

In the Matter of:

UNITED STATES OF AMERICA

vs.

JOSHUA RYNE GOLDBERG

COMPETENCY HEARING

December 14, 2015

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UNITED STATES OF AMERICA vs. JOSHUA RYNE GOLDBERG
Hearing, Competency on 12/14/2015

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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

CASE NO.: 3:15-mj-1170-JRK

UNITED STATES OF AMERICA

vs.

JOSHUA RYNE GOLDBERG

PROCEEDINGS BEFORE
THE HONORABLE MAGISTRATE JUDGE JAMES R. KLINDT

10:22 a.m. through 12:06 p.m.
Monday, December 14, 2015

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1 P R O C E E D I N G S

2 December 14, 2015

3 THE COURT: This is the case of United
4 States of America versus Joshua Ryne Goldberg,
5 Case No. 3:15-mj-1170-JRK.

6 Kevin Frein represents the United
7 States. Paul Shorstein represents Mr. Goldberg
8 and Mr. Goldberg is present in the courtroom.

9 Mr. Goldberg was charged in a criminal
10 complaint on September 10th, 2015 on the day
11 that he was arrested.

12 He has an initial appearance also on
13 that date of September 10th, 2015. At his
14 initial appearance he asked for and qualified
15 for and the federal public defender and the
16 federal public defender was appointed to
17 represent him.

18 The government moved to detain
19 Mr. Goldberg and asked for a continuance of the
20 hearing and the hearing was continued until
21 September 15th, 2015.

22 In the meantime Mr. Shorstein filed a
23 notice of appearance and the public defender was
24 relieved of representing Mr. Goldberg.

25 At the detention hearing scheduled for

1 September 15th, 2015 Mr. Shorstein asked for a
2 continuance of detention hearing and, also, he
3 moved for a competency examination. The court
4 granted that motion and entered an order on
5 September 16th, 2015 directing that Mr. Goldberg
6 be evaluated to determine whether he is
7 competent to proceed with trial and all other
8 matters in the case.

9 He arrived at the Federal Detention
10 Center in Miami on September 28th, 2015 and his
11 evaluation commenced at that time.

12 He was evaluated from that point into
13 September and a report issued dated November 13,
14 2015 in which the lead evaluator, Lisa B.
15 Feldman opined that Mr. Goldberg was not
16 competent to proceed.

17 So after receiving the report and once
18 Mr. Goldberg was then transported back to
19 Jacksonville we held a status hearing and that
20 was on December 3rd, 2015 and at that hearing we
21 set or discussed setting this hearing, that is
22 the competency hearing, and then between the
23 time of the status conference and today,
24 specifically on December 7th, 2015, on behalf of
25 Mr. Goldberg, Mr. Shorstein filed a notice of

1 intent to rely on insanity defense.

2 So that's where we are. And we've
3 convened for the competency hearing and
4 previously Mr. Shorstein and Mr. Frein had
5 agreed that we could conduct this hearing via
6 video conferencing but I've been advised that
7 we're having difficulty with the video
8 conferencing, so we can do one of two things, we
9 can continue the hearing until another date and
10 we can try again to see if we can get the video
11 conferencing equipment working.

12 This is the first time, I want to say,
13 in more than eight years that we've had to
14 continue a video conference hearing because of
15 difficulties so it's fairly unusual that these
16 don't work smoothly.

17 The other thing that we could do is that
18 we could ask that Dr. Feldman or those who are
19 with her locate a notary in the federal
20 courthouse in Miami, the notary could administer
21 the oath to Dr. Feldman and identify Dr. Feldman
22 for the record and we could conduct this hearing
23 via telephone. So those are our two options.

24 Mr. Shorstein, why don't I turn to you
25 first. What do you think?

1 MR. SHORSTEIN: Your Honor, I have no
2 objection to proceeding by phone.

3 THE COURT: All right. Mr. Frein?

4 MR. FREIN: Your Honor, I would agree
5 given that everyone is here if we could proceed
6 by phone, the United States would be in
7 agreement with that.

8 THE COURT: So what we'll do in just a
9 moment during the recess, it seems to me since
10 Dr. Feldman is your witness, Mr. Frein, you may
11 want to contact her via telephone, see what
12 arrangements you can help her make or what
13 arrangements she can make to find a notary.

14 The last time I did this one of your
15 colleagues found a notary whose commission had
16 expired about a year earlier, so if you can make
17 sure and verify that if a notary is found that
18 the notary's commission hasn't expired because
19 that would make any oath administered by the
20 notary worthless.

21 So if you could see what you can do in
22 that regard and once you know something you can
23 inform Ms. Chaddock and I'll be standing by and
24 if the marshal could stand by with Mr. Goldberg
25 we'll see how long this might take.

1 I would think in the Federal Courthouse
2 in Miami that a notary could be located fairly
3 quickly. I'm thinking that the U.S. Attorney's
4 Office, I believe, it's located in the
5 courthouse in Miami, so it would seem to me that
6 someone in the U.S. Attorney's Office or someone
7 in the clerk's office would be able -- would be
8 a notary and be able to administer the oath.

9 So with that, let's recess and hope that
10 we can get started within about the next 15
11 minutes.

12 We're in recess.

13 (Short recess.)

14 Court Security Officer: All rise.

15 THE COURT: All right. We're back in
16 the case of the United States versus Joshua Ryne
17 Goldberg. Case No. 3:15-mj-1170-JRK.
18 Mr. Shorstein is here on behalf of Mr. Goldberg
19 and Mr. Goldberg is present in the courtroom.
20 Mr. Frein represents the United States.

