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**PIONEERS IN CRIMINOLOGY**

**III. Isaac Ray (1807–1881)**

WINFRED OVERHOLSER

Dr. Winfred Overholser (A.B. Harvard 1912, M.D. Boston University 1916, Sc.D. [hon.] Boston University 1940), was formerly Commissioner of Mental Diseases for the Commonwealth of Massachusetts. In 1937 he was appointed Superintendent of St. Elizabeths Hospital, the large Federal mental institution in Washington, D. C., succeeding the late Dr. William Alanson White. Formerly Professor of Psychiatry at Boston University, he has held that title at George Washington University School of Medicine since 1938. He was President of the American Psychiatric Association 1947–48, and Vice-President of the First World Congress of Psychiatry in Paris in 1950. He has been awarded several foreign decorations, including the French Legion of Honor (Chevalier), and recently received the Distinguished Service Award of the United States Department of Health, Education, and Welfare.

In 1952 he received the first Isaac Ray Award of the American Psychiatric Association. He is the Editor-in-Chief of the *QUARTERLY REVIEW OF PSYCHIATRY AND NEUROLOGY*, and is the author of *The Psychiatrist and the Law* and (with W. V. Richmond) *A Handbook of Psychiatry*. He is a frequent contributor to medical and legal journals.

The picture of Dr. Isaac Ray below is reproduced from an original Brady photograph in the possession of the Congressional Library, Washington, D. C.—EDITOR.

By far the most influential American writer on forensic psychiatry during the whole nineteenth century was Isaac Ray.<sup>1</sup> Ray was a man of wide interests, a gifted linguist, and an effective writer on whatever subject he treated. His chief interest throughout his entire lifetime was in the closer application of the principles of psychiatry to the law. Although he wrote a book on mental hygiene and one on mental pathology, together with innumerable articles in various legal and medical journals dealing with various phases of mental disorder, he is principally remembered as the author of *The Medical Jurisprudence of Insanity*, which first appeared in 1838, ran through at least five



ISAAC RAY, M.D.

<sup>1</sup> In the preparation of this biographical sketch, the author has been greatly aided by Dr. Louis E. Reik, of Princeton University, who has made available the results of his extended studies of Ray's

American editions, and one or two in London, and is still referred to by courts of last resort as the authoritative work on the subject. To deal adequately with a man of these protean interests and gigantic abilities could not be done in the space of less than a full volume. An attempt will be made in this note, however, to point out some of the accomplishments and views of this great American physician.

Isaac Ray was born in Beverly, Massachusetts, January 18, 1807. He came from an old New England family; his English ancestor, Daniel, purchased land in Plymouth in 1630 and removed to Salem the following year. He attended Phillips Andover Academy, studied for a time with Dr. George Shattuck of Boston, and then entered the Medical School of Maine at Bowdoin College. He received the degree of Doctor of Medicine in 1827, and the following September he opened an office in Portland, Maine. While in Portland he gave several series of lectures on botany and natural history and published a volume entitled, "Conversations on the Animal Economy", a presentation in dialogue form of the principles of physiology.

#### EASTPORT

In 1831 he removed to Eastport, Maine, which was then a thriving seaport, with frequent ocean communication with Boston and with a good bit of international trade as well. An English officer traveling in America at about this period commented on the extent and the quality of the stock in Favour's Bookstore, which he visited while passing through Eastport. Certainly, from his many references to French and German writings it is clear that Ray was in touch with a vast amount of foreign as well as domestic literature. Something of the quality of his mind is found in an extract from a lecture delivered by him in Eastport in 1832: "The first obstacle to the reception of truth . . . is a fear of inquiry, and it is one which has always been and still continues to be among the most impregnable strongholds of error. . . . Surely if our opinions are wrong, the sooner they become unsettled the better, and if right, the enquiry by making us acquainted with their foundations and bearings, will strengthen our belief."

Dr. Ray's first article on medical jurisprudence appeared in the *Boston Medical Magazine*<sup>2</sup> under the title, "A Review of the Medical Testimony in a case of Alleged Murder." He made a scathing attack upon the lack of fundamental knowledge of pathological anatomy (the subject of his graduation thesis at Bowdoin) exhibited by one of the principal witnesses. "His testimony opens with a flourish of trumpets the like of which for asinine tones was never before heard, we will venture to say, since the world began." He concluded, "The truth is, that medical jurisprudence is too much neglected in this country, and while this neglect continues, errors as unpardonable, though perhaps not quite so gross, will be frequently occurring. Though involving questions of the deepest interest both to the physician and lawyer, it must

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life and work; by Dr. Henry N. Babcock, Superintendent of Butler Hospital, Providence, for the use of material from the Isaac Ray Library; by Dr. Benjamin Pasamanick of Johns Hopkins University, for permission to use his article on Ray's phrenological interests; and the Librarian of the Houghton Library of Harvard University, who gave authority to quote from Ray's letters to Charles Sumner. For their assistance he expresses herewith his deep gratitude.

<sup>2</sup> Vol. 2 p. 18 (July, 1833).

be confessed that it has received little attention from either. . . . It is strange . . . that physicians should be so deficient in a branch of their science, which gives them the best chance in the world, of distinguishing themselves either to their credit or their shame."

