Donald G. Hoppe, Psy.D. & Associates
CLINICAL PSYCHOLOGY

INTELLECTUAL EVALUATION

NAME: Kevan Brumfield

DATE OF BIRTH: 1/7/1973

DATE OF EXAMINATION: 3/13/1009

AGE: 36 years, 2 months

INSTRUMENT ADMINISTERED: Wechsler Adult Intelligence Scale--Fourth Edition

EXAMINER: Donald G. Hoppe, Psy.D.

Verbal Comprehension	*Raw Score*	*Scaled Score*	*Percentile Rank*	*95% Confidence Interval*
Similarities	13	4		
Vocabulary	21	6		
Information	5	5		
VCI	15	**72**	3	67 - 79

Perceptual Reasoning	*Raw Score*	*Scaled Score*	*Percentile Rank*	*95% Confidence Interval*
Block Design	24	6		
Matrix Reasoning	16	9		
Figure Weights	8	6		
PRI	21	**82**	12	77 - 89

Working Memory	*Raw Score*	*Scaled Score*	*Percentile Rank*	*95% Confidence Interval*
Digit Span	20	6		
Arithmetic	12	8		
WMI	14	**83**	13	77 - 91

Processing Speed	*Raw Score*	*Scaled Score*	*Percentile Rank*	*95% Confidence Interval*
Symbol Search	8	2		
Coding	24	2		
PSI	4	**56**	0.2	52 - 69
FSIQ	54	**70**	2	67 - 75
GAI	36	**75**	5	71 - 81

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ROBERT V. BLANCHE, M.D.
4040 NORTH BLVD., SUITE A
BATON ROUGE, LA., 70806

July 24, 2007

Ms. Prem Burns
Assistant District Attorney
Parish of East Baton Rouge
State of Louisiana

Dear Ms. Burns,

You have asked me to render an opinion upon the question of whether or not Mr. Kevan Brumfield meets established clinical criteria for Mental Retardation, or more specifically, has an IQ of 70 or less, and evidence of substantial deficits in adaptive functioning, a component of this diagnosis. Kevan Brumfield is on "Death Row" at Angola Penitentiary, convicted of the first-degree murder of Cpl. Betty Smothers. He has been sentenced to death; however, due to the Supreme Court Ruling (Atkins ruling), persons with an IQ of 70 or less, shall be spared the penalty of death.

There does not seem to be any debate about several diagnoses of Mr. Brumfield amongst the professionals who have examined him over the years of his life. There is general agreement that he meets diagnostic criteria for Conduct Disorder, undersocialized/aggressive type (before the age of 18), Attention Deficit Hyperactivity Disorder, and Antisocial Personality Disorder (after the age of 18). There DSM-IV-TR criteria for these diagnoses are described below, or in attachment, taken directly from the DSM-IV-TR.

I understand clearly that the outcome of the hearing will result in a life or death decision for Mr. Brumfield by Judge Brady, who will preside over this matter. In this regard, my analysis certainly considers the gravity of the determination. I have spent at least 30 hours of active research in this analysis, painstakingly combing through the voluminous records that you provided, and countless more hours contemplating the data and issues. My personal feelings about the death penalty acknowledged and put aside, I have put focused my best efforts in formulating my scientifically based opinion of the data that is available. As you know, I also interviewed Mr. Brumfield on Death Row at Angola State Penitentiary. His attorney videotaped that interview.

I reviewed the following documents that your office provided: 1.) 1/19/1995 Psychological examination by Brian T. Jordan, PhD. 2.) 5/31/1995 neuropsychological examination by John Bolter, PhD. 3.) Social history (6/29/1995) prepared by Cecil Guin, Ph.D., BCSW.; 4.) Pages 14-32 of petitioner's

