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Hall v. Florida: The Supreme Court's Guidance in Implementing Atkins

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HALL V. FLORIDA: THE SUPREME COURT'S GUIDANCE IN IMPLEMENTING *ATKINS*

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In *Atkins v. Virginia*,[1] the U.S. Supreme Court concluded that criminal defendants with mental retardation could not be sentenced to death or be executed because such an execution would constitute cruel and unusual punishment and therefore was prohibited by the Eighth Amendment. A dozen years later, in *Hall v. Florida*,[2] the Court has reiterated the constitutional holding of *Atkins* and has given the states guidance on its implementation.[3] The Court held that Florida could not impose an arbitrary IQ score limitation on the right of capital defendants to seek relief under *Atkins*.[4] While the holding in *Hall* was relatively narrow, the Court's decision has reinforced the importance of protecting individuals with this disability from the death penalty, and provided helpful context for lower courts facing the task of implementing *Atkins* in individual cases.

Cases involving *Atkins* claims are at the confluence of doctrinal developments under the Eighth Amendment and professional and clinical understanding about mental disability and its diagnosis. This Article seeks to explore what the *Hall* decision teaches about the current understanding in each of these subjects and steps that can be taken to assure that the rights of defendants who have intellectual disability[5] are fully protected.

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[1] 536 U.S. 304 (2002).

[2] 134 S. Ct. 1986 (2014).

[3] *Id.* at 1999 ("This Court . . . reads *Atkins* to provide substantial guidance on the definition of intellectual disability.").

[4] *Id.* at 2001.

[5] The Court's decision in *Atkins* used the then-accepted clinical term "mental retardation" to describe the group of individuals within the scope of the case's protection. *See Atkins*, 536 U.S. at 320–21. In *Hall*, both the majority opinion and the dissent chose to adopt the term now used by most professionals in the field, "intellectual disability." *Hall*, 134 S. Ct. at 1990 ("This opinion uses the term 'intellectual disability' to describe the identical phenomenon."); *see also id.* at 2002 (Alito, J., dissenting). In the decade between *Atkins* and *Hall*, clinicians moved to the latter terminology with near unanimity. *See* AM. ASS'N ON INTELL. & DEVELOPMENTAL DISABILITIES, INTELLECTUAL DISABILITY: DEFINITION, CLASSIFICATION, AND SYSTEMS OF SUPPORTS 1 (11th ed. 2010) [hereinafter AAIDD, DEFINITION MANUAL]; AM. ASS'N ON INTELL. & DEVELOPMENTAL DISABILITIES, USER'S GUIDE: TO ACCOMPANY THE 11TH EDITION OF

I. THE SUPREME COURT'S DECISION IN *HALL V. FLORIDA*

In *Atkins*, the Court, having ruled that the execution of individuals with mental retardation was unconstitutional, left to the states "the task of developing appropriate ways to enforce the constitutional restriction upon [their] execution of sentences."[6] *Hall* is the first case in which the Court considered a limitation imposed by a state on the ability of capital defendants with intellectual disability to assert a claim to the Eighth Amendment's substantive protection.

The clinical definition of intellectual disability involves three prongs,[7] with the first prong being a significant impairment in intellectual functioning, which is generally measured by IQ tests. Florida's statute, enacted in 2001,[8] defines this prong as "'significantly subaverage general intellectual functioning.'"[9] While the statute makes no reference to any specific IQ score, the Florida Supreme Court interpreted the statutory language to impose a strict cutoff score of 70,[10] and forbade lower courts from interpreting that score in light of the "standard error of measurement" (SEM), which is an attribute of any psychometric instrument.[11] As a result, the defendant in this case

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INTELLECTUAL DISABILITY: DEFINITION, CLASSIFICATION, AND SYSTEMS OF SUPPORTS 72 (11th ed. 2012) [hereinafter AAIDD, USER'S GUIDE] ("The term *intellectual disability* covers the same population of individuals who were diagnosed previously with mental retardation . . . ."); AM. PSYCHIATRIC ASS'N, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS: DSM-5 33 (5th ed. 2013) [hereinafter APA, DSM-5]; Robert L. Schalock et al., *The Renaming of* Mental Retardation: *Understanding the Change to the Term* Intellectual Disability, 45 INTELL. & DEVELOPMENTAL DISABILITIES 116, 116 (2007). The Court's shift in terminology has been welcomed in the disability and clinical communities. *See, e.g.*, Tony Mauro, *It's 'Intellectual Disability' Now*, NAT'L L.J., June 2, 2014, at 20; Tony Mauro, *Supreme Court's Use of 'Intellectual Disability' Wins Praise*, NAT'L L.J. BLOG OF LEGAL TIMES (May 28, 2014), http://www.nationallawjournal.com/legaltimes/id=1202657038598/Supreme-Courts-Use-of-Intellectual-Disability-Wins-Praise. Because the relevant Florida statute and court decisions, as well as the *Atkins* decision itself, use the term "mental retardation," this Article will use the two terms interchangeably.

