

Psychiatric Testimony and The Rashomon Phenomenon

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Increasing scrutiny is now being directed to the use of scientific evidence and the utilization and participation of expert witnesses in American courts. The adversary mode of presentation of evidence has frequently been distinguished by a wide variety of distortions and manipulative efforts. Those in the forensic sciences have become more and more critical of this system, which has been characterized by a generally low quality of professional participation and frequent injustice.

While the defects of the American legal system have become blatantly manifest, insufficient attention has been directed towards the participation of professional experts and the types of testimony likely to emerge under this kind of system. Unfortunately many physician-participants enter the legal arena with an insufficient familiarity with the procedures, tactics, and built-in biases of the system. Similarly, factors which lead to distorted testimony have not been adequately explored and made known to the scientific experts likely to appear in court. This neglect has been most marked at the training level. In this panoply of evidentiary chaos, psychiatric testimony, because of the nature of the material and the need for interpretation of soft data, is perhaps most prominent. Consequently, psychiatrists have been strongly criticized in the courts, particularly for the content of testimony and the occasional markedly contrasting opinions expressed. Szasz has criticized the legal role of the psychiatrist, claiming that the psychiatrist frequently performs as a societal spokesman in a ritualistic validation of a social consensus.

Perr¹ has reviewed some reasons for the variation in psychiatric and other medical testimony. Rather than a single monolithic social norm, many philosophies may determine psychiatric testimony. Other problems include that of the partisan "medical advocate" who testifies in a predictable fashion, not only for philosophical reasons, but because of other types of bias or economic interest. It is no secret that attorneys and prosecutors have their "stables" from which "expert witnesses" can be paraded into the court room.

At times, the contradictions deemed characteristic of expert testimony reflect a situation more apparent than real.

There is frequently a high concordance of opinion, and so in the great majority of cases in which expert testimony applies, that testimony is not visible because it is not a point of contention. Many civil cases are settled out of court; in many criminal cases there is basic agreement and the medical testimony is not brought to the courtroom because it is no longer contributory to a disposition. Second, there may be a general consensus on clinical opinion but difference in interpretation or degree. Third, a difference of opinion may be due to inadequate examination by one or both sides. This is quite common and may reflect defective diagnostic effort, lack of time or money for such a study, or lack of sufficient training, skill, and experience in the examiner. A fourth basis for the conflict of opinion, not as common, is the participation of the frankly dishonest medical advocate. . . .²

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Sindell and Perr³ have discussed the problem of the biased witness who may go beyond his narrow professional expertise. The problems of malingering, secondary gain, and compensation neurosis were discussed in the context of a so-called "traumatic neurosis" civil case. There the medical witness, a neurosurgeon, equated "traumatic neurosis" with compensation neurosis, malingering, and just plain old lying. To some degree, then, Szasz is frequently correct in feeling that a moral judgment is being expressed.

In addition to the purported social role of the witness, the set or bias may be determinative of the ultimate opinion despite a rather narrow fact base available to both sides without significant or marked difference in detail.

Some examiners are aware of their 'set' or at least some elements of it but may still be influenced by 'bias' unconsciously determined. Greiner⁴ has reported the influence of subjective bias of clinical pharmacologists in determining the results of purportedly objective drug research.

A number of years ago the Japanese motion picture, "Rashomon," focused on the interpretation of events as seen through the distorted eyes of the participants, whose perceptions were determined by their own needs or personalities. The Rashomon phenomenon applies to ordinary trial witnesses. Thus friends, enemies, and parties at interest are expected to reflect this characteristic in the courtroom; and their testimony is accordingly viewed with quizzical caution.

The same phenomenon holds true for the 'impersonal,' 'impartial,' 'uninvolved,' 'outside,' 'authoritative' expert witness. To reflect the operation of the Rashomon phenomenon in this regard, this paper presents four psychiatric evaluations of a single defendant. They are printed word for word (other than a few changes of identifying data) in order to minimize distortion by the author and to present both the fact base and the reasoned conclusions. These reports were placed in evidence and are therefore public record. The actual testimony of each psychiatrist was totally consistent with and reflective of the prepared report.

Psychiatrist A examined the defendant at the request of the Public Defender. Psychiatrists B and C conducted their evaluations on behalf of the State, having first seen the report of Dr. A. Psychiatrist D also participated at the request of the Public Defender, particularly to utilize hypnosis as an additional investigative tool. The reports of B, C, and D were written independently with no communication between them. It is to be noted that there was general agreement, though with some variance, in the information available upon which to base a conclusion. The focus, depth, and type of examination differed, but the history as given by the defendant to each examiner was generally consistent, with some contrasting data which will be apparent below. It should be stressed that not only will the examinee give a slightly different history on each occasion upon which he is examined but that also he is likely to respond to the needs or particular line of questioning of the examiner.

The reports are presented in full to represent the type of examination, the data available, and the significant observations and accompanying conclusions—all purportedly dealing with the same phenomenon.

Report of Psychiatrist A

At your request, I examined Mr. John S. in my office on October 7, 1974. I also interviewed his mother. Mr. S. is a Vietnam veteran who has been working full time in a factory and living in his family's home. In April, 1974 he is alleged to have shot and killed his father.

Several days prior to the alleged offense, his mother told him that his father had attempted to play "Russian roulette" with her (a high risk game in which one bullet is inserted into the bullet chamber, the chamber is rotated so that the bullet may or may not be in the firing position, and the gun is fired at someone). On the day of the

alleged offense his father was deriding him for having fought in only a "sissy war." Believing his mother's life to be in danger, and wishing to demonstrate he was not cowardly, he got a pistol, put a bullet in it, and was waving the gun menacingly in front of the father "so that he could see what it felt like." The argument continued for some time, the father apparently not feeling in danger or making any move to leave. The patient describes himself, at one point, as going into a trance or a state of "suspended animation" (dissociative state). He remembers vaguely thinking that the bullet was in position furthest from the firing position. He has no recollection of firing or intending to fire the gun. He recalls suddenly feeling as if he was back in Vietnam facing an enemy (*déjà vu*). He then recalls being struck by his brother, landing on the floor, but being fully conscious of what was being said by others around him. Although he sensed from the comments that someone had been shot he was not able to connect himself with having committed the act. It wasn't until later, when he "came to" that he was shocked when he began to realize what he must have done. His mother and other witnesses verify that he looked dazed, as if in a trance, and like a "zombie."

