

Mark A. Kalish, M.D., F.A.P.A
3131 Camino del Rio North
Suite 270
San Diego, California 92108
(619) 282-7172
FAX
(619) 282-7626

Diplomate
American Board of
Psychiatry & Neurology

Diplomate
American Board of
Forensic Psychiatry

Distinguished Fellow
American Psychiatric Assoc.

March 2, 2006

Mr. Philip Halpern
Assistant US Attorney
880 Front St
San Diego, CA 92101

Re: US v. Cunningham

Dear Mr. Halpern:

Thank you for providing for my review the forensic psychiatric report of Saul Faerstein, M.D. dated February 13, 2006. You have asked that I review this report and provide you with my comments and opinions.

While Dr. Faerstein is a Board certified psychiatrist, I would call to your attention the fact that he is not Board certified as a forensic psychiatrist. I would also call your attention to the fact that he administered no psychological testing which might form an objective basis for the opinions expressed in his report.

It is noted that the patient first began to manifest psychiatric symptoms of depression and anxiety in mid-2005. This would correspond to the time when revelations of his illegal conduct were first coming to light. It is quite understandable that he would become anxious and depressed as his illegal conduct was being discovered and he faced the realization that he might lose his job and face jail time. What is not addressed is the fact that at no time prior to the discovery of his illegal conduct did the patient suffer from any psychiatric symptoms such as depression or anxiety that might be related to guilt or remorse over his ongoing illegal conduct, or to his prior military service which is being proffered as an explanation for his illegal conduct.

3/2/2006

2

After his illegal conduct was discovered, the patient consulted Ronald Smith, M.D. who recommended that the patient be hospitalized. The patient refused and Dr. Smith did not feel that the patient's condition warranted involuntary hospitalization. The severity of the patient's developing depression raises the significant issues as to his risk for suicide or flight after sentencing.

On page 6 of his report, Dr. Faerstein writes that Mr. Cunningham recognizes now that Wade and others in Washington were part of a culture of corruption and that good motives may lead to bad decisions when that corruption confuses the relationships of the people involved in the process. It appears that Dr. Faerstein is suggesting that the problem of corruption lies in others rather than with Mr. Cunningham. It appears that Mr. Cunningham is not taking responsibility for his conduct, but rather he is portraying himself as a victim of a corrupt culture rather than being one of the architects of such a culture.

On page 7 of his report, Dr. Faerstein suggests that as part of Mr. Cunningham's military training, "He learned how to block out the consequences and focus on the goals." I think this is a misunderstanding of Mr. Cunningham's military training and an inappropriate attribution of Mr. Cunningham's illegal conduct to that training. While his military training certainly encouraged him to focus on the goals of his mission, I don't believe his training would encourage him to block out the consequences of his actions. In fact, it is the constant awareness of the consequences which favor a positive outcome.

Also on page 7 of his report, Dr. Faerstein suggests that some of Mr. Cunningham's behavior, "evolved from within his psyche, but some of it was fostered by and thrust on him by the service and by society as a whole." He goes on to write, "Society needs heroes and wants them to be superheroes. The normal sense of mortality is suppressed in order to fulfill this role." There is no objective evidence to support this conclusion. This is an attempt to avoid personal responsibility for his illegal conduct and shift responsibility. It is also a disservice to all those who served honorably in the military and later in public office. If such a causal relationship between military service and the illegal conduct existed one would expect to see it with greater frequency. Because such a causal connection does not exist, such illegal conduct is seen only rarely.

Dr. Faerstein opines that Mr. Cunningham's, "Capacity to rationalize his conduct was increased by his sense of vulnerability to any harm." Rephrased in plain English, Mr. Cunningham was able to rationalize his illegal conduct because he felt he could get away with it.

