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# A Symposium on Mental Health Concepts in Family Law

## Introduction

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SANFORD N. KATZ\*

What is mental health? Mental health has been described as the optimum functioning of an individual within the situation in which he finds himself. Or as Hacker has said,<sup>1</sup> it is the successful integration of the personality.

Of late, mental health has become of great national concern. There seems to be a concerted effort to awaken society into recognizing mental health problems, identifying causes, and effectuating methods by which these problems may be resolved. Millions of dollars have been appropriated by the Federal Government to study various aspects of mental health, to support training for mental health personnel, and to provide facilities for the treatment and cure of emotional diseases.

Few social problems are divorced from mental health implications. In fact, an important beginning toward the resolution of several current problems—for example, combating juvenile delinquency, emancipating the poor from the culture in which they find themselves caught, or helping members of minorities to control their hostilities toward the dominant culture groups that have suppressed them—might well be made through appropriate mental health services.

Legal institutions have generally been suspicious of the mental health implications of their work. Investigations into mental health by lawyers and their clients, judges, legislators and law students, have been taboo. Some breakthroughs have occurred with recent studies of the

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1. Quoted in F. C. Redlich in *The Concept of Health in Psychiatry*, reprinted in J. KATZ, GOLDSTEIN & DERSHOWITZ, *PSYCHOANALYSIS, PSYCHIATRY AND LAW*, 521, 522 (1967).

value orientations of lawyers,<sup>2</sup> the counseling function of lawyers,<sup>3</sup> problems of emotional health of law students, and the mental health implications of legal education.<sup>4</sup>

To many, the obvious areas in substantive law where mental health concepts seem relevant and where mental health specialists, particularly psychiatrists, seem appropriate as collaborators, are family law and criminal law. Mental cruelty is, of course, a ground for divorce. The emotional health of the child is a matter of concern when applying the doctrine of "the best interests of the child."

As for the criminal law, the defense of insanity immediately comes to mind as having relevance in the mental health field. But research in the other fields may, in the next decade, show that questions about mental health implications may be appropriate beyond these two most obvious subject areas.

The law of procedure, for example, may lend itself to this kind of inquiry. The adversary process itself may be scrutinized to determine its effect on the mental health of the participants. The law of evidence, especially presumptions and hearsay rules, may be another area where mental health sciences might be beneficial for theoretical explorations.

But our concern is with family law. We shall try to focus on and attempt to view mental health concepts and the role of the mental health specialist, particularly the psychiatrist, from three perspectives: those of the law professor, the psychiatrist, and the judge.

We shall attempt to explore the following questions: To what extent do law schools have a responsibility to equip law students with insights into mental health problems? Should the law schools play any role in preventive mental health? If mental health concepts are relevant in legal education, where and how should they be taught? What part can continuing legal education programs play in this area? What new roles can the psychiatrist play on the law faculty? For the most part his role has been one of a collaborator in teaching and preparing teaching materials. Further, what contribution can psychiatry and psychoanalysis realistically make to the law?

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2. See *e.g.*, WEYRAUCH, *THE PERSONALITY OF LAWYERS* (1964).

3. See *e.g.*, FREEMAN, *LEGAL INTERVIEWING AND COUNSELING* (1964).

4. See *e.g.*, Andrew S. Watson, *Problems of Emotional Health in the Law Student* (unpublished memorandum to the University of Pennsylvania Law Faculty).

To what extent do court procedures, particularly the juvenile court, advance or frustrate the mental health of the participants? If the juvenile's mental health is jeopardized by the procedures, what recommendations can be advanced to overcome this predicament? What further considerations can psychiatrists make to the juvenile court?

The following contributions of Professor B. J. George, Dr. Jay Katz and Judge Orman W. Ketcham are adapted from papers given at the Family Law Round Table at the Annual Meeting of the Association of American Law Schools in Washington, D. C. on December 29, 1967.