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NEED FOR STATUTORY PSYCHIATRIC EXAMINATION IN CRIMINAL CASES

BY WILLIAM NELSON, M. D.*

The continually recurring conflict between the legal and medical profession on the relation between mental abnormality and responsibility for crime is certainly undergoing some evolutionary changes that are more closely approaching a common understanding. While sensational trials for capital offenses bring the question forcibly before the public mind and, in some instances, while medical experts are besought to testify in behalf of one or the other sides, their testimony being ridiculed because of the views held by the opposing sides which must necessarily be biased to some extent because of the manner of employment of the experts, it is an established fact that judges of the courts, trial attorneys, both for the State and the defense, and juries are coming to a more cooperative attitude with the medical profession in dealing with problems of crime.

This attitude is particularly noticeable to the Psychiatric Clinic in St. Louis, which is located in the same building with the Criminal Divisions of the Circuit Court, the Courts of Criminal Correction and the City Courts.

While this Clinic is interested primarily in building character in children and over 75 per cent of the individuals examined in this Clinic are under 18 years of age, it has rendered service to the above named courts with adult individuals charged with crime.

Roughly speaking, the Criminal Divisions of the Circuit Court have jurisdiction over felonies; the Courts of Criminal Correction over minor commissions of crime and the hearing of preliminary trials of individuals accused of more serious offenses; and City Courts having jurisdiction over violations of City Ordinances, misdemeanors, etc. The latter courts are not courts of record and do not have jurisdiction over felonies.

Unlike a few states in our union, Missouri has no mandatory law providing for the mental examination of those charged with crime, but since the establishment in May, 1923, of the Psychiatric Clinic as a unit in the Department of Public Welfare of the City, frequent use of its services has been made by adult courts.

There is no system by which cases have been referred from the Courts to the Clinic for examination, and it rests with someone con-

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nected with the individual alleged to have committed an offense to request his referral to the Clinic for a mental examination. Sometimes the judge of the court in which the individual is arraigned for trial initiates the request, sometimes the state's attorney, sometimes the attorney for the defendant, while at other times relatives or friends of the accused request it. The request usually comes while the individual is in jail awaiting trial or on his appearance in court during trial. Rarely has the request come after his trial before the sentence has been executed. From the Clinic's viewpoint, three requirements are exacted preliminary to the examination and made inviolate:

(1) No individual charged with crime will be examined who has already been indicted and is under the jurisdiction of the court unless the judge having such jurisdiction requests that the examination be made.

(2) It is made a condition of the examination that the judge of the court, the State's Attorney and the defendant's representative be given a copy of the report of the findings of the Clinic in the case.

(3) That the Clinic has the privilege of consulting with any psychiatrist or psychiatrists that may have been otherwise engaged to examine the individual with a view to arriving at some common understanding of the case and the submission of correlated conclusions and recommendations.

In the first place this assures us that the judge is conversant with the fact that such examination is in progress even though he has issued the request for the examination at the importunity of someone else. In the second place it is made plain that our examination is made for what benefit the facts revealed may be to the court in making a humane disposition of the case; it puts the examination on an impartial basis free from any prejudices in favor of either side. And in the third instance many times it prevents the discrediting of expert testimony upon the witness stand in opposing statements made by experts that are more apparent than real due to the manner of framing questions by the State's Attorney on the one side and the defense attorney on the other. In the City Courts requests usually come from the judges of the courts direct, and since procedure there is not of the strict formality that exists in the higher courts, the humane elements in dealing with the accused persons are capable of more prompt utilization and with less hardship in awaiting the routine application of the law that is necessitated by our present legal procedure in the higher courts where a jury of lay persons determines the mental state of the individual.

From May 1, 1923, to December 10, 1925, 128 individuals have

been referred to the Clinic for examination from the adult courts. The offenses these individuals have been charged with ranged from the most heinous for which capital punishment is permissible to the simpler violations of the City Ordinances, such as vagrancy, being drunk on the street, etc.