21 We convened this hearing about 45
22 minutes ago but there was a problem with the
23 video feed and I understand now that that has
24 been corrected and we're ready to proceed by way
25 of video with the presentation and there will be

1 at least one witness.

2 So, Mr. Frein, how did you wish to
3 proceed this morning?

4 MR. FREIN: Your Honor, the United
5 States is ready to move forward and call what
6 would likely be our only witness, Your Honor.
7 Procedurally I would advise the court there is
8 likely an AUSA en route to that office and
9 hopefully that won't disrupt anything but that
10 was the notary I found.

11 THE COURT: All right. Thank you. So
12 who is your witness?

13 MR. FREIN: Your Honor, the United
14 States would call Dr. Lisa Feldman.

15 THE COURT: All right. And,
16 Dr. Feldman, you're present in Miami?

17 THE WITNESS: Yes, I am, Your Honor.

18 THE COURT: Would you raise your right
19 hand, please.

20 Do you solemnly swear that the testimony
21 you are about to give will be the truth, the
22 whole truth and nothing but the truth so help
23 you God?

24 DR. LISA BATH FELDMAN, having been produced,
25 was first duly sworn and examined as follows:

1 THE WITNESS: I do.

2 THE COURT: Would you state your full
3 name, please?

4 THE WITNESS: Lisa Bath Feldman.

5 THE COURT: Would you spell your first
6 name, please?

7 THE WITNESS: L-i-s-a.

8 THE COURT: Your middle name, please?

9 THE WITNESS: B-a-t-h.

10 THE COURT: And your last name, please?

11 THE WITNESS: F-e-l-d-m-a-n.

12 THE COURT: All right. Mr. Frein, you
13 may proceed.

14 DIRECT-EXAMINATION

15 BY MR. FREIN:

16 Q. Good morning, Dr. Feldman.

17 A. Good morning.

18 Q. Dr. Feldman, where are you currently
19 employed?

20 A. Through the Federal Detention Center in
21 Miami, Florida.

22 Q. What is your current position at the
23 Federal Detention Center in Miami, Florida?

24 A. I am a forensic psychologist.

25 Q. And when did you start working as a

1 forensic psychologist for the Federal Bureau of
2 Prisons?

3 A. November 2006.

4 MR. FREIN: Your Honor, at this time
5 pursuant to my discussion with Mr. Shorstein I
6 would tender into evidence as Government's
7 Exhibit No. 1 the curriculum vitae of
8 Dr. Feldman.

9 THE COURT: Mr. Shorstein?

10 MR. FREIN: No objection, Your Honor.

11 THE COURT: Thank you. Government's
12 Exhibit 1 will be received.

13 (Government's Exhibit-1 was received
14 into evidence.)

15 MR. FREIN: Also, at this time, Your
16 Honor, based on my conversations with
17 Mr. Shorstein I would tender to the court
18 Dr. Feldman as an expert in the field of
19 forensic psychologist.

20 THE COURT: Mr. Shorstein?

21 MR. SHORSTEIN: No, objection, Your
22 Honor.

23 THE COURT: All right. You may proceed.

24 BY MR. FREIN:

25 Q. Dr. Feldman, are you familiar as part of

1 your responsibilities at the Federal Detention
2 Center in Miami with a defendant by the name of
3 Joshua Ryne Goldberg?

4 A. Yes, I am.

5 Q. When did Mr. Goldberg first arrive at
6 your facility?

7 A. If I may, I'm going to reference my
8 report.

9 Q. Yes, Doctor.

10 A. He arrived at our facility on
11 September 20, 2015.

12 Q. When was Mr. Goldberg assigned to you
13 as part of the competency evaluation process?

14 A. The following -- either that day or the
15 following day.

16 Q. Once Mr. Goldberg is assigned to you for
17 the purposes of conducting a competency evaluation,
18 please explain to the court how you start that
19 competency evaluation process.

20 A. Normally an initial contact is held with
21 the defendant to explain the nature or purpose of
22 the evaluation.

23 Q. Did you do that with Mr. Goldberg?

24 A. I did, yes.

25 Q. And were you able to explain to

1 Mr. Goldberg why he was at the facility and the
2 limits on confidentiality as part of the competency
3 evaluation process?

4 A. Yes.

5 Q. What was Mr. Goldberg's reaction to your
6 explanation to him, Dr. Feldman?

7 A. In -- well, in Mr. Goldberg's case this
8 initial contact was held in the suicide watch area
9 of our facility because he had been placed on
10 suicide watch the night before. So this is not
11 typically where an initial contact is held unless he
12 is on suicide watch.

13 Q. When you make contact with him in that
14 area, does he generally seem to acknowledge or
15 understand what you have told him about why he is at
16 the facility and limits of confidentiality?

17 A. I'm sorry, could you repeat that,
18 please?

19 Q. Sure. When you met with him, did
20 Mr. Goldberg acknowledge or seem to understand your
21 explanation of why he was at the facility and the
22 limits of confidentiality?

23 A. He did understand. I mean, he
24 acknowledged that, however, he insisted that he
25 should be at a federal or a medical center, a

1 hospital for the evaluation.

2 Q. During the course of the evaluation
3 period did you conduct different types of tests and
4 interviews with Mr. Goldberg?

5 A. Yes.

6 Q. In addition to those tests and
7 interviews did you also review various documents and
8 other sources of information related to
9 Mr. Goldberg?

10 A. Yes, I did.

11 Q. Can you please briefly describe for the
12 court, Dr. Feldman, what were some of the documents
13 and other forms of information you reviewed as part
14 of the competency evaluation process?

