

it was unlikely that he would be able to assist in his defense. In contrast, experts from a state hospital indicated that although Mr. Hill was not in agreement with his attorneys' legal advice, it did not preclude him from assisting in his defense if he so chose. These opposing viewpoints emphasize the difficulties faced when applying complex psychiatric constructs to concrete legal standards. The trial court judge, in forming his opinion, opined that although an individual may believe that portions of the Bible refer specifically to him, it does not necessarily indicate that he is delusional.

The supreme court indicated that Mr. Hill's interaction with the trial judge reinforced its conclusion that he was capable of assisting in his own defense. While Mr. Hill's written and oral statements may have provided evidence of his ability to appreciate the nature and purpose of the proceedings against him, self-report of competence or ability to assist in one's defense may do little more than lead to face-value assumptions. In fact, in this case, the defense argued that Mr. Hill's letter provided evidence of his inability to cooperate, as the judge had previously directed the defendant not to write directly to the court.

Complexities such as these may place the forensic psychiatrist in a precarious situation. While there may be no concrete solution, some considerations may be taken into account. When a finding of not competent to stand trial is considered, a formal assessment of malingering may be useful; there was no mention of such a consideration in Mr. Hill's case. In addition, when the question of unwillingness versus inability to assist arises, particular care should be taken to attempt to understand the defendant's reasoning. That is, an individual's answers should not simply be accepted at face value. Rather, diligence in trying to understand the logic and rationale behind these answers should drive the assessor's conclusions. Further, it is worth bearing in mind that an individual's rational understanding of the nature and purpose of proceedings should not unduly influence conclusions regarding his ability to assist.

This case raises the inherent difficulties in applying complex clinical data and analysis to dichotomous legal decisions. Assessments are often conducted in contexts where there is no unassailable answer as to an individual's competence to stand trial. When, on appeal, the abuse of discretion stan-

dard is applied, it becomes difficult to demonstrate that no reasonable person would have arrived at a particular conclusion, given the available data.

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Burden of Proof in Establishing Mental Retardation in Capital Cases

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The Standard of Beyond a Reasonable Doubt for Establishing Mental Retardation in Capital Cases Is Unconstitutional Under the Eighth Amendment

In *Hill v. Schofield*, 608 F.3d 1272 (11th Cir. 2010), the defendant appealed the decision by the U.S. District Court for the Middle District of Georgia denying the *habeas* petition that challenged his death sentence. The district court did grant appealability of the Georgia Supreme Court's decision to uphold the state statutory requirement that mental retardation must be proved beyond a reasonable doubt for exemption from the death penalty. Mr. Hill claimed that the statutory standard was in violation of the constitutional ban on cruel and unusual punishment, as established by *Atkins v. Virginia*, 536 U.S. 304 (2002).

Facts of the Case

In 1991, Warren Lee Hill was convicted and sentenced to death for the 1990 murder of his prison cellmate. Both his conviction and his sentence were affirmed on direct appeal in 1993, and *certiorari* was denied by the Supreme Court in 1994. Subsequently, Mr. Hill initiated a *habeas* petition, arguing that mental retardation exempted him from execution. The state *habeas* court found that the evidence that he was mentally retarded was credible and granted his writ to conduct a jury trial in which the preponderance-of-the-evidence standard was to be applied.

Georgia appealed, and the state supreme court reversed and remanded the case, directing the *habeas* court to determine without a jury whether Mr. Hill could establish his claim of mental retardation beyond a reasonable doubt (*Turpin v. Hill*, 498 S.E.2d 52 (Ga. 1998)), the standard established by Georgia state law (Ga. Code Ann. § 17-7-131(c) (3) (1998)). In 2002, the *habeas* court found that although Mr. Hill's IQ score was low enough to meet the criterion for mental retardation beyond a reasonable doubt, he did not demonstrate sufficient impairment in adaptive function. For the psychiatric definition of mental retardation, both are needed (Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition (DSM-IV), 2000, p 41). The court concluded that Mr. Hill was not entitled to *habeas* relief. Concurrently, *Atkins* was being heard by the United States Supreme Court; in that case, the Court held that the execution of offenders with intellectual disabilities was in violation of the Eighth Amendment's ban on cruel and unusual punishment.

Mr. Hill repeteditioned the *habeas* court on the basis of *Atkins*, arguing that the use of the beyond-a-reasonable-doubt standard was unconstitutional. The *habeas* court agreed and found that the standard placed an undue burden on the defendant by creating "an extremely high likelihood of erroneously executing mentally retarded defendants" (*Hill*, p 1275). The court found that Mr. Hill's claim of mental retardation was supported by a preponderance of the evidence. Georgia appealed, and the state supreme court reversed (*Head v. Hill*, 587 S.E.2d 613 (Ga. 2003)). Mr. Hill initiated federal *habeas* proceedings in the U.S. District Court for the Middle District of Georgia. That court denied the *habeas* petition, but granted a certificate of appealability on the mental retardation claim.

Ruling and Reasoning

A three-judge panel of the Eleventh Circuit Court of Appeals reversed the district court's denial of Mr. Hill's petition for *habeas*, reasoning that the evidentiary standard of beyond a reasonable doubt, the most stringent standard in use, imposed the "overwhelming majority of the risk of error on the defendant" (*Hill*, p 1279). It held that by applying this standard, "Georgia holds that it is far better to erroneously execute a mentally re-

tarded person than to erroneously impose a life sentence on one not mentally retarded" (*Hill*, p 1279) and "eviscerates the command of the Eighth Amendment" (*Hill*, p 1283).

