The Psychiatric Autopsy: Its Legal Application

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History written without psychological insight is like a meal without salt and spices: dull, tasteless and flat. Herodotus, the father of all historians, is so readable today because he characterized all his figures, from the most ancient Egyptians and Persians to his contemporary Greeks, by their likes and dislikes, by their loves and hates, their ambitions and frustrations, their motives — good and evil.

In the last twenty years, psychohistory has been successful because it has utilized dynamic concepts in the analysis of historical persons, groups and movements. Psychiatry itself has not shied away from analyzing deceased persons, sometimes brilliantly, as in Freud's analysis of Leonardo da Vinci,[1] sometimes in a fashion which has added to the discredit and ridicule which is often heaped upon psychiatry, such as in Freud's and Ambassador Bullitt's analysis of President Woodrow Wilson.[2]

The so-called psychological autopsy has been used extensively and quite regularly in an attempt to determine the psychological cause of death of suicide victims, particularly in Southern California.

I consider the term *psychological autopsy* quite defective because it excludes the multitude of medical factors which must be taken into account, particularly in regard to toxicology, pharmacology, anatomical pathology, clinical events in the life of the deceased, etc. For this reason a new term, *psychiatric autopsy,* will be used here, meaning the psychiatric analysis of the deceased person, with full consideration of his genetic and environmental background, his personal experiences, all documents which he may have left behind, either written by himself or by others pertaining to him, but also contributions and statements, so-called oral history, by relatives, friends, acquaintances, witnesses, etc. In this light the psychiatric autopsy could be defined as the postmortem examination of all the remains of the deceased, which permit insight and knowledge of his personality structure, his behavior patterns and, most importantly, the events leading to his demise. A purely psychological autopsy without medical considerations is not sufficient. The notorious Texas mass murderer, who indulged in a shooting spree from a tower at the University of Texas campus, had an undiagnosed brain tumor, an unexpected

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finding, which must certainly be taken into consideration, although to this day its significance remains in doubt.

Another notorious example would be the late Howard Hughes, whose sharp business practices, extreme suspiciousness and finally his phobic withdrawal from the world, represent one side of the coin, the other being the medical complications, his self-inflicted starvation, his total neglect of serious kidney disease, and the possibility of overdosage of or habituation to narcotics.

The main emphasis of this paper will not be the psychiatric-medical implications of a psychiatric autopsy but the legal implications in three areas, first in regard to competency questions in wills, testaments and contracts; second in cases of tort or "wrongful death"; third, in criminal cases.

1. Last Wills and Testaments

In this area at least a partial analysis of the deceased or testator has been rather customary. It has often been necessary to inquire into the frame of mind of the deceased at the time the will was signed. The legal interpretation of this analysis often has been quite rigid and narrow. The psychiatric expert had to limit himself to the mental status of the testator at the exact time the will was signed and had to determine only if at that time the deceased was competent; that is, if he was aware of the fact that he was signing a will; if he was aware of the nature and extent of his bounty; and if he was aware of the natural objects of his bounty. For this determination the courts frequently did not permit an evaluation of the deceased's background, his medical and psychiatric history, events before and after the signing of the will, and many other facts which would be of great importance to the clinician but were considered to be irrelevant for purposes of the law. In recent years the courts have become much more liberal in permitting the expert witness to state the reasoning behind his judgment of "competency" or "incompetency." In order to testify with reasonable medical certainty regarding the testator's condition at the time the will was signed, the expert is now often permitted to conduct a complete psychiatric autopsy, to develop reasons behind his opinion and, while he still must answer the critical question, the state of mind at the signing of the will, he nevertheless is frequently able to function very much like he would in a clinical case presentation.

One brief example may suffice. A 94-year-old black man had died, leaving his sole surviving heir, his grandson, only a very small part of a sizable estate, a 105 acre, valuable suburban property which he had acquired by homesteading as a Spanish American War veteran, dividing the major portion of it in small parcels, leaving it to the neighbors and to his attorney's children. This, his second will, had been written one year before his death. Four years before that he had written a first will, leaving his entire estate to the surviving grandson, of whom he was fond and proud.

