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Rt. Rev. Msgr. John J. Hayes

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MENTAL DISEASE AND THE ECCLESIASTICAL COURTS†

RT. REV. MSGR. JOHN J. HAYES*

THE CONTENTS OF THIS PAPER seem to me somewhat elementary for this audience, but I have been counseled by those much wiser than I to the effect that a simple declaration of the proper procedure in insanity cases and the attitude of the Rota as manifested over the years, is most acceptable and valuable. Consequently, I am merely reaffirming what is in the Code, in the *Provida Mater*, and in Rota decisions which must be familiar to all of you, but which may yet be useful, because it condenses into the space of half an hour, a great deal of legislation and a number of judicial decisions about mental disease.

The task before the judge in a marriage case involving a plea for declaration of nullity on the grounds of insanity of one of the parties is a very difficult one. He is not asked to pronounce upon the sanity of one who stands or sits or lies before him here and now; by the time the case reaches him, it is abundantly evident that the person in question is not *sui compos*; if he were, the case would hardly be before the court. Besides, cases in which one of the parties was openly and obviously insane at the time of the actual marriage are extremely rare, for few people will marry a recognized lunatic, and even fewer priests or civil or other authorities could be persuaded to officiate at such a

†This article was originally published in 16 THE JURIST 267 (1956). It has been slightly modified here with the author's permission. In connection with this article, see the symposium on *Mental Disease and Criminal Responsibility* in 4 CATHOLIC LAWYER (Autumn 1958) and 5 CATHOLIC LAWYER (Winter 1959).

*Officialis, Diocese of Bridgeport.

marriage. No, the courts must normally deal with the determination of the ability of a person to have given matrimonial consent at the time of entering the contract of marriage, which is anywhere from months to years in the past, and in a case where the signs were not so obvious at the time as to make the partner or official witness refuse to go on. It is good that a corpus of law, precedent and presumption, has been built up for the judge's guidance, and it is a pleasure for me to trace the consistency, the wisdom, the clarity, the essential sanity and even shrewdness of Church legislators and especially courts in this important matter.

I have called this an important matter, and indeed it is. Anything is important which deals with the progressive deterioration of the human intellect and personality, and our responsibility in the premises is grave indeed. Besides, the mere incidence of these cases is already on the increase; one of the first things that impressed me as I thumbed through the Rota cases in a preliminary survey for this paper was the sheer numerical increase of insanity cases proportionately to others. Obviously, the enormous increase in mental disease in our time already makes its mark upon our courts; the promise is that this tendency will continue, unless some new drug or technique of treatment be discovered.

In the face of this vast and continuous increase in the number of those afflicted with mental disease, it is good to know that the Rota (and other courts following it) has been moving steadily and consistently towards a jurisprudence in the field of mental disease which gives substantial guidance to any local ecclesiastical judge in marriage cases. The *de iure* portion of one decision after another presents a series of

considerations which, taken with the line of decisions, forms a body of precedent which it would be difficult to assail.

Incidentally, it is quite significant that we find the Rota and other ecclesiastical courts dealing so largely with cases of mental disease so soon after the development of modern psychiatry. It is a common charge against all courts, civil and ecclesiastical, that they run a generation or two behind the time, that they are so rigidly determined to abide by the principle *stare decisis* that they are relatively blind to newly discovered facts, and theories, and circumstances which might justly challenge precedent. Thus, in our own country, and in recent time, Mr. Roosevelt attempted to defend his desire to pack the Supreme Court with judges of his own choosing (and his philosophy) by presidential jibes at the "nine old men" and with the charge that the court was still living in "horse and buggy days." Regardless of the merits of this particular case, we know it is common for people in litigation to criticize courts as cold-hearted, unfeeling, unsympathetic, too much absorbed in past principles and precedents to see present realities and see them whole.

It is good, therefore, that in this agonizing matter of mental disease, the Rota (and following the Rota, other courts) has been modern in its knowledge of the field. For this matter of mental disease is truly especially agonizing in our time. Dr. Braceland¹ remarks that if any other disease were on the increase at the same rate as mental disease, a state of national emergency would be declared. There are more people in mental hospitals than there are students in all

¹ BRACELAND, FAITH, REASON AND MODERN PSYCHIATRY 8 (1955).

our colleges and universities. Mental disease is a pressing problem.

