Ake Dah

*Norval Morris†*

Then Abraham bound the youth with belts and straps,
And builded parapets and trenches there,
And stretched forth the knife to slay his son.
When lo! an angel called him out of heaven,
Saying, Lay not thy hand upon the lad,
Neither do anything to him. Behold,
    A ram, caught in the thicket by its horns;
Offer the Ram of Pride instead of him.
But the old man would not so, but slew his son,
And half the seed of Europe, one by one.

Wilfred Owen

"The Parable of the Old Man and the Young"
WAR POEMS (1917?)

It would have been disapproved, frowned on, even perhaps a
matter for comment: teaching a Malay sergeant how to roll a ciga-
rette in one of those filthy little tin and rubber machines that leave
wisps of tobacco sticking out the end—the type you lick from side
to side on the grey, sticky edge of the cigarette paper. But happily
none of my superior officers was there to see my childish delin-
quency, and the Malay sergeant was clearly enjoying the lesson.

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That was one very good thing about Moulmein. It was so distant from headquarters and so far down the chain of command that one way or another I was always warned, well in advance, before the arrival of anyone in authority over me.

Still, I did feel somewhat foolish, being so unprofessionally occupied, when a police corporal burst into my office to announce: "A large number of villagers is approaching. You should come, Sir."

I did what we had been instructed always to do first in situations of uncertainty: put on my officer's cap. Then, buttoning my tunic and adjusting my Sam Browne, I stepped into the outer office, which gave a view across the parade ground to the thirty or forty approaching Burmese.

I could not imagine what was happening. I thought I recognised that most of the elders who led the group were from the village of Versali. The headman of the village, Ake Dah, seemed to be walking alone in the rear of the crowd, dressed in the saffron robe of a Buddhist priest, but without the priest’s shaven head.

The leading group of elders stopped about ten paces from the police station. Ake Dah stopped in their rear. The straggling group of children further to the rear also stopped. I stood on the steps of the verandah of the police station. There was utter silence. Ake Dah seemed entirely at ease, but those in front could not have been less so.

How long we would have preserved this tableau I do not know. Eventually I found some words to end it, though they seemed hardly apposite. "What can I do for you?" It must have sounded peremptory, though that was not my intention.

One of the older villagers took a step or two toward me and said, "We have brought Ake Dah to you."

"Yes," I replied, looking at Ake Dah, who stood calm and apparently uninvolved in the rear.

There was no response.

It seemed courteous not to prolong the stagey scene. I stepped down and walked to the group, who moved aside as I did so, making a rough aisle leading to Ake Dah. As I walked to him, I offered some such formality as, "Good afternoon, Headman."

He made no reply, but inclined his head toward me.

"Do, please, tell me what all this is about."

The words came with explosive unexpectedness: "Mr. Policeman, I tried to kill my son, Mai Treya, my only son. The village men stopped me and brought me here for you to arrest and punish me. I told them they were wrong, but I came with them. Here I am."
I had no idea what to do. I had not been trained for this type of arrest! I glanced around, nervously I suppose, toward the police station and the two or three policemen peering out from the window and the open door. It seemed weak to call them out, but I did feel exposed and insecure—not about my safety, of course, but about appearances, which so plague young district officers.

The mood of the crowd seemed to be relieved by Ake Dah’s words. As I looked at them, several in one way or another confirmed that Ake Dah had told the story they wished to tell. The next move, they made clear, was up to me. So I did and said what I would do and say for any other visitor. Gesturing toward the police station, I invited Ake Dah to come in with me. Calmly, he assented and followed me.

In my office, I took off my cap and invited him to sit down. By a slight movement of his head, he declined. He stood there, almost serene: I was fidgety, not he.

“Would you tell me all that has happened, Headman?”

“I told all, Mr. Policeman. Now no more.” He was polite, but utterly taciturn. Questions not connected with the events that brought him here were answered courteously but briefly; questions relevant in any way to his attack on his son, anything to do with his son, elicited no reply.

Suddenly, his neck stiffened, his head turned slightly to the right and upwards, his glance also moved to the right and upwards, and he did not seem to hear whatever I was then saying to him. After a few seconds—though at the time it seemed an inordinate period of immobility—his body relaxed and his eyes moved back to engage mine.

“Are you feeling ill, Headman?” I asked anxiously. He did not seem to understand.

“No, Mr. Blair.”

There seemed nothing else to say. I had to arrest him. I did so in the formal words of arrest—for attempted murder. He made no response. I called in the duty sergeant and told him that Ake Dah was under arrest. I asked the sergeant to see that Ake Dah was lodged in the jail, in a single cell, not with any other prisoner, and I stressed that he should be given every opportunity to contact me, or anyone else, if he so wished.

Ake Dah listened to all this and offered the one comment to me that he had allowed himself that afternoon. “You are wrong to do this.” He then made “eyebong” to me, pressing his palms together in front of his chest and inclining his body and head slightly toward me, and followed the sergeant out of my office.
It struck me that I should have been worrying more about the son than the father, since the father gave no indication of evasive intent, and perhaps the son was in need of medical care. I walked out to the group of villagers still waiting outside my office, told them that Ake Dah was being taken to jail, and asked them about Mai Treya.

They had done what had to be done without any advice from me. The boy had been taken to the hospital immediately after the attack on him was interrupted. They had heard no word since, but it was their opinion that he was not mortally injured. It was a stab wound in the back near the left shoulder, but clear of the lungs, as they described it to me. I was unsure whether to go to the hospital or to the village. The latter seemed more sensible: I could not help at all at the hospital. The boy would be looked after well without my intervention, but the quicker I found out what had happened at the village, the better.

I told one of the Burmese policemen to accompany me, and we set out on bicycles for the two-mile ride to Versali.

Versali was unique among the villages in my district, and there were few villages like it in Lower Burma. Like most Burmese villages, Versali was surrounded by a low fence of wood and interlaced bamboo leaves, which might inhibit a few wilder animals and was believed to impede hostile nats—the thirty-seven animistic spirits that pervade Burmese village life. Also, like other villages, the houses were predominantly of bamboo and thatch, with stronger woods reinforcing some of the uprights and an occasional tin roof as a tribute to the English midlands.

A few houses, the more prosperous, were built on wooden stilts, lifting them eighteen or so inches above the ground, cooling them and greatly reducing their population of insects.

What distinguished Versali was that, unlike Burmese villages generally, it had been influenced by the economic opportunities of European colonisation. Most villages remained isolated from the economic life of the twentieth century, their rice culture the same as it had been for centuries, each village largely self-sufficient—but not Versali. It had its own timber mill, which competed with the European mills. It had its own herd of elephants, trained to work in the forest and at the timber mill.

There were not what one would call roads in Versali—there were tracks rather, but tracks wide enough to allow an elephant to
haul a large wooden sled stacked with logs from the trees felled in the teak forest owned by the village. The mill itself was not modern, but it was efficient enough to bring prosperity to Versali. Versali’s houses were better, its sanitation and services more ample, than those of any other village in the district.

Much of this prosperity was the result of Ake Dah’s energy and intelligence. He had married the daughter of the previous headman. Before his father-in-law’s death he had started the mill and demonstrated his suitability to lead the village. There had been no doubt of the succession.

I had met Ake Dah soon after my arrival in Moulmein. Since then, I must have spoken to him on six or seven occasions; I had no particular sense of him. He was reserved, obviously intelligent, quiet, and respectful—perhaps too respectful—but no district officer could be other than pleased with Versali and with Ake Dah as its headman. Taxes were collected without apparent resentment. The village was contented and prosperous. One could hardly ask for more.

There had been only one source of tension I could call to mind as I bicycled to Versali, trying to avoid the deeper ruts in the tracks, and that too concerned Ake Dah and his family. He was openly a leader of the Young Men’s Buddhist Association. He travelled regularly to meetings of the Association elsewhere in Burma, and other leaders of the Association sometimes visited him in Versali.

The YMBA had been established in Burma in emulation of the YMCA. If such organisations were suitable for Christian youth, particularly those in the army, then, the Buddhists of Burma thought, a similar organisation for boys and young men of their religion would prove similarly valuable. And given the administration’s support of the YMCA movement, it could hardly without open bigotry oppose the YMBA. But from its earliest days, the YMBA had served purposes other than the religious. Devout Buddhists supported it, of course—it had the blessing of what passes for a priesthood in Theravada Buddhism, which predominates in Burma, Ceylon, and Thailand—but its mission soon became political: it was irredentist and in vigorous and open pursuit of independence from colonial rule and influence.

The political purposes of the YMBA were much assisted by an extensive infiltration of younger Burmese barristers who had read law as undergraduates in India, Burma, or, in a few cases, England. Some had also eaten their dinners at an Inn of Court in London and developed the sharper political inclinations of the foreign bar-
rister in England. There was little attempt to conceal the striving toward independence from the Raj nurtured in the YMBAs of Burma.

Ake Dah may have been the perfect headman from the perspective of the District Officer, but from Mandalay and Rangoon he was seen quite differently: not as a major threat—by no means a national leader of a hostile political movement—but as locally influential and therefore needing to be watched.

Ake Dah had been the ideal son-in-law to the previous headman, with the exception that at first no grandchildren came to enliven the headman’s declining years and to carry on what had seemed an appropriate family succession in Versali.

Soon after his father-in-law’s death, when Ake Dah was in his mid-forties and his wife only a few years younger, a son was born to them, a son they called Mai Treya to stress their deepening religious devotion: his name suggested that he might bear the kharra of the next Enlightened One. Other more conservative Buddhists disapproved of Ake Dah so naming his son, but the name remained, though shortened in daily use to Treya. Two daughters were born in the years immediately following Mai Treya’s birth.

Ake Dah and his family dominated the village of Versali administratively, financially, and architecturally. Their house was much larger and more comfortable than the others, rather like one of the better European bungalows, though adhering to the outward appearance of a village hut, built on low stilts and with a substantial surrounding verandah.

I knew, too, that Mai Treya had been sent to boarding school in Rangoon, to an English private school, St. Mark’s, that was attended by the more privileged European children in Rangoon and the children of a few wealthy Burmese—it was thought to be the best school in Burma. Though its religious affiliation was Church of England, there was no insistence on religious observance as a condition of enrollment, and children of Buddhist parents who wished their children not to be drawn away from their religion were admitted with this exception: boys were not enrolled or allowed to remain if they had entered the Buddhist “priesthood” by the ceremony of shin-pyu and service in a kyaung, a Buddhist monastery—a normal ceremony and practice for Buddhist boys at about the age of nine.

Those who ran St. Mark’s professed religious tolerance and no doubt believed they demonstrated it, but it was inevitable that at St. Mark’s the Ten Commandments dominated the Five Precepts and the ambitious ways of the West displaced the Middle Way.
I had met Mai Treya once or twice. I reckoned his age to be about eleven or twelve. He had seemed a bright and pleasant young man standing at the ferry jetty on his way to and from Ran-goon in his westernised school uniform. I had no idea what life was like for him at his father's village. At school, I supposed it was like life at a modified English public school—much modified, I hoped.

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On the outskirts of Versali I caught the front wheel of my cycle in a deep rut and fell heavily. Elephant-drawn sleds and bullock carts play havoc with jungle trails. I should have concentrated more on keeping myself upright and less on Ake Dah and his family. The policeman helped me up; I arrived in Versali in a dirtier condition than a district officer should.

In the village, there were few people about. It occurred to me that one contingent was following me back from Moulmein, while another had accompanied Ake Dah's wife and daughters to the hospital with Mai Treya. And I suddenly doubted that I had been sensible to come to Versali at all. Perhaps I should have stayed at police headquarters and interviewed some of the villagers there, or gone to the hospital to talk to the boy himself—if he was fit to be interviewed—or those who were with him. It was too late for such reflections now. Would I ever gain sense to think things through before charging off to useless action?

Ake Dah's house was deserted. I looked in every room. There were no signs of a struggle: no blood, no furniture overturned. No one approached the house.

The timber mill on the edge of the village was working. One elephant was visible, a native riding on its neck, directing the hauling of logs onto the elevated feed that led to the saws. Smoke came from the mill and from a few of the huts. I decided to wait on the verandah for the villagers to return from Moulmein and then to get one or two of them to tell me, in situ, what had happened to Mai Treya.

There was a rattan chair on the verandah near the front steps. I sat myself there. My police attendant sat on the steps. We were both shaded by the overhanging, bamboo-thatched roof, but it was steaming hot.

Why not do some detective work while I had the chance? I went back into the house to see whether there was anything like an office. Where did Ake Dah keep his records? And what of his correspondence? My superiors might be interested in what I might find there.
There was an office table on one side of the dining room, with what looked like army ammunition boxes stacked beside it. There was a small bookshelf on the wall behind the table. I opened one of the ammunition boxes and started to rummage through the hand-written correspondence, which was mostly in English. My police assistant came to the door. I found myself pretending to be doing other than what I was. How very ridiculous!

"Let us wait outside," I said. And we resumed our positions on the verandah.

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By the early afternoon, I had the story of the morning’s attack on Mai Treya as clear as I ever would—in its externals, not its motivations. Villagers and family agreed precisely on what had happened. They disagreed wildly about why it had happened.

Ake Dah had awakened his son early, as he often did. They were seen talking on the verandah after first dawn. They then walked to the small pagoda that Ake Dah had had built not far from his house and assumed positions of meditation on the apron of the pagoda, the boy cross-legged, the father to the son’s left in a tight kneeling position. There were a few other villagers worshiping at the pagoda but none close to Ake Dah and Treya. Both father and son appeared to be in deep and prolonged meditation, side by side. Ake Dah was seen to take a long knife from his robe and raise it high behind his son. He paused. Villagers saw him and several shouted at him. Simultaneously the knife was thrust forward and the boy turned toward the shouts from the villagers. The knife entered the boy’s back, but high and to one side. The villagers rushed at Ake Dah and held him. He made no resistance.