When the second will was contested by reason of "undue influence,"

the Arizona Court of Appeals ruled that there had been no undue influence.[3] The second approach was on the basis of incompetency. The deceased had spent the last year of his life in a Veterans Administration Hospital, where he had become more and more demented, confused, forgetful, and unable to look after his most simple needs. The defense, attempting to uphold the second will, had psychiatric witnesses who testified that a lucid interval at the time of the signing of the second will, while not particularly likely, was still a remote possibility, and that the demonstration of advanced and extremely severe vascular changes of the central nervous system had no direct relation to the mentality. While the second point had to be conceded, at least to some extent, the first point was disputed by a psychiatric autopsy, which revealed that the deceased had functioned well throughout life and had been a law-abiding individual of no unusual habits until his 90th year, more or less, when he began to manifest signs of confusion, progressive memory loss — mainly for recent events, disorientation, habit deterioration and general constriction of interest and initiative. It was shown that this condition had proved to be steadily progressive from competency to incompetency and had necessitated his confinement at a Veterans Administration Hospital just a few weeks after the second will had been signed. While hospitalized the last year of his life, he was unable to find his bed, urinated in the halls, did not recognize his grandson, and had to be fed, clothed and taken care of like a baby.

Numerous records and statements by many witnesses, including physicians, proved that at the time the first will had been signed, the deceased had been rational; but at the signing of the second will and for some time before that, until his death, he had presented all classical signs of progressive dementia. With this type of psychiatric autopsy, the jury became convinced that a lucid interval at the time of the second will was an extremely unlikely event and that, with almost absolute medical certainty, it could be excluded. The second will was set aside and the first will was upheld.[4]

In this area of last wills and testaments, also including contracts, very numerous examples could be cited. It may be of help to introduce the term *psychiatric autopsy* in order to lend weight to the expert's opinion, even though this opinion must be limited to the time of the signature.

2. Tort or Wrongful Death

The second area is more unusual. This has to do with torts or with so-called wrongful death. In all these cases the deceased was not known to the examiner and yet it was important to evaluate the mode of death and the environmental, intrapersonal and interpersonal events leading to death. After the introduction of the psychiatric autopsy in the Arizona courts, the mode of death in tort cases has been elucidated in at least nine cases and the number is rapidly increasing.

The first case had to do with an uneducated Mexican laborer who had lost one arm while working on a cotton gin. He was fitted with a

prosthesis, returned to work, soon lost the other arm on the same piece of machinery under similar circumstances. Now he had two prostheses, two ugly metal hooks instead of hands, and was of course totally disabled. While riding with his wife along a highway, he may have attempted to help her with the driving. It is possible that his hooks got entangled in the spokes of the steering wheel. In any event, he was unable to prevent an accident which killed his wife. He was now left a widower, totally disabled, with several small children. Soon thereafter he committed suicide. The legal question here was formulated as follows: Was this suicide a wrongful death, an irresistible impulse as a result of three tragic accidents, the loss of one arm, the loss of the second arm, and then the loss of his wife, or could it be interpreted as an act of God, an unrelated tragedy which "just happened"?

The psychiatric autopsy revealed that this man had been a stable, law-abiding, hard-working, well-providing, family man, that he had never been an alcoholic, never had shown any signs of drug consumption, that there was no family history of mental illness, nor had he anything approaching depression, nervous breakdowns, or mood swings. The longitudinal review of his life gave no indication that he was a likely candidate for suicide. Thus the accidents must be considered proximate causes of the tragic end result. The cause-effect relationship was proved mainly by elimination of any other plausible cause.[5]

3. Criminal Cases

In criminal cases, the traditional role of the psychiatric expert has to do with the evaluation of the defendent principally in regard to his competency to stand trial and to his mental status at the time the offense was committed, with specific consideration of the M'Naghten test or whatever other test the jurisdiction demanded. In a multitude of cases where there was no clear cut major psychosis, the experts disagreed on the possibility or probability of temporary insanity, psychotic episodes, dissociative states, fugue states, temporary black-outs, episodic dyscontrol syndromes, dual personality, and many other diagnostic categories. While the precipitation of these transient, rather ill-defined conditions was frequently the important part of the analysis, the psychiatrist's main effort was still directed toward the evaluation of the defendant.

In the first case considered in this category, the provocation was so horrendous, the threats to the defendant and her children were so realistic and unusual that it was suggested to the defense attorney that the victim of the homicide be analyzed. It was pointed out that the defendant, while certainly in a state of some kind of psychological trauma at the time of the homicide, nevertheless was aware of the nature, quality and consequences of her acts, was able to conform to the requirements of the law and of society, and could not be considered, under any stretch of the imagination, as psychiatrically ill. The defense attorney consented, rather reluctantly, to introduce the new concept of the psychiatric autopsy to be performed upon the victim in order to demonstrate that the defendant was

only acting in self-defense and was justified in feeling that self-defense was necessary and that, considering the circumstances of this case, any reasonable person may have acted similarly under similar circumstances.

