

1959

## The Teaching of Psychiatry in Law Schools

John M. MacDonald

Follow this and additional works at: <https://scholarlycommons.law.northwestern.edu/jclc>

 Part of the [Criminal Law Commons](#), [Criminology Commons](#), and the [Criminology and Criminal Justice Commons](#)

---

### Recommended Citation

John M. MacDonald, The Teaching of Psychiatry in Law Schools, 49 J. Crim. L. Criminology & Police Sci. 310 (1958-1959)

This Article is brought to you for free and open access by Northwestern University School of Law Scholarly Commons. It has been accepted for inclusion in Journal of Criminal Law and Criminology by an authorized editor of Northwestern University School of Law Scholarly Commons.

# THE TEACHING OF PSYCHIATRY IN LAW SCHOOLS<sup>1</sup>

JOHN M. MACDONALD

WITH A COMMENT BY HENRY WEIHOFEN

Dr. Macdonald is Assistant Professor of Psychiatry, University of Colorado School of Medicine and Assistant Medical Director of the Colorado Psychopathic Hospital. As consulting psychiatrist to the District Courts of Colorado, he has gained considerable experience in forensic psychiatry. He is the author of "Psychiatry and the Criminal."

Henry Weihofen, Professor of Law in the University of New Mexico since 1949, and member of the committee on legal education in the Albuquerque Bar Association, was formerly with the faculty of law in the Colorado State University. He was head of the Appellate Review Section of the War Labor Board, and later attorney for U. S. defense in the Court of Claims during the War years.

In 1955 Professor Weihofen received the Isaac Ray Award of the American Psychiatric Association. Lectures which he delivered in that connection are published (1956) under the title, "The Urge to Punish."—EDITOR.

There is growing recognition of the contribution of psychiatry to the administration of justice. The determination of criminal responsibility, the evaluation of sex offenders in accordance with sex psychopath laws, the treatment of mentally abnormal offenders, and the rehabilitation of criminals are among the responsibilities shared by the court and the psychiatrist. It is not in the courtroom alone that the psychiatrist can be of assistance to the lawyer. Psychiatrists have long emphasized the value to the law student of instruction in psychiatry and psychology. Opinion within the legal profession has been sharply divided on the desirability for such instruction.

In an attempt to evaluate the teaching of these subjects in law schools, the writer submitted in 1957, the following questionnaire to the deans of the 128 law schools which had been approved by the American Bar Association in 1956:

1. Is psychiatry a part of the curriculum in your law school?
2. Is psychology a part of the curriculum in your law school?
3. Numbers of hours devoted to the teaching of psychiatry and/or psychology in your law school?
4. Is the course in psychiatry optional or compulsory?
5. Is the course in psychology optional or compulsory?

<sup>1</sup> EBAUGH, F. G. AND JEFFERSON, R. A.: *Liason Teaching of Psychiatry in Law Schools*, J. CRIM. L. AND CRIMINOLOGY. 22: 724, 1932.

6. Is the course in psychiatry confined to a descriptive account of the major psychiatric diseases?

7. Are there clinics given to supplement lectures? Number of clinics?

8. Do you feel, as Dean of a law school, that courses in psychiatry are worthwhile and should be included in your curriculum?

9. Do you plan to arrange for teaching of psychiatry in the future?

10. I would appreciate any additional comments pertaining to this subject that you care to add.

This questionnaire was based on one used in 1931 by Ebaugh and Jefferson,<sup>1</sup> in order to facilitate comparison with their findings. The questionnaire is brief and, like the study as a whole, has obvious shortcomings. Nevertheless, the data obtained may be of some value. Replies were received from 126 of 128 approved law schools in the United States.

It was found that thirty-two schools include lectures in psychiatry and/or psychology. Of the remaining ninety-four schools:

twenty-five plan to give instruction in psychiatry;

twenty-five consider that psychiatry should be taught but have no plans;

thirty-two do not feel that psychiatry should be included in the curriculum;

four do not plan to teach psychiatry and expressed no opinion as to whether it should be included in the curriculum; and

eight stated neither their plans nor their opinions

as to whether psychiatry should be included in the curriculum.