Another sidelight of interest here is that the attitude of ecclesiastical courts toward the psychiatric profession will undoubtedly have historical value in defense of the Church. In our day, there is a widespread misconception that there is a basic conflict between psychiatry and Catholicism. It is difficult to understand why. The Church has made its position in the matter abundantly clear. Pope Pius XII had spoken on the subject to various audiences, and each time had expressed his opposition to the extreme atheistic and materialistic determinists in the psychiatric profession, while insisting upon the fact that there is no conflict between sound psychiatry and true religion. Similarly, the ecclesiastical courts rely upon the testimony of psychiatrists, recognize their interpretations of symptoms and, in general, treat psychiatrists with a respect which reflects a conviction of the entirely acceptable standing of the profession. Beyond this, it is a common practice among the clergy to refer emotionally and mentally disturbed persons to individual psychiatrists. Psychiatric hospitals and psychiatric wards are under Church direction. Priests practice the psychiatric profession.

It is an outstanding example of the persistence of error, that against such a background the idea can exist that there is a fundamental conflict between Catholicism and psychiatry. Why does the false idea live on? We do not know. Perhaps it is because the atheistic, pansexualist wing of the profession is so voluble and vociferous. Perhaps in answering their absurdities we have not always been careful to make clear the fact that in fighting *them* we are not indicting all psychiatry.

In May 1955 an article appeared in the

Woman's Home Companion on the subject, "What Does Your Church Think of Psychiatry?" In the course of this article reference was made to the fact that people wishing information about Catholicism and psychiatry should write to the Guild of Catholic Psychiatrists, Stamford, Connecticut. I mention this because of the fact that in the following two months I received 1431 letters and post cards seeking information about psychiatry and religion; and 812 of these correspondents expressed varying degrees of surprise that Catholics could have anything to do with psychiatry! Sooner or later this misconception will be eradicated, but we may rest assured that there will be those who will continue to insist for years to come, that the Church in the beginning opposed psychiatry. Meanwhile, the Rota and our other courts are building up proof to the contrary. This will be a valuable polemical weapon for us through the years.

The Rota uses the words "amentia" and "dementia" in discussing mental illness. It should be noted that these words as used by the Rota have no particular relationship to the meaning of these terms on the lips of a modern psychiatrist. The Rota by "dementia" seems to mean monomania, or fixed ideas, and if these fixed ideas be outside the area of the marriage contract, valid consent would be possible. "Amentia" quite clearly indicates to us a state of true insanity causing an inability for responsible action or true consent. We may well thank God that the Rota has used these words so consistently; one can understand the nature of the illness in question in any particular case by reading the description of the illness, its symptoms and developments, in the court records. Had the Rota adopted the rich and confusing terminology of a

growing and eager psychiatric profession, we might have been driven to despair. To know what I mean, I advise any one of you to take up a book on modern psychiatry, let us say *Odenwald & Van Der Veldt*, or *Cavanagh & McGoldrick*, and see there, the hundreds of divisions and subdivisions of mental disease. We know what the Rota means and that, in this our day, is a gain indeed. Generally speaking, the Rota supports the nullity of marriage in cases of proved amentia. In general terms again, it normally holds for the validity of the marriage in cases of dementia.

Insanity cases are admissible in our courts only because the "consent of the parties" makes marriage and without it a marriage is impossible.² In the Canon Law we have no "statutory" impediments to the marriage of the mentally ill. If one is truly insane, matrimonial consent is closed to him³ by the law of nature. Nor is there a question of error or fraud; whether the other party knows about the insanity at the time is irrelevant.

What degree of discretion must a man or woman have to give such consent as is required? This question has been long and much debated, and a definitive apodictic fixed rule can hardly be set. Consequently, the nub of many a marriage case is precisely here. Has the mental disease at the time of the marriage reached such a point that consent is *now* impossible? Certainly, greater discretion is necessary than that required to commit a mortal sin. And certainly, one of the great questions in the field of legal medicine is that of the responsibility of the psychotic person for his acts, with opinion more and more inclined to

deny such responsibility. Of course the materialistic determinists are forced on a priori grounds to deny all true responsibility for anybody about anything; but there are those among psychiatrists of sound background and good philosophy who, nevertheless, deny true responsibility in persons afflicted with certain types of mental illness. The insight required for marriage being greater than for mortal sin, an a fortiori argument against the validity of marriage in such cases is admissible. The Rota is on record very clearly on the subject of how much discretion is required for matrimonial consent, and its attitude is sane and shrewd and sound. In a Rota case⁴ the judge was asked to sit on a matter which involved a person who, it was claimed, was incapable of appreciating the "ethical side" of marriage, although rational in other respects. This man's relationship with women for many, many years had been of an exclusively trifling nature. It was argued that because over so long a period he had had one affair after another with several women, he was psychologically incapable of comprehending the concept of a union with a woman which would be sacred and exclusive and permanent. In other words, he was unable to give true consent to marriage.

