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## The Trial of Louis Riel: A Study in Canadian Psychiatry

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**ABSTRACT:** The Riel case in 1885 is one of the most striking cases in the history of forensic psychiatry. On the one hand, Riel was the hero of the underprivileged, French Canadian-Indian halfbreeds whose futile revolt in the Canadian Northwest captured the imaginations of French Canadians in Quebec, for whom he became a hero and a martyr. Prior review in this journal has detailed the clinical data referable to his mental condition. This paper reviews the actual trial, the questionable management by the defense, and the inadequate preparations by the defense psychiatrists. Subsequent to the sentence of death, the Canadian prime minister, Macdonald, ordered a medical review, more or less dictating the result. For whatever reason, the medical reports when made public did not fully reflect the actuality of what occurred. The result was a questionable execution, the creation of a martyr, and a spark for the cultural conflict that continues to bedevil Canada.

**KEYWORDS:** psychiatry, insanity defense, Louis Riel, historical background, megalomania, capacity to be executed

In a previous article [1], I have reviewed the strange story of Louis Riel, focusing on the interrelationship of mental illness, political leadership, religion, and charisma. That paper provided a clinical background for the internationally celebrated trial of 1885 as a result of which Riel was found guilty of high treason and hanged. In a companion paper [2], misidentification of self as an element of Riel's psychopathology was explored.

This presentation deals more narrowly with the actual trial and the forensic psychiatric input of the participants. However, reference to the other two papers will be useful to the reader in comparing the testimony to data that could have been available at trial. Much of the detail of the trial comes from the transcripts of the trial and the subsequent medical submissions.

The trial began on 20 July 1885; Riel had several charges stemming from the insurrection of that year. The language of the charges was very complex, basically alleging treason against the Queen. Some of the charges identified Riel as a subject of the Queen; others identified him as living within the realm. Probably this was done to cover the possibility that Riel would claim that he was an American and not a Canadian, an act that he could have taken in view of his having obtained an American citizenship. In any event, he was accused of having not regarded his duty of allegiance to the Queen, not having fear of God in his heart, but having been "moved and seduced by the instigation of the devil as a false traitor" against the Queen [3].

The Crown had five prosecutors; the defense had a contingent of four attorneys. The

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defense unsuccessfully questioned the jurisdiction of a magistrate rather than a superior court, lack of a grand jury, and the use of a jury of six rather than twelve. After an adjournment to allow the defense to obtain its witnesses and after the disposition of technical issues, the actual trial began.

Riel requested a delay of a month; included in his request was his need for his certificate of American citizenship to show that he was not a British subject (the prosecutor in his opening statement indicated that a person could be charged with high treason even if that were the case). The actual trial was delayed until 28 July 1885.

Prosecutor Osler himself described the trial to the jury as "the most serious trial that has ever probably taken place in Canada." The details of the events of the insurrection, the battles at Duck Lake, Fish Creek, and Batoche were briefly related at the trial.

Riel attempted to speak during the testimony of Charles Nolin, his cousin and a witness for the prosecution. A somewhat heated interchange developed as Riel's own lawyers sought to prevent him from interfering ("Once he has counsel, he has no right to interfere.") The judge admonished Riel asking Riel whether or not his case was in the hands of counsel; Riel answered, "partly," an answer the judge refused to accept. Riel indicated that he had 200 questions with which to cross-examine the witness. After a recess, his lawyers indicated that they would not continue, if Riel were allowed to ask questions of the witnesses. The judge then told Riel that he had a right to ask questions, but if he did so, his attorneys would abandon the case. Riel indicated that he did not feel that his attorneys were sufficiently knowledgeable about the details of the case. Riel indicated that he had to defend himself or "consent to the animal life of an asylum." "I don't care much about animal life, if I am not allowed to carry with it the moral existence of a human being." The judge told him to stop and then refused to let him cross-examine witnesses. Riel declined to make a choice while the judge indicated that he did not wish to exclude the defense attorneys, though he indicated that if the attorneys left, he would have to appoint other defense counsel.

Father Alexis André, the first witness for the defense, stated that he did not wish to talk to Riel about politics or religion because on those subjects he was often a "fool" and did not have intelligence of mind. The local priests felt that Riel could not continue in his religious duties and that he was not responsible. On cross-examination Father André acknowledged that Riel asked for \$100 000 for his claim against the government but was willing to settle for \$35 000 (in December 1884). This testimony was quite brief.

