

JUDICIAL DECISION MAKING IN *ATKINS* CASES: EXAMINING
THE INFLUENCE OF PSYCHOLOGICAL REPORTS
AND JUDICIAL ATTITUDES

by

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ABSTRACT

The impact of psychological assessment report style (i.e., deficit- versus strength-based reports), report content (e.g., claimant educational background, details of the instant offense, prison behavior), and judicial attitudes toward intellectual disability (ID) were assessed with regard to judicial decision-making in a mock *Atkins* case. A between-groups study (i.e., strength- and deficit-based report groups) was conducted through the use of a mixed-mode design. Participants included 122 judges serving in either federal or state courts.

Results supported the hypothesis that the style in which a psychological assessment report is written is influential in final case outcome. Specifically, the strength-based report group was significantly more likely to find against ID than the deficit-based group, and the deficit-based group was more likely to find in favor of ID than the strength-based group. Contrary to the hypotheses, judicial attitudes toward ID did not predict the extent to which participants weighed certain report content in their final decision (i.e., relevant evidence against ID, not relevant to the decision, relevant evidence in favor of ID). However, the results showed that the extent to which participants weighed the claimant's index offense to be evidence in support of ID was a significant predictor of final case outcome; when the index offense was viewed as evidence against ID, participants were more likely to find against ID. Personal experience with the ID population was not a significant predictor of final case outcome, but as knowledge of the diagnostic criteria increased, participants were more likely to find in favor of ID. The perceived

credibility of the psychologist who authored the mock report did not predict participant agreement with the report's final conclusion regarding ID.

Overall, the results of this study indicated that the general style in which psychological assessment reports were written influenced judicial decision-making in a mock *Atkins* case. In addition, the results of this study revealed that attitudes toward and experience with ID were less influential in judicial decision-making than initially believed. Knowledge of ID was revealed to be a significant predictor of final case outcome. The limitations of this study and suggested directions for future research are discussed.

DEDICATION

TF, thank you for teaching me what is truly important in this life.

LIST OF ABBREVIATIONS AND SYMBOLS

α	Cronbach's measure of internal consistency
df	Degrees of freedom
M	Mean: sum of a set of values divided by the number of values in the set
p	Probability associated with the occurrence under the null hypothesis of a value as extreme or more extreme than the observed value
r	Pearson product-moment correlation
<	Less than
>	Greater than
=	Equal to
B	Standardized <i>Beta</i> coefficient: change in the outcome variable in standard deviations associated with one standard deviation change in the predictor variable
χ^2	Computed value of a chi-square test
SE	Standard error
Mdn	Median
N	Total number in a sample
Wald	Wald statistic: test statistic used to assess whether the regression coefficient for a predictor in a logistic regression model is significantly different from zero
C.I.	Confidence interval
SD	Standard deviation

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CONTENTS

ABSTRACT	ii
DEDICATION	iv
LIST OF ABBREVIATIONS AND SYMBOLS	v
ACKNOWLEDGMENTS	vi
LIST OF TABLES	ix
1. CHAPTER 1: INTRODUCTION	1
2. CHAPTER 2: METHOD	40
3. CHAPTER 3: RESULTS	59
4. CHAPTER 4: DISCUSSION	81
REFERENCES	98
APPENDICES	106

LIST OF TABLES

1. Demographic Variables of the Sample	60
2. Predicting Case Outcome by Report Type.....	62
3. Predicting Case Outcome by CLAS-MR Score.....	63
4. Predicting Case Outcome by High and Low CLAS-MR Scores	64
5. Predicting ID Status by CLAS-MR Score and Report Type: Main Effects.....	65
6. Predicting ID Status by CLAS-MR Score and Report Type: Interactions.....	65
7. Predicting Influence of Escape History on Final ID Decision by Report Type and CLAS-MR Score.....	67
8. Predicting Influence of Criminal History on Final ID Decisions by Report Type and CLAS-MR Score.....	68
9. Predicting Influence of Employment History on ID Decisions by Report Type and CLAS-MR Score	69
10. Predicting Influence of Marital History on Final ID Decision by Report Type and CLAS-MR Score.....	70
11. Predicting Influence of Driving Ability on Final ID Decision by Report Type and CLAS-MR Score	71
12. Predicting Influence of Communication Skills on Final ID Decision by Report Type and CLAS-MR Score.....	72
13. Predicting Influence of Prison Behavior on Final ID Decisions by Report Type and CLAS-MR Score.....	73
14. Predicting ID Status by Report Type and Influence of Index Offense	74

15. Predicting ID Status by Report Type and Knowledge of ID	75
16. Predicting ID Status by Report Type and Experience with ID.....	76
17. Predicting ID Status by Report Type and Knowledge-Experience	77
18. Predicting Influence of APD History on Final ID Decision by Report Type and CLAS-MR Score.....	78
19. Predicting ID Status by Report Type and Influence of APD.....	79
20. Source Credibility as a Predictor of Agreement with Report Findings	80

CHAPTER 1

INTRODUCTION

In *Atkins v. Virginia* (2002), the United States Supreme Court held that individuals with intellectual disability (ID) are exempt from the death penalty. That case established the execution of individuals with ID as a violation of the 8th Amendment's protection against cruel and unusual punishment. Since the *Atkins* decision, determinations regarding the presence of ID have typically been decided by judges (Blume, Johnson, & Seeds, 2010), but little is known about the basis for judicial decision-making in these cases. While judges have access to expert witnesses to inform their decisions regarding the presence of ID, little is known about the factors presented by psychologists that judges find influential in their decisions. The general style in which psychologists present their information (i.e., focus on strengths versus deficits in deriving conclusions) remains unaddressed in the literature. The influence of the content contained in psychological assessment reports (e.g., previous diagnosis of ID, employment and educational history, prior mental health treatment, marital status) also remains unexplored. In addition, the impact of case specific variables (e.g., level of planning, complexity of the actual murder[s], ability to elude police) contained in those reports have not been thoroughly examined.

Exploration of the factors that influence judicial decision-making in *Atkins* cases is important for a number of reasons, foremost among which is gaining an understanding of the decision-making process. Specifically, research is needed to examine whether judicial decisions are guided by commonly held negative attitudes related to ID (i.e., ID is characterized by severe and obvious deficits), rather than systematic, analytic-based decisions. Given that *Atkins* cases

often include voluminous documents and judges may have little familiarity with ID prior to presiding over an *Atkins* hearing, their thinking and decisions may be particularly susceptible to the “mental shortcuts” characteristic of attitudes and related biases toward a subject (Aronson, 2008; Chaiken & Maheswaran, 1994). Decision-making in *Atkins* cases may also be prone to the influence of attitude and related bias because the psychological reports submitted to the court for any one case may conflict in their assessment practices, interpretation of results, and/or diagnoses/conclusions. Decision-making has been shown to be especially prone to the influence of attitudes and biases when ambiguous information is presented (Chaiken & Maheswaran, 1994; Darley & Gross, 1983; Greene & Ellis, 2007). Gaining an understanding of whether *Atkins* decisions are influenced by negative attitudes is important in order to assess whether these decisions are made equitably.

There is scant empirical research on judicial decision-making, especially as it pertains to *Atkins* cases. Thus, judicial decision-making as a function of psychological report style and content, as well as the manner in which attitudes toward the ID population may affect decisions in these cases, remains unexplored territory. The present study aimed to fill those gaps in the literature.

Defining Attitudes: An Overview of Relevant Concepts

It is important to provide an overview of attitude prior to considering the influence of psychological assessment report style and content on judicial decision-making, as judicial attitudes toward ID may impact the way in which the information contained in reports is processed. Attitudes are defined as “favorable or unfavorable dispositions toward social objects, such as people, places, and policies” (Greenwald & Banaji, 1995, p. 7). Petty, Wegener, and Fabrigar (1997) noted that the most important aspect of attitudes is the evaluative component that

accompanies the overarching opinion of a subject. The evaluative component acts as a lens through which data concerning groups or behaviors is colored.

Pratkanis (1987) conducted a study in which he hypothesized that attitudes would lead to selective identification of facts, especially in cases related to ambiguous past events. In that study, 60 undergraduate students were tasked with identifying which statement of two they believed was true regarding 16 public figures; an equal number of liberal and conservative personalities were included in the study. Participants also completed a task in which their attitudes toward the 16 personalities were assessed. The results of the study indicated that participants were more likely to identify a statement about a public figure as true when it was consistent with their attitude toward that individual. Pratkanis concluded that “social history can be rewritten to reflect one’s current attitudes and beliefs” (1987, p. 6). That finding is particularly relevant to the current study because decisions made in *Atkins* cases tend to include review of voluminous and ambiguous information that is open to interpretation and susceptible to the influence of attitudes, as well as a retrospective evaluation of behaviors.

Lord, Ross, and Lepper (1979) conducted a study that examined the impact of information that either confirmed or disconfirmed beliefs regarding capital punishment, which is especially relevant to the current study. The authors hypothesized that belief polarization (i.e., further commitment to initial beliefs and attitudes) would increase when participants were confronted with mixed or inconclusive findings. Belief polarization was hypothesized to occur as a result of biased processing in favor of evidence that is consistent with initial attitudes toward a subject. Evidence contrary to attitudes and expectations, on the other hand, would likely be dismissed in favor of information that was attitude-consistent. The study included 24 participants in favor of the death penalty and 24 participants who were opposed to the death penalty. All

participants answered questions that provided insight into their attitudes toward capital punishment. Participants then read one study that supported the death penalty as a deterrent to crime and one study that disconfirmed its utility as a deterrent. After reading the studies the participants completed a questionnaire that assessed their change in attitude toward capital punishment as a result of exposure to the materials. Participants were then exposed to detailed critiques of the previously read studies' methods and procedures, followed by an additional assessment of their attitudes.

The results of the aforementioned study by Lord, Ross, and Lepper (1979) indicated that there was a strong correlation between participant attitude toward the death penalty and the study they found convincing. Specifically, participants found attitude-consistent information to be convincing, and they were more likely to dismiss attitude-inconsistent information. In addition, the results supported the hypothesis that the presentation of mixed or ambiguous information detailing the deterrent effects of the death penalty further polarized participant attitudes rather than facilitated impartial consideration of the information presented. Examination of attitudes at the conclusion of the study showed that participants were more entrenched in their initial attitudes toward capital punishment than they were at the outset of the study. In sum, the authors concluded that participants found arguments/information convincing when the content was consistent with their existing attitudes, and ambiguous information appears to further polarize attitudes and beliefs toward a subject. These results may be due to biased processing such that attitude-consistent information is attended to and internalized while attitude-inconsistent information is dismissed.

The Attitude-Behavior Relationship. Although attitude can shape the way information is processed (i.e., attitude- consistent information is valued and more readily recalled, attitude-

inconsistent information is dismissed, ambiguous information further polarizes initial attitudes), the relationship between attitude and behavior has been shown to be inconsistent. In his seminal review of over 40 studies on the relationship between attitude and behavior, Wicker (1969) concluded that, “Taken as a whole, these studies suggest that it is considerably more likely that attitudes will be unrelated or only slightly related to overt behaviors than that attitudes will be closely related to actions” (p. 65). He further noted that available studies typically cited less than 10% of the variance in overt behavioral measures could be attributed to attitudes. Although Wicker’s review was conducted over 40 years ago, ongoing empirical study of the relationship between attitude and behavior has continued demonstrate mixed results (for a thorough review of relevant literature see Ajzen & Fishbein, 2005).

While research continues to demonstrate an unreliable relationship between attitude and behavior, the accessibility of attitudes toward a subject appears to increase the likelihood that individuals will behave in attitude-consistent ways. Attitude accessibility refers to the “speed and ease with which the attitude can be accessed from memory” (Fazio, Chen, McDonel, & Sherman, 1982, p. 340). High attitude accessibility easily calls to mind a stored evaluation of the subject and low attitude accessibility does not reference a stored evaluation with ease. A number of studies (for an overview of relevant research see Glasman & Albarracin, 2006) have demonstrated that increased attitude accessibility results in greater attitude-behavior consistency.

In sum, attitudes are stored evaluations of a subject. The presentation of attitude-consistent or ambiguous information can serve to activate attitudes and lead to further polarization of beliefs as a result of biased processing of information related to the subject. While attitudes may be important to the manner in which one views a subject and processes

information, attitudes are not necessarily indicative of behavior, as research has shown an inconsistent relationship between attitudes and behavior.

Judicial Decision Making and the Influence of Attitude

There is little research on the factors that influence judicial decision-making, especially with regard to determinations of ID status in *Atkins* cases. However, existing research on judicial decision-making reveals that there are a number of non-legal factors (e.g., defendant and victim demographics, the judge's background) that affect legal decisions (e.g., Baumer, Messner & Felson, 2000; DeSantis & Kayson, 1997; Dhimi, 2003; Englich, Mussweiler, & Strack, 2006; Foley, 1987; Guthrie, Rachlinski, & Wistrich, 2001; Lichtenstein, 1982; Steen, Engen, & Gainey, 2005; Vito & Keil, 1988). Although the majority of research efforts in the area of legal decision-making have focused on decisions made by laypeople (i.e., jurors; Greene & Ellis, 2007), there is a small body of scholarly writing, largely non-empirical, that explores the possible role of non-legal factors, which includes attitudes and related stereotypes/bias, in judicial decisions.

The influence of anecdotal and behavioral evidence in judicial decisions. Anecdotal and behavioral evidence is often favored over statistical data in legal decision-making (Lyon & Koehler, 1996). For example, Lyon and Koehler (1996) found that in child sexual abuse cases, the courts tend to value discussion of characteristics or behaviors that they perceive as consistent with sexual abuse when considering the legitimacy of such claims. The courts tend to overlook that there is no behavioral protocol for abuse victims. By doing so, the courts fail to consider the fact that many children without a history of sexual abuse also possess those characteristics or behaviors and vice versa. More careful consideration of those characteristics and behaviors in both abuse victims and those without such a history might provide an appropriate context for the

consideration of seemingly dispositive factors, and as such, minimize the influence of attitude and bias (i.e., children who have been abused act in certain ways and those without an abuse history do not display such characteristics/behaviors). Rachlinski (2000) noted that the legal system tends to “treat the term ‘consistent with’ as being identical to ‘probative value of’” (p. 90).

In *Atkins* cases, it is possible that judges favor anecdotal/behavioral evidence over objective testing data (e.g., scores on IQ measures, adaptive behavior profiles). As such, judges may be more highly influenced by the psychological assessment reports and related opinions of psychologists that offer anecdotal/behavior evidence with little objective testing data to support their opinions simply because the presentation of such evidence is more appealing, especially when the evidence is consistent with their attitudes toward ID. In addition, evidence presented by psychologists that evokes an image of how judges believe an individual with ID *should* act may also be highly influential because it serves to confirm a preconceived, albeit often inaccurate, prototype of ID (see Public Conceptualization of Mild ID for information regarding popular conceptualizations of ID). Thus, the anecdotal/behavioral evidence conveyed in psychological assessment reports that coincides with judicial attitudes and related bias toward individuals with ID, despite potential inaccuracy of the image, may be especially persuasive and influential in final judicial opinions.

The influence of retrospective evaluation in judicial opinions. The fact that judges evaluate events, as well as the characteristics and actions of defendants and victims, from a retrospective position may influence the weight certain evidence is given when addressing legal questions (Greene & Ellis, 2007). Greene and Ellis (2007) noted that the emotional nature of the events that come before the criminal justice system can lead to a great deal of processing rooted

in attitudes and bias rather than systematic and analytical evaluation of evidence. For example, if a judge in an *Atkins* case cannot generate scenarios based on the evidence provided in which the claimant has ID (e.g., the judge cannot envision an individual with ID planning and executing a multiple-victim murder and escape), he/she may rule against the claimant despite objective findings that support both a diagnosis of ID and the ability to execute such behaviors. However, if the details of the crime and the other case-specific variables comport with the beliefs of the judge regarding the abilities and behaviors of individuals with ID (i.e., individuals with ID *can* complete the tasks involved in that capital crime), the judicial opinion may find in favor of the claimant. In general, the retrospective nature of the decisions made in *Atkins* cases and the potential for these cases to trigger emotional reactions that then activate attitudes and related biases in the processing of information may influence how evidence is weighed in judicial decisions in these cases.

The influence of a subset of factors in judicial decision-making. There is evidence that judicial decisions tend to rely on only a small number of factors among the many that are presented in a given case. Dhimi (2003) found that judicial decisions regarding bail in a sample of actual cases from courts in London could be predicted using “a small subset of cues, and bases its predictions on one cue alone” (p. 175). The results of that study indicated that bail could be accurately predicted based on a small subset of cues 96.3 and 94.6% of the time for the two courts sampled. Although 25 cues were included in the analyses of that study, the results indicated that, on average, sets of three cues were considered in decisions. Influential cues included requests from the prosecution regarding bail, previous conviction(s), the defendant’s community ties, and special conditions in custody requested by police following arrest. The author posited that the decisions made by others in prior cases or proceedings for the index

offense (i.e., police, previous bench, prosecutors) were highly influential in judicial decision-making; others' decisions acted as a default in bail decisions. These results generally indicate that while a great deal of information may be presented in a legal proceeding, decisions often rest upon a small number of factors, especially decisions made by others in prior proceedings.

It is possible that judges attend to only a subset of the many factors presented in *Atkins* cases. That small subset of influential factors may consist of those that support the judge's attitude toward and preconceived notions of ID, despite their accuracy, scientific rigor, and/or relationship to the diagnostic criteria. Judges may also defer to the decisions made by psychologists they find credible, similar to the manner in which judges deferred to prior decisions made by legal professionals in Dhimi's study (2003); Dhimi's study (2003) did not cite credibility as a factor in judges' tendencies to rely on prior legal decisions in making their bail decisions, but credibility has been shown to sway opinions (Aronson, 2008).

Non-legal factors influencing decisions. There are a number of non-legal factors (i.e., issues outside of the legal question) that have been cited in the literature as impacting judicial decisions. The influence of these non-legal factors appears to be related to attitudes towards the broad groups that manifest these characteristics. The non-legal factors most often cited in the literature to influence decision-making include age, gender, and race. Research indicates that decision-making has been influenced by age and gender, such that younger individuals and males are treated more punitively within the criminal justice system than older individuals and females (Albonetti, 1991; Foley, 1987; Steffensmeier, Ulmer, & Kramer, 1998).

Similar studies have been conducted on the influence of race in sentencing determinations. According to Steen, Engen, and Gainey (2005), "the racial stereotyping approach to understanding disparity in punishment asserts that global, culturally derived stereotypes about

race-ethnicity link certain groups of offenders to notions of dangerousness, culpability, and threat of criminality” (p. 437). Specifically, some research (e.g., DeSantis & Kayson, 1997; Foley, 1987; Lichtenstein, 1982; Steffensmeier, Ulmer, & Kramer, 1998; Vito & Keil, 1988; Wolfgang & Riedel, 1973) has found that racial minorities tend to be treated more punitively than their Caucasian counterparts, and minority races have been linked to perceptions of increased dangerousness and/or culpability. Research regarding the role of victim race in death penalty cases has “demonstrated that offenders who have white victims, and black offenders who kill whites in particular, are more likely to face a ‘death qualified’ jury and receive the death sentence” (Vito & Keil, 1988, p. 483).

While a number of studies have revealed race to play a statistically significant role in sentencing, other research has revealed mixed results. In a meta-analysis of race and sentencing studies published between 1974 and 1996, Pratt (1998) found race was not a significant factor in length of sentence. The author further noted that the way in which race was operationalized in the studies included in the meta-analysis might play a role in the significance of race on sentencing. It was noted that race was more likely to be a significant determinant of sentencing when it was dichotomized as either White or non-White, but not when a third, “other” category was an option; racial designations of prior research may conceal the effects of race on sentencing. Thus, research methodology and related data analysis appears to impact findings regarding the role of race in sentencing.

While the majority of research in the legal arena tends to focus on the influence of age, gender, and race in differential sentencing, there are a number of other non-legal factors that have been studied. English, Mussweiler, and Strack (2006) conducted a series of studies in which they assessed whether the sentences imposed by judges were influenced by irrelevant

factors. Participants in those studies were experienced legal professionals (i.e., judges and attorneys). The irrelevant factors to which the participants were exposed included a sentence proposed by a journalist (i.e., one versus three years in prison), the prosecuting attorney's sentence demand that was determined at random and consisted of either a high (i.e., nine-month probation) or low (i.e., three-month probation) sentence, and the throw of dice in which the numbers obtained were then said to be the prosecutor's sentence demand. The results were consistent across the three studies, as the sentences proposed by participants were positively correlated with the anchor to which they were exposed (i.e., journalist's sentence proposal, prosecutor's sentence, numbers on a dice roll); high anchors resulted in more severe sentences by participants and low anchors resulted in less severe sentences. Overall, these results indicated that legal professionals' decisions were influenced by irrelevant factors. This tendency remained constant despite the fact that the legal professionals were told that the sentencing anchors were randomly chosen in the latter two studies. Thus, legal decision-making does not appear to be immune to the influence of irrelevant and/or random information. Similar irrelevant factors may influence judicial decision-making in *Atkins* cases, and more broadly, views of individuals with ID.

The influence of mental health evidence on judicial decision-making. There is contradictory information regarding the influence of psychological evidence on judicial decision-making in criminal cases. Research in the area of competence to stand trial found that judges' opinions typically align with that of mental health professionals (Zapf, Hubbard, Galloway, Wheelles, & Ronan, 2004; Freckleton, 1996), which may indicate an overreliance on mental health evidence. In contrast, Melton, Petrila, Poythress, and Slobogin (2007) opined that the information provided by psychologists may be "insignificant in many cases- either in the sense

that the judge pays little attention to it, or in the sense that the judge merely uses it to justify ‘scientifically’ a decision he or she has already made” (p. 291). Thus, it is possible that judges selectively use psychologists’ opinions, and they may also use them only when they are attitude-consistent. Similar processes may be present in *Atkins* cases, with a possible overreliance on attitude-consistent information and/or dismissal of attitude-inconsistent psychological evidence regarding ID despite its objective value to the legal issue.

There is also evidence to suggest that judges give greater weight to certain aspects of mental health testimony than others. Redding, Floyd, and Hawk (2001) conducted a vignette-based study in order to examine preferences regarding mental health testimony in criminal responsibility (i.e., insanity) determinations. The results were similar to those of Lyon and Koehler (1996), such that descriptive clinical evidence was preferred over other types of evidence. Specifically, in a sample of judges and attorneys, anecdotal and behavioral evidence, clinical diagnosis, and theoretical explanations of behavior accounted for 30.7% of the variance in the ratings of importance regarding types of evidence provided by mental health professionals (MHP). In that study, importance of evidence was defined as the degree to which the evidence was essential to a “fair and accurate finding” (p. 586). Relevance to the legal issue accounted for the second greatest portion of the variance (i.e., 16.7%) and the least influential was statistical evidence (i.e., 14.15%). Statistical evidence included data on diagnostic reliability and the criminal act itself. Similar to the findings of other studies (e.g., Krauss, Lieberman, & Olson, 2004; Lyon & Koehler, 1996; Redding & Reppucci, 1999), the researchers concluded that legal professionals tend to minimize the extent to which quantitative data can be applied and some judges may not consider scientific methodology “essential” in forming clinical opinions.

The influential nature of anecdotal and behavioral evidence may be the result of the potential for such evidence to support judicial attitudes in a way that statistical and more objective evidence cannot. It is possible that the highly important quantitative data presented in *Atkins* cases (e.g., IQs, adaptive behavior scores) are minimally influential and judges rely on the anecdotal and behavioral evidence presented by psychologists.

Diagnostic Criteria for Intellectual Disability

In order to understand the ways in which psychological assessment report style (i.e., strength- versus deficit-based) and content, as well as negative attitudes, may influence determinations of ID, it is necessary to review the diagnostic criteria. There are two main definitions of ID. The American Association on Intellectual and Developmental Disabilities (AAIDD; 2010) puts forth one of those definitions, and the other is put forth by the American Psychiatric Association (APA; American Psychiatric Association, 2013). Both definitions include three diagnostic criteria: (a) deficits in intellectual functioning, (b) limitations in adaptive functioning, and (c) onset of the aforementioned deficits prior to the age of 18 years.

With regard to establishing deficits in intellectual functioning, both organizations require the use of an individually administered, psychometrically valid, and comprehensive measure of intelligence. As noted by the APA (2013), “Individuals with intellectual disability have scores of approximately two standard deviations or more below the population mean, including a margin for measurement error (generally +5 points). On a test with a standard deviation of 15 and a mean of 100, this involves a score of 65-75 (70+/-5)” (p. 37). A diagnosis of ID, or refutation of this diagnosis, should not be rendered without administration of an appropriate IQ measure (AAIDD, 2010).

Both the AAIDD (2010) and the APA (2013) require significant deficits in adaptive behavior. Adaptive behavior is currently conceptualized as falling into three broad domains: (a) conceptual, (b) social, and (c) practical. The conceptual domain generally includes those skills that involve the concepts of language, money, reading and writing, time, and numbers (AAIDD, 2010). The social domain “involves awareness of others’ thoughts, feelings, and experiences; empathy; interpersonal communication skills; friendship abilities; and social judgment” (APA, 2013, p. 37). Lastly, the practical domain includes those skills related to activities of daily living (e.g., hygiene and health), money management, employment, scheduling (e.g., making and attending physician’s appointments), safety, travel/transportation, and leisure activities (AAIDD, 2010).

While both the AAIDD (2010) and the APA (2013) define adaptive behavior in terms of three domains, they differ in the nature of the impairments required for a diagnosis of ID. The AAIDD (2010) requires either significant impairment (i.e., performance that is approximately two standard deviations below the mean) in one of the aforementioned domains or an overall score on a measure of adaptive behavior (i.e., an adaptive behavior composite). In contrast, the APA (2013) requires impairment in at least one of the three domains, but does not quantify the level of impairment necessary for a diagnosis of ID. It should be noted that while the APA does not designate specific cutoff scores, it does require that impairments in adaptive functioning be the direct result of intellectual impairment. The AAIDD, on the other hand, does not make such a statement regarding the direct link between adaptive impairments and intellectual limitations.

As stated by the AAIDD (2010), adaptive behavior should be assessed through the use of an appropriate, standardized measure of adaptive behavior. Both the AAIDD and the APA, however, recognize that these measures are sometimes inappropriate or impossible to administer.

There are other methods of obtaining data relevant to this issue (e.g., clinical judgment, record review, collateral contacts) that can be used for diagnostic purposes when standardized measures are impossible or inappropriate to use (AAIDD, 2010).

The use of clinical judgment in the diagnosis of ID. While objective testing is necessary for accurate assessment and diagnosis of ID, clinical judgment also plays a large role and may explain differences in the conclusions reached by multiple evaluators in any one case. As stated by the AAIDD (2010) and Schalock and Luckasson (2005), “clinical judgment is a special type of judgment rooted in a high level of clinical expertise and experience; it emerges directly from extensive data” (p. 86 and p. 5, respectively). Formal training, as well as clinical experience and extensive knowledge of an evaluatee, must inform clinical judgment.

Both the AAIDD (2010) and Schalock and Luckasson (2005) noted there are three criteria that must be met when clinical judgment is used. The processes involved in clinical judgment must be systematic, which includes decisions and related processes that are organized, sequential, and logical. Clinical judgment must be formal, which necessitates explicit and well-reasoned decision-making. Finally, clinical judgment must be transparent. The AAIDD (2010) clearly notes that clinical judgment should not be conceptualized as “a justification for abbreviated evaluation, a vehicle for stereotypes or prejudice, a substitute for insufficiently explored questions, an excuse for incomplete or missing data, or a way to solve political problems” (p. 87). It should be noted that clinical judgment is but one aspect of a comprehensive, ethical, and accurate evaluation of ID. Clinical judgment should not supersede the results of valid and reliable assessment instruments (e.g., measures of IQ, adaptive behavior measures).

The use of clinical judgment in *Atkins* cases has been addressed in the literature. MacVaugh and Cunningham (2009) noted that there are a number of misuses of clinical

judgment that may occur in these cases. One misuse includes proffering an opinion that an obtained IQ is an underestimate of an evaluatee's true IQ as a result of seemingly incongruent and more developed verbal ability or social functioning. They also cautioned against the use of intuitive judgments, which include those rooted in statements such as a claimant "does not seem mentally retarded" (p. 155). The authors reasoned that such intuitive judgments should not be used because normative comparisons do not exist for such impressions, and those statements do not have scientific merit, as they are not valid or reliable.

Clinical judgment may be especially pertinent in *Atkins* evaluations, as evaluators may be faced with numerous and discrepant scores on intelligence measures when reviewing records (MacVaugh & Cunningham, 2009). The authors recommended that evaluators thoroughly consider scoring errors in discrepant results, as well as the psychometric properties of the measures used in the evaluation in order to generate hypotheses that can account for the differences in scores. They caution evaluators not to dismiss results from standardized testing in favor of their intuitive judgment or general impressions of a claimant. Furthermore, the AAIDD (2010) specifically notes that criminal and verbal behavior should not be used to infer level of adaptive functioning or to confirm/refute the presence of ID.

In sum, clinical judgment is often an important aspect of evaluations of ID, especially in *Atkins* cases. However, the decisions rooted in clinical judgment should be clearly explained in psychological assessment reports. These decisions should not dismiss results of valid and reliable assessment measures, but rather, they should incorporate those results to support their judgment or thoroughly explain why the results do not comport with their opinion. Thorough and clear explanation as to the source of discrepant scores and/or opinions may serve as a safeguard against confirmation bias, which is defined as the tendency to "seek, perceive, interpret, and

create new evidence in ways that verify their preexisting beliefs” (Kassin, Dror, & Kukucka, 2013; p. 44).

Characteristics of mild intellectual disability. According to a number of sources (e.g., Switzky & Greenspan, 2006; MacMillan, Siperstein, & Leffert, 2006; Salekin, Olley, & Hedge, 2010), the majority of claimants in *Atkins* cases fall within the mild range of ID. As such, it is important to provide an overview of mild ID. It should be noted that while previous definitions of ID put forth by the APA (2002) and AAIDD (e.g., Heber, 1961; Grossman, 1973; Grossman, 1983) assigned severity levels through the use of IQ cutoffs, the most recent APA (2013) conceptualization determines severity by the extent of limitations in adaptive behavior; the AAIDD (2010) no longer conceptualizes ID through the use of severity levels.

