

## The Devil's Advocate

Parricide has been as interesting to psychiatrists as foeticide is to the clergy, and the New England area has produced two of the more notorious examples of alleged Oedipal murders. The legend of Lizzie Borden<sup>1</sup> from Fall River and the case of Peter Reilly<sup>2</sup> of Litchfield, Connecticut, have a New England flavor that sets them apart from Chicago gangland killings, mid-west mass murders, and west coast crimes of passion.

Whether Lizzie Borden's forty and then forty-one whacks with an axe<sup>3</sup> are fact or fiction still is roundly debated in Fall River, and the scene of the crime is that city's major tourist attraction.<sup>4</sup> Peter Reilly's case may be destined to become another legend in its own time.

There are a number of extraordinary things about young Peter Reilly's case. On March 25, 1976, the same judge who presided over the 1974 conviction of Peter granted his motion for a new trial.<sup>5</sup> It is as uncommon for judges to concede error as it is for doctors to admit mistakes, perhaps because it is all too human to err but divine to cling to illusions. In any event, medical detective work convinced the judge that there had been an egregious miscarriage of justice.

The *Reilly* case also shows the importance of professional competence and cooperation. The original trial was poorly defended<sup>6</sup> and obvious leads were not followed up by counsel.<sup>7</sup> The two medical witnesses who cast a different light on matters were Dr. Milton Helpern and Dr. Herbert Spiegel. The testimony of each had to be framed within the context of the relevant legal issues, namely whether there was newly discovered evidence, not available at the original trial, which could not have been discovered by due diligence, that was likely to produce a different result at a new trial.<sup>8</sup> Such new evidence could not be merely cumulative.

Dr. Helpern's testimony was crucial in developing the time sequence of the murder and showing that Peter could not have committed the brutal killing of his mother. Third parties established where Peter was at the relevant times, and Dr. Helpern testified that it was physically impossible within the time sequence for Peter to have killed without being contaminated with the victim's blood.<sup>9</sup> Dr. Helpern's expert opinion contradicted that of the local medical examiner who had testified at the original trial.

Dr. Spiegel's testimony was directed at the invalidity of the confession which had been obtained from Peter by State Troopers. At about 11:10 p.m. on the day of the crime, Peter gave a statement as to his whereabouts that evening to a State Trooper. At about 1:45 a.m. the next day he was taken to Troop Headquarters. He was interrogated from about 6 to 8 a.m., then given a polygraph test, and interrogation was resumed for a period in excess of six hours. During the course of the latter interrogation Peter made certain admissions and a confession, which led to his arrest for the crime of murder.<sup>10</sup>

Peter, according to Dr. Spiegel, is "a somewhat immature young man who has a serious deficit in his ability to identify who he is as a person . . . . As a result of this, he had difficulty integrating his concept of self, and, at the same time, has confusion and difficulty and a poor ability to integrate his conceptions of others; and this combination of being so terribly uncertain about who he is as a person and who he is relating to, especially people in authority, leads to a great deal of confusion and, certainly, a great deal of difficulty in trying to withstand any efforts at interrogation and to make critical judgments about the difference between a statement and an assertion or a question . . . . he can easily be confused; and he most certainly, can easily accept as a fact something he knows nothing about."<sup>11</sup>

The theory propounded by Dr. Spiegel was that people differ as to their susceptibility to suggestion or capacity to withstand interrogation and that Peter's profile showed that he was highly vulnerable. Of course, the fact that people differ in their ability to withstand the pressures of interrogation is not recently discovered knowledge,<sup>12</sup> and even our courts have developed criteria bearing on the voluntariness of confessions.<sup>13</sup> For Dr. Spiegel's testimony to be admissible at the hearing on a motion for a new trial, however, it was essential that it be "new evidence."<sup>14</sup>

The requirement that his evidence be "new" was met in the *Reilly* case by the court holding that since the original trial a new scientific method, formerly not available, had been developed for measuring personality and susceptibility to influence by persons in positions of authority. The new profile test measures the ability of people to concentrate under given test conditions and was first published by Professor Ernest Hilgard in 1975,<sup>15</sup> some two years after the original trial. Since the test was unavailable at the time of the 1973 trial, Dr. Spiegel's testimony was held to be newly discovered evidence. The state's argument that Dr. Spiegel's testimony was merely cumulative was rejected, in part because Peter's mental state at the time of the confession was not raised at his original trial. Such testimony was deemed to be relevant and material to the nature, weight, and admissibility of Peter's confession and admissions. The Court concluded that the absence of any expert testimony and the failure to raise the issue of the reliability of the confession and admissions resulted in an injustice to Peter.

