

[The Shame of Medicine: Acquittal by Psychiatry](#)

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When a pathologist gives expert testimony in a murder case, he may be able to say why the victim died. The pathologist-physician would not be expected to express an opinion about the defendant's guilt or innocence; were he to express an opinion about it, it would not be attributed to his medical expertise.

When a psychiatrist gives expert testimony in a murder case, neither the identity of the killer nor the cause of the victim's death is in doubt. What is in doubt is the killer's "criminal responsibility" for the crime:

Did he or did he not possess "mens rea"(guilty mind) at the time of his offense?

Pro forma, the psychiatrist testifies about whether the killer was or was not insane at the time of the killing. De facto, because of the function of the term "insanity," especially in the context of a murder trial, the psychiatrist-physician testifies about the defendant's guilt or innocence. Moreover, his "expert opinion" is attributed to his medical expertise.

Law, psychiatry, and the public treat the term "insanity" ("mental illness") as if it were a property inherent in, or attributable to, a person, a moral agent; that is, as if it were a phenomenon or fact, like having brown eyes or a broken arm. However, the insanity defense—like any courtroom defense against an accusation—is a tactic, not a fact. Debating the "validity" of insanity defenses is shadowboxing: The "experts" argue about dispositional tactics as if they were empirically verified or verifiable medical observations or facts; they disagree about how the criminal justice system ought to deal with the defendant, not about what the defendant did to his victim.

Murder trials are stages for the enactment and resolution of real-life tragedies. They are not settings devoted to truth-seeking. The script defines what the actors must say, and the play must end in acquittal, conviction, or a psychiatric verdict of "not guilty by reason of insanity"/"diminished capacity."

In July 2008 a Welsh couple—Brian Thomas, 59 and his wife, Christine, 57—were vacationing in their camper. One night Brian strangled Christine, then called the police and told them he did it while he was sound asleep "dreaming" he was defending himself from an intruder. At Thomas's criminal trial in November 2009 the court was told that "the couple had been asleep in their camper van in a car park when they were disturbed by youths in cars performing wheel spins and

so moved elsewhere. However, Thomas then had a nightmare that one of the youths had broken into the van and later woke to find himself next to his wife's body, at which point he called the police." Court, prosecution, and defense agreed that Thomas suffered from "a sleep disorder and so had no control over his body when he attacked his wife of 40 years while they were both asleep."

Thomas, we learned from press accounts, "regularly took anti-depressant drugs which made him impotent," and the couple slept in separate bedrooms at home. He had stopped his medication before the holiday, allegedly to be able to have intercourse with his wife. Medical experts testified that "the sudden withdrawal of the drugs could have led to him having very vivid dreams."

The defense claimed that Thomas was suffering from the "non-insane" form of automatism and asked for an acquittal. The consequences of finding Thomas "not guilty by reason of insanity," explained Chief Crown Prosecutor Iwan Jenkins, "would have meant Mr. Thomas's detention in a psychiatric hospital, but it is now clear that the psychiatrists feel that that would serve no useful purpose. . . . It is only because of highly sophisticated tests carried out by sleep experts that Mr. Thomas's condition could be confirmed."

According to reports, the jury was "directed to return a not-guilty verdict, allowing Mr. Thomas to leave court an innocent man." The judge reassured Thomas "that in the eyes of the law he bore no responsibility for what he had done" and added that "he was a decent man and devoted husband." If any words of praise were offered about Mrs. Thomas, they were not reported.

After the trial one defense expert—Dr. Chris Idzikowski, director of the Edinburgh Sleep Centre—was reported to have been "still unsure which form of sleep disorder caused Thomas to kill his wife, but he supports the court's decision. . . . I'm sure there are people who have the disorder, commit a crime, and try to lean back on it to get away with it. . . . 'I'm convinced he was not guilty. That said, you never know. Maybe he's a genius who's tricked me and everybody else and is now going to claim lots of insurance money for his wife's death.'"

Prosecutor Jenkins alleged that "the circumstances of this case are almost unique in the UK." Well, not quite. Under the heading "Homicidal Somnambulism," [Wikipedia lists 68 similar cases](#), many from Britain.

Sleep Driving

Kenneth Parks, a 23-year-old married man, lost money gambling, stole from his in-laws and employer, and was fired from his job. On Sunday, May 24, 1987, he planned to confess his misdeeds to his in-laws. But while he slept, he got up early, drove more than 14 miles to his in-laws' home, broke in, assaulted his father-in-law, and stabbed his mother-in-law to death. He then drove himself to the police station, saying, "I think I have killed some people."

"Sleep driving," anyone?

A. F. kept loaded firearms in his room. His father slept in the adjoining room. Hearing a bump against the connecting door early one morning, A. F., allegedly still asleep, hollered. "You dog, what do you want here?" and fired the gun near to his hand, killing his father.

Willis Boshears, an American army sergeant stationed in England, was drinking in a pub, returned to his apartment with a young couple, and went to sleep on the floor. When he woke up, he found he had killed the woman. He then hid her body miles away.

All these "sleepwalkers" were acquitted.

Let us put ourselves in the position of a person charged with the duty of determining a defendant's responsibility for killing while allegedly asleep. What information would help us arrive at a correct determination? Mainly, we would want to know as much as possible about the defendant's relationship to his victim. The accounts of the Thomas case tell us very little about this. Instead, they dwell on the defendant's alleged "sleep disorder," his abnormal EEG, his being on and off "antidepressant" drugs, and his impaired sexual potency. None of this information helps a jury determine whether Thomas should be held responsible for killing his wife.

I am not an expert on sleep. What I do know is that sleep involves a general relaxation of the voluntary neuromuscular system, including that part of it necessary for keeping a person standing upright. Horses can sleep standing because their legs can lock, but human beings cannot do so. And horses too need to lie down to sleep deeply. The idea that a person may be able to rape and murder while asleep and not be responsible for his behavior is a product of the modern technology-based misunderstanding of the brain, the mind, sleep, and responsibility.

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