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## PREFRONTAL LOBOTOMY AND THE COURTS

Edward E. Mayer

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The brain operation called prefrontal lobotomy was used for medico-legal purposes in the late spring of last year in the Quarter Sessions Court of the County of Allegheny, Pittsburgh, Pennsylvania. A pre-trial petition asked for the Court's consent for a prefrontal lobotomy to be performed upon one Millard Wright to cure him of his criminal tendencies. A condensed report of the proceedings, therefore, is believed of sufficient importance to warrant its publication together with some of the medical and legal implications.

Millard Wright, who is now 37 years old, had a long career of crime before he came under investigation by the Behavior Clinic of the Criminal Court. He had been confined for robberies in penitentiaries in Ohio and West Virginia as well as in the Western Penitentiary of Pennsylvania. At no time during his previous incarcerations nor in the intervening periods had there been any suggestion of mental illness. Though examined by many physicians in the various institutions he was always regarded as having normal intelligence and health.

There were numerous cases of housebreaking and robbery in the summer of 1945 in Allegheny County. Millard Wright was apprehended, still carrying the loot from the last of ten houses that had been entered by him in the course of two months and placed in the Allegheny County Jail to await trial. Six weeks after his arrest he started refusing to eat, gradually stopped conversing, appeared bewildered and confused, and made what appeared to be an attempt at suicide. A commitment to the Farview State Hospital for the Criminal Insane was therefore requested. The request was granted and he was sent to Farview, where he remained until the spring of 1947. He was discharged as recovered and returned to the jurisdiction of Allegheny County. The postponed trial for the felonies of 1946 was about to be placed on the calendar. His counsel, seconded by a Deputy District Attorney, requested that his client be permitted to enter a hospital to have a prefrontal lobotomy performed in an attempt to cure the prisoner of his criminal tendencies. The

kind and humane judge before whom the petition was presented acceded to the request. The trial was accordingly postponed. Like Judge Ulen in the book "I, too, Nicodemus" by Judge Curtis Bok of Philadelphia, the judge, was willing to help a human being to reestablish himself in society if it were possible to do so, though he had no precedent for granting a petition for an experimental operation.

The petition was presented to the local court about the time the *American Weekly Magazine* featured an article by G. B. Lal. It was based upon a medical report on a lobotomy in which it was stated that an incorrigible criminal "twenty-eight years old and mentally unbalanced had been converted into a rational, decent woman." The physician involved, however, later regretted his premature enthusiasm. In a communication received in response to my inquiry, the Clinical Director of the hospital in which this woman was operated, stated: "The clinical course of this patient does not justify any definite conclusion. The unusual, rather remarkable improvement which occurred has not been fully maintained. We would consider the whole procedure in cases of a Psychopathic Personality entirely an experimental one so far as our experiment is concerned."

After his operation and discharge from the hospital Wright was again returned to the Allegheny County Jail and in due time brought before the Court for trial. This was about two months after the operation. A judge, other than the one who had granted the petition, presided at the trial which was without jury. Up to this time the Behavior Clinic, although it had diligently studied the prisoner, had not been asked by the presiding judge for its opinion upon either Wright's sanity or upon the operation. At the trial, although the Clinic, as is its custom, had given to the sitting judge a complete social, psychologic and psychiatric report, it was asked merely to give an opinion concerning Wright's sanity at the time when the felonies were committed. Was this defendant sane or insane at the time of the felonies committed by him? As a matter of procedure it may be worthwhile to state that during the hospitalization of Millard Wright for his operation, although the Clinic was a neutral party and had no part in the petition for the operation, newspapers intimated that the Clinic had been consulted and had assented to the petition. There was no justification for such an opinion inasmuch as the Clinic had not been asked by the Court for it. The refusal of those connected with the Clinic to make any public statements was in accordance with the ethics of the medical profession. At the trial neither

the psychiatrists nor the psychologist of the Clinic were asked to give any details of their findings either previous to or after the operation. Concerning his mental status when the felonies were committed they did state that his man's crimes were carefully planned, that they were not the result of irresistible urges and that he was not insane at the time. The Clinic recognized that this man was a psychopathic person who developed a state of depression six weeks after his arrest. This often happens in persons who are neurotic psychopaths after they are apprehended and jailed. The Superintendent of the Farview State Hospital apparently agreed with us. In his communication to the Clinic he says: "Evidence of psychosis since his admission has not been strong. His behavior is rather that of a psychopath."