15 A. I reviewed various documents including
16 the criminal complaints and the affidavit that was
17 submitted that resulted in the charges, the offense
18 conduct, or the alleged offense conduct, various
19 medical records that were provided by Mr. Goldberg's
20 attorney as well as additional communications that
21 he had that were unrelated to the offense conduct.

22 Q. Dr. Feldman, I would like to move into
23 the first area of discussion and that is the various
24 interviews you conducted with Mr. Goldberg. Based
25 on those interviews and the review of his behaviors

1 at the detention facility, what were some of the
2 behavioral observations that you made during the
3 competency evaluation process?

4 A. Mr. Goldberg had a very difficult time
5 adjusting to our facility, that started from the
6 moment that he arrived at our facility, which
7 resulted in him being placed on suicide watch due to
8 statements that he had made.

9 His behavior or cleanliness was called
10 in on numerous occasions. He presented as unkempt.
11 He refused to shower. He had difficulties
12 maintaining his room clean, there were several
13 inmates in his -- in the unit that he was housed in
14 that would frequently have concerns about -- he was
15 not interacting as a typical inmate in a general
16 population unit.

17 Q. Moving beyond some of the behavioral
18 observations that you described, based on your
19 contact with him, what were your observations
20 regarding his mental status during the competency
21 evaluation process?

22 A. I'm sorry, may I just interrupt.
23 Someone has walked into the conference room. Oh,
24 the notary public.

25 Q. I believe based on the equipment now

1 working, Dr. Feldman, that individual is free to go.

2 MR. FREIN: Is that correct, Your Honor?

3 THE COURT: Yes.

4 MR. FREIN: Yes, that individual is free
5 to go, Dr. Feldman.

6 BY MR. FREIN:

7 Q. Dr. Feldman, I will repeat that question
8 for you.

9 Moving from the behavioral observations
10 to Mr. Goldberg's mental status, based on your
11 contact with him during the evaluation for
12 competency, what were your observations regarding
13 his mental status?

14 A. Throughout the contact with Mr. Goldberg
15 he behaved or he displayed very childlike behavior.
16 Some of his verbalizations bordered on
17 argumentativeness but in a more childlike behavior.
18 Verbalizing frustration when he was told that he
19 would not be able to be at a medical center, for
20 example.

21 Even after being told this multiple
22 times he continued to persevere or repeat himself
23 insisting that he should be at a medical center.

24 In addition, his thought content
25 contained very paranoid, suspicious ideas, feeling

1 that people were trying to harm him, feeling that
2 other people were out to get him, after -- even
3 after staff would intervene and try to investigate
4 and assess the situation where no -- none of the
5 allegations were founded he continued to remain very
6 vigilant, very suspicious.

7 Q. Now, during the course of the competency
8 evaluation was Mr. Goldberg also administered any
9 type of medication as part of the competency
10 evaluation process?

11 A. Yes.

12 Q. Okay. What medications are you aware
13 that Mr. Goldberg was given to try to assist him
14 during the competency evaluation process?

15 A. Well, he met with medical staff even
16 before he came to the FDC Miami. His medication
17 regimen did change throughout the course of
18 his treat- -- or, I'm sorry, his evaluation at our
19 facility.

20 One note of concern was that he even
21 reported to the psychiatrist that he had taken a
22 pill from another inmate. I believe he had advised
23 the psychiatrist this, which is just another
24 indication of his very poor functioning on the unit,
25 and even with multiple medication changes at times

1 he would report that his symptoms would decrease,
2 however, still as per the review of Dr. Gonzalez's
3 notes his mental state remained relatively unstable.

4 Q. And what was the final medication that
5 was prescribed to Mr. Goldberg?

6 A. At the time of this report, which was
7 close in time to the time that he left our facility,
8 he was prescribed Olanzapine.

9 Q. And what is Olanzapine, Dr. Feldman?

10 A. Olanzapine is an antipsychotic or it's a
11 medication that is used to treat symptoms of
12 psychosis. He was also prescribed an
13 antidepressant, 14 47 Citalopram that is used to
14 treat and Mr. Goldberg reported and even exhibited
15 many symptoms of chronic depression. And he was
16 also prescribed Clonazepam which is an antianxiety
17 medication.

18 Q. Okay. Dr. Feldman, does there come a
19 point in time as part of the evaluation process that
20 in addition to the interviews that you also moved
21 towards administering tests of Mr. Goldberg as part
22 of the effort to determine a diagnosis, if he has a
23 mental illness or mental disorder?

24 A. Well, the tests, some of the tests are
25 used to aid in making a diagnosis but not used

1 solely for that purpose.

2 Q. I would like to talk about one of the
3 tests that was administered to Mr. Goldberg, the
4 MMPI-2RF. Are you familiar with that test?

5 A. Yes.

6 Q. What is the purpose of that test,
7 Dr. Feldman?

8 A. That test was administered to
9 Mr. Goldberg in order to assess his psychological
10 functioning.

11 Q. And what were the results of that test
12 after it was administered to Mr. Goldberg?

13 A. Mr. Goldberg's overall responses on the
14 test suggested that he was over reporting
15 psychiatric symptoms that, as well as additional
16 bodily complaints that are not typically endorsed by
17 individuals that have genuine impairment in these
18 areas. Based on that response I was unable to make
19 any additional interpretation.

