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# Unconscious Fantasies: From the Couch to the Court

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No single unifying theory exists that explains the plethora of behaviors that bring individuals before the courts on a daily basis. No biological, social, or familial model for criminal behavior is without limitations, or exempt from controversy and criticism. We suggest, however, that it is appropriate, and often necessary, for the psychiatric expert to advance lucid, intelligible, and simplified psychodynamic formulation, either alone or in conjunction with another explanatory model of criminal behavior, to assist the court in its understanding and disposition of a given case. In some cases, apparent criminal behaviors result when unconscious motivating factors, particularly unconscious fantasies, find expression in conscious life. In this article, we consider the etiologic role of unconscious fantasy in certain seemingly inexplicable criminal behaviors. The concept of unconscious fantasy is explained and a detailed case description and formulation are provided in order to illustrate the central role of unconscious fantasy in some of these behaviors. Recommendations are offered for the manner in which psychodynamic formulation should be presented in reports and in courtroom testimony through reference to the authors' experience.

"... all our human acts are purposeful in the sense of being governed by programs which, if understood, reveal the meaning of our behavior no matter how incongruous or illogical it may appear to be when viewed in isolation."

—Michael F. Basch

*Psychic Determinism and Freedom of Will*<sup>1</sup>

Psychoanalytically based explanations of criminal/antisocial behavior<sup>2</sup> have given way to increased emphasis on and research into biological, familial, and social pathways to criminality. Psychia-

trists may offer behavioral and motivational explanations and opinions to a court when, for example, violence has been committed by someone as a "crime of passion" or by someone who is psychotic, intoxicated, or a psychopath. Such explanations are more readily understood in court than those based on dynamic formulations, which are by definition hypotheses. Yet there are many cases when a person's violent or criminal behavior may not be explained by empirical observation alone. A satisfactory explanation, i.e., one that offers a sensible understanding of the behavior in question, may often include psychological or dynamic interpretations. This dilemma underscores an intrinsic problem at the interface of law and psychiatry—

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the difficulty of proposing conjecture in a system founded on facts. The problem is no less severe when psychiatric opinion and testimony are based on empirical models, for such models have not been immune to harsh judicial and media criticism.

The scant literature that touches upon the psychiatric expert's use of dynamic explanations is both cautionary and apologetic. Freud,<sup>3</sup> in a rare paper on the use of psychoanalysis in court, cautions that the use of scientific techniques similar to psychoanalysis is experimental and should not be applied to testing the veracity of witnesses lest they "influence the verdict of the court." Tanay and Robertson<sup>4</sup> decry using "the language of speculation or hyperbole." MacDonald<sup>5</sup> first expresses concern that experts not "ventur[e] into territory which is often beyond the knowledge of the judge, attorney, [and] jurors . . .," but then concedes "It is possible, and indeed often essential, to present psychodynamic material, but this should be done with sensitivity." Bromberg<sup>6</sup> is closer to the point when, in discussing the difficulties psychiatrists have participating in the legal system, he suggests that the discomfort lies in not being able to adequately describe psychological life to lay people who are unaccustomed to thinking in terms of unconscious mental functioning.

These limitations, however, should not interfere with the performance of one of our essential tasks, which is to explain human motivation, behavior, and feeling, in either their most manifest or subtlest forms. Notwithstanding on-

going controversy about the place of psychiatric expert evidence in the courtroom, and questions about its "wizardry,"<sup>7</sup> psychiatrists are repeatedly called upon by lawyers and the judicial system to enhance understanding of a person's mental state and psychological functioning. Such requests are made with equal frequency in cases that cannot be adequately understood without resorting to a psychological/dynamic explanation. Theoretically grounded and properly carried out dynamic formulation, made intelligible for the lay person, can be of definite value to the justice system.

This paper will emphasize the value of dynamic formulation as a means of elucidating the underpinnings of some apparently criminal behaviors, especially those that we have suggested are not readily explained by empirical models. We will focus on the role of one particular mental process—unconscious fantasy—which we posit plays a central role in many poorly understood criminal behaviors. A section dealing with our own experience presenting the psychiatric evidence in the case that we describe will allow us to make recommendations concerning the manner in which psychodynamic material should be presented in court reports and in court.