current pleadings in federal court, which reference the testing of Dr. Ricardo Weinstein, Dr. James Merikangas, Dr. Victoria Swanson. 5.) Dr. Wienstein's evaluation, the psychological report has Victoria Swanson, and the neuropsychiatric evaluation of Dr. Merikangas. 6.) Pages 6-15 of Warrick Dunn's autobiography, Running For My Life; 7.) Transcripts of the penalty phases, opening and closing arguments, at both the guilt and penalty phases of his trial. 8.) Extensive medical records from various facilities, including Earl K. Long, East Baton Rouge Parish Prison, Greenwell Springs Hospital and others. 9.) Various records from Margaret Dumas Mental Health Clinic and records from East Baton Rouge Parish Pupil Appraisal services. 10.) Records from Baton Rouge Military Institute (BRMI),11/14/88-1/2/89; and other records from residential facilities; 11.) Records from Reynold's Institute (5/22/87-11/5/1987); 12.) Two video taped statements on DVD made by Kevan Brumfield following his arrest on 1/12/1993. 13.) Transcripts of testimony at trial of Dr. Bolter, Kevan's Mother, and Dr. Guin; 14.) Various testing forms measuring Adaptive functioning (Vineland and ABAS).

From the DSM-IV-TR (pages 41-42): The essential feature of Mental Retardation is significantly sub-average general intellectual functioning (Criterion A) that is accompanied by significant limitations of adaptive functioning in at least two areas of the following skill areas: communication, self-care, home living, social-interpersonal skills, use of community resources, self direction, functional academic skills, work, leisure, health, and safety (Criterion B). The onset must occur before the age of 18 years (Criterion C).

General intellectual functioning is defined by the intelligence quotient (IQ or IQ equivalent) obtained by assessment with one or more of the standardized individually administered intelligence tests (e.g. Wechsler intelligence Scales for Children, 3rd edition, Stanford Binet, 4th edition, Kaufmann Assessment Battery for Children). Significantly sub-average intellectual functioning is defined as an IQ of about 70 or below (approximately 2 standard deviations below the mean). It should be noted that there is a measurement error of approximately 5 points in assessing IQ, although this may vary from instrument to instrument (e.g. the Wechsler IQ of 70 is considered to represent a range of 65-75). Thus, it is possible to diagnose Mental Retardation in individuals with IQ's between 70 and 75 who exhibit significant deficits in adaptive functioning. Conversely, mental retardation would not be diagnosed in an individual with an IQ of less than 70 if there were no significant deficits or impairments in adaptive functioning. The choice of testing instruments should take into account factors that my limit test performance (e.g. the individual's socio-cultural background, native language, and associated communicate, motor, and sensory handicaps). When there is significant scatter in the subtest scores, the profile of strengths and weaknesses, rather than the mathematically derived full-scale IQ will more accurately reflect the person's learning abilities. When there is a marked discrepancy across verbal and performance scores, averaging to obtain a full-scale IQ score can be misleading.

Impairments in adaptive functioning, rather than a low IQ, are usually the presenting symptoms in individuals with mental retardation. Adaptive functioning refers to how effectively individuals cope with the common life demands and how

well they meet the standards of personal independence expected of someone in their particular age group, socio-cultural background, and community setting. Adaptive functioning may be influenced by various factors, including education, motivation, personality characteristics, social and vocational opportunities, and the mental disorders and general medical conditions that may coexist with Mental Retardation. Problems in adaptation are likely to improve with remedial efforts than is the cognitive IQ, which tends to remain a more stable attribute.

It is useful to gather evidence for deficits in adaptive functioning from one or more reliable independent sources (e.g. teacher evaluation and educational, developmental, and medical history). Several scales have been designed to measure adaptive functioning or behavior (e.g. the Vineland Adaptive Behavior Scale and the American Association on Mental Retardation Adaptive Behavior Scale. These scales generally provide a clinical cut off score that is a composite of performance in a number of adaptive skill domains. It should be noted that score for certain individual domains vary considerably in reliability. As in the assessment of intellectual functioning, consideration should be given to the suitability of the instrument to the person's socio-cultural background, education, associated handicaps, motivation, and cooperation. For instance, the presence of significant handicaps invalidates many adaptive scale norms. In addition, behaviors that would normally be considered maladaptive (e.g. dependency, passivity) may be evidence of good adaptation in the context of a particular individual's life (e.g. in some institutional settings).