20 Q. The next test that I'd like to discuss
21 with you is the SIRS-2. Was that administered to
22 Mr. Goldberg?

23 A. Yes.

24 Q. And are you familiar with that test,
25 Dr. Feldman?

1 A. Yes.

2 Q. What is the purpose of the SIRS-2 test?

3 A. The SIRS-2 was administered to
4 Mr. Goldberg in order to assess for any malingering
5 or feigning of psychiatric impairment.

6 Q. What were the results of that test
7 administered to Mr. Goldberg?

8 A. The results on this test fell in a --
9 there are several different categories. His results
10 did not fall within the feigning range and they were
11 more consistent with -- it's classified as
12 indeterminate meaning that no additional evidence
13 existed to classify Mr. Goldberg as feigning
14 psychiatric impairment.

15 Q. Dr. Feldman, based on the results of the
16 tests that you've described, the information that
17 you reviewed, the interviews with Mr. Goldberg and
18 your overall observations of him during the
19 competency evaluation timeframe, were you able to
20 develop a diagnosis of whether or not Mr. Goldberg
21 is suffering from a mental illness or mental
22 disorder?

23 A. Yes.

24 Q. What was your diagnosis, Dr. Feldman?

25 A. I assigned a diagnosis of unclassified

1 schizophrenia spectrum and other psychotic disorder
2 and --

3 Q. Go right ahead, I'm sorry.

4 A. And I assigned this diagnosis in
5 Mr. Goldberg's case for several different reasons.
6 The majority of his mental state throughout the
7 evaluation period, as well as a review of many of
8 the records that I received and was able to review
9 suggested significant deficits in Mr. Goldberg's
10 perceptions of reality. And even unfortunately the
11 records had many different types of diagnosis
12 ranging from anxiety disorder to even schizophrenia.

13 I assigned this diagnosis based on a
14 degree of diagnostic uncertainty, and, also, the
15 fact that since Mr. Goldberg at the time is
16 currently 20, to make a diagnosis of schizophrenia,
17 I believe that additional time would be necessary in
18 order to accurately rule out or determine whether
19 Mr. Goldberg suffers from schizophrenia or another
20 type of thought disorder.

21 Q. Dr. Feldman, once you had determined a
22 diagnosis of the unspecified schizophrenia spectrum
23 which affects his thought order process, I would
24 next like to move towards the test you administered
25 regarding competency.

1 As part of the competency evaluation was
2 Mr. Goldberg administered what is referred to as the
3 GCCT-MSH?

4 A. Yes.

5 Q. Are you familiar with that test?

6 A. Yes.

7 Q. What is the purpose of that test,
8 Dr. Feldman?

9 A. This test was administered to
10 Mr. Goldberg in terms of assessing his factual
11 understanding of the legal system.

12 Q. When you say the factual understanding
13 of the legal system, please explain what you mean by
14 that.

15 A. The test is composed of different
16 elements that only assess someone's or a defendant's
17 knowledge of, for example, the locations of the
18 major courtroom participants, the roles of the
19 courtroom participants, a very brief explanation of
20 the charges against them and any type of possible
21 penalty that they may be facing. The test is not
22 assessed for any type of ability to appreciate their
23 own legal situation.

24 Q. What were the results of that test when
25 it was administered to Mr. Goldberg?

1 A. On this test Mr. Goldberg exhibited a
2 good factual understanding of the legal process.

3 Q. Was his score consistent with that of an
4 individual who would be competent to stand trial?

5 A. Yes.

6 Q. I'd next like to talk about an
7 additional test that was administered as part of the
8 competent process referred to as the Mac-CAT-CA.

9 Are you familiar with that test?

10 A. Yes.

11 Q. What is the purpose of that test,
12 Dr. Feldman?

13 A. This test was administered to
14 Mr. Goldberg in order to provide a more
15 comprehensive assessment of his not only factual
16 understanding of the courtroom process and the
17 courtroom proceedings, this test also assesses for
18 his appreciation of how he is likely to be treated
19 throughout the course of the process of
20 adjudication.

21 Q. Now, focusing on the first part of that
22 test that evaluates his competency for understanding
23 courtroom processes, how did he score on that part
24 of the test, Dr. Feldman?

25 A. He evidenced no impairment, similar to

1 the Georgia Core Competency Test, the GCCT.

2 Q. The second part of that test that
3 evaluates competency in terms of the ability to
4 appreciate, Mr. Goldberg's ability to appreciate his
5 legal situation, how did he score on that portion of
6 the test?

7 A. Well, that's actually the third part of
8 the test, there is also a second part that assesses
9 for reasoning. But, again, it's not reasoning about
10 his own situation, it's reasoning about a
11 hypothetical case but in terms of the third part of
12 the test where Mr. Goldberg is asked specific
13 questions about how he is likely to be treated
14 during the process of the legal proceedings he did
15 score in the clinically impaired range.

16 Q. What does that mean that he scored in
17 the clinically impaired range?

18 A. That means that due to his belief
19 system, he believes -- that interfered with his
20 ability to provide meaningful coherent information
21 that would exhibit a rational understanding of the
22 charges against him, as well as a rational
23 understanding of an ability for him to assist in his
24 defense.

25 Q. So, Dr. Feldman, just to make sure I

1 understand, on the Mac-CAT-CA the first two portions
2 or sections of it he met the standard for
3 competency, but it is the third portion regarding
4 the ability to appreciate his own legal situation is
5 where the clinically -- where he was found to be
6 clinically impaired; is that correct?

7 A. Well, this test, if I can just -- this
8 test is not designed to follow any type of, whether
9 it's a federal standard for competency, it just
10 assesses those areas, those three areas. But in
11 terms of the last area on the test is appreciation,
12 that is where his scores were impaired.

