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Psychologist as Expert Witness in "Psychiatric" Questions

Elliot R. Levine*

WHEN THE SEEKING OF TRUTH and the dispensing of justice require an evaluation of a litigant's mental functioning, the courts have traditionally looked to medically trained *psychiatrists* to serve as expert witnesses. In his private practice the psychiatrist frequently uses the consultative services of a *clinical psychologist* because psychological tests are more quantitative, less subjective, and more sensitive to the nuances of personality deviation than are the traditional psychiatric evaluative techniques.¹ The psychologist can offer to the court, as well as the medical profession can, the opportunity for the utilization of the most scientific means and methods of appraising personality.² For legal purposes, the *clinical psychologist* may be better qualified than the *psychiatrist* to serve as an expert witness.

Limitations of Psychiatric Techniques

In deriving his evaluation, the psychiatrist routinely uses case history and clinical observations but when used for litigation purposes, both have serious limitations. Reported historical case material often lacks objectivity; even though the person interviewed is not deliberately evasive or deliberately untruthful, he is quite likely to be unable to objectively convey his conscious feelings and attitudes, let alone his unconscious motivations and drives. Therefore, it is not realistic for the court to expect the psychiatrist to devote the necessary time to discover the omissions and to rectify the distortions inherent within the case history.³ The psychiatrist's behavioral observations are also influenced by subjective factors. Because their diagnostic sessions are, by necessity, time limited, the psychiatrist is able to focus only on certain areas of the individual's personality, rather than on the whole person.⁴

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¹ Porteous, *Practice of Clinical Psychology*, 8 (1941); *Hidden v. Mutual Life Insurance Co.*, 217 F. 2d 818, 820 (4th Cir. 1968); *Reese v. Naylor*, 222 S. 2d 487, 488 (Fla. 1969).

² Liebenson and Wepman, *The Psychologist as a Witness*, 251 (1954); *Washington v. U.S.*, 390 F. 2d 444 (D.C. Cir. 1967).

³ *Bush v. McCollum*, 231 F. Supp. 560, 563 (N.D. Tex. 1964).

⁴ Rapaport, *Diagnostic Psychological Testing*, 45 (rev. ed. 1968).

In the case of *People v. Hester*,⁵ the court stated that a physician who conducts a diagnostic evaluation of a litigant for the purpose of becoming qualified as an expert witness ordinarily may not testify as to his medical opinions when his medical opinions are based on the litigant's subjective symptoms. The rationale of the court was that subjective complaints lack the element of trustworthiness. This danger is not as great if there has been a treatment relationship. If there has been a treatment relationship the physician may state his medical opinions in court even if they are based on the litigant's subjective complaints.⁶ When doubt is cast upon the veracity of the litigant's statements to the physician, the trial court should use discretion in determining whether or not to hold the evidence admissible.⁷ The court, in the case of *State v. Griffin*,⁸ held that a case history because of its subjectivity does not constitute factual evidence unless corroborated by other competent evidence.⁹

The case history approach and clinical observations are powerful tools in the hands of a skilled psychiatrist in his private practice where he has sufficient time to make an intensive diagnostic study. Because of the press of professional time, the realities of the situation are often otherwise when the psychiatrist sees a litigant for a diagnostic evaluation.¹⁰ To work through evasiveness, denial, repression, and personality facades requires considerable time and a clinical interview is usually not long enough. By necessity subjective factors play a considerable role in a psychiatric evaluation.

Dr. Thomas S. Szasz, a medically trained psychoanalyst of national prominence has stated, ". . . a matter . . . discussed among psychiatrists but which is rarely made publicly explicit is the possibility that psychiatry has been 'oversold' . . . The current popular belief that psychiatry has much to contribute to jurisprudence may be ill-founded and misleading."¹¹ Opinions obtained by two or more psychiatrists are often conflicting because their evaluative techniques are highly subjective. It is unreasonable to place the psychiatrist in the untenable position of having to state an expert opinion based on a short diagnostic interview and a case history. Because the criteria for their opinions are not explicit, the court lacks objective evidence to consider in arriving at a decision. As a result, the court's decision is likely to be swayed by

⁵ *People v. Hester*, 39 Ill. 2d 489, 237 N.E. 2d 466 (1968).

