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Trends. Competency and Terrorism in the Moussaoui

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Abstract. This article describes several Issues related to the evaluation of competency to stand trial for defendants accused of terrorism.

Lawyers assigned to the defense of Zacarias Moussaoui--an alleged 20th hijacker in the 9/11 terrorist attacks--recently attacked the competency of their client by asserting that "it could not possibly...be said that the defendant is competent to make a knowing and voluntary decision to waive the right to the assistance of counsel" and that the client was probably irrational and suffering from mental problems (Lewis, 2002). The lawyers stated that their assertion was based on the client asserting that he demanded that they be fired, that he wished to represent himself, that he believed the lawyers were working with the government in a mission to execute him, that the lawyers were playing a game of deception, and that the lawyers were motivated by "greed, fame, and vanity" (Lewis, 2002).

Yet, Moussaoui may be on to something. Representing oneself and firing one's lawyers are allowed by the United States criminal justice system and, thus, cannot be prima facie evidence of incompetence. Also, there are lawyers who seize on legal cases imbued with notoriety as a vehicle for seeking and reinforcing fame and for attempting to sate greed and vanity. Moreover, insofar as Moussaoui is vehemently against the American way of life, advocates its demise through political violence, was complicit in this violence, and believes the its criminal justice system to be inherently unfair and geared towards protecting this way of life, he would be correct in assuming that his lawyers are out to facilitate his execution because they are acting within the system--thereby reinforcing it--and because capital punishment is a possibility. In other words, a system established to protect a political perspective cannot concurrently be established to lead to its demise regardless of the justice of this demise.

The lawyers' insistence on Moussaoui's likely irrationality and bearing of an emotional or mental disorder is also telling. Irrationality as a construct is ultimately no more than what some majority or politically powerful minority believes is acceptable as to thought, emotion, motivation, and behavior. The same ultimately applies to the construct of emotional and mental disorder because even the demonstration that a physical state has a causal relationship with something labeled as an emotional or mental disorder is dependent on the social psychological phenomenon that labels thought, emotion, motivation, and behavior as stigmatic and meriting change. As well, it is noteworthy that all the above is occurring in the context of Moussaoui effectively complicating the tasks of the prosecution and demonstrating so-called rationality and logic to the presiding judge in a number of requests relevant to his prosecution.

The Moussaoui case and other terrorism cases effectively demonstrate the political, social, and cultural assumptions and concurrent limitations of any specific criminal justice system. This does not mean that his case cannot be justly adjudicated. However, it does mean that the political actors with a stake in the competency of the system need to be less quick to sincerely question the competency of someone without such a stake. (See Charland, L.C. (2001). Mental competence and value: The problem of normativity in the assessment of decision-making capacity. *Psychiatry, Psychology, and Law*, 8, 1345-145; Freckleton, I. (1996). Rationality and flexibility in assessment of fitness to stand trial. *International*

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Journal of Law and Psychiatry, 19, 39-59; Gutheil, T.G. (1999). A confusion of tongues: Competence, insanity, psychiatry, and the law. *Psychiatric Services*, 50, 767-773; How can rationality be defined? <http://www.islamic.org.uk>; Lewis, N.A. (April 25, 2002). Defense seeks extensive tests on mental health of suspect. *The New York Times*, <http://www.nytimes.com>; Noonan, J.R. (1999). Competency to stand trial and the paranoid spectrum. *American Journal of Forensic Psychology*, 17, 5-27.)(Keywords: Competency, Moussaoui, Terrorism.)