

10-1-1972

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Recommended Citation

Shaffer, Thomas L., "Myth and Mental Commitment" (1972). *New Dimensions in Legislation*. Paper 1.
http://scholarship.law.nd.edu/new_dimensions_legislation/1

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MYTH AND MENTAL COMMITMENT*

by Thomas L. Shaffer**

My expectations in speaking to a group of healers about the mentally ill -- as a person and citizen, rather than as patients -- are that you will be receptive and reasonable, since the subject is of special concern to you. I have the impression that no one in the world is happy about the state of treatment for mental disorders -- least of all those who do the treating.

Your expectations, in having a lawyer inflicted upon you, may be that you will hear a harangue -- and I think it best not to disappoint you.

We might reach both of these expectations by pretending that you are all federal judges and I, a noisy civil-liberties lawyer -- one of those who argues that welfare mothers are entitled to have as many children as they want; and theatres are entitled to show dirty movies; and Nazis, Kluxers, and Communists are entitled to say what they think.

So, let us try that.

What I am going to ask you to do, as judges, is to empty every mental institution, finally and completely,

*Delivered at a session sponsored by the Catholic Hospital Association during the Americal Health Congress, Chicago, Illinois, August 10, 1972

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of every patient who wants to leave. I want you, as judges, to open the doors. If the people who will leave should be locked up, it is surely not the business of healing to operate the jails that hold them. I am going to ask you, judges, to put mental health on the same basis as dental health.

If a dental patient would like to keep his rotten tooth, the Constitution protects his right to do so. If a kookie citizen wants to be kookie, judges, he has a right to be kookie. He has a right not to be locked up. He has a right not to be electrocuted, or mutilated, or coerced, and badgered, and manipulated into being like everybody else. And no doctor or policeman, spouse, parent, child, neighbor, or busybody has any right to do him out of his kookiness.

I am asking you to open up mental treatment, put it on a free-enterprise basis. Take the bars off the windows -- and I am asking this as a matter of fundamental constitutional right. The coerced confinement of bizarre people is a failure, and in its failure it is a vast and unresponsive denier of the rights of men. It is not and probably never has been a system of care for the sick. It is, and always has been, a system of imprisonment.

Assumptions which are easily made in this prevailing system of imprisonment for bizarre and disturbed citizens are that: (1) these citizens are ill,

in somewhat the same way a person with a broken arm is ill; (2) they are being treated for this illness, in a necessary and temporary confinement; and (3) they are, in any event, dangerous people who have to be kept out of circulation (and we know this to be true because physicians, who understand these things, say it is true).

Commitment to a mental institution, in reality, is a life sentence to a place that is probably worse than prison. The sentence is passed with nothing even remotely resembling due process of law. The fact is that a person can be locked up because a physician says he should be. He can be kept locked up as long as a physician says he should be. And the only "treatment" given may, at best, be a locked door; and, at worst, a horrifying routine of humiliation, torture, and curious surgery.

There are hundreds of thousands of people in this state. Every tenth one of the rest of us may be in it some day. There are more people confined because of supposed mental disability than there are in hospitals for physical illness. The ratio of physicians to so-called mental patients is about one to a thousand. The American Psychiatric Association maintains that it should be one to 150. Since society will not hire the doctors, the solution is to release the patients.

Mind you, I am only talking about patients who do not want to be locked up. Most of them were locked up in the first place on a theory of untested witchcraft. Standards of involuntary commitment have been under attack for years by most of non-medical psychology, and by many courageous and unheeded voices in the psychiatric profession.

Patients are locked up because their behavior annoys somebody who is able to get them locked up. They are drugged or shocked into submission because they refuse to act as a physician, or judge or bureaucrat, acting under medieval standards, thinks they should act. In Massachusetts the law says that I can be confined against my will in a mental institution if I am "likely to conduct" myself "in a manner which clearly violates the established ... conventions ... of the community." In almost any state I can be locked up in some frighteningly hideous place because a doctor or judge, or even a relative who is weary of me, says he thinks that committal to that place would be for my own good.

Virtually, none of these so-called mental patients is dangerous; the arrest rate among former mental patients is about one-half that of the general population. Even if they were dangerous, one might wonder why bizarre people should be locked up when the more devious and more dangerous among us are not locked up.

"Mental illness," as Dr. Thomas Szasz says, is "a metaphor which has been mistaken for a fact." It is a jail door for hundreds of thousands of citizens and therefore a more ominous metaphor than the domestic possession our Puritan forebearers believed in, or the pacts with Satan which medieval man feared.

