The Psychiatrist in Court
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Trial transcript from a very controversial and highly publicized local trial which took place in Oakland, California. It is the case of *People v Darlin* June Cromer, a woman with a ten year history of hospitalization and treatment of schizophrenia. She killed a black boy and her defense was insanity. The prosecution asked for a death sentence on the "special circumstances" that the killing was racially motivated. This grounds for a death sentence had never been used before in history. Dr. Sszasz testified as a rebuttal witness for the prosecution and I am enclosing a transcript of his testimony. Some of the issues which a reviewer might address include the facts that:

(1) Dr. Szasz admits that he never examined the defendant, yet renders an opinion about her.
(2) Dr. Szasz admits that he did not review all her medical records, yet renders an opinion.
(3) (3) Dr. Szasz testifies as an expert in psychiatry that there is no such thing as mental disease.
(4) It is also well know that Dr. Szasz criticizes forensic psychiatrists for testifying for money. In that context it is interesting to note that for his approximately two hours of testimony, Dr. Szasz was paid $3,000 and expenses.

Donald T. Lunde, M.D.

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# THE PSYCHIATRIST IN COURT: PEOPLE OF THE STATE OF CALIFORNIA V. DARLIN JUNE CROMER

*The Journal would like to thank Dr Donald T Lunde for his suggestion to publish verbatim trial testimony of psychiatrists in court Dr Lunde first made the suggestion at a meeting of The American College of Forensic Psychiatry in San Diego last October We are indebted to Dr Lunde not only for his idea but for his actual follow-up in providing us with this transcript of the Darlin June Cromer case.*

*We would also like to thank Drs Selwyn Smith and Joseph Finney for their analyses of Dr Thomas Szasz's testimony in the Cromer trial Panel discussion of the case will continue in next issue with commentary already prepared by Dr. Ronald Shlensky Attorney and Board member, Melvin Belli has been invited to reply as has Dr Thomas Szasz Readers are also invited to reply to this issue.*

*The following brief background sketch was compounded from a number of news reports on the case. We are most grateful to Bethany Korwin-Pawlowska of The Oakland Tribune for providing the Journal with a full set of news clips from the newspaper's archives*

*On February 6, 1980 a search was undertaken for a missing five year old black child, Reginald Lamon Williams of Alameda, California His mother had left Reginald in a shopping cart playing with a friend in front of their apartment When the mother went to look for her child to get him ready for kindergarten, the friend told her that Reginald "had left with this white lady" who had promised to take the boy to his grandmother*

*Investigation led authorities to arrest Darlin June Cromer, 33, a white woman and divorcee from Pinole, California. Mrs Cromer confessed to kidnapping, strangling and burying the child at a nearby beach. She led authorities to a sewage treatment plant where the child's body was unearthed.*

*The prosecutor, Deputy District Attorney Albert Meloling, a veteran trial lawyer who had prosecuted sixty murder trials, relentlessly pressed the jury to find Cromer sane and guilty of murder in the first degree; her alleged motive: an absolute hatred of blacks Assistant Public Defender Dean Beaupre exhorted jurors "to be mature enough and sensible enough" to accept that Cromer was mentally ill at the time of the offense and to render a diminished capacity verdict of manslaughter.*

*Darlin June Cromer presented a ten year history of mental disorder. Her psychiatric dossier revealed a procession of extraordinary experiences: she claimed to have received secret messages through her television set; the neighbors' chickens spoke to her; she had run up hundreds of dollors worth of parking tickets for parking in "red zones." She believed that these zones were specially set aside for menstruating women. She also believed that she had been made pregnant by an astronaut; she uttered logic-defying statements such as : "I'm a black queen, and I'm beautiful, and you do not have to bow to me I play chess "*

*Dr. Thomas Stern, a Berkeley physician described Mrs Cromer as "the most bizarre and dangerous patient I have ever examined " Dr. Joseph Satten and Dr. Hugh Winig found her overwhelmed with schizophrenia, incapable of forming murderous intent Dr. Lunde described her as a "hopelessly ill psychotic so mentally disabled on the day of the crime that by law she should be convicted of manslaughter " Dr. Lunde further testified that Cromer intended to eat the child's body with the belief that her cannibalism would "slow down the aging process and make her more beautiful."*

*The prosecution arranged to bring Dr. Thomas Szasz from New York to California to testify in the trial. In contradistinction to the findings of mental disorder by Stern, Satten, Winig and Lunde, Szasz asserted that Cromer was fully responsible for her acts and "suffering from the consequences of having lived a life very badly, very stupidly, very evilly."*

*The jury deadlocked on the sanity issue, one juror holding out*





*for a verdict of insanity Reporter Lance Williams of the Tribune narrated the closing stage of the trial as follows: "But after long discussion, prayer and a read-back of the Szasz testimony, the jury unanimously agreed Cromer was sane." The jury convicted Darlin June Cromer of first degree murder "with special circumstances" (kidnapping and racial motive), circumstances which allow imposition of the death sentence in California; the jury, however, recommended mercy and Darlin June Cromer was sentenced to life imprisonment without possibility of parole.*

## DONALD T. LUNDE, M.D.

**The following letter was received by the Journal from Donald T. Lunde, M.D., Clinical Associate Professor of Psychiatry and Behavioral Sciences, Stanford Medical School. The letter was accompanied by the trial transcript published here.**

*Dear Ed,*

*I am enclosing a copy of a transcript from a very controversial and highly publicized local trial which took place in Oakland last year It is the case of People v Darlin June Cromer, a woman with a ten year history of hospitalization and treatment of schizophrenia. She killed a black boy and her defense was insanity The prosecution asked for a death sentence on the "special circumstances" that the killing was racially motivated This grounds for a death sentence had never been used before in history Dr. Szasz testified as a rebuttal witness for the prosecution and I am enclosing a transcript of his testimony Some of the issues which a reviewer might address include the facts that:*

*[1] Dr. Szasz admits that he never examined the defendant, yet renders an opinion about her.*

*[2] Dr Szasz admits that he did not review all her medical records, yet renders an opinion.*

*[3] Dr Szasz testifies as an expert in psychiatry that there is no such thing as mental disease.*

*It is also well known that Dr. Szasz criticizes forensic psychiatrists for testifying for money In that context it is interesting to note that for his approximately two hours of testimony, Dr. Szasz was paid $3,000 and expenses*

*Donald T. Lunde, M.D.*

**THOMAS SZASZ, M.D.** called as a rebuttal witness by the People, having been sworn, was examined and testified as hereinafter set forth.

*Clerk: Please state your name for the record*

*Witness: Thomas Szasz, S-z-a-s-z.*

*Court: S-z-a-s-z?*

*Witness: Yes.*

*Court: How do you pronounce that, sir?*

*Witness: Szasz*

*Court Your first name is Thomas?*

*Witness: Yes*

*Court: Thank you.*

**DIRECT EXAMINATION**

*Q: What is your employment, sir?*

*A: I'm professor of psychiatry at the State University of New York in Syracuse, New York.*

*Q: And how long have you been employed in that position?*

*A: I will be completing my twenty-fifth year this spring.*

*Q: Are you licensed to practice medicine in the State of New York?*

*A: I'm licensed to practice in the State of New York as well as other states, including California.*

*Q: Have you written any articles or documents or books in connection with the subject of psychiatry, forensic psychiatry, diagnosis, reliability, and subjects of that type?*

*A: I've published seventeen books and approximately four hundred articles and book chapters, book reviews*

*Q: Do some of these deal with the subject of the reliability of psychiatric diagnosis?*

*A: Yes, some of them do.*

*Q: Have you made a particular effort to study the subject of psychiatry or psychiatric conditions and responsibility?*

*A: Yes, sir, I have.*

*Court: Pardon me, Counsel Read that question back, please. (Last question read ) Thank you.*

*Q: And have you read or written articles on that subject also?*

*Mr. Beaupre: I object to that as irrelevant.*





*Court: Overruled*

*A: Yes, sir, I have written numerous articles on it and several books on the subject.*

*Q: Have you studied and written on the subject of schizophrenia?*

*A: Yes, sir*

*Q: And have you written works and have you studied on the subject of schizophrenia and responsibility?*

*Mr. Beaupre: I object to that as irrelevant*

*Court: Overruled. You may answer.*

*A: Yes, sir, I have written, in fact, I have written numerous articles, I couldn't remember the exact number, on schizophrenia. Virtually all of them deal with schizophrenia and responsibility And I have also written a book entitled* Schizophrenia *which in fact has been translated into half a dozen languages*

*Q: Are you a member of the American Board of Psychiatry and Neurosurgery?*

*A: Neurology*

*Q: Neurology Pardon me.*

*A: Yes, sir. I was qualified as a specialist in 1951, almost thirty years ago.*

*Q Have you previously testified in the courts in this country on the subject of psychiatric conditions and responsibility?*

*A: Yes, I have, on a few occasions*

*Q: Did you assist the District Attorney in Los Angeles County in the case involving one of the Manson Group, that is, the case involving Leslie Van Houghten?*

*Mr Beaupre: Objection; irrelevant*

*Court: The objection is sustained.*

*Q: Have you made a particular study of the subject of forensic psychiatry?*

*A: Yes, sir, I have made a long study*

*A: And what has that study consisted of?*

*A: It has consisted of a long range I've really studied the subject almost ever since I went into psychiatry more than thirty years ago. It has consisted of a study of the whole literature of the subject This study of the subject, sociology, anthropology, current practices in this country and other countries, resulting in numerous articles, symposia, participations and books on the subject.*

