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JURY POOL MEMBERS' BELIEFS ABOUT THE RELATION BETWEEN POTENTIAL IMPAIRMENTS IN FUNCTIONING AND MENTAL RETARDATION: IMPLICATIONS FOR *ATKINS*-TYPE CASES

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I. INTRODUCTION

In *Atkins v. Virginia*, the Supreme Court ruled that executing offenders with mental retardation (MR) constitutes "cruel and unusual punishment[]"[1] prohibited by the Eighth Amendment.[2] Determining whether a defendant is a person with MR is critically important because such a finding will remove the death penalty as a potential punishment. In *Atkins*-type cases, MR determinations are made by judges or jurors (fact finders), not mental health experts. These fact finders often do not possess specia-

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1. U.S. CONST. amend. VIII.
2. *See* Atkins v. Virginia, 536 U.S. 304, 321 (2002).

lized knowledge about MR, and the criteria they use to decide whether a defendant is a person with MR may not be consistent with the diagnostic criteria used by mental health professionals. Mental health professionals involved in *Atkins*-type cases have speculated that most of the general population believes "people with mental retardation have vastly lower abilities"[3] than people without MR. If this speculation is true, it is likely that fact finders will often fail to identify defendants with more moderate impairments as persons with MR, even when these impairments clearly meet diagnostic criteria for MR.

This article presents the results of an empirical study which examined more than eight hundred jury pool members' perceptions about the relation between potential deficits in functioning and MR and compared their perceptions to those of more than eighty mental health professionals who work with persons with MR on a daily basis. Part II provides background information for the study. It begins by defining MR according to official diagnostic criteria and providing an overview of the role jurors play in making MR determinations. Next, the article identifies the areas of functioning examined in the study and explains why jurors are expected to have more accurate perceptions in some areas than others. Part III details the methods used in the study. Part IV presents the results of the study, including comparisons between jury pool members' and mental health professionals' responses. Part V uses the study results to identify implications for legal and mental health practitioners. Part VI summarizes the study and concludes.

II. Background Information

A. Defining MR and Examining the Role of Fact Finders in Making MR Determinations

The Supreme Court did not endorse a specific definition of MR to be applied by state courts in the *Atkins* decision; however, it implied that state statutes which define MR should generally conform to the diagnostic criteria devised by the American Association on Intellectual and Developmental Disabilities (AAIDD) and American Psychiatric Association (APA),[4]

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3. Dennis R. Olvera et al., *Mental Retardation and Sentences for Murder: Comparison of Two Recent Court Cases*, 38 Mental Retardation 228, 232 (2000) (comparing the unequal outcomes of Indiana v. Miller, No. 49G059508CF110486 (Marion Super. Ct. 1998), *rev'd*, 770 N.E.2d 763 (Ind. 2002) and Indiana v. Rogers, No. 45GO49502CF00056 (Lake Super. Ct. 1997), *aff'd*, 698 N.E.2d 1172 (Ind. 1998), two pre-*Atkins* Indiana murder cases in which the defendants exhibited similar characteristics but only one was determined to be a person with MR).

4. *See Atkins*, 536 U.S. at 317 n.22, 309 n.3; *see also* Am. Psychiatric Ass'n, Diagnostic and Statistical Manual of Mental Disorders 41 (4th ed., text rev. 2000) [hereinafter DSM-IV]; Am. Ass'n on Mental Retardation, Mental Retardation: Definition, Classification, and Systems of Supports 5 (9th ed. 1992) [hereinafter AAMR, 9th ed. 1992]. At the time *Atkins*

which are among the most well-known and widely-used criteria in the mental health field. While the AAIDD and APA standards differ in some respects,[5] each identifies three basic components for diagnosing MR: (a) significant subaverage intelligence, (b) significant impairment in adaptive functioning, and (c) evidence that the first two components have been present since the beginning of the developmental period, which is usually before age eighteen.[6]

The AAIDD and APA standards for diagnosing MR were designed for use by mental health professionals, not fact finders. However, while mental health professionals often testify as expert witnesses in *Atkins*-type cases,[7] fact finders ultimately determine whether the defendant is a person with MR.[8] In fact, the criteria that fact finders use to make decisions about MR in any given case may not necessarily follow AAIDD or APA

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was decided, the AAIDD was called the American Association on Mental Retardation (AAMR). Though the Court discussed the 1992 AAMR definition of MR in its opinion, *see Atkins*, 536 U.S. at 309 n.3, the AAIDD published a revised set of diagnostic criteria shortly after the decision, *see* AM. ASS'N ON MENTAL RETARDATION, MENTAL RETARDATION: DEFINITION, CLASSIFICATION, AND SYSTEMS OF SUPPORTS 14 (10th ed. 2002) [hereinafter AAMR, 10th ed. 2002]. We have chosen to retain the abbreviated form of "mental retardation" (MR), as opposed to "intellectual and developmental disability," because it is the term used in the *Atkins* decision and is still the diagnostic term used by the APA. However, the acronym AAIDD will be retained throughout the article even when documents from that organization were published under the AAMR name.

5. The AAMR, 9th ed. 1992 and DSM-IV definitions describe substantial impairment in adaptive functioning as serious limitations in two of ten identified skill areas, whereas the more recent AAMR, 10th ed. 2002 definition asserts that substantial impairment in adaptive functioning exists when limitations in at least one of three areas—conceptual, social, and practical adaptive skills—are established by standard measures patterned on the behavior of the general public. *See* AAMR, 10th ed. 2002, *supra* note 4, at 14.

6. *See* DSM-IV, *supra* note 4, at 41; AAMR, 9th ed. 1992, *supra* note 4, at 5.

7. Though we are unaware of any study that has examined the frequency with which mental health professionals testify as expert witnesses in *Atkins*-type cases, a study of nineteen pre-*Atkins* capital cases in which each defendant claimed to be a person with MR revealed that mental health professionals were called as expert witnesses in approximately seventy-nine percent of these cases to establish or discredit the defendant's MR claim. *See* Lisa Kan, Marcus T. Boccaccini, Amanda McGorty, Ramona M. Noland & Kristy Lawson, *Presenting Information About Mental Retardation in the Courtroom: A Content Analysis of Pre-*Atkins *Capital Trial Transcripts from Texas*, 33 LAW & PSYCHOL. REV. 1, 16 (2009) [hereinafter Kan et al., *Trial Transcripts*]. Given the high profile nature of capital cases, it is difficult to imagine a post-*Atkins* case where at least one mental health professional is not called to testify as an expert witness for the prosecution or the defense.

