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## Foreword

WARREN P. HILL\*

Under a heading as sprawling and ill-defined as "Psychology and Law" the average reader of law reviews will doubtless anticipate a hodge-podge of miscellaneous and unrelated excursions into outlying and possibly esoteric fields of the law, running the gamut from how to pick a favorably-disposed jury to current witness fees for psychiatric testimony. It is the hopeful purpose of this brief introduction to dispel such a prejudgment of discontinuity, if not of triviality, and explain how, in the editor's view, each contribution to the ensuing symposium plays an integral role in sketching in outline a profoundly new and different approach to an understanding of the legal system and its operation. Our effort is thus directed to all those, lawyers especially, who can conceive of the tools of the legal profession, not as stray and unrelated bits of technicality decreed by some omniscient and long-forgotten seer, but as manifestations of a social phenomenon having its roots in the personal lives and relationships of the people.

If such an approach were useful only for academic contemplation or for idle speculation among social philosophers the need of such a collection of articles for presentation primarily to the practicing bar would be slight indeed. The fact is, however, that the theories of human behavior that underlie the discussions that follow carry certain far-reaching implications that bring into question the very foundations of currently-accepted legal institutions and practices. These theories which form the underlying motive of this symposium stem mainly from developments and findings in the relatively modern science of dynamic psychiatry as fathered in this century by the Vienna neurologist, Sigmund Freud, and adapted to present-day conditions in this country by his students and followers. Because Freud had a theorizing mind which ranged far and wide in such fields as religion, literature, anthropology and sociology, his influence was not confined to the clinic but spread in ever-widening circles to every vital area of thought wherever man as a social animal was the proper focus of attention. It is small wonder then that his formulations and insights which have so drastically altered thinking in other significant social dis-

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\*Assistant Professor, College of Law, Ohio State University.

ciplines have begun to seep through the conservative barriers of the legal profession, which, preeminently, has always concerned itself with attempting to understand and control human behavior through the use of various sanctions and rewards.

Modern psychiatry which evolved from clinical studies of patients suffering from functional mental disorders such as hysteria and neurosis has become generalized into a useful and workable orientation, known as the so-called "psychology of the depths" because of its stress on the influence exerted by the workings of the unconscious mind. Now, to hold that the teachings of the psychoanalytical school are of profound interest to the law and apply to all of us does not involve acceptance of a thesis of universal abnormality. It is only to acknowledge the well-established proposition that neurotic and "unhealthy" mental processes are only quantitatively different from normal ones but that the psychodynamics are the same. The ego's typical defense mechanisms which operate to distort our grasp of reality, though used more extensively under neurotic and psychotic conditions, are employed occasionally by perfectly "normal" persons. On this question of degree then rests the medical distinction between mental health and illness.

Some of these foregoing insights and others are dealt with in the legal context in the papers that follow. Dr. West paints with the broadest brush, making an elequent plea for a closer rapport between medical and legal practitioners in view of the cognate nature of the human problems they have to solve. In level of generality Professor Hancock comes next with his absorbing historical survey of Anglo-Saxon trial as a means of discharging tensions and relieving group hostility. Judge Jerome Frank brings the judicial process down-to-date and searchingly demonstrates how clumsy and inefficient our methods still are for arriving at a truthful reconstruction of the facts in the most simple of lawsuits. These two papers cast intriguing cross-lights on one another. To what extent, for example, are we still satisfied with elaborate court ritual without questioning the accuracy of the judicial findings of guilt or liability? Dr. Higly's paper suggests certain refinements on techniques for "detecting deception" in witnesses and criminal suspects which would revise our pre-freudian commonsense notions about the nature of prevarication. Mr. Potts develops one of the incidental topics touched on by Judge Frank, viz., the psychology of the lawyer-client relationship, specifically in the area of marital discord. To what extent must the legal practitioner be also a therapist and diagnostician? Is not the legal interview analagous in some important respects to the psychiatric interview with the client in trouble making the same sort of "transference" as the emotionally-supported mental patient? Professor Cady takes up the protean

doctrine of mental incompetency and subjects it to a thorough-going evaluation in terms of dynamic concepts. And finally but hardly of less significance, Mr. Canty of the Detroit Recorder's Court, describes how a modern well-equipped court clinic can aid the judge and other governmental officials in understanding the motivations of the criminal offender and the "problem driver."

The writers whose views are presented in this symposium are obviously not mere armchair theorists but practical men of affairs who have successfully applied these newer psychological insights in their diverse legal endeavors. If there is any basic antipathy between psychiatry and law, it is certainly not evident from their expositions. And if our readers should make the plausible-sounding charge that we are trespassing in sacred precincts where laymen fear to tread, I can only quote from an article in a recent issue of the American Journal of Psychiatry:

" . . . . there is no fundamental conflict between psychiatry and the law. Only between psychiatrists and lawyers does the conflict persist. The chief cause for the mutual distrust and suspicion lies in ignorance of each other's functions, objectives and basic philosophy. The remedy lies in increased research and ever-widening dissemination of knowledge."

It is to this high purpose that this issue is devoted.