Editor:

As a forensic psychiatrist with 40 years of experience, I found some features of the Elizabeth Smart case very familiar. The acceptance of psychotic behavior, particularly if it includes religious themes, is widespread and results at times in tragedy. It is common for police to declare a suspect a perpetrator. Sam Sheppard and O. J. Simpson are two examples of this tradition. The result is that the investigation is impeded or abandoned.

A mere 30 years ago, Mr. Mitchell, a self-proclaimed prophet, would have been living a relatively comfortable life in a state hospital. Had Mr. Mitchell been confined to a mental institution, the child and her family would have been spared the trauma they have experienced. Mr. Mitchell would have avoided prolonged incarceration. At the present time, not once in the extensive news media coverage did I hear the term psychosis mentioned.

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Editor:

I am writing in response to two editorials regarding the insanity defense and Andrea Yates by Dr. Emily A. Keram and Dr. Lise Van Susteren.[1,2]

Since the Andrea Yates decision last year, I have heard mental health professionals universally decrying the outcome, bemoaning that our field has been set back a generation, that regular people (jurors especially) "just don't understand" mental illness, and that the court's decision was nothing more than a reflection of the ill-conceived prejudices of those who fear mental illness. Even this Journal, the journal of record for American forensic psychiatry, has chosen to publish two nearly identical Commentaries (i.e., those of Drs. Keram and Van Susteren) as if a reasonable and contrary opinion did not even exist. I believe that the outrage of my psychiatric colleagues is misplaced and unwarranted—and indeed, that psychiatrists have good reason to be pleased with the outcome of the *Yates* case.

The problem with the arguments of Drs. Keram and Van Susteren—and with nearly all the other arguments I have heard so far opposing the *Yates* verdict—is that they erroneously equate mental illness with insanity. Dr. Keram believes that Andrea Yates was insane because Ms. Yates was severely mentally ill; Dr. Van Susteren echoes this sentiment, noting that ". . .Andrea Yates was recently found guilty of murder, even though she was clearly, and by all accounts, mentally ill" (Ref. 2, p 474). Who disputes that Ms. Yates was mentally ill? Even the prosecution readily admitted this. The jury in the *Yates* case was, fortunately, able to grasp that mental illness is not the same as insanity.

The *Yates* jury did just what a jury is expected to do in insanity cases: it made a distinction between mental illness (a medical concept) and insanity (a legal, moral, and ethics concept). The jury heard from both sides that Ms. Yates was ill; but, unlike Dr. Keram, the jurors did not limit themselves to recognizing that Ms. Yates was psychotic, but pushed to the crucial next question: was Andrea Yates so mentally ill that she should be excused (legally) from killing five children? This is a far more difficult question, and the fact that neither Dr. Keram nor Dr. Van Susteren addresses it proves the key point I would like to make: psychiatrists have no special expertise—beyond what they have as laypersons—in determining whether acts driven by a severely disturbed mind should be excused by the community.

The concept of insanity goes back many, many centuries. For all the countless attempts to define insanity in words, no consensus has ever emerged (and countless critiques have been published over the years, with little or no progress being made). I suspect this endless word wrangling is because insanity is one of those notions so fundamental as to resist all attempts to define it. Our legal system recognizes that jurors are often asked to grapple with concepts of this nature, as, for instance, the notion of "reasonable" in beyond a reasonable doubt. Perhaps the most useful insanity definition I am aware of is this: to be insane means to be so crazy that one should not be held responsible for what one has done. This seems as practical as any other definition and renders more explicit the fact that what we regard as insane (i.e., legally excusable) cannot be reduced to simpler, quantifiable, operative dimensions. It is a fundamental concept, and we, as members of a society in which crime occurs, must wrestle with this every time we try

to understand how a criminal act is committed by someone who is mentally ill. Psychiatrists want to equate mental illness with insanity, and because psychiatrists are experts on mental illness, they believe—as Dr. Keram and Dr. Van Susteren do—that psychiatrists should call the shots so far as insanity jurisprudence goes. It is with this notion that I disagree most strongly.