[6] *Atkins*, 536 U.S. at 317 (alteration in original) (quoting Ford v. Wainwright, 477 U.S. 399, 416–17 (1986)).

[7] For a fuller discussion of the three prongs of the definition of intellectual disability, see *infra* Part II.

[8] Florida's statute was enacted one year before *Atkins* and was one of the eighteen state statutes the Court pointed to in identifying a national consensus against executing individuals with mental retardation. *Atkins*, 536 U.S. at 315 (citing FLA. STAT. § 921.137 (2001)).

[9] Hall v. Florida, 134 S. Ct. 1986, 1994 (2014) (quoting FLA. STAT. § 921.137(1) (2013)).

[10] *See* Cherry v. State, 959 So. 2d 702, 712–13 (Fla. 2007) (per curiam), *abrogated by Hall*, 134 S. Ct. 1986.

[11] For a fuller discussion of SEM, see R. MICHAEL FURR & VERNE R. BACHARACH, PSYCHOMETRICS 118 (2d ed. 2014) (stating that the SEM is "one of the most important concepts in measurement theory"); GARY GROTH-MARNAT, HANDBOOK OF PSYCHOLOGICAL ASSESSMENT 15 (5th ed. 2009) ("The logic behind the SEM is that test scores consist of both truth and error. Thus, there is always noise or error in the system, and the SEM provides a range

had his evidence of intellectual disability rejected in the courts below because his IQ score of 71 was one point over the state's judicially created ceiling.[12] The U.S. Supreme Court found that the state court's rejection of other evidence of a defendant's disability because of an arbitrary rule regarding IQ scores violated *Atkins*.[13]

The Court reached this conclusion for three reasons. The first was that Florida's rule was inconsistent with medical and clinical understanding and practice.[14] The second was that most states had rejected imposing a rule like Florida's.[15] And third, the Court brought its "own judgment"[16] to bear on the scope of the Eighth Amendment's protection, concluding that diagnosing intellectual disability was a matter that included clinical judgment[17] and that capital defendants have a right to present all evidence that would bear on the question of whether they were entitled to constitutional protection.[18]

II. DIAGNOSING INTELLECTUAL DISABILITY: RELEVANT EVIDENCE AND CLINICAL JUDGMENT

The decision in *Hall* is firmly grounded in the accepted clinical definition[19] of intellectual disability that has been employed by professionals in the field for

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to indicate how extensive that error is likely to be. The range depends on the test's reliability so that the higher the reliability, the narrower the range of error."); Edward J. Slawski, *Error of Measurement*, *in* 1 ENCYCLOPEDIA OF HUMAN INTELLIGENCE 395 (Robert J. Sternberg et al. eds., 1994).

[12] *Hall*, 134 S. Ct. at 1994 ("Pursuant to this mandatory cutoff, sentencing courts cannot consider even substantial and weighty evidence of intellectual disability as measured and made manifest by the defendant's failure or inability to adapt to his social and cultural environment, including medical histories, behavioral records, school tests and reports, and testimony regarding past behavior and family circumstances.").

[13] *Id.* at 2001.

[14] *Id.* at 1995.

[15] *Id.* at 1996–98.

[16] "'[T]he Constitution contemplates that in the end our own judgment will be brought to bear on the question of the acceptability of the death penalty under the Eighth Amendment.'" *Id.* at 1999 (alteration in original) (quoting Coker v. Georgia, 433 U.S. 584, 597 (1977)).

[17] *Id.* at 2000 ("'It must be stressed that the diagnosis of [intellectual disability] is intended to reflect a clinical judgment rather than an actuarial determination[.]'" (alteration in original) (quoting AAIDD, DEFINITION MANUAL, *supra* note 5, at 40)).