The unpublished opinion of the Connecticut court makes it quite clear that the judge was convinced that Peter in fact was innocent and had not killed his mother. Moreover, there are strong indications that two neighbors committed the crime, since their alibi witness has repudiated her former statement, fingerprints were found at the scene of the crime, and possible motive has been established.<sup>16</sup>

We are somewhat troubled by the legerdemain by which it was determined that Dr. Spiegel's profile was "newly discovered evidence." Obviously, new trials cannot be granted for all homicide convictions that occurred before Professor Hilgard's new test was published. The reason for the reversal of the court's prior conviction of first degree manslaughter was the conclusion that there had been a miscarriage of justice and that in fact Peter was innocent. The professional ineptitude of counsel and medical witnesses at the first trial were corrected by a courageous judge who was not afraid to admit that he and the jury had been wrong. Interprofessional teamwork at the re-hearing made possible a different version of the facts and the conclusion that Peter was innocent.

Fortunately, Peter Reilly was not an occupant of death row during the last week of March when the Supreme Court heard arguments for and against the abolition of capital punishment. Although it might be gross to say that he was "leading the life of Reilly," nonetheless he was on the outside awaiting word as to whether the prosecutor was as enlightened as the judge who had freed him.

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## References

1. On August 4, 1892, the stepmother and father of thirty-two-year-old Lizzie Borden were killed in their home in Fall River, Massachusetts. According to the legend, Lizzie was guilty but the jury nonetheless acquitted her.
2. Peter Reilly, then aged 18, on April 12, 1974, was convicted of manslaughter in the first degree for the killing of his mother Barbara Gibbons in September 1973. He was sentenced to a term of not less than six nor more than sixteen years at the Connecticut Correctional Institution. On March 25, 1976, the Superior Court of Litchfield County issued its Memorandum of Decision granting a new trial on the basis of newly discovered evidence.
3. *Lizzie Borden took an axe  
and gave her mother forty whacks;*

*When she saw what she had done,  
She gave her father forty-one.*

4. A Fall River newspaperman, Edmund Pearson, was largely responsible for the legend. He wrote a series of articles and a book entitled *Trial of Lizzie Borden* (Doubleday, Doran & Co., 1937). The most recent discussion of the case is that by Edward D. Radin, entitled *Lizzie Borden: The Untold Story* (Simon & Schuster, 1961), which vindicates Lizzie and pins the crime on the maid Bridget Sullivan and also accuses Edmund Pearson of bias and inaccurate reporting. The Lizzie Borden case has inspired numerous books, articles, and plays. See Radin, *supra*, at 242-243.
5. Conn Gen States §52-270 provides: "The superior court . . . may grant a new trial of any cause that may come before it, for . . . the discovery of new evidence . . . according to the usual rules in such cases."
6. Judge Speziale at p 29 of his Memorandum Decision states that ". . . certain aspects of his defense that may have been properly developed through the exercise of due diligence may have been overlooked or their importance unappreciated by the petitioner and his counsel at the original trial. . . . The court must note, however, that the defense's failure to present any psychiatric testimony to explain and refute the petitioner's confessions and admissions, though a favorable psychological report was available to it, and also its failure to offer any medical testimony to rebut the very damaging testimony of Dr. Izumi clearly demonstrate a lack of due diligence. These two serious omissions created gaps in the defense and it is likely that the petitioner was unable to perceive these gaps because of his immaturity and inexperience." On p 31 the court again notes that "The absence of any evidence to controvert Dr. Izumi's testimony at the original trial was a serious omission on the part of the defense."
7. Apparently, defense counsel was particularly ineffectual in the cross-examination of the Medical Examiner, Dr. Izumi, as to the time sequence and again in the exploration of the mysterious fingerprints at the murder scene.
8. Memorandum Opinion at p 7
9. *ibid*
10. See Foster: Confessions and the station house syndrome, 18 DePaul L. Rev 683 (1969), where it is argued that extra-judicial confessions should be inadmissible because of their substantial unreliability.
11. Memorandum Opinion at p 24
12. See Foster, *op cit supra* n 10
13. For example, see *Rogers v Richmond*, 365 US 534 (1961); and *Chambers v Florida*, 309 US 227 (1940). For an excellent decision regarding the confessions of juveniles, see *In the matter of four youths*, 89 Wash L Rptr 639 (DC Juv Ct 1961)
14. See n 5, *supra*
15. The article appeared in the February 1975 issue of *Annals of Psychology*. Dr. Spiegel was principal investigator in the development of this test.
16. See Memorandum Decision at p 13. There was animosity between the victim and one of two brothers who lived in a trailer adjacent to the murder scene, plus the possible motive of robbery.