suffered a fractured skull. His impoverished family did not seek medical treatment for him. His IQ was measured at 63, but during the sentencing hearing of his trial, his lawyer didn’t present evidence of Mata’s mental retardation or abusive childhood. He was executed in 1996.

Barry Lee Fairchild had an IQ that measured as low as 60. At his clemency hearing, he fell asleep. He was executed in 1995.

Morris Mason had so little conception of his death that on his way to the death chamber, he asked a visitor to tell a fellow inmate, "When I get back, I’m gonna show him I can play basketball as good as he can."

The court’s landmark ruling—which comes 13 years after a previous ruling that executing the mentally retarded did not violate the Constitution—is another defining moment in the struggle to end the death penalty. Justice John Paul Stevens noted in the decision that there was a "consistency in the direction of change."

In 1989, only two states banned the execution of the mentally retarded—that number had grown to 18 by the time of the Supreme Court decision. And no state had gone in the other direction and lifted the ban.

Key to these changes has been grassroots activism. Anti-death penalty activists have consistently exposed the utter barbarity, racism, and arbitrariness of the death penalty. Our activist tactics have put pressure on politicians and state legislatures to pass anti-death penalty legislation—even when they didn’t want to. When the public learns the truth about the death penalty, support drops.
International pressure has played an important role, too. Fifteen countries of the European Union filed a brief on behalf of Daryl Atkins, and a group of senior American diplomats told the court that the practice of executing the retarded was out of step with much of the world and a source of friction between the U.S. and other countries.

The justices of the Supreme Court would like us to believe that their decisions aren’t swayed by grassroots activism. We know better, and their decision to ban the execution of the mentally retarded is proof.

Source: http://www.nodeathpenalty.org/newab025/banned.html

NOTES:
Mental Retardation and the Death Penalty
By Dudley Sharp, Justice For All, 10/18/01

Capital punishment is popular in the United States. Thirty-seven states plus the federal military have death penalty laws.

The death penalty is not so popular when it comes to people who have mental retardation. Even though an estimated 35 people with mental retardation have been executed under capital punishment laws since 1977, many states either do not allow such executions or are moving in that direction.

However, much of the presentation regarding excluding the execution of the mentally retarded has been either highly deceptive, lacking in a clinical foundation, or both.

Some say that we mustn't execute people who do not know right from wrong and who lack understanding the severity of their crimes. The reality is that we have not been executing such people for decades. Currently, during pre-trial, trial and appeals, the law provides evaluation for mental competency -- and such an evaluation requires that the defendant understand the consequences of their actions, that they must be able to constructively participate in their own defense and that they understand the nature of their punishment. Furthermore, mental capability is one of the many issues that a jury might consider when establishing mitigation which may dictate a sentence less than death. Quite simply, only mentally competent capital murderers can face either execution or life in prison.

Yet, here is an example of the type of obfuscation and ignorance that is often seen within this issue.

Death penalty opponents state that Texas has executed 6 mentally retarded capital murderers. Those executed are defined as mentally retarded by their IQ numbers. First, mental health professions state that IQ measurements alone cannot establish mental retardation. So states that solely use that standard to exclude a possible death sentence have used an improper standard and those who declare people mentally retarded simply by IQ numbers are equally incorrect.

Those Texas six are called mentally retarded because they allegedly had a measured IQ of below 70 -- a standard below which some establish mental retardation. First, death penalty opponents will often list only the lowest recorded general IQ numbers of the murderer and intentionally withhold other tests which recorded much higher numbers. Such opponents also fail to note that there is a margin or error of plus or minus 10 points within that IQ evaluation, meaning that only those who score below a 60 on their maximum IQ test can establish mental retardation by using those numbers.

Furthermore, general IQ is not even relevant to the evaluations. Only performance IQ, which attempts to measure a person’s abilities to function effectively under real world situations, is the relevant issue, if one improperly wishes to just 'go by the numbers'. Again, those states and advocates who use only general IQ evaluations have misunderstood or improperly applied that qualification.

