

FORENSIC PSYCHIATRY IN A NUTSHELL

Forensic Science Seminar Series
University of Rhode Island
Kingston, R.I.

Daniel P. Greenfield, MD, MPH, MS
Clinical Professor of Neuroscience (Psychiatry)
Seton Hall University
School of Health and Medical Sciences

Sojourner to Perryville, Rhode Island

dpgreenfieldmdpsychiatry@msn.com

973/376-0026



my life,
in a nutshell

www.iamdarius.com

FORENSIC PSYCHIATRY IN A NUTSHELL

I. INTRODUCTION

- A. Case presentation
- B. Elements of the case
- C. Medical vs. legal thinking
- D. Why experts? (opinion evidence)

II. AREAS IN FORENSIC MEDICINE AND PSYCHIATRY

- A. Medicine: civil law (accidents and professional liability)
- B. Psychiatry: Analysis of behavior in civil, criminal, and family law
- C. Three areas of the law and three time frames
 - 1. Civil, criminal, and family
 - 2. Past, present, and future
- D. What is involved in the practice?
 - 1. Evaluations, reports, consulting to counsel, and/or the courts
 - 2. Testimony: Should the treating doctor testify on behalf of his or her patient as an expert? (Advocacy)

FORENSIC PSYCHIATRY IN A NUTSHELL

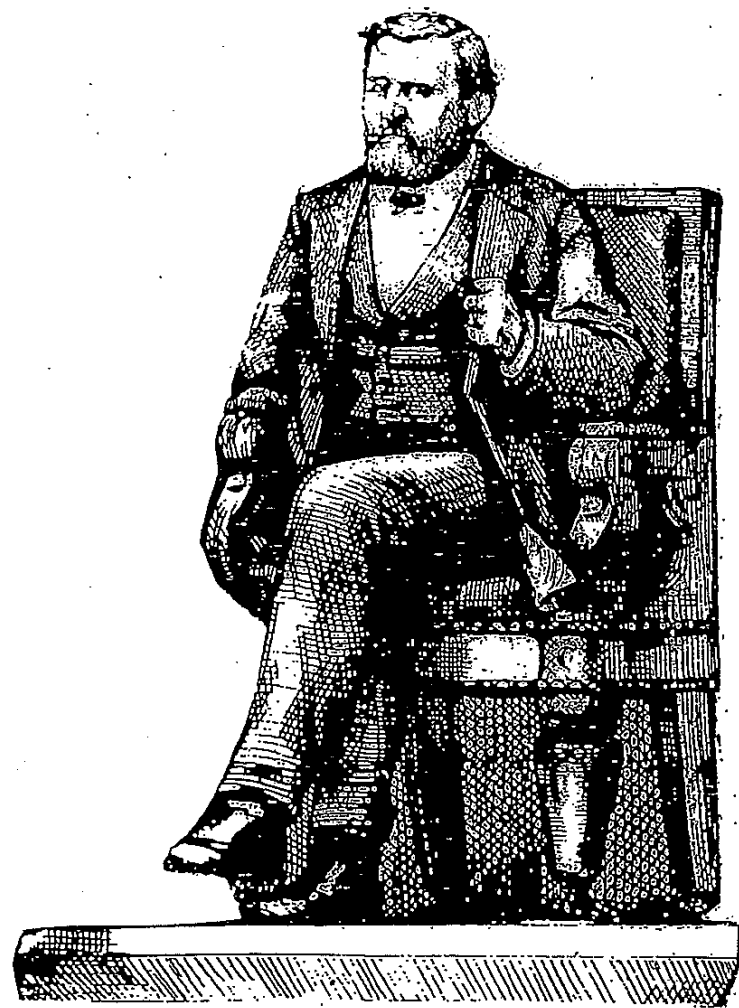
- Definition: "FORENSIC" = "FORENSIS" (Latin), "of a forum, place of assembly"

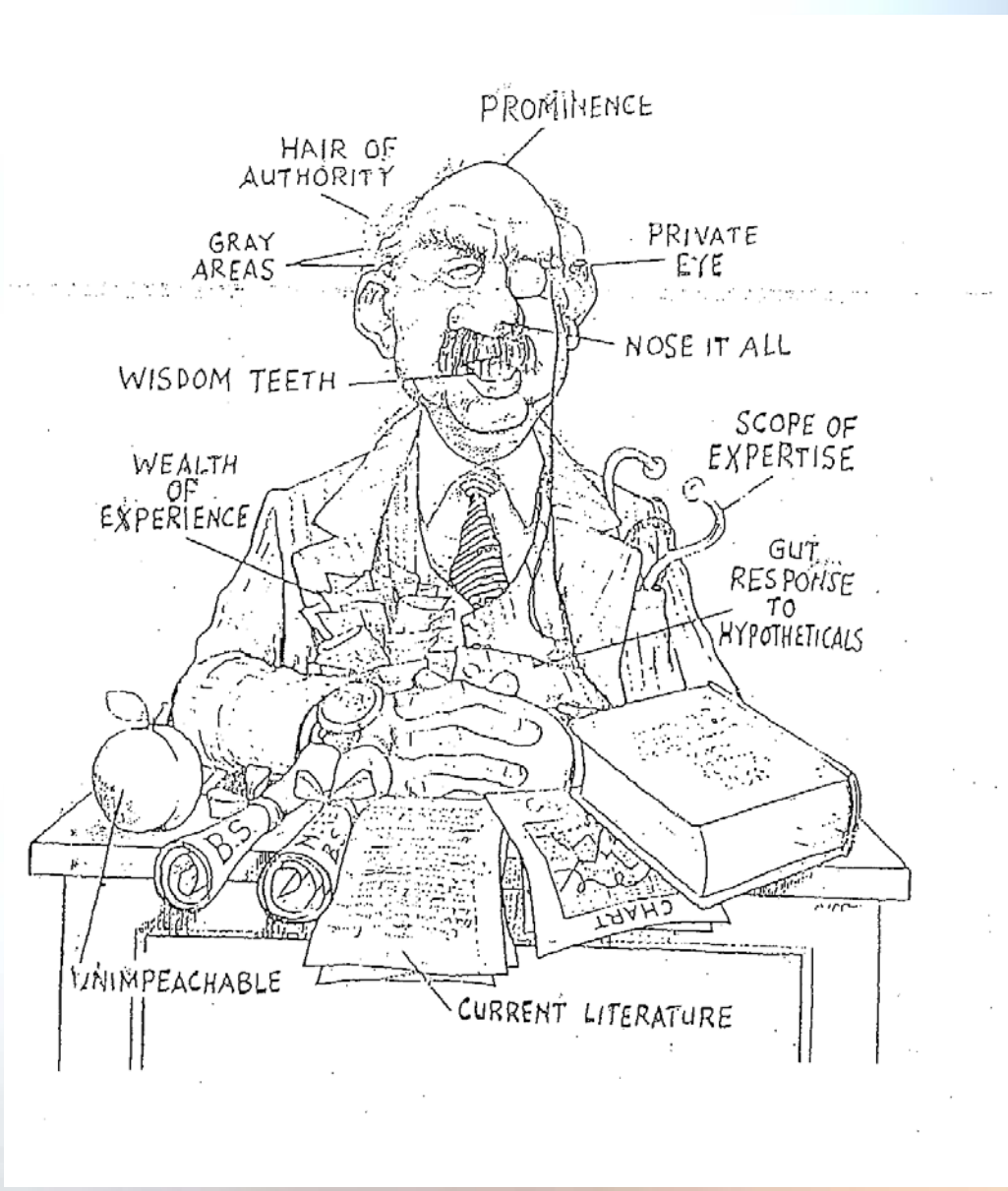
"PSYCHIATRY = "PSYCHE" (Greek), "soul; mind";
and "IATROS" (Greek), "physician"