Father Vital Fourmond described Riel before the rebellion as two people—one affable, polite, pleasant, and charitable. When contradicted he became irrational and violent in his expressions. After the rebellion he was excited and threatening. Riel announced to him that he, Riel, was now Father Fourmond's spiritual adviser, to which the priest responded by telling Riel the only way Riel would direct the priests was by shooting them. Riel told him that the Trinity was really a unity, that the Virgin Mother was not the mother of God but mother of the Son of God. He therefore changed the expression, "Hail Mary, mother of God" to "Hail Mary, mother of the Son of God." Riel was going to Italy to overthrow the Pope, to choose another Pope of his own making or to appoint himself.

Francois Roy, the first psychiatrist called for the defense, testified in English and French. Roy was the medical superintendent and one of the proprietors of the Beauport asylum. Roy reported that Riel was discharged after 19 months in January (1878) with a diagnosis of megalomania. People with that diagnosis are very clever and often appear quite well; they have "sensible moments" and may not be recognizable as such by casual observers. Roy did not examine Riel at the time of the trial; he did listen to the courtroom testimony of the prior two days. Roy concluded that at Beauport, Riel had been cured "more or less." Based on the testimony, he felt that Riel's mind was now "unsound,"

he was not the master of his acts, and the symptoms currently described were similar to those when hospitalized.

The prosecutor, B. B. Osler, brother of Sir William Osler, tried to show that Dr. Roy was a businessman, a proprietor, but Roy stated that he personally took care of Riel. Osler asked for the papers dealing with Riel's hospitalization, only to be told by Roy that he had not brought the papers with him (Roy had come from Quebec to testify, and not only did he not talk to Riel, he brought no records of any kind). "I cannot give you what I have not got." Roy stated that he had not inquired about Riel's earlier history. Riel was hospitalized under the name Larochelle but later confessed his true identity. At times he was violent and had to be restrained. Dr. Roy was asked about the importance of having a written history of the case to which Roy responded that he thought that he would be asked only his opinion. Asked if that would be satisfactory, Roy said that at first he did not think of coming. A major feature of Riel's disease was a fixed idea incapable of change (thus, according to the prosecutor, a person was sane if an idea was subject to control). Dr. Roy gave no other feature of the disease but granted that patients might have lucid intervals.

Dr. Roy initially testified in English; the defense attorney interjected to suggest that Roy would understand the questions better in French, to which Osler responded, "If the man wants to hide himself under the French, he can do so." Osler then asked if it was consistent with control to abandon a mission or idea for \$35 000. Roy's response to this and related questions were difficult to follow. It may well be that some of the problems were related to the use of two languages and translators at the trial. Nonetheless, Dr. Roy was poorly prepared and obviously not acquainted with the details. Dr. Roy equated being on a mission with an inability to know right from wrong. Dr. Roy was asked about Joseph Smith, the Mormon. Asked if Smith was insane, Roy stated that he did not know his history. Asked about Brigham Young, Roy answered "to my mind he was more or less insane." To the relationships of Young's prophecies and the concept of right and wrong, Roy said that if Young were sent to his asylum, he would make a study of the case. Osler also brought up the question of skillful fraud. After an unclear response, Osler stated, "If you cannot answer in English or French, I may as well let you go. You can go."

Dr. Daniel Clark was about 50 at the time of the Riel trial. According to Friedland [4], he had arrived in Canada at the age of 12. In 1850, at age 15, he went to California, and in one year made much money mining for gold. He graduated from the Victoria Medical School in Cobourg, Ont.; he volunteered for the North in the Civil War and served in the army of General Grant. In 1875, he became the superintendent of the Toronto asylum on Queen St., the location today of the Queen Street Mental Health Centre. He also wrote a novel on the rebellion of 1837, edited a book of poetry, and published books of photographs.

