

various phobias, compulsive states, or dissociative states like hysterical amnesia. It is in these compulsive states particularly that we find what is known as irresistible impulse. Perhaps kleptomania is the best example of these compulsive neuroses so far as the law is concerned. The so-called psychosomatic disorders are not of particular interest in the criminal law, although they often are of concern in tort law, as in the case of traumatic neuroses.

There is another group of mental disorder, classified in the official nomenclature of the American Psychiatric Association as personality disorders. This includes, among others, the so-called psychopathic or sociopathic personality. The sociopath is characterized by lack of aim and of foresight, the failure to profit by experience, impulsiveness, egocentricity, a lack of emotional rapport with others, a lack of sympathy, a general immaturity and very little regulatory influence of intellect upon his behavior. A moderate proportion of criminals may fall in this group and some very decidedly do so. The notion that there is a "mental abnormality manifested only by repeated criminal or otherwise antisocial conduct" is, however, unpsychiatric. There is no such entity, even though the proposed Model Penal Code of the American Law Institute purports to exclude persons with a diagnosis of sociopathic personality. There are many criminals who are not sociopaths, but the sociopath who comes into conflict with the law has numerous symptoms in addition to his antisocial behavior, and is decidedly a mentally sick man.

THE NATURE OF A MENTAL EXAMINATION

Let us now turn to considering the nature of a mental examination. There may be a very few cases in which a glance even by an untrained person will satisfy the observer that the subject is mentally deranged, but these cases are rare indeed. A proper examination calls first of all for a physical examination and if possible an electroencephalogram to determine from what are colloquially known as "brain waves" whether or not there is a tendency toward epilepsy or some other gross abnormality of the brain. The presence or absence of gross neurological changes should be tested. A reasonably full history of the individual is essential, together with various psychological tests; the history should be obtained from the subject himself and from outside sources. No one is an entirely dependable source of information about his own conduct, particularly in criminal cases, where self-serving and self-exculpatory declarations are likely to be met. The psychiatric interview should include not only the history but the ascertaining of the presence or absence of delusions and hallucinations, evaluation of the judgment of the subject, his recognition of his relations with those about him or what we term orientation, his memory, his thought processes, and his emotional reactions, such as undue elation or depression or indifference. There is hardly any one symptom which can be said to be pathognomonic of mental disorder and except in unusual instances there is hardly anything so clearcut and obvious as, let us say, an X-ray of a broken bone.

Isaac Ray, the great American pioneer in medical jurisprudence, said many years ago, "Insanity is a disease and as is the case with all other 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." The psychiatrist, whether examining an alleged offender or a private patient in his office, will take into consideration the entire body of symptoms and signs in an attempt to understand why the individual conducts himself and feels as he does. For this purpose several interviews or a period of observation in a mental hospital may be necessary.

THE PSYCHIATRIST AND THE DURHAM RULE

From what I have already said it will be seen that the psychiatrist is interested in the very criterion outlined in *Durham*, namely, that of productivity. While being questioned under the *Durham* rule (214 F. 2d 862 (District of Columbia Cir., 1954)) he is thus speaking as a *psychiatrist*, and has full opportunity to outline the history, the whole development of the subjects' conduct, and the relationship of his mental disorder, if any, to the act with which he is charged. The problem of causation of conduct is within the psychiatrist's province, whereas the *M'Naghten* rule and the frame of reference in which the questions under that rule are asked pose a moral query which is not within the competence of the psychiatrist.