Hall v. Florida: Capital Punishment, IQ, and Persons With Intellectual Disabilities

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The United States Supreme Court has ruled on the question of persons with intellectual disability and capital punishment in several notable cases, including *Penry v. Lynaugh* (1989) and *Atkins v. Virginia* (2002). In 2014, the U.S. Supreme Court revisited the subject in *Hall v. Florida*. Although Florida Statute § 921.137 prohibits imposing a sentence of death on a defendant convicted of a capital felony if it is determined that the defendant is intellectually disabled, the Florida Supreme Court strictly interpreted the law so that, because Mr. Hall's IQ was not below the cutoff of 70, further evidence could not be presented to show that he had an intellectual disability. In *Hall v. Florida*, the Court analyzed the relevance of the standard error of measurement of IQ testing, whether there is a consensus among the states regarding capital punishment, and whether there is a consensus among professional associations regarding these questions. The Court also adopted the term "intellectual disability" as opposed to "mental retardation," following changes in both the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, and the U.S. Code and Code of Federal Regulations. We examine the Court's decision and offer commentary regarding the overall effect of this landmark case.

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In 1989, the Supreme Court of the United States ruled five to four in *Penry v. Lynaugh*[1] that executing persons with intellectual disabilities is not categorically prohibited under the Eighth Amendment. This was the first time the Court had ruled on this question. The Court noted, "While a national consensus against execution of the mentally retarded may someday emerge reflecting the 'evolving standards of decency that mark the progress of a maturing society,' there is insufficient evidence of such a consensus today" (Ref. 1, p 340). At the time of the Court's ruling, only one state, Georgia, banned the execution of persons with intellectual disabilities. In this article, we will use the current term intellectual disability and will use the term mental retardation only when discussing the evolution of the terminology or directly quoting source references.

In 2002, the United States Supreme Court held in *Atkins v. Virginia*[2] that execution of a criminal with an intellectual disability is a "cruel and unusual" punishment prohibited by the Eight Amendment. The six-to-three decision reflected the "the evolving standards of decency" (Ref. 2, p 321). Influencing the opinion was not the number of states that prohibited death as punishment for criminals with intellectual disabilities, but "the consistency of the direction of the change" (Ref. 2, p 315). Notably, in the 12 years since *Penry*, 18 states have passed legislation limiting the death eligibility of defendants with intellectual disabilities.

The Court identified two reasons that persons with intellectual disabilities should be "categorically excluded" (Ref. 2, p 318) from execution. The first was whether the justifications for the death penalty, as identified in *Gregg v. Georgia* (1976),[3] were actually applicable to persons with intellectual disabilities. In *Gregg*, the Court identified the two social purposes to be served by execution as "retribution and deterrence" (Ref. 3, p 183). Retribution depends on the culpability of the offender; the lesser culpability of the defendant with intellectual disabilities does not justify the imposition of the death penalty. In the same fashion, the impaired behavioral and cognitive functioning of defendants with intellectual disabili-

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ties limits the deterrent effect of the death sentence on their actions. The second justification for a categorical rule against the execution of those with intellectual disability was that they face a "special risk for wrongful execution" (Ref. 2, p 320), because they are more likely to give false confessions and to serve as poor witnesses and are less likely to provide meaningful assistance to counsel.

Atkins gave general guidance to the states. At the time, the generally accepted finding of intellectual disability required proof of three things: subaverage intellectual functioning, lack of fundamental social and practical skills (i.e., deficits in adaptive functioning), and the presence of both before age 18 (i.e., deficits during the developmental period). IQ scores under approximately 70 typically indicated disability. In *Atkins*, Justice John Paul Stevens wrote that the states cannot execute a person with an intellectual disability, but allowed the states to define who is intellectually disabled. Prior research offers further analysis of the *Atkins* decision (e.g., Ref. 4).