In this case, the psychiatric expert retained by the Rota itself held that Tito, the husband, although intelligent (he was a lawyer, but with a history of narcotic addiction), was incapable of valid matrimonial consent. "Given his constitutional immorality," said the expert, "he could not evaluate sufficiently the ethical side of the marriage act, much less the importance of

² *Coram Julien omnibus videntibus*, 5 July 1947; 39 S.R. Rota Dec. 397 (1947).

³ *Ibid.*

⁴ *Causa nullitatis matrimonii coram Wynen*, Feb. 24, 1941.

the duties that derive from this act. He understood the act that he performed, but he did not freely determine himself to it. Consequently, Signor Tito should be held irresponsible both from the moral and the juridical viewpoint."⁵

There was much more expert testimony to the same effect, but in the end, the court refused to declare the marriage null. The factual evidence of mental incapacity at the time of the marriage itself and for the three years preceding it and the three years following it, was very weak. The significant thing to my mind is the fact that the learned and influential judge, Monsignor Arthur Wynen, thought it necessary to examine at great length the psychological and psychiatric grounds alleged, and furthermore, that he admitted as a matter of principle and as not inconsistent with scholastic philosophy and theology, that it is not enough for freedom and imputability that there be a mere conceptual cognition; there is required in addition, the ability to weigh and evaluate the substantial elements of the proposed action. The following are excerpts from his opinion:⁶

In not a few judgments there is really a twofold cognitive function which can be and should be distinguished; the one merely representative or *conceptual*, the other, deliberative or *evaluative*; and this twofold function is principally in evidence in judgments which concern "practicable things" ("agibilia"), in other words in practical judgments. The merely conceptual cognition expresses *what* the object of cognition *is*, the evaluative cognition expresses what importance or worth it has, or *what value it has*. Generally, a man perceives both aspects together in the same act of cogni-

⁶ *Id.* at 149-51.

⁵ 33 S.R. Rota Dec. 15; Nullitas Matrimonii coram Wynen Feb. 25, 1941, p. 144 at 148 (1950). (1950).

tion; especially an adult in those matters which pertain to ordinary, everyday experience. But neither factually nor conceptually, do these two cognitions express the same thing; they express rather *diverse aspects* of the same object. Experience shows that the merely conceptual judgment is formed earlier and with much more difficulty. Furthermore, it is to be noted that the *use of reason* which is required for every human act, regards both conceptual cognition and evaluative cognition, and demands a capacity both for the *exercise* of reason, and for the *dominion* of reason, that is, the capacity of a man to dispose of himself and of his action according to that twofold cognition of the object. . . .

Now it is one thing for a man to *lack* the requisite evaluative cognition, and another for him to *pay no attention* to it. A child of five years who sets fire to his father's hayloft, although he has conceptual cognition both of the hayloft and the fire, *does not have* evaluative cognition of the crime, that is the *objectively very serious* violation of right order which he perpetrates; and consequently, this violation cannot be imputed to him. He does have, however, both conceptual and evaluative cognition of his act inasmuch as it is a *wrongful childish deed*, and accordingly, in this respect, his action is imputed to him and is deserving of punishment. But an adult who posits the same external act, generally has not only conceptual cognition, but also evaluative cognition of the crime he commits, but he pays no attention to it; because notwithstanding it, he proceeds to the commission of the crime, and therefore, he should be fully accountable for it. And this essential difference between child and adult as regards the imputability of their own acts, obtains even more in civil law and especially in the law of contracts than it does in criminal law. A child of five years, who spends a thousand lire on sports and childish amusements, although he may perhaps understand very well conceptually what a thousand lire are, and what sports and amusements are, and what buying and selling are, nevertheless, because he lacks the

necessary mental development and maturity, is not yet able to *evaluate and weigh*, not even as to substantials, what it is to spend a thousand lire on sports and amusements. Therefore, even from the viewpoint of natural law alone, he must be said to *contract invalidly*.

