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February 8, 2006

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PSYCHOLOGICAL EVALUATION

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

JEFFREY DEMOND WILLIAMS, Petitioner (Examinee)

Vs.

NO. H-04-2945
Capital Murder

DOUGLAS DREKE, Respondent

Dear Ms. Schmucker:

Per your request and Court Order I examined the above named Inmate in the Texas Department of Criminal Justice (TDCJ) on January 11, 2006. My opinions are based upon on that interview and related testing to be identified below as well as review of records provided by your office as follows:

- West Oaks Hospital Discharge Summer 4/12/92 through 5/15/92*
- HISD Dept. of Exceptional Educ. Behavioral Staffing Request Form*
- Affidavit of Dr. Richard Garnett, Ph.D.
- Affidavit of Wanda Williams, Δ 's Father
- Affidavit of Breda B. Tedra, Δ 's Sister
- Affidavit of Reginald Tolbert, Δ 's Childhood Church Friend
- Affidavit of Ronnie Johnson, Jr., Δ 's H.S. Classmate
- Affidavit of William Moore, Δ 's H.S. Classmate
- Affidavit of Wayne Wade, Δ 's Neighbor and Playmate*
- Affidavit of Hazel Garcia, Δ 's Friend*

- Affidavit of Dr. Walter Quijano
- Affidavit of Jerry L. Brittain, Ph.D.
- Affidavit of Dwalon Youngblood, Δ's Navy Boot Camp Buddy.
- Affidavit of Padrica Youngblood, Dwalon Youngblood's Aunt
- Affidavit of James Claypool, Δ's H.S. Principal*
- Affidavit of Joyce Hood, M.A. Psychology
- Police Incident Report 005371099 for Aggravated Assault.
- Dr. Richard Garnett's 'Initial Consultation Report' and his 'Supplement Report'
- Education Records, Public School Records (TAAS Tests Scores)
- TDCJ Windham School Records
- Employment Records, United States Navy, NAPA Auto Parts, Kroger Grocery and Trump Casino TDCJ Med/Psych File
- Witness Statement of Reginald Deway Tolberg and Everton Dear.

Prior to beginning my examination I explained its purpose and limits of confidentiality to the Inmate. The Examinee was offered to ask any questions he might have, he had no questions, indicated he understood the purpose of the examination and limits of confidentiality and signed a Disclosure Statement, which became a part of my records. My direct examination lasted from approximately 9:30 a.m. until 3:00 p.m. with an approximate 30 minute break for the Examinee occurring at about 1:00 p.m. In addition to a standard clinical interview for the purposes of this evaluation I also administered the Stanford Binet-V (SB-5) test of intelligence, Green's Word Memory Test (GWMT) and I utilized the Vineland-II Adaptive Behavior Scales.

BACKGROUND INFORMATION

The Examinee is a 30-year-old African American male who was born December 16, 1975 in Houston, Texas, where he was raised. He currently is housed in the Polunsky Unit of TDCJ having been convicted of Capital Murder.

EDUCATION

The Examinee reports that he completed High School at Robert E. Lee High School in Houston, Texas in 1994. Examinee reports that during his adolescent years in High School he exhibited a number of behavior problems. He notes that some of the behaviors included "popping lockers" and skipping school. However, he indicates a lot of his behavior problems began while he was in Elementary School. He recalls getting into trouble for putting tacks in people's seats and for stealing crayons. According to the Examinee his grades in school were always "B's and C's and a few "D's". He states his grades pretty much stayed the same throughout his schooling as far as he recalls.

FAMILY BACKGROUND

Examinee indicates that his mother is Wanda Ray Williams and his father is James Marion Williams. He reports his parents live in Jersey Village, which is near Houston. The

Examinee states he has one sister by the name of "Tedra", who also lives in Houston. He spontaneously reports "we don't get along."

MILITARY

The Examinee reports that subsequent to High School he joined the Navy. He states he attended Boot Camp at Great Lakes, Illinois. Examinee indicates he was discharged from the Navy with a rank of E-3. He reports at the time of discharge a rank of E-3 meant he was a seaman. The Examinee explains that a rank of E-1 is a recruit seaman, a rank of E-2 is an apprentice seaman and a rank of E-3 is a seaman. He reports that he was discharged from the Navy under General conditions, Honorable.