Clark testified that he had seen Riel three times, twice the previous day and once that morning. He also heard some prior witnesses. Clark was more articulate than Roy, indicating that assuming Riel told the truth and that he was not a malingerer, the only conclusion was that Riel was insane. "It is all nonsense to talk about a man not knowing what he is doing simply because he is insane." He criticized the concept of knowing right from wrong as only part of the truth ("the large minority of insane do know right from wrong; it is one of these metaphysical subtleties that practical men in asylums know to be false"). The defense attorney, Fitzpatrick, questioned Clark specifically in the words of the M'Naghten rule, regarding knowing right from wrong, to which Clark responded, "I think he did know. I think he was quite capable of distinguishing right from wrong," a comment that the defense attorney hastened to clarify. However, Clark proceeded to state that no sane man would have come to Saskatchewan as Riel did to gather a force

so that he could become monarch of the country and divide the Northwest in sevenths, each for a different nationality. He then agreed that assuming that, Riel was insane. Dr. Clark was cautious. "I assume of course . . . that not only the evidence given is correct, but that he was not a deceiver."

On direct examination, very little data were elicited concerning either Riel's past history or his mental status when examined.

On cross-examination, Osler had Clark agree that Riel would know the nature and quality of the acts and would know they were wrong, even if based on delusional thinking. As to skillful shamming or malingering, Clark stated that "in a cursory examination of a man of this kind, who has a great deal of cunning, who is educated, that it is impossible for any man to state on three examinations whether he is a deceiver or not. I require to have that man under my supervision for months, to watch him day by day before I could say whether he is a sham or not."

The essence of Clark's cross-examination seems to reflect his view that Riel was mentally ill but not to a degree that it would affect responsibility, though Clark attempted not to testify as to an ultimate conclusion. He would not compare Riel to Joseph Smith or Brigham Young. Osler tried to indicate that doctors were too liberal in applying legal concepts, and Clark responded that insanity per se does not absolve from responsibility.

On redirect examination, Clark portrayed religious leaders such as Smith, Young, and Mohammed as consistent and of sound mind; Clark did not feel that Riel "would make a very good Brigham Young or El Mahdi." Today one would probably find it less likely for a witness to discuss religious leaders unrelated to the matter at hand. In any event, Clark's testimony, though verbally more sophisticated and more reflective perhaps of the use of English language and law, was actually quite negative in terms of supporting a claim of nonresponsibility.

The first rebuttal witness called by the prosecution was Dr. James Wallace, superintendent of the Hamilton asylum for the insane. Wallace had also listened to the prior testimony and had examined Riel for half an hour. He found no evidence of insanity and concluded that Riel was of sound mind. The direct examination was extremely brief—of just a few minutes. On cross-examination, he clarified his opinion to state that he had not found symptoms of insanity based on his limited contact and acknowledged that he had had patients hospitalized for weeks before he found symptoms of mental illness. Wallace did indicate that megalomania, according to one writer, was a condition with delusions, grandiose ideas, thoughts of greatness, most commonly associated with paralytic insanity or general paralysis (in today's terms, neurosyphilis). Basically, megalomania to him referred only to grandiose ideas. Wallace added that megalomania was not a mental disease, only a symptom. The defense attorney introduced a book written by a Frenchman, Dagoust, about megalomania followed by a confusing discussion of the role of irritability. Wallace also acknowledged that grandiosity was found in simple mania. However, since megalomaniacs think that they have everything, they have no need to want any more. As Wallace added, such a person would be "so self-contented." Reference was also made to the word "monomania" to apply to the same concept. The witness was not familiar with other French authors so that line of questioning was dropped (Wallace: "I don't want to hear any French authors. I never read them.").

Osler on redirect tried to make a point that the disease and therefore the delusions are fixed and do not fluctuate, or as he put it, "so that when a person has taken herself for a queen, she remains a queen?" In other words, since the ideas are fixed, they are therefore under control.

Dr. Jukes, apparently a general medical officer of the mounted police, was the next prosecution rebuttal witness. He related that he had seen Riel almost every day for two months and would talk to him about his health and other things. Jukes stated that he had no reason to question Riel's mental condition, that he had never made any effort

to do so because his duty was otherwise. The cross-examination also dealt with the religious leaders already discussed; Jukes made an interesting point that a religious leader may be perceived as inspired if successful in his endeavors, but if he fails he would then be considered to have been delusional. Jukes described Riel as a man of great shrewdness and great depth so that his followers, of much inferior education, viewed him as a savior, and Riel might have role-played to maintain his influence more than he actually believed. However, Jukes had never discussed these matters with Riel, who always spoke rationally with him.