8. Several states have enacted statutes that expressly state whether a judge or jury makes this determination. For example, in North Carolina and Oklahoma, if the court does not find that the defendant is a person with MR in a pretrial hearing, the issue is sent to the jury prior to sentencing. *See* N.C. GEN. STAT. § 15A-2005(e) (2009); OKLA. STAT. tit. 21, § 701.10b. (2009). Other states have established MR determination procedures through case law. See Nava Feldman, Annotation, *Application of Constitutional Rule of* Atkins v. Virginia, *536 U.S. 304, 122 S. Ct. 2242, 153 L. Ed. 2d 335 (2002), that Execution of Mentally Retarded Persons Constitutes "Cruel and Unusual Punishment" in Violation of Eighth Amendment*, 122 A.L.R. 5TH 145 (2009), for detailed descriptions of recent cases addressing the impact of *Atkins* on MR proceedings in capital trials. States such as Georgia have resolved that juries should determine whether a defendant is a person with MR, while Mississippi, Virginia, and others leave that decision to the trial court. Additionally, procedures in some states are triggered at the time the defendant raises the *Atkins* issue. For example, in California a defendant's request to determine the issue pretrial will be heard by the judge; otherwise, the jury will determine the issue before the sentencing phase if the defendant is found guilty. *See id.*

diagnostic criteria. These points were openly acknowledged in *Ex parte Briseno* when the Texas Court of Criminal Appeals stated that, while mental health professionals might be able to diagnose a capital defendant with MR, "the ultimate issue of whether [the defendant] is, in fact, mentally retarded for purposes of the Eighth Amendment ban on excessive punishment is one for the finder of fact."[9] Moreover, the court noted that, in addition to diagnostic standards, fact finders might also focus upon other aspects of the defendant's behavior, such as behavior during the crime,[10] a position that is in direct opposition to the recommendations of the AAIDD.[11]

Existing research provides little information about whether fact finders and mental health professionals conceptualize and form conclusions about MR in similar ways. One can reasonably assume that mental health professionals who testify in court support their conclusions by referring directly to AAIDD or APA diagnostic criteria. However, these criteria may not resonate with fact finders. Fact finders may not understand why certain behaviors, such as social skills,[12] are important for official diagnosis while others, such as behavior during a crime, are not even considered.[13]

B. Areas of Functioning Examined in the Study

This study focuses on the following eight areas of functioning: (1) ability to form and maintain a romantic/sexual relationship, (2) ability to operate a motor vehicle, (3) ability to work, (4) substance use, (5) independent living, (6) school performance, (7) ability to read and write, and (8) criminal behavior. We were primarily interested in areas one through four because a prior mock jury study of ours[14] and the findings from a case study conducted by Olvera and colleagues[15] suggest that these might be areas in which jurors do not have an accurate understanding about the abilities of persons with MR. Areas five through seven were included because of their common sense association with MR, and our expectation

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9. *Ex parte* Briseno, 135 S.W.3d 1, 9 (Tex. Crim. App. 2004).

10. *See id.* at 8 (finding that it is permissible for fact finders to take into account whether "the commission of [the] offense require[d] . . . complex execution of purpose").

11. The AAIDD instructs clinicians: "Do not use past criminal behavior . . . to infer level of adaptive behavior or about having MR/ID." AM. ASS'N ON INTELLECTUAL & DEVELOPMENTAL DISABILITIES, USER'S GUIDE: MENTAL RETARDATION 22 (10th ed. 2007) [hereinafter AAIDD, 10th ed. 2007].

12. *See* AAMR, 10th ed. 2002, *supra* note 4, at 14 (defining impairment in adaptive functioning as significant limitations in social, conceptual, or practical skills).

13. *See* quoted language *supra* note 11.

14. Lisa Kan, K. Turner, Marcus T. Boccaccini, Ramona Noland & Beth Caillouet, Poster Session at the Annual Meeting of the American Psychology-Law Society: Jurors' Beliefs About Impaired Adaptive Functioning: Implications for *Atkins*-type Cases (March 2006) [hereinafter Kan et al., Poster Session] (presenting findings of a recently conducted mock jury study).

15. *See* Olvera et al., *supra* note 3.

was that jury pool members would recognize impairments in these areas as suggestive of MR. Criminal behavior was also included in the study because evidence suggests that the general population does not believe that a person with MR is capable of knowingly committing a crime.[16] Moreover, there is considerable debate among mental health professionals about whether behavior during a crime should be considered when making MR diagnoses.[17]

The areas of functioning examined in this study do not necessarily mirror the areas identified by the APA and AAIDD in their MR diagnostic classification systems. Current APA criteria include the following ten specific areas of adaptive functioning: communication, self-care and home living, social skills, use of community resources, self-direction, functional academic skills, work, leisure, health issues, and safety.[18] The AAIDD employs a slightly different approach and examines three global, rather than specific, areas of functioning: social, practical, and conceptual.[19] While the link between some of the areas in the study and official diagnostic criteria is clear (e.g., ability to read and write and functional academic skills), other areas may not be linked at all (e.g., substance use). This disparity, however, should not limit the usefulness of the study results because fact finders are not required to base their decisions on diagnostic criteria and instead may base them on any information that they determine to be useful.

1. Potential Areas of Misperception

The four areas of functioning for which jury pool members were expected to have misperceptions about persons with MR are the ability to form and maintain romantic/sexual relationships, ability to operate a motor vehicle, ability to work, and substance use. These areas were selected based on findings obtained from one of our prior experimental studies[20] and Olvera and colleagues' analysis of the different outcomes in two pre-*Atkins* cases in Indiana.[21] In the experimental study, undergraduate students, assuming the role of mock jurors, were asked to decide whether the

16. *See* Kan et al., Poster Session, *supra* note 14.

17. *See* Kan et al., *Trial Transcripts*, *supra* note 7 *passim*; *see also* Stephen Greenspan & Harvey N. Switzky, *Lessons from the* Atkins *Decision for the Next AAMR Manual*, *in* WHAT IS MENTAL RETARDATION? 279 (H.N. Switzky & S. Greenspan eds., 2006); Bethany Young, Marcus T. Boccaccini, Mary Alice Conroy & Kristy Lawson, *Four Practical and Conceptual Assessment Issues that Evaluators Should Address in Capital Case Mental Retardation Evaluations*, 38 PROF. PSYCHOL.: RES. & PRAC. 169 (2007); quoted language *supra* note 11.

18. *See* Tammi Reynolds & Mark Dombeck, Formal DSM-IV-TR (2000) Recognized Criteria for Mental Retardation (Aug. 24, 2006), http://www.mentalhelp.net/poc/view_doc.php?type=doc&id=10346&cn=208.

19. *See* AAIDD, 10th ed. 2007, *supra* note 11, at 3.

20. *See* Kan et al., Poster Session, *supra* note 14.