⁶ *Id.* at 479.

⁷ *Id.*

⁸ *State v. Griffin*, 49 Ariz. 43, 406 P. 2d 397 (1965).

⁹ *Id.* at 401.

¹⁰ Rapaport, *supra* n. 4 at 46.

¹¹ Szasz, *Psychiatric Expert Testimony: Its Covert Meaning and Social Function*, 20 *Psychiatry*, 313 (1957).

the authoritative presence, persuasiveness, and style of the expert psychiatric witness; in essence, the court is vulnerable to being led rather than being informed.¹²

Clinical Psychologist in the Court Room

In the court room the psychologist can support his interpretation with documented data. In addition to basing his judgment on clinical observations, case history, and theories of personality, the psychologist, through established scientific measuring techniques has normative data with which to compare any given individual. Furthermore, the test results are available for opposing counsel's psychologist to examine; as a consequence, the court does not have to depend solely on the conjectures and subjective opinions of the expert. Psychological techniques have gained wide acceptance: they are used in state and federal hospitals, in the armed services, in penal institutions, and in private practice.¹³

Techniques of the Clinical Psychologist

When an attorney calls upon a clinical psychologist to serve as an expert witness to aid the court in the ascertainment of facts or evidentiary material, the attorney should have an understanding of the techniques used by the psychologist in reaching his evaluation. When the purpose of the testing is to assess personality structure, projective instruments are most often used. Projective tests are so named because the person tends to project his psychological make-up and proclivities without conscious awareness. Projective tests present to the individual a rather amorphous problem situation which can be dealt with in a multitude of ways. Research has shown that in the processes of structuring the unstructured test material, people will attribute their own basic personality characteristics to the ambiguous test stimuli. Given the task of having to complete this partial sentence, 'All men are created . . .' most people might respond by saying "equal." That would be a structured situation that leads to a narrow, structured answer; the response of the individual is a predictable reaction and consequently would reveal little about the person as a unique individual. However, if the stimulus were "All men . . ." the task is unstructured and, therefore, not highly predictable. In this situation, the person's response is more likely to reveal something about him and his idiosyncrasies.¹⁴

The rationale of projective tests is that an individual's basic needs, drives, personality structure, etc. are not readily revealed by observing

¹² Toch, *Legal and Criminal Psychology*, 162 (1961).

¹³ *Hidden v. Mutual Life Insurance Co.*, *supra* n. 1 at 820.

¹⁴ Munn, *Psychology*, 218 (4th ed. 1961).

his overt behavior (whether verbal or performance). Man's behavioral manifestations do not parallel his psychodynamics (unconscious needs and drives) because much of his daily behavior is culturally prescribed. Projective techniques are employed because they are unstructured and offer the person a wide latitude of response. The person being tested reacts without knowing the significance of his productions or how his total performance will be evaluated. It, therefore, becomes extremely difficult to hide behind social facade and the individual cannot, in any systematic way, consciously influence the interpretation of the skilled clinical psychologist. The difficulty of either feigning or denying psychological problems when projective techniques are used adds measurably to their utility.¹⁵ The sample of behavior obtained from the projective instrument will reliably reflect the person's underlying personality structure and emotional make-up.¹⁶

When blind diagnoses made from projective tests were compared with clinical histories and symptomatology, published reports have demonstrated the reliability and validity of projective tests. Projective tests have been developed through literally thousands of scientifically controlled research studies of large cross sections of the population. Research has revealed that certain kinds of responses and certain relationships of responses occur with significant frequency in certain clinical groups but not in others and not in the "normal" population.¹⁷ Consequently the deviations from normal expectancy due to psychopathology can be determined from interpreting the responses to projective instruments and by comparing the individual's response to the established standards of the given test.¹⁸ From the interpretation of an individual's responses, the clinical psychologist can evaluate the way the person differs from the norm and the possible etiological factors underlying the deviation. This scientifically derived approach to personality assessment provides the most sophisticated means of evaluating the emotional functioning of an individual. Two of the most widely used projective instruments are the Rorschach Technique and the Thematic Apperception Test.