13 Q. Dr. Feldman, based on your evaluation of
14 Mr. Goldberg's competency, is he actively displaying
15 symptoms of a mental disorder that severely impairs
16 his rational understanding of the legal proceedings
17 against him?

18 A. Yes.

19 Q. And is it also likely that based on your
20 observations and on the evaluation, the competency
21 evaluation period that his current mental state will
22 interfere with his ability to assist in his own
23 defense?

24 A. Yes.

25 Q. Finally, Dr. Feldman, based on your

1 evaluation process, the interviews, the tests, the
2 review of the records, what is your opinion
3 regarding whether or not Mr. Goldberg is currently
4 competent to stand trial?

5 A. My opinion is that at this time he is
6 not competent or he is incompetent to proceed with
7 any legal proceeding.

8 Q. Dr. Feldman, as part of the competency
9 evaluation period, you authored an approximate
10 nine-page report; is that correct?

11 A. Yes.

12 MR. FREIN: And, Your Honor, at this
13 time based on conversations with counsel I would
14 move what's been marked as Government's
15 Exhibit 2 into evidence. Government's Exhibit 2
16 which is the nine-page forensic evaluation
17 report authored by Dr. Feldman with an
18 additional cover page dated November the 13th,
19 2015 signed by the warden, R.C. Cheatham, if I'm
20 pronouncing that correctly, from the Miami
21 Detention Center.

22 THE COURT: Mr. Shorstein?

23 MR. SHORSTEIN: Your Honor, I have no
24 objection to entering the report. I would move
25 whether now is the right time or the end of the

1 hearing that it be filed under seal.

2 THE COURT: I will receive the
3 government's exhibit, the report of Dr. Feldman
4 and we can discuss whether it should be sealed
5 and the grounds for that after we're done with
6 that, Dr. Feldman. Mr. Frein?

7 (Government's Exhibit-2 was received
8 into evidence.)

9 MR. FREIN: Your Honor, at this time I
10 have no further questions for Dr. Feldman.

11 THE COURT: Mr. Shorstein?

12 MR. SHORSTEIN: I have no questions,
13 Your Honor.

14 THE COURT: Dr. Feldman, I have a few
15 questions for you. Let me start by asking you
16 this, how many times during Mr. Goldberg's stay
17 at the detention center in Miami did you
18 actually interview him yourself?

19 THE WITNESS: September 29th, 2015, that
20 was the first contact that I had with him and on
21 that day I had multiple contacts with him that
22 spanned in the morning as well as in the
23 afternoon. I also had contact approximately
24 four additional days.

25 THE COURT: Were there others that

1 assisted you with your evaluation who either
2 also interviewed Mr. Goldberg and reported the
3 results of their interviews to you or were there
4 others who assisted you with administering the
5 tests?

6 THE WITNESS: There was one other
7 individual.

8 THE COURT: And who was that?

9 THE WITNESS: That was Ms. Iliana
10 Jimenez.

11 THE COURT: And what is her position?

12 THE WITNESS: She is a psychology
13 graduate student. It's a temporary position.

14 THE COURT: At one point in answering
15 Mr. Frein's questions you noted that there were
16 deficits in Mr. Goldberg's perception of
17 reality. Could you provide any specific
18 examples regarding what you meant by that?

19 THE WITNESS: Yes, Your Honor. I mean,
20 there are -- just in terms of my initial contact
21 with him after explaining to Mr. Goldberg
22 numerous times that he was at our facility for
23 the evaluation and was not going to be sent to a
24 medical center for this evaluation, he continued
25 to maintain this belief that he should not be

1 here, I'm sorry, or he should not be at our
2 facility.

3 Another example was numerous times he
4 had, Mr. Goldberg had made allegations that
5 people were harming him on the unit, that he
6 feared for his safety at that time. I called
7 additional correctional staff to intervene and
8 to investigate, which included them interviewing
9 Mr. Goldberg. During that time Mr. Goldberg
10 could not provide any factual information and it
11 appeared that these were more vaguely held ideas
12 that he frequently communicated to either myself
13 or to medical staff or to correctional staff on
14 the unit.

15 THE COURT: Do you have your report in
16 front of you?

17 THE WITNESS: Yes.

18 THE COURT: Would you look at page 5?
19 Towards the top of that page it's the first full
20 paragraph that starts with his insight. Do you
21 see that?

22 THE WITNESS: Yes.

23 THE COURT: It says his insight into his
24 mental health and legal status was impaired,
25 moreover, his judgment as to cause and effect

1 relations was poor.

2 Can you elaborate on that?

3 THE WITNESS: Yes. In terms of, and
4 this goes back to page 4 of the report, where
5 I -- it indicated that Mr. Goldberg had a very
6 poor adjustment to our facility, refusing to
7 shower, to maintain his cell in any type of kept
8 fashion. He was given numerous opportunities,
9 warnings that he needed to take care of his
10 hygiene, take care of his behavior, his
11 interactions even on the unit. In spite of
12 those warnings he continued to display very poor
13 hygiene. He -- throughout staff describes him
14 as emitting very foul body odor, just constantly
15 even -- he would frequently go to medical. He
16 was seen by medical staff in terms of the
17 lesions on his body and was advised numerous
18 times to stop picking at himself because it was
19 only serving to exacerbate the bleeding and the
20 irritation and the inflammation.

21 At points Mr. Goldberg was even able --
22 he verbalized I can't stop. So these are all
23 examples of very poor insight to his behavior
24 and inability to see beyond what he is doing now
25 and how it might impact him in the long run.