Regarding his participation in the Navy, the Examinee reports "I had a lot of conflicts. I was in the wrong place at the wrong time." He indicates he got into trouble for failure to obey orders and states this was usually the result of "miscommunication". The Examinee reports that on at least one occasion he knew the procedures to follow for painting that was to be done on the ship, but rather than follow instructions he took short cuts and got into trouble for same. For example, he knew he was to remove rust before painting a surface and he refused to do so, preferring to "cut corners". He states he served on an Aegis cruiser. The Examinee recalls he got into trouble when on the helm one night because he was 11° off course. He complains he was off course because he had dropped his contact lenses and was having difficulty finding them. He goes on to explain that Navy ships often "sail in a box", and explains this is a way to make sure you don't get too far off course.

The Examinee reports that Navy Boot Camp is four weeks long, but it took him eight weeks to complete it because he had to retake the test until he passed same.

The Examinee indicates his main problem in the Navy came to be a particular Division Officer who had complained about him repeatedly.

MARITAL HISTORY

The Examinee reports he has never been married.

EXAMINEE'S DISCUSSION OF CURRENT EVENTS

The Examinee recalls going through the Diagnostic Unit when he was admitted to TDCJ. He was able to explain TDCJ procedures for cuffing an inmate, and reports the Corrections Officers often do not follow proper procedure, are lazy and just collecting a paycheck. The Examinee explained he does not have access to a television, but listens to radio on a regular basis. He notes he enjoys a particular station that plays a lot of jazz music. The Examinee can not state the names of any of the jazz artists, but simply knows he enjoys jazz. As a part of listening to that radio station he reports he listens to the news on a regular basis. He knows the current President is George W. Bush and he describes President Bush as "a nut" because of "the way he handled the Katrina victims and because those youngsters are dying in Iraq." The Examinee indicates the reason the United States is actually in Iraq is to obtain oil.

The Examinee recalls being instructed by Navy superiors about how to behave appropriately in the Country of Dubai. He recalls being told never to shake with the left hand because it is considered insulting in the Muslim World.

The Examinee states that his health is good, but complains of stress headaches. He notes "it bothers me that people are dying because their cases are being thrown out."

The Examinee indicates that he is out of his cell for about an hour a day and is either allowed to go outside or to the day room. He states that typically he is allowed outdoors two hours per week and otherwise goes to the day room. The Examinee reports that he occasionally makes phone calls while incarcerated, although he is reluctant to make phone calls because they are not very private and he is only allowed five minutes.

MENTAL STATUS

The Examinee appears to be oriented to person, place, time and situation. He indicates the date is January 10, Wednesday, 2006. He is able to explain the location of death row and that it is divided into sections A through F and each section has 14 cells. There was no evidence of hallucinations or delusions. I noted no impairment in short term or long term memory. The Examinee made good eye contact throughout my examination. Speech was spontaneous, with adequate articulation, rate, and volume. The Examinee was friendly and at least superficially cooperative. I saw no impairment in fine or gross motor movement. Gait was constrained by shackles worn to and from examination. The Examinee expressed humor and laughter appropriately and no constriction in affect or mood was noted.

During my contact when I asked for a writing sample the Examinee went out of his way to point out that he has people helping him with his writing, that he cannot write independently, that he spells poorly and needs help.

At one point I was going to have the Examinee take the Personality Assessment Inventory (PAI). I had the Examinee read out loud some of the items and he complained he could not understand many of the words in the PAI. The PAI is written at a fourth grade reading level (see assessed 10th grade reading level below using the WRAT-III).

When I asked the Examinee about his relationships with women he complained that women were "like a computer virus. They make you crash." He states in his youth he hung out with "dudes and a few girls". He states they went to various places as a group, hung out together, went to the Mall and the movies together. There were occasions when he spent time alone with females.

The Examinee states he got his driver's license "around age 16 or 17 I think." He indicates he used to shoot hoops now and then with his friends, but mostly they just got together and smoked weed. The Examinee's favorite sport appears to be boxing. He is aware that Cobey Bryant with the L.A. Lakers recently scored a "triple double and carried the team." The Examinee recalls that when he would play basketball with his buddies he would quit because he would get frustrated if he wasn't winning.