The boy was in severe pain—the muscles and tendons of his left shoulder were deeply cut—but he made no move away from his father. As the villagers held Ake Dah, the boy struggled with them and flung himself toward, not away from, his father’s arms, including the arm and hand still holding the bloody knife. The villagers pulled him away and tended his wound.

There had been no harsh words between Ake Dah and Treya; father and son had seemed particularly close. Treya had returned from Rangoon only a few days before. His father seemed delighted with him and had, some thought, been neglecting his work for the village to be with his son—but none blamed him for that. Talking to both those in his household and other villagers, I had the sense that Ake Dah was greatly admired, almost venerated. But he was also viewed as a distant, almost feared, figure—esteemed not loved,
deeply respected, but not at all a man of the village.

There did not appear to have been any recent changes in Ake Dah's behaviour. He was as devout and predictable as ever—in fact, more so. And he appeared to be at least as fond of Mai Treya as he had ever been.

It was clear that I would not learn much more that day at Versali. The policeman and I cycled back to Moulmein, this time with my eyes carefully on the road ahead. I sent the policeman back to the police station, and I went on to the hospital, intending to interrogate Mai Treya.

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Dr. Veraswami said that Mai Treya was well enough for me to talk to him, "But remember, Mr. Blair, I know you will forgive me pless, the boy hass suffered a terrible experience today. The body repairs quickly, the knife missed its mark, but he loves hiss father, and he iss bewildered. It must be terrible for him. Do pleass be gentle with him."

Veraswami did not come with me to Treya's bedside. I suspected he did not wish the boy to associate him too closely with one who might be punishing his father. He was wise to stay apart for the time being.

Treya lay quietly in a single room, reading what looked like boys' twopenny weeklies, to which I had been addicted in my youth but which were known by parents at the Club as "rubbishy comics." He hurriedly put them aside as I entered the room. His left shoulder was heavily bandaged. He was lying back on pillows and did not seem to be in pain. A young woman, not dressed as a nurse, more likely a house-servant I thought, rose from a chair in the corner of the room as I entered. I gestured to her to sit down and spoke to the boy. "Good evening, Treya. May I talk to you for a while?"

The calm, almond eyes in the round, brown face turned directly to me. "Good evening, Sir. Please come in." The words were of clear, English enunciation, precise and sharp, quite unlike the usual slow and lilting speech of a Burmese youth.

I enquired if his shoulder hurt. "A bit stiff, Sir." Had his mother and sisters come with him to the hospital? "Yes, Sir. They left not long ago." He was respectful but quiet. I found myself struggling for questions to keep up a conversation between us. I did not wish to plunge immediately into the morning's events.

"Is there anything I can get you? A book perhaps?" No, he had some books and comics—he glanced shyly toward what I now
clearly saw were the Gem and the Magnet, half-tucked under the sheet on his bed.

"Ningala," apparently the name of the girl seated in the corner, "will get me anything I want from Versali."

"Will Ningala stay with you here?" I asked, unwittingly finding a clumsy opening for my inquiry.

"My father told her to stay with me. She will stay."

"Your father sent her though he is not at the village. He is . . . ." I managed to stop myself blurt ing out the unpleasant reality of his father's situation.

Confronted by my tactlessness, Treya's calm deserted him. He made no answer. His eyes filled with tears. He did not blink. He looked directly at me, wide-eyed, as the tears bathed his eyes and moved to his cheeks.

I was appalled by my insensitivity. "Don't worry, Treya. Everything will be all right." What in heaven's name that meant, I cannot imagine. I didn't for a moment think everything would be all right.

Treya finally cut through my evasions. "There is something wrong with my father. Why don't you help him instead of locking him up? He told Ningala to stay with me to help me. Do please help him."

Ningala had not moved in response to Treya's tears, but she was obviously deeply troubled. Treya spoke to her in Burmese, telling her, as best I could understand, not to worry, Blair sahib was not hurting him.

I heard myself trying to reassure Treya that I would indeed be of help to his father—though that hardly seemed my job. "Tell me what you think is wrong with your father. I promise to try to help."

He began to reply, but only a whimpering cry emerged. Apparently he believed me; he felt my sympathy, and that entirely destroyed his control. The contained youth departed, and I found myself awkwardly holding a clutching and sobbing little boy, who was gulping "I don't know" through his tears.

There was nothing for me to do at the hospital. Ake Dal had arranged, apparently from his cell, all that should be done: someone to sit beside his injured son through the night until his mother and sisters could return the next morning. How extraordinary! In the morning he tries to kill the boy; in the afternoon he makes thoughtful provision for his care and protection.

What stayed with me and resonated in my mind was Treya's statement, "There is something wrong with my father. Why don't
you help him?” But that was not my job. To see that he was fairly tried for attempted murder was my job.

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I had not been particularly successful with the son; could I do any better with the father? I would have to try.

He was held as I had directed he should be. His cell was clean. The blankets on his trestle-and-canvas cot looked fresh and were neatly folded. There was a table and a straight, wooden chair in his cell. The cell was well lit and not in the line of sight of other cells. Ake Dah, still wearing his saffron robe, sat on the chair, quite immobile, eyes cast down, hands resting on his lap.

He raised his head as I approached. He did not seem troubled. He was certainly not outwardly resentful. He did not smile, but his eyes acknowledged my arrival.

I asked the policeman on duty to unlock the door to the cell. It seemed a strange request of one in a cell, but it did not feel inappropriate: “May I come in?”

“Yes, Mr. Blair.”

Ake Dah did not get up as I entered his cell. I took off my cap and looked about for somewhere to sit. He inclined his head toward the cot. I sat there.

“Are they looking after you properly here, Headman?”

“Yes, Mr. Blair. But you should not have sent me here.”

In view of Ake Dah’s directness, I decided that the proper course was to be direct myself. “I had no choice, Headman. You and your villagers told me you had committed a serious felony. You had to be arrested. You might have attacked Treya again. He was in danger.”

“Treya was never in danger. I know you think he was, Mr. Blair, but he was not—never. It was a wonderful thing that happened—a revelation, not a crime. It is not your fault you did wrong. But you did wrong.”

He made no sense to me. Yet he seemed so reasonable, so confident, almost generously forgiving. I must have looked quite lost, for in a burst of words he told me what had happened at the Versali pagoda that morning, as he understood it.

“Mai Treya is to become an Enlightened One, a true Buddha. Perhaps soon, perhaps in many generations. It is told to me. And I have to protect him and test him. He is besmirched at that school, St. Mark’s. He is tempted from the Path of Enlightenment. I should never have left him there, but his mother and I were so ambitious for him. The voice of God told me to kill him, as it has
often told me other things. I have been tested and proved worthy as the protector of the next Buddha, and the divine kharma of Mai Treya is confirmed. I was told to kill him. I did what God commanded, and he spared me and spared my son. The voice of God spoke through the villagers and saved Mai Treya to stay a while with me. It is most wonderful."

There was no response I could make. I sat silent. I do not think I fidgeted. I behaved properly, I think—just listening intently and looking directly at Ake Dah—but this did not, as I had hoped, prompt him to explain further. Finally, I said, "I do not understand, Headman."

"You either understand, Mr. Blair, or you do not. I cannot help you."

"What then do you think I should do, Headman? I cannot have headmen attacking their sons with knives. That is a crime. You know it is a crime. You know I must arrest and charge you."

Suddenly it was as if I were not in the cell with him. I do not think he heard my last sentence or two. He was quite still, almost rigid, eyes averted from mine. After a few moments he seemed again to recognise my presence and recalled that I had asked him a question, and, with a somewhat condescending smile, he replied, "God told me what to do. I cannot help you, Mr. Blair. I did what I had to do. I do not know what you should do."

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It had been a dreadfully long day. Too much had happened—too much that bewildered me. A talk with Dr. Veraswami might help, and I certainly would welcome a beer.

I walked the short distance from the jail to Veraswami's bungalow. As I approached, I saw Veraswami's wife and two of his children scurrying away from the verandah—they would never stay to meet me. Veraswami had insisted it was just embarrassment in the presence of a European, though it seemed an odd contrast to Veraswami's own social confidence. But their hiding from me had never made me feel unwelcome—disappointed rather. I would have liked to come to know Veraswami's family too.

When I reached his bungalow, a servant told me that Dr. Veraswami had not yet returned from the hospital but would be back soon. Would I not wait? Would I like a beer?

I accepted both invitations and settled myself in my usual rattan chair to try to think through the turmoil of the day. But whenever I set myself deliberately to think something through, I find fantasy substituting for thought, unreal conversations in my head.
that can never take place, the past and an unlikely future inter-
mixed. So I did not hear Veraswami until he was quite close to the
verandah, startling me by calling out, "What a joy to see you here,
Mr. Blair. How very kind of you."

I was too troubled to make small talk. As soon as Veraswami
had found a beer and come out onto the verandah, I accosted him:
"Have you seen the Headman from Versali yet, Dr. Veraswami?"
No, he had seen and treated Mai Treya, as I knew, but he had not
thought it necessary or proper for him to go to the jail to see the
boy's father. He had heard stories of what had happened but had
not given them much thought. The boy was not in any medical
danger.

"But the father claims he heard the voice of God telling him
to do what he did. And further that God then intervened and
through the villagers saved his son. Surely that adds up to a medi-
cal problem, Doctor."

"If it iss true, it iss a theological matter, not a medical prob-
lem. And it iss also a problem for those like you who serve the law,
issn't it? Are you going to punish the servant of God?"

I must have looked annoyed. Veraswami seemed to be playing
games with me at a time when I needed his best counsel. "But he
must be mad, Dr. Veraswami. He seems to love his son. He hears a
voice telling him to kill the boy. Surely that is madness—
technically, medically, madness."

Seeing my annoyance, Veraswami became grave. "Many peo-
ple hear voices in their heads, Mr. Blair. I mean they truly believe
they hear voices which others do not hear. I do not doubt them; it
iss their truth. And it iss also true that the alienists sometimes lock
them up ass mad because of what they say they hear and what
they do. I do not know if the boy's father would have been thought
mad if he had not tried to kill his son. But then he did try to kill
his son, you and many others tell me, and so you say he must be
mad. Perhaps . . . perhaps . . . ." His voice sank to silence.

"Should you go to see him, Dr. Veraswami?"

"But what if he doesn't want to talk to me? I gather he didn't
talk much to you. I will try, of course, but for whom do I go?"
Obviously agitated, Veraswami paced about the verandah, his eyes
turned away from me looking toward the hospital. "Do I see him
for you, ass one serving the criminal law, to consider whether to
punish him? Or iss he a patient? Not, I think, unless he wants me
to be hiss doctor, and I will be surprised if he doess—he has never
called for my help before, and he does know of me." Veraswami
paused, turned to me, and added, "Since he iss in jail I will call on
him to see if he needs medical help and we will see what happens. He may wish to talk to me.”

Veraswami reminded me that he had worked for a time in a mental hospital in London and that he had considered making psychiatry his specialty. “But that iss a verry different story I will tell you one day, not now. Doess the Headman not need a lawyer as much as a doctor? Hass he a lawyer?”

I had not considered the matter. I should have, but I hadn’t. I made a mental note to ask him. I found myself rehearsing in my head what I would say to Ake Dah and how he might reply—and I to him—and he to me—and so on.

Veraswami cut into my reverie. “You look tired, my young friend. Are you hearing voices yourself?”

“Oh course not, Dr. Veraswami. Just thinking what I should say to Ake Dah and he to me.”

“Well, you do look tired. It must have been a verry verry long day for you. Much to do. Much to worry about. There iss nothing more to do now. The boy iss safe. I will go to the jail. Perhaps you should go to your bungalow or to the Club or wherever you want to go. But no more work today.”

He was right. I had better think more and rush about less. No, not the Club—my bungalow. And I thanked Veraswami and walked home in the peace of the evening saddened for Treya, Ake Dah, and, it better be confessed, for myself.

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Mid-morning, the next day, my start-the-day routine completed—inspections, duty rosters, the lists settled for the next sessions of the Magistrate’s Court, including a preliminary hearing into the charges against Ake Dah—I made my way to the jail.

Ake Dah responded warmly to news of my visit to Treya, but he was barely interested in what I had to tell him of the hearing I would have to hold into the evidence against him, the hearing at which I would have to decide whether the charge should go forward. I managed to hold his attention sufficiently to explain that if the evidence supported a charge of attempted murder, he would be tried in Mandalay or Rangoon before a Judge of the Superior Court, whereas if it were a lesser charge against him—say, unlawful wounding or assault occasioning bodily harm—he could be tried before me, in the Magistrate’s Court, if he wished. I urged him to get a lawyer to represent him at the preliminary hearing. I told him I was not experienced in these matters, but that everything I had been taught and everything I had observed led me to
the view that he would be wise to get a lawyer immediately.

"Mr. Blair, I did what had to be done, what God told me to do. I do not think I need anyone to explain that to you. But I will think about what you have said." I recalled the story of the devout Christian accused at the Old Bailey who had declined a dock brief and the assistance of counsel on the ground that "Jesus was his counsel," and who was nevertheless urged by the judge "to get local counsel also," but I did not think it wise to tell that story to Ake Dah.

Ake Dah seemed uninterested in further discussion of his own situation and rather brusquely shifted the conversation to conditions at Versali, asking me if a few of the elders of the village could come to the jail to discuss what should be done at the mill and in the fields and with the working elephants while he was in jail. I agreed, of course, and helped him to make the necessary arrangements for a message from him to be taken to Versali.

