J Forensic Sci, Jan. 1972, Vol. 17, No. 1

Emanuel Tanay,[1] *M.D.*

Forensic Psychiatry in the Legal Defense of Murder

The crime of murder exists in some form in all known societies. In the disposition of those who are found guilty, the law places little reliance upon behavioral sciences. Homicide occurs for diverse reasons. The law recognizes this fact by providing several legal categories of homicide, one of which is "not guilty by virtue of insanity." The concept of insanity in determining responsibility for the crime is defined according to legal criteria. The literature on the issue of criminal responsibility is extensive, but that issue will not be the subject of this paper.

The act of homicide is not only a physical but also a psychological event. The state of mind of the perpetrator during the execution of the crime is of crucial legal consequence; therefore, the psychiatrist is an important resource to the legal process in determining his condition. For historical reasons, the law has made an attempt to place the primary focus of attention on the act itself. The dominance of the act was an important political achievement, assuring equality before the law. The act of murder was to be adjudged and punished the same whether committed by a prince or a pauper—at least this was the hope. The political organization of society has changed, as well as the psychological sophistication of the public at large. Society is ready to shift the emphasis from the act to the actor. The need for psychiatric participation in this process will increase in the future.

Psychiatric contributions to the litigation process in general, and the handling of homicide in particular, are based upon clinical skill, experience, and some degree of legal sophistication. Without clinical expertise in the subject matter, the psychiatrist is a mere figurehead, utilized in the courtroom for ritualistic purposes. Scientific knowledge of the subject, however, is not enough for the purpose of meaningful participation in the legal process. It is essential that a psychiatrist be familiar with the legal setting in which he renders his services. It goes without saying that the legal profession also needs psychiatric sophistication in order to be receptive to psychiatric contributions.

Within the psychiatric and legal professions, there has been opposition to such cross-education. In both professions, one encounters those who champion the slogan "A little knowledge is a dangerous thing." They refuse to recognize that nothing is more dangerous than ignorance and that the so-called little knowledge can be valuable for the acquisition of further in-depth knowledge. Information about psychiatry will not transform the lawyer into a psychiatrist, but it might help him to become a better lawyer. Information about the law will not make the psychiatrist an attorney, but it will help him to become a better practitioner within the scope of his own profession.

Presented at the Plenary Session of the Twenty-third Annual Meeting of the American Academy of Forensic Sciences, Phoenix, Ariz., 23 Feb. 1971. Received for publication 4 May 1971; accepted for publication 14 Sept. 1971.

[1] Wayne State University, Detroit, Mich.

Varieties of Homicide

It is almost banal to stress that there are varieties of homicide; nevertheless, it is necessary, since society treats homicide as if it were unitary behavior. There are homicides which represent the ultimate of organization, structure, preparation, and execution; at the other end of the spectrum, there are those which are nothing more than a disorganized, unplanned discharge of primitive aggression. A duel may lead to homicide, but it represents an example of organized, ritualized aggression. A lethal confrontation portrayed in a Western is an organized form of behavior with definite rules of procedure. A gangland killing is an organized form of behavior carried out by those who believe in violence as a means for resolution of conflict. Such models of egosyntonic modes of homicidal behavior have dominated our handling of homicide. It is essential to recognize that they represent a small fraction of the homicides in our culture.

As long as homicide is viewed primarily as reflective, egosyntonic behavior, punitive measures seem appropriate. The recognition of a form of homicide which is nonreflective, egodystonic, and represents a decompensation phenomenon requires a different approach. The egodystonic homicide can be best described as the conclusion to a process occurring between two individuals whose personalities and life situation determine the homicidal outcome. The homicide in these cases represents a resolution of conflict extending over a long period of time and maintained primarily on an unconscious level. The homicide takes place during a disruption of the ego and may be precipitated by a seemingly insignificant provocation. The term "homicidal process" is used here to describe the progressive intensification of the sadomasochistic relationship between the perpetrator and the significant person who usually becomes the victim. "Usually" is emphasized, as occasionally displacement occurs and an uninvolved person becomes the focus of the homicidal discharge.

