



Psychiatry in Court: The Usefulness of Psychiatric Reports and Psychiatric Evidence in Court Proceedings

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By PETER SHEA

The stated aim of this book is to convey to lawyers a general understanding of the language and assessment methods employed by forensic psychiatrists in preparing reports or giving evidence in court. In doing so, the author also wishes to map the limits and limitations of the psychiatric language and concepts used by his profession, which often are not recognised by lawyers uninitiated in the psychological disciplines.

Psychiatric assessments are, in essence, no different to psychological assessments carried out by clinical psychologists. Whilst some of the theoretical frameworks and conceptualisations used by psychiatrists may differ from those employed by clinical psychologists (for instance, psychiatrists are more likely to adopt a bio-medical model), these should not impinge on assessment or diagnosis. Assessment and diagnosis, which are at the heart of any forensic report, are rooted in atheoretical observation and measurement according to standard tests and criteria based classifications contained in the foundational texts: the *Diagnostic and Statistical Manual of the American Psychiatric Association* (DSM-IV) and the World Health Organisation's *International Classification of Diseases* (ICD-10).

The hallmark of a book such as this, therefore, should be the accessibility and breadth of its overview of a variety of fundamental issues, concepts, processes and classifications as they translate from their discipline of origin (whether forensic psychiatry or clinical psychology) to the realm of litigation.

Shea divides the work into four broad sections: the language of psychiatry, the assessment (of patients), the connection between mental disorder and criminal behaviour and dangerousness. The first section, for instance, details in short chapters of approximately 15 pages each fundamental material on the system of classifying disorders, the major schools of psychiatry and key categories of illness such as schizophrenia, the depressions, psychopathy and post-traumatic stress disorders (PTSD).

The author's main focus and predilection, however, is towards criminal behaviour and the interrelationship between mental disorders, the responsibility of the accused and the causes of crime. This is reflected in discussion of such timeless questions as how the presence of mental disorder may be causally associated with a particular criminal action or diminish criminal responsibility. He does not neglect more particular or contemporary concerns, such as the connection between depression and shop-lifting and the status of 'repressed memories'. The concept of dangerousness, which supports most of the legislative powers under the *Mental Health Acts*, is also discussed at length and with practical insight.

Ultimately, Shea does not attempt to give answers or even data to answer the question of whether or not a person with a specific disorder is likely to have been responsible for his or her actions. He recognises that not just in a legal sense (the question of judgement in an individual case) but also in a therapeutic sense (how best to conceptualise and treat this individual's psychological problems) that the question of a connection must always be decided on a case by case basis. A causal relationship cannot be assumed: 'the simple coexistence of two sets of phenomena — criminal behaviour and mental disorder — especially for the first time, does not establish a causal relationship' (p 118). A correlative of this stance, is the realisation that the law should not make simplistic demands on psychiatrists and psychologists. They should neither attempt nor be expected to accurately predict or guarantee the future 'dangerousness' or criminal propensities of any particular individual presented before the law for bail, parole, or sentencing.

Instead, we believe what the law legitimately should do is to consult a therapist who has both recent experience treating the particular individual, and detailed knowledge of the empirical and theoretical research in the area of that person's illness, with a view to having that particularised, expert assessment fed into the legal balance. Thus, whilst no psychiatrist or clinical psychologist can guarantee or even quantify likely outcomes, they can be asked to explain what treatments are available, which they'd recommend, what improvements are possible and what negative psychological impact may be occasioned by say continuing detention or incarceration.

Shea is also disarmingly frank about the limits of his discipline and the theories of the mind, emotions and cognition and statistical science that underlie it. 'At best we can make educated guesses but the nature of these will be determined by our own experiences and understanding of human nature and hence be subjective.' (p 120)

At one level, the focus of the book on criminal and quasi-criminal regulation and law is understandable, especially in a book commissioned under the auspices of the Institute of Criminology monograph series. However it is unfortunate that the book, titled as it is *Psychiatry in Court*, could not expand to give a fuller coverage of issues relevant to the civil law. The fascination with the 'deviant', as defined by the criminal law, is widespread across society, which mythically conflates law and the courts with criminal law. This has led to an implicit definition of the work of the forensic psychiatrist as someone chiefly concerned with the criminal courts and quasi-

criminal regulatory bodies, such as the mental health tribunals. The forensic psychiatrist or psychologist is thus pictured as someone in a Scotland Yard laboratory, working on a *Silence of the Lambs* killer. The term 'forensic', however, has no such etymological limitation. The word means simply 'of the courts of law', from the Latin root which gives us 'forum'.