During his stay in Eastport he became much interested, among other things, in the then prevalent tenets of phrenology. For example, his review of Combe's book on phrenology appeared in 1834.<sup>3</sup> There is, he says, "an original and distinct power for every special end and object of our existence" and the theory, as he says, "lends a powerful support to morality and religion." As shown by this and other even earlier articles, he had completely accepted the phrenological theory at that time. In the same period also he translated two volumes, the fourth and the sixth, of Gall's *Fonctions du Cerveau*. In this venture he was apparently acting as a "ghost writer" for one Winslow Lewis, Jr., M.D. of Boston, whose translation of the works of Gall was published in Boston by Marsh, Capen, and Lyon in 1835. This activity of Ray's has been recently explored by Dr. Benjamin Pasamanick of the Johns Hopkins University School of Hygiene and Public Health, who has kindly given me permission to refer to his article (to appear later in the American Journal of Psychiatry) entitled, "An Obscure Item in the Bibliography of Isaac Ray."<sup>3a</sup> Ray's interest in phrenology continued at least to some extent during his entire lifetime, although it was considerably attenuated in his later years. Even as late as 1879, for example, he wrote to Nahum Capen, the Boston publisher of Gall, "No storybook was ever devoured with such an abandon of every other thought as was Gall's great work *Sur Les Fonctions*." A large portion of phrenology is today looked upon as a passing fad in the history of thought. Nevertheless, despite its doctrines of "bumps and dents", its notions of organs of "inhabitiveness", "philoprogenitiveness", "combativeness", "love of approbation", "veneration", "conscientiousness", and so on, it made distinct contributions to the knowledge of the structure of the brain, and gave impetus to what later was known as the "German School" of neurology. It was Gall and Spurzheim, for example, who showed first that the white substance of the brain is fibrous. Phrenology was an attempt at a scientific approach to psychiatry, and for a time at least it attracted the best medical minds both in England and in this country.<sup>4</sup> It is greatly to the credit of Ray that he was ready to investigate this new approach to the problems of behavior.

Ray's first essay in the field of psychiatric jurisprudence is found in the form of a Lecture on the Criminal Law of Insanity<sup>5</sup> in 1835. This was a comprehensive discussion in which he took up particularly the questions of lucid intervals and what

<sup>3</sup> THE CHRISTIAN EXAMINER, 16, 221 (May, 1834).

<sup>3a</sup> Since this article was set up the contribution by Dr. Pasamanick has been published in AM. J. PSYCHIAT. 111: 164.

<sup>4</sup> See FULTON, JOHN F. *Early Phrenological Societies and their journals*. BOSTON MED. AND SURG. J. 196: 398, Mar. 1927, and STOOKEY, BYRON. *A Note on the Early History of Cerebral Localization*. BULL. N. Y. ACAD. OF MED. second series, 30: 559, July 1954.

<sup>5</sup> THE AMERICAN JURIST, 14: 253 (October, 1835). The reader should appreciate that the word "insanity", shunned today by psychiatrists and now exclusively a legal term, was used in Ray's time with the same meaning and connotation as our modern words and phrases, "mental disease", "mental disorder", and "psychosis".

was then known as moral insanity. He cast doubt upon the legal doctrine of lucid intervals, saying, for example, "Lucid intervals are nothing more than intermissions of the cerebral disease and depend upon the same pathological conditions as other intermittent diseases." In this discussion he referred to a large number of writers, including Pinel, Haslam, Esquirol, Georget, Hoffbauer, Combe, and Gall and Spurzheim. He attacked particularly what may be termed "the intellectual approach" to the problem of criminal responsibility. "The error", he says, "arises from considering the reason, or to speak more definitely, the intellectual faculties, as exclusively liable to derangement, and entirely overlooking the passions or affective faculties. . . . While the reason may be unimpaired, the passions may be in a state of insanity, impelling a man . . . to the commission of horrible crimes in spite of all his efforts to resist. . . . The whole mind is seldom affected; it is only one or more faculties, sentiments, or propensities, whose action is increased, diminished or perverted, while the rest enjoy their customary soundness and vigor. . . . True philosophy and strict justice require that the action of the insane should be considered in reference . . . to the faculties that are diseased." An interesting comment in this essay concerns what he refers to as the "unparalleled frequency" of insanity in the United States. He adds, "The frequency and freedom of elections are constantly influencing the hopes and the passions, and the general accessibility to office diverts the mind from the even tenor of its way, and fills it with vague and insatiable cravings, to an extent that renders the common phrase 'political fever' something more than a figure of speech."

In a criticism of this article "G.T.C."<sup>6</sup>, speaks of a "crusade, the object of which is to rescue bleeding humanity from its imaginary tyrant, precedent." Following this criticism was an editorial note evidently written by Charles Sumner, one of the editors, criticizing the critic as misunderstanding Ray. "Doctor Ray has adopted the phrenological theory of insanity of Dr. Andrew Combe, that is, that the brain is not a single organ but a congeries of separate but united organs, each of which has its appropriate function. . . . That science is now receiving the support of so many enlightened and scientific men that it needs no defense at our hand." Doctor Ray made a vigorous rejoinder to "G.T.C."<sup>7</sup>, remarking *inter alia*, "Neither can we object to the law's attempting a definition of insanity, if it be anxious to add another to the thousand and one failures, to define a condition of mind, that never was and never can be thoroughly understood."