From the DSM-IV-TR (pp 93-94): Conduct Disorder: The essential feature of Conduct Disorder is a repetitive pattern of behavior in which the basic rights of others or major age-appropriate norms or rules are violated. These behaviors fall into four main groupings: aggressive conduct that causes or threatens physical harm to other people or animals; non-aggressive conduct that causes property loss or damage; deceitfulness or theft; and serious violations of rules....". Children or adolescents with this disorder often initiate aggressive behavior and react aggressively to others. They may display bullying, threatening, or intimidating behavior; initiate frequent physical fights, use a weapon; be physically cruel to people or animals; steal while confronting a victim (e.g. armed robbery). Physical violence may take the form of rape, assault, or in rare cases, homicide.

There may also be serious violations of rules (e.g. school, parental) by individuals with this disorder. Children with this disorder often have a pattern, beginning before the age of 13 years, of staying out late at night despite parental prohibitions. There may be a pattern of running away from home overnight. To be considered a symptom of Conduct Disorder, the running away must have occurred at least twice. Runaway episodes that occur as a direct consequence of sexual or physical abuse do not typically qualify for this criterion. Children with this disorder may often be truant from school, beginning prior to the age of 13. In older individuals, this behavior is manifested by often being absent from work without good reason.

Conduct disorder may be associated with a lower-than-average intelligence, particularly with regard to verbal IQ. Academic achievement in reading and other

verbal skills is often below the level expected on the basis of age and intelligence and may justify the additional diagnosis of a Learning or Communication disorder. Attention Deficit Hyperactivity Disorder is common in children with Conduct Disorder.

For a review of the diagnostic criteria for other diagnoses (not in dispute) of Kevan Brumfield, please refer to the attachments on Antisocial Personality Disorder and Attention Deficit Hyperactivity Disorder (from the DSM-IV-TR).

Adaptive function, as measured in the Vineland Scale of Adaptive Functioning, there are 4 dimensions or domains of adaptive functioning which should be appraised: Communication, Daily Living Skills, Socialization, and Motor skills.

From a review of the available records from teachers, psychologists, psychiatrists, and other clinicians in various settings, it is my opinion that there is an abundance of evidence of behavioral/anecdotal reports which indicate that Kevin's adaptive functioning is, in fact, in the *normal range*, given his age group, socio-cultural background, and community setting.

ANALYSIS AND DISCUSSION OF THE DATA

Kevan Brumfield was such a behavioral problem once he started grade school, that he continuously had the attention of his teachers and the East Baton Rouge Pupil Appraisal services that were available. Numerous teachers, therapists, psychologists, and psychiatrists evaluated him, through out his life, pre and post convictions of the many crimes he committed, and before and after the age of 18. Literally every psychologist who has examined Kevin, except Dr. Weinstein, has found consistently that his IQ is in the borderline range of general intelligence (in the range above 70, certainly not below 70).

He was diagnosed with CONDUCT DISORDER, UNDERSOCIALIZED, AGGRESSIVE, in 1985 and 1986 (Dorothy Gammel, PhD, Margaret Dumas Mental Health Clinic). He was diagnosed by Dr. Brian Jordan in January, 1995, with Antisocial Personality Disorder (with poor impulse control), though he most likely also suffered from a "neurologically based hyperactive disorder during child hood which merged with antisocial personality traits" later in life. Dr. John Bolter, a clinical neuro-psychologist, evaluated him also in 1995 and he diagnosed Attention Deficit Hyperactivity Disorder and learning disability; however, IQ testing revealed a score of 75 (WAIS), which is on the "low end of intelligence", according to Dr. Bolter (3906, p 146, testimony by Dr. Bolter). Dr. Brian T. Jordan, found him to be functioning at the lower end of the Low Average Range (page 4, Jordan psychological examination, 1/19/1995).

In an integrated evaluation/report (9/1983) by the East Baton Rouge Parish School Pupil Appraisal Services (Reakey D'Antoni, Ed.S. and Nancy Hillman, PhD, school psychologist), the examiners report that the "results of educational assessment of

Kevan's current test performance indicate a below-grade-level-performance, however, no significant strengths or weaknesses. Psychological assessment, based on formal and informal measures indicated that Kevan was functioning cognitively in the low average ranges. Kevan very well may be functioning well within the average or higher range because he put forth inconsistent and often minimal effort during testing. His strengths, as suggested from testing are his fund of general information, his mathematical skill, his short-term memory, and his social judgement. Weaknesses suggested from his test results are in vocabulary size, facility in classifying verbal concepts and non-verbal abstract concept – formation. Distractibility did not appear to be either from testing or classroom observations to be a significant problem for Kevan. When he chose to be on task and concentrate, he displayed adequate attention span for his age. (00 027). These examiners, also in this report, state, "although sociocultural factors may have affected his cognitive and social development, these factors do not appear to be the primary cause of Kevan's academic or behavior problems". (00 026).