I tried again to urge him to get a lawyer and offered to help him do so if he wished, but he remained uninterested, almost patronising in rejecting my offer. So be it, I thought, I will not be troubled in court by lawyers' wranglings. I will hear what a village elder or two report of the attack on the boy, get a medical report on him, let Ake Dah tell his story if he wishes to, and then decide what I want to happen and so order. There would be no chance of my getting into legal difficulties provided I didn't give reasons for what I would order—I would just say I had reflected on the evidence and decided to order so and so. This was probably the best judicial advice I had been given at the Mandalay School; I would follow it.

I went back to the police station, taking off my cap as I entered so that I could nod to the duty sergeant without putting him to the burden of a salute, and wandered into my office.

To my astonishment, there was U Tin Hlang, sitting in my least uncomfortable chair, his round, brown face with its curved scar beaming at me.

"Mr. Lang! How good to see you here again!" I burst out, for I had found him personally a joy in our time together on the Cunningham case.*

He was obviously pleased by the immediate warmth of my greeting. He rose quickly, hand extended. "And it is very good to see you again, Your Honour." He knew that as a junior magistrate

I was entitled to no such honorific, other than in the courtroom, but it had become a form of lightly teasing address to me when we were together wrestling with JayJay’s future and he had wished to stress the weight of the burdens that fell on my young shoulders.

“What brings you here? Surely you can’t still be worrying about the Cunningham case.”

“No. Not that case, though you were a great help to our movement in that case. Your perfidious larceny of the Burmese child has been spread far and wide”—he opened his arms to embrace all Burma—“and I am very grateful to you. No; that case is over between us. This time it is your devout Versali Headman and his potentially Enlightened Son who bring me into Your Honour’s presence. I come at the direction of the General Council of Burmese Associations. You cannot have forgotten us, the GCBA. It would disappoint me profoundly to be told that we are not a sharp thorn in your district officer’s side, a persistent burr under the saddle of your far-flung administration.”

I must have failed to conceal my regret at realising that now every decision I might make about Ake Dah and Mai Treya would be under skilled scrutiny. Deciding what was right and ordering it without giving reasons were now forlorn hopes. My genial Burmese barrister might be good (if verbose) company, and he might be instructive about social change and politics in Burma, but he would not make my magisterial task a whit easier. At the Club, the combination of Doctor Veraswami, U Tin Hlang the barrister, and my inept self would inspire astonishingly little confidence. And like it or not, what they thought and said at the Club pressed upon me.

The steady certainty of most Europeans with whom I associated that I was sentimental and weak in my dealings with the Burmese made balanced decisions much more difficult. I was often troubled by the thought that I was either reacting excessively against what was seen as “the right thing to do,” which almost always was favourable to the immediate interests of the Europeans, or letting myself be swayed weakly to go along with Club opinion.

I have since learnt that every judge is stirred by similar anxieties and is influenced by them whether he likes it or not, whether he realises it or not. But at twenty-two, with few friends to support my weak tendrils of independent judgment, I felt these pressures keenly.

Yes, I am sure my face did not conceal these reactions from U Tin Hlang. “Do not worry too much, Your Honour. Together we will handle these matters peacefully—at any rate without scandal.” He smiled at my negatively shaking head.
"I suppose you want to see Ake Dah immediately," I said. "He told me clearly he did not want legal assistance. Why should I let you see him?"

"You are quite right, Your Honour, you should not authorise my admission to your no doubt excellent jail. Certainly not until I commit some appropriate offense or until the Headman from Versali asks for me as his legal counsel."

I kept silent, sure that Hlang, with the pompous affectation of a London-Burma barrister, was only circling around what he really wanted to say. He continued, drawing an envelope from his pocket, "But I would be grateful if you would give this letter to your headman prisoner. It is from the Secretary of the GCBA."

I took the letter and promised to get it to Ake Dah within the hour. It did not seem hard to guess what it would contain. I had no doubt that Ake Dah would soon be U Tin Hlang's client and that my judicial task would thus be greatly complicated. I had to admit to myself that when I was thinking of a lawyer for Ake Dah I was not thinking of a lawyer like U Tin Hlang, not a lawyer who would relate village concerns to the larger political realities of Burma—and make these linkages in a case that already seemed more than sufficiently complicated for my taste.

"By the way," U Tin Hlang added as I put the envelope on my desk, "do you censor incoming mail? I don't think you should, unless you suspect it contains contraband or a file or some complicated plans for escape. But so that you shall not ever doubt me, here is a copy of what is in that envelope." He handed me a letter.

I put it on the desk, ostentatiously unread.

"Where will you be staying, in case Ake Dah wishes to contact you, as I'm sure he will?" I asked.

"I will go now to the Htun Hla Hotel, Mr. Blair, which as you know is not at all like the Savoy. But it will have to serve. Would you perhaps join me there for a drink before dinner—or perhaps also for dinner, if you are not otherwise engaged?" I must have been slow of response, so that he added, "I will not burden you with talk of the case of the Headman, I promise you. But I would find it most pleasant to talk with you about other things Burmese and English, if you wish."

I accepted his invitation, saw him out of my office, and returned to read the paper he had given me, a duplicate, he said, of what was in the envelope. It was in Burmese script and beyond my comprehension. I don't know why I had thought it would be in English, considering its Buddhist provenance. But U Tin Hlang had added a note of translation for my benefit: "All this conveys,
Mr. Blair, are two propositions: That the Young Men's Buddhist Association was represented yesterday at an emergency meeting of the General Council of Buddhist Associations, and at the meeting it was decided to send me immediately to Moulmein to serve as counsel to the Headman of Versali in any legal proceedings that might arise from the events at Versali that day concerning the Headman and his son. I err; there are more than two propositions when I think about it. The Headman is asked to accept me as his counsel, and—a centrally important final proposition—he is informed that the General Council will bear the heavy costs of my representation."

I suppose that was all that was in the unopened envelope I arranged for Ake Dah to receive. Surely U Tin Hlang would not risk any discrepancies. At all events, the policeman who delivered the envelope to Ake Dah returned to me with the request that I approve U Tin Hlang's visiting Ake Dah in jail as his counsel.

* * * *

I had no choice.

I knew precisely where the Htun Hla Hotel was situated: on the other side of town from my bungalow, near the statue of the young Buddha from the Mons period, the statue I most enjoyed in Moulmein. The Buddha was not huge like those in Arakan, not minute as in the Pyu kingdom, but life-sized and unconventionalised, not posed in a formal posture of meditation, but young and alive, sitting on a bench with his feet swinging free. Nevertheless, it was undeniably a statue of the Buddha and had been so treated, probably since the first century A.D., though history and myth are often intertwined in Burma as, I suppose, they are elsewhere.

The Htun Hla had been a hotel—or, rather, there had been a hotel on that site—at least since a representative of the East India Company had visited Moulmein and stayed at an inn or resthouse of that name in 1742—and probably long before. It was the best hotel in Moulmein, but still pretty seedy and clearly less comfortable than the Government Resthouse or the Club, both of which were, for different reasons, denied to U Tin Hlang.

I decided to arrive in style. U Tin Hlang often had that effect on me. He seemed so lightly to be pursuing larger purposes that I reacted by moving to the juvenile, wishing to surprise him. Why not live up to my nickname? I would arrive in a rickshaw. There were not many rickshaws in Moulmein, but I managed to arrange for one to collect me.

In the event, the rickshaw, or rather my timing of dressing for
the trot across town, kept me late. I changed out of uniform into a
light cotton safari jacket, light khaki shorts and long white socks,
and I made sure that my boy had polished my brown shoes to a
spit shine. It seemed the right dress, neither too formal nor too
casual—I still cared about such things. But I timed it badly. It was
a steamy evening and I showered and dressed too quickly, so that
when the rickshaw arrived and we were no more than a hundred
yards on our way, my shirt was ringing wet, odiously wet, impossi-
bly wet. I had to tell the rickshaw wallah to turn back and wait
while I dried myself and stood under the slowly rotating fan in my
bedroom until I stopped sweating and could put on a shirt which
might retain some hint of crispness until I reached the hotel.

It was not U Tin Hlang who was surprised on my arrival. He
was nowhere to be seen as I stepped down from the rickshaw in
front of the hotel. The surprise was mine, but not mine alone. Ver-
awami was there, obviously astonished at my behaviour. “What
iss it, Mr. Blair? Are you not well? Do you require my professional
assistance? Can you no longer walk or ride a bicycle?”

It seemed better to ignore his ponderous efforts at teasing.
“Good evening, Doctor. What are you doing here?”

“We are, ass one may say, both doing the same thing: dining
with the barrister, U Tin Hlang. Did he not tell you he had invited
me?” Verawami looked troubled, as if it might embarrass me that
he was here.

I tried to express my pleasure at his presence, though I did not
feel it. The three of us together would make an even odder group
than I had anticipated and, when reported to the Club, our dinner
would take on the air of a conspiracy. But there was nothing I
could do about it now. I often felt that way when dealing with U
Tin Hlang, but I never seemed to learn from these repeated exper-
ences. I found myself thinking that that was why he would pros-
per politically and I would not.

U Tin Hlang was waiting just inside the entrance to the hotel
in its open, scrubbed, but starkly furnished foyer. He had a table
for us in the large room that served alike for lounge and dining
room, immediately beneath a fan rotating with reasonable speed
and only moderate clanking noises. The chairs were upright and
wooden backed, but there were cushions on their seats.

There seemed little to link the three of us, little in common to
talk about. There was, of course, one inexhaustible subject, if we
cared to stay on it: life in London, particularly life in London for
foreign students and youths from the provinces. It sustained us
through beers before dinner, through a clear vegetable soup served
with a few green leaves skimming the surface, and through what U Tin Hlang told us was a chicken curry served on rice with what was called “ngapi” or “nganpayay,” a fermented fish paste, which, he claimed, was the regional dish of southern Burma. It smelt powerfully; I took very little. U Tin Hlang noticed my caution and said that he was not surprised: The dish was not often served to foreigners, and when Mr. Kipling had tried it he had offered the opinion that it was “fish pickled when it ought to have been buried long ago.” I did my best. In very small quantities it was tolerable.

It was not the beer that made me decide it was ridiculous for us to avoid the topic we all wished to discuss. One could not drink too much beer in that heat if it were not to flow out of one’s pores as from a sieve. I waited for a pause in the conversation. “Let us talk about Ake Dah and Mai Treya. Of course the matter is _sub judice_, but I believe we three have the best interests of the village and of the father and son at heart and should be able to talk to one another about it.”

As I spoke I had the sinking feeling of one knowing that he is ingenuous and childish. Veraswami was silent. U Tin Hlang responded with gravity, quite unlike his usual bantering style: “Thank you for your confidence, Mr. Blair. I shall not misuse it. I will remember and learn from what you both say, but I shall not use it to embarrass you or to constrict your judicial or medical discretions. Please believe me.” And again I could see why high office awaited him.

I turned to Dr. Veraswami: “You saw Ake Dah today. What is your opinion of him. Is he mad?”

“I can tell you the name the psychiatrists are beginning to give to his mental disorder, but I do not know what the word ‘mad’ means, Mr. Blair, and I am not being difficult with you, for sure not. He is schizophrenic, of the paranoid type. He has delusions of grandeur. He has been selected by God to smooth the path of a new Buddha. He hears voices in his head telling him this in many different ways, but always about his son, Mai Treya.”

“But,” I objected, “he is probably the most successful headman in southern Burma, in all Burma for all I know. He has made that mill and that elephant herd. Few other villages have done anything like it. The village will be lost without him—they’re already consulting him while he’s in jail. He’s obviously very intelligent and very sensible.”

“You are quite right, quite right, but you make the mistake, the very common mistake, of thinking that the mentally ill are unintelligent. He is very intelligent. But you must understand, he
really believes he is the servant of God. He doesn’t think it, he
knows it. Just like your Abraham said he knew it. It is, you have
long ago understood, the same story. But you must not think that
is surprising. It is a very, very common story. Many people
hear voices in their heads, I mean hear them, I do not mean say
they hear them, I mean hear them, hear them,” and he nodded
repetitively until U Tin Hlang interrupted.

“Tell me, Dr. Veraswami, do such voices often tell men to kill
their sons?”

Veraswami nodded even more vigorously at the point of U Tin
Hlang’s enquiry. “To injure or kill themselves, that is common.
To kill their entire families and themselves is also reported quite
often in the literature. To kill wives they believe are faithless is
also very common, associated often with their own failing sexual-
ity, isn’t it? But you are right: To kill a son to prove obedience to
God or more extraordinarily to save the son’s soul for future Godli-
ness is rarely reported.”

We were silent. I was shaping a question as to what he thought
had brought Ake Dah to this belief when Veraswami continued,
“You must not think Ake Dah is prevaricating. He speaks truth
as he sees it, and many people will believe he speaks absolute
truth, real truth, objective truth, not just subjective truth. After all
the Christians and Jews, and even the Moslems, all believe that
Abraham spoke truth in fact about his attempted murder of his
son Isaac. Each year Ake Dah has been becoming more devout.
Each year he spends more time in meditation, more time at the
pagoda and less with his family, is more anxious about his divine
blessed son at that wicked school, and gives less attention to
the affairs of Versali—and I don’t think he visits his wife’s bed at
all nowadays. He has been growing steadily more and more and
more troubled, more frequently hears the voice inside him telling
him what to do. His schizophrenia and his hallucinations feed on
his genuine religious beliefs. It is very sad.”

“What,” U Tin Hlang asked, “do you mean when you say ‘the
voice inside him?’ Is it different from my hearing you talk?”