Several witnesses, mostly military, were called to describe their observations of Riel while he was being held prior to trial. Captain Holmes Young said in describing Riel, "I found that I had a mind against my own and fully equal to it, better educated and much more clever than I was myself. He would stop and evade answering questions with the best possible advantage."

### **Riel's First Statement**

Ignoring the advice of his attorneys, Riel then spoke to the jury before its deliberations, stating that it would be "easy . . . to play insanity" but he hoped to "maintain calmness and decorum." His presentation was long, meandering, and generalized. He complimented the court, the jury, and both sets of lawyers, invoking the blessings of Christ upon all. Much of his commentary focused on his religious orientation, again in a rather broad way, reflecting to a degree his feeling that God had protected him over the previous 15 years. Riel expressed his thanks for those who testified as to his sanity. "I have been in an asylum, but I thank the lawyers for the Crown, who destroyed the testimony of my good friend Dr. Roy, because I have always believed that I was put in the asylum without reason." He was pleased that if he were to die, he would not be reputed to be insane or a lunatic; he acknowledged that he was a prophet—a decent prophet—and had some ability to foretell the future, but he declined to talk about his plans of partitioning the land, rather enigmatically commenting, "I do not know if I am prepared to speak of it here because it would become public information, there is so much at stake that if I explained that theory Canada would not very long remain in quiet."

Riel equated the actions of the government with irresponsibility, pointing out that irresponsibility is insanity, and therefore the government itself was insane.

"The Ministers of an insane and irresponsible Government and its little one—the North-West Council—made up their minds to answer my petitions by surrounding me slyly and by attempting to jump upon me suddenly and upon my people in Saskatchewan. Happily when they appeared and showed their teeth to devour, I was ready: that is what is called my crime of high treason, and to which they hold me today. Oh, my good jurors, in the name of Jesus Christ, the only one who can save and help me, they have tried to tear me to pieces.

"If you take the plea of the defence that I am not responsible for my acts, acquit me completely since I have been quarreling with an insane and irresponsible Government. If you pronounce in favor of Ottawa, which contends that I am responsible, acquit me all the same. You are perfectly justified in declaring that having my reason and sound mind, I have acted reasonably and in self-defence, while the Government, my accuser, being irresponsible, and consequently insane, cannot but have acted wrong, and if high treason there is it must be on its side and not on my part."

### **The Summation of the Prosecutor, the Judge's Instructions, and the Verdict**

The Crown Counsel, in his summation, pointed out that at this trial there was no contradiction or dispute as to the facts. He did note that the defense attempted to justify

the rebellion while claiming simultaneously on the one hand that the leader, Riel, had reason as a patriot to act as he did and on the other that he was also insane. "They cannot claim for their client what is called a niche in the temple of fame and at the same time assert that he is entitled to a place in a lunatic asylum." The prosecutor noted that Riel led 700 to 800 French half-breeds and spoke to at least 2000 people in the area from July 1884 to March 1885 when the war started without anyone claiming that Riel was insane. The prosecution also made much of Riel's offer to leave the country for \$35 000. The prosecutor stated that the only peculiarity in the case was the record of mental illness 8 or 9 years earlier and criticized the lack of detailed information presented at the trial concerning that hospitalization. Covering another possibility, he also said that if indeed Riel's mind was weak and had given way, would it not have been more likely to do so after the collapse of his rebellion and his apprehension than at the time of the rebellion itself when he did not show that very insanity.

On 1 Aug. 1885 the judge defined for the jury high treason as the levying of war against Her Majesty, an insurrection within the realm. If the defendant did the acts charged, the jury must consider anything that might relieve the defendant of responsibility. The presiding judge then defined insanity in accord with the M'Naghten standards.

The same day the jury returned a verdict of guilty with a recommendation for mercy.

