

## DISCLAIMER

Electronic versions of the exhibits in these minutes may not be complete.

This information is supplied as an informational service only and should not be relied upon as an official record.

Original exhibits are on file at the Legislative Counsel Bureau Research Library in Carson City.

Contact the Library at (775) 684-6827 or [library@lcb.state.nv.us](mailto:library@lcb.state.nv.us).

# ACLU of Nevada

American Civil Liberties Union of Nevada  
325 South Third Street  
Las Vegas, NV 89101  
775- 786-3827 (Reno contact)

DATE: April 24, 2003

TO: Chairman Mark Amodei  
Nevada Senate Judiciary Committee and Committee  
Members

FROM: Richard Siegel, Ph. D., Professor of Political Science, UNR,  
President, ACLU of Nevada

RE: Public Opinion on AB 15

1. The clear trend in U.S. and State public opinion is to oppose the execution of the mentally retarded with steadily increasing majorities. Even before the U.S. Supreme Court Atkins decision, the primary recent national poll on this subject, a Gallup Poll in May 2002, found 83% to 13% opposition to executing the mentally retarded, with 5% expressing no opinion. This represents a 6.4 to 1 ratio of opposition to support, the strongest opposition to execution for any of the four groups identified in that poll as potential persons to execute.
2. Earlier polls in the U.S.A. generally found 64% to 72% opposed to the execution of the mentally retarded.

The movement to exempt the mentally retarded was evident from polls taken after Pennsylvania and Georgia court decisions in the 1980s allowed such executions.

Roger Hood (The Death Penalty: A Worldwide Perspective, Oxford 1996, pp. 101-102) cites a national poll in 1989 finding that 71% of respondents opposed such executions. He also cites a 1987 Georgia poll finding that "two-thirds" of respondents "opposed the execution of the mentally retarded".

The Georgia poll allowed that state's legislators to become the first to prohibit such executions in a death penalty state.

A June 2001 North Carolina Poll found opposition to executing the retarded with 63.0% opposed, 21.1% in favor, and 15.9% undecided or other.

The Charlotte Observer-WBTV New Carolina poll found in July 2000 that North Carolina respondents opposed executions of the retarded by a ratio of 64% to 21% (15% refused to answer or answered "not sure"). (Source: *The Charlotte Observer*, 9/10/200).

Finally, a Behavior Research Center poll of Arizonians taken in July 2000 found that respondents opposed the death penalty for the mentally retarded 72% to 11% (11 percent responded to "depends upon circumstances" and 6% responded "no answer" or "unsure"). This Arizona poll also found that opposition to such executions was over 67% for:

Whites:	72.2%
Hispanics:	78.4%
Democrats:	76.2%
Republicans:	67.8%

3. Public opinion in Europe and Latin America (including Mexico) is increasingly hostile to the U.S. use of the death penalty but is most critical when these aspects are involved:
  - a. Mentally retarded or severely mentally ill defendants
  - b. Foreign nationals, especially when American states ignore the Consulate agreement that requires them to notify the dependent's home country.
  - c. Crime committee when defendant is under 18.
  - d. Female defendant

Nevada has a great interest in not being the target of European animosity over such issues, this in the context of its desire to maximize foreign tourism.

The Gallup Poll. Latest 6-9, 2002. N=1,012 adults nationwide. MoE± 3(total sample)

**“If you could choose between the following two approaches, which do you think is the better penalty for murder: [rotate] the death penalty or life imprisonment with absolutely no possibility of parole?” Form B (N=537, M0E±5)**

	<b>Death Penalty</b>	<b>Life in Prison</b>	<b>No Opinion</b>
	<b>%</b>	<b>%</b>	<b>%</b>
<b>5/02</b>	<b>52</b>	<b>43</b>	<b>5</b>
<b>5/01</b>	<b>52</b>	<b>43</b>	<b>5</b>

**“In your opinion, is the death penalty imposed [rotate] too often, about the right amount, or not often enough?”**

	<b>Too Often</b>	<b>About Right</b>	<b>Not Enough</b>	<b>No Opinion</b>
	<b>%</b>	<b>%</b>	<b>%</b>	<b>%</b>
<b>5/02</b>	<b>22</b>	<b>24</b>	<b>47</b>	<b>7</b>
<b>5/01</b>	<b>21</b>	<b>34</b>	<b>38</b>	<b>7</b>