These cases review parameters of IQ testing. The mean IQ score is 100. The standard deviation (i.e., how scores are distributed in a population) of an IQ test is approximately 15 points; two standard deviations is approximately 30 points. The standard error of measurement (SEM) is a marker of the reliability of a test, reflecting the test's inherent imprecision. SEM means that test scores must be understood as a range rather than as discrete values. One SEM equates to 68 percent confidence; 2 SEMs equate to 95 percent confidence. Therefore, an IQ score of 71 reflects a range of scores from 66 to 76 with 95 percent confidence and a range of 68.5 to 73.5 with 68 percent confidence.[5]

Hall v. Florida

In 2014, the U.S. Supreme Court in *Hall v. Florida*[5] considered state laws defining intellectual disability for the first time since *Atkins.* A reader of the lay press after *Hall* would have believed that many defendants with intellectual disabilities were being executed with complete disregard to the *Atkins* holding of the United States Supreme Court (e.g., Ref. 6). A defendant convicted of a capital crime could seemingly be sentenced to death based simply on an IQ score with an "arbitrary cutoff of 70."[6] In fact, the Florida statute states that "A sentence of death may not be imposed upon a defendant convicted of a capital felony if it is determined . . . that the defendant is intellectually disabled."[7] Contrary to critics of Florida's practices, the statute actually prohibits the trial court from sentencing to death a defendant with intellectual disability who is convicted of a capital felony. The Florida statute defines intellectual disability as "significantly subaverage [i.e., two or more standard deviations from the mean score] general intellectual function existing concurrently with deficits in adaptive behavior and manifested during the period from conception to age 18."[7]

So, where did Florida go wrong? The conflict seems inherent: a state can be in compliance with *Atkins* and at the same time continue with the execution of persons with intellectual disabilities. Of note, Florida statute § 921.137 (passed before *Atkins*) was favorably cited by the *Atkins* Court. It was the Florida Supreme Court's narrow interpretation of the statute (i.e., requiring a strict IQ score cutoff) that was in error. The problem was that, until the decision in *Hall,* Florida did not define the criteria for persons with intellectual disabilities in a way that comported with professional guidelines and national consensus. In fact, the U.S. Supreme Court determined that "Florida's law contravenes our Nation's commitment to dignity and its duty to teach human decency as the mark of a civilized world" (Ref. 5, p 2001).

Case Summary

In Florida in 1978, Freddie Lee Hall and an accomplice kidnapped, beat, raped, and murdered Karol Hurst, who was 7 months pregnant. Then, as they had planned, Mr. Hall and his accomplice robbed a convenience store and, in the process, killed a sheriff's deputy who was attempting to apprehend them. Mr. Hall was convicted of capital murder in 1978 and sentenced to death. His sentence for the second murder was later reduced.

During the sentencing, the court questioned whether Mr. Hall's behavior and abilities were consistent with those of a person who had an intellectual disability: "Nothing of which the experts testified could explain how a psychotic, mentally-retarded, brain-damaged, learning-disabled, speech-impaired person could formulate a plan whereby a car was stolen and a convenience store was robbed" (Ref. 8, p 713). Mr. Hall's siblings testified, however, that he was "significantly retarded . . . slow with speed and . . . slow to learn." The defense showed that he had developmental delays and was severely physically

abused as a child. They acknowledged that Mr. Hall had kidnapped the victim and driven her 18 miles away into the woods. The court ruled that he had showed "more deliberation and planning than [that] which might be attributed to a typical retarded defendant" (Ref. 8, p 713). The trial court found a discrepancy between his background and behavior (both during the trial and at the time of the criminal act) which was inconsistent with the defense experts' testimony. Subsequently, the court was left to believe that the evidence of the experts was exaggerated.

In 1988, Mr. Hall petitioned the Florida Supreme Court for *habeas corpus* relief on the basis of the U.S. Supreme Court's ruling in *Hitchcock v. Dugger* (1987),[9] which held that capital defendants must be permitted to present all mitigating factors, not just statutory mitigating evidence, which should be considered by the judge and jury in death penalty proceedings. Mr. Hall was granted relief, and at a resentencing hearing, he presented evidence of intellectual disability, including school records, attorney records and briefs, medical and clinical opinions, and siblings' testimony. The Florida Supreme Court vacated his original sentence, determining that a nonharmless *Hitchcock* error had occurred. The case was remanded for new sentencing, at which point, Mr. Hall was again sentenced to death in 1991, although "the trial court found Hall mentally retarded as a mitigating factor and gave it 'unquantifiable' weight" (Ref. 8, p 706).