Mr. S was thought of as a good soldier when on active duty in Vietnam. He received bronze stars, air medals, and campaign stars. He was made increasingly uneasy by the guerilla type warfare—not knowing from which direction the enemy might fire, always being on the move for fear of being hunted down, and going for days with little or no rest. He recalls suddenly going into a trance in a non-combat situation and attempting to fight with a number of those he was with, without realizing what he was doing. He denies intending to harm the others or being drunk. He was easily subdued without injury to anyone. He recalls dreaming several times that there was a flying saucer on the roof of the barracks, and insisting each time that others go out with him to look (dream state). That is, he had lost the distinction between dreaming and reality. A woman with whom he had a long relationship at home wrote him a "Dear John" letter which increased his depression and insecurity.

For the following year and one half prior to the alleged offense, his uneasiness continued despite discharge from the service. He startled easily when awakened, even by someone familiar to him. He became quite uncomfortable in crowded places such as nightclubs, fearing attack (for no reason) from a stranger. He dreamed often of being dead or about to die and being unable to do anything about it (traumatic neurosis of war).

He became unpredictably impulsive, once throwing a glass, at another time jumping up on a table for no apparent reason and when not intoxicated. During these periods he felt as if his body was doing something he had no control over (automatism). At times he felt his heart was slowing down and his breathing was stopping, and he couldn't move (sleep paralysis). Once his mother found him standing in his room holding his mattress up in a trance. When she woke him, he said he thought he had actually been in a coffin and was trying to lift off the top so that he wouldn't die. Prior to the alleged offense he had also lost weight, and was increasingly depressed. Feeling he could no longer live with his father, he was planning to move at the time of the alleged offense.

The patient recalls feeling alienated from his father from an early age. When the father drank excessively he would insult and threaten the boy for no apparent reason. He would threaten to use "machine guns" he allegedly had hidden in the basement and the garage on the son (no such guns existed). The father once went looking for the boy with a two by four to beat him, for no apparent reason. The defendant has no previous record of felony, and no previous history of violent behavior. He was actively involved in sports in school, and received an athletic scholarship to college. There is no history of previous psychiatric illness.

The father was hospitalized for mental illness following World War Two. Although he apparently never saw action, he had a number of false beliefs (delusions) that he had mutilated the enemy single-handed, and had been a fearless soldier in action. He

drank excessively and was frequently abusive physically to all members of the family, save one daughter. A short time prior to his death he developed a skin condition which was only moderately incapacitating and for which he had to use medication. Mrs. S also had to take medication for ulcers. He apparently thought taking medicine to be such a sign of weakness and such a burden for them both that he seriously suggested they enter a suicide pact. Mrs. S now states he had not threatened her with Russian roulette, but had suggested suicide by gunshot for him and her. Mrs. S now states that she was planning to separate from her husband at the time of his death and feels her son might have been reacting to the probable separation as he had done to separations they had had in the past.

A sister lived in constant fear of the father, mostly keeping to her room and out of his sight. She was under psychiatric care prior to the offense. A brother is a sleepwalker who, in that state, turns on all the lights and talks of seeing someone in a rocking chair in the window of the liquor store (there is no rocking chair in the window).

The mother is a beauty shop operator. She is under treatment for ulcers, and had several separations from her husband. She expected that her son would be killed someday by her husband, and not vice versa.

In my opinion, Mr. S is suffering from a hysterical neurosis, dissociative type, which was an outgrowth of a traumatic neurosis incurred in Vietnam while facing combat. At the time of the offense he was in a dissociative state in which his state of consciousness was so altered that he was behaving physically automatically, and psychologically as if he was back in Vietnam facing an enemy at that moment. He has no recollection of any intent to harm his father, and has no memory of pulling the trigger (amnesia). Following the offense, while lying on the floor, he could hear the others talking as if someone had been shot, but could not connect himself with the act. He made no attempt to flee. Later when he "came to" he was shocked and remorseful for what he was told he had done. In my opinion, at the time of the offense, he did not know that he was committing a crime, he did not know it might lead to injury or death of his father, and did not know he was doing something punishable by law. In my opinion, he was not criminally responsible at the time of the offense.

Mr. S is presently competent to stand trial. Although occasionally impulsive, he does not appear to be dangerous to others at present. Any intense feelings of hate he had were mostly focussed on his father, and not on others. He shows none of the personality characteristics known to be associated with those who are dangerous in their personality such as repeatedly violent with little provocation, intense emotional need to carry a weapon, etc. His neurosis is treatable with out-patient psychotherapy, which should help relieve some of the latent panic he is experiencing over his separation from his family. He is remorseful about what happened and is motivated to be helped. There is no indication of basic criminality in his personality.

Report of Psychiatrist B

On November 30, 1974, I saw Mr. John S. at my office for a mental status examination. Originally he had an appointment on November 27, 1974, but he cancelled it 15 minutes before the appointment time and it had to be rescheduled for a weekend since his trial date has been set. The following is a report of my findings.

Identification

Name:	John S.
Age:	25 years
Sex:	Male
Race:	Caucasian
Marital Status:	Single
Religion:	Catholic

Past History

The examinee was born on September 5, 1949, and he was raised by his parents in a neighboring town. His mother is 45 years of age and is living and well. She works as a part-time beautician. She is described as being warm-hearted, outspoken, friendly and a good mother. His father died at 49 years of age from a gun shot as described in the History of Present Circumstances. He was a construction laborer who had been working as a pumping station operator for the town. He is described as being strict and old-fashioned. He drank a lot and when he was drunk he was nasty, but when he was sober he was "beautiful." The examinee has a single, 26 year old sister, a 21 year old, recently-married brother and a 12 year old sister. His older sister had gone to a psychiatrist in the past and his father had to be hospitalized for a "nervous breakdown" after World War 2.