*Q: Have you received any par-*

*ticular awards from different groups on the subject of psychiatry?*

*A: I have received quite a few awards on the subjects, yes, sir I don't remember all of them offhand.*

*Mr. Meloling: I offer Dr. Szasz, Your Honor, as an expert in the field of psychiatry*

*Mr. Beaupre: May I voir dire?*

*Court: You may voir dire.*

**VOIR DIRE EXAMINATION**

*Q: (Mr. Beaupre) Can you tell me what associations you belong to?*

*A: I am a fellow in the American Psychiatric Association. I'm a member of the American Psychoanalytic Association. And I'm a member of a few others on psychiatry, sociology, this sort of thing.*

*Q: Could you tell me what those few others are?*

*A: If I can look at my notes.*

*Court: You may do so if you don't remember.*

*A: (Continuing) American Humorists' Association.*

*Q: (Mr. Beaupre) American Humorists?*

*A: Humorists' Association. I can't think of any others*

*Q: Is that all?*

*A: I think that's probably all*

*Q: How about the American Association for the Abolition of Involuntary Mental Hospitalization?*

*A: That was an association which I founded but which has since been disbanded*

*Q: So it's no longer existent?*

*A: That is correct.*

*Q: Any other associations you belong to?*

*A: As I said, I can't think of any offhand I used to belong to a great many. I dropped membership in many of them.*

*Q: These awards which you have received, have they been from The American Psychiatric Association?*

*A: No, sir I have not received any award from the American Psychiatric Association.*

*Q: How about the American Psychoanalytic Association?*

*A: Not from the American Psychoanalytic Association.*

*Q: Have you ever received*





*any award from any group of organized psychiatrists?*

*A: (Pause) I'm not sure. I received an award, an honorary lectureship in England some years ago, which I think may have been, a lectureship in Essex, which I think may have been sponsored by a psychiatric group. But I'm not sure. No, I have received some other awards I received an award from some New York psychiatric groups, on second thought*

*Q: What was the name of that psychiatric group?*

*A: There was Clara Thompson of the William Ellison White Institute. This was probably more than twenty years ago, so I'm not very up on this.*

*Mr. Beaupre: I have nothing further*

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**Q: "Now, you haven't examined the defendant, have you?"**

**A: "No, sir."**

**Q: "Would it assist you in testifying to examine her now?"**

**A: "No, sir."**

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*Court: The Court finds that he is an expert in the field of psychiatry and may testify as an expert*

**DIRECT EXAMINATION (Resumed)**

*Q: (Mr. Meloling) Did you also receive the Holmes Hunsarberg Award in 1969?*

*A: Yes*

*Mr Beaupre: Objection; he's already qualified*

*Court: The answer may stay in.*

*Q: (Meloling) Did you have occasion to look at a series of medical records and psychiatric reports in connection with the case that is now before this Court?*

*A: Yes, sir, I have.*

*Q: Do you have a present recollection as to precisely what those documents or records were?*

*A: In the main they were the medical records reports of a group of psychiatrists giving reports concerning the psychiatric condition of the defendant in this case.*

*Q: Did you also have occasion to look at the medical records of Dr Dolgoff, her treating doctor?*

*A: Dr Dolgoff, Dr Winig, Dr. Lunde, Dr. Morris*

*Q: Dr Ponomareff?*

*A: Dr. Ponomareff*

*Q Did you also have occasion to read a copy of a statement*

that the defendant gave to a deputy sheriff by the name of Dorothy Sabo?

A: Yes, I also saw that.

Q: No you haven't examined the defendant, have you?

A: No, sir.

A: Would it assist you in testifying to examine her now?

A: No, sir.

Q: You understand that what we are concerned with is her mental condition on February 5 of last year?

A: That is my understanding.

Q: Why would it not help you to examine her now to determine what her mental condition was on February 5, last year?

A: Because I could only determine by examining her now what her mental condition is now

Q: What is the reason for that?

A: That is the nature of a psychiatric examination. I don't know what her mental condition was six months ago. I wouldn't know what it would be six months from now.

Q: Is there anything in the -- in a particular study of psychiatry, is there anything that you could study which would qualify you to examine the defendant now and tell the ladies and gentlemen of the jury what her mental condition was February 5 of last year?

A: No, there is none.

Q: Can you tell us what a mental illness is?

A: Yes A mental illness is a name which we nowadays tend to attach to behavior which is deviant, distasteful, illegal, obscene. That is the conventional use of the term.

Q: Pardon me?

A: That is the conventional use of the term.

Q: Is there anything special of the type of conduct that you have just described as being included within mental illness that necessarily means that a person that does that type of conduct is psychotic?

A: Many of these this question and many of these psychiatric terms are really a method of definition Traditionally the root psychotic as against neurotic, these are relatively recent terms, a hundred years old, which are now in the process of being changed by the American Psychiatric Association. But the word psychotic has traditionally been used for behaviors which





are very upsetting as against those which are less upsetting which are called neurotic So those which are very upsetting are often called psychotic.

Q: If it is less upsetting, it is neurotic?

A: It is neurotic

Q: Is there anything especially scientific about those terms?

A: No. Those terms are unscientific But they give the appearance of being scientific

Q: Why are they unscientific?

A: Because in point of fact, they simply make this common sense distinction between degrees of upsettingness There are even jokes about what these terms really mean.

One which I think is very telling is that when a person upsets himself or herself, then he or she may be called neurotic. If a person upsets other people then they are called psychotic.

Q; Is there anything in the definition of a psychotic which necessarily means that a psychotic is not responsible for what they do?

A: Well, as people who have studied this area know very well, that's long been a matter of debate in psychiatry and all the authoritative opinion has been to the point that terms like psychotic, schizophrenic, and so forth have no point-to-point relationship to irresponsibility

The person can be called schizophrenic or psychotic and can be considered to be and held to be responsible So it is quite irrelevant to talk about whether the person is psychotic because it doesn't mean he or she is not responsible.

Mr. Beaupre: I object to that and ask that it be stricken. Goes beyond his expertise as a psychiatrist whether or not somebody is "responsible."

Court The objection is overruled

Q: (Meloling) You said it was irrelevant to the disucssion of the responsibility to label someone schizophrenic. Is that what you said?

Court: I'm sorry, Counsel. Let me interrupt. We had better make a clarification

Maybe I'm misunderstanding your objection. I was not treating your objection as relating to legal responsibility That's not in his area of expertise. I'm treating your objection as relating to legal responsibility That's not in his area of expertise. I'm treating your objection as it relates to mental responsibility as opposed to legal.

*Mr. Beaupre: We now understand each other.*

*Court: All right*

*Q: (Meloling) You said that the question of whether or not a person was suffering from schizophrenia is really not relevant to the question of whether or not they are responsible?*

*A: That is correct. The word schizophrenia was originally introduced into modern science, modern psychiatry by a Swiss psychiatrist, Bleuler, and he himself spent a great deal of care and attention on emphasizing this point, that responsibility in the sense which you mentioned it in the sense in which I was using the term, whether the person knew what they were doing and therefore has free will, can control their actions, and so forth, is sort of independent from whether or not they may be diagnosed as schizophrenic*

*Schizophrenics can be and are responsible, and this is, for example, consistent with the present practice that most people who now have schizophrenia are in the community and it is now general practice not to lock them up, not to hospitalize them. So they have all the rights and freedoms of you and me and, therefore, all the responsibilities of you and me to be held responsible for what they do.*

*Q: If you were to look at a person let's assume that you examine a person on day twenty and you are asked to give an opinion as to what the person's mental condition is on day one. If you were to determine a given opinion as to mental condition, what would be the reliability of that opinion?*

*A: The reliability of that opinion would be exceedingly low because in point of fact, the most that really I can know is what that person told me they were like on day one. And what inferences I could draw from them would not be very reliable*

*Q: There has been some testimony in this case that there is a Litmus Test for determining the presence of a psychosis, and that Litmus Test, which was I believe it was Dr. Lunde that testified to that -- indicated that you can prove a psychosis -- now correct me if I am wrong you can prove a psychosis by giving a person psychotropic drugs Is there any merit in that contention?*

*A: There is not only no merit in that contention, but that contention, in my opinion, is so false that to give it under oath would in my opinion border on perjury There is absolutely no authority whatsoever, and of course not only no authority, but no evidence that you can*





*do such a thing. And nowhere in the world is psychosis diagnosed in this way by giving people drugs and seeing what happens to them.*

*Q: What is the purpose of giving people medications like antipsychotic drugs such as Darvon, Navane or Lithium or-- not Darvon I'm sorry Just take those two.*

*A: Thorazine.*

*Q: All right.*

*A: Haldol.*

*Q: What is the purpose of giving people that type of medication?*

*A: If I may, let me give a two-pronged answer to this question There are those people who strongly believe, who sincerely believe I think they are wrong, but they are entitled to their beliefs who*

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**" Drugs are chemical strait jackets Psychiatrists don't need these jackets because they put chemicals in your body so you are immobilized."**

---

*sincerely believe that these drugs somehow help the disease which this person allegedly has. Sort of like insulin helps diabetes or aspirin helps arthritis.*

*Now in that case, for those people who believe that, the purpose would be to ameliorate the so-called psychotic symptoms That's one view.*

*A second view, which I hold is more plausible, is that these drugs don't ameliorate any psychotic illness because there is in fact no such illness, there is only a particular personality, a particular behavior which is very upsetting, very disturbing, may be very aggressive, very agitated And what these drugs do is that they dull the person. They work like electric shock and lobotomy used to.*

*I have more than thirty years ago no, twenty-five years ago suggested that in effect these drugs are chemical strait jackets. As you know, crazy people used to be tied up in strait jackets, literally jackets Now they have been done away with. Psychiatrists don't need these jackets because they put chemicals in your body so you are immobilized You are so fatigued, so slowed down that you can hardly talk, hardly move. You don't feel like doing anything*

*So they are quite useful for controlling people. That's why the Russians, for example, use it on prisoners and so on It was used in Jonestown. Jim Jones used it on his victims*

*Q: It is for the purpose of controlling behavior?*

A: For controlling people.

