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I.W.A. JOHNSON, Clerk, District Courts  
El Paso County, Texas  
Manuel Hernandez  
BY DEPUTY

PSYCHOLOGICAL REPORT July 3, 1980

Name: Barry Raymond Chvarak  
c/o El Paso County Jail  
El Paso, Texas

Date of Birth: 3/25/1958 (22 years)

Tests Administered: Wechsler Adult Intelligence Scale; Wide Range Achievement Test; Subtests of the Reitan Neuropsychological Test Battery; Subtests of the McCarron-Dial Assessment of Neuromuscular Dysfunction; Haptic Visual Discrimination Test; Rorschach Psychodiagnostik; Minnesota Multiphasic Personality Inventory; Psychological Interview.

Date of Evaluation: July 2, 1980

Referred by: Manuel Hernandez, M.D.

cc: Hon. Enrique H. Pena, Judge  
327th Judicial District of Texas  
El Paso, Texas 79901

Mr. Steven Simmons, District Attorney  
El Paso County Building  
El Paso, Texas 79901

Mr. Chvarak was brought to the evaluator's office by a member of the Sheriff's Department who remained throughout the testing session. The member of the Sheriff's Department waited in the outer waiting area and offered no interruptions or distractions throughout the evaluation. Mr. Chvarak was very quiet, subdued, and clearly moderately depressed throughout the evaluation. He was passively cooperative, however, and completed all test instruments. With the exception of the Minnesota Multiphasic Personality Inventory, the results appear to be valid estimates of his present intellectual and psychological functioning.

On the Wechsler Adult Intelligence Scale, Mr. Chvarak achieved a Verbal I.Q. measured at 82, at the lower end of the Below-Average (Dull Normal) range. His Performance I.Q. was significantly higher,

measured at 102, in the middle of the Average range. His Full-Scale I.Q. was measured at 90 at the lower end of the Average range, although this score is considerably less meaningful in view of the 20-point discrepancy between his Verbal and Performance I.Q.'s. This pattern of verbal and performance I.Q. scores are very frequently seen in individual's suffering from specific learning disabilities or language/learning disorders. His performance on the Verbal portion of the W.A.I.S. was very stable and smooth but of poor quality with all subtest scores significantly below average. As might have been anticipated from his educational background having been in Special Education throughout most of his scholastic career, he made low scores on the Information, Arithmetic, and Vocabulary subtests. These three subtests are intimately associated with, and dependent upon, formal academic training and reflect his very poor scholastic foundations. On the Comprehension and Similarities subtests, however, neither of which are as dependent upon formal academics and are generally conceded to be the best estimates of underlying verbal ability, he also scored well below average. On the Comprehension subtest, for example, although he demonstrated reasonably good knowledge of social relationships and fair problem-solving ability, he was almost totally unable to deal with any abstract concept whatsoever. He responded totally "concretely" and intellectually inflexibly to any abstract question and was totally unable to interpret even the simplest proverb. On the Digit Span subtest, although he was able to repeat a reasonably good 6 random digits forward, he was able to repeat only 3 reversed, suggesting difficulty in the ability to "dual track": that is, to maintain two or more abstract concepts in mind while manipulating them. Both "concreteness" and

difficulty in "dual tracking" again strongly suggest the presence of a moderate learning disability affecting the language and verbal areas of the left cerebral hemisphere.

The results of the Performance section of the W.A.I.S. were somewhat more erratic but of much better quality than the verbal, with subtest scores ranging from moderately below, to moderately above, the national norm. His lowest score came on the Digit Symbol subtest, a relatively simple timed task that required that he place geometric symbols below the nine digits as rapidly as possible. He had no difficulty comprehending the task but his performance was considerably slower than average. This subtest although simple, is extremely susceptible to the effects of even mild organic cerebral dysfunction and, again, strongly suggests the presence of a learning disability. The remainder of the performance items were all at, or above, the national norm. On the Block Design subtest, for example, he was able to correctly assemble all ten designs achieving few time bonuses. This was also the case on the Object Assembly subtest, correctly assembling all four objects. The results of the Performance section of the W.A.I.S. thus reflect intact visual, perceptual, and motor abilities of at least an average order which is consistent with his academic history. He has experienced chronic difficulties in the language-oriented courses although he has done much better in those areas requiring primarily perceptual and motor functions. The results of the Full-Scale W.A.I.S. are thus completely consistent with the presence of a language/learning disability which, in turn, is also consistent with his statements during the psychological interview that he had been in Special Education throughout most of his academic career.