Following this there started a series of letters to Charles Sumner from Doctor Ray, now preserved in the Houghton Library in Harvard, which has kindly consented to their use. Under date of 5 May, 1836 he wrote to Sumner "The principle of law, or more properly speaking, of common sense, that insanity excuses crime, of course, no one would blame, but the moment the question of what conditions of mind, insanity may be predicated [sic], comes up, the law forthwith lays down certain principles to guide our judgment. . . . Now these principles are erroneous, being based on imperfect notions of insanity, and therefore I attacked them." This passage is an interesting adumbration of the much later correspondence between Judge Doe and Doctor Ray which resulted in the enunciation of the so-called New Hampshire

<sup>6</sup> *Idem*, 15: (April, 1836).

<sup>7</sup> *Idem*, 16: 43.

Rule. Later in the letter Doctor Ray said, "Your profession needs light on the subject and so does mine, nearly if not quite as much, but there are no works in the language calculated to furnish it. The idea of translating some of the German or French treatises first suggested itself to my mind, but the more carefully I examine them, the less suitable do they appear to answer, in fact, the purpose I thought necessary, and the more strongly I felt obliged to prepare work myself, which should answer fully the idea of what I considered such a work should be. Accordingly, I began one and have written a considerable portion of it." Thus was the *Medical Jurisprudence of Insanity* born—a book which John Minson Galt, another of the "Original Thirteen" founders of the American Psychiatric Association, declared in 1865<sup>8</sup> "does more credit to America than aught in relation to insanity that has been produced on this side of the Atlantic."

In his next letter, of 18 May 1836 he said, "The legal relations of insanity have excited an extraordinary interest in Paris for the last ten years, and they are beginning to take it up in England. I trust our own country will not be behind Europe in a matter so closely connected with the cause of humanity, science, and legislation, and as the influence of authority is less here, perhaps, I think, it will not. All that is wanted is light." In a later letter to Sumner, dated 4 October 1837, he asked for Sumner's impartial opinion of the manuscript of the book on medical jurisprudence and suggested that perhaps some such person as Judge Story or Professor Greenleaf might be willing to express an opinion as well. It would be interesting to know the sequel. At any rate, the book when it appeared in 1838 was dedicated not to Sumner or to Story or to Greenleaf, but to Horace Mann! Friendly relations certainly continued between Ray and Sumner; the dedication was *not* due to strained relations with Sumner. In 1844, for example, Sumner wrote a very cordial letter to Ray, and Ray wrote at least two letters to Sumner in the 50's, when the latter was United States Senator from Massachusetts.

The *Medical Jurisprudence of Insanity* is not alone remarkable because it was produced by a country practitioner in a small town or that it was to become a classic widely quoted and highly influential. More than all these, it was with the exception of two relatively minor exceptions the *first* treatment of the relations of law and psychiatry to appear in the United States. In 1819 in Philadelphia had appeared the volume entitled, "Tracts on Medical Jurisprudence" with a preface by Thomas Cooper, M.D. and the "Elements of Medical Jurisprudence" by Theodric Romeyn Beck, published in Albany in 1823, contained in chapter 13 a section on mental alienation. Neither of these volumes, however, was as comprehensive or as original in any respect as Ray's masterpiece.

The volume was entitled "A Treatise on the Medical Jurisprudence of Insanity by I. Ray, M.D.", and was published in Boston in 1838 by Charles C. Little and James Brown. The first edition ran to 480 pages. The preface begins, "Few probably, whose attention has not been particularly directed to the subject, are aware how far the condition of the law relative to insanity is behind the present state of our knowledge concerning that disease. . . . In general treatises on legal medicine, this branch of it has always received a share of attention; but the space allotted to it is altogether

<sup>8</sup> AM. J. INSAN., 12: 239.

too limited to admit of those details, which can alone be of any useful service; and it is one of those branches on which the author is usually the least qualified by his own experience, to throw any additional light. Insanity itself is an affection so obscure and perplexing, and the occasions have now become so frequent and important when his legal relation should be properly understood, that an ampler field of illustration and discussion is required for this purpose, than is afforded by a solitary chapter in works of this description."

The first chapter, including 67 pages, is entitled, "Preliminary Views", and presents a summary of Ray's examination of existing rules, with his proposals for improvement. He reviews the doctrines of insanity "dogmatically" laid down by Lord Hale with such effect on his successors. He suggests in a footnote that one reason why the criminal law of insanity has undergone so little improvement in England is probably that the accused, not being allowed counsel, the "officers of government have always been at liberty to put their own construction on the law". "Thus", he says, "the old maxims have been repeated year after year, and not being questioned, their correctness has remained undoubted." He makes a long attack upon the "right and wrong test" as well as upon the "delusion test" laid down in the Hadfield case. He then proceeds to an extensive discussion of "moral insanity", a disorder which had been described by Pinel and more recently in English by Prichard. "Insanity is a disease, and as is the case with all diseases, the fact of its existence is never established by a single diagnostic symptom, but by the whole body of symptoms, no particular one of which is present in every case." He reviews the law of insanity in Great Britain and in this country too as "loose, vacillating and greatly behind the present knowledge of the disease". He suggests that it would be wiser to permit the jury to decide whether or not the mental unsoundness, if it existed, embraced the criminal act within its sphere of influence. In this connection he recommends court experts in the French manner as a means of giving the jury sound advice. Further, if insanity is pleaded a commission should be appointed, consisting of men well experienced in the study of mental disorder, who will proceed to the examination of the accused "with coolness and impartiality". The chapter concludes with a panegyric of phrenology,<sup>9</sup> although the word phrenology is not mentioned. He says that those who refuse to take the dominant philosophy on trust and seriously inquire into its foundations "are stigmatized as visionaries and overwhelmed with ridicule and censure".<sup>10</sup> This eulogy, it may be added parenthetically, is found in each of the first four editions, but was omitted in the fifth edition of the work, which appeared in 1870.

