



Mark White: Justice demands a review in Texas death penalty case

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In less than a week, Milton Mathis, a man with mental retardation, is scheduled to be executed by the state of Texas. This execution is scheduled despite the fact that it is unconstitutional to execute anyone with mental retardation and no federal court has evaluated the mental retardation evidence in the case.

I unequivocally support the death penalty in appropriate cases. During my term as governor of Texas, 19 individuals were executed. I am not here to express sympathy for Mathis. His crimes are horrible. He was convicted of shooting to death Travis Brown III and Daniel Hibbard in their Fort Bend County home. He shot another teenage girl in the same rampage, leaving her paralyzed from the neck down.

However, the death penalty is meant for those criminals who are the most blameworthy, those who deserve to pay for their crimes with their lives. Mental retardation unquestionably affects blameworthiness, since those with mental retardation are unable to fully appreciate the nature of their actions. They may suffer from disabilities affecting moral reasoning, impulse control and how they understand cause and effect.

The evidence shows that Mathis clearly has mental retardation. According to the American Psychological Association, the threshold for determining mental retardation is an IQ of 70 to 75. Mathis has repeatedly scored in the low 60s — well below this cutoff — including a 62 on a test administered by the Texas Department of Criminal Justice, the very agency responsible for carrying out his execution. Also, Mathis has suffered from obvious mental disabilities since childhood: He failed the first, fifth and eighth grades and dropped out of high school in ninth grade. He has had problems with functions that come easily to most of us, like dressing himself.

The U.S. Supreme Court ruled almost a decade ago that the execution of those with mental retardation is unconstitutional. Unfortunately for Mathis, this ruling came weeks after his capital conviction was finalized. So Mathis has had to navigate the confusing labyrinth of state and federal law that govern legal claims after convictions in order to present the evidence of his mental retardation to a court.

And:

A petition will be filed with the U.S. Supreme Court requesting that they order a hearing in federal court to consider the evidence that Mathis has mental retardation. The Supreme Court

should grant the petition so that this evidence can be fully considered.

If the court refuses to order an examination of the evidence, justice can still be done if Gov. Rick Perry stays the execution so that his office can make an independent inquiry into the procedures and facts surrounding Mathis' death sentence. The governor of Texas is authorized by law to take action to prevent precisely this sort of injustice. Perry has correctly refused to grant clemency in cases where all the evidence has been reviewed fully and fairly. But this is not such a case. The review is not complete, and the evidence has not been fully heard.

Mark White served as Texas governor from 1983 to 1987 and Texas attorney general from 1979 to 1983. He co-chairs The Constitution Project's Death Penalty Committee and may be contacted at markwhite@constitutionproject.org.