The perpetrators of this type of homicide do not suffer from superego defects; on the contrary, they show evidence of a strong overcontrolling superego [*1*]. These are people who do not have the capacity to gratify their aggressive needs consistently and do it in an explosive manner. The history of these individuals usually reveals violent childrearing practices, which account for the severity of the superego. In the dissociative homicide, the availability of a gun appears to be a crucial variable. Explosive discharges of aggression may have occurred in these perpetrators before and were terminated by verbal or nonlethal physical assaults. The incidence of such episodes, however, is generally rare in this group. Dissociative homicide usually requires the presence of a number of factors: an overcontrolling superego in the perpetrator, a sadomasochistic relationship between victim and perpetrator, the occurrence of an altered state of consciousness, and the presence of a weapon. Dissociative homicide is analogous to a nuclear reaction, in which a number of isolated events must occur simultaneously in order to trigger the explosion.

Insanity as a Defense

The never-ending controversy and outpouring of literature on the subject of insanity as a defense is usually conducted without consideration of those facts essential to the whole interaction. On one side, the proponents of insanity as a defense visualize the execution of mentally ill citizens for crimes which they have committed in a state of mental derangement. The opponents of insanity as a defense, on the other hand, see murderers who go scot free because skilful attorneys, with the help of unscrupulous psychiatrists, mislead innocent juries into acquittal. This discrepancy might offer stimulating mental exercise to those who engage in this polemic, but it seems to have little basis and relationship to the

transactions which occur in the criminal courts of the nation. A few oversimplified generalizations may be made:

1. Insanity as a defense is raised almost exclusively in cases of involuntary homicide and only when the perpetrator of the involuntary homicide is charged with first-degree murder.
2. The perpetrators of homicide who plead insanity as a defense are neither mentally ill nor criminals.
3. The concept of insanity is a legal fiction without much relationship to the realities of the functioning and malfunctioning of the human mind.
4. The determination of insanity in criminal law is to a minimal degree influenced by psychiatric thinking or psychiatric participation.
5. Insanity is raised as a defense in a small proportion of the cases of homicide. A great many perpetrators of homicide who are legally and factually entitled to this defense do not make use of it.

Defense by reason of insanity exists in law due to the simple fact that there *are* some crimes which are committed as a result of insanity, that is, some crimes are symptoms of a mental disorder. The defense by insanity has a variety of useful functions, which appear to have been lost in the hue and cry against alleged coddling of criminals. Such a defense is essential for the internal coherence of the legal structure. If criminal sanctions are based on criminal responsibility, then involuntary behavior has to be excluded from the criminal process. Furthermore, the defense by insanity fulfills an important social function by protecting sick people from punishment and, perhaps, further aggravation of their condition.

The existence of the defense by insanity proclaims that the law recognizes the fact that certain forbidden conduct is more appropriately handled by treatment than by punishment. This issue is particularly critical in view of the fact that penal institutions in our society do not regularly provide treatment for mentally ill prisoners. The controversy about the defense by insanity would be much less intense if such treatment were generally available in penal institutions. Punishment of those who have transgressed provisions of the criminal law while lacking the ability to control their behavior is offensive to the sense of justice and, therefore, undermines respect for the law. Such punishment has no justification regardless of the basic objectives of criminal law, whether they be those of retribution, deterrence, or rehabilitation. Furthermore, the defense by insanity has some fiscal significance, as it reduces the burden on the penal system of having to care for people who do not require the complex and expensive services of penal institutions.

The defense by insanity also provides for the inclusion of psychiatry into the courtroom, which is certainly beneficial to the law and possibly useful to psychiatry. Psychiatry has a humanizing influence upon criminal law. The best example of this is the handling of suicide. Through the medium of the defense by insanity, the handling of suicide has been transformed from a felonious offense to a medical entity, exciting little interest in the criminal law. Society does not appear to have suffered as a result of this evolution, and certainly the individual citizens afflicted by suicidal impulses are better served by psychiatry, inadequate as it is, than by the criminal process. I believe that defense by insanity, which now is rarely utilized, poorly presented, and frequently unsuccessful, will, nevertheless, succeed in transforming the present irrational handling of homicidal offenders into a realistic and useful system of disposition.

The Model for Homicide

In handling homicide, the law utilizes the model of the criminal man who wilfully and maliciously kills another human being for some utilitarian purpose. This model fits certain

homicidal offenders. There is, however, no doubt that the majority of the perpetrators of homicide do not fit this particular model. They can be accommodated within it only by doing violence to basic legal principles, to the sense of justice, and, last but not least, to the findings of behavioral sciences. The law as a rational system cannot survive if it continues to disregard scientific reality in principle or in practice.