[18] *Id.* at 2001 ("Freddie Lee Hall may or may not be intellectually disabled, but the law requires that he have the opportunity to present evidence of his intellectual disability, including deficits in adaptive functioning over his lifetime.").

[19] AAIDD, DEFINITION MANUAL, *supra* note 5, at 1 ("Intellectual disability is characterized by significant limitations both in intellectual functioning and in adaptive behavior as expressed in conceptual, social, and practical adaptive skills. This disability originates before age 18."). The American Psychiatric Association's diagnostic manual defines intellectual disability in similar terms. APA, DSM-5, *supra* note 5, at 33 ("Intellectual disability (intellectual developmental disorder) is a disorder with onset during the developmental period that includes both intellectual and adaptive functioning deficits in conceptual, social, and practical domains.").

decades.[20] While the holding was relatively narrow—specifically rejecting Florida's artificial limitation on the IQ scores that are an essential component of just one prong of that professional definition—the Court's opinion also provides some clarity on the role of various categories of evidence in *Atkins* cases.[21]

A. Intellectual Impairment

The first prong of the definition, and the one addressed by the Court in *Hall*, involves the individual's measured intelligence.[22] AAIDD's definition describes this requirement as "significant" limitation in "intellectual functioning."[23] "Significant" has always been understood as a term of art and is used to describe measured intelligence that is approximately two standard deviations below the mean.[24] As a practical matter, this means that to satisfy the first prong of the definition an individual will have measured intelligence in roughly the bottom 2 or 2.5% of the general population.[25]

The precise issue in *Hall* was whether Florida (and, at most, a handful of other states) could impose an arbitrary IQ score ceiling that, by definition, excludes a number of individuals whose intellectual impairment satisfies the clinical definition of intellectual disability.[26] But beyond the relatively technical psychometric question, the *Hall* opinion places IQ scores in their proper context in the process of determining which defendants will be exempt from execution and which will not.[27]

Although the Court supported its conclusion with references to the clinical literature about IQ testing,[28] the grounding of its constitutional holding is substantially broader. As the majority observed, "Intellectual disability is a condition, not a

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[20] *Hall*, 134 S. Ct. at 1993 ("Society relies upon medical and professional expertise to define and explain how to diagnose the mental condition at issue. And the definition of intellectual disability by skilled professionals has implications far beyond the confines of the death penalty: for it is relevant to education, access to social programs, and medical treatment plans.").

[21] *Id.* at 1990–91, 1994 (listing "medical histories, behavioral records, school tests and reports, and testimony regarding past behavior and family circumstances" as "probative of intellectual disability").

[22] *See id.* at 1994.

[23] AAIDD, DEFINITION MANUAL, *supra* note 5, at 1.

[24] *Id.* at 31 ("The 'significant limitations in intellectual functioning' criterion for a diagnosis of intellectual disability is an IQ score that is approximately two standard deviations below the mean, considering the standard error of measurement for the specific instruments used and the instruments' strengths and limitations.").

[25] *See* Marc J. Tassé et al., *The Construct of Adaptive Behavior: Its Conceptualization, Measurement, and Use in the Field of Intellectual Disability*, 117 AM. J. ON INTELL. & DEVELOPMENTAL DISABILITIES 291, 298 (2012).

[26] *See Hall*, 134 S. Ct. at 1994.

[27] *See id.* at 2001.

[28] *Id.* at 2000 ("By failing to take into account the SEM and setting a strict cutoff at 70, Florida goes against the unanimous professional consensus. Neither Florida nor its *amici* point to a single medical professional who supports this cutoff." (citation and internal quotation marks omitted)).

number."[29] The legislatures of the states that had banned the death penalty for individuals with intellectual disability prior to *Atkins* did not do so because they were focused on a particular IQ score. Nor was the Court in *Atkins* motivated by academic fascination with the psychometrics.

