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CLINICAL PSYCHOLOGICAL ASSESSMENT

OF

ALEXANDER BAILIFF

DOB – 25 AUGUST 1970

DATE OF ASSESSMENT – 11 JUNE 2013

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Background

On 11 June 2013, Mr Alexander Bailiff attended my rooms at the University of Sydney for the purposes of undertaking a clinical psychological assessment in relation to criminal proceedings in the New South Wales Local Court. I am aware that Mr Bailiff is charged with breaking and entering a dwelling house to commit a serious indictable offence (property damage). Additionally, in early October 2012 Mr Bailiff sent a series of text messages to a former partner, some of which contained possible suicidal ideation. He was charged in the ACT with contravening a Protection Order and the charges are listed before the ACT Magistrates Court for determination in August 2013.

In preparing this report I had available to me a bundle of documents including the Court Attendance Notice and Police Facts Sheet regarding events on 11 March 2013; a copy of the Criminal History of Mr Bailiff; ACT Charges and Statements of Facts in relation to events in October 2012, when the former partner received some text messages; clinical notes from the Prince of Wales Hospital Kiloh Centre; and historical reports dating from 2003 to 2012.

I have been asked to write a forensic report for use in court addressing the following issues:

- 1 Diagnosis of any mental illness, condition or developmental disability that Mr Bailiff suffers from currently and at the time of the alleged offence on 11 March 2013;
- 2 In respect of any diagnosis made, details of Mr Bailiff's current treatment regime (if any);
- 3 Recommendations on any future treatment regime or support plan, including an opinion on whether the proposed treatment is available in mental health facilities or through mental health services in NSW or the ACT, and
- 4 Recommendation on the degree of supervision or monitoring required under any proposed treatment regime or support plan and the availability of such supervision within NSW or the ACT.

In addition, I have been asked to express an opinion as to whether the client is fit to plead under the *Presser* Criteria.

To the extent that it was possible, I did not canvass the circumstances of the offences with Mr Bailiff, as requested.

Expert Witness Statement

I acknowledge that I have received and read a copy of the Uniform Civil Procedure Rules 2005, Schedule 7, Expert Witness Code of Conduct, and I agree to be bound by it. I have the degrees of BA (Hons I) and PhD from the School of Psychology at the University of New South Wales. I am a registered psychologist in Australia and a member of the Australian Psychological Society and its College of Forensic Psychologists. I am a Fellow of the International Association for the Scientific Study of Intellectual Disability and member of the Australasian Society for the Study of Intellectual Disability. I have undertaken clinical and research work in forensic psychology for more than two decades; I have published more than 20 books or book chapters, and more than 64 papers in professional journals in my fields of expertise in psychology. In the matter of this client I was asked to report on mental state, a field in which I am expert. I prepared the report in conformity with the Expert Witness Code of Conduct.

Family and Social History

At the time of the assessment, Mr Bailiff was aged 42 years, an overweight man who was inappropriately dressed for the weather (he was in shorts and a tee shirt on a cold winter day); he wore spectacles and had several days' growth of stubble, and a strong body odour. He wore a baseball cap throughout the assessment.

Mr Bailiff's conduct and demeanour was inappropriate. He was over-familiar with people who passed by in the corridor, and entered an office of a colleague on the same floor for a chat. It was extremely difficult to conduct the interview because he was tangential in his responses and over-inclusive.

The history that was obtained was extremely fragmented. Mr Bailiff immediately informed me that his behaviour was disinhibited owing to the fact that he suffered from brain damage incurred in a motor vehicle accident when he was about 15. He attempted (in my opinion deliberately) to exhibit the behaviours which were described on one of the documents available to me, apparently written by Mr Roger Parker QC, entitled *Adducing Evidence to Prove or Disprove Brain Damage* (Brain Damage Medico-Legal Aspects, Blackwell Press, Sydney (1994)). This refers to work by Dr William Lishman. To quote briefly from this page:

"Most characteristic (of focal cerebral disorder) is a disinhibition with expansive over familiarity, tactlessness, over talkativeness, childish excitement or prankish and punning social and ethical control may be diminished with lack of concern for the future and for the consequences of actions (sic) . . . elevation of mood is often seen, namely an empty and fatuous euphoria rather than a true elation which communicates to the observer . . . concentration, attention and ability to carry out a planned activity are impaired by these changes but performance on tests of formal intelligence is often surprisingly well preserved once the patient's cooperation has been secured."

