Reasonable Accommodations for Meeting the Unique Needs of Defendants with Intellectual Disability

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The Americans with Disabilities Act has allowed for greater participation of individuals with disabilities across a variety of contexts, most notably in employment settings. Individuals with intellectual disability (ID) are still precluded, however, from full participation in other contexts, and they are often relegated to the forensic arena without sufficient support, including after being adjudicated incompetent to stand trial (IST). Frequently, individuals who are adjudicated IST due to ID are committed to inpatient psychiatric hospitals that are unable to meet their unique needs. We argue that the provision requiring reasonable accommodations to secure meaningful participation in state-funded restoration efforts, explicitly covered by Title II of ADA, is both relevant and imperative for this group. Further, we argue that simple modifications to the forensic assessment process, as well as the trial itself, can provide the scaffolding to facilitate individuals' full and complete participation in the process, reducing the likelihood of an inappropriate determination as IST. In our opinion, failing to appropriately modify the forensic assessment, treatment, and trial process systematically excludes and uniquely disadvantages this population because individuals with ID are often able to meet the essential functions of participation except for interference from deficits commensurate with ID.

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Progress in the disability rights movement in the United States reached a major milestone with the passage of the Americans with Disabilities Act (ADA), the broad-sweeping federal legislation that formally prohibited discrimination against individuals with disabilities.[1] It was drawn from the foundation initially laid by Section 504 of the Rehabilitation Act of 1973, which prohibited discrimination against individuals with disabilities by any entity receiving federal assistance.[2] ADA broadened the scope of this legislation by expanding the contexts in which discrimination is prohibited. The ADA Amendments Act (ADAAA) of 2008 made it easier for individuals to secure accommodations under ADA, mandating a broad interpretation of the term "disability."[3] At its core, ADA was designed to remove barriers that precluded individuals with disabilities from fully participating in various aspects of American life (e.g., employment, education, public accommodations).

This important legislation is divided into three sections, each focusing on a different context: employment settings (Title I), public entities (Title II), and public accommodations (Title III). The focus of this paper is on Title II, which states, "No qualified person with a disability may be excluded from participating in, or denied the benefits of, the programs, services, and activities provided by state and local governments because of a disability" (Ref. 1, § 35.130(a)). Specifically, this article focuses on meaningful participation in the criminal adjudicative process and stated-funded competence restoration efforts, the former constituting a fundamental right

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accorded to all individuals via the United States Constitution,[4] and the latter representing states' efforts to protect this right for all individuals.

Per the language of the Act, a "qualified individual with a disability" is someone who meets the essential eligibility requirements of participation in a program and/or service. The Act further requires public entities, including state and local governments, to make "reasonable accommodations" to "policies, practices, or procedures," except in instances wherein modifications would "fundamentally alter the nature of the service, program, or activity," or result in an "undue burden on the entity" (Ref. 1, § 35.130(b)). Examples of reasonable accommodations include the removal of physical barriers precluding access to buildings or the provision of auxiliary aids to facilitate communication. Much has been written regarding reasonable accommodations for individuals in vocational settings (e.g., alternate schedules, periodic breaks, modified materials, shifting work requirements),[5-8] and the U.S. Equal Employment Opportunity Commission (EEOC) has enforcement guidelines for employers and employees requesting, securing, and providing reasonable accommodations.[9]

Relevant to those services provided by state and local governments is the fundamental right, accorded to all individuals by the Sixth Amendment of the U.S. Constitution,[4] "to a speedy and public trial, by an impartial jury . . . and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense." These rights, collectively referred to as the due process guarantees of the Constitution, are important in ensuring the fairness and accuracy of criminal proceedings. The U.S. Department of Justice (DOJ), Civil Rights Division,[10] explicitly stated that Title II of ADA requires that "state and local government criminal justice entities . . . must ensure that people with mental health disabilities or I/DD [intellectual and developmental disabilities] are treated equally in the criminal justice system and afford them equal opportunity to benefit from safe, inclusive communities" (Ref. 10, *para* 1). The Department of Justice identified multiple examples of reasonable accommodations to facilitate effective communication, expressly covered under Title II of ADA, including the use of simple language, comprehension checks, additional time, and assistive technology.