Hall makes clear that the fundamental reason for the constitutional ban on executing individuals with intellectual disability springs from the nature of the disability itself.[30] *Atkins* had identified two parallel sets of reasons, beyond the consensus evidenced by legislative enactments, that persons with mental retardation should not be executed. The first was that a defendant's intellectual disability means that his or her execution would serve none of the purposes for which the death penalty has been adopted, such as deterrence[31] or retribution.[32] The second group of reasons involved the Court's concern that a defendant's disability could increase the likelihood of a miscarriage of justice: "These persons face 'a special risk of wrongful execution' because they are more likely to give false confessions, are often poor witnesses, and are less able to give meaningful assistance to their counsel."[33]

The fact that the reasons at the foundation of *Atkins*'s constitutional protection of defendants with intellectual disability relate to functional limitations rather than merely to IQ scores raises the question of the appropriate role of those scores in adjudicating capital cases under *Atkins* and *Hall*. The answer is that measurably impaired intellectual functioning remains an essential component in the process of determining whether a defendant has intellectual disability,[34] but it cannot be the end of the inquiry.

A defendant claiming protection under *Atkins* must demonstrate a substantial impairment in cognitive ability, and that demonstration typically involves evaluating the results of an IQ test or tests.[35] The standard threshold for diagnosing intellectual disability is that the measured impairment must be at least two standard deviations below the mean.[36] But neither courts nor legislatures are free to impose rigid rules,[37] nor can they use IQ scores as an excuse to exclude relevant evidence of an individual's

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[29] *Id.* at 2001.

[30] *Id.* at 1993–94.

[31] Such defendants have a "diminished ability" to "process information, to learn from experience, to engage in logical reasoning, or to control impulses . . . [which] make[s] it less likely that they can process the information of the possibility of execution as a penalty and, as a result, control their conduct based upon that information." *Id.* at 1993 (alteration in original) (quoting Atkins v. Virginia, 536 U.S. 304, 320 (2002)) (internal quotation marks omitted).

[32] "The diminished capacity of the intellectually disabled lessens moral culpability and hence the retributive value of the punishment." *Id.* (citing *Atkins*, 536 U.S. at 319).

[33] *Id.* (quoting *Atkins*, 536 U.S. at 320–21).

[34] *See id.* at 1994, 2001.

[35] *See id.* at 1994.

[36] *Id.*

[37] *Id.* at 1990 ("[Florida's] rigid rule . . . creates an unacceptable risk that persons with intellectual disability will be executed, and thus is unconstitutional.").

actual impairment.[38] As the Court noted, "[A]n individual's intellectual functioning cannot be reduced to a single numerical score."[39]

B. Adaptive Limitations

Although the Florida rule overturned by the Supreme Court involved IQ test scores, the *Hall* opinion emphasizes the central importance of the *second* prong of the definition, deficits in adaptive functioning.[40] When testimony on intellectual disability has produced evidence of cognitive limitations within the diagnostic range of intellectual disability, "the defendant must be able to present additional evidence of intellectual disability, including testimony regarding adaptive deficits."[41] This requirement is fully consistent with the Court's focus on an individual's functional impairment. It is the things a person cannot do, or cannot do adequately, that reduce individual culpability and make execution unacceptable.[42]

In assessing adaptive functioning, clinicians focus on a variety of deficits.[43] AAIDD's classification manual emphasizes the actual impact of intellectual limitations on the individual's life[44]: "Adaptive behavior is the collection of conceptual, social, and practical skills that have been learned and are performed by people in their everyday lives."[45] Among the tools available to clinicians in diagnosing adaptive deficits are standardized psychometric instruments known as adaptive behavior scales.[46] Unlike IQ tests, these instruments are not administered to the person who is being evaluated, but rather focus on other sources of information, including information provided by teachers, family members, and others familiar with the individual's everyday functioning.[47] Along with school and social service records and similar evidence, these may permit an evaluator to determine whether the reduced cognitive

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[38] *Id.* at 1995 ("[Florida's rule] takes an IQ score as final and conclusive evidence of a defendant's intellectual capacity, when experts in the field would consider other evidence.").

[39] *Id.*

[40] *See id.* at 1994 ("The first and second criteria—deficits in intellectual functioning and deficits in adaptive functioning—are central here.").

[41] *Id.* at 2001.

[42] *Id.* at 1994; *see supra* note 12 and accompanying text.

[43] *See, e.g.*, APA, DSM-5, *supra* note 5, at 33.

[44] AAIDD, DEFINITION MANUAL, *supra* note 5, at 11.

[45] *Id.* at 43. The APA's approach is similar. *See* APA, DSM-5, *supra* note 5, at 33 ("Deficits in adaptive functioning that result in failure to meet developmental and sociocultural standards for personal independence and social responsibility. Without ongoing support, the adaptive deficits limit functioning in one or more activities of daily life, such as communication, social participation, and independent living, across multiple environments, such as home, school, work, and community.").