This was the case of a young British woman, who had married an American soldier stationed in England, where the first child was conceived and born. The second child, also conceived in England, was born after the couple had returned to the United States. The husband proved to be one of the most bizarre and unusual sexual psychopaths encountered by this examiner. The tortures and indignities inflicted upon his wife could not be found even in Krafft-Ebing and Havelock Ellis. The defendant had repeatedly left home in an attempt to escape but was returned by the husband, often with force. She was unable to return to her native England because, while the older child had been born in England and thus had English citizenship, the younger child had been born in the United States and could thus not be removed without the father's consent.

During the few years of their marriage, the husband's paranoid tendencies became more and more apparent. Finally, on the night of the killing, he had quite suddenly stated that he was convinced that both of his children were fathered by his brother, who had never been in England, and that these two little bastards would have to be killed. He gave the wife a choice among having the children strangled, drowned or shot — but they would certainly be dead the next morning. After the husband fell asleep, the defendant then shot and killed him.

The psychiatric autopsy revealed that the victim had been hospitalized in a military hospital where the physicians had been aware of his psychosexual deviations and tendency toward violence. The defendant had been hospitalized in a private psychiatric hospital for a short time as a result of the torture and abuse inflicted by her husband, a classical case of wife battery. All this was well documented.

In addition, numerous neighbors came forth with testimony that they had repeatedly seen the defendant with black eyes, bruises and other types of injuries, that she had bitterly complained about this abuse by her husband and had pleaded for help. The fact that the deceased's brother could not possibly have been the father of the two children was proved without any doubt. Under these circumstances, the diagnosis of the deceased was one of sexual psychopathy, paranoid personality, finally progressing to a true paranoid psychosis, with displays of extreme violence, wife battery, sadistic tendencies and the distinct possibility of homicide.

Since very little could be found in the literature to justify a psychiatric autopsy on the victim in criminal proceedings, a famous work of fiction, supposedly based upon fact, was introduced: the novel by the Austrian author, Franz Werfel, *Not the Murderer but the Murdered is Guilty.*[6]

The presiding judge consulted on two different occasions with all the judges hearing criminal cases in this jurisdiction before permitting the psychiatrist to testify, who dealt exclusively with the victim and not with

the defendant. While the charge was one of "murder, open," the jury returned a verdict of voluntary manslaughter, which was upheld upon appeal to a higher court.[7]

Within a few months after this case, which received some publicity, two other and rather similar cases came to trial. One was a slightly retarded black woman, age 35, who had killed her common-law husband, who in the past had beaten her repeatedly, once shot her very seriously, and had made numerous threats against her life. On that particular occasion he had been drinking, again displayed violence and further threats toward the defendant, whereupon she shot and killed him.

The psychiatric autopsy of this victim revealed a propensity toward excessive drinking, gambling, assaults and violence. It revealed that the defendant was justified in her fear for her life, since it was not unreasonable to assume that the victim may have proceeded to homicide, and that the defendant acted like other reasonable persons may have acted under similar circumstances. While the charge was one of murder, the jury returned a verdict of voluntary manslaughter, with ten years' probation, without any term in jail if the defendant abides by the terms of probation.[8]

The third case concerned a 20-year-old black man, who shot and killed his step-father, who on that particular night had gone with an axe after the defendant's mother, the victim's wife, in an attempt to force her out of her locked car where she was trying to protect herself against his homicidal threats. In the past the victim had very frequently assaulted, battered and injured his wife, at one time fracturing her nose; assaulted and injured the wife's 13-year-old daughter, his step-daughter,necessitating hospitalization of the child; and made numerous threats, at times with knives, against the lives of all of his family members.

The psychiatric autopsy of the deceased revealed a boisterous, aggressive, self-centered, domineering, tyrannical person, who spent most of his time drinking in a veterans' club, without evidence that he had ever been in the military service. It further proved numerous acts of violence and threats of violence while at work, so that most of his co-workers and acquaintances were afraid of him and frequently had to interfere when he lunged at or assaulted some of his companions in the barroom or at work.