“Yess, I think it is. When I hear you talk there is noise in my
head, but I know it comes from outside my head. When Ake Dah
hears the voice of God, God speaks directly to him. He hears the
noise inside his head, but it comes from inside his head. Ass I
say, God speaks directly to him, directly, not from outside.”

“Can you cure him?” I asked.

Veraswami smiled at me with warmth. “You ask a kind and
gentle question, but I am not sure I can answer it. If by curing him
you mean stopping his hearing the voices or stopping his acting on them, I can do that by sedating him heavily and by having him watched carefully and for a long time—until he ceases to hear the voices, which will happen some time hence, perhaps in a few years if he lives so long. But he may not want the sedating or the watching. And why should I try to cure him, Mr. Blair? He iss now even more esteemed in the village, soon perhaps throughout the Buddhist world. Mai Treya iss not in danger. He iss old enough to be separated from his father for a while and to be instructed how to care for himself so that he can be with his father without danger. Why should we cure him?"

U Tin Hlang began to speculate how those who were paying his fees, the General Council of Buddhist Associations, would like to have a genuine new prophet on their hands and was suggesting lightly that they had enough trouble with the British without adding any new theological burden, when our dessert arrived. Fresh fruit it appeared to be, which seemed promising after the gorge-raising threat of the unburied fish until U Tin Hlang pointed out that it included the Moulmein specialty, “durian,” much prized throughout Burma, though, he added “some Englishmen will tell you that the flavour and odour of this fruit may be realised by eating a garlic custard over a London sewer, while others are no less positive in their perception of it as a delicious blending of sherry, spicy custard, and the nectar of the Gods. Do try it, Mr. Blair.” I did. It was rather like a mango, crisp and tasty despite its musky smell.

All in all, I was glad I had accepted U Tin Hlang’s invitation to dinner. I had struggled through the food—if not a culinary delight, it was certainly a memorable and recountable experience—but I had been pleased by our conversation. Veraswami had given me some glimmering of understanding of this extraordinary crime, if crime it was. I had at least a sense of the psychological pressures on Ake Dah, and U Tin Hlang had meticulously observed the proper limits of extra-court advocacy.

I decided to risk a further step. I told them of my difficulty in understanding the legal aspects of the case, equipped with only the Indian Penal Code, my notes from the Mandalay course, and one or two tired and old textbooks. This led U Tin Hlang, as I hoped it would, to volunteer to lend me, for a few days, some later commentaries that he had brought with him.

I asked U Tin Hlang if he had been involved in any earlier cases where he had advanced the defence of insanity. He said he had, and that what it came to in his view was this: However the
test of insanity as a defence to a criminal charge might be worded, he had found that if he could bring the jury to identify with his client to the extent of having some understanding of the psychological tumult inside him, they would find him not guilty by reason of insanity. Generally, the jury wished to avoid convicting the accused if they could say to themselves: “If I were sick enough, I could do that.” If they didn’t feel like that—and he thought it was a matter of feeling rather than thinking—there would be a conviction.

The last defence-of-insanity case he had been involved in was rather like what Veraswami had been talking about—a man in a psychotic depression who had killed his wife and daughter, and then tried, without success, to kill himself. He was found not guilty by reason of insanity because, U Tin Hlang thought, the jury had come to understand how those periods of sadness we all have, that sense of uselessness and of the miseries of the world, can become deep and painful and lasting, so that death for those one loves and for oneself seems a kindness. He had found that if the jury could be brought to think about their own depressions, they would have at least a clue to, a distant sense of, a psychotic depression. They had to be brought to see in themselves, in miniature, the depression, the psychotic depression, that would lead a person to kill a member of his family and then to try to kill himself. “If I cannot make them identify with the criminal, have some sense of the awful force of his sickness, see at least a tinge of it somewhere in their own lives, they will convict.”

All this seemed safely distant from Ake Dah’s attack on his son, but I could see how links could be drawn. U Tin Hlang, I realised, was really being very helpful to me, and without any unethical advocacy. I was grateful to him.

U Tin Hlang got the books for me from his room and saw us to the front steps of the hotel. “No doubt you will want another rickshaw to deliver Your Worship to his bungalow,” Veraswami said helpfully. “Tell me, Mr. Lang, if I may so call you, following the uncouth practice of our young judicial friend, is ‘Worship’ the proper term for him?”

I tried to separate myself from this absurd dialogue. U Tin Hlang offered the helpful view that “Worship” was only appropriate when my great judicial mind was turned, as now, toward theological disputations, toward extra-sensory epiphenomena. Otherwise, the appellation should be “Your Honour,” not “Your Worship.”

I had had enough of this. “Good night Mr. Lang. Thank you
for dinner. Are you coming with me, Dr. Veraswami?” And I set off to walk home through the now cooler evening, Veraswami falling in quietly beside me.

It struck me that this was the first time since I had come East that I had heard of mental illness in the villages. It was sometimes said that the pace of village life was such that psychosis was not to be found there. I asked Dr. Veraswami if this were so and if Ake Dah had lapsed into mental illness because he had parted from the simpler life of a villager and taken on Western competitive ways. He was amused at my question. “My young friend, I know they say that, that there iss no psychosis in the villages, but all that means iss that there have been no psychiatrists in the villages.” His high-pitched giggle expressed his approval of his turn of phrase. “Burmese villagers are quite ass likely to go mad ass the rest of us. They are spared psychiatrist, not psychosis.” The giggle resumed.

As we parted, I thanked him for what he had told me about Ake Dah and said I would ask him to advise me again when I had a better understanding of what I would have to decide at the preliminary hearing.

* * * *

Do an appreciation of the situation, my instructor in Mandalay used to tell us, as you would for a military manoeuvre. At the time, it seemed a rather elementary piece of advice, but in a crisis it is comforting to fall back on the tried-and-true. It’s not only in war that you must sum up the enemy and his positions, chart your resources, assess your options, and then make a decision. Do it whenever you have an important decision to make.

What were my options with Ake Dah? There was no question of bail: He was properly held on a valid charge until the preliminary hearing. His counsel had made no application for a psychiatric examination. He might do so, of course, and that would delay the preliminary hearing, but he hadn’t yet. Should I be taking any formal steps in light of what Dr. Veraswami had told me of Ake Dah’s mental illness? Or should I leave matters as they stood until Ake Dah was arraigned before me in my role as a Police Magistrate on the charge of attempted murder and then decide whether he should be held for trial in the Supreme Court or be tried on a lesser charge before me? Or should something else be done to bring his attack on his son to a legal resolution? There was clearly a variety of options: An “appreciation” was required.

The simple course, the straight up and down the pitch course, was to do nothing now—often an excellent plan—to wait for the
preliminary hearing and then to respond to the evidence that would be presented. If U Tin Hlang made no mention then of Ake Dah's apparently mad religious beliefs, all I would have to do would be to let trained judges in Mandalay or Rangoon, wherever he was tried, grapple at trial with his defence of insanity if it were made. There would certainly be adequate evidence before me to commit Ake Dah for trial on a charge of attempted murder unless something was said about his mad motive, and I was under no obligation to raise any question about his motives.

That seemed the simple and safe path to follow. It could get me into no legal difficulties and would be approved by my superiors—but it felt wrong. It increased the chance of a substantial sentence of imprisonment for Ake Dah, which did not seem likely to be of much use to his family, to Versali, or to anyone else. And U Tin Hlang might well decide to offer Ake Dah as a martyr to the Raj, advancing a justification of his actions on religious rather than psychiatric grounds, arguing the validity of Ake Dah's religious beliefs and not their psychopathology. That might be one way to advance the purposes of the GCBA, who were, after all, employing him. That must be his plan. Otherwise, he would have been besieging me with interlocutory motions for a psychiatric assessment of Ake Dah prior to the preliminary hearing, trying to get the attack on Mai Treya treated not as a criminal law matter at all but rather as a problem of mental health which might or might not require Ake Dah's commitment to a mental hospital and which certainly made a criminal charge inappropriate.

So, if I did nothing but act the remote magistrate, U Tin Hlang had it in his power, given what I knew of Ake Dah's own explanation of his conduct, to use Ake Dah for political purposes, to take advantage of his mental illness and the deep sincerity of his religious beliefs to sacrifice him. It could not be right for me to fall in with such a plan, but it was not immediately clear what I could do to stop it.

The plain fact was that I didn't know enough law to make an effective appreciation of the situation. It was obvious to me that I had better do some work and try again. And this time I would have to rely on my own efforts with the law. If I sought help from Mandalay I would be told to follow ordinary procedures, which would play into U Tin Hlang's plans if they were what I judged them to be.

Every moment of the next two days that I could tear free from regular duties was devoted to the search. It proved not too difficult and much more interesting than I had expected. What Section 84
of the Indian Penal Code, the law applicable in Burma, said about
the defence of insanity was clear enough:

Nothing is an offence which is done by a person who at the
time of doing it, by reason of unsoundness of mind, is incapa-
ble of knowing the nature of the act or that he is doing what
is either wrong or contrary to law.

I found that there were two sources for this section. In 1837,
Thomas Babington Macaulay had drafted a proposed Section 67
for the Indian Law Commissioners, which had been published by
order—it proudly read—of “The Governor-General of India in
Council”:

Nothing is an offence which a person does in consequence of
being mad or delirious at the time of doing it.

The other source was obviously the opinion of the judges,
given in the House of Lords in 1843 after the M’Naghten
case, which provided for a defence of insanity if, by reason of unsound-
ness of mind at the time of the act charged as a crime, the accused
did not know the nature and quality of his act or did not know
that what he was doing was wrong.

Macaulay’s Section 67 seemed likely to me to give a defence to
Ake Dah—there could certainly be evidence that Ake Dah was
“mad” (Macaulay’s word) at the time he wounded his son and that
he acted as a consequence of that madness. But it seemed much
less likely that he would have a defence under the law as it stood,
under the Indian Penal Code’s Section 84, since he clearly knew
that what he was doing was “contrary to law.” U Tin Hlang would
argue on behalf of Ake Dah, of course, that the law must yield to
the command of God, but he would have to admit that Ake Dah
knew that the law forbade what he was doing. So, I wasn’t at all
confident that Ake Dah would have a valid defence of insanity
under the law as it stood. Yet it seemed monstrous to think of him
as an ordinary violent criminal.

I would have to ask Dr. Veraswami what the principle was be-
hind the defence of insanity. Why were there these differences be-
tween one test and another? But there seemed little I could do
about it at this stage. And, as often happened when things were at
their most confusing, a promising idea came to me.

There was one order I could make at this stage that would at
least delay the trial and might avoid it entirely. At the very least,
it would give me time to talk to Ake Dah and his family, to talk to
Veraswami, to better understand the law and what options I
had—to make a better “appreciation of the situation.”

As a magistrate at a preliminary hearing, I could not force a
defence of insanity on Ake Dah, but I remembered that the ques-
tion of Ake Dah’s “fitness to plead” to the charge, his mental com-
petency to stand trial, was relevant even at this early stage and
that I was entitled as a magistrate to raise that question even if
Ake Dah and U Tin Hlang did not want it to be raised. Mandalay
had been more helpful than I had given them credit for; some
things had stuck.

I checked on it. I was right. If there was reason to believe that,
because of mental illness, an accused was “unfit to plead” at a pre-
liminary hearing, the magistrate could order him to be held for a
psychiatric report at the nearest mental hospital. Within a week,
the hospital was required to report to the court on the accused’s
mental condition and to state whether, in their view, he was fit for
trial and, if not, whether he should be committed as insane.

I then checked on what this fitness to plead meant. It
amounted to a test of whether the accused knew that he was on
trial and knew the likely consequences of a trial and of whether he
could reasonably well defend himself or reasonably well assist his
counsel in his defence. It seemed quite clear to me that Ake Dah
could do all these things very well indeed, but it did not seem un-
fair to use this method of holding matters still for a time so that U
Tin Hlang and his employers could not use for their own ends
what I now found myself thinking of as the tragedy at Versali.

I had a message taken to U Tin Hlang at his hotel that I pro-
posed to call the case of Ake Dah at the next petty sessions, which
would be tomorrow, to make an interlocutory order prior to the
preliminary enquiry.

* * * *

I have never enjoyed a court hearing as much. U Tin Hlang
appeared robed, as he had in the Cunningham case. It astonished
the few litigants before me and amazed their local counsel, but U
Tin Hlang was used to making a stir in Burmese courts and was
untroubled by his grandeur amidst our simplicities.

A policeman acting as clerk of the court called the case of Ake
Dah. U Tin Hlang looked around as if astonished at the absence of
his client. I plunged ahead: “On the basis of information that has
come to me from the jail, and on the basis of my own observations
of the accused in this case, I am ordering that the headman, Ake
Dah, now held in Moulmein Gaol, be transferred to Moulmein
Hospital for a psychiatric examination as to his fitness to plead to
the charge against him.” That was it: as few reasons as possible, just the order.

U Tin Hlang protested grandly and strenuously: abuse of power, tyrannical treatment of a loyal servant of the State, defamation of religion, gross error of law, intention immediately to appeal, and so on. I knew his rhetoric outreached his authority and that there was no appeal from such an order except by way of *habeas corpus* application to a superior court, which would be most unlikely to succeed and, if it did succeed, would not help his pursuit of the martyrdom of Ake Dah. I said that his objections were noted and had the next case called.

My joy in victory was short-lived. For a week, perhaps for a longer time, I had staved off what I took to be U Tin Hlang’s plans for Ake Dah. But I still had no clear idea what I wanted to happen to him.