- "...a subspecialty of psychiatry in which scientific and clinical expertise is applied to legal issues in legal contexts embracing civil, criminal, correctional, or legislative matters...should be practiced in accordance with guidelines and ethical principles enunciated by the profession of psychiatry..."

____ "Ethical Guidelines for the Practice of
Forensic Psychiatry" American Academy of Psychiatry
and the Law (1998)

THE DOCTOR GOES TO COURT





Civil Issues as the Subject of Forensic Mental Health Evaluations and Reports

- Employment law (sexual harassment; discrimination; others)
- Personal injury (including sexual abuse)
- Professional liability (malpractice)
- Mental health law (civil commitment, including SVPs/SDPs)
- Toxic exposure
- Will contests
- Dram-shop liability
- Competency (civil)
- Divorce
- Custody and visitation

CIVIL CASE: DILEMMAS

Shortly after the second first- year medical school Psychiatry class session, a female student called the instructor, a male physician, asking for a "phone conference" about "a friend who has a lot of troubles." The student did not give any more details at that point, and the instructor agreed to meet with the student before the third class

Questions:

- (1) Given the nature of the student's phone call, should the instructor have agreed to meet with her? Is that agreement ethical?
- (2) Is there a doctor/patient relationship between the student and her Psychiatry course instructor?

CIVIL CASE: DILEMMAS

The meeting occurred, and it became clear that the “friend” was the student herself. She was feeling anxious and rejected, after having recently ended a 3-year relationship with her former partner. The student also acknowledged her several-year history of what had been diagnosed as Bipolar Disorder, Mixed, so far with psychopharmacologic intervention. She requested advice, referral, and/or a clinical evaluation followed by treatment from the instructor, a psychiatrist.

Questions:

- (1) Should the instructor stop the meeting at that point? If so, how should the instructor do that?
- (2) Should the instructor advise?
- (3) Should the instructor refer?
- (4) Should the instructor evaluate the student himself?
- (5) Should the instructor treat the student?
- (6) At what point during this scenario, does a doctor-patient relationship exist, if at all?

CIVIL CASE: DILEMMAS

The instructor referred his student to a colleague whom the student saw briefly. She continued in the Psychiatry course, doing average work, consistent with her other work in medical school. She sought referral again from the instructor, who called his colleague for background information. His colleague's assistant told the instructor that the patient/student has refused to permit information to be released from the colleague's clinical chart to anybody, including the referring physician (the instructor). The student also asked to meet with the instructor a second time, to discuss her course paper as well as referral. He agreed.

Questions:

- (1) Should the instructor agree to meet again?
- (2) Does the instructor now have a doctor-patient relationship as well as an instructor-student relationship with the student?

CIVIL CASE: DILEMMAS

This pattern repeats itself several times over the semester-long course, ending with a meeting with the instructor, and with the student's requesting formal evaluation and treatment by the instructor. She said she requested this because "nobody knows me as well as you" and "no psychiatrist is as good as you. The rest are all crazy. Believe me, I know!" The instructor refused, but did offer the student another referral. The student refused.

Questions:

- (1) Did a doctor-patient relationship exist between the instructor and his student at that point?

CIVIL CASE: DILEMMAS

About three weeks before the end of the semester (and the course) the student stopped attending the Psychiatry and all other courses, and did not re-enroll for the next semester's program. She did not contact the instructor again.

Questions:

(1) Should the instructor try to contact the student?

CIVIL CASE: DILEMMAS

Approximately one- and- one-half years later, the instructor received a letter from a law firm representing the former student advising that the former student was suing him for alleged medical malpractice and sexual harassment, and has also complained to the State (Regulatory) Medical Board about him.

Questions:

- (1) What should the instructor do at this point?
- (2) Is there a basis for a medical malpractice action against the instructor by the student?
- (3) Is there a basis for a sexual harassment action against the instructor by the student?
- (4) Is there a basis for a complaint to the State Medical Board against the instructor by the student?