A similar, albeit separate, mechanism designed to protect the right to fair criminal proceedings is the requirement that defendants possess the requisite ability and knowledge to meaningfully participate in the process, articulated first in the Supreme Court of the United States decision, *Dusky v. United States*.[11] Per *Dusky*, criminal defendants must possess a factual and rational understanding of the proceedings against them, as well as the capacity to consult with counsel in their defense. Today, all states have codified some variation of these rights, referred to as the *Dusky* prongs, to protect the integrity of the adjudicative process. Individuals who fail to meet one of the *Dusky* prongs are considered incompetent to stand trial (IST) and are most often committed to inpatient psychiatric hospitals for competence restoration treatment[12]; these hospitals are typically funded by state and local governments and therefore are covered under Title II of the ADA.[1] We argue that Title II of the ADA is relevant in securing accommodations for individuals in the courtroom who may otherwise be able to participate. Title II is also relevant for modifying existing competence restoration treatment for subsets of defendants with qualified disabilities adjudicated by the court as IST. In addition, we suggest other modifications that have the potential to facilitate the participation of individuals with intellectual disability (ID) in the adjudicative process, and to avoid inaccurate determinations of defendants with disabilities as IST.

ID and the Adjudicative Process

Individuals with ID are disadvantaged in the criminal adjudicative process due to deficits associated with their disability. The Supreme Court of the United States delineated some of these deficits in *Atkins v. Virginia*.[13] In this landmark decision, the Court articulated that individuals with ID are less morally culpable than their non-disabled counterparts due to deficits in their judgment, reasoning, and impulse control. Specifically, the Court noted that defendants with ID "have diminished capacities to understand and process information, to communicate, to abstract from mistakes and learn from experience, to engage in logical reasoning, to control impulses, and to understand the reactions of others" (Ref. 13, p 318). The Court thereby questioned the retributive and deterrent aims of capital punishment with these defendants.

The deficits articulated by the Supreme Court of the United States interfere with participation in the adjudicative process well beyond capital sentencing. Research indicates that individuals with ID are at risk at various stages of the process from initial contact with police, during interrogation, and through trial resolution.[14,15] In some cases, these deficits may be severe enough to render an individual IST. In other cases, however, these deficits may be appropriately addressed through the provision of reasonable accommodations.

When identified as IST, appropriately or not, individuals with ID are disenfranchised further because traditional competence restoration treatment is inappropriate with this population. The problem here is twofold: some individuals with ID may be inappropriately identified as IST due to the inadequacy of formal assessment methods, and individuals with ID who are adjudicated IST are frequently committed to inpatient psychiatric hospitals unfit to meet their unique treatment needs. The latter is covered by Title II because these programs are usually state-funded. Although not covered under ADA, the need for modifications to the formal assessment process responsive to the needs of individuals with ID represents a key component of ethical professional practice. Simple modifications to the assessment process can effectively reduce the inappropriate identification of individuals with ID as IST and more appropriately address their needs.

In contrast, some individuals with ID may be competent to proceed, yet require formal accommodations to the trial process. For these individuals, Title II is relevant and allows for the provision of reasonable accommodations during the adjudicative process. Although there may be defendants for whom both are relevant (i.e., concerns regarding competence to proceed, as well as the necessity of reasonable accommodations), these two areas remain distinct. The focus of this paper is on modifications to various stages of the adjudicative process to facilitate full participation from individuals with ID in the court process. We begin with an overview of individuals with ID who are adjudicated IST.

ID and Competence to Stand Trial

Estimates suggest that more than 60,000 evaluations of adjudicative competence are conducted annually in the United States, with approximately 20 to 30 percent of those individuals adjudicated IST.[16] In most cases, the underlying etiology rendering an individual IST is psychosis.[17] Limited research suggests that pharmaceutical intervention is the most common treatment for competence restoration, with group psychoeducation as the most common conjunctive technique.[18-21] The majority of individuals adjudicated IST are ultimately restored to competence within a period of six months with the typical provision of pharmacological treatment and group psychoeducation.