21. *See* Olvera et al., *supra* note 3.

defendant in a criminal case could be a person with MR.[22] Before making a decision, the mock jurors were asked to read a description of the crime—a rape followed by murder—and transcripts of expert testimony on whether the defendant could be a person with MR.[23] The defendant in the case had a history of alcohol and marijuana use, had obtained a driver's license, and had worked as a welder's assistant during his time in prison, although he never once worked after his release.[24] The crime occurred in the defendant's house after he offered the victim, a stranger standing by the road on a hot day, a drink of water.[25] Expert testimony included information about intelligence test scores, adaptive functioning, and malingering.[26] Overall, most mock jurors (about 70%) did not think that the defendant was a person with MR. At the end of the study, they were asked to respond to an open-ended question which asked them to identify the aspect of the case that had the most influence on their decision.[27]

The most important finding from the mock jury study was that some of the responses to the open-ended question suggested that jurors may grossly misunderstand certain abilities of persons with MR. For example, several mock jurors reported that the defendant could not be a person with MR because he was able to get an erection and wanted to have sex.[28] Others reported that the defendant could not be a person with MR because he used drugs and alcohol.[29] In other words, these responses suggest that jurors may believe that a person must have extreme deficits in behavior in certain areas of functioning before they can be classified as a person with MR. Merely having an interest in sexual activity or using substances seemed to suggest a level of functioning that was too high to result in a diagnosis of MR.[30]

The results of our mock jury study are consistent with the observations of Olvera and colleagues, who compared the discrepant outcomes of two pre-*Atkins* Indiana cases and sought to determine the underlying reasons for the divergent results.[31] The defendants in the cases, Ronnie Miller and Thomas Lee Rogers, claimed to have MR and shared several common characteristics. Miller and Rogers were both able to drive cars, work jobs in the building trade, live apart from their families, and use substances.[32] However, Miller seemed to have a higher level of adaptive functioning

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22. *See* Kan et al., Poster Session, *supra* note 14.
23. *Id.*
24. *Id.*
25. *Id.*
26. *Id.*
27. *Id.*
28. *See id.*
29. *See id.*
30. *See id.*
31. *See* Olvera et al., *supra* note 3.
32. *Id.* at 228-29.

since he could also operate a dump truck, diagnose and repair cars, and care for himself independently.[33] Despite their similarities and Miller's seemingly higher level of adaptive functioning, Miller was found to be a person with MR while Rogers was not.[34]

Miller's attorneys described the challenge of altering jurors' perceptions that even basic skills such as being employed and driving are "obvious[ly] . . . evidence of adaptive functioning,"[35] and accepted as "prima facie evidence of normality, regardless of other deficits."[36] To overcome these perceptions, they dedicated substantial time and resources to interviewing Miller's family to gather specific information about his adaptive skills and to obtaining his school and driving records.[37] At trial, their research showed that, underneath the surface-level appearance of moderate adaptive functioning, Miller had a "spotty" work history in unskilled jobs, had his driver's license previously revoked, and had very poor reading comprehension and writing skills.[38] On the other hand, the defense in Roger's case failed to even conduct a standardized adaptive behavior test on him, much less investigate and attempt to uncover evidence of severe deficits in adaptive functioning.[39] As a result, Roger's defense team was unable to overcome the stereotyped perceptions engrained in the jurors' minds that Miller's defense team had worked so hard to defeat.

Our prior mock jury study and the results of the Olvera study suggests that fact finders may incorrectly assume that persons with MR do not use or abuse substances and are unable to form and maintain romantic/sexual relationships. Substance use is slightly lower among persons with MR than the nondisabled general population, but it "nonetheless [remains] a problem for many individuals [with MR]."[40] Additionally, offenders with MR reportedly use and abuse substances at a higher rate than non-offenders with MR, with one study finding that up to 60% of MR offenders use substances prior to committing a crime.[41] The severity of intellectual deficits in persons with MR does appear to be related to the amount of substances used since persons with milder deficits reported a greater amount of substance use than persons with moderate or severe MR.[42]

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33. *Id.* at 230.
34. *Id.*
35. *Id.* at 230.
36. *Id.* at 232.
37. *Id.* at 230.
38. *Id.* at 230-31.
39. *Id.* at 230.
40. Neil B. McGillicuddy, *A Review of Substance Use Research Among Those with Mental Retardation*, 12 MENTAL RETARDATION & DEVELOPMENTAL DISABILITIES RES. REVIEWS 41, 41 (2006). The author of this study included alcohol and illicit drugs in the broad term "substances."
41. *Id.* at 301; *see also* Jane A. McGillivray & Megan R. Moore, *Substance Use by Offenders with Mild Intellectual Disability*, 26 J. INTELL. & DEVELOPMENTAL DISABILITY 301 (2001).
42. *See* McGillicuddy, *supra* note 41.

Likewise, although persons with MR are somewhat less likely to marry[43] and have more limited knowledge about sexual behavior than the nondisabled general population,[44] persons with mild MR often marry and engage in meaningful intimate relationships.[45] Persons with mild intellectual deficits will likely comprise a significant portion of defendants who raise *Atkins* claims in court.[46] Consequently, fact finders who view a defendant's substance use or interest in a sexual relationship as evidence of normal adaptive functioning risk classifying the defendant as not meeting criteria for MR when he may actually be a person with genuine MR entitled to special legal protections.

2. Potential Areas of Accurate Perception

The three areas of functioning for which jury pool members were expected to have relatively accurate perceptions about persons with MR are independent living, school performance, and the ability to read and write. These three areas were chosen because we speculated that the general population embraces commonly held beliefs about the abilities of persons with MR in these areas. For example, it is probable that a significant portion of the general population believes that persons with MR require some assistance while living in the community, attend special schools or special education classes at public schools, and have difficulty reading and writing.

3. Criminal Behavior and MR

There is considerable debate among mental health professionals about whether it is appropriate to consider criminal behavior as an indicator of MR.[47] Bethany Young and colleagues surveyed mental health professionals who perform evaluations in *Atkins*-type cases and discovered that most professionals who participated in the study believe it is appropriate to consider information about their patients' behavior during a crime.[48] Those

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43. *See* H. Koller et al., *Marriage in a Young Adult Mentally Retarded Population*, 32 J. MENTAL DEFICIENCY RES. 93 (1988).

44. *See* M. McCabe et al., *The Sexual Knowledge, Experience, Feelings and Needs of People with Mild Intellectual Disability*, 31 EDUC. & TRAINING MENTAL RETARDATION & DEVELOPMENTAL DISABILITIES 13 (1996).

45. *See* Koller et al., *supra* note 44.

46. *See* Jessica Jones, *Persons with Intellectual Disabilities in the Criminal Justice System: Review of Issues*, 51 INT'L J. OFFENDER THERAPY & COMP. CRIMINOLOGY 723, 723-33 (2007) (concluding that violent offenses are uncommon among persons with very low IQ scores (e.g., less than 50)); M.K. Simpson & J. Hogg, *Patterns of Offending Among People with Intellectual Disability: A Systematic Review. Part 1: Methodology and Prevalence Data*, 45 J. INTELL. DISABILITY RES. 384, 384–96 (2001).

47. *See, e.g.*, quoted language *supra* note 11.