Riel was then given the right to make a further statement before sentencing (and after the jury had dispersed). Based on its length he spoke well over an hour, about 10 000 words, so that brief excerpts cannot give the full flavor of his statement. Riel was pleased that he had been cleared of the "stain" of insanity. The verdict proved that he was not ordinary, that he was hunted "as an elk" for 15 years and since the biblical David had 17 years, he, Riel, still had two. He reviewed the history of the Northwest and the Red River rebellion. His plans included distribution of the land by sevenths to: half-breeds, Italians, Irish, Bavarians, Poles, and Belgians from the United States as well as Swedes, Norwegians, Jews (if they acknowledge Jesus), Germans, and so on. This statement was rather disorganized and more difficult to follow than his effort the day before. "The idea of the seventh, I have two hands, and I have two sides to my head, and I have two countries." He spoke of having a \$5000 reward on his head, his belated five-year exile starting in 1875, his being owed lands and money, a judge in Manitoba giving him the name, David, his identification with David, but overall the intent and meaning of his words remained most cloudy and poorly comprehensible.

### Subsequent Events

As a result of the highly charged environment and emotions reflecting primarily the area's cultural background and conflict, Prime Minister Macdonald appointed a special commission to review the mental status of Riel. The doctors were instructed not to inquire as to whether or not Riel had delusions but "whether he is so bereft of his reason as not to know right from wrong and as not to be an accountable human being." The ordinary appeals as far as the Privy Council in England had been fruitless, and this last review was to decide whether or not Riel should be executed in accord with the judge's sentence.

On 3 Oct. 1885, Prime Minister Macdonald [5] wrote to Dr. Michael Lavell, the head of the commission, who was instructed to keep his trip and object "a profound secret." Macdonald told Lavell that Dr. Valade of Ottawa had been appointed so there could be a French Canadian on the commission. Valade's cover was that he was going to get vaccines from the United States. Macdonald told Lavell that he informed Valade that Lavell was an expert in "criminal lunatics," instructing Lavell, "So don't be too modest about it."

Macdonald suggested that Lavell see as few people as possible, "so soon as you are convinced that Riel knows right from wrong and is an accountable being. Remember

that the Jury has decided that he was sane when his treasons were committed and at the time of his trial.”

Lavell was further instructed, “You cannot therefore go beyond that verdict and your inquiry will be limited to the simple question whether he at the time of your report is sufficiently a reasonable and accountable being to know right from wrong. If a man has raging dementia after conviction the law humanely postpones the Execution so that he may have an opportunity of preparing for death—but if—whatever illusions he may have—he still knows right from wrong the law should be allowed to take effect . . . A man may have his mind so unhinged as to warrant two medical men to certify his insanity so as to send him to an asylum for curative purposes and yet be open to the penalties of the law for a breach of such law.”

It is rather surprising to have a prime minister more or less limiting an inquiry in a way that certainly would not be acceptable practice today. Various states do have a procedure to review the mental state of people awaiting execution. While the criteria are not explicitly clear, the courts or governors have not infrequently delayed execution until the defendant had recovered from the acute or severe mental illness so that the person could appreciate what was going on. In the United States, knowing right from wrong has not been the standard. When mental illness is found, execution is deferred until the person is restored to sanity or has recovered.

The very narrow “legal” instructions of the prime minister obviously carried much weight.

Lavell had been a surgeon and was warden of the Kingston Penitentiary. Curiously, he previously held the Chair of Obstetrics at the medical school of Queens University and was the first dean of the Kingston Women’s Medical College [5]. In any case, he delivered the goods.

Lavell performed in a fashion that today would be labelled as unethical. He did not inform Riel of his own identity or purpose. In his own report, he described this subterfuge; Riel assumed that Lavell was a newspaper reporter. Lavell stated, “I know I had a wily, clever and ambitious man to deal with . . . I was desirous of fortifying myself against mistakes.” He also observed Riel surreptitiously. When Riel spoke in a fashion that suggested disorganized thought, Lavell expressed surprise that a man of his ability and intelligence would talk, write, and “assume the role of a crazy man.” Riel then apologized for wearying him, and they discussed other matters.

Lavell’s final report to the government said only: “I have the honor to report that having given conscientious consideration to the case of Louis Riel, now confined under sentence of death, and fully appreciating the trust committed to me and the consequences involved, I am of the opinion that the said Louis Riel although holding and expressing foolish and peculiar views as to religion and general government, is an accountable being and capable of distinguishing right from wrong.”