The evidence revealed that he had had one psychiatric hospitalization for alcoholism, at which time assaultiveness and violence were recorded. He reacted to the extreme in any argument and could not brook any differences with his demands and opinions. The diagnosis of chronic alcoholism, in a paranoid personality; with episodic, acute intoxications; manifestations of prior serious violence; and possible homicidal tendencies was made. The jury returned a verdict of not guilty and freed the defendant,[9] probably on the basis that he was acting in defense of his mother, partially also in self-defense, and that he was justified in his fear of the assaults and threatened assaults committed by the victim, and that the past history of the victim amply demonstrated his dangerousness.

Common Denominators of Victims

In all three cases the victim had precipitated his own death by acts of violence, threats of violence, pathological aggressiveness, wife or child battery, alcoholism, paranoid attitudes; and in one case by outright delusions, acts of cruelty, sadism, a reputation of dangerousness and a prediction of future dangerousness, probably including homicide.

In each case it could be demonstrated that the defendant had committed homicide under circumstances of extreme provocation. The psychiatric autopsies revealed that self-defense against the deceased was a necessity. Without psychiatric autopsies the urgency of self-defense would have been much less evident. The dangerousness of the victims had to be proved and could be proved without doubt. The expert witness was limited, by rules of evidence, to cite only those incidents of violence, assaultiveness and paranoid behavior of the victim which were actually known to the defendant, which contributed to the defendant's fear and his subjective need for self-defense. At the same time the psychiatric autopsy implied that under similar circumstances the average citizen may well have acted exactly like the defendant did.

The concept of dangerousness, which has given psychiatry so many difficulties in its unpredictability and the many errors which have been committed in that respect, assumes an entirely different aspect when applied to a dead person, whose every act is now being revealed, rather than to a defendant whose whole future lies ahead of him. Cynically one might add that it is safe to "predict" the dangerousness of a dead person and certainly it is a lot less risky than such a prediction in a live one. However, since the admissibility of evidence of dangerousness in the psychiatric autopsy is almost limitless, with the exception of those acts and behavioral deviations of the dead victim which were unknown to the defendant, it certainly permits a much more thorough justification for the expert's opinion than is usually permitted in the evaluation of a defendant.

In all three cases the notorious battle of the experts was avoided, since the emphasis of the argument was not upon the defendant but upon the victim. The questions which defense counsel had proposed, regarding temporary insanity, diminished criminal responsibility or accountability, etc., were completely avoided by putting the deceased on trial rather than the defendant.

Admissibility

Obviously this deviation from the traditional role of the expert witnesses created serious questions of admissibility, but in all three instances the Superior Court of Arizona decided that the victims' behavior could be analyzed by the psychiatrist in order to prove the reality of the danger in which the defendants found themselves. Contrary to prior usage of putting the defendant's competency and sanity in

question, the expert showed, through the psychiatric autopsy, that the defendants acted rationally, not irrationally, that the victims' demise by homicide could have been predicted, by implication, from their own histories. Apparently the juries were impressed with the thesis that not the murderer but the murdered was guilty, or at least more guilty.

In order to prove self-defense, the psychiatric autopsy can help in the following areas. First, the defendant must have reasonably felt that he (or those close to him) was in immediate danger of life or of great bodily harm; second, he must have acted solely because of that belief; third, he must have used appropriate and not excessive means of procuring his safety or the safety of those close to him; fourth, while self-defense is based upon the subjective belief of being in danger, the concept of justifiable homicide is based less upon a belief of the defendant than upon the assumption that a reasonable person in the shoes of the defendant would have feared for his life or the life of his children.

While the concept of self-defense is more subjective, a necessary act from the defendant's point of view, the test regarding justifiable homicide is more objective because it asks whether a reasonable person in the shoes of the defendant would have had reason to be afraid and would probably have acted in a similar fashion as the defendant.

As to admissibility, the Arizona Court established in *State v. Wallace,* 83 Ariz. 220, 319 P.2d 529 (1958):

> It appears from the testimony that the defendant admitted the killing but claimed it was done while under great fear in defense of her home and to prevent bodily harm to her person . . . .Where there is a claim supported by some evidence of self-defense,and the proof justifies the giving of a charge on the law of self-defense, the defendant may, for the purpose of showing the deceased to have been the aggressor and the killing to have been necessary in self-defense, show *hostile feelings* on the part of the deceased toward her, previous difficulties and the like . . . .It is a well settled doctrine which has been codified by our legislature that under certain conditions and circumstances one may defend himself against death or great bodily harm. ARS 13-462. And if a homicide results *then the accused may support that defense by evidence of all circumstances of the homicide.* (Emphasis added) p. 531

It would appear that in the three cases cited above, the admissibility of the psychiatric autopsy has now been established by trial court case law. The intent of the law appears to be clear: to present to the jury all facts affecting the defendant's fears or belief that he was in imminent danger of being severely harmed or killed.