48. *See* Young et al., *supra* note 17, at 173.

who said they considered criminal behavior noted it can provide information about planning and organizational abilities, which are related to adaptive functioning. Several also noted that some types of crimes, such as white collar crime and elaborate cons, are beyond the abilities of persons with MR. Additionally, a study of trial transcripts from nineteen pre-*Atkins* capital cases in which the defendants claimed to be persons with MR revealed that criminal behavior was used by expert witnesses to make inferences about adaptive functioning in over two-thirds (68%) of the cases.[49] The AAIDD, however, adopts an opposing view and expressly discourages mental health professionals from considering criminal behavior as a diagnostic factor.[50] Mental health professionals who oppose using criminal behavior to diagnose MR warn that persons with MR might also have deficits in communication skills and memory, which could impair their ability to provide accurate information about what actually happened during a crime.[51] They also argue that information regarding past criminal behavior generally lacks details regarding the level of adaptive functioning needed to complete the crime and the extent to which the offender acted independently.[52]

Notwithstanding these concerns, research suggests that jurors' decisions about whether a defendant is a person with MR may be influenced by crime details. Findings from our prior mock jury study suggest that a defendant's behavior during a crime is the third most important factor considered by jurors when making MR determinations.[53] Moreover, several participants in that study reported that the aspect of the crime that was most important to their determination that the defendant was not a person with MR was that he knew that what he had done was wrong.[54] This finding was unexpected because the study materials did not mention whether the defendant knew that his behavior was wrong.[55] These results correspond with the results of a study conducted by Margaret Reardon and colleagues, which suggests that jurors are more likely to conclude that a defendant is a person with MR if presented with expert testimony that the

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49. *See* Kan et al., *Trial Transcripts*, *supra* note 7, at 16-17.

50. *See* quoted language *supra* note 11 and accompanying text.

51. *See* Caroline Everington & Denis W. Keyes, *Diagnosing Mental Retardation in Criminal Proceedings: The Critical Importance of Documenting Adaptive Behavior*, 8 FORENSIC EXAMINER 31, 34 (1999).

52. *See* Greenspan & Switzky, *supra* note 17, at 287-88.

53. *See* Kan et al., Poster Session, *supra* note 14. The three factors that were cited by mock jurors as most influential to their MR determination are adjustment to prison (e.g., working in prison) (21%), IQ test scores (19%), and behavior during the crime (17%). Each juror was allowed to choose only one factor from a multitude of options (e.g., low IQ, expert testimony, crime details, etc.). Therefore, by comparison, criminal behavior was a very influential factor in the mock jurors' decisions. Interestingly, very few mock jurors (3%) reported being most influenced by the defendant's educational history (i.e., enrollment in special education classes and a reputation as a "slow learner").

54. *See id.*

55. *See id.*

defendant's crime was "attributable" to his MR.[56] Stated differently, the probability that mock jurors are willing to find a defendant to be a person with MR is greater when a "nexus" between the defendant's MR and actions has been established.[57] Though the Supreme Court has held that nexus testimony is not required for defendants to be excluded from the death penalty under *Atkins*,[58] attorneys and mental health professionals may nonetheless continue to present nexus testimony in court.

C. Purpose of the Current Study

The purpose of the current study is to examine jury pool members' beliefs about behaviors often associated with MR and to compare those beliefs to those of mental health workers who interact daily with persons with MR. Specifically, this study seeks to determine the extent to which these potential MR decision makers have an accurate understanding of the abilities and limitations of persons with MR. Existing research suggests that the general population holds stereotypical beliefs that the abilities of persons with MR are extremely diminished.[59] The areas of functioning examined include those in which jurors may be prone to misunderstanding the abilities of persons with MR (i.e., ability to form and maintain romantic/sexual relationships, ability to operate a motor vehicle, ability to work, and substance use)[60] as well as those in which jurors may be less prone to misunderstanding (i.e., independent living, school performance, and the ability to read and write).[61] Criminal behavior was also chosen as an area of study due to the controversy surrounding its use for MR diagnostic purposes. We hope that the results of this study will help attorneys and mental health professionals understand what jurors actually know about the abilities and limitations of persons with MR.

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56. *See* Margaret C. Reardon et al., *Deciding Mental Retardation and Mental Illness in Capital Cases: The Effects of Procedure, Evidence, and Attitudes*, 13 PSYCHOL. CRIME & L. 537, 541, 543 (2007). Specifically, 41.8% of mock jurors found that the defendant was a person with MR when presented with such evidence as opposed to 28.8% of mock jurors who found otherwise. *Id.* at 545.
57. *See id.* at 545.
58. *See* Tennard v. Dretke, 542 U.S. 274, 289 (2004).
59. *See* Olvera et al., *supra* note 3.
60. *See* discussion *supra* Part II.B.1.
61. *See* discussion *supra* Part II.B.2.

III. METHODS

A. Participants and Procedure

Participants in this study included 888 adults who reported for jury duty in a suburban county[62] located in a southeastern state during the eight-month study period and 87 adults from the same state who worked daily with persons with MR. The average age of the jury pool members was 43.9 years (SD = 12.6). A little over half of the jury pool sample was female (n = 541, 60.9%), and most members identified themselves as Caucasian/white (n = 465, 52.4%) or African-American/black (n = 345, 38.9%). A member of the research team traveled to the courthouse to attend juror orientation sessions, and at the end of each session, the judge who oversaw the orientation introduced the researcher and explained the voluntary nature of the study. The researcher then explained the study procedures and obtained informed consent from willing participants who completed the study questionnaire on-site.

The mental health workers who participated in the study were employees of group homes, children's advocacy centers, and individuals who worked in school districts with disabled children. These participants were involved with the direct and indirect care of children and young adults with special needs, many of whom are persons with MR. Some assisted with clothing, feeding, and bathing while others engaged in supervisory and mentoring roles. The average age of the mental health workers was 38.8 years (SD = 12.7). Most of the mental health workers were female (n = 69, 79.3%), and most identified themselves as Caucasian/white (n = 71, 81.9%) with a smaller proportion identifying themselves as African-American/black (n = 16, 18.4%). All reported having earned a high school degree, and most had attended college (n = 69, 79.3%). Of those who attended college, 26 (37.7%) had earned a bachelor's degree and 12 (17.4%) had earned a master's degree. The mental health workers had an average of 9.5 (SD = 7.9) years of experience working with persons with MR, and they worked an average of 4.45 (SD = 1.1) days per week with them. A member of the research team traveled across the state to group homes and day treatment facilities to recruit mental health workers for the study. At each location, the researcher obtained the approval of facility administrators to conduct the study, then explained the study procedures and obtained informed consent from willing participants who completed the study questionnaire on-site.

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62. During the study, fifty-six jury pool members were disqualified for failing to complete the questionnaire or for responding in a manner which clearly suggested random responding.