In addition to the model of the criminal man, the law has utilized the model of the sick man who is excluded from criminal sanction. This model has led a shadowy existence and has been treated as a stepchild of psychiatry and the law. Defense by insanity is prominent in the law library but disreputable in the courtroom. The indiscriminate charge of first-degree murder utilized in most homicides by the prosecution raises no legal eyebrows. The assertion of defense by insanity, however, renders the legal or psychiatric practitioner suspect of intellectual dishonesty.

There is a common myth to the effect that crafty defense attorneys, with the cooperation of unscrupulous psychiatrists, bring about acquittals of murderers. In reality, the opposite is true. The majority of attorneys handling homicide cases are unskilled in the preparation and presentation of insanity as a defense, and only a small number of attorneys have prepared and used such a defense repeatedly. There may be a number of unscrupulous psychiatrists, but very few psychiatrists of any kind are willing or able to participate in the legal process. It is, therefore, not surprising that insanity is used as a defense infrequently and rarely with success. Between 60 and 80 percent of all homicides involve impulsive violence towards someone with whom the perpetrator has had an intense relationship. Most of these would qualify for raising insanity as a defense. Only 2 percent of cases charged with homicide lead to acquittal by reason of insanity [*2*].

In involuntary, dissociative homicide the defendant usually has no other defense than that of insanity [*1*]. He asserts it not because of the prospect of avoiding punishment but due to the fact that he has no other option. In this type of homicide the perpetrator usually reports the crime himself. He frequently has made a confession and reinforced it by many self-incriminating statements. The act frequently is committed in the presence of witnesses. The initial comments by the perpetrator, as well as his behavior, are often designed to assure him of a charge of first-degree murder.

In the cases of egodystonic and psychotic homicide, success in apprehension and prosecution is aided by forces rooted in the psychology of the perpetrators of these acts. In the 80 to 90 homicides which I have examined, in only a few were even half-hearted attempts made to elude apprehension. In many instances, the perpetrator calls the police or reports the crime at the police station. It hardly requires the skills of Sherlock Holmes or the resources of Scotland Yard to deal with this particular category of homicidal offenders. Furthermore, it does not require brilliant advocacy to persuade a jury that the accused did know what he was doing and, therefore, that it is the duty of the jury to find him guilty of first-degree murder. For reasons which seem beyond comprehension, prosecutors in this country consider it their duty to obtain a first-degree conviction as often as possible. For example, a man who killed his mother suddenly, without any intense interaction with her, and then proceeded to have sexual relations with her dead body, was charged with first-degree murder!

Plea of Insanity

Insanity as a defense is asserted in only a small proportion of all cases where it could be legally applied. There are a variety of reasons for the striking underutilization of this defense. The law limits the raising of the defense by providing a legal restrictive formula for

its presentation. Another limiting factor is the lack of familiarity on the part of attorneys with this defense. There is also the reality of lack of sufficient witnesses competent in psychiatry. The public attitudes which are exemplified by the attitudes of juries are another consideration. The practical utility of insanity as a defense at the present time is, therefore, insignificant in the handling of homicide. It is a defense scarce in the courtroom although plentiful in literature.

Insanity as a defense could be viewed, as a practical matter, not to be a defense at all but a form of guilty plea. In asserting the defense by insanity, the perpetrator admits the act and submits himself to a disposition prescribed by the law subsequent to his so-called acquittal. In other words, acquittal by virtue of insanity involves confession of the act and acceptance of a legally prescribed disposition—which could be called a sentence. Successful assertion of the defense by insanity does not bring freedom with it. Not guilty by virtue of insanity, operationally speaking, means the acceptance of an indeterminate sentence; therefore, the defense by insanity leads primarily to a moral vindication. The control over the perpetrator is retained by the state subsequent to the acquittal. How the state chooses to exercise this control will vary. In any other acquittal, the state relinquishes the control over the defendant. The following case history is illustrative.