Criminal Issues as the Subject of Forensic Mental Health Evaluations and Reports

Traditional Criminal Responsibility-Reducing Psychiatric Defenses:

- Legal insanity
- Diminished capacity
- Intoxication
- Irresistible impulse

Sex Offenses

- Sex offenses
- Sexually violent predators (SVPs)/Sexually dangerous persons (SDPs)
- Community notification (Megan's Law registrants)

Domestic Violence

Malingering

Arson

Competency to Stand (Proceed to) Trial

Mitigation issues (death penalty)

Embezzlement

Battered Woman (spouse) Syndrome (syndrome evidence cases)

Blackouts

Elder Abuse

Future Dangerousness

- *Miranda* (constitutional rights) waiver
- Mitigation of penalty (federal sentencing guidelines)
- Suicide
- Transfer (waiver; referral issues for juveniles)

Time Frames for Criminal Psychiatric Evaluations

Past	Present	Future ^a
<i>At time of investigation</i>	Competency to stand trial/ proceed to trial	Competency to stand trial/ proceed to trial Dangerousness
☒ Legal insanity	Civil commitment (present dangerousness)	☒ Civil commitment (involuntary psychiatric hospitalization)
☒ Diminished capacity	☒ Sex offenders	☒ Sexual civil commitment (sexually violent predator [SVP]/sexually danger- ous person [SDP])
☒ Intoxication	☒ Civil commitment (involuntary hospitalization)	☒ Outpatient registration of sex offenders ("Megan's Law")
☒ Other commit- tees		☒ Outpatient civil commit- ment ("Kendra's Law" in New York)
<i>At time of offense</i>		
☒ <i>Miranda</i> rights waiver		

^aFor the "reasonably foreseeable future." An unpublished consensus among about 35 superior court judges in New Jersey, from an informal poll conducted on November 21, 2006, agreed with a time frame of weeks-to-months—in contrast to other time frames such as days-to-weeks, or months-to-years—for this standard of "reasonably foreseeable future." Otherwise, the authors of this book, the 35 polled superior court judges, and numerous other researched sources do not define a more specific time frame for this standard.

CLINICAL AND FORENSIC ANALYSIS*

For the clinical practitioner, the conceptual framework is some variation of identification, chief complaint, history of the present illness, pertinent past history, laboratory test data, differential diagnosis, medical diagnostic impression. For the forensic psychiatric practitioner, the four-step conceptual framework is issue, legal criteria, relevant data, and reasoning process:

1. *Issue*: What is the specific psychiatric-legal issue to be considered?
2. *Legal criteria*: In the jurisdiction in which this specific psychiatric-legal issue must be resolved, what are the legally defined terms and criteria that will be used for its resolution?
3. *Relevant data*: Exactly what information (such as part of what might be collected by a clinician following the traditional clinical framework for data organization) is there that is specifically pertinent to the legal criteria that will be used to resolve the specific psychiatric-legal issue?
4. *Reasoning process*: How can the available relevant data be applied to the legal criteria so as to yield a rationally convincing psychiatric-legal opinion?

*R. Rosner (2003)

PSYCHIATRIC-LEGAL REASONING: A THREE-STEP PROCESS*

1. Assertion of a law or law-like proposition
2. Assertion of a factual proposition
3. A deductive inference from 1 and 2

PSYCHIATRIC-LEGAL REASONING: A THREE-STEP PROCESS*

FIRST EXAMPLE:

1. Humans are the only rational bipedal animals.
2. Socrates is a rational bipedal animal.
3. Therefore, Socrates is human.

SECOND EXAMPLE:

1. Persons who are competent to stand trial have the capacity to understand the charges against them, the capacity to understand the nature of the court proceedings against them, and the capacity to cooperate with an attorney in their own defense.
2. John Doe has the capacity to understand the charges against him, the capacity to understand the nature of the court proceedings against him, and the capacity to cooperate with his attorney in his own defense.
3. Therefore, John Doe is competent to stand trial.

FAULTY PSYCHIATRIC-LEGAL REASONING:

I*

"If the first premise is wrong—that is, if the legal criteria used are incorrect—then the opinion is unsupported logically.

If the second premise is wrong—that is, the available data are not relevant to the legal criteria—then the opinion is unsupported, logically..."

If the two premises are correct, the deductive inference may be wrong.

THIRD EXAMPLE:

1. All humans are rational bipedal animals
2. Socrates is a rational bipedal animal
3. Therefore, Socrates like chocolate

The fallacy is obvious.

**Rosner, R. (2005)*

FAULTY PSYCHIATRIC-LEGAL REASONING:

II*

FOURTH EXAMPLE:

1. People with borderline personality disorder are characteristically impulsive and aggressive.
2. Roger has been diagnosed with borderline personality disorder.
3. Therefore, Roger is not criminally responsible for slaying his wife.

What is the fallacy?

-OR-

FIFTH EXAMPLE:

1. Persons who are capable of understanding the charges against them, capable of understanding the nature of the court proceedings against them, and capable of cooperating in their own defense are competent to stand trial.
2. Richard Roe understands the charges against him, understands the court proceedings against him, and is able to cooperate in his own defense.
3. Therefore, Richard Roe was legally sane (and legally responsible) at the time when he committed the offense.

What is the fallacy?

*Rosner, R. (2005)

FAULTY PSYCHIATRIC-LEGAL REASONING: III*

SIXTH EXAMPLE:

1. "Babies are illogical.
2. Nobody is despised who can manage a crocodile.
3. Illogical persons are despised.

Answer: Babies cannot manage crocodiles."

SEVENTH EXAMPLE:

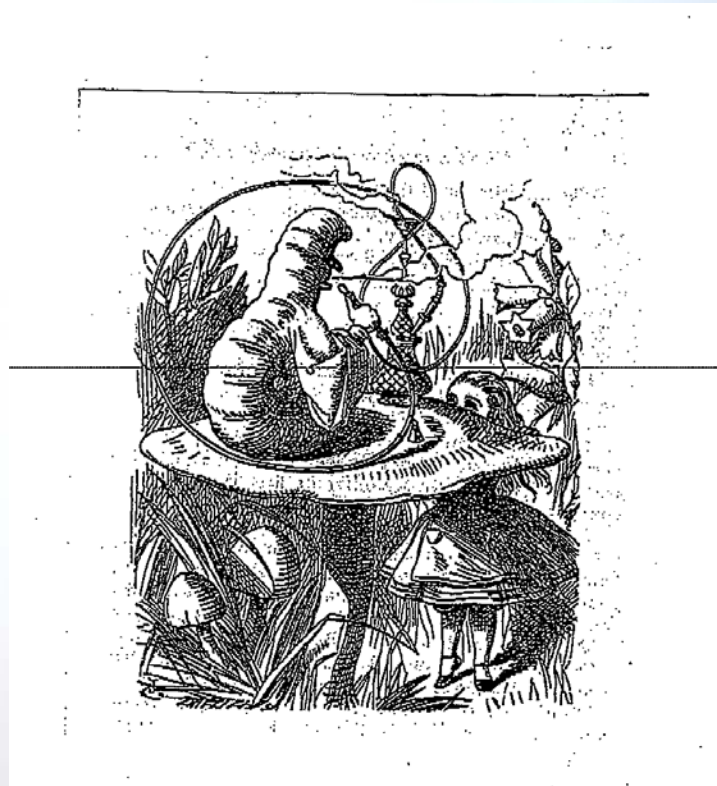
1. "Nobody who really appreciates Beethoven fails to keep silence while the 'Moonlight Sonata' is being played.
2. Guinea pigs are hopelessly ignorant of music.
3. No one who is hopelessly ignorant of music ever keeps silence while the 'Moonlight Sonata' is being played.

