

that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury and proved beyond a reasonable doubt. The required finding of an aggravating circumstance exposed the defendant to a greater punishment than that authorized by the jury's guilty verdict.

Justices concurring: Ginsburg, Stevens, Scalia, Kennedy, Souter, Thomas

Justice concurring specially: Breyer

Justices dissenting: O'Connor, Rehnquist, C.J.

935. *Atkins v. Virginia*, 536 U.S. 304 (2002).

Virginia's capital punishment law is invalid to the extent that it authorizes execution of the mentally retarded. Execution of a mentally retarded individual constitutes cruel and unusual punishment prohibited by the Eighth Amendment. Circumstances have changed since the Court upheld the practice in *Penry v. Lynaugh*, 492 U.S. 302 (1989); since that time 16 states have prohibited the practice, none has approved it, and thus "a national consensus" has developed against execution of the mentally retarded. The Court's "independent evaluation of the issue reveals no reason to disagree with the judgment of the legislatures" that have created this national consensus.

Justices concurring: Stevens, O'Connor, Kennedy, Souter, Ginsburg, Breyer

Justices dissenting: Rehnquist, C.J., Scalia, Thomas

936. *Stogner v. California*, 539 U.S. 607 (2003).

A California statute that permits resurrection of an otherwise time-barred criminal prosecution for sexual abuse of a child, and that was itself enacted after the pre-existing limitations period had expired for the crimes at issue, violates the Ex Post Facto Clause of Art. I, § 10, cl. 1.

Justices concurring: Breyer, Stevens, O'Connor, Souter, Ginsburg

Justices dissenting: Kennedy, Scalia, Thomas, Rehnquist, C.J.

937. *Virginia v. Black*, 538 U.S. 343 (2003).

The provision of Virginia's cross-burning statute stating that a cross burning "shall be *prima facie* evidence of an intent to intimidate" is unconstitutional.

Justices concurring: O'Connor, Stevens, Breyer, Rehnquist, C.J.

Justices concurring specially: Souter, Kennedy, Ginsburg

Justices dissenting: Scalia, Thomas

938. *Lawrence v. Texas*, 539 U.S. 558 (2003).

A Texas statute making it a crime for two people of the same sex to engage in sodomy violates the Due Process Clause of the Fourteenth Amendment. The right to liberty protected by the Due Process