* * *

Previously, when I had visited Dr. Veraswami’s hospital, I had not thought it necessary to inspect the psychiatric section. I am not sure what I had expected, and I am still not sure whether the psychiatric annex for the mad and the retarded at Moulmein Hospital is at all like an asylum for the insane in England, or in India, or in one of the larger towns of Burma—probably not. But Dr. Veraswami told me the problems were much the same. There were only differences of size which, he said, had a great effect on conditions generally, on sanitation, individual care, and the general tone of the institutions, but not on the psychiatric problems they had to deal with. The sad truth was, he said, that quite a lot was known about the general patterns of mental illness and of retardation, but not much was known about the causes of those patterns of behaviour or about their cure.

He said he thought the problems were much the same everywhere because, when careful comparisons were made between different countries and corrections were made for differences of diagnostic practice, every country seemed to have about the same proportion of schizophrenics and of other mentally ill and retarded people in their populations. Mental illness, in other words, was part of the human condition—like physical illness. We should not be surprised or resentful. God or natural selection or both had done the job they had done, and we had to live with it.

At all events, the psychiatric annex at Moulmein Hospital consisted of what seemed to my para-military eye to be a dusty parade ground—Dr. Veraswami called it the “yard”—surrounded on four
sides by single-story dormitories, offices, and a few consulting rooms. The distinctive feature was that it was surrounded—huts, yard, and all—by a wire fence about ten feet high topped by barbed wire—surplus, probably, from the carnage on the Western Front.

The brutal directness of the sun on the yard was mitigated by a few open shelters made of wooden uprights on which rested corrugated iron roofs to shade the tables and benches where some of the inmates sat dozing or talking. Others walked about in the sun, many talking or muttering to themselves. Some crouched or curled up in the shade of the walls of the surrounding buildings and dozed. It was a scene of inaction. I had expected to be anxious for my safety—to put no fine phrase upon it, scared. I was not. I was outraged.

“You must not be surprised, Mr. Blair. There iss not much for them to do. Why not sleep or talk to oneself?”

“But surely there is much that they could do. They could be working. They could be in treatment for their illness.”

“Perhaps . . . perhaps . . . but I have one doctor to help me with this part of the hospital, and he iss a Burmese who hass not been trained in psychiatry. If he had been so trained, he would be in a most lucrative practice in Rangoon, to be sure. We have eighty patients here, rarely less, and they stay for a long while, some until they die, indeed, most until they die.”

“It seems such a waste, Dr. Veraswami. Can’t we do better than this?”

“You must not be critical, my young friend,” Veraswami said, softening any hint of a rebuke by a smile of approval at my indig-nation. “We do better, so it seems to me, than many places, many countries, your own included if I may be so bold. Ass you see, there are not many here. Many others who are mentally sick are cared for in the villages by their families. In your country perhaps fewer families can care for their sick, or want to.”

I had no idea if he was right or not. Probably he spoke sense, but it didn’t make much difference to what I saw: sick people abandoned and deserted, filling in time, just filling in time.

“Is this what is to become of Ake Dah? I have come to respect him. The thought of his spending years in a place like this, kicking the dust and talking to himself, is miserable. Can’t we do better than this?”

I was deeply troubled: why, I am not sure, but suddenly Ake Dah was close to my heart. It was terrible to think of his spending perhaps twenty years—and it might be that—in a place like this.
“Where is Ake Dah now, Dr. Veraswami?” I asked.

Veraswami nodded toward a hut on the other side of the parade ground from where we were standing. “He iss in a single room, under observation continuously, which he resents. But if I am to report about him to your court, as you have ordered, I thought it best to have him watched. And there iss always the risk that the voice he hears might tell him to kill himself—though I think that iss unlikely. Still, better to be safe . . . .”

“I thought you told me, Doctor, that under sedation he would not hear that voice.”

“Probably not, but it would be better, would it not, if he iss to be tried, for him to be ass clear in the head ass possible. So I thought we should observe him closely for a time when he has not taken any drugs. And, I must also tell you, I think it verry likely indeed that he will refuse to take any drugs. He will hate them. He doess not think he iss sick; he believes he iss chosen of God. He doess not want to be cured, not at all. Am I to force him to be drugged?”

“Would it be convenient for me to visit him now? If he agrees?” I was not sure why I wished to talk with Ake Dah, but I did. As a magistrate, I was supposed to rely only on whatever evidence was brought before me in court. But in my other capacity, as chief of the local police, who controlled this prosecution, I needed to know as much as I could about him. And also it was my duty to protect a prisoner and to ensure he was treated properly. Perhaps these were all excuses for inquisitiveness.

“Of course you may see him, but I think U Tin Hlang iss with him now. Would you not rather wait until he iss alone?”

I had forgotten that my ordering a psychiatric examination of the prisoner did not at all prevent his counsel seeing him whenever it was medically convenient. U Tin Hlang would be doing a lot of consulting, planning for Ake Dah I hoped, but also for his political employers. I asked Dr. Veraswami if he could spare some time to talk to me while I waited to see Ake Dah. “By all means. It iss not a busy day at the hospital. Let us talk here.”

It was, I suppose, an appropriate setting in which to learn about a defence of insanity, and about what happens to those who are found not guilty by reason of insanity: a shaded corner of a large yard, dotted with fools and madmen, not uncomfortable since a breeze stirred the palm trees outside the fence, but profoundly depressing—a scene of pain and hopelessness.

We sat on a plank bench. Veraswami leaned his elbows on the rough table and looked up at me, ready to be questioned. I told
him I had boned up on the law and its background, that I knew what a defence of insanity involved as a matter of proof, that I knew that most who were found not guilty by reason of insanity were then sent to a mental hospital until they were sane and no longer dangerous, but that I really did not understand how those words of the law worked in practice, here or elsewhere.

Veraswami was slow in replying, obviously making an effort to organise his thoughts. His arms rose from the table, his hands open and pressing inwards as if on a large invisible ball. "I will try, Mr. Blair. I have seen something of what happens to them in England and my country and here. But it iss not easy, it iss all so chancy. I shall try to make it simple."

I bridled at this. "Dr. Veraswami, I know you are more than twice my age and trained and experienced in these matters, which I am not, but don't oversimplify for my benefit. I shall do my best to understand."

He looked horrified. He probably was. He leapt from his seat and waved his arms like some of the others in that fenced yard. "Oh, pleass, Mr. Blair. You misunderstand. It iss for myself that it must be simple. If I go on, round and round, with long medical words, I will not myself be knowing what I am talking about. For myself, for my own understanding, I will try to make it verry clear. But the trouble iss that in fact these are not simple matters, so that if one makes it direct and simple one also makes it wrong. But to start with, simple, simple, for me, not for you."

I apologised and calmed him down, thinking that he might be a good candidate for one of his own sedatives at this moment; but as usual Veraswami reacted with warmth to my apology, sat himself down opposite me so that the scene of the wandering patients was behind him, and talked to me with unusual directness and understanding.

It came to this: From what he knew already of Ake Dah, if he were found fit for trial, charged with attempted murder, and pleaded the insanity defence, no psychiatrist, no doctor who knew anything about mental illness, would deny that he was a paranoid schizophrenic and that his attack on Mai Treya was related to his illness. So, unless something went wrong, and it often did in sensational trials, he would be found not guilty by reason of insanity and would then be committed to a mental hospital, probably near Rangoon, where he would be held for a long time. The conditions would be much like those I was looking at over Veraswami's shoulder, only worse because the hospital would be more crowded.

If, of course, he did not plead a defence of insanity and tried
to justify his actions as directed by God, the court would do one of two things. It might force an insanity defence upon him, which it could then do, particularly because it would have his—Veraswami's—report, which he would have to present to me, since I had ordered Ake Dah's psychiatric examination. I had not until then realised that I had already unwittingly limited Ake Dah's and U Tin Hlang's freedom of strategy at trial by ordering the enquiry into Ake Dah's fitness for trial. Or they would simply convict him of attempted murder and presumably impose a sentence of imprisonment.

So, either way, Ake Dah would spend a long time away from Versali, away from his family.

"But all this makes no sense, Doctor. You tell me that Ake Dah is no longer a threat to his son. His son wants him home. His family and the villagers all want him back if he won't attack anyone. What are we doing sending him away for years? Will it help him get better?"

Veraswami said that he did not think Ake Dah would ever change very much, "Not until he is quite old and doesn't care so much about himself."

"What would you do about Ake Dah if we didn't have to worry about these legal processes, Dr. Veraswami?"

Veraswami hesitated, looked about him, and then smiled with pleasure at the idea that came to him. "I would keep him here for a few months, perhaps a year or so, to help me get thisss terrible place into better order—it doess look terrible doesn't it? Ake Dah iss a fine organiser, an industrious man. He would be excellent here."

"But you just told me every psychiatrist would say he is mad."

"Yes. But that does not mean he would not be verrry useful here."

"Does he think he is mad? You told me he doesn't think he is at all sick. Why should he stay here?"

Veraswami did not immediately respond. He looked about him for a while and then said, "You raise a question which I find verrry difficult. At one level I think Ake Dah knows the voice he hears iss a symptom of hiss sickness, but he cannot admit that to himself. He must deny it. It ruins him entirely not to. It diminishes his son if he admits to being ill. It destroys much that he has built around himself. Yet I think he knows, in a sense he knows, but he keeps pushing the truth away. Iss there nothing in your life like that, Blair? Not at all as threatening, of course, but things you know about yourself you put out of your mind, failures, weak-
nesses, inadequacies, forbidden temptations which you don’t let yourself think about. There are for most of us. And for Ake Dah these are deeply painful thoughts that must be held down very strongly; he must act very calm and wise and divinely inspired to keep them from him. Do I make any sense to you, my young friend? I am not sure of these things, as I said, though I think we all understand them to a little degree, but without the pain that Ake Dah,” he gestured behind him, “and these others endure.”

If what I thought Veraswami was saying was right, then it was very relevant indeed to Ake Dah’s state of mind when he tried to kill his son. The idea that Macaulay had suggested in 1837 seemed precisely appropriate in one sense, and his words came back to me—nothing is an offence which a person does in consequence of being mad at the time of doing it. But there seemed a difficulty in the logic. Had Ake Dah not been “mad,” he would not have attacked his son, so that on its face Macaulay’s provision, were it law, would give Ake Dah a defence. But, in a deeper sense, Ake Dah knew that the voice he heard was part of his “madness” and not the voice of God—he knew it, but could not admit it. Pride would not let him admit it. He could not reduce himself or his son in that way.

Pride might be too large a word for this type of self-protection, but the principle was clear. Mai Treya had been attacked because Ake Dah was not willing to face the truth about himself. Yet Mai Treya was also attacked because Ake Dah was sick and heard voices. In this situation, which analysis was to be preferred: that which held Ake Dah as blameless because the voices were not his and they caused the attack, or that which held that Ake Dah well knew he was not obeying the voice of God, but rather his own view of himself and his son as privileged, great beings—so that he preferred to sacrifice his son rather than the Ram of Pride?

And, of course, if enough people believed that he and the voice he heard were expressing objective truth, divinely revealed truth, then he would be seen as a great prophet, just like Abraham.

These ideas that Veraswami had launched needed further thought, that at least was obvious. I said as much to Veraswami and told him I did not wish to see Ake Dah now. I would get in touch with him soon, well before the hearing next week on the question of Ake Dah’s fitness to plead.

Over the next two days, whenever I could escape from routine duties, I tried to write up, for myself, an “appreciation” of the defence of insanity.

Mental illness could be relevant to a criminal charge, quite
apart from any special defence of insanity, by helping to disprove
the presence of the mental element of the crime—that the killer
intended to kill, the taker of property to steal, and so on—but such
a use of mental illness as a defence was apparently quite rare and
would not help with the Ake Dah case, since Ake Dah certainly
knew he was trying to kill his son.

So it was the special defence of insanity to a criminal charge,
rules made to deal with mental illness as distinct from other pres-
sures toward crime, that I would have to “appreciate.” The Indian
Penal Code, the notes I had from the Mandalay course, and the
materials loaned to me by U Tin Hlang eventually came together
in my mind.

There were several competing tests of insanity as a defence to
a criminal charge, but they all had the same structure and the
same three elements:

- mental illness at the time of the crime,
- a causal relation between that mental illness and the crime,
  and
- rules about who had to prove the first two elements and at
  what levels of persuasion.

All three elements were extremely imprecise. Medical defini-
tions would not suffice for the mental illness element. Philosoph-
ically acceptable definitions would not suffice for the causal ele-
ment. The language of the law about the strength of proof required
to establish both the illness and the fact that it caused the crime
was quite vague.

Macaulay in 1837 had framed the simplest and what seemed
to me the intellectually most satisfactory test: “Nothing is an of-
fence which a person does in consequence of being mad,” or, to put
it even more clearly, “Did the accused’s mental illness cause the
crime?” All other tests were simply variations of this idea, modify-
ing what was meant by mental illness, limiting it to knowledge of
wrongness or illegality, and trying to define the causal relationship
between the illness and the crime. This was true of the judges who
addressed the House of Lords after Daniel M’Naghten had been
found not guilty by reason of insanity, of the Indian Penal Code,
which would apply to Ake Dah, and of all other legal tests of in-
sanity as a defence to crime that I could find.

There had also been attempts to give a defence of insanity to
those who, though they knew what they were doing, had been una-
ble to control themselves. But this idea of measuring man’s voli-
tional control had understandably proved elusive in the ex-
So, at bottom, what I had to think about was whether Ake Dah's mental illness—which Veraswami assured me was a reality and which, since I had observed Ake Dah's auditory hallucinations for myself, I knew to be genuine—had caused him to try to kill Mai Treya. In one sense, the answer was obvious. If he had not heard the voices he would not have attacked the boy. Is that all there was to it? Surely not, for if that were so everyone who had any "mental illness" and did an act which was otherwise a crime would have a defence of insanity, for obviously everything he did would have to be to some degree influenced by the mental illness. There must be more to it than that.