**“Do you favor or oppose the death penalty?” [see below]**

	<b>Favor</b>	<b>Oppose</b>	<b>No Opinion</b>
	<b>%</b>	<b>%</b>	<b>%</b>
<b>Women</b>	<b>68</b>	<b>29</b>	<b>3</b>
<b>**Juveniles</b>	<b>26</b>	<b>69</b>	<b>5</b>
<b>The mentally ill</b>	<b>19</b>	<b>75</b>	<b>6</b>
<b>**The mentally retarded</b>	<b>13</b>	<b>82</b>	<b>5</b>

**“Generally speaking, do you believe the death penalty is applied fairly or unfairly in this country today?”**

	<b>Fairly</b>	<b>Unfairly</b>	<b>No Opinion</b>
	<b>%</b>	<b>%</b>	<b>%</b>
<b>5/02</b>	<b>53</b>	<b>40</b>	<b>7</b>
<b>6/00</b>	<b>51</b>	<b>41</b>	<b>8</b>

## Richard Siegel

---

**From:** King, Rachel [Rking@dcaclu.org]  
**Sent:** Wednesday, April 23, 2003 12:54 PM  
**To:** Richard Siegel (E-mail)  
**Subject:** FW: What is President Bush's Position on MR DP?

Rachel King  
State Strategies Coordinator  
Capital Punishment Project, ACLU  
202/715-0833 - phone  
202/546-0738 - fax

-----Original Message-----

**From:** Rust-Tierney, Diann  
**Sent:** Tuesday, June 12, 2001 6:26 PM  
**To:** DeathPenalty, Intern; 'Earl Bender'; 'Eric Ferrero'; Ham, Eric; Bellin, Judy; 'Kate Stewart'; King, Rachel; Noble, Josh; Vandivier, Robert; Williams, Wanda  
**Subject:** FW: What is President Bush's Position on MR DP?

-----Original Message-----

**From:** Ronald Tabak [mailto:RTABAK@skadden.com]  
**Sent:** Tuesday, June 12, 2001 1:27 PM  
**To:** Moratorium-L@www3.law.cornell.edu  
**Cc:** edavis@abcny.org; rhalperi@post.cis.smu.edu  
**Subject:** What is President Bush's Position on MR DP?

June 12, 2001

New York Times

President Says the Retarded Should Never Be Executed

By RAYMOND BONNER

WASHINGTON, June 11 - As he prepared to leave for Europe, President Bush said today that an individual who is mentally retarded should not be executed, addressing an issue that has sparked sharp criticism overseas. But an aide said the comment did not represent a shift in Mr. Bush's position.

The statement sowed confusion among opponents of the death penalty, who originally saw it as reflecting a significant change in the president's view.

Mr. Bush's remarks came in a discussion with European reporters here before his departure on a trip in which he is expected to encounter protesters against capital punishment. He was asked his reaction to the nine retired American diplomats who said in a brief filed last week with the Supreme Court that the execution of the mentally retarded tarnished the United States' image abroad and interfered with the conduct of foreign policy.

"We should never execute anybody who is mentally retarded," President Bush said, according to a transcript of the remarks provided by the White House. He went on, "And our court system protects people who don't understand the nature of the crime they've committed nor the punishment they are about to receive."

Harold Koh, the lawyer who wrote the brief for the diplomats, said he was encouraged by Mr. Bush's statement that the mentally retarded should not be executed. "I think the president should move to make this the policy of his administration, and encourage governors, including in Texas, to sign bills banning the execution of people with mental retardation," Mr. Koh said.

The Texas Legislature has passed such a bill, and it is awaiting action by the governor, Rick Perry. Supporters of the legislation say Texas has executed six mentally retarded defendants since 1976. When Mr. Bush was governor of Texas, he opposed legislation to bar executions of the mentally retarded and he maintained that position during his campaign for president.