There is no history of enuresis, sleepwalking, stuttering, thumb sucking, nail biting, or excessive daydreaming. As a child he had frequent nightmares of witches and devils. He had many friends and preferred to be with them rather than alone. He played dodgeball, basketball, football, went swimming and ran track (high hurdles). He describes his childhood as being generally happy.

Mr. S completed one and one-half years of college at a Junior College in a southern state, when he was 20 years old. He left because he was not interested in college. While in school he received average grades. He served in the United States Army from December 1970 to December 1972, in the infantry. He was in Viet Nam for eleven months and he saw action while there, receiving some commendations. He received a General Discharge because of a drug dependence problem. Following his discharge he worked for A—B—C Steel for eight months installing aluminum siding and went to school to learn air conditioning, when he was arrested.

The examinee had the usual childhood diseases. When he was four years old he had an uncomplicated tonsillectomy. In 1972 he was involved in an automobile accident, fracturing his left zygomatic arch (cheekbone) and being knocked unconscious. He woke up in the hospital, but there were no residuals. As a child he had bilateral mastoiditis that was treated and there were no complications. While in service he contracted malaria five times. When he was a child he had headaches over his left eye, but they have not been present for years. There is no history of dizziness, fainting episodes, fits, spells, or convulsions. While in service he took heroin intravenously, but he turned himself in for treatment under a rehabilitation program that apparently was successful. He states that he feels tense in crowded or closed in areas and once while in Viet Nam, he started fighting and acting violently due to the frustration he felt at the way in which he was living. Once he had a dream of being in a flying saucer and for several days the dreams seemed real to him. He smokes two packs of cigarettes per day and consumes a case of beer on the weekends.

Mr. S is single. No abnormality in his sexual history is detected.

In 1969 he was arrested in a southern state for grand larceny after he and some friends took some motorcycles, but the charges were dropped. In 1972 he was arrested for being drunk and disorderly and was fined \$75.

History of Present Circumstances

Mr. S is charged with the murder of his father at their home on April 9, 1974. On the day in question he arrived home from work at about 5:00 P.M. He had stopped at a bar first, but he was not drunk. His father began to criticize him and an argument ensued. A few weeks previously his father had pulled a gun on his mother and wanted to play "Russian roulette." During the argument the examinee stated: "If you want to play the game we'll play it and get it over with." He went to his room and came down again with his pistol and one bullet. The argument continued and the examinee put

the bullet in the chamber of the gun. His brother grabbed the gun from him and took the bullet out, but he grabbed it back and put the bullet in the gun cylinder again and closed it. He walked over to the side of the table where his father was sitting, holding the gun at hip level, when the gun went off accidentally. Mr. S states that he did not realize that he was clutching the gun that tightly, or that the bullet was in position. When the gun went off he could not believe it and was stunned. He saw his father fall, but did not think that his father had been shot in the head. He thought that he might have been shot in the shoulder or stomach. His brother came up behind him and struck him in the face, knocking him down. The next thing he knew the police were there and he was arrested. He was in jail for five weeks and presently he is out on bail.

Mr. S. states that he was aware of what was happening at the time and knew that the gun had gone off. At no time prior to the shooting or during it was he unaware of events. He states that the shooting occurred in the heat of the argument.

Mental Status Examination

The examinee is noted to be a young, tall, well developed, well nourished, white male with a moustache and attired in casual clothing. He smokes during the interview and no gross unusual mannerisms are noted. He is friendly and cooperative toward the examiner. His affect is adequate and appropriate. His speech is spontaneous, logical and coherent. There is no evidence of a thinking disorder. He is oriented as to time, place and person. His memory is intact and his judgment is unimpaired as tested by test situations. His intelligence is in the normal range.

Conclusions and Recommendations

According to Mr. S's statement he is claustrophobic and somewhat of a tense individual. However, I can find no evidence of a severe neurosis, psychosis, organicity, or mental deficiency. It is my opinion that at this time he is capable of conferring with his attorney and assisting in the preparation of his defense.

I have reviewed the extensive file that you sent to me, including the report of Dr. A. Mr. S's own statement contradicts the conclusion drawn by Dr. A. When questioned directly he states that he did not feel that his mother's life was in danger or that he was in Viet Nam facing an enemy. He was in a daze after the gun went off, but not prior to or during the shooting. It seems to me that the shooting was accidental and done in the heat of the argument and that this should be taken into consideration. However, I can find no support for the conclusion that Mr. S was suffering from a dissociative state. Therefore, it is my opinion that at the time of the alleged crime he was responsible for his actions under McNaghten.

Report of Psychiatrist C

I am herewith enclosing the report of my examination of Mr. John S. who was interviewed at this office on November 15 and November 18, 1974 for a total of five hours. In addition, he took the Minnesota Multiphasic Personality Inventory (MMPI). This situation has been discussed with the prosecutor and a number of statements have been reviewed. These included autopsy reports, police records, depositions by family members and friends, and the evaluation by Dr. A reported in his letter of October 14, 1974.

Mr. S. is a 25 year old single man charged in the homicide of his father, John S., Sr. at the family home on April 9, 1974. The various accounts of the observers have been noted in the above depositions and police statements. The various statements and the story as given by Mr. S are generally consistent in terms of factual data. Mr. S has had a number of examinations including psychiatric evaluations, psychological testing, and neurologic review. I have seen only the report of Dr. A.

Mr. S had been working at a steel mill in Bush City. He had taken off the day before April 9, as he did on occasion after having worked much overtime. After work on April 9, he and a friend stopped at a local tavern for about an hour where he had about four brandies and four beers. He and his friend then drove to the family home so that he could get some more money. The family was having dinner. His father made some derogatory remarks criticizing John for his inadequacies (a common event at home). His father would criticize him for his job, not making enough money, the kind of people he worked with, his not being a man, even criticizing the war that John had been in, compared to the war (World War II), in which the father had participated. John mentioned an episode a few weeks earlier in which the father had pulled a gun on the mother and offered to play Russian roulette. His mother had called John in a panic, fearing that the father would shoot her and he told her to leave.