As noted above, the determination of adaptive functioning must consider the individual's socio-cultural background and community setting. The following is a description of Kevin's background and community, ascertained from the records, and from my knowledge of Baton Rouge, as a life long resident. Kevin was born in the community of North Baton Rouge. This community is one characterized by poverty, unemployment, gangs, racial tension, epidemic substance abuse, black on black violence, and other forms of crime. In this community, his mother and multiple "step" fathers reared him in a one or two bedroom apartment along with his younger sister and older brother. His home life growing up has been described as an impoverished, dysfunctional, and abusive family environment, with at least six male figures who moved in and out of the house over a course of 15 years, which is unfortunately typical of many families in this community. A mother who clearly lacked the necessary skills for appropriate parenting reared him. In Kevan's world, dishonesty and deception were rewarded. Individual rights and property were not respected. Manipulative and antisocial behavioral traits led more often to economic and material successes (if not to injury, death, or incarceration), than honest hard work. Violence was the rule and the model that he learned. He grew up in a microcausm of an impoverished and lawless community and family. Economic hardships in this socio-cultural background encourage a variety of illegal activities. Indeed, Kevan boasted to Dr. Bolter (page 5, Bolter evaluation, 5/31/1995) that he quit a job because his earnings were better through distributing drugs and selling firearms. It is clear, over and over again through out his life, that Kevan did *what ever he wanted to do,* without regard for any rules or the rights of others. He learned to take care of his self, one way or the other, as he had an inadequate mother, and multiple abusive and likely antisocial "father figures" growing up. He may well have suffered extreme physical abuse at the hands of these men. It is thus not surprising that he developed antagonism to any authority figures. He had multiple school placements, due to clearly documented behavioral problems, which ultimately limited his academic achievements. Dr's Weinstein, Swansen, and Merikangas argue that these influences are social risk factors for the development of mental

retardation; however, they neglect to point out that the social-cultural influences described above, also serve as an incubator for the development of an individual who becomes a dangerous criminal, or one who meets criteria for the antisocial personality disorder.

There is not one assessment that diagnosed mental retardation or an IQ below 70 prior to the age of 18, despite repeated efforts in testing him. All of the intellectual assessments done prior to the age of 18, indicate that Kevan's IQ consistently fell in the 70-85 range (low normal to normal range). The intellectual assessments that were performed on Kevan were done prospectively, with the goal of determining the best and most appropriate placement available to him at the time is his community. One must also consider that Kevan's effort in these testing situations, an important variable in performance on these tests, was *probably* poor (given his profile of conduct problems and hyperactivity), yet he still managed to achieve scores in the low normal range. In my extensive experience working in this community with troubled children and adolescents in the 90's and in liason with East Baton Rouge Parish Pupil Appraisal Program (as Medical Director of HCA Parkland Hospital's Adolescent Program 1989-1995), as well as Medical Director of the Children's Rehabilitation Program at Assumption General Hospital, working along side the excellent clinical psychologist Dorothy Gammel, if there was one thing that EBRP Pupil Appraisal Program did well, it was to identify the children who were mentally retarded. Incidentally, Dorothy Gammel, PhD, examined Kevan when he was a patient at Margaret Dumas Mental Health Clinic, 1/7/1986 (see item # 454, Discharge Summary). She diagnosed Conduct Disorder, undersocialized aggressive type, Code 312.00, made no mention of mental retardation, an Axis II diagnosis]

The documented unbiased evidence in his various records before the age of 18 will show that Kevan actually attained what can only be construed to be *normal functional adaptive skills* in the domains of conceptual, social, and practical skills, *given* his socio-cultural background and community for a young man in his age group.