And based on that analysis, as well as a review of the case facts, such opponents cannot support their claims that Texas has executed even a single mentally retarded murderer. I suggest that may likely be the case in other states, as well.

A case example: During Texas' last legislative session, in the spring of 2001, supporters of HB236, a bill to ban execution of the mentally retarded, held a public rally at the capital in Austin and invoked the case of Mario Marquez, executed in 1995, as one of those 6 cases and stated that Marquez was exactly that kind of murderer which HB236 was designed to protect. Supporters of that bill could not have provided a better case for Texans to oppose this bill and for Governor Perry to veto it.
Marquez was angry that his wife was leaving him, so, in retaliation, he murdered his wife's 14-year-old niece, Rachel and his 18-year-old estranged wife, Rebecca. They were beaten, sexually assaulted, then strangled to death. Marquez then waited for his mother-in-law, to return home, beat and sexually assaulted her -- then presented the two brutalized bodies of the two girls to her -- as trophies for his anger. There is little doubt but that he was also going to murder his mother-in-law, but Marquez's continued assault on her was interrupted and he fled from the scene.

Marquez's performance IQ was measured at 75 -- 16 points above the minimum number required to establish that arbitrary "mental retardation" standard, using the plus or minus 10 point variable. And Marquez's life and crimes, spanning many years, fully support that Marquez knew exactly what he was doing.

When given the facts of specific crimes, like Marquez's, many would agree with the jury -- that such mentally competent, guilty capital murderers should face the death penalty as a sentencing option.

There are some additional considerations:

1) Many argue strenuously to halt execution of the "mentally retarded", yet they do nothing to properly define what "mentally retarded" means in a fashion reflecting a full understanding of the issues, much less do they discuss the premeditation, planning and consideration which the alleged "mentally retarded" murderers so often invested in the murders. A full accounting should be demanded in any public policy discussion, and

2) Many argue strenuously against a death penalty option for the mentally retarded, but they fail to tell us why such individuals should not be subject to execution, but should be subject to a life sentence. Is the murderer any less guilty or culpable for one sentence than the other? A jury may decide that the murderer deserves a lesser sentence, because of any mitigation which may be reflected by competency issues, but that decision is best made by the jury, which has all the case facts before it. Much of the effort to exempt the "mentally retarded" from execution can best be described as another effort to reduce the application of a proper sentencing option by those who oppose executions under all circumstances.

3) In establishing a below 70 IQ number as the threshold for withholding a death sentence option, several important issues are often neglected
   a) the previously discussed issue of both the 10 point variable and the performance IQ issues, as well as

   b) when the IQ test was taken. If the test was taken after an arrest, then there is a strong likelihood that the arrested party would do everything possible to score as low as possible, as a self preservation issue. This would negate the reliability of the test. And as you can never be sure about that issue, under those circumstances, then other means will have to be used to establish competency and

   c) IQ test results from the same individual can vary greatly over time, well outside any 10 point variable. This directly goes to those states which have standards that say the test must have been administered prior to age 18. Both education and experience can increase IQ's over time. Therefore, that prior to age 18 rule may allow a competent murder to escape proper punishment, only because of an arbitrary and capricious standard, which had no relevance at the time of the murder. And, again, the distinction between general and performance IQ come into play, as well as all the other variables and limitations.

That is why the current system, as it now exists, is the best*. Determine competency pre trial. Relive those issues again, at trial and on appeal. Establish if the defendant knew right from wrong, if the defendant can constructively participate in their own defense and establish if they understand the nature of their punishment. And review those issues, again, on appeal.
That appears to be the most responsible and honest method of reviewing these cases and issues. Any other method is more arbitrary and capricious. To date, there is nothing to indicate that a better system has been presented. If you review those state statutes which ban the death penalty for the “mentally retarded”, you will find that virtually any other method is more arbitrary and capricious. The states have done is to pass laws which will allow fully competent murderers to escape the most appropriate punishment consideration. Remember, these statutes are specifically directed against the death sentence, not lesser sentences.

