

REPORT OF PSYCHIATRIC ASSESSMENT

Name: Jose Padilla
Date of Birth: 11/18/70

9/26/06

INTRODUCTION

I was first contacted in February of 2006. Mr. Padilla's attorneys requested a psychiatric evaluation and some guidance in their dealings with him given his protracted period of isolation.

The evaluation consisted of a series of interviews with the defendant (more than 20 hours), interviews with the defendant's family, his mother, his brothers and his ex wife and a review of all available clinical records pertaining to the defendant. Psychological tests were administered. The evaluation also included extensive contacts with his attorneys both past and present as well as a review of materials pertaining to his current housing in Miami.

CONFIDENTIALITY

The limitations of confidentiality were made clear to the defendant from the outset. He indicated he understood and agreed to participate.

BACKGROUND

Jose Padilla was arrested on May 8th 2002 after arriving at Chicago airport from Zurich, Switzerland. Following a period of interrogation in Chicago, the defendant was brought to New York on a material witness warrant and incarcerated at the Metropolitan Correctional Center, in New York. On Sunday June 9th 2002 President Bush signed an order declaring him an enemy combatant and on June 10th he was taken to the naval brig in Charleston, South Carolina. He was interrogated and kept in isolation until March of 2004 after which he was allowed access to an attorney. On November 17th 2005 he was indicted on charges of providing material support to terrorists outside the US. In January of 2006 the defendant was moved to Miami where he remains incarcerated in a secure housing unit or SHU. He is being held under special administrative measures which are substantially more restrictive than the ordinary regulations for inmates kept in the special housing unit. From the outset, his attorneys have expressed concern regarding his capacity to assist them in preparing a defense to the charges.

The defendant was born in Brooklyn New York. His father died when he was a young child and his mother moved the family to Puerto Rico for a time. When he was about six years old she brought the family to Chicago. He did well in school and as a young boy was deeply involved with the church. He developed severe behavior problems as a teenager and was incarcerated until he was about 18 years old. He was involved with a young woman, Marisol, in Chicago, and the couple had a son who is now about 16 years old. When the defendant's family moved to Florida in the late 1980s, at first he stayed in Chicago but later joined them. The relationship ended. He served time again in the early 1990s in Florida. In prison he was first exposed to Islam. After his release from prison he converted to Islam. He changed his behavior and became more responsible. He married in the mid 1990s. He and his wife ultimately divorced. In 1998 he decided to go to the Middle East to study of Islam, Islamic culture and Arabic. In Egypt he married again. He and his wife have two children.

INTERVIEWS WITH THE DEFENDANT

I met with the defendant on five consecutive days from 6/26/06 – 6/30/06 and again on 9/11 and 9/12/06. To date I have spent between 20 and 22 hours with the defendant. All the interviews were conducted in the conference room at the SHU. During the interviews the defendant was shackled and handcuffed. The handcuffs were extended to allow some ease of

movement. We were observed through a window throughout. During each interview, I sat with my back to the window in order to allow the defendant to see both the door and the window in order to increase his sense of agency and control. It was clear to me that the defendant enjoyed good relations with the professionals responsible for his care in Miami. The tone of their interactions was professional and cordial throughout. The defendant appeared generally comfortable with them. The first four interviews lasted approximately four hours, alone with the defendant. The fifth interview lasted about an hour and consisted of a review of the week's discussions in the presence of his attorneys. The September sessions were arranged in order to administer the MacArthur Competence Assessment Tool – Criminal Adjudication and other psychological tests.

On first meeting the defendant, one is struck by how well spoken he is, how patient he seems in spite of what must seem to be interminable difficulties, and how socially appropriate he is. On initial interaction, his speech seems logical, coherent and goal directed. He comes across as intelligent and thoughtful. He interacts well with the officers charged with his care. He cooperates in a gentlemanly fashion with the procedures they are required to perform, without complaint. On one occasion, when I was more than two hours late, he made no reference to my lateness and seemed genuinely surprised when I brought it up and apologized. The terms "decorous" and "gracious" aptly describe the defendant.