The results of the examination of these 128 individuals is as follows:

Those suffering from frank mental disease (insane according to legal interpretation):

	Cases	Per Cent
General paresis	11	8.4
Dementia praecox	9	7.0
Paranoid psychosis	12	9.3
Manic depressive insanity.....	1	0.7
Epileptic insanity.....	4	3.1
Senile dementia	2	1.4
Unclassified	4	3.1
Feeble-minded with mental disease.....	10	7.7

Those suffering from psychopathic conditions not frank mental diseases (semi-responsible, semi-insane, etc.):

Psychopathic personality	25	19.5
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Feeble-minded and irresponsible, having less than three-fourths the mentality of the average adult, or the feeble-mindedness being associated with actual psychopathic states (insane according to legal interpretation):

Feeble-minded	18	14.0
Feeble-minded with psychopathic personality	9	8.5
Mental disease or feeble-mindedness associated with syphilis of central nervous system	5	3.7
Undiagnosed	12	9.3
Normal mentality.....	6	4.5

Total.....	128	100.0
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DISPOSITION

To Psychopathic institution		To Feeble-minded institution	
Recommendations made	Accepted	Recommendations made	Accepted
76	64	8	8

It will be seen from the foregoing tables that over 40 per cent of the individuals examined were suffering from frank mental disease that

comes within the meaning of the legal term insanity. Of those afflicted with feeble-mindedness, 14 per cent had this condition alone; 8.5 per cent had feeble-mindedness associated with psychopathic personality—the so-called feeble-minded delinquent as designated by some states; and 3.7 per cent had feeble-mindedness or mental disease associated with syphilis of the central nervous system. In 9.2 per cent the individuals were not under observation long enough to arrive at any conclusions, and in 4.5 per cent they were found to be of normal mentality. In a little over 19 per cent psychopathic personality was found and if we add to this the 9.2 per cent not under observation long enough to arrive at definite conclusions, and the 4.5 per cent found to be of normal mentality we have only one-third of the individuals referred for examination in which it could not be stated they were suffering from mental abnormality to the degree of irresponsibility. No doubt some of those in this group would on further examination pass into one of the groups constituting frank mental abnormality.

The greatest number of psychopathic personality came from the City Courts where misdemeanors alone are tried. Many of these individuals were arrested for vagrancy, begging, drunkenness, peace disturbance, etc., but upon a thorough examination some of them showed signs of maladjustment from early childhood. Sex perverts, invert, drug habitués, chronic alcoholism, etc., and other conditions indicating mental abnormality were found.

Since these courts have not the power to commit individuals to mental disease hospitals, it devolved upon the psychiatrist to plan some disposition where the judge of the court was willing to accept the opinion rendered him. It must be said to the credit of the judges in our City Courts that they welcome advice from the psychiatrist and it has been possible through close cooperation and persuasive powers exerted upon the defendant in court to send him to our City Sanitarium (for mental disease) where it is possible for him to receive intelligent and humane care for his condition. Many individuals are repeaters in these courts, for they do not remain free long after being brought into court and fined, and in lieu of their ability to pay a fine they are sent to the Workhouse, but are soon in court again after their release from the Workhouse.

One man who was examined by the Clinic had a record of 97 arrests, and he has been in the Workhouse 22 times and was on his way there again when we recommended more humane treatment for him. He was feeble-minded, was beginning to deteriorate mentally from age, and he presented a pathetic picture as he pleaded with the

judge that he would not harm anyone, but desired to be left alone and not be molested by the law.

In the Circuit Courts where greater formality exists in court procedure and where it is necessary to convince many more persons of the significance of the facts elicited in a mental examination, the possibility of getting humane treatment for the irresponsible defendant is not so favorable. A thing, however, that is of great help in convincing judge, jury and attorneys of one's findings is the conduction of a careful examination, taking into consideration the life experiences of the individual and considering his present condition on the basis of what he was endowed with in beginning his life as well as the stresses that have come since his life began. A carefully written report stated in plain, simple and concise language not only convinces judges, juries, etc., of the integrity of the examiner, but also educates them to a better understanding of the limited responsibility of some of the higher grades of the feebleminded and the psychopathic personalities.