We do not really need a bill of rights for the mentally ill. All we really need is treatment of mental patients as if they are people -- then apply to them the same Bill of Rights we apply to everyone else. If we do this, we shall say that mental illness is not a justifiable reason for depriving a person of liberty against his objection. We shall say, if mental patients are really people, that they have a right to be treated in accordance with the highest standards of current medical practice. If adequate resources do not exist to provide that kind of care, the patient should be free to leave the institution and find his comfort elsewhere. To put it another way, we shall say that citizens have a right to medical facilities which are at least as attractive, comfortable, and promising as the average dentist's office. Attractive, comfortable, and promising enough, that is, that people do not have to be forced into them.

We shall say that a person who is thought to be mentally ill has a right to be protected from his friends and relatives. If they want to lock him up,

they will have to do so under the standards of the criminal law -- and that will require the assistance of a lawyer, trial by jury, protection against search and seizure, and a sentence which is specific, terminable, and subject to review. This would probably signal the withering away from hospitals for the mentally ill. I suppose (applying the apparent public priorities we use in this country) the money saved as a result can be used to start a war somewhere.

Your order, if you judges agree with me, would probably put an end to such things as psycho-surgery and electrical shock, since if patients can now choose what happens to them, surely, none will choose electrical shocks or having their brains mutilated. There is evidence of a new enthusiasm for cutting on the brains of kookie people. An item in the Congressional Record by a District of Columbia psychiatrist, charges that the destruction of human brains in order to control behavior is now being performed in this country on hyperactive children -- some as young as five years old -- on alcoholics, drug addicts, promiscuous housewives, and for the purpose of curing people who are found to be excessively warm-hearted, delicate, conscientious, or enthusiastic. This doctor wants Congress to outlaw all psycho-surgery, whether the patient consents or not. Others in the healing profession -- most, perhaps -- would support the outlaw-

ing of electrical shock, which has always appeared to me to be as scientifically defensible as letting blood would be.

What will take the place of the abandoned mental hospitals? Here is a utopian prediction by Dr. Thomas Szasz:

"The mental hospital should be a new kind of institution, resembling neither prison nor medical hospital. Its purpose would be to provide the kind of help rendered today by many psychiatrists, psychologists, and social workers. These services are more comparable to those obtainable in certain schools, hotels, vacation resorts, and aboard ocean liners, than to those furnished by ordinary hospitals. Accordingly, in mental institutions (the term "hospital" would only be distracting) few physicians would be needed, and they would care only for bodily diseases. Until new standards are developed, personnel for this sort of organization should be recruited from those who demonstrate interest and skill in this type of work, not from those who meet the existing, but irrelevant, institutional qualifications."

I must say that sounds almost attractive. I might be willing to go there without being arrested first, which is now true of many mental hospitals with which I am familiar.

In such a place, the Bill of Rights is no particular problem. A person in that sort of institution could: communicate freely with others, inside and outside, as the First Amendment provides; own things and acquire things and give them away or sell them; have

access to the courts in case somebody wants to push him around; choose what is to be done to him -- at least as much as you and I choose what is done to us in, for example, a dentist's chair; and he could keep his mouth shut, or speak in tongues, or be irresponsible, or sing at inappropriate times, if that is what he wished.

Well, there are many reasons why you, as judges, may not give me what I, as a lawyer, say the Constitution requires. One is that some mental patients cannot choose or cannot care for themselves, and others really are dangerous. But we can provide an objective choice for people who cannot choose. And by objective choice I mean a non-medical, outside judgment -- by a judge if need be.

We neither need a coercive hospital system to take care of physically disabled people; nor do we need it to take care of people who really are dangerous. Other institutions can do both of those things and do not need the cloak of therapy to do it. Other procedures will protect -- better than mental-health laws have -- against the possibility that the patient's welfare or the safety of other people are an excuse, while the real reason for locking the patient up is that he is a pain in the neck.

Reasons that most mental patients are where they are have very little to do with mental health. Senile

people are confined because local homes for old folks will not admit them. Sexual deviants are confined because it makes lawyers and judges, and most people it seems, feel better to think that child molesters are suffering from some sort of disease. Somewhat similar points could be made about people accused of crime, drug addicts, alcoholics, and other kinds of dropouts who end up in mental hospitals. The mental-health system has been made to bear the sins of our callous treatment of old people, our guilt over our inhuman prison system, our hypocritical attitudes on sex, and heaven knows what else.