The reader is referred elsewhere for a philosophical discussion of psychic determinism and free will, and of the role of unconscious motivating factors in our legal system's concept of criminal responsibility.<sup>1,8</sup> We do feel, however, that a consideration of unconscious motivating factors, could and should, in some

cases, result in mitigating an accused individual's disposition or in directing him or her towards the mental health system. Such a suggestion is consistent with recent consideration some authors have given to cases of shoplifting where the behavior is rooted in some dynamic construct often associated with depression.<sup>9-12</sup> One author<sup>13</sup> has even suggested renaming this particular form of behavior "shoplifting without criminal intent."

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Efforts by psychoanalytic writers to characterize unconscious fantasy, and to provide more than an elusive definition of it, attest to its amorphous nature. Although the words "fantasy" and "phenomenon" are etymologically derived from the same Greek root for "show" or "appear," unconscious fantasy is only assumed or inferred by its effects and cannot be observed directly.<sup>14</sup>

Unconscious fantasies are cryptograms of the person's unconscious emotional and experiential life, that find expression in all aspects of conscious life. Most authors agree that fantasy is derived from earliest bodily impulses, sensations, and affects, modulated in continuum by all conscious and unconscious mental processes and by external reality.<sup>15</sup> Over time, they form a reservoir of somatic experiences, affects, memories, images, and wishes. One conceptual model of unconscious fantasy would be a filmstrip that is continuously running within the unconscious, edited from moment to moment in response to internal and external stimuli, and por-

tions of which are "spliced" into conscious expression.

Contrary to more classical analytic thought, Arlow<sup>16</sup> suggests that fantasies are not exclusively vehicles for the discharge of the instinctual energies of the Id. In addition to wish fulfilment, unconscious fantasy can be modified in its expression by secondary process and be expressed later in sublimated form,<sup>17</sup> or serve a self-punishing or defense function.<sup>15,18,19</sup> In self-psychology terms,<sup>19</sup> unconscious fantasy is a mental mechanism that serves to maintain needed self-restorative affective ties to an important, but empathically failing other person. For example, behavior that demands constant approval unconsciously expresses a reparative fantasy in a person who feels he did not receive sufficient parental affirmation of his self-worth.

Like other unconscious processes, unconscious fantasy can be expressed through actions, postures, accident-proneness, and conversion symptoms,<sup>20</sup> or can be presumed through a patient's idiosyncratic use of metaphors, jokes, art, masturbation fantasy, and day/night dreaming.<sup>21</sup> In an example provided by Isaacs,<sup>20</sup> a panoply of biting and devouring games, evident in a child's conscious expression in play, was thought to convey the aggressive unconscious fantasies that developed secondary to his known bad experience at the breast.

We have defined and described unconscious fantasy as a ubiquitous unconscious mental process that commences in infancy and proceeds throughout life as a core of themes central to an individual, which are continuously modified

according to experience. In a manner similar to other unconscious mechanisms, unconscious fantasy manifests itself in a person's thoughts, feelings, and behaviors. The following case demonstrates how a dynamic approach enabled the assessors to decipher the unconscious fantasy derivatives in apparently criminal behavior in order to clarify its nature.

### Case Illustration

Allan, a 21-year-old single man, was attending university prior to his arrest and planning a professional career. He was admitted to a forensic psychiatric assessment facility on a judge's order. On this index admission, he was facing charges relating to an auto collision in which several people were seriously injured. He had been fleeing from police following a gun store break-in. He was also facing a variety of offenses stemming from his involvement with a peer group seeking to acquire arms and equipment for future paramilitary/vigilante activities.

He was a well-mannered, compliant, and quiet boy prior to age 16. He was studious and did well in school, and he was dependable and hard working at home on the family farm where he was raised.

His parents, especially his mother, were unhappy throughout all but the first year of their 24-year marriage. There had been frequent arguments and occasional physical violence. Allan was often an intermediary. He would console his mother to the extent of laying beside her following a quarrel.