A 48-year-old Negro male (a Mr. Smith) shot and killed his wife on 8 February 1969. There was a long history of marital discord. On Friday, 7 February, Mr. Smith came home from his part-time job as cleanup man at a K Mart at 11 a.m., slept till 1 p.m. and then went to his regular job at Ford Motor Company, where he worked till 12 a.m. He again returned home, went to sleep, and woke up at 4 a.m. to go to his part-time job. He got off at 10 a.m. Saturday. He purchased some groceries and then went to his home, where he attempted to go to sleep. Shortly after his arrival, his wife informed him that someone was there to see him—a Wayne County deputy sheriff attempting to serve papers upon him concerning his wife's suit for divorce. He did not accept the papers. This irritated his wife, who went across the street to neighbors and evidently made a call to the police. The police entered the house, since the wife claimed that Mr. Smith was armed and was about to kill her. The officers came into the house, searched Mr. Smith, and departed once they recognized that no violence had taken place and that none appeared imminent. Mr. Smith found this upsetting and decided to leave the house. He stated that he took a bath, dressed, and went downstairs. He was about to leave but, being completely exhausted, sat down on the couch and went to sleep. He said he was awakened by the barking of his dog and found his wife bending over him with a gun. He jerked the gun from her hand. The next thing he remembered was that she was lying on the floor and appeared to be shot. Mr. Smith went to a neighbor and called the police, notifying them that a shooting had taken place. Mr. Smith said he remembered grabbing the gun but denied pulling the trigger.

Mrs. Smith had a history of frequent acute disturbances and of having attempted suicide in 1968. The past history of Mr. Smith was stable. He had worked for Ford Motor Company since 1950. He had no history of antisocial activities, no police record. I examined Mr. Smith in April 1969, found him free of any psychiatric symptoms or disability, and so testified. I did express the opinion that at the time of the act Mr. Smith was suffering from an irresistible impulse. The jury found Mr. Smith not guilty by virtue of insanity, and he was committed to Northville State Hospital in accordance with Michigan law. This occurred in May 1969. In October 1969 I again examined Mr. Smith at Northville State Hospital, where he had full ground privileges, was permitted to leave the hospital, was working regularly, and was free of any psychopathology.

Seven months after commitment, in December 1969, a hearing was held in front of a Wayne County circuit judge, the purpose of which was described by the attorney as

"The demonstration to the Wayne County Circuit Court that Mr. Smith is being illegally detained by the institution inasmuch as he is presently sane, and not a danger to himself or to society." In the same communication, the attorney also related that Mr. Smith, being indigent, had inadequate funds for the pursuit of the matter. The petition was opposed by the attorney general, who produced the psychiatrist in charge of Mr. Smith as his expert witness. The state psychiatrist testified that Mr. Smith was not psychotic, that he did have ground privileges, and that ground privileges were not granted to those who were dangerous to themselves or to society. The psychiatrist believed, however, that Mr. Smith was not ready for discharge. As the only support for his opinion he offered the fact that Mr. Smith was observed in the bushes with a female patient. The female patient in question, a middle-aged, Jewish lady from Detroit and a long-time resident of Northville State Hospital, utilized her ground privileges to be present in the courtroom during this hearing and offered to testify that nothing improper occurred. The assistant attorney general attempted in an extensive cross-examination to extract from me the opinion that being in the bushes with a female inmate of the institution was contrary to the laws of the State of Michigan and that, as this in fact constituted statutory rape, Mr. Smith was to be considered as having criminal propensities.

Extensive additional testimony was taken. The attorney informed me of the outcome in a letter: "We were unsuccessful in our attempt to convince Judge Ryan that the captioned party should be released at present from the Northville State Hospital, Judge Ryan having asserted that an extremely strong showing of restoration to sanity need to be made in light of the fact of the past homicide, and concluding that such showing had not been presented. In light of your testimony, and the clearly favorable matter extracted during cross-examination of the defendant's witnesses, I was most surprised by the ruling."

Mr. Smith was returned to Northville State Hospital, where he continued to be an exemplary patient until April 1970, whereupon he gave expression to his lack of faith in the legal system by discharging himself through the process of walking away. He did contact his attorney some days later to inform him of the fact that he had resorted to self-help.

This case history indicates that the so-called acquittal by virtue of insanity is not an acquittal at all. It furthermore demonstrates the arbitrary nature of the judicial process.