In contrast to defendants who are adjudicated IST pursuant to psychiatric symptoms, there is a small but meaningful subset of defendants who are rendered IST due to deficits commensurate with ID (e.g., approximately 6.5% of more than 8,000 defendants evaluated in Virginia were diagnosed with "mental retardation/learning disorders").[17] Individuals with ID represent a heterogeneous group with varying strengths and weaknesses. For the purposes of this discussion, we focus on individuals who fall in the mild range (i.e., approximately 85% of individuals with ID) because this group is most likely to benefit from the provisions we recommend.

For individuals adjudicated IST pursuant to ID, typical competence restoration treatment is unlikely to be effective, and standard assessment procedures may also be unsuccessful. They are unlikely to benefit from psychotropic medication, its administration may be inappropriate or unethical,[22] and there is evidence of harmful long-term side effects.[23] Group psychoeducation is likely to require cognitive skills beyond those of the typical individual with ID; modified (and potentially more intensive) treatment is therefore required, which is largely unavailable in these settings. Multiple authors have conceptualized treatment of this population as representing competence education (or attainment) as opposed to competence restoration because this group is unlikely to have previously acquired the knowledge required of adjudicative competence.[24-29] In addition, individuals adjudicated IST pursuant to ID tend to demonstrate impairments in factual understanding of the trial process[17,25,29,30] instead of typical impairments seen in individuals adjudicated IST due to psychosis[30,31] (e.g., applications of legal information to unique situations). In other words, defendants adjudicated IST pursuant to ID present with different treatment needs than individuals with psychiatric impairment alone, and thus require modifications to the assessment, treatment, and trial process that are

responsive to these needs and match their requisite skills.

Past research on competence restoration for individuals with ID is limited. Some authors have argued restoration efforts with this population are met with decreased success.[26,32,33] In one study, the authors reported a low rate of restoration with this population (18%), arguing restoration efforts may be less effective with these patients.[26] In a review on the topic, Zapf and Roesch concluded there was limited evidence for the efficacy of some training programs, particularly considering the resource-intensive nature of the training.[34] The relative lack of success with this population, however, may represent the inadequacy of provided services rather than limited effectiveness. Research from the education literature suggests that individuals with ID can benefit from instruction and can increase their repertoire of skills involving reading comprehension, academic performance, and working memory.[35-38] Further, Wall and Christopher demonstrated a competency attainment rate of approximately 61.1 percent in a sample of individuals with ID who received training via the Slater Method, a tailored courtroom education program designed for individuals with ID to facilitate competence attainment (discussed in more detail subsequently).[28]

Importantly, in *Jackson v. Indiana*[39], the Supreme Court of the United States determined that indefinite commitment of an incompetent defendant is a violation of equal protection given the more lenient commitment standard relative to individuals not charged with crimes. The Court also found that it is a violation of due process to detain incompetent defendants for "more than the reasonable period of time necessary to determine whether there is a substantial probability that he will attain trial competence in the near future" (Ref. 39, p 716). Although states have implemented *Jackson* in various ways, the Court specified that states must either pursue civil commitment or release the defendant. Despite this, research has indicated efforts at predicting (un)restorability are meager, and few variables consistently discriminate whether individuals will be restored in a timely manner.[17,40,41] Although some have argued that measured intelligence (IQ) is related to restorability,[26,32,42] available research is limited. Thus, relying upon determinations of unrestorability without pursuing alternatives (such as modified treatment) runs the risk of inaccurately identifying individuals as unrestorable who may benefit from training.

Reasonable Accommodations

Accommodating the needs of individuals with ID from assessment through adjudication can facilitate their participation in a process from which they may otherwise be excluded. The following modifications expand the options for courts. The provision of reasonable accommodations, much like those offered in vocational settings per ADA, can provide the required assistance that individuals with disabilities may need to move forward with adjudication on their pending charges. Much like employment settings, reasonable accommodations can be proffered in a variety of ways to match many unique needs.

