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EDITORIALS

THE HYPOTHETICAL QUESTION AGAIN

1. The hypothetical question is ever with us. The following recent example, contributed by an eminent psychiatrist, Dr. Harold Hulbert, exhibits it at its worst:

“The hypothetical question was gradually designed to eliminate prejudice and at the same time to permit each opposing counsel to introduce for consideration his viewpoint of the evidence in whole or in part. It is appreciated by lawyers and courts. Juries think that it is silly and that courts who permit it, lawyers who use it, and witnesses who pretend to learn to answer it fairly (or maybe use this mysterious method to suppress half-truths by presenting other half-truths) must all be silly, dumb, or smart aleck. Witnesses consider it an archaic, awkward, and not very useful modicum for exchange of ideas.

“Courts, Bar Associations, and legislatures might well take under consideration both the simplification of the hypothetical question, retaining only its merits, its usefulness, and its impartiality; and they might well also consider that it too, like instructions, should be presented to the Court first in chambers before being presented in public to the witness before the Court and jury.

“An example of the heights of absurdity to which an unrestricted hypothetical question may reach is the following, taken verbatim from a recent case in our bailiwick. The case at issue was about the contractual competency of an old lady who had diabetes. A quack doctor had testified that she was too crazy to have married, but not too crazy to have hired and paid him. That doctor had coached his lawyers in preparing their questions which they in turn propounded to a defense expert, a regular physician.

“Q. Now, Doctor, are you familiar with the philosophy of heterogeneous and homogeneous evolution as applied to the science of medicine?

A. No.

Q. Did you ever hear of it? A. No.

- Q. Do you know whether or not the internal organs reason deductively or inductively? A. That is quack medicine.
- Q. That is quack medicine? A. Yes, sir.
- Q. Will you answer the question, do you know, or don't you know?
- A. The answer is no, I don't know.
- Q. You do not know then the philosophy of heterogeneous and homogeneous evolution as applied to the science of medicine?
- A. No, no.
- Q. Is it true, Doctor, from a scientific basis that one might suffer a twenty-five per cent injury, we will say, by way of identification, of the first joint of the thumb, or any finger on their hand, and yet the incapacity might be increased to seventy-five percent or more, if you would take into consideration the heterogeneous and homogeneous evolution as applied to that particular injury, or to the science of medicine, due to the fact that the particular organs contained within the human body have certain and definite functions when they exist and stand alone as particular organs, and when they work or operate homogeneously, that is similarly and are thrown together for the purpose of keeping body and soul together, have you an opinion whether or no this is scientifically true—

Atty. S: That is certainly a honey.

Mr. P: Pardon me, I had not finished.

The Witness: The question is, If you lose the loss of your thumb, can you think within seventy-five per cent of normal?

Mr. P: No, that is not the question at all. Read the question. That is not in it. My question has nothing to do with the mentality as yet. Do not try to make it ridiculous, Doctor.

The Judge: Read the question. (Last question read)

Atty. S: You are making it ridiculous. If anybody in Cristendom can tell what that question is, I would like to hear their explanation.

The Judge: Let him finish it.

Mr. P: Have you an opinion whether or not this is scientifically true, taking into consideration the entire membrane, in conjunction with the particular joint as mentioned in this question?

Atty. S: Now have you finished the question?

Mr. P: Yes.

Atty. S: I object to it as absolutely unintelligible.

The Judge: Objection sustained."

2. On the other hand, the hypothetical question is often indispensable for ascertaining whether an expert's testimony is relevant at all, as the other evidence develops:

Liquid Carbonic Co. v. Industrial Commission, filed June 9, 1933 (186 N. E. Rep. 140). The plaintiff sued for the death of her husband, who while working in the Carbonic Company's boiler-room fell and injured his knee; some days later his knee swelled and lamed him; on going to take a bath, he fell into the tub and died when taken out. One physician testified that the autopsy showed chronic myocarditis (heart disease). On the other side, two physicians testified hypothetically that the injury to the knee, if followed by a fever, would throw extra work on the heart, and would thus be a cause of death. Now, says, the Court's opinion, "The medical testimony for the plaintiff (except Dr. C.'s) was based on the supposition that the deceased had a fever, and that consequently a heavier burden was thrown upon the heart . . . But there *was no evidence* upon which to base the supposition that the deceased had a fever . . . Therefore the medical testimony based upon the hypothesis that fever existed *had no value*, and *there was no evidence* to show a causal relation between the injury and the death."

This opinion shows how needful it may be to hypothesize; otherwise a baseless opinion could not have been discarded.

3. How to reconcile these two opposite results? Can we eliminate the abuses and yet retain the needful practice? Or must we abolish the whole institution?

Let some one devise a practicable remedy.

JOHN H. WIGMORE.

PAROLE IN NEW JERSEY

In the last number of the *Journal* we reported the very interesting fact that the Board of Parole of Illinois is about to experiment with

tables of predictability in its parole work. In other words, it intends to try to put selection on a scientific basis after the manner advocated by Burgess, the Gluecks and others. We regard this as a development well worth watching. Inadvertently, in our editorial, however, we stated that New Jersey had already adopted the prediction system. This was an error. Selection in New Jersey is carried out through a classification system, the purpose of which is to make as careful studies of individual offenders as possible. The system in that state has been very clearly described in our Progress Number (Vol. XXIV, May-June 1933, pp. 88-108) by Mr. Winthrop D. Lane. Mr. Lane has, for a number of years, been Director of the Division of Parole in the New Jersey Department of Institutions and Agencies. During this period New Jersey has developed a thorough and intensive classification procedure based on careful studies and histories of individual prisoners and has won a position of leadership wherever questions of parole are being considered.

ROBERT H. GAULT.