Answer: Guinea pigs never really appreciate Beethoven."

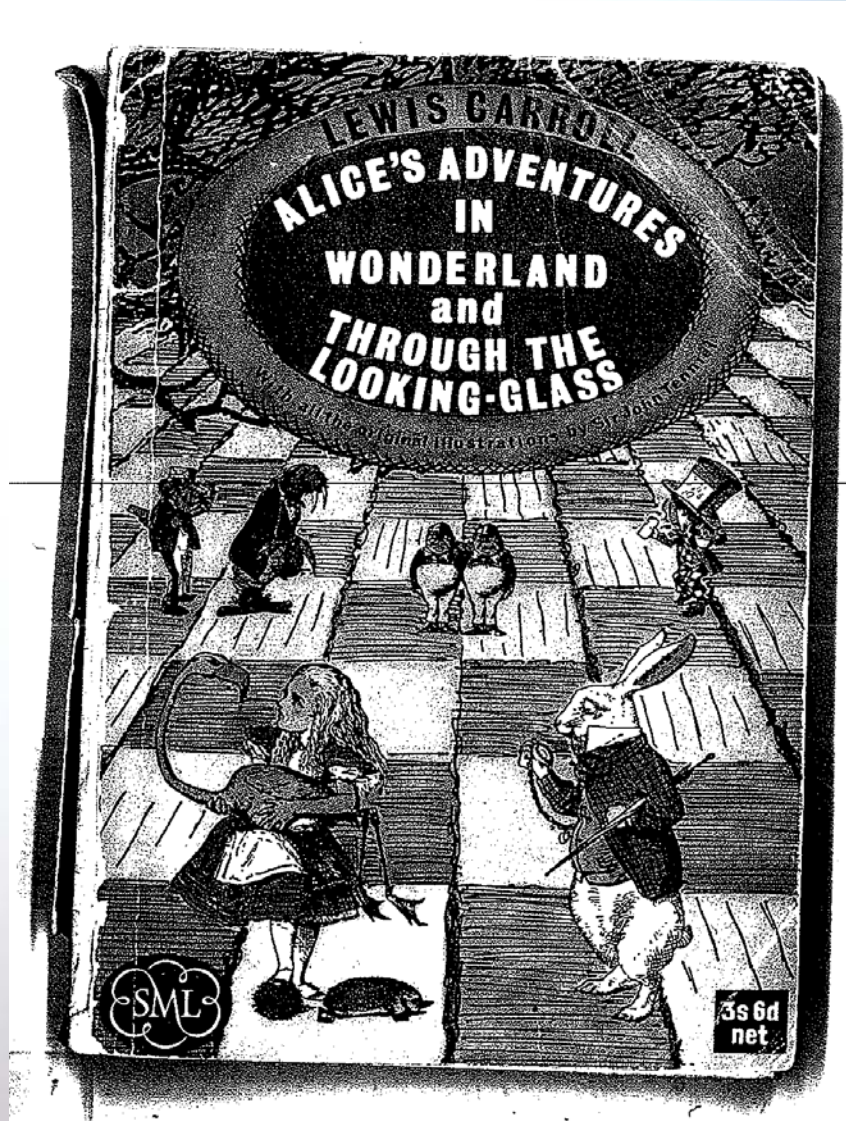
**Lewis Carroll, Symbolic Logic: Part I. Elementary (1896)*



"Drink me."



"Smoke me."



PSYCHIATRIC DEFENSES TO CRIMINAL ACTS IN NEW JERSEY:

THREE SPECIFIC DEFENSES*

- Insanity Defense (2C:4-1)*
- “Diminished Capacity” Defense (2C:4-2)*
- Intoxication (involuntary, generally) Defense (2C:4-8)*

These are potential exceptions to the often-heard adage,

“If you do the crime, you’d better be ready to the time...”