Q: And their behavior?

A: And their behavior.

Q: Is there any evidence whatsoever that you have observed or that you have found that in fact these types of medication treat the mental condition?

A: Well, if I may be specific, no, there isn't But I can be more specific, because studying the evidence I have of this tragic case before us, the defendant in this case has been the beneficiary of ten years of this wonderful chemical treatment, and she went from bad to worse, from ill behavior, unadvised behavior, irresponsible behavior to assault and finally to murder. This is all in the inference of this wonderful treatment. This is the factual case before us. After all the patient was treated for two years before she murdered.

Q: Assume, if you will, that a person is said to be delusional on a given day, suffering from a delusion. In your opinion, would you think that if you were treating that person for a period of two years before that day that the delusion would be known to you as a treating doctor?

A: Well, that would almost go without saying because, after all a delusion is simply the name that we give to a belief or set of beliefs which strikes your average person in a particular culture as peculiar or strange. And since in the process of treating a person you learn what they think, in two years, the chances of learning this would be exceedingly high.

Q: Is a psychiatrist are you trained in psychiatry in such a way or in such a manner that you are able to invalidate facts?

A: No, I don't think anyone can invalidate facts regardless of his training

Court: I'm sorry, Counsel. I have heard the answer, but I don't know what it means But that's possibly because I don't know what the question means Could you clarify your question? What do you mean by invalidating facts?

Mr. Meloling: I'm going to clarify it right now

Court: I don't need to know what it means? All right. Maybe they do (pointing to the jury)

Q: (Mr. Meloling) Assume, if you will, on February 5 last year,, Ms. Cromer went to West Oakland in this city and there at the International Grocery, confronted two little black girls, little girls nine and seven years old, and said





to them words to the effect, Your godmother or your grandmother sent me to get you to take you to your father

At that point in time, is there any psychiatric training that you could possibly have that would permit you to give an honest opinion that when she was looking at those two little girls, she was looking at two animals?

A: (Pause) Let me, uh, say this about the question I certainly believe that there is no psychiatric training that would enable you to know or to say what she was looking at at that time But I would like to say something else because there is an element of mystification, there is an element of making something very simple look very complicated, what we are getting into, and that is, that after all, what this woman or anybody else was looking at at that time is really known to one person only, and that is, in this case, Ms Cromer.

And if she was looking at animals, it would be up to her to explain that to the jury She is the only one who knows what she was looking at For a psychiatrist to say that he knew what she was looking at, he doesn't know anymore than you do or I do. She knows, so she can explain that that's what she was looking at. Fine.

Q: There is evidence in this case that when the defendant was strangling, she had her hand around the neck of this little boy, and when she was strangling him and after when she was putting her hand over his mouth and his nose to suffocate him, that she was in fact doing these acts to a doll or a doll-like object.

Is there anything in your psychiatric training or anything available in the field of psychiatry that would permit them to give an honest opinion that in fact that's what she was looking at when she was strangling this little boy, that is, a doll or doll-like object?

A Well, as I understand it, this question is very similar to the previous one. No, again, I would say there is nothing in one's psychiatric training, and it would be very difficult

Mr Beaupre: I would object to anything beyond that as non-responsive to the question.

Court: The answer may stay in as it is

Q: (Meloling) You read these reports of Doctors Lunde, Ponomareff, Winig, Dolgoff, his medical records.

Did you see anything at all in any of those reports that would indicate to you that at the time Ms Cromer was at

the time she picked up this little boy when he was playing in this shopping cart over here, at the time she carried him or pushed him from one point to another and strangled him to death, that she didn't know that in fact she was pushing a little black boy in that cart and that she in fact was killing this little black boy when she strangled him to death? Is there anything to indicate that to you?

A: I'm sorry Can you read that back to me? I'm not sure what the question was.

Court: Do you want it read back?

Mr. Meololing: I can repeat it.

Court: All right.

Q: (by Mr. Meloling) Is there anything that you have read in any of this literature, the medical reports, the reports of the psychiatrists that saw Ms. Cromer, the statements that she gave to the deputy sheriff, anything at all that you have seen which would show you that she in fact was not pushing a little black boy in that cart or that in fact she was not strangling a little black boy when she took his life?

A: No. There is absolutely nothing in any of that material that would indicate to me that she did not know what she was doing.

Q: Assume, if you will, that on February 11, this is four days six days after the killing of this little boy, Ms Cromer was at Highland Hospital, and Ms. Cromer said, ' I killed a nigger.'

Is there anything that you have observed in any of these reports that I previously referred to that would indicate to you or show you so that you could tell us that she was not talking about having killed a little black boy?

A: No. There is nothing that would indicate that. All of this material seems to me to border on what is ordinarily called self-evident. So somehow to interpret it further seems to me an exercise in sophistry.

The person said that she killed a black person. There is evidence she killed a black person So to talk about food and animals and so on becomes a figure of speech I mean one can always call something else by some other name. And perhaps one should say something about that

It is quite common in everyday language

Mr. Beaupre: Objection; nonresponsive.

Court: Sustained.

Q: (Meloling) You said it is





quite common in everyday affairs to call items by it different names?

A: We all do that all the time sooner or later, we call things by some figure of speech, some so-called metaphor, some other image. I mean if you don't like somebody, you say, 'You are a son of a bitch.' We don't mean that literally a person is a son of a bitch. We call somebody 'The apple of my eye.' We don't mean you are an apple

(Laughter)

A: (Continuing) We say to our daughter, 'You look so sweet, I can eat you up ' That's a figure of speech.

The fact that she may have said something like that, obviously she did not eat the person, so a statement she was going to eat it becomes, in my opinion, an outright lie. If she wanted to eat the person, she had plenty of time to eat him.

(Laughter)

(Continuing) And when people use figures of speech, that becomes a matter of speech for juries to determine, not for psychiatrists

Q: (Mr. Meloling) You read in Dr. Winig's report that Dr. Winig said she was grossly delusional and that her believing things about blacks and Orientals far exceeds simple prejudice.

What is the difference between prejudice and a delusion? Is there a difference?

A: Yes A simple prejudice is one that the observer would say is widely held and that he finds acceptable. And a delusion would be one which he feels is a bit too much But obviously this is an utterly subjective and politically and morally loaded question because the idea that blacks are not human or that Jews are not human or that non-Christians, for that matter, are not human, I mean this is what human history has been about, that people see other people as animals and are ready to kill them. And to say that this is a delusion is a violence to all human history

Q: Assume, if you will, that Ms Cromer is reported to have said that 'The only good nigger is a dead nigger ' Would you construe that as being a delusion or a statement of bigotry and racism?

A: This itself is a matter of one's own subjective point of view. And I must confess that to me actually speaks louder than words, actions speak louder than words and words, if somebody says such a thing, I assume they don't like black people and they are not very nice people until proven otherwise. I personally have no need to speculate further.

Q: You have read Ms Cromer's history at least based upon

what these reports indicate that I have shown to you. Can you tell us what you have observed in these reports, in these medical records that indicate what kind of person Ms Cromer is?

A: I can make some judgment based on the materials which I have read, yes, sir.

Q: What is that?

Mr Beaupre: I am going to object on the ground this goes beyond calling for a psychiatric opinion.

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**"[Mrs. Cromer] was suffering from the consequences of having lived a life very badly, very stupidly, very evilly..."**

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Court: Well, the question is fairly broad I'll sustain the objection that it is too broad You will have to limit it.

Q: (Meloling) You have read the records that I have just reiterated earlier, the medical records of Dr Dolgoff?

A: Yes.

Q: This morning you read the medical records from the San Francisco Hospital, 1977, did you not?

A: I did.

Q: And you also read the medical records from Contra Costa County Hospital, 1976?

A: I did

Q: Was there anything in those records to indicate that Ms Cromer was anything other than Strike that Was there anything in those records to indicate that Ms Cromer was so psychotic during the period of her treatment that she didn't know what she was doing?

A: Absolutely not. Not to me.

Q: You have an opinion as to what Ms Cromer was suffering from, if anything, on February 5, this year?

A: Yes, I do.

Q: What is that opinion?

A: That opinion is that she was suffering from the consequences of having lived a life very badly, very stupidly, very evilly; that from the time of her teens, for reasons which I don't know, she had, whatever she has done, she has done very badly

She was a bad student There is no evidence that she was a particularly good daughter, sister. She was a bad wife. She was a bad mother. She was a bad employee insofar as she was employable.

Then she started to engage in illegal drugs, then she escalated to illegal assault, and finally she committed this murder





She has gone from one bad life decision to another

After all, life is a task You either cope with it or it gets you; that is to say, you go down because you do not know what to do with it. If you do not know how to build, you can always destroy These are the people that destroy us in society, our society, and other people.