A White House spokeswoman, Claire Buchan, said the president's remarks today did not reflect a change in his views. "This is not a change of policy," Ms. Buchan said. "He's talking about the standards they had in Texas."

The confusion appears to arise over the standards for when a defendant is mentally retarded and the standards for whether the defendant is competent to stand trial and knows right from wrong and therefore can be found guilty for his actions. Jurors are instructed that if they determine that a defendant did not know right from wrong, they should find him not guilty by reason of insanity. But a person can know right from wrong and still be mentally retarded. Generally speaking, a person is considered retarded if he has an I.Q. below 70. More than a dozen states that have the death penalty bar execution of the mentally retarded. This means that even after a defendant has been found competent to stand trial, and that he understood the nature of his crime, he may not be executed.

In Florida, Gov. Jeb Bush has said he will not sign the death warrant for a retarded death-row inmate.

Mr. Koh said Mr. Bush's remarks suggested that he did not understand the standards for determining whether a person was competent to stand trial or was mentally retarded. "He's trying to convey the impression that he cares about the mentally retarded, while he's adopted the posture which allows the mentally retarded to be executed," Mr. Koh said.

# Bar execution for mentally retarded

We would not ... could not ... execute a 7-year-old child. A 7-year-old, after all, doesn't have the capacity to understand the charges against him, doesn't have the ability to help an attorney defend him. Even if a 7-year-old confessed, it would be highly suspect: A 7-year-old is very impressionable; he'd tell a questioner just about anything, hoping to get the questioning over and go home. To execute a 7-year-old would be unthinkable.

How then could we execute a grown-up with the mind of a 7-year-old? Clearly we shouldn't ... we mustn't!

Yet that is the fate that awaits Thomas Nevius, a grown man with the mind of a 7-year-old, who will be executed by the state if the Nevada Board of Pardons doesn't commute his sentence. The board — Gov. Kenny Guinn, Attorney General Frankie Sue Del Papa and the seven justices of the Nevada Supreme Court — will hear Nevius' request for clemency on April 11. They should spare his life and sentence him instead to two life terms without the possibility of parole.

At the same time, the Nevada Legislature should approve a bill that would bar the execution of anyone with an IQ below 70, the standard used by the United States government to certify someone as profoundly disabled because of mental retardation.

Nevius was sentenced to death in 1982 for raping a Las Vegas woman and killing her husband during a robbery two years earlier. He was fingered by his three partners in the crime, including his younger brother. The other three accepted lesser sentences and told police that Nevius was the ringleader of the gang. It's a patently absurd position. Nevius has a well-documented IQ in the mid-60s and, like a 7-year-old in the presence of teens, would be a follower not a leader in a gang of "normal" people. But the jury who heard his case was never told that Nevius was mentally retarded, probably because his lawyer never spoke to Nevius enough to realize that there was something wrong with him. Since the trial, six of the jurors have signed affidavits stating that they wouldn't have sentenced him to death if they'd known he was mentally retarded.

There are other reasons to question Nevius' guilt. For instance, although the rape victim identified him as the man who shot her husband, clothes that she said he was wearing were too small to have ever been worn by

Nevius, according to his current attorney, public defender Michael Pescetta.

But the time for considering Nevius' guilt has run out. His final appeal was rejected by the U.S. Supreme Court on March 5. Now only the Pardons Board can stop his execution.

The question facing the Pardons Board — as well as the Legislature in Assembly Bill 353 — is whether a mentally retarded man should be not just punished but given our ultimate punishment: death. Well, why not?

As Brian Lahren, executive director of the Washoe Association for Retarded Citizens, told an Assembly committee last month, a significantly retarded defendant cannot comprehend the consequences of the decisions on his defense that he is asked to make; he doesn't understand what it means to "waive your rights"; he has a limited ability to tell his story or understand what is needed to help in his defense; he has a tendency to acquiesce to authority, so it's nearly impossible to develop a defense. Significantly, by the time they are adults, the mentally retarded have developed their own mechanisms to hide the fact that they are retarded; they listen intently to an attorney but ask no questions and offer no suggestions to counter the accusations. Like children, they are very accepting of what's going on.