Both the APA (2013) and Baroff and Olley (1999) provide a similar overview of the abilities and impairments in functioning typically experienced by individuals with mild ID. In the conceptual domain, adults with mild ID may approach problems in a concrete manner and typically have difficulty with abstract thinking. Executive functioning (e.g., planning, cognitive flexibility), short-term memory, and the skills related to academic settings may also be affected. In the social domain, individuals with mild ID may appear immature, language and communication may be concrete, emotion regulation may be difficult, and they may exhibit poor social judgment. Individuals with mild ID may also be at risk of manipulation by others (i.e., gullible, naïve) and fail to adequately assess the risk(s) associated with their behavior and social situations. In the practical domain, individuals with mild ID may function at an age-appropriate level with regard to personal care. However, support may be needed with more complex practical skills (e.g., raising a family, obtaining and maintaining competitive employment, money management, healthcare and legal decisions).

For many individuals with mild ID, overt limitations may be restricted to areas that emerge in an academic context, which may be less obvious to others (MacMillan, Siperstein, & Leffert, 2006). According to Baroff and Olley (1999) adults with mild ID typically demonstrate full and independent, albeit basic, self-help skills, function independently in the community, possess basic reading skills, complete basic calculations, and are able to maintain employment in unskilled positions. In addition, individuals with mild ID can “fulfill all adult social roles: have friends, marry, and become (a) parent” (Baroff & Olley, p. 58).

In general, individuals with mild ID present with more subtle impairments than individuals with more severe ID (MacMillan, Siperstein, & Leffert, 2006). Greenspan (2006) noted that mild ID is often difficult to identify because “there is overlap in symptoms and needs between this group and the much larger population of marginally functioning ‘normal people’” (p. 206). Individuals with mild ID are, in many ways, indistinguishable from their non-ID counterparts. As a result of the fact that individuals with mild ID are more similar to than different from the population with low average intelligence, MacMillan, Siperstein, and Leffert (2006) noted “individuals with (mild ID) represent 100% of the cases in which the answer to the question ‘Does this individual have (ID)?’ is actually in doubt” (p. 197). The similarity between individuals with mild ID and those at the lower end of the average range of functioning complicates ID assessment and diagnosis in *Atkins* cases.

The “cloak of competence.” Accurate diagnosis of ID is further complicated by the tendency of individuals with ID to assume what is often referred to as the “cloak of competence” (Edgerton, 1993). This term is described as the practice by which individuals with ID attempt to mask their impairments in order for their deficits to go undetected by others. For example, an individual with ID may choose to engage in discussions in which they are comfortable, familiar,

and possess accurate knowledge. In doing so, they mask the fact that they lack knowledge in many other areas. Extreme care in maintaining hygiene, clothing, and general physical appearance are also ways in which people with ID attempt to conceal deficits in other areas (Keyes, Edwards, & Dering, 1998). Thus, use of the cloak of competence allows individuals with ID to appear largely unimpaired.

While the cloak of competence may assist individuals with ID to avoid detection in their everyday lives, this practice is counterproductive to the accurate assessment and diagnosis of ID. For example, scores on adaptive behavior measures may be inflated because respondents may accurately report the skills they have seen the evaluatee demonstrate, but then extrapolate from those skills to others which they have never observed the individual completing. The respondent may erroneously assume the evaluatee is equally as competent across skills, thereby making the evaluatee appear more capable than is accurate. It is only through thorough evaluation (e.g., review of all available records, administration of psychometrically sound measures when appropriate, collateral contacts) that evaluators are able to identify and explain instances in which the cloak of competence is used and how it affected accurate assessment and diagnosis of ID in any one individual.

Public Conceptualization of Mild ID

There is a small body of literature regarding the general public's conceptualization of ID. Generally, it appears the public believes that individuals with ID are easy to identify in that members of the ID population demonstrate the same deficits, all of which are severe (Scior & Furnham, 2011; Scior, 2011). As noted by Dudley (2000), the current perception is that people with ID are "incapable of thinking or speaking for themselves, being unable to live independently, and being unable to become employed in the competitive work world" (p. 449).

However, these conceptualizations overlook the vast majority of individuals with ID and virtually all of those who fall in the mild range.

Several recent studies found that the general public largely underestimates the abilities of those with mild ID. Musso, Barker, Proto, and Gouvier (2011) examined the way 890 college students conceptualized mild ID. The results indicated that 23.7% of the sample did not believe individuals with mild ID marry and 29.3% believed that individuals with mild ID “almost never” maintain employment. Sixty percent of the sample indicated it was sometimes easy to tell when an individual had mild ID, 14.2% agreed it was “often” easy to tell, and 4.4% believed it was “almost always” easy to make that distinction. Participants were also split on whether individuals with ID could carry out basic tasks associated with day-to-day life, which included the ability to manage money, use a cell phone, shop, hold a conversation, clean their home, understand instructions, complete errands, and drive a vehicle. Overall, these results indicated that current perceptions of individuals with mild ID tend to promote the misperception that individuals with mild ID are easy to identify and severely impaired.

A study by McCaughey and Strohmer (2005) examined prototypes of various disability groups, which included ID. The results indicated that the core characteristics of the ID prototype were accurate. They included “needs help/dependent on others” and “slow learner/comprehension problems” (p. 94); 77% and 72% of the sample endorsed those characteristics, respectively. However, there were a number of inaccuracies in the secondary characteristics of this prototype. Inaccurate secondary characteristics included: impaired speech and motor skills, childlike, obvious physical differences, and a happy/loving disposition. The sample correctly identified enrollment in special education as a secondary characteristic. Tertiary characteristics included an inability to function normally in society and work, and the presence

of a brain dysfunction; the latter is atypical for those with mild ID. Generally, results indicated that participants believed individuals with ID could be readily recognized and these results provided evidence that the prototype for mild ID includes a number of characteristics that are outside the clinical definition (e.g., speech impairment, physical differences, impaired motor skills).

In a study conducted by Doane and Salekin (2009) on the ability to malingering adaptive behavior deficits after coaching was provided, results indicated that mild ID was poorly understood by the undergraduate sample. That study tasked participants with completing two different adaptive behavior measures (Adaptive Behavior Assessment System- 2nd Edition [ABAS-2], the Scales of Independent Behavior- Revised [SIB-R]) as if they were reporting as a person with either mild, moderate, or unspecified ID; information relevant to the specific severity level was provided to participants prior to completion of the measures. Consistent with the aforementioned perceptions of ID, participants in that study significantly underestimated the abilities of individuals with mild ID on one of the two measures (ABAS-2) despite coaching, and they responded in a manner that was consistent with severe deficits, regardless of the severity of ID that was coached (i.e., mild, moderate, unspecified). It should be noted that participants in the study endorsed significantly more impaired skills in the practical domain than those in the social or conceptual domain on one of the measures used. In general, the results indicated that participants underestimated the abilities of individuals with ID, and as such, they were ineffective at malingering the adaptive behavior deficits characteristic of this population on one of the measures (ABAS-2). A similar study conducted by Schnorf (2013) also found that simulators tended to present with severe deficits on an adaptive behavior measure used in the study, which endorsed a perception of ID that was characterized by severe deficits.

In sum, research related to public perception of ID has indicated that the lay population possesses an inaccurate understanding of ID, especially the mild range. The general public tends to endorse a perception of mild ID as being easily recognized. Furthermore, the general public tends to underestimate the abilities of those with mild ID. This information is relevant to the current study because judges may also have an inaccurate understanding of the abilities typically held by individuals with mild ID and, as a consequence, ID determinations may be made in error in some cases.

Studies Related to Perceptions of ID in the Legal System

There are several studies that examined perceptions of ID within the criminal justice system. One study found that judges believed individuals with ID involved in the criminal justice system are at a greater disadvantage than their typically functioning peers (Cockram, Jackson, & Underwood, 1992). The results also indicated that 24% of participants thought that these individuals act more competent than they are. Of interest, the judges in that study rated their understanding of ID to be low and often confused ID with serious mental illness. Perhaps most relevant to the current study, 24% of judges thought that people who have ID are easy to identify.

In their study of 96 criminal attorneys in Australia, McGillivray and Waterman (2003) assessed beliefs regarding individuals with ID. The results indicated that 96.9% of the sample acknowledged that individuals with ID had different needs than other marginalized groups. The majority of the sample (68.4%) believed that this population has a tendency to want to please others, and 63.5% of the sample believed this population desired to appear competent. Further analysis indicated that participants familiar with ID were significantly more aware of this population's tendency to want to present as non-impaired (i.e., the cloak of competence). Similar

to the previously cited studies on the public's perception of ID, results of that study indicated a minority of the sample believed it was easy to determine whether an individual had ID. In sum, it appears that there may only be a basic working knowledge of ID among the attorneys in that study.

There is evidence that the presence of ID in both crime victims and suspects has an impact on the way in which police officers respond to a crime. McAfee, Cockram, and Wolfe (2001) conducted a study in which they analyzed police response to crimes that involved individuals with ID in a sample of over 300 officers. That study aimed to assess participant response across a number of scenarios, which included the presence of ID in the victim, presence of ID in the suspect, and type of crime (i.e., major vs. minor). The results indicated that officers were less likely to believe victims when the alleged assailant had ID, major crimes were viewed as more serious when the alleged assailant had ID, and officers took significantly stronger actions on the victim's behalf when they had ID (e.g., called a counselor to assist). In the less serious crime scenario, officers took less severe action against the assailant when he/she had ID. The authors concluded that the presence of ID was a significant determinant with regard to how the officers handled the vignette. The authors further concluded that officers' responses to the vignette was evidence of the attitude and related biases they held regarding individuals with ID (e.g., individuals with ID are more dangerous) and in need of additional protection when victimized, as their responses were deemed "more extreme" (p. 169) when compared to the responses provided for non-ID vignettes.

One study examined the contents of court testimony in pre-*Atkins* cases in which the presence of ID was at issue. Kan, Boccaccini, McGorty, Noland, and Lawson (2009) conducted a study using 19 pre-*Atkins* trial transcripts to examine the frequency of testimony content. Their

results indicated that adaptive behavior was more often discussed than intelligence level. However, only 5 of the 19 cases presented results from standardized measures when testimony on adaptive behavior was presented. The results also indicated that contrary to the AAIDD's (2010) view regarding the inappropriateness of the use of criminal behavior to infer adaptive functioning, 68.4% of the cases in that study used criminal behavior as evidence for or against adaptive functioning. On average, 9 pieces of information related to criminal behavior were discussed with regard to adaptive behavior, with a range of 0 to 68. Thus, it appears that adaptive behavior is an exceptionally important factor discussed in *Atkins* cases, and despite statements made by the AAIDD (2010) prohibiting the use of criminal behavior as evidence for or against impairments in adaptive functioning, details of the claimant's criminal activities are often offered as evidence related to adaptive skills.

A study conducted in 2010, by Boccaccini, Clark, Kan, Caillouet, and Noland, assessed whether jury pool members and mental health professionals harbored the misconceptions often cited in the literature regarding this population (i.e., severe deficits). Participants read a series of statements regarding the abilities of a person who claimed to have ID and then indicated whether the abilities discussed were within the skill set of individuals with ID. The results indicated that there were significant differences in the way jury pool members and mental health professionals viewed these individuals. Jury pool members did not view individuals with ID as engaging in sexual behavior outside of a romantic relationship or using substances. Jury pool members did not view that population as capable of living in the community with assistance. Mental health workers, on the other hand, believed that an individual with ID was capable of living semi-independently in the community. With regard to criminal behavior and the presence of ID, jury pool members tended to endorse the presence of ID when statements were made concerning the

individual's lack of awareness regarding his criminal behavior. Mental health workers were more likely than jury pool members to view individuals with ID as possessing deficits in the ability to drive a motor vehicle. In general, the results of the study tended to support the notion that the lay public views individuals with ID as being significantly more impaired than is accurate.

Two internet-based studies were conducted in order to examine the effects of procedural, evidentiary, and attitudinal variables in mock *Atkins* cases (Reardon, O'Neil, & Levett, 2007). Death-qualified mock jurors were provided a summary of a capital crime, as well as evidence presented by the defense and prosecution. In the first study, the two most relevant manipulations for the current project included evidence that the defendant lacked/did not lack practical adaptive behavior skills (e.g., self-care), and evidence that the defendant did/did not lack skills in the social domain (e.g., interpersonal/relationship abilities) in addressing the claim of ID. That study also assessed the influence of the "nexus" testimony (p. 541), which addressed the defendant's ability to appreciate the nature of his criminal act, as well as the extent to which he was susceptible to the influence of others as a result of intellectual impairments. The nexus testimony connects the presence of ID to the commission of the crime. The results indicated that participants were slightly more inclined to find the defendant to have ID when he lacked social skills than when they were present. Deficits in practical skills did not influence findings of ID. Surprisingly, when the nexus testimony was presented, mock jurors were less likely to find the claimant to have ID.

The first study also manipulated the stage of the legal process at which the ID determination was made (i.e., mid-trial versus post-conviction), as well as the party that bore the burden of proof (i.e., defense versus prosecution). The results indicated that the phase at which the issue of ID was determined played a key role in whether the claimant was found to have ID,

such that participants were less likely to render a finding of ID when the decision was made during a sentencing hearing. In addition, participants were less likely to find the claimant to have ID when the defense bore the burden of proof. According to the authors, procedural variables (i.e., when the decision regarding ID is made, party who bears the burden of proof) might be more influential than evidentiary variables (e.g., deficits in social and/or practical skills, future dangerousness). The authors generally believed that the participants were less likely to render a finding of ID because they were “resistant to making a formal finding of retardation to excuse the defendant from the death penalty” (p. 555). Those results indicated that decisions regarding ID were influenced by factors (e.g. burden of proof, stage of legal process) that were outside of the legal question (i.e., whether the claimant has ID).

The second study used a similar approach to that of the first study. The most relevant manipulations included whether mental illness or ID was claimed, the severity of the mental illness or ID, and the heinousness of the crime. The results indicated that participants were less likely to support a finding of mental illness than they were to find a claimant to have ID. Heinousness was found to be predictive of mental disorder, but only when the mental disorder presented was less severe. When heinousness was paired with severe mental disorder, participants were more likely to find in favor of a death verdict and less likely to support the presence of mental illness or ID. The authors concluded that it is more difficult to convince juries of the presence of mental illness than ID. In addition, they reasoned that the greater rate of death verdicts in the presence of highly heinous crimes committed by severely disordered individuals was likely the result of concerns regarding future dangerousness.

In her doctoral dissertation, Hensl (2011) used a case-vignette study with federal and state judges that examined the influence of judicial knowledge of and attitudes toward ID, as

well as mental illness, on final *Atkins* decisions. The results indicated that judges generally had an adequate understanding of the diagnostic criteria for ID. The results revealed that 16.2% of judges did not understand that a low IQ was insufficient for a diagnosis of ID, and 28.4% of judges did not understand the required deficits in adaptive behavior necessary for a diagnosis of ID. The majority of judges (67.6%) believed that ID could be diagnosed after the age of 18 years. However, results also indicated that although claimants with either mild or moderate ID were depicted in the case vignettes, approximately 38% of the sample did not find the claimant to have ID. The author speculated that those “results may also suggest that some judges refused to render a finding of ID even when they recognized ID was present, or when they believed that the defendant exhibited a more severe level of ID than was actually present, and, in turn, engaged in some form of judicial nullification” (p. 93). Judicial experience with capital cases and/or *Atkins* cases did not predict final decisions. In general, the findings of that study revealed judges generally had an adequate understanding of the criteria needed for a diagnosis of ID, but at the same time, results were consistent with the aforementioned studies in that ID was generally conceptualized as severe. In addition, the author concluded that the results of the study were consistent with information previously discussed in that they demonstrated a “tendency for some judges to disregard objective fact and scientific evidence in favor of their own beliefs, biases, and assumptions” (p. 116) in their final decision regarding the presence of ID.

In sum, the few empirical studies available on the topic of ID and the legal system indicate that legal personnel have a mixed understanding of and attitudes toward the population with ID. Legal professionals tend to acknowledge that this population may be at a disadvantage in the legal system, especially since they may employ the cloak of competence to mask deficits. However, the results also indicated that legal personnel often confuse ID and mental illness, and

they maintain the beliefs that ID is easily recognized and individuals with ID have severe impairments.

The Potential Role of Attitude and Bias in Judicial Decision Making in *Atkins* Cases

Although there is little empirical research regarding the role of attitude in judicial decision-making in *Atkins* cases, there is anecdotal evidence to support the notion that at least some judges may be influenced by these factors when ruling in *Atkins* cases. One of the most notable cases in which attitude and bias appear to have played a significant role in decision-making is *Ex parte Briseno* (2004). In that case, the Court cited seven criteria, commonly referred to as the *Briseno* Factors, which they believed should be considered in *Atkins* cases to assist the Court in making ID determinations. Those criteria are as follows:

1. Did those who knew the person best during the developmental stage- his family, friends, teachers, employers, authorities- think he was mentally retarded at that time, and, if so, act in accordance with that determination?
2. Has the person formulated plans and carried them through or is his conduct impulsive?
3. Does his conduct show leadership or does it show that he is led around by others?
4. Is his conduct in response to external stimuli rational and appropriate, regardless of whether it is socially acceptable?
5. Does he respond coherently, rationally, and on point to oral or written questions or do his responses wander from subject to subject?
6. Can the person hide facts or lie effectively in his own or others' interests?
7. Putting aside any heinousness or gruesomeness surrounding the capital offense, did the commission of that offense require forethought, planning, and complex execution of purpose? (p. 1)

According to MacVaugh and Cunningham (2009), the seven criteria “reflect a level of impairment that is consistent with Moderate Mental Retardation (IQ = 40-55) or Severe Mental Retardation (IQ = 25-40), rather than the Mild Mental Retardation category (IQ = 55-70)” (p. 136), which is the range most often found among *Atkins* claimants. The Factors assume a level of impairment that is more severe than is accurate for *Atkins* claimants, which supports the previously discussed research regarding the public’s tendency to view individuals with ID as

grossly impaired. These Factors further illustrate the Court's misunderstanding of and/or lack of familiarity with mild ID, as the Factors fail to describe the majority of individuals in that population.

Despite the fact that the *Briseno* Factors are not dispositive of ID, they are mentioned in *Atkins* cases with some regularity. A study conducted by Hedge (2012) examined the content of 62 judicial opinions in *Atkins* cases. Of the cases examined, over 48% mentioned at least one of the *Briseno*-type Factors as evidence to support judicial opinions. The results of that study indicated that although the Factors do not coincide with best practices in the assessment and diagnosis of ID, they are nonetheless regularly discussed in *Atkins* decisions.

It should also be noted that the *Briseno* Factors focus on the presence of strengths in determining whether a claimant has ID. The focus on strengths to refute a diagnosis of ID is contrary to the standards put forth by the AAIDD (2010). The AAIDD (2010) note that strengths often exist among deficits in individuals with ID. In addition, the *Briseno* Factors consider the claimant's behavior during the capital offense in the evaluation of ID. Switzky and Greenspan (2006) noted that criminal behavior should not be used as evidence for or against the presence of ID. They cited two main reasons why this should not be done: (a) there is typically a paucity of information regarding the claimant's criminal behaviors and the cognitive skills required to complete them, and (b) normative information regarding the skills involved with crimes (e.g. firing a gun, identifying a store to burglarize, driving a getaway car, disposing of incriminating evidence) that an individual with ID can likely complete and/or not complete does not exist. They also noted "judges...are much more likely than a qualified expert to base their diagnostic judgment mainly on their own intuitive notions, and prejudices, concerning how people with ID are supposed to behave in the world" (p. 291). It should also be noted that deriving impressions

of the presence of ID from criminal behavior is shortsighted, as the AAIDD (2010) requires consideration of adaptive behavior in the context of every day life. Criminal behavior, especially capital crime, is not typically engaged in on a daily basis, and as such, the skills used in crime cannot be generalized to overall adaptive functioning. In sum, focusing on claimant strengths and the use of criminal behavior to inform decisions regarding ID may be the result of negative attitudes (e.g., “a person with ID cannot perform an armed robbery and elude police for three weeks”) rather than systematic evaluation of whether those issues are in fact dispositive of ID.

It is also possible that judges fall prey to illusory correlations that are rooted in attitude and biases (Tversky & Kahneman, 1973). According to Aronson (2008), an illusory correlation is present when a relationship is perceived between “two entities that we think should be related- but, in fact, they are not “ (p. 145). For example, if judges unfamiliar with ID assume that the ability to obtain a license and drive is outside the realm of abilities of those with ID, a claimant who has a license and drives may automatically be perceived as not having ID regardless of other data that indicate deficits consistent with such a diagnosis. The illusory correlation between the ability to drive and not-ID status may result in denial of an *Atkins* claim for a claimant who does in fact have ID, but at the same time is able to drive. The *Briseno* Factors appear to be rooted in a number of illusory correlations (e.g., individuals with ID cannot speak coherently or make plans). Similar to the manner in which attitude-consistent information is more heavily weighted than information that disconfirms preconceived beliefs, illusory correlations can serve to confirm pre-existing beliefs (Aronson, 2008).

Two case studies by Olvera, Dever, and Earnest (2000) presented capital murder cases (i.e., *Indiana v. Miller*, 1998; *Rogers v. State*, 1998), in which ID was claimed¹. Although the

¹ The cases described were tried prior to *Atkins v. Virginia* (2002), however, the two cases occurred in a state (i.e., Indiana) in which it was already considered a violation of the 8th Amendment to execute individuals with ID. Thus,

claimants in the two cases were similar in many ways, the case outcome was vastly different, with one claimant found to have ID, thus escaping the death penalty, and the other sentenced to death after his ID claim was denied. Both claimants operated motor vehicles, were employed in unskilled laborer positions, lived independently, abused substances, and had full scale IQs of less than 70. Despite their similar backgrounds, Miller was found to have ID and Rogers's claim was denied. The authors noted that the disparate decisions might have been attributable to the differences in assessment of ID used in the two cases, with both cases hinging on the issue of adaptive behavior.

While both claimants were administered standardized measures of intelligence, only Miller received a standardized measure of adaptive behavior; Rogers's adaptive behavior was assessed "informally" (p. 229). It should be noted that the experts in Rogers's case found the fact that he was employed as an electrician's helper and was able to drive as highly influential in their assessment of his adaptive functioning. In addition, Rogers was found to be able to perform basic self-care activities. His apparent deficits were attributed to anti-social behavior rather than inability. It appears the three experts in his case refuted a diagnosis of ID based on the strengths Rogers exhibited and the belief that his deficits were the product of willfulness, not a lack of skill.

Interestingly, Miller demonstrated adaptive behavior skills that matched or exceeded those of Rogers. For example, it was cited that Miller could drive a multi-gear dump truck, but Rogers was only able to drive a car. However, Miller's defense team appeared to have thoroughly investigated his background and abilities, and as a result, they were able to demonstrate that while he had a number of skills (e.g., driving, cooking, employment), they were

assessment and diagnosis in Indiana prior to the *Atkins* decision was still vital to death penalty cases, as that diagnosis exempted a defendant from execution.

fraught with issues. Those issues included an overall poor employment history and a marred driving history (e.g., loss of license, moving violations). Furthermore, although Miller wrote letters to family, it was only with reliance on a dictionary and his fellow inmates that he was able to produce such writings; he was unable to read or write above a third- grade level without assistance. Thus, the ID finding in Miller's case appears to be the result of the administration of standardized measures by the defense team's expert, as well as efforts to thoroughly understand his adaptive skills. The use of a formal adaptive behavior measure with a semi-structured format allowed for a more complete understanding of his strengths, and more importantly to the issue of ID, his weaknesses.

The authors concluded that Rogers was found not to have ID as a result of the pervasive misperception of the ID population as being significantly more impaired than their non-ID counterparts. Specifically, Olvera, Dever, and Earnest (2000) noted, "possession of skills such as the ability to drive, to work, and to make simple purchases is accepted as prima facie evidence of 'normality,' regardless of deficits" (p. 232). This notion was further supported by the court opinion in Rogers's case, which cited his strengths as evidence against significant impairment. In sum, the authors provided anecdotal evidence that negative attitudes and biased processing with regard to what ID "looks like" may be present in *Atkins* cases.

In sum, it appears that judges may have an adequate working knowledge of the diagnostic criteria for ID. However, the more subtle nuances of ID, especially mild ID, may be misunderstood by some judges, similar to the way in which it is misunderstood by the general public. It appears that negative attitudes (e.g., the view of ID as severe across the population, belief that deficits are obvious) and biased processing (i.e., attention to attitude-consistent

information and dismissal of inconsistent information) may underlie judicial decision making in *Atkins* cases.

Purpose of the Current Study

The main purpose of this study was to examine the influence of psychological assessment report style (i.e., strength- and deficit-based approaches) and content, as well as attitude toward ID, on judicial decision-making in *Atkins* cases. The psychological reports of evaluators vary widely in terms of overall style and content. Some reports may include information that is not relevant to the diagnosis of ID and/or information based on popular misconceptions that may unduly influence the trier-of-fact by providing support for negative attitudes regarding ID. The current study was designed to provide insight into decision-making that may not be explicitly acknowledged in formal judicial opinions and/or may be part of processing that is unavailable to judges without prompting (i.e., the impact of attitude). While judges write a formal opinion after reaching their decision in those cases, for the most part, they likely do not explicitly state all of the information they considered. In addition, they may not be aware of all of the factors that influenced their decision. This study was the first to examine the influence of psychological report style on judicial decision making in *Atkins* cases, and it adds to the small but growing number of studies on the role of specific report content and judicial attitudes in *Atkins* decisions.

The influence of strength- and deficit-based reports was of particular interest in this study. While the AAIDD (2010) requires ID to be diagnosed based on deficits, it appears that psychological assessment reports in some *Atkins* cases use strengths to refute the diagnosis (e.g., *Clemons v. Alabama*, 2005; *Ex parte Briseno*, 2005; *Holladay v. Campbell*, 2006). Not only do psychologists submit strength-based reports, but they have also played a role in shaping statutes (e.g., *Ex parte Briseno*). The fact that these types of reports appear to exert great influence in

Atkins cases further supports the belief that some judges may not have a thorough understanding of ID and/or are influenced by negative attitudes when presiding over those cases. Given that prior research has shown that attitude-consistent information is more influential than attitude-inconsistent information (Pratkanis, 1987), as well as the fact that mixed information may further polarize attitudes (Lord, Ross, & Lepper, 1979), the style in which a report is written may be especially important to the final case outcome in *Atkins* cases.

The results of this study can be used to inform the best practices of psychologists who conduct *Atkins* evaluations and legal professionals who work on such cases. The results of this study can be used to bring attention to the tendency of psychologists to present information related to *Atkins* cases in either strength- or deficit-based styles, which may unduly influence judicial decision-making. Increased attention to the impact report style can have may prompt psychologists to examine their report writing to ensure their reports are balanced in approach, considering both strengths and deficits an *Atkins* claimant demonstrates. In addition, this study may bring additional attention to the fact that strengths should not preclude a diagnosis of ID.

Results of this study can be used to devise training seminars for judges and lawyers who may be involved with *Atkins* cases. It is important for legal teams and triers-of-fact to understand that while a strength-based report may be persuasive because it supports common attitudes and evokes typical conceptualizations of the ID population, that is not how the diagnosis should be derived. Refuting a diagnosis of ID based on the presence of strengths is a decision rooted in misinformation, negative attitudes, and biases, as an inherent assumption exists that if an individual has ID, he or she cannot complete many tasks that are simple in nature (e.g., driving, maintaining employment, cooking a meal). Given that studies have shown that biases can be successfully challenged and overcome by the provision of specific, corrective prompts (Evans,

2007; Kahneman & Frederick, 2005), perhaps training seminars can assist judges to focus on systematic evaluation of the evidence provided in those cases in order to minimize the influence of persuasive but prejudiced factors.

Understanding the influence of various facets of the psychological assessment reports submitted in *Atkins* cases and how those reports influence judicial decisions is especially important because these cases are the only type of criminal proceedings in which exemption from the death penalty is dependent on a psychological diagnosis (DeMatteo, Marczyk, & Pich, 2007). The content of psychological reports often becomes a central issue in *Atkins* cases. The content of psychological reports and the conclusions reached are especially important given the fact that many judges who review the information may not have prior knowledge of and experience with ID. Without formal knowledge of and experience with ID, judicial attitudes toward the ID population may be especially influential as judges consider voluminous and often contradictory psychological evidence. Gaining a better understanding of the influence exerted by report style and content, as well as the role of attitudes in judicial decision-making is a necessary step toward ensuring that due process is maintained for *Atkins* claimants.

Hypotheses

Hypothesis One.

It was hypothesized that the final case outcome (i.e., not-ID versus ID) would be predicted by the type of report viewed by participants. Specifically, participants in the strength-based report group would be more likely to find in favor of a not-ID outcome than would the deficit-based report group, and the deficit-based group would be more likely to find in favor of the claimant (i.e., ID). This relationship was hypothesized because it was believed that the style of a report had the ability to influence judicial decision-making despite the acceptability of the

assessment practices used to derive the psychologist's conclusions (i.e., refutation of an ID diagnosis based on strengths).

Hypothesis Two.

Given that research has shown that the prevailing attitude toward individuals with ID is negative (i.e., individuals with ID are more severely and obviously impaired than is accurate; Dudley, 2000; McCaughey & Strohmer, 2005; Musso, Barker, Proto, & Gouvier, 2011; Scior & Furnham, 2011), higher scores on the Community Living Attitudes Scale, Mental Retardation (CLAS-MR; a measure of attitude toward the ID population), would be predictive of decisions in favor of a not-ID finding; higher scores on that measure were indicative of more negative attitudes toward ID. This relationship between attitudes and case outcome was hypothesized because it was believed that participants with negative attitudes toward ID would be less likely to envision an individual with ID possessing the skills perceived to be necessary to commit a capital crime. The hypothesized relationship between attitude and final case outcome (i.e., ID versus not ID) would be maintained regardless of the report provided (i.e., strength- versus deficit-based report).

Hypothesis Three.

Scores on the CLAS- MR would be predictive of the weight given to the claimant's escape and criminal histories, as well as his ability to work, marry, drive, communicate, and function within a prison environment, on final case outcome (i.e., evidence in favor of ID versus evidence against ID). Specifically, as CLAS-MR scores increase, suggesting more negative attitudes toward ID, judges would be more likely to find the aforementioned abilities to be evidence against an ID finding. Conversely, as scores on the CLAS-MR decrease (i.e., more positive attitudes), judges would find the aforementioned variables to be evidence in favor of an

ID finding. These relationships were predicted because negative attitudes tend to result in negative expectations or inferences toward a subject (Pratkanis, 1989).

Hypothesis Four.

Due to the fact that the claimant's functioning during the index offense (i.e., he utilized planning, lying, procuring weapons and/or vehicles, and eluded police) was in opposition to the popular conceptualization of mild ID (Dudley, 2000; McCaughey & Strohmer, 2005; Musso, Barker, Proto, & Gouvier, 2011; Scior & Furnham, 2011), it was hypothesized that the weight given to the index offense (i.e., evidence in favor of ID versus evidence against ID) would predict final case outcome. Specifically, it was hypothesized that participants would find against ID when they viewed the index offense as evidence against ID, and they would find in favor of ID when they viewed the details of the offense as evidence in favor of ID.