1 THE COURT: What about the first
2 sentence, though, on page 5 of the paragraph? I
3 referred to his insight into his mental health
4 and I'm focusing on the next words, and his
5 legal status was impaired.

6 Could you expound on your view that his
7 insight into his legal status was impaired?

8 THE WITNESS: Yes. This was prominent
9 throughout the evaluation and definitely became
10 more apparent when I administered one of the
11 tests to him that assesses his appreciation of
12 the charges against him and when he was
13 questioned about the actions that led to his
14 offense or the -- his arrest he frequently
15 indicated that he should not be charged for
16 these actions, that this was more due to
17 mislabelling, mislabelling as a terrorist and he
18 would try to explain his logic as to why he was
19 engaging in the alleged offense conduct, that
20 appeared to be a distorted type of logic.

21 THE COURT: In what way?

22 THE WITNESS: For example, in terms of
23 when he -- when Mr. Goldberg was asked whether
24 or not he feels that his own attorney is likely
25 to help him with the legal system or throughout

1 the legal system in defending him, Mr. Goldberg
2 verbalized that he has concerns that his lawyer
3 already feels that he has been labeled as a
4 terrorist and feels that he will be treated less
5 fairly than other defendants charged with
6 similar offenses.

7 THE COURT: Turning to page 6 of your
8 report under the section psychological test
9 results, the MMPI-2RF is a test that you
10 administered and you discussed that with
11 Mr. Frein, and you said that in your report
12 Mr. Goldberg's responses were reflective of over
13 reporting of severe psychological impairment and
14 you continue on.

15 Then I believe you stated that the
16 SIRS-2 was indeterminate, I think was your word,
17 whether he was feigning a mental disorder.

18 On the next page you discuss in some
19 detail your view with respect to whether
20 Mr. Goldberg is malingering. And if I'm reading
21 your report correctly addressing malingering, it
22 seems to me, from what I'm reading is that you
23 leave open the possibility that Mr. Goldberg is
24 malingering, there is a possibility that he is
25 not malingering at all and there is a third

1 possibility that he might be malingering some
2 but have a genuine condition, as you say,
3 regarding his mental health status.

4 Is that -- did I summarize that
5 accurately, albeit in layman's terms, and would
6 you expect a four-month evaluation to focus or
7 distinguish between which of those it might be
8 in terms of malingering?

9 THE WITNESS: Your Honor, just to answer
10 the first part of your question, that paragraph,
11 the paragraph on page 7, the last paragraph, I
12 attempted to convey that in any type of forensic
13 evaluation malingering should be considered.

14 The second part I think was consistent
15 with what you said, that there are some
16 indications, for example, the MMPI-2 that did
17 show signs that he could possibly be
18 exaggerating mental health symptoms.

19 And then the third part I -- in taking
20 together all of the results, including the
21 review of the records and the course of
22 treatment at our facility, I did not assign that
23 classification.

24 However, now in answering the second
25 part, Your Honor, I do believe that in any

1 future evaluation, and especially over of a
2 four-month period, that the issue of feigning,
3 and please note that even though Mr. Goldberg
4 could possibly be exaggerating his mental health
5 symptoms, there is significant evidence that he
6 does suffer from a mental illness, but I do
7 believe that in further evaluations that should
8 be addressed.

9 THE COURT: But now looking at the last
10 page of your report, page 9, Mr. Frein asked you
11 some questions about this but I wanted to ask
12 you a couple more questions.

13 In the first paragraph it's continuing
14 from page 8 towards the middle of the paragraph
15 you write Mr. Goldberg's score in the clinical
16 psychologic impairment range in his ability to
17 appreciate his own legal situation. The
18 defendant's score on this portion of the test
19 suggests that his appreciation of how he is
20 likely to be treated in the course of
21 adjudication or rational understanding of the
22 proceedings against him is adversely affected by
23 symptoms of a mental disorder.

24 And when you were explaining that to
25 Mr. Frein you said something to the effect, and

1 I'm not trying to quote you, but something to
2 the effect that his belief system had something
3 to do with his performance on this portion of
4 the Mac-CAT-CA test.

5 Can you, first of all, tell me and
6 describe in more detail what that test consists
7 of? In other words, what are the questions and
8 what were Mr. Goldberg's answers? And then if
9 you could expound upon what you meant, if I
10 heard you right, that his belief system affected
11 his performance?

12 THE WITNESS: Yes, Your Honor. This
13 section of the test consists of questions that
14 directly relate to Mr. Goldberg's beliefs about
15 his own situation, his own legal situation.

16 For example, one of the questions is,
17 and I don't have the test in front of me, but it
18 asks do you feel more or less or about the
19 same -- I'm sorry. Do you feel more likely,
20 less likely, or about the same to be treated
21 fairly by the legal system?

22 Mr. Goldberg's responses suggested some
23 very flawed reasoning.

24 For example, he feels, as I said earlier
25 hopefully in answering one of your questions, he

1 feels that his attorney is less likely to help
2 him because of the fact that Mr. Goldberg
3 believes his attorney thinks of him as a
4 terrorist and will, therefore, assist him less.

5 Another factor or another question on
6 this test is Mr. Goldberg is asked are you more
7 likely, less likely, or about the same to be
8 found guilty as compared to other defendants who
9 are charged with similar charges.