As to the current situation, reacting with anger, John went to his room, took his gun and one bullet, and returned to the dining area. He states that he said something like "You always say you're a man and play Russian roulette." His younger brother, Teddy, was present and took the gun away, putting the bullet in one hand the gun in the other. John grabbed both back from his brother, inserted the bullet in the gun, walked around to the left side of his father. "I was holding the gun at hip level. We were arguing . . . I got so mad. The gun went off and he was shot. My brother gave me a roundhouse and knocked me down. I couldn't believe what happened. You put in one round in a gun of a possible six rounds. The police came and I was put in jail. My brother said I was like froze, standing there. I couldn't believe it. The cops were right there. It seemed like a minute."

John was in the house only 5 to 10 minutes. His friend stayed outside in the car waiting for him. When this situation was reviewed in the second interview, John indicated that when he went to get his gun, it was not to kill his father but to get back at him by putting his father in his shoes "to let him see how it feels." He put the bullet in the gun in front of his father. He states that he did not realize that the bullet would be in a firing position. He had had the gun 4-5 months, would shoot it at a range. Previously he always filled all the cylinders. "No one thought anything would happen. When it went off, I was shocked." He does not think that the gun was cocked but it can be released by sufficient pulling of the trigger. He does not recall pulling the trigger. He did not think where the bullet was. "It was like a freak accident." "All I had in mind was to scare him. He always wanted to play that game." "After it went off, I was like in a daze. I would hear what went on. I remember the police coming in, I could hear but I wasn't functioning." He knows that his brother knocked him down immediately but he is not sure if he was unconscious. He recalls his mother saying, "Oh my God, he was shot." He recalls seeing his father fall from the chair. "I didn't know he was shot in the head. I thought it was the shoulder or chest."

John was born in Bush City, graduated from the Bush City High School in the bottom one-third of his class. He was an athlete, active in track, on the National Hurdle team, broke two state and one national records. He was unable to get into a major university and went to a Junior College in a southern state. This was a large Junior College. He went for 2 years but did not complete the needed credits for an associate degree, falling 14 credits short when he failed some humanities courses. He had intended to be a physical education major. He dropped out in the second semester of the second year. He had a girl friend at the time (in his home state) and was not sure what to do in regard to his relationship with her; he had wanted to get married which his parents opposed. He joined the Army in early 1970, had basic training at Fort Dix, then was sent to Fort Ord, California, for Advanced Infantry Training for 9 weeks, leaving there in June, 1970. He next went to Fort Benning, Georgia where he took paratrooper training, was in the Airborne Infantry, and did 40-50 jumps. After 30 days leave at home, he went to Vietnam where he served from August 1970 to July 1971. He states

that he liked Vietnam, that he felt important, that he "walked point," being the first man in 4-5 man scouting parties. He planned to be there 21 months but his unit was pulled out early. He returned to Fort Campbell, Ky. where he stayed from August, 1971 to December, 1972. In Kentucky, things were rather disorganized and he had little to do. His highest rank was E-4, equivalent to a corporal with two stripes. He had a number of minor infractions—late for formation and similar minor matters which resulted in several reductions in rank and promotions from E-3 to E-4. He once was AWOL when he returned for his parents' 25th anniversary. He was away 8-9 days, was fined \$50 and restricted for 14 days, with extra duty. He contracted malaria in Vietnam and had 4-5 malarial episodes with two hospitalizations in Vietnam and he thinks three times at Fort Campbell, responding to treatment. He has not had difficulty since discharge. His only physical complaint is hemorrhoids.

He has a general discharge under honorable conditions, being discharged early because of drug usage. He had been snorting and smoking heroin in Vietnam. He had limited experience with "shooting it." He turned himself in for a drug treatment program at Fort Campbell under an amnesty program. He attended a clinic, had group therapy, and was released one month early.

He has used marijuana since 1967 from about age 17. Marijuana makes him feel content, in a 'party mood.' He has used no drugs since his discharge on December 6, 1972 other than periodic marijuana use and alcoholic beverages. His marijuana use varies—maybe 15 days a month, the amount depending on availability and social circumstances. He had no marijuana on the day of the shooting.

His story of his Vietnam experience was quite different from that noted in the letter of Dr. A. He was located at a base along the coast. He would periodically go out on patrol. He had three contacts with the enemy in 11 months. These actions lasted 5-15 minutes. "I did my job. After the first job you look for it. I liked it." He voluntarily extended his tour, originally planning to be there longer so that he would get an early discharge. "I liked my job. It was pretty free. I was the rankinest man in my squad." He states that he had considerable responsibility, that he would help out new officers, that people trusted him. He would go out on 30 day sweeps. He states that in his area, the enemy did not have equipment, supplies, or means of evacuation and so avoided contact. He felt that morale improved when there was contact. Though the scouting forays were strenuous physically, he had a sense of satisfaction and accomplishment. He would carry 70-80 lbs. of equipment. "I'm a physical person." He did have one episode where he 'lost his head' after a three day drunk, swung at everyone, and was locked up for a few hours until he sobered up. There were no charges. According to him, almost everyone used heroin back at the base but not in the field.

He indicated that he had a unit citation and a bronze star. He would be extremely angry when his father belittled his war experiences as just being a game.