Punishment and Homicide

Legal punishment has been the exclusive approach in the handling of homicidal behavior. The purpose of legal punishment has been a hotly debated issue. There are those who have held through history that punishment has no purpose and should be purely retributive. This view is the original one; consideration of the purposes of punishment are a secondary and subsequent elaboration. Retributive punishment was the basic expression of the Mosaic injunction that "Thou shalt give life for life, eye for eye, tooth for tooth, burning for burning, wound for wound, strike for strike." The same principle was expressed in the Lex Talionis of Greek culture.

The Christian view of punishment has been a rejection of the "eye for eye and tooth for tooth" maxim as pronounced in the Sermon on the Mount. This, however, applied only to the individual and not to the state. St. Paul expressed this clearly when he indicated that not only God punishes the wicked but also the ruler of the earthly state, who, St. Paul [*3*] says,

> . . . is the minister of God to thee for good. But if thou do that which is evil, be afraid; for he beareth not the sword in vain; for he is the minister of God, a revenger to execute wrath upon him that doeth evil.

Kant and Hegel have been clearcut proponents of punishment for punishment's sake. The concern with rehabilitation, reformation, or any other utilitarian aspect of punishment was, in Hegel's view [*4*], debasing to the criminal himself:

> He does not receive his due honor unless the concept and measure of his punishment are derived from his own act. Still less does he receive it if he is treated either as a harmful animal who has to be made harmless or with a view to deterring or reforming him.

Of the ancient philosophers, Plato [*5*] seems to be the only one who has viewed punishment along utilitarian lines. In the *Protagoras* he states:

> If you will think, Socrates, of the nature of punishment, you will see at once that in the opinion of mankind virtue may be acquired; no one punishes the evil doer under the notion, or for the reason, that he has done wrong;—only the unreasonable fury of a beast acts in that manner. But he who desires to inflict rational punishment does not relatiate for a past wrong which cannot be undone; he has regard to the future, and is desirous that the man who is punished, and he who sees him punished may be deterred from doing wrong again. He punishes for the sake of prevention, thereby clearly implying that virtue is capable of being taught.

Punishment imposed under criminal law is at times justified on the grounds of having preventive value. The concept of deterrence is a cherished notion for the legal system. Deterrence is accepted, without much empirical evidence, to support the impact of this concept. On mere theoretical grounds one could attribute effectiveness to deterrence only in reflective, egosyntonic, criminal behavior. Certainly, deterrence is of little consequence in behavior which is symptomatic of underlying emotional illness. Crime which is motivated by the need for punishment will not be prevented by the imposition of criminal sanctions.

Furthermore, there are important differences in the institution of preventive measures and the imposition of criminal sanctions. Preventive measures are prospective, directed towards the future prior to the occurrence of the morbid condition. Criminal sanction is retrospective. Preventive measures require some degree of renunciation but do not impose suffering, whereas the very essence of punishment is the imposition of conditions designed to produce suffering. Preventive measures and medical treatment might involve suffering, but suffering is not an essential part of them. There is no doubt that punishment plays a significant role in the development of normal individuals. There are, however, those upon whom punishment has no preventive effect.

The adversary system requires that the prosecution offer rational motives for the most irrational homicide. This task of the prosecution is enhanced by the almost universal need to view homicidal behavior as rational. The idea of having acted without control, of not having been in the possession of one's faculties is a terrifying one and is rejected not only by the jury but frequently by the perpetrator himself. Many a man would rather hang than accept the proposition that he acted without reason.

A middle-aged, professional man who shot his wife and her boyfriend was under my treatment for over five years subsequent to the shooting. He was acquitted on grounds of insanity. Since I was treating him, I did not testify on his behalf. For a long time after the acquittal he held on to the notion that he had, in fact, committed this act wilfully. Only in the latter stages of his treatment did he become aware of the fact that he did not act as a free agent. Jack Ruby, whom I examined at the request of the defense, made efforts to provide rational motives for killing Lee Harvey Oswald, the assassin of President Kennedy. This was subsequent to his trial and death sentence.