Allan's 49-year-old father was described as an extremely obsessional and compulsive individual with an uncanny ability to insinuate himself into any situation. He pursued any cause or task with unrelenting zeal, including several litigations in which he was successful. Although he had no history of criminality, his paranoid traits, litigiousness, and defiance of authority led to chronic friction and ill will between himself and his local government. His family saw him as rigid and controlling to the point of being stifling. He frequently and angrily devalued them for their inability to measure up to his standards, and Allan, particularly, was made to feel inadequate by him. Academic or athletic accomplishments that fell short of excellence were met with his father's severe criticism.

Allan's mother, an attractive 41-year-old woman, was able to cope through the years only by relying upon Allan as her confidant, if not husband substitute. She explained that but for Allan's wish to have a younger brother, she would not have continued with a difficult pregnancy, especially when she discovered that her husband had an extramarital relationship.

Allan's support system during his childhood and early adolescent years was limited to his paternal grandfather, a man whom he described as "the nicest, wisest man I ever knew." The boy was otherwise a loner, content to work on his own in the school library, or find refuge in a fantasy world composed of science fiction, military themes, and martial arts. During his later adolescent

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years, Allan developed a relationship with a young, impressionable, and dependent woman whose actions he came to control.

Following the death of his grandfather, and soon after he turned 16, Allan became rebellious and defiant. He became involved with a group of boys, all from middle-class families, that subsequently grew to be about 10 in number. A club of boys who took camping trips and shared adventure fantasies soon progressed to a group aspiring to become vigilantes. Their "mission" was to dispossess drug dealers of their drugs and firearms, a task translated into action only once after Allan had left the group. As the group began illegally acquiring the guns, vehicles, and communication apparatus that they would one day need for their work, Allan became more alienated from his family. His parents disapproved of the military fatigues that he wore. His grades dropped as the time spent with the group dominated his life. He explained his interest in the group as an attraction to "excitement, power, and intrigue."

Soon after Allan joined the group, his mother was diagnosed as having a particularly lethal malignancy. She was advised to put her affairs in order since she would probably not survive beyond two years. She was coerced into having what was likely a life-saving operation. Her unduly fatalistic attitude revealed some previously expressed fantasies about escaping her marriage by suicide.

Allan had been experiencing ongoing dysphoria and irritability, accompanied by some changes in appetite, sleep, and

concentration, from the time of his grandfather's death. It is at that time that he developed suicidal ideation and started to elaborate suicidal plans, some of which were partly carried out. The more than 12 aborted suicidal plans/gestures/attempts included death by fire, hanging, electrocution, self-cutting, jumping from high places, and seemingly accidental death involving farm machinery.

Allan's suicidal fantasies and behavior were expressed in various forms. Although a timid child, frightened by water and heights, he became conspicuously daring during his dysphoric years. He had been observed driving a motorcycle along a country road at 100 miles per hour. On his first sky-diving jump, he unclipped the rip cord that would have automatically activated the main parachute, and deliberated whether he would activate the auxiliary parachute on the way down, but at the last moment, he reclipped the automatic rip cord. He had seen to it that his girlfriend was on the ground observing his first and quite possibly his only jump.

Allan's preferred method of dying was to be killed by another. "If someone else can pull the trigger for you," he stated, "it's not suicide . . . it's mercy killing." He once tried to provoke the group leader, whom he considered to be volatile and violent, to shoot him. The theme of being killed, as an expression of suicidal fantasy, was particularly well demonstrated in the charges that led to the index admission.

After several weeks of feeling angry that he had been falsely charged for some

group-related offenses, and trapped at home by a stipulation in a bail order, Allan decided that he needed a gun. He could offer no explanation for this need. He asserted that it was certainly not based on any intended use. Interestingly, his father's guns were readily accessible to him. After loading his mother's car with break-in equipment and convincing his girlfriend to accompany him, a "wrong turn" on the highway resulted in a high speed drive to an unfamiliar city and a gun store that was apparently previously unknown to him. After breaking in, stealing some rifles, and triggering the alarm, he and his girlfriend were finally apprehended, but not before a police chase resulted in an accident where several people were seriously injured. Allan had parked in a well lit area, "forgot" to turn on his headlights, and had stolen some rifles that he was well aware would not match the ammunition that he had brought with him from home.