In the midst of Mr. Hall's legal proceedings were two important developments relevant to his arguments: in 2001, the Florida legislature enacted the statute (921.137, described earlier) prohibiting death sentences for individuals with intellectual disabilities. In 2002, the U.S. Supreme Court ruled in *Atkins* that the Eighth Amendment prohibits the execution of people with intellectual disability. Mr. Hall filed a successful *habeas* petition in the Florida Supreme Court soon after the apparent abolishment of the death penalty for persons with intellectual disabilities.

In 2009, an evidentiary hearing was held, at which point testimony was presented from multiple expert witnesses and family members. Mr. Hall had taken many IQ tests over the years. Of the nine IQ evaluations with scores ranging from 60 to 80, the sentencing court excluded the two scores below 70 for evidentiary reasons. Only the scores between 71 and 80 were left. Mr. Hall had repeatedly been diagnosed with intellectual disabilities in the past: he had scored 73 and 80 on the Wechsler Adult Intelligence Scale-Revised (WAIS-R) and 71 on the WAIS-III (third edition). The trial court held, however, that he had not established the first element of a mental disability claim: Florida law requires that a defendant show an IQ score of 70 or below before being allowed to present additional evidence of intellectual disability.

The Florida Supreme Court affirmed, interpreting the statute to mean that a score above 70 on the WAIS-III precludes a showing of intellectual disability. They rejected Mr. Hall's argument that the standard error of measurement should be considered and that his IQ scores should be read as a range of scores from 67 to 75. The court also rejected the argument that a bright-line cutoff score above 70 was contrary to *Atkins*. The Supreme Court of Florida affirmed the order denying postconviction relief from a sentence of death.

The Florida Supreme Court's conclusion was consistent with their rulings in prior cases (Ref. 8, p 11) that a defendant must establish all three elements of such a claim of intellectual disability; the failure to establish any one element will end the inquiry. In other words, if the defendant does not meet the first prong of the Florida statute (i.e., the requisite IQ score), then the court will not consider the other two prongs of the intellectual disability determination (i.e., adaptive functioning and age of onset). The court reasoned that the U.S. Supreme Court left the determination of who should be classified with an intellectual disability to each state. The court claimed that the Florida statute was consistent with the diagnostic criteria of the American Psychiatric Association (APA) for intellectual disability. Two justices dissented.

In 2013, Hall appealed to the U.S. Supreme Court. The Court granted *certiorari* and focused on narrowing the definition of intellectual disability.

The question before the Court was to determine whether the Florida statute was constitutional as interpreted by Florida's court in requiring an IQ test score of 70 or less for the court to consider any evidence bearing on the question of intellectual disability. In a five-to-four decision, the Supreme Court ruled in May 2014 that Florida's statute was unconstitutional, and the case was remanded to the Supreme Court of Florida.[10]

At this point, it must be noted that the decision in *Hall* uses the term "intellectual disability" as opposed to mental retardation. This distinction reflected several notable changes. First, in 2013, the APA published the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5).[11] Included in this edition was a new definition for intellectual disability, termed intellectual developmental disorder. The elimination of the multiaxial diagnostic system removed intellectual disorders from Axis II, which should assist in lessening the stigma associated with having intellectual disability.[12] Second, in 2010, Congress enacted Rosa's Law,[13] which replaced the term mental retardation with intellectual disability throughout the U.S. Code and Code of Federal Regulations.

In their ruling, the United States Supreme Court considered an *amici curiae* brief submitted by the American Psychiatric Association, American Psychological Association, American Academy of Psychiatry and the Law, Florida Psychological Association, National Association of Social Workers, and the National Association of Social Workers Florida Chapter in Support of Petitioner.[14] The Supreme Court's reasoning in *Hall* included an interpretation of how Florida determined whether someone had an intellectual disability. Instead of considering the three prongs of *Atkins* simultaneously, the Florida courts use the first prong (IQ) as a barrier to the other two. So if a defendant's IQ were above 70, he would be barred from presenting other evidence to support his intellectual disability. Florida's position appeared to contravene the position of the American Psychological Association, which stated that there is "unanimous professional consensus that the diagnosis of intellectual disability requires comprehensive assessment and the application of clinical judgment" (Ref. 14, p 8), and that "the use of a fixed IQ score cutoff to assess intellectual functioning violates the professional consensus and clinical norms of mental health professionals" (Ref. 14, p 17).