Of the thirty-two schools that include lectures in psychiatry and/or psychology:

eight provide ten or more hours of instruction;

three provide six to seven hours of instruction;

ten provide three to five hours of instruction;

seven provide two or less hours of instruction;

and

four provide seminars but no regular lectures.

#### COMPARISON WITH THE 1931 STUDY

	1931	1957
Number of questionnaires	78	128
Number of replies	73	126
Schools that teach psychiatry	13	32
Schools that plan to teach psychiatry	14	25

If it is assumed that the schools which did not answer the questionnaires do not or did not provide instruction in psychiatry or psychology, then the percentage of approved law schools which teach these subjects has increased from 16.6 percent in 1931 to 25 percent in 1957. Similarly, the percentage of approved law schools which either teach or plan to teach these subjects has increased from 34.6 percent in 1931 to 44.5 percent in 1957.

Schools which considered that courses in psychiatry would be worthwhile, yet did not plan to include them, gave lack of time, lack of money, or the belief that these courses should be in the pre-legal curriculum as their reasons. Eighteen deans complained of lack of time in an already overcrowded curriculum. One dean wrote, "In the last 20 years it has been necessary to add new courses in order to keep pace with modern developments. Such courses for example as administrative law, labor law, taxation and medical testimony in personal injury cases. Only last year we started teaching jurisprudence and we do not have a course in comparative law, international law or history of the law, all extremely important in the world today."

There would obviously be considerable opposition to any suggestion that the curriculum should be lengthened. As Prosser stated,<sup>2</sup> the student feels quite understandably that there should be a limit somewhere, that even Jacob undertook to labor

<sup>2</sup> PROSSER, W. L.: *The Ten Year Curriculum*, J. LEG. EDUCA. 6: 149, 1953.

only seven years for his reward and felt quite justifiably abused when more was required of him.

Five schools complained of lack of money and indicated that if financial aid could be obtained, instruction in psychiatry would be given. Frequent comment was made that psychology should be included in the pre-law studies, but it is rarely a requisite subject. The fact that the medical school was some distance from the law school was a deciding factor in one university.

Thirty-two deans stated that psychiatry and psychology should not be included in the curriculum. Some very emphatic remarks were made. "It is the opinion of our law school faculty that courses in psychiatry do not constitute an appropriate part of a professional law school curriculum." "Psychiatry or psychology alone seem too narrow for any purpose that we can envision." "It would be unreasonable to require law students to study psychiatry as it would be to require medical students to take courses in accounting, international law, contracts, constitutional law and other worthwhile courses."

Fifty deans believed that psychiatry should be added to the curriculum. Some doubted the advantage of a separate course and considered that psychiatry should be an integral part of the total background underlying certain courses.

One dean commented, "It is my firm belief that if lawyers (law students) could be given a slanted but scientific approach to the problems of human motivations and reactions it would aid them immeasurably in their profession. Many law school people believe that this is being done and I count myself among the dissenters. I do not believe that all lawyers should be psychologists or psychiatrists but they should have basic (scientific) information in areas directly relating to their profession."

Although no adverse comments were made on psychiatry or psychiatrists, it may well be that scepticism of the profession and its teachings influenced some law schools in their decision not to include psychiatry in the curriculum. Despite the need for cooperation, there has long been some measure of distrust between lawyers and psychiatrists. The differing theories of the various schools of psychiatry, the disagreement of psychiatric witnesses, and the outspoken comments of the more vocal (but not necessarily more competent) psychiatrists have been repeatedly criti-

cized by members of the bar. Complaint has been made of the fantastic nature of some psychiatric testimony. Some of these complaints are well justified, but criticism would be less frequent if lawyers came to court equipped with a better understanding of psychological principles. It is, indeed, unfortunate that so often the physician and lawyer come together only in the courtroom, under circumstances which are not always conducive to the development of better understanding between the two professions.