[46] *See* ADAPTIVE BEHAVIOR AND ITS MEASUREMENT: IMPLICATIONS FOR THE FIELD OF MENTAL RETARDATION (Robert L. Schalock ed., 1999).

[47] *See generally* Tassé et al., *supra* note 25; *see also id.* at 297.

functioning measured by IQ tests constitutes a real-world disability in the individual's life. Since adaptive behavior inquiries in the context of a capital trial are, of necessity, retrospective in nature,[48] a thorough individual, educational, and family history becomes essential.[49]

A feature of adaptive behavior assessment that causes some confusion is that the focus is exclusively on deficits and not on strengths.[50] At first blush, the exclusive focus on deficiencies may seem counterintuitive; but clinicians have long recognized that for almost all individuals with intellectual disability, functional weaknesses coexist with strengths,[51] and there is no "list" of things that no individual with intellectual disability can do.[52] With the increased focus on adaptive deficits after *Hall*, there is a substantial risk that triers of fact may fall into the trap of relying on unfounded and inaccurate stereotypes about what people with intellectual disability can and cannot do.[53] Courts will need to be particularly careful not to rely, either directly or indirectly, on such stereotypes.

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[48] For a discussion of the particular challenges of retrospective diagnosis, see AAIDD, DEFINITION MANUAL, *supra* note 5, at 95–96; ROBERT L. SCHALOCK & RUTH LUCKASSON, CLINICAL JUDGMENT 33–39 (2d ed. 2014).

[49] An example of the kind of evidence that can be evaluated under the second prong of the definition can be found in the *Hall* case itself. *See* Hall v. Florida, 134 S. Ct. 1986, 1990–91 (2014).

[50] *See, e.g.*, AAIDD, DEFINITION MANUAL, *supra* note 5, at 1 ("Intellectual disability is characterized by significant *limitations* both in intellectual functioning and in adaptive behavior . . . ." (emphasis added)); APA, DSM-5, *supra* note 5, at 33 ("*Deficits* in adaptive functioning that result in failure to meet developmental and socio-cultural standards for personal independence and social responsibility." (emphasis added)).

[51] AAIDD, DEFINITION MANUAL, *supra* note 5, at 45 (explaining that "adaptive skill limitations often coexist with strengths"); AAIDD, USER'S GUIDE, *supra* note 5, at 1 ("Within an individual, limitations often coexist with strengths.").

[52] *See* AAIDD, DEFINITION MANUAL, *supra* note 5, at 47 ("[I]n the process of diagnosing [intellectual disability], significant limitations in conceptual, social, or practical adaptive skills is not outweighed by the potential strengths in some adaptive skills."); Caroline Everington & J. Gregory Olley, *Implications of* Atkins v. Virginia*: Issues in Defining and Diagnosing Mental Retardation*, 8 J. FORENSIC PSYCHOL. PRAC. 1, 8 (2008) ("The argument is often made that if a person has certain practical skill strengths, the person cannot have mental retardation, when, in fact, all of the major professional definitions of mental retardation allow for intraindividual difference in adaptive behavior.").

[53] AAIDD, USER'S GUIDE, *supra* note 5, at 26 ("These incorrect stereotypes are unsupported by both professionals in the field and published literature."); Marc J. Tassé, *Adaptive Behavior Assessment and the Diagnosis of Mental Retardation in Capital Cases*, 16 APPLIED NEUROPSYCHOLOGY 114, 121 (2009) ("[L]aypersons may erroneously interpret these pockets of strengths and skills as inconsistent with mental retardation because of their misconceptions regarding what someone with mental retardation can or cannot do."); SCHALOCK & LUCKASSON, *supra* note 48, at 38 ("Regardless of their origin, a number of incorrect stereotypes can interfere with how a clinician interprets information in making a retrospective diagnosis.").

C. Age of Onset

The third prong of the definition of intellectual disability is the requirement that the condition have manifested during the developmental period.[54] As a practical matter, this will exclude from the diagnosis only those individuals whose impairment (which satisfies the other two prongs) occurs only in adulthood, as in cases of traumatic brain injury.