Hypothesis Five.

Increased experience with and knowledge of ID would predict a finding in favor of the petitioner (i.e., ID) regardless of the group (i.e., strength- versus deficit-based). This relationship was hypothesized as a result of the fact that increased experience with ID has been shown to correct misconceptions regarding this population (Roper, 1990).

Hypothesis Six.

It was hypothesized that judges with higher CLAS- MR scores would view Antisocial Personality Disorder (APD) as evidence against ID, attributing deficits in functioning to willfulness and/or a lack of motivation rather than a lack of ability.

Hypothesis Seven.

Because APD has been cited as an underlying reason for deficits in adaptive behavior (i.e., deficits are the result of willfulness rather than impairment in functioning; Blume, Johnson,

& Seeds, 2009; *Holladay v. Campbell*, 2006; Olvera, Dever, & Earnest, 2000) it was hypothesized that as judges deemed a history of APD to be evidence against ID, they would be more likely to provide a not-ID finding.

Hypothesis Eight.

It was hypothesized that judges would be more likely to agree with the finding in the report they received (i.e., ID versus not ID) when they rated the author of the report as credible. This relationship was hypothesized because research demonstrates that opinions tend to correspond to those of credible sources when presented with ambiguous information (Chaiken & Maheswaran, 1994; Johnston & Coolen, 1995; Pornpitakpan, 2004). It is further hypothesized that source credibility would be more likely to predict agreement between participant opinion and that of the psychologist regarding ID in the strength-based group than those participants in the deficit-based group. This was hypothesized because the strength-based report supports popular misconceptions of ID, and as such, would reinforce the beliefs of the participants in that group.

Exploratory Hypotheses.

Because there was no previous research available on the impact of psychological assessment report style on judicial decision-making in *Atkins* cases, a number of exploratory hypotheses were proposed regarding that relationship. It was hypothesized that participants in the strength-based report group would deem escape history, criminal behavior, employment history, marital status, driving ability, communication skills, and functioning in prison to be more influential in rendering a not-ID outcome than the deficit-based group; the deficit-based group would not find these factors to be as influential in a not-ID decision. These relationships between report type and the influence of the aforementioned factors were hypothesized because strengths

in those areas are in direct contrast to the popular misconceptions of ID, and as a result, they would be considered evidence against an ID finding. The results of the exploratory hypotheses were presented under Hypothesis Three in the Results section, as group differences were analyzed as part of the models relevant to that hypothesis.

CHAPTER 2

METHOD

Design

This study was conducted using a between-group, mixed-mode design. Federal and state judges from the United States were recruited for this study and then randomly assigned to one of two groups, one group reviewing a strength-based report and the other reviewing a deficit-based report. With the exception of the report type, all participants received the same stimulus materials. The University of Alabama's Institutional Review Board (IRB) approved this study on March 25, 2015 (see Appendix A for the IRB approval letter).

Mixed-mode designs are an aspect of the tailored-design method (Dillman, Smyth, & Christian, 2009). That type of design has been found to improve the validity of studies by increasing the response rate across various types of participants, thereby minimizing or eliminating a number of sampling-related issues (Dillman, 2000). That approach focuses on the reduction of four significant sources of error: (a) coverage, (b) sampling, (c) nonresponse, and (d) measurement. The following is a summary of those sources of error (see Appendix B for additional details regarding this study's use of the tailored-design method):

1. Coverage error: This type of error occurs when individuals from the target population do not have the same probability of being recruited for the sample, which may result in differences between the individuals recruited for and/or included in the sample and those excluded. For example, using only email recruitment methods for judges would exclude the entire subset of judges without publically available email addresses; there may be important group differences between judges with publically available email addresses and those without such accessible information.

2. Sampling error: Sampling error occurs when the survey is only administered to a subset of the population of interest, which can impact the results and their generalizability. Dillman, Smyth, and Christian (2009) note that some degree of sampling error is present in all studies, as entire populations are not typically recruited for participation in research.
3. Nonresponse error: Nonresponse error was perhaps the most significant potential issue in the current study. This type of error occurs when individuals recruited for the sample do not participate. A high rate of non-response may be a function of group differences between the responders and non-responders recruited from the population. For example, it is possible that in the current study, participation may have varied as a function of workload, such that busier judges did not participate as often as judges with less active dockets. Moreover, there may be additional group differences between judges in busy and less active courts/jurisdictions (e.g., socioeconomic status, political affiliation, rate of crime in the local community), and these differences could also have impacted the results.
4. Measurement error: This type of error occurs when respondents do not provide accurate or precise responses to the study's inquiries, which can be the result of poor survey design. For example, complicated questions may cause participants to misunderstand what is being asked by the researcher, and as such, they may provide inaccurate answers.

Participants

Federal judges from the Appeals and District Court levels across all states, as well as state court judges from the Supreme/highest, appellate/intermediate, and trial levels were

recruited. Judges in state courts were only recruited from states with the death penalty (N = 32; see list in Appendix C). Participants were recruited from the aforementioned levels of the judiciary because judges in those courts have the potential to hear *Atkins* cases.

Two sources were used to provide an estimate of the number of judges in each level of the judiciary, the Bureau of National Affairs (BNA) Directory of State and Federal Courts, Judges, and Clerks (Kitchell, 2014) and www.uscourts.gov. Those sources revealed that a total of 667 federal judges met criteria for inclusion in this study (i.e., 21 years of age, currently serving as a judge). At the state level, there were 1064 judges across the highest/Supreme and appellate/intermediate levels. The exact number of judges in trial level state courts was unavailable, but it is estimated to be several thousand. The results of a power analysis revealed that a sample size of 118 judges (i.e., N = 59 judges per group) was required to establish a significance level of $p < .05$, power .80, and medium effect size.

Judges in the aforementioned jurisdictions were recruited despite age, years of experience, health status, race or ethnicity, sex/gender, political affiliation, level of education, or other demographic or personal variables. Prior experience with death penalty or criminal cases was not a requirement for participation, as such experience is not a prerequisite for presiding over *Atkins* cases.

Participant Recruitment Methods

Participants were recruited for this study using three different methods as part of a mixed-mode approach (Dillman, Smyth, & Christian, 2009). All participants were contacted for recruitment purposes via email, the United States Postal Service (USPS), and/or the National Judicial College (NJC) newsletter (see Appendix D for letter of support from NJC). Email, USPS, and the NJC were used to decrease the potential impact of coverage, sampling, and non-

response errors because the opportunity to participate was available to a greater cross section of potential participants (i.e., judges with either a publicly available email or mailing address, and those involved with the NJC). In addition, the mixed-mode design allowed participants to take the study in the manner that was most convenient and comfortable for them (i.e., electronic or paper-and-pencil format). Professional email and mailing addresses of judges were obtained through Internet searches of publicly viewable websites (e.g., www.uscourts.gov, state and local court websites) and searches of publically available directories contained in the Law Library at The University of Alabama. A master list of potential participants was derived from the aforementioned searches, and the randomization function in Excel was used to select the recipients of the recruitment materials.

All judges for whom a publicly available email address was available were sent an electronic Request for Participation email and embedded therein was a link that would take the participant directly to the survey (Appendix E). All email correspondence was completed using the writer's University of Alabama email address. For those potential participants for whom an email address was not available, a letter that provided the same information, as well as a paper version of the study materials, was sent via the USPS (Appendix F). In addition to the recruitment letter and survey, each packet sent through the USPS included a prepaid and preaddressed return envelope for the study materials. All materials sent via the USPS used the Department of Psychology's mailing address as the return address. When both an email address and a mailing address were available, judges were recruited via email in an effort to defray costs and because overall there were fewer email addresses available.

Two weeks after the initial email or letter was distributed, a follow-up e-mail or postcard (Appendix G) was provided to potential participants; the follow-up correspondence took the

same form (i.e., email or USPS) as the initial correspondence. Dillman, Smyth, and Christian (2009) and Fox, Crask, and Kim (1988) noted that a follow-up communication has been shown to increase participant response rate. Despite evidence that follow-up communications tend to result in greater participant response rates, optimal timelines for the dissemination of such materials (i.e., timelines that produced the greatest increase in participant response rates) were not found in the literature. Thus, a two-week follow-up was deemed appropriate, as that time period allowed initial recruitment materials to be delivered to and reviewed by potential participants.

In addition to the aforementioned procedures, the NJC agreed to assist with recruitment. The NJC is an organization that describes a commitment to the provision of training and continuing education for judges within the United States. The NJC cites “education – innovation – advancing justice” (<http://www.judges.org>) as its mission. As noted on their website, over the course of the NJC’s 50-year history, it has assisted thousands of judges in advancing their knowledge and skillset. They accomplished this task through the provision of in-person seminars, web-based seminars, webcasts, and internet-based self-study programs. The NJC’s Academic Director agreed to post a brief description and a link to this study in the newsletter that was distributed to all members of this organization. Interested judges were directed to the Qualtrics.com page that hosted the Request for Participation form (Appendix H). Judges willing and able to complete the study after clicking the link and reading the recruitment materials were then able to continue on to the study at their leisure via an embedded link. The Request for Participation form informed judges that they also had the opportunity to request a paper-and-pencil version of the study. It should be noted that the members of the NJC did not receive a

follow-up contact because they were not contacted individually, but rather, through the use of the organization's newsletter.

Potential participants recruited for this study via USPS were randomly assigned to one of two groups (i.e., a strength- or a deficit-based report group) through the randomization function in Excel. Participants accessing the study through electronic means (i.e., link in the recruitment email, link in the NJC newsletter) were randomly assigned to one of the two groups by the randomization function in Qualtrics.

Recruitment Response

A total of 2,845 judges were recruited for this study via email and mail; this number does not include the judges who received recruitment materials via the NJC. A total of 122 federal and state judges completed the study (see Table 1 for additional information regarding participants). The participant response rate was 4.29%. This response rate is significantly lower than the rate found in previous studies with similar participants and design (Evans, 2012; Hensl, 2011), which found rates of 18.28% and 17%, respectively. Of the judges recruited for this study, 667 federal judges were recruited, with 237 federal judges contacted via email and 430 judges contacted via USPS. Of the 667 federal judges recruited for this study, recruitment materials for 72 judges were either undeliverable or judges replied in order to decline participation.

A total of 2,178 state-level judges were recruited for participation. Of those attempts to recruit participants, a total of 189 recruitment materials were either undeliverable or judges replied in order to decline participation. Recruitment materials were disseminated via USPS to 409 state-level judges, and 1,769 judges received recruitment materials via email.

Procedure

Following the recruitment procedures outlined in the previous section (Participant Recruitment Method), interested participants either clicked the link in the email or NJC newsletter, or completed the study via the paper-and-pencil version. The following procedure applied to all participants (please see Stimulus Materials for a thorough description of all items):

1. Presentation of a brief instruction sheet (Appendix I)
2. Completion of a brief demographic and experience/knowledge questionnaire (Appendix J)
3. Completion of the CLAS-MR (Appendix K)
4. Presentation of the diagnostic criteria for ID (Appendix L)
5. One of two randomly assigned mock psychological assessment reports:
 - a. The complete strength-based report (Appendix M)
 - b. The complete deficit-based report (Appendix N)
6. Completion of the study's main survey (Appendix O)

It was anticipated that the study would take approximately 20 minutes. Given that the participants recruited for this study were judges, it was assumed they were effective readers. As such, it was estimated they would read at a rate of 350 words per minute (Fry, 1963). The reports included in the stimulus materials were an average of 3,916 words, which indicated they would each take approximately 11 minutes. The remainder of materials were estimated to take 8 to 10 minutes to read and answer. In addition, the Instruction Sheet (Appendix I) prompted participants not to spend more than a few seconds on each question.

The materials in this study were written at Flesch-Kincaid Grade Level 12. Because participants were judges who routinely read materials at or above the 12th grade level (e.g., legal

briefs, psychological assessment reports, case law), it was assumed that materials written at this level would not pose a problem for participants with regard to comprehension.

Measures and Stimulus Materials

Request for participation materials: Email (Appendix E), Letter (Appendix F), NJC (Appendix H). Three similar Request for Participation documents were distributed for this study, one via email, one via letter, and one through a link in the NJC newsletter. These materials were designed with two main goals in mind: (a) incorporate empirically supported approaches designed to increase participation, and (b) include a clear, thorough, yet concise overview of the study that would allow the document to serve in place of a written informed consent document. In order to achieve the first goal, the materials incorporated aspects of the tailored- design method (see Appendix B for a detailed description of the tactics used). In order to accomplish the second goal, the materials included a brief overview of the study's purpose and expectations of involvement (e.g., completion time, procedures). In addition, the possible risks of participation (i.e., fatigue and boredom), as well as the ways in which these risks have been minimized, were discussed. The voluntary nature of the study, the ability for all participants to cease participation at any time with no adverse consequences, the possible benefits of this study, and the contact information for the primary investigator, secondary investigator, and the IRB were also included in the materials. The care taken to ensure all responses remained secure and anonymous was also detailed. Finally, the IRB approval number, the date of approval, and the project's expiration date were included.

The Request for Participation materials varied as a function of the mode of delivery. For example, the emailed materials made reference to electronic completion of the study, and the materials sent via USPS referred to the completion of the paper-and-pencil materials. Each

version noted that participants were welcomed to complete the study using the alternate format. Instructions as to how the alternate format could have been accessed and completed were also included. In addition, the email and USPS versions of the Request for Participation materials were personalized with the judge's name and level of the judiciary. The recruitment materials disseminated by the NJC were not personalized, as they were included in a newsletter received en masse by all subscribers to the NJC. The request for participation materials and the follow-up communication described below were influenced by Evans (2012), as both studies involved the recruitment of judges and employed a similar overall method. In addition, that study achieved an acceptable response rate, and it was anticipated that the use of similar recruitment materials might result in a comparable response rate.

Follow-up email and postcard (Appendix G). Brief postcard and email follow-up communications were designed for use in this study. The materials provided a reminder of the study's existence, thanked participants that have already participated, and provided an additional opportunity for those who have yet to complete it. Both the postcard and email also reiterated the fact that an alternative format of the study was available. Both forms of follow-up communication included The University of Alabama's official logo/image because the inclusion of such images has been shown to increase the response rate (Dillman, Smyth, & Christian, 2009). It should be noted that an end date for completion of the study was not included on any of the materials as such information has been shown to decrease participant response rate (Dillman, Smyth, & Christian, 2009).

Study instructions (Appendix I). A brief instruction sheet was provided to all participants. The instructions stressed six main points:

- 1) Participation and responses were anonymous, and therefore, participants should not include their name on materials;
- 2) For their convenience, participants were able to stop their participation at any time and resume the study at a later date without loss of their data;
- 3) An overview of the materials to follow and a request that participants only consider the information provided in the reports when answering related survey questions;
- 4) Guidance related to the time it should take participants to complete survey questions. It was noted that the survey was designed to be straightforward and that each question should not take more than a few seconds to answer. This point was included in order to assist participants in timely completion of the study;
- 5) Participants were asked not to skip any survey items. However, the electronic survey allowed them to skip questions, as forcing participants to complete all items has been shown to increase study attrition (i.e., beginning a study, but failing to complete it; Dillman, Smyth, & Christian, 2009);
- 6) Clarification regarding use of the term “mental retardation.” Although the term “intellectual disability” is the preferred term (Schalock, Luckasson, & Shogren, 2007), the legal system uses “mental retardation.” As such, “mental retardation” was used in the majority of the study materials.

Background questionnaire (Appendix J). This questionnaire included items related to basic demographics (e.g., age, gender, ethnicity, geographic location), as well as questions related to experience as a judge and whether they were appointed or elected to their position. This questionnaire also included a set of items regarding participant experience with ID. These questions were included in order to assess whether experience with ID was related to attitudes

toward this population as measured by the CLAS-MR and/or judicial decision-making. One point was assigned to each type of experience endorsed by participants (i.e., zero to nine points). This approach allowed scores to be used as a continuous variable in relevant analyses. Scores were not weighted as a function of the type of contact with members of the ID population because it is the opinion of the researcher that type of contact is not necessarily equated with intensity, quantity, and/or duration.

The questionnaire also included four questions that were used to assess participants' knowledge of ID (i.e., diagnostic criteria). This information was used as a continuous variable in order to assess whether knowledge of ID was correlated with and/or predictive of CLAS-MR scores, case outcome, and participant opinion regarding the importance of marital history, driving ability, employment history, escape from jail, history of APD, verbal communication skills, criminal history, and behavior in prison to a diagnosis of ID.

The Community Living Attitudes Scale, Mental Retardation Form (CLAS-MR; Appendix K). The CLAS-MR (Henry, Keys, Jopp, & Balcazar, 1996) was used to assess participants' attitudes toward individuals diagnosed with ID. The full measure consists of 40 items that are divided into four subscales: (a) Empowerment; (b) Exclusion; (c) Sheltering; and (d) Similarity. The following is a summary of the individual subscale content:

1. Empowerment subscale: This subscale consists of 13 items and is used to assess the degree to which respondents believe those with ID are able to make their opinions known in decisions that affect their lives. The items in this scale stress "self-advocacy, self-direction, choice, and mutual help" (Henry, Keys, Jopp, & Balcazar, 1996, p. 150) of individuals with ID.

2. Exclusion subscale: This subscale consists of eight items that assess the respondent's desire to separate those with ID from the community.
3. Sheltering subscale: The Sheltering subscale is used to evaluate the extent to which the respondent believes those with ID require supervision and protection in their daily lives. Only two items from this seven-item subscale were included in this study, as the other items were the least relevant of the scales to the research questions and their inclusion would add time to the overall study.
4. Similarity subscale: This subscale consists of 12 items that assess the respondent's perception that those with ID are similar to themselves with regard to goals and human rights.

All questions on the CLAS-MR are rated on a six-point Likert-type scale with response options that range from 1 ("strongly disagree") to 6 ("strongly agree"). Higher scores indicate a negative attitude set that endorses the following: (a) limitations on the rights of those with ID; (b) a greater number of deficits in everyday abilities; and (c) biased/stereotyped beliefs regarding individuals with ID and their abilities.

Initial scale development of the CLAS-MR included 283 participants: 80 undergraduate students and 203 community members. Retest reliability was assessed with 104 undergraduate students by administering the measure twice with a one-month interval between administrations. Results indicated that each of the four subscales' test retest reliability was above .7. Internal consistency (Cronbach's α) for this measure was moderate at $r = .57$.

In the current study, the results of the CLAS-MR were conceptualized as an overall composite score that reflected a general measure of attitudes towards individuals with ID. The use of subscales rather than an overall composite may have resulted in a restriction of range and

would have increased the number of predictors used in the analyses, which would have been problematic with regard to power given the small sample size. In order to use a composite score for this study, a number of test items were reverse coded in order to match the valence of the other items. The possible range of scores for the measure as it was administered in this study ranged from 35 to 210. The internal consistency of the portion of the CLAS-MR used in this study was .89, which indicated very good internal consistency among scale items.

Diagnostic criteria for intellectual disability (Appendix L). A summary of the diagnostic criteria put forth by both the AAIDD (2010) and APA (2013) was provided to each participant. Though there exists a small number of other definitions, these two references are the most often cited definitions of ID used in *Atkins* cases (Blume, Johnson, & Seeds, 2009). This material was provided to participants prior to reading the report so that they had the most basic information regarding ID needed to guide them through the decision-making process. Without such information, participants with little knowledge of ID would have no basis from which to evaluate the information provided to them. Furthermore, judges in actual *Atkins* hearings are provided with information about ID and can access resources as needed throughout the duration of the case. In addition to the basic diagnostic criteria, the information sheet included a listing of skills that are associated with the three broad domains of adaptive behavior.

Strength- and deficit-based mock psychological assessment reports (Appendices M and N, respectively). The two reports used for this study were created from publically available transcripts and judicial opinions from *Atkins* cases. The creation of these reports was influenced by academic and scholarly discussions regarding current issues with the assessment and diagnosis of ID in capital cases and various approaches to psychological report writing. The transcripts and opinions accessed for this study either extensively referred to the contents of

psychological reports and/or contained excerpts of reports. All information used in this study was de-identified and case-specific details were changed in order to protect confidentiality. Though it is possible that the majority of reports used in *Atkins* cases are longer than those used for this study (i.e., nine pages), the length was deemed suitable for the purpose of this study, and the author knows of at least one case in which the length of the report to the Court was less than nine pages (i.e., *Thomas v. Allen*, 2009). Given that report length and presentation (e.g., the use of tables, bulleted lists) may be a confounding variable regarding the persuasiveness of the psychologists' final opinions (Goodman-Delahunty & Dhimi, 2012), the reports were designed to be the same length and visually similar. It should be noted that the final conclusions of the evaluators regarding the presence of ID were not included in the reports. This information was not included because inclusion of the psychologist's ultimate opinion regarding ID may lead judges to defer to the opinion of the psychologist if they view the source as credible (Chaiken & Maheswaran, 1994; Johnston & Coolen, 1995; Zapf, Hubbard, Cooper, Wheelles, & Ronan, 2004).

The cases that were chosen for this study were done so for specific reasons. First, they were cases that had publicly available transcripts and/or opinions. Second, the transcripts/opinions described work produced by psychologists that stressed contrasting factors and/or assessment report styles. Specifically, some of the transcripts/opinions focused on the deficits the claimants possessed in discussing the psychologist's assessment of ID, which is consistent with the way in which ID should be assessed according to the AAIDD (2010), and other transcripts/opinions focused on discussion of strengths as evidence against ID. The "strength-based," report (Appendix M) was derived from case materials that tended to focus on the skills that the claimant demonstrated, which were then used as evidence against a diagnosis

of ID. The “deficit-based” report (Appendix N) was written in a manner that would lead to a diagnosis of ID based on the claimant’s deficits.

The two reports used in this study were created to be similar in style and content to reports submitted to the court by psychologists. The reports were written to incorporate the background information that is often contained in psychological reports (e.g., social background, medical/mental health history, previous psychological assessment results, current clinical observations/mental status, third party observations/interviews; Cunningham, 2010; Melton, Petrila, Poythress, & Slobogin, 2007). A review of a number of *Atkins* transcripts and judicial opinions (for a list of cases reviewed see Hedge, 2012) revealed that there are several areas that garner particular attention in these cases (e.g., IQ, criminal history, details of the index offense, educational history, mental health diagnoses, behavior in prison). These areas were emphasized in the two reports used in this study. The reports were created to represent an individual who may meet criteria for mild ID (i.e., possesses both strengths and deficits, is largely representative of individuals with low-average intelligence).

Actual reports were not used in this study for a number of reasons, which include: (a) the desire to protect the identity of claimants in actual *Atkins* cases, (b) the desire to respect the professional work of psychologists who submitted reports in these cases (i.e., psychologists may feel professionally and/or personally embarrassed/attacked if a report they authored was used, specifically referenced, or easily identified in this study), (c) to avoid any legal issues that may stem from inclusion of an original or readily identifiable report (e.g., additional appeals as a result of the study’s findings), and (d) publically available psychological reports submitted in *Atkins* cases are difficult to access given the nature of these cases and the contents of the reports

(e.g., testing data, personal information about the claimant and other individuals referenced in case material).

Though the two reports were created from an accumulation of information gathered from multiple sources, they were written in such a manner that they represented two sides to the same case (e.g., a home invasion that included two rapes and murders, poor academic performance in childhood, a chaotic family environment, history of juvenile delinquency, a lengthy adult criminal record, a history of escape from a correctional facility), but written in the contrasting styles. Specifically, one report focused on the abilities of the claimant (i.e., the strength-based report) and the other report focused on the skills/activities for which the person needed assistance or could not perform (i.e., deficit-based report). Both reports also included a smattering of information related to the opposite position, but the *emphasis* was placed on either the strengths or deficits of the claimant.

Pilot study. Prior to finalizing the reports for dissemination to potential participants, a pilot study (see Appendix P for IRB approval letter) was conducted to assess the strength of the manipulation (i.e., strength- vs. deficit-based report) and to ensure that the other information included in the reports was generally the same (see Appendix Q for pilot survey questions). The pilot study was disseminated via email to lawyers from the Tuscaloosa County District Attorney's Office and to students who were attending law school at The University of Alabama; a total of approximately 550 individuals were recruited for the pilot, but an exact number is not provided because the number of law students was estimated to be between 500 and 550 by a faculty person at the law school. Lawyers and law students were selected for the pilot as a result of their interest in and knowledge of the legal system, some of which would be consistent with that of judges hearing *Atkins* cases. Given the limited number of accessible judges in Tuscaloosa

(N = 7), it was necessary to extend recruitment efforts beyond judges. For the pilot study, all participants reviewed both reports in order to compare their contents. The reports were counterbalanced to avoid any effect the ordering of materials may have in answering the questionnaire.

The results of the pilot study indicated that the main manipulation was successful (see Appendix R for a summary of results from the pilot study). Specifically, of the 24 participants that read the strength-based report, 75% believed it was in fact focused on the strengths of the claimant rather than deficits. Of the 20 participants that read the deficit-based report, 90% believed the report focused on the deficits rather than strengths of the claimant in its presentation of information.

As previously mentioned, the second goal of the pilot study was to assess the degree to which the objective/factual content of the reports was similar. Similar content was necessary in order to ensure that participant responses differed as a function of report style, and not the inclusion of content unrelated to the manipulation. Participants were asked whether the main content areas contained in the reports (e.g., social background, criminal history, driving history/abilities, work history and related skills) were similar. Participants were provided the opportunity to answer “yes” or “no” with regard to similarity, and if they answered “no,” which indicated differences in the content area, they were asked to provide qualitative data as to how the topic area could be made more similar in the revised/final report. For the purposes of the pilot study, “generally similar content” was defined as the reports sharing 75% of the objective/fact-based content.

The results of the pilot study showed that 50 to 85.71% of participants judged the content to be similar between the two reports, which means that some content areas were judged to be

similar by 50% of participants and some content areas were judged to be similar by as much as 85.71% of participants. In order to increase the similarity in content between the two reports, especially in the content areas in which less than 75% of participants judged content to be similar, the qualitative comments were read and the feedback was incorporated to increase similarity. For example, several participants noted that the bulleted and list-like format used in the deficit-based report assisted them in remembering details of the report and in improving overall readability. As such, information from the strength-based report was altered in format to include bulleted and list-like information in the same sections as it appeared in the deficit-based report (e.g., work history, IQ scores). Numerous participants noted that the deficit-based report contained significantly less detail regarding driving ability/habits than the strength-based report. In response, details were removed from the strength-based report and some were added to the deficit-based report in order to make the content more similar.

Main survey (Appendix O). Participants completed the 12-question survey after reading the randomly assigned report. Responses to questions were provided through the use of a five-point Likert-type scale and evaluated the degree to which an issue/item influenced the participant's final decision regarding ID. Higher scores indicated that the participant viewed the evidence as highly influential in favor of ID, and lower scores indicated that the participant viewed the evidence as highly influential against a finding of ID. A five-point scale was used because the use of the "uncertain" or neutral category decreases as the number of scale points increases (Matell & Jacoby, 1972), and as such, a three-point scale may have led to an overuse of the neutral category; "Not relevant to my decision regarding ID" was used as the neutral category in this study. However, a seven-point or larger scale was not used because an increased numbers of points on an ordinal scale requires adequate representation in each cell for statistical

analyses, which may be problematic given the fact that responses tend to cluster between three points on such a scale (A. T. Gilpin, personal communication, August 8, 2013). Krosnick and Fabrigar (1997) also noted that scales should not exceed five points, as scales of this length are shown to be more valid and reliable than scales of other lengths; lengthier scales (i.e., seven points and higher) do not provide meaningful distinctions between categories. The main survey questions were randomly ordered to minimize any effect the order of questions may have posed.

All participants were asked to provide their final decision regarding the presence of ID (i.e., ID versus not-ID). This question was presented using both ordinal scale (i.e., the claimant likely does not have ID, the claimant might not have ID, cannot decide, the claimant might have ID, the claimant likely has ID) and dichotomous answer formats, which was intended to allow the greatest flexibility with regard to data analysis. Statistical analyses are limited when dichotomous questions alone are posed in surveys, but this information was collected and analyzed because judges are forced to make a dichotomous ruling (i.e., has ID or does not have ID) in *Atkins* cases.

CHAPTER 3

RESULTS

Demographics

A total of 2,845 judges were recruited for this study. Of those recruited, 122 participants completed this study, producing a response rate of 4.29%. Participants included in the final analyses were 17 (14%) judges from the federal system and 81 (66.4%) judges from the state system; 23 (18.9%) judges endorsed “other” when indicating the type of court in which they served. Of the participants, 86 (70.5%) were males and 35 (28.7%) were females. A total of 19 states and the District of Columbia were represented in the sample, with the largest number of participants ($N = 13$; 10.7%) from Texas (see Appendix S for additional information regarding representation of states). Judges ranged in age from 39 to 91 years ($M = 59.71$, $SD = 8.38$). The majority of the sample (52.5%) indicated that they were elected to their judgeship, and the remainder indicated that they were appointed to their position. With regard to race/ethnicity, the sample primarily identified as Caucasian/white (86.9%).

The vast majority of participants held a Juris Doctor (JD; 95.1%). Experience with capital and *Atkins* cases spanned a large range, with participants hearing between 0 and 200 capital cases ($M = 6.35$; $SD = 20.88$), and between 0 and 70 *Atkins* cases ($M = 1.41$; $SD = 6.93$). With regard to personal experience with ID, the majority of the sample indicated they had a history of exposure to the population with ID. Specifically, the majority of participants either read/watched non-fiction accounts that included references to ID (e.g., textbooks, scholarly articles, documentaries; 53.3%) or fictional accounts (e.g., *Forrest Gump*, *Of Mine and Men*, *The Other Sister*; 63.9%) of ID. A smaller subset of the sample (20.5%) indicated that they performed volunteer work with

individuals with ID in some capacity (e.g., Special Olympics, Association of Retarded Citizens).

Additional information regarding the demographics of the sample is included in Table 1 below.

