

Texas, Intellectual Disability and the Death Penalty - Moore v. Texas

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On June 6, 2016 the United States Supreme Court granted certiorari in *Moore v. Texas*.¹ AAPL, along with the Constitution Pro-

ject, and the Southern Center for Human Rights had filed an amicus brief supporting certiorari.²

The question the Court accepted for appeal was whether, in determining whether an individual may be executed it was a violation of the Eighth Amendment and the Court's decisions in *Hall v. Florida*³ and *Atkins v. Virginia*⁴ to prohibit the use of current medical standards on intellectual disability, and to require the use of outdated medical standards.⁵

Moore was convicted of being the shooter in a botched 1980 robbery. He was found guilty and sentenced to death that same year. He has been on Texas' death row ever since. He has had several direct and habeas appeals and has been twice re-sentenced to death. During his latest habeas appeal Moore raised many claims, including a claim that the Eighth Amendment barred his execution because he was Intellectually Disabled. The Texas trial habeas court concluded that Moore met the definition of Intellectual Disability under the current guidelines of the AAIDD (American Association on Intellectual and Developmental Disabilities) and under both the DSM IV and the DSM 5. The Court found that both Moore's impairment in adaptive functioning and his corrected IQ score placed him in the range of mild Intellectual Disability. The Court found that he was therefore barred from execution under *Atkins* and *Hall*.

The Texas Court of Criminal Appeal reversed. The Court held that the state habeas trial court erred by relying on current medical standards rather than the twenty-two year old

standard in *Ex parte Briseno*⁶ that the Texas Appellate Court had adopted in prior cases for *Atkins* claims. The Appeals Court held that it was up to the Texas legislature to change the law, not the Court. Using the *Briseno* standard, the Texas Appeals Court then analyzed the presence of Intellectual Disability based on IQ scores that were not statistically corrected. The Texas Appeals Court also did not consider adaptive functioning at all. The Texas Appeals court found that Moore was not Intellectually Disabled and reimposed the death penalty. Moore appealed to the U.S. Supreme Court.

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AAPL's amicus brief reviewed the history of the diagnosis of Intellectual Disability both pre and post *Atkins*, how the Court in *Atkins* relied on DSM-IV-TR's now outdated definition of Intellectual Disability, and how subsequent Courts before *Hall* tended to rely on strict IQ cutoffs to define Intellectual Disability. We then reviewed the DSM 5 approach, which expressly states that diagnosis of Intellectual Disability should be based on both clinical assessment and standardized testing of intelligence, as well as evaluation of adaptive functioning. We wrote that the Texas Appellate Court's exclusive reliance on statistically uncorrected IQ tests alone, without also analyzing impair-

ments in adaptive functioning, was not appropriate. We then applied this analysis to several cases, including Moore's.

I have previously written in this column about the APA's and AAPL's amicus brief in *Hall*.⁷ In that brief we updated the Supreme Court on changes in the professional understanding of Intellectually Disability. The majority and minority opinions both quoted extensively from our brief.

AAPL has only signed on to one other amicus brief asking for certiorari in the Supreme Court. The chance that the Supreme Court will accept any case is very low. The Court receives approximately 7,000 to 8,000 petitions for a writ of certiorari each year, and hears only about 80 of those cases.⁸ I hope AAPL's certiorari amicus brief played even a part in the Court's acceptance of this important matter.

AAPL will almost certainly review and participate in the writing of an amicus briefs on the merits in this matter. I will keep you informed of our progress. ☺

References:

1. USSC, Docket number 15-707, <http://www.scotusblog.com/case-files/cases/moore-v-texas/>
2. [http://www.scotusblog.com/wp-content/uploads/2016/04/Bobby James Moore v Texas amicus.pdf](http://www.scotusblog.com/wp-content/uploads/2016/04/Bobby-James-Moore-v-Texas-amicus.pdf)
3. 134 S.Ct. 1986 (2014)
4. 536 U.S. 304 (2002)
5. [http://www.scotusblog.com/wp-content/uploads/2016/04/Moore Petition.pdf](http://www.scotusblog.com/wp-content/uploads/2016/04/Moore-Petition.pdf)
6. 135 S.W.3d 1 (Tex. Crim. App. 2004)
7. AAPL Newsletter, September 2015, Vol. 39, No. 3, page 5
8. <http://www.supremecourt.gov/faq.aspx#faqi9>

MUSE & VIEWS

What's in a Name?

A Florida woman was arrested in May for shooting a missile at an occupied car. A closer look at the police report shows the woman's legal name, Crystal Metheny. When contacted by a reporter regarding the detained woman's unique name, an employee for the Polk County Sheriff's office replied, "Sir, this is Florida. We have a lot of interesting names here."

Source: www.eonline.com

Submitted by William Newman MD