Lawyers hold on to the cherished notion that social scientists in general, and psychiatrists in particular, are eager to invade the province of criminal law and to reform, pervert, redesign, and otherwise gain control of this legal institution. In reality, few social scientists and almost no psychiatrists have any concern with the legal process. Neither psychiatric research nor its literature devotes any space to criminal law. In fact, it is difficult to discover any psychiatric interest in criminal proceedings. Crime has been neglected not only by social science but by the law itself. Unless a lawyer is also a judge, he will show hardly any interest in criminal law. Specialists practicing criminal law, incidentally, generally are held in low esteem by the other segments of the legal profession.

Forensic Psychiatry

If certain legal issues do require psychiatric elucidation, then a psychiatric subspecialty which is capable of performing the specialized services required by the legal process is needed. This subspecialty, known as forensic psychiatry, has been more a concept than a reality. The lack of development of forensic psychiatry is, in large measure, a consequence of the general reluctance to have the psychiatrist testify in the courtroom. In fact, it is considered to be disreputable for a physician in general, and a psychiatrist in particular, to appear in a courtroom on more than a few occasions in his lifetime.

The contemporary ideal forensic psychiatrist is a man who writes extensively on the subject of law and psychiatry but avoids tarnishing his image by entering the courtroom. For example, Dr. Thomas Szasz, who is a recognized authority in the area of law and psychiatry, has written several books and innumerable articles on the subject, without any significant exposure to the legal process. He proudly admits that he has testified in a courtroom on only two occasions. The recently organized American Academy of Psychiatry and Law took as one of its basic tenets avoidance of any involvement with courtroom testimony. Lack of experience is usually a reflection upon one's competence, but not so in the field of forensic psychiatry. On cross-examination, the psychiatrist is frequently asked if he has ever testified in a court of law before. If he answers in the affirmative, the cross-examiner believes that he has unmasked the expert as a fraud. The first courtroom testimony of a psychiatrist, like the virginity of a maiden, is highly valued, though it usually admits of a poor performance.

In a recent highly publicized multiple homicide in Detroit the defense was based on insanity. A law-abiding citizen killed his daughter and three of her boyfriends. Extensive psychiatric testimony was presented at the trial following this tragedy. A psychiatrist appearing on behalf of the defense was questioned by the defense attorney at length as to his qualifications. In fact, 16 pages of the transcript are occupied by the demonstration that the doctor was eminently qualified. At the end of the presentation of the expert's qualification, the following exchange took place between the defense attorney and his expert:

Q. Are you trained, and do you practice a subspecialty ordinarily referred to as forensic psychiatry?
A. No.
Q. Have you ever previous to this date, doctor, been summoned to testify and given testimony in a criminal as distinguished from a civil proceeding in court?
A. No, I haven't.
Q. Have you ever testified either for the prosecution or for the defense in a murder case?
A. No, I haven't.
Q. Have you had, however, court exposure?
A. Yes, on several occasions.

Q. Only because, I gather, it became necessary by reason of your patient's involvement in civil litigation, is that right?
A. Yes. That would summarize most of my experience.
Q. How old are you, doctor?
A. 43.

The defense attorney seems to be telling the jury that his expert is particularly qualified because he has never been tarnished by exposure to the legal process. In fact, the same psychiatrist testified that he had been retained by the defense for the purpose of examining the defendant in connection with the pending criminal trial. However, upon visiting the defendant in his home he decided that the man should be admitted to the hospital under his care for treatment.

Q. Now would it be fair to say that Mr. Garland was initially recommended to you for psychotherapy or for psychoevaluation or for both?
A. I went to his home with the understanding that I was going to evaluate him for the purpose of getting an opinion as to his state at that earlier time [He must mean at the time of the homicide, E.T.], but as I saw him there it was very obvious that he wasn't going to be able to cooperate with me in that state of mind, plus there was this danger to his life. At that point I shifted my emphasis.
Q. Hence you recommended that he be hospitalized . . . ?
A. Yes.

Thus, the psychiatrist appeared in the courtroom clothed with the mantle of respectability, which the lawyer attaches to the treating physician, and free of the stigma of being a forensic psychiatrist seeing an individual for an evaluation. It has been my practice to separate treatment and courtroom testimony. A combination of the two has adverse effects for either function. Treatment becomes meaningless and courtroom participation ineffective when rendered in combination.