While we have not succeeded in convincing the administrators of the law in all cases of the wisdom of our recommendations, it is believed we have succeeded in securing a mitigation of punishment on the basis of statements in our reports. In fact, at least two of our judges have stated that they had assessed less severe punishment upon defendants because of our findings and no individual has been given capital punishment that we have examined, although some of the individuals have been guilty of most atrocious acts in the form of murder, sex attacks associated with sadistic attitudes, etc.

As an illustration of how feeble-mindedness and inverted and perverted instinct may cause one to commit the most heinous offense, I cite extracts from the following case history:

Case number 1667 is a white male, 25 years of age, American born of ancestors who for at least two generations were American born. He reached the 5th grade in country school. His employment record is unfavorable. He spent 18 months in the Boonville, Missouri, Reformatory and has been arrested on several occasions on suspicion of thefts and perverted sex acts, but no positive proof of these acts could be established.

The charge that brought him into court was the murder of a 6-year-old boy which was accomplished by his choking the child until life was extinct and suspending his body in the basement where the deed was committed, later removing it to an outbuilding.

He was referred to the Clinic by a circuit judge at the request of the attorney for the defendant.

His father was a poorly constituted man physically, always having a pale color and state of nutrition was poor. He was a farmer, but never able to assume duties requiring active and persistent effort. He was unstable emotionally, quick to become angered, but his anger subsided promptly. He drank alcoholics to excess and was promiscuous sexually. He died at the age of 23 years from "typhoid fever" after an illness of one week.

His mother is living, age 47. She is a meek, rather apathetic appearing woman who has poor adaptive ability. She has been married three times, her first husband dying about four years after their marriage. The patient under examination was the only child born to them. She was married the second time shortly after the death of her first husband and to this marriage four children were born. After 20 years of life with her second husband, he died and she married for the third time, this time marrying an ex-convict.

The difficulty her son is involved in disturbs her a great deal. She cries over it a great deal and seems to be completely overwhelmed. She doesn't think he has ever been "just right." She went to school as a girl but did not get beyond the 5th grade. She states the school work was always difficult and she quit when she was about 15 or 16 years of age.

PATIENT—Developmental History: He was born in Missouri, June 30, 1900. The father was not strong at the time he was conceived. The mother received a severe shock in the death of her mother when the mother of the patient was three months pregnant with him. He began to walk before one year of age, but had several spasms over a period of six months. This seemed to retard his walking which was not well controlled until he was 18 months of age. He was nervous as a baby and his right upper extremity was kept in constant motion. He was broken out all over his body at nine months of age with blood boils. He talked and frequently jumped out of bed in his sleep as a child. He did not develop voluntary control of his urine until 15 years of age.

Health: Started having spasms when he was nine months old. These continued until he was 18 months old. He still has what the mother calls "flighty spells." These come about once a month. His eyes have a wild stare in them and they last for two or three hours. They usually come after some excitement and he does not seem to know what he is doing. He never has had good color in his face and the mother thinks that he might have tuberculosis. Coughs a great deal.

School: Went to school in DeSoto, Missouri. Left school when he was 12 years old and when in the 5th grade. Was backward in school and had a hard time to get along. Truanted at school. No further information obtainable.

Work: He has never succeeded in learning a trade, or mastering any particular kind of work, business or profession, and has never succeeded in holding a job longer than three months. The reason for him holding the job three months was because the job was on a boat destined for New Orleans, and he could not return. Average salary has been \$18 a week. Has done work in box factories, soap factories, cotton mill, Bell Telephone Company when he was a lineman, and at the Fisher Auto Body Company. Most that he ever made was driving an ash wagon. Doing this he made \$22 a week. With the one exception, he has never held any job over a month. Takes one of his "flighty spells" and comes home. Was discharged from the Telephone Company for having stolen one of their automobiles. He will never apply for a job by himself. Mother always goes with him.

