

Excerpt of published Appellate Court decision citing expert testimony of Mark Siegert, Ph.D. regarding Mental Retardation and Competency to Proceed

**State of New Jersey v. M.J.K**

SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION  
DOCKET NO. A-2695-02T2  
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Dr. Mark Siegert, who has held a doctorate in clinical psychology since 1984, testified thereafter. His background included five years as a clinical instructor in psychology and psychological testing and assessment at Harvard Medical School, service as the Supervisor of Psychological Testing and Psychotherapy at Columbia University, where he taught graduate students, and experience as the Chief of the Division of Psychology for St. Barnabas Hospital in Livingston, during which time he also served on the staff at Mountainside Hospital. In addition, he spent a year working at a rehabilitation center for multiply-handicapped children, who suffered from mental retardation along with one or more other handicaps.

Siegert interviewed both defendant and his father. He found that on the surface, the depth of defendant's disability was not apparent. Siegert opined that while defendant was oriented to time, place and things and thus met the criteria for proceeding to trial under the first prong of the competency statute, he did not meet the criteria established in the second part of the statute for a finding of competence. According to Siegert, defendant did not have the ability to understand and weigh the decision about whether or not to testify, did not understand the consequences of his answers and had no capacity to understand plea negotiations. Defendant therefore did not have the ability to participate in an adequate presentation of a defense and lacked the ability to understand specific defenses. Although defendant could sometimes identify witnesses who were favorable or unfavorable to him, he could not do so consistently. Moreover, defendant lacked the ability to abstract and generalize. Siegert also found that defendant had a full-scale IQ of 73, a score that indicates that defendant has mild mental retardation in accordance with the DSM-IV, the diagnostic manual used by mental health professionals. Siegert also offered opinions

about Dr. Joseph, the State's expert. He opined that Joseph was not qualified to administer the CAST-MR because the test protocol requires that it be given by those who have specific experience working with people with mental retardation, a qualification Joseph lacked. Moreover, Siegert opined that this shortcoming on Joseph's part had the capacity to affect the administration of the test and thus the validity of the results. As an example, Siegert noted that, based upon the raw data that Joseph supplied, she had used a leading question and guided defendant to an answer, but had then scored the answer as if defendant had spontaneously given it correctly. In addition, he found that Joseph improperly gave defendant more information to help him answer questions, but then gave him full credit as if he had answered correctly without assistance. Further, he found that Joseph also gave defendant full credit for incomplete answers rather than scoring those responses as partially correct answers.

Siegert also testified that after he read Joseph's report and reviewed the test methodology that led to her conclusion that defendant was competent, he contacted Dr. Caroline Everington, one of the originators of the CAST-MR. He asked Everington to evaluate defendant, because he was concerned that Joseph had not done so properly.

[From decision]...while the judge was entitled to rely on one opinion out of the four, his failure to give any reasons for rejecting the opinions of Dr. Siegert and Dr. Dasher was inappropriate. Each of them conducted a careful and thoughtful analysis of defendant's abilities to understand and participate in his defense. Each of them, when compared with Dr. Joseph, was eminently better qualified to evaluate a mentally retarded individual like defendant. Their contrary opinions, if they were to be rejected, were entitled to the judge's careful analysis and consideration and were deserving of an explanation of the judge's reasons for his apparent disagreement with their conclusions.