pability. Deterrence is premised on the ability of offenders to control their behavior, yet "the same cognitive and behavioral impairments that make these defendants less morally culpable . . . also make 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 on that information." [157]

As to the the procedural requirements for such cases, the Court in *Atkins* wrote that, "[a]s was our approach in *Ford v. Wainwright* with regard to insanity, 'we leave to the State[s] the task of developing appropriate ways to enforce the constitutional restriction upon [their] execution of sentences.'" [158] Thus, in *Schriro v. Smith*, the Court held that the Ninth Circuit "erred in commanding the Arizona courts to conduct a jury trial to resolve Smith's mental retardation claim." [159] States, the Court added, are entitled to "adopt[ ] their own measures for adjudicating claims of mental retardation," though "those measures might, in their application, be subject to constitutional challenge." [160]

In *Hall v. Florida*,[161] however, the Court limited the states' ability to define mental retardation (or, to use the more modern term, "intellectual disability") by invalidating Florida's "bright line" cutoff based on IQ test scores. The Florida state courts had ruled that anyone with an IQ above 70 was prohibited from offering additional evidence of mental disability, and was thus subject to capital punishment. The Court invalidated this rigid standard, observing that "[i]ntellectual disability is a condition, not a number." [162] The majority noted that, although IQ scores are helpful in determining mental capabilities, they are imprecise in nature and may only be used as a factor of analysis in death penalty cases.[163] This reason-

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[157] 536 U.S. at 320. The Court also noted that reduced capacity both increases the risk of false confessions and reduces a defendant's ability to assist counsel in making a persuasive showing of mitigation.

[158] 536 U.S. at 317 (citation omitted), quoting Ford v. Wainwright, 477 U.S. 399, 416–17 (1986).

[159] 546 U.S. 6, 7 (2005) (per curiam).

[160] 546 U.S. at 7.

[161] 572 U.S. ___, No. 12–10882, slip op. (2014).

[162] 572 U.S. ___, slip op at 21.

[163] Id. Of those states that allow for the death penalty, a number of them do not have a strict cut-offs for IQ scores. *See, e.g.* Cal. Penal Code Ann. §1376; La. Code Crim. Proc. Ann., Art. 905.5.1; Nev. Rev. Stat. §174.098.7 (2013); Utah Code Ann §77–15a–102. Similarly, the U.S. Code does not set a strict IQ cutoff. See 18 U.S.C. §3596(c).