From the outset the defendant was reluctant to speak with me but did so anyway, as though out of politeness. Unlike most defendants possessed of the same attitude to the examination, there was never a question that he would refuse to leave his cell for a session in spite of his stated apprehension, and later, obvious discomfort with the proceedings. He repeatedly expressed concerns that speaking about what happened to him in the brig would cause great harm to the government. He felt it was important not to speak about what happened to him in case other attorneys might use his case and as a result the government might have to release detainees held at Guantanamo Bay. He felt it was unfair for a civilian judge to be allowed to rule on military matters since by definition the judge was not familiar with the needs of the military. He was convinced that court proceedings were unfair to the FBI agents whose initial interviews with him had come under the scrutiny of the defense team. When he took the position of advocate for the government's position, he seemed calm and relaxed. When this was challenged – with the question of why he was so preoccupied with the fairness of the proceedings to those he had acknowledged had not been fair to him he became mildly agitated and changed the subject, usually to complain that his attorneys had not made gains fast enough.

At other times he expressed with absolute certainty that were he to speak about what happened to him at the brig, he would be taken back there. He told me on several occasions that even if he wins his freedom in this case, he will be taken back to the brig. He expressed feelings of intense helplessness. He described how he had begged to have his conditions improved to no avail. He reflected repeatedly on the futility of any help or intervention to aid him. He was certain that nobody could help him, that he could not be rescued from his current situation. He expressed a certainty that his family would be harmed. He told me he had told "them" – his interrogators – everything he possibly could but it had made no difference.

When it was not possible to reassure him with absolute certainty that he would not be taken back to the brig, he was not reassured by the court's promise to handle his case via expedited review should this occur. He expressed the sense that the government was omnipotent when it came to his case. He was convinced he had signed a document promising not to say anything about his interrogation or detention. He reported a visit from one of the staff at the brig prior to his departure in which the staff member "joked" with him about going on talk shows and writing a book to which he responded that he would never do such a thing. From this "joke" the defendant was certain that it was the speaker's intention that a threat should be inferred: that were he to speak out about what happened to him, he would be returned to the brig, where, he repeatedly assured me, he would die. He told me he would "know what to do" were he taken back there. In support of his conclusion that the government was somehow controlling his case, he pointed to the fact that nothing much had in fact changed in spite of his attorney's telling him he is now protected by the law. He described how he is still in isolation in a small cell and if anything, compared to conditions at the brig during the last months of his detention there he has fewer privileges. The defendant expressed impatience at the slow progress of change. He compared it to a man dying of thirst in the desert being offered only a few small drops of water. He had

expected to be released once he was released from the brig and was angry and upset that he had not been.

The defendant insisted he had already told his attorneys "everything". When I provided him with examples of what was still needed from him he would change the subject. He insisted that things could still move forward and expressed frustration that they had not. He was unwilling he said to view the tapes of his interrogation handed over by the government as evidence to his attorneys because he "couldn't". He refused to specify why but became obviously distressed and changed the subject.

During the interviews the defendant demonstrated inordinate sensitivity to the repetition of questions, leaving one in no doubt that in some ways, the process of the evaluation itself, even interactions with his attorneys, in which he was asked to provide information he was fearful of providing in many ways re-created the conditions of the interrogations during which he was asked the same questions repeatedly, over his objections.

During the interviews certain themes recurred:

- how the interviews, and his interactions with his attorneys are both the same as and different from his experience of interrogation in the brig;
- how his situation is unique and somehow critical to the government, how the outcome of his case and his situation in general is influenced by national politics and how he alone understands what's at stake;
- his sense that "it was all happening again" is repeatedly triggered by a turn of phrase or a figure of speech. For example when I asked him about his travels, he took up the phrase, repeated it, and looking way reflected on how his interrogators had used that phrase;
- when an issue had to be revisited because of a need for further information, the defendant would become distressed at the repetition and reflect on how the interrogators used to repeat the same questions over and over to him;
- when a line of questioning became uncomfortable for the defendant his facial tics became very prominent. At times his eyes would widen and his face would become flushed and diaphoretic.

As the line of questioning continued he would change the subject and state that whatever changes had been brought about were not enough, how the interview was the same as interrogation, or that if he wins he loses (goes back to the brig). At other times he would simply insist that he had already answered the question, that the conclusion had already been established, or that he wanted to put things behind him and move on.