While Allan was unclear about what motivated his particular actions that night, he did fantasize an outcome. He imagined that he would be shot dead by the police and his girlfriend would witness his death, but she would survive unharmed. On the preceding day, he had put his school books away on the shelves of the family library, suggesting he would not need them again. He had purchased a bumper sticker during the week and affixed it to the windshield of the car on the night of the gun store break-in. It read "LIFE IS HARD, THEN YOU DIE."

### **Formulation and Discussion**

Limited information about Allan's infancy and childhood makes it difficult to speculate about early genetic aspects of his fantasy formation. It was clear that Allan was not only an expected child, but also his mother's deliverer. As he grew older, he was cast in the role of consort to his needy and inescapable mother, and assumed the role of surrogate father to his younger brother. Predictably, his father treated him more as a rival and foe than a son and he repeatedly made Allan feel inferior and impotent.

Elements of the Oedipus complex are readily discernible in the preceding description. The twist, however, is that in Allan's family, the otherwise heavy line between oedipal fantasy and reality was not boldly drawn. It is quite likely that the fear of consummating the forbidden oedipal fantasy presented as a reality when Allan became a sexual person. In later adolescent years, incestuous fantasies of the mother were disguised in some of Allan's masturbatory fantasies of a "fiftyish" pretty blond school teacher, a description not unlike that of his mother.

If the oedipus complex is successfully negotiated as a stage of psychosexual development, the child, faced with the threat of his father/arch-rival's retaliation (castration), relinquishes his sexual interest in his mother, identifies with his father and incorporates the latter's prohibitions (conscience). Many believe that individual and family psychopathology that tampers with the successful resolution of this (or any other devel-

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opmental) stage, leads to difficulties later on in life that, on close inspection, seemingly resemble and flow from the "failed" stage. Allan's history, especially his later adolescent behaviors and apparent criminal activities, are replete with oedipal themes derived from the inappropriate role he assumed in a disturbed family.

The threat of enactment of the oedipal fantasy, fortified by Allan's passing through puberty, was neutralized while his grandfather was alive. This idealized father figure functioned as a ballast for Allan, and provided him with adventure and escape fantasies that kept the risk of discharging the oedipal fantasy in check until the grandfather died. Soon thereafter, Allan became more openly hostile at home. His anger expressed both the desperation he felt in being trapped at home, and his rage toward his parents.

The vigilante group conveniently and unwittingly provided Allan with an opportunity to manage affects and impulses that he was poised to act on. To a significant extent, the group's goals and values simulated their parents'. Through the group, Allan could accomplish his unconscious agenda of enacting the oedipal fantasy, and at the same time be seen as performing the noble (parental) mission of defending the good and suppressing the bad. Joining the group allowed Allan to identify with his father's strength and morality; he too was prepared to quell all injustice.

A struggle reminiscent of the oedipal conflict had taken place within the group as well. In his self-conceived "advisor role" to the group, Allan had vied for

superiority with the group's leader, and as a result, risked, if not invited, being killed by him. It is no surprise that guns were the prized possessions of the group. Although his father's guns were available to him, Allan needed to establish the potency of his own phallus by getting his own gun.

Allan's membership in the group and planned vigilante activities are thus representative of his oedipal struggle for supremacy over his father. The wish for victory over his father, if not actual victory, could only result in suitable punishment. In Allan's case, punishment befitting the crime was represented by the plethora of self-destructive behaviors. Understandably, then, Allan's preferred method of dying was to be killed.

The victory and retribution themes inherent in the unconscious oedipal fantasy that found expression in Allan's affiliation with the group, and in his criminal and self-destructive behaviors, were ingeniously brought together and vividly enacted on the night of the gun store break-in/police chase. As just punishment for his quest for primacy (and oedipal victory), Allan fantasized about, and nearly succeeded at, being killed by the police/father figures.

Allan's dream material represents an admixture of self-destructiveness, and aggressive and emancipation fantasies, in the context of oedipal issues. In one such dream, he either falls or is pushed off a high place by an "authoritative man," flanked by the idealized grandfather and his mother. In another dream, he "sneaks into" his grandmother's barn and goes riding on a horse that ulti-

mately throws him, then tramples and bites him.

