

---

## An Introduction to the Interrelationships of Law and Medicine

Hubert Winston Smith

Follow this and additional works at: <https://via.library.depaul.edu/law-review>

---

### Recommended Citation

Hubert W. Smith, *An Introduction to the Interrelationships of Law and Medicine*, 18 DePaul L. Rev. 345 (1969)

Available at: <https://via.library.depaul.edu/law-review/vol18/iss2/1>

This Article is brought to you for free and open access by the College of Law at Via Sapientiae. It has been accepted for inclusion in DePaul Law Review by an authorized editor of Via Sapientiae. For more information, please contact [digitalservices@depaul.edu](mailto:digitalservices@depaul.edu).

# DE PAUL LAW REVIEW

Volume XVIII

SUMMER 1969

Numbers 2 & 3

## AN INTRODUCTION TO THE INTERRELATIONSHIPS OF LAW AND MEDICINE

HUBERT WINSTON SMITH\*

**I**T HAS always been the task of the law to protect and regulate private and public interests. To keep abreast of the changing world, the law must be kept constantly informed concerning the problems posed by individual and social needs in a world that never stands still.

In a democracy such as ours, it is reassuring to believe that social evolution is guided by a primary concern for human beings, by justice based upon truth, and by an enduring regard for the liberties enshrined in our Bill of Rights. Zechariah Chaffee, the great equity teacher at Harvard Law School, once said that so long as freedom of expression remains uncurbed, free men will have no need to fear. Finding of the real facts has been much facilitated by the current use of pretrial discovery techniques. The utility of these pretrial conferences has been particularly enhanced by the increasingly prevalent use of medical specialists.

It is natural that law and medicine should set a pattern for inter-professional studies of multidimensional problems. Each is concerned primarily with the human being and the manifold problems he encounters during the life cycle. Marshalling and evaluating evidence

\*DR. SMITH is Chancellor of the Law-Science Academy of America (Crested Butte, Colorado). He is Director of Interprofessional Studies, College of Law, University of Oklahoma (Norman) and Consulting Psychiatrist, Department of Psychiatry and Behavioral Science, University of Oklahoma (Oklahoma City). DR. SMITH received his A.B. and M.B.A. from the University of Texas, his LL.B. from Harvard Law School, and his M.D. from Harvard Medical School. He is a Fellow of the New York Academy of Medicine, holder of the Milton Award for Scientific Research at Harvard University, and recipient of the Gold Medals of The Wellcome Foundation of London in the History of Medicine and of the Law-Science Academy for work in developing the interrelationships of law and medicine.

often requires closest cooperation if a correct diagnosis and disposition are to be based upon truth. Each profession has a humanistic interest in improving conditions under which men live and in social protection of those who are handicapped, regardless of cause. Their practitioners have much to do with the social philosophy and community conscience of an evolving society.

In law, as in medicine, an emergency may require prompt action, with the actor doing the best he can with the knowledge and means he possesses. Hippocrates said of the doctor's dilemma: "The need is great, the occasion instant, experiment perilous." Emergency may create a like dilemma for the man of law, whether he be advocate, counselor, or judge. Fortunately, it is usually possible by stopgap action to abate the emergency so that deliberate action can be taken, in law or medicine, based upon multidimensional fact-finding and policy-science.

It is general knowledge that more than 50,000 people are killed on American highways each year in automobile accidents and additional millions injured. Large numbers are killed and injured in industrial accidents, in household and nonwork accidents of every description, and by intentional or criminal acts. Since the earlier part of this century, metropolitan centers have been developed for training forensic pathologists and toxicologists to investigate cases of sudden death occurring unattended by a physician, or under circumstances suggesting possible criminal agency. On the civil side, each of the twenty medical specialities and subspecialities has been called upon to illuminate legal problems. Foremost of these is the relationship of trauma (physical or psychic) to the primary causation, precipitation or aggravation of injury, disease or disability, and the scope of effective treatment and rehabilitation.

Today the competent trial lawyer must have an adequate knowledge of the scientific components of his case. It is to be hoped that in the future every law school will have a basic course of at least four hours per week in legal medicine, utilizing outstanding specialists in cooperation with a course leader trained in both law and medicine. The structure and function of the human body can be presented in terms of the nine main organ systems, explaining normal functions of nontraumatic diseases of each, as well as the early and late effects of physical and psychic trauma. A tenth area can be reserved for the total personality,

embracing psychiatry, clinical psychology and other behavioral sciences.

The flow of medical and scientific material relevant to legal problems exceeds the imagination. One state medical library of my acquaintance subscribes to over 900 medical journals published in the English language! There is a need for top medical specialists to scan and evaluate this torrential flow of material in terms of its value in solving legal and social problems. Any profession, art, or craft (for example, engineering, architecture, building trades, photography, accidentology, identification, physics, chemistry, pharmacology, and toxicology) may have relevant evidentiary contributions to make to the solution of disputed issues in a particular case, but the value of medical sciences relating to injury and health exceeds all others.

The second medical field which needs to be taught in the modern law school is the science of human behavior in relation to legal and social problems. The lawyer needs basic training in dynamic psychiatry and clinical psychology so that he can handle adequately psychic injuries due to trauma, mental defense cases in criminal law courts, family law matters, proper counseling of clients, mental health and community problems, and a host of forensic cases involving such matters as competency to do particular acts, guardianship, juvenile delinquency, and personal injury problems. The lawyer also needs to know the contributions and limitations of particular types of scientific evidence (the proofs of science and the science of proof), such as radiological studies, the electroencephalogram (brain wave studies), neurological examination, psychiatric and psychological examination, electromyogram (tracings of muscle activity), examination by polygraph ("lie detector" interrogation), and sodium pentothal interviews ("truth serum").

Interdisciplinary studies today may relate to establishing facts by drawing upon any relevant discipline competent to speak. It is a method gaining favor in proving facts in the trial courts, in developing social policy for executive action, or in providing an adequate basis for model legislation. Not only do such studies bring more fully to light the varied factors which are relevant, but they also help us to expose error or to establish truth by drawing to a focus all available circumstantial evidence, thus achieving corroboration, which is the very essence of proof. It is in this spirit that the *DePaul Law Review* has embarked upon this venture and in so doing, has issued the challenge both to law and medicine to transcend "the failure to communicate."