On page 8 of his report, Dr. Faerstein writes, "It is possible that his extraordinary deeds in the service planted a subconscious sense of entitlement which fed his rationalization to accept these gifts for his sacrifices." I disagree with Dr. Faerstein. Mr. Cunningham's extraordinary deeds in the service had nothing to do with his conduct in the instant offense. There was nothing subconscious about his sense of entitlement. He did not accept gifts. He actively solicited bribes. He solicited those bribes because he thought he could get away with it.

file #

3/2/2006

3

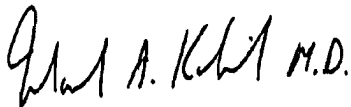
Finally, Dr. Faerstein writes, "In the Navy he was given medals for ignoring danger signs and performing perilous and death-defying acts. In Congress he was expected to behave very differently, but the psyche can not make such a U-turn easily."

I disagree with Dr. Faerstein. Mr. Cunningham was not given medals for ignoring danger signs, he was given medals because he saw the danger signs and he was successful in combat. In Congress, Mr. Cunningham was only expected to follow the law and to represent his constituency. The suggestion that the psyche can not make such a U-turn easily is ludicrous. One only has to look at the distinguished service of John McCain and Max Cleland to understand that honorable military duty can foster honorable civil service.

Dr. Faerstein attributes Mr. Cunningham's illegal conduct to an alleged psychiatric condition which was created by Mr. Cunningham's military service. If Mr. Cunningham developed a psychiatric condition due to his military service why was there no manifestation of that psychiatric condition prior to his illegal conduct in the instant case? If Mr. Cunningham's alleged psychiatric condition was the cause of his illegal conduct why was there no such behavior evident in the 30 years prior to the instant offense. Is it not more likely that Mr. Cunningham's illegal conduct was motivated by greed and that it took place at this point in time because he had means and opportunity? I believe this is the more logical and reasonable psychological explanation.

I hope this report has been of some help. If I can be of any further assistance, please feel free to call.

Sincerely,



Mark A. Kalish, M.D., F.A.P.A.

file #

CURRICULUM VITAE
OF
MARK A. KALISH, M.D.

BIOGRAPHICAL DATA

Date of Birth: November 1, 1951

Place of Birth: Chicago, Illinois

Marital Status: Married

PROFESSIONAL ADDRESS

3131 Camino del Rio North
Suite 270
San Diego, California 92108
(619) 282-7172
Fax: (619) 282-7626

EDUCATION

B.S., The University of Michigan; Ann Arbor, Michigan; Major - Biology
August, 1972

M.P.H., The University of Michigan; Ann Arbor, Michigan; Major - Medical Care Organization;
December, 1977

M.D., Northwestern University Medical School; Chicago, Illinois; December, 1977

Internship: Loma Linda University Medical School; Loma Linda, California;
Department of Psychiatry; January - December, 1978
Training Director: Louis P. Bozzetti, M.D.

Residency: The University of California, San Diego
Department of Psychiatry, M-300, La Jolla, California 92037 July, 1979 - July, 1982
Training Director: Robert Nemiroff, M.D.

Mark A. Kalish, M.D.
March 2, 2006

MEDICAL LICENSE

California Physician & Surgeon License, G 38634, January 2, 1979

BOARD CERTIFICATION

Diplomate, Board of Medical Examiners, 1979

Diplomate in Psychiatry, American Board of Psychiatry and Neurology, 1986

Diplomate in Forensic Psychiatry, American Board of Forensic Psychiatry, 1989

Diplomate in the Subspecialty of Forensic Psychiatry, American Board of Psychiatry and Neurology, October, 1994 - October, 2004

Recertification in Forensic Psychiatry, American Board of Psychiatry and Neurology, 2003 - 2013

Independent Medical Examiner, State of California, Department of Industrial Relations, Division of Industrial Accidents, 1989 - 1993

Examiner, American Board of Forensic Psychiatry, 1990 - 1991

Examiner, American Board of Psychiatry & Neurology, 1990 - 1996, 1998, 2000

Fellow, American Psychiatric Association, 2001

Distinguished Fellow, American Psychiatric Association, 2003-2005

ACADEMIC POSITIONS

Assistant Clinical Professor, voluntary; Department of Psychiatry, The University of California, San Diego; 1989 to present