Regarding the handling of money the Examinee states that when he was in the Navy his money was "direct deposited". He indicates the ship had an ATM on board. He had no difficulty using that ATM regularly.

PREVIOUS TESTING

The Examinee was tested by Houston Independent School District (HISD) in 1992 at age 16. Psycho-educational testing at that time indicated a WISC-R, Verbal I.Q. of 79; Performance I.Q. of 65; and a Full Scale of I.Q. of 70. These Verbal and Performance I.Q. scores are the reverse of current testing results. The Examinee was also labeled as Emotionally Disabled and given a diagnosis of Oppositional Defiant Disorder.

Apparently the Examinee was also placed on Ritalin for a couple of years during that time frame. It is important to note the Examinee was not labeled as Mentally Retarded or even Learning Disabled at that time.

Review of school records and the deposition of the examinee's mother taken at a prior hearing strongly indicate behavior problems began in the developmental years. The justification for a Conduct Disorder diagnosis was clearly apparent. This diagnosis was also given at the time of a psychiatric admission when the Examinee was age 16. I believe the length of stay was about two to four weeks. No diagnoses of learning disability or Mental Retardation were given at that time. The attending psychiatrist diagnosed the Examinee with Conduct Disorder and Attention Deficit Hyperactivity Disorder (ADHD). The Examinee apparently exhibited a number of Conduct Disorder behaviors to include "popping lockers", "slashing teacher's tires", and fire setting. The Examinee also began use of marijuana in early adolescence and per my current clinical interview smoked quite a bit of "weed" during his adolescence.

RECENT PSYCHOLOGICAL TESTING

Per the report submitted by Dr. Richard Garnett the Examinee was evaluated November 14, 2005. At that time he was administered the Kaufman Functional Academic Skills Test (KFAST), the Wide Range Achievement Test-3 (WRAT-3), and the Wechsler Adult Intelligence Scale-III (WAIS-III). There was no effort to assess malingering. According to Dr. Garnett the results of all tests fell into the Mild Mental Retardation range. The tests were administered by Gilda Kessner, Psy.D. Dr. Garnett was kind of enough to review the criteria for Mental Retardation and provided some historical background for the diagnosis. He summarized the results as follows:

On the Kaufman Functional Academic Skills Test the Examinee received a standard score of 78, placing him at the 7th percentile with a rating of "well-below average". On the reading sub-test the Examinee received a standard score of 82, placing him at the 12th percentile, with a rating of "below-average". None of these scores are in the 1st-3rd percentile ranges.

On the WRAT-3 the Examinee achieved a Reading standard score of 79, placing him at the 8th percentile, and 10th grade Reading level. On Spelling the Examinee received a standard score of 69, placing him at the 2nd percentile, 4th grade Spelling level. On Mathematics the Examinee received a standard score of 70, placing him in the 2nd percentile, 4th grade Mathematics level. (There is an interesting disparity between the reading level and spelling level as measured by the WRAT-3.)

On the WAIS-III the Examinee achieved a Verbal I.Q. of 70, placing him in the 2nd percentile with likely Verbal I.Q. ranging from 66-77; The Examinee scored a Performance I.Q. of 77, placing him at the 6th percentile with a likely Performance range of 72-85; The Examinee's Full Scale I.Q. was 71, placing him in the 3rd percentile with likely I.Q. range of 68-76. (There is also an interesting disparity between the Examinee's Verbal I.Q. of 70 and his 10th grade Reading Level score on the WRAT-3.)

Dr. Garnett goes on to indicate that the Examinee suffers from significant limitations in adaptive behavior. He is indicating that the Examinee's deficits include "*non-violent rule violations*" while incarcerated. Dr. Garnett characterized the Examinee's "inability to comply with even the simplest of rules was testament to his problem in adapting to his environment" as an example of the Examinee's claimed deficit in socialization.

Dr. Garnett is indicating that the Examinee demonstrates deficits in self-care skills to include "basic personal behaviors where an individual tends to his or her own hygiene and health". He cites the biological mother's report that the Examinee would wear the same clothing "over and over again in High School if she did not make him change his clothes." He cites the biological father's report that the Examinee "would pick at his acne until it bled and then Jeffrey would go to school with small pieces of tissue paper all over his face".