They are, in other words, just the sort of defendants who would be found incompetent if they suffered a mental illness. They are never allowed to serve on a jury. But under current law they can be executed.

A prime objection to the clemency petition, as well as to Assembly Bill 353, seems to be the fear that a clever criminal will fake retardation to avoid punishment for his crimes. In today's society, however, a mentally retarded individual accumulates a record of special-education services and poor academic performance early in life, and experts agree that the assessments that are done today are highly reliable. AB 353 requires evidence of retardation before the crime was committed. When Nevius' background was investigated, in fact, those kinds of records were found, dating back to his school years in Philadelphia, Pa.

The decisions that are made on Nevius' request for clemency and on AB 353 will say a lot about the kind of society this is. If we are willing to execute a man with the IQ of a child, we must also be willing to execute a child. Surely not in Nevada.



Thomas Nevius

His request for clemency will be heard on April 11.

# Executing a retarded killer

*State Pardons Board should commute the sentence*

**T**he two most serious concerns about the death penalty in this country hinge on disparate enforcement by race and economic class and the fact that — as currently applied — this ultimate penalty is rarely speedy or sure.

Take the case of Las Vegas resident David Kinnamon, 34, shot in July 1980 when he returned to his home on King Richard Avenue to find a burglary in progress.

Of the four men arrested in Mr. Kinnamon's death, two have been convicted of first-degree murder and sentenced to life in prison; David Nevius turned state's evidence and received probation on a reduced charge of involuntary manslaughter after testifying against his older brother, Thomas; and Thomas Nevius now awaits execution after the U.S. Supreme Court on Monday turned down a petition challenging his death sentence on the grounds he is mentally retarded.

**Nevius is reported by his attorney to have an IQ of 57 to 68.**

Thomas Nevius — previously convicted for a second-degree murder in Pennsylvania — was sentenced to death in 1982. After 18 years, no execution date has been set. Swift and sure?

Now, the final decision on whether to execute Nevius — reported by his attorney to have an IQ of 57 to 68 — falls to the Nevada state Pardons Board, made up of the seven Nevada Supreme Court justices, state Attorney General Frankie Sue Del Papa and Gov. Kenny Guinn.

Nevada's death penalty should be maintained. It's appropriate for certain especially heinous offenses, not only as a deterrent and a matter of justice, but also to remove in the most pragmatic and certain manner the possibility of future innocents being killed or terrorized by that occasional sociopath who seems unable to develop the slightest qualm about destroying innocent lives.

The case of Thomas Nevius does not appear to be such a case. The convict's attorney says he has received written declarations from six jurors that they would not have voted for a death sentence had they known the defendant was retarded. (Such affidavits carry no legal weight, but surely indicate the jury was deprived of potentially relevant information.)

For that matter, a bill to ban executions of the mentally retarded — a restriction already in place in 13 states — is currently pending before the Legislature. To act while such a bill is being debated — after 18 years have already slipped by — could appear to verge on the bloodthirsty.

No one is saying Thomas Nevius should walk free — though a system that granted just such a "Get Out of Jail Free" card to the first gang member to talk, accepting at face value his assertion that the slow-witted Thomas Nevius was the ringleader, may be a topic for another day's discussion.

Yes, the crime was reprehensible, and Nevada law quite properly holds all four burglars equally responsible for a death occurring during their premeditated felony — no matter who actually pulled the trigger.

But in the case of somebody with the mental capacity of a child, a sensible compassion should guide the Pardons Board to commute the sentence of convicted murderer Thomas Nevius to life in prison, without the possibility of parole.

LAS VEGAS REVIEW JOURNAL

Our Say on the Issues of the Day

COMING THURSDAY

Columnist Steve Sebelius on state and local politics.

# OPINION AND COMMENTARY

WEDNESDAY, MARCH 7, 2001

OPINION DESK 383-0273

PAGE 6B

THE BIG THREE

Subjects generating the most reader response:  
 1. WHOSE MONEY? Bush tax plan 2. EDUCATION  
 ISSUES: teacher pay testing 3. RICK PITINO: search  
 for a UNLV hoop coach.

K-7