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Sunday, August 30, 1998

## Nevada court abandoned its duty in death case

Allowing execution runs counter to an  
international treaty we signed

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To the editor:

Late last month, in an exceedingly short opinion, the Nevada Supreme Court held that the Nevada statute allowing the death penalty to be imposed on individuals 16 and older was not pre-empted by a 1992 international human rights treaty. The court reached a politically popular result: that even juveniles should pay for their crimes. Unfortunately, in reaching this result, the court abandoned its duty to interpret and apply the law.

The court was faced with the appeal of Michael Domingues. On Oct. 22, 1993, when he was 16 years old, Domingues murdered a woman and her 4-year-old son in their Las Vegas home. Nine months later, Domingues was sentenced to death by a Clark County jury. That sentence was upheld by the Nevada Supreme Court in 1996.

In a renewed challenge to the sentence, Domingues and his public defender argued to the state Supreme Court that the death sentence violated the International Covenant on Civil and Political Rights. This 1992 treaty unequivocally prohibits death sentences for crimes committed by people below 18 years of age. Under this treaty, Domingues, who was 16 at the time of his crime, was most certainly protected from a death sentence. Or so it seemed. The court found the treaty simply did not apply.

The court conceded both that the treaty prohibited juvenile executions and that a duly ratified treaty of the United States will supersede

or pre-empt a conflicting state law. Nevertheless, relying on comments made by the U.S. Senate in ratifying the treaty, the court found that the treaty at hand simply did not apply to U.S. citizens. The court did not analyze the language of the treaty to determine whether the state statute was pre-empted. Instead, the court deferred to a Senate "reservation" or qualification to the treaty. Unfortunately, this deference begged the very question which was put to the court: Is the Senate reservation valid? The court simply failed to confront -- or even, as Justice Rose argued, to remand the case for a full hearing on -- the difficult constitutional question of whether the U.S. Senate can unilaterally exempt the United States from its obligations under human rights treaties.

The court's decision is not just bad news for Michael Domingues. It's bad news for the United States. If international human rights treaties provide a minimum standard for other nations to live up to, we ought to live up to those minimum standards as well. It is hypocritical to condemn China and Burma for human rights violations while at that same time we fail to live up to our own obligations. In *Domingues vs. State*, the Nevada Supreme Court not only abandoned its duty to interpret the law but it also passed up a prime opportunity to help make the United States an example to the world.

**THADDEUS MASON POPE**

Washington, D.C.

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