Ray then proceeds to discuss Mental Disease in General, Idiocy, Imbecility, the Legal Consequences of Mental Deficiency, the Pathology and Symptoms of Mania, and what he terms Intellectual Mania, both general and partial. An original part of his contribution is chapter seven on Moral Mania. "Thus far", he says, "Mania has been considered as affecting the intellectual faculties only. . . . It will not be denied that the propensities and sentiments are also integral portions of our mental constitution and . . . dependent on the cerebral organism. . . . We were bound to believe

<sup>9</sup> The word "phrenology" appears in the index of the third edition only.

<sup>10</sup> A TREATISE ON THE MEDICAL JURISPRUDENCE OF INSANITY, Boston (1838) p. 66.

that [the brain] is liable to disease and consequently, that the affective, as well as the intellectual faculties are subject to derangement." Previously to Pinel, he says, it was a matter of universal belief that insanity is always accompanied by derangement of the reasoning powers. Pinel found, however, that "many maniacs have betrayed no lesion whatever the understanding, but were under the dominion of instinctive and abstract fury. This form of mental disorder he designated as *manie sans délire*."<sup>11</sup>

He quotes Prichard as defining this condition as "consisting in a morbid perversion of the natural feelings, affections, inclinations, temper, habits, and moral disposition without any notable lesion of the intellect or knowing and reasoning faculties, and particularly without any maniacal hallucinations." In defending moral insanity Ray recognized the importance of the affective as distinguished from the cognitive life, a fact which was emphasized by the researches of Freud and which is an integral part of the modern concepts of psychiatry. Under Moral Insanity he includes the compulsive acts such as kleptomania, fire-setting, what is now termed sexual psychopathy, and homicidal insanity; in general, that is, some of the neuroses and "psychopathic ['sociopathic'] personality".

He writes later<sup>12</sup> as follows: "In medical science, it is dangerous to reason against facts. Now we have an immense mass of cases related by men of unquestionable competence and veracity, where people are *irresistibly* impelled to the commission of criminal acts while fully conscious of their nature and consequences. . . . They are not fictions invented by medical men for the purpose of puzzling juries and defeating the ends of justice, but plain, unvarnished facts as they occurred in nature; and to set them aside without a thorough investigation, as unworthy of influencing our decisions, indicates any thing rather than that spirit of sober and indefatigable inquiry which should characterize the science of jurisprudence. We need have no fear that the truth on this subject will not finally prevail, but the interests of humanity require that this event should take place speedily." It is interesting that the British Royal Commission on Capital Punishment in 1953 was still discussing this very point!

In discussing Lucid Intervals<sup>13</sup> Ray cautions against mistaking the disappearance of symptoms for the cure of disease, citing malaria and epilepsy as examples. "That the intermissions of mania are ever so complete, that the mind is restored to its original integrity, would seem scarcely probable, from the fact, that the very seat of the pathological changes is the material organ on which the manifestations of mental phenomena depend."<sup>14</sup> We should, he says, exercise far greater caution in applying the doctrine in criminal cases than in civil, as the momentary excitement caused by sudden provocation may easily end the "temporary cure". He concludes,<sup>15</sup> "Burdened as the criminal law is with false principles on the subject of insanity, the time has gone by when juries will return a verdict of *guilty* against one who is ad-

<sup>11</sup> *Op. cit.*, p. 169.

<sup>12</sup> *Op. cit.*, p. 263.

<sup>13</sup> *Op. cit.*, Ch. 14.

<sup>14</sup> *Op. cit.*, p. 321.

<sup>15</sup> *Op. cit.*, p. 337.



mitted to have been insane, within a short period of time before the criminal act with which he is charged."

The remaining of the twenty-five chapters are discussions of Dementia, Delirium, the Duration and Curability of Madness, Simulated Insanity and Concealed Insanity, Suicide, Somnambulism, the Effect of Insanity on Evidence, Drunkenness and finally Interdiction. In this last chapter he discusses to some extent matters of guardianship and conservatorship, as well as confinement of the mentally ill. This is a topic which he developed in great detail in later works, as we shall see.

The fourth<sup>16</sup> and subsequent editions contained another chapter on the duties of medical witnesses and referred to the first American case<sup>17</sup> in which it was required that an expert should give his opinion on an hypothesis rather than on the evidence he had heard. Ray referred to the hypothetical question as "a fiction, an acknowledged creation of fancy", which is supposed "to serve the ends of truth and justice better than the actual facts." This chapter was largely based on an article by Ray<sup>18</sup> in which he commented on the fact that although Lord Hale must have made himself familiar with all the learning of his time, the doctrines of physicians on the subject of mental disorder have been treated "as the speculations of visionary men, used by ingenious counsel for the purpose of screening their clients from the consequences of their crimes." The common law, he added, must welcome the teachings of science if it is to deserve the merit its advocates claim for it. In this, as in so many other respects, Ray proved himself far ahead of his times.