The results of the Wide Range Achievement Test are completely consistent with the presence of a learning disability affecting the language areas. He achieved a Reading Score measured at Grade Level equivalent 5.6. His Spelling Score was even lower, measured at Grade Level equivalent 3.6. On the Spelling portion, for example, although he was able to spell five words including "train" and "shout" he was unable to spell such relatively simple words as "correct", "circle", or "educate". Despite having graduated from high school these academic achievement levels, again, suggest a moderately severe learning disability affecting the language areas.

The results of the neuropsychological test battery are again consistent with the presence of a specific language/learning disability primarily affecting the left verbal cerebral hemisphere but leaving the right hemisphere relatively intact and uninjured. The results of the Reitan Neuropsychological subtests reveal a considerable discrepancy in function between the left and right sides. His finger-tapping speed was actually somewhat faster in his nonpreferred left than right hands, suggesting dysfunction in the left cerebral hemisphere. Further, his performance on finger-tip writing and

other left/right orientations all suggest better functioning in the nonpreferred left side than right, again, suggestive of dysfunction in the left cerebral hemisphere. The results of the Trail-Making

Test are also consistent with some mild organic dysfunction as the scores were much lower than the normal adult. The results of the Reitan-Wepman Aphasic Screening Test, however, reveal no specific expressive or receptive aphasias and his reading, writing, and

calculational abilities are very poor but show no specific aphasic components. The results of the McCarron-Dial Assessment of Neuro-

psychological Dysfunction also are consistent with the other neuropsychological test results and reveal dysfunction in the preferred right as opposed to left hand. The Haptic Visual Discrimination Test again suggests some mild organic dysfunction affecting the left cerebral hemisphere. He experienced difficulty in the tactile perception of texture, configuration, and even size and shape with his preferred right hand, again, suggesting some mild organic dysfunction affecting the left verbal cerebral hemisphere. The results of the total neuropsychological test battery are thus completely consistent with some organic involvement, which has resulted in a learning disability affecting the language areas but leaving the perceptual and motor abilities intact and functional. It is the evaluator's opinion, however, that this learning disability although it is the result of some mild organic involvement is a chronic condition and not the direct result of brain trauma and injuries suffered in the motorcycle accident which occurred approximately a year ago. The fact that he has experienced chronic academic difficulty from the third grade to the present time and that he has achieved only primary school academic levels would suggest that this condition is one of long standing.

The results of the objective and projective personality evaluations are somewhat inconsistent and suggest both problems with language as well as a considerable amount of present emotional instability. The Rorschach response record was of reasonably good form and quality, most of the responses were very accurate to the visual stimuli and there were no truly strange or peculiar elements noted. There were no contaminations or confabulations suggestive of reality contact problems or thought process disorder evident from

these results. There was evidence of a considerable amount of frustration and hostility as well as some depression noted from the content but again this was not of seriously pathological proportions. In view of his limited reading ability, the items of the M.M.P.I. were administered orally and he marked his answer sheet which likely improved the validity somewhat. Nevertheless, the M.M.P.I. validity scales are excessively elevated in the direction of emotional distress and depression. Further, there is a strong suggestion that he either did not understand all of the items of the personality instrument or, in fact, attempted to present himself in a somewhat more pathological or emotionally unstable light than was, in fact, the case. At any rate these results must be considered so speculative as to be invalid. During the psychological interview he was pleasant although very withdrawn and his general demeanor very "flat" and unemotional. He would respond to direct questions but offered little additional information. He was not in the least evasive or guarded when discussing the events for which he is charged, however, and attempted to present as clear and comprehensive picture as possible. Although clearly depressed and somewhat agitated and anxious, these reactions were no greater than would have been anticipated from a young man in his circumstances.