Regarding school records Dr. Garnett seems to believe that the school was motivated not to label the Examinee as Mentally Retarded. He also characterized the Examinee as a "follower and not a leader". Dr. Garnett seems to be implying that the impulsive behavior of the Examinee, to include the impulsive violence of the Capital Murder he was convicted of, is indication that he is Mentally Retarded. The record does not reflect anything other than the Examinee acting alone in the Capital Murder. He wasn't following anyone. The same applies to his conflicts while in the Navy and on-the-job conflicts after discharge. I do not know what the conclusory statement "follower and not a leader" derives from.

Dr. Garnett cites what he terms "anecdotal evidence" that the Examinee is "*not rational and consistent with Mental Retardation*" in that the Examinee lived alone in an apartment for several weeks before becoming homeless. He indicates the Examinee "paid for the apartment in cash because *he could not operate a checking account.*" Dr. Garnett also indicates the Examinee only cooked fast food in the apartment, using "microwave" type food and apparently the Examinee described cooking a hamburger as involving "putting the burger in a baggie", then dropping the baggie in (boiling) water. Other anecdotal evidence Dr. Garnett cites as indication of Mental Retardation includes the Examinee taking off his clothing, smoking in a car with the windows rolled up on a hot day. He preferred taking his clothes off rather than rolling the windows down. Reportedly, "His friend surmised that Mr. Williams had observed them smoking pot in the car, so it had not occurred to Mr. Williams to smoke with the windows down or outside of the car." No mention is made in this statement about the Examinee's use of pot as opposed to simply observing his friend smoking it. Dr. Garnett goes on to state "It could be argued that Mr. Williams has shown indications of significant impairments in adaptive behavior in virtually all the areas used for diagnostic determination by the DSMV-IV, much less two out of the eleven. The evidence clearly suggests that Mr. Williams meets the second prong of the diagnosis of Mental Retardation." Dr. Garnett fails to delineate the alleged impairments in the 11 areas listed in the DSM-IV.

CURRENT TESTING

On the Standard Binet-5 (SB-5) the Examinee obtained a Non-Verbal I.Q. of 70, 2nd percentile, 66-78 at the 95 percent Confidence Interval; The Examinee achieved a Verbal I.Q. of 75, 2nd percentile, 95 percent Confidence Level 70-82; Full Scale I.Q. of 71, 3rd percentile, 95 percent Confidence Interval of 68 to 76. The Examinee's effort during testing was poor as noted by his frequent, rapid responses stating "I can't do that". He failed to even initiate effort on many test items.

In an effort to be systematic with regard to assessing adaptive behaviors I attempted to use the Vineland-II Adaptive Behavior Scales Interview Form. There is no caretaker to interview, since the Examinee has actually been adequately independent for quite some time. In lieu of that I studied the deposition testimony of the biological parents, and read the affidavits provided, in an effort to determine the Examinee's level of adaptive behaviors. It was also important to review other aspects of the records, such as school records, current TDCJ records, and my interview of the Examinee was designed to discuss many of the items contained in the Vineland-II. The Vineland-II Adaptive Behavior Scales Interview has never been normed on a criminal population and actually I don't know of such a device for measuring adaptive behaviors that has been normed on a criminal population. However, in an effort to be thorough and at least systematic I again decided to use the Vineland-II rather than rely solely on records or anecdotal reports. In addition, the Vineland-II is an excellent list of the kinds of potentially problematic adaptive behaviors exhibited by Mentally Retarded persons. Because it has never been normed on a criminal population I certainly can't vouch for its statistical foundation. Nevertheless, its use as noted above is systematic and maintains at least the face validity of associated behaviors of concern in assessing Mental Retardation. In attempting to score the Examinee using items from the Vineland-II it does not appear that the Examinee is functioning as Mentally Retarded, and it doesn't appear that he has ever functioned as Mentally Retarded. Some of his adaptive behavior scores are low, such as communication skills, but daily living skills and socialization are in the low to moderate low range. Even these low scores are low mostly due to the fact that some information I simply did not have and could not score. In addition, his score on socialization would have been much higher, except for the fact many of the problematic behaviors are better classified as antisocial as opposed to socialization deficits associated with Mental Retardation (MR). When I refer to antisocial behaviors versus deficits in socialization the former involves willingness and the later involves inability. Many of the Examinee's problem behaviors in socialization involve the instrumental use of anger, not the impulsive version of childish anger found among many Mentally Retarded people.