Dr. Keram complains that jurors are simply not capable of understanding the complexities of mental illness in the (relatively) brief time they are involved in a case. She points to the many shortcomings of the jury system, and notes, as many have, that laypersons are not equal to the task of grasping highly sophisticated issues such as mental illness. Dr. Keram points to the Holy Land—Australia, in this case—where a wonderful inquisitorial system is capable of finding the truth. Similarly, Dr. Van Susteren complains that the Texas definition of insanity is inadequate and "crude" and that reform is needed (again). Would there be this call for reform if the *Yates* trial had gone the other way? I suspect not.

The outcome of the *Yates* trial is not a step backwards for psychiatry or for the mentally ill. We should be pleased that the court was able to distinguish being mentally ill from being insane. Psychiatrists seem to sympathize with Ms. Yates. Yet, this sympathy is not enough to sustain their argument that she was insane. Where, in all of these debates, is there discussion of those five children whom she brutally killed? As is all too common, victims seem to fade into the far distance, attention to whom is usually excluded for fear that actually reflecting on their deaths will prejudice one's ability to think straight. Thinking about these five young children is exactly what the jurors did; and the jurors asked, what explains their deaths? What explains the fact that Andrea Yates chose to use such a particularly painful and heinous means of killing those children? What was it about her mental illness that accounts for that? The jury asked this question and did not get a satisfactory answer from the psychiatrists. It's not pleasant to think about this, is it? But the *Yates* jury did, and they concluded that Ms. Yates' disturbed mind was not disturbed enough to explain her killing five children. The jurors were also not convinced that Ms. Yates was unable to have acted differently; they recognized that, to at least some extent, she chose to act in the manner that she did.

Dr. Keram draws far too large of a lesson from the *Yates* case; she concludes that we should do away with elected judicial officials, that juries are inadequate, that we need to embark on a "re-examination of the fundamental concepts of criminal responsibility, punishment, and the adversarial system" (Ref. 1, p 473). It certainly cannot be that the last thousand years of Anglo-American jurisprudence is devoid of any accumulated wisdom and in need of complete revamping because of the passions raised by one trial that did not go one's way.

Dr. Keram complains that "Americans are not comfortable with the concept that a determination of legal insanity may carry a presumption that the defendant does not deserve to be punished, regardless of how horrible the crime is" (Ref. 1, p 473). She is suggesting, of course, that this concept is correct and proper, and that Americans, if they are not able to live with it, should not be permitted to weaken a good concept. I would suggest that we remember for whom laws are written: if "Americans" are not happy with how criminal behavior is dealt with, they have every right to change things. Dr. Keram sees this as a problem with Americans; I see this as a problem with the insanity defense.

As a final point, one must bear in mind that nearly all insanity acquittals are arranged through plea agreements. This is because, in nearly every case, all parties involved can agree on the facts and how a defendant should be dealt with. In Dr. Keram's game theory language, one might say that most of the time, insanity cases are handled via a "cooperative game": both sides "win" through mutual cooperation. It is only in rare cases where such deep disagreement exists that no common ground may be reached; in those rare instances, when the cooperative game model will not work, the system switches to the only other alternative, the "zero-sum" or "non-cooperative" game (i.e., the trial process). Trials are, by definition, about the failure of cooperation; even people of good faith may have differences of opinion.

In summary, I am not convinced that insanity jurisprudence is in need of such drastic reworking as Dr. Keram and Dr. Van Susteren suggest. We should look more closely at the *Yates* case as an example of how the community—our neighbors—are brought into the process of making difficult decisions about legal responsibility. As psychiatrists, we ought not to play ourselves as smarter than everyone else; we

should have some humility for the opinions of our neighbors and recognize that even within our own field we still know very, very little about the human mind and soul. We do not want a judicial system composed of "people who know better"—our Constitution guards against this as the first step toward tyranny. Insanity is a subject about which psychiatrists may provide some education. However, psychiatrists are not more qualified than anyone else in making ultimate decisions about insanity. The *Yates* case, by stressing the distinction between the two, helps to ensure that the mentally ill get a fair shake should they ever have to defend themselves in court.

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References

1. Keram EA: The insanity defense and game theory: reflections on Texas v. Yates [editorial]. J Am Acad Psychiatry Law 30:470–3, 2002
2. Van Susteren L: The insanity defense, continued [editorial]. J Am Acad Psychiatry Law 30:474–5, 2002