—“Baretta” television series, 1970

**N.J. Code of Criminal Justice
(various editions)*

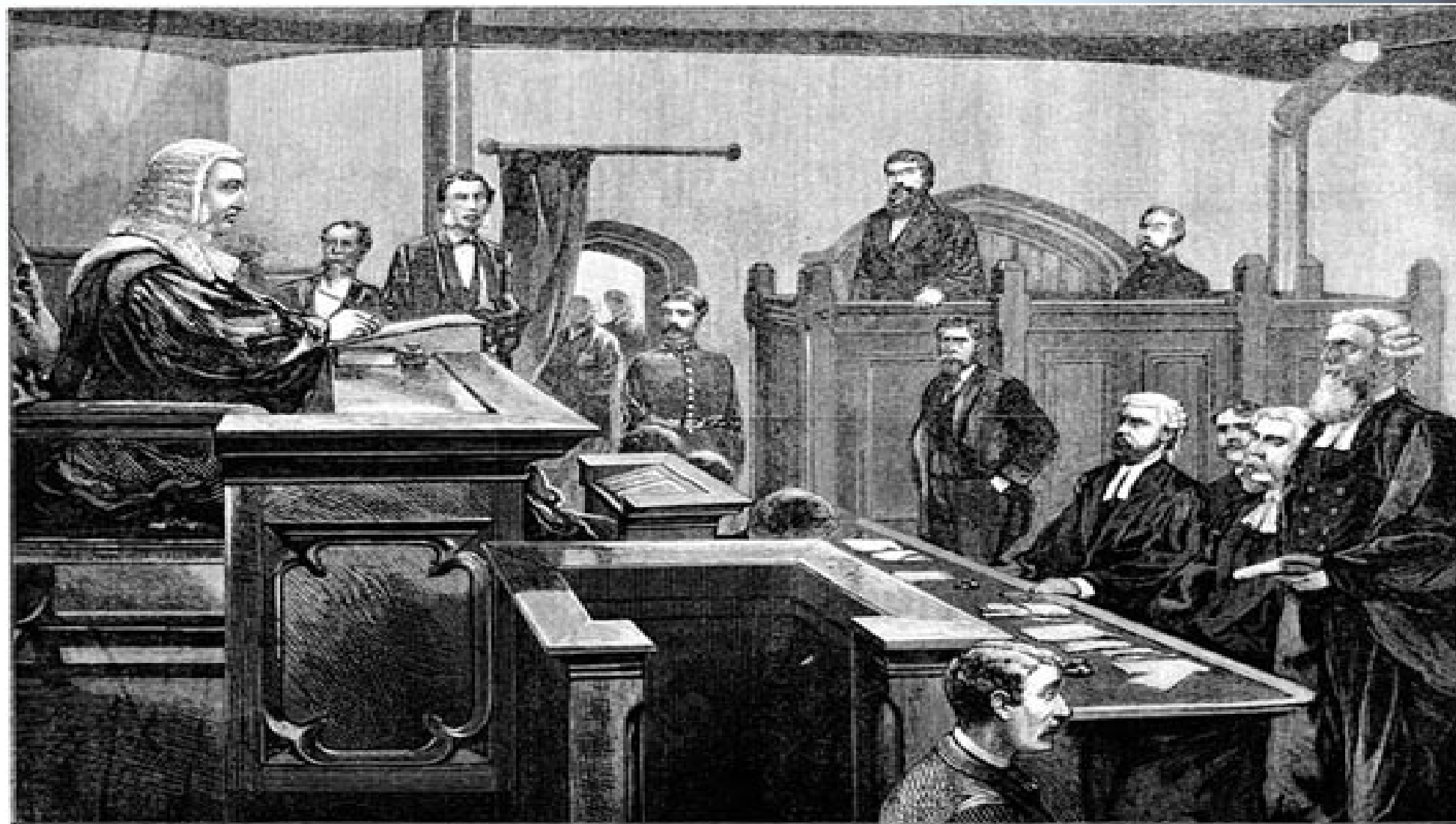
PSYCHIATRIC DEFENSES TO CRIMINAL ACTS IN NEW JERSEY: INSANITY DEFENSE

2C:4-1. Insanity Defense

A person is not criminally responsible for conduct if at the time of such conduct he was laboring under such a defect of reason, from disease of the mind as not to know the nature and quality of the act he was doing, or if he did know it, that he did not know what he was doing was wrong. Insanity is an affirmative defense which must be proved by a preponderance of the evidence. L.1978, c.95

Source: NJS 2A:163-2; 2A:163-3

*Prior Laws: R.S. 2:190-171 (L. 1943, c.41. p.81, § 1)L.1922, c. 101 § 3
p. 189 [1924 Suppl. § 53-133p]*



THE KELLY TRIAL—THE JUDGE IN COURT



PORTRAIT OF DANIEL WEBSTER.

THE AMERICAN.

AN HISTORICAL DIGRESSION: I REX V. M'NAGHTEN (1843)

In the landmark *Rex v. M'Naghten* case in 1843 – which is the current basis for the insanity defense in most jurisdictions in the United States and the United Kingdom – Daniel M'Naghten, while in a delusional mental state, mistakenly shot and killed Edward Drummond, the private secretary to Sir Robert Peel, the English Prime Minister at the time, believing that he was the Prime Minister.

AN HISTORICAL DIGRESSION: II

REX V. M'NAGHTEN (1843)

Nine psychiatrists testified as expert witnesses to M'Naghten's mental state at the time of the shooting. He was found legally insane, even though testimony indicated that he might have generally been able to conduct his life rationally and have been able to understand the difference between right and wrong.

AN HISTORICAL DIGRESSION: III

REX V. M'NAGHTEN (1843)

The amorphous quality of M'Naghten's mental condition described by the experts in this case which permitted a successful insanity defense left the Victorian crown, government, and public uncertain. This uncertainty resulted in a subsequent ruling by a commission of fifteen Queen's Bench judges giving the following well-known language – language which in psychiatric “legal insanity” defense in English-based legal jurisdictions to this day – for that defense.

AN HISTORICAL DIGRESSION: IV REX V. M'NAGHTEN (1843)

"...to establish a defense on the ground of insanity, it must be clearly proved that, at the time of committed act, the party accused was labouring...under such a defect of reason, from disease of the mind, as to not know the nature and quality of the act he was doing, or, if he did know it, that he did not know that it was wrong..."

PSYCHIATRIC DEFENSES TO CRIMINAL ACTS IN NEW JERSEY: “DIMINISHED CAPACITY” DEFENSE

2C:4-2. Evidence of mental disease or defect admissible when relevant to element of the offense.

Evidence that the defendant suffered from a mental disease or defect is admissible whenever it is relevant to prove that the defendant did not have a state of mind which is an element of the offense. In the absence of such evidence, it may be presumed that the defendant had no mental disease or defect which would negate a state of mind which is an element of the offense. Mental disease or defect is an affirmative defense which must be proved by a preponderance of the evidence. L.1978 c.

The Four Levels of Complicatedness of Behavior (“Conduct”) Articulated in the “Diminished Capacity” Psychiatric Criminal Defense Statute

1. For the first- and second-degree offenses (more serious; more punishment, if convicted)
 - Purposeful
 - Knowing
2. For third- and fourth-degree offenses (less serious; less punishment, if convicted)
 - Reckless
 - Negligent

PSYCHIATRIC DEFENSES TO CRIMINAL ACTS IN NEW JERSEY: INTOXICATION DEFENSE

2C:2-8. Intoxication

- a. Except as provided in subsection d. of this section, intoxication of the actor is not a defense unless it negatives an element of the offense.
- b. When recklessness establishes an element of the offense, if the actor, due to self-induced intoxication, is unaware of a risk of which he would have been aware had he been sober, such unawareness is immaterial.
- c. Intoxication does not, in itself, constitute mental disease within the meaning of chapter 4.
- d. Intoxication which (1) is not self-induced or (2) is pathological is an affirmative defense if by reason of such intoxication the actor at the time of his conduct did not know the nature and quality of the act he was doing, or if he did know it, that he did not know what he was doing was wrong. Intoxication under this subsection must be proved by clear and convincing evidence.