The book was enthusiastically reviewed<sup>19</sup> in *The American Jurist* by Luther S. Cushing (later a judge and a reporter of Massachusetts decisions) who, with George Hillard, was a co-editor of the *American Jurist* with Charles Sumner. Emphasizing the debt which Ray owed to phrenology, Cushing mentioned his division of the "organs" of the brain into those of the affective powers and the intellectual powers, adding that if this classification be true "it furnishes an intelligible rule for ascertaining the civil rights, as well as the criminal responsibilities, of the insane." Cushing also emphasized the importance of Ray's concept of moral mania.

#### AUGUSTA

Ray did not remain long in Eastport after the appearance of his *magnum opus*. In 1841 he was appointed the Superintendent of the new Maine Insane Hospital at Augusta, where he remained until 1845. His reports as Superintendent are carefully written and discuss at considerable length his concepts of the proper treatment of the mentally ill. He was opposed to depletion, the method which had been used extensively by Benjamin Rush, and stated that he preferred to depend largely on moral means, that is, treatment which is addressed directly to the mind itself, or as we would say today, psychotherapy. He spoke of amusements and games, reading, walks, religious services, and occupation of various sorts. He was somewhat opposed to the English doctrine of non-restraint, considering that on the whole a moderate

<sup>16</sup> The fourth edition was published in 1860.

<sup>17</sup> *U.S. vs. McGlue*, 26 Fed. Cas. 1093 (1851).

<sup>18</sup> *MONTHLY LAW REPORTER*, 22: 129 (July, 1859).

<sup>19</sup> See *THE AMER. JURIST*, 19: 363 (July, 1838).

amount of physical restraint for disturbed patients was beneficial rather than harmful. Apparently he looked on the British method, which of course is now generally accepted throughout Western Europe and the United States, as a form of what he termed "ultra-ism".

It was during his incumbency of the office of Superintendent of Augusta that he became in 1844 one of the "Original Thirteen", the founders of the Association of Medical Superintendents of American Institutions for the Insane, now known as the American Psychiatric Association, the oldest national medical organization in the United States. Aside from bringing out a second edition of *The Medical Jurisprudence* in 1843 and writing a review of the account of the famous trial of Abner Rogers<sup>20</sup>, in Massachusetts, he did very little other writing in this period.

#### PROVIDENCE

In 1845, on the recommendation of a number of prominent psychiatrists, the group who were planning to build and operate a private mental hospital in Providence, Rhode Island, appointed him Superintendent of the Butler Hospital. He suggested visiting the European hospitals first, and characteristically, insisted on paying his own expenses rather than having them defrayed by the trustees. He spent a number of months in Europe<sup>21</sup>, and on his return reported under the title, "Observations on Foreign Hospitals for the Insane" in the April 1846 issue of *The American Journal of Insanity* (2: 289). On his return to Providence in the Spring of 1846 he engaged in planning and constructing the buildings of the Butler Hospital; he remained as the superintendent from May 1846 to January 1867, despite his original intention, as stated in his letter of acceptance, not to "continue in the office more than three or four years".

During the period of his superintendency at Butler Hospital Ray spent nearly all of his time at the hospital, traveling very little except on the occasions when he

<sup>20</sup> 7 Metcalf 500.

<sup>21</sup> This was in all probability Ray's first and only trip to Europe. In an article on Ray in *One Hundred Years of American Psychiatry* (Col. Univ. Press 1944), p. 67, the present author stated that Ray "interrupted his practice to spend almost a year in England and France (1828-1829)", and quoted at length from a diary (unsigned) in the possession of Butler Hospital which was attributed to Ray. That attribution is almost certainly incorrect; rather, the diary appears to have been written by Amariah Brigham, a friend of Ray, who is known to have been in Europe at that time!

Notices in the *EASTERN ARGUS*, of Portland, Maine, recently located by Dr. Louis E. Reik, indicate that in June 1828 Ray advertised to give a two months' course in botany, and that in November of the same year he proposed to "repeat his course of Lectures on Natural History: The preface of his "conversations on the Animal Economy" was dated May 11, 1829. Thus an "alibi" is established for Ray—he certainly was not away from Portland for "almost a year" in 1828 or 1829. Further, Ray himself wrote in the *American Journal of Insanity* for April 1846 (2, p. 289): "An interval of professional leisure, during the last summer, enabled me to gratify a long cherished wish of seeing a little of the Old World"—hardly the words of a repeater! Finally, as corroboration may be added the fact that a "Biographical Sketch of Dr. Amariah Brigham" by E. K. Hunt (Utica, 1858) contains lengthy quotations from Brigham's diary which correspond exactly with the handwritten pages of the manuscript diary at Butler Hospital. To those of his colleagues who may have referred to this passage in his article, the author offers his apologies; to Dr. Reik, who made the identification of the diaries as Brigham's, he extends his thanks.

was called as an expert witness. That he did much writing and thinking on medico-legal problems as well as on other matters is quite clear from his bibliography. He wrote, for example, on Shakespeare's delineations of insanity, on education in relation to the health of the brain, on the popular feeling towards hospitals for the insane, etherization in the treatment of insanity, the insanity of George III, cerebral dynamics, and on legislation for the insane in Maine. In the latter article<sup>22</sup> he refers particularly to an act of 1847 (c. 33) forbidding the care of the mentally ill in jails, and providing for simpler commitment, and for an observation commitment until further order of the court to a state hospital if a plea of insanity is entered in a criminal case. This latter course, he adds, "is unknown to the forms of the English common law, and this, we suspect, is the first attempt to incorporate it with these forms." He refers also to a "recent New York case" (further details not given) in which doctors who were sent to the jail to examine a defendant were refused admission on the orders of the District Attorney!