Whenever a man, who because of his age is presumed to be endowed with power of sufficiently evaluating something, is said nevertheless, to have acted without sufficient evaluative cognition, that can arise either from the fact that he *did not want*, or from the fact that he *was unable*, to evaluate or weigh the proposed action sufficiently. One who *does not want* to acquire this knowledge will generally not escape either the subjective imputability or the objective obligatory force of his act, since he affects ignorance, and it is hardly ever possible to discern whether sufficient evaluative cognition was lacking — at least of a confused and implicit kind. But one who *is unable* to evaluate at least the substance of the proposed action, is obstructed in his natural power of appreciation, either by an impediment which is merely temporary and transitory (drunkenness, delirium, violent fever, etc.) or by an habitual defect (whether congenital or acquired during the course of his life); this type of habitual defect is present in not a few mental diseases and psychic anomalies, among which in recent times has been numbered so-called constitutional immorality.

This case has now been made the subject of a juridical monograph by an Italian Jesuit, Father G. M. Fazzari, S.J.⁷ I have not been able to read this essay, but from various reviews of it, gather the following: after examining matrimonial consent from all sides, including its affective elements, the author concludes that “constitutional immorality” can amount to a psychic incapacity to give valid consent.

⁷ D'AURIA, *Valutazione etica e consenso matrimoniale* (ETHICAL EVALUATION AND MATRIMONIAL CONSENT) (Summer 1956).

“The use of reason, which is required in order not to be ignorant [of the substantials of marriage within the meaning of Canon 1082] is not sufficient for the capacity to give a valid consent,” according to this author. There is required in addition, “a maturity and normalcy of psychic links [collegamenti] which permit the spontaneous transformation of the knowledge of marriage into a rational appreciation, at least confused and implicit, of all its essential aspects, particularly the ethical.”⁸

It seems to me very significant that a judge of the standing of Monsignor Wynen would concede the possibility of deciding a case on the grounds of lack of evaluative consent, and the essay of Father Fazzari is further evidence that modern psychological findings are making some impression. But I think it will be some time before marriages will be successfully attacked on these grounds. After all, the ecclesiastical courts demand moral certainty that a given consent was invalid by reason of mental incapacity. Constitutional immorality is one of the more obscure chapters in psychiatric literature as is also the mental illness of the so-called psychopath personality. If the courts hesitate to accept the concurring opinions of many experts, as they did in the case just described, it is clear that there would be little hope of an annulment in a case where the experts disagreed. Psychiatric experts will be very likely to disagree as to the moral and legal responsibility of psychopaths.⁹

⁸ Fazzari's book is reviewed by Rebecchi in 56 *Divus Thomas* 155 (1953); another review appears in 27 *Estridios Ecclesiasticos*, (1953).

⁹ CLECKLEY, *THE MASK OF SANITY* (1950), where psychopaths are considered to be psychotics and largely irresponsible for their erratic behaviour. In CAVANAGH & MCGOLDRICK, *FUNDAMENTAL PSYCHIATRY* (1953), it is said: “In the present

But whether in ecclesiastical or civil or criminal proceedings of any kind, the thing that prevents courts from accepting psychiatric findings seems to me to be the inability of the experts to agree among themselves. I have heard court officials complain that psychiatry is not scientific because you can always get good, reputable experts on both sides, whose testimony is diametrically opposed on the question of responsibility. I think the judges in ecclesiastical courts are inclined to say to the psychiatrists: "First come to agreement among yourselves as to the findings of your science, and then we will listen to you." And they have the further reservation as to psychiatric testimony on responsibility: "If you are a psychiatrist who does not believe in free will anyway, we cannot help being suspicious when you testify that someone is not responsible for something. Your denial of free will should logically, in our opinion, lead you to deny that anyone is ever responsible for anything."¹⁰

Again, the Rota has rejected the opinions of the experts with its reasons founded in the testimony of the *inexpertis*, the relatives, the friends, the pastor of the party. Thus,¹¹ there is a record of a woman who was accused that because she used drugs excessively, she was constantly and habitually deprived of the use of reason for a long time before her marriage, and therefore, incapable of consent to the marriage contract. Three experts were called to testify as such,

state of our knowledge and public opinion, we have little choice but to state, when asked for an opinion, that the psychopathic personality is legally responsible for his acts. Certainly he knows the difference between right and wrong, on an intellectual level at least, even if he does not accept it emotionally."