B. Perceptions of Deficits in Adaptive Functioning Questionnaire

The participants completed an eight-page questionnaire designed to identify the level of impairment in adaptive functioning that they believed a defendant needs to demonstrate to be considered a person with MR. Each page contained a series of statements which described the behavior of Joe Davis, a thirty-eight-year-old man who claimed to have MR.[63] Each separate page listed statements that related exclusively to one particular area of functioning. The statements were deliberately ordered so that the first statement suggested a high level of impairment (low level of functioning) in that area with each statement thereafter suggesting a slightly lower level of impairment (higher level of functioning). The final statement on each page suggested no impairment. For example, the first statement about the ability to work states that Joe Davis "cannot work because he is not able to learn job skills required for even very simple jobs." The final statement in that area says that Joe Davis was a science teacher at an elementary school. Statements between these two extremes indicated that Joe Davis could sort and fold clothes, work as a mail clerk in an office, work as a data entry clerk, and be employed as a medical technician.[64]

For each statement, participants were given the following instructions: "Pretend that the description is the ONLY information you have about Mr. Davis. Then decide if the description suggests that Mr. Davis is a person with mental retardation (MR) or not (Not MR)." After each statement, the participants were asked to mark their decision ("MR" or "Not MR"). Each page was designed so that participants should respond "MR" for several statements in a row and then switch to "Not MR" when the behavioral descriptions began to suggest a higher level of functioning (lower level of impairment) inconsistent with MR. The areas of functioning examined were: (1) ability to form and maintain romantic/sexual relationships, (2) ability to operate a motor vehicle, (3) ability to work, (4)

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63. Three different versions of the questionnaire were completed by the jury pool members. In the first version, jury pool members were told that Joe Davis had been accused of murder. In the second version, they were told that he was seeking disability benefits. In the third version, they were simply told that he claimed to have MR. The reason for using different versions was to examine whether jury pool members were less likely to believe that Joe Davis was a person with MR when he appeared to have something important to gain (i.e., acquittal for murder or government benefits) if he was found to have MR. Interestingly, jury pool members' response patterns were nearly identical for all three versions. The findings reported for jury pool members are a combination of all of the jury pool members' responses from all three versions.

64. Due to space constraints, we were unable to reproduce the actual questionnaires in the article. However, shortened and paraphrased versions of the statements read by participants are presented in Tables 1-3 in the order in which they were shown on each questionnaire. *See infra* Tables 1-3.

substance use, (5) independent living, (6) school performance, (7) ability to read and write, and (8) criminal behavior.[65]

C. Odds Ratios

Odds ratios were used to examine differences between jury pool members' and mental health workers' responses. Odds ratios greater than 1.0 indicate that the odds that mental health workers would identify a behavioral description as suggestive of MR were larger than the odds that jury pool members would identify that same description as an indicator of MR. Odds ratios of 2.0 are often interpreted as statistically significant while odds ratios greater than 3.0 are considered large.[66] Odds ratios smaller than 1.0 indicate that jury pool members were more likely than mental health workers to mark "MR" for a particular statement. Because odds ratios less than 1.0 can be difficult to interpret, it is sometimes useful to interpret the reciprocal of these ratios. For example, the reciprocal of an odds ratio of 0.5 would be 2.0 (1 divided by 0.5). In the context of the current study, this transformed odds ratio (0.5 to 2.0) would indicate that the odds that jury pool members saw the description as indicative of mental retardation were 2.0 times the odds that mental health professionals saw the description as indicative mental retardation. Although no odds ratios were transformed in the current study, this information may be useful for readers who want to understand the size of the values presented in the results.

D. Hypotheses

Research has suggested that jurors may grossly underestimate the ability of persons with MR to form and maintain romantic/sexual relationships, operate motor vehicles, work, and use substances.[67] As such, for these areas we hypothesized that jury pool members would be less likely than mental health workers to mark "MR" for the initial statements, which suggest highly impaired adaptive functioning, and also for other statements which suggest moderate levels of impairment. However, we also believe that jurors have relatively accurate perceptions about the abilities of persons with MR in the areas of independent living, school performance, and the ability to read and write. Accordingly, we hypothesized that jury pool

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65. For a discussion of why these particular areas were selected for the study, see discussion *supra* Part II.B. For information about the statements included in each area of functioning, see *infra* Tables 1-3.

66. *See* Joseph L. Fleiss et al., *The Logistic Regression Analysis of Psychiatric Data*, 20 J. PSYCHIATRIC RES. 195, 198 (1986); C. Keith Haddock et al., *Using Odds Ratios as Effect Sizes for Meta-Analysis of Dichotomous Data: A Primer on Methods and Issues*, 3 PSYCHOL. METHODS 339, 341-43 (1998).

67. *See* Olvera et al., *supra* note 3; *supra* notes 28-30 and accompanying text.

members' responses would generally match the mental health workers' responses to statements in these areas. Finally, due to the controversy and disagreement among mental health professionals about using criminal behavior to diagnose MR, we did not offer a prediction about potential differences between jury pool members' and mental health workers' responses to statements in that area.

IV. RESULTS

A. Potential Areas of Misperception

As predicted, jury pool members were less likely than mental health workers to mark "MR" for statements in areas where misperceptions were expected. The only exception was for the area of ability to work. The results are presented in Table 1.

The largest differences between mental health workers' and jury pool members' responses were seen for the ability to form and maintain romantic/sexual relationships and the ability to operate a motor vehicle; however, these differences were only observed for statements that indicated highly impaired adaptive functioning.[68] Overall, few jury pool members appeared to believe that potential deficits in the ability to form romantic/sexual relationships suggest MR. For example, only 39.9% of jury pool members reported that the description of Mr. Davis as a person who does not understand or find value in romantic relationships suggests MR while 74.7% of mental health workers chose "MR" for this statement (odds ratio = 4.5, $p < .01$).[69] Consistent with several participants' comments in our prior mock jury study,[70] jury pool members appeared to believe that persons with MR do not engage in sexual behavior. Indeed, only 13.6% of jurors reported that Mr. Davis could be a person with MR when they were told that he has had sex but no romantic relationships whereas 54.0% of mental health workers marked "MR" for that statement. The odds ratio of 7.5 ($p < .01$) for this difference was the largest effect observed in the entire study.[71] Likewise, few jury pool members appeared to believe that potential deficits in the ability to drive indicate MR since only 31.1% responded "MR" for the initial statement "cannot drive." In contrast, well over half (70.9%) of the mental health workers surveyed believed this statement accurately describes a person with MR (odds ratio = 5.4, $p < .01$).[72]

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68. *See infra* Table 1.
69. *See infra* Table 1.
70. *See* Kan et al., Poster Session, *supra* note 14; *supra* text accompanying notes 28, 30.
71. *See infra* Table 1.
72. *See infra* Table 1.

Contrary to expectations, jury pool members' responses did not differ noticeably from mental health workers' for statements associated with Mr. Davis's ability to work. A possible reason for such close agreement in this area is that only the initial statement was believed to suggest MR by more than 10% of mental health workers (94.2%).[73] Thus, it appears that the questionnaire did not include a statement suggesting moderate impairment. If the questionnaire had included a description of moderate impairment, there may have been more variation between the groups' responses.