Q: You feel that Ms Cromer, because of her pattern, that she wanted to destroy Is that what you are saying?

A: I am convinced of it, that she wanted to destroy

Q: There is some discussion in the reports and the records that Ms Cromer had talked from time to time about suicide.

A: Yes She has made an attempt at it She has also wanted to destroy herself

Q: Is there any indication in that because a person wants to take their own life that that in itself is an indication that they should not be responsible for their conduct?

A: No. That's an indication that they should not be responsible but connect with the fact that many people who think of killing themsleves kill other people. Many people who kill other people kill other people in order to be punished At least then something happens to them, something interesting, something important

Mr Beaupre: I'm sorry What were those last two words?

Court. "Something important."

Witness: "Something interesting, something important."

Mr. Beaupre: Interesting?

Witness: Yes

Q: (Mr Meloling) On April 1, last year, this is some seven weeks roughly after the killing of Reginald Williams, Ms Cromer is reported to have said words to the effect that " If I had the opportunity, I would do it again "

Is there anything that you have seen in any of the reports the medical records, the reports of any of the doctors that saw her that would indicate to you that when she made that statement she didn't know what she was saying?

A: No, there is no indication to me that she did not know what she was saying

Excuse me. May I have some water, please.

(Bailiff complied)

Q: (Mr. Meloling) When Ms Cromer was being talked to by Dr Winig on February 7, which is two days after the killing, she is reported to have

*said to Dr. Winig, " I enjoyed killing the nigger "*

*Is there anything that you have seen, anything that you have read in connection with this case that would indicate to you that when Ms. Cromer said that, she didn't know what she was saying?*

*A: No, sir. Again, I would take that sort of statement as consistent with what happened in this tragic case. People do what they want to do.*

*Q: Is there any question in your mind, based upon what you have read and what you have heard, that Ms Cromer didn't do what she wanted to do when she killed Reginald Williams?*

*A: No, I don't have any doubt at all.*

*Q: It is your opinion, is it not, that in fact Ms Cromer killed Reginald Williams because she wanted to?*

*A: Yes, sir.*

*Q: Is there anything that you have read in connection with this case or anything that you have heard in connection with this case that would in your opinion prevent Ms Cromer on February 5, of last year from developing or having the state of mind of premeditation and deliberation or malice as it applied to the killing of Reginald Williams?*

*A: No, I do not know of anything that would prevent her from developing those states of mind or those conditions for this act.*

*Mr. Meloling: Thank you, Dr. Szasz*

**CROSS EXAMINATION**

*Q: (By Mr. Beaupre) Dr Szasz, when was the first time you saw any records pertaining to this case?*

*A: The first time I saw the records was yesterday afternoon*

*Q: And what records have you reviewed?*

*A: I have them with me, most of them. The records of the examinations of the psychiatrists*

*Q: Could you take those records out that you say you have with you and tell us which ones you reviewed?*

*A: (Complying) Yes, sir. What would you like me to do with them?*

*Q: I would like you to tell me what records you reviewed pertaining to this case.*





*A: This is not necessarily the order in which I reviewed them. They are in the order in which they are in here.*

*Q: I'm sorry, I can't understand you.*

*A: This is not necessarily the order in which I reviewed them This is the order they are in*

*Q: Just list them for me, please.*

*A: Folder from Dr Robert Dolgoff dated April 1, 1980, psychiatric report with appendices.*

*Q: Those are Dr Dolgoff's records?*

*A: It is a letter to Mr Harold Adams with attachments*

*Q: Okay*

*A: Okay Records from the Contra Costa County Medical Services. Letter from Dr. Lunde to the Honorable Winton McKibben, dated October 9, 1980. Letter from Hugh Winig to Mr Michael Cardoza, dated February 7, 1980. Letter from Charles I Morris, M D., to the District Attorney's office, date February 7, 1980. Letter from Dr. George Ponomareff to the Honorable Winton McKibben, dated October 8, 1980. Progress notes from Dr Dolgoff handwritten over a period of some months, perhaps two years, concerning the case. Xeroxed And that may be no. Yes, there are some attachments to that, some letters to various people that he has written That's it*

*Q: Those are the only records that you have every reviewed pertaining to this case?*

*A: Those are all the written records*

*Q: You have never looked at anything else?*

*A: No, sir.*

*Q: You have never seen a six-inch file of Highland Hospital records, criminal justice health records, the records of Dr Everts, the records of Dr Kessler, the records of Dr Cheek, the records of the Center for Special Problems in San Francisco, you have never seen any of those documents?*

*A: That is correct.*

*Q Have you interviewed the defendant's mother, June Saul?*

*A No, sir.*

*Q: Have you interviewed the defendant's sister?*

*A: No, sir.*

*Q: Have you interviewed Dr. Thomas Stern?*

*A: No, sir.*

*Q: Have you spoken to Mr. Thomas Richards or Don Hammond?*

*A: No, sir.*

*Q: Have you interviewed the defendant's aunt, Marion Kollasch?*

*A: No, sir.*

*Q: Have you interviewed the defendant's friend, Clarence Mitchell?*

*A: No, sir.*

*Q: How about her friend, Dianna Bage?*

*A: No, sir.*

*Q: How about her former employer, Windell Fudgen? How about another working partner, Theodore Boyagian, B-o-y-a-g-i-a-n?*

*A: No, sir.*

*Q: Theodore Martins, the bartender?*

*A: No, sir.*

*Q: Dr. C.J. Mayers?*

*A: No, sir.*

*Q: How about Patsy Craffey, a friend of the defendant?*

*A: No, sir.*

*Q: How about Alameda Police Officers Leckler and Allik, have you talked to them?*

*A: Who are they?*

*Q: Two police officers from the city of Alameda.*

*A: No, sir.*

*Q: Have you ever seen any police reports from the Alameda-the city of Alameda?*

*A: No, sir.*

*Q: When was it that you reviewed the records from San Francisco General Hospital?*

*A: Either last night or this morning*

*Q: I thought you just testified that you didn't review those records Didn't you testify that?*

*A: I have some hospital records here.*

*Q: Pardon?*

*A: I have some hospital records here. I mean if you are trying to trap me as to which records*

*Q: Doctor, I asked you to tell me what you reviewed. If you have skipped something--*

*A: Sir, I've told you that I have only reviewed these records. And then you asked me twenty names and asked if I saw them and you know I didn't see any of them.*





*Q: I certainly do know that you didn't see any of them. You have got that right.*

*Now, I've asked you whether you reviewed the hospital records from San Francisco General Hospital*

*A: Well, can I look if they are in here?*

*Q: Certainly, Doctor I asked you to list what you looked at If you have made a mistake or an error, please look in there and correct yourself*

*A: Thank you (examining file)*

*Mr. Meloling: Pardon me, Your Honor, if I may The doctor read those records in my office this morning, and I have them right here. That's why he can't find them. I have the records that he read in my office this morning, and I have them here. He doesn't have them. I have them*

*Witness: Thank you, because obviously, you know, having read all these records in a short period of time, I can only be sure I read what is in front of me now*

*Q: (By Mr Beaupre) I see you are confused about that*

*A: Sir?*

*Q: you are confused about that?*

*A: No, I'm not confused at all*

*Mr. Beaupre: May I see the records you showed him?*

*Mr. Meloling: Yes. They are the hospital records from San Francisco Hospital (handing)*

*Q: (By Mr. Beaupre) You also saw this group of records, Doctor (handing)?*

*A: Let me see (examining) Yes, I saw these records.*

*Q: And those are the records from what?*

*A: San Francisco General Hospital*

*Q: Do you know if these are the complete records?*

*A: I have no idea if they are the complete records*

*Q: Have you ever looked at the Criminal Justice Mental Health Unit Records from Alameda County?*

*A: Sir, may I say for the sake of precision that I have not seen any other records or I would have testified to having seen. So the answer to any subsequent questions about records would be no. These are the only records I have seen.*

*Q: You haven't seen any records from Alameda County*

*Mental Health System at all?*

*A: No, sir*

*Mr Beaupre: May I have just a moment, Your Honor?*

*The Court: Sure.*

*(Pause)*

*Court: Why don't we take our mid-morning recess. Fifteen minutes. The same admonitions are in effect.*

*(Mid-morning recess taken).*

*Court: Let the record show that the defendant is present, all members of the jury are present, counsel for both sides are present.*

*You may continue, Mr. Beaupre.*

*Q: (by Mr. Beaupre) How much have you been paid for your testimony, Doctor?*

*A: I've not been paid for any testimony at all, Sir. I've been paid for the three days which it has required for me to come out here and go back home. $3,000 in expenses.*

*Q: $3,000 plus expenses?*

*A: That is correct.*

*Mr. Beaupre: Nothing further.*

*Court: Redirect?*

**REDIRECT EXAMINATION**

*Q: (By Mr Meloling) Dr. Szasz, is a psychiatric diagnosis as accurate as a medical diagnosis?*

*A: Not usually, no.*

*Q: What is the reason for that?*

*A: Medical diagnoses deal with objective and demonstrable lesions in the body, broken bones, diseased livers, kidneys and so on. Psychiatric diagnoses deal with behaviors that human beings display, and they have to be interpreted in moral, cultural, and legal terms and, therefore, different interpreters will arrive at different judgments*

*Q: Because why, because they give a subjective evaluation to it? Is that the reason?*

*A: Because they give a subjective evaluation, because of the moral dimensions of their evaluation. I can give an example of what would be the simplest one.*