A tendency is frequently found in court to attempt to prove that a psychopathic person, although not insane, is nevertheless irresponsible. It might be well here to say that the chronic alcoholic, the drug addict, the sexual pervert, as well as the chronic criminal are included by most writers in the psychopathic group. Yet the alcoholic is rather more neurotic than psychopathic. And the sexual pervert is rarely a psychopath. At one time psychopaths were considered to be morally insane, whatever that term may mean. Some psychiatrists even today claim that the psychopaths are amoral. Labels like moral insanity, or social agnosia, or criminosis are in themselves meaningless in a court trial. It is questionable whether they are even satisfactory in psychiatric nomenclature. Though the psychopaths are anti-social or unstable, they cannot be labeled insane except by a great stretch of imagination. Even if the courts would be willing to consider them irresponsible they are so numerous that not the jails but the hospitals would become overcrowded with them. For it is particularly the psychopath who gets into difficulties because he is extroverted and aggressive. He loves to dramatize himself, likes publicity and lacks conscience, or in the vernacular of the psychoanalyst, he is deficient in his super-ego development.

The psychopath cannot learn to subordinate his temporary desires for more lasting values. Psychopaths, as well as neurotics, are called immature, inasmuch as they show that they are inadequate to take on adult responsibilities and to adjust themselves to disappointments and frustrations. The ultimate result is either an inability to meet their reality situations or an attempt, often unconscious on their part, to alter reality by anti-social behavior. In the latter case they are called psychopaths.

A criminal psychopath becomes not only a social outcast, but a self-outcast, due to his personality defect. For this reason some psychiatrists say that every psychopath has a drive towards self-destruction. The psychopath knows he is maladjusted. He becomes resigned to it through repetition, developing a sort of conditioning toward it and by this process also increasing his anti-social drive. Yet, though he understands the nature of his acts even to such an extent that he often condemns himself even more bitterly than do others, he is unable to change his behavior sufficiently to become a decent citizen. Some psychopaths glory in their misdeeds. Most of these are Don Juan types and also sadistic, delighting in being cruel to family and friends. Some assert that the early revolt against his father is directed later against society at which time the judge becomes for him a father substitute. At any rate it is recognized that chronic anti-social acts are attempts by an individual to overcome or compensate for his own maladjustments. In my opinion the word psychopath might just as well be dropped as far as court procedure is concerned inasmuch as it is an all too inclusive word. Attempts have been made to separate the social psychopath from the alcoholic, to make a distinction between the criminal psychopath and the sexual pervert, and to enlarge upon the over self-regard or narcissism of the neurotic in contrast to the law of super-ego or conscience in the psychopath. It follows that considerable misunderstanding may take place when a psychopathic person is on trial. The Cuyahoga County, Ohio, Juvenile Court report of 1946 points to the correct direction the findings of a Clinic should take in saying that "the social and personality maladjustments within and particular to the individual are important and that the usually alleged causes are incidental."

Last year for the first time the United States Supreme Court handed down a decision in a case involving a defense against first degree murder on the score that the defendant had psychopathic tendencies and was also borderline in mentality. The trial judge had not permitted this opinion of psychiatrists to enter into the guilt or innocence plea and the defendant was found guilty of deliberate and premeditated murder. This decision was upheld by the Supreme Court. Many psychiatrists in their zeal seemingly forget that evidence presented to a jury must be absolutely proven and above the suspicion of partisanship. Psychopathic tendencies, if permitted to be introduced into a trial on the assumption that they prove lack of premeditation, are liable to open the way to more errors and false judgments on the part of juries than is even now the case. This does not imply that if an expert opinion can show that there was an actual lack of pre-

meditation that such evidence should not be used in extenuation or in mitigation. It is not, however, in my opinion, good forensic psychiatry to say as did Weihofen and Overholser in the *Yale Law Journal*, 56:955—981, 1947, that "it is logical, if insanity is a defense, to maintain that if the defendant, because of mental disorders short of insanity, was incapable of premeditating and deliberating the killing (malice aforethought) and in fact did not premeditate or deliberate, he cannot be guilty of a crime which by definition requires these elements." What is a mental disorder short of insanity and what degree of intensity could be considered by a judge as admissible for the jury to consider?