As predicted, jury pool members were less likely than mental health workers to believe that persons with MR use substances. Perhaps the most important finding in this area was that neither jury pool members (6.7%) nor mental health workers (9.2%) viewed Mr. Davis as a person with MR when he purchased substances for his own use.[74] Mental health workers (26.7%), however, were somewhat more likely than jury pool members (17.6%) to identify Mr. Davis as a person with MR when he used substances provided to him by others (odds ratio = 1.7, $p < .05$).[75] The largest difference observed was for the first statement, which indicated that Mr. Davis did not know what drugs and alcohol are and had never used them. A mere 34.1% of jury pool members believed this statement suggests MR, as opposed to 73.6% of mental health workers (odds ratio = 5.4, $p < .01$).[76] The reason for this discrepancy is unclear. However, jury pool members (63.8%) and mental health workers (78.2%) were in closer agreement for the statement about Mr. Davis having used drugs or alcohol but not understanding what they were, though this difference was still large enough to be considered statistically significant (odds ratio = 2.0, $p < .05$).[77]

B. Potential Areas of Accurate Perception

Despite our expectations that jury pool members' responses would generally match mental health workers' responses for statements associated with independent living and school performance, large differences were observed in both of these areas. Alternatively, responses to statements in the area of ability to read and write were generally in agreement, thus confirming expectations. The results are displayed in Table 2.

Independent living was the area that produced the most disagreement between the groups' responses. Most jury pool members (84.4%) responded that Mr. Davis could be a person with MR when told that he had

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73. *See infra* Table 1.
74. *See infra* Table 1; discussion *infra* Part V.B.
75. *See infra* Table 1.
76. *See infra* Table 1.
77. *See infra* Table 1.

lived in a state hospital as a child;[78] however, they were much less likely to believe that he could be a person with MR when the statements indicated that he lives in his community with some assistance. For example, whereas 68.9% of mental health workers marked "MR" for the statement "lives in apartment by himself, social worker visits once per month," only 33.7% of jury pool members responded accordingly (odds ratio = 4.4, $p < .01$).[79] A similar outcome was noted for jury pool members' (48.2%) and mental health workers' (78.2%) responses when told that Mr. Davis lives in an apartment by himself but is visited weekly by a social worker (odds ratio = 3.8, $p < .01$).[80]

The area of school performance also produced considerable disagreement between the groups' responses. The overall findings in this area suggest that jury pool members are much less likely than mental health workers to believe that an individual who attended special education classes during his school career could be a person with MR. For instance, a little over half of jury pool members (53.3%) marked "MR" for the statement about Mr. Davis having attended special education classes through high school, having received a certificate of coursework completion, but not having received a degree.[81] In comparison, over 75% of mental health workers believed that this statement could suggest MR (odds ratio = 2.7).[82] Responses for the two groups were relatively consistent for the statement "mostly regular classes at public school with some special education, received regular diploma," (jury pool members = 8.6%, mental health workers = 3.4%, odds ratio = 0.4) which met predictions for this area.[83]

Jury pool members and mental health workers showed more agreement about statements relating to the ability to read and write, which is consistent with earlier predictions for this area. Nevertheless, jury pool members tended to see severe deficits in adaptive functioning in this area as an indicator of MR more often than mental health workers. This is evident by the fact that only one statement had an odds ratio greater than 1.0.[84] Specifically, 62.7% of jury pool members marked "MR" for the statement "can recognize written name and write name with some mistakes, no other reading or writing ability," while less than half of mental health workers (46.0%) marked "MR" for the same statement (odds ratio = 0.5, $p < .01$).[85]

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78. *See infra* Table 2.
79. *See infra* Table 2.
80. *See infra* Table 2.
81. *See infra* Table 2.
82. *See infra* Table 2.
83. *See infra* Table 2.
84. *See infra* Table 2.
85. *See infra* Table 2.

C. Criminal Behavior and Perceptions of MR

For general criminal behavior, the most notable pattern in the results was that most jury pool members and mental health workers believed Mr. Davis was a person with MR when he did not know that his behavior was wrong, regardless of whether he acted alone, with others, or at the request of a peer. In fact, no less than 66% of jury pool members and no less than 80% of mental health workers marked "MR" for these statements.[86] In sharp contrast, very few participants reported that the last three statements, in which Mr. Davis knew his actions were wrong, could suggest MR.[87]

V. IMPLICATIONS

Mental health professionals will almost certainly continue to provide expert testimony about MR in *Atkins*-type cases both now and in the future.[88] However, fact finders—usually jurors with little, if any, knowledge or exposure to MR—will ultimately decide whether the defendant in those cases is a person with MR.[89] Due to inexperience in dealing with persons with MR, it has been suggested that fact finders harbor stereotypical views about their abilities and often expect them to have "vastly lower abilities" than persons without MR.[90] The results of our study appear to confirm that suggestion, at least to some extent.

The overall results indicate that jury pool members were more hesitant than mental health workers to classify Mr. Davis as a person with MR. While this conclusion may have stemmed from jury pool members' lack of knowledge about the abilities of persons with MR, another possible explanation is that jury pool members were generally hesitant to say that certain statements suggest MR and, in turn, defaulted to "Not MR" when unsure. In other words, they may have assumed that Mr. Davis did not have MR until they read a statement that unquestionably indicated MR to them. If this was the case, then the decision process was consistent with the role of actual jurors in *Atkins*-type cases: assume that the defendant is nondisabled until the defense meets its burden of proof in establishing MR.[91] However, jury pool members' responses could also suggest that jurors may not recognize true symptoms of MR when they see them.

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86. *See infra* Table 3.
87. *See infra* Table 3.
88. *See* discussion *supra* note 7.
89. *See supra* note 8 and accompanying text.
90. Olvera et al., *supra* note 3, at 232.
91. Most states place the burden of proving MR on the defendant. *See* Carol S. Steiker & Jordan M. Steiker, Atkins v. Virginia: *Lessons from Substance and Procedure in the Constitutional Regulation of Capital Punishment*, 57 DEPAUL L. REV. 721, 724 n.24 (2008) (discussing the variation among states regarding the standard of proof for MR).

Jury pool members usually were less likely than mental health workers to mark "MR" for statements suggesting severely impaired adaptive functioning. In fact, the largest discrepancies between jury pool members' and mental health professionals' responses in each area were usually for the initial statement. Moreover, these differences were observed both in areas in which we expected jury pool members to have misperceptions and areas in which responses between the groups were projected to be generally in agreement. Conversely, jury pool members were as likely as or slightly more likely than mental health workers to choose "MR" for statements suggesting low impairment in adaptive functioning. The only notable exception was for statements related to the ability to read and write, where jury pool members were more likely to say that more severe impairment suggested MR. The reason for this finding is not clear, but may suggest an over-reliance on this ability in jury pool members' decision making process. If they maintain relatively simple notions about what it means to be a person with mental retardation, they may see ability to read and write as having a very high level of concordance with diagnostic status, whereas mental health professionals do not see such a strong relation between this ability and diagnostic status.

