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THE INSANITY OF MD.'S INSANITY PLEA: WHY IS THE MURDERER OF 3 MEN 'NOT CRIMINALLY RESPONSIBLE'?

By Richard Vatz | May 7, 2023 | Commentary | 1 🗳️ | ★★★★★

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The Clifton T. Perkins Hospital Center in Jessup is the maximum security facility in Maryland to house and treat the criminally insane. State photo

By Richard E. Vatz and Jeffrey A. Schaler

The suspect in the killing of three workers in a Smithsburg, Md. factory — the dead are Mark Alan Frey, Charles “C.J.” Edward Minnick Jr. and Joshua “Josh” Robert Wallace — has been found “not criminally responsible.” According to a report by state psychiatrists, the suspect, Joe Louis Esquivel, is suffering from schizophrenia, previously undiagnosed.

[Some of the facts of the case are gleaned from reports in the Hagerstown Herald-Mail.]

Schizophrenia is a catch-all term as used in criminal law, usually vaguely meaning that a defendant distorts reality or, worse, had hallucinations at the time of the crime(s).

Regarding “not criminally responsible,” the term references the current state of the insanity plea in Maryland. In order to be held responsible for a crime, two things must be present: *mens rea*, or the intention to commit the crime, and *actus reus*, meaning the criminal act. *Mens rea* is the operative criterion here.

It is important to remember that “insanity” is a legal term. It is not a medical or psychiatric term. Insanity implies, regarding the “cognitive” component of criminal intent, that a defendant allegedly did not know what he was doing at the time of the criminal act, that he did not know that his actions were wrong. The second component,

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the “volitional” prong, means that he was incapable of conforming his behavior to the dictates of law.

We submit that it is scientifically impossible to know whether or not these criteria are true or false. There is a difference between mind and brain.

If an accused successfully pleads “not criminally responsible” and is found guilty, he or she is remanded to a relatively cushy mental health facility and may be released whenever the state finds the perpetrator to no longer be insane, with that finding ratified by a judge. This is far from an objective or scientific assessment; it is simply arbitrary.

The use and success of insanity pleas varies throughout the country, but when combined with psychiatric testimony regarding sentencing, psychological mitigation is omnipresent.

Regarding the defendant’s alleged lack of understanding of what he was doing, note that in this case Esquivel knew enough to run away from the police, hit a police car, run and shoot at them and claim he was trying to commit suicide by police.

Such a state of legal affairs regarding the not criminally responsible plea, allowing theoretically for a very early release, is anathema to the relatives of victims and manifest in this case, according to The Washington Post. Decedent Mark Frey’s widow, Angie Frey called it a “nightmare,” likening it to “total hell on earth.” Mark Frey knew the shooter and had criticized him to Angie as a bad employee, lazy and undependable; Mark had shared this assessment with management to no avail.

Before Judge Brett R. Wilson stated his expected finding, remanding Esquivel to a state hospital, victim Brandon Michael and his family derided the ruling, essentially rewarding, as he termed it, the “cowardly” atrocities.

Even Assistant State’s Attorney Chris McCormack, mystified by the “medical” report on Esquivel, claimed he was dubious regarding the conclusions in the report to which prosecutors generally acquiesce.

Thus, it is clear that the shooter knew what he was doing, that he knew that murder was wrong, and that he demonstrated behavioral control. All behavior, or modes of conduct, is volitional. A seizure or convulsion is not behavior. It is a neurological reflex devoid of intention or will. Despite this fact, those who argue in favor of an insanity defense assert that behavior can be involuntary.

When successful, “not criminally responsible” pleas may inadvertently constitute a Sword of Damocles for victims’ relatives. They may never know when the killer of their loved one or fellow workers will be released, and they have to focus meticulously on hearings and trials for the perpetrator to assert and reassert their hope that the accused remains in the “hospital.”

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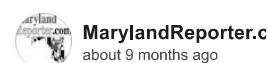


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Esquivel's claim is that volitionally he, as Frey understands it, "was supposedly not in control of his actions." Psychiatrists have conceded to us that this criterion, the volitional prong, can be confirmed even less than the cognitive prong. How does the state prove that a person had control over his actions? One can always fake loss of control.

The proliferation of the measure of criminals' "snapping" has proliferated in the public lexicon, another claim that cannot be disproved. An involuntary behavior, independent of reflexes, is a contradiction.

Washington County's state's attorney, Gina M. Cirincion in an e-mail to *The Post* said that prosecutors will not oppose the not criminally responsible finding by state forensic psychiatrists.

Why has not the evidence been produced for finding Esquivel insane beyond saying he is schizophrenic, and why does the prosecution just accept the findings? In the absence of evidence – and there is no possible evidence adducible other than mental health professionals' unsupported opinions to demonstrate a lack of control of behavior – the reasonable inference is that prosecutor Cirincion finds this an easy way out, and the psychological effects on the victims' relatives and others be damned.

This is just one more example of irresponsibly providing evidence for future felons to believe that their horrendous actions will likely be consequence-free. There are exceptions wherein state psychologists, psychiatrists and the criminal justice system are willing to rigorously confront weak claims of exculpatory insanity, but they are not in sufficient abundance.

Richard E. Vatz (rvatz@Towson.edu) was psychology editor of USA Today Magazine for almost forty years and political persuasion professor at Towson University. Jeffrey Alfred Schaler (ijas@icloud.com), a psychologist, is a retired professor of Justice, Law and Society at American University's School of Public Affairs, and a retired member of the psychology faculty at Johns Hopkins University. They are co-editors of "Thomas S. Szasz: the Man and His Ideas" (Transaction and Routledge, London, 2017) and authors of many pieces on psychiatry, insanity pleas and the law.

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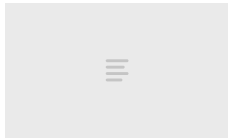


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Richard E. Vatz Ph.D. retired from Towson University in January 2023 wherein he served for almost a half-century and was the longest serving member of The Academic Senate. He is Author of The Only Authentic of Persuasion: the Agenda-Spin Model (Authors Press, 2022)

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Kristen on May 9, 2023 at 8:09 am

It sickens me that yet another triple murderer is essentially getting away with murder in Maryland this year. My family and I have experienced the pain and injustice of Maryland's insanity defense and not criminally responsible findings firsthand. Jeffrey Burnham killed someone in Allegany County, stole her car, drove 2 hours to a house in Howard County that he had never been to before, ambushed his estranged half-brother and his wife, stole their Corvette convertible for his getaway joyride (instead of the Camry or Highlander), told someone they'd "see him on the news" while the manhunt was underway, and said the voices in his head told him to kill 3 people when he was out of gas and options at the time he was apprehended in Davis, WV. He said he had to confront his half brother, a pharmacist, about the Covid vaccine. As family of Kelly & Brian Robinette, it's impossible to reconcile the nature and extent of the murderer's actions with the end result of the

murder cases in both Howard and Allegany Counties. Family and friends have to live in fear of him being released if a psychiatrist deems him “safe.” It’s a nightmare.

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