The Rorschach Technique

The Rorschach Technique, which is internationally the dominant projective technique, consists of ten standard cards, each with a different ink blot form.¹⁹ The ink blots are neutral stimuli in that they con-

¹⁵ Liebson and Wepman, *supra* n. 2 at 187.

¹⁶ Klopfer and Davidson, *The Rorschach Technique: an Introductory Manual*, 14-16 (1962).

¹⁷ Rapaport, *supra* n. 4 at 52.

¹⁸ Liebenson and Wepman, *supra* n. 2 at 247.

¹⁹ Klopfer and Davidson, *supra* n. 16 at 8.

vey no clear-cut imagery. The ink blots appear as different things to different people and there are innumerable possibilities for structuring the ink blots.

A basic assumption underlying the Rorschach technique is that there is a relationship between perception and personality. The manner in which an individual handles the Rorschach situation in order to tell what it looks like to him is often as revealing as the ultimate perception itself. The individual's perceptual responses are a function, not only of the properties of the ink blot, but also of his motives, drives, basic needs and experiences, both past and present.²⁰

Since the ink blots do not evoke learned responses, the person being tested is forced to react in a naive manner and project his attitudes, feelings, conflicts and significant personality features.²¹ Whereas everyday perceptions permit conventions to obscure the active nature of the perceptual processes, the Rorschach technique permits the individual's active perceptual process to be observed. This provides the trained psychologist with considerable understanding of the fundamental aspects of the individual's psychological functioning. For instance, severe psychopathology might be indicated when the individual is unable to sufficiently control his associative processes once they have been set in motion by his initial perception of the ink blot. If the verbalized response does not conform to the form qualities of the ink blot, the broad limits imposed by the ink blot's structure have been violated and one would question the individual's capacity to react appropriately to his environment (i.e. psychotic behavior).²²

The Rorschach Technique can aid the court in understanding the psychological causation of an individual's behavior and in ascertaining whether or not a psychotic condition is involved. With the aid of the Rorschach Technique, a psychologist is capable of delineating a litigant's impulses and of reaching an opinion as to whether or not the individual's defense mechanisms would likely decompensate to the degree that the individual is likely to have acted antisocially.²³

The Thematic Apperception Test

The Thematic Apperception Test (TAT) is another widely used projective technique. It is of great value when used in conjunction with the Rorschach. It enables the psychologist to fill in the skeleton of diagnoses and personality structure with flesh and blood of actual ideational and feeling contents.²⁴ The Thematic Apperception Test

²⁰ Wickens and Meyer, *Psychology*, 571 (rev. ed. 1961).

²¹ Noyes, *Modern Clinical Psychiatry*, 130-131 (6th ed. 1963).

²² Rapaport, *supra* n. 4 at 268-277.

²³ Noyes, *supra* n. 21 at 130-131.

²⁴ Rapaport, *supra* n. 4 at 49.

consists of twenty pictures to which the person being tested makes up stories.²⁵ The aim is to confront the person with a great variety of pictured situations. In the process of telling stories in a controlled situation to standardized cards, the individual reveals his dominant drives, conflicts, attitudes, and feelings, etc. Whether or not the individual has bizarre thoughts or obsessive ideation is also ascertainable.²⁶

The Time Factor in Evaluation

In a matter of hours the clinical psychologist can by means of objective psychological tests obtain highly accurate information about the personality structure and emotional make-up of an individual. To equal the degree of reliability, validity, and objectivity obtained via psychological tests about the psychic make-up of an individual, a psychiatrist would in almost every case have to invest months. The traditional psychiatric diagnostic interview in conjunction with a medical and social history is not nearly as reliable. A psychological evaluation can identify and classify an individual's present psychological functioning. Also within the expertise of the clinical psychologist, via projective tests, is the ability to explain the causative factors of a given mental or emotional condition.²⁷ Such information can be of great value to an attorney in the handling of many cases.