I also administered Green's Word Memory Test (GWMT) in an effort to assess whether or not the Examinee was putting forth adequate effort for the cognitive assessment. The GWMT is extremely useful in the identification of malingering. The Examinee failed the effort portion of the GWMT. What is advantageous about the GWMT, in addition to an excellent hit rate, is that the individual's scores can be compared to various types of patient groups for statistical comparison. The Examinee's profile fits a group of patients asked to fake impairment in more than one study. His profile also fits a group of patients classified as sophisticated volunteer simulators. Interestingly, the Examinee's scores were worse than a group of Advanced Dementia patients, age 78, who were hospitalized due to their Advanced Dementia. His scores were worse than individuals diagnosed with Major Depression, who also failed the GWMT. Comparing the Examinee to a group of Mentally Retarded patients, the Examinee failed the

effort portion of the GWMT, while the group of Mentally Retarded patients actually passed it quite easily.

ADAPTIVE BEHAVIORS

Using the DSM-IV – Criteria for the diagnosis of Mental Retardation, in addition to developmental onset and sub-average intellectual functioning, deficits in two of the following skill areas must be demonstrated: Communication, self-care, home living, social/interpersonal skills, use of community resources, self-direction, functional academic skills, work, leisure, health and safety.

In the area of communication the Examinee is making a poor effort to demonstrate his capacity for oral as well as written communication. I asked the Examinee to write a brief hypothetical letter of complaint to someone who had sold him a car that didn't work well. The Examinee's hand writing was quite good; he went out of his way to tell me that he had to have help when he wrote letters, that he didn't spell well. The letter written on the day of my examination was very brief. However, in comparing it to a letter the Examinee wrote while in the Navy there were considerable discrepancies in demonstrated ability. The Examinee's letter written while in the Navy was an effort on his part to respond to allegations and the possibility of being kicked out of the Navy. His letter while in the Navy was more than adequately sophisticated, and while it had some spelling errors it appeared to me to be well thought out, rational and there was nothing about it that indicated the Examinee suffered from Mental Retardation. In addition, his oral communication and listening skills during my contact with him were clearly adequate. He clearly can specify the who, what, when and where of just about any situation in describing stories or recounting his history. There was nothing about his communication skills that indicated a deficit consistent with Mental Retardation.

In the area of self-care, while the Examinee's parents complained about the way he cared for his acne and the way he dressed while a teenager, I just can't see that those are adequate descriptions of genuine self-care deficits consistent with Mental Retardation. The behaviors they describe are actually consistent with many teenagers, and are also consistent with the Examinee's pattern of behavior reflecting a Conduct Disorder apparent by adolescence. Deficits in self-care are supposed to involve inability to perform self-care activities, and these inability can involve the incapacity to concentrate long enough, or to remember appropriate self-care behaviors. The descriptions I read reflected an unwillingness to exercise appropriate self-care and hygiene. These descriptions are also inconsistent with current self-care/hygiene behaviors. The Examinee indicated to me the importance of cleanliness to him. When placed in his cell at the time of his incarceration the first thing he did was clean the cell, he complained about how dirty it was, and described how he used layers of socks and paper bags as a cleaning instrument he fashioned. Also, TDCJ Commissary records reflect that the Examinee certainly has an interest in personal hygiene, buying large quantities of soap and other personal care items.

In the arena of home living, while the Examinee has never been particularly successful in his personal life and was possibly "sloppy" when he was a teenager, to the point that his parents complained about it, he did in fact demonstrate a capacity for home living while he was in the Navy. He could not have lasted the two years that he did last in the Navy without adequate home living skills, which included keeping his bunk properly made, keeping his living area properly clean and orderly. While he was stationed on the Aegis Cruiser Ship he spent time

working in the Galley and his duties there involved cleaning, washing, using the chemicals on board that would be required for same. The Examinee has swabbed decks, he has polished and painted, removed rust, cleaned tables, bussed tables, etc. He had to take care of his own clothing. The Examinee was cited on occasion for dressing sloppily, but this also is not uncommon in the military, and by itself or in combination with other behaviors just does not appear consistent with a deficit in adaptive behaviors surrounding home living.