A. Limited Recognition of Severe Deficits as Indicators of MR

The failure of jury pool members to recognize severe deficits in functioning as indicators of MR was especially pronounced for the ability to form and maintain a romantic/sexual relationship and the ability to operate a motor vehicle. For both of these areas, fewer than 40% of jurors reported that the most severe levels of impairment suggest MR, compared to at least 50% to 70% of mental health workers who marked "MR" for statements related to these areas.[92] These differences are so large that they were more likely due to the jury pool members' lack of understanding about MR than their general hesitancy to choose "MR" unless presented with a statement that unquestionably suggested MR to them. The general hesitancy interpretation is more consistent with findings for school performance since most jury pool members (77.3%) viewed the most severe level of impairment in that area as suggestive of MR, even though mental health workers were more likely to choose "MR" for that statement (93.1%).[93]

Confirming our expectations, jury pool members were more likely than not to recognize severe impairments in functioning as indicative of MR in the area of independent living. No less than 84.4% of jury pool members chose "MR" for statements which indicated that Mr. Davis had

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92. *See infra* Table 1.
93. *See infra* Table 2.

lived or continues to live in a state hospital or a group home.[94] What many jury pool members failed to recognize, however, is that persons with MR can live independently in community settings with limited supervision. For instance, while 68.9% of mental health workers marked "MR" for the statement "lives in apartment by himself social worker visits once per month," only 33.7% of jury pool members marked accordingly.[95] Independent living was included in this study because jury pool members were thought to have a relatively accurate understanding about the ability of persons with MR to live on their own in society. The results, however, seem to suggest otherwise.

B. Criminal Behavior and Substance Use

The responses to statements about criminal behavior and substance use revealed one of the more important findings from the study: jury pool members were more likely to connect these behaviors to MR if Mr. Davis did not know what he was doing.[96] These findings suggest that jurors are more likely to determine that a defendant is a person with MR when there is a clear nexus between his criminal behavior and MR, a finding that is consistent with the limited research conducted in this area.[97] Of course, defendants who truly did not know what they were doing during a crime should be found "not guilty by reason of insanity."[98] However, the more realistic scenario for *Atkins*-type cases is that a defendant may have had some knowledge that what he was doing during the crime was wrong yet failed to fully appreciate the wrongfulness of his actions due to his MR. These results suggest that jurors may be receptive to arguments that a defendant's criminal behavior is consistent with his appropriate diagnostic status, even though they are not required to find a nexus between the two. Another implication is that attorneys may have much to gain by making sure that jurors know that it is not necessary for there to be a nexus between the crime and symptoms of MR for the defendant to be a person with MR.

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94. *See infra* Table 2.

95. *See infra* Table 2.

96. Jury pool members were somewhat less likely than mental health workers to see Mr. Davis as a person with MR for statements related to criminal behavior even though at least 66.3% of them responded "MR" for each of the three statements that indicated severe impairment. *See infra* Table 3. This may be partly attributable to jury pool members' general hesitancy to choose "MR" for any statements unless presented with a statement that undeniably suggested MR to them. *See* discussion on general hesitancy *supra* Part II.A.

97. *See* Reardon et al., *supra* note 57.

98. *See* 21 AM. JUR. 2D *Criminal Law* § 47 (2010). *But see id.* § 46 ("Some jurisdictions have, by statute, abolished the defense of insanity.").

C. Utility of Study Findings for Future Cases

Attorneys and mental health professionals involved in *Atkins*-type cases in jurisdictions which require juries to make MR determinations will be able to use data in Tables 1-3 to prepare their cases and expert testimony. These tables provide valuable information about the beliefs jurors may hold towards persons with MR and allow attorneys and mental health professionals to compare the abilities and characteristics of the defendants in their own cases to those of Mr. Davis. Attorneys and experts can compare the abilities and characteristics of the defendants in their cases to those in the tables to get an idea of what jurors are likely to think about the defendants in their cases, which may influence how they structure their arguments or conclusion in court. Simply stated, the values in the tables may help attorneys and mental health professionals "know their audience" and what they need to hear. Take, for example, an attorney in an *Atkins*-type murder case who has chosen to represent a client with mild MR who lives by himself. Studies have shown that most violent crimes committed by persons with MR are carried out by persons with milder levels of impairment.[99] If the attorney looks to Table 2, he will see that an overwhelming majority of mental health workers believed that persons with mild levels of MR can live in their communities with limited assistance. Most jury pool members, however, seemed to think that persons with MR are not able to live alone and usually live in mental hospitals or group homes. Aided by this information, the attorney could then decide that he needs to spend a significant amount of time, with assistance from a mental health professional, explaining to jurors that persons with MR can live alone in their communities.

This type of comparative analysis may be especially useful for the areas of school performance, ability to read and write, and ability to work. Findings from a recent study of trial transcripts in capital cases involving questions of MR found that functional academics and work were among the most commonly discussed areas of functioning.[100] The percentage values in Tables 1 and 2 suggest that jurors do not necessarily see a connection between work skills and MR with the exception of statements that suggest extremely severe impairment. Additionally, many jurors appear to think that persons with MR are not able to attend public school.

D. Study Limitations

The results of our study are subject to several inherent limitations. First, readers should bear in mind that the participants were asked to make

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99. *See* Reardon et al., *supra* note 57.
100. *See* Kan et al., *Trial Transcripts*, *supra* note 7.

MR determinations based on several short, limited statements applicable to each area of functioning and were told to ignore previous statements when making decisions. This procedure was adopted to examine jury pool members' beliefs about multiple areas of functioning and multiple degrees of impairment in each area. However, in virtually every *Atkins*-type case jurors will be presented with an assortment of behavioral information about the defendant and will not have to consider each piece of information in isolation. Additionally, readers should be cognizant of the fact that some areas of functioning assessed in this study may truly have more diagnostic value than others. It is for this reason that jury pool members' responses were compared to those of experienced mental health workers whom we believed were most able to identify behavior that truly suggests MR under accepted diagnostic standards. Furthermore, due to constraints on our time and resources, we were unable to include doctoral-level mental health professionals and judges in the pool of participants. Finally, because the jury pool members surveyed were all residents of the same county in the same southeastern state, their views may not necessarily match those of individuals in other areas.

VI. Conclusion

Decisions regarding a defendant's status as a person with MR are made by fact finders, not mental health professionals. These fact finders are often jurors who have had limited exposure to persons with MR. Researchers have speculated that jurors believe persons with MR have "vastly lower abilities" than nondisabled persons.[101] The results of this study appear to confirm such speculation. Overall, the jury pool members in this study were less likely than experienced mental health workers to see severe impairments in functioning as evidence of MR. Jury pool members were also heavily persuaded by statements which suggested that the defendant knew his actions were wrong, and most indicated that those statements do not describe a person with MR. Despite some inherent limitations in the study, we hope that our findings will assist attorneys and mental health professionals in their preparation for trial. The empirical data presented in Tables 1-3 should help them know their audience and develop accurate and convincing arguments and testimony in court. Although research in this area is currently limited, we hope that our findings serve as a foundation for further research efforts towards increasing knowledge and understanding in this important, yet misunderstood, field of study.

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101. *See* Olvera et al., *supra* note 3, at 232.