Adjunct Professor of Law; The University of San Diego Law School, San Diego, California; February, 1989 to 1999

Clinical Instructor; Department of Psychiatry, The University of California, San Diego; 1983 to 1989

Guest Lecturer; The University of San Diego Law School, San Diego, California; 1985 to 1989

Lecturer; Department of Natural Resources and Human Ecology, California State College, San Bernardino, California; Fall, 1978

Mark A. Kalish, M.D.
March 2, 2006

PROFESSIONAL EXPERIENCE

Psychiatric consultant to the military entrance processing station, 1997 - present

Appointment as Special Master to the Family Court Division of the San Diego County Superior Court, 1997 - 1998

Appointment as Guardian Ad Litum by the U.S. District Court, for the Southern District of California, 1997

Medical Consultant, California State Department of Corporations, 1997 - 2001

Medical Expert Reviewer, Medical Board of California, 1995 - present

Medical Expert Panel, California State Bar Court, 1995 - 1997

Staff Psychiatrist, Richard J. Donovan Correctional Facility, San Diego, California July, 1987 to June, 1988

Staff Psychiatrist, Metropolitan Correctional Center, San Diego, California; June, 1984 to October, 1985; October, 1987 to November, 1988

Psychiatric Consultant; California State Department of Rehabilitation, 1350 Front Street, San Diego, California 92101; July, 1982 to January, 1984

Consultant; CRASH Golden Hills Residential Treatment Facility, 2410 "E" Street, San Diego, California 92102; January, 1980 to May, 1989

Medical Director, CRASH Short Term Residential Drug Treatment Program, July, 1980 to July, 1981

Emergency Room Physician, Jerry L. Pettis Memorial Veterans Administration Medical Center, Loma Linda, California; January, 1979 to July, 1979

HOSPITAL AFFILIATIONS

Attending Staff; Mercy Hospital, 4077 Fifth Avenue, San Diego, California; July, 1982 to August, 2000

Courtesy Staff; Mercy Hospital, 4077 Fifth Avenue, San Diego, California; August, 2000 to present

Mark A. Kalish, M.D.
March 2, 2006

MEDICAL STAFF POSITIONS

Treasurer, Vista Hill Medical Staff, 1985

Secretary, Vista Hill Medical Staff, 1986

Chairman, Pharmacy & Therapeutics Committee, Vista Hill Hospital, 1985, 1986

Member, Pharmacy & Therapeutics Committee, Mercy Hospital, 1985 to 2001

Chairman, Ad Hoc Committee on Sedative-Hypnotics, P & T, Mercy Hospital, 1985

Member, Library Committee, Mercy Hospital, 1985 to 1993

Chairman, Committee on Psychiatry & the Law, San Diego Society of Psychiatric Physicians, 1987 to 1990

Member, Peer Review Committee, San Diego Society of Psychiatric Physicians, 1991 to 1998

Chairman, Peer Review Committee, San Diego Society of Psychiatric Physicians, 1992 to 1994

PROFESSIONAL ORGANIZATIONS

Phi Beta Kappa, 1972

American Public Health Association, 1977-1990

San Diego Psychiatric Society, 1981-2005

American Psychiatric Association, 198 -2005

California Psychiatric Association, 1981-2005

San Diego Medical Society, 1981-2005

American Medical Association, 1981-2005

California Medical Association, 1981 -2005

American Academy of Psychiatry and the Law, 1986 to present

Mark A. Kalish, M.D.
March 2, 2006

COMMUNITY ORGANIZATIONS

Director, Friends of Mercy, 1989 to 1994

Secretary Treasurer, Friends of Mercy, 1990

Vice President, Friends of Mercy, 1991

President, Friends of Mercy, 1992

Director, Mercy Physicians Medical Group, 1989 to 1991

Director, International Aerospace Hall of Fame, San Diego, California, 1985 to 1991

Sponsor, San Diego Old Globe Theater, 1986 to 1989

Member, National Hole-In-One Association, 1989

Underwriter, KPBS Radio, Public Radio- San Diego 1992 to 1998