The defendant was willing to say yes or no to a list of interrogation techniques from media reports concerning what had been conceded by the government. He denied being sexually assaulted or humiliated. He denied being water-boarded with uncharacteristic intensity and insistence. He acknowledged being kept in the dark or with the lights on for very long periods of time, being shackled and left alone for long periods of time, of being kept in a cold environment for long periods of time and above all of being certain he would die in the brig or never get out. He described periods of sleep deprivation – of lying in a cell restrained without a mattress with the lights on and how every five minutes a door would slam. He recalled asking for medication for pain and being told by staff they were not authorized to give him anything. He described an incident during which he felt intense pressure on his chest "like 200lbs" and was convinced he was going to die right then. He told his first attorney, Mr. Patel about it – of note, he did not inform staff, in part because he did not expect to be helped by them, and presumably because he rarely interacted with them given that he was monitored electronically thus obviating the need for visual inspection by an actual human being at regular intervals as is normally the case. When he spoke about this, he sounded fearful.

Repeatedly, in the course of our interviews, obviously painful recollections of being taken out of the cell to a "recreation" cage at the brig intruded. The defendant recalled how he begged them not to take him out and put him in the cage. He would not say what went on in the cage or why it upset him so. The defendant made it clear to me that he had not told me everything that had been done to him in the brig and that he would not do so.

The defendant told me that he had no way of keeping track of time while in the brig. (He was the sole occupant on the lower level of the brig). There were long periods of darkness and long periods of bright lights. There were no clocks or calendars. He had no access of any kind to the outside world. He recalled being delighted with the view from his small window in Miami. He was unable to put events in chronological order for me. He was clear that early on, for what seemed like months, there was a "terrible time". He could not be more specific than he had already been with me, he told me. Then things got better. He recalled conversations or thoughts that if John Kerry got elected things might change for him and related changes in his conditions to this possibility. He acknowledged that there were long periods for which he seemed to have no memory. He spoke about his feelings of great distress even at the thought of watching the tapes of his own interrogation. He is unable to watch the tapes. At the suggestion that he might, he becomes visibly terrified. At other times he changes the subject. He has also been enabled to either read transcripts or listen to tapes of intercepted conversations which the government intends to use as evidence in his trial.

MENTAL STATUS EXAMINATION

The defendant was awake, alert and oriented in all spheres throughout the process. Wearing an orange jump suit, shackled and handcuffed, he is a slight man with short hair appearing about his stated age. Facial tics are prominent when he becomes distressed. Tics consist of sudden facial grimacing sometimes involving only the orbicularis oculi muscles around the eyes, sometimes extending to the lower facial musculature. There are jerking eye movements also associated with the tics. He is unaware of them. The defendant has an exaggerated and easily elicited startle response. He appears hypervigilant at times, his eyes darting towards the window and around the room. When stressed he becomes visibly diaphoretic.

For short stretches of time he is able to concentrate and stay on topic without becoming distracted. He becomes restless and perseverative (returning to and repeating the same material over and over). His language functions are generally intact. He reports deficits in memory when it comes to his period of detention on the brig. He reports feelings of temporal disorientation, difficulties telling how long certain situations lasted, and in what sequence they occurred. He reports and demonstrates feelings of detachment from the world outside, from his family, and from those around him who do not understand his situation.

The defendant's affect is markedly constricted. He describes himself as lonely. He comes across as depressed at times. He reflects on feelings of despair, of begging for relief and not being heard, of the futility of trying to help alleviate his distress. At other times he expresses intense frustration at the slow pace of things and the sense that what improvements there has been have been too little too late.

The defendant appears convinced at times that no matter what happens he will be returned to the brig, even if he prevails in his current case. His expectations regarding his case are somewhat surprising, suggestive of a breakdown in reality testing: he believes he will be more fairly treated by the courts (because of the specialness of his case), for example, than others facing the same charges. He is unable to answer simple questions pertaining to his expectations regarding his own case. For example, when asked whether his lawyers are likely to help him more, less or about the same as they would help others in a similar situation, he experiences a blocking of thought and answers that he does not know, attributing his inability to answer to his isolation. When asked a specific question pertaining to how much he is likely to tell his attorneys compared to others who are in trouble, he answers that he does not know, that his case is totally different. When he is reminded that we are not speaking about people who are guilty but merely people who are in trouble, he responded "I don't believe that I am in trouble". When unable to answer other basic questions as to his expectations regarding his own case he cites the influence of the media and politics as variables that cannot be predicted. While his spontaneous speech does not become disorganized, his responses to emotionally charged questions suggest thought disorder and possible paranoid ideation.