Clinical Psychologist in a Criminal Case

In a criminal case the clinical psychologist can often aid the trier of facts in his search for the truth as to whether or not the accused has a mental defect, the nature of the abnormality, and whether or not there is a causal relationship between the mental defect and the criminal behavior.²⁸ Some criminal acts require considerable intelligence; the clinical psychologist is able to ascertain whether the accused has the intellectual wherewithal required. Other criminal acts require a high degree of manual dexterity. The psychologist, by means of an intelligence test and various performance tests can determine the defendant's hand-eye coordination and motor performance level of skill. With such information the clinical psychologist can render a professional opinion as to whether or not the accused possessed the ability to have committed the act in question.

Projective tests can provide information about an individual's frustration tolerance, usual pattern of reaction to stress, emotional stability

²⁵ Coleman, *Abnormal Psychology and Modern Life*, 522 (2d ed. 1956).

²⁶ Watson, *Clinical Method in Psychology*, 512 (1951).

²⁷ *City of Austin v. Hoffman*, 379 S.W. 2d 103 (Tex. 1964); *Sandow v. Weyerhauser Co.*, 449 P. 2d 426 (Ore. 1969).

²⁸ *Carter v. State*, 376 P. 2d 351 (Okla. 1962); *People v. Horton*, 308 N.Y. 1 (1954), 123 N.E. 2d 609 (1954).

in interpersonal relationships, and propensity for criminal behavior. For example, this author was asked to evaluate a patient who, on the basis of a brief clinical interview, gave a very favorable impression; he appeared to be genuinely concerned and remorseful about his recent criminal activity. In contradistinction, the projective tests revealed this young man's internal state to be incongruent with what he manifested externally. He possessed many doubts and conflicts concerning his masculine self-image and showed the potential to employ antisocial behavior in order to bolster his self-esteem and to make himself appear adequate in the eyes of his peers. The projective tests further revealed that whenever his adequacy as a man was challenged his behavioral controls would rapidly disintegrate. At such times he was capable of acting out his hostility in a violent and psychotic manner. Whereas through behavioral observation, this individual appeared quite "normal," the psychological tests unequivocally showed a psychopathic personality disorder and the likelihood of episodic sadistic and even homicidal acts. In this case, the psychological evaluation was quite consistent with the criminal activity of which the young man was accused.

Emotional Reaction to Physical Injury

The psychologist can aid the court in determining the existence or non-existence of significant changes in personality manifestations as a result of a sustained physical injury.²⁹ The emotional reaction to an injury is ascertainable by projective tests. A psychological evaluation might reveal that a permanent disability caused by an (industrial) accident resulted in a suicidal attempt, and that there is a high probability of a future suicidal attempt. Further, the evaluation might show that the individual had previously been able to defend adequately against underlying feelings of inadequacy and to maintain a healthy level of functioning. However, because of the physical injury, he is no longer able to maintain a positive self-image and has become flooded by feelings of self-doubt and inadequacy. The projective tests might also reveal that as a consequence of the accident the plaintiff developed a paranoid schizophrenic reaction with delusions of persecution and that costly psychotherapy will be needed to ameliorate his psychological problems. Certainly such information would be invaluable to plaintiff's counsel.

Use of the Clinical Psychologist in Brain Injury Cases

If a physician diagnoses cerebral dysfunctioning and attributes it to the accident in litigation, plaintiff's counsel might still employ the services of a clinical psychologist. In addition to confirming the physician's

²⁹ Sandow v. Weyerhauser Co., *supra* n. 27 at 427.

findings, the psychologist can assess, through objective psychological tests, the extent to which the brain damage affects the plaintiff's behavior and intelligence, and the extent to which it will diminish the plaintiff's ability to earn a living. The psychologist's evaluation is not just a diagnosis of brain damage based on objective analysis of behavioral events, it is also an objective estimate of the behavioral limitations imposed by brain damage. The clinical psychologist is able to specify to the court exactly what skills and abilities have been impaired and to what extent they have deteriorated.³⁰