I finally concluded that I was on the wrong trail in trying to understand the defence of insanity by refining the issues of definition and causation. The truth was different. What was at issue was attribution of responsibility, not analysis of a definable condition and of a result. The central question was an "ought" question, not an "is" question: Was Ake Dah so sick that he ought not to be held responsible for his act? It was an imprecise question of justice, a question of judgment, not a question of measurable fact.

I felt confident about this, but it did not carry me to any easy conclusion about Ake Dah. It seemed to push me into trying to answer a question of enormous difficulty, one not only beyond my capacity but perhaps beyond anyone's capacity: Was Ake Dah morally innocent or not? It seemed a question peculiarly within St. Peter's province, if it is he who guards the Pearly Gates. How could I possibly know?

Veraswami had told me of the Dacoits, a criminal tribe of India who had also percolated into northeastern Burma. A young person in that tribe would steal and sometimes murder, since that was what he was expected and taught to do as proper behaviour by those to whom he had been born and who had reared him. He should certainly be convicted of those crimes, it seemed to me, but circumstances also seemed to make him morally innocent.

Was Ake Dah any different? He and the Dacoit youth both knew the criminal law prohibited what they were doing—declared it to be the most serious of all crimes. Yet both were morally convinced of the virtue of their behaviour. To St. Peter they would, I suspected, seem very similar. Why, then, did they seem different to me?

I thought, too, of U Tin Hlang's description of some political activists who willingly gave their lives for their political beliefs, carrying explosives on their bodies into the buildings of the Raj to
sacrifice themselves there. Were those terrorists as morally innocent as those led to kill by mental illness? Should they, as a moral matter, doubt the validity of their political beliefs more or less than Ake Dah should doubt the divine origin of his voices? Which of the two "prides" was easier to reject? Which merited the larger suspicion and, therefore, the greater effort at self-control? It seemed an unanswerable question.

I came to the conclusion that it was not for me to struggle further with these moral conundrums. The defence of insanity only made sense to me as a way of extending mercy to some whose sickness led us to wish to forgive them their acts. That was all: a means of extending mercy when we sympathised with what would otherwise be a crime.

And it struck me again that it was a strange sort of mercy. If Ake Dah were found not guilty by reason of insanity on a trial for attempted murder he would very likely spend many years in a mental hospital, vegetating, not changing other than for the worse, though he was now a threat to no one. It seemed a miserable sort of clemency. If only there were some way of getting him out of the clutches of the criminal law entirely so that his voices and his beliefs could be dealt with as matters of mental health and not as the precipitants of crime.

* * * *

On Sundays in Moulmein I often went to Morning Service. Perhaps there was an element of doing what was expected of me, although I don't think that was why I went. I doubt that the hope of everlasting life moved me, but I did find comfort and peace in the remembrances of my childhood, of the warmth of ceremonies and hymns closely shared with my mother, and of church-going with my family on those occasions when my father was home on leave from India. I have often thought that the Church of England is like the Jewish faith in that folkways and customs, a sense of group belonging, weigh far more heavily with its adherents than do beliefs or doctrines. At all events, I went to Morning Service on many Sundays in Moulmein, shook hands with the vicar on the way out, enquired whether I could be of service to anyone in his flock, and sometimes walked on to a light lunch at the Club, thus both prolonging and weakening my nostalgia for England.

This morning, as I turned away from the vicar, having performed my obsequies, a Burmese youth accosted me, and handed me an envelope, saying: "Mr. Blair, Sahib, Mr. U Tin Hlang asked me to give you this. I am to wait for a reply." He breathed heavily
in satisfaction at a lesson well learned and precisely rendered.

The message from U Tin Hlang read: “I called at your bungalow and was told you were at church. I have laid my hands on a motorcar. If you are free, would you join me for a drive to the hills? I have a well-stocked picnic hamper. I will pick you up at your bungalow half an hour hence, unless you tell the bearer of this note you cannot come.”

I resented his assumption that I would be so readily available, but in fact I was. Why not? It might be interesting, and he certainly had not embarrassed me by talking too much about our pending case at dinner the other night. So I sent a message of acceptance and hurried back to my bungalow to change into cooler clothes.

U Tin Hlang arrived in what he later told me was a bull-nosed Fiat, a lengthy two seater touring car with a canvas hood, now rolled down behind the back seat, and long running-boards that became mudguards sweeping up over the wheels like surprised eyebrows beside the long green bonnet of the car. The spare tyre was to the right of the driver’s seat, outside the cabin of the car, as was the large hand-brake on which Hlang’s right hand rested as he pulled up in front of the steps of my bungalow, tooting loudly, though he could see me plainly, standing there waiting for him.

A substantial wicker basket rested on the back seat. It appeared he had catered well for the picnic if there was any relation between the size of the hamper and the quantity of its contents. I rather hoped that he had put aside his taste for the Burmese gastronomic exotica of our dinner at his hotel—less moribund fish would not disappoint me.

“Come on, Blair, hop in.” He opened the small U-shaped door on the passenger’s side. He hadn’t stopped the engine; the dust of his arrival had hardly settled before we were on our way. But to where?

“Where are we going, Mr. Lang?”

I expected a reply, not a song, and for a time I did not realise that he was trying to achieve at once both a song and an answer to my question. He threw back his shoulders and mouthed the lyrics roundly to produce a powerful and quite respectable baritone, at least so it sounded over the noise of the engine, and demonstrated a mastery of cockney intonation as he sang:

> By the old Moulmein Pagoda, lookin’ lazy at the sea,
> There’s a Burma girl a-settin’, and I know she thinks
> o’ me . . .
> An’ I seed her first a-smokin’ of a whickin’ white
cheroot,
An' a-wastin' Christian kisses on an 'eathen idol's foot.

Cheroot and foot rhymed perfectly, to U Tin Hlang's exaggerated satisfaction. He sang it twice, and then switched from the cockney baritone to his own London-accented speech to add the obvious, "Your own Mr. Kipling—1889 I believe," and then further added, now in his powerful version of cockney, "Let us see of what he was a-talkin'."

"The lady or the pagoda, Mr. Lang?" I asked. And we both laughed in the joy of the adventure.

"The pagoda, you ass, though who can tell . . . ." I shared the childish pleasure of the moment. How he had managed to get a touring car for our enjoyment amazed me, but it did not matter. I had a sense of youthful irresponsibility, like an undergraduate out on an uncaring prank, which is what I suppose I should have been, not a District Officer worrying about an attempted murder that might disturb the life of a village.

"Alright, so it's the pagoda. But which pagoda?" I asked. "The country is littered with them."

"Littered. Do you really mean that?" Of course I didn't and said so, for they brought charm to every Burmese view, wherever they occurred, though I thought, without saying so to U Tin Hlang, that their distant prospect was to be preferred to their sometimes dingy or garishly repainted appearance seen up close. But even that thought was grossly unfair, I had to admit to myself, since many of them had stood where they were for far longer periods than any English statuary—other than, perhaps, Stonehenge, if that can be called statuary.

We settled to the drive, not trying to talk much over the noise of the engine, with the wind only slightly impeded by the low glass wind-screen. I did learn that an agent of the East India Company had loaned the car to U Tin Hlang for whatever period he would be in Moulmein. His work as a barrister, he somewhat pompously affirmed, was primarily concerned with commercial matters, not these personal disputes which I seemed to attract, and he did a lot of work for the East India Company. With the rainy season approaching, he did not much fancy getting about my town on foot, or even in the rickshaws that I was reputed to prefer for a variety of purposes: for transportation, as hearses—he knew not what else.

I ignored these elephantine attempts at humour and asked him which pagoda was the old Moulmein pagoda Kipling had in mind. He said he was not sure, but he thought it was the
Kyaikthanlan Pagoda on the highest hill-top overlooking Moulmein. Anyhow, he had declared this to be Kipling's pagoda for today's outing, since it gave such a fine view over Moulmein and the Salween.

The road followed the Salween for a distance and then set off straight through paddy fields to the nearest hills, winding dustily into cooler air and lighter vegetation. We drove for about forty minutes before, as we came around a bend, U Tin Hlang pointed over the wind-screen, "There it is, Blair," and braked to a swift stop.

It was less a pagoda than a series of pagodas, though one sharply arched and pointed pagoda at the summit stood high above the others. The lower and smaller pagodas were a crisp white, the higher and larger, a dark, earth-red colour, topped by a bronze point. In the foreground, on the road, was a Burmese youth kneeling on his heels, his open umbrella resting on the road. He knelt close to it to shield the sun from his neck and back while he gazed across the valley toward the town and the vast view of the winding Salween.

"You like it, Blair?" Indeed I did.

U Tin Hlang started the car, drove quietly round the youth so as not to disturb him or obstruct his view, and stopped the car at some steps at the foot of the low hill on which the pagodas were built. We took the picnic hamper between us, each holding a handle, climbed the stairs, walked to the left of the main pagoda, and sat under a tree with our backs to the buildings, sharing the view the boy was admiring from the road.

It was a good lunch, with none of the culinary peculiarities I had feared. Fresh sandwiches, some cheese, cold beer, some fruit—most un-Burmese except for the fruit. Whoever had packed the hamper had been ingenious in keeping the beer cool. Each bottle had been tightly wrapped, when very cold, in layers and layers of newspaper, and then in several thicknesses of cloth to insulate it from the heat. Beer has rarely tasted better to me.

It was most pleasant there with U Tin Hlang. He knew a great deal about Burma and its history and was happy to instruct me, friend to friend, the difference between our years falling away in the ease of our talk. We wandered around the pagoda, observing but not disturbing the few Burmese squatting in quiet meditation.

The clouds were gathering. The rainy season had arrived, and an early downpour instead of the usual late-afternoon shower seemed likely. U Tin Hlang asked if I wished to be driven back to Moulmein or whether I had the time to see another pagoda. He
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said there was a famous one not far from where we were.

There was no reason to cut short this expedition. "I'm in no hurry. Why is it famous?" I asked.

"Not so much for what is there, as for what happened there," he replied. "What happened there, or what is alleged to have happened there, is that when young Siddhartha Gautama, the last Buddha, saw the four statues at this pagoda, he then decided—had not decided before, but then decided—to give his life to the service of others, in particular to trying to find means to reduce their suffering. Anyhow, you will see, it's called the Uzine Pagoda."

We descended to the valley by the same road that brought us up but took a narrower and rougher road toward Moulmein, almost a dirt track, when we left the hills. Suddenly there was a hissing noise, and U Tin Hlang was braking. Tyres in the 1920's were most delicate. We were lucky to have gone as far as we had without a puncture. U Tin Hlang was efficient in jacking up the car, removing the flattened tyre and the wheel, and replacing them with the spare. I had done this often enough with army vehicles to be of use. It did not take long. Now we must hope that we could get back to Moulmein without another puncture, which would have compelled us to patch up one of the inner tubes and not just change the wheel.

The Uzine Pagoda, the scene of the Buddha's dedication to the reducing of human suffering, was memorable for the life-sized and realistic statues of four men on the paved apron in front of the largest pagoda. One was of a very old man, another of an obviously very sick man, another was dead, and the fourth had the wretched physique of a religious ascetic. All clearly suffered, and suffered greatly. These were the stark stimuli of the Gautama's self-redirection, but I wondered why they had so moved him when there must have been so much real human suffering all too readily at hand. Still, such was the legend, and it gave the statues a better moral than most religious statuary. It pressed upon me the primacy of my own obligation, not to strike fine legal or moral postures, but to try to reduce suffering.

The first heavy drops of rain struck. We rushed back to the car but failed to get the canvas hood up before the deluge hit. At last it was in place and we were in, clipping the celluloid curtains onto the attachments which held them between the hood and the cabin of the car. We were sopping wet. The road was rapidly becoming a muddy path. U Tin Hlang thought it best to try to get on our way before the road became impassable. We moved slowly back to the main road to Moulmein, which was in better condition,
and as the rain settled from the first prolonged downpour to a steady stream, we pulled up at the steps to my bungalow.

I persuaded U Tin Hlang to come in and to change out of his dripping clothes. I lent him a shirt and a pair of pants, which fitted him quite well, while my houseboy dried and aired his. We sat on the verandah watching the rain bend the leaves and weigh down the boughs.

Tropical storms are noisy on tin roofs, and for a time we did not talk. I wondered whether I should talk about Ake Dah. U Tin Hlang had carefully but not ostentatiously avoided that topic so far. Clearly, if it was to be raised between us, the initiative would have to be mine. And perhaps, even if I did raise it, he would prefer not to talk about it. But it seemed to me silly not to take advantage of his knowledge, even if I thus risked his bending me to his purposes.

"I know it is unethical for us to discuss the Ake Dah case out of court, but I am troubled for him and for his family—particularly for Treya. Do you mind talking to me about it?"

"You are right, Blair, it's certainly unethical, but I have come to trust you more than you think, and I am prepared to risk it."

The risk, of course, was mine, not his, since I had initiated the discussion, but I didn’t mind his suggesting the contrary. "Yes, let's talk about it."

I told him why I hoped I would not have to commit Ake Dah for trial for attempted murder. It might suit the GCBA, and even possibly the YMBA, but I could not see what good such a trial could do for Versali, or for other villages, or for Ake Dah and his family. This sort of violent attack on a child, seen by the attacker as divinely inspired, was not one that could be deterred by the threat of punishment. It would do no good to Ake Dah for some to see him as a religious martyr if he were convicted and imprisoned, or as mad if he were acquitted as not guilty by reason of insanity. It wouldn't help Treya at all. His life would be blighted more by what happened to his father at trial than by what his father had done to him. So I could see only one way out.