In terms of social and interpersonal skills, there were occasions the Examinee got along fine with others while in the Navy, had friends at school, and got along with certain teachers. However, his alleged deficits in socialization, including interpersonal skills, are consistent with his developmental history of Oppositional Defiant Disorder, later Conduct Disorder and still later by age 18, Antisocial Personality Disorder (APD). It is not that he had deficits in socialization that reflected lack of capacity; so much as he experienced interpersonal conflicts consistent with an unwillingness to honor rules, and the rights and safety of others, reflecting Antisocial Personality Disorder. The Examinee has a pattern of aggression dating back to at least his adolescence which involves placing others at risk, rule breaking, interfering with the rights and well-being of others. During his developmental years these reflected behaviors typical of Conduct Disordered adolescents and did not represent decrements in intellectual or adaptive functioning consistent with Mental Retardation. Indeed, his mother testified that he was capable of doing school work, he just wouldn't do it, and apparently preferred to participate in popping lockers, setting fires, slashing tires and smoking weed.

In terms of the use of community resources, there is nothing in my contact with the Examinee and nothing in his history that indicates he has a deficit in the capacity to utilize community resources. He can access his community, he can apply for jobs, he can apply for unemployment, he can get around his community, can ride a bus, take a taxi and drive a car. The Examinee learned early on to sell weed, at least occasionally, to make extra money. When this kind of behavior starts the motivation to connect to the mainstream of culture becomes impaired and often is seen as unnecessary. It is a cash business. Related to his capacity to utilize community resources is the issue of self-direction. To assume that the Examinee lacks self-direction, is not capable of self-direction, or was a follower rather than a leader, all in a fashion consistent with Mental Retardation is simply not accurate. He was clearly capable of long periods of self-direction. There were significant periods of time during his work in the Navy when he was appropriately self-directed. He demonstrated motivation and in fact was promoted to the rank of E-3 before he was discharged. The problem was connected to the Examinee's antisociality. He got into trouble in the Navy because of repeated conflicts with authority figures, after discharge from the Navy he had difficulty maintaining employment because he would go to sleep on the job, would refuse his job duties, and always blamed somebody else. The Examinee was certainly able to steal a car all by himself. His ability to even manage money had to be adequate. He acknowledges while in the Navy his paycheck was "direct deposited" and he knew how to use an ATM machine. Even as a teenager, he knew how to make money the easy way and would occasionally sell drugs of his own volition. There was no indication that someone coerced him in to drugs sales or led him into drug sales, and he knew how to deal with cash.

In the arena of functional academic skills, the records appear to be pretty evident that his academic problems blossomed during the teenage years along with his Conduct Disorder. His biological mother made it clear that he could do the school work, he just wasn't willing. He was

labeled as Emotionally Disabled at the time of his educational diagnostic evaluation in 1992 and was diagnosed as Oppositional Defiant Disorder. The decrement in his academic performance was related to a personality disorder, rather than deficits in academic skills associated with Mental Retardation. From Elementary and into High School there was no significant intervening variable that can be identified as a source of Mental Retardation. There was no evidence of significant illness or significant head injury that would cause a dramatic decrease in cognitive capacity consistent with Mental Retardation. He was not a good student, but that does not make him Mentally Retarded.

Others behaviors listed in the DSM-IV include work, leisure, health and safety. In this regard the record reflects the Examinee was capable of work, he just wasn't willing to perform consistently, often making excuses in conflict with authority figures. This pattern began in adolescence, possibly before adolescence, and continued into adulthood. He certainly was capable of exploring leisure activities, did so in the Navy with shore leave, and did so in his adolescence although his favorite leisure activity in High School appeared to be "smoking weed". The Examinee would occasionally play basketball with friends, but he reports he would often quit if he wasn't getting his way, meaning if he wasn't winning. He went to movies and malls with friends, played basketball. Unfortunately, during his adolescence much of his leisure time was spent smoking weed with friends. The Examinee is also aware of health and safety issues. In describing his time in the Navy, he clearly knew where sick bay was, knew what you had to do if you had a health problem or an injury on board ship. He knew the procedures to obtain medical help while on board ship. The Examinee recalled classes he took, or instructions he received from superior officers regarding safety issues. If was standing watch on deck he knew the procedure for taking watch during inclement weather and was able to verbalize same to me. He was made aware, and clearly recalled, that it was unsafe and inappropriate to shake the left hand of a Muslim for fear of insulting them.