#### INSTRUCTION IN PSYCHIATRY AND PSYCHOLOGY

The instruction in psychology or psychiatry which is provided by the thirty-two law schools varies considerably. It ranges in time from a one-hour lecture to a fifty-hour course of lectures and is provided by a lawyer, psychiatrist, psychologist or sociologist. Psychiatric patients are rarely presented to the students although motion pictures illustrating mental illness are sometimes utilized. Often the instruction is limited to a particular aspect of forensic psychiatry, such as the civil commitment of mentally ill persons to a mental hospital or the determination of criminal responsibility.

At the University of Pennsylvania, a psychiatrist, Dr. Andrew S. Watson, Professor of Psychiatry in Law is engaged half time in a research project, supported by a financial grant from the National Institute of Mental Health, for the development of teaching materials in law and the behavioral sciences. He is assisted by a number of psychologists, sociologists and anthropologists. "The project envisions publication of teaching materials designed to supply law students with a better orientation toward the behavioral sciences and to examine specific legal problems in specific areas of the law in the light of relevant contemporary knowledge of human behavior. Examples of problems reviewed include:

Examination of the question whether psychiatrists should be permitted to testify as in the Hiss case.

Examination of criteria employed by courts in adoption and custody cases.

Examination of deterrence and rehabilitation and other possible goals of criminal law administration in the light of contemporary knowledge of human behavior.

In addition, introductory materials are being prepared to summarize the theory and method of

the various behavioral sciences, to supply basic orientation to law students in these disciplines, to point up differences in method and in theory between these disciplines and among various schools within these disciplines."<sup>3</sup>

At Yale University, which also has a grant from the National Institute of Mental Health, a very successful course, "The Dynamics of Human Behavior" has been expanded and renamed "Law and the Behavioral Sciences." There is also an advanced course "Psychiatry and the Law" which is taught jointly by a lawyer and psychiatrist.

At Temple University, the course is not confined to a descriptive account of major psychiatric diseases. Such matters as the following indicate the course orientation.

(a) Clinical psychology in terms of projective techniques and tests.

(b) How psychiatric and psychological concepts apply in the courtroom and what these concepts are.

(c) How these concepts are utilized in pretrial and posttrial procedures.

(d) The validity of criticism of the legal process in terms of modern scientific thinking in the behavioral sciences.

(e) What explanations of human behavior are adaptable to integration with law and the legal rationale governing conduct criminally and civilly?

(f) What are the barriers to communication between law and the behavioral sciences?

Plans for the future include a joint (Legal Aid-Psychiatric) Clinic as an experiment in putting some of these concepts into actual use and controlled application. Other courses in the medical-legal area are "Medico-legal Problems of Personal Injury Litigation" and "Scientific Proof in Criminal Litigation."

Franklin University teaches psychology in a Domestic Relations course to help the prospective lawyer recognize (1) the source of the marital conflict in terms of social, psychological, religious or economic problems (2) that divorce is not the only solution (3) for a suitable reconciliation the problem must be resolved (4) that teamwork with other professions is essential.

#### COMMENT

This study shows that there has been a significant increase since 1931 in the percentage of ap-

<sup>3</sup> Association of American Law Schools, Report of special Committee on Law and Psychology, 1956.

proved law schools which teach psychiatry or psychology. Such instruction should be of practical value in many areas. In the courtroom, psychological insight is helpful in the selection of jurors and the interrogation of witnesses. Although many skilled trial lawyers show remarkable intuitive grasp of psychological factors, not every attorney is so gifted. Understanding of the psychological origins and treatment of criminal behavior should surely be an advantage to the judge who sentences convicted offenders.

When the plea of insanity is entered, when the issue is mental competency in the civil court, and when neuropsychiatric illness is a subject of litigation in personal injury cases, the value of a basic knowledge of psychiatry to an attorney needs no emphasis. Similarly in divorce proceedings some psychological understanding may be invaluable.

