

Proximate Causation

The legal definition of causation (proximate causation) and the perspective from behavioral science is not the same and sometimes is actually divergent. For example, from a psychiatric perspective, when a personality disorder is diagnosed in the plaintiff, the true “cause” of symptoms that follow the incident or condition claimed to have caused these symptoms is, as likely as not, to be the personality disorder. Personality disorders are described in detail in the *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, 2013*. There are 14 different categories of personality disorder discussion as well as blends of features from more than one category, diagnosed under the label Personality Disorder Not Otherwise Specified. These are strategies of interpersonal behavior that cause functional impairment and are established generally by mid to late adolescence. *Personality Disorders are every bit as proximate as is the event or condition alleged to have produced post-incident symptoms.*

It was a statement by the great lexicographer Dr Samuel Johnson in the course of a review of the *Essay on Waters*, by Dr Charles Lucas. Lucas extolled the healing powers of the waters at Bath (where he was physician) and elsewhere during an enforced hiatus in his political life in Dublin. Dr Johnson was evidently not persuaded: "It is incident to physicians, I am afraid, beyond all other men, to mistake subsequence for consequence." In other words, just because B follows A, does not mean that A necessarily *caused* B. According to Dr. Johnson, we physicians frequently confuse the two, often during forensic psychiatric assessment where we attempt to establish causation along with damages.

For example, just because a patient complains of pain after an accident but complained of none before the accident, does not necessarily mean that the accident caused the pain. The patient may be denying that he or she had a pre-existing condition and/or exaggerating the pain symptoms he is feeling post accident. This all too human tendency is often aggravated by the process of litigation and the prospect of obtaining substantial financial compensation for an alleged injury that causes functional impairment.

The physician rendering a forensic opinion about causation must therefore make a careful, evidence based, judgment about the role, if any, that a particular incident or circumstance played in the symptoms that temporally follow it. Other possibly contributing factors must also be identified. The forensic psychiatrist is best to avoid pronouncements that an incident or condition “caused” the claimant’s emotional symptoms. The law attempts to impose a “pool ball notion of causation,” i.e. ball A struck ball B causing effect C. In behavioral science, however, for more than a century, researchers have pointed to the multiple determinants of a particular effect. It is rare for one single circumstance or event to uniquely produce a psychological effect.

However, astute lawyers have been aware of this dilemma for a long time. Almost 140 years ago in 1870, a Boston lawyer, Nicholas St. John Green, wrote the following in his paper *“Proximate and Remote Cause:”*

“The chain of causation” is only a metaphor. In reality every event has a multiplicity of interdependent causes. The “proximate cause” is just the antecedent event people choose to pick out in order to serve whatever interest they happen to have in the case at hand. Similarly, labeling a cause “remote” is just a way of announcing a decision not to attach liability to it. Independent of someone’s interests, one cause is not more “proximate” or “remote” than any number of other causes.

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