

DENIS WILLIAM KEYES, PH.D.

Four Harrill Court
Charleston, South Carolina 29412

Laurence E. Komp, Esq.
Attorney at Law
P.O. Box 1785
Manchester, MO 63011

re: Robert Keith Woodall, Case no. 5:06-cv-216-R

Dear Mr. Komp:

My name is Denis W. Keyes, Ph.D., and I am an Associate Professor of Special Education at the College of Charleston in Charleston, South Carolina. I hold a Bachelor of Science degree in Special Education from Ohio University, with an emphasis in mental retardation; a Master of Education degree in Special Education from Miami University of Ohio; a Master of Science degree in School Psychology from Miami University (Ohio); an Educational Specialist degree in School Psychology from Miami University (Ohio); and a Doctor of Philosophy degree in Special Education from the University of New Mexico. I have been actively involved in the field of mental retardation since 1974, and am a Fellow of the American Association on Mental Retardation since 1997. Since 1988, I have been a consulting expert in cases of inmates on Death Row who are suspected of having mental retardation. As part of my research agenda, I have authored and co-authored numerous articles and made several presentations on this topic. In June 2002, the United States Supreme Court cited my work in the majority opinion in *Atkins v. Virginia* (536 U.S. 304). A copy of my current curriculum vitae is attached to this statement.

I am not a strong proponent of capital punishment, nor am I completely against its use in certain circumstances. I do believe that certain people, by nature of their heinous acts, have forfeited their right to breathe. However, I am vehemently opposed to the execution of people with mental retardation because of their inherent diminished understanding of and culpability for their crimes.

In the field of mental retardation there has, over time, existed various labels for the condition, including Mild Mental Retardation, Educable Mentally Handicapped (EMH), or Intellectually Developmentally Disabled (IDD). Any legitimate diagnosis of any of these labels at any time during the life of a defendant should, if not immediately preclude the imposition of the maximum penalty, at least necessitate a correctly administered and in-depth evaluation by a qualified professional in the assessment of individuals with mental retardation.

Since beginning my research agenda in 1991, and even more since *Atkins* was decided, I have reviewed relevant materials developed for numerous suspected cases of mental

retardation on America's Death Rows, including information on both the intellectual and adaptive skill status of inmates. However, in over half of the cases referred to me for evaluation for a possible mental retardation diagnosis, data I reviewed made it impossible to even consider making such a diagnosis and I have subsequently withdrawn my name from these cases. Additionally, on several more cases I refused to diagnose because of obvious malingering.

I should like to preface my concerns by noting that the diagnosis of mental retardation requires a very specific set of data, and that the data must conform to the requirements of the tests' manuals. This is necessary for several reasons, not the least of which is to ensure the replicability of the initial data for accuracy in diagnosis. The test manual of the Peabody Individual Achievement Test - Revised (PIAT-R) states very clearly that all data the examinee produces must be present on the protocol in such a way as to ensure accuracy in scoring after the fact. The examiner is obligated to write any verbal responses, and to describe - in detail - any behaviors the examinee displays that may be scored positively or negatively.

In May, 2007, an attorney for Robert Keith Woodall (Case no. 5:06-cv-216-R) contacted me and requested that I review several documents, including a competency report, testimony transcript, school records and protocols of various evaluations Mr. Woodall has experienced since 1991. Given the totality of the data I reviewed, I am seriously concerned about the accuracy and validity of the tests administered and, subsequently, the various resulting scores and conclusions.

The protocols (a term used for completed test record forms that have been used in an evaluation) that I reviewed from the evaluation from 1991 are, in toto, substandard and flawed as they are missing crucial parts of the evaluation. For instance, none of the protocols I reviewed included any of the fundamental data points mentioned above (actual responses, verbal and physical, or notes about behaviors, strategies and questions of the examinee) that are, quite simply, required to accurate diagnosis. Given the instructions in the test manuals, none of these tests can be considered valid because they do not include any of the data needed. The only terms that can be applied to such poor test administration are careless and sloppy, neither of which should ever be applied to any psychological evaluation, much rather one for the possible imposition of the death penalty. Although this was an academic evaluation, I am very concerned that subsequent testing may have been flawed as well.