We cannot enter here into the detailed findings of the Clinic in its report on Millard Wright. They have been sealed and are the property of the Court to be released only by it. We are permitted, however, to state that he showed much internal tension from his boyhood, that concealed hostility had always existed towards his father (and this does not mean hatred which is a self-conscious thing) which had been aggravated by the overzealous attempts of his mother to please and placate him. This maladjusted boy in his adolescence became a delinquent. Placed in a reform school, he was not changed when he emerged from its walls. He started shortly after this on his career of gaining money by robberies. He had, as is the case with the criminal element, no inhibitions. Laws did not restrain him from satisfying his desire for more money than he could legitimately earn. He always had, of course, specious reasons for what he did. The robberies of the summer of 1945 were largely, he later admitted, due to his affair with a woman for whom he desired to provide better than he could legitimately. He was not married to this woman, who was one of many in his life. His two marriages had ended in the divorce courts. Wright stated later that "she broke me because she had lost faith in me" as his explanation of the psychosis which had developed while awaiting his trial.

### *The Trial*

We come now to the trial and the witnesses for the defense. It was, as stated before, a non-jury trial. The sitting judge had received a detailed report from the Behavior Clinic giving this man's background, its medical findings and its interpretation of Wright's personality and mentality. Also, a summary of pertinent literature concerning the operation of prefrontal lobotomy. The defense counsel attempted to obtain this report before the trial began, but permission was not granted in accordance with the rules governing the Behavior Clinic. Much could be said here in connection with the laws concerning the discre-

tionary power of a judge over the release of evidence obtained by a court through a clinic such as ours. Our reports go to the court and our findings are not open to either prosecution or defense attorneys unless the sitting judge deems it expedient to release them. Often, as in the Millard Wright case, the report is not introduced at the trial and may be withheld from the scrutiny of both trial attorneys. It is the policy of our judges to consider our reports as privileged communications. Though the surgeon who performed the so-called experimental operation refused to give an opinion concerning the sanity of Millard Wright, it had been tacitly accepted, I believe, that he was operating to ascertain whether he could cure criminal tendencies. The surgeon was no doubt honest and sincere at the trial when he asked, in order to give his experiment a chance to succeed, that Millard Wright be given his freedom and be returned to a normal home environment.

No one, however, when the petition for this operation was presented had informed the Court that unlike ordinary operations, a "cure" could not be expected at the time of the discharge of the patient from the hospital. The Judge who heard the petition was not informed that the actual results of this experimental operation would not be known for several years. The sitting Judge, who was, as stated before, not the Judge who agreed to the operation, was now confronted with the request to release a man guilty of many crimes in order to await the results of an operation which was conceded to have been an experiment. The issue was further clouded inasmuch as the surgeon stated that this man's removal to a normal home was necessary in order to secure a change of personality. Millard Wright did not have, however, a normal home to go to. Nor did he have a job assured to him. And no psychiatric supervision could have been arranged for him by the Court if he should be released.

The defense also introduced the testimony of a physician who stated that Millard Wright had always been insane, that he was insane when he was discharged from the State Hospital and that therefore he should not have been returned to this County to stand trial. He was not asked what his findings were on which he based these conclusions. His contention, of course, if valid would have released the prisoner and would not have necessitated the injection of the lobotomy operation and its possible results in the plea to the Judge to release Millard Wright.

