

January 18, 2021

General Mark A. Milley
Office of the Chairman of the Joint Chiefs of Staff
9999 Joint Staff Pentagon
Washington, D.C. 20318-9999

Dear General Milley:

As a psychiatrist with 20 years of experience performing capacity evaluations on violent offenders, and as a law professor who served from 2005 to 2007 as Chief White House Ethics Counsel for President George W. Bush, we are writing to alert you to the risk that as a consequence of his psychiatric condition President Trump may give illegal military orders in the last 48 hours of his administration. While the law requires that legal military orders be followed, execution of an illegal military order is itself a violation of the law and in some circumstances could be a war crime.

The President's Psychiatric Condition

Although neither one of us has had the opportunity to observe President Trump in person we are both familiar with his patterns from having seen him frequently in the media over the past four years, having read his written communications on social media and elsewhere, and having studied sworn testimonies about him by his close associates. One of us has the expertise to identify serious risks of danger due to mental impairment. While a formal medical diagnosis ordinarily would not be warranted without authorization to treat a patient and a meeting with the patient face to face, psychiatrists have a responsibility to report and warn the public and persons in authority about compelling evidence of mental compromise if there is a risk to the public.

Here is a brief summary of data that document President Trump's dangerousness and apparent lack of mental capacity:

Mental capacity refers to the mental soundness that is a fundamental and necessary component of decision-making. Mr. Trump has been questionable at baseline, to the point where a historically unprecedented number of mental health experts came forth, documenting their evidence in the 2017 public-service book, *The Dangerous Case of Donald Trump*, and then in a supplemental 2019 report that showed an astonishing lack of capacity to perform his duties. In late 2020 and early 2021, mental health experts have been confronted with even more powerful evidence of mental deterioration. This includes:

1. *Compromises in comprehension, or an inability to take in critical facts or information.* This was seen in Mr. Trump's inability to accept election results, insisting that he was "robbed" and that he actually won by a "landslide," no matter the lack of evidence. He was confronted with facts that included overwhelming vote margins in key states, five dozen defeated lawsuits including several Supreme Court appeals, the Electoral College vote, and certification of results by the U.S. Congress. Still, he could not recognize facts that were obvious. The same held true for his denial of a worsening SARS-CoV-2 pandemic that is now consuming more than 4000 American lives a

day, soon to reach a total of half-million deaths within weeks. This was expected from his behavior patterns showing a fragile sense of self that would make it difficult to receive any type of criticism or setback. He was likely to fall into a psychotic spiral in the case of a major rejection, such as the loss of an election, and he did indeed do so.

2. *Faulty information processing, in the form of mendacity, rigidity, and self-occupied notions of entitlement.* Mr. Trump exhibited pathological levels of mendacity throughout his presidency, but in his recent hour-long phone call with Georgia's secretary of state, as well as in his speech at the "Save America" rally, he showed rigidity in thinking, an inability to manipulate the information he received, and thought patterns that are consistent with delusions and inconsistent with strategic, rational thinking. He has demonstrated seemingly limitless narcissistic entitlement, whereby a *Washington Post* reporter stated as of today: "Trump remains fixated with getting revenge on R members who voted against him on impeachment, per several advisers. [He i]s talking about pardons nonstop and still telling advisers that he really won the election."
3. *Interferences to sound decision making, including loss of impulse control, recklessness, and an inability to consider consequences.* Mr. Trump had been escalating his personal feud with the election results in inciting others to commit illegal acts beginning with solicitation of election fraud in Georgia and other states and escalating to violence against the general public and elected officials. On January 6, 2021, he encouraged a march on the Capitol that he knew would turn violent, where members of Congress and the vice president narrowly escaped harm. He encouraged an attack on our institutions of democracy that showed a combination of reckless decision making, a lack of concern for the harm to persons and property, and an inability to consider consequences for himself and others, as he showed surprise at his own impeachment and his expulsion from multiple social medial platforms. His psychological structure suggests that, having tasted power, he is likely to experience letting go as psychic annihilation, which would make him prone to making rash decisions.
4. *Proneness to placing himself and others in danger, including encouraging, recommending, or inciting violence on the part of his followers.* Even after the violent insurrection, Mr. Trump continued to hold dangerous delusions of grandeur and paranoid ideations, and his likely impulse to mount an even larger insurrection and violent upheaval in his last two days remains. He has suffered impeachment, but without conviction and removal, he retains access to nuclear and other weapons and his power over the military. This situation maximizes his vindictiveness while he is still uncontrolled and inclined to a "scorched earth" policy against a nation that has rejected him. He thus poses an imminent danger to others and the public.