As indicated, it seemed that Mr Bailiff was trying to emphasise aspects of this description.

Mr Bailiff informed me that he had been born at the Royal Hospital for Women and was eight weeks premature because his mother was under stress at the time. He had a sister, Vanessa,

who was older than he was and she was killed during the car accident in which Mr Bailiff was involved when he was aged 15. He has a brother who is 11 years younger than he is. He said that his natural parents separated by the time that he was 10, prior to the brother being born. He maintained that his mother was on a range of prescribed medication when he was young and that she bashed both himself and his older sister. He claimed that the mother was driving the car which caused the death of the sister and his brain injury. He said that at the age of 15 after the accident he was sent to a number of refuges by his mother.

Mr Bailiff attended a number of schools in Victoria up until the time that his sister was killed and he was injured. The family initially lived in Glen Iris until he was about three years of age and then in Healesville. He describes his life as being traumatic because of the car accident. At one stage he was in Prince Henry Hospital for rehabilitation. He went to Canberra and lived with his natural father. He lived in Melbourne with a girlfriend. For about the last five years he has lived at an address in Narrabundah by himself.

He spent a great deal of time trying to talk about the car accident and also the relationship with his former girlfriend who is involved in the Apprehended Violence Order that he breached by sending her text messages. Mr Bailiff was repeatedly asked to return to the question which was asked and as this process continued it appeared that he became irritated by the fact that he was not sanctioned to speak at length about the issues about which he wanted to talk about. Despite repeatedly telling Mr Bailiff that I had been asked not to canvass the circumstances of the offences with him, he responded that I had not asked him about the offences, but he was telling me. It was very difficult to stop the torrent of information which he gave.

Amongst the various pieces of information that Mr Bailiff produced was that he once spent four months in gaol in the ACT and he was found "not guilty by reason of impairment".

He said that at the time of the offences in New South Wales he was in Sydney for six months living at the residence of his mother and her current partner.

Mr Bailiff informed me that he currently resided at the Matthew Talbot Hostel and had been there since earlier in 2013.

When asked if he had ever held paid employment he replied, "Why would I have paid employment when I am a genius, a savant?" He claimed that he was able to establish a WHO Precedent; he also gave a lengthy and garbled account of a story concerning the Pope. He spoke at length about his previous legal matters and the supposed defences which he had successfully used.

Health

When asked about his health, Mr Bailiff replied that his health is fine. He denied using alcohol or taking any medication and said that he was impaired as a result of the car accident.

Mental Health

According to the Discharge Summary from the Prince of Wales Hospital Mental Health Program, dated 15 October 2012, in relation to an admission from 4–9 October 2012, the client was diagnosed with situational crisis and acquired brain injury. On discharge he was medicated on one milligram of Risperidone. He was described as having acquired brain injury and a resultant hypo manic state and he presented to hospital with police after contemplating suicide by jumping off the Gap. He called police himself and requested psychiatric help. Suicidal ideation was secondary to multiple psychosocial stressors. He denied any suicidal ideation at the time of the discharge and there was no evidence of acute major mood disorder or psychotic illness at discharge. He was transferred back home and travelled by train to Canberra. It was recommended that he be followed up with the Community Mental Health Service in Canberra.

A report by Dr Stephen Allnutt, dated 10 April 2012, indicates that the client was assessed whilst incarcerated at the AMC (presumably the Alexander Maconochie Centre, a correctional centre in the ACT). Dr Allnutt describes the client as speaking rapidly with intensity, manifesting suppressive speech, being overly talkative, over familiar, expansive in his affect and manifesting a tendency towards perseveration, and flight of ideas. He manifested difficulty in inhibiting his underlying urgency and endorsed a number of symptoms that seemed to be consistent with hypo mania. Dr Allnutt states that the client manifests a severe cognitive impairment in his ability to conform his behaviour to social norms. Dr Allnutt concludes that in relation to all of the offences which were the subject of that report, the client would have been suffering a mental impairment as a consequence of brain damage. Dr Allnutt goes on to state that it is unlikely that his mental impairment seriously impaired his capacity to know the nature and quality of his conduct or that he was compromised in his capacity to know that his conduct was wrong; however, during the period of his offending his mental impairment had the effect that his capacity to control his conduct was seriously compromised and on balance he would have available to him a defence of mental impairment.