We tend to define acute psychological illnesses as a matter of degree, in opposition to less disruptive or less obviously overwhelming psychological harms and experiences such as grief, non-acute depression and the host of what would once have been known as the more mundane neuroses. As such, acute psychological illnesses may not feature so often or obviously in the civil law, even in areas like torts and family law, as they do in criminal work. Nevertheless, even if those biblical tomes, the DSM-IV and the ICD-10, are to remain the essential dividing line between what matters from a legio-psychiatric perspective and what is peripheral, introductory works like this could still benefit from a greater attention to civil law issues.

For example, the chapter in this book on PTSD lists the clinical symptoms associated with the syndrome and neatly discusses some of the sceptical views current amongst medical professionals. However it fails to place this in any legal context (other than averting to the problem of suspected malingering) or to explore the relevance of these definitions and arguments for the law. PTSD is at the heart of one of tort law's wordiest and most enduring debates about the limits of negligence liability for what was (and is) still known by the misnomer of 'nervous shock'. This book does not engage with that debate and thus can shed no light on its shifting terrain.

Similarly, PTSD's genuine sufferers, whether their problems are incurred through gradual or sudden, negligent or accidental onset, must sustain behavioural and emotional difficulties that permeate their lives. Such difficulties must affect their work, their relationships and their social interactions. A sympathetic and realistic understanding of how these problems manifest themselves would be invaluable for a lawyer dealing with a client with PTSD which impacted on their legal problem, as well as to a plaintiff or defendant lawyer dealing with a claim for which PTSD was a head of damage. A text such as this would benefit by giving greater attention to explanatory overviews of the range of symptoms and problems which are typical, perhaps leavened with some case studies as illustrations.

Of course no text, however lengthy, is going to replace the need for a well-explained, tailored set of psychiatric and psychological assessment reports on the particular individual in question. Nor is it going to replace the need for specialist legal practitioners to become familiar themselves with primary materials psychological dictionaries and encyclopaedia and the labyrinths of the DSM-IV and ICD-10. However specialist criminal and personal injury practitioners are not the only lawyers who encounter clients with mental problems. In a book aimed as a text for the legal profession and the judiciary in general, a better overview description of a broad range of the more common disorders would be invaluable.

The image of the law as archetypically about what happens in court, primarily to the criminally accused, seems to have skewed or at least

unnecessarily limited the author's approach to his subject. To the average practising lawyer, criminal work is not common. In fact, contested litigation is only one path on the map of dispute resolution. The courts, and what might happen in them, obviously remain an important ultimate parameter in any legal dispute. The background questions of 'how would this stand up in court?' and 'what would a judge or appeal court say as a matter of law?' help determine the approaches taken by legal practitioners to any problem. When an unusual mental condition or response stalks the facts of a problem, or a psychological element is central to the law governing a problem, then the lawyer is likely to need the assistance not just of psychological knowledge but of an expert who understands the legal process and court methods.

To the psychiatrist and clinical psychologist asked to prepare medico-legal reports for and act as consultants and expert witnesses to litigation, the traditional, boundary-setting assumption that forensic psychiatry equals criminal psychiatry is constrictive and an iceberg vision of the law. In short, this book is a clear introduction to questions of criminality and mental disorder and the role and limitations of the expert witness in such questions. It should be of great interest and some guidance to those lawyers and judges concerned with these issues. However, outside those topics, it rarely strays.

GENEVIEVE DINGLE AND GRAEME ORR
UNIVERSITY OF QUEENSLAND AND GRIFFITH UNIVERSITY