¹⁰ See 33 S.R. Rota Dec. 15, at 166-67 (1941).

¹¹ 29 S.R. Rota Dec. 195 (1937).

two *periti* and subsequently, a *peritior*.¹² The two *periti* testified clearly that because of her addiction, the lady could not have sufficient power of mind and will for valid matrimonial consent. The *peritior* leaned in that direction without being quite so definite, but even some of his opinions and conclusions were rejected by the court. This, on the basis that the pastor, relatives and friends believed her to enjoy sufficient powers of mind to enter upon a valid contract. They testified that she had freely and voluntarily given consent, that she truly loved her husband, and she desired the marriage. In giving a finding *non constare de nullitate*, the Rota comments:

We say the *peritior* erred because he demands too much for valid contracting; not merely the use of reason, but sound critical acumen, prudence, wisdom, good judgment, etc. Also, he asks more of the will than is necessary. Granted, for the sake of argument, that the lady, without an injection of morphine, would not have given consent, this does not make her consent invalid. For it matters not *how* she is led to consent, whether altogether from within or also from some external incitement; it is required and suffices for valid contracting that the contracting party places a positive act of the will and legitimately manifests it. Nor has it been demonstrated that the lady was incapable of placing such an act; the contrary is evident. For, overcoming the opposition of her family and her own subjective uncertainty, she actually decided to get married, prepared everything necessary to this purpose, she went to church and there gave her consent.

¹² The *periti* are experts who scientifically evaluate the significance of the behaviour of the person whose sanity is in issue. They have observed the patient or they have seen the testimony of lay witnesses (*inexpertis*). Cf., Can. 1792. The *peritior* is called to evaluate the opinions of the *periti*, usually because there is disagreement. Cf., Can. 1801, § 3; Can. 1803.

How the specialist judges from her antecedent uncertainty that her consent is invalid, we do not know. These, then, are the reasons on account of which the judges reject the testimony of the specialist in favor of the nullity.

In these two cases, both of which I think interesting, the first, because of the recognition of some of the obscurer claims of modern psychology; the second, for its sanity and good sense in the presence of the somewhat precious reasoning of the experts, the Rota has stood for validity. But the traditions of the Rota in terms of true insanity are quite different. Let us look at the provisions regarding: (1) presumptions, (2) lucid intervals, (3) experts. The attitude of the Rota is so fixed that a marriage case entered on the ground of insanity stands or falls on the facts. The law is established. The precedents are clear and numerous; the presumptions are established in law. In all marriage cases:

1. The prevailing basic presumption is "*in dubio standum est pro valore matrimonii.*"

2. Also, there is a prevailing presumption in natural law that all men are sane, until the contrary is proved.

3. Then, there is a vastly important presumption regarding the lucid interval. When a person is known to have been insane before and after, there is an established presumption that he remained insane and incapable of consent during the interval. The period of intermission is presumed to be a lessening of the insanity rather than a cure because mental ailments are of their nature enduring.¹³ This is all the more

demonstrable today since modern medical opinion tends to view the lucid interval as a mere screening of latent insanity. Civil codes usually deny recognition to contracts entered during such intervals.¹⁴ Insanity is of an essentially degenerative nature. Having proved amentia antecedent and subsequent to marriage, concomitant amentia is rightly deduced, which is always true in those diseases which are rooted in congenital bases like "dementia praecox, sive hebefrenica sive paranoica."¹⁵

Lucid intervals mean a termination or even a temporary cessation of the signs of insanity, which does not mean that the patient is cured, but only that the underlying malady is obscured.¹⁶ These presumptions, of course, as all presumptions in marriage cases, or in anything else for that matter, yield always to the facts. Indeed, the presumption requires the support of circumstances and evidence sufficient to raise it to the level of moral certitude in the judge, which is demanded for any judicial sentence. I do not suppose any judge would demand evidence of actual anterior delusions or hallucinations; but we certainly need evidence of some kind to indicate that mental disease was already underway, such as excessively moody behavior, strange actions and statements, bizarre behavior (fixing people with stares, secret and furtive chucklings, etc.), any combination or all of which have weight as showing that the progressive deterioration has already begun. This lucid interval doctrine is now pretty well established. Occasionally, *Defensores Vinculi* in lower courts will zealously argue

¹³ 26 S.R. Rota Dec. 83 (1934); 25 S.R. Rota Dec. 47 (1933); 10 S.R. Rota Dec. 18 (1919); 8 S.R. Rota Dec. 19 (1916); 1 S.R. Rota Dec. 10, 17, 21 (1909).