TABLE 1

Areas of Functioning for Which Jury Pool Members Were Expected to Be Less Likely than Experienced Mental Health Workers to See Potential Impairments in Functioning as Suggestive of Mental Retardation

	Percent (%) Marking "MR"		
Behavioral Areas and Associated Levels of Functioning	Jury Pool Members	Mental Health Workers	Odds Ratio
Ability to form and maintain a romantic/sexual relationship			
Does not understand or find value in romantic relationships.	39.9	74.7	4.5**
Has had sex, but has never been in a romantic relationship.	13.6	54.0	7.5**
Limited history of dating, one dating relationship lasted two months.	8.1	8.0	1.0
Multiple dating relationships longer than two months, never lived with a dating partner.	5.4	1.1	0.2
Multiple dating relationships and has live current partner for more than one year.	3.3	1.1	0.3
Has been married for three years and has two children with wife.	3.4	2.3	0.7
Ability to operate a motor vehicle			
Cannot drive.	31.1	70.9	5.4**
Has driving permit, but can only drive with a licensed driver as passenger.	19.8	55.2	5.0**
Has driver's license that only allows him to drive to work.	22.8	19.5	0.8
Has normal driver's license, can only drive to limited number of well-know locations.	33.8	35.6	1.1
Has commercial driver's license, drives delivery truck in town, makes no routing or delivery decisions.			
Has a commercial driver's license, must plan routes and make delivery adjustments.	1.6	0.0	1.0
Ability to work			
Has never been employed because unable to learn skills for even very simple jobs.			
Has been employed sorting and folding garments at a factory.	25.7	9.2	0.4*
Has been employed as a mail clerk.	7.2	2.2	0.3
Has been employed as a data entry clerk.	2.7	0.0	1.0
Has been employed as a third grade science teacher.	0.0	0.0	1.0
Substance use			
Does not know what drugs and alcohol are and has never used them.	34.1	73.6	5.4**
Has used drugs and/or alcohol, but did not understand what they were.	63.8	78.2	2.0*
Uses drugs and/or alcohol, but only when someone else gives them to him.	17.6	26.7	1.7*
Purchases drugs and/or alcohol for own use.	6.7	9.2	1.4
Buys and sells drugs and/or alcohol to support own use.	4.9	1.1	0.3
Buys and sells drugs and/or alcohol to support own use and for financial gain.	4.5	1.1	0.3

Note. There were 888 jury pool members and 87 mental health professionals who completed the study questionnaire. The statements in this table are shortened and paraphrased versions of the statements that participants read. Odds ratios greater than 1.0 indicate that the odds that mental health workers would respond that Joe Davis (a thirty-eight-year-old man) is a person with MR were higher than the odds that jury pool members would indicate the same response. Larger odds ratios indicate a greater difference between mental health workers' and jury pool members' responses. Odds ratios followed by one asterisk (*) are statistically significant at the $p < .05$ level, and those followed by two asterisks (**) are statistically significant at the $p < .01$ level.

TABLE 2

Areas of Functioning for Which Jury Pool Members Were Generally Expected to Agree with Experienced Mental Health Workers About the Relation Between Potential Impairments in Functioning and Mental Retardation

Behavioral Areas and Associated Levels of Functioning	Percent (%) Marking "MR": Jury Pool Members	Mental Health Workers	Odds Ratio
Independent living			
Has lived in state hospital since he was a nine-year-old child.	84.4	92.0	2.1*
Lived in state hospital as child, but lives in group home as adult.	88.9	93.1	1.6
Has always lived with family, lacks skills needed to live on own (e.g., grocery shopping).	58.7	78.2	2.5**
Lives in apartment by himself, social worker visits once per week.	48.2	78.2	3.8**
Lives in apartment by himself, social worker visits once per month.	33.7	68.9	4.4**
Lives by himself and receives no assistance.	1.5	0.0	1.0
School performance			
Attended school for special needs children throughout childhood, received no degree.	77.3	93.1	4.0**
Took special education classes in public school through ninth grade, then stopped school, no degree.	58.9	79.3	2.7**
Took special education classes in public school through twelfth grade, received certificate of coursework completion, but no degree.	53.3	75.9	2.7**
Took both special and regular education classes in public school through twelfth grade, received certificate of coursework completion, but no degree.	38.7	45.9	1.3
Took mostly regular classes at public school with some special education, received regular diploma.	8.6	3.4	0.4
Took no special education classes, earned high school degree, completed one year of community college.	1.4	0.0	1.0
Ability to read and write			
Cannot read or write.	53.5	43.7	0.7
Can recognize written name and write name with some mistakes, no other reading or writing ability.	62.7	46.0	0.5**
Can read common signs in community (e.g., exit, stop, open/closed, men vs. women).	41.2	25.3	0.5**
Can read some basic children's books and write short sentences.	39.1	29.9	0.5**
Can read sports scores and TV listings in newspaper, can complete job application with some mistakes.	10.0	17.2	1.8*
Reads several newspaper articles a week and can write detailed letters without major mistakes.	3.1	2.3	0.7

Note. There were 888 jury pool members and 87 mental health professionals who completed the study questionnaire. The statements in this table are shortened and paraphrased versions of the statements that participants read. Odds ratios greater than 1.0 indicate that the odds that mental health workers would respond that Joe Davis (a thirty-eight-year-old man) is a person with MR were higher than the odds that jury pool members would indicate the same response. Larger odds ratios indicate a greater difference between mental health workers' and jury pool members' responses. Odds ratios followed by one asterisk (*) are statistically significant at the $p < .05$ level, and those followed by two asterisks (**) are statistically significant at the $p < .01$ level.

TABLE 3

Jury Pool Members' and Experienced Mental Health Workers' Beliefs About the Relation Between Criminal Behavior and Mental Retardation

Behavioral Areas and Associated Levels of Functioning	Percent (%) Marking "MR"		
	Jury Pool Members	Mental Health Workers	Odds Ratio
Criminal behavior			
Arrested with group of peers, did not know that what the group was doing was wrong.	66.3	83.9	2.7**
Committed a crime at request of a peer, did not know that what he was doing was wrong.	73.2	82.7	1.8*
Committed crime on own, did not know that what he was doing was wrong.	70.0	80.4	1.8*
Arrested with group of peers, knew that what the group was doing was wrong.	16.2	7.1	0.3*
Committed crime at request of peer, knew that what he was doing was wrong.	12.5	10.5	0.8
Committed crime on own, knew that what he was doing was wrong.	10.0	4.6	0.4

Note. There were 888 jury pool members and 87 mental health professionals who completed the study questionnaire. The statements in this table are shortened and paraphrased versions of the statements that participants read. Odds ratios greater than 1.0 indicate that the odds that mental health workers would respond that Joe Davis (a thirty-eight-year-old man) is a person with MR were higher than the odds that jury pool members would indicate the same response. Larger odds ratios indicate a greater difference between mental health workers' and jury pool members' responses. Odds ratios followed by one asterisk (*) are statistically significant at the $p < .05$ level, and those followed by two asterisks (**) are statistically significant at the $p < .01$ level.