*Homosexuality was recognized as a mental disease until a few years ago. And now it is no longer a mental disease. The American Psychiatric Association has decided that it is not. So now if a psychiatrist says it is a disease, one would say it is a delusion.*





*Q: What was that?*

*A: Now one could say that to say that homosexuality is a disease would not be a delusion.*

*(Laughter)*

*A: (Continuing) They said now they said it was a disease. Not now, but last year, smoking is a disease.*

*Q: Smoking is now a psychiatric condition?*

*A: Not condition, sir, a disease.*

*Q: A disease?*

*A: A disease. Since January 1980. So is gambling*

*Q: Pardon?*

*A: Gambling is also a disease.*

*Q: How do you treat that, that is, gambling, do you take away the money?*

*(Laughter)*

*Court: You win.*

*(Laughter)*

*Witness: That's right That's my recommendation also.*

*(Laughter)*

*Mr Meloling: I have nothing further*

**RECROSS EXAMINATION**

*Q: (By Mr. Beaupre) Doctor, isn't it true that there is no such thing as a mental disease?*

*A: I'm sorry, I don't understand the question.*

*Q: Well, you wrote that, Doctor. You wrote --*

*Court: He says he doesn't understand the question.*

*Witness: You said 'Isn't that true?' You didn't say is it my opinion*

*Q: (By Mr Beaupre) You wouldn't write anything that wasn't true?*

*A: There is an area of opinion. I'm here to give an opinion.*

*Q: Your opinion is that there is no such thing as mental disease. Isn't that right?*

*A: That is correct.*

*Mr. Beaupre: Thank you. Nothing further.*

**FURTHER REDIRECT EXAMINATION**

*Q: (By Mr. Meloling) What is the reason for that opinion?*

*A: The reason for that opinion is the one that has already been developed, that the term "mental illness" is*

a term that is applied to mental behavior And I think it should be restricted to diseases of the body Mental disease, "You are the apple of my eye," that's a figure of speech.

Q: But when you are referring to it as a disease, that's what you object to?

A: That's what I object to. Not only that, if you refer to it as a disease and then you actually believe that it is a disease and then treat it with chemicals In other words, if somebody steals or assaults somebody Let's say, for example, in this case somebody assaults two people of a different race and then instead of going to jail, they are getting chemicals for it so they can commit another crime.

Mr. Meloling: Thank you very much. I have nothing further.

(Defense counsel confer.)

Mr. Beaupre: I have nothing further.

Court: Do members of the jury have any questions they wish to ask this witness?

(Jury questions passed to the Court )

**COURT/JURY EXAMINATION**

Q: (By the Court) Based upon the materials that you have reviewed, Doctor, do you have any opinion as to whether --does the evidence indicate to you in any way that drugs were involved in the conduct that was shown by what was alleged to have been the killing of this child?

A: My impression from reading the documents before me is that drugs are in no way involved in the act itself I interpreted the defendant's drug use as a part and parcel of her increasingly bad behavior.

Instead of working, taking care of herself, being good to people, she took illegal drugs, which simply had the effect of making life even more disorganized for her But I see no point-to-point causal connection between taking drugs and killing human beings There is no scientific evidence at all that the one leads directly to the other.

In general, what drugs do is that they may allow people to do what they want to do anyway. In fact there is an old Roman proverb that "In wine there is truth." Under the influence of drugs, people are simply more likely to do what they are likely to do anyway, violent people to kill, the best people to become the best, or perhaps just to go to sleep.

Q; All right Now assuming hypothetically that the reports are true that this defendant committed no abnormal behavior up to her teenage years, and assume further that the reports are true that she started acting the way the reports indicate





she started acting from shortly after she got married, how would you account, up to the time of the killing of the child, how would you psychiatrically, if at all, account for this apparent change in her conduct?

A: Well, I hate, Your Honor that you added "psychiatrically" because my judgment is that this is very, very much a job for a jury to determine why people do such things as they do. But as a psychiatrist, as a psychologist, I might, with as much modesty as I can about this sort of thing, venture this sort of idea:

Life gets in some way existentially, to use this modern word, life gets a little more difficult after puberty, after fourteen, fifteen, sixteen Up until that age, it is enough for us to be the son or daughter of whoever we are, to go to school, to be a student.

After thirteen, fourteen, fifteen, we have to be somebody We have to do something. And then if we are not good at basketball, at mathematics, at being a mother, a father , a housekeeper, a something, increasingly our self-esteem deteriorates and increasingly that person's life will turn sour and that person will have difficulty in putting it together.

So I don't think one needs any special medical or scientific explanation to account for the difficulties that people run into in their young years, which explains why people after adolescence in their early adulthood, have difficulties with the law, with drugs, with their lives, because that is a crucial period, making something with your life If you don't do it between the ages of fifteen and thirty you will be trouble.

Q: Now do you feel, from your study in the field of psychiatry, that psychiatrists are better able to understand those changes that occur in people than persons who do not have the benefit of your specialized training?

A: Well, this is perhaps what the gentleman, Mr. Beaupre, was getting at was my belief about mental illness

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**"In psychiatry, there are only words, talk and the judgment of the credibility of that talk."**

---

I very strongly believe that if people are honest and intelligent and thoughtful, they can do just as well and usually better than psychiatrists about judging these things. And the evidence is that writers, I think Shakespeare and Mark Twain did much better than all the psychiatrists that I know.

Court: The Court has a couple of questions of its own.

Q. (By the Court) You indi-

cated an answer to a question asked of you by Mr Meloling that you could examine a person and you could form an opinion as to that person's condition at the time that you examine him or her.

A: (Nodded affirmatively)

Q: But that you felt that it would be invalid for you to hazard an opinion as to what that person's mental condition was on some prior occasion. I assume the further away from the date of your examination, the more tenuous the opinion would be.

A: (Nodded affirmatively)

Q: My question to you is, as a psychiatrist, now how, psychiatrically, do you determine at the time of your examination if the person has the ability to form a given mental state at that time, what procedures do you go through to make that determination, or do you?

A Your Honor, can you explain to me a little further what you mean about how I determine whether a person can form a mental state, because, as you yourself know, we are dealing here with rather slippery abstractions, that is, forming a mental state as against having a mental state.

Q: All right

A: What would you like to get at?

Q: I didn't mean it in the abstract form. I should have said, are they capable of holding, entertaining a particular mental state at a particular time?

A: Okay. Well, the way I do that, and the way every psychiatrist more or less who is worth his salt does this, is not very different from the way you are asking questions of me. You are asking questions and you are watching what sort of response I give, and then you make a judgment about how with it your interlocutory is Depending on the occurence, intelligence, relevance of those answers, you form a judgment about a person's intelligence, knowledge about events, responsibility about what is going on, are they with it? It is a fairly common-sensical judgment based entirely on conversation.

And there is a good reason why psychotherapy is called a talking cure. That's often used as a pejorative. But it is after all what it is doing. That's what a great deal of the legal profession is about.

It is through talking that you find out what a person is like. Obviously you can't tell what a person was like six months before. He could have had a head injry, he could be in an entirely different state.





Q: Do you as a psychiatrist have any tools which you use in evaluating these reactions that you witness when you are asking questions, do you have any tools which you use?

A: Sir, that is

Q: I'm sorry Different from the tools that we non-psychiatrists would use?

A: That, I think, goes to the heart of the matter of what psychiatry is about In my opinion, and I have been in psychiatry for thirty-two years and have enough honors to prove that I have some worth in the profession, we don't have tools We do have some ideas, some scholarship, some knowledge. So I would say that the psychiatrist, if he is a good psychiatrist, may know more about this sort of thing than a lay person in terms of information, in terms of knowledge about what to look for and what certain information might mean

But the issue of tools is quintessential In medicine, there are tools, there are blood counts, there are x-rays, there are CAT scans

In psychiotry, there are only words, talk and the judgment of the credibility of that talk

These are all judgments and they are highly influenced also by the purposes of the examination.

I think it would be a mistake for me not to enlarge on my answer here, if I may, Your Honor

Q: You may

A: The purpose of an examination and the investigation and the hearing like this is, after all, not just to determine abstractly what a defendant's mental state was months ago, but it is to determine whether or not that person should be punished by the law or to be set free into a psychiatric system to be held for a few months and then set free again to conduct whatever conduct they want to engage in. That is after all the real purpose against which this examination is conducted

Q: Well, if one were to engage your services as a psychiatrist and say, Doctor, what we want you to do is to examine this person and tell us to the best of your opinion (a) what this person's mental state is now and (b) if you can do so, what that person's mental state was vis a vis the ability to hold malice, to deliberate, to premeditate as of a prior date, now would you as a psychiatrist simply give us that opinion that I have asked you for or would you give that opinion based upon your supposition

as to how that opinion may ultimately be used to either imprison another person, not imprison them, release them or what-not?

Are you saying that as a psychiatrist that you necessarily would have to consider this background of what may happen with your opinion in determining what your opinion would be?

A: Well, again, Your Honor, in all modesty and fairness, what I am saying is that my opinion and every psychiatrist's opinion who would sit in a chair like this, would be very heavily influenced by this dispositional programmatic idea in his head; that this is the ultimate truth of such testimony, in my opinion, and I am saying this under oath, very seriously

Q: Okay

A: How may I cite some evidence for this?