The results of the personality evaluation are completely consistent with a young man with a chronic learning disability and mild organic dysfunction affecting all the language areas. Although there is evidence of depression and anxiety, these appear to be much more reactive to his present circumstances than chronic components. Other than this, there is no evidence of any serious symptoms of neurosis or psychosis. There is no evidence of delusions, hal-

lucinations or thinking disorder. His thought processes are clear and logical although of a modest order. He does give a rather classic picture of the language/learning disability, however. There is evidence of a significant amount of frustration and resultant anger, aggression, and hostility evident from these results. This is very frequently the case with the learning disabled, in that they have great difficulty dealing with academic subjects or even normal activities involving abstractions, despite normal intelligence. This frequently results in their being behavior problems or discipline problems in school and on occasion engaging in aggressive, acting-out, or delinquent behavior. Although Mr. Chvarak has had no history of serious delinquency he has been arrested previously for minor offenses which is consistent with his tendency to impulsive acting-out. Those with learning disabilities affecting the verbal areas experience great difficulty in dealing with any abstract ideas. As noted, Mr. Chvarak responds totally "concretely" to any abstract question. Further, throughout the evaluation he experienced difficulty and was very hesitant in following verbal directions. This lack of ability to deal with abstract concepts results in difficulty in drawing cause/effect relationships. These individuals frequently react impulsively and without being able to draw conclusions about the effects of their behavior in terms in later consequences. They tend to be very active and engage in active, sometimes impulsive behaviors in that their motor and performance abilities are intact but their language abilities and reasoning skills are limited. Mr. Chvarak appears to fulfill all of these characteristics both from test results and the history obtained during the evaluation.

During the psychological interview, as noted, he attempted to be responsive to the evaluator's questions concerning the alleged incident from which he is charged. He stated that he had been drinking moderately heavily during the evening and remembered all of the events up to, during, and subsequent to, the alleged incident. He stated that he had told his brother that he was going to "shoot up the place" but that his brother had discounted his statement. He stated that he remembered laughing rather uncontrollably while putting bullets in the rifle. He stated that once he began to engage in the actual firing he became more or less unaware of what he was doing or why he was doing it. He stated that he remembered being hit and also being grabbed and later handcuffed. Throughout the lengthy evaluation and despite constant questioning by the evaluator he consistently denied having any reason then, or at the present time, for having engaged in the activities. He specifically stated that he did not know any of the individuals involved and, further, at the present time did not know the names of the individuals involved. Although it would appear from his description that there was a period in which he became somewhat dissociative, there is no evidence that he was ever either unconscious nor totally amnesic for his behavior.

With respect to the statutory questions, it is the evaluator's opinion that at the present time, Mr. Chvarak does not suffer from a mental disease nor psychosis, although he does have a learning disability that appears to be of organic origin. Although his verbal comprehension is limited, it is the evaluator's opinion that he does have a rational as well as factual knowledge of the charges against him and the possible consequences of his conviction. Further,



although his verbal fluency and comprehension are limited, he would be capable of conferring with his attorney in order to prepare a legal defense. On this basis, although he does have a learning disability he would be competent to stand trial in the evaluator's opinion.

It is also the evaluator's opinion that at the time of the incident for which he is charged, Mr. Chvarak did not suffer from a mental disease, psychosis, nor was he mentally retarded. Again, it is the evaluator's opinion that he suffers from a mental defect that of a specific language/learning disability which results in his behaving in an impulsive and unpredictable manner. It is the evaluator's opinion that his impulsivity and erratic behavior is normally under reasonably good volitional control but that the ingestion of alcohol further reduces his already poor impulse control. Further, he has little appreciation of cause/effect relationships which is further deminished by alcohol. It is thus the evaluator's opinion that under the influence of alcohol, he probably behaved in a completely irrational and impulsive manner and was unable to conform his conduct to the requirements of the law that he allegedly violated. Although it is probable that he was aware that his actions were illegal if not wrong, his capacity to control his behavior was limited. Nevertheless, in the strictest interpretation of the statutes he would not be considered legally insane in that although he suffers from a learning disability it requires the voluntary ingestion of alcohol to reduce his volitional control to the point of being unable to control his conduct. On this basis, it is the evaluator's opinion that he was legally sane at the time. He does suffer from a chronic learning disability which should be

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taken into consideration in the final disposition of his case.

A handwritten signature in cursive script, reading "Randolph H. Whitworth".

Randolph H. Whitworth, Ph.D.  
Psychologist

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