¹⁴ 2 GASPARRI, DE MATRIMONIO n. 785 (1932); WANENMACHER, CANONICAL EVIDENCE IN MARRIAGE CASES 296.

¹⁵ 7 S.R. Rota Dec. 20 (1915).

¹⁶ 13 S.R. Rota Dec. 5 (1921).

against this lucid interval presumption (i.e., the presumption that there is no lucid interval) but they get nowhere and should get nowhere.

4. Another interesting and highly significant condition of insanity case hearings is that the Code (Can. 1982) orders that the opinion of experts is to be sought. This is mandatory in Canon Law, not optional. This is something new in the Code. The Rota as late as 1916 declared a marriage involving insanity null without having called upon any experts, and the judges wrote into their decision the fact that no law required the calling of experts.¹⁷ Even now, the law demands the experts' testimony only as a matter of liceity in the court proceedings. A judge who reaches a state of moral certitude without them would seem to pronounce sentence validly. The Rota speaks to the point here also: "An expert must be called if it be necessary to detect the existence and nature of the insanity; but if there be present common signs by which any person of sense could know, especially when these signs are numerous and long-lasting, no expert need be called."¹⁸

The expert is called to determine two things: (1) Was the party sane? (2) Was his mental disease such that real consent to the contract of marriage was impossible? There is no limit on the number of experts either way. The Code, using the plural, would suggest at least two; *Provida Mater* says one is enough in simple cases; the Rota¹⁹ once used ten. Whoever they are, they should be eminent and competent, not necessarily Catholic, but "imbued with the Catholic doctrine on insanity."²⁰ And I may

add, that we ought to be sure they know what we are after, i.e., the two questions with which I opened this paragraph: Was he sane? Could he consent?

Mental disease has many wide and unpredictable ramifications. Various psychiatrists may hold widely differing opinions on the nature or origin or course of the same disease. They may disagree violently upon many matters with which the disease is concerned. But much of this disagreement may from our point of view be simply irrelevant. Our concern is with the one simple question: "Was the person capable of giving consent"? Doctors who might agree on this one point affirmatively or negatively might differ on everything else, yet we would have the consensus we ideally seek from the experts.

Both Canon Law and *Provida Mater* are anxious that the judges receive as complete a picture as possible of the illness which allegedly vitiates the consent. Therefore, the doctors who had treated the defendant before the case came up in court are barred as experts, because they may already have formed their opinions; it is *required* that they be summoned as witnesses (Can. 1982; *Provida Mater*, art. 143). Aside from thus providing a full picture, such witnesses can provide evidence for the experts in such times as the expert cannot examine the party because of absence or refusal to undergo an examination. The Code (Can. 1982) directs an examination, with an eloquently shrugged "*si casus ferat.*"

Experts are chosen by the judge. We do not have the spectacle in ecclesiastical courts of psychiatrists testifying to contradictions because they are "for the defense" or "for the plaintiff." After the testimony of the experts has been received, the judge is free, in good conscience of course, to re-

¹⁷ 8 S.R. Rota Dec. 19 (1916).

¹⁸ 15 S.R. Rota Dec. 15 (1923).

¹⁹ 10 S.R. Rota Dec. 1 (1918).

²⁰ *Provida Mater* art. 151.

ject their testimony, to call other experts or one other of greater skill to look further into the matter. Nor at long last is he in anyway bound to follow the expert opinion, nor the opinion of the "more expert."²¹ They are skilled in their field, but he is the judge. This is true even if they all concur, though one wonders about the quality of the judgment that would go against the unanimous concurring testimony of specially qualified experts in the field of their specialty. But of course there are many other elements in the proof of a case which might give the judge reason for going against the experts, and the judge must of course concern himself with all possible elements of proof which are available. Other witnesses should always be called to testify to the daily life of the person before and after the marriage, his mode and content in conversation, his attitudes, his insight, his mannerisms, his obsessions, his judgment of events, local, personal and public, his appreciation of his surroundings, his family relations, etc.²² In spite of these other sources of proof, the Code (Can. 1804, § 2) demands that a judge rejecting the opinion of experts must state the reasons upon which the rejection is based. This interestingly reverses the principle established by the Rota's²³ saying it was not necessary to state the reasons for rejection. Thus, while ordinarily he would and should accept the judgment of experts of whose competence and honesty he is satisfied,²⁴ the judge remains the final voice in the solemn decision about the validity of the marriage contract which is, after all, a sacrament. "Nam periti non sunt conjudices

sed consiliarii tantum, nec eorum voto quantum vis erudito et concordi alligatur iudex."²⁵

