

## Strange Shift in the Case of Daryl Atkins

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### An Argument From the Heart

On February 20, 2002, James Ellis stood alone before the United States Supreme Court. The Court sought to use the case of *Daryl Renard Atkins v. Virginia* (No. 00–8452) to determine whether or not persons with mental retardation should be executed. Ellis argued for the banning of such a punishment. In doing so, we, his fellow members in the American Association on Mental Retardation (AAMR), saw Jim as our own “Mr. Smith Goes to Washington.”

To us, his argument was superb. Earlier, he constructed a list of points to stress. He was determined to argue only these points. Even so, I held my breath as certain justices did every thing they could to tease Ellis into straying from his list: “What if Osama Bin Laden was retarded?” “Isn’t what you are talking about only a tiny blip [on the larger judicial] screen?” “Why should we care about what the rest of the world thinks of us?” “How can we ratchet up [the U.S. Constitution] like this?”

Ellis could have taken a home-run swing at any of them, but he did not. He stayed in form. His tone of voice was never strained. He remained calm, gentle, and honest. He reflected a strong caring for the persons he and the rest of the AAMR membership represent.

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### A Heartwarming Victory

On June 20, 2002, the Court ruled 6 to 3 that the execution of persons with mental retardation was unconstitutional. Justices Stevens, O’Connor, Kennedy, Souter, Ginsberg, and Breyer voted for the ban. Justices Scalia, Thomas, and Rehnquist dissented. Most interesting, Justice Stevens, in writing the ruling, hewed closely to all of the points that Ellis raised:

- Such executions violate the 8th Amendment of the Constitution forbidding “cruel and unusual punishment.”
- Disabilities in reasoning, judgment, and control of impulses can keep some persons from being as

morally culpable as others who commit capital crimes.

- The ruling contained a list of “diminished capacities.” Anyone acquiring a certain number of them before age 18 could hardly be listed among “the worst of the worst” for whom execution is reserved.
- These particular persons may have deserved a punishment, but executing them would be excessive and unfair.
- Stevens recognized a consistency of the direction of change in legislatures within the death penalty states. For example, from 1988 to 2001, 8 of these states voted for such a ban.
- Stevens agreed that executing these persons “will not measurably advance the deterrent or the retributive purpose of the death penalty.”
- He also agreed that persons with this disability have often been coerced into confessing to murders they did not commit.

Although it is too early to measure the total impact of the Court’s ruling, one can sense that it may radically alter the geometry of our country’s criminal justice system. For example, I cannot name a single execution of a person with mental retardation since this ruling was handed down. Now, as strange as it may seem, the first person to die after *Atkins v. Virginia* may be Mr. Atkins himself.

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### An Unforeseen Shift

On August 5, 2005, a jury in Yorktown, Virginia, voted that Mr. Atkins did not have mental retardation. The jury did so even though the U.S. Supreme Court used the *Atkins* case so vividly when it banned the execution of persons with this disability on June 20, 2002. Consequently, the judge ordered that Mr. Atkins be kept on death row, and his date in the death chamber was set for December 2.

Those of us in the field who have followed this case closely know that Mr. Atkins does have mental retardation and that compelling evidence of this was presented at his trial. Leading mental retarda-

tion experts testified. Their well-supported opinions were based on objective testing of Mr. Atkins as well as on detailed descriptive information from numerous school teachers, family members, and individuals who had been Mr. Atkins' peers when he was growing up. So how could this jury conclude that Mr. Atkins did not have mental retardation?

### *The Reason for the Shift*

I believe the Virginia court mistakenly allowed the prosecution to designate as an "expert witness" a psychologist whose views are not grounded in science or medicine and who, by his own admission, is unqualified to diagnose mental retardation. The prosecution's "expert," Stanton Samenow, is a professional witness, not a helping professional. In trial after trial and on his website, he proclaims the same thing: Criminal defendants act as they do because they choose to be evil and because they are too lazy to work at being good.

While Dr. Samenow is, of course, free to believe as he wishes, his views are politics, not psychology. No court should permit him to use trial proceedings to pander to law-and-order jurors when he cannot support his claims using the methodology recognized in the field of intellectual disabilities.

In Mr. Atkins' case, Dr. Samenow dismissed the

relevance of low IQ and relied on Mr. Atkins' own description about his life skills and abilities to conclude that he does not have retardation. This is absurd. Although intelligence testing has its limitations, no one working in the field would suggest that it is not the linchpin of a mental retardation assessment.

Similarly, with respect to life skills, known as "adaptive functioning," no one who knows anything about mental retardation would rely on an individual's self-report for such a determination. The strong tendency to exaggerate abilities and deny limitations is perhaps the single best-established attribute of persons with mild mental retardation—and long recognized in the literature.

If courts and juries are going to engage in life-and-death decision-making regarding who is and is not properly diagnosed with mental retardation, they should hear from experts who are qualified by training and experience to render opinions in this area. Dr. Samenow does not meet this standard.

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