The Examinee made it clear to me that he reads newspapers on a regular basis and he obtains them from other inmates that are willing to share the newspapers. He indicates he might read the Dallas paper, the Houston paper or the Fort Worth paper. Like many men the Examinee states he is most interested in the Sports section. He is aware of current events, often listens to the news on his radio. When questioned about these things the Examinee discloses some of his reading materials, but as soon as he realizes that he is acknowledging capacities that are not in his interest at the current time he then goes out of his way to minimize his understanding of the material. In addition to reading newspapers, he claims to read the Bible and a "Hindu" text. However, when he tells me about reading these religious texts he can not state any understanding, but even more importantly he can not state a favorite verse out of the Bible. It is my understanding that he has a significant tattoo on his back related to "Roman's 3:16". He never mentioned it to me, but reference to this tattoo is in the records. I received a list of reading material the Examinee had in his cell and found it interesting that there was at least one text book by a psychologist, Albert Ellis, related to Rational Emotive Therapy, and a variety of what I would consider to be high level reading materials in the form of novels.

The Examinee's Toni-3 I.Q. score of 83 obtained in TDCJ is probably the most accurate representation of his intellectual functioning. The 83 is only slightly lower than the average Toni score among inmates in TDCJ. It is also a non-verbal score and what's good about it aside from the fact that it is a handy screening device, is that the score is more independent of cultural bias since it is non-verbal.

The Examinee went through a thorough psycho-educational examination in 1992 and was not diagnosed as Learning Disabled or Mentally Retarded. Psycho-educational examinations are required by law when indicated. They are thorough and are usually done quite well. In the current case the Examinee was labeled as Emotionally Disabled, Oppositional Defiant Disorder, rather than Mentally Retarded. It is in the best interest of the school system to appropriately label children who are Mentally Retarded, Learning Disabled, or Emotionally Disabled. The notion that school systems will not call a child Mentally Retarded, when they are in fact Mentally Retarded, is an unjustified allegation. Educational diagnosticians may make errors in that regard, but they certainly do not go out of their way to mislabel. Given the patterns of behaviors described during the Examinee's developmental years, it is perfectly understandable that he was classified as Emotionally Disabled as opposed to Learning Disabled or Mentally Retarded.

Based on the results of the GWMT it appears the Examinee is malingering current intellectual functioning. The likelihood is extremely high that he is involved in "effortful failure" and in the presence of that the likelihood of getting an accurate measure of intellectual functioning is extremely slim. It is likely that neither of the recent intellectual assessments done for the current litigation is accurate. Note should also be made that it is often very difficult to test teenagers. They are often sullen, uncooperative, they would rather be hanging out with friends, and given the Examinee's Conduct Disorder at that time it is likely that his effort during educational diagnostics was less than adequate. Deficits in adaptive behaviors consistent with Mental Retardation were not present during that testing and so were not identified.

As noted above, a variety of behaviors that actually reflect the Examinee's history of Conduct Disorder and antisociality are being labeled as deficits in adaptive behaviors consistent with Mental Retardation. There is a big difference between behavior deficits that reflect inability versus unwillingness to obey rules or honor the safety and rights of others. This Examinee's pattern of Antisocial Personality Disorder reflects an unwillingness to exhibit appropriate socialization behaviors and skills. It is not that he is incapable of functioning within a community and utilizing community resources; it is that he is unwilling to function within a community and within the rules defining that community. It does not appear at all likely that a dual diagnosis of APD and MR is justified.

CONCLUSIONS

1. It is my opinion that the Examinee, Jeffrey Demond Williams, is not Mentally Retarded.
2. It is likely that the Examinee is malingering cognitive impairment.

Sincerely,



Thomas G. Allen, Ph.D.
Licensed Psychologist 2-2955
TGA/rka

dc: Dr. Allen's Notes & Testing.