A series of reports by Dr G J George, consultant psychiatrist to Forensic Services in Mental Health ACT, was available to me. The report dated 29 April 2011, states that Mr Bailiff is unfit to plead and will remain unfit indefinitely because he has a chronic mental impairment through an acquired organic mental disorder related to a brain injury. He presents much of the time in a chronic manic state and appears to suffer from significant mood disorder. He is highly distracted, somewhat fatuous in his mood and subject to impulsive and disinhibited behaviour. His illness appears to be chronic.

A report by Dr Leonard Lambeth and Ms Natasha Shott from Forensic Services, Mental Health ACT, dated 20 May 2009, indicates that the client presented as suffering an organic mental disorder with predominantly frontal symptoms resulting in an organic personality disorder. The report concluded that Mr Bailiff was unfit to plead because of impairment to his mental processes. His behaviour was not considered to be modifiable by any form of psychotherapy and the only way of modification would be medication, but he is most unlikely to be compliant with medication. Therefore, a psychiatric treatment order was recommended, as well as medication with a depot medication such as Risperdal Consta and prescription of mood stabilising medication (although this would probably not be beneficial due to his non-compliance).

Other reports have stated similar conclusions.

In my opinion Mr Bailiff can be diagnosed with 294.11 Major Neurocognitive Disorder Due to Traumatic Brain Injury (*Diagnostic and Statistical Manual of Mental Disorders- 5th Edition*, American Psychiatric Association, 2013). He suffered a traumatic brain injury which resulted in difficulties in the domains of complex attention, executive ability, learning, memory, speed of processing, and disturbances in social cognition. He exhibits disturbances in emotional function (easy frustration, affective lability), and personality changes (disinhibition, suspiciousness).

Kaufman Brief Intelligence Test Second Edition (KBIT-2)

The Kaufman Brief Intelligence Test Second Edition is a brief, individually administered measure of verbal and non-verbal intelligence, and can be used for children, adolescents and adults ranging from 4 to 90 years. The test yields three scores, Verbal, Nonverbal and IQ Composite Score. The Verbal score includes results on two sub-tests, Verbal Knowledge and Riddles, and assesses verbal, school-related skills by assessing a person's word knowledge, range of general information, verbal concept formation and reasoning ability. The Nonverbal score (the Matrices subtest) measures the ability to solve new problems by assessing an individual's ability to perceive relationships and complete visual analogies (A S Kaufman and N L Kaufman, (1997) *Kaufman Brief Intelligence Test Second Edition Manual*, Pearson, Minneapolis MN).

Mr Bailiff obtained the following results which are reported at the 90 per cent level of confidence:

	Score	Confidence Interval	Percentile Rank
Verbal	80	74 – 88	9
Nonverbal	100	92 – 108	50
IQ Composite Standard Score	89	84 – 95	23

These results indicate that overall Mr Bailiff functions in the category of low average intelligence. There is a significant difference between his verbal and non-verbal standard scores with his verbal score being at the lower end of the range of low intelligence and his non-verbal score being average. The KBIT-2 is an untimed test, and Mr Bailiff would have received much lower results if a timed test of intelligence had been administered, because his responses were very slow and laboured.

During the testing, when Mr Bailiff began to fail some of the items, he veered off onto tangential topics such as his blog, and the legal precedent that he claimed to have been set in a case in which he was involved in the ACT. He also reasoned out loud and engaged in fatuous smiling which appeared to be unrelated to any stimulus in the test setting. This type of distracted behaviour became more apparent as the questions became harder. He also commented on his own presentation stating that he was going to take a "wild guess" and that he "flippantly says things that he shouldn't say". Therefore, it appears that to some degree Mr

Bailiff uses the distraction of tangential stories and comments to cover up and divert attention from his limitations in reasoning.

An attempt was made to gain insight into Mr Bailiff's difficulties with adaptive behaviour, but he maintained that he had no such difficulties, and did not cooperate with answering questions.

Fitness to be Tried

I attempted to canvass the *Presser* criteria with Mr Bailiff. He was able to tell me the charges against him in the ACT and NSW. He stated that he would not be entering a plea because of the "precedent" of not guilty by reason of impairment in the ACT. He did not respond to questions about the jury or challenging the jury, and spoke at length about tangential topics such as his blog. He stated in response to a question that his attention span was fine and he had no problem following what happens in court. When asked about the issue of letting his counsel know what his version of the facts is, he gave a garbled version of his defence being that there is not an element of crime.

