

## **Panel #2 Is it Constitutional to Impose the Death Penalty on the Mentally Retarded?**

- 1) On what basis is it that Sandra Day O'Connor in *Penry v. Lynaugh* (1989) holds that the Constitution does not preclude the execution of a mentally retarded person convicted of a capital offense?
  
- 2) Even though juries are free to take mental retardation into consideration as a mitigating factor in criminal liability, on what basis does the American Bar Association Brief hold that the integrity of the justice system falters when defendants with mental retardation are convicted of capital crimes with death penalties attached?
  
- 3) What explanation can you give for the fact that numerous defendants with mental retardation have been sentenced to death despite their later proven innocence? Likewise, how do you account for the fact that since 1973, no fewer than 90 criminal defendants on death row have been exonerated and set free?
  
- 4) Why do you think it is that the majority of Americans polled in recent national surveys (2001) oppose the execution of mentally retarded defendants whereas the large majority of Americans still support the use of the death penalty on those found guilty of committing egregious/deplorable crimes? And what do you make of the fact that Congress prohibits the application of the death penalty to mentally retarded federal defendants whereas the majority of states do allow for the possibility of the death penalty for mentally retarded criminal defendants?