In records I surveyed, this is crying out loud and it is almost like denying that white is white and black is black The psychiatric testimony given by Dr. Levy when the defendant assaulted two people with a bottle was, I think, this person should not be punished but should be treated by psychiatrists. Now that's a recommendation; that's not psychiatry That's like saying let's go to this movie or let's go to that movie. That's a recommendation about how somebody should be treated It is there in black and white.

**"There is no disease from which you get excused, except schizophrenia."**

Q: Okay

A: Now let me add, this is usually concealed This was the essence of the book which I authored more than twenty years ago, The Myth of Mental Illness Schizophrenia looks like a statement like "The door is brown." That looks like a statement It is brown, it is not brown. It is true or false. But that's not true. Schizophrenia is a statement like "Please open the door," or "Please close the door." It is a hidden recommendation. Schizophrenia used to be the recommendation "Let us commit this person to a hospital." "Let's treat them like a sick person, let's excuse them for a crime." That was a hidden agenda.

Looks like diabetes, but it isn't diabetes because for diabetes you don't get excused for pneumonia you don't get excused. For brain tumor you don't get excused. For leukemia you don't get excused. There is no disease from which you you get excused, except schizophrenia





Court: However, Doctor, we don't ask you to tell us whether the person should be excused or not We want you to tell us just the facts as near as you can, psychiatrically

A: I said

Q: (By the Court) Is this person capable of harboring a mental state that we call malice? And we define malice for you. We don't care if you know what we intend to do with it or not

A: I understand

Q: Do you feel that a psychiatrist can give us that kind of information and would do it? I'm asking you about yourself You don't know about other psychiatrists.

A: Okay

Q: Would you give that kind of information irrespective of how the psychiatrist thought we would use that information?

A: I think that is within the limits of the possibilities, and I have always tried to do that as sincerely as I've tried to do from the reconstruction of the events, I think

Court: Do members of the jury have further questions?

(No response)

Court: Further direct?

Mr Meloling: No, Your Honor

Court: Recross?

Mr Beaupre: Yes, Your Honor.

Court: All right.

## FURTHER RECROSS EXAMINATION

Q: (By Mr Beaupre) Dr Szasz, you made a statement on this, you stated a few minutes ago that this person would be released in a few months if put in a mental hospital Is that right?

A: Might be.

Q: Isn't it true that you have written that most that you have written that most people get longer sentences than if they were handled by the penal system?

A: Would you tell me what you are referring to, the date?

Q: The date that you wrote that?

A: Yes

Court: Let me intervene anyway

There is no objection, but I am doing so. This jury is not to be concerned at this stage with this witness' opinion as to what ought to happen to the

*defendant, depending upon what you find This opinion is not relevant to that issue. You make certain determinations on your own based upon the objective evidence that is presented to you. All right. Any further questions?*

*Mr Beaupre: I take it you are ruling I cannot explore that topic*

*Court: That is correct*

*Mr. Beaupre: I have no further questions.*

*Court: May the witness be excused?*

*Mr. Meloling: Just one question, Your Honor.*

**FURTHER REDIRECT - EXAMINATION**

*Q: (By Mr. Meloling) Dr Szasz, you mentioned on the subject of the reliability of psychiatric diagnosis, from a legal standpoint. Are you familiar with refusal by Sigmund Freud to testify in the Loeb Leopold case in Chicago?*

*Mr. Beaupre: Objection; irrelevant*

*Court: Sustained*

*Mr. Meloling: I have no further questions*

*Court: May the witness be excused?*

*Mr Meloling: Yes*

*Court: Both sides?*

*Mr Beaupre: May he be subject to recall?*

*(Laughter)*

*Mr Beaupre: Oh, he's got another day here, a thousand bucks a crack, we ought to have*

*Mr. Meloling: Counsel's remarks are not necessary We don't know what he has paid all the psychiatrists he called, Your Honor.*

*Mr. Beaupre: I'll be glad to show you*

*Mr. Meloling: Anyway, from the standpoint of recalling*

*Court: Just a moment The matter of recall, I will want to talk to counsel about that*

*For the moment, you are not excused, you are released*

*But then I will want to talk to counsel before we take the noon recess as to the probability of this witness being called again, and if so, for what We do understand he's come from across the country, and unless there's some real expectation that he will be recalled, I don't propose to hold him here.*





*All right. You are released at the moment, Doctor, but you are not excused You will know shortly after noon whether we will still keep you on the hook*

*Witness: Thank you, Your Honor*

*Court: All right*

*Mr Meloling: Can we let him know by two o'clock?*

*Court: All right. By two o'clock*

*Witness Thank you.*

*Mr.Meloling: Thank you.*

*Our next witness is Lee Coleman, Your Honor*

*Court: All right*

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## DISCUSSION OF THE TESTIMONY

To: American Journal of Forensic Psychiatry

From: **SELWYN M. SMITH, M.D.**
Professor of Psychiatry
University of Ottawa

Psychiatrist-in-Chief
Royal Ottawa Hospital

Dear Mr Miller:

Thank you for your letter of February 20, 1982, and for forwarding to me copy of the trial transcript for my comments. I have read this with interest.

Dr Thomas Szasz's views are well known and have certainly received considerable discussion and comment and engendered a flurry of debate for many years. This is not the forum to provide a focus for disagreements concerning Dr Szasz's views as these have been well documented in the psychiatric literature. I shall instead confine my comments to the usefulness and quality of psychiatric testimony as portrayed by Dr Szasz in this particular transcript

## EXAMINATION OF THE DEFENDANT

The preparation by Dr. Szasz prior to giving testimony was in my opinion extremely superficial and contrary to acceptable standards of practice. By his own account Dr. Szasz did not review all the material that was available and that described the psychiatric testing on the defendant. Nevertheless, he came to court to testify and in many ways utilized the witness box as a forum for a presentation of his own particular views.

**"Szasz utilized the witness box as a forum for a presentation of his own particular views."**

His conclusions were clearly made prior to his brief review of the material. This flippancy was compounded by his own statement that he saw no need to examine the defendant. Surely when requested to offer an opinion involving one's expertise as a physician and psychiatrist, one should indeed be prepared to examine the defendant with an open mind and not prejudge the situation because of one's own beliefs. This is particularly true if one is being handsomely paid as was the situation here. I found Dr. Szasz's stance particularly troubling and certainly demeaning to the profession of medicine in general, and psychiatry in particular.

Dr Szasz is a Professor of Psychiatry, and yet I found his comments pertaining to psychiatry in general and schizophrenia in particular, simplistic, unrealistic, and unscientific, and not a true reflection of knowledge. In my opinion, such comments were not helpful to the court. I was particularly troubled also by the approach Dr. Szasz adopted in suggesting that other psychiatrists have perjured themselves in regard to their professional opinions. I can only presume and indeed certainly hope that counsel for the defendant placed before the jury opposing views concerning the nature of mental illness.

## CRIMINAL RESPONSIBILITY

At first blush, it is clear that Dr. Szasz was answering the ultimate question relating to criminal responsibility. This indeed was the issue before the jury. He was correctly halted in this connection by the judge who stated that Dr. Szasz or the jury should not be concerned with eventual disposition. To provide





**"His testimony, in general, exhibited a poor command of medical-legal principles and a callous disregard of an ill person."**

such an opinion on a legal issue is not the role of the psychiatrist and Dr. Szasz's approval in this regard is certainly contrary to the views held by a number of distinguished forensic psychiatrists in the United States. His testimony in general exhibited a poor command of medical-legal principles and a callous disregard for an ill person.

## PROFESSIONAL WITNESS

Dr. Szasz's injection of humour into his courtroom testimony was in my opinion quite demeaning to the serious task at hand. This unfortunately was compounded by the repartee between the counsel following the examination of Dr. Szasz. Such a state discredits the profession of medicine in general and psychiatry in particular I was left at the conclusion of reading this testimony, with the distinct impression that it is to be expected that the public at large should hold such a dim view of the value of psychiatry when a Professor of Psychiatry is prepared, without examination of the defendant, to come to court, be qualified as an expert, and then comment on a situation in a preconceived way The witness box should certainly not be used as a forum for one's own particular idiosyncratic views To be paid so highly for such nonsensical views, places Dr Szasz in the category of the "professional witness," something he himself has criticized.

It is my view that if you wish to publish the transcript, it should indeed be placed alongside the comments of one of the other psychiatrists at trial to provide a balance for the readers of this journal. The journal should not be utilized as a forum to publish once again Dr. Szasz's views without rebuttal in the context of the trial.

**JOSEPH C. FINNEY, LL.B., M.D.**

PSYCHIATRY IN A MURDER TRIAL (Comment on the Szasz testimony in the Cromer case)

*This article was written after the publisher of The American Journal of Forensic Psychiatry sent me a copy of Thomas Szasz's testimony in the case of People v Darlin June Cromer, with a letter from Donald T Lunde, M D., asking "a reviewer" to*

*comment on specific criticisms that he offered.*

I venture to say that psychiatrists (in common with psychologists, sociologists and anthropologists) have, more often than not, an emotional bias toward the defendant in a criminal trial. That is, those naturally inclined toward the defense greatly outnumber those emotionally inclined toward the prosecution. This is so because of the strong humanitarian values we hold. We believe in being charitable, kind, sympathetic, understanding, and forgiving, and not harsh, revengeful and punitive. In most cases, the opposing sympathy, sympathy for the victim of the crime, is not activated.