Mr Bailiff did not respond in any meaningful fashion to many questions about the *Presser* criteria, and therefore I cannot make a determination as to whether in my opinion he is fit to be tried. I note the previous reports by Dr George and others where the client has been assessed as being unfit, although I could not arrive at a clear conclusion on the basis of this current assessment.

Summary and opinion

Diagnosis of any mental illness, condition or developmental disability that Mr Bailiff suffers from currently and at the time of the alleged offence on 11 March 2013

Mr Bailiff suffers from the mental illness of 294.11 Major Neurocognitive Disorder Due to Traumatic Brain Injury which arose as a result of a car accident when he was aged 15. Because the injury arose during the developmental period prior to the age of 18, this could be regarded as a developmental disability. He has deficits and difficulties in the following cognitive domains:

- Complex attention (e.g. sustained attention, selective attention, processing speed)
- Executive function (e.g. deficits in planning, decision making, responding to feedback, disinhibition, mental flexibility)
- Learning and memory – his pre-morbid intelligence was probably higher than his current low average level of functioning; he has difficulty with word selection on occasion and impairments in memory
- Social cognition (e.g. behaviour clearly out of the acceptable social range, insensitivity to social standards of personal presentation and conversation, excessive focus on topics, poor decision making, little insight)

In respect of any diagnosis made, details of Mr Bailiff's current treatment regime (if any)

Mr Bailiff appears to be receiving no treatment currently.

Recommendations on any future treatment regime or support plan, including an opinion on whether the proposed treatment is available in mental health facilities or through mental health services in NSW or the ACT

I recommend that Mr Bailiff be assessed by a neurologist expert in the field of the long-term effects of and possible rehabilitation for traumatic brain injury, including the possibility of medication to assist in managing the client's behaviour. There may be programs in the domains of social and interpersonal skills which might assist him to better manage his behavioural deficits and difficulties. It is doubtful whether treatment would be available in mental health facilities in NSW or the ACT. The major issue in preventing further offending behaviour is addressing Mr Bailiff's problematic challenging behaviour, and it seems that he will not comply with any prescribed medication; therefore the only available courses of action would be a treatment order for possible medication and/or participation in a behaviour modification rehabilitation program if there is an available program.

Recommendation on the degree of supervision or monitoring required under any proposed treatment regime or support plan and the availability of such supervision within NSW or the ACT

Mr Bailiff would benefit from close supervision and support, although it is unlikely that he will cooperate with any treatment regime or support plan.

Fitness to be Tried under the Presser criteria

I was unable to draw a conclusion about the client's capacity to comprehend the court process as determined by the *Presser* criteria owing to his lack of responses to the questions asked. Under the *Kesavarajah* criteria it is unlikely that he can sustain attention through the course of the court proceedings and his disinhibited and intrusive social behaviour would be problematic.

Thank you for asking me to assess this client.



Susan Hayes

14 June 2013

ABBREVIATED CURRICULUM VITAE

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Professor Susan Hayes is a forensic psychologist; she currently holds appointments as Professor of Behavioural Sciences in Medicine at the University of Sydney and Visiting Professor at the University of Bristol, UK.

Professor Hayes has been practising as a forensic psychologist for over 25 years. After majoring in psychology in her undergraduate degree and obtaining first class Honours, she graduated with a PhD in psychology from the University of New South Wales' School of Psychology, in the Faculty of Science. She was made a Fellow of the International Society for the Scientific Study of Intellectual Disability on 2004. She is a member of the Australian Psychological Society and a member of its College of Forensic Psychology, as well as being a member of other learned societies relevant to the practice of forensic psychology. She is an Authorised Report Writer for NSW Attorney General's Department Victims Services. She has been the recipient of a number of awards, including the Order of Australia (AO) in 1998.

Professor Hayes is a nationally and internationally recognised expert in forensic psychology, especially in the field of the person with intellectual disability in the justice system. She has published widely in the field and is the author of over 100 publications including peer reviewed journal articles, books, monographs and chapters in books. She has presented more than 80 conference papers at national and international conferences. She has been the recipient of over 27 research grants to fund research in the area of people with intellectual disabilities; she has supervised a number of post-graduate students undertaking projects in this and other areas.

Professor Hayes has prepared hundreds of assessments of both offenders and victims of crime and has appeared in court as an expert witness on many occasions. She has also assessed clients in regard to family court proceedings, ability to consent to medical treatment, guardianship, and child protection. She has given expert testimony in the areas of psychological/psychiatric conditions and disorders, and legal issues, for both the defence and the prosecution.