Table 1

Demographic Variables of the Sample

Categorical Variables	Frequency	Percentage
Court in which participant serves		
Federal Court of Appeals	3	2.5
Federal District Court	14	11.5
State Supreme Court	3	2.5
State Appellate Court	17	13.9
State-level criminal court	61	50.0
Other	23	18.9
Unspecified	1	0.8
Gender		
Male	86	70.5
Female	35	28.7
Unspecified	1	0.8
Type of judicial appointment		
Elected	64	52.5
Appointed	54	44.3
History of elected and appointed	2	2.5
Unspecified	1	0.8
Race/ethnicity		
Caucasian/white	106	86.9
Latina/Latina/Hispanic	7	5.7
Other	5	4.1
African-American/Black	4	3.3
Level of education		
Bachelor's Degree	1	0.8
Master's Degree	1	0.8
Juris Doctor (JD)	116	95.1
Ph.D.	2	1.6
Other	1	0.8
Unspecified	1	0.8
Recruited through NJC		
Yes	12	9.8
No	107	87.7
Unspecified	3	2.5
Experience with ID		
Close family member with ID	21	17.2
Child with ID	2	1.6

Friend with ID	23	18.9		
Worked with ID population	16	13.1		
Volunteered with ID population	25	20.5		
Took a course that covered ID	12	9.8		
Read/watched non-fictional account of ID	65	53.3		
Read/watched fictional account of ID	78	63.9		
Other experiences with ID	23	18.9		
Knowledge of ID (frequency and percent of correct responses)				
A low IQ is sufficient for a diagnosis of ID	99	81.1		
Deficits in adaptive behavior are required in more than one area for a diagnosis of ID	30	24.6		
The presence of certain strengths and/or criminal behavior can be used to refute a diagnosis of ID	46	37.7		
In order to diagnose an adult with ID, there must be a diagnosis on record prior to age 18 years	88	72.1		
<hr/>				
Continuous Variables	<i>M</i>	<i>SD</i>	Mode	<i>Mdn</i>
Age (ranged from 39 to 91years)	59.71	8.38	62, 67	61
Experience with the death penalty cases				
Capital cases heard as a judge (0-200)	6.35	20.88		
<i>Atkins</i> cases heard as a judge (0-70)	1.41	6.93		
Scores on the CLAS-MR (range: 35- 210)	80.51	16.92	78	81
Knowledge of ID (range: 1-4)	2.18	.89	2	2
Experiences with ID (range: 1-9)	2.17	1.36	2	2
Sum of knowledge and experience (range: 1-9)	4.37	1.65	4	4

A table summarizing demographics by group can be found in Appendix T and a summary of the frequency of participant responses to survey questions by group can be found in Appendix U.

Hypotheses

The following section provides the results of the eight main hypotheses for this study. The findings of exploratory hypotheses that pertained directly to a main hypothesis (i.e., any notable group differences) were discussed within each of the relevant sections. As such, an Exploratory Hypotheses section was deemed unnecessary. It should be noted that the

assumptions of logistic regression (i.e., linearity, independence of errors, multicollinearity) were met.

Hypothesis one: It was hypothesized that the final case outcome would be predicted by the report reviewed by participants, such that the strength-based group would find against ID and the deficit-based group would find in favor of ID. Binary logistic regression was used to analyze the predictive ability of report type on final case outcome (i.e., dichotomous decision regarding ID status). The results supported the overarching hypothesis that the strength-based report would predict a not-ID finding and the deficit-based report would predict an ID outcome. The full model was statistically significant, $\chi^2(1, N = 122) = 35.29, p < .001$, which indicated that the model was able to distinguish between judicial decisions in favor of ID and those against ID when report type was used as a predictor. The model explained between 25.9% (Cox and Snell R square) and 35.2% (Nagelkerke R square) of the variance in case outcome, and the model correctly classified 75.4% of cases (84.4% of not-ID cases and 69.9% of ID cases).

Table 2

Predicting Case Outcome by Report Type

	B	S. E.	Wald	df	p	Odds Ratio	95.0% C. I. for Odds Ratio	
							Lower	Upper
Report type	2.53	.48	27.38	1	.000	12.58	4.87	32.49
Constant	-.58	.27	4.16	1	.041	.58		

Hypothesis two. The results of this study showed mixed support for the hypothesis that CLAS-MR scores would predict final case outcome (i.e., more negative attitudes of ID [higher CLAS-MR scores] would be more likely to result in a not-ID finding, and less negative attitudes [lower CLAS-MR scores] would support an ID finding). Binary logistic regression was used to assess the predictive ability of CLAS-MR scores (range: 38 – 140) and report type on final case

outcome (i.e., dichotomous decision regarding ID status). The results indicated the CLAS-MR was not a significant predictor of final case outcome, $\chi^2 (1, N = 105) = 2.03, p = .155$. The model explained between 1.9% (Cox and Snell R square) and 2.6% (Nagelkerke R square) of the variance in case outcome, and the model correctly classified 63.8% of cases (5.1% of not-ID cases and 98.5% of ID cases).

Table 3

Predicting Case Outcome by CLAS-MR Score

	B	S. E.	Wald	df	p	Odds Ratio	95.0% C. I. for Odds Ratio	
							Lower	Upper
CLAS-MR Score	-.02	.01	1.98	1	.160	.98	.96	1.01
Constant	1.92	1.02	3.55	1	.059	6.83		

The predictive ability of CLAS-MR scores on final case outcome was also assessed through an exploratory analysis using a median split. In that analysis, the CLAS-MR was coded as a dichotomous variable using the median ($Mdn = 81$), such that the final case outcome of participants with a total CLAS-MR score below the median was compared to participants with a total score above the median. The full model was statistically significant, $\chi^2 (1, N = 105) = 4.85, p = .028$, which indicated that the model was able to distinguish between judicial decisions in favor of ID and those against ID when high (i.e., greater than the median) and low (i.e., the median or below) CLAS-MR scores were used as predictors. Further examination of results indicated that low scores on the CLAS-MR predicted an ID finding and high scores predicted a not-ID finding. The aforementioned finding supports the hypothesis between CLAS-MR scores and ID findings. The model explained between 4.5% (Cox and Snell R square) and 6.2% (Nagelkerke R square) of the variance in case outcome.

Table 4

Predicting Case Outcome by High and Low CLAS-MR Scores

	B	S. E.	Wald	df	p	Odds Ratio	95.0% C. I. for Odds Ratio	
							Lower	Upper
CLAS-MR score	.90	.41	4.72	1	.03	2.46	1.09	5.46
Constant	.08	.28	.08	1	.78	1.08		

An additional analysis examined the main effects for CLAS-MR scores and report type, as well as the interaction of those variables on final case outcome. The omnibus model containing the main effects was statistically significant, $\chi^2 (2, N = 105) = 33.55, p \leq .000$, which indicated that the model was able to distinguish between judicial decisions in favor of ID and those against ID. The model explained between 27.4% (Cox and Snell R square) and 37.3% (Nagelkerke R square) of the variance in case outcome, and the model correctly classified 71.4% of cases (66.7% of not-ID cases and 74.2% of ID cases). Further examination of main effects indicated that both CLAS-MR scores and report type were statistically significant predictors of final case outcome (see Table 5 below). The analyses indicated that in accordance with the hypothesis, CLAS-MR scores predicted final case outcome, such that low scores predicted an ID finding and higher scores tended to find against ID. The relationship between report type and final case outcome was consistent with the overarching hypothesis of this study in that the deficit-based report group was likely to find in favor of ID and the strength-based report group was likely to find against ID.

Table 5

Predicting ID Status by CLAS-MR Score and Report Type: Main Effects

	B	S. E.	Wald	df	p	Odds Ratio	95.0% C. I. for Odds Ratio	
							Lower	Upper
CLAS-MR	-.03	.02	3.93	1	.047	.97	.94	1.00
Report type	2.64	.55	23.41	1	.000	14.07	4.82	41.06
Constant	1.82	1.17	2.43	1	.119	6.18		

The omnibus model for the interaction between CLAS-MR and report type on final case outcome was statistically significant, $\chi^2(3, N = 105) = 33.60, p < .001$, which indicated that the model was able to distinguish between judicial decisions in favor of ID and those against ID. The model explained between 27.4% (Cox and Snell R square) and 37.4% (Nagelkerke R square) of the variance in case outcome, and the model correctly classified 71.4% of cases (69.2% of not-ID cases and 72.7% of ID cases). Although the full model was statistically significant, there was no significant interaction between variables.

Table 6

Predicting ID Status by CLAS-MR Score and Report Type: Interaction

	B	S. E.	Wald	df	p	Odds Ratio	95.0% C. I. for Odds Ratio	
							Lower	Upper
CLAS-MR	-.03	.02	2.15	1	.142	.97	.94	1.01
Report type	3.20	2.63	1.48	1	.223	24.63	.14	4268.25
CLAS-MR x Report type	-.01	.03	.05	1	.827	.99	.94	1.05
Constant	1.64	1.44	1.29	1	.255	5.13		

Hypothesis three. It was hypothesized that as CLAS-MR scores increased, participants would be more likely to find information related to the claimant's escape history, criminal behavior, employment history, marital status, ability to drive, communication skills, and functioning within prison as evidence against ID. Multinomial logistic regression was used to

analyze the ability of CLAS-MR scores to predict the influence of the aforementioned variables on final case outcome. Individual analyses were conducted for two main reasons: (a) Prior research with similar variables indicated that these predictors were highly correlated (Hedge, 2012), which, if analyzed in the same model, would have resulted in a violation of multicollinearity, an assumption of multinomial logistic regression; and (b) the small sample size obtained for this study limited the number of predictors that could be analyzed in a model, as there would likely have been limited cases in each category. Each analysis included examination of main effects for CLAS-MR score and report type, as well as the interaction effect of these two predictors.

Initial analyses related to this hypothesis included an examination of the five response choices regarding the influence of report content on final case outcome. The five response choices were as follows: (a) highly relevant evidence against ID, (b) slightly relevant evidence against ID, (c) not relevant to my decision regarding ID, (d) slightly relevant evidence in favor of ID, and (e) highly relevant evidence in favor of ID (see Appendix O for survey questions). The results indicated that a number of cells were underrepresented by participant responses and because of this underrepresentation, the five response options were collapsed into three categories: (a) evidence against ID, (b) not relevant to my decision regarding ID, and (c) evidence in favor of ID. Utilizing analyses with limited or no cases in numerous categories would have impacted the interpretation and generalizability of results. The baseline category used in these analyses was “not relevant in my decision regarding ID,” as it was deemed the most neutral of the three categories. Main effects were examined on the first step of the analysis, and the interaction of the relevant variables were examined on the second step of the analysis.

Escape history. Multinomial logistic regression was used to analyze the ability of CLAS-MR scores to predict the influence of claimant history of escape on final case outcome. The analysis included examination of main effects for report type and CLAS-MR score on the first step, as well as the interaction of these two predictors on the second step. The results indicated there was a main effect for report type, $\chi^2 (2, N = 104) = 13.87, p = .001$. Specifically, the deficit-based report group was more likely to find escape to be evidence in favor of ID than the strength-based report group. There was no main effect for CLAS-MR scores, $\chi^2 (2, N = 104) = 1.03, p = .597$. There was no statistically significant interaction between report type and CLAS-MR scores, and as such, the interaction was not entered into the final model using the Forced Entry method (see Table 7 for a summary of results). The model explained between 13.3% (Cox and Snell R square) and 15.3% (Nagelkerke R square) of the variance in case outcome. This hypothesis was rejected, as CLAS-MR scores did not predict the influence of escape history on ID decision.

Table 7

Predicting Influence of Escape History on Final ID Decision by Report Type and CLAS-MR Score

	B	S. E.	Wald	df	p	Odds Ratio	95.0% C. I. for Odds Ratio	
							Lower	Upper
Relevant evidence against ID								
Intercept	-.33	1.12	.09	1	.769			
Report type	-.76	.45	2.84	1	.092	.47	.99	1.04
CLAS-MR score	.01	.01	1.00	1	.318	1.01	.19	1.04
Relevant evidence in favor of ID								
Intercept	-2.10	1.55	1.85	1	.174			
Report type	1.49	.72	4.27	1	.039	4.43	1.08	18.16
CLAS-MR score	.01	.02	.09	1	.761	1.01	.97	1.04

Criminal history. Multinomial logistic regression was used to analyze the predictive ability of CLAS-MR scores on the influence of the claimant’s criminal behavior on final case outcome. The analysis included examination of main effects for report type and CLAS-MR score on the first step, as well as the interaction of these two predictors on the second step. The results indicated there was a main effect for report type, $\chi^2 (2, N = 104) = 12.82, p = .002$. The deficit-based report group was significantly less likely than the strength-based report group to find the claimant’s criminal history to be relevant evidence in favor of and against a finding of ID. There was no significant main effect for CLAS-MR scores, $\chi^2 (2, N = 104) = 1.19, p = .551$. There was no statistically significant interaction between report type and CLAS-MR scores, and as such, the interaction was not entered into the final model using the Forced Entry method (see Table 8 below for a summary of the results). The model explained between 12.6% (Cox and Snell R square) and 14.2% (Nagelkerke R square) of the variance in case outcome. The hypothesis was rejected, as CLAS-MR scores did not predict the influence of criminal history of final ID decision.

Table 8

Predicting Influence of Criminal History on Final ID Decision by Report Type and CLAS-MR Score

	B	S. E.	Wald	df	p	Odds Ratio	95.0% C. I. for Odds Ratio	
							Lower	Upper
Relevant evidence against ID								
Intercept	.79	1.25	.39	1	.530			
Report type	-1.69	.51	10.90	1	.001	.19	.07	.50
CLAS-MR score	.00	.02	.01	1	.914	1.00	.97	1.03
Relevant evidence in favor of ID								
Intercept	1.66	1.30	1.63	1	.201			
Report type	-1.29	.52	6.04	1	.014	.28	.10	.77
CLAS-MR score	-.01	.02	.75	1	.385	.99	.96	1.02

Employment history. The results revealed that scores on the CLAS-MR did not predict the influence of employment history on judicial decision making, and as such, this hypothesis was rejected. The analysis included examination of main effects for report type and CLAS-MR score on the first step, as well as the interaction of these two predictors on the second step. The results indicated there was a main effect for report type, $\chi^2 (2, N = 104) = 13.62, p = .001$. The deficit-based report group was significantly more likely than the strength-based report group to find the claimant's criminal history to be relevant evidence in favor of a finding of ID. There was no significant main effect for CLAS-MR scores, $\chi^2 (2, N = 104) = 2.42, p = .298$. There was no statistically significant interaction between report type and CLAS-MR scores, and as such, the interaction was not entered into the final model using the Forced Entry method (see Table 9 below for a summary of the results). The model explained between 13.9% (Cox and Snell R square) and 16.6% (Nagelkerke R square) of the variance in case outcome.

Table 9

Predicting Influence of Employment History on ID Decision by Report Type and CLAS-MR Score

	B	S. E.	Wald	df	p	Odds Ratio	95.0% C. I. for Odds Ratio	
							Lower	Upper
Relevant evidence against ID								
Intercept	.59	1.77	.11	1	.739			
Report type	.80	.87	.86	1	.354	2.23	.41	12.18
CLAS-MR score	.00	.02	.03	1	.859	1.00	.96	1.05
Relevant evidence in favor of ID								
Intercept	2.22	1.71	1.68	1	.195			
Report type	2.11	.83	6.44	1	.011	8.22	1.62	41.77
CLAS-MR score	-.02	.02	.65	1	.421	.98	.95	1.02

Marital history. Based on the results of this analysis, the hypothesis was rejected, as CLAS-MR scores did not predict the influence of marital history on case outcome. The analysis

included examination of main effects for report type and CLAS-MR score on the first step, as well as the interaction of these two predictors on the second step. The results indicated there was a significant main effect for report type, $\chi^2 (2, N = 105) = 6.16, p = .046$, which indicated that the deficit-based group was more likely than the strength-based group to find in favor of ID. There was no main effect for CLAS-MR scores, $\chi^2 (2, N = 105) = 4.93, p = .085$. There was no statistically significant interaction between report type and CLAS-MR scores, and as such, the interaction was not entered into the final model using the Forced Entry method (see Table 10 for a summary of results). The model explained between 9.8% (Cox and Snell R square) and 11.1% (Nagelkerke R square) of the variance in case outcome.

Table 10

Predicting Influence of Marital History on Final ID Decision by Report Type and CLAS-MR Score

	B	S. E.	Wald	df	p	Odds Ratio	95.0% C. I. for Odds Ratio	
							Lower	Upper
Relevant evidence against ID								
Intercept	-2.27	1.31	2.99	1	.084			
Report type	-.61	.53	1.32	1	.250	.54	.19	1.54
CLAS-MR score	.02	.02	2.09	1	.148	1.02	.99	1.05
Relevant evidence in favor of ID								
Intercept	.43	1.16	.14	1	.711			
Report type	.76	.47	2.63	1	.105	2.13	.85	5.31
CLAS-MR score	-.02	.01	1.09	1	.296	.99	.96	1.01

Driving ability. The results of this analysis indicated that the hypothesis was rejected, as CLAS-MR scores did not predict the influence of driving ability on final case outcome. The analysis included examination of main effects for report type and CLAS-MR score on the first step, as well as the interaction of these two predictors on the second step. The results indicated there was a main effect for report type, $\chi^2 (2, N = 102) = 16.881, p \leq .000$. The deficit-based

report group was significantly less likely than the strength-based report group to find the claimant’s driving ability to be relevant evidence against a finding of ID. There was no significant main effect for CLAS-MR scores, $\chi^2 (2, N = 102) = .03, p = .982$. There was no statistically significant interaction between report type and CLAS-MR scores, and as such, the interaction was not entered into the final model using the Forced Entry method (see Table 11 for a summary of the results). The model explained between 15.3% (Cox and Snell R square) and 17.5% (Nagelkerke R square) of the variance in case outcome.

Table 11

Predicting Influence of Driving Ability on Final ID Decision by Report Type and CLAS-MR Score

	B	S. E.	Wald	df	p	Odds Ratio	95.0% C. I. for Odds Ratio	
							Lower	Upper
Relevant evidence against ID								
Intercept	.59	1.13	.27	1	.602			
Report type	-1.39	.47	8.78	1	.003	.25	.10	.63
CLAS-MR score	.00	.01	.01	1	.926	1.00	.98	1.03
Relevant evidence in favor of ID								
Intercept	-1.22	1.46	.69	1	.405			
Report type	.85	.65	1.69	1	.194	2.33	.65	8.38
CLAS-MR score	-.00	.02	.02	1	.900	1.00	.97	1.03

Communication skills. The results of this analysis indicated that the hypothesis was rejected, as CLAS-MR scores did not predict the influence of communication skills on final case outcome. The analysis included examination of main effects for report type and CLAS-MR score on the first step, as well as the interaction of these two predictors on the second step. The results indicated there was a main effect for report type, $\chi^2 (2, N = 102) = 36.83, p \leq .000$. The deficit-based report group was significantly more likely than the strength-based report group to find the claimant’s communication skills to be relevant evidence in favor of a finding of ID. There was

no significant main effect for CLAS-MR scores, $\chi^2 (2, N = 102) = .36, p = .836$. There was no statistically significant interaction between report type and CLAS-MR scores, and as such, the interaction was not entered into the final model using the Forced Entry method (see Table 12 for a summary of results). The model explained between 30.5% (Cox and Snell R square) and 36.6% (Nagelkerke R square) of the variance in case outcome.

Table 12

Predicting Influence of Communication Skills on Final ID Decision by Report Type and CLAS-MR Score

	B	S. E.	Wald	df	p	Odds Ratio	95.0% C. I. for Odds Ratio	
							Lower	Upper
Relevant evidence against ID								
Intercept	1.58	2.02	.61	1	.436			
Report type	-1.14	.85	1.81	1	.179	.32	.06	1.69
CLAS-MR score	.01	.03	.12	1	.734	1.01	.96	1.06
Relevant evidence in favor of ID								
Intercept	-.21	2.08	.010	1	.921			
Report type	1.64	.85	3.756	1	.053	5.144	.98	26.96
CLAS-MR score	.01	.03	.308	1	.579	1.014	.97	1.07

Prison behavior. The results of this analysis indicated that the hypothesis was rejected, as CLAS-MR scores did not predict the influence of prison behavior on final case outcome. The analysis included examination of main effects for report type and CLAS-MR score on the first step, as well as the interaction of these two predictors on the second step. The results indicated there was a main effect for report type, $\chi^2 (2, N = 105) = 42.60, p \leq .000$. The deficit-based report group was significantly more likely than the strength-based report group to find the claimant's prison behavior to be relevant evidence in favor of a finding of ID. The results also indicated that the deficit-based group was significantly less likely than the strength-based group to find prison behavior to be relevant evidence against a finding of ID. There was no significant

main effect for CLAS-MR scores, $\chi^2 (2, N = 105) = 1.42, p = .493$. There was no statistically significant interaction between report type and CLAS-MR scores, and as such, the interaction was not entered into the final model using the Forced Entry method (see Table 13 for a summary of results). The model explained between 34.2% (Cox and Snell R square) and 39.8% (Nagelkerke R square) of the variance in case outcome.

Table 13

Predicting Influence of Prison Behavior on Final ID Decision by Report Type and CLAS-MR Score

	B	S. E.	Wald	df	p	Odds Ratio	95.0% C. I. for Odds Ratio	
							Lower	Upper
Relevant evidence against ID								
Intercept	.26	1.63	.03	1	.873			
Report type	-1.73	.68	6.44	1	.011	.18	.05	.67
CLAS-MR score	.02	.02	1.01	1	.316	1.02	.98	1.06
Relevant evidence in favor of ID								
Intercept	-1.52	1.69	.81	1	.368			
Report type	1.38	.69	4.07	1	.044	3.98	1.04	15.27
CLAS-MR score	.02	.02	1.25	1	.264	1.02	.98	1.07

Hypothesis four. Based on the results of the following analysis, the hypothesis that the weight given to evidence related to the claimant’s index offense (i.e., evidence in favor of or against an ID finding) would be predictive of final case outcome was supported. Binary logistic regression was used to assess the impact of report type and the influence of the claimant’s index offense on final case outcome (i.e., ID versus not-ID). Main effects for report type and the influence of the index offense were examined on the first step, as well as the interaction of those variables on final case outcome on the second step. The full model was statistically significant, $\chi^2 (3, N = 105) = 52.18, p < .001$, which indicated that the model was able to distinguish between judicial decisions in favor of ID and those against ID. The model explained between

37.2% (Cox and Snell R square) and 50.4% (Nagelkerke R square) of the variance in case outcome, and it correctly classified 80.4% of cases (77.3% of not-ID cases and 82.4% of ID cases).

Further examination of the results indicated that there were statistically significant main effects for report type and the influence of the index offense on final case outcome (see Table 14 below), but the interaction effect of these two variables was not statistically significant. The main effects were consistent with the overarching hypothesis guiding this study. Specifically, that the deficit-based report produced significantly more determinations in favor of ID and the strength-based report produced significantly more determinations against ID. Consistent with this hypothesis, as participants found evidence of the index offense influential in favor of ID, the final case outcome was more likely to be in favor of ID. The reverse was also true, such that as participants found the index offense influential evidence against ID, they were more likely to provide a not-ID finding.

Table 14

Predicting ID Status by Report Type and the Influence of Index Offense

	B	S. E.	Wald	df	p	Odds Ratio	95.0% C. I. for Odds Ratio	
							Lower	Upper
Report type	3.32	1.22	7.46	1	.006	27.76	2.56	301.55
Influence of index offense	.78	.34	5.13	1	.024	2.18	1.11	4.27
Report x Index offense	.47	.78	.36	1	.59	1.60	.35	7.36
Constant	.23	.52	.19	1	.66	1.25		

Hypothesis five. It was hypothesized that as knowledge of and experience with ID increased, participants would be more likely to find in favor of the claimant (i.e., ID). The results of the following analyses indicated that knowledge and experience did not predict final case outcome. As such, the hypothesis was rejected. Three sets of binary logistic regression were used

to analyze the impact of report type, knowledge, experience, and a sum of knowledge and experience on final case outcome. Main effects were examined on the first step of each analysis, and the interaction of relevant variables was assessed on the second step.

The first analysis included examination of main effects for report type and knowledge of ID, as well as the interaction of these two predictors. The results indicated there was a main effect for report type, such that the deficit-based report group was more likely to find in favor of ID than the strength-based group, $B = 2.57$, $SE = .50$, $Wald = 26.27$, $df = 1$, $p \leq .000$. Although the results indicated that there were no main effects for knowledge of ID when it was entered in the first step with report type, $B = .49$, $SE = .28$, $Wald = 2.61$, $df = 1$, $p = .106$, it was significant when entered with the interaction term on the second step of the analysis (see Table 15 for a summary of the results). That result indicated that increased knowledge of ID was predictive of an ID finding. There was no statistically significant interaction between report type and knowledge of ID. The full model explained between 28.9% (Cox and Snell R square) and 39.3% (Nagelkerke R square) of the variance in case outcome.

Table 15

Predicting ID Status by Report Type and the Knowledge of ID

	B	S. E.	Wald	df	p	Odds Ratio	95.0% C. I. for Odds Ratio	
							Lower	Upper
Report type	-4.76	1.40	11.55	1	.001	117.23	7.51	1829.30
Knowledge of ID	.901	.40	5.07	1	.024	2.46	1.12	5.40
Report x Knowledge of ID	-1.01	.57	3.13	1	.077	.37	.12	1.12
Constant	-2.56	.98	6.88	1	.009	.08		

The second set of binary logistic regression analyses examined the predictive ability of participant experience with ID and report type on final case outcome. Main effects for report type and experience with ID, as well as the interaction of these two predictors were examined.

The results indicated there was a main effect for report type, such that the deficit-based report group was more likely to find in favor of ID than the strength-based group, $B = 2.52$, $SE = .49$, $Wald = 26.85$, $df = 1$, $p \leq .000$. There was no main effect for experience with ID, $B = -.16$, $SE = .17$, $Wald = .97$, $df = 1$, $p = .326$. Results indicated there was no significant interaction between report type and experience with ID (see Table 16 for a summary of the results). The full model explained between 27.1% (Cox and Snell R square) and 36.9% (Nagelkerke R square) of the variance in case outcome.

Table 16

Predicting ID Status by Report Type and Experience with ID

	B	S. E.	Wald	df	p	Odds Ratio	95.0% C. I. for Odds Ratio	
							Lower	Upper
Report type	3.37	1.02	10.99	1	.001	29.17	3.97	214.42
Experience with ID	-.05	.20	.06	1	.807	.95	.65	1.41
Report x Experience with ID	-.36	.36	1.02	1	.311	.70	.35	1.40
Constant	-.44	.52	.70	1	.404	.65		

The third binary logistic regression analysis included examination of the ability of knowledge and experience combined to predict final case outcome. Main effects for report type and the sum of knowledge and experience with ID, as well as the interaction of these two predictors were examined. The results indicated there was a main effect for report type, such that the deficit-based report group was more likely to find in favor of ID than the strength-based group, $B = 2.49$, $SE = .49$, $Wald = 26.17$, $df = 1$, $p \leq .000$. There was no main effect for the sum of knowledge and experience with ID, $B = .01$, $SE = .14$, $Wald = .00$, $df = 1$, $p = .970$. Results indicated there was no significant interaction between report type and the knowledge-experience

sum (see Table 17 for a summary of the results). The full model explained between 26.7% (Cox and Snell R square) and 36.3% (Nagelkerke R square) of the variance in case outcome.

Table 17

Predicting ID Status by Report Type and Knowledge-Experience

	B	S. E.	Wald	df	p	Odds Ratio	95.0% C. I. for Odds Ratio	
							Lower	Upper
Report type	4.54	1.47	9.56	1	.002	93.81	5.27	1670.00
Knowledge-Experience with ID	.14	.16	.78	1	.377	1.15	.84	1.58
Report x Knowledge-Experience with ID	-.45	.29	2.43	1	.119	.64	.36	1.12
Constant	-1.17	.78	2.20	1	.138	.31		

Hypothesis six. Based on the results of the following analysis, the hypothesis that CLAS-MR scores would predict the influence of APD on final case outcome was rejected. Multinomial logistic regression was used to analyze the ability of CLAS-MR scores to predict the influence of claimant history of APD diagnosis on final case outcome. The analysis included examination of main effects for report type and CLAS-MR score on the first step, as well as the interaction of these two predictors on the second step. The results indicated there were no main effects for report type, $\chi^2 (2, N = 105) = 2.95, p = .228$, or CLAS-MR score, $\chi^2 (2, N = 105) = 2.48, p = .290$. There was also no statistically significant interaction between report type and CLAS-MR scores, and as such, the interaction was not entered into the final model using the Forced Entry method(see Table 18 for a summary of the results). The model explained between 5.0% (Cox and Snell R square) and 5.7% (Nagelkerke R square) of the variance in case outcome. This hypothesis was rejected, as CLAS-MR scores did not predict the influence of APD on ID decision.

Table 18

	B	S. E.	Wald	df	p	Odds Ratio	95.0% C. I. for Odds Ratio	
							Lower	Upper
Relevant evidence against ID								
Intercept	-1.31	1.33	.97	1	.324			
Report type	-.47	.53	.76	1	.382	.63	.22	1.78
CLAS-MR score	.02	.02	1.04	1	.307	1.02	.99	1.05
Relevant evidence in favor of ID								
Intercept	-1.64	1.20	1.87	1	.172			
Report type	.02	.47	.67	1	.415	1.46	.59	3.65
CLAS-MR score	.38	.01	2.30	1	.130	1.02	.99	1.05

Hypothesis seven. It was hypothesized that participants who viewed a history of APD as evidence against ID would be more likely to provide a not-ID finding for the final case outcome. The following analysis indicated that a history of APD did not predict final case outcome, and as such, the hypothesis was rejected. Binary logistic regression was used to assess the impact of report type and the influence of the claimant's history of APD on final case outcome. Main effects for report type and the influence of APD were examined on the first step of the analysis, as well as the interaction of those variables on final case outcome on the second step. The results indicated there was a main effect for report type, $B = 2.789$, $SE = .521$, $Wald = 28.690$, $df = 1$, $p \leq .000$. The deficit-based report group was significantly more likely than the strength-based report group to find in favor of ID. There was no significant main effect for the influence of APD, $B = .48$, $SE = .30$, $Wald = 2.53$, $df = 1$, $p = .112$. There was no statistically significant interaction between report type and the influence of APD, and as such, the interaction was not entered into the final model using the Forced Entry method (see Table 19 for a summary of the

results). The model explained between 31.9% (Cox and Snell R square) and 43.3% (Nagelkerke R square) of the variance in case outcome.

Table 19

Predicting ID Status by Report Type and the Influence of APD

	B	S. E.	Wald	df	p	Odds Ratio	95.0% C. I. for Odds Ratio	
							Lower	Upper
Report type	2.77	.53	27.74	1	.000	15.96	5.69	44.75
Influence of APD	.42	.36	1.35	1	.246	1.52	.75	3.10
Report x APD	.17	.64	.07	1	.790	1.18	.34	4.11
Constant	-.75	.29	6.59	1	.010	.47		

Hypothesis eight. Based on the following analysis, the hypothesis that participant ratings of source credibility would predict agreement with the opinion of the psychologist who authored the report was not supported. Binary logistic regression was used to assess the predictive ability of source credibility and report type on final case outcome. Main effects for source credibility and report type were examined on the first step, as well as the interaction of those variables on final case outcome on the second step. The full model was statistically significant, $\chi^2(3, N = 118) = 10.13, p = .018$, which indicated that the model was able to distinguish between cases in which participants agreed with the finding of the psychologist's report and those in which the conclusions diverged. The model explained between 8.2% (Cox and Snell R square) and 12.2% (Nagelkerke R square) of the variance in case outcome, and the model correctly classified 75.4% of all cases. Further examination of the results indicated that there were no statistically significant main or interaction effects in this model (see Table 20 below). It should be noted that 73.0% of the sample agreed with the finding of the psychologist and 23.8% of participants disagreed with the psychologist's finding regarding ID.