The advantages of instruction in psychiatry are not limited to the courtroom. The lawyer client relationship may be complicated by "transference" problems as a result of which the client's attitude toward his attorney may be determined by his relationship with important figures in his childhood rather than by the present situation. Rarely will the client reveal that he feels toward his lawyer as he did, for example, toward one of his parents, as he is usually unaware of the origin of these feelings. This behavior with its irrational basis may give rise to serious difficulties unless its origin is recognized and handled effectively. Skill in interviewing is of prime importance, although it is seldom given the consideration it deserves.

Recognition of mental illness in a client may forestall tragedy or expensive litigation which would not be in the client's best interests. The paranoid and hypomanic patient are particularly liable to involve themselves in law suits. The paranoid person who seeks legal aid in defending himself from his imagined persecutors all too often feels himself justified in taking the law into his own hands when he fails to obtain the help he expects from the legal profession or the police. Yet, the fact that he seeks aid through the proper authorities may give rise to a false feeling of security that he will respect the law. In the last three years, the writer has examined two patients who committed murder under these circumstances.

A middle-aged woman had delusions that her husband was having sexual relations with their teenage daughter. The police department, on receipt of her complaint, arranged for a physical

examination of the daughter. The woman did not accept the results of the examination and later shot and killed her husband. A railway worker complained to a sheriff's office and to his attorney that officials of the railroad union were doping him. The complaint was recognized as being absurd, but no attempt was made to obtain psychiatric examination and the man subsequently murdered one of his imagined persecutors.

Goodman has observed<sup>4</sup> that "one of the principal trends in contemporary thought concerning legal education is that which emphasizes the policy-making function of the attorney both in public positions and in private practice and which correlatively advocates training in the utilization of "social science" skills. Certainly a background of training in psychiatry might well lead to benefits, both to the lawyer and to society, which would extend beyond the advantages already described above.

Although many law faculties believe that psychology should be included in the prelaw training, there are serious drawbacks to this proposal. The courses in psychology available in prelaw colleges are not tailored to suit the special needs of the lawyer. The course in psychiatry and psychology should not be confined, as it sometimes is, to a descriptive account of the major psychiatric disorders. Rather the emphasis should be on providing the student with some understanding of personality development and the functioning of the human mind including the mental mechanisms which underlie both normal and abnormal behavior.

Zilboorg has suggested<sup>5</sup> that young law students should serve as prison guards for awhile, the way medical students serve as clerks in hospitals during their student days. "The law student should get some authentic case histories from various prisoners and compare them with their court and probation records, in the same manner as medical students and interns are required to take histories and examine patients and then compare the data thus obtained with the hospital records." One might add that such a scheme should be supplemented by counselling with a psychiatrist.

Ongoing research at the University of Pennsylvania, Yale and other law schools should aid in the

<sup>4</sup> GOODMAN, L. H. AND RABINOWITZ, R. W. *Lawyer Opinion on Legal Education*, YALE LAW JOUR. 64: 537, 1954-1955.

<sup>5</sup> ZILBOORG, G.: *THE PSYCHOLOGY OF THE CRIMINAL ACT AND PUNISHMENT*, New York, Harcourt, 1954.

development of sound teaching material in the behavioral sciences for law students. The courses must have sufficient practical value to justify their presence in an already overcrowded curriculum. The present study suggests that law schools are gradually adopting a more favorable attitude toward the inclusion of courses in psychiatry and psychology.

COMMENT BY HENRY WEIHOFEN

It is interesting to learn that law school instruction in psychiatry or psychology has become so popular that over 44 percent of approved law schools now either teach or plan to teach these subjects. One can applaud this trend and yet entertain some doubts. One big doubt in my own mind is whether most of these courses, as now are being given, are adequate for the purpose intended.

The reason for this doubt is the present lack of adequate teaching materials for such a course, and the still more serious lack of teachers competent to teach it.

Dr. Macdonald is, of course, right when he says:

"The course in psychology and psychiatry should not be confined, as it stands, to a descriptive account of the major psychiatric disorders. Rather the emphasis should be on providing a student with some understanding of personality development and the functioning of the human mind including the mental mechanisms which underlie both normal and abnormal behavior."