U Tin Hlang was obviously interested. The round, hooded eyes opened in exaggerated enquiry.

"We must keep him at Dr. Veraswami's hospital for about a year—under treatment, I suppose we should say—and then let him go back to the village. I think we can manage that if you will help, Mr. Lang."

"Have you discussed these ideas with Dr. Veraswami or with my client in my absence?" U Tin Hlang asked.
"No, and I suppose I shouldn't be discussing them with you, Lang, but I can't manage it on my own."

U Tin Hlang started to wander about my verandah, carrying his whisky and soda with him. "You know, Blair, I can agree to nothing without my client's consent, and whatever you think about it, I see Ake Dah as my client and not those who are paying me. Just for the moment, let us assume Ake Dah would agree. What exactly are you suggesting?"

So I told him. He would not oppose the adjournment of the preliminary hearing into the charge against Ake Dah until Dr. Veraswami would testify that Ake Dah was fit to be tried. I would suggest to Dr. Veraswami, in the light of what he had already told me about Ake Dah's mental condition, that a period of treatment in his hospital would at the very least improve Ake Dah's fitness for trial. U Tin Hlang could return for the preliminary hearing about a year hence, "at a date that suits your calendar," I even more improperly interpolated, and at that preliminary hearing the charge of attempted murder would be withdrawn and a charge of unlawful wounding substituted. If the accused wished it, I could hear that charge. It would not have to be sent on to a Superior Court as would attempted murder. At such a trial, if Ake Dah pleaded guilty, it seemed to me most unlikely that he would have to serve any prison time. His period in the mental hospital would count as time served in a sentence of, say, one year's imprisonment and two years on probation under suitable conditions. Of course, I could not promise any of these things. Ake Dah might get suddenly worse or more dangerous, but, if things stayed roughly as they now were, that is the sentence I had in mind on his plea of guilty to unlawful wounding.

"Blair, when are you taking up the law? Hurry home to one of the Inns of Court. You will make a most ingenious barrister if you don't find your own way to prison before you are admitted." He was obviously delighted with me, if not with my plan. "You are sure that wily old Veraswami didn't put you up to this?"

Somewhat annoyed, I made no answer. "Do you want another whisky?"

"Please, please," and he held out his glass to me, but made no immediate reply to my proposal.

Put out by his unresponsiveness, I went on: "I am not experienced in these matters, as you well know, but this does seem to me the best result for all concerned. If you disagree, tell me why. Surely we can act sensibly in this matter and don't have to get caught up in trials that will do no good to anyone and hurt many."
I gave him his refilled glass. We were physically close as I handed it to him. By not grasping the glass he kept me close, eye to eye. "Very well, Blair. I'll trust you completely. We shall talk of this to no one else. I'll tell those who sent me that it was my idea, that Ake Dah and his son needed their support, and that this is the best way to give it. And that I lured you into it. You play your role without talking about it to others, including Veraswami, and I'll play mine.

My face must have revealed my pleasure.

"Oh, don't look so self-satisfied, Blair. This will not be easy at all to bring off. You forget I have a strong-willed, if wild-minded, client. I very much doubt that he will fall in with your plan. I will tell him I have persuaded you to it, but I think he will hate everything about it. He sees himself not only as innocent, but as chosen of God to demonstrate the Buddha-like kharma of Mai Treya and his own noble role in its revelation. But I will try."

U Tin Hlang thought it better to persuade Ake Dah's family to our plan—which was now his plan—before raising it with his client. I decided to go with U Tin Hlang the next morning to Versali.

It required less energy to get to Versali in his grand automobile than on my bicycle, but at one stage I doubted which I preferred. Despite the deep ruts in the track, U Tin Hlang drove with undergraduate panache. Swooping around a bend, we confronted two working elephants carrying wicker howdahs on their backs, laden with villagers on their way to the teak forest. The car's brakes squealed. One elephant trumpeted, its trunk curled up above my head; the other elephant glared balefully. We backed off swiftly. I had a glimpse of how Hannibal's enemies must have felt. U Tin Hlang turned off the engine and apologised frequently, to the elephants, not to me, as they lumbered past.

Military trucks were reasonably well known in Versali, but a Burmese driving a large green Fiat sportscar and accompanied by the District Officer was as surprising to the villagers as he had been to the elephants.

Ake Dah's wife came out of their bungalow as we pulled up. U Tin Hlang spoke to her in Burmese. He knew I understood enough Burmese to follow the gist of the conversation but that I was not fluent enough to carry on a conversation of any complexity. We had agreed that he should be the one to present his plan and that my presence should be taken as a validation of his power to arrange what he had in mind. It would have been inappropriate for me to advance the scheme myself. With each further step, I be-
came a possible impediment to his ideas, rather than the source of the plan.

The Headman’s wife did not at first invite us in, preferring the safety of the open ground surrounded by a small but growing group of children. U Tin Hlang persisted in polite enquiries about her family, reports of Mai Treya’s improving health, and statements of his desire to discuss important matters with her until she had little choice but to invite us both to come onto the verandah of the bungalow. The children drifted off, though their eyes and those of others in the village remained on us for the brief time we talked.

Ake Dah’s wife gathered her two younger children, her daughters, to her knees and listened while U Tin Hlang outlined with precision, and in a strongly caring manner, his belief that it would be better for Ake Dah to stay at the hospital for some months, even up to a year, before returning to Versali. He stressed that she and her children could visit him there as often as she wished and that he would be taken care of. Meanwhile, Mai Treya could come home from hospital as soon as the doctor thought his shoulder sufficiently healed.

She nodded in understanding but volunteered nothing.

Would she agree to this? he asked.

She would do whatever Ake Dah thought best, she replied, though she could not understand why he should stay away so long. He was needed in Versali. It would be hard for her and the children without him.

U Tin Hlang kept pressing, perhaps too strongly I thought, assuring her that the General Council of Burmese Associations would see that she and her husband and family were well cared for, but he could get no expression of agreement from her. She intended to walk to the hospital that afternoon and would talk with Ake Dah about what U Tin Hlang had said if she were allowed to see her husband. She would also be visiting her son in the other part of the hospital. She did not speak a great deal, but I had the sense that she had a clear idea of what was being suggested.

We left the village, the car the centre of delight to an attendant crew of running children, U Tin Hlang roaring the engine, though creeping forward slowly and tooting the horn frequently to increase their delight. We circumnavigated the village in some style and then attacked the rutted track to Moulmein, accelerating to shake off our tail of laughing youngsters.

“We had better go straight to Ake Dah, before she gets to him,” U Tin Hlang suggested, and I agreed.

We did not talk much on the way to the hospital, each plan-
ning how to handle Ake Dah. I realised that I must not share my entire plan with U Tin Hlang. For all I knew, he might have been having similar anti-conspiratorial ideas about me.

“I think you should see Ake Dah alone, Mr. Attorney,” I said. “It would seem better for you to show your client this way out and then together persuade me to it, don’t you think?”

U Tin Hlang agreed. So when we reached the hospital I sat in the office where Veraswami had instructed me when I last visited the psychiatric section, while U Tin Hlang went to his client’s cell—or was it a room? I suppose it was a cross between the two.

* * * *

U Tin Hlang returned in anger. “It’s no use, Blair. He really is mad. He insists on going to trial. He’s going to be vindicated at trial, seen for the hero he is: the protector of the new Buddha. I had my doubts of your plan from the beginning.” Now I knew that U Tin Hlang was destined for high political office. He obviously believed, absolutely and without doubt, that it was now my plan to which he had tentatively agreed, solely to humour me.

I decided to take the plunge. I felt as though I were again entering the courtroom to surprise U Tin Hlang with my initiative about Ake Dah’s fitness to plead, but I quickly suppressed any false sense of confidence.

I asked an attendant to take me to Ake Dah and invited U Tin Hlang to come with me. I did not talk to U Tin Hlang en route, staying close to the attendant, allowing U Tin Hlang to hurry behind.

Ake Dah received us courteously, getting up from his trestle bed as we came in. He gestured for U Tin Hlang and me to sit on the bed. He sat on the wooden chair facing us. Saffron robed, without sandals, he still wore an air of calm and dignity.

I knew Ake Dah’s English was excellent, but I spoke slowly and clearly in an effort to get my words straight and to accentuate the threat I had in mind. I made no introductory remarks beyond a “Good afternoon, Headman,” to which he made the gesture of eyebong in reply.

“Your counsel tells me that the suggestion he made to you has been rejected. So be it. We shall hold the preliminary hearing into the charge of attempted murder at the next court sessions. Is there anything else you wish to know? Anything else you would like before then?”

Ake Dah expressed thanks for my concern and said that there was nothing he wanted. U Tin Hlang was looking at me with a
surprised expression. Why had I dragged him back to the cell if this was all I had in mind? So I pressed on, brutally but quietly, I hoped.

"I must tell you, Headman, that at the same sessions of the court there will be a petition presented by one of my policeman to have Mai Treya declared an abused and neglected child and made a ward of the state. We will have to find a suitable and safe institution for him where he will not be attacked. I am sorry to have to tell you this at such a time, but I thought it better to give you and your counsel as much notice as possible of this petition. It will be served on your wife tomorrow."

I have never seen a face and figure disintegrate so swiftly as did Ake Dah's. U Tin Hlang was on his feet and glaring at me, the curved scar on his face burning red, his arm around the bent shoulders of the now stricken and trembling Ake Dah. I did not wait for any word from either of the men in the cell with me. I walked out of the cell, telling the guard outside that U Tin Hlang would likely be staying with his client for some time.

It worked, of course. When the court convened, U Tin Hlang did not oppose Veraswami's recommendation that Ake Dah should be held for treatment until he was better able to stand trial. After preliminary hostility toward me, U Tin Hlang rejoiced with me in the success of his plan, and we set a tentative date, some months hence, to reconsider when he would plead his client guilty to unlawful wounding or, he suggested, to assault occasioning actual bodily harm, if the attempted murder charge were dropped.

There seemed no need to pursue the neglect petition.

* * * *

Over the next few months, I asked Veraswami regularly about his headman patient and about what he had heard of his family. Mai Treya was back at school, and the general report was that he was doing well. Versali and Ake Dah's family were not suffering. It seemed Ake Dah made better decisions about the village when he made only a few decisions and those only when consulted at the hospital by the elders. He interfered less and kept his thoughts for the more important matters, rather than being the pervasive overseer. And Veraswami professed himself deeply grateful. "You should visit the psychiatric section now, Mr. Blair. What you called a prison yard iss now a sweetly blooming oasis. Well, perhaps I exaggerate. But there are trees, and bushes, and running water, and shady corners. It iss verry good of you to give me such excellent staff, and for free, even if you do so by blackmail. You
may have done wisely. Buddhism will not have its Abraham, but this case has been a great strain on your character, a very great strain indeed."
Selected Annotated Bibliography

Ake Dah's case presented Blair with four issues of legal doctrine: (1) the special defense of insanity, (2) the disposition of persons found not guilty by reason of insanity, (3) competency to stand trial, and (4) prosecutorial discretion as to charging and plea bargaining. For those who wish to pursue these issues, the following is a short guide to the case law, statutes, and commentary.

I. THE SPECIAL DEFENSE OF INSANITY

A. Case Law

*M'Naghten's Case*, 8 Eng. Rep. 718 (H.L. 1843). The defendant was found "[n]ot guilty, on the ground of insanity" for the murder of Edward Drummond, secretary to the prime minister, Sir Robert Peel. The House of Lords took an interest in the outcome of the case and requested the judges of the Court of Common Pleas to answer several general questions regarding the principles and scope of the law that governed such cases. Lord Chief Justice Tindal's response contains what has come to be known as the *M'Naghten* rule:

[T]he jurors ought to be told in all cases that every man is to be presumed to be sane, and to possess a sufficient degree of reason to be responsible for his crimes, until the contrary be proved to their satisfaction; and that to establish a defence on the ground of insanity, it must be clearly proved that, at the time of the committing of the act, the party accused was labouring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing; or, if he did know it, that he did not know he was doing what was wrong.

*Id.* at 722.

*Durham v. United States*, 214 F.2d 862 (D.C. Cir. 1954). The defendant's conviction for housebreaking was reversed on the ground that the trial judge should have found that the defendant had produced sufficient evidence of mental disorder to shift the burden of proof of sanity to the prosecution. Considering the appropriate test for insanity to be employed on remand, the court rejected the *M'Naghten* rule and formulated what came to be known as the "product" test:
We find that as an exclusive criterion the right-wrong test is inadequate in that (a) it does not take sufficient account of psychic realities and scientific knowledge, and (b) it is based upon one symptom and so cannot validly be applied in all circumstances. We find that the "irresistible impulse" test is also inadequate in that it gives no recognition to mental illness characterized by brooding and reflection and so relegates acts caused by such illness to the application of the inadequate right-wrong test.

The rule we now hold must be applied on the retrial of this case is simply that an accused is not criminally responsible if his unlawful act was the product of mental disease or mental defect.

*Id.* at 874-75 (footnote omitted).

*United States v. Brawner,* 471 F.2d 969 (D.C. Cir. 1972) (en banc). The defendant was convicted of second degree murder. On appeal, the court replaced the "product" rule announced in *Durham* with the American Law Institute formulation in the *Model Penal Code*, see infra, commenting that:

[a] difficulty arose under the *Durham* rule in application. The rule was devised to facilitate the giving of testimony by medical experts in the context of a legal rule, with the jury called upon to reach a composite conclusion that had medical, legal and moral components. However the pristine statement of the *Durham* rule opened the door to "trial by label." *Durham* did distinguish between "disease[]" . . . and "defect[]" . . . . But the court failed to explicate what abnormality of mind was an essential ingredient of these concepts. . . .