Allan's parasuicidal/suicidal actions also expressed his rage at and aggression toward an otherwise suffocating, needy, and inescapable mother. Like the unconscious oedipal fantasies, his unconscious aggressive fantasies toward his mother had been dealt with more adaptively and prevented from discharge prior to the death of his grandfather. His open hostility towards his mother (and father) thereafter, heralded the expression of his latent aggression, thinly veiled in his self-destructive behaviors. The aggression was primarily expressed indirectly through symbolic acts, such as the sky-diving and police-chase incidents. His girlfriend likely served as a surrogate for his mother. His choice of a girlfriend whom he ultimately devalued for her neediness and submissiveness is suggestive of unresolved issues involving his mother. His efforts to influence his girlfriend to have homosexual relations while he was in jail, as a way to preserve her heterosexual fidelity to him, we interpret as an aggressive and sexual fantasy toward his mother, displaced onto the girlfriend. In compelling his girlfriend qua mother-surrogate to witness his most spectacular parasuicides, Allan accomplished two purposes. He first symbolically killed his mother by killing her introject; suicide here would thus be a matricide equivalent.<sup>22</sup> Second, he obtained retribution and expressed aggression by passively making a murderess of her.<sup>23</sup> Such aggressive fantasies are not without consequences.

Often, so repugnant a wish as the

death of another, no less one's mother, is met with and counterbalanced by guilt that turns the aggression toward the self. In an unusual turn of events, Allan's unconscious destructive fantasies toward his mother became realized after she was diagnosed with a terminal illness. A wish to be killed, evident in Allan's parasuicidal behaviors, as rightful punishment for the desired death of another, is one of the three wishes identified by Menninger<sup>24</sup> as forming the unconscious determinants of suicide. The other two wishes, a wish to kill hated introjects and wish to die (here best seen as an escape fantasy equivalent), are also operative in Allan's case. His choice of such dramatic means to enact his self-destructiveness bespeaks the intensity of his aggression,<sup>25</sup> and also represents an identification with, and need to surpass, the power and fearlessness of his arch-rival/father.

In sum then, Allan's apparent criminal behavior after age 16 is comprised of complex dynamic underpinnings. Against an oedipal backdrop, his actions can be interpreted as the expression of suicidal and murderous fantasies, modified by defense and external reality. His behaviors were symbolic acts carried out as a means of resolving unconscious conflicts, rather than as an end in themselves.<sup>26</sup>

### **The Psychiatric Report and Testimony**

Allan's assessors appreciated early in his forensic evaluation that it was incumbent upon them to provide the justice system with an intelligible and sen-

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sible explanation of the underlying meaning and purpose of his criminal behaviors. To not do so would have left Allan vulnerable to having his behavior judged in isolation rather than in context.

After describing his history in detail, the report (drafted by one of the authors (HB) while he was a resident) specified that Allan's behaviors could neither be explained by any single psychiatric diagnosis, nor could they be attributed to criminal or antisocial personality tendencies. The psychiatric evidence underscored the role of unconscious conflict and fantasy as the primary motivation for the behaviors, rather than an inherently unsatisfying explanation resting on conscious motivation. The report made it clear that the explanation contained in its conclusions was a hypothesis that proceeded from a detailed understanding of Allan's history and of the events. The significance and role of hypothesis/formulation was later described in courtroom testimony as the integral clinical and conceptual vehicle by which psychiatrists explain psychological life.

In addition to Allan's guilty plea with respect to the charges described in the case history, he faced two further sets of charges, involving the acquisition of firearms and communication equipment, respectively. The same report was reviewed and considered by each of the three judges before whom Allan appeared. One of the authors (HB) provided testimony before two of the judges. All three of the judges were interviewed following the final disposition

of the cases and the transcript of their sentencing judgments was obtained.

All of the judges readily acknowledged that the psychiatric report and testimony, where applicable, were instrumental in helping them to understand what they clearly considered to be a baffling individual and a complex case. They appreciated the straightforward manner in which psychoanalytic/psychiatric concepts were explained and related to the behaviors under examination.