The Assistant District Attorney was justified therefore, when the release of Millard Wright was asked, to object inasmuch as there was no proof offered that this man—to use his words—"was not still a thief." There was considerable newspaper com-

ment during the trial. Wright, before the trial was over, was quoted by one reporter as saying: "I hope the judge will give me the opportunity to prove that surgery can change a man's personality." The Judge, however, in his disposition of the case stated: "This man must be punished for his many crimes. I cannot take the chance of releasing this convict now. He underwent this operation at the insistence of his counsel in the hope that he would escape serving sentence."

### *The Operation*

It is again an interesting coincidence that at the time the Judge was handing down his decision the June 30th edition of *Time Magazine* came out with an article on "Prefrontal Lobotomy" and among other things said that "Surgeons are being swamped by demands for this operation by alcoholics, criminals, frustrated business men, unhappy housewives and people who are just nervous."

The prefrontal lobotomy operation has been performed on many thousands of chronic, incurable mental patients. Naturally, as in all operations, there is a tendency to enlarge upon its usefulness and to give it wide application. There is not justification, however, from any survey of the literature, for accepting a conclusion that criminal tendencies can be eliminated by any of the several types of lobotomy which are in use. In fact, there are numerous examples cited in the literature of criminal tendencies having been initiated by this operation. In other words, patients upon whom this operation was performed were arrested later for various crimes—persons who before the operation had never been charged with any anti-social acts. This Clinic has had such persons before it. One was charged and convicted of murder. This does not, however, invalidate the surgeon's hope that some day Wright's personality may become an entirely different one and that he will cease and desist from his criminal acts. But wishful thinking is not evidence in a court of law.

In the operation called lobotomy or leukotomy, two buttons of bone are removed, one on each side of the head. Some surgeons use a cutting instrument called a leukotome through which a tube runs that contains a wire saw. Others use a blunt cutting knife to cut the white matter of the brain in a fan-shaped manner. The surgeon, based on his knowledge of brain topography, severs the connections between the frontal brain and the primitive middle portion. Technically speaking, the communications are interrupted between the recently developed intellectualized frontal and the primitive thalamic centers. Surgeons differ as



to the number of planes in which they should cut the connections and as to how much of the brain association fibers they should separate.

Porteous in stating that "the style of response" of the brain is changed by a lobotomy has expressed aptly what the operation tries to do. But in advance no one knows just how a mind will change. Exactly what new patterns of conduct will evolve cannot be anticipated. That impulsive conduct leading to crime will be inhibited is not predictable in advance. This, however, must have been the basis upon which the hope of altering criminal tendencies in Millard Wright was based. Freeman and Watts, who are the American pioneers and best authorities on this operation, doubt its efficacy in this respect, saying: "It seems remarkable in a way that psychosurgery should abolish criminal propensities while at the same time reducing social inhibitions."

*Comment and Conclusion.*

There remains to make some comment upon the Clinic findings after Millard Wright was returned to the jail as contrasted with those made before the operation. There was no change in intelligence. There did not appear to be much alteration of personality in terms of his style of responses. In some of the psychological tests some slight differences in attitudes and self-objectiveness were noted. But they were not conclusive changes and did not justify the opinion that this man would not at some future time perhaps again commit a felony. One paragraph of the report of the psychologist of our Clinic is interesting at this point: "We cannot find any change in his personality pattern that would convince us that there has been any material change in his anti-social tendencies. Our opinion is that this man has true insight in the full sense of the word at the present time in the same sense that he did previous to his operation."

There was no noticeable alteration of his egocentricism when last examined. It certainly had not decreased. Nor had the operation produced any noticeable change in his ambivalent tendencies. His super-ego was still a weak one.

I have tried to explain in untechnical language the outstanding questions raised in Court in this case. For non-medical readers it should be stated that neurosurgeons are constantly modifying the lobotomy operation. They are particularly interested in cutting smaller and smaller bands of nerve fibres in a continuous attempt to localize the functions of specific parts of the frontal lobes. Inasmuch, therefore, as the clinical effects of the operation are not entirely established, the time has not arrived when this operation should be offered to a court and accepted as a pre-sentence procedure.