His father was 49. He has a sister, 27, a brother, 21, and a younger sibling age 12. His sister has seen a psychiatrist. He states that he is the only one of his family to get into trouble. His father was about 6 foot tall, 170-180 lbs. John is 6' 4½", 190 lbs. He related the chaos, arguing, and fights at home. A few weeks earlier, his father reportedly pulled a gun on his mother and wanted to play Russian roulette. He notes that his father would always put him down (as well as everyone else). He would say to John, "Why don't you kill yourself?" He recounted beatings over the years and indicated that his sister used to stay in her room because of her fear of her father. She would not talk to him. He states that his father would beat his sister and mother, throw them downstairs. He used to make his mother kneel and say the Rosary. Two or three months earlier, his father came home drunk, attacked his brother. The police were called and his father was locked up. He states that he never hit his father. His father had worked in construction, then at the Bush City Sewage Treatment plant for 12-15 years. Though his father drank heavily, he never missed work. He thinks that his father was hospitalized

during or after World War II but knows nothing of the details. About 12-15 years ago his father had jaundice. His father in the past frequently beat his mother particularly when he was small. He has not done so in the last 10-12 years. About 12-13 years ago, his parents separated for 4-6 months. His mother has been ailing—has had gall stones, one kidney removed, a hysterectomy.

John likes to drink Polish Blackberry Brandy which is 80-86 proof. He indicated that he likes to drink it straight or on the rocks, that it cost 45-55¢ per shot, that he mixed it with beer as he did on April 9. He states that he loved his father though they were never close and never agreed. He does not feel that he was drunk on April 9, but states that he was feeling good.

He states that he got along well at work with everyone, at times made \$400-500 a week with overtime. He has lost his job because of current charges.

He at times has unpleasant dreams, recalls one in which he was sealed off in a box. On one occasion in February or March of 1974, he apparently was found picking up his mattress, scraping on the wall. He states that he thought he was dying in an enclosure. This episode, vaguely described, occurred after a drinking episode and he has had no other similar episodes. He has had frequent dreams of dying. He states that this occurred particularly when he first came home. He said also that at the time he was 'paranoid' which he defined as not wanting to be around large groups of people. Once in a bar, he threw a glass at a mirror—"I knew what I was doing. just raising hell." He states that his brother is a sleep walker but to his knowledge, he (John) is not.

John is a tall, muscular good looking fellow who was pleasant, affable, cooperative, likeable, relaxed. He showed good emotional reactivity and displayed a reasonable sense of humor. He was not particularly anxious, displayed no depression. He did convey a sense of lack of self-esteem and a need for approval. No personality deviations were noted in the interview situations nor did he display unusual or bizarre thinking, hallucinations, delusions. Tendencies to excessive emotional reactions were not noted nor were there indications of hypochondriacal or unusual bodily concerns. His memory seemed to be quite good.

On a prorated WAIS (Wechsler Adult Intelligence Scale), he had a verbal IQ of 97, performance of 100, and a full scale of 99—in keeping with reported past accomplishment. Some of his responses indicated a tendency to be impulsive and a tendency to react without reflective thought. No particular tendency to organic brain factors was noted. His test drawings of designs were in normal limits.

His test drawings reflected some problems in sexual identification with some discomfort in his relationships with women and a general immaturity. Some anxiety was noted as he attempts to seem to be a comfortable masculine person but anxiety in relationships is noted. Some concern over bodily image is also evident. Parenthetically, he has a number of short or superficial relationships with girls. He cannot find one with whom he is comfortable. He is distrustful of girls particularly when they become possessive. He would like to marry but feels he is not ready.

On projective testing, he showed many common responses reflecting normal percepts. There was some concern over bodily adequacy. Two mask responses reflected some hypersensitivity. No indication of psychosis or gross deviation was noted.

The MMPI reflected inner feelings of low self-esteem, tendencies to depression, tension, suspicion, poor judgment, and asocial behavior. The test pattern is compatible with that seen in personality disorders. Frequently such persons have a pattern of disrupted social and interpersonal relations. He is uncomfortable in social relationships and in unfamiliar situations. The pattern reflected some possible schizoid features. He is basically inhibited, easily embarrassed, and hypersensitive. With alcohol, some of these traits may become more pronounced. Nonetheless, the overall pattern was not markedly pathological and described primarily the personality traits noted.

Overall impression would be that of a personality disorder, passive-aggressive person-

ality with some use of drugs and alcohol over a long period of time to a limited degree. There have been marked domestic and family problems with extreme antagonisms between the father and son. The combination of events—an angry confrontation, some drinking, an easily triggered impulsive personality were involved in what occurred.

Mr. S is not psychotic. He shows no significant psychiatric disorder in terms of overt mental illness. He did not demonstrate mental disease or defect at the time of the incident and therefore did not, because of a demonstrable mental disease, not know right from wrong. He shows no significant mental disorder at this time which would affect his competence to stand trial. He is readily able to relate what occurred, cooperate with his attorney, and understand the nature of the charges against him.

My observations and conclusions are significantly different from those of Dr. A. Dr. A has indicated his opinion that Mr. S is "suffering from a hysterical neurosis, dissociative type which was an outgrowth of a traumatic neurosis incurred in Vietnam facing combat." He further did not feel that Mr. S is criminally responsible. He describes his neurosis as treatable with out-patient psychotherapy and further felt that there is no indication of basic criminality in his personality.

I would agree only with the last statement—that Mr. S does not show that type of personality disorder characterized by criminal behavior for gain or that he has a disturbed orientation predictably likely to be involved in violence. His tendency to overreact when under stress and with some alcohol intake is that seen commonly in personalities of this type. He generally is a warm and appropriately reactive individual without significant mental deviation. I do not see evidence of a "neurosis" or symptoms that require treatment.

I see no evidence to merit the conclusion of traumatic neurosis incurred in Vietnam. This is an ill-defined term usually referring to an immediate reaction to overwhelming stress. Significant features of such conditions usually are severe anxiety occurring immediately, psychophysiologic or hypochondriacal symptoms, and continuing manifestation of symptoms dating from the stressful events. None of these have been elicited in this case. There is no indication either of significant impairment in the service and any history of medical attention or treatment for such a condition. He was in the service for a prolonged period after his return from Vietnam and has been a civilian for a period of about 1½ years without significant clinical problems prior to the homicide. He did not see any physicians since discharge for continuing difficulties.

I did not elicit any material to connect what happened in Vietnam. He has no recollection of thinking at the time in terms of Vietnamese experiences. Further, there is no reflection of a dissociative state; I do not see evidence of any significant alteration of consciousness. He could recall all events up to the time he was knocked out by his brother, an event which caused a momentary lapse after the act. There is no amnesia or history of automatic behavior. Lastly, he does not show indication of significant neurosis at this time. I might add that so-called hysterical traumatic events are more common in young women with a history of immaturity, narcissism, and somatic or hypochondriacal concern.