The defendant comes across as someone struggling to act normally, as the interview goes on. On first contact there is little clue of the problems that emerge later on in the interview. Finally, on follow up interview with his attorneys after spending 16 hours with the defendant over

four days, the defendant's responses to questions and requests for information were the same as they had been at the outset of the first interview as though the intervening sessions had not occurred. He seemed not to remember the conclusions of our discussions upon which he agreed on certain facts for example.

The defendant comes across as entirely detached from things that concerned or interested him in the past. Reminders of his life prior to the detention seem to have no emotional impact. He seems detached also in discussing religion.

His insight into his problems is profoundly impaired although at times he appears to appreciate the impact of his prolonged isolation on his ability to correctly evaluate situations. For example, when asked about whether his lawyer is likely to help him as more, less or about the same as anyone else facing similar charges he responded:

"I don't know, I'm sorry, I honestly don't know. I'm here, isolated, 24 hours a day, isolated, I don't know what the situation is out there considering the history of things here in the states. There is a possibility that there may be people (who) hold a certain view and that the lawyers are concurring in an opinion about me. I can't say if this individual thinks Jose is well respected, innocent...."

The view to which the defendant was referring was the view that he is the enemy, a view repeated to him frequently during his detention. In spite of acknowledging that he does not know, and that his capacity to understand what's going on in his case is limited as the result of his ongoing isolation, he remains unable to accept what is told to him by his attorneys. When asked about this he becomes visibly distressed.

There is no evidence of thought disorder or psychosis on interview. However the defendant makes a number of references to hallucinations and strange experiences during his detention. He is terrified of appearing or being seen as "crazy". He recalled being told by one of his interrogators that were he to relate a particular experience to someone "on the outside", they would see him as "crazy". He was unable to tell me what that experience was. He also made a number of references to drugs or truth-serum in the course of his interview and how it affected him. On discussing this with the defendant, it was difficult to discern whether the defendant was telling me about a conclusion he had drawn about his experiences, i.e. attributed terrible experiences to truth serum, or whether he was recalling the actual administration of drugs by someone in the course of his interrogation. Recollection of the defendant's internal experiences, (perceptions, thoughts, conclusions etc.) are sometimes as vivid as recall of the defendant's external experiences. At times the defendant becomes intensely anxious and expresses fear of losing his mind on recalling his detention.

During the initial period (one to two hours) of each session, interactions with the defendant are almost identical to the initial period of the first interview, as though the intervening sessions had not occurred. What the defendant says, his reflections on his situation, are all the same – as though one were watching a reprise of the earlier interviews. A good example of this concerns what he thinks his attorneys should be doing for him: even though in the latter periods of earlier sessions (hours 3 – 4) the defendant was able to concede his attorneys are working hard on his behalf, the following day it is as though the conversation never took place and the defendant has no recollection of the "progress" of the prior days. This occurred around several issues during the evaluation leaving the examiner with a sense that no matter what "progress" the defendant made in earlier sessions, by the time of the next session, it would be back to square one, so to speak. This phenomenon, also described by his attorneys in their interaction with him over time, suggests either a serious impairment of learning or raises the possibility of impairments in reality testing associated with the trauma.

TESTING

MacArthur Competency Assessment Tool – Criminal Adjudication (MacCat-CA)

The MacCAT-CA is a 22 item structured interview that was developed by psychologists and psychiatrists working under a grant from the MacArthur Foundation. A structured interview consists of a series of explicitly scripted questions that address the various

contingencies that arise in the course of the test. The defendant's response to each question is scored according to specific and explicit criteria. The results for each item are tallied to give a score for each of the dimensions evaluated by the measure.

The test measures:

- Understanding – the defendant's factual understanding of legal proceedings,
- Reasoning – the defendant's ability to assist counsel, and
- Appreciation – a rational understanding of the proceedings as applied to his or her particular case.

Understanding:

Items 1 – 8 assess the defendant's capacity for a factual understanding or comprehension of the legal system and the processes of adjudication. A hypothetical case is read to the defendant and he is asked specific questions about it. The case involves an assault by "Fred" on "Reggie" in a bar. The items explore the defendant's comprehension at a general and descriptive level of legal terms, the roles of the primary actors in the judicial process and the basic parameters and features of different stages of adjudication.