Dissent

Circuit court Judge Hull dissented from the majority opinion. She wrote, "There is no holding in *Atkins*, or any other Supreme Court decision . . . invalidating a reasonable doubt standard for mental retardation claims" (*Hill*, p 1284). Judge Hull emphasized that although there is a national consensus against executing offenders with mental retardation, there is not one on how to determine mental retardation.

Discussion

The majority decision in this case is a clear choice to err on the side of imposing a life sentence on "one not mentally retarded" rather than to execute a "mentally retarded person." However, Mr. Hill's case demonstrates that establishing mental retardation for legal purposes is not straightforward. Mr. Hill was found to be mentally retarded according to the standard of preponderance of evidence, but not by the standard of beyond a reasonable doubt. Most of the states that impose the death penalty use preponderance of evidence. Thus, had Mr. Hill been charged in Alabama instead of Georgia, for example, he would not have been executed, based on the evidence that he presented for mental retardation.

The definition of mental retardation used in *Atkins* (p 318) is "having significantly subaverage general intellectual functioning resulting in or associated with impairments in adaptive behavior which manifested during the developmental period," a definition that captures the general spirit of the meaning used in most clinical contexts.

Disassociations between adaptive and intellectual function are not unusual. For example, people with autism spectrum disorders frequently have substantial impairments in adaptive function coupled with normal IQ scores. Severe personality disorders can also lead to poor adaptive function in the presence of normal intelligence. People with these types of dissociation are not defined as mentally retarded. Less common are cases like Mr. Hill's, in which adaptive capacity exceeds intellectual capacity (validly measured), since intellectual limitations lead to adaptive impairments. The *Atkins* decision recognized the relationship

between intelligence and adaptive capacity, implying causality in the phrase “resulting in.” However, the *Atkins* decision adds the phrase “or associated with” denoting, in fact, a meaningful distinction between a causal and a correlational relationship for intelligence and adaptive capacity.

Although the initial ruling of the Eleventh Circuit implies an appreciation of the lack of diagnostic precision by recognizing that beyond a reasonable doubt is too high a standard, the decision does not clarify how cases with divergent and clinically inconsistent findings are to be decided. The *Atkins* decision parsed the diagnostic context in which IQ, adaptive function, and age of onset are to be considered together as correlated but free-standing determinants. From that ruling, it is a short step to a situation in which the legal standard can be applied to each criterion separately. In *Hill*, the court treated the diagnostic criteria as statutory elements to be proved separately, rather than as diagnostic markers to be evaluated as components of a unitary concept. *Hill* illustrates the difficulty in applying clinical criteria, derived from scientific theory and used as a guide to assessment and treatment, to a legal question that requires absolute certainty.

Follow-Up

In November 2010, following a poll of Eleventh Circuit judges in active service, the court ordered a rehearing *en banc* and vacated the previous decision (*Hill v. Schofield*, 625 F.3d 1313 (11th Cir. 2010)). The decision from that *en banc* hearing was published November 22, 2011 (*Hill v. Humphrey*, 662 F.3d 1335 (11th Cir. (2011))). Regarding the issue of the appropriate standard of proof, the majority noted that “*Atkins* expressly left it for the states to develop the procedural and substantive guides for determining who is mentally retarded” (*Hill*, p 2). Regarding the burden of proof the court stated:

Because there is no specific, much less “clearly established” by Supreme Court precedent, federal rule regarding the burden of proof for mental retardation claims [the Antiterrorism and Effective Death Penalty Act of 1996] mandates that this federal court leave the Georgia Supreme Court decision alone—even if we believe it incorrect or unwise—and affirm in this case [*Hill*, p 2].

Clearly, this is an evolving area of law, and future developments will continue to define the standards and procedures deemed constitutionally acceptable.

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Conditions of Release for Insanity Acquittees

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Compliance With Treatment Is the Only Condition That Can Be Imposed on an Insanity Acquittee When Released From a Hospital

In *United States v. Crape*, 603 F.3d 1237 (11th Cir. 2010), the United States Court of Appeals for the Eleventh Circuit addressed the conditions of release for an insanity acquittee. The acquittee appealed his recommitment to the hospital from conditional release, arguing that the district court overstepped its authority by requiring that he abstain from writing threatening letters. The appellate court considered whether district courts may impose conditions in addition to compliance with psychiatric and medical treatment on conditionally released insanity acquittees.

Facts of the Case

In 2002, Michael Crape was arrested and charged with mailing threatening letters to President Bush and Vice President Cheney. Mr. Crape was found not guilty by reason of insanity and committed to a psychiatric hospital, where he remained for five months before being conditionally released. The conditions of his release were to comply with prescribed psychiatric and medical treatment and to refrain from writing threatening letters. Sometime after leaving the hospital, Mr. Crape resumed writing threatening letters. He was arrested in 2006 for sending a letter to the Palm Beach County Sheriff’s office demanding “7.3 million for the return of six 15-year-old white females” and threatening to “chop off their heads and mail them to [the sheriff’s office]” (*Crape*, p 1240). A status conference was held in his absence, and, as a result, Mr. Crape’s conditional discharge was revoked. He returned to the hospital.

Mr. Crape appealed the revocation of his conditional release to the Eleventh Circuit Court of Appeals for the first time in *United States v. Crape*, 314