The individual facts in the record provide abundant evidence of early indications of Mr. Hall's disability,[55] but not every case will produce that much evidence from childhood. Diagnostic standards do not require actual IQ testing administered during the developmental period.[56] Recollections and contemporaneous indications from teachers, family members, and others of any delays in an individual's development may prove to be important in such a retrospective diagnosis.[57]

III. THE FUTURE OF *ATKINS* CASES AFTER *HALL*

Although the holding in *Hall* directly affects a relatively small number of capital defendants in a handful of states,[58] the Court's approach suggests some approaches and directions in other cases as well.

One clear message is that the states are not free to define intellectual disability in any way they choose, but must act consistently with the consensus of professionals in the field.[59] As the Court noted, "*Atkins* did not give the States unfettered discretion to define the full scope of the constitutional protection."[60] This reminder of the seriousness of the constitutional issue should prove instructive if there are circumstances in which it is proposed that a state should narrow, in some way, the scope of protection afforded to defendants with intellectual disability. In particular, the Court's emphasis

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[54] AAIDD, DEFINITION MANUAL, *supra* note 5, at 1 ("This disability originates before age 18."); APA, DSM-5, *supra* note 5, at 37 ("Onset is during the developmental period . . . .").

[55] *See* Hall v. Florida, 134 S. Ct. 1986, 1991 (2014).

[56] AAIDD, DEFINITION MANUAL, *supra* note 5, at 27 ("Thus, disability does not necessarily have to have been formally identified, but it must have originated during the developmental period.").

[57] Tassé et al., *supra* note 25, at 296 ("For such a [retrospective] diagnosis, the clinician must use multiple sources of information, including any data that can be obtained (e.g., school records, work records) to develop as complete a picture of the person's history of adaptive competencies to determine manifestations of possible ID prior to age 18.").

[58] *See Hall*, 134 S. Ct. at 2001 ("Florida is one of just a few States to have this rigid rule.").

[59] *Id.* at 1993 ("In determining who qualifies as intellectually disabled, it is proper to consult the medical community's opinions.").

[60] *Id.* at 1998; *see also id.* at 1999 ("If the States were to have complete autonomy to define intellectual disability as they wished, the Court's decision in *Atkins* could become a nullity, and the Eighth Amendment's protection of human dignity would not become a reality. This Court thus reads *Atkins* to provide substantial guidance on the definition of intellectual disability.").

on scientific and clinical understanding of intellectual disability calls into question the approach by a few courts that rest heavily on stereotypes about people with intellectual disability rather than on the scientific knowledge and experience accumulated by professionals in the field.[61]

Similarly, the central reason for the Court's rejection of Florida's inflexible approach to IQ scores may have broader implications as well. As the Court concluded, "This rigid rule, the Court now holds, *creates an unacceptable risk* that persons with intellectual disability will be executed, and thus is unconstitutional."[62] This focus on the quantification of risk raises serious questions about one state's unique imposition of the burden on the defendant to prove his intellectual disability beyond a reasonable doubt.[63]

CONCLUSION

The decision in *Hall* rejects the notion that states have broad latitude to ignore the scientific understanding of intellectual disability.[64] But in a broader sense, the Court's decision may prove to be most memorable for its reminder that a primary function of the Eighth Amendment's prohibition on cruel and unusual punishment is the "protection of human dignity."[65] The Supreme Court's emphatic commitment to vigorous protection of individuals from excessive punishment may prove to be one of the lasting legacies of this Term.

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[61] *See, e.g.*, John H. Blume et al., *Of* Atkins *and Men: Deviations from Clinical Definitions of Mental Retardation in Death Penalty Cases*, 18 CORNELL J.L. & PUB. POL'Y 689, 710–14 (2009) (criticizing *Ex parte* Briseno, 135 S.W.3d 1 (Tex. Crim. App. 2004)); *see also* Gilbert S. Macvaugh III & Mark D. Cunningham, Atkins v. Virginia*: Implications and Recommendations for Forensic Practice*, 37 J. PSYCHIATRY & L. 131, 135–37 (2009).

[62] *Hall*, 134 S. Ct. at 1990 (emphasis added).

[63] *See* GA. CODE ANN. § 17-7-131(c)(2)–(3) (2014); Head v. Hill, 587 S.E.2d 613, 622 (Ga. 2003) (finding constitutional Georgia's statute assigning the defendant the burden of proving his intellectual disability beyond a reasonable doubt).

[64] *See Hall*, 134 S. Ct. at 1993, 1999.

[65] *Id.* at 1999.