And finally, to address the cruel and unusual punishment question... Based upon current law and legal opinion, at the US Supreme Court level*, execution of the mentally retarded is not cruel and unusual punishment. But, in making such judgments, we should rely on a full review of the issues and not base our conclusions on emotion and incomplete and inaccurate presentations.

*A Note Regarding “Mental Retardation and the Death Penalty”:

Since this article was written in 2001, the following change took place regarding administering the death penalty for the mentally retarded:

“On June 20, the Supreme Court issued a landmark ruling ending the execution of those with mental retardation. In Atkins v. Virginia, the Court held that it is a violation of the Eighth Amendment ban on cruel unusual punishment to execute death row inmates with mental retardation. The decision reflects the national consensus which has formed on this issue. (Associated Press, June 20, 2002).

Previously, in 1989, the U.S. Supreme Court ruled on Penry v. Lynaugh (492 U.S. 302). In a 5-4 decision, the Court held that executing persons with mental retardation was not a violation of the Eighth Amendment. Mental retardation should instead be a mitigating factor to be considered by the jury during sentencing. Writing for the majority, Justice Sandra Day O'Connor said that a "national consensus" had not developed against executing those with mental retardation. At the time, only two states, Maryland and Georgia, prohibited such executions. Between the Penry and Atkins decisions, 16 additional states enacted laws prohibiting the execution of the mentally retarded. The federal death penalty statute also forbids such executions.”


NOTES:
Writing Prompt: Mental Retardation and the Death Penalty

In *Atkins v. Virginia* (2002), the Supreme Court held that it is a violation of the Eighth Amendment’s ban on cruel and unusual punishment to execute death row inmates with mental retardation. According to the majority opinion, the decision reflected a national consensus that had formed on the issue. The case overturned a 1989 ruling in which it was decided that mentally retarded persons could be subject to the death penalty, but their condition should be a “mitigating factor” to be considered by the jury during sentencing.

Write a persuasive essay in which you discuss and defend your view regarding mentally retarded people and the death penalty. You may use the following information, your own experiences, observations, and/or readings.

- “Mental health experts have pointed out that mentally retarded persons’ characteristic suggestibility and willingness to please leads them to confess - sometimes falsely - to capital crimes. In 1983, police convinced Earl Washington to make a statement concerning the rape and murder of a woman in Culpeper, VA, in 1982. The statements were used against him and in 1984 he was convicted and sentenced to death. Sixteen years later, DNA tests confirmed that Washington was innocent and he received an absolute pardon.”

  -Source: Death Penalty Information Center

- “The Court pronounces the punishment cruel and unusual primarily because 18 States recently have passed laws limiting the death eligibility of certain defendants based on mental retardation alone, despite the fact that the laws of 19 other States besides Virginia continue to leave the question of proper punishment to the individuated consideration of sentencing judges or juries. I write...to call attention to the defects in the Court’s decision to place weight on foreign laws, the views of professional and religious organizations, and opinion polls in reaching its conclusion. The Court’s suggestion that these sources are relevant to the constitutional question finds little support in our precedents and, in my view, is antithetical to considerations of federalism.”

  -Source: Supreme Court Justice William Rehnquist, dissenting opinion in Atkins

- “The mentally retarded can never meet the criteria of extraordinary blameworthiness. People with retardation are incapable of calculated, mature evil...They are limited in their ability to learn from experience, to control their impulses, to think in long-range terms or to understand causality. Children outgrow most of these limitations. Those who are retarded cannot.”

  -Source: Jamie Fellner, Associate Counsel at Human Rights Watch

As you write, remember to:

- Consider the purpose, audience, and context of your essay
- Organize your essay so that your ideas progress logically
- Include relevant details that clearly develop your essay
- Edit your essay for standard grammar and language usage