In 1850 he proposed a Project of a Law for Regulating the Legal Relations of the Insane.<sup>23</sup> The insane, he holds, should be held liable in tort and trespass actions, and if a question of mental fitness for trial arises the defendant should be preferably committed to a mental hospital for observation. Insane persons should not be held responsible for criminal acts unless such acts are proved not to be the direct or indirect results of insanity. He also recommended a commission for the commitment of the mentally ill. He later expanded the ideas in this article into a comprehensive "project" which will be mentioned below.

Aside from the third and fourth editions of *The Medical Jurisprudence* the only other book which appeared from Ray's pen during the Butler period was entitled "Mental Hygiene" (1863). This phrase, which seems very familiar and modern to us, actually had been used by Sweetser twenty years earlier (1843). Mental hygiene he defines as "the art of preserving the health of the mind against all the incidents and influences calculated to deteriorate its qualities, impair its energies, or derange its movement." In discussing the influence of the times upon mental disorder Ray takes the position that mental disease is on the increase and adds, "Every advance in civilization implies cerebral effort." He speaks of the atmosphere of excitement in which people are living at the present time, "an atmosphere", he says, "which without the most prudent management is calculated to impair the vigor of the mind and facilitate the invasion of disease." Among the factors operating adversely he comments on the increase of newspapers and books, imaginative books and especially juvenile books, as well as the failing influence of the home in education—a modern ring indeed!

Ray's stay at Butler Hospital was an active and fruitful one. Beside managing the affairs of the hospital closely and writing the annual report he wrote frequently for the legal and medical journals and presented numerous papers at the meetings of the Association of Medical Superintendents of American Institutions for the Insane. Mention has been made of his presentation at a meeting of the Association in 1850 of a project of a law relative to the legal relations of the insane. This was a

<sup>22</sup> AM. J. INSAN. 4: 211.

<sup>23</sup> THE MONTHLY LAW REPORTER 13: N.S. 3, p. 217 and AMER. J. INSAN. 7: 215.

matter which occupied much of his thought, and which culminated in 1864, with a proposal adopted by the Association, entitled, "A Project of a General Law for Determining the Legal Relations of the Insane."<sup>24</sup> The article was a comprehensive one, dealing with the principles of commitment and of other relations of the mentally ill, including such matters as liability in tort and trespass, guardianship, wills and criminal responsibility. For commitment he recommended a commission which would report to a justice of the court in the case of any person alleged to be in need of care, and recommended authorizing a similar commission to report in the event that it was alleged that a person in confinement was not in further need of hospitalization.

Paragraphs 12 to 16 inclusive are of particular interest as dealing with criminal cases. It is provided: that insane persons shall not be made responsible for criminal acts in a criminal suit, unless such acts shall be proved not to have been the result, directly or indirectly, of insanity; that there be delay of the trial in the event that insanity is alleged, until such time as the insanity shall be cured. In the event of such an allegation the commission shall examine the prisoner and if he is found to be mentally ill he is to be confined "in some hospital or in some other place favorable for a scientific observation of his mental condition." Commitment is provided in the event of acquittal by reason of insanity, the prisoner to be discharged, however, in the event that the "paroxysm of insanity" is found by the judge to be the first and only one ever experienced, in which case he should be unconditionally discharged. Other sections provide for the responsibility of insane persons in civil suits for injury to person or property, and for the invalidity of contracts and wills of the insane.

Two other items of biography may be mentioned during the Butler Hospital period; he was given the honorary degree of Master of Arts by Bowdoin College in 1846 and in 1855 he was elected president of the Rhode Island Medical Society and of what is now the American Psychiatric Association, serving in the latter capacity for four years.

#### PHILADELPHIA

In January 1867 Doctor Ray resigned as Superintendent of the Butler Hospital, partly at least on account of failing health, and removed to Philadelphia. He immediately became interested in the public affairs of the city and the state, lectured for a time in one of the medical colleges in Philadelphia, testified frequently in medico-legal cases, and continued to write vigorously and effectively on medico-legal matters. During this period two volumes appeared from his pen, both in 1873. One of them, a small booklet entitled, "Ideal Characters of the Officers of a Hospital for the Insane", was probably inspired by a tractate of Thomas Fuller, the author of "The Holy War." It discusses, for example, The Good Superintendent, The Good Steward, The Good Wife of the Superintendent and the Good Attendant. The other volume was entitled "Contributions to Mental Pathology." This was largely a reprinting of selected articles which had already appeared. The volume shows the wide range of Ray's interests and his forceful way of presenting matters. He deals with such varied topics as causes of insanity, statistics of insanity, objections to

<sup>24</sup> AM. J. INSAN. 21: 21-62.

moral insanity considered, delusions and hallucinations, confinement of the insane, the law of insanity in criminal cases, medical experts, and the reports of a number of interesting trials both of will cases and of crimes.