Table 20

Source Credibility as a Predictor of Agreement with Report Findings

	B	S. E.	Wald	df	p	Odds Ratio	95.0% C. I. for Odds Ratio	
							Lower	Upper
Report type	1.14	2.66	.19	1	.67	3.14	.02	571.80
Credibility of psychologist	-.12	.37	.10	1	.75	.89	.43	1.84
Report x Credibility	.08	.67	.02	1	.90	1.09	.29	4.00
Constant	.99	1.42	.49	1	.49	2.69		

CHAPTER 4

DISCUSSION

This study sought to examine the impact of psychological assessment report style (i.e., strength- versus deficit-based), report content (i.e., driving history, behavior in prison, employment history, marital history, escape from jail, details of the index offense, verbal/communication skills, criminal history, diagnosis of APD), and attitudes toward the ID population on judicial decision-making in *Atkins* cases. This was the first study to investigate the influence of report style on judicial decision-making, and only one of two to assess the impact of report content on *Atkins* cases (Hedge, 2012). Although available scholarly writing contains some discussion of the influence judicial attitudes and non-legal factors have on more general legal decision-making (e.g., Baumer, Messner & Felson, 2000; DeSantis & Kayson, 1997; Dhimi, 2003; English, Mussweiler, & Strack, 2006; Foley, 1987; Guthrie, Rachlinski, & Wistrich, 2001; Lichtenstein, 1982; Steen, Engen, & Gainey, 2005; Vito & Keil, 1988), there is little empirical study as to how these factors may influence judicial decision-making in *Atkins* cases (for related research see Hensl, 2011). Gaining a more thorough understanding of these issues is the first of many steps toward ensuring that the legal system is functioning in a manner that is fair for claimants, as well as society.

The Impact of Psychological Assessment Report Style

Perhaps the most important finding of this study was the insight provided that the tenor of psychological assessment report writing (i.e., strength- versus deficit-based focus) has a substantial impact on outcomes for *Atkins* claimants. The author's review of more than 70 judicial opinions and numerous transcripts from *Atkins* cases provided evidence that psychologists tend to write psychological assessment reports from either a strength- or deficit-

based perspective or style. While the deficit-based style is generally more consistent with the standards for the evaluation and diagnosis of ID (i.e., deficits, which may co-exist with strengths, are used as support for a diagnosis of ID) put forth by the AAIDD (2010), the strength-based report style is inconsistent with best practices; the strength-based style uses claimant strengths to build a case against a diagnosis of ID. The results of this study clearly demonstrated that the style in which a report is written has the ability to influence judicial decision-making in *Atkins* cases.

These findings highlight the importance of providing accurate and objective psychological assessment reports to the court that include both claimant deficits and strengths in deriving a conclusion regarding the presence of ID. Failure to write reports in the manner supported by the AAIDD may result in a biased view of ID and a diagnostic decision rooted in misinformation (e.g., strengths can be used to refute a diagnosis of ID, criminal behavior is acceptable evidence of adaptive behavior), overreliance on clinical judgment, and/or an overly simplistic, narrow view of a claimant's functioning. Reports written in a manner that is consistent with the AAIDD's recommendations is especially important because there may be instances in which only one report is submitted for court review (i.e., when one court-appointed evaluator is used). In those instances, the results of this study indicate that the style in which that report is written can sway judicial opinion, despite the acceptability of the approach used to derive conclusions.

The tendency for judicial decisions to be influenced by report style such that a deficit-based report predicted an ID finding and a strength-based report predicted a not-ID finding may be explained by several factors. Redding and Murrie (2010) noted that judges tend to value clinical data provided by mental health experts over statistical data. The reports used in this study were largely clinical in nature (i.e., descriptions of claimant behavior/skills and notable life

events rather than numerous scores from a variety of actuarial measures), which may have been especially appealing and persuasive to judges who tend to favor that approach when considering mental health testimony. Thus, the findings that report style predicted case outcome might have been a product of judicial reliance on and a tendency to favor clinical data provided by experts in evaluating claimants; the style of the report may have not been as influential as the clinical emphasis contained across both reports. If the style of the report had been retained, but there was less clinical and more statistical data, results may have been different. This study's results regarding the influence of report style of judicial decision-making may also be a product of the fact that judges tend to accept the opinions of mental health experts in the overwhelming majority of cases (96.9%; Zapf, Hubbard, Cooper, Wheelles, & Ronan, 2004). That research may be especially applicable to the current study because judges were provided only one report for review, thereby not placing them in the position to make a decision regarding ID in light of contradictory report styles and findings. Overall, this study's findings suggest that the style in which a psychological assessment report is written can have a substantial influence in judicial decision-making in *Atkins* cases, but the underlying reasons as to why style was influential remains unclear.

Judicial Attitude Toward ID and Final Case Outcome

Available research on the public's attitudes toward individuals with ID reveals that this population tends to be viewed as having severe and obvious deficits (Doane & Salekin, 2009; Dudley, 2000; Scior, 2011; Scior & Furnham, 2011). Research also supports that negative attitudes toward individuals with ID extend to the legal system, such that crimes are viewed as more serious when committed by an individual who has ID (McAfee, Cockram, & Wolfe, 2001). In addition, one study (Hensl, 2011) found that despite evidence in favor of a diagnosis of mild

or moderate ID, 38% of judges did not rule in favor of ID. Although the underlying reason for that result was unclear, the author concluded that “some judges refused to render a finding of ID even when they recognized ID was present...and, in turn, engaged in some form of judicial nullification” (p. 93). Taken together, the aforementioned findings convey that negative attitudes toward this population have an impact on the way in which crimes committed by individuals with ID are viewed, as well as judicial decision-making in cases in which ID is an issue.

The results of this study generally did not support the hypothesis that judicial attitudes influenced case outcome. Negative attitudes toward ID did not result in more determinations of not-ID and more positive attitudes did not lead to more ID findings when CLAS-MR was analyzed as a continuous variable. This unexpected result may be due to the inconsistency present between attitude and behavior found in prior research (Ajzen & Fishbein, 2005; Wicker, 1969), such that judicial attitudes toward ID did not result in behaviors (i.e., case determinations) that supported those attitudes. It was expected that the more negative the attitude (i.e., the belief that individuals with ID demonstrate severe impairments in functioning), the more likely judges would have been to provide a not-ID finding, as those participants would perceive the behaviors involved in a capital crime (e.g., drive to the destination, obtain and effectively use a weapon, thwart efforts of victims to contact police, use a disguise) as inconsistent with ID.

Prior research on the attitude-behavior relationship may lend insight into the aforementioned finding. Ajzen and Fishbein (2005) noted that a single score on a broad-based attitude measure, such as that used in this study, may not “represent the attitude construct in all its complexity” (p. 177). Thus, while the CLAS-MR may have provided an acceptable general measure of the cognitive and affective components of attitudes toward ID, it is possible that the conative or behavioral component of attitudes, which provides insight into how individuals

behave toward a subject, was not accurately captured by this measure/score. Ajzen and Fishbein (2005) also noted that valid and reliable measures of attitude should include both a large number of items and questions that span a wide variety of behaviors toward the subject, rather than a small number of specific questions. Attitude measures that contain a large number of questions and examine a variety of behaviors toward a target group have been found to more accurately predict behavior toward a subject. Given that general attitudes toward a subject have not been strongly related to behaviors (Ajzen & Fishbein, 2005), it is possible that the CLAS-MR did not provide the number and/or variety of items required to accurately assess attitudes that would predict behavior. In sum, accurate prediction of judicial decision-making in an *Atkins* case through the use of the CLAS-MR may have been problematic because the measure contained too few items and was too general in nature to accurately predict behavior toward an individual who may have ID.

It is also possible that judicial attitudes toward ID did not predict final case outcome because of the use of a general measure of attitudes was incompatible with the prediction of such a specific behavior by judges toward the subject of interest (i.e., determination of ID). Based on their review of research relevant to the attitude-behavior relationship, Ajzen and Fishbein (1977) concluded that the correlation between general attitudes toward a subject and isolated behaviors was low. Aronson (2007) made a similar point when he suggested that questionnaires and actual experience with the subject of interest might activate different attitudes. It is reasonable that while the CLAS-MR activated certain attitudes toward ID, the presentation of a psychological assessment report in which a determination of ID was to be made activated a different set of attitudes that were influenced by the specific issues involved in *Atkins* determinations. Thus, the CLAS-MR may have been too general a measure to predict such a specific behavior because the

attitudes assessed by the CLAS-MR were categorically different from those activated through a review of *Atkins*-related case materials.

Studies have demonstrated that increased attitude accessibility tends to result in greater attitude-behavior consistency (Fazio, Chen, McDonel, & Sherman, 1982; Glasman & Albarracin, 2006). Although attitude accessibility was not directly assessed in this study, the inconsistency between attitudes and behavior found in the results may indicate that judicial attitudes toward ID were not highly accessible, and as such, served as a poor predictor of behavior toward that population. If judicial attitudes toward the ID population were in fact accessible, it is possible that judges were able to set aside their attitudes toward the ID population in order to make a more objective finding regarding the presence of ID. If this is the case, the results of this study may indicate that judges use a more systematic, analytic-based decision-making process than one rooted in attitudes, and/or popular conceptualizations of ID.

Although the mock psychological assessment reports did not explicitly state a final conclusion regarding the presence of ID, participants may have deferred to the report's inferred conclusion (i.e., the strength-based report inferred a not-ID finding, the deficit-based report inferred an ID finding) despite their personal attitude toward ID. The results revealed that participants' ratings of source credibility did not predict agreement with the report writer's conclusion regarding ID, but participants may have deferred to the writer's inferred opinion without formal acknowledgement of their credibility when prompted; the participants may have been unaware that they deferred to the writer's conclusion.

An exploratory analysis that dichotomized CLAS-MR scores (i.e., a high and low group) using a median split ($Mdn = 81$) was also conducted. The results of that analysis supported the hypothesis that low scores would predict an ID finding and high scores would predict a not-ID

finding. Although this result supports the hypothesis, it should be interpreted tentatively given the problems associated with median splits, which primarily includes the potential to group highly dissimilar scores within the same group and to place similar scores in different groups (Field, 2009). For example, participants with the minimum score of 35 may be grouped with participants who have a score of 80, despite the possibility that they are categorically different with regard to attitude toward ID. Similarly, participants with scores of 80 and 83, though likely similar in overall attitude toward ID, would be placed into different groups in this analysis because the median split was 81.

Judicial attitudes and the weight given to report content in final case outcome. The results of this study generally failed to support the hypothesis that attitude would predict the weight given to evidence of the claimant's history of escape from a correctional facility, criminal history, employment history, marital history, driving ability, communication skills, and prison behavior on judicial opinions regarding ID. Specifically, negative attitudes toward ID generally did not predict participant view of those factors as evidence against ID, and there was no significant interaction between report type and CLAS-MR scores in predicting final case outcome.

It is possible that the presence of an unknown and unexamined confounding variable impacted results. Specifically, an influential and unaccounted for variable may have exerted a suppressor effect. Thus, if the confounding variables were to be identified and statistically controlled for in the model, it is possible that the predictors in this study would be significant. Previous research established that non-legal factors (e.g., race, age, gender) have been influential in judicial decision-making (e.g., Baumer, Messner & Felson, 2000; DeSantis & Kayson, 1997; Dhimi, 2003; English, Mussweiler, & Strack, 2006; Foley, 1987; Guthrie, Rachlinski, &

Wistrich, 2001; Lichtenstein, 1982; Steen, Engen, & Gainey, 2005; Vito & Keil, 1988). There are a number of background variables presented in the reports that may have unintentionally played a significant role in judicial decision-making. The influence of non-legal and/or clinically significant factors beyond those specifically addressed in the survey may have overshadowed any existing influence of the factors examined in this study, thus resulting in a rejection of the hypothesis.

A number of the analyses revealed a significant main effect for report type. Specifically, there was a significant main effect for report type on the influence of escape, employment, criminal, and marital histories, as well as driving ability, communication skills, and prison behavior. The results were generally consistent, as the deficit-based group was significantly more likely than the strength-based group to perceive a claimant's employment, criminal, and marital histories, as well as his communication skills and prison behavior as evidence in favor of an ID finding. In addition, the deficit-based group was significantly less likely than the strength-based group to view the claimant's history of escape, driving, and prison behavior as evidence against ID. Lastly, an analysis of the main effects for report type indicated that the deficit-based group was also significantly less likely to view the claimant's history of escape as evidence in favor of ID. Considered together, these results appear to support the main hypothesis of this study: the style in which a report is written, either emphasizing deficits in supporting a diagnosis of ID or strengths in refuting that diagnosis, appears to impact the way in which evidence is viewed with regard to ID, such that judges who read a deficit-based report will tend to view evidence in favor of ID and those who read a strength-based report will view the report's contents as evidence against ID. Essentially, it appears that report type "primes" readers to view evidence from the same perspective in which the report is written.

Summary. The results of this study were inconsistent with the hypothesis that attitude toward ID would be a significant predictor of judicial decision-making; attitude did not appear to exert the strength and type of influence on behavior that was expected. While there are a number of possible explanations for this finding, it appears that judicial decision-making may be less susceptible to the influence of attitudes than initially believed. However, the results provided further support for the hypothesis that report type exerts a significant influence on judicial decision-making in *Atkins* cases, as there were a number of main effects for report type.

The Predictive Ability of Index Offense on Case Outcome

The results of this study supported the hypothesis that the influence of the index offense would predict the final case outcome. Specifically, as participants found the claimant's index offense to be evidence against a finding of ID, they were more likely to provide a not-ID decision. On the other hand, participants who viewed the claimant's index offense as evidence in favor of ID were more likely to find the claimant had ID. Both studies by Kan, Boccaccini, McGorty, Noland, and Lawson (2009) and Hedge (2012) found that evidence of criminal behavior is often presented as evidence for or against adaptive behavior deficits. The current study furthered that research by examining the direction of influence (i.e., in favor of ID versus against a finding of ID) exerted by such information. It is notable that inclusion of the details related to the index offense does not necessarily result in a finding in favor of or against ID (Hedge, 2012). Rather, it appears that the participants' perception of the crime's details as being evidence in favor of or against ID determines the influence it exerts on final decision-making. That is, a claimant's involvement in a capital crime does not necessarily equate to evidence against ID, but rather, the specific details and how they are perceived in light of the typical abilities of the ID population appears to be important.

There was no significant interaction effect between the weight given to this evidence in favor of or against ID and the report type, which indicates that perception of the offense behavior supersedes the overall style of the report. This finding appears to provide evidence of the difficulty associated with identifying mild ID, as Switzky and Greenspan (2006) noted that mild ID tends to be “elusive to classify” (p. 198). The difficulty inherent in identifying mild ID appears to make the behaviors associated with the commission of a capital crime open to interpretation regarding whether they are within the capabilities of someone with ID.

The Role of Knowledge and Experience in Judicial Decision-Making in *Atkins* Cases

Similar to the results of Hensl’s (2011) doctoral dissertation, the findings of the current study revealed that judicial experience with ID did not predict final case outcome. Given that increased experience can serve to correct misconceptions and improve perceptions of the ID population (Roper, 1990), it was believed that greater experience with ID would predict a finding in favor of the claimant (i.e., ID). This relationship was hypothesized because it was believed that increased experience with ID would assist participants in understanding the wide range of strengths possible for an individual with ID, and as such, participants would be less likely to dismiss a diagnosis of ID when such evidence was presented.

The results of this study were interesting given that attitude accessibility, which was assumed to be greater as experience with and/or knowledge of a particular subject increases, and may thereby result in greater attitude-behavior consistency, was only partially supported by these results. The results indicated that experience with ID did not predict final case outcome, nor did the sum of one’s experience with and knowledge of that population. It is possible that participants actively controlled for the influence their personal experience with ID had on their findings, and in turn, attempted to take a more objective stance regarding their decision-making.

As previously discussed, it is possible that unknown and unaccounted for variables impacted these analyses, resulting in non-significant results for experience and the sum of knowledge and experience. It is also possible that experience did not provide reliable insight into the abilities of individuals with ID, and as such, a statistically significant relationship between those factors and case outcome was not found.

Although experience and the sum of knowledge and experience did not predict final case outcome, knowledge of ID was a statistically predictor of final case outcome. Specifically, in support of the hypothesis, the results indicated that increased knowledge of ID was predictive of an ID finding. It is possible that objective knowledge and related understanding of ID results in the ability to understand that the presence of deficits are the defining factor in the diagnosis of ID, and the presence of strengths does not necessarily refute such a diagnosis. Knowledge of ID may also serve to correct misconceptions of the population with ID. In addition, similar to previously discussed analyses, there were main effects for report type, such that the deficit-based group was more likely to find in favor of ID than the strength-based group. Those findings further supported the hypothesis that the style in which a report is written is predictive of final case outcome, with deficit-based reports resulting in ID findings and strength-based reports resulting in not-ID findings.

The Relationship between Attitude, APD, and Final Case Outcome

Contrary to this study's hypothesis, CLAS-MR scores were not predictive of the influence a history of APD would have on final case outcome. Thus, participants with more negative attitudes toward the ID population did not necessarily weigh APD as evidence against an ID finding. Although several *Atkins* cases (*Ex Parte Briseno*, 2004; *Green v. Johnson*, 2008; *Lambert v. State*, 2005) cited a history of APD as a factor that contributed to a not-ID finding,

there appears to be a lack of empirical support for the relationship between APD and case outcome as a function of attitude toward ID. Thus, a history of APD may not be as influential as initially believed, even with individuals who possess a negative view of ID. While research has shown that decisions tend to hinge upon a few pieces of seemingly important information, it is possible that APD is not one of the key pieces of evidence guiding judicial decision-making in *Atkins* cases. Another possible explanation for this finding may be that APD is only one of several factors that interact to influence ID finding, and examination of the role APD plays in isolation is meaningless. Results may have been different if multinomial logistic regression could have been used in this study, as several predictors would have been entered on various steps to assess their importance in relation to other predictors. Similar to the results of previously discussed analyses, the significant main effect for report type lent additional support to the hypothesis that the overarching style in which a psychological assessment report is written has a significant impact on judicial decision-making.

Source Credibility and Agreement with Psychological Findings

Prior research has revealed that individuals tend to be influenced by or defer to the opinions of credible sources (Chaiken & Maheswaran, 1994; Pornpitakpan, 2004). The results of this study did not support those findings, as perceived source credibility did not predict participant agreement with the conclusion inferred by the psychological assessment report. Examination of the results revealed that 73% of participants agreed with the conclusions of the psychologist's report, but that agreement was not predicted by perceived credibility. It is possible that review of only one report can explain the rate of agreement between judges and the reports' conclusions, as judges did not have additional and/or contrasting information to challenge the conclusions of the report they read, thus defaulting to the opinion therein. This result may also

indicate that the perceived credibility of the report's author is not as important in the concordance rate between judges and experts as initially believed unless there is significant question as to the author's credibility (e.g., overt issues related to competence, questionable ethical conduct, contradictory statements). Interestingly, there was no main effect for report type in this analysis, which indicated that agreement was not necessarily a function of the specific report type received by participants.

Limitations

Although this study provided insight into the role of psychological assessment report style and content, as well as attitudes toward ID on judicial decision making in *Atkins* cases, this study had several limitations. One of the most significant limitations was the low response rate and resulting small sample size. It is possible that, despite the use of the tailored-design method, there were meaningful differences between responders and non-responders as a function of the study's design. Furthermore, it is possible that those differences may have impacted the results and conclusions of this study. It is unclear as to the underlying reason for the low response rate, but several factors may have played a role. These factors include the time commitment needed to complete the study, professional interest in *Atkins*/capital cases, the perceived importance or applicability of individual participant response, and personal views of the death penalty. With regard to the impact of the time commitment on judicial response rate, it is possible that the average of 20 minutes needed to complete this study was burdensome for judges, especially without the presence of an external incentive. Despite a statement in the recruitment materials that indicated all judges, regardless of the type of cases they hear and experience with *Atkins* and/or death penalty cases were eligible for inclusion in the study, several judges responded to requests for participation by indicating they do not hear cases relevant to the study topic. Thus,

response rate may have been impacted by the extent to which judges' perceived their experience as relevant to the study. Finally, several judges indicated that they were unwilling to complete the study as a result of their personal view of the death penalty; they indicated that capital punishment should not be used under any circumstances, and as such, they felt they could not provide objective responses to the questionnaire.

As previously noted, this study had a relatively small sample size ($N = 122$), which served as a limitation. Initial data analyses using multiple regression resulted in the violation of a number of statistical assumptions because the data was not normally distributed. As a result of those violations, logistic regression was used to analyze the data. Non-parametric tests are less preferred than parametric tests, and it is possible that the use of logistic regression adversely impacted the study's power. The low sample size also necessitated that univariate analyses be used rather than multivariate, and model building was greatly limited. It is possible that a larger sample size would result in data that is normally distributed, and as a result, the preferred parametric tests, multivariate analyses, and/or multiple regression could be used, which in turn, may impact results and related conclusions.

This study also combined responses from federal and state judges, as well as appellate and trial-level judges. The low response rate and final number of participants did not allow for examination of differences between types of judges (i.e., federal versus state, appointed versus elected), or other possible confounding variables, such as political affiliation, state in which the participant served as a judge, gender, race, etc. It is possible that those background variables may play a role in judicial decision-making and/or the influence of attitudes toward the ID population. However, those factors were unable to be examined.

The fact that a second pilot study was not conducted in order to re-assess the similarity of the content between reports serves as an additional limitation of this study. The initial pilot study was conducted in order to assess whether the reports shared generally similar content. Those qualitative responses were then reviewed and changes to the final reports were made in a manner that would increase the similarity of content. However, an additional pilot study aimed at re-assessing the degree of similarity between the revised, now final versions of the reports was not conducted. Thus, it is only assumed that the final report content was generally similar (i.e., sharing approximately 75% of the same content). This serves as a limitation because there is a possibility the reports were not as similar as intended, and therefore, results may be the product of differences in report content rather than differences in style.

The review of only one report by judges may also be considered a limitation of this study, as judges typically receive reports from both the defense and prosecution's experts. The review of only one report may have impacted the way in which that report was viewed by participants, judicial decision-making in this case, and the perceived credibility of the report's author. Perhaps most notably, the receipt of only one report did not allow judges to consider contrasting information and conclusions regarding the claimant. As a result, it is possible that judicial decisions coincided with the report they read not because the style of the report was necessarily persuasive, but rather, there was no clear reason to second-guess the inferred conclusion of the report. In addition, the creation of psychological assessment reports serves as a limitation because there are likely differences between the mock reports created for this study and those used in actual *Atkins* cases. Thus, the artificial nature of the reports used in this study serves as a potential limitation.

Recommendations for Future Research

It is recommended that future research attempt to replicate this study with a larger sample size in order to increase the study's power. It is also recommended that once an adequate sample size is reached, efforts be made to explore any meaningful differences between federal and state-level judges, as well as those who hear criminal cases versus those who do not. Examination of differences between appellate and trial-level judges is also recommended, as there may be meaningful differences between those groups. Stratification by geographic location may also reveal meaningful differences. In general, future research on the factors that influence judicial decision-making in *Atkins* cases should involve obtaining a larger sample size in order to increase the statistical power of the study and enable examination of outcomes as a function of professional (e.g., type of court in which the judges hear cases, judicial experience with criminal cases) and personal (e.g., geographical and demographic) differences between participants.

As previously mentioned, attitude accessibility is positively correlated with the attitude-behavior consistency. Thus, it is recommended that future research include formal assessment of attitude accessibility. Exploration of the impact implicit attitudes have on judicial decision-making may also be useful.

This study examined between-group differences as a function of report type. As such, it is unclear as to how results may be impacted if all participants received both versions of the report. It is recommended that future research include a design that examines judicial decision-making when both types of reports are reviewed. In addition, it is recommended that future research endeavors on this topic attempt to use de-identified, actual psychological assessment reports to minimize the artificiality inherent in creating reports.

Conclusion

This study added to the small body of empirical literature relevant to *Atkins* cases. It was the first study to examine the impact of report style on those decisions, and it brought attention to a highly understudied area of research, the relationship between psychological assessment report content, judicial attitudes, and decision-making in *Atkins* cases. In general, the results of the current study clearly illustrated that report style is influential in final case outcome for *Atkins* claimants. However, specific report content and attitude toward ID appear to be less influential than initially believed. Many of the results of this study, although not significant, are welcomed findings, as they seem to indicate that judicial decision-making in *Atkins* cases is more systematic and less influenced by attitudes and non-legal factors than initially believed. Thus, possibly creating a fairer climate for the determination of *Atkins* cases. Additional research is needed to understand the impact of psychological assessment reports, as well as other factors influencing judicial decision-making in *Atkins* cases.

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Appendices

Appendix A

Letter of Approval from The University of Alabama's Institutional Review Board

Office for Research
Institutional Review Board for the
Protection of Human Subjects

THE UNIVERSITY OF
ALABAMA
R E S E A R C H

March 25, 2015

Krystal Hedge, M.A.
Department of Psychology
College of Arts & Sciences
The University of Alabama
Box 870348

Re: IRB # 14-OR-134-R1 "Judicial Decision Making in *Atkins* Cases: An Examination of What Matters and Why"

Dear Ms. Hedge:

The University of Alabama Institutional Review Board has granted your renewal application approval.

Your renewal application has been given expedited approval according to 45 CFR part 46. You have also been granted the requested waiver. Approval has been given under expedited review category 7 as outlined below:

(7) Research on individual or group characteristics or behavior (including, but not limited to, research on perception, cognition, motivation, identity, language, communication, cultural beliefs or practices, and social behavior) or research employing survey, interview, oral history, focus group, program evaluation, human factors evaluation, or quality assurance methodologies.

Your application will expire on March 24, 2016. If your research will continue beyond this date, complete the relevant portions of the IRB Renewal Application. If you wish to modify the application, complete the Modification of an Approved Protocol Form. Changes in this study cannot be initiated without IRB approval, except when necessary to eliminate apparent immediate hazards to participants. When the study closes, complete the appropriate portions of the IRB Study Closure Form.

Should you need to submit any further correspondence regarding this proposal, please include the above application number.

Good luck with your research.

Sincerely,


Carpanato T. Myles, MSM, CIM, CIP
Director of Research Compliance & Research Compliance Officer
Office of Research Compliance


358 Rose Administration Building
Box 870127
Tuscaloosa, Alabama 35487-0127
(205) 348-8461
FAX (205) 348-7189
TOLL FREE (877) 820-3066

Appendix B

Use of the Tailored Design Method in the Current Study

Type of error	Specific plan to address potential error	Reason for the plan in the current study
Coverage error (i.e., members of the population of interest have varying probability of being included in the sample)	All members of the population of interest were contained on the recruitment list. Publically available directories and the Internet were consulted in order to draft complete recruitment lists.	All members of the population should have an equal chance of being recruited for the study (Dillman, Smyth, & Christian, 2009). Failure to include names of participants of interest means they will not have an equal chance of being included in the recruitment efforts and study sample.
	The recruitment list did not contain the names of individuals who were not part of the population of interest.	Only names of individuals in the population of interest should be included in the recruitment list to ensure the chance of being recruited is not affected by inclusion of ineligible individuals (Dillman, Smyth, & Christian, 2009).
	Each potential participant was only included on the recruitment list once. Thorough review of the list ensured names were not duplicated.	The inclusion of potential participants on the recruitment list more than once increases their probability of being selected for the study (Dillman, Smyth, & Christian, 2009).
	All correspondence with potential participants was personalized.	Emails sent individually rather than in bulk are less likely to be filtered as spam or blocked by email servers (Dillman, Smyth, & Christian, 2009). Thus, all potential participants who are recruited for the sample via email are estimated to be equally likely to receive the recruitment materials.
	Emails were formatted with text-based messages, not HTML.	Messages that use HTML are more likely to be filtered as spam/blocked

		by email servers (Dillman, Smyth, & Christian, 2009).
	A mixed-mode design (i.e., electronic and paper-and-pencil surveys) was used to recruit participants.	This design will help to ensure that potential participants are recruited from the population of interest despite the contact information available (i.e., email address vs. mailing address). Limiting the recruitment approach to either email or paper-and-pencil would likely exclude a large portion of the population from being recruited.
Sampling error (i.e., imprecision present in results due to sampling of only a subset of the population of interest)	Random sampling from population of interest.	Random selection from the population of interest decreases sampling error when the entire population cannot be surveyed (Dillman, Smyth, & Christian, 2009). The use of random selection will serve to decrease the chance that differences exist between those included in the sample and those not surveyed; selection of participants will not vary systematically as a function of location, demographics, or other potentially confounding variables.
	The recruitment list included all known members of the population of interest.	Failure to include all members of the population of interest on recruitment lists would result in increased sampling error, as only a subset of the population would be included in recruitment efforts (Dillman, Smyth, & Christian, 2009).
Nonresponse error (i.e., participants who respond to recruitment efforts are systematically different than non-responders)	<ol style="list-style-type: none"> 1. Mixed-mode design allowed participants to choose the method of response that was most convenient for them; participants were not limited to one mode of responding. 2. Paper-and-pencil surveys included a self-addressed and stamped envelope. 	Increase convenience of responding so that participation will be appealing to as many members of the population of interest as possible (Dillman, Smyth, & Christian, 2009).