PSYCHIATRIC DEFENSES TO CRIMINAL ACTS IN NEW JERSEY: INTOXICATION DEFENSE

2C:2-8. Intoxication – cont.

- e) Definitions. In this section unless a different meaning plainly is required:
- 1) “Intoxication” means a disturbance of mental or physical capacities resulting from the introduction of substances into the body;
 - 2) “Self-induced intoxication” means intoxication caused by substances which the actor knowingly introduces into his body, the tendency of which to cause intoxication he knows or ought to know, unless he introduces them pursuant to medical advice or under such circumstances as would afford a defense to a charge of crime;
 - 3) “Pathological intoxication” means intoxication grossly excessive in degree, given the amount of the intoxicant, to which the actor does not know he is susceptible. *L.1978, c. 95, § 2C:2-8, eff. Sept. 1, 1979. Amended by L.1983,c. 306. § 1, eff. Aug. 26, 1983.*

Source: Model Penal Code: 2.08.

TIME FRAMES FOR CRIMINAL FORENSIC PSYCHIATRIC EVALUATIONS

Past	Present	Future
<i>At time of investigation</i>	<i>Competency to stand trial/proceed to trial</i>	<i>Competency to stand trial/proceed to trial</i> <i>Dangerousness</i>
<input type="checkbox"/> Legal insanity	Civil commitment (present dangerousness)	<input type="checkbox"/> Civil commitment (involuntary psychiatric hospitalization)
<input type="checkbox"/> Diminished capacity	<input type="checkbox"/> Sex offenders	<input type="checkbox"/> Sexual civil commitment (sexually violent predator [SVP]/sexually dangerous person [SDP])
<input type="checkbox"/> Intoxication	<input type="checkbox"/> Civil commitment (involuntary hospitalization)	<input type="checkbox"/> Outpatient registration of sex offenders ("Megan's Law")
<input type="checkbox"/> Other committees		<input type="checkbox"/> Outpatient civil commitment ("Kendra's Law" in New York)
<i>At time of offense</i>		
<input type="checkbox"/> <i>Miranda</i> rights waiver		

COMPETENCY TO STAND TRIAL IN NEW JERSEY: “MENTAL INCOMPETENCE EXCLUDING FITNESS TO PROCEED”

2C:4-4. Mental incompetence excluding fitness to proceed.

- a. No person who lacks capacity to understand the proceedings against him or to assist in his own defense shall be tried, convicted or sentenced for the commission of an offense so long as incapacity endures.
- b. A person shall be considered mentally competent to stand trial on criminal charges if the proofs shall establish:
 - 1) That the defendant has the mental capacity to appreciate his presence in relation to time, place and things; and
 - 2) That his elementary mental processes are such that he comprehends
 - a. That he is in a court of justice charged with a criminal offense.
 - b. That there is a judge on the bench.
 - c. That there is a prosecutor present who will try to convict him of a criminal charge.
 - d. That he has a lawyer who will undertake to defend him against the charge.
 - e. That he will be expected to tell to the best of his mental ability the facts surrounding him at the time and place where the alleged violation was committed if he chooses to testify and understands the right not to testify.
 - f. That there is or may a jury present to pass upon evidence adducted as to guilt or innocence of such charge or that if he should choose to enter into plea negotiations or to plead guilty that he comprehend the consequences of a guilty plea and that he be able to knowingly, intelligently, and voluntarily waive those rights which are waived upon such entry of a guilty plea. And
 - g. That he has the ability to participate in an adequate presentation of his defense.
- 3) *L.1978, c. 95, § 2C:4-4, eff. Sept. 1, 1979. Amended by L.1979,c. 178. § 13, eff. Sept. 1, 1979.*

Source: N.J.S., 2A 163-02
Model Penal Code: 4.04.

Criminal Competency Case Dilemma

Criminal Case Presentation: "I Was Robbed!"

A 45-year old married male ("M.M.") with no children has a long-standing criminal history, including an alleged series of breaking and entering episodes in fifteen homes in a housing development over a two-week period of time. Because of his lengthy psychiatric history as a "MICA" ("mentally ill chemical abuser") patient, his defense attorney requested your forensic psychiatric evaluation of M.M. for his "Competency to Stand Trial" ("CST") status in connection with charges arising from the alleged 15 burglaries (even though his attorney has no difficulty herself communicating with her client).

Criminal Competency Case Dilemma

The first time you evaluated M.M. in State prison, he was rational, calm, lucid, and forthcoming. He had been drug-free at that point for several years, had not been treated with psychotropic medications since he had first been incarcerated about four years before you saw him, and had never exhibited odd behavior or been seen in psychiatric or psychological consultation since he had first been incarcerated. Although it is the roll of the court to decide "Competency" as such, your psychiatric consultation, impressions, and opinion – "held with a degree of reasonable medical probability or certainty" – support a court determination that M.M. was "CST" at that time.

Criminal Competency Case Dilemma

The vicissitudes of court scheduling and procedures being what they are, by the time a formal Competency Hearing could be scheduled, over a year had passed. The attorney calls and asks about your availability to testify at the upcoming Competency Hearing. You suggest that your clinical impressions and opinions may be outdated, because you have not interviewed/examined M.M. in over a year, and you suggest seeing him again in follow-up. The attorney arranges for that follow-up appointment.

Criminal Competency Case Dilemma

At follow-up in the county jail, M.M. presents drastically different from the first evaluation: he is virtually incoherent, delusional, speaks about hyperreligious topics, and is barely understandable. Your opinion, ultimately, does not support his being considered Competent by this court.