Writing for the dissent, Justice Alito argued against reliance on the evolving standards of the professional associations. He contended that basing Eighth Amendment law on the changing views of, for example, the American Psychiatric Association "will lead to instability and continue to fuel protracted litigation" (Ref. 5, p 2006). Furthermore, problems might arise when professional associations disagree.

Discussion

Hall v. Florida revisits the discussion of the purposes of punishment in the criminal justice system. The rationale for punishment has been justified by rehabilitation, deterrence, and retribution. As a society, we must consider whether these justifications remain relevant and valid, and in what cases they might not apply. Arguments against the death penalty are plentiful, including that its application is "racially disparate, geographically arbitrary, and based upon the economic status of capital defendants" (Ref. 15). The U.S. Supreme Court decisions involving the Eighth Amendment and persons with intellectual disabilities illustrate that an argument of deterrence is not relevant in these cases.

The decision in *Hall* has interesting implications. Although it is relatively rare[15] for a convicted defendant sentenced to death to raise intellectual disability as a bar to execution, the Supreme Court decision will open the door for these evaluations. The decision effectively affords greater protection from capital punishment for defendants with intellectual disabilities. Because DSM-5 emphasizes clinical assessment and adaptive functioning, there will be an opportunity for a "lively debate"[11] among forensic mental health experts when discussing intellectual disability, especially when the disorder is argued as a bar to capital sentencing.

Although IQ score is an objective measure (standard errors aside), the interpretation of adaptive functioning can be a relatively subjective assessment, albeit quantifiable, perhaps, by measures such as the Vineland Adaptive Behavioral Scale. The decision in *Hall* gives convicted defendants a new opportunity to present evidence regarding any intellectual limitations, and attorneys will have the opportunity to present opposing opinions. Mental health experts will be called to opine on both the interpretation of IQ testing and the presence, or lack thereof, of adaptive functioning. Following the U.S. Supreme Court's decision, the defendant's IQ will no longer be considered first without simultaneously considering adaptive functioning. Experts can still rely on IQ scores but must take into account the inherent imprecision of these scores and reconcile them with the totality of the facts of the case, collateral information, and personal evaluation of the defendant. These efforts will assist in conducting a comprehensive assessment, rather than simply using the technical approach of an IQ test.

The question of adaptive functioning in intellectual disability also warrants examination from a neuropsychological perspective. Critical review of competing definitions and identifiable causes of syndromes and of similarities and differences between clinical presentations (e.g., cognitive deficits and neuroanatomical abnormalities) has direct relevance to the evaluation of a defendant's cognitive capacities, state of mind, and related behaviors. The adoption of "intellectual disability" (ID) in favor of "mental retardation" in the new edition of the DSM was meant to modify the diagnostic criteria with these factors in mind, and not simply to diminish the stigma associated with this term. This change, according to Wahlberg[16] and consistent with professional practice standards, recognizes that, "The IQ is no longer preeminent for defining ID or its severity, relying instead on broader clinical criteria and neuropsychological evaluation. More relevance is given to the evaluation of the individual's performance in daily life" (Ref. 16, p 33).

Disproportionate reliance on IQ cutoffs not only fails to capture an individual's adaptive functioning and various sources of test error, but also ignores the necessity of comprehensive neuropsychological testing in assessing a defendant's potential for rehabilitation (which, as stated, is one of the principal rationales for punishment). In addition, rather than view diagnosis of a patient with intellectual disabilities as simply a matter of clinical interpretation and judgment, neuropsychologists use a host of standardized and validated measures to assess an individual's social and emotional maturity, life skills, and abilities relative to his peers. Strict application of IQ cutoff scores fails to recognize the diagnostic realities (and practice standards) in the assessment of intellectual disability in both medical and legal contexts.

Although the decision in *Hall* appears to settle the question of capital punishment and the intellectually disabled, controversy seemingly remains for mental health experts. Many continue to debate the role of forensic psychiatrists in such cases. Although the American Medical Association Council on Ethical and Judicial Affairs specifies that physicians should not participate in legally authorized executions,[17] testimony in capital cases does not constitute such participation. Without fear of ethics violations, physicians will have the opportunity to evaluate defendants in capital cases who argue intellectual disability.

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