An illustrative example is taken from case law wherein the Supreme Court of Washington determined that "courts may also accommodate the needs of a particular defendant by modifying trial schedules and day-to-day courtroom procedures to make the proceedings more accessible to a party. Such accommodations, when appropriate, are permissible exercises of judicial discretion—but are distinct from the legal analysis of competency to stand trial" (Ref. 43, p 7). In this case, the defendant was diagnosed with an auditory processing disorder and borderline intellectual functioning, for which a neuropsychologist recommended trial accommodations to facilitate the defendant's participation. This approach was criticized by the court of appeals, which held that the court inappropriately conflated competency with disability accommodation law.[43] The Supreme Court of Washington disagreed, stating, "To be clear, a criminal defendant's competency to stand trial and the need for disability accommodations at that trial are distinct, if at times overlapping, concerns" (Ref. 43, p 15). In other words, the determination of the defendant's competency should be independent of the need for accommodations. We agree with this analysis and extend this further, noting that individuals with ID are at risk of being inappropriately identified as IST when reasonable accommodations would be sufficient.

In another example from Vermont,[44] a defendant appealed his conviction, arguing that the court was in error by finding him competent to proceed contingent upon the assistance of a "cognitive facilitator." In this case, the defendant had a documented measured intelligence (IQ) between 65 and 70, with ev-

idence of variable functional capacities. During the plea hearing, the defense attorney asked questions, along with "periodic conferences" to ensure his understanding. On appeal, the defendant argued the court had used "predictive" competence, rather than present ability as required by *Dusky*, in opining he was competent with this accommodation. The court disagreed, citing a prior case wherein a juvenile with a developmental disability was considered competent with the assistance of a cognitive facilitator. In the discussion, the court noted, "There is nothing to prevent a court from qualifying its competency finding and suggesting accommodations that will enable the defendant to better capitalize on his capacity to understand and participate effectively in the proceedings" (Ref. 44, *para* 12). Here, we agree with the Vermont court that qualified competency findings via accommodations (covered by Title II) can protect the rights of defendants who may otherwise not be able to participate in the adjudicative process.

Similar proposals have been offered elsewhere. For example, the Slater Method, one of the most widely accessible models for competence restoration treatment for individuals with ID, provides for the assistance of qualified individuals in the courtroom setting and advocates the use of "a representative . . . to play an active role in fostering discussion between the defendant and the attorney" (Ref. 28, p 195). More recently, the Arc's National Center on Criminal Justice and Disability (NCCJD) advocated for the utility of supported decision-making in the courtroom for defendants with ID, citing a civil case in which a court of appeals opined similarly.[45] This particular provision is one of many ways in which accommodations may provide support to navigate the court process successfully. The following is a review of other accommodations that may help secure the full and meaningful participation of defendants with ID.

Considerations Regarding Assessment

As previously described, there are multiple ways in which deficits commensurate with ID may interfere with the assessment of an individual presumed to be or ultimately adjudicated IST, and forensic evaluators are urged to be mindful of these factors. Albeit not covered by Title II, ethical professional practice requires clinicians to be mindful of appropriate accommodations to the evaluation process. Typical evaluations of competency involve use of a structured or semi-structured interview designed to evaluate defendants' rational and factual understanding of the proceedings. Several instruments have been designed to guide the inquiry, including the MacArthur Competence Assessment Tool – Criminal Adjudication (MacCAT-CA[46]), the Evaluation of Competence to Stand Trial (ECST-R[47]), and less structured tools, such as the Competency Assessment Instrument.[48] These instruments all have open-ended questions that require the spontaneous generation of information, for which items are scored relative to standard criteria and the subjective opinion of the examiner. Although useful for individuals with intact cognitive functioning, individuals with ID may struggle to respond appropriately without additional assistance. The MacCAT-CA and the ECST-R have not been normed on individuals with deficits in intelligence, and the authors caution against administration of these instruments to individuals with ID. In other words, the competence assessment instruments most commonly used are inappropriate for this group of defendants, and general assessment methods (e.g., structured or semi-structured interviews) may similarly be ineffective.[49]