None of the tests administered in the evaluation I reviewed can be accurately replicated and, lacking these vital data points, one must conclude that the earlier evaluation is invalid due to critical errors and omissions on the part of the examiner(s) in the testing process. Additionally, the protocol for the most important test administered, the Wechsler Adult Intelligence Scale - Third Edition - hereafter WAIS-III), was not included in the evidence turned over to counsel for the defense, and subsequently not supplied to me for my investigation. Given the critical errors in test administration noted above, I am extremely concerned about the accuracy and validity of the IQ.

The IQ reported by Dr. Johnson in his testimony was noted as being between 74 and 78. This is the range that used to be referred to as "borderline intellectual functioning". Since the test administered was new at the time of the testing, and since I have not had an opportunity to review any of the 1997 evaluation results, or any subsequent testing as well, the mid-seventies range of IQ must be considered within the Standard Error of measure (SEM), plus/minus 5 points. This means that the IQ can, in fact, be as low as 69, or as high as 83. Subsequent testing in other areas, including academic subjects and adaptive skills, should have been performed since the IQ was, technically, still within the range of possible mental retardation (70 to 75). This is especially true for adaptive behavior testing, since the IQ is close to the low average range, adaptive skills may be the key to understanding his overall functioning and skills.

It is hard for most people to understand, but well-respected clinicians who lack significant experience with the background, skills, behaviors, development and/or education of people who have mental retardation will sometimes assume that such examinees are more capable than they really are, particularly during testing situations. This may be because of the behavior, appearance, demeanor and/or criminal history of the defendant. However, this assumption can be deceiving because people with mental retardation often go to great lengths to appear 'normal' and thus prevent others from identifying them as mentally retarded. The most common method employed to do this is by smiling, nodding, acting in complete agreement, appearing as though they understand everything they hear or see. This phenomenon is called the "Cloak of Competence," so coined in a 1967 book by Professor Robert Edgerton (*The Cloak of Competence: Stigma in the Lives of the Mentally Retarded*. University of California Press). Additionally, the majority of the public at large typically equate the term "mental retardation" with more visible forms of the condition, such as Down syndrome, Fragile X syndrome and Prader-Willi syndrome. Each of these conditions result in physical and behavioral features that make it easy to see there is a disability present. However, such genetic causes make up only a small fraction of the population of people with mental retardation.

In December, 2006, I co-authored (with Dr. James R. Patton, a nationally known expert in the field of mental retardation) an article that was published in a journal entitled *Exceptionalities* (volume 14, pages 237 - 255), entitled "Death Penalty Issues Following Atkins." It was intended to assist both counsel and court(s) in correctly understanding the problems of mental retardation diagnosis in adulthood and the importance of experience with the condition. A copy of this article is also included at the end of this statement.

Conducting a full and in-depth adaptive evaluation on Mr. Woodall is also required, and should include personal interviews with the defendant, his family, friends, teachers, employers, probation and/or parole officers, current and former spouses - and sometimes even children - in order to gain vital information from those who knew Mr. Woodall prior to his incarceration(s) and during his youth. Gathering such information is absolutely crucial to making an accurate diagnosis of mental status under standards established by both the American Association on Mental Retardation (AAMR, 2002) and the American Psychiatric Association (Diagnostic and Statistical Manual-Fourth Edition, APA, 2000).

Necessary adaptive behavior information from other respondents should be collected in individual interviews with knowledgeable witnesses who should be made available to all experts through the discovery process. The fact that the only adaptive testing done in Robert Keith Woodall's case was done using a classroom edition of the old Vineland suggests that the previous evaluations have not been adequate.

Finally, it should not be forgotten that, during the time Mr. Woodall was in school, Kentucky's educational system was so inequitable as to necessitate a complete demolition and total overhaul in June, 1990. Part of the Kentucky Education Reform Act (KERA) included difficulties noted in obtaining special education services for children. Given this fact, and the pathetic evaluation from 1991, I strongly urge the Court to cautiously consider the need for Mr. Woodall to be evaluated by a qualified expert in the testing of individuals with disabilities.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'D. W. Keyes', with a stylized flourish at the end.

DENIS W. KEYES, Ph.D.
Associate Professor of Special Education
Nationally Certified School Psychologist
Fellow of the American Asso. on Intellectual Developmental Disabilities
(formerly the American Asso. on Mental Retardation)