But some of these courses, especially those conducted by psychiatrists, I venture to guess do consist largely of a descriptive account of psychiatric disorders. Elsewhere, Dr. Macdonald says, "The instruction is limited to a particular aspect of forensic psychiatry such as the civil committal of mentally ill persons to a mental hospital or the determination of criminal responsibility." This probably describes most of the courses conducted by lawyers.

Dr. Macdonald mentions that a major purpose of the project being conducted at the University of Pennsylvania is the development of teaching materials for a course in Law and Psychiatry. These materials are now in their second mimeographed edition. When they are published and made available for other schools, this hurdle will, it is to be hoped, be overcome.

But while materials developed by one such project can be made available for others, the lack of teaching personnel is not so easily met. The problem is not one merely of finding a law teacher with some knowledge of or interest in psychiatry, or a psychiatrist with sufficient knowledge of law to discuss legal problems. The course should present a much more integrated body of materials than such a person can give. It will almost necessarily require the close collaborative efforts of a law-trained and a psychiatrically-trained person. But when two persons trained in different disciplines attempt to communicate, each has a task comparable to learning a new language. As I can testify from personal experience, even the psychiatrist who has had many years in close cooperation with the courts does not easily think in legal concepts or use legal terminology with preciseness. By the same token the psychiatrist is disappointed to find that even the lawyer who has given a lot of attention to the problems of mental responsibility or incompetence does not really understand even the most basic theoretical tenets of modern psychiatry.

When the two attempt to collaborate, some powerful emotional reactions are sure to occur. Each participant will be invading a new field having an unfamiliar value system, strange techniques, and a set of new and difficult conceptual models.

Dr. Andrew S. Watson, who has been the psychiatrist on the University of Pennsylvania project since its inception, in a paper presented at the annual meeting of the Association of American Law Schools in San Francisco last December, discussed some of the hazards arising out of the personality attributes of the participants in such courses.<sup>6</sup> These emotional factors, he feels, present some of the most serious hurdles that have to be dealt with in organizing such a course. Psychiatrists have come to recognize frankly that they were probably led into this specialty by, among other reasons, the unconscious hope of working out their own personal emotional problems. Lawyers interested in the subject are likely to have the same unconscious motivation. There is no objection to this, so long as the search for self-understanding is conducted primarily on the broader, philosophical level, and is not centered on direct private therapy.

<sup>6</sup> This paper will be published in a forthcoming number of the *JOURNAL OF LEGAL EDUCATION*.

For the psychiatrist, the major difficulty will probably be to relinquish the air of omniscience that the deference of his patients has developed in him and to be willing to enter the arena with a lawyer and engage in the adversary technique for resolving problems. To have to debate and to defend his tenets and his concepts against critical attack is a disturbing experience for the psychiatrist. It will not be easy to find one able and willing to participate in a course conducted in the Socratic manner traditional in law schools. The task will be even harder if we accept Dr. Watson's insistence that our man must have "flexibility," an attribute encompassing "a lively and free-ranging sense of intellectual curiosity; ease in forming personal relationships with colleagues; a sense of assurance about his own professional and intellectual concepts so that he can freely examine others."

These difficulties are perhaps more valid reasons

for hesitating to introduce such courses as those that Dr. Macdonald suggests.

Some schools avoid the problem by taking the position that psychology should be a pre-law subject. But the undergraduate courses that a pre-law student is likely to take probably consist of experimental academic psychology (plus perhaps "mental hygiene"). While not without value, such courses have little direct usefulness for lawyers. Psychiatry courses are given in medical school, and are not usually offered in the undergraduate colleges at all. If law training is to include any basic understanding of human behavior as related to the specific problems encountered by lawyers, it must be provided in the law school curriculum.

Apparently a growing number of law schools accept this conclusion. But enthusiasm for the objective should not blind them to the difficulty of achieving it.