Without further belaboring the above points, I would reiterate my opinion that Mr. S manifests primarily a behavior type of disorder which is not ordinarily construed as being a mental disease which would affect criminal responsibility.

Report of Psychiatrist D

I saw Mr. S with the Public Defender, Mr. X, at Mr. X's request, on October 21, 1974. I asked to see him immediately without discussing the case with Mr. X beyond our telephone conversation during which the appointment was made. I specifically did not want to read the other psychiatrist's report before talking to him, nor did I want more details about the problem. I wanted to get a clear first impression of my own. So I took him

into my consultation alone with his permission, and we talked. I found him to be an alert, clean, attractive and properly well-dressed young man, noticing his beard makes him more aggressive than he would look without the beard. I found that he is a first generation American. His father is Ukrainian and his mother is Polish. Polish was spoken in the home but the children were not taught Polish. I found conversation with him easy. I found that we developed rapport quickly and very satisfactorily. I began talking about his experience in Vietnam. He told me that he enjoyed his experience in Vietnam. He was there on active duty for 13 months. He is very proud of the fact that he was Point Man for his group. He was always the one who led his group single file through the jungle and found the paths. He was proud of the fact that he rarely needed a compass to find his way. I asked him if he had done much hunting before he went into service. He said some. I asked him how hunting compared with guerilla fighting in Vietnam. He told me that guerilla fighting in Vietnam was much more exciting, much more fun than hunting because the quarry being hunted was more dangerous and is intelligent and the risk was so high. I asked him if he had ever knowingly killed in combat and he said no, that when they made the body count, the group knew that they had killed so many men, but at no time did he know that he had actually killed a person. That he apparently never was face-to-face with a man that he killed. He enjoyed being in Vietnam so much that he extended his period of service and when he was brought back to the U.S. after 13 months, he found life in the army in the States very dull. The transition from being dirty and sloppy on the field to the spit and polish required in the States was very difficult for him to make. I asked him if he had received any de-conditioning, and I did not use this term. But I asked him if he was given any help in the training but he said none, just to have his boots polished. He seemed very comfortable in talking to me about the joy of killing, and probably this was in large measure due to the fact that my early training in the deep South and as a country doctor in the hills had helped me to understand this type of person.

I asked him about the type of guerilla training he had and it was as anticipated. That when anything alerts you, you shoot and you don't think—you shoot. He was trusted by his comrades to never lead them into ambush because his senses were alert to danger. His pride in his leading his group, his pride in serving his country, his pride in being a good guerilla fighter, his freedom to express his joy of killing, was very clear, and very comfortable in the exchange between us. I asked him if he had ever had experiences when he had done violent acts without knowing why he did them, and he discussed and described two incidents. One was when he came back from a three day leave of absence in Viet Nam and he had been drinking very heavily throughout these three days. He exploded into fighting apparently with his fists and he hit an Officer, among many others. He was subdued by the Military Police, put in the stockade until he cooled down. No charges were brought by the Officer. It was attributed to combat neurosis problems. Mr. S said he couldn't understand why he exploded. The only person he was mad at was not present. He had no explanation why he went berserk. He told me of another time when he was sitting comfortably drinking beer at a bar and there was nothing that he could remember to trigger him, but suddenly he threw a glass of beer in the bartender's face. He didn't understand this, and cannot now understand it because he liked the bartender. He couldn't understand why he threw the beer in the bartender's face. He did not go into the incident of his killing his father except very superficially. But, again, I had the very clear impression that his memory for the incident was hazy, just as his memory for the other two incidents was hazy. That is, he could not remember pulling the trigger. He could not understand why he had killed his father. My time was short, and I had made the appointment under considerable pressure of time so that I went into an attempt at hypnotic induction with Mr. S's permission. As I was doing the induction, he stopped me three different times and in three different ways. He wanted my reassurance that I would be in control and that he would do nothing to hurt me.

I assured him that he would do nothing to hurt me. We were friends and there would be no need to hurt me and I would protect him. His pronounced fear of going into hypnosis because he might lose control and inadvertently hurt me was intensely pronounced. He finally went into a good trance. I got arm levitation satisfactorily. I put him into a deep trance. We would be able to do the age regression to the time of the "incident," as he refers to the time of his killing of his father—when the Public Defender wanted us to do it. He would, for the time, go into a good, deep, relaxing sleep from which he would awake refreshed, at which time he would be able to go into hypnosis again at which time we would do what was needed by the Public Defender. I left him sleeping in my consultation room and returned to the waiting room where Mr. X was waiting for me. We talked for about an hour. I told Mr. X that I felt that this was a man who was out of a previous age. That he was one of those fighters who is easily conditioned by the military services to act without thinking, according to the type of action which is required. That is, in civilian life, he would hit without knowing he was hitting until he had already hit. He would not "telegraph" his blows. He had the nervous mechanism that make for a good prize fighter and a good man in any type of combat situation especially guerilla fighting for which he had been trained. I said I felt it was not simply a chance that he killed the person he was angry with. Shooting from the hip, as he did, without taking aim, the average policeman would have shot one of the bystanders. But this man was trained as a marksman, and it was no accident that his shot was a lethal one, that it was an accident that he pulled the trigger. I said that he was still in danger of killing when he would be sufficiently aggravated and especially when he was drinking or under the influence of drugs. That he would be expected to use whatever weapons were at hand, and if no weapons were at hand, he would use his fists. There is difficulty of translating a condition reflex into legal terminology because this man is like Pavlov's dogs. Pavlov's dogs were conditioned to salivate when a bell was rung. This man is conditioned to kill or to hit with lethal effort under any condition in which he feels himself in danger. I suggested that the Public Defender have a sleeping electroencephalogram done. Apparently this was attempted later, but not successfully done. The electroencephalogrammer reported that at no time did the patient go into a true sleep. I asked that this test be repeated. I do not know whether this has been done. A waking normal EEG indicates nothing.