The judge who tried the charges stemming from the gun store break-in/police chase impressed the testifying author as less interested in psychological explanations and more invested in the criminological aspects of the behaviors and their effects. He seemed to need to work harder than the other judges to understand the dynamics. Consistent with this observation, this judge later stated in interview that he found it "hard to catch the nuances with professional witnesses." On the other hand, it is conceded that he was trying charges relating to dangerous behavior that resulted in serious injury to several people, a situation which mandated emphasis on the general deterrence branch of sentencing. He "wonder[ed] whether [the] evidence [he heard was] consistent with [the] self-destructive bent" presented in the psychiatric evidence. In fact, he saw Allan's motive as more "to commit a criminal act for gain . . . the suicidal motive, if any, was minimal on the night in question."

The psychodynamics appeared to hold more meaning for the other judges,

who demonstrated a great willingness to understand and consider the complex dynamic basis of Allan's actions. One of these judges described Allan as an "extremely uncommon criminal" whose aim was not personal gain. They both saw in Allan's apparent criminal behaviors the self-destructive and aggressive fantasies hypothesized in the psychiatric evidence.

Psychiatric input also significantly prompted all three judges to attribute more weight than they might have otherwise to rehabilitative and therapeutic issues. Two of the three stated in interview that the psychiatric evidence mitigated the length of the sentence they were prepared to impose in the absence of such evidence. All three strongly recommended treatment. The judge who was perceived as less sympathetic specifically asked that the prison authorities be advised that "the court urgently recommends full treatment."

The effective presentation of psychodynamic formulation in court thus seems to depend on the interaction of a variety of factors. Factors specific to psychiatric experts include their forensic experience, capacity to provide simplified explanations of psychological constructs in language devoid of mysticism and jargon, and ability to communicate their understanding to judges and lawyers. The degree of psychological-mindedness of the legal participants is, of course, another significant factor, but one which is not so amenable to external control. The testifying author has come to realize in retrospect that both he and Allan's defense counsel could have been more

effective if they had had more experience presenting psychiatric evidence, dynamic or otherwise. This observation would be valid regardless of limitations in the first judge's own psychological-mindedness. The nature of the offence and its circumstances, and offender characteristics also play important roles in the justice system's receptivity to greater psychological understanding of the offender.

### Conclusions

We have undertaken to describe how dynamic formulation, in this case unravelling unconscious fantasy structure and its conscious determinants, can provide an understanding of behavior that might otherwise elude those called upon to comprehend it. Understanding Allan's unconscious fantasies and their relationship to his behaviors delineated foci of psychopathology amenable to therapeutic intervention. The presentation of the formulation of Allan's case provided the various judges who tried him with insight into the complex psychological determinants of his acts. This insight helped them to see him as more of a troubled individual than a criminal, and thereby allowed them to moderate their disposition of his case to the extent made possible by other sentencing considerations, and to endorse treatment recommendations.

Unconscious fantasy is a ubiquitous, stable, and enduring mental process, born from earliest somatic experiences. It undergoes perpetual transformation in response to internal and external experience. Its uniqueness lies in the fact that

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it is a mental process that can influence perception and experience, and act as a guiding force for future adaptive and maladaptive behavior.<sup>27</sup>

It is clear that the judiciary is receptive, if not eager, to obtain the benefit of psychiatric expertise in its decision making, whether it asks for it directly or impliedly. Although all accused persons seem to be considered under the same umbrella of criminal behaviors, judges are mindful of distinctions among offenders and would be loath to group offenders whose behaviors were prompted by a psychological disturbance with self-serving, criminally-minded ones. Psychiatrists can help by enhancing lawyers' and judges' understanding of such distinctions, thereby assuming a positive and clinically sound role of guiding the court toward a rehabilitative rather than a punitive decision, where merited. In so doing, the criminal justice system can potentially be helped to arrive at a disposition that best reflects its wish to strike a balance between deterrence, rehabilitation, and the protection of the public.

We conclude that the advancement of dynamic formulation and unconscious motivation in reports and during expert testimony in court can be valuable when other models do not adequately explain behavior that the court seeks to understand. However, the lay population's limited comprehension of analytic and dynamic concepts demands that psychiatrists use precise and simplified language, illustrated by examples that truly explain the concepts. Further research and writing that elucidate the manner in

which experts can best put forward dynamic formulation in a forensic context would be a welcome addition to the sparse literature in this area.

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