Criminal Competency Case Dilemma

Over the next several years, you consult with M.M. several times, each time with the same observations and impressions – M.M.'s incoherent and psychotic presentations do not support his being considered competent. During all of this time, M.M. has never been seen in psychiatric consultation at the jail; has never been prescribed psychotropic medications; and has never been involved in any untoward, urgent or otherwise unremarkable events: He keeps to himself, does not bother anybody, and is not bothered by anybody. His Competency Hearings have continued to be rescheduled and then postponed again for one reason or another over a six-year period. By this time, you have seen M.M. eight times over a six-year time span.

Criminal Competency Case Dilemma

Finally, you consult on M.M. for what turns out to be a last time, and find him as clear, lucid, and psychiatrically unremarkable as he had presented on the first consultation over six years before. Concerning his legal case, he tells you that in his, right or wrong, he has served the maximum sentence he would have received had he been convicted of the burglary charges from seven years ago, and is "ready to move on with the case." You suspect "faking" (malingering) over the past six years on M.M.'s part, conclude that inference in the differential diagnosis section of your report to his attorney and duly write and send your report to the attorney. This time, you indicate in your report that your expert opinion supports M.M.'s being considered competent by the court.

Criminal Competency Case Dilemma

About four days after sending your report to the attorney (who has not been communicative with you over the years, and who has been slow to return your telephone calls and emails and faxes, if she ever did), she call you and tells you icily that "...Doctor, you have turned...", that "...Your services will no longer be required in this matter..." and that "...I have decided to have my client testify for himself at the Competency Hearing, rather than you. Thank you for your services..."

Criminal Competency Case Dilemmas

Questions

1. What is going on here, "behind the scenes?"
2. What responsibilities ("duty"), if any, do you have at this point?
3. What action, if any, should you take at this point?
4. What difference between legal and medical thinking and between the roles of counsel (attorneys) and experts, does this case vignette illustrate?

2C:4-4 Mental Incompetence Excluding Fitness to Proceed

- a. No person who lacks capacity to understand the proceedings against him or to assist in his own defense shall be tried, convicted or sentenced for the commission of an offense so long as such incapacity endures.
- b. A person shall be considered mentally competent to stand trial on criminal charges if the proofs shall establish:
 - 1) That the defendant has the mental capacity to appreciate his presence in relation to time, place and things; and
 - 2) That his elementary mental processes are such that he comprehends:
 - a) That he is in a court of justice charged with a criminal offense;
 - b) That there is a judge on the bench;
 - c) That there is a prosecutor present who will try to convict him of a criminal charge;
 - d) That he has a lawyer who will undertake to defend him against that charge;
 - e) That he will be expected to tell to the best of his mental ability the facts surrounding him at the time and place where the alleged violation was committed if he chooses to testify and understands the right not to testify;
 - f) That there is or may be a jury present to pass upon evidence adduced as guilt or innocence of such charge or, that if he should choose to enter into plea negotiations or to plead guilty, that he comprehend the consequences of a guilty plea and that he be able to knowingly, intelligently, and voluntarily waive those rights which are waived upon such entry of a guilty plea; and
 - g) That he has the ability to participate in an adequate presentation of his defense.

THE VOTE

- Competent to stand (proceed to) trial
- Not competent to stand (proceed to) trial
- Need more information
- Don't know

THE ANSWER

The defendant was found “Competent to Stand (Proceed to) Trial,” and did.



thank
you!

Case Presentation

- A middle-age, retired male, former laborer, retired after winning a lottery award, lives with wife and mother-in-law
- Longstanding history of idiopathic seizure disorder, and intermittently compliant, with/adherent to treatment, with a criminal history of two Domestic Violence (DV) episodes
- Involved in a DV episode over a twelve-minute period during which he killed his wife and injured his mother-in-law with a knife he sought and obtained from a kitchen cabinet (the present offense)
- He claimed that his treating neurologist (not documented) had halved his dose of anticonvulsant about two months before the incident, and that he himself had no memory of the incident because it occurred during a seizure ("intraictal")
- A Court-ordered psychiatric evaluation supported NGRI; a somatoforensic evaluation was arranged as a "second opinion"
- A trial was held at which both mental health professionals testified

COMMON CHARACTERISTICS OF EPILEPTIC SEIZURES*

1. Epileptic seizures are usually discrete, time-limited events with an identifiable onset and termination
2. Most epileptic seizures, particularly those types which possibly could be implicated as a cause of ictal violence, have a well-defined and predictable evolution of behavior from beginning to end
3. After termination of most seizures, there is a progressive recovery of consciousness and neurological function
4. Epileptic seizures may be expressed as a variety of behaviors within one seizure type, but epileptic seizures are generally stereotyped within the same individual

**D. Tremain (2003)*

Ictal Aggressions: Pathophysiology*

- Primary ictal aggression ("...directly stimulated by the epileptic discharge")
- Secondary ictal aggression ("...distribution of normal social controls by a seizure discharge...")
- Non-aggressive violent automatisms ("...a stereotyped automatism... not directed toward a person or object... no aggressive intent...")
- Resistive violence ("...reactive automatism or... a post-ictal confused state...")
- Post-ictal psychosis

**D. Tremain (1991)*

FORENSIC EVALUATION OF EPILEPTIC AGGRESSION*

1. What are the fundamental characteristics of epileptic seizures? How do we determine if a paroxysmal event is an epileptic seizure?
2. Under what circumstances could ictal aggression or violence occur? What is the pathophysiology of ictal aggression, if it occurs at all?
3. Is there evidence from the medical or legal literature that ictal aggression has actually occurred? What is that evidence?
4. Is there evidence that inter-ictal aggression occurs as a part of an epilepsy syndrome? Is epilepsy more frequent in violent prisoners than in the general population?
5. Are there other causes of paroxysmal violence which should be considered in a different diagnosis of ictal aggression?
6. What guidelines should be followed by an expert witness when considering the possible relationship between a violent event and an epileptic seizure?

**D. Tremain (2003)*

CRIMINAL RESPONSIBILITY

“ Actus non facit reum nisi mens sit rea ”

(“ The deed does not make a man guilty unless his mind is guilty ”)

--Quoted in D. Tremain (2003)

CLINICAL AND FORENSIC ANALYSIS CONTRASTED

For the clinical practitioner, the conceptual framework is some variation of identification, chief complaint, history of the present illness, pertinent past history, laboratory test data, differential diagnosis, medical diagnostic impression, and treatment plan.

