Journal of Criminal Law and Criminology

Volume 39 | Issue 5 Article 4

1949

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Probably the oldest form of psychiatry which has been recognized in this country with the possible exception of state hospital management, is the psychiatry practiced in conjunction with the courts. The need for professional differentiation between those who are able to stand trial and those who are not so by virtue of mental disorders was early recognized in the courts. From time to time the expert has been castigated by the lay press and those who do not understand psychiatry and the modern practice of medicine in the courts, who are likely to come to conclusions that are unjustified as to how the psychiatrist serves the bench and the bar.

With the development of the mental hygiene movement, and particularly with the development of the juvenile court, the need has not been entirely one of obtaining expert diagnostic opinions, but has begun to include the idea of treatment for not only the seriously mentally sick (insane), but also those who fail to be law-abiding by reason of some less serious medical or psychological deviation.

Psychiatry in the Civil Courts

In general, the modern practice of psychiatry in the courts can be classified into civil and criminal. The use of psychiatry in civil courts still reverts to the old prototype of the alienist who, given a certain amount of data in the form of a hypothetical question, has to decide if a testator is able to make a valid will, or who testifies whether a particular person having an estate is able to care properly for it or himself.

If we include in the civil courts the probate aspect which has to do with the placement of children and their proper care and upbringing, we find that the functions of the court requiring expert opinion are greater than they have ever been. One can hardly conceive of the number of tragedies that must have occurred in past generations in the administering of orphans' estates and in the arrangement for their care. Even today we

have tragedies that are hanging over children whose problems are being solved by probate judges by means contrary to psychiatric belief. The general superstition that a child is invariably better off with his mother, regardless of her mental capacity, her housekeeping ability, and her ignorance of child care, let alone her emotional instability, provided only that she be not guilty of moral turpitude, is a bizarre concept. Passing before the psychiatrist who deals with children is a long line of completely inadequate mothers whose children would be better off in a foster home or under the care of an able housekeeper whose activities are directed by a loving and competent father. Some recent experiences that I have had with rural courts enables me to state with some degree of positiveness that judges are still being swayed by tradition and by their own imaginations. This is not because of any personal mental defect, but rather because psychology and psychiatry have not, even today, been incorporated in the education of the lawyer.[1] Sometimes the judge's cultural background, his interest in modern things, his attitude and contacts with social workers and others who deal with human beings, enables him to rise above this lack. In other cases, particularly in communities where welfare work and psychiatric clinics are not sufficiently organized, tragedies occur sometimes long after a case is adjudicated because of an unscientific decision of the judge.

What psychiatry has to offer in the civil courts, beyond these matters of child placement and guidance of those who have responsibility for wards of the court, still is largely unrecognized. Frederick Wertham,[2] points out that a brain autopsy should be performed where there is a question of the testator's mental capacity. The findings in arteriosclerosis and senile psychosis frequently do not even require the use of a microscope to enable the neuropathologist-psychiatrist to express a valid opinion as to testamentary capacity.

It is a strange situation that modern psychiatry has not been called upon more by the civil courts to aid in the evaluation of testimony. Only too often the delusions of the paranoid husband, who claims that he has been betrayed by his wife, has been the basis of a divorce decree. I cannot say that it would be well to keep these people together but certainly the wife should not have a black mark on her record because of this delusional material. In some modern courts, such as the Circuit Court in Wayne County, Michigan, it is not uncommon for the judge to call in a

1 *Cf.* Report of Committee on Medical Jurisprudence, American Psychiatric Association 1945.

2 The Brain as an Organ. New York 1934, the MacMillan Co.

psychiatrist, oftentimes rather unofficially, to express his opinion on testimony which is being rendered by a person who might be of unsound mind. The time will come, I am sure, when a person who is trained in psychiatry, even though he is not a psychiatrist with a medical background, will be in a position to advise judges in the medical dynamics of testimony. The deliberate liar should be diagnosed and the judge should know that a given witness is that kind of person.

We have got too far now in psychological science to leave decisions as to the accuracy of testimony to "hunches" on the part of the judge. It is quite true that the judge develops what might be called a clinical sense. He learns after many years on the bench, if he is an alert and well qualified person intellectually, that there are certain things about individuals which indicate their testimony is not reliable. These things extend beyond the usual tests of credibility such as the coherence of the testimony and the agreement of testimony with its context; for instance the manner, demeanor and conduct of the witness must be taken into account. The psychological evidence is not given the proper weight in our courts.