I asked for a psychological test and a battery of psychological testing, including the Rorschach, the Thematic Apperception test, Sentence Completion test, and drawings of a person, a house, and a tree. This was done October 31, 1974 by Dr. Marietta Z. Her report is included. I would like to quote from her report:

. . . The personality structure suggests a basically immature, orally fixated character, passive-aggressive in makeup with hysterical components. He seems to possess few inner resources or automatic inhibitory controls and thus, when conscious, rational controls are weakened (i.e., under the influence of alcohol, etc.), he seems quite capable of acting out his aggressive (and/or sadistic) impulses.

Aggressive behavior and violence as a way of solving problems when he becomes emotionally aroused are apparent in several of his TAT themes. For example, one of his stories (13 MF) was about a 'dude . . . just killed his honey and now he can't believe he did it . . . he probably found out his chick was running around with somebody else . . . he kills her . . . he leaves the State, gets lost, they can't find him'. In another story (8 BM) though at first he couldn't decide whether 'he was the aggressor or the victim, the main character or 'hero' ends up being the aggressor—'this is a tough one . . . possibly this is the guy, shot someone, he's reminiscing, maybe that time when he got shot in the war . . . the bullet, the doctors are taking it out . . . probably that's the guy who shot him . . . reliving the experience . . . the guy possibly that he shot, having an argument, got carried away and shot him . . . could have stabbed him'.

Though his conception of the masculine role appears to be associated with aggressive

behavior, at the same time, underneath, he also seems to feel that he does not at times have the adequacy to deal with his experiences, feelings and impulses effectively or keep his infantile drives in check. He is quite childish in his need or desire for immediate, frank, emotional satisfaction and in a sense would like to turn the clock back; to be a young child again, free of adult restrictions (on behavior) and responsibilities.

To Summarize: As would be expected, in view of his present circumstances, there is evidence of underlying anxiety, emotional ambivalence and uncertainty and a need to restrict 'output'. His reactions however, also reveal weak automatic inhibitory defenses and a need to rely on conscious controls to keep negativistic and aggressive feelings and impulses in check; controls which can be readily weakened under emotional pressure, the influence of alcohol, drugs, etc.

Mr. S cancelled his second appointment with me. Whether his excuse was valid or not is questionable. Because of my own time limitations, since I was away on previous engagements and because of the small amount of time before trial and also because Dr. Z and I have found it very difficult to do a second age regression with the same validity as comes through the first valid age regression. We took the chance and on December 4, I attempted an age regression with Mr. X, Mr. E, a videotape expert and Mr. F, who was present as a person who might be needed in case of physical violence which got out of hand. The patient was very cooperative. We had a beginning interview taped, with Mr. S being interviewed by Mr. X, and then I made the attempt at age regression. The first attempt was utterly a failure. The second attempt we got what I consider a role play. I had the feeling that the murder had been so traumatic that he could not permit himself to re-experience it. I have had such an experience in the past with another patient where it took many hours of psychotherapy in dealing with the painful memories of an incident before we were able to do a successful age regression of that incident. There has obviously been unavailable time to do this. In many points he was quite contradictory in his attitude compared to the first interview. He now said that the war in Viet Nam was a useless war. That being in combat was experiencing the utter fatigue and discomfort in having to keep on going despite overwhelming fatigue. He could not get his anger with his father because his father was dead. It was over. He also said that he felt that he could not explain or remember why he pulled the trigger or when he pulled the trigger or that he pulled the trigger at all. This remains a blank. Apparently he got a gun because he had to get one to outdo his father. Apparently except for his father's insistence on playing this Russian Roulette game with his mother, he would not have gotten a revolver. But having to do so, he had to get a better one than his father. He again insisted that he had no intention of killing his father and I felt that he was telling a valid feeling. I also felt that his inability remembering pulling the trigger was valid. He gave a very definite picture of someone who wanted to beat down his opponent with his opponent's weapon, and it was quite clear that if his father had capitulated, and given in, he would not have needed to pull the trigger. At this time, he said that he knows that it is wrong to kill. My feeling is that this is lip service to the Court, just as saying the war in Viet Nam was a foolish, shameful waste of time, men and money. I think that he was telling me the truth during the first session when he said that the war in Viet Nam was a right war and that he was proud of being in it.

Summary

In my opinion, this man is to be classified as a neurotic, a passive-aggressive dependent person with hysterical dissociation under stress or drugs. His responses to the psychological tests indicates that while he knows intellectually that it is wrong to kill in civilian life, that under sufficient pressure of emotional passion or aggravation or anger or under the influence of aggravation or alcohol, this man has no defenses against the conditioned

reflex of hitting with all the lethal force at his command. He is utterly helpless to protect himself from hitting in (as) lethal a manner as available to him as a small child is unable to keep from wetting his diapers. Before he went into military service, he had no defenses, no built-in inhibitions to protect him from hitting before he thought. This is a man who never learned to count to 10 before he hit. He would hit and then be amazed at what he had done. He then was put into guerilla training in which he was conditioned to skillfully kill. He was to shoot at any suspicious sound and skillfully, and think about why he shot afterwards. He was never given any de-conditioning.

He was exposed to a childhood and adolescence of what is now called Battered Child Syndrome. When his father was drunk, the defendant was exposed to his father's brutal verbal and physical aggression. He was also helpless to protect his mother and his brothers and sister likewise. When he returned from doing the only thing he ever felt proud of in his life, he was exposed to his father's ridicule. His father insisted that his (time) as a Marine in service during peacetime was infinitely more glorious and dangerous than his son's experience in dangerous guerilla warfare in the jungles of Viet Nam. The father further infuriated him by insisting that he leave home. Mr. S is still a child and he needs the security of his home just as a small child does. His father insisted on his paying more and more money until it was ridiculous. His father tried driving him out of the house over a very long period of time. His father set up the situation by getting a gun and tormenting the mother by wanting to play Russian Roulette with her. In my opinion, this is as accidental a murder as if Mr. S had been driving a car on an icy road at night when he was drunk and somebody came out between parked cars as unexpectedly and he couldn't use the brakes because of the ice on the road. Psychologically, Mr. S doesn't have any brakes to use under any condition. I feel Mr. S's crime is not his own but society's. We trained him to kill. We did not untrain him. It is my feeling that it is, in other words, an accidental, unplanned, unpremeditated killing. He wanted to bluff his father into backing down. But I do not believe that he intended to kill. I do not believe that he knew he was killing at the time he was pulling the trigger. I think that was an automatic reaction over which he had no control given the situation in which he was placed. The Court should also remember that he bought the gun legally which adds to society's responsibility in this situation.