The Competence Assessment for Standing Trial for Defendants with Mental Retardation (CAST-MR)[50] was developed in response to similar criticisms of existing measures that focused largely on psychiatric symptoms rather than concrete courtroom-related knowledge, leading individuals with expressive language deficits and impaired language comprehension to perform poorly on those instruments. The CAST-MR was drafted to adjust for some of these concerns via simplifications to the instrument and content (i.e., lower grade reading level; simpler language; reliance on multiple-choice format for items). Underscoring the demand for competence assessment instruments that can be used with individuals with ID, a survey of forensic psychologists found that the CAST-MR was the second most frequently used measure of competency to stand trial (although the frequency of use was marginal in this now-dated sample).[49] Despite initial studies demonstrating adequate psychometric properties, there have been criticisms related to the composition of the initial validation samples (e.g., the use of community members as opposed to criminal defendants; the over-representation of dually diagnosed individuals), and concerns regarding the seeming modification of the standard to which defendants are held. Grisso explicitly criticized the use of a multiple-choice for-

mat, noting that the deficits accommodated for (e.g., expressive language impairments) may be a required component of functioning competently in the process.[51] Although noble in its development, the CAST-MR fell short of the goal of developing a competence assessment instrument specifically for individuals with ID.

Consistent with the rationale underlying the CAST-MR, the format and structure of evaluations of adjudicative competence may require modification. In considering this, we emphasize our current understanding of learning and recall. The wealth of literature in cognitive psychology and models of information processing indicates that certain types of tasks are easier than others and generally reflect a hierarchy of skills ranging from most to least difficult.[52] Evaluations should also follow this general structure, with question stems forming a hierarchy of complexity ranging from most difficult (i.e., open-ended) to least difficult (i.e., recognition memory), with variations in between. A similar proposal was offered by Appelbaum in a discussion of recommendations for forensic evaluators.[25] This structure allows individuals to demonstrate their knowledge in a variety of ways, considers how intellectual or neuropsychological deficits may interfere with expression of knowledge, and assesses which accommodations are best suited for a defendant. For each domain, the following hierarchical structure can be useful in structuring the inquiry:

open-ended format (no prompts), multiple-choice format;

multiple-choice format, with visual cuing;

forced-choice format (e.g., true/false, yes/no); and

recognition format (i.e., selections from a list).

Further, this evaluation structure allows scores to be presented and interpreted while being mindful of the accommodations provided. Specifically, scores are awarded for correct responses, with full scores awarded for un-administered items falling below that item in the hierarchy (i.e., an individual who answers the open-ended question correctly would be awarded full points for the alternative questions in that same domain). A similar scaffolding method is used in the Texas Functional Living Scale (TFLS), which is designed to evaluate adaptive functioning.[53] On some sections of the TFLS, there are scoring differences for the level of prompt provided (e.g., three points for no prompting, two points for oral prompting, and one point if a pointing prompt is required). Applying this method, scores on the modified competence assessment instrument reflect both the level of knowledge an individual possesses and the complexity of questions the individual answered independently. Scores can be provided for the various response options, with percentage scores reflecting the proportion of times the individual spontaneously recalled information (i.e., a percentage score for the open-ended question stems), as well as how frequently the individual benefitted from cuing (i.e., percentage correct for the multiple-choice questions). This type of structure not only accommodates the unique needs and strengths of individual defendants, but it is also flexible in ways that traditional competence assessment instruments are not. We also echo the recommendation of Appelbaum that forced-choice options (e.g., "yes/no") should include an item-reversal technique that allows for an assessment of acquiescence bias.[25]

Although critics may argue that accommodations effectively change the standard for these defendants, we believe that this format simply allows individuals to demonstrate the knowledge they possess in an alternative format, more suited to their individual strengths, weaknesses, and communication style. This simple modification to the assessment process provides individuals with disabilities the opportunity to demonstrate their capacity in ways that best suit their unique skills (and mitigates the influence of their deficits). For example, failure to spontaneously generate an accurate description of the role of a judge in the courtroom without prompting does not necessarily suggest that an individual lacks this knowledge; instead, it may reflect other things, such as expressive language deficits, limited communication skills, poor initiation, or retrieval deficits. Allowing the opportunity to select the correct response from a list, however, could accommodate these deficits in such a way that the examinee's knowledge and mastery of information can be demonstrated without interference from deficits in other areas. Consider the normative example of being provided this type of prompting in everyday life, such as when a response of, "Did you check the kitchen table?" may cue an individual as to the location of lost keys. These techniques are particularly useful with respect to the assessment of factual knowledge related to the court

process. Here, we echo Zapf and Roesch that clinicians need to be aware that inability does not necessarily equate to incapacity.[34]