	<ol style="list-style-type: none"> 3. Participants were able to stop and resume the electronic survey at their leisure. 4. The study should not have taken more than 20 minutes to complete. 	
	<p>Deadlines for participation were not included in any of the study materials.</p>	<p>Deadlines are noted to decrease survey response rates (Dillman, Smyth, & Christian, 2009).</p>
	<p>Increase comfort of responding (Dillman, Smyth, & Christian, 2009).</p>	<p>Mixed-mode design and the opportunity to complete the alternative version of the study will ensure that participants' can respond to the survey in the manner that is most comfortable/familiar to them.</p>
	<ol style="list-style-type: none"> 1. Use of official logos: Email and paper-and-pencil correspondence will include use of The University of Alabama's logo and templates. The Department of Psychology's letterhead will be used for the paper-and-pencil recruitment material. 2. Approval from the Institutional Review Board was noted in recruitment materials. 3. Confidentiality of responses via Transport Layer Security (TLS) and anonymous responses was highlighted in the recruitment materials. 4. Minimal personal information was obtained for the study, as intrusive questions decrease response rates. 5. Use of a University of Alabama-sponsored email address. 	<p>Dillman, Smyth, and Christian (2009) noted that these approaches can be used to establish trust with potential participants, which in turn, will increase response rates.</p>

	<p>Contacts with potential participants were personalized. Personalization of study materials included recruitment materials with personalized salutations and specific reference to the type of court (i.e., federal or state) in which the judge serves.</p>	<p>Personalized contacts have been shown to increase participant response rate (Dillman, Smyth, & Christian, 2009; Garner, 2005; Goldstein, Martin, & Cialdini, 2008; Cook, Heath, & Thompson, 2000).</p>
	<p>A follow-up email or postcard was sent two weeks after the initial distribution of study materials.</p>	<p>There is evidence to indicate that the number of contacts made with potential participants increases response rate (Cook, Heath, & Thompson, 2000; Dillman, Smyth, & Christian, 2009; Kaplowitz, Hadlock, & Levine, 2004; Sheehan & Hoy, 1999; Shih & Fan, 2008).</p>
	<p>The following approaches have been noted to increase participant response rate and were used in this study:</p> <ol style="list-style-type: none"> 1. Saying “thank you” (Dillman, Smyth, & Christian, 2009; Goldstein, Martin, & Cialdini, 2008). 2. Demonstration of positive regard (Dillman, Smyth, & Christian, 2009). 3. Presentation of the study topic in a way that is salient to the participant (Dillman, Smyth, & Christian, 2009). 4. Engage the “social exchange theory,” such that the perceived benefits of the study outweigh the perceived costs of participation (Dillman, Smyth, & Christian, 2009). 5. Appeal to potential participants’ sense of social validation and normative behavior, which stressed that others that are similar to them were also asked to and will likely complete the study (Dillman, Smyth, & Christian, 2009; Goldstein, 	<p>These measures assisted to increase response rate by appealing to a variety of individuals.</p>

	<p>Martin, & Cialdini, 2008).</p> <ol style="list-style-type: none"> 6. Support group values (e.g., receive psychological reports that are useful, assist in evaluating fairness of legal system/death penalty; Dillman, Smyth, & Christian, 2009). 7. Note that opportunities to respond are limited (Dillman, Smyth, & Christian, 2009). 8. The task was made to look important: date added to the recruitment and follow-up materials, used good quality paper for the paper-and-pencil materials, booklet created for the paper-and-pencil version, university logos added to electronic and paper materials (Dillman, Smyth, & Christian, 2009). 	
<p>Measurement error (i.e., instances in which participants respond to survey questions with inaccurate or imprecise answers)</p>	<p>Dillman, Smyth, and Christian (2009) put forth a number of recommendations to assist in the development of clear, concise, and effective survey questions. The following is a list of the recommendations used in this study:</p> <ol style="list-style-type: none"> 1. All questions applied to the participants surveyed. 2. All questions were designed to be technically accurate in their approach in order to increase the likelihood that participants provide the answers sought by the investigator. 3. Questions were asked individually (e.g., no “double-barrel” questions). 4. The words and sentences used were simple and avoided esoteric language and psychological jargon where possible. 5. Direct and concrete words were 	<p>These considerations and approaches assisted in the development of effective survey questions and maximized the chance responses (Dillman, Smyth, & Christian, 2009).</p>

	<p>used to clearly communicate concepts/questions.</p> <ol style="list-style-type: none"> 6. Only essential words were used in posing questions in order to minimize overall study length and question complexity. 7. Complete and simple sentences were used to maximize clarity 8. Answer categories were developed to include all reasonable answers to survey questions. 9. Answer categories were designed to be mutually exclusive. 10. Likert scales were limited to no more than five answer categories. 11. The scales were developed in a manner such that response options were relatively equal distances apart conceptually. 12. Conceptually similar questions were grouped together. 	
	<p>Dillman, Smyth, and Christian (2009) provided a number of recommendations to develop visually appealing surveys. The following recommendations were used in this study:</p> <ol style="list-style-type: none"> 1. Line spacing, fonts, and text sizes were chosen in a manner that ensured legibility of questions and answers. 2. The visual presentation of the surveys was generally consistent across the electronic and paper-and-pencil versions of the study. 3. Questions were presented in blocks, rather than long lists, with no more than seven questions in a block. 4. Scales were used that approximated the distribution of the characteristics of the 	<p>Development of visually appealing surveys assists in increasing likelihood of participation (i.e., increase impression of task importance) and assists participants to provide accurate answers (Dillman, Smyth, & Christian, 2009).</p>

	<p>population, with the middle category representing the average position.</p> <p>5. Response options were aligned in one line horizontally in order to be visually consistent.</p>	
--	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--

Appendix C

List of States With the Death Penalty Obtained from: Death Penalty Information Center, March 7, 2014

- 1) Alabama
- 2) Arizona
- 3) Arkansas
- 4) California
- 5) Colorado
- 6) Delaware
- 7) Florida
- 8) Georgia
- 9) Idaho
- 10) Indiana
- 11) Kansas
- 12) Kentucky
- 13) Louisiana
- 14) Mississippi
- 15) Missouri
- 16) Montana
- 17) Nebraska
- 18) Nevada
- 19) New Hampshire
- 20) North Carolina
- 21) Ohio
- 22) Oklahoma
- 23) Oregon
- 24) Pennsylvania
- 25) South Carolina
- 26) South Dakota
- 27) Tennessee
- 28) Texas
- 29) Utah
- 30) Virginia
- 31) Washington
- 32) Wyoming

Appendix D

Letter of Support from NJC



Hon. Chad C. Sabers (Ret.)
President

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Hon. William F. Dowd (Ret.)

February 21, 2014

To the members of the Institutional Review Board:

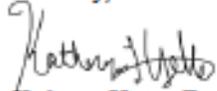
Ms. Krystal Hedge, a doctoral student in the University of Alabama's clinical psychology program, and I recently discussed how The National Judicial College might assist her with recruitment of judges to participate in a study for her dissertation. After reviewing her approved dissertation proposal and discussing our involvement in recruitment, I am pleased to assist Ms. Hedge in recruiting judges for her study by doing the following:

- Ms. Hedge will provide me with an electronic link to her study and enough information about the study to draft a short description.
- The National Judicial College will, at its discretion, draft a short article with information about the study in its monthly electronic newsletter, *The Judicial Edge*. The article will include a description of the study as well as a link to the study itself.

We receive numerous requests each year from individuals and organizations to have access to the judges who attend courses here as study participants. So that we don't overwhelm them or in any way appear that we're endorsing the study or the research project, we have found that periodically posting notices about studies that benefit the justice community in our electronic newsletter is the best way to invite participation.

I understand that participation on their part is voluntary and their choice to participate will be kept confidential. I look forward to assisting Ms. Hedge in the pursuit of her doctorate.

Sincerely,


Katheryn Yetter, Esq.
The National Judicial College
Academic Director
Phone: 775-327-8213

EDUCATION | INNOVATION | ADVANCING JUSTICE

3664 N. Virginia Street, Judicial College Building, LDR-MS 308 • Reno, NV 89507
tel (775) 784-6747 • 800-25-JUDGE (800-255-6342) • fax (775) 784-6214 • www.njc.org

Appendix E

Request for Participation Email

THE UNIVERSITY OF ALABAMA

Dear [Judge's name],

As a judge in the [enter appropriate level of judiciary], you are being asked to take part in a national study regarding judicial decision making in capital murder cases in which a claimant purports to have mental retardation (“*Atkins* cases”). This study is part of a dissertation entitled, *Judicial Decision Making in Atkins Cases: An Examination of What Matters and Why*, being conducted by Krystal Hedge, a doctoral student at The University of Alabama. This is the first study to examine judicial decision making in *Atkins* cases as a function of psychological assessment report content and beliefs regarding mental retardation. **Please know that you are invited to participate regardless of your experience with *Atkins* cases and your likelihood of hearing such cases. Any and all input is valuable!**

As an important member of the legal system, your input would be highly valued. This study will help to understand judicial decision making in *Atkins* cases and to assist psychologists to write evaluation reports that are accurate, clear, and meaningful, which in turn, will assist judges in making determinations of mental retardation. Although the goal is to have as many judges as possible complete this study, your individual response is important because you will bring to it your own experiences, personal and professional background, and views. While participation will not directly benefit you, the results of the dissertation have the potential to benefit all legal professionals involved with *Atkins* cases, and more generally, cases in which psychological reports are submitted. The only foreseeable risks of participation are fatigue and boredom. To minimize these risks, you will be able to stop the study in order to resume it at another time. If you decide to discontinue the study at any time, you are free to do so without penalty and your data will be discarded. Your participation would include: completing a brief survey related to your background and beliefs regarding individuals with mental retardation, reading an abbreviated psychological assessment report, and answering several questions related to the report provided. Just the 20 minutes it will take you to complete this study would make an important contribution to understanding the way in which judges make *Atkins* decisions, as well as improving the reports psychologists submit to assist judges with these determinations.

[Judge's name], it is important that you feel comfortable completing this study. As such, your participation in and responses to this study will be completely confidential. You will not provide your name or any other information that can identify you. Confidentiality will also be ensured by the use of Transport Layer Security (TLS) encryption of the online survey and your responses. There will be no way to know whether you completed this study or declined to participate.

If you have questions or concerns regarding this study, please contact Krystal Hedge via email at kahedge@crimson.ua.edu or Dr. Karen Salekin (faculty advisor) at 205-348-0679 or via email at

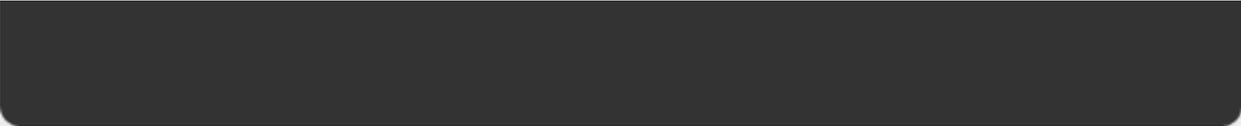
ksalekin@bama.ua.edu. If you have questions regarding your rights as a research participant, please contact The University of Alabama's Institutional Review Board at 205-348-8461 or 1-877-820-3066 (toll free). This study was approved by the Institutional Review Board on *(insert date of approval)* and is identified in their system by the following number: *(insert number provided by IRB upon approval)*. This study is approved through *(insert renewal date)*. **A paper-and-pencil version of this study is available upon request.** Please email kahedge@crimson.ua.edu if you are interested in a paper-and-pencil version.

Your participation in this study is completely voluntary. You are free to decline this request for participation and to stop participating at any time prior to submitting your survey responses.

If you understand the statements above, are over 21 years of age, currently serving as a judge, and freely consent to participate in this study, please click on the following link to access the study: *(insert appropriate Qualtrics link)*

Thank you in advance for your participation in this study,

Krystal Hedge, M.A.
Doctoral Candidate
Clinical Psychology, Psychology-Law Concentration
Department of Psychology
The University of Alabama
Tuscaloosa, AL 35487



Appendix F

Request for Participation Letter

College of Arts and Sciences
Department of Psychology

THE UNIVERSITY OF
ALABAMA
ARTS & SCIENCES

[Date]

Dear *[Judge's name]*,

As a judge in the *[enter appropriate level of judiciary]*, you are being asked to take part in a national study regarding judicial decision making in capital murder cases in which a claimant purports to have mental retardation (“*Atkins* cases”). This study is part of a dissertation entitled, *Judicial Decision Making in Atkins Cases: An Examination of What Matters and Why*, being conducted by Krystal Hedge, a doctoral student at The University of Alabama. This is the first study to examine judicial decision making in *Atkins* cases as a function of psychological assessment report content and beliefs regarding mental retardation. **Please know that you are invited to participate regardless of your experience with *Atkins* cases and your likelihood of hearing such cases. Any and all input is valuable!**

As an important member of the legal system, your input would be highly valued. This study will help to understand judicial decision making in *Atkins* cases and to assist psychologists to write evaluation reports that are accurate, clear, and meaningful, which in turn, will assist judges in making determinations of mental retardation. Although the goal is to have as many judges as possible complete this study, your individual response is important because you will bring to it your own experiences, personal and professional background, and views. While participation in this study will not directly benefit you, the results of the dissertation have the potential to benefit all legal professionals involved with *Atkins* cases, and more generally, cases in which psychological reports are submitted. The only foreseeable risks of participation are fatigue and boredom. To minimize these risks, you will be able to stop the study in order to resume it at another time. If you decide to discontinue the study at any time, you are free to do so without penalty and your data will be discarded. Your participation would include: completing a brief survey related to your background and beliefs regarding individuals with mental retardation, reading an abbreviated psychological assessment report, and answering several questions related to the report provided. Just the 20 minutes it will take you to complete this study would make an important contribution to understanding the way in which judges make *Atkins* decisions, as well as improving the reports psychologists submit to assist judges with these determinations.

[Judge's name], it is important that you feel comfortable completing this study. As such, your participation in and responses to this study will be completely confidential. You will not provide your name or any other information that can identify you. There will be no way to know whether you completed this study or declined to participate.



348 Gordon Palmer
Box 870348
Tuscaloosa, Alabama 35487-0348
FAX (205) 348-8648
www.as.ua.edu/psychology

If you have questions or concerns regarding this study, please contact Krystal Hedge via email at kahedge@crimson.ua.edu or Dr. Karen Salekin (faculty advisor) at 205-348-0679 or via email at ksalekin@bama.ua.edu. If you have questions regarding your rights as a research participant, please contact The University of Alabama's Institutional Review Board at 205-348-8461 or 1-877-820-3066 (toll free). This study was approved by the Institutional

Review Board on *(insert date of approval)* and is identified in their system by the following number: *(insert number provided by IRB upon approval)*. This study is approved through *(insert renewal date)*. **Your participation in this study is completely voluntary.** You are free to decline this request for participation and to stop participating at any time prior to submitting your survey responses.

If you understand the statements above, are over 21 years of age, currently serving as a judge, and freely consent to participate in this study, please complete the enclosed study and return it using the pre-paid, addressed envelope. An electronic version of this study is also available- please click this link to access the electronic version if you prefer to complete it electronically: *(insert Qualtrics study link)*

Confidentiality will also be ensured by the use of Transport Layer Security (TLS) encryption of the online survey and your responses.

Thank you in advance for your participation in this study,

Krystal Hedge, M.A.
Doctoral Candidate
Clinical Psychology, Psychology-Law Concentration
Department of Psychology
The University of Alabama
Tuscaloosa, AL 35487

Appendix G

Follow-up Recruitment Email/Postcard

THE UNIVERSITY OF ALABAMA

Dear *[Judge's name]*,

Two weeks ago an email was sent to you that asked for your assistance with a study regarding judicial decision making in *Atkins* cases.

If you already completed the study, thank you for your assistance- your time and response are greatly appreciated. If you have not yet participated, you still have time to do so. You can find the study at this link *[appropriate Qualtrics link to be inserted]*, or you can email kahedge@crimson.ua.edu in order to request a paper-and-pencil version of the materials

Thank you in advance for your participation in this study,

Krystal Hedge, M.A.
Doctoral Candidate
Clinical Psychology, Psychology-Law Concentration
Department of Psychology
The University of Alabama
Tuscaloosa, AL 35487

The University of Alabama
Department of Psychology
C/O Krystal Hedge, MA
Box 870348
Tuscaloosa, AL 35487-0348

Hon. (Judge's name)

Address Line 1

Address Line 2

Address line 3

Address line 4



Appendix H

Request for Participation for the National Judicial College

THE UNIVERSITY OF ALABAMA

As a judge and member of the National Judicial College, you are being asked to take part in a national study regarding judicial decision making in capital murder cases in which a claimant purports to have mental retardation (“*Atkins* cases”). This study is part of a dissertation entitled, *Judicial Decision Making in Atkins Cases: An Examination of What Matters and Why*, being conducted by Krystal Hedge, a doctoral student at The University of Alabama. This is the first study to examine judicial decision making in *Atkins* cases as a function of psychological assessment report content and beliefs regarding mental retardation.

As an important member of the legal system, your input would be highly valued. This study will help to understand judicial decision making in *Atkins* cases and to assist psychologists to write evaluation reports that are accurate, clear, and meaningful, which in turn, will assist judges in making determinations of mental retardation. Although the goal is to have as many judges as possible complete this study, your individual response is important because you will bring to it your own experiences, personal and professional background, and views. While participation will not directly benefit you, the results of the dissertation have the potential to benefit all legal professionals involved with *Atkins* cases, and more generally, cases in which psychological reports are submitted. The only foreseeable risks of participation are fatigue and boredom. To minimize these risks, you will be able to stop the study in order to resume it at another time. If you decide to discontinue the study at any time, you are free to do so without penalty and your data will be discarded. Your participation would include: completing a brief survey related to your background and beliefs regarding individuals with mental retardation, reading an abbreviated psychological assessment report, and answering several questions related to the report provided. Just the 20 minutes it will take you to complete this study would make an important contribution to understanding the way in which judges make *Atkins* decisions, as well as improving the reports psychologists submit to assist judges with these determinations.

It is important that you feel comfortable completing this study. As such, your participation in and responses to this study will be completely confidential. You will not provide your name or any other information that can identify you. Confidentiality will also be ensured by the use of Transport Layer Security (TLS) encryption of the online version of this survey. There will be no way to know whether you completed this study or declined to participate.

If you have questions or concerns regarding this study, please contact Krystal Hedge at kahedge@crimson.ua.edu or Dr. Karen Salekin, faculty advisor (ksalekin@bama.ua.edu or 205-348-0679). If you have questions regarding your rights as a research participant, please contact The University of Alabama’s Institutional Review Board at 205-348-8461 or 1-877-820-3066 (toll free). This study was approved by the Institutional Review Board on *(insert date of approval)* and is identified in their system by the following number: *(insert number provided by IRB upon approval)*. This study is approved

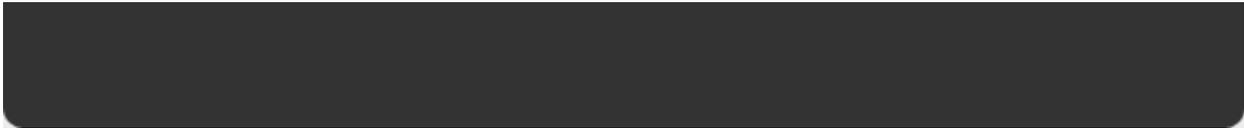
through (*insert renewal date*). **A paper-and-pencil version of this study is available upon request.** Please email kahedge@crimson.ua.edu if you are interested in a paper-and-pencil version.

Your participation in this study is completely voluntary. You are free to decline my request for participation and to stop participating at any time prior to submitting your survey responses.

If you understand the statements above, are over 21 years of age, currently serving as a judge, and freely consent to participate in this study, please click on the following link to access the study:
[appropriate qualtrics.com link to be inserted]

Thank you in advance for your participation in this study,

Krystal Hedge, M.A.
Doctoral Candidate
Clinical Psychology, Psychology-Law Concentration
Department of Psychology
The University of Alabama
Tuscaloosa, AL 35487



Appendix I
Study Instructions

Study Instructions

- Your participation and responses are anonymous- please do not include your name anywhere on the study materials.
- If you cannot complete the study in one sitting for any reason, you can return to it at another time (Online version- simply click the original link and you will be taken to where you left off).
- You will be provided with a brief psychological assessment report. Please consider only the information in the report when answering the survey questions that follow it- we cannot provide additional information. Prior to reading the report, you will be asked to complete basic background questions.
- Please do not spend an undue amount of time on any of the questions- the surveys were designed to be as straightforward as possible in order to minimize the time you spend on the study. Each question should only take a few seconds to answer.
- It is important for us to get as much study data as possible- please do not skip any of the survey questions.
- “Mental retardation” will be used in this study, as it is the term retained by the legal system. However, the preferred clinical term is “intellectual disability,” and at times, that term appears in the following materials.

Thank you!

Your participation in this study is highly valuable and much appreciated.

Appendix J
Background Questionnaire

Basic Background Questionnaire	
<i>Gender</i>	<input type="checkbox"/> Male <input type="checkbox"/> Female
<i>Age in years</i>	_____
<i>Judicial appointment</i>	<p>Please indicate how you obtained your position as a judge:</p> <input type="checkbox"/> Elected <input type="checkbox"/> Appointed
<i>Location</i>	<p>Please indicate the state in which you currently serve as a judge: _____</p> <p>Please select the type of court in which you are currently serving:</p> <input type="checkbox"/> Federal Court of Appeals <input type="checkbox"/> Federal district court <input type="checkbox"/> State Supreme Court (or your state's equivalent) <input type="checkbox"/> State appellate court (or your state's equivalent) <input type="checkbox"/> State level criminal court <input type="checkbox"/> Other: _____

<p><i>Race/Ethnicity</i></p>	<p><input type="checkbox"/> White/Caucasian, not Hispanic</p> <p><input type="checkbox"/> Hispanic/Latino/Latina</p> <p><input type="checkbox"/> Black/African American</p> <p><input type="checkbox"/> Asian/Asian American</p> <p><input type="checkbox"/> Pacific Islander</p> <p><input type="checkbox"/> Biracial</p> <p>Other (please specify): _____</p>
<p><i>Education</i></p>	<p>Please check <i>all</i> that apply:</p> <p><input type="checkbox"/> Bachelor's degree</p> <p><input type="checkbox"/> M.A. or M.S.</p> <p><input type="checkbox"/> J.D.</p> <p><input type="checkbox"/> Ph.D.</p> <p><input type="checkbox"/> Other: _____</p>
<p><i>Experience within legal system</i></p>	<p>Approximate number of <u>capital cases</u> heard as a judge: ____</p> <p>Approximate number of <i>Atkins</i> cases heard as a judge: ____</p> <p>Please check all that apply:</p> <p><input type="checkbox"/> I have served as a prosecuting attorney</p> <p><input type="checkbox"/> I have served as a defense attorney</p>
<p><i>National Judicial College</i></p>	<p>Were you recruited through the National Judicial College?</p> <p><input type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p>

Please answer the following questions regarding mental retardation (MR):

1. A low IQ is sufficient for a diagnosis of MR
 True
 False
2. Deficits in adaptive behavior/daily functioning are required in more than one area (i.e., social, practical, conceptual) for a diagnosis of MR
 True
 False
3. The presence of certain strengths (e.g., ability to drive a car, maintain long-term employment) *and/or* criminal behavior (e.g., purchasing a weapon, choosing a victim, disposing of evidence) can be used to refute a diagnosis of MR
 True
 False
4. In order to diagnose an adult with MR, there must be a diagnosis on record prior to the age of 18 years
 True
 False

Please check *all* that apply:

- I have/had a close family member (not your child) with MR
- I have/had a child with MR
- I have/had a friend with MR
- I worked with the MR population (e.g., social worker, in-home care, special education teacher or aide)
- I volunteered with the MR population (e.g., Special Olympics, ARC)
- I took a course that specifically covered MR (e.g.,

	<p>developmental psychology, teaching)</p> <ul style="list-style-type: none"><input type="checkbox"/> I have read/watched non-fictional information about the MR population (e.g., textbooks, scholarly articles, psychological reports, documentary)<input type="checkbox"/> I have read/watched fictional accounts of the MR population (e.g., Forrest Gump, Of Mice and Men)<input type="checkbox"/> I have no personal experience with individuals with MR <p>Other experience with individuals who have MR (please specify):</p> <hr/> <hr/> <hr/>
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Appendix K

The Community Living Attitudes Scale, Mental Retardation Form (CLAS-MR) as Used in the Current Study

Instructions: Please indicate *to what extent you agree with* each statement below.

1. People with mental retardation trying to help each other is like “the blind leading the blind.”

1	2	3	4	5	6
Strongly Disagree					Strongly Agree

2. People with mental retardation should not be allowed to marry and have children.

1	2	3	4	5	6
Strongly Disagree					Strongly Agree

3. A person would be foolish to marry a person with mental retardation.

1	2	3	4	5	6
Strongly Disagree					Strongly Agree

4. People with mental retardation should be guaranteed the same rights in society as other persons.

1	2	3	4	5	6
Strongly Disagree					Strongly Agree

5. People with mental retardation do not want to work.

1	2	3	4	5	6
Strongly Disagree					Strongly Agree

6. People with mental retardation need someone to plan their activities for them.

1	2	3	4	5	6
Strongly Disagree					Strongly Agree

7. People with mental retardation should not hold public office.

1	2	3	4	5	6
Strongly Disagree					Strongly Agree

8. People with mental retardation should not be given any responsibility.

1	2	3	4	5	6
Strongly Disagree					Strongly Agree

9. People with mental retardation can organize and speak for themselves.

1	2	3	4	5	6
Strongly Disagree					Strongly Agree

10. People with mental retardation do not care about advancement in their jobs.

1	2	3	4	5	6
Strongly Disagree					Strongly Agree

11. People with mental retardation do not need to make choices about the things they will do each day.

1	2	3	4	5	6
Strongly Disagree					Strongly Agree

12. People with mental retardation should not be allowed to drive.

1	2	3	4	5	6
Strongly Disagree					Strongly Agree

13. People with mental retardation can be productive members of society.

1	2	3	4	5	6
Strongly Disagree					Strongly Agree

14. People with mental retardation have goals for their lives like other people.

1	2	3	4	5	6
Strongly Disagree					Strongly Agree

15. I would trust a person with mental retardation to be a baby sitter for one of my children.

1	2	3	4	5	6
Strongly Disagree					Strongly Agree

16. People with mental retardation cannot exercise control over their lives like other people.

1	2	3	4	5	6
Strongly Disagree					Strongly Agree

17. People with mental retardation can have close personal relationships just like everyone else.

1	2	3	4	5	6
Strongly Disagree					Strongly Agree

18. I would not want to live next door to people with mental retardation.

1	2	3	4	5	6
Strongly Disagree					Strongly Agree

19. People with mental retardation are usually too limited to be sensitive to the needs and feelings of others.

1	2	3	4	5	6
Strongly Disagree					Strongly Agree

20. People with mental retardation should live in sheltered facilities because of the dangers of life in the community.

1	2	3	4	5	6
Strongly Disagree					Strongly Agree

21. People with mental retardation should be encouraged to lobby legislators on their own.

1	2	3	4	5	6
Strongly Disagree					Strongly Agree

22. People with mental retardation are the best people to give advice and counsel to others who wish to move into community living.					
1	2	3	4	5	6
Strongly Disagree					Strongly Agree
23. The opinion of a person with mental retardation should carry more weight than those of family members and professionals in decisions affecting that person.					
1	2	3	4	5	6
Strongly Disagree					Strongly Agree
24. People with mental retardation can plan meetings and conferences without assistance from others.					
1	2	3	4	5	6
Strongly Disagree					Strongly Agree
25. People with mental retardation can be trusted to handle money responsibly.					
1	2	3	4	5	6
Strongly Disagree					Strongly Agree
26. Residents have nothing to fear from people with mental retardation living and working in their neighborhoods.					
1	2	3	4	5	6
Strongly Disagree					Strongly Agree
27. The best care for people with mental retardation is to be part of normal life in the community.					
1	2	3	4	5	6
Strongly Disagree					Strongly Agree
28. The rights of people with mental retardation are more important than professional concerns about their problems.					
1	2	3	4	5	6
Strongly Disagree					Strongly Agree

29. Agencies that serve people with mental retardation should have them on their boards.

1	2	3	4	5	6
Strongly Disagree					Strongly Agree

30. The best way to handle people with mental retardation is to keep them in institutions.

1	2	3	4	5	6
Strongly Disagree					Strongly Agree

31. Homes and services for people with mental retardation should be kept out of residential neighborhoods.

1	2	3	4	5	6
Strongly Disagree					Strongly Agree

32. Increased spending on programs for people with mental retardation is a waste of tax dollars.

1	2	3	4	5	6
Strongly Disagree					Strongly Agree

33. Home and services for people with mental retardation downgrade the neighborhoods they are in.

1	2	3	4	5	6
Strongly Disagree					Strongly Agree

34. Professionals should not make decisions for people with mental retardation unless absolutely necessary.

1	2	3	4	5	6
Strongly Disagree					Strongly Agree

35. People with mental retardation are a burden on society.

1	2	3	4	5	6
Strongly Disagree					Strongly Agree

Appendix L

Diagnostic Criteria for Intellectual Disability

Diagnostic Criteria for Mental Retardation

The American Association on Intellectual and Developmental Disabilities (AAIDD, 2013) and the American Psychiatric Association (Diagnostic and Statistical Manual- 5, 2013) put forth the following criteria for the diagnosis of intellectual disability (formerly “mental retardation”):

- 1) Significant deficits in intellectual functioning (i.e., an IQ of approximately 70 or below), which includes reasoning, problem solving, abstract thinking, comprehension, planning, judgment, academic learning, and learning from experience.
- 2) Significant deficits in adaptive behavior that affect **at least one** of three domains:
 - a. *Conceptual*: Language, reading, writing, memory, money concepts, math reasoning, problem solving, judgment in novel situations
 - b. *Social*: Interpersonal skills, social responsibility, empathy, social judgment, self-esteem, gullibility, social problem solving
 - c. *Practical*: Activities of daily living (personal care), health and safety, money management, employment skills, transportation, maintaining schedules
- 3) Onset of the aforementioned deficits prior to the age of 18 years

Appendix M

Strength-Based Report

FORENSIC EVALUATION

Name: James Smitt

Reason for Referral: Mr. Smitt was referred for an evaluation of mental retardation.

BACKGROUND INFORMATION

Mr. Smitt is the second oldest of five children. The claimant's father acknowledged a chaotic family environment that included domestic violence, child abuse, limited finances, and abandonment, and he affirmed that both he and his wife consumed alcohol heavily. The elder Mr. Smitt was often absent from the home for extended periods.

During his son's trial the elder Mr. Smitt expressed that his son was "a good little boy, but somewhere along the way he just went bad." He considered him to be "violent and unpredictable." The claimant admitted to truancy, violating curfew, and destructive, high-risk behaviors (e.g., vandalism). Mr. Smitt stated he engaged in conduct-disordered behaviors "all the time, 24/7." He also noted that he got into "a lot of trouble at school," and his peers often "put (him) up to things." He acknowledged periods of physical aggression, as well as theft behaviors.

At the age of 19 years he met a 16-year old girl. They conceived a child and later married. Mr. Smitt and his first wife lived independently at times, but they regularly benefited from his wife's parents' assistance (e.g., father-in-law secured employment for Mr. Smitt; provided financial assistance; secured housing). Notably, Mr. Smitt recalled the name of one of the neighborhoods where he and his wife resided. According to Mr. Smitt, while his wife was pregnant, he commenced with a pattern of sexually-deviant behaviors. By the time his marriage ended he had been arrested and convicted of numerous criminal offenses, several of a violent and/or sexual nature. Mr. Smitt cited his frequent legal problems as the reason for his divorce.