10 In Mr. Goldberg's responses, again in my
11 opinion indicated very flawed, very irrational
12 logic in that he believes that because of the
13 facts that his motives were based on -- to
14 become a journalist or to become even he had
15 said an employee of the FBI, that he feels he is
16 less likely to be found guilty because of, for
17 one, those -- his actions. And he also
18 expressed the belief of -- there were -- on the
19 one hand he felt he was less likely to be found
20 guilty because of his motives in that he was
21 attempting to become a journalist, he was not
22 attempting to portray himself or -- I'm sorry,
23 he was indicating he was attempting to portray
24 himself as a terrorist in order to identify
25 other terrorists.

1 He also reasoned that he is more likely
2 to be found guilty because of the media
3 sensation that the case has drawn and he
4 verbalized the fact that his case has received
5 more media attention than other cases of
6 terrorism in the past and somehow -- I'm having
7 trouble explaining this because this is, in my
8 opinion, very distorted beliefs --

9 THE COURT: Well, what --

10 THE WITNESS: -- that --

11 THE COURT: I'm sorry, go ahead.

12 Well, let me ask you a couple of
13 questions about that because I think I could see
14 someone believing that it would not be
15 irrational to think that you might have a chance
16 of being found not guilty because your motive
17 was to be a journalist, or your motive was to
18 work for the FBI in doing what you were doing.

19 In other words, if you just take the
20 facts that are alleged in the complaint if
21 Mr. Goldberg's position was at trial that he
22 wasn't acting as a terrorist and that wasn't his
23 intent and his intent was to be a journalist or
24 his intent was to help the FBI, then it wouldn't
25 seem necessarily to be irrational that he would

1 think that would create a situation where he is
2 less likely to be found guilty.

3 THE WITNESS: Shall I -- would you like
4 me to add, Your Honor?

5 THE COURT: Well, I would just like to
6 hear your reaction to what I said.

7 THE WITNESS: In terms of what you said,
8 Your Honor, I do believe that there are much
9 more legal, and I know that I was not asked to
10 provide an opinion on criminal responsibility,
11 but I believe that there are many different
12 alternative actions he could have chosen to --
13 if, in fact, he did want to, for example, work
14 with the FBI. And to my knowledge, there has
15 not been any verification that he had contacted
16 the FBI to report this or to request an interest
17 in working with them. And in my opinion that
18 shows very, I guess, going back to the cause and
19 effect, very poor cause and effect thought
20 process.

21 THE COURT: And what about the comment
22 you made, and, again, I'm not trying to quote
23 you, but you said something to the effect
24 because of his belief system he was unable to, I
25 think you said, appreciate his own legal

1 situation.

2 When you said belief system, I wasn't
3 clear what you meant by that.

4 THE WITNESS: Your Honor, I think in
5 belief system, the beliefs that I was explaining
6 in answering some of his responses to those
7 questions on the tests are some examples of his
8 belief system.

9 THE COURT: All right. Mr. Frein, do
10 you have any other questions?

11 MR. FREIN: I do not, Your Honor.

12 THE COURT: Mr. Shorstein, do you?

13 MR. SHORSTEIN: No, Your Honor.

14 THE COURT: All right. Dr. Feldman,
15 you're excused. Thank you.

16 THE WITNESS: Thank you, Your Honor.

17 (Witness excused.)

18 THE COURT: All right. Do either of you
19 have any argument you wish to make regarding the
20 competency issue?

21 MR. FREIN: None from the United States,
22 Your Honor.

23 THE COURT: Mr. Shorstein?

24 MR. SHORSTEIN: Nothing on behalf of
25 Mr. Goldberg, Your Honor.

1 THE COURT: All right. Well, I think --
2 I was trying to understand a little better what
3 Dr. Feldman meant that Mr. Goldberg has a
4 deficit in his ability to appreciate his own
5 legal situation because usually you find that
6 someone, at least my experience has been, that
7 someone who as an inability to appreciate his
8 own legal situation also shows sign of an
9 ability to appreciate the legal system more
10 objectively. And here Mr. Goldberg has shown
11 that he understands the legal system, he
12 understands what everyone's role is but he
13 doesn't appreciate his own legal situation.

14 I have to tell you that the examples
15 that Dr. Feldman gave didn't overwhelm me in
16 terms of her finding. And I say that because I
17 could see, as I told her, where someone might
18 believe that if his defense was that he was
19 committing these various acts because he wanted
20 to be a journalist or he committed these acts
21 because he wanted to work for the FBI could
22 provide a defense in the case. We've seen
23 defenses before where defendants have claimed
24 that their motive in committing certain actions
25 wasn't -- wasn't for the purposes that seemed

1 maybe obvious on its face or what the
2 allegations were but they were doing it because
3 they were trying to help law enforcement or they
4 were doing it for other reasons.

5 So I wasn't greatly impressed with that,
6 and if Mr. Goldberg's view is that he might be
7 more likely to be found guilty because of the
8 attention the media gave his case, that would be
9 in line with defendants who move for a change of
10 venue because they are afraid -- that the
11 defendant is afraid he or she can't get a fair
12 trial because of the media, so that doesn't seem
13 irrational to me either.

14 And even believing that you're going to
15 be treated differently because it's alleged that
16 you are a terrorist doesn't seem to me to be
17 irrational. Maybe if you think your lawyer will
18 treat you differently it crosses the line from
19 rational to irrational, but nevertheless given
20 the other findings regarding Mr. Goldberg's
21 mental health condition and, specifically given
22 that he is displaying symptoms of a mental
23 disorder that severely impair his rational
24 understanding of the legal proceedings against
25 him, I am going to find that he is incompetent

1 to proceed at this point.

