

## TEXAS DEFENDER SERVICE

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### **Forensic Psychologist Banned from Making Mental Retardation Evaluations in TX Death Penalty Cases**

#### **Attorneys to Urge Courts to Review Cases Where Questionable Methods were Used to Assess Death Row Prisoners who have Intellectual Disabilities**

(Austin, Texas, April 15, 2011) George C. Denkowski, a psychologist who used his own criteria to find many men eligible for the death penalty, was banned today from practicing forensic psychology in Texas. Denkowski's methodology, which often used unaccepted diagnostic techniques of inflating IQ and adaptive behavior scores for reasons of lifestyle and culture during the evaluations of death row prisoners, had come under scrutiny by his peers. The Texas State Board of Examiners of Psychologists began investigating Denkowski's methods after a complaint was filed by at least one of his colleagues alleging he misused psychological testing and inflated IQ scores.

Denkowski served as an expert witness for the prosecution in at least 25 capital and noncapital cases in Texas and around the country, and he provided testimony (especially in Harris County) of at least fourteen inmates currently on death row, including two who have exhausted all appeals, and four other inmates who have already been executed. In some cases, Denkowski served as a witness for the defense.

"Once again another junk science scandal has rocked Texas' death row," said Kathryn Kase, an attorney with Texas Defender Service who represents Daniel Plata. "The courts must review the cases of these men who were evaluated using highly questionable methods before any executions take place. Otherwise, we will not only be violating the Constitution, but our most basic moral standards."

In 2005, Denkowski found that Kase's client Plata did not have mental retardation, despite three IQ tests showing an IQ below 70. Denkowski added points to Plata's adaptive behavior test results because Plata was from an "impoverished background." The state courts disagreed with Denkowski's opinion and sharply rebuked him for his improper methods.

In 2002, in *Atkins v. Virginia*, the U.S. Supreme Court banned the death penalty for people with mental retardation. Expert forensic psychologists are used to determine if a defendant has mental retardation and if he is eligible for the death penalty. Many of the men whose scores Denkowski raised were African American, Hispanic, or non-English speaking.

Denkowski's methodology had come under scrutiny by his peers before. His diagnostic techniques were cited in the 2010 edition of the American Association on Intellectual and Developmental Disabilities' manual, which "**strongly caution[s] against practices such as those recommended by Denkowski.**"

In addition to Plata, other cases where Denkowski's determinations of mental retardation were central include:

- **John Matamoros** -- Matamoros was diagnosed at 14 with mental retardation, but was denied relief under *Atkins* based on Denkowski's personal scoring system, which included increasing Matamoros' self-care rating on the basis that he filed his fingernails by biting them. He has an appeal pending before the Fifth Circuit challenging Denkowski's diagnostic techniques.
- **Virgilio Maldonado** – Denkowski made more than 60 upwards adjustments on Maldonado's adaptive behavior scores and a Spanish-language interpreter suggested answers to him during the tests. These actions should have invalidated the test scores, but state and federal courts have upheld Maldonado's death sentence.
- **Steven Butler** – IQ tests conducted in 2003 by a defense expert and in 2006 by Denkowski show that Butler had mental retardation, but Denkowski rejected the full-scale IQ score on the test he administered and inflated Butler's score by selecting the score Butler received on only three of the test's eleven subtests, despite not being able to point to any scientific basis for such an interpretation. He also inflated Butler's adaptive scores on the basis of "non-intellectual factors," such as claiming that Butler's limited academic achievement was the result of lifestyle choices not inadequate learning ability. Butler has an *Atkins* appeal on hold in federal court pending final resolution of the complaint against Denkowski.
- **Calvin Hunter** – School records and previous IQ testing showed that Hunter had mental retardation. Denkowski did not administer an IQ test, but testified that Hunter did not have mental retardation. Hunter has an appeal pending to remand his case to a trial court based in part on Denkowski's flawed evaluation.
- **Michael Richard** – Denkowski initially found that Richard – who required help of his sisters to dress himself until age 14 and cut his meat with a spoon because he could not use a knife – had mental retardation, but reversed himself after the District Attorney's Office intervened. Denkowski calculated Richard's adaptive behavior score by relying on normative scales for men twenty years younger than Richard and by making assertions based on objects found in Richard's cell. Richard was executed in 2007 following a controversial decision to close the courthouse doors to his appeal.

Several *Atkins* appeals in Texas have been on hold pending the outcome of Denkowski's hearing. However, without legislative action, many of these individuals could be procedurally barred from pursuing appeals based on Denkowski's junk science.

"We must make sure that every case where Mr. Denkowski served as an expert is reviewed by the courts. We cannot simply shrug our shoulders and sit by and watch while the state uses legal technicalities to execute these intellectually disabled men, especially on the word of someone who is no longer permitted to make these kinds of determinations," said Texas State Senator Rodney Ellis.