For the forensic psychiatric practitioner, the four-step conceptual framework is issue, legal criteria, relevant data, and reasoning process.

CLINICAL FORENSIC ANALYSIS*

For the clinical practitioner, the conceptual framework is some variation of identification, chief complaint, history of the present illness, pertinent past history, laboratory test data, differential diagnosis, medical diagnostic impression. For the forensic psychiatric practitioner, the four-step conceptual framework is issue, legal criteria, relevant data, and reasoning process:

1. *Issue*: What is the specific psychiatric-legal issue to be considered?
2. *Legal criteria*: In the jurisdiction in which this specific psychiatric-legal issue must be resolved, what are the legally defined terms and criteria that will be used for its resolution?
3. *Relevant data*: Exactly what information (such as part of what might be collected by a clinician following the traditional clinical framework for data organization) is there that is specifically pertinent to the legal criteria that will be used to resolve the specific psychiatric-legal issue?
4. *Reasoning process*: How can the available relevant data be applied to the legal criteria so as to yield a rationally convincing psychiatric-legal opinion?

*R. Rosner (2003)

BASEBALL, UMPIRES AND THE LAW

In baseball, there are three types of umpires, which correspond to three roles in the legal system, as follows:*

TYPES OF UMPIRES

"I call it as I see it."

"I call it as it is."

"It's nothing until I call it."

ROLES IN THE LEGAL SYSTEM

The lawyer (advocate)

The expert witness

The judge (court)

**Anon., ca 2008*

THE CORE CLINICAL QUESTION FOR THIS CASE

Was the individual actively psychotic at the time of the offenses, or was he angry and exercising bad judgment in connection with the offense(s)?

The Epilepsy Defense: The Defense Psychiatrist's Opinion

"...based on my comprehensive review I am able to make the following conclusions:

Tragically, _____ had a seizure and stabbed _____ and killed _____. There is no apparent motive, no instigating factor, and no reason why this should have happened. While it is, of course, a tragedy, _____ did not knowingly or willfully commit these acts. These acts occurred under the influence of his seizure disorder. As such, _____ was not aware of what _____ was doing and was not aware that what _____ was doing was wrong. _____ criminal behaviors are the direct outgrowth of a chronic neurological and mental disease that _____ has taken every effort to control. I find that _____ meet the criteria set forth in M'Naghten and, there should not be held accountable for behaviors that _____ cannot control. All of the opinions expressed in this report are held with a high degree of medical and psychiatric certainty..."

The Epilepsy Defense: The Defense Psychiatrist's Opinion: I

Without reiterating information and details already presented and discussed both in this report and elsewhere in records and materials available for review in this matter, it is my psychiatric/neuropsychiatric opinion—held with a degree of reasonable medical probability— that based on _____'s purposeful, goal-directed, complex, planned and executed, complicated, and sustained underlying mental states and overt behaviors in connection with the alleged assault and slaying incident in question of September __, __, although _____ described an imperfect memory for what _____ alleged did, _____ was sufficiently aware of what that was to have done what _____ did (again, in a complex, goal-directed, sequential, planned, and sustained way, requiring an awareness of the past, an ability to understand and appreciate h__ present situation at various times during the course of the incident in question, and an ability to formulate future goals and to act on them), even if _____ was agitated, upset, impulsive, and acting with poor social judgment in connection with the period of time in question, and even though _____ described having had an imperfect memory for the incident in question.

The Epilepsy Defense: The Defense Psychiatrist's Opinion: II

As just described, _____'s actions, activities, inferrable underlying mental states and psychiatric/neuropsychiatric conditions and behaviors during the period of time in question required an awareness of h____ past circumstances and plan, h____ subsequent realization (when _____ was resisting arrest, requiring as having been sprayed with Mace) that _____ was in trouble, h____ efforts to resist arrest, and h____ subsequent imperfect recollection of the incident in question and its aftermath, in my professional psychiatric/neuropsychiatric opinion—held with a degree of reasonable medical probability—support and reinforce my professional opinion that _____ was aware of what _____ was doing in connection with the alleged assault and slaying incident in question, even if _____, again, were acting with poor social judgment, even if h____ planning was quick and impulsive, and even if _____ were have some degree of neurologic seizure activity leading up to, during, and following the incident in question.

The Epilepsy Defense: The Defense Psychiatrist's Opinion: III

In that sense, as indicated above in the "Behavioral Analysis" of _____'s manifest behaviors and the inferrable mental state and psychiatric/neuropsychiatric conditions underlying those behaviors, "speak for themselves" (my words) as purposeful, goal-directed, planned, executed, complicated, sophisticated, knowing, and extended over a period of time series of activities and behaviors.

The Epilepsy Defense: The Defense Psychiatrist's Opinion: IV

In terms of potential prior episodes of neurogenic (seizure-generated) behaviors by _____ similar to those reportedly involved in the September __, ___ incident in question, review of applicable medical and neurologic records and materials, and discussion with _____, in my view, did not indicate prior such episodes of the duration and type as in the September __, ___ incident in question. As a factor potentially involved in neurogenic behaviors, the presence of similar prior episodes, to my understanding, is an important factor. Such episodes are not present in _____'s history.

The Epilepsy Defense: The Defense Psychiatrist's Opinion: V

Finally, in terms of potential applicable psychiatric/neuropsychiatric criminal responsibility-reducing defense in this matter (specifically, "Legal Insanity," "Diminished Capacity," and/or "Intoxication," according to applicable State of New Jersey law, as I understand that law), none would apply in this case, in my professional psychiatric/neuropsychiatric opinion. As noted above, this is an opinion which I hold with a degree of reasonable medical probability, and with which I respectfully disagree with Dr. _____ and Dr. _____, to the extent that their psychiatric and psychological opinions give and support the criminal responsibility-reducing psychiatric defense of "Diminished Capacity."

THE VOTE

- Guilty (or responsible) as charged
- Not guilty
- Not guilty by reason of insanity ("NGRI")
- Need more information
- Don't know

THE ANSWER

The defendant was found guilty of murder,
as charged, in a jury trial.



thank
you!