The expert would serve to corroborate the defendant's fears and his belief that he was confronted not just by an angry person but by a dangerous person. The expert would thus elucidate the circumstances

surrounding the incident, the atmosphere in which the defendant acted in self-defense or in defense of those close to him.

The psychiatric autopsy becomes admissible since it may be the only available tool to verify to the jury the nature and mental condition of the person with whom the defendant was dealing at the time of homicide.

The accused, instead of being deprived of criminal responsibility at the time of the crime, was rather acutely aware and alert to the danger which the victim presented to his life and safety or that of his family, those under his custody and the community at large. Instead of having the burden of proof of competency placed upon the defendant, he is elevated to the status of a citizen, who performs an unpleasant but necessary task, knowing full well that legal consequences could possibly result.

The Battle of the Experts

A rather unexpected but pleasant fringe benefit was the unanimity of the psychiatric experts performing the psychiatric autopsies, very much in contrast to the frequent differences which occur in psychiatric evaluations of defendants. The experts were able to agree almost completely on the analysis of the deceased victims. All the imponderable elements which beset the examination of a live defendant, such as elements of transference, counter transference, difference of interpretation of what is said by the defendant, different mental states which the defendant may manifest from day to day, due to changes in his condition as well as possible changes in medication, were totally absent in the performance of the psychiatric autopsy. The various experts had exactly the same material, the same documents, the same oral histories obtained by various witnesses and acquaintances of the victim, and thus came to the same conclusions. While the psychiatric diagnoses of the victim differed very slightly, the description of his behavior pattern, his personality structure, and the significant events in his life allowed no differences of opinion. The psychiatric autopsy prevented evidence which proved to be fixed, inflexible and reproducible at any time. The vagueness of the interpersonal relationship between psychiatrist and examinee has been removed. Thus the psychiatric autopsy appears to be more objective and less controversial than the analysis of the living examinee.

The Psychiatrist's Role

Does a psychiatric autopsy add to the authority which the psychiatrist exerts in a court? Does it add to the disproportionate influence of his testimony and to the awe in which he is held by some members of the legal profession and by many members of the jury? I found these sentiments to be present at first when the psychiatric autopsy was introduced. The man who undertakes to analyze and almost bring a dead person back to life in front of the jury, must truly be some kind of miracle worker. However, this sort of feeling was readily overcome when it was demonstrated by several

experts in the same trial that the conclusions were based on solid facts, and the analysand, while truly dead, revealed his secrets and his conduct by his actions rather than by words, and that, while the emphasis is often upon the pathological features of the deceased, the normal reaction patterns were not neglected.

In the civil cases the jury frequently can identify with the deceased, at least to some extent. In the tort cases the deceased is often found to be a perfectly normal person without significant deviation. There has been an almost audible sigh of relief by the legal profession and in the court room since it became apparent that the psychiatric witnesses for once were in full agreement in case after case where the psychiatric autopsy was introduced in last wills or testaments, torts or criminal cases.

In the psychiatric autopsy the psychiatrist is deprived of his most important tool, the face-to-face encounter with a live person, who interacts with the examiner, manifesting emotion, judgment and response. But there are compensating features. The objectivity of the testimony not based upon the expert's subjective observations, but based upon documentary evidence and oral history which cannot be refuted, appears to be an equally powerful means in the hands of the psychiatrists. Thus, rather than increasing the mystique of psychiatry and its reputation to be an inexact specialty somewhat outside of medicine, the reputation of psychiatry as a branch of medicine, using scientific tools, has been enhanced.

Since the psychiatrist leaves the defendant strictly alone and addresses himself to the circumstances under which a certain event took place and what provoked it, he greatly diminishes the stigma of participation in adversary proceedings and places himself in the role of a psycho-historian who couldn't care less. To me it was a great relief and a great surprise to find that I was much less on the defensive in these cases than in the ordinary participation in court proceedings, and this was confirmed by several colleagues.

In summary, the use of the psychiatric autopsy in several areas of forensic psychiatry is recommended.

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