. . . Assuming that a mental disease, in the legal sense, had been established, the fate of the defendant came to be determined by what came to be referred to by the legal jargon of "productivity." On the other hand, it was obviously sensible if not imperative that the experts having pertinent knowledge should speak to the crucial question whether the mental abnormality involved is one associated with aberrant behavior. But since "productivity" was so decisive a factor in the decisional equation, a ruling permitting experts to testify expressly in language of "product" raised in a different context the concern lest the ultimate issue be in fact turned over to the experts rather than retained for the jurors representing
the community.

*Id.* at 977-79 (footnote omitted).

*Ake v. Oklahoma*, 105 S. Ct. 1087 (1985). The defendant, an indigent, was convicted of murder and sentenced to death, having been denied a state-funded psychiatric examination that he argued was necessary for an effective insanity defense. The Court held that

when a defendant demonstrates to the trial judge that his sanity at the time of the offense is to be a significant factor at trial, the State must, at a minimum, assure the defendant access to a competent psychiatrist who will conduct an appropriate examination and assist in evaluation, preparation, and presentation of the defense.

*Id.* at 1097.

B. Statutes and Proposed Statutes

**INDIA PEN. CODE** § 84 (1860), *reprinted in 1 Gour’s Penal Law of India* 476 (S.C. Manchanda & R.B. Sethi 8th ed. 1966), provided: “Nothing is an offence which is done by a person who at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act or that he is doing what is either wrong or contrary to law.”

COPY OF PENAL CODE PREPARED BY THE INDIAN LAW COMMISSIONERS AND PUBLISHED BY COMMAND OF THE GOVERNOR-GENERAL OF INDIA IN COUNCIL, Cmd. 673, 41 Sessional Papers for the House of Commons 479 (1837-1838). A proposed draft of the Indian Penal Code, this was the work of Thomas Babington Macaulay. The draft provides:

66. Nothing is an offence which is done by a person in a state of idiocy.

67. Nothing is an offence which a person does in consequence of being mad or delirious at the time of doing it.

The similarity to the *Durham* rule should be noted.


(a) **AFFIRMATIVE DEFENSE.**—It is an affirmative defense to a prosecution under any Federal statute that, at the time of
the commission of the acts constituting the offense, the defendant, as a result of a severe mental disease or defect, was unable to appreciate the nature and quality or the wrongfulness of his acts. Mental disease or defect does not otherwise constitute a defense.

(b) **Burden of Proof.**—The defendant has the burden of proving the defense of insanity by clear and convincing evidence.

**Model Penal Code** § 4.01 (Proposed Official Draft 1962) provides:

(1) A person is not responsible for criminal conduct if at the time of such conduct as a result of mental disease or defect he lacks substantial capacity either to appreciate the criminality [wrongfulness] of his conduct or to conform his conduct to the requirements of law.

(2) As used in this Article, the terms “mental disease or defect” do not include an abnormality manifested only by repeated criminal or otherwise anti-social conduct.

Many states have adopted this recommendation of the American Law Institute.

**Model Insanity Defense and Post-Trial Disposition Act** § 201 (Uniform Law Commissioners 1984) provides: “An individual is not criminally responsible if at the time of the alleged offense, as a result of mental illness or defect, the individual was substantially unable to appreciate the wrongfulness of the alleged conduct.”


A person charged with a criminal offense should be found not guilty by reason of insanity if it is shown that as a result of mental disease or mental retardation he was unable to appreciate the wrongfulness of his conduct at the time of the offense.

As used in this standard, the terms mental disease or mental retardation include only those severely abnormal mental conditions that grossly and demonstrably impair a person’s per-
ception or understanding of reality and that are not attributable primarily to the voluntary ingestion of alcohol or other psychoactive substances.

Id. at 685.


**Recommendation One.**—The special defense of insanity should be abolished and replaced by statutes providing for acquittal when a criminal defendant, as a result of mental disease or defect, lacked the state of mind (*mens rea*) required as an element of the offense charged.

**Recommendation Two.**—Legal standards of civil commitment should apply to commitment of defendants acquitted by reason of insanity under statutory *mens rea* provisions, with the due allowance being made for a presumption of continuing dangerousness with respect to those acquitted of offenses involving violence.

**Recommendation Three.**—Absolute or conditional release of defendants acquitted under statutory *mens rea* provisions should be based on concurring medical certification and judicial determination that release poses no substantial public risk; revocation of conditional release status should be permitted if the defendant fails to comply with release conditions, including those relating to continued psychiatric treatment.

**Recommendation Four.**—Mental illness of a defendant who fails to satisfy the criteria of acquittal under statutory *mens rea* provisions should be considered as a factor in mitigation of sentence, permitting hospitalization for treatment in lieu of imprisonment up to the maximum term prescribed by law for the offense of which he was convicted.

Criminal Justice Mental Health Standards § 7-6.1 (1984):

(a) A person is not responsible for criminal conduct if, at the time of such conduct, and as a result of mental disease or defect, that person was unable to appreciate the wrongfulness of such conduct.

(b) When used as a legal term in this standard "mental disease or defect" refers to:

(i) impairments of mind, whether enduring or transitory; or,

(ii) mental retardation,
either of which substantially affected the mental or emotional processes of the defendant at the time of the alleged offense.

C. Commentary

Abraham S. Goldstein, The Insanity Defense (1967). Professor Goldstein argues that the insanity defense, as it is applied by juries, is essentially a test of moral blameworthiness and that the precise wording of the test is therefore much less important than the way in which it is administered procedurally. He discusses in considerable detail the implications of the various procedural rules governing proof of an insanity defense.

Norval Morris, Madness and the Criminal Law (1982). In chapter two, Professor Morris discusses arguments for the abolition of the special defense of insanity and concludes that they are persuasive. He advocates application of traditional mens rea principles to cases involving mentally ill defendants and offers arguments rejecting use of the "guilty but mentally ill" verdict available in several states.

Brooks, The Merits of Abolishing the Insanity Defense, 477 Annals Am. Acad. 125 (1985), discusses the mens rea approach to insanity-defense reform advocated by Professor Morris and others. Professor Brooks concludes that it has significant advantages over the American Law Institute's Model Penal Code test from both a moral and an administrative point of view, provided that it is coupled with adequate post-conviction safeguards for those convicts who require treatment.


II. Disposition After a Finding of Not Guilty by Reason of Insanity

A. Case Law

Jones v. United States, 103 S. Ct. 3043 (1983). The defendant, who had been charged with attempted petty theft, was found not guilty by reason of insanity and committed to a District of Columbia mental hospital. After a year's hospitalization, he petitioned for release on the ground that one year was the maximum sentence he
could have received had he been convicted of the crime. The Court held, first, that an insanity acquittal is adequate to support automatic and continuing commitment for treatment and for the protection of society and, second, that it was not unconstitutional to hold the acquitted defendant in a mental hospital "until such time as he has regained his sanity or is no longer a danger to himself or society," id. at 3052, even if this period would be longer than the maximum prison term he could have received had he been convicted as charged.

B. Proposed Statute

MODEL INSANITY DEFENSE AND POST-TRIAL DISPOSITION ACT § 901 (Uniform Law Commissioners 1984). This is a model code provision relating to the disposition of those found not guilty by reason of insanity:

(a) Unless earlier discharged by order of the court . . . an individual found not criminally responsible by reason of mental illness or defect is subject to the jurisdiction of the court for a period equal to the maximum term of imprisonment that could have been imposed for the most serious crime of which the individual was charged but found not criminally responsible.

(b) Upon expiration of its jurisdiction under this [Act] or earlier discharge by its order, the court may order that a proceeding for involuntary commitment be initiated pursuant to the [statute on civil commitment of individuals who are mentally ill or defective.]

C. Commentary

ABRAHAM S. GOLDSTEIN, THE INSANITY DEFENSE (1967). In chapter ten, Professor Goldstein discusses the problem of indeterminate detention and the need to compare the consequences of an insanity plea with the consequences of a guilty plea. He suggests that detention of persons found not guilty by reason of insanity should ordinarily not extend beyond the period for which a sentence may have been imposed, unless "it is highly probable that the offender's release would be dangerous to life or person in the reasonably near future." Id. at 169.

Note, Commitment Following an Insanity Acquittal, 94 HARV. L. REV. 605 (1981). The Note argues that the standard of proof of dangerousness typically applied by most states to continuing commitment of persons found not guilty by reason of insanity is lower
than that applied to persons civilly committed because society retains “a muted desire to punish” such persons, stemming from “our visceral disbelief in the possibility of acts without choice.” *Id.* at 607.

III. COMPETENCY TO STAND TRIAL

A. Case Law

*Dusky v. United States,* 362 U.S. 402 (1960) (per curiam). This case establishes the basic constitutional standard of competence to stand trial under the due process clauses: “[T]he ‘test must be whether [the defendant] has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding—and whether he has a rational as well as factual understanding of the proceedings against him.’” *Id.* at 402.

*Jackson v. Indiana,* 406 U.S. 715 (1972). The petitioner was a deaf mute with the mental level of a pre-school child. Accused of stealing four dollars of property in one robbery and five dollars in another robbery, Jackson was found not competent to stand trial and was committed to a state mental hospital until such time as he was competent. The testimony at the competency hearing indicated that Jackson’s ability to acquire the necessary communication skills was doubtful and revealed that Indiana had no facilities to instruct someone as handicapped as Jackson. Jackson argued that his commitment amounted to a life sentence. The Court held that commitment of a person found unfit to stand trial cannot be indeterminate:

[A] person charged by a State with a criminal offense who is committed solely on account of his incapacity to proceed to trial cannot be held more than the reasonable period of time necessary to determine whether there is a substantial probability that he will attain that capacity in the foreseeable future. If it is determined that this is not the case, then the State must either institute the customary civil commitment proceeding that would be required to commit indefinitely any other citizen, or release the defendant.

*Id.* at 738 (footnote omitted).

C. Commentary

*Norval Morris, Madness and the Criminal Law* (1982). In chapter two, Professor Morris argues that abolition of the plea of
incompetence to stand trial and the substitution of a six-month continuance, delaying the trial until the competence of the accused is maximized, would better protect the defendant’s interests than its retention.

Note, *Incompetency to Stand Trial*, 81 Harv. L. Rev. 454 (1967). This Note surveys the history of the doctrine of incompetency to stand trial and suggests that the interests of defendants are best served by keeping the standard of competency narrow in scope.

IV. PROSECUTORIAL DISCRETION IN CHARGING

A. Case Law

*Wayte v. United States*, 105 S. Ct. 1524 (1985). This case illustrates the breadth of the prosecutor’s discretion. Wayte was one of a group of vocal protestors against a draft-registration law. The government’s decision to prosecute only notorious violators of the registration law (due to a lack of resources sufficient to prosecute all violators) was upheld:

In our criminal justice system, the Government retains “broad discretion” as to whom to prosecute. . . . “[S]o long as the prosecutor has probable cause to believe that the accused committed an offense defined by statute, the decision whether or not to prosecute, and what charge to file or bring before a grand jury, generally rests entirely in his discretion.” . . . . This broad discretion rests largely on the recognition that the decision to prosecute is particularly ill-suited to judicial review. Such factors as the strength of the case, the prosecution’s general deterrence value, the Government’s enforcement priorities, and the case’s relationship to the Government’s overall enforcement plan are not readily susceptible to the kind of analysis the courts are competent to undertake.

*Id.* at 1531 (citations omitted).

*Kent v. United States*, 272 F.2d 795 (1st Cir. 1959). The defendant appealed his conviction on a guilty plea, claiming it had been coerced by a threat that his fiancee would be prosecuted as an accessory if he did not cooperate. The court said:

There are many reasons why a defendant may choose to plead guilty. They do not, simply by being denominated “fears,” necessitate the conclusion that the plea was not vol-
We are not prepared to say that it can be coercion to inform a defendant that someone close to him who is guilty of a crime will be brought to book if he does not plead. If a defendant elects to sacrifice himself for such motives, that is his choice, and he cannot reverse it after he is dissatisfied with his sentence, or with other subsequent developments.

Id. at 798 (citations omitted).

B. Statute

Fed. R. Crim. P. 11(d) provides:

INSURING THAT THE PLEA IS VOLUNTARY. The court shall not accept a plea of guilty or nolo contendere without first, by addressing the defendant personally in open court, determining that the plea is voluntary and not the result of force or threats or of promises apart from a plea agreement. The court shall also inquire as to whether the defendant's willingness to plead guilty or nolo contendere results from prior discussions between the attorney for the government and the defendant or his attorney.

C. Commentary

Abraham S. Goldstein, The Passive Judiciary: Prosecutorial Discretion and the Guilty Plea (1981). Professor Goldstein attempts to balance the desirability of some judicial oversight of prosecutorial discretion against the separation-of-powers problems inherent in judicial control of executive decisionmaking. He suggests that prosecutors and the courts must share responsibility for serving the public interest in fair and efficient enforcement of the criminal law.

Alschuler, Implementing the Criminal Defendant's Right to Trial: Alternatives to the Plea Bargaining System, 50 U. Chi. L. Rev. 931 (1983). Professor Alschuler is highly critical of our ingrained acceptance of plea bargaining and negotiated justice. He argues that important societal values are served by hearing what a defendant has to say in his defense and that cost-based arguments favoring plea bargaining are without merit.

It is doubtful that Blair could ultimately have controlled the custody of Mai Treya, but the institution of custody proceedings was probably within his power. After the Cunningham case, Blair