Events of the past several weeks have significantly enhanced the risk of mental incapacity for President Trump: the realization that he is deemed by Congress and the courts to have lost the election; his exposure to criminal charges for financial crimes in New York and now for incitement of election fraud in Georgia; the January 6 Capitol riot and his exposure to criminal charges for incitement of sedition; his second impeachment by the House and his being taken off of Twitter and other platforms. These are all intolerable conditions for an individual who has shown an extreme need for adulation and approval. His

level of fragility and lack of internal constraints make it likely that destruction of the nation and the world would not matter, and he could be psychologically disposed to want to destroy himself with the world than to allow a world that has rejected him to live on. In common clinical practice, the same psychological disposition could cause a rejected family member to inflict physical harm on his entire family and then himself. In the case of the president, this could involve a significant portion of the nation, even if it portends his own demise. Even his extreme entitlement and self-interest may not be enough to safeguard against impulsive decisions that bring harm to himself and others.

In short, the combination of an inability to take in critical information, to process information, and to make sound, non-impulsive decisions that are grounded in reality while considering consequences make it likely that he lacks the capacity to evaluate facts and determine if his own military orders are legal or illegal. A mentally fit president knows that he cannot order the military to assassinate a foreign leader, to launch an unprovoked first nuclear strike, or to commit war crimes, but an incapacitated president might not recognize these legal constraints or may imagine facts that simply do not exist – for example an attack on the United States that did not occur. We believe that based on the data we have observed there is a grave risk that President Trump is in the latter category and that enhanced scrutiny of his military orders for their legality is required.

The Risk of President Trump Giving Illegal Military Orders

The current problem is that, because of his mental instability and apparent lack of capacity, President Trump cannot be trusted to use proper judgment. He is capable of issuing military orders for personal reasons, in a fit of vindictive rage, an impulsive act, or a delusional and paranoid state. He is probably not capable of recognizing the military significance of facts he encounters, if he can grasp the facts at all – for example whether the United States or an ally has been attacked or is about to be attacked – any more than he is capable of recognizing facts about who won a presidential election. This lack of mental capacity is a matter of grave concern.

For the next 48 hours President Trump represents an existential threat to the world because of his authority over the United States military. This is particularly true if any military order he gave involved the use of nuclear weapons, but even a conventional military strike against a foreign power could escalate into a nuclear response putting the incoming Biden Administration in an untenable position where we might have to respond in kind.

Ordinarily, the law would focus on the mental capacity of a person before determining the validity of his actions – for example, mental capacity to enter a guilty/not guilty plea at criminal arraignment, mental capacity to stand trial, and mental capacity to execute a will or a contract. If the person lacked mental capacity, the person's act could not carry legal consequences and thus would be null and void.

In the case of the president, however, the Constitution likely preempts much of this “common law” approach to mental incapacity because the 25th Amendment provides a mechanism for removal of a mentally incapacitated president. Although both of us have urged that that be done in the case of President Trump, the decision lies with the vice president and the majority of the cabinet. Thus far the 25th Amendment has not been invoked. Given the speed with which some military orders are carried

out, there might not be time for the 25th Amendment to be invoked and the vice president as acting president to rescind a military order.

But there still must be scrutiny of the substantive legality of the military order itself. It is clear that illegal military orders should not be followed. See Article 92 of the Code of Military Justice which repeatedly refers to the obligation to obey “lawful” military orders. It is also clear that when a president is mentally incapacitated – particularly if that mental impairment involves an inability to recognize demonstrable facts such as whether the United States is under attack by an adversary – the risk of an illegal military order is enhanced. Although there is ordinarily a presumption that a military order is legal, it is the responsibility of others in the chain of command to ascertain the legality of the order based on actual facts, not facts as a mentally incapacitated president sees them.

A stark example: If a mentally incapacitated president is convinced that another nuclear power has attacked us when there is no evidence of such an attack or that such an attack is imminent, the actual facts known to the United States military should determine whether a presidential order to retaliate is legal or illegal. If it is illegal under the factual circumstances for the United States to launch a first strike (a first strike in some circumstances is illegal), it would be illegal to carry out an order for a “retaliatory” or “preemptive” strike that is premised on information known to be highly suspect or even false.

There are too many signs of mental incapacity. In addition to worrisome signs at baseline, he has shown an acute deterioration recently, following his Covid-19 infection, his loss of an election, his incitement of a violent insurrection, his second impeachment, and his expulsion from multiple social media platforms. He is, in addition, facing expulsion from the White House within 48 hours, when he will lose all presidential powers as well as protections, a fact that he seems unable to accept and that he regards as a supreme injustice to himself.

We fear that irreversible decisions may occur in the last 48 hours. Some of President Trump’s orders may – based on actual facts and law – be illegal orders and even war crimes. Unfortunately, military orders that can be carried out in the next 48 hours are irreversible.

We hope that you will give thought to our urgent plea regarding your responsibilities as a check on the dangers posed by a leader who, without the requisite mental capacity, threatens the existence of our democracy in his remaining hours in office.

Sincerely,

/s/ Bandy X. Lee
Bandy X. Lee, M.D., M.Div.

/s/ Richard W. Painter
Richard W. Painter, Esq.