In instances where the cause of an individual's failure to generate information spontaneously through open-ended questions is, in fact, the result of deficits in communication or expressive language that will impair their participation, these impairments are likely to present elsewhere and to interfere with capacities in other domains. That is, evaluators are required to make subjective determinations of an individual's ability to communicate rationally with counsel in the preparation of a defense during evaluations of competence (i.e., prong two of the *Dusky* standard). If these skills are impaired, the clinician should gauge this during other, more detailed portions of the interview and assessment. In other words, accommodating these deficits in the formal assessment of factual knowledge is unlikely to mask the deficits that will interfere with adjudicative competence in other ways.

To accommodate the social deficits that often present concurrently in ID (e.g., gullibility, naiveté, acquiescence bias),[54] evaluators may need to adapt the ways in which the assessment is conducted and responses are evaluated. Of concern is the tendency of individuals with ID to acquiesce or parrot back information. This tendency may leave the evaluator with the mistaken impression that the defendant possesses a greater mastery of the material than is true. To guard against this possibility, evaluators need to avoid leading questions and vary the ways in which information is presented and discussed. In addition, requiring defendants to explain what they mean in their own words is another technique that may be useful in this regard. For example, "Can you tell me what the public defender does without using the word 'defend'?" and "What exactly does that word 'defend' mean?"

Allowing the individual to garner examples can also be useful, particularly in instances wherein an individual has difficulty generating words with similar meanings. This is a similar recommendation to that offered by Appelbaum, who noted that self-reported claims of comprehension should not be taken at face value; instead, examiners should seek additional evidence of comprehension, particularly considering an individual's motivation to appear less impaired.[25]

Treatment Considerations

In addition to assessment accommodations, it is also important to consider how competence restoration treatment may require flexible adjustment, given that typical treatment methods (i.e., group psychoeducation, psychotropic medication) are unlikely to be effective with this population. Similar to assessment modifications, adjustments to competence restoration treatment should reflect our understanding of the impairments inherent in ID.[55-57] One promising method is the Slater Method,[28] which is a training program for individuals with ID focusing on major modifications in four areas: the teaching ability of the trainers, the content of the materials, the manner of presentation, and the usefulness of the program to legal counsel.[25,58-60] Past research on the Slater Method suggested its utility in restoration efforts because participants receiving this treatment (as opposed to standard treatment efforts) were significantly more likely to be recommended to the court as competent to stand trial.[28] Although this method is ideal, the time and resource costs of the program are prohibitive in settings with limited funding (e.g., state hospital settings where the majority of competence restoration treatment is provided).[12] The Slater Method requires one-on-one sessions, tailored to the unique needs of each patient, with ongoing assessment throughout training. State hospitals are often unequipped and understaffed to deliver this type of intensive treatment to the select patients for whom this treatment is most appropriate.

Despite these barriers, there are modifications and adjustments to this program that can be implemented in cost-effective ways. For example, directives from the training manual provide recommendations for interviewing and providing treatment to this population, derived from the collective understanding of the impairments inherent in ID (see Table 1 for a review of those recommendations). The concept of errorless learning is also relevant when working with patients who have cognitive impairments. Errorless learning takes place when virtually all errors are prevented in the training process; it has been found to be more efficient for individuals with neuropsychological impairments than trial-and-error learning.[61]

Cognitive Remediation

In addition to modifying traditional methods, it is important to consider alternatives to addressing psy-

Table 1 Recommendations for Interviewing and Providing Treatment for Individuals with ID

Use simple language.
Speak slowly, clearly, and calmly.
Use concrete terms and ideas.
Avoid questions that give part of the answer within the question (leading questions).
Ask open-ended questions, as relying on yes–no responses may lead to the assumption that the individual understood the answer when they may not have understood the question.[29]
Repeat questions from different perspectives to avoid parroting.
Proceed slowly, and provide praise and encouragement.
Avoid frustrating questions about time, complex sequences, or reasons for behavior.
Highlight important information to improve memory retention.
Repeat information to improve retention.
Cut down on distractions.
If a response is ineffective or inappropriate, provide direct, explicit feedback.
Be careful not to provide nonverbal cues that may aid in responding accurately.
Take short breaks, as individuals learn best with multiple, short sessions rather than a few, long sessions.