In the civil problem of commitment of the non-criminal insane we have a whole congeries of problems. In Illinois, attempts are being made to do away with commitment in its present form. This does not mean that there is to be no review by a judicial agency of the fact that the individual has been placed in a mental hospital. Rather it means that the patient who, through no fault of his own, has become mentally sick should not have a permanent record by a court of an adjudication which condemns him to bear the title of an insane person for the rest of his life. It seems abnormal in this modern and civilized day that one group of ailments should be singled out from all others to require court attention. There are, of course, good reasons why this particular process has come about. One reason is, of course, the fact that mental cases, not having any insight into their condition, generally refuse to go to a hospital for treatment of their own accord. They must be admitted by force, and the American legal system does not permit the forcing of people to do what they do not want to do. This would be contrary to all of our tenets of "freedom". The second reason is, that from the sixteenth and seventeenth centuries there are records of persons who had large estates being confined to madhouses against their will by grasping relatives. I sometimes question whether these stories are entirely true, for the lack of insight on the part of the patient would make him claim to be of sound mind, and the weakness of

psychiatric knowledge of those days would make it appear to the inquisitive or intrusive laymen, who might interest himself in such a case, that the patient really was not insane and should be liberated. Only too often, in my own practice, I have seen relatives of patients interfere with proper treatment because they did not realize how sick their husbands, wives, sisters or others might be. The psychiatric practitioner may see that the patient has obviously all of the characteristic symptoms of a psychosis but yet the relatives make the bald statement, "He is no more crazy than I am."

It is to be hoped that soon mental disease will lose its stigma in the same way that syphilis and tuberculosis have lost their stigmata in this country—by free discussion which will remove the feeling of inferiority from which the hospitalized patient suffers.

Gradually, in many states the commitment procedure is commanding the services of skilled psychiatrists rather than general medical practitioners who are not sensible to the finer points of diagnosis. This removes even further the possibility of a false diagnosis. The person unskilled in psychiatry forgets that a case requiring hospital treatment may not exhibit his symptoms at all times. From time to time the symptoms may disappear entirely or take a different form, and most often when the patient is being interviewed he reaches a pitch of tension which enables him to overcome his basic delusions or other symptoms so that he may appear, even to a psychiatrist who sees him only once, to be mentally sound. Of course, there are cases who are sick all the time and whose sysmptoms are so characteristic that even other psychotic persons recognize them.

Psychiatry in the Criminal Courts

In the criminal court the picture is becoming somewhat crystallized and the intrusion of psychiatry has proved its worth, for that has been the attitude of many judges toward the use of this medical discipline in the courts.

When courts began formally to use psychiatrists after the first global war, the latter had a much weaker armamentarium than they have today. Twenty-five years ago we could have been accused of using only two techniques: the first, to lock up the dangerous persons and the second to pat the harmless person on the back and give him encouragement. Today we have better diagnostic techniques, including the electroencephalograph, and, too, we have much more to offer in the way of treatment.

The introduction of psychiatric process into the courts and corrective institutions has proved of great significance. The value of medical treatment in this sense cannot be described in statistical terms. A novelist or writer perhaps would be better able to show the difference in attitude on the part of courts, prisons and even the inmates, from the cold blooded scientists. In spite of the fact that I am very skeptical about the application of chemical tests for intoxication in court procedure when used by untrained police officers, it is the result of the introduction of psychiatric and other scientific methods that it was possible to introduce this type of equipment. It is now even possible in progressive jurisdictions to use hypnotic drugs and the polygraph in order to get at the truth. This is particularly true in courts where there is a high-standard psychiatric clinic to guard against the use of such equipment as a bludgeon or as a means of obtaining confessions instead of the third degree.

The line of demarcation over which psychiatry cannot step and still hold the respect of courts is still a very sharp one. A psychiatrist cannot replace a jury even though he has scientific techniques which will get at the truth better than all of Wigmore's[3] methods of getting accurate testimony. In most jurisdictions no matter how great the esteem in which the psychiatrist may be held, the judge is very jealous of his prerogative to sentence and is prone to sentence as he thinks it should be done rather than apply the sentence scientific techniques indicate should be used for therapeutic purposes.