Brain damage need not be ruled out when medical tests do not conclusively reveal organicity (brain damage). This fact is important to the personal injury attorney. In a situation where there are behavioral manifestations of brain damage, the professional services of the psychologist might well prove beneficial. When medical tests do not reveal brain damage, the psychiatrist or neurologist will frequently call in a psychologist as a consultant to differentiate possible brain damage from hysteria or malingering. If there is brain damage, the clinical psychologist is likely to pick it up on a standard intelligence test. By way of example, a patient referred to this author possessed a master's degree and had worked successfully in a professional capacity. The treating psychiatrist felt either that she had brain damage despite a negative electroencephalogram (EEG) test, or that her inappropriate behavior might be due to a schizophrenic condition. The Rorschach test ruled out schizophrenia as the cause of her behavioral difficulties but did reveal significant organicity. On the Wechsler Adult Intelligence Scale this woman obtained a verbal I.Q. of 105 and a performance I.Q. of 78. Verbal skills are less sensitive to brain injury than visual-motor coordination. Research reveals that a marked discrepancy, such as 27 I.Q. points between verbal and visual-motor performance scores is, in itself, a pathognomic sign of cerebral dysfunctioning. A comparison of an individual's academic background to present functioning as determined by an intelligence test is also a means of determining present malfunctioning. In light of this particular woman's fine educational and professional background, her low I.Q. score further substantiated the diagnosis of cerebral dysfunctioning. As a result of the finding obtained by the psychological tests, a non-routine, somewhat painful, pneumoencephalograph test was administered. The results of that procedure also revealed extensive brain damage.

By means of various psychological tests, the clinical psychologist is able to render a professional opinion in a court as to whether or not a plaintiff's intellectual capacity has deteriorated and whether or not the deterioration is the result of brain damage sustained in the accident at issue.

³⁰ Buckler v. Sinclair Refining Co., 68 Ill. App. 2d 283, 216 N.E. 2d 14 (1966).

When intellectual ability is an issue before the court, the psychologist is the only one to serve as the expert witness.³¹ Intellectual ability is communicated by means of an I.Q. score. The I.Q. score is the quantitative measure derived from intelligence tests. It is the clinical psychologist who possesses the expertise necessary to administer and evaluate these tests so as to determine the degree to which an individual is capable of functioning intellectually.³²

Serving as an Expert Witness

The leading case on the question of the psychologist as an expert witness is *People v. Hawthorne*.³³ A majority of the court held that insanity is not exclusively a medical matter to which only a medical doctor can testify as an expert witness. In the case of *Jenkins v. United States*,³⁴ the defendant relied upon the defense of insanity after being charged with assault with intent to rape. The District of Columbia Circuit Court of Appeals held, after carefully considering the qualifications and training of a Ph.D. clinical psychologist, that members of that profession are qualified to serve as expert witnesses and to answer hypothetical questions. The present United States Chief Justice, as a judge of that court, stated in a concurring opinion that a Ph.D. clinical psychologist is competent in a scientific sense and hence legally qualified to make a diagnosis of the existence and character of mental diseases and also to state an opinion as to whether or not there is a causal relationship between a disease and an unlawful act.³⁵ Numerous cases, both criminal and civil, have held that a qualified clinical psychologist may testify as an expert on the issue of mental illness or psychological condition.³⁶

Qualifications of the Clinical Psychologist

The American Psychological Association has stated that a qualified psychologist is competent as an expert witness on the nature of, and the existence or non-existence of, mental disease or defect. The American Psychological Association also has stated that the Ph.D. clinical psychologist is competent as an expert witness to answer hypothetical

³¹ Liebenson and Wepman, *supra* n. 2 at 59-60.

³² *Id.*

³³ *People v. Hawthorne*, 293 Mich. 15, 291 N.W. 205 (1940).

³⁴ *Jenkins v. U.S.*, 307 F. 2d 637 (D.C. Cir. 1962).