Mr. Smitt later married his second wife after they conceived a daughter. He again benefited from familial assistance for residence, employment, and finances. During the early part of his marriage he was incarcerated for Sexual Assault. It should be noted Mr. Smitt specifically recalled having been sentenced to seven years in prison, which is consistent with available documentation. The couple reportedly separated, and he was shortly after charged with Rape and Assault. His criminal offenses and subsequent incarcerations interfered in his relationship and the couple divorced. However, they maintained a sexual relationship until his arrest for the index offense.

Education History

Mr. Smitt has a 7th grade education. He performed poorly throughout his academic career and was retained in the 1st and 3rd grades. His promotion to 5th through the 7th grades was denoted as "social promotion" given that his final grades were all F's. No behavior problems were noted in the records. However, he was noted to have been absent 46 days in 4th grade. During his 7th grade

year he attended a special class for mentally retarded children. Opinions from school officials as to the reason for Mr. Smitt's poor school performance varied. While one school official described Mr. Smitt as "definitely retarded," another official expressed the opinion that Mr. Smitt's chaotic home environment had a significant influence on him and restricted his learning. In addition, he "cut school a lot." According to Mr. Smitt, he was highly distractible in class and often badgered his peers. By his report he is functionally illiterate.

Mr. Smitt recalled that he obtained a driver's license at age 16; he reported cheating on the exam. He described himself as "an awesome driver." Mr. Smitt stated he relied on written directions and landmarks to maneuver his way, and if lost, he sought the assistance of others for additional directions. Prior to his arrest he had traveled independently across the Southeast and Midwest. He performed basic repairs, traded, and bought motor vehicles.

Employment History

Mr. Smitt's employment history can best be characterized as sporadic. He reported that many of his jobs were established through familial connections. Mr. Smitt noted that he did not have difficulties completing employment-related tasks. He recalled various places of employment and their street address. When asked how he and his family survived financially given his lack of stable employment, he stated that he used to steal money and valuables from others' homes.

Job	Responsibilities	Approx. length of employment	Reason for leaving
Warehouse	Laborer	9 months	Terminated for tardiness
Warehouse	Laborer	Several weeks	Terminated for missed days, tardiness
Grocery store	Stacked boxes in a cooler	3 or 4 months	Quit- felt he was being over-worked
Assistant to a contractor	Laborer	Intermittent for several months	Termination- due to incarceration
Grocery store	Stocked shelves	Several months	Disliked job, lack of interest
Warehouse	Laborer	Several weeks	Terminated- due to incarceration
Construction company	Laborer	Several months	Quit after being offered promotion- uninterested in increased duties

During this evaluation he claimed that his wives took care of the family finances and that he never held a personal checking or credit card account. However, Mr. Smitt testified that he attended to activities of daily living, which included purchasing clothes and food.

The claimant confirmed that during his incarcerations he was placed in work programs (e.g., kitchen duty, farm work, ground's keeping). He denied difficulties in performing related tasks. By his report, he followed the directions he was given at these programs.

Legal History

A. Delinquency

At age 12, Mr. Smitt became involved with the Juvenile Court. He was placed on indefinite probation secondary to destructive and mischief behaviors (e.g., throwing items onto a freeway from an overpass). Two years later a petition was filed against Mr. Smitt for multiple burglaries. As a result, he was committed to the Georgia State Boys School until he was 16 years of age.

B. Adult Legal History

Records revealed Mr. Smitt to have an extensive adult criminal history. He was twice charged with Assault, as well as Sexual Assault 1st Degree (two separate counts), Molestation, Rape, Sexual Abuse, Escape, Assault (two separate counts), Kidnapping, Attempted Murder, Burglary, Buying and Receiving Stolen Property, and several firearms charges.

On one occasion, Mr. Smitt escaped from jail with an accomplice by overpowering a correctional officer, stealing that officer's gun and tying him up with bed sheets. During the ensuing escape, Mr. Smitt stole a getaway car and utilized an alias to elude police detection. It was while on escape that Mr. Smitt committed the index offense.

Relevant information pertaining to the capital crime: According to Mr. Smitt, he drove to the home of Ms. Lynn White, a former girlfriend, on the night of the index offense. He sought to obtain cash and valuables for later sale. He parked his car a few blocks away to avoid suspicion. Ms. White was home with her 16-year old daughter. Prior to entering the home he cut the telephone lines and the wire to the motion sensor light. He entered the home with a ski mask on, gloves, and a gun. Mr. Smitt saw Ms. White, grabbed her by her hair, and forced her to retrieve the cash and valuables from the house. Ms. White's daughter began screaming upon seeing Mr. Smitt. He slapped her hard enough to cause loss of consciousness. He then ordered Ms. White to undress. He blindfolded her and bound her wrists with duct tape. Mr. Smitt proceeded to sexually assault her at gunpoint. Ms. White's daughter was then bound with duct tape and sexually assaulted. Mr. Smitt then shot and killed Ms. White and her daughter. He fled the scene and escaped in his car. He was apprehended in North Carolina two weeks later. Reportedly, while in the hospital receiving treatment for gunshot wounds he sustained during apprehension, Mr. Smitt told a deputy, "I killed two people, and it wasn't for nothing- I needed money and I knew they had some."

Mr. Smitt testified during his Capital Murder trial. He responded appropriately to questions indicating satisfactory verbal comprehension. His responses were coherent, rational, and logical. He made reference to specific dates, identified places and addresses, and recalled prior criminal convictions. Throughout his testimony he maintained his innocence in the murders.

Functioning within correctional institutions: Records revealed that since his admission to the current facility, Mr. Smitt has either accurately completed or correctly instructed another party to complete numerous visitor request log sheets, as well as the forms needed to order from the canteen. There was nothing to suggest that Mr. Smitt has been unable to attend to necessary activities of daily living or that he encountered difficulty in making his wants and desires clearly

known. All accounts from correctional officers indicate he has functioned well within the facility.

During his tenure at prison, Mr. Smitt requested medical assistance for various ailments. He also proffered suggestions for treatment remedies, sometimes naming specific medications and other interventions, based on previous beneficial experiences. It should be noted that he was able to monitor and care for his hypertension while incarcerated.

Three correctional officers familiar with Mr. Smitt provided insight into his functioning. All three officers expressed the belief that Mr. Smitt's cognitive capacity was not reflective of mental retardation. One officer reported that during prior conversations with Mr. Smitt, he demonstrated no difficulty in comprehending and communicated in a rational and logical manner. He also explained that he had the opportunity to sit next to Mr. Smitt during the Capital Murder trial and he observed no difficulties on the part of Mr. Smitt in following the course of the trial. Another officer described Mr. Smitt as "savvy" and a "street smart" individual who "knew how to work the legal system to his advantage." The third officer reported at least five opportunities to speak with Mr. Smitt, and he explained that Mr. Smitt was very deliberate and purposeful in these conversations, always avoiding speaking about relevant issues (i.e., suspected crimes). That officer noted that Mr. Smitt would speak at length about other issues including work or mutual acquaintances. During these conversations Mr. Smitt was knowledgeable about these issues and was logical and coherent in his speech.

HISTORY OF PSYCHOLOGICAL TREATMENT AND EVALUATIONS

For ease of review, the results of Mr. Smitt's intelligence tests have been put together in table format at the end of this document.

A. Assessment of cognitive functioning- Prior to the age of 18 years: Mr. Smitt's intellectual functioning was assessed using the *Wechsler Intelligence Scale for Children (WISC)*, which was specifically designed as a measure of intelligence for children. The *WISC* administration occurred when Mr. Smitt was nine years of age. The *WISC Record Form* revealed a Full Scale IQ of 49, which was descriptively classified as "Mental Defective."

B. Assessment of cognitive functioning- Post 18 years of age: Mr. Smitt was admitted to Northwestern State Hospital (NWSH) secondary to a charge of Molestation. The records indicate Mr. Smitt escaped from treatment on several occasions and returned to the facility on his own accord. Treatment protocol included antipsychotic medication. Mr. Smitt accurately recalled having been prescribed Haldol, Thorazine, and Abilify during this hospitalization. The results of psychological testing at NWSH revealed that Mr. Smitt obtained a Full Scale IQ of 66 on the *Wechsler Adult Intelligence Scale (WAIS)*, which was classified as "Mental Defective." Although this result met the then-established IQ criteria for mental retardation, psychology staff opined Mr. Smitt to be "functioning well within the Borderline or Low Average range of intelligence." Despite the aforementioned opinion, a diagnosis of Mild Mental Retardation was rendered. This final diagnosis is believed to be more heavily weighted on Mr. Smitt's IQ results as opposed to his adaptive functioning, as staff noted, "he has been able to hold responsible jobs and adequately support his family. ...His behavior is reported to be within normal proportions on the unit." A diagnosis of Antisocial Personality Disorder was also rendered upon discharge.

While incarcerated in the Department of Corrections (DOC) Mr. Smitt's intellectual functioning was again assessed. The results "indicate[d] an IQ that is borderline with a standard score of 72." The repeated administration of the *WAIS* occurred approximately eight months after the initial administration. The potential problem of practice effects (i.e., an elevated score that results from increased familiarity with a measure due to recent administration) must be considered with regard to the increased Full Scale IQ.

Eight years later, Mr. Smitt was evaluated by the DOC after being imprisoned for Rape. The *WAIS* was administered and Mr. Smitt obtained a Full Scale IQ of 69, which was classified as "Mental Defective." An achievement assessment was conducted using the *Wide Range Achievement Test*. The results revealed Mr. Smitt's reading vocabulary skills to be equivalent to a 2nd grade level and his arithmetic skills to be equivalent to a 3rd grade level. The examiner's clinical impression was that Mr. Smitt was functioning in the "Borderline Mentally Retarded range." The examiner further opined that the pattern of *WAIS* subtest scores "suggest both cultural deprivation and organic factors contribute to his mental retardation." There is nothing to indicate that this examiner conducted formal assessment of Mr. Smitt's adaptive functioning and thus, overall diagnostic opinion regarding mental retardation appears to have been based solely on intelligence testing results.

Another administration of the *WAIS* was conducted in response to concerns that Mr. Smitt was functioning much too well for the dorm setting in which he was housed, which was designed for individuals with cognitive impairment. On this administration of the *WAIS*, Mr. Smitt obtained a Full Scale IQ of 73. This score was descriptively classified as "Borderline." In that report, the evaluator opined that Mr. Smitt was appropriate for the general population dormitory.

Mr. Smitt's intellectual functioning was also assessed with the *Wechsler Adult Intelligence Scale-Revised (WAIS-R)* by the DOC. His Full Scale IQ of 70 was descriptively classified as "Borderline." Notes in the record questioned whether Mr. Smitt was putting forth a genuine effort on that administration of the *WAIS-R*.

Mr. Smitt was court ordered to Bellevue Secure Medical Facility (BSMF) for evaluation of his competence to stand trial and mental status at the time of the offense. According to the hospital records, Mr. Smitt denied symptoms of major mental illness and he reportedly displayed no signs of such an illness. He was described as cooperative with staff and he did not display "any overt physical acts of violence." Mr. Smitt attended to grooming and hygiene appropriately and independently. He attended to room maintenance, used the telephone without assistance, and communicated needs and desires satisfactorily. A psychologist wrote that "his previous intelligence testing suggested intellectual functioning in the Borderline range, though his ability to communicate verbally and his history of independent living suggest he is 'streetwise' and, apart from his extensive criminal behavior, not the kind of person who would require extensive supervision on the basis of intellectual impairment." The psychologist noted Mr. Smitt "scored well in most areas of a measure designed to assess competency to stand trial and was quite educable on points of minor misunderstanding." It was noted that Mr. Smitt possessed a "very intact memory," "good insight," and demonstrated a "robust sense of humor." The evaluator also noted Mr. Smitt demonstrated an ability to explain complex social situations and provided

rationale for his behaviors within these situations, which is “not typically seen among mentally retarded individuals.” The evaluator concluded a diagnosis of mental retardation was not appropriate. The evaluator’s impressions were that Mr. Smitt was functioning in the “subaverage” range of intelligence, but above the threshold for mental retardation, and his intellectual deficits were secondary to his limited education. He further opined that Mr. Smitt met the diagnostic criteria for Antisocial Personality Disorder.

Mr. Smitt was evaluated by Michael A. Butcher, M.D. during the Post-conviction hearing. Dr. Butcher opined that diagnoses of Mild Mental Retardation and Antisocial Personality Disorder were appropriate for Mr. Smitt; he accurately noted in his report that mental retardation and Antisocial Personality Disorder are not mutually exclusive. Dr. Butcher testified that he arrived at this opinion after reviewing his records and performing an informal assessment of Mr. Smitt’s adaptive functioning. The evaluator noted that Mr. Smitt informed him that he would not speak about the index offense upon advice from his attorney. Mr. Smitt demonstrated similar behavior during one of his depositions, which demonstrated good decision making and an understanding of the potential consequences of discussing his case.

Mr. Smitt was evaluated by Jordan Ables, Ph.D. to assess for mental retardation. Dr. Ables administered the *WAIS*, as well as a number of other measures. Mr. Smitt obtained a Full Scale IQ of 65. He reportedly performed “pretty badly” on a visual-motor measure. Dr. Ables opined that the difficulties Mr. Smitt exhibited were “definitely consistent with retardation.” Dr. Ables further opined that Mr. Smitt’s performance on a drawing task indicated that he draws in a “very juvenile way,” which he believed was consistent with mental retardation. Finally, Dr. Ables testified that Mr. Smitt’s sentences on a sentence completion task were simplistic and concrete. Although during the deposition Dr. Ables frequently referred to Mr. Smitt’s performance as consistent with and reflective of mental retardation, he acknowledged that the results could be consistent with a learning disability. With respect to the claimant’s adaptive functioning, Dr. Ables described such functioning to be “low.” He testified that Mr. Smitt could not consistently maintain a residence or employment, or “keep out of trouble with the law.” He also opined Mr. Smitt’s performance reflected deficits in communication skills.

Current Clinical Presentation

Mr. Smitt was interviewed for five hours at Broward Correctional Facility. The claimant presented in institutional-issued clothes and both hygiene and grooming were adequate. The claimant remained cooperative and attentive throughout the interview. Eye contact was consistently and appropriately maintained. He utilized gestures to augment speech and his overall demeanor was pleasant and cordial. He demonstrated no bizarre or unusual mannerisms. Mr. Smitt’s speech remained logical and coherent. He demonstrated no difficulty understanding questions posed and his vocabulary was concrete but sufficiently intact. The majority of his responses contained specific details and he often attended to chronology when providing information. The claimant was able to recall information without significant difficulty and he often referred to specific dates when discussing events. His recall of his criminal adjudications was also quite intact. His affect was appropriate to content of discussion. At times Mr. Smitt was quite jovial and revealed a good sense of humor. Mr. Smitt’s thought processes were intact and he demonstrated no signs of confusion. History of perceptual disturbances was denied and at no time during the interview did Mr. Smitt demonstrate signs of auditory or visual hallucinations,

paranoia, or delusions. During the interview Mr. Smitt proffered respect towards this examiner and he demonstrated knowledge of common social customs (e.g., allowed me to go first in purchasing from the vending machine, stood up and shook my hand at the end of the session). Further testing and interviews were not indicated.

Summary

James Smitt was interviewed pursuant to a Court order for an evaluation of Mental Retardation. He has been administered numerous intellectual assessments and results have been consistent (i.e., low IQ of 65 to high of 73). However, his overall performance was not consistent with mental retardation. For example, during a *WISC* administration he demonstrated poorer performance on subtests identified as easy for children with mental retardation and better performance on subtests identified as difficult for such children. Also, his overall Performance IQ (i.e., non-verbal reasoning) and Verbal IQ (i.e., verbal-based reasoning) were essentially equivalent, whereas children with mental retardation tend to show higher Performance IQ compared to Verbal IQ. It is also important to note that on several occasions his Performance IQs fell within a range much higher than that demonstrated by individuals with mental retardation. In addition, Mr. Smitt's improved Performance IQs across time is significant (i.e., 44 to 81) and does not comport with the relatively consistent performance of individuals with mental retardation. The subaverage Verbal and Full Scale IQs identified on the most recent intellectual assessments must be considered in light of Mr. Smitt's limited academic experiences, as verbal subtests depend heavily on attained academic level and continued learning. Mr. Smitt ceased school prematurely and he did not receive proper educational assistance. His illiteracy has also limited continued learning. Finally, all test results must be considered in light of the fact that Mr. Smitt may not have put forth a genuine effort, as such, his actual IQ may be higher than that indicated by formal testing.

Personal contact with Mr. Smitt confirmed verbal abilities that are above those typical in individuals with mental retardation. Mr. Smitt also displays sufficient communication skills during times of obvious stress (e.g., legal proceedings) and, in stark contrast to the gullibility often observed among individuals with mental retardation, Mr. Smitt endured rigorous cross examination during his Capital Murder trial and did not present with inconsistencies or succumb to pressure. Additionally, review of the historical data as well as personal observation of Mr. Smitt revealed his memory capacities to be intact; he was able to recall information including specific dates, details of past events, and names of acquaintances and neighborhoods.

Records and testimony by family members during the Capital Murder trial provided no information to indicate that Mr. Smitt exhibited limitations in adaptive functioning at any time. Although Mr. Smitt demonstrated maladaptive behaviors (i.e., conduct disordered behaviors) during his formative years, records indicate he could behave appropriately; he had no significant behavior problems. As an adult, Mr. Smitt demonstrated some limitations in adaptive functioning, but it appears these limitations are the result of personality traits and consequential of chronic, deliberate criminal activity. It is noted that Mr. Smitt was never gainfully employed for a long-term period. However, the fact that he spent a significant portion of his adulthood incarcerated precluded him from being gainfully employed. Additionally, Mr. Smitt admitted that his wives' family provided financial assistance and he acknowledged committing criminal acts for financial gain. Thus, with the ability to obtain income from other sources Mr. Smitt's

incentive to work was likely diminished. Finally, there were occasions in which the claimant did obtain employment and was able to perform the work required of him but for personal reasons, or forced reasons (e.g., incarceration) he ceased with employment.

Throughout his adulthood Mr. Smitt has communicated sufficiently so as to make his needs and desires known. During his current incarceration he has appropriately requested medical attention, sometimes proffering suggestions for treatment based on recall of prior beneficial experiences, and has appropriately updated his visitor request logs. He has not been a major discipline problem, suggesting good knowledge of and adherence to institutional rules. Finally, Mr. Smitt engaged in criminal behaviors that are inconsistent with deficits in adaptive behavior. These behaviors include: escaping from a correctional institution, eluding law enforcement, relying on an alias, and arriving to the scene of the index offense with a weapon. He also has a history of driving, buying/selling/trading vehicles and independent travel across states.

Table 1

Test²	Age	Verbal IQ	Performance IQ	Full Scale IQ	Descriptive Classification	Opinion regarding Mental Retardation
WISC	9 years	61	44	49	Mental Defective	None noted
WAIS	20 years	**	**	66	Mental Defective	Mild Mental Retardation
WAIS	21 years	**	**	72	Borderline Mental Retardation	Unknown
WAIS	29 years	64	81	69	Mild Mental Retardation	Unknown
WAIS	31 years	69	80	73	Borderline Mental Retardation	Rule out learning disability, brain injury
WAIS-R	37 years	69	75	70	Borderline Mental Retardation	Not available
WAIS-R	41 years	74	61	65	Mild Mental Retardation	Mild Mental Retardation

² Wechsler Intelligence Scale for Children (WISC); Wechsler Adult Intelligence Scale (WAIS); Wechsler Adult Intelligence Scale – Revised (WAIS-R); * *IQ scores could not be located.

³ Wechsler Intelligence Scale for Children (WISC); Wechsler Adult Intelligence Scale (WAIS); Wechsler Adult

Appendix N

Deficit- Based Report

FORENSIC EVALUATION REPORT

Name: James Smitt

Reason for Referral: Mr. Smitt was referred to this examiner for an evaluation of mental retardation.

BACKGROUND INFORMATION

Mr. James Smitt is the second of five children. Records indicated that his mother had been an alcoholic throughout his childhood. Information provided from multiple sources indicated the respondent was raised in a chaotic and dangerous home environment. The family resided in a government assisted housing project and had limited resources to meet basic needs.

Mr. Smitt has been married twice and both relationships terminated in divorce. His first marriage occurred at 19 years of age. He was married for approximately two years and their union resulted in the birth of a daughter. Mr. Smitt stated that his wife filed for divorce after he was incarcerated and court ordered to participate in a sex offender treatment program. During the course of the interview Mr. Smitt volunteered that prior to this act he had engaged in other deviant sexual behavior, which included sexual assaults and molestation.

Mr. Smitt was married to his second wife for three years. According to the respondent, he did not want to get married but agreed to marry after his second child was conceived. The couple resided together for only a short period of time as Mr. Smitt spent the majority of their relationship in prison for sexual offenses. He stated that he and his ex-wife had sexual relations for three years after the finalization of their divorce, at which time he was arrested for the index offense.

Available information suggests that Mr. Smitt never lived independently, and he generally relied on others to meet his needs. According to his family, Mr. Smitt did not have the skills to obtain a job (all jobs were obtained for him), cook for himself, or otherwise live independently (e.g., pay rent/mortgage; locate a doctor when ill; use services at a bank). Mr. Smitt indicated that while he had limitations, he had the ability to do some things on his own including driving; he reported cheating on the exam in order to obtain his license. Mr. Smitt stated he relied on landmarks to maneuver his way, and if lost, he sought the assistance of others for additional directions. Mr. Smitt depended on family members to take care of his financial needs and never possessed a credit card or checking account.

Education

Review of school records suggests Mr. Smitt had difficulty learning and functioning in the school environment. He failed the 1st and 3rd grades, and with the exception of a D+ in arithmetic in 4th grade, earned F's in all academic subjects. Mr. Smitt was absent 46 days during the 4th grade and was an ongoing disturbance in the classroom. He dropped out of school in 7th grade.

In a report to the court, the principal of his elementary school stated that Mr. Smitt was “definitely mentally retarded.” The principal further described Mr. Smitt as gullible and a follower who was easily influenced by others. In a letter written by his school counselor it was again stated that the principal and Mr. Smitt’s teacher believed that “he did not have the ability to learn on the level of an average child” and his placement in a “special school” was again requested. Records indicate that Mr. Smitt was later placed in a class for retarded children. One of his teachers reported that he was succeeding in this placement and commented that it was her belief that his problems in learning were the result of conflict within the home rather than intellectual limitations. However, she provided no empirical support for her statement, but instead provided the fact that he had moderate successes in arithmetic and could repeat some of the information that was discussed in class as support for her supposition. At that point in time Mr. Smitt was 13 years of age and functionally illiterate. Records indicate that in addition to trouble learning and succeeding in the school environment, Mr. Smitt was also disruptive in the classroom. For example, the following statement was written in a school note: “James is somewhat of a retarded child. Although he has been promoted academically, it is likely he will continue to be poorly behaved in the classroom, and he is unlikely to improve academically.”

Employment History

According to both the respondent and his sister, the jobs listed below were not obtained independently, but instead were obtained with assistance of friends or family members.

Job	Responsibilities	Approx. length of employment	Reason for leaving
Gas Station	Pumped Gas – stopped fill on the even dollar because he could not make change with coins	3 months	Could not work the cash register, could not read or write.
Warehouse	Loaded boxes on trucks	4 months	To earn more money at next job.
Warehouse	Loaded trucks	9 months	Terminated for tardiness.
Grocery store	Stacked boxes in a cooler	3 or 4 months	Quit- felt he was being over-worked.
Assistant to a contractor	Toted shingles, demolition	Intermittent for 6 months	Termination- legal difficulties resulted in many missed days.
Gas Stations	Could only pump gas – ended the fill on the even dollar because he could not make change with coins	4 months	Lack of education & impaired ability to do the work.
Construction company (part of work release program)	Stacked lumber	2 months	The company went out of business
Self-employed	Recycled bottles, cans, scrap metal with a friend. His friend sold the goods.	Ongoing- when money was needed	N/A
Assisting father with handyman services	Painting- required only gross motor movements. Could not do detailed work,	Intermittently for several years	N/A

	buy paint/ materials because he did not know how.		
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Legal History

A. Delinquency

Mr. Smitt was adjudicated delinquent on two occasions. His first adjudication was for throwing items onto the freeway from an overpass. The outcome of this case was Mr. Smitt's placement on indefinite probation. Mr. Smitt's second adjudication occurred after he was charged with six burglaries. As a result of these charges, the Court placed Mr. Smitt in the Georgia State Boys school for two years.

B. Adult Legal History

Mr. Smitt has been incarcerated for the majority of his adult life. His record reflects charges of Assault (two separate counts), Sexual Assault 1st Degree (two separate counts), Molestation, Sexual Abuse, Burglary, Buying and Receiving Stolen Property, Rape, Escape, Kidnapping, Attempted Murder, several firearms charges, and Capital Murder.

According to available information, Mr. Smitt escaped from jail on one occasion. He and another inmate assaulted a deputy, took his weapons, and bound him with sheets. As part of their escape, they reportedly stole a getaway car. According to Mr. Smitt, he did not plan the escape but did participate upon the insistence of his accomplice. Mr. Smitt used an alias following his escape.

Relevant information pertaining to the capital crime: According to Mr. Smitt, he drove to the home of Ms. Lynn White, a former girlfriend, on the night of the index offense. He sought to obtain cash and valuables for later sale. He parked his car a few blocks away to avoid suspicion. Ms. White was home with her 16-year old daughter. Prior to entering the home he cut the telephone lines and the wire to the motion sensor light. He entered the home with a ski mask on, gloves, and a gun. Mr. Smitt saw Ms. White, grabbed her by her hair and forced her to retrieve the cash and valuables from the house. Upon seeing Ms. White's daughter, he slapped her hard enough to cause loss of consciousness. He then ordered Ms. White to undress. He blindfolded her and bound her wrists with duct tape. Mr. Smitt proceeded to sexually assault her at gunpoint. Ms. White's daughter was then bound with duct tape and sexually assaulted. Mr. Smitt then shot and killed Ms. White and her daughter. He fled the scene and escaped in his car. He was apprehended two weeks later in North Carolina. Reportedly, while in the hospital receiving treatment for gunshot wounds he sustained during his apprehension, Mr. Smitt told a deputy, "I killed two people, and it wasn't for nothing- I needed money and I knew they had some."

Of import were observations made in relation to Mr. Smitt's ability to function during his trial and deposition. His attorney recalled that Mr. Smitt did not readily understand what was told to him and that he spent a lot of time explaining very basic information. His attorney remembered preparing Mr. Smitt for deposition by using very concrete instructions. Despite numerous hours of preparation, Mr. Smitt looked to his attorney frequently for guidance and often responded in ways that were not in his best interests. With respect to his deposition, Mr. Smitt frequently became confused and tended to answer questions concretely and without elaboration. Mr. Smitt made the decision to testify against the advice of his attorney and the Judge during the guilt

phase of his capital murder trial. His decision demonstrates extremely poor judgment and highly limited insight into the possible consequences of this choice. Mr. Smitt's poor decision making in relation to testifying was further compounded by his decision to lie on the witness stand. In sum, Mr. Smitt demonstrated impaired social skills and related reasoning abilities.

Functioning within correctional institutions:

There is ample evidence in the files provided by the Department of Corrections (DOC) regarding Mr. Smitt's ability to seek and receive medical attention for a variety of ailments, including hypertension for which he receives chronic care. All of Mr. Smitt's medical request forms are completed by another inmate; he does not have the ability to independently complete those forms. His fellow inmate stated that he often writes these requests for Mr. Smitt, and when he does, he often makes requests for specific interventions. With regard to care and treatment for hypertension, the nurse stated that Mr. Smitt is compliant with treatment, has learned to take his own blood pressure, and can understand the numeric value obtained on the monitor. By all reports, Mr. Smitt functions well within the structure of prison, as his basic needs are taken care of by others and there is little room for independent activity.

Mr. Smitt has learned to do things with assistance from other inmates. For example, he has learned how to update his visiting logs and place orders from the canteen. Completing the canteen order requires that Mr. Smitt ask a fellow inmate for the number that coincides with the desired item, and then Mr. Smitt writes that number down on the form. Mr. Smitt stated that he would not know how much he could order with a particular amount of money. When asked about updating his visiting log, Mr. Smitt stated that he sometimes requires assistance, but can now copy names and numbers to make the changes necessary to update the log.

Mr. Smitt exhibits problems in adaptive behavior even within the highly structured setting of death row. For example, records indicated that the respondent cannot use the phone on his own, has impaired social skills (e.g., frequently interrupts people), has a poor memory, and when in conversations with others, he often "goes off on a tangent." Several records described the respondent as gullible and noted that he tends to follow others. Records noted that Mr. Smitt can take care of his basic grooming needs.

Mr. Smitt's ability to maintain appropriate hygiene was supported by three correctional officers (COs). However, one CO indicated that Mr. Smitt would have to be reminded regularly to sweep the floors and conduct general cleaning of his cell. The CO provided statements indicating that Mr. Smitt demonstrates limitations in functioning and is of "limited mental capability." He explained further that Mr. Smitt does not have many skills, and he believes he is unlikely to acquire these skills. A second CO commented that Mr. Smitt would have the ability to conduct simple tasks and engage in menial labor jobs, but that he would "not be of much value in a non-laborer position." Another CO noted that he was able to effectively communicate with Mr. Smitt, but he noticed that Mr. Smitt would sometimes become confused when talking about unfamiliar topics. It was his belief that Mr. Smitt attempted to discuss such topics in order to portray himself as being smarter than he actually is.

With regard to the diagnosis of mental retardation, notations in various documents suggested that Mr. Smitt has either mild mental retardation, or can be best described as "slow." During the

sentencing phase of the criminal proceedings, the court stated that they found him to be “slightly mentally retarded” and used mental retardation as a mitigating factor.

HISTORY OF PSYCHOLOGICAL EVALUATION

Available information indicates that Mr. Smitt has undergone numerous mental health evaluations. During one or more hospitalizations or incarcerations he reported experiencing hallucinations and was treated with Haldol, Thorazine, or Abilify. The treatment was initiated based on self-report data in the absence of external corroboration (e.g., there were no observations consistent with the presence of psychosis or prior treatment for a psychotic disorder). Mr. Smitt has been previously diagnosed with Antisocial Personality Disorder, Mental Retardation, Paraphilia Not Otherwise Specified, Anxiety Disorder, and Depression.

Assessment of Cognitive Functioning

For ease of review, the results of Mr. Smitt’s intelligence tests have been put together in table format and can be found at the end of this document.