## RACIAL BIAS

It's not clear that the bias of psychiatrists for the defendant applies to trials for crimes of every kind. It may be that in certain crimes, psychiatrists are emotionally inclined against the defendant. These might be cases in which the psychiatrist's sympathy is aroused for the victim, perhaps cases in which the psychiatrist identifies with the victim. This point could be the object of some research. It may be that the nature of the Cromer crime murder that was racially motivated, turned Dr. Szasz against the defendant as it turned the prosecutor and the jury. We are told that the prosecutor asked for and got a death sentence on the "special circumstances" that the killing was racially motivated. This manifest content is irrelevant to the issue of the insanity plea, but it was not irrelevant to Dr. Szasz's willingness to testify. He specifically associated from killing blacks to killing people of his ethnic group, thus identifying himself with the victim.

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**"Are there any reasons for first degree murder that are not *bad* reasons?"**

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Murder is the gravest legal category of killing. Manslaughter is a lesser crime, and in virtually all jurisdictions, two or three degrees of murder are defined. I gather that this woman was convicted of first degree murder, the gravest degree. Under U.S. Supreme Court guidelines of constitutionality, death sentence is permissible when reasonable criteria are spelled out for this option. It might seem reasonable to impose death for a grisly, sadistic, cruel killing preceded by torture. But does it make sense to give this woman the death sentence because she had bad reasons for committing the murder? Looking at the definition of





first degree murder, and its distinction from manslaughter, and from murder of less degree, one must ask, are there any reasons for first degree murder that are not *bad* reasons? To focus on her racial bias is merely to inflame the jury emotionally with matters that are not germane to this woman's culpability.

## PSYCHOLOGICAL/ BIOLOGICAL ILLNESSES

Another preliminary comment: the only things that Szasz recognizes as illnesses are biological illnesses. I have published reasons for recognizing psychological illnesses, too (1,2), and indicated what the criteria should be, and how to measure them. In the 20 years since publishing those papers, I have devoted much of my career to developing such measurements. Nevertheless, there is one sense in which Szasz is right. The law should not treat psychological illnesses the same as it treats biological illnesses.

Psychological illnesses (or, for that matter, psychological disabilities) are acquired by learning. They are learned and reinforced by rewards and punishments. The classical prototype of psychological illness or disability is hysterical neurosis, which includes self-deception at its core, and thus consists of a deepseated playing of a role, without the person being aware that he plays a role. If the law treats the hysterical neurosis as an illness, and rewards it either by financial compensation for disability, or by excuse from punishment for crime, the effect on the individual is to make him "sicker": i.e., to strengthen and reinforce the self-crippling internal behaviors by which he enslaves himself and cripples himself. I testified factually to that effect in a social security disability case, but a court later held (3) that the Administrative Law Judge had been wrong to deny the disability claim on that basis. Of course, this is a matter of public policy that is appropriately decided by legislation. Legally recognizing psychological illness (e.g. hysteria) as illness has also a subtle effect on the public, eroding truth, honesty, openness, responsibility and self awareness, and encouraging other people to get rewards and evade responsibility in the same self-crippling way.

So if this were a case of hysterical neurosis, I might testify for the defense that the neurosis is present, and yet I would feel that the law should treat it as a non-illness. The second half of that sentence is my personal opinion on public policy, a value judgment, and I should not be allowed to give it in court, as the court doesn't care what I think the law ought to be. If this were a case of hysterical neurosis, I could at least sympathize with Szasz's de-

sire to see the prosecution win. Unfotunately Szasz did not make it clear that what he was testifying about was his view of what the law ought to be.

Now we come to a crucial aspect of this case. The evicence (not contradicted, so far as I know) was that Darlin June Cromer met the accepted diagnostic criteria for schizophrenia, and not for hysterical neurosis. To Szasz that makes no difference. He considers that schizophrenia, like hysteria, is a psychological illness, i.e. one acquired in a person's life experience through learning from the

**"The fact of schizophrenia, according to Szasz, should not affect the verdict nor the sentence."**

social environment. Szasz advocates that such conditions should not be regarded as illnesses in the eyes of the law. A schizophrenic should be regarded as a person without illness or disability. The fact of schizophrenia, according to Szasz, should not affect the verdict nor the sentence. If, indeed, we believed that schizophrenia is learned from the social environment, we might agree with Szasz in drawing that conclusion. Twenty years ago it was reasonable to believe that of schizophrenia. But in the last 20 years, evidence has accumulated that schizophrenia is a biological illness. I won't summarize the evidence here, nor try to persuade those who are not convinced of it. The weight of scientific judgment has swung heavily on this issue of fact.

Now suppose that the defendant is shown to have a biological illness that affects her behavior. To make the point clear, let's get away from schizophrenia and look at mechanical injury of the brain. Suppose the woman were hit on the head with a rock, and suffered mashing of her cerebral cortex. Suppose that her conduct changed sharply at that time. Before, she was bright and well-behaved. Afterward, she fails in her work, she hits people every day for no apparent reason, and she begins killing people occasionally, say, about one victim every three years, on the average. What should a criminal court do? Would Szasz think that such a person should be held criminally responsible in court? Since Szasz was allowed to give his opinion that schizophrenics are responsible for their acts, perhaps he should have been asked this hypothetical question, too. Under prevailing laws she'd be found not guilty by reason of insanity. She would probably be committed to a mental hospital. But soon she would be released. Why? Because no psychiatrist could say that further treatment could help her; and because no psychiatrist could predict how soon, if ever, she would kill again. So she would be released, and, by hypothesis, kill again.





## FACTS, VALUES, EMOTIONS

Still, that doesn't affect how we should testify in this case. As expert witnesses, we don't make law: we work under the law as it is. In testifying, the expert witness is to confine himelf to the facts, and not be affected by his values, his emotions, his hopes that the defendant will be acquitted or convicted, nor even his opinion that the defendant ought to be convicted or ought to be acquitted. Psychiatrists, like others, are human beings, and are influenced by emotions despite efforts to be neutral, impartial, objective, and factual. Still, we should do our best to be impartial. We should be willing to testify factually for the defense, even when we hope the prosecution will win, and willing to testify factually for the prosecution even when we hope the defendant will win.

I can remember four murder cases in which I testified either in court or in deposition: in two cases for the defense, and in two cases for the prosecution. In one of the cases, I shuddered to think of the consequences of a finding of not guilty by reason of insanity (NGRI). It was likely that the defendant would (after a brief confinement in a mental hospital) soon be free to roam the streets and kill again. Nevertheless, I gave the testimony that resulted in his acquittal. Why? Because it is the duty of an expert witness to testify truthfully regardless of the consequences. We don't make the law We might recommend to the legislature (or the Congress) what the law ought to be, but the courtroom is not the place to do so. We have to work under the law as it is.

## REVIEW OF LUNDE'S CRITIQUE

Now let's look at the four negative criticisms that Dr. Lunde makes of Dr. Szasz's testimony.

*[1] that Dr Szasz did not examine the defendant, but gave an opinion about her*

What I think Dr. Szasz tried to do was to give an opinion on whether the conclusions reached by other doctors reasonably followed from their observations. If so, that's legitimate. I used to testify frequently before Administrative Law Judges on appeals of denials of Social Security Disability In this role, I was not allowed to examine the patient. My task was to read the medical reports and interpret them to the court: to tell the court what conclusions could reasonably be drawn from the medical evidence. That's a perfectly legitimate thing to do.

*[2] that Dr. Szasz did not review all her medical records, yet rendered an opinion.*

That's okay, too, so long as he truthfully identified which ones he had read and which ones he had not. On cross-examination, the defense attorney can bring the omissions to light, and he did so in this case. What the defense attorney failed to do in this case was to ask questions of the form, "Would it change your opinion if you knew such and such?" That could have been very effective with Dr. Szasz, as the defense attorney might have shown that Dr. Szasz's opinion would have remained the same regardless of what the facts might be.

*[3] that Dr. Szasz testified as an expert in psychiatry that there is no such thing as mental illness.*

Here we need to distinguish several points. Szasz uses a much narrower definition of disease, illness, or sickness than the Standard Nomenclature does. I believe that ethically Szasz should have said so. Since he didn't, the cross-examining attorney should have brought it out. He should have asked Szasz to look at the Standard Nomenclature of Disease, and also at the International Classification of Disease, and confirm that schizophrenia and other mental illnesses are listed therein. One thing that Szasz means by his dictum is that only biological sickness should count as sickness in the eyes of the law,and that psychological sickness, acquired by social learning, should not count as sickness in the law. On this point I agree with him (hysterical neurosis should be no defense for murder), though not all psychiatrists would agree. Be that as it may, our opinion is a value judgment and, if we make that clear, the court is unlikely to hear it. Our opinion on what the law ought to be is seldom considered relevant in a court. I don't say never, because sometimes the courts do make new law, and hence consider what the law ought to be, though I'd prefer them to leave such decisions to the legislature. There is, however, a factual point at issue, in this case. Szasz denies that schizophrenia is a biological illness. He believes that schizophrenia is acquired environmentally, learned through one's experiences in life. But the weight of scientific evidence seems otherwise now. I think ethically Szasz should have told the court that his opinion is a minority now on that issue. Since he failed to do so, the cross-examining attorney should have clarified that this is an issue at stake, and that Szasz's social learning theory of schizophrenia is no longer accepted by most experts in the field.