³⁵ *Id.* at 647.

³⁶ *State v. Padilla*, 66 N.M. 289, 347 P. 2d 312 (1959); *People v. Pennington*, 58 Cal. Rptr. 374, 426 P. 2d 942 (1967); *Watson v. State*, 273 S.W. 2d 879 (Tex. 1954); *People v. Davis*, 44 Cal. Rptr. 454, 402 P. 2d 142 (1965); *Carter v. State*, *supra* n. 28, Knoepel v. State, 382 S.W. 2d 493 (Tex. 1964); *Doherty v. Dean*, 377 S.W. 2d 153 (Tex. 1960); *City of Austin v. Hoffman*, *supra* n. 27; *Washington v. U.S.*, *supra* n. 2; *Hidden v. Mutual Insurance Co.*, *supra* n. 1; *Sandow v. Weyerhauser Co.*, *supra* n. 27; *Reese v. Naylor*, *supra* n. 1; *Buckler v. Sinclair Refining Co.*, *supra* n. 30.

questions as to the causal relationship, or lack thereof, between such disease or defect and a crime or other behavior which is the subject matter of the litigation.³⁷ The Ph.D. clinical psychologist receives extensive training in assessing the psychodynamics influencing human behavior. He also gains broad experience in making differential diagnoses by using clinical observations, case history, and psychological tests. In the course of his training the clinical psychologist becomes imbued with knowledge of the broad spectrum of human behavior: normal, borderline, and abnormal. Being able to differentiate normal and borderline behavior from abnormal behavior is essential in making accurate diagnoses. The clinical psychologist receives intensive training in psychopathology, both in academia and from a one-year internship in a mental hospital approved by the American Psychological Association.³⁸

Expert status should not be based on membership in a particular group, rather it should be based on usefulness to the court because of special skills and knowledge.³⁹ The practicing attorney should recognize that the psychiatrist is only one of the experts in the area of human behavior.⁴⁰ "There is no magic in particular titles or degrees and in our age of intensive scientific specialization we might be denying ourselves the use of the best knowledge available by a rule that would immutably fix the educational qualifications to a particular degree."⁴¹

It is evident that the clinical psychologist possesses special skills and knowledge that can be of immeasurable service to the court. By objectively assessing behavior, the psychologist is able not only to describe that behavior, but he is also able to compare it to scientifically derived normative data. As a result, he is able to determine whether or not the individual has a mental illness. The use of psychological test results, in conjunction with historical information and clinical judgment, enables the clinical psychologist to reach an informed opinion about the nature and existence or non-existence of mental disease and to determine whether or not it is causally related to behavior under legal consideration.

³⁷ The American Psychological Association (the national organization of the profession and science of psychology), as *amicus curiae*, included the statements in its brief to the Court of Appeals in the Jenkins case. These statements were made to aid the court in reaching a just determination. Parenthetically, it should be noted that the court accepted the position of the American Psychological Association even though an *amicus curiae* brief filed by the American Psychiatric Association was contrary.

³⁸ Liebenson and Wepman, *supra* n. 2 at 23-45. For a more comprehensive review of the educational and training requirements for a Doctor of Philosophy in Clinical Psychology see the Report of the Committee on Training in Clinical Psychology of the American Psychological Assoc., 2 *Am. Psych.* at 539, 543-545.

³⁹ Toch, *supra* n. 12 at 162.

⁴⁰ *Id.*, Jenkins v. U.S., *supra* n. 34 at 643-644; Washington v. U.S., *supra* n. 2 at 446; People v. Davis, *supra* n. 36 at 148.

⁴¹ People v. Hawthorne, *supra* n. 33 at 25.

The key consideration regarding the admissibility into evidence of the psychologist's testimony is the probable probative value of his opinion.⁴² As discussed above, the psychologist's opinion in large part is based upon well-documented objective data. The psychology profession offers the court the most accurate and scientific opinion available.