2 I think that a four-month evaluation
3 will further shed light on Dr. Feldman's view
4 that Mr. Goldberg does not have the sufficient
5 ability to appreciate his own legal situation.
6 It will also shed light on whether he is
7 malingering and allow him to be treated for what
8 appears to be one or more mental disorders that
9 very likely would affect his ability to assist
10 counsel in the case.

11 So I will find that he is mentally
12 incompetent to stand trial at the present time
13 because he is unable to understand the nature
14 and consequences of the proceedings against him
15 or to assist properly in his defense and I will
16 commit him to the custody of the Attorney
17 General to undergo treatment including
18 restoration and further evaluation.

19 Let's take up together with that the
20 notice of intent to rely on insanity defense
21 that was filed, document 23 by Mr. Shorstein
22 September 3, 2015.

23 Mr. Frein, did you have a motion in that
24 regard?

25 MR. FREIN: Your Honor, I did pursuant

1 to 18 United States Code, Section 42, 42(A) the
2 United States would make a motion that the
3 defendant also be evaluated for sanity at the
4 time of the offense, that would be
5 contemporaneous with his competency evaluation
6 at whatever medical center he is designated at.

7 THE COURT: And, Mr. Shorstein, do you
8 have any objection to the government's motion?

9 MR. SHORSTEIN: No objection, Your
10 Honor.

11 THE COURT: I'll grant the government's
12 motion and, also, order that the evaluation
13 process of Mr. Goldberg include a determination
14 or at least an opinion by the -- wherever he is
15 evaluated, I'm hoping it's Butner but I had
16 ordered that last time. And, again, let me just
17 say Mr. Goldberg's insistence that he should be
18 at a medical center may very well have been
19 because I ordered that he go to Butner, which is
20 a medical center, so that may not have been
21 reflective of any mental health problem that he
22 had or any inability to understand reality, he
23 may just have remembered and he may have read
24 the order where I directed that. But as is
25 not -- it's not unusual for the Bureau of

1 Prisons to disregard a judge's recommendations
2 and that's what the Bureau of Prisons did in
3 this instance. But I am assuming that he will
4 go to the Federal Medical Center at Butner and
5 he can be evaluated both for competency, he can
6 be treated for competency or treated for
7 incompetency and he can also be evaluated to
8 determine whether he was sane at the time of the
9 offense.

10 And I will direct that the portion of
11 the evaluation addressing sanity at the time of
12 the offense just be provided to counsel and not
13 the court.

14 I've had occasion in the past where I've
15 been provided with that and I, of course, have
16 nothing to do with any issue related to whether
17 he was sane at the time of the offense.

18 Now, with respect to the sealing of the
19 report, Mr. Shorstein, I'm going to keep the
20 report sealed and allow you seven days to cite
21 authority for allowing the report to remain
22 sealed.

23 And then, Mr. Frein, I'll give you seven
24 days to respond to that and if there is any
25 interested party that wish to be heard on that,

1 that party or those parties will also have the
2 opportunity to file something within seven days
3 of the defendant's motion to seal.

4 So, let's see, today is the 14th, why
5 don't I give you until the 22nd, Mr. Shorstein.

6 MR. SHORSTEIN: That's fine, Your Honor,
7 I'll have it done before then.

8 THE COURT: Okay. And then, Mr. Frein,
9 I'll give you until 29th.

10 MR. FREIN: Yes, Your Honor.

11 THE COURT: To file the government's
12 response and any other interested party can file
13 a response to the defendant's motion on that day
14 and then I'll take up the issue whether it
15 should remain sealed.

16 All right. So I'll enter a written
17 order shortly finding Mr. Goldberg incompetent
18 and enter my finding here and also order that he
19 be examined with regard to sanity at the time of
20 the offense.

21 I think that conversation is everything
22 we need to do today.

23 I did want to mention this, though, in
24 regard to the preliminary hearing the
25 preliminary hearing of course was supposed to be

1 held within 14 days of Mr. Goldberg's arrest and
2 under Rule 5.1B the court can extend that time
3 with the consent of the defendant or on a
4 showing of extraordinary circumstances and
5 justice requires the delay. Given that I've
6 found Mr. Goldberg incompetent, I can't expect
7 him to consent to a delay in the preliminary
8 hearing, but I do find that there are
9 extraordinary circumstances that exist and
10 justice requires the delay of the preliminary
11 hearing. And essentially Mr. Goldberg is
12 incompetent to proceed and he could not assist
13 his counsel in the preparation of the
14 preliminary hearing and he could not assist his
15 counsel during the preliminary hearing. So
16 we'll continue that hearing until a later time.

17 With respect to detention, good cause
18 continues to exist to delay the detention
19 hearing because Mr. Goldberg has been found
20 incompetent to proceed, and then with respect to
21 the Speedy Trial Act, the government, of course
22 had 30 days from the filing of the complaint to
23 present this matter to the grand jury but with
24 respect to the Speedy Trial Act any issues
25 related to the competency with Speedy Trial so

1 by my calculation there are 25 days left and
2 that will remain suspended until and if building
3 is found competent at a later date.

4 Do you agree with those matters with
5 respect to the preliminary hearing and detention
6 and the Speedy Trial Act, Mr. Frein?

7 MR. FREIN: The United States does, Your
8 Honor.

9 THE COURT: Do you, Mr. Shorstein?

10 MR. SHORSTEIN: We do, Your Honor.

11 THE COURT: Okay. I think that takes
12 care of everything. We'll be in recess. All
13 rise.

14 (Whereupon, the proceedings were
15 concluded at 12:06 p.m.)

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