*[4] that Dr Szasz, who criticizes forensic psychiatrists for testifying for pay, did so himself in spades, receiving $3,000 for two hours of testimony, a pay rate of $1500 per hour, according to Dr Lunde.*

But, in fact, Dr. Szasz, who works in New York, testified in California. He missed three days to travel and to testify. Before agreeing to testify, he spent some hours reviewing the record and

**"His rate of pay was not $1500 per hour Surely Dr. Lunde knew that."**

discussing the case with the attorneys. It seems fair to estimate that this case cost Szasz 30 hours of his professional time. So his rate of pay was not $1500 per hour but $100 per hour. Surely Dr. Lunde knew that. I would not criticize either Dr. Szasz or Dr. Lunde for charging $100 per hour, though my own fee for forensic work has been $75 per hour. Maybe I should raise it. Incidentally, if Dr. Szasz has in fact said that psychiatrists should not be paid for testifying in court, this is another point that the cross-examining attorney should have brought out.

Finally, let us look at some specific points in the testimony.

Defense attorney Beaupre had no grounds for objecting to the prosecutor's having Szasz tell what he had studied and written. The court was right to overrule the objection. The defense attorney hurt his case with the jury by his foolish attempt to exclude testimony that was obviously relevant.

**" .. that Dr. Szasz testified that Dr. Lunde's testimony was false as to border on perjury was inappropriate, offensive and alarming."**

Szasz agreed that he is a "member" of the *American Board of Psychiatry and Neurology* That's false. The Board has members, but Szasz is not one of them. He should have corrected the wording, to say that he is "certified" by the Board, or is a "diplomate" of the Board.

The definition of mental illness that Szasz gave the court (*"deviant, distasteful, illegal, obscene"*) is highly personal and idiosyncratic. Very few experts in the field would agree that this is an adequate

definition. Question: did Szasz have an ethical obligation to say so? Mr. Beaupre was incompetent in his failure to bring that out on cross-examination. Furthermore, DSM-III gives specific criteria for schizophrenia and other mental illnesses.

I find it inappropriate, offensive, and alarming that Dr. Szasz testified that Dr. Lunde's testimony was not only false, but so false as to border on perjury. Dr. Szasz has a right to disagree with Dr. Lunde, but his accusation of perjury is totally unjustified. I'm appalled that he said such a thing.

On what we're given, it seems that Dr. Lunde and not Dr. Szasz has the facts right. This is hard to say for sure without reading Dr. Lunde's testimony, but the issue seems to be whether diagnoses can be made on the basis of response to medicines, response to treatment. Dr. Szasz denies it, but it happens all the time. One example: a patient is diagnosed schizophrenic because his symptoms seem to resemble schizophrenia more than manic-depressive illness. A doctor treats him with thioridazine, which is good for schizophrenia. He improves, but not greatly. Another doctor gets the idea of trying lithium, a medicine good for manic conditions. The patient recovers fully. The doctor changes the diagnosis from schizophrenia to manic-depressive illness on the basis of this good result of a therapeutic trial.

Another example: a patient seems to have a mild depression. A doctor treats him with a tricyclic antidepressant. The patient recovers from the depression, but becomes manic. After this unfavorable therapeutic trial, the doctor changes the diagnosis from depressive neurosis to manic-depressive illness (bipolar affective disorder).

Dr. Szasz is also in error in saying that the only effect, or the main therapeutic effect, of psychiatric medicines is to dull the person. Sometimes, in fact, they do dull the person, but that is not the desired effect; that's not what we mean by successful treatment. The goal is to restore the person to autonomous thinking, to a state of freedom. Dulling is an undesired side effect. We try to find dosages and combinations that will have as much therapeutic effect as possible and as little side effect as possible. I can't believe that Dr. Szasz doesn't know that.

Prosecutor Meloling asked Dr. Szasz whether Mrs. Cromer was so psychotic that she didn't know what she was doing. Szasz's answer in the negative, if valid, shows no more than that Mrs. Cromer did not conform to one of the alternatives that would have made her in-





sane under the McNaughton rule. The answer doesn't suffice to draw any conclusion of sanity even under the McNaughton rule.

All the arguments that Dr. Szasz made that Mrs. Cromer should not be found NGRI are equally good as arguments that nobody should ever be found NGRI. An alert defense attorney would have made this clear on cross-examination. It would have weakened the impact of Dr. Szasz's testimony The closest the defense attorney came to it was to have Dr Szasz say that there is no such thing as mental disease. That gets toward the point, but doesn't quite make it.

## PSYCHIATRIC TESTS

Dr. Szasz says that medicine has diagnostic tests, while psychiatry has nothing but words. The fact is that we have tests, ranging from the WAIS and MMPI to the Dexamethasone Suppression Test and the REM latency. I think psychiatrists may be at fault in not using these tests often enough, but I'm not aware that Dr. Szasz has made any effort to correct this situation. Perhaps the reverse. Since he doesn't recognize any tests, he seems to discourage their use.

Szasz is right in saying that the supposedly factual statements people make are often influenced by the conclusions that may follow about what ought to be done. Psychiatrists are not alone in this failing. Greater use of objective tests would help to remedy that situation.

## APPEAL WARRANTED

From the facts that we are given, and from the segment of testimony under direct and cross-examination, which was sent me, I strongly suspect that under our laws Mrs Cromer was entitled to found not guilty by reason of insanity. From the same segment of evidence I conclude that the defense attorney did not do a competent job in defending Mrs Cromer He did not know how to cope with psychiatric testimony He did not cross-examine adequately. He could have done better if he had brought in as co-counsel one of the 25 or more attorneys who are also psychiatrists; or at least had a legally-informed psychiatrist advise him on the cross-examination;or at the very least, had the services of an attorney experienced in psychiatric issues and knowledgeable on the strengths and weaknesses of Dr. Szasz's well-known controversial points of view. A defendant facing a possible death penalty is entitled to legal services of very high quality. This defendant did not receive legal services of even average quality, considering the issues involved. She

might as well have had no attorney at all. I believe that an appeal could be taken on grounds that she did not have the constitutionally-guaranteed services of an attorney.

## REFERENCES


(1) *Prolegomena to epidemiology in mental health J Nerv. Ment. Dis , 1962, 195,99-104*
(2) *What is sickness? Merrill-Palmer Quarterly, 1963, 9, 205-228.*
(3) *Dixon v. Weinberger*



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*Members of the American College of Forensic Psychiatry as well as subscribers to the Journal are invited to comment on the segment of trial testimony presented in the Journal or on the reactions of Drs. Lunde, Smith and Finney [Ed ]*

### IDAHO ELIMINATES INSANITY DEFENSE

*The law says mental illness or defect may not be used as a defense in criminal cases. Instead, a trial should be held on guilt or innocence, and if a defendant is found guilty, a judge will consider mental illness when sentencing. Dr. Ronald Shiensky comments: "This move, if it can withstand constitutional challenges, will probably represent a trend and a major change in English-American law. Just how one with no "capacity to intend" can be held responsible for a crime is confusing. Crimes require both an 'actus reus' (act) and 'mens rea', usually intent. Our rising crime rate produces pressure to limit protections afforded criminal defendants. The democratic experiment is seeing hard times."*

### CONJOINT REVIEW TEAM

**Roger Guzman, M.D., Forensic Services Department of Centracare Saint John, New Brunswick, offers us the use of their "Conjoint Review Team" to review books and manuscripts. The team consists of a psychiatrist, psychologist, criminologist and Registered Nurse. As a group, they will be able to provide well-balanced commenteries of works submitted to the Journal.**

### MEMBERS OF THE BAR AND BENCH

**The National Institute for Trial Advocacy is pleased to announce the upcoming Mid-America Regional to be held May 27 - June 6, at the University of Kansas School of Law, Lawrence Kansas. Those interested should contact: Prof. Laurence M. Rose, Univ. of Kansas School of Law, Lawrence, KS 66045 or call 913-864-4010**



# UNWRAPPING THE RIDDLE OF THE BRAIN-INJURED PATIENT BY UTILIZING THE BEAM EEG

**Leonard R. Friedman, J.D., M.D.**

*Dr. Friedman sent the following article to us, saying: The BEAM EEG is a new discovery and is of the utmost importance. It enhances our capability as forensic psychiatrists in locating areas of damage in the brain and has tremendous medical-legal implications "*

*Dr. George Mendelson, M.D., reviewed Dr. Friedman's article, sharply disagreeing with the author's statements. Dr. Mendelson commented: "The BEAM EEG is not an accepted test in psychiatry" and that "there is no way that evidence of cerebral pathology can be said to 'correlate' with subjective pain and suffering."*

*The Journal, in publishing Dr. Friedman's paper, does not necessarily endorse his statements or findings. The paper is published by us as a personal exploration in a growing field of medical research involving microtechnology, imagery and computers.*

*BEAM, an acronym for "Brain Electrical Activity Mapping System," is the brainchild of Dr. Frank Duffy of Harvard Medical School. BEAM is an imaging instrument which converts the tracings of an electroencephalograph into a color contour map. The instrument is being used as a visual aid in the study of brain disorders, disability, mental illness, senility and criminality Dr. Schildkraut of Harvard Medical School calls BEAM "an important tool by which to pursue our studies of depressive disorders."*

*[Editors]*

### SYMPOSIUM IN FORENSIC PSYCHIATRY

*The American College of Forensic Psychiatry will hold its 3 day Symposium (Fri-Sun) on February 4,5,6, 1983 in Santa Barbara, California at The Biltmore Hotel (on the ocean front) Particular focus at this meeting will be given to the role of the psychiatrist as expert witness in civil and criminal cases. There will also be workshops in other areas of forensic psychiatry. Participation is limited to 100. Please let us know as early as possible of your interest.*