Understanding addresses:

1. Roles of the defense attorney and prosecutor
2. Elements of an offense
3. Elements of a lesser included offense
4. Role of the jury
5. Role of the judge at trial
6. Consequences of conviction
7. Pleading guilty
8. Rights waived in making a plea

Each item has a possible score of zero, one or two for an aggregate total of sixteen. Understanding scores of ten or higher suggest satisfactory comprehension of basic legal information. Impairment in understanding, when present, may be attributed to either a defendant's low intellectual functioning due to either low intelligence or the interference caused by symptoms of severe mental illness. The possibility that the defendant is feigning must also be considered. When present, the examiner relies on other sources of data, such as the interview with the defendant, with collaterals or the review of records to interpret the low score.

Defendant's Scores:

1. Roles of the defense attorney and prosecutor:	1
2. Elements of an offense:	0
3. Elements of a lesser included offense	0
4. Role of the jury	2
5. Role of the judge at trial	2
6. Consequences of conviction	2
7. Pleading guilty	1
8. Rights waived in making a plea	2

Total = 10 = **Minimal/No Impairment**

Reasoning

Items 9 – 16 assess the defendant's capacity to consult with his attorney in a reasonable way: his ability to provide the attorney with case relevant information; his understanding the significance of both case relevant information and more general legal information provided by the attorney and his communication preferences regarding how the case will be handled.

The items continue to use the hypothetical case (Fred assaults Reggie with a pool cue in a bar) discussed in the understanding section.

9. Self Defense
10. Mitigation of the prosecution's evidence
11. Possible provocation
12. Fear as a motivator of one's behavior
13. Possible mitigating effects of intoxication
14. Seeking information: defendants' ability to identify important information in decision making
15. Weighing consequences: defendants' ability to infer or think through the implications of choices.
16. Comparing alternatives

Reasoning is scored in the same manner as discussed above. A score of 11 or higher suggests that a defendant has sufficient capacity to seek, identify, weigh, balance more relevant and less relevant information as well as use this data to make decisions about his or her case. Scores of 8 or lower suggest difficulties in information seeking or weighing functions. The cause of the deficits is identified by the defendant and or collateral interview and or record reviews.

The Defendant's Score:

9 Self Defense	0
10 Mitigation of the prosecution's evidence	1
11 Possible provocation	0
12 Fear as a motivator of one's behavior	0
13 Possible mitigating effects of intoxication	2
14 Seeking information: defendants' ability to identify important information in decision making	0
15 Weighing consequences	2
16 Comparing alternatives	2

Total = 7 = Clinically Significant Impairment

The defendant scored a total of 7 points in the Reasoning component – individuals who score 8 or lower have been shown, in studies of the instrument, due to confusion about the legal system and how it works. Confusion as to how the legal system actually works has obvious consequences for a defendant's ability to assist counsel or to represent himself. 68% of individuals found incompetent according to the test achieved a higher score than the defendant. 56.8% of individuals confirmed as incompetent achieved a higher score than the defendant.

Many defendants facing serious charges are unwilling to provide their attorneys with information for a variety of reasons. Using a hypothetical case, the examiner is able to distinguish between those who *cannot* provide case relevant information to their attorneys and those who for a variety of reasons, *will not* provide such information.

The results of the Reasoning portion of the scale suggest that the defendant's psychiatric and psychological problems are interfering with his cognitive capacity. Given the well documented long term effects of isolation and trauma on cognitive functioning independent of psychiatric status, the results suggest that neuropsychological testing may be useful in elucidating the extent of the damage.

The results of the Reasoning portion of the test came as a complete surprise to me. The defendant is a gracious and well-spoken interviewee. His ability to conceal his difficulties is reminiscent of how people in the early stages of say Alzheimer's disease can, using humor and other socially appropriate distractions, conceal their disorientation and memory difficulties.

Appreciation

Items 17 – 22 assess the defendant's rational understanding of the proceedings against them. In contrast to the understanding and reasoning portions of the test from which conclusions about the defendant's abilities in their own cases are inferred from the abilities they demonstrate with regards to a hypothetical case, the appreciation measure examines the defendant's understanding of his own legal predicament. The six items explore the defendant's attitudes and beliefs about their roles as defendants and how they will be treated by the legal system in a number of important ways.