Thus, the judge is firmly protected against purely diagnostic medical decisions. It is good that he is; psychiatric theory is prolific and eloquent, but when it comes to individuals the theory, like statistics, breaks down. Each case must be judged separately on its own merits. There is a medical theory, put forward to me recently by an able and generally conservative psychiatrist, that if a man actually develops openly, at the age of say 40, a certain constellation of symptoms, we can safely conclude that whether he gave evidence of it or not, he was already a victim of mental disease, already constitutionally incapable of sound judgment or valid consent to contract when he was 7 or 12 or 15 or 20, or any time up to the present. To this thesis Dr. Francis Braceland writes:

Frequently in marital situations, the question is asked whether this man knew what he was doing, and the psychiatrist is put on the spot. The answer is that he may have known what he was doing, and yet, have his judgment colored by delusions. For instance, there are many people who are teetering along outside of hospitals. They are borne up by the security of their families, the fact that people put up with their idiosyncrasies, that the people in their jobs understand them, and they live narrow, constricted lives in which very few demands are made upon them. Then comes some type of stress, whether it is being taken into military service, an accident, a serious illness, or perhaps the feeling that he should be married. Many times this feeling that he should be married is simply because of what other people will think and someone gets picked out as the partner.

If the individual is paranoid, if the indi-

²¹ 20 S.R. Rota Dec. 6 (1928).

²² 8 S.R. Rota Dec. 19 (1916).

²³ 3 S.R. Rota Dec. 39 (1911).

²⁴ 1 S.R. Rota Dec. 10 (1909).

²⁵ 16 S.R. Rota Dec. 16 (1924).

vidual is schizophrenic, or homosexual, this marriage will tip over the patient, not invariably, but nearly so, and as a consequence, there will be a psychotic break, and often a frank, open schizophrenia. *Now that patient was schizophrenic to begin with*, but he was compensated, as we say, just like a heart is compensated and it is only under great stress, such as adjusting to another person, the sexual problems involved, etc., that he breaks. Mind you, he might have broken later anyhow, but this simply does it quickly. The job for the psychiatrist, therefore, is to determine the diagnosis. If the diagnosis is schizophrenia, this is not something which happens all at once; *this is a way of life, as it were; it has been coming on for a long time.*²⁶

In this description, the actual marriage can be precisely the precipitating factor which brings out his insanity — not that he *now becomes* mentally ill and incapable of consent *but that he always was and now we know it*. Similarly, Monsignor Fidecicchi says:

It happens frequently that the family and friends of the sick person do not notice the confusion of his mind, especially at the beginning of the insanity. Whence it follows that it is not unusual for a person to seem capable of carrying on his ordinary duties well — and yet he must be considered unfit for marriage — sometimes the

violently insane remain in a state of apparent quiet and yet their actions are not those of their own mind.

In summary, then, the whole subject of mental disease in connection with the ecclesiastical courts is one which will require increasing attention as the diseases themselves tend to become increasingly prevalent. In these circumstances it is a consolation and a comfort to know that the jurisprudence of the Rota is quite clear on what we should do in the judging of such cases. There are certain mental diseases which of their nature allow a lucid interval in which marriage might be contracted validly. But there are other diseases in which it is no longer in accordance with precedent to assume a lucid interval. If it can be demonstrated that the person had been afflicted with this disease prior to and after the time in which the marriage was contracted, the established presumption is against the existence of any lucid interval.

Besides the establishment of presumptions with regard to the existence of a lucid interval, Canon Law and court practice have quite clearly outlined the place of the expert in cases of mental disease. He is to be consulted, his opinions are to be carefully pondered, but the judge, in the final analysis, has full responsibility for the decision.

²⁶ Private letter to me dated September 22, 1955.