In the two short paragraphs summarizing his appraisal of adaptive functioning (p. 14-15) Dr. Weinstein states that compared to his siblings and cohorts, he was always delayed. He states, "he was unable to understand simple instructions even during his teen and adult years". Dr. Weinstein states, "he was unable to perform simple tasks requiring visuo-spatial coordination, including lacing his shoes". I would dispute this anecdote (which he has no evidence for) by another (which is substantiated): Kevin Brumfield had no difficulty loading a clip, manipulating an automatic weapon, and firing with deadly accuracy into the body of Cpl. Smothers. Dr. Weinstein appears to neglect the abundance of evidence in the records of the following anecdotes about how he functioned in his life.

The following are observations and/or anecdotal instances from his records which reflect *normal* adaptive functioning (given his educational, familial, and socio-cultural background):

In the adaptive functioning domain of communication (or AAMR domain: Conceptual skills: receptive and expressive language, reading and writing, money concepts, self directions): 1.) From a review of medical records at the East Baton Rouge Parish Prison, Kevin communicated quite well in his request for medical attention. He employs cursive script in writing his requests. It is clear that Kevin reads well enough to sign consents and fill out very specific requests for medical assistance. Also, from Dr. Bolter's report, Kevin was able to give concise historical information about his past. His use of vocabulary appropriately conveys specific meaning (see examples of requests for medical attention). In my interview of Kevin, he comprehended and responded to my questions in an appropriate manner. He listened to my questions cooperatively and seemed to clearly comprehend what I was asking him to respond to or discuss. Kevin is able to initiate appropriate social conversation. For example, at the end of my interview, he spontaneously engaged me in a friendly discussion about shoes.

2.) From the book Running For My Life, by Warwick Dunn, the accounts of the interaction suggest that Kevin grasps spiritual or other abstract concepts beyond just a literal or concrete interpretation. It is remarkable also that he remembered the stats of Mr. Dunn, and had followed the exploits of all of his brothers and sisters. It is striking that Kevin could advise Mr. Dunn "to get married, to have kids, and to find happiness". These anecdotes (pages 6-16) indicate ability to grasp concepts that are abstract (e.g. "street justice") and imply very good receptive and expressive language and good social and interpersonal skills.

3.) He communicates with his attorney, and is able to follow understand simple instructions. For example, on the day when I first visited him on Death Row, he refused to be interviewed by me. He informed that he had spoken to his attorney on the phone that instructed him not to consent to the interview. This is in stark contrast to Dr. Weinstein's conclusion that "he was unable to understand simple instruction during his teen and adult years" (page 14).

4.) According to multiple references in the records, Kevin was skillful at lying and manipulating others, in his efforts to get his own way, or to avoid responsibility and/or punishment of inappropriate and/or unlawful behavior. There does not appear to be self esteem issues. In records, Kevin boasted of his abilities and that he thought well of his self.

5.) In 1991, Kevin attended Camelot Career College. Afterwards, he was able to get several short-lived jobs at restaurants, including Ralph and Kacoo's restaurant. He did not sustain his employment very long; however, the significance of this relative to adaptive functioning is that he was able to apply for a job and convince the employer to give him an opportunity for the job. He told Dr. Bolter that he quit the job because his earnings were better through distributing drugs and selling firearms. In terms of adaptive functioning, his "occupational skills" involved selling drugs on the street, implying that he could manage money, use the telephone, and

use transportation (he could certainly drive a car). Dr. Weinstein's statement (p 14) that "he never learned to perform tasks or activities that would lead to gainful employment" is simply not true. We can only speculate about the sums of money that crossed his hands in his illegal occupation. Kevin admitted to me that he sold cocaine on the streets. He stated that usually he would have not more than 2 or 3 hundred dollars on him at a time! Kevin did not need a bank account or a checking account! Drug dealing on the streets requires at a minimum the communication skills necessary to negotiate and transact such "business", including an ability to quickly count, change, and collect money, in a "pressured" situation. Relative to adaptive functioning, this activity supports at least normal adaptive functioning in the domains of communication, social skills, managing money, and occupational skills. Of note, is a reference in one of his encounters in the emergency room at EKL (nurses notes), where he was being treated for multiple gunshot wounds, he still had the presence of mind to secure his money, and he allowed for his bundle of bills ($ 1022.00) to be secured by an officer. Again, this anecdote suggests his attention to safety and security (of his belongings).

