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Incompetency to Stand Trial: A Difference of Opinion

The issue of competency to stand trial has long been argued by lawyers and psychiatrists in private discussions and open court, in brief letters and lengthy books. There has been effort directed toward establishing legal and psychiatric standards which, despite the shortcomings of our language and knowledge, could be applied evenly and logically to determine a person's competency to stand trial [1-3].

We are reporting a case of homicide in which the defendant has a psychosis which includes a fixed religious delusion system. Following his plea of not guilty by reason of insanity, the question of his competence to stand trial was raised. The difference of opinion to be explored lies between the defendant's forensic psychiatrist and the defendant's attorney. It centers on the defendant's ability to relate to his attorney and the court, that is, to communicate relevantly, to collaborate reasonably and to testify rationally. Many other items pertaining to competency are not at issue in this report.

Case Report

The defendant's parents were born and raised in Poland. Since they were Jewish, they faced Hitler's terror following his invasion of their homeland. Rather than being killed, like many of their relatives and friends, their youth and vigor dictated that they be sent to work camps. They survived and were reunited. When their only child, Barry, was born in 1948, they did not have him circumcised. They had come to view circumcision as a meaningless and potentially hazardous custom. This decision was to become important to Barry.

Barry had a sheltered, over-protected childhood in a home permeated with sadness. In 1956, when Barry was eight years old, the family migrated to Israel in search of security and safety. There, for the first time, Barry had some playmates. Not finding conditions in Israel stable, in 1959, when Barry was eleven years old, the family journeyed to Australia. At the age of twelve, Barry experienced auditory hallucinations which his mother attributed to indigestion. He could, and often did, detach himself from reality and live in his own imaginary world. In 1963, they left Australia and moved to the United States. Barry was 15-years-old—intellectually gifted but physically immature. He was preoccupied with trying to fit everything he experienced into a mathematically precise system. He had an "aversion for the physical world" and was drawn to "a world where mind and spirit were

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paramount." He did well academically until his junior year in college. Then his grip on the "physical," that is, real, world faltered and failed. He argued with his parents who found him growing distant and traveling on "the road to self-annihilation"—the very road he wanted. He began abusing drugs—marijuana, hashish, LSD, amphetamines, heroin, cocaine, and opium. He decided sex was woman's evil invention. He made several trips abroad visiting among other countries Poland, Israel, and Pakistan.

In November 1970, at the age of 22, he killed his 21-year-old girlfriend Marsha. The following is the sequence of events which explain, for him, this act. Five months before, in July of 1970, Barry hallucinated two geometric forms, a pentangle and a rectangle, with words written within them. He then heard a voice say "Ani Moshe, Ata Aaron" ("I am Moshe, you are Aaron"). He believes Moshe was an angel sent by God to give Barry a new name and to tell him of his mission. He was given a "rundown on cosmogenesis by Moshe." God had written two sets of books—the Book of Knowledge and the Book of Life. The Book of Life was stolen by Ashtoreth and Baal. This crime was to be avenged; part of the vengeance was completed when Baal's incarnation, Christ, was crucified. The vengeance would be completed when Ashtoreth was killed.

Ashtoreth is the Hebrew form of the Phoenician goddess Astarte, the goddess of fertility and sexual love. She was the spouse and female counterpart of Baal—Baal being the God of the sun and Astarte the goddess of the moon. In the Hebrew Bible [4,5], which contains some of the earliest material on her, Ashtoreth is vocalized as bosheth, "shame," indicating the Hebrew contempt for her cult.

