Execution Exemption Should Be Based on Actual Vulnerability, Not Disability Label

Stephen Greenspan
Department of Psychiatry
University of Colorado Health Sciences Center

Harvey N. Switzky
Department of Educational Psychology
Northern Illinois University

Mental retardation (MR) is an invented bureaucratic category, currently undergoing radical rethinking and likely renaming, that includes many who have biologically based brain disorders, but is itself determined on functional criteria (e.g., IQ below a certain level) that are purely arbitrary. People with MR are socially vulnerable and thus are more likely to be "naïve confessors," "naïve defendants," and "naïve offenders." That is most likely the (largely unarticulated) rationale and justification for the Supreme Court's decision, in *Atkins v. Virginia* (2002), to exempt the class from execution. Although the decision is to be applauded as a step in a more humane direction, it is problematic to use an indirect, artificial, and insufficiently inclusive category to determine who should or should not be executed. Limited social intelligence (with consequent social vulnerability) is a characteristic of a wide range of brain-based syndromes and disorders, including many who fall above the (artificial) upper IQ limit and, thus, are ineligible for the MR label and the legal protections associated with it. A more equitable, and logical, policy would be to extend execution exemption to all who demonstrate the same kinds of vulnerabilities, especially if they can be linked to some brain-based medical condition, regardless of whether one qualifies for the (soon to be discarded) label of MR.

Adaptive Behavior Assessment and the Diagnosis of Mental Retardation in Capital Cases

Marc J. Tassé

University of South Florida, Tampa, Florida

There are essentially three main prongs to the definition and diagnosis of the condition known as mental retardation: deficits in intellectual functioning, deficits in adaptive behavior, and onset of these deficits during the developmental period. The U.S. Supreme Court ruled in 2002 in a decision known as *Atkins v. Virginia* that it was essentially cruel and unusual punishment to execute a person with mental retardation, thus violating the Eighth Amendment of the American Constitution. For the purpose of this article, we focused on the issues as they relate to the second prong of the definition of mental retardation, that is, adaptive behavior. We present and discuss the primary concerns and issues related to the assessment of adaptive behavior when making a diagnosis of mental retardation in an *Atkins* claim case. Issues related to standardized assessment instruments, self-report, selection of respondents, use of collateral information, malingering, and clinical judgment are discussed.