Pre-trial Forensic Psychiatry

The place of psychiatry in the criminal court is three-fold. Under the so-called Briggs law in Massachusetts, and under those laws that have been adopted in other states for the same end although the means may be different, psychiatry is used to get the opinion of a disinterested, experienced, scientifically skilled person to determine whether a person guilty of a serious offense, usually murder, is of sound mind.

The passage of this type of law has been brought about by the lack of understanding which laymen have as to the difficulty of making a finding of "soundness of mind." If a murderer or other serious offender has such an obvious mental disturbance that even the laymen can recognize it there is no need for a psychiatrist as the defendant will not be brought to trial in most jurisdictions. Certainly no police officer or prosecuting attorney is

3 Wigmore, John H. *Wigmore's Code of the Rules of Evidence in Trials at Law.* Boston, 1942, Little, Brown & Co.

fool enough to put a man on the stand and have the newspapers report the ravings of an unsound mind which would be obvious to any reader. The vast majority of mentally sick individuals who have committed serious offenses and who are brought to trial are close to the borderline. Their symptoms are such that the laymen, and oftentimes even the psychiatrically inexperienced physician, cannot recognize their problem.

I have testified in a case where I was one of two psychiatrists for the defense and six of the most prominent psychiatrists in the same community all testified that the man was sane. I recognized certain symptoms during my interviews which apparently did not come out in the other examinations. Perhaps repeated examinations by the prosecution's experts might not have revealed these symptoms to them too. The jury was willing to take my testimony because the combined testimony of the other experts equalled mine. In other words, while each found only one or two of the seven symptoms I listed, between the six of them all of the seven symptoms were reported. It turned out, a year later, that the man was so definitely insane that he was being given electric shock treatment and did not respond to it.

It seems to be the opinion of laymen that the psychiatrists who testify for the defense are being bribed. I have testified many times for the defense and I can assure you that the question of any ulterior motive has never come up, and yet some of the cases I was sure were insane did not appear to be so either to the newspaper reporters or in some instances the judge himself until later developments proved that the psychiatric examination was right.

Sometimes the difference of opinion as to mental soundness and unsoundness rests upon the use of terms. In one case I testified that the patient was suffering from manic-depressive psychosis and was very depressed. Other evidence revealed that the development of the depression had been gradual and that the patient for a week prior to the commission of the crime, could not even find her way to and from a corner drug store, and obviously was very sick. Yet a psychiatrist who testified, while admitting that this patient was depressed, termed the case a "situational" depression and claimed that it was not a mental disease in the sense that it impaired responsibility, that she could be found guilty. He believed her to be of legally sound mind at the time the crime was committed. To me this was hair-splitting, but legitimate hair-splitting because the training of all psychiatrists is not the same and the clinical experience of all psychiatrists can not be the same. Too, interpretation of mental

symptoms in terms of legal responsibility differs with different experts. This matter of opinion testimony cannot be standardized. All that we can ask for is that the experts' competence and training be passed upon by some disinterested body such as the American Board of Neurology and Psychiatry, and that they be adequately compensated by the State so that the question of veniality may not be brought up. Certainly there is proper concept under the law to assume that if a man were so sick that he did not know what he was doing, could not control himself, and did not know that what he was doing was wrong, such a defendant could not be considered to have the same need for severe treatment as a person who deliberately—I use this word in the layman's sense—commits a crime.

It is obvious then that psychiatric service in preventing juridical misconceptions about the sanity defense does serve a purpose. To be of more value, however, we should hope to educate the public to understand that psychiatric diagnosis is not a cut-and-dried thing but that there is a legitimate difference of opinion among experts, and that there is a difference in the use of terms as well as a personal psychological difference in the application of legal definition to medical findings between two experts.

The Ability to Stand Trial

The second use of the psychiatrist in the criminal court is to pass upon the mental competence of a defendant. Under the McNaghten rule[4] a person cannot be brought to trial if he is sufficiently unsound of mind that he does not understand the nature of the proceedings or that he cannot cooperate properly with counsel.

Here again the problem which faces the psychiatrist is primarily one of diagnosis: can the patient stand trial; will he make a fool of himself on the stand; will he, by virtue of mental disease, be unable to describe what happened at the time he committed his offense; or will he try to convince the jury that he has been forced to commit his offense by virtue of the will of God who talks to him or because of some other extra-normal experience?