6.) Relative to daily living skills domain of adaptive functioning, his attention to hygiene appears to be good. There do not appear to be any deficits in his ability to dress his self appropriately, much less tie his own shoes. There is evidence that Kevin takes pride in at least some aspects of his appearance. For example, a common adornment of fashion of persons in his socio-cultural background is the gold capping of his front teeth, which indicates self-direction and attention to appearance.

7.) Kevin has fathered 5 illegitimate children. This clearly indicates social adeptness, in that he had no problem seducing and impregnating his sexual partners (social skills domain of adaptive function). However, relative to "health and safety" (an adaptive functioning domain), during my interview of him, I asked him basic questions about feeding an infant as well as identifying distress of a baby. For example, he knew that a baby's bottle has to be warmed up, "but not too hot". He knew when and how to burp a baby after feeding. He knew to check a baby's diaper and the reason for changing the diaper, for example, a chance of infection could occur. Also, Kevin was very concerned about his health, as evidenced by his polite and fairly articulate communication of various problems in the medical department at the East Baton Rouge Parish Prison.

8.) In terms of evidence of adeptness in functional academic skills, fine motor skills, self-direction, community use (various domains of adaptive functioning), the following ability illustrates a synthesis of those domains. Kevan was able to drive a vehicle and knew how to provide basic service for an automobile. In my interview of him, I questioned him about driving a vehicle and also about basic servicing of a vehicle. He could describe how to tell when a vehicle needed gas and oil, including the fact that there were differences in the types of fuels (leaded or unleaded). He was able to drive on the interstate. He could tell me basic rules of driving a vehicle, for example, that there are signs to indicate a speed limit (though he stated he did not obey these, as "I would go as fast as I want to go"). He could tell me what the

colors of a traffic light indicate. He knew that running a red light was something that the police would stop you for. He knew that a red light coming on the dashboard might indicate that the vehicle was low on oil, or that looking at the "stick" on the engine could check this. However, Kevan did not go to driving school nor did he need to obtain a drivers license, though this did not stop him from driving, as he did not respect laws or rules or authority. Kevan drove the cars that were available to him, when he wanted to, where ever he wanted to. His knowledge of streets in his community and how to get from one area of town to another is illustrated in the videotapes of his confession.

9.) Kevin was concerned about providing for his girlfriends and children. It appears he was concerned with and that he tried to be responsible in providing financial assistance.

10.) Socialization domain of adaptive function: Kevin's difficulty in controlling his behavior was evident as soon as he started school. He was hyperactive and impulsive and was defiant to the rules of the teacher and classroom. However, when Kevin was "one-to-one" with his teachers, or when properly motivated, he was able to work productively and cooperatively. However, he was also described as one who would take up for or defend other children who were being picked on by others. Though Kevin was often aggressive toward others, but there are numerous instances and references to situations where Kevin could control his emotions and behavior *when he wanted to.* However, there is no evidence that Kevan depended on no one but his self. He stole what he needed or wanted. He consistently lied, cheated, bullied, and manipulated others through out his life. In the absurd sense of adaptive functioning, his adeptness is adpative functioning is illustrated time and time again through out his adult years by his ability to lie, manipulate, and avoid responsibility.

11.) Kevin could cooperatively play various sports, including football, baseball, and basketball. In my interview of Kevan, he was able to tell me the basic rules and objectives of these sports, including how one scores. From his time spent at Christian Acres (12/3/87-8/24/1988), the counselor identified Kevan as having leadership skills, and he enjoyed playing various sports, including football, baseball, basketball, ping pong, and pool.

Lastly, it is the crime itself, which synthesizes nearly all of the components of adaptive functioning, though in an absurd and grotesque sense. Kevin had leadership skills, evident in that he could direct others in the planning of illegal activities. The codefendents testified that Kevin planned and directed the assault and robbery. In the videotapes of his interrogation, one can see his composure, as he at first attempted minimize his involvement in the crime, basically attempting to implicate the two other accomplices as the shooters. He communicated (lied) clearly to the detective that he was only the driver of the car of his accomplices who were going on "a hustle". He later confessed to being one of the shooters, and this was convincingly proven during the trial. It was also evident that Kevan planned this

crime in advance, and that he chose his victim, a female police officer, presumably because she was a woman, and less likely to be a threat.

I am prepared to further expound upon my findings at the hearing.

Sincerely,

Robert V. Blanche, M.D.