

**In the Matter of:**

*UNITED STATES OF AMERICA*

vs.

*JOSHUA RYNE GOLDBERG*

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*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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Jacksonville, Florida 32202

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December 14, 2015

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

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

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

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

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

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

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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COURT CERTIFICATE

STATE OF FLORIDA )  
COUNTY OF DUVAL )

I, Allison B. Murray, Registered  
Professional Reporter, certify that I was authorized  
to and did stenographically report the foregoing  
proceedings and that the transcript is a true and  
complete record of my stenographic notes.

DATED this 20th day of January 2016.



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Allison B. Murray, RPR

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

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