- 17 Likelihood of being treated fairly
- 18 Likelihood of being assisted by defense counsel
- 19 Likelihood of fully disclosing case information to defense counsel
- 20 Likelihood of being found guilty
- 21 Likelihood of punishment if found guilty
- 22 Likelihood of pleading guilty (plea bargain)

Each question is asked in two phases: the defendant, for example, is asked whether he is more, less or just as likely to be treated fairly by the legal system and the response is noted. The defendant is then asked to explain his answer. Regardless of choice, if the defendant's reasons seem plausible, the score is 2, if the reasons given are questionably plausible, the score is 1. A score of 0 is applied when either, the defendant does not answer the question, or if the reasons given are clearly implausible and appear to be based on a delusional premise or a serious distortion of reality. A score of 11 – 12 indicates minimal or no impairment, a score of 9 – 10 indicates mild impairment, and a score of 0 – 8 indicates clinically significant impairment.

The Defendant's Score:

- | | | |
|----|--|---|
| 17 | Likelihood of being treated fairly | 1 |
| 18 | Likelihood of being assisted by defense counsel | 0 |
| 19 | Likelihood of fully disclosing case information to defense counsel | 0 |
| 20 | Likelihood of being found guilty | 0 |
| 21 | Likelihood of punishment if found guilty | 0 |
| 22 | Likelihood of pleading guilty (plea bargain) | 2 |

Total = 3 = **Clinically Significant Impairment**

In the administration of this portion of the interview, the defendant was most symptomatic. The defendant's score of 3 in appreciation suggests a profound impairment. Compared to individuals found incompetent according to the test, 83.7% of incompetent individuals achieved a higher score than the defendant. In studies in individuals confirmed as incompetent, 76.5% achieved a higher score than the defendant. The number of zero scores is also significant: the defendant scored zero on four questions.

Conclusion: Based on these data, it is my opinion, within a reasonable degree of medical and psychiatric certainty, that well beyond the preponderance of the evidence reveal that the defendant does not appreciate the nature of the proceedings against him and is unable to either assist counsel in his own defense or to represent himself.

Millon Clinical Multiphasic Inventory (MCMI – 3)

The MCMI-3 is a long established psychological test that helps elucidate an individuals underlying personality and psychological status. It consists of 175 true / false questions that are scored by computer yielding a narrative report. The defendant completed the test on 9/11/06 and it was sent to Pearson Assessments (a nationally recognized testing service) for scoring. Review of the narrative report reveals that the defendant is severely minimizing his problems and presenting himself as stress free.

According to the report:

"Unless this patient is a well functioning adult with only minor life stressors, his responses suggest a need for social approval or naïveté about psychological matters"
(Capsule Summary p2)

Based on his responses to the questions the defendant demonstrated both Schizoid and Compulsive Personality features (Capsule Summary p2)

Page 3 Interpretive Report Profile of BR Scores > 60

DIAGNOSTIC SCALE	BR SCORE
Desirability	80
Schizoid	72
Narcissistic	61
Compulsive	60
Somatoform	66
Dysthymia	67
Drug Dependence	65
Major Depression	64
Delusional Disorder	63

According to the report:

"Although he appears indifferent to his social surroundings, avoiding introspection, and generally disengaged from the subtleties of emotional life, much of this may be a cover up of stronger feelings" p 6

"...this man has learned to prefer a simple, repetitive and dependent life pattern in which he can avoid self assertion, abdicate autonomous responsibilities, and ignore normal social relationships and conventional aspirations. Disengaged from and uninterested in most rewards of an active social life, he may alternately appear apathetic and asocial, touchy and argumentative. By significantly restricting his social and emotional involvements, he may have perpetuated his life pattern of cheerless and fractious isolation" p 7

In the section dealing with noteworthy responses, the report lists the following (among others):

What few feelings he has he rarely shows to the outside world	True
When he has a choice he prefers to do things alone	True
Takes great care to keep his life private so nobody can take advantage of him	True

The treatment guide suggested by the findings suggest that

Primary goals must focus on *acquiring social skills, building confidence and overcoming fear of self determination*. Measures to accomplish these goals, according to the report are *likely to be resisted by the patient*. The report suggests that special attention be paid to helping the patient overcome his tendency to withdraw from others and to mistrust them.