Barry hallucinated the same voice again a month later, in August. At that time he was informed that it was he who was to complete the vengeance and kill Ashtoreth. After her death the judgment day would come. The voice also told him that after he was circumcised, he would be informed of Ashtoreth's identity. In September, he was circumcised. In early October he saw worms crawling under his skin; his father brought him to see a physician. He was found to have large excoriated lesions on his chest and arms and a psychiatric evaluation was recommended. Two weeks later, at the constant urging of auditory hallucinations which repeated that Ashtoreth must die, he went to see Frances, an acquaintance. He was under the impression this girl was the incarnation of Ashtoreth. He told her, "I have to kill you," and attacked her with a knife. He found he could not complete the act and he left saying, "Cosmic powers say you must die." The following day he was found hiding in the bushes outside her house with a loaded shotgun. He was arrested and the District Attorney asked that he be sent to the Psychiatric Unit of the County Hospital for evaluation. Frances then dropped charges against him. He was transferred to a larger psychiatric unit in a nearby university hospital for still further observation. After several days of hospitalization, he realized that he had made an error—Frances was not Ashtoreth, if she had been, he would have succeeded in killing her. In the hospital, he spoke of his extensive drug abuse. He reports he almost constantly heard voices or thoughts coming from the outside via what he called "psychic osmosis." He felt, however, that to describe these experiences to his doctor would interfere with his mission. While hospitalized he used marijuana and he was discharged for having broken his agreement not to use drugs while hospitalized. Two days later, on Wednesday, the 4th of November he drove to a nearby state in order to purchase a handgun. "I knew there could not be failure with a handgun and consequently Ashtoreth would come to me and identify herself and she as well as I knew the ending of the book."

He hurried back the next day believing that the first girl he saw would be Ashtoreth. He went to the Student Union building where Marsha, his girlfriend, walked up to him. "At first I could not conceive that she was the one to be killed," he stated. They spent the entire evening and part of the night driving around. Marsha made the statement to

him, "I was the first person you saw today." He recounts, "I looked at her in disbelief; then I realized that she was Ashtoreth and had to be killed." He motioned her out of the car. She faced him and he reports she said, "You have taught me not to be afraid of death." He shot her three times and drove away. "I felt as if I were a spectator, I had no control over what was going on; I was only an agent of the Almighty."

Prior to the hearing, the lawyer and psychiatrist jointly interviewed the defendant, and informed him of their disagreement regarding his competence to stand trial. The following are among the questions the psychiatrist asked the defendant:

- P. What did you think about the girl's death?
- B. The act was an act of justice and vengeance—it wasn't wrong—I didn't even do it—I was just the instrument.
- P. What do you think of the girl's death now?
- B. I believe how deep seeded the commandment, Thou shall not kill is. Considering the commandment I received, I did the right thing—[it was] overdue justice and vengeance. Considering our human needs, I did the wrong thing.
- P. Did you do right or wrong?
- B. Right.

Among the questions the lawyer asked the defendant:

- L. Who are you? Are you Aaron or Barry?
- B. I can't answer that by giving one answer—the I in me is Aaron. When this mortal shell, the body, drops off I will be Aaron. Aaron is a newly discovered aspect of myself.
- L. Did you tell me that you didn't want to go to jail?
- B. Yes.
- L. Were you being honest with me?
- B. Yes. I am not overly concerned by my surroundings. Freedom is not paramount in my mind as it is in others.
- L. Do you have the will to live?
- B. Not the slightest.
- L. But if you don't care about life then do you care about anybody?
- B. Well if my mission was as it was told to me then I have some regard about you who are trying to help me. You think you are speaking to Barry but it is Aaron who is answering. This body was conceived by Ashtoreth. I feel as if I'm sitting in a movie right now.
- L. When you talked to the Doctor yesterday, in response to the question about what you were told to do—you were asked, was it rational?
- B. Yes, when I heard the voice it was.
- L. But now? Was it a rational process?
- B. Barry is answering no but Aaron says yes.

The attorney also asked a series of question regarding Barry's factual understanding of the proceeding—What is a trial? What are the functions of the judge? jury? prosecution and defense attorneys? He answered correctly.

The next day, at the hearing, the defense counsel asked the factual questions and again the responses were appropriate. The following are among the questions asked the defendant on cross examination by the district attorney:

- D.A. Do you understand what is happening?
- B. This is destined by God.
- D.A. Do you care what happens?
- B. I firmly believe this world is in its last moments. I need no defense of insanity because I am not insane.
- D.A. Did you tell the doctor at the State Mental Hospital for the Criminally Insane that you would preside in court?
- B. Yes.

- D.A. How?
- B. In the sense of witnessing justice being done.
- D.A. Did you say you were an angel?
- B. Yes.
- D.A. Are you?
- B. Yes.
- D.A. Did you say that there is no charge against you?
- B. Yes.