Discussion

Four psychiatric reports, utilized as the basis for psychiatric testimony at a criminal trial for murder, have been presented in detail. Striking are the differences in approach, philosophy, observations, conclusions, and attitudes toward the relationship of psychiatry and law. Some reports focus on psychiatric nosology closely correlated with the traditional legal conceptual framework. Others deal with or focus on childhood traumata, conditioning, and the social implications of behavior. Two examiners report definitive findings of personality disorder or behavior related to personality typology. Two others focus on the influence of war neurosis or traumatic neurosis, dissociative phenomena, or conditioning. On the one hand, the behavior in question is related to characteristic action under stress and an alcohol or drug related state—consistent with a life pattern. On the other, the individual involved is portrayed almost as a passive purveyor of behavior determined by a variety of outside forces. One examiner obviously reflects personal attitudes towards war and violence as a social phenomenon.

Having offered this commentary, I should at this point interpose the fact that I was Psychiatrist C. I will not further in this paper deal with the clinical psychiatric concepts involved. A later paper will discuss the scientific base of the issues involved as well as its application in a legal context. My purpose here is to deal broadly with the problems of differences in testimony and the possibilities of developing a more consistent legal psychiatric system. Because of my involvement and lack of information, it is difficult for

me to comment on the motivations of the psychiatric participants in this courtroom drama. Their idiosyncracies of education and career similarly cannot be presented. Each psychiatrist has credentials and experience in psychiatry which would reasonably be assumed to justify a creditable psychiatric opinion. Three (A, B, C,) have some legal psychiatric background; three (A, B, D) have had psychoanalytic training. At least one has completed such training; one had left the formal confines of such training for a non-traditional type of practice. All were reasonably eloquent and devoutly sincere.

Another character in the drama should be mentioned. The judge (sitting as jury) reacted with dismay to the contrasting opinions. On the one hand, he was faced with the decision of deciding which group seemed more creditable to him, by whatever criteria would seem persuasive to him, a role that he did not relish. On the other hand, his own experiences, knowledge, and attitude must to some degree determine the reception accorded to the protagonists. Thus the question of the bias of the judge (and jury when there is one) is another logical extension of the analysis of unconscious determinants in the legal process. All attorneys and others involved reflect similar but remote considerations.

Thus, all participants in the legal arena reflect some aspect of the Rashomon phenomenon. This is to be expected, but at least in the case of the expert witness, one would desire a maximum of neutral judgmentalism and impartial application of scientific data expressed in accord with the principles of the law (not of psychiatry). By analyzing the causes of disparity in scientific opinion derived from a standard data base, we might perhaps minimize the influence of this phenomenon.

Those who would be science opinion givers (or 'expert witnesses') must know much in addition to the traditional narrow dimensions of their field or specialty.

To the fullest extent possible, a witness needs to know himself, his needs and identifications, and his tendency to reflect his own value system. He needs to know the standards of the law, its rationale, and its practice to be able to apply his knowledge to the needs of the law and to avoid the obfuscation of personal philosophy or morality. He needs to be versant with the specific clinical phenomena under question in the legal case, circumstances which may be rare in ordinary clinical practice. He must know his field and its literature (particularly if the phenomena are not common to his experience), and be able to recognize the importance of accumulating clinical expertness in the area under question. He needs to understand the importance of adequacy of examination and access to background data. He must recognize that an opinion in law is not speculation, theory, or possibility but a measured evaluation based on probability; this lack is one of the greatest defects in much of the testimony in our courts. Lastly he must be keenly aware of the pernicious effect of a political, religious, moral or philosophic stance which may dominate his testimony as a witness.

These issues must be elucidated in psychiatric training, where capacity to learn in accord with an alien standard (the law) and flexibility of thought may be more likely to be present (and before dogma has crystallized into defective practice patterns).

If each witness is to act in an idiosyncratic fashion, then the role of the "expert" is indeed dubious. Events such as those in this case would serve as support to the contention of Seymour Pollack that there is a need for a specialty field in psychiatry to deal with forensic issues so that psychiatry can be appropriately applied to the purposes of the law.

Another issue not addressed here is the current system of utilization of experts which enhances the distortion of the evidence given. Perhaps the law must scrutinize the policy of having advocates seek out compatible echoers of their adversary position and reconsider alternatives.

The present structure of the role of expert witness will probably continue to further the evidentiary chaos of the American legal system. Knowledgeable psychiatrists (and other physicians, scientists, and technicians) must direct their efforts in the interim to

raising the level of the application of specialized knowledge to the legal process. Inappropriate multiplicity of opinion is not tolerable; limited sophistication is no more acceptable than limited examination. Standardization of thought and practice must be sought, while at the same time, the door must be left ajar for reasonable diversity of thought and changing concepts.

The psychiatric profession must be keenly aware of its responsibility in operating within the confines of an existing system which is not under its control but which does work to an acceptable degree if sufficient effort is applied. This effort necessitates recognition of those factors which result in aberrant use of the intellectual process called 'expertness.' Not only must we apply accumulated knowledge while recognizing its limitations, but we must also be constantly aware of unconscious determinants affecting the appropriateness of the manner in which this is done. Therefore it will serve us well to consider the effect of the Rashomon phenomenon in the interaction of psychiatry and the law as we do in so many other aspects of clinical psychiatric practice.

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