The defendant declined to take the Minnesota Multiphasic Inventory – 2 (MMPI-2). He was upset at the prospect of being so scrutinized. For ethical reasons (causing the defendant to answer questions under duress would inflict considerable suffering on the defendant) no efforts were made to exhort him to change his mind.

DIAGNOSIS

The defendant meets full diagnostic criteria for a diagnosis of Post Traumatic Stress Disorder, according to the Diagnostic and Statistical Manual of the American Psychiatric Association Fourth Edition, Text Revision (DSM 4 TR):

1. He has endured a traumatic event that involved actual or threatened death or serious injury, or a threat to the physical integrity of self or others and his response involved intense fear and helplessness. The use of prolonged isolation along with tactics designed to have an individual reveal facts they otherwise might not wish to reveal, as well as the fostering of dependence on interrogators not only creates the conditions in which individuals might reveal important information, but also the conditions that induce intense fear, feelings of helplessness and loss of control characteristic of the traumatic experience. Sleep deprivation, physiological stress, repeated questioning only exacerbate the traumatic nature of the experience. The defendant believed he was going to die on a number of occasions during his detention. He believed his family would be harmed if he did not comply. He learned that no matter whether he was co-operative or whether he pleaded with his captors, that he was utterly helpless and absolutely dependent on them for everything. He believed and still believes they have the ultimate power to decide what happens in his life, his case, whether he is released or whether he returns to the brig. The traumatic event was complicated by its duration. The defendant's current environment remains psychologically unsafe for him.
2. The traumatic event is persistently re-experienced in several ways: by recurrent and intrusive distressing recollections of the events including images, thoughts and or perceptions. When these intrusive recollections are triggered by turns of phrase or intonation during the interview for example the defendant feels as though the traumatic event is recurring again – the interview is the same as the interrogation. The defendant demonstrated intense physiological distress and evidenced physiological reactivity on exposure to cues that symbolized or resembled aspects of the traumatic event. His facial tics became prominent and increased in frequency and intensity, he became diaphoretic at times and appeared restless and anxious.
3. The defendant makes persistent efforts to avoid stimuli associated with the trauma and demonstrates a general numbing of responsiveness including efforts to avoid thoughts, feelings and conversations associated with the trauma – he refuses to watch the video of his interrogation, he refuses to answer questions pertaining to aspects of the evidence against him related to the trauma. He has large memory gaps related to his detention – he is unable to place events in chronological order or say how long different situations persisted. He fails to recall important aspects of the trauma. There is evidence of markedly diminished interest in significant activities – he feels detached not only from the man he was and the life he had, but from others as well. There is a restricted range of affect. The defendant periodically concludes that no matter what, win or lose, he will be going back to the brig, where he will die – and as such, has a sense of a foreshortened future.
4. There is clear evidence of increased arousal as indicated by the defendant's exaggerated startle response, his periodic hypervigilance, and his difficulties concentrating.

In addition to the symptoms of post traumatic stress disorder, the defendant also demonstrates the kind of disorientation, confused thinking, paranoid ideation and inability to trust others outside the closed environment characteristic of individuals who have been isolated for a long time. Had this man not been detained and interrogated for such a long time, there would be serious question as to whether he is psychotic. His reasoning is clearly impaired and paranoid tendencies are evident throughout the interviews. These features account in part for the finding of schizoid tendencies on the MCMI-3

The issue of malingering has to be considered in any evaluation involving legal proceedings. The definition of malingering is the deliberate feigning or exaggeration of psychiatric symptoms for a specific conscious purpose. Such individual present themselves as more impaired than they actually are. In the defendant's case the opposite is true: he strives to present himself as stress and symptom free both on interview and on testing. He was very reluctant to allow a psychiatric evaluation in the first place and is equally reluctant to allow evidence of psychiatric impairment to be brought forward. He is terrified that anyone will consider him mentally ill or crazy. A diagnosis of malingering is not appropriate in this case.