Discussion

This case illustrates the complexity of the issue of competency to stand trial. Differences of opinion between lawyers and psychiatrists often stem from their different approaches to trying to understand human behavior. Henry Davidson [6] has pointed out that:

The lawyer reasons deductively—he lays down a general principle. . . . Then from this principle, he determines the ruling on a specific case. The psychiatrist, as a medical scientist, must reason inductively—starting with observations, then drawing conclusions.

This difference in reasoning is apparent when exploring the history of the legal standards of competency to stand trial and evolving attempts by psychiatrists to translate psychiatric data into legally useful information.

The original insertion of the question of competency to stand trial probably arose out of a legal procedural issue: what to do with the defendant who could not or would not verbalize a plea. In the 18th and 19th centuries, as a result of a series of celebrated trials, standards for incompetence evolved which emphasized the cognitive capacity of the defendant to understand the procedures of the courtroom and to collaborate with his attorney [7]. In the Anglo-American trial system there is an overriding concern that the defendant be able to protect himself. Underlying the question of competence to stand trial, are the following legal principles. First, it is important to have as complete as possible an accounting of what occurred, especially when the accused is the only person in possession of exonerating factual material. Secondly, the person involved must be aware of what is happening to him in a criminal proceeding so that he can avail himself of all possible moves to protect himself. Thirdly, the dignity of the legal process must be preserved by having a reasonable, rational defendant. And fourthly, if a defendant is found guilty, he must know why he is being punished.

The specific application of these principles remains confusing. A recent encyclopedic study by the American Bar Foundation states [8]:

The exact state of mind required for the postponement of criminal proceedings has been variously phrased in statutes, but few of them lay down an explicit test such as appears in proceedings to establish criminal irresponsibility. Whatever the Statutory formulation of the tests of present competency, most jurisdictions have retained the common law criteria of ability to comprehend the proceedings and ability to assist in the defense as interpretive guidelines for the statutory language. . . .

The Supreme Court's decision in the *Dusky* case stated [9]:

the test must be whether . . . [the accused] has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding, and whether he has a rational, as well as factual, understanding of the proceedings against him.

The phrase "rational understanding" was not, however, clearly defined.

In any case involving serious mental illness in the defendant, the question of competency must be resolved prior to any consideration of the issue of responsibility for the

alleged criminal act. Both the legal and psychiatric professions often have a difficult time separating these two questions. Contrary to the uninformed opinion of many psychiatrists, the presence of mental illness in the accused does not necessarily preclude his competency to stand trial. From the psychiatric standpoint the task is to translate psychiatric information into legally useful statements, while remembering that the final responsibility for determination of competence belongs to the courts. Comprehensive check lists encouraging productive collaboration between professionals of both the psychiatric and legal disciplines have been devised.

A comprehensive, complex, and often referenced check list for criteria for competence is the one elaborated by Ames Robey [10]. His checklist is divided into three categories: 1) comprehension of court proceedings; 2) ability to advise counsel; and 3) susceptibility to decompensation while awaiting or standing trial. The general rule as stated by Dr. Robey is that "to be considered competent to stand trial, an individual must possess sufficient capacity to comprehend the nature and object of the proceedings and his own position in relation to those proceedings; and to be able to advise counsel rationally in the preparation and implementation of his defense [11]."

In the case reported above, the defendant's lawyer, focusing on the awareness, cognitive ability, and coherence of the defendant's statements, decided that he could work effectively with him. The defendant's psychiatrist thought that the defendant's ongoing religious delusion system, which played a significant role in the homicide, would impair the defendant's ability in Robey's second category, the ability to advise his lawyer. The defendant's alternating between being an angel and a client would impair his ability to maintain a relationship with his attorney. Knowing that his defense was insanity but insisting he was not insane would interfere with maintaining a consistent defense. His testimony, if needed, would be irrational since it would be based on currently held delusional ideas.

The court decided that, at the time of the hearing, the defendant was not competent to stand trial. He was returned to the State Mental Hospital for the Criminally Insane to await another competency hearing in one year.

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