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Ang Udom
Michael G. Karnavas
ECCC, National Road 4, Chaom Chau
PO Box 71
Phnom Penh
Cambodia

Re: **Ieng Sary**

Scope of Evaluation

Dear Mr. Ang and Mr. Karnavas,

I appreciate your and Tanya Pettay's thoughtful efforts to identify the information the Trial Chamber will need in order to authorize a forensic neuropsychiatric evaluation of your client's fitness to stand trial. My answers to the questions in yesterday's message from Ms. Pettay follow:

A. What special qualifications should the evaluator possess?

To perform a reliable (by generally accepted standards) forensic neuropsychiatric evaluation of competence to stand trial, the examiner needs to be a forensically trained neuropsychiatrist capable of systematic, neuropsychodynamically informed observations of the defendant's cognitive functioning in an extended legal proceeding, including the defendant's interactions with his attorneys. Specifically, the expert retained needs to be able to:

1. Provide a competency-specific mental status examination relative to capacity to assist counsel—which includes, for example, an assessment of his autobiographical memory. This requires a context-specific, task-specific (rather than generalized) understanding of competence.
2. Provide a systematic assessment of the limits of the defendant's attention, concentration, understanding and communication of relevant language, and executive functions relative to his endurance in the presence of fatigue and pain as the trial progresses and the complexity of the information presented increases.
3. Perform a culturally informed evaluation, taking into account the defendant's cultural background in relation to the cultural setting of the trial.

4. Rule out faking, exaggerating, or malingering (a subject on which I have taught seminars for the U.S. Department of Justice).
5. Take a careful medical and mental-health history and consider the interaction between medical and neuropsychiatric impairments.
6. Assess potential side effects of a range of medications, whether acute or emerging gradually in the form of subtle yet significant medication-related neurotoxicity.
7. Consider any history of head injury (recent or remote) or other potential indicators of Organic Brain Syndrome.
8. Consider such collateral data as are relevant to the evaluation.
9. Conduct an objective evaluation irrespective of retention by prosecution or defense (it helps to have been retained previously, in other cases, by both sides).

B. What examinations should be conducted?

Given the complexity of this evaluation in its cultural and historical context, I recommend the following:

1. For preparation, familiarization with proceedings to assess whether examinee is able to follow them well enough to assist counsel.
2. Observation in court over time.
3. Observation of attorney-client interactions.
4. Forensic neuropsychiatric interviews.
5. Ruling out faking or malingering.
6. Review and analysis of records from hospital and prison.

C. How long should these examinations last?

Given the complexity of the evaluation and potential issues such as fatigue and fluctuating mental status, I estimate 5 days.

D. What costs are standard for providing such expertise (keeping in mind, however, that the UN has fixed rates which are nonnegotiable)?

My standard rate is \$500/hr up to \$5000/day, including preparation and travel. I am willing to adjust the costs as appropriate.

Attached is a copy of my C.V., which documents my experience in performing as well as teaching, consulting, and publishing with respect to such forensic

neuropsychiatric evaluations. Please feel free to get back to me if you have any questions or if additional information is needed.

Yours very truly,

Harold J. Bursztajn, M.D.

CC: Tanya Pettay