His article on the confinement of the insane<sup>25</sup> is so timely that an excerpt from it was used in the introduction of the Model Draft Act Governing the Hospitalization of the Mentally Ill, which was prepared by the Federal Security Agency in 1950. In citing the purposes of a law concerning the confinement of the mentally ill he says, "In the first place the law should put no hinderance in the way to the prompt use of those instrumentalities which are regarded as most effectual in promoting the comfort and restoration of the patient. Secondly, it should spare all unnecessary exposure of private troubles, and all unnecessary conflict with popular prejudices. Thirdly, it should protect individuals from wrongful imprisonment. It would be objection enough to any legal provision, that it failed to secure these objects in the completest possible manner." He criticized the jury system for commitment then in vogue in Illinois, saying that it is "shocking to every notion of domestic propriety." He denied, as did and does everyone familiar with the actual situation, that improper confinement in mental hospitals was more than extremely rare. To him, admission should be as simple as possible, although he added that some sort of legislation is essential. He concludes: "that such legislation would prevent all popular clamor now so loud and wrathful, we do not believe. . . . As long as men are swift to believe any plausible story of wrong-doing, without inquiry or hesitation; as long as newspapers can find in such stories the materials of a great sensation; as long as there is a prevalent belief that no one is insane who is not furiously mad,—so long will the confinement of the insane in establishments expressly designed for the purpose be viewed with feelings of distrust, whatever may be the legal provisions by which it is regulated."

The chapter on the evidence of medical experts<sup>26</sup> is a trenchant and penetrating critique of a problem which still plagues us today. It is objected, he says, that experts disagree; very little evidence of any sort, he retorts, is completely harmonious. If it be said that expert testimony confuses the jury, so does other testimony. "This objection to the testimony of experts comes with ill grace from lawyers, in view of the fact that it is regarded as sound law to admit, in questions of mental condition, the opinions of ordinary witnesses." He denies that experts are venal—"Because a man's opinions are worth money, it does not follow that they are corruptly bought." He doubts if appointment of neutral experts by the governor could be expected to remedy the situation "before some distant millennial period." He would adopt the Continental system of *expertise*, or provide, as in Maine, for observation commitment in criminal cases where insanity is alleged. He objects to the hypothetical question, and urges that the judge keep the cross-examination within its proper limits. In the last analysis, "We must look for improvement not so much to any devices of legislation, as to broader views and a firmer spirit on the part of those who administer the laws, to a higher sense of professional honor, both in the lawyer and the physician, and to a healthier public sentiment."

<sup>25</sup> CONTRIBUTIONS TO MENTAL PATHOLOGY, p. 168. Also AMER. LAW REV. 3: 193 (1869).

<sup>26</sup> *Op cit.*, p. 409.

In a much later article on this topic<sup>27</sup> he phrased the proper ethics of the expert thus: "Doctors in testifying are bound by more than the Hippocratic Oath, to serve as faithful ministers of science, casting aside every ignoble prepossession born of the time or the place, and laying upon her altar the offering of an intelligent investigation and an honest purpose."

Two other articles may be mentioned briefly. In a review of a discussion of moral insanity<sup>28</sup> held in Paris in 1866 and attended by Falret, de Boismont, Morel, Bailarger, Moreau and others, he discussed, *inter alia*, hysteria. "The term hysteria is much used to signify whatever is obscure or strange in the disorders, mental and bodily, of the fair sex. That it is an expression of ignorance rather than of knowledge can scarcely be denied. . . . None of the substitute names is less liable to objection." (Ray accepted in this article the then general belief that hysteria is confined to the female sex.) The other article<sup>29</sup> asked for a scientific study of occult phenomena in order to save from the "pernicious doctrines of spiritualism, and from our insane asylums thousands who are now hopelessly drifting in that direction." He expressed his belief that "such phenomena will be as satisfactorily explained as are now the wonders of electricity."

#### THE NEW HAMPSHIRE RULE

Probably the most significant event of the Philadelphia period of Ray's life, something which has left its mark upon American jurisprudence, was the adoption of the so-called New Hampshire Rule in the case of criminal charges to which insanity is pleaded as a defense. Recently Dr. Louis E. Reik of Princeton has unearthed a considerable amount of correspondence which took place between Judge Charles Doe of the New Hampshire Supreme Court and Doctor Ray from 1866 to 1872.<sup>30</sup> As we have seen, Ray had long taken the position that the criteria of intellectual comprehension of right and wrong laid down in the M'Naghten Rules are wholly inadequate, and that, indeed, no legal definition or universally applicable test of criminal irresponsibility by reason of insanity can be devised. Judge Doe was thoroughly convinced that Ray was right, although he hesitated to quote Ray as his authority, preferring to confine his arguments to purely legal grounds. He concluded that "the great masters of our law" never made the distinction between law and fact in cases of insanity, and that by setting up various theoretical criteria for legal responsibility they not only invaded the realm of science but also betrayed the spirit of the common law. In 1865 Doe had dissented,<sup>31</sup> but by 1868 he had convinced Chief Justice Perley, so that the latter followed what is now called the New Hampshire Rule in charging.<sup>32</sup> This charge was upheld on appeal and again in the following year the Rule was re-affirmed.<sup>33</sup> Judge Doe in his letters insisted that credit

<sup>27</sup> *The Duncan Will Case*, AM. J. INSAN. 31: 277 (1875).