These recommendations were derived from the Slater method.[28]

cholegal deficits and their underlying etiology in forensic contexts. One promising alternative is cognitive remediation, which is designed to address underlying neuropsychological skills deficits (e.g., training in attention, memory, executive functioning) to mitigate the resulting psycholegal deficits. Previous researchers have advocated for investigation of this treatment with individuals with ID.[62,63] Unfortunately, investigations often systematically exclude individuals with deficits in intelligence due to concerns regarding generalizability,[64,65] and cognitive rehabilitation investigations have been generally neglected in defendants with ID. Thus, little is known about the relative effectiveness with this population. Future research should investigate whether this is a viable treatment option for this group of defendants.

Considerations Regarding the Trial Process

Consistent with the recommendations of Wall *et al.*[27] and NCCJD,[45] we advocate for consideration of an informed assistant in the courtroom who can function as a liaison between the defendant and counsel, particularly in cases wherein communication deficits are present. This individual can evaluate the defendant's comprehension, in real time, to ensure the defendant's ongoing understanding and participation. The liaison may also serve to facilitate effective translation of complex legal concepts into language the defendant can understand. The liaison is distinguished from an advocate in that the liaison serves as an informed individual who can assist in various functions that will allow for autonomous decision-making. This is much like the provision of an interpreter for individuals who are deaf or hard of hearing or for whom English is a second language. In this case, the interpretation skills involve translating complex language or concepts into simpler, more parsimonious terms. Similar provisions are often provided when modifying materials for lower grade reading levels and were explicitly referenced by the U.S. Department of Justice in describing reasonable accommodations in the courtroom (e.g., "using simple language to convey an oath or question"; Ref. 10, § I).

In addition to having a liaison in the courtroom, it may be useful for individuals with ID to receive accommodations such as additional time to process information, alternative mechanisms through which they may clarify information (e.g., allowing questions and clarifications where otherwise inappropriate), and simplifications of language. Beyond this, NCCJD[45] discussed the utility of a witness who can testify regarding the defendant's impairments and how they may influence how the defendant is perceived in the courtroom. Other examples of trial accommodations, taken from the Arc's Factsheet for attorneys,[66] include the following:

- speak slowly, with frequent repetition;
- provide periodic breaks;
- present information in a concrete, step-by-step manner;
- provide for videotaped testimony or videoconferencing;
- use interpreters, alternative text formats, or note takers;
- consider alternative seating arrangements or modified schedules; and
- allow a support person or animal to aid the defendant during the trial.

Providers and professionals involved at each stage of the process should routinely consider the ways in which simple and reasonable modifications may facilitate the participation of an individual with ID in the trial process. Given the diversity of skillsets

within this population, it is important to match the demands of the situation with the unique strengths of that individual. This will require critical evaluation of an individual's abilities, with an emphasis on what the individual can and cannot do, both with and without assistance. Consistent with the rationale of ADA, accommodations should facilitate the success of individuals with ID in the trial process.

Flexibility of the Standard

A major concern of providing accommodations is that it may effectively lower the bar for competence, circumventing protections intended for persons whose cognitive impairment places them at a disadvantage in the courtroom. Grisso[51] has argued that changing the ways in which questions are asked (e.g., using multiple-choice format questions, as with the CAST-MR)[50] is unrelated to the real-world demands of the trial process, thereby changing the context for which an individual is prepared. The accommodations proposed here, however, simply allow for the individual to function comparably to similarly situated peers without intellectual deficits.