A. Assessment of Cognitive Functioning - Prior to 18 years of age: Mr. Smitt was assessed at the age of nine years using the Wechsler Intelligence Scale for Children (WISC), the results of that evaluation showed his full scale IQ to be 49. The psychologist reported that Mr. Smitt was of Borderline Intelligence and that he should be able to proceed in school if he is placed in a grade below the level of his chronological age, with plans to pass him each year.

B. Assessment of Cognitive Functioning and Adaptive Behavior - Post 18 years of age: The results of his psychological testing at North Western State Hospital (NWSH) show a discharge diagnosis of Mild Mental Retardation and Paraphilia Not Otherwise Specified. This same report indicated that the staff considered Mr. Smitt to be functioning within the Borderline or Low Average range of intelligence. Support for this functional assessment was one statement that detailed their belief that Mr. Smitt had been able to maintain employment and support his family; a formal adaptive behavior assessment measure was not administered.

During one of Mr. Smitt’s incarcerations, he was evaluated for transfer from a unit that housed inmates with mild cognitive impairment back to general population. The evaluator opined that Mr. Smitt was appropriate for return to general population and based on the scores of the Wechsler Adult Intelligence Scale (WAIS), recommended that he be evaluated for a learning disability or suspected brain damage. The evaluator did not make a statement as to whether the respondent had mental retardation, but the Full Scale IQ obtained fell within the appropriate bandwidth for a diagnosis of Mild Mental Retardation (i.e., IQ = 72).

Mr. Smitt was admitted to Bellevue Secure Medical Facility (BSMF) for an evaluation of competence to stand trial and mental state at the time of the offence. Review of documents indicates that Mr. Smitt functioned well at the facility and when provided regular reminders, did not demonstrate problems related to hygiene or cleanliness of the living environment. Staff notations also indicated that he demonstrated effective communication skills. At the conclusion of the evaluation, Mr. Smitt was deemed competent to stand trial and to be without significant psychological disturbance at the time of the alleged crime. Though formal assessment of mental retardation was not completed at BSMF, a psychologist proffered an opinion regarding the

appropriateness of the diagnosis. According to the psychologist, “his previous intelligence testing suggested intellectual functioning in the Borderline range, though his ability to communicate verbally and his history of independent living suggest that he is ‘streetwise’ and, apart from his extensive criminal behavior, not the kind of person who would require extensive supervision on the basis of intellectual impairment.”

The defense hired Michael Butcher, M.D. to evaluate mental retardation for the post-conviction hearing. Dr. Butcher is not a psychologist and as such, he did not conduct psychological tests to support the diagnoses he rendered of mild mental retardation and Antisocial Personality Disorder. He accurately noted in his report that mental retardation and Antisocial Personality Disorder are not mutually exclusive. Dr. Butcher reported that Mr. Smitt was often tangential in speech and would relate information in a very disjointed manner. Record review revealed to Dr. Butcher a history of alleged head injury, a tumultuous and difficult upbringing, and IQ tests with scores in the range of mild mental retardation. Dr. Butcher reported that he used all of this information in arriving at the aforementioned diagnoses.

Mr. Smitt was evaluated by Jordan Ables, Ph.D. to assess for mental retardation. Dr. Ables administered the *WAIS*, as well as a number of other measures. Mr. Smitt obtained a Full Scale IQ of 65. He reportedly performed “pretty badly” on a visual-motor measure. Dr. Ables opined that the difficulties Mr. Smitt exhibited were “definitely consistent with retardation.” Dr. Ables further opined that Mr. Smitt’s performance on a drawing task indicated that he draws in a “very juvenile way,” which he believed was consistent with mental retardation. Finally, Dr. Ables testified that Mr. Smitt’s sentences on a sentence completion task were simplistic and concrete. Although during the deposition Dr. Ables frequently referred to Mr. Smitt’s performance as consistent with and reflective of mental retardation, he acknowledged that the results could be consistent with a learning disability. With respect to the claimant’s adaptive functioning, Dr. Ables described such functioning to be “low.” He testified that Mr. Smitt could not consistently maintain a residence or employment, or “keep out of trouble with the law.” He also opined Mr. Smitt’s performance reflected deficits in communication skills.

CURRENT CLINICAL PRESENTATION

Mr. Smitt was oriented to time, place and person, and demonstrated adequate attention. He was alert, adequately groomed, and exhibited interest and motivation in completing the tasks. His speech was judged to be simple and concrete with respect to word choice and content, and his ability to comprehend was judged to be limited. Despite the observed limitations in communication, Mr. Smitt was able to provide this examiner with information about his life history. Mr. Smitt was polite and courteous, and his demeanor was judged to be positive. Mr. Smitt demonstrated a noticeable inability to maintain a cohesive train of thought.

Results of Psychological Tests/Procedures

A. Wechsler Adult Intelligence Test – III (WAIS-III)

The WAIS-III is a measure of intelligence and cognitive abilities. The respondent’s Full Scale IQ = 59, his Nonverbal IQ = 62, and his Verbal IQ = 59. Significant differences were noted between index scores. Specifically, his Perceptual Organization Index (i.e., measure of non-verbal reasoning used to solve novel problems of a visual nature) and Working Memory Index (i.e.,

measure of the memory processes in which diverse information stored in short term memory is inspected, sorted, or transformed) were found to be significantly lower than his Verbal Comprehension Index (i.e., measure of the accumulated fund of general verbal abilities acquired at home, school, or work) and Processing Speed Index (i.e., measure of the ability to quickly scan, discriminate, and visually order presented information). This overall IQ profile is typical of that seen in individuals with mental retardation (i.e., Full Scale IQ \leq 70).

B. Wechsler Individual Achievement Test (WIAT)

The WIAT is a comprehensive measure of academic achievement. Due to illiteracy, Mr. Smitt was not administered subtests rooted in writing and reading skills. Mr. Smitt was unable to understand the instructions for the administration of one of the subtests and as a result, that subtest could not be administered. Mr. Smitt shows significant deficits in achievement as measured by the WIAT. All subtest scores fell in the range consistent with the performance of children in the 5 to 7 year age range. As compared to his other subtest scores, the respondent demonstrated relative strengths in Oral Language and Listening Comprehension.

C. Scales of Independent Behavior- Revised (SIB-R)

The Vineland Adaptive Behavior Scales (VABS) is a measure of adaptive and maladaptive behaviors. The VABS is intended for administration to informants who know the person of interest well. Due to his prolonged incarceration, there is no way to assess Mr. Smitt's current adaptive behavior in the community. The VABS was administered to Mr. Smitt's sister and a cousin who resided with him during childhood. The goal was to obtain quantitative information related to their memories of Mr. Smitt when they were last in contact with him for any substantial period of time. The results of the VABS indicate that Mr. Smitt demonstrated deficits in adaptive behavior during childhood. These deficits were seen across multiple areas with particular impairments noted in fine motor skills and areas related to social and practical skills.

SUMMARY

As was previously discussed, the respondent currently functions well within the institutional setting, though he continues to demonstrate deficits related to communication, functional academic skills, and social/interpersonal skills. Record review, evaluation of Mr. Smitt, and information gained from collateral sources provide evidence to support the presence of these and other deficits in adaptive functioning currently and across the lifespan. Specifically, he demonstrated deficits in the areas of communication, social-interpersonal skills, use of community resources, home living, self-direction, functional academic skills, work, and safety.

Mr. Smitt's Nonverbal IQ was assessed by this writer to be 62, his Verbal IQ to be 59, and his Full Scale IQ to be 59. All of his index scores placed him in the WAIS-III descriptive category of Extremely Low. The FSIQ of 59 best represents his cognitive ability at this time. Overall, Mr. Smitt demonstrated relative strengths in processing speed and verbal reasoning, and relative weaknesses in visual spatial reasoning and working memory.

As previously mentioned, the results of the WIAT suggest broad based deficits in cognitive ability. In light of Mr. Smitt's limited educational background and his history of repeated and extended incarceration, it would be expected for the scores on the WIAT to be lower than that which may have been obtained in his childhood and adolescent years. However, the scores

obtained during this administration are consistent with school documents that clearly identified him as a person who needed to be placed in special education, who had low IQ scores (often identified as mentally retarded), and who demonstrated a general inability to learn in the classroom. Review of the scores shows extreme deficits across subtests (age equivalent of 5 to 7 years). These results are consistent with the current administration of the WAIS, which indicates that his cognitive ability is quite limited.

Table 1

Test³	Age	Verbal IQ	Performance IQ	Full Scale IQ	Descriptive Classification	Opinion regarding Mental Retardation
WISC	9 years	61	44	49	Mental Defective	None noted
WAIS	20 years	**	**	66	Mental Defective	Mild Mental Retardation
WAIS	21 years	**	**	72	Borderline Mental Retardation	Unknown
WAIS	29 years	64	81	69	Mild Mental Retardation	Unknown
WAIS	31 years	69	80	73	Borderline Mental Retardation	Rule out learning disability and organic brain injury
WAIS-R	37 years	69	75	70	Borderline Mental Retardation	Not available
WAIS-R	41 years	74	61	65	Mild Mental Retardation	Mild Mental Retardation

* **IQ scores could not be located.

³ Wechsler Intelligence Scale for Children (WISC); Wechsler Adult Intelligence Scale (WAIS); Wechsler Adult Intelligence Scale – Revised (WAIS-R);

Appendix O

Main Survey

Main survey: Please provide the best answer for the following questions

Based on the report, do you believe the claimant has ID?

Yes, the claimant has ID

No, the claimant does not have ID

How credible do you believe the psychologist who authored the report to be?

Not at all credible

Slightly credible

Somewhat credible

Mostly credible

Highly credible

Please indicate your belief regarding whether this claimant has ID:

The claimant likely does not have ID

The claimant might not have ID

Cannot decide

The claimant might have ID

The claimant likely has ID

Main survey: Please provide the best answer for the following questions

How much weight did you give the claimant's *index offense* (e.g., planning, cutting phone lines, tampering with motion sensors, eluding arrest for weeks) in your decision regarding ID?

Highly relevant evidence <u>against</u> ID <input type="checkbox"/>	Slightly relevant evidence <u>against</u> ID <input type="checkbox"/>	Not relevant to my decision regarding ID <input type="checkbox"/>	Slightly relevant evidence <u>in favor</u> of ID <input type="checkbox"/>	Highly relevant evidence <u>in favor</u> of ID <input type="checkbox"/>
------------------------------------------------------------------------	--------------------------------------------------------------------------	----------------------------------------------------------------------	------------------------------------------------------------------------------	----------------------------------------------------------------------------

How much weight did you give the claimant's *criminal history* in your decision regarding ID?

Highly relevant evidence <u>against</u> ID <input type="checkbox"/>	Slightly relevant evidence <u>against</u> ID <input type="checkbox"/>	Not relevant to my decision regarding ID <input type="checkbox"/>	Slightly relevant evidence <u>in favor</u> of ID <input type="checkbox"/>	Highly relevant evidence <u>in favor</u> of ID <input type="checkbox"/>
------------------------------------------------------------------------	--------------------------------------------------------------------------	----------------------------------------------------------------------	------------------------------------------------------------------------------	----------------------------------------------------------------------------

How much weight did you give the claimant's *employment history/skills* in your decision regarding ID?

Highly relevant evidence <u>against</u> ID <input type="checkbox"/>	Slightly relevant evidence <u>against</u> ID <input type="checkbox"/>	Not relevant to my decision regarding ID <input type="checkbox"/>	Slightly relevant evidence <u>in favor</u> of ID <input type="checkbox"/>	Highly relevant evidence <u>in favor</u> of ID <input type="checkbox"/>
------------------------------------------------------------------------	--------------------------------------------------------------------------	----------------------------------------------------------------------	------------------------------------------------------------------------------	----------------------------------------------------------------------------

How much weight did you give the claimant's *prior diagnosis of Antisocial Personality Disorder* in your decision regarding ID?

Highly relevant evidence <u>against</u> ID <input type="checkbox"/>	Slightly relevant evidence <u>against</u> ID <input type="checkbox"/>	Not relevant to my decision regarding ID <input type="checkbox"/>	Slightly relevant evidence <u>in favor</u> of ID <input type="checkbox"/>	Highly relevant evidence <u>in favor</u> of ID <input type="checkbox"/>
------------------------------------------------------------------------	--------------------------------------------------------------------------	----------------------------------------------------------------------	------------------------------------------------------------------------------	----------------------------------------------------------------------------

How much weight did you give the claimant's *behavior in prison* in your decision regarding ID?

Highly relevant evidence <u>against</u> ID <input type="checkbox"/>	Slightly relevant evidence <u>against</u> ID <input type="checkbox"/>	Not relevant to my decision regarding ID <input type="checkbox"/>	Slightly relevant evidence <u>in favor</u> of ID <input type="checkbox"/>	Highly relevant evidence <u>in favor</u> of ID <input type="checkbox"/>
------------------------------------------------------------------------	--------------------------------------------------------------------------	----------------------------------------------------------------------	------------------------------------------------------------------------------	----------------------------------------------------------------------------

How much weight did you give the claimant's history of escape from jail in your decision regarding ID?

Highly relevant evidence <u>against</u> ID <input type="checkbox"/>	Slightly relevant evidence <u>against</u> ID <input type="checkbox"/>	Not relevant to my decision regarding ID <input type="checkbox"/>	Slightly relevant evidence <u>in favor</u> of ID <input type="checkbox"/>	Highly relevant evidence <u>in favor</u> of ID <input type="checkbox"/>
------------------------------------------------------------------------	--------------------------------------------------------------------------	----------------------------------------------------------------------	------------------------------------------------------------------------------	----------------------------------------------------------------------------

How much weight did you give the claimant's marital history in your decision regarding ID?

Highly relevant evidence <u>against</u> ID <input type="checkbox"/>	Slightly relevant evidence <u>against</u> ID <input type="checkbox"/>	Not relevant to my decision regarding ID <input type="checkbox"/>	Slightly relevant evidence <u>in favor</u> of ID <input type="checkbox"/>	Highly relevant evidence <u>in favor</u> of ID <input type="checkbox"/>
------------------------------------------------------------------------	--------------------------------------------------------------------------	----------------------------------------------------------------------	------------------------------------------------------------------------------	----------------------------------------------------------------------------

How much weight did you give the claimant's verbal/communication skills in your decision regarding ID?

Highly relevant evidence <u>against</u> ID <input type="checkbox"/>	Slightly relevant evidence <u>against</u> ID <input type="checkbox"/>	Not relevant to my decision regarding ID <input type="checkbox"/>	Slightly relevant evidence <u>in favor</u> of ID <input type="checkbox"/>	Highly relevant evidence <u>in favor</u> of ID <input type="checkbox"/>
------------------------------------------------------------------------	--------------------------------------------------------------------------	----------------------------------------------------------------------	------------------------------------------------------------------------------	----------------------------------------------------------------------------

How much weight did you give the claimant's driving history/abilities in your decision regarding ID?

Highly relevant evidence <u>against</u> ID <input type="checkbox"/>	Slightly relevant evidence <u>against</u> ID <input type="checkbox"/>	Not relevant to my decision regarding ID <input type="checkbox"/>	Slightly relevant evidence <u>in favor</u> of ID <input type="checkbox"/>	Highly relevant evidence <u>in favor</u> of ID <input type="checkbox"/>
------------------------------------------------------------------------	--------------------------------------------------------------------------	----------------------------------------------------------------------	------------------------------------------------------------------------------	----------------------------------------------------------------------------

Please use the space below to include any information you believe would be helpful for the research team to know:

Thank you for your participation in this study!

Appendix P

IRB Approval Letter for Pilot Study

Office for Research
Institutional Review Board for the
Protection of Human Subjects

August 12, 2013

THE UNIVERSITY OF
ALABAMA
R E S E A R C H

Krystal Hedge
Department of Psychology
College of Arts and Sciences
Box 870348

Re: "Judicial Decision Making in Atkins Cases: Examining the
Influence of Psychological Report Content and Judgmental
Heuristics"

Dear Ms. Hedge:

This letter comes as a response to your communication received
August 9, 2013. According to the Office for Human Research
Protection (OHRP) under policy 45 CFR 46.101 the proposed work is
not human subjects research.

Because the work is not considered human subjects research, it does
not require IRB approval and is therefore excluded from review by the
IRB.

If you have any questions or if I can be of further assistance please do
not hesitate to contact me.

Sincerely,

Appendix Q

Pilot Survey Questionnaire

- Please check the appropriate box:
 - I am a lawyer
 - I am a law student

- How long did it take to read:
 - Report 1: _____
 - Report 2: _____

- Do you believe **Report 1** was predominantly focused on discussion of the petitioner's **strengths or abilities**?
 - Yes
 - No

- Do you believe **Report 2** was predominantly focused on discussion of the petitioner's **deficits or weaknesses**?
 - Yes
 - No

Although the level of detail, writing style, evaluators' conclusions, and/or the overall emphasis of these reports may differ, I am interested in whether their objective content is *generally similar* ("generally similar" can be thought of as the two reports sharing approximately 75% of the content regarding a certain topic). Do you think both reports contained *generally similar* content on the following topics:

- The petitioner's social background (e.g., family environment, marriages):
 - Yes
 - No

- The petitioner's criminal history:
 - Yes
 - No

- The petitioner's driving history/abilities:
 - Yes
 - No

- The petitioner's work history and general work skills:
 - Yes
 - No

- The petitioner's academic/educational background:
 - Yes
 - No

- The petitioner's mental health history (e.g., previous diagnoses, medication):
 - Yes
 - No

- Results from previously administered psychological evaluations:
 - Yes
 - No

- Mr. Smitt's ability to communicate verbally (despite whether the reports differed in their opinion of his abilities to communicate):
 - Yes
 - No

- The report writer described his/her interview with and/or evaluation of the petitioner:
 - Yes
 - No

- The opinion of third parties regarding Mr. Smitt's presentation (Report One discussed police department personnel and Report Two discussed staff in a correctional facility)
 - Yes
 - No

- The petitioner's functioning while in a correctional or mental health facility:
 - Yes
 - No

Appendix R

Results of Pilot Study

	Legal Personnel	All Participants ⁴
Do you believe Report 1 was predominantly focused on discussion of the petitioner's strengths or abilities?	<ul style="list-style-type: none"> - Yes: 86.7% (N = 13) - No: 13.3% (N = 2) 	<ul style="list-style-type: none"> - Yes: 83.3% (N = 15) - No: 16.67% (N = 3)
Do you believe Report 2 was predominantly focused on discussion of the petitioner's deficits or weaknesses?	<ul style="list-style-type: none"> - Yes: 91.7% (N = 11) - No: 8.31% (N = 1) 	<ul style="list-style-type: none"> - Yes: 86.76% (N = 13) - No: 13.33% (N = 2)
<p>Prompt provided: Although the level of detail, writing style, evaluators' conclusions, and/or the overall emphasis of these reports may differ, I am interested in whether their objective content is <i>generally similar</i> ("generally similar" can be thought of as the two reports sharing approximately 75% of the content regarding a certain topic). Do you think both reports contained <i>generally similar</i> content on the following topics:</p>		
The petitioner's social background (e.g., family environment, marriages):	<ul style="list-style-type: none"> - Yes: 50% (N = 6) - No: 50% (N = 6) 	<ul style="list-style-type: none"> - Yes: 57.14% (N = 8) - No: 42.86% (N = 6)
The petitioner's criminal history:	<ul style="list-style-type: none"> - Yes: 50% (N = 6) - No: 50% (N = 6) 	<ul style="list-style-type: none"> - Yes: 57.14% (N = 8) - No: 42.86% (N = 6)
The petitioner's driving history/abilities:	<ul style="list-style-type: none"> - Yes: 50% (N = 6) - No: 50% (N = 6) 	<ul style="list-style-type: none"> - Yes: 50% (N = 6) - No: 50% (N = 6)

⁴ A pre-pilot was conducted using the same stimulus materials in order to gather information regarding the length of time it took to read each report. The three participants included two master's-level clinicians in the field of psychology-law and one educator.

The petitioner's work history and general work skills:	<ul style="list-style-type: none"> - Yes: 58.3% (N = 7) - No: 41.7% (N = 5) 	<ul style="list-style-type: none"> - Yes: 57.14% (N = 8) - No: 42.86% (N = 6)
The petitioner's academic/educational background:	<ul style="list-style-type: none"> - Yes: 66.7% (N = 8) - No: 33.3% (N = 4) 	<ul style="list-style-type: none"> - Yes: 71.43% (N = 10) - No: 28.57% (N = 4)
The petitioner's mental health history (e.g., previous diagnoses, medication):	<ul style="list-style-type: none"> - Yes: 83.3% (N = 10) - No: 16.7% (N = 2) 	<ul style="list-style-type: none"> - Yes: 85.71% (N = 12) - No: 14.29% (N = 2)
Results from previously administered psychological evaluations:	<ul style="list-style-type: none"> - Yes: 66.7% (N = 8) - No: 33.3% (N = 4) 	<ul style="list-style-type: none"> - Yes: 64.29% (N = 9) - No: 35.71% (N = 5)
Mr. Smitt's ability to communicate verbally (despite whether the reports differed in their opinion of his abilities to communicate):	<ul style="list-style-type: none"> - Yes: 66.7% (N = 8) - No: 33.3% (N = 4) 	<ul style="list-style-type: none"> - Yes: 71.43% (N = 10) - No: 28.57% (N = 4)
The report writer described his/her interview with and/or evaluation of the petitioner:	<ul style="list-style-type: none"> - Yes: 50% (N = 6) - No: 50% (N = 6) 	<ul style="list-style-type: none"> - Yes: 57.14% (N = 8) - No: 42.86% (N = 6)
The opinion of third parties regarding Mr. Smitt's presentation (Report One discussed police department personnel and Report Two discussed staff	<ul style="list-style-type: none"> - Yes: 66.7% (N = 8) - No: 33.3% (N = 4) 	<ul style="list-style-type: none"> - Yes: 71.43% (N = 10) - No: 28.57% (N = 4)

in a correctional facility):		
The petitioner's functioning while in a correctional or mental health facility:	<ul style="list-style-type: none"> - Yes: 66.7% (N = 8) - No: 33.3% (N = 4) 	<ul style="list-style-type: none"> - Yes: 71.43% (N = 10) - No: 28.57% (N = 4)

Appendix S

Summary of Geographical Representation Across Participants

State in which participant served as judge	Frequency	Percentage
Alabama	8	6.6
Arizona	4	4.1
Arkansas	1	0.8
California	10	8.2
Colorado	1	0.8
Delaware	2	1.6
Florida	4	3.3
Georgia	3	2.5
Idaho	2	1.6
Indiana	9	7.4
Kansas	12	9.8
Kentucky	4	3.3
Louisiana	3	2.5
Mississippi	1	0.8
Missouri	1	0.8
Nebraska	1	0.8
North Carolina	2	1.6
Ohio	8	6.6
Oklahoma	3	2.5
Oregon	4	3.3
Pennsylvania	6	4.9
Tennessee	2	1.6
Texas	13	10.7
Washington	3	2.5
Wyoming	1	0.8
New York	2	1.6
District of Columbia	1	0.8
Maryland	1	0.8
Hawaii	1	0.8
New Mexico	1	0.8
Missing	7	5.7
Total	122	100

Appendix T

Demographics by Group

	<u>Deficit-Based Report</u>		<u>Strength-Based Report</u>	
	Frequency	Percent	Frequency	Percent
<i>Categorical Variables</i>				
Court in which participant serves				
Federal Court of Appeals	2	3.3	1	1.6
Federal District Court	6	10.0	8	12.9
State Supreme Court	2	3.3	1	1.6
State Appellate Court	9	15.0	8	12.9
State-level criminal court	31	51.7	30	48.4
Other	10	16.7	13	21.0
Unspecified	0	0.0	1	1.6
Gender				
Male	42	70.0	44	71.0
Female	18	30.0	17	27.4
Unspecified	0	0.0	1	1.6
Type of judicial appointment				
Elected	31	51.7	33	53.2
Appointed	26	43.3	28	45.2
History of elected and appointed	3	5.0	0	0.0
Unspecified	0	0.0	1	1.6
Race/ethnicity				
Caucasian/white	50	83.3	56	90.3
Latina/Latina/Hispanic	5	8.3	2	3.2
Other	2	3.3	3	4.8
African-American/Black	3	5.0	1	1.6
Level of education				
Bachelor's Degree	1	1.7	0	0.0
Master's Degree	0	0.0	1	1.6
Juris Doctor (JD)	58	96.7	58	93.5
Ph.D.	1	1.7	1	1.6
Other	0	0.0	1	1.6
Unspecified	0	0.0	1	1.6

Recruited through NJC				
Yes	13	13.3	4	6.5
No	46	81.7	58	93.5
Unspecified	3	5.0		
Experience with ID				
Close family member with ID	8	13.3	13	21.0
Child with ID	0	0.0	2	3.2
Friend with ID	8	13.3	15	24.2
Worked with ID population	8	13.3	8	12.9
Volunteered with ID population	14	23.3	11	17.7
Took a course that covered ID	9	15.0	3	4.8
Read/watched non-fictional account of ID	30	50.0	35	56.5
Read/watched fictional account of ID	35	58.3	43	69.4
Other experiences with ID	12	20.0	11	17.7
Knowledge of ID (frequency and percent of correct responses)				
A low IQ is sufficient for a diagnosis of ID	46	76.7	53	85.5
Deficits in adaptive behavior are required in more than one area for a diagnosis of ID	15	25.0	15	24.2
The presence of certain strengths and/or criminal behavior can be used to refute a diagnosis of ID	28	46.7	18	29.0
In order to diagnose an adult with ID, there must be a diagnosis on record prior to age 18 years	41	68.3	47	75.8

	<u>Deficit-Based Report</u>				<u>Strength-Based Report</u>			
<i>Continuous Variables</i>	<i>M</i>	<i>SD</i>	<i>Mode</i>	<i>Mdn</i>	<i>M</i>	<i>SD</i>	<i>Mode</i>	<i>Mdn</i>
Age (ranged from 39 to 91years)	59.4	8.5	61	61	60.0	8.4	67	61
Experience with the death penalty cases								
Capital cases heard as a judge (0-200)	7.8	28.1	0	1	5.1	11.1	0	1

<i>Atkins</i> cases heard as a judge (0-70)	1.96	9.95	0	0	.95	2.6	0	0
Scores on the CLAS-MR (range: 35- 210)	80.9	17.2	71	80	80.1	16.8	78	81
Knowledge of ID (range: 1-4)	2.2	.98	2	2	2.2	1.4	2	2
Experiences with ID (range: 1-9)	2.1	1.4	1	2	2.3	1.4	2	2
Sum of knowledge and experience (range: 1-9)	4.3	1.6	3	4	4.4	1.7	4	4

Appendix U

Frequency of Responses to Survey Questions by Group

	<u>Deficit-Based Report</u>		<u>Strength-Based Report</u>	
	Frequency	Percent	Frequency	Percent
Does the claimant have ID?				
Yes	51	85.0	22	35.5
No	7	11.7	38	61.3
How credible do you believe the psychologist who authored the report to be?				
Slightly	1	1.7	3	4.8
Somewhat	15	25.0	19	30.6
Mostly	30	50.0	33	53.2
Highly	14	23.3	7	11.3
Does the claimant have ID?				
Likely does not have ID	2	3.3	18	29.0
Might not have ID	1	1.7	8	12.9
Cannot decide	6	10.0	11	17.7
Might have ID	14	23.3	17	27.4
Likely has ID	36	60	8	12.9
How much weight did you give the index offense in your decision regarding ID?				
Highly relevant evidence against ID	14	23.3	32	51.5
Slightly relevant evidence against ID	26	43.3	15	24.2
Not relevant	8	13.3	8	12.9
Slightly relevant evidence in favor of ID	7	11.7	2	3.2
Highly relevant evidence in favor of ID	2	3.3	1	1.6
How much weight did you give the claimant's prior diagnosis of APD in your decision regarding ID?				
Highly relevant evidence against ID	0	0.0	4	6.5

Slightly relevant evidence against ID	11	18.3	14	22.6
Not relevant	16	26.7	20	32.3
Slightly relevant evidence in favor of ID	20	33.3	16	25.8
Highly relevant evidence in favor of ID	11	18.3	5	8.1
How much weight did you give the claimant's employment history/skills in your decision regarding ID?				
Highly relevant evidence against ID	2	3.3	5	8.1
Slightly relevant evidence against ID	9	15.0	21	33.9
Not relevant	2	3.3	9	14.5
Slightly relevant evidence in favor of ID	26	43.3	21	33.9
Highly relevant evidence in favor of ID	18	30.0	3	4.8
How much weight did you give the claimant's marital history in your decision regarding ID?				
Highly relevant evidence against ID	0	0	2	3.2
Slightly relevant evidence against ID	9	15.0	16	25.8
Not relevant	24	40.0	29	46.8
Slightly relevant evidence in favor of ID	22	36.7	0	0.0
Highly relevant evidence in favor of ID	3	5.0	12	19.4
How much weight did you give the claimant's driving history in your decision regarding ID?				
Highly relevant evidence against ID	2	3.3	7	11.3
Slightly relevant evidence against ID	13	21.7	29	46.8
Not relevant	25	41.7	17	27.4
Slightly relevant evidence in favor of ID	14	23.3	4	6.5
Highly relevant evidence in favor of ID	2	3.3	0	0.0

favor of ID

How much weight did you give the claimant's verbal skills in your decision regarding ID?

Highly relevant evidence against ID	0	0.0	20	32.3
Slightly relevant evidence against ID	9	15.0	22	35.5
Not relevant	3	5.0	6	9.7
Slightly relevant evidence in favor of ID	26	43.3	4	6.5
Highly relevant evidence in favor of ID	18	30.0	6	9.7

How much weight did you give the claimant's behavior in prison in your decision regarding ID?

Highly relevant evidence against ID	2	3.3	19	30.6
Slightly relevant evidence against ID	7	11.7	25	40.3
Not relevant	7	11.7	6	9.7
Slightly relevant evidence in favor of ID	29	48.3	7	11.3
Highly relevant evidence in favor of ID	13	21.7	2	3.2

How much weight did you give the claimant's history of escape from jail in your decision regarding ID?

Highly relevant evidence against ID	1	1.7	14	22.6
Slightly relevant evidence against ID	20	33.3	25	40.3
Not relevant	20	33.3	17	27.4
Slightly relevant evidence in favor of ID	14	23.3	2	3.2
Highly relevant evidence in favor of ID	2	3.3	1	1.6

How much weight did you give the claimant's criminal history in your decision regarding ID?

Highly relevant evidence against ID	0	0.0	7	11.3
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Slightly relevant evidence against ID	12	20.0	23	37.1
Not relevant	16	26.7	19	30.6
Slightly relevant evidence in favor of ID	23	38.3	9	14.5
Highly relevant evidence in favor of ID	6	10.0	1	1.6