**Case 1. Assessment of Intellectual Disability and**

**Capital Punishment: A Question of Human Rights?**

Dr. Eduardo Romaro, a clinically trained forensic psychologist, was retained by the

prosecution to evaluate the intellectual competence of John Stone, a 50-year-old

man convicted of first-degree murder of a guard during a bank robbery. John had

claimed he was innocent throughout the trial. In the state in which the trial was

conducted, individuals convicted of such an offense face the death penalty. John’s

attorney challenged the death penalty option for his client, claiming that the defendant

is intellectually disabled. The U.S. Supreme Court ruled in *Atkins v. Virginia*

(2002) that the execution of those with intellectual disability (formerly known as

mental retardation) is unconstitutional. Dr. Romaro had worked with the prosecution

before on intellectual disability cases, but this is the first time he had been

retained for a capital punishment case. He is personally ambivalent about whether

states should implement the death penalty.

The psychologist meets John in a private room in the prison and administers a

battery of intellectual and adaptive behavior tests with proven psychometric validity

for determining forensically relevant intellectual ability. Just as he ends the formal test administration, John becomes distraught and appears to be experiencing an anxiety attack. In his distress the psychologist hears the prisoner repeatedly asking God for forgiveness for killing the guard and for murdering another person, who he keeps calling “the boy waiting for the bus.” The psychologist shifts into an emergency crisis intervention mode to help calm the defendant and rings for assistance. Dr. Romaro was shocked to hear John “confess” not only to the bank murder but also to the murder of a “boy waiting for a bus.”

The *Diagnostic and Statistical Manual of Mental Disorders*, fourth edition (*DSM-IV-TR*) diagnosis of intellectual disability (currently termed “mental retardation developmental disability”) requires that individuals demonstrate significantly sub-average intellectual functioning, impairments in adaptive functioning, and *onset before 18 years of age*. Similarly, the state standard for intellectual disability includes a developmental history of intellectual impairment. Prior to testing, Dr. Romaro had asked the prosecutor for all available childhood mental health or school records to determine if John meets these criteria. No formal educational or psychological evaluations were included in the materials he received. The records indicated that John had a poor academic record, was retained in fifth grade, was suspended several times for coming to school drunk, and had left school when he was 15. State criteria also include an IQ score less than 70 and poor adaptive skills.

That evening Dr. Romaro scores the test battery. John’s IQ score is 71, his performance

on other cognitive tests fell close to the intellectual disability cutoff score (some above, some below). His adaptive functioning score is a standard deviation below average. However, given the prisoner’s age, without a more detailed set of childhood records, it is difficult to clearly conclude that he meets the *DSM-IV-TR* or state legal criteria for intellectual disability. Dr. Romaro had not been asked to administer assessments for mood, schizophrenia, or other psychotic disorders that might impair intellectual and adaptive performance.

**Ethical Dilemma**

Dr. Romaro is not sure what forensic opinion to give regarding whether or not John meets the legal criteria for intellectual disability. Without evidence of intellectual

disability in his youth, a diagnosis of intellectual disability may not be possible and, thus, could not be used to support John’s death penalty appeal. He is also unsure whether he has an ethical responsibility to include in his report John’s “confession” or John’s statement about the “boy waiting for a bus.”