In the case of Mr. Garland, the hospitalization led to the introduction of material which was highly detrimental to his defense. During his stay in the hospital he was given shock treatment, as a result of which he behaved aggressively and threatened a provocative paranoid patient. The testimony of various frightened and prejudiced nurses describing the defendant as dangerous, wilful, and bragging about the commission of the offense had a most deleterious effect. It was, therefore, not surprising that this sick man, who in his entire life was not even convicted of a traffic violation, was declared a premeditating criminal.

This case illustrates the dilemma confronting a practicing attorney who frequently has the choice of two types of psychiatrists available to him. He can select a legally unsophisticated but psychiatrically knowledgable practitioner, or he can turn to the professional psychiatric witness who devotes his time exclusively to courtroom appearances. This type of psychiatrist frequently has neither psychiatric competence nor the essential credibility. A psychiatrist who does not practice clinical psychiatry is, in fact, not a psychiatrist in the strict sense of the term. A psychiatrist who practices forensic psychiatry exclusively will sooner or later lose touch with psychiatry—if, in fact, he ever had it. The suspicious attitudes of the general public and lawyers towards the forensic pseudo-psychiatrist are, therefore, understandable.

The choice should not be between the legally ignorant psychiatrist and the psychiatrically inadequate one. There is room between these two extremes for a forensic psychiatrist who is, first and foremost, a psychiatrist, but who has acquired some legal sophistication. Thus forensic psychiatry can only be a subspecialty, not of psychiatry as such but

of the individual psychiatrist. A pathologist who did nothing but give courtroom testimony would, with the passage of time, cease to be a pathologist. I do not know of any pathologists who, in fact, have devoted themselves exclusively to forensics. Unfortunately, in the field of psychiatry there are such individuals, although their number is small, contrary to popular opinion. These psychiatric dropouts find a refuge from psychiatry in the no-man's-land between psychiatry and law. If forensic psychiatry is to become a viable subspecialty, the involvement of full-fledged psychiatrists with the legal process is a must.

There are various forces which work against the involvement of practicing psychiatrists in the legal process. Some of these are (*1*) psychiatric theory and dogma proclaim treatment to be the exclusive concern of the psychiatrist; (*2*) lack of understanding of the law due in part to the lack of teaching of forensic psychiatry during the training of psychiatrists; (*3*) the hostility of the law towards intrusion by psychiatrists into the legal domain; and (*4*) individual abuses by attorneys of physicians in general and psychiatrists in particular in matters of scheduling of testimony and payment for services rendered. These various factors condition the average psychiatrist to avoid courtroom involvement with a phobic intensity.

Conclusions

It is, at times, amusing to hear lawyers and judges expound about the virtues and vices of psychiatry, without having had the opportunity to work with a practicing psychiatrist in their entire professional careers. Similarly, psychiatrists give pronouncements on the involvement of psychiatry with the law without having had the opportunity and challenge of being significantly exposed to legal processes. Psychiatry has a legitimate interest in attempting to contribute to the development and practice of law. Law constitutes a significant aspect of social reality. Prevention of psychiatric morbidity is intimately involved with the administration of justice. Law, on the other hand, needs the resources of psychiatry for theoretical and practical reasons. The legal precepts which govern human behavior require the data of the social sciences, including psychiatry. The practical administration of justice in the individual case calls for the collection and interpretation of relevant information of psychosocial nature. This is best performed by various behavioral scientists, including psychiatrists. This collaboration between the law and the behavioral sciences is desirable in all areas of the law; however, it appears to be most crucial in the handling of homicide.

The ideals of law and psychiatry can be best achieved through cooperative efforts in theoretical formulation and practical application. It is, therefore, in the best interest of law, psychiatry, and society to further the development and growth of the psychiatric subspecialty of forensic psychiatry.

References

[*1*] Tanay, E., "Psychiatric Study of Homicide," *American Journal of Psychiatry*, AJPSA, Vol. 125, March 1969, p. 9.
[*2*] Goldstein, A. S., *The Insanity Defense*, Yale University Press, New Haven, Conn., 1967.
[*3*] *Great Books of the Western World*, Vol. 3, Encyclopaedia Britannica, Inc., 1952, p. 490.
[*4*] *Great Books of the Western World*, Vol. 3, Encyclopaedia Britannica, Inc., 1952, p. 494.
[*5*] *Great Books of the Western World*, Vol. 7, Encyclopaedia Britannica, Inc., 1952, p 45.

852 Fisher Building
Detroit, Mich. 48202