Consistent with ADA, the proposed accommodations are changes in the procedures that enable an individual with a disability the opportunity to participate meaningfully. One can liken this situation to the provision of braille text for individuals who are blind. In no instance would an individual with this type of impairment be expected to see to function independently in a court setting, nor would these individuals be relegated to inpatient psychiatric treatment to engage in treatment efforts designed for individuals with severe mental illnesses. Why, then, should individuals with ID be expected to function independently without the provision of assistive aides and devices to facilitate their success or be committed on an inpatient basis to receive services unsuitable for their needs? These accommodations simply provide the much needed support to facilitate their success in a legal context from which they may otherwise be precluded.

Summary and Conclusions

One mechanism designed to protect the fairness of adjudicative proceedings is the recognition that defendants must possess requisite skills to adequately and effectively participate in the legal process. Prior research has indicated that a subset of defendants referred for competence to stand trial evaluations have been diagnosed with ID, and most of these individuals are found competent to proceed (e.g., one study reported between 12.5% and 36% were determined not competent).[28,45,67] Complicating this is the unique group of individuals with ID who are adjudicated IST pursuant to irremediable deficits in intelligence. These individuals are restored to competence at lower rates than their counterparts,[26,28,45] and typical competence restoration methods are unlikely to be effective, rendering these individuals without appropriate services to aid in their successful return to court. Instead, these individuals often find themselves in psychiatric hospitals that are unfit to meet their needs until courts must decide which alternative dispositions to pursue. Beyond this, some of these individuals may be inappropriately identified as IST when simple accommodations to the assessment or adjudicative process would allow for their participation.

Instead of continuing this unfortunate reality, which includes few viable alternatives (i.e., determinations of unrestorability, civil conservatorships), we advocate for the provision of modifications that may provide the support to secure their meaningful participation. These proposed modifications flexibly allow individuals with ID to demonstrate their knowledge and participate meaningfully without interference from their deficits. The position that individuals with ID should receive appropriate and modified treatment to accommodate their deficits is an uncontroversial one. Many have advocated for the treatment of this unique population in a qualitatively different manner than the typical defendant adjudicated IST pursuant to a severe psychiatric illness, which constitutes ethical professional practice.[27,45,67]

It is important to consider the relative cost of these accommodations, particularly considering that ADA does not require accommodations when it would create an undue hardship on the entity. The modifications we have discussed are relatively minimal with respect to financial cost, with the largest burden being on time spent modifying existing practices and procedures. Despite this, the long-term benefits of expanding the adjudicative process for the benefit of these individuals are likely to outweigh any initial costs associated with the provision of accommodations. More accurate and appropriate assessment is likely to improve identification rates (including a reduction in the number of individuals who are inaccurately identified as IST), and more effective train-

ing programs will likely expedite the process, thereby shortening the length of time that an individual is diverted from adjudication. Most important, however, is that, with reasonable accommodations, the integrity and fairness of the process will be strengthened by allowing individuals who have the capacity to proceed the freedom to do so, with only minimal modification and burden to the state.

Future research should seek to investigate the provision of these modifications, with a focus on whether such accommodations allow for participation without effectively modifying the standard to which these individuals are held. The natural concern is that individuals with ID will be held to a lesser standard than their counterparts. It will be vital to safeguard against this undesired outcome when determining whether these provisions are viable options. Regardless, we recognize that this is a pressing problem facing many state forensic systems, for which creative solutions may allow individuals to exercise their fundamental rights to proceed with charges pending against them.

In closing, it is worth noting that these proposed accommodations are not unique to individuals with ID and may serve to meet the unique needs of defendants with other irremediable deficits (e.g., pursuant to a brain injury, dementia). Regardless, the focus of this paper was limited to the specific group of individuals with ID. We recognize that individuals presenting with other forms of psychopathology are also covered under ADA and require unique treatment, although much of the research on this topic has been designed with their needs in mind, particularly considering the focus of psychiatric medication intervention for restoration treatment.[21] Instead, this paper sought to shine a light on a different population of defendants, the unique needs of this population, and to stimulate future research on whether the provision of reasonable accommodations could address this pressing need in our forensic mental health system.

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