OBSERVATIONS PERTAINING TO FITNESS TO PROCEED

The defendant has not been able to assist his attorneys in reviewing the evidence turned over by the government in his case. He is unable to answer questions in sufficient detail so as to be of use to his attorney's in his defense. When asked for further information, beyond what has already been given he insists on some occasions that the issues in question "have been established" and no further information is required, on other occasions he insists he has already answered the questions. He is unable to watch video recordings of his interrogation. He is unable to view transcripts of taped phone conversations to be used against him at trial. When approached by his attorneys, he begs them, "Please, please please" not to have to do it. Efforts to desensitize him to the distress of confronting what happened to him – talking about the tasks at hand in a gradual way without threatening exposure, over time, have failed utterly. Even after 16 hours of work with me during which he revealed some details of what had happened to him, he was still unable even to consider watching the tapes or reviewing the evidence against him. The ineffectiveness of such desensitization was striking – on the last session, when his attorneys were present, he came across as he had during the early portions of our first interview, as if none of the intervening hours had occurred. Once again, he changes the subject and becomes resistant to questions when asked to provide more information than he has already provided.

He tends to identify with the interests of the government more than his own interests at times. For example, after defense counsel aggressively scrutinized the behavior of FBI agents at Chicago airport where he had been arrested, and appeared to score some points, the defendant's reaction was that the lawyers were unfair to the agents. Instead of being pleased at their success, if anything, he was upset with them. During my interviews with the defendant he repeatedly expressed concern as to the fairness of the proceedings to government interests. This is a common response in individuals who have been traumatized. One way of coping has been traditionally labeled as "identification with the aggressor". In its most extreme form identification with the aggressor leads to Stockholm Syndrome – a condition first described in hostages who identify completely with the aims, motives and perspectives of the hostage takers to the point of joining their cause. Identification with the aggressor works for people in traumatic situations because it is the aggressor who has all the power and the more they meet the aggressor's needs and identify with the aggressor's cause, the safer they are. Such identification also aids those seeking to elicit information from detainees: a detainee who is entirely identified with the aims of interrogators is going to try to please them any way he (or she) can including providing information they might have (or making it up if necessary) in order to aid the cause. The defendant's request of his mother that she write to President Bush on his behalf when she visited him at the brig is of concern in this regard also.

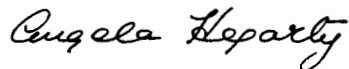
Absent a full flowering of Stockholm Syndrome, individuals suffering the effects of protracted trauma are intensely ambivalent about such feelings, especially, as in the defendant's case, when no reward is forthcoming and when traumatic recollections intrude on consciousness. At such times, individuals such as the defendant experience intense distress, as though the trauma were recurring. This triggers a desire to avoid the pain – hence the defendant's inability to engage in discussions about the evidence or deal with anything that reminds him of the trauma or triggers symptoms.

The symptoms of post traumatic stress disorder account for the deficits in appreciation (the application of legal knowledge and principles to his own case) on the MacCat-CA. The impairment in the defendant's reasoning on the MacCatCA was entirely unanticipated. The defendant is intelligent and well spoken. The most reasonable hypothesis regarding the deficits in reasoning clearly evidenced in this portion of the test is that the defendant's difficulties in concentration (also symptomatic of PTSD) made it difficult for him to listen, attend and follow the examples given and questions asked, along with the chronic distraction of his other symptoms.

There is no evidence that the defendant is deliberately exaggerating or feigning deficits or problems, *on the contrary*, he strives at every turn to insist that he is "normal" and is fearful of being thought of as "crazy". He uses his intact social skills to cover over his problems by gracefully changing the subject and raising emotionally charged issues designed to distract from the problems at hand. He minimizes or denies problems at every turn. He was very anxious about the assessment itself – and avoided rather than sought any situation in which his problems might become evident.

Based on these data, and well within a reasonable degree of medical and psychiatric certainty, it is my opinion that greater than the preponderance of the evidence suggests that as the result of his experiences during his detention and interrogation, the defendant does not appreciate the nature and consequences of the proceedings against him, is unable to render assistance to counsel, and has impairments in reasoning as the result of a mental illness: post traumatic stress disorder, complicated by the neuropsychiatric effects of prolonged isolation and as such lacks the capacity to assist in his own defense.

Respectfully Submitted



Angela M Hegarty MB BCH BAO
Diplomate of the American Board of Psychiatry and Neurology
Diplomate in Forensic Psychiatry