Associates: Has never had normal companionship, as he has associated entirely with children much younger than himself. Even to this day he would rather be with small children than with people of his own age. Mother states that he will sit and watch little children play for hours. While he was in school it is reported that his companions imposed upon him.

Discussion: The entire life history of this man indicates abnormality.

He has been unable to meet the vicissitudes of a simple life from early childhood. His failure in achievement in school can surely be accounted for on the basis of his limited mentality, for according to tests he has the mentality of a child slightly over eight years of age.

The opinion that this man is feebleminded and psychopathic and as such is not responsible for his acts was reported to the judge of the court, and upon the defendant's plea of guilty of the accusation he was sentenced to life imprisonment in the State Penitentiary.

It is not believed that this individual would ever adapt himself in society, and it was recommended that he be committed to an institution for the treatment of mental disease, and would it not be a much more humane and intelligent manner of dealing with such an individual than to send him to the penitentiary where little constructive aid exists for the alleviation of such conditions?

This case is cited not because it is unusual in its manifestation among individuals committing grave offenses against society, but be-

cause it represents both the feeble-minded and psychopathic in the same individual and it can be readily seen how inadequate are his resources to help him in an adjustment to the conditions that society places upon one. But for a mental examination he probably would have been considered sane and a jury might have decided upon the death penalty, for the crime was a most revolting one and we have not yet gotten away from the attitude of revenge rather than constructive measures for those who have offended society.

There can be no doubt that a jury is incompetent to decide a medical question, and with individuals who are found to be irresponsible by unbiased medical experts a trial on the basis of innocence or guilt should not be conducted.

Thousands of dollars would not only be saved annually in avoiding tedious trials with expensive talent and the economic loss of time to attorneys, witnesses, etc., but a more intelligent disposition of the individual would often times result in economic return from his services.

The State of Massachusetts has by far the best provisions in its law, calling for the mental examination of those charged with crime.

Dr. Malcolm A. Bliss of St. Louis, who has done much for the welfare of the mentally afflicted in our city, is interested in the enactment of legislation mandatory for the examination of individuals charged with crime. He has in mind the creation of a state department of mental diseases, the qualifications of whose members should be defined by statutes, and whose duty it would be to examine individuals charged with crime. This would insure the examination being made by mental experts and the rendering of an impartial opinion.

The examination should be made as promptly after indictment as possible and before expensive trial on the basis of guilt is resorted to. In the cases where irresponsibility was found to be present, trial would be unnecessary and vast expenditure of time and money would be saved, both on the part of the State and the individual.

No doubt it will be some time before there is thorough harmony between the medical expert's views and those of the Court, but our experience with several judges of the courts in St. Louis indicates that they have broad and open minds and are very receptive to enlightenment on the medical aspect of legal responsibility.

In the obviously insane individuals, lay-persons are quite willing to agree with us in our opinions; but just as in the less clearly defined deviations from the normal in physical disease the signs of mental dis-

ease are not so manifest, and it is in these cases that the judge, attorney and jury disagree with us.

It is the duty of the psychiatrist to present his findings before these individuals in simple non-technical language and in his endeavor to correlate and integrate all the sources dealing with the person charged with crime from the time of his arrest to the time of final disposition, he must deal with the problem in simple non-technical terms.

The frequency with which judges have accepted our recommendations will be seen by reference to the table "Disposition."

In conclusion, our findings in the cases examined as well as the experience of other localities and the practice in vogue in some of our states indicate the imperative need for the mental examination of persons charged with crime. We know that our present day method of dealing with an appreciable per cent of such individuals is expensive, rewarded with failure in improving them (as evidenced by the great number of recidivists that haunt the courts), and, to say the least, is inhumane.

With such examination as a routine procedure we would soon have a vast array of data pertaining to the situation that should be of inestimable value for the future. It is the duty of the medical and legal profession to so correlate their activities that the shaping of public opinion will result in the espousal of the cause of the mentally afflicted who have committed crime and permit of the enactment of legislation that will not only benefit the individual, but react to the economic enhancement of society.