There can be no hard and fast line here, but the psychiatrist appointed by the court, having no responsibility to the defense or prosecution, can bring an unbiased opinion to bear. I have often felt that here the psychiatrists should be attached to courts and that outside psychiatrists should not be brought in because

4 Selling, L. S. *Diagnostic Criminology*, Ann Arbor, 1935, Edwards Brothers. p. 24.

of their lack of uniformity of experience with the criminal case. I feel that this type of borderline problem is solved more accurately by depending on the experience of psychiatrists who have seen similar cases than by anyone whose skill comes from reading textbook descriptions. The question must come up, "How is this man going to appear on the stand?" If he is only feeble minded shouldn't we, perhaps, call him insane so he will not have to be subject to cross-questioning and be unable to answer by virtue of his mental weakness?

Indeed, it is only humane not to subject these people to the experience of an open trial and to let them hear themselves being discussed as of unsound mind and be confronted with the proposition that their ideas are all bosh. Such an experience is definitely the reverse of therapeutic. If we are to expect these people to get well after they have been sent to a mental hospital perhaps we should do something to prevent their having this experience. I cannot urge that we should have only star chamber hearings, if a man has committed a serious offense, where the officers of the court go into camera, and come out with a decision that he is insane and should be put away. Surely, those who are interested in the case should have an idea of why a decision of this sort was reached. Nevertheless, the ideal of a trial for the mentally sick, in my opinion, has never had any defenders. There is, without a doubt, a need for revision of our entire judicial thinking about this, yet I cannot conceive of any better tests than those which are at present on the statute books. Mental illness should not be an *excuse* for evading the responsibility for an act, but there certainly should be a means of making the offender law-abiding by curing him of the disorder which caused his bad behavior.

This, then, brings up a number of problems. Why should a man who is sick when he is brought to trial, and presumably sick when he committed his offense, be sent back for trial after he has been cured? The determination of unsoundness of mind which makes the man unfit for court appearance carries with it commitment to a mental hospital, but he has to be returned for trial. This is not recognized by newspaper reporters and other laymen who pass upon the work of the courts.

Matters are complicated further by the presence in corrective or medico-corrective institutions of individuals who are untreatable and can never recover and can never be brought back to trial after a period of years because the witnesses have disappeared. Why subject a man to the injustice of holding a trial over him, particularly if he is harmless yet not well?

The use of shock treatment raises another issue at this point. Depressed cases are apt to commit murder or to attempt suicide. I have seen several cases of infanticide by mothers who were depressed. A serious depression comes after childbirth in a certain number of women. Although depressed cases respond well to electro-shock, these people are forced to remain in jail for a considerable time as most murder cases cannot obtain bond. With nothing to help recovery under these circumstances the patient may, by virtue of the fact that he is being held in durance vile, become worse.

In a case in Detroit an intelligent prosecutor, an able psychiatrist and broad-minded court made it possible for a woman, who, in a depression had killed her child, to be sent to a private hospital before she was even arraigned. She was given electro-shock treatment and made the usual recovery in such cases. When she was brought to trial she was of sound mind. Under the Michigan statutes it was mandatory that if she be found "not guilty by virtue of insanity," which was the logical jury finding in such a case, she must, nevertheless, be sent to the State Hospital for the criminal insane.

Why should this woman who is now well be sent to a mental hospital? What will be the criteria for summoning her back to court? Must she stand trial again? This whole group of questions has never been answered. To my knowledge the issue of curing a sick patient who is awaiting trial has never been raised. The interests of justice and of the community would certainly be served by curing her and making it unlikely that she would commit a similar offense. If she is sick enough to deserve the treatment, as determined by her psychiatrist and others in the hospital, should that not be enough to justify a decision to *nolle prosequi*?

Post-Trial Therapy

There is a last phase of psychiatry which is possibly more important to society than any of the previously discussed aspects of psychiatric medical jurisprudence. That is the application of psychiatric diagnosis to the convicted offender. Although our corrective system has up to this time been set up only as a punitive measure, the idea is slowly coming into our national consciousness that it is more important to make offenders law-abiding in the future than merely to allow our emotions to explode in our reaction to the heinousness of the crime.