<sup>28</sup> A. J. MED. SCI. 57: 139 (1869).

<sup>29</sup> ATL. MO. 22: 129 (1868).

<sup>30</sup> *The Doe-Ray Correspondence: A Pioneer Collaboration in the Jurisprudence of Mental Disease*. 63 YALE L. J. 183 (Dec. 1953).

<sup>31</sup> *Boardman vs. Boardman* 47 N.H. 120.

<sup>32</sup> *State vs. Pike* 49 N.H. 399.

<sup>33</sup> *State vs. Jones* 50 N.H. 369.

be given to his colleagues and that he be left out as much as possible. In a letter of 24 May 1869 Ray, for example, wrote, "I shall substitute Chief Justice Perley for Mr. Justice Doe because you so earnestly wish it, but I shall do it under a kind of mental protest."

In an article entitled, "The Law of Insanity"<sup>34</sup> Ray discussed Judge Edmond's charge<sup>35</sup> in the first of three cases, all of which, he thought, paved the way for further advance. He proceeds, "A far greater advance of judicial opinion on this subject—one, indeed, that may be regarded as final—has been made in two cases recently adjudicated in New Hampshire." He then goes on to discuss the cases of Boardman vs. Woodman and State vs. Pike.<sup>36</sup> He adds, "We talk about the law of insanity. Properly speaking, there can be no law on this subject other than the facts themselves. Courts cannot rightfully say that insanity under certain forms destroys no element of responsibility. It may, or it may not; it is simply a question of fact." Commenting on the traditional "tests", he remarks that the older definitions show the state of medical science, then existing, and that only by hearsay. "We might as well", he adds, "go back to Galen and Hippocrates as to Hale's time." And again, "A new truth may be deprived of half its power by being mixed up with old formulas and venerable fallacies." He concludes, "The cases to which we have called the reader's attention, show both the prevailing dissatisfaction with the law of insanity as usually expounded, and the progress that has been making, during the last thirty years, towards that triumphant solution of doubts and difficulties which we have had the pleasure to record. The friends of humanity may now rejoice in the well grounded faith that the day is not far distant when we shall cease to take the lives of the insane on the strength of a metaphysical subtlety."

Little remains to tell of the Philadelphia period. In 1879 Dr. Ray was honored by Brown University with the degree of Doctor of Laws. In the same year his only son, Dr. B. Lincoln Ray, died suddenly. Doctor Isaac Ray died in his sleep in Philadelphia on March 31, 1881, his wife, whom he had married in Portland in 1831, surviving him. He was buried in Providence, Rhode Island.

#### RAY IN MID-TWENTIETH CENTURY

Isaac Ray has been dead for over 70 years, but his influence and his memory are still strong. Recently, the Butler Hospital at Providence established an Isaac Ray Library, which houses Doctor Ray's personal library. In 1951 the American Psychiatric Association, of which he was one of the founders, established the Isaac Ray Award, to be given annually to a psychiatrist or member of the legal profession who has promoted closer relations between law and medicine. The first lecturer under this award was the author of the present article. The second was Dr. Gregory Zilboorg, the eminent psychiatrist of New York; and the lectures under the third award will be given by the Honorable John Biggs, Jr., Chief Judge of the Third Circuit of the United States Court of Appeals. The latest recognition of the influence of Isaac

<sup>34</sup> THE AMER. L. REV. 4: 236 (1870).

<sup>35</sup> People vs. Kleim, 1 Edm. Sel. Cas. 13 N.Y.; Common. ex rel Haskell vs. Haskell 2 Brewster 491, Pa.; Common. vs. Rogers, 7 Metcalf 500, Mass.

<sup>36</sup> Supra, Notes 31 and 32.

Ray could hardly be more *à propos*. On July 1, 1954, the United States Court of Appeals for the District of Columbia, (Bazelon, J., with Edgerton and Washington, J.J.), quoting Isaac Ray as one of its authorities, decided as follows:<sup>37</sup> "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 and 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. We conclude that a broader test should be adopted. . . . The rule we now hold must be applied on the retrial of this case and in future cases is not unlike that followed by the New Hampshire Court since 1870. It is simply that an accused is not criminally responsible if his unlawful act was the product of mental disease or defect. . . . The legal and moral traditions of the Western world require that those who, of their own free will and with evil intent commit acts which violate the law shall be criminally responsible for those acts. Our traditions also require that where such acts stem from and are the product of a mental disease or defect as those terms are used herein moral blame shall not attach and hence there will not be criminal responsibility. The rule, we state in this opinion is designed to meet these requirements."

#### EPILOGUE

A gentleman of wide culture and reading, learned in various languages and a master of English style, a public-spirited citizen, an able hospital administrator, a thoughtful student of law and of medicine, Isaac Ray believed throughly that it was both desirable and possible that science should make further contributions to law. As he said in the conclusion of one of his last addresses—that given before the Medico-Legal Society of New York in 1877: "The administration of justice . . . must often be imperfect until the light of medical science is freely admitted and used; not the light that has travelled down to us from the times of Coke and Hale, but that which we owe to the progress of knowledge during the present century, greater, far greater indeed than that of all centuries together."

<sup>37</sup> See *Monte W. Durham vs. United States*, Case No. 11859.