Dr. Valade’s report to Macdonald, according to Knox [6], said, “After having examined carefully Riel in private conversations with him and by testimony of persons who take care of him, I have come to the conclusions that he is not an accountable being, that he is unable to distinguish between wrong and right on political subjects, which I consider well-marked typical forms of insanity under which he undoubtedly suffers, but on other points I believe him to be sensible and can distinguish right from wrong.”

In the printed Government report, the words, “not an accountable being” were omitted.

Dr. Jukes, who had also testified at the trial, submitted a report to the Commission: “That Riel differs systematically from the large majority of mankind in the views he entertains respecting certain questions relating to religious subjects or rather to certain spiritual phenomena such as Inspiration and Prophetic Vision in relation thereto, must be admitted; on these subjects he cherishes illusions or hallucinations which vary ma-

terially in intensity under varying physical and mental conditions; but diversities of opinion, I believe, upon these kindred subjects do not properly constitute insanity."

These reports were submitted in the 6 to 8 Nov. 1885 period. Riel was hanged on 16 Nov. The Minister of Justice, Campbell, wrote an opinion upholding the steps taken that momentous day.

Campbell concluded, "Whether rebellion alone should be punished with death is a question upon which opinions may differ. Treason will probably ever remain what it always has been among civilized nations, the highest of all crimes. . . . In this particular instance, it was a second offence and, as on the first occasion, accompanied by bloodshed under the direct and immediate order of the prisoner, and by the atrocity of attempting to incite an Indian warfare, the possible results of which the prisoner could and did thoroughly appreciate."

Subsequently, in March 1886 it was moved in the House of Commons "That this House feels its duty to express its deep regret that the sentence of death passed upon Louis Riel, convicted of high treason, was allowed to be carried into execution." Hector Langevin, a cabinet minister from Quebec, attempted in defending the conservative government to answer the French-Canadian clamor of protest from Quebec. The petition did not pass.

The issues have already been presented. In terms of today, the defense made a poor presentation, and its witnesses were not persuasive at the trial. As shown in this paper, the evolution of Riel's condition was not clearly elaborated, particularly in reference to his mental condition in the 1884 to 1885 period. More importantly he was not adequately examined, with excess reliance placed on information that was dated.

There is no doubt that today, more than a hundred years later, one might find a different result. The decision did not represent a prejudice against the insanity defense itself. One of Riel's supporters, Jackson, had already been found not guilty by reason of insanity. In the Shortis case of 1895 [4], an Irish immigrant in Quebec was found not guilty by reason of insanity for a double homicide, a verdict supported by the cabinet.

The English-French conflict was exacerbated by the Riel case. The collaboration of French Canadians in the Conservative government and support in Quebec for the Conservatives evaporated. The current Quebec motto of "Je me souviens" ("I remember") reflects the everlasting memories of an event long ago when a solitary, charismatic, mentally disturbed French Canadian-Indian "half-breed" led a futile revolt, achieving a fame and a martyrdom that probably would not have been his had it not been for the perhaps precipitous use of a hangman's noose in a tumultuous time.

## References

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### **Erratum**

In the article, "The Trial of Louis Riel: a Study in Canadian Psychiatry" (Vol. 37, No. 3, May 1992, p. 852), I erred in stating that Valentine Shortis was found not guilty of homicide, a verdict supported by the cabinet. In actuality, the insanity defense failed and Shortis was sentenced to death. The cabinet was evenly split over a recommendation for clemency. The Governor General, Lord Aberdeen, then commuted Shortis to "imprisonment for life as a *criminal lunatic* (italics mine), or otherwise as may be found fitting." This action exacerbated the discontent of French-Canadians over the Riel case. This decision in the Shortis case may have been a factor in the election of a Liberal, Wilfrid Laurier, who became the first French-Canadian prime minister of Canada in 1986.

Shortis remained incarcerated for 42 years; in the earlier years, he was frequently described as mentally ill. In his later years, he apparently functioned quite well and was released at age 62 in 1937; in 1941 he died suddenly of a heart attack.

Both the Jackson and Shortis cases reflect the fact that Canadian authorities were not adverse to considering the impact of mental illness in deciding the disposition of offenders, a step that was rejected in the Riel case.

I wish to thank Abraham L. Halpern, M.D., for bringing this error to my attention.

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### **Erratum**

The articles that appeared in the May issue of the journal under the Psychiatry and Behavioral Science Section Awards were erroneously labeled Case Reports on the title page.