Mental Aberration Viewed as a Social Ill

Contrary to widely held belief, medical training is not an absolute prerequisite to advising the court on the matter of insanity. The issue of insanity is not exclusively within the expertise of medical science; although the traditional medical model has viewed mental disease as a function of physiochemical factors, research to-date certainly has not substantiated this belief. For example, a diagnosis of paranoia refers to behavioral and ideational disturbances; such a diagnosis is meaningless in a physiochemical frame of reference.⁴³ There has been a growing belief within the psychiatric profession that the medical model may be an anachronism when dealing with emotional illness.⁴⁴ The fact that chemotherapy is one form of treatment does not prove schizophrenia to be a disease as opposed to being a mental aberration. Dr. Thomas S. Szasz has stated that there is no such thing as mental illness and that the alleged existence of such illness is a "myth." Mental illness is a "metaphorical term" referring to disturbances or deviations in social behavior.⁴⁵ Dr. Szasz suggests that it would be more accurate and serviceable to define psychiatry as one of the many sciences dealing in human social behavior than to define psychiatry as the study and treatment of mental illness.⁴⁶

From the standpoint of legal counsel it should be noted that neither theoretic nor therapeutic approaches to mental dysfunctioning are germane to the court room. Rather, in the court room, the issue should

⁴² *Sandow v. Weyerhauser Co.*, *supra* n. 27 at 428-430.

⁴³ Szasz, *Classification of Mental Illness: A Situational Analysis of Psychiatric Operations*, 33 *Psychiatric Quarterly*, 77 (1959).

⁴⁴ Rapaport, *supra* n. 4 at 13.

⁴⁵ Szasz, *Psychiatry, Psychotherapy, and Psychology*, 1 *A.M.A. Archives of General Psychiatry*, 455 (1959).

⁴⁶ *Id.* Dr. Szasz states that there is something amiss about the American Medical Association's proclamation that mental health is the responsibility of the medical profession. Dr. Szasz states: "If mental well-being is a medical specialty how could non-medically trained people such as Erich Fromm, Rollo May, Carl Rodgers, Ann Freud, Melanie Klein, etc., contribute as significantly to the theory that the American Medical Association's position "is an attempt to promote the institutional superiority of the medical profession over its non-medical competitors." See *People v. Davis*, *supra* n. 36 at 148 where the court held that mental illness is not completely within the expertise of medical science; a medical degree is not the *sine qua non* to qualify one to testify in the area of mental functioning.

See *Toch*, *supra* n. 12 at 160.

be the relationship of the mental condition to the behavior that led to the litigation. Because of the relative reliability and validity of psychological assessment techniques, the psychologist may be the single most competent expert witness to answer hypothetical questions when mental functioning is in issue before the court. As was suggested in the concurring opinion of Chief Justice Burger in *Jenkins*, the lack of a medical degree and the lesser degree of responsibility for patient care in a mental hospital setting is not justification for disqualifying a clinical psychologist to testify as an expert witness.⁴⁷ In the court room the question is not treatment but rather diagnosis and causation of criminal behavior, or in a civil suit the relationship of defendant's behavior to plaintiff's psychological state. In either a criminal or civil case the psychologist's techniques might be the most useful. Wigmore has stated, "Courts are ready to learn and to use it, whenever the psychologist produce it, any method which the latter themselves are agreed is sound, accurate, and practical. . . . Whenever the psychologist is ready for the courts, the courts are ready for him."⁴⁸ The psychologist is ready and has been ready for sometime; the profession of psychology can make contributions of such value that the law can neglect them only at the risk of promoting injustice.⁴⁹ The relatively limited use of psychologists may, in part, be because trial lawyers are not doing the creative and imaginative thinking necessary to adopt psychological developments to jurisprudence.⁵⁰

⁴⁷ *Supra* n. 34 at 646.

⁴⁸ 3 Wigmore at 367-368 (curr. ed.).

⁴⁹ Cairnes, *Law and the Social Sciences*, at 217 (1935).

⁵⁰ Louisell, *The Psychologist in Today's Legal World*, 39 *Minn. L. Rev.* 235 (1955).