Except in those states where the death sentence is still being invoked most offenders eventually are returned to society and it well behooves us to try to make a decision as to what should

be done with these people in view of that fact. If they are to be put on probation that form of treatment is intended to make them law-abiding. If they are to be sent to a corrective institution one should look very carefully to see that what happens to them there will return a socially adjusted individual to his community. Unfortunately, this is seldom the case. Even in those penal institutions where psychiatry has gained a foothold, funds and personnel have not been available to introduce a distinctly therapeutic atmosphere.

In hospitals for the criminal insane the situation is somewhat different because the evidence of mental disease in their inmates is quite obvious, so that medical and psychiatric treatment can be directed toward the cure of the ailment and the presumption is, that the mental illness is the cause of the offense and the removal of that illness will make the person law-abiding in the future.

In a prison the existence of mental illness is not so clearly cut. The economic and other causes of crime overshadow, in the "practical" mind, the basic psychological deviation. Until the environmental factors are better controlled it must be obvious that only small inroads can be made into the problem as decades go on. We must face the fact it is only since the first global war that any scientific approach has been made to criminology. Gross, Garofalo, and Lombroso and the others who are considered the classics in criminology were only able to point to primitive socio-psychological findings. They were too few in number, too radical in their beliefs for their time and too much shut up in their ivory towers to command attention from the "practical" present-day administrator and politician. Even today we cannot expect our highly trained psychiatric physician to know all of the odds and ends of political maneuvering in order to correct prison conditions or make great changes in the social conditions which produce crime.

Any knowing person must admit that there can be only a small number of cases who, through direct treatment on the part of the psychiatric staff of the prison, can profit by therapy.

On the other hand the court has a great opportunity. The court is in a position, if it has scientifically trained help, to evaluate the violator standing before him. A person who has transgressed is yet very definitely a person. Through such relatively novel psychiatric means as probation prediction tables and charts, the use of intelligence tests, the use of subtler diagnostic methods like the Rorschach test and the thematic apperception test we are gaining deeper insight into the problem person. The

psychiatric interview probes more deeply through the contributions of psychoanalysis.

It is not possible to give a thorough psychoanalysis to every offender nor would it be profitable. Time spent with a man who is merely going to go out and be law-abiding and who will make no further contribution to society than keeping out of the hands of the police, is almost wasted. It is much better to have psychiatrists treat neurotics, artists, physicians or even skilled workmen. On the other hand much can be done with simple therapy. My own experience in using ordinary directive psychotherapy with probationers, children in corrective schools and adults in prisons has confirmed in me the belief that a little psychiatric treatment goes a long way, but of course the more that can be given the better the result. We must not forget the findings of Roethlisberger and Dickson.[5] Their research in industry demonstrated that merely the giving of attention to a group of workers could raise production and enable these workers to make a better adjustment within the plant. The expansion of this research into the counseling services in industry was equally revealing for it took from the worker the stigma of anonymity and made him a person. Similarly even a little psychiatric treatment given a person under probation or in the courts or institutions produces results.

Finally, even the psychiatrist must admit that there are individuals who are not treatable. For these people, prison is not the answer. It is sufficient that they be kept in custody. There is no reason why they cannot lead a pleasant life and perhaps be made to make a contribution to society by working in shops or offices within custodial areas. Since the psychiatrist cannot be optimistic about the outlook why not confine these people not as punishment but in an attempt to gain something from them to repay for the harm they have done?

Conclusion

We can close this very brief discussion by pointing out that:

(1) Psychiatry can be used in the courts to aid the judge in evaluating testimony;

(2) It is useful in the civil courts to advise the judge in the proper therapeutic handling of wards of the court or persons whose cases are coming under judication in order that children particularly, but also incompetent persons, may be guided into

5 Roethlisberger, F. J. and Dickson, W. J., *Management and the Worker*, Cambridge, 1940. Harvard University Press.

proper treatment so their lives will be adequate and pleasant and society will gain some from their existence;

(3) An early psychiatric evaluation on criminal cases is indicated in order to protest both the court and the defendant;

(4) The rules of responsibility and the statutes which define the mental condition of the individual with regard to his guilt, and his ability to stand trial must be completely re-evaluated in terms of modern treatment;

(5) After conviction the purpose of all court procedure would be to make the individual law-abiding. With this consideration uppermost in mind, the functions of probation and corrective institutions must be completely re-evaluated in the light of the contributions that psychiatry is able to make.