Much of this probably annoys you, but I assure you that all of this, and more, is being brought before real judges right now. Our archaic official approach to bizarre behavior may well go the way of segregated schools, and mal-apportioned legislatures, and illegal police practices. The elected representatives of the people, and the people themselves, have neglected this injustice so long that not even a judge can hide from it any longer. A federal judge in Alabama has by court order replaced the state supervisor of mental institutions and has ordered that state to employ the staff necessary to provide individual, prompt, humane care. The court-ordered ratio of staff to patients there is nearly one-to-one. He further ruled that no one can be held in mental institutions there for more than six

months. In that case, and in several others, federal judges have held that lack of funds or facilities is no defense.

That, of course, gets us back to what I would be asking of you if I were a lawyer for your patients and you were judges. Since, according to the American Psychiatric Association, no state provides enough money for adequate staff, the best answer is for healers to get out of the business of forcing people to become normal. Mental healers should be working on willing patients -- with whom success is much more likely anyway -- and leave the unwilling to cruder forms of consolation. This is more than an inflammatory argument.

We do well to stop and realize that our opinion -- of professional judgment -- that someone is disabled may tell more about us than it does about the person who is supposed to be disabled. "A handicapped person," in the sociological definition, "is a person whom others think is incompetent or unattractive; someone whom others want to help or protect or avoid." So the world tells a person like that he is sick. And he says "No, I'm not sick." And the world says "Well, you see, that's your problem. You just don't believe you're sick. That's why you're sick. If you only could see that you are sick, everything would be alright. You wouldn't be sick any more." What we may really mean, is that he does things we think he shouldn't -- like

the coronary patient in the limerick:

My doctor has made a prognosis
 That intercourse fosters thrombosis
 But I'd rather expire
 Fulfilling desire
 Than abstain and develop neurosis.

A society in which deviant people are identified not only identifies the deviance, it creates it. In specific reference to mental patients, the sociologists have noticed that psychiatric diagnosis does not correlate either to observable behavior or to treatment. The word "schizophrenia" does not describe what people do and it carries no clear indication of what should be done to them. It has no purpose, in other words, except as a reason for confinement or for seeing a psychiatrist. It resembles the process in which some public schools decide that children are retarded. Retarded children, the schools maintain, do not do very well in school. What is a retarded child? Someone who does not do very well in school!

Someone who gets a label tends to act as the label says he should. Then everyone else acts as they should toward people who have that label. Soon, everything is oriented toward the label. And that, the sociologists say, is how an "oddball" becomes psychotic and how somebody's troublesome relative becomes your mental patient. According to the sociologists, our most common forms of segregation are: prisons for the behaviorally different; mental institutions for the

emotionally different; rehabilitation centers and special schools for the physically different; and ghettos for the racially different.

Judges may force mental hospitals to treat citizens humanely, but not even judges can fathom or correct the complex biases by which we separate ourselves. It is that thought which prevents me from feeling self-righteous about your profession and the mentally ill. My profession has, I am sure, done more to build walls around outcasts than yours has. I am hoping that we can cooperate, however, in pulling the walls down.

I should summarize in more specific terms regarding the rights of mental patients in the coercive system we have. Here are a few specifics: (1) A person who is committed for mental care on a court order should have all of the procedural protections given a criminal defendant -- including notice, counsel, jury trial, and the privilege against self-incrimination; (2) the grounds on which people are involuntarily committed should be rigorously examined for empirical validity -- not merely clinical validity -- and should be subjected to rigorous constitutional evaluation. It seems to me clearly unconstitutional to lock a man up because he might harm himself, or because his conduct is unconventional. It seems equally unconstitutional to lock him up because he is dangerous, unless

the person who asserts the danger can prove it to laymen beyond a reasonable doubt; (3) every patient is entitled to prompt, individual care, and should not be held unless he gets it; his case should be reviewable by a judge, at the patient's request, no less often than every two months; (4) unless the school of psychotherapy, which is in control of the institution's program, demonstrates that it is causing improvement in the patient's condition, the patient has a right to release. Psychiatry does not have the right, and should not have even the desire, to be a penal discipline. If it cannot deliver cure -- and in many, many cases, it demonstrably cannot do so -- it has no right to detain free men; (5) ordinary freedom to move, own, communicate, and express oneself should be guaranteed to a patient unless the medical team can demonstrate to a judge that deprivation is medically essential; (6) unless the patient is continuously and completely dissociated, he should retain the right to refuse any medical or psychological procedure, including procedures of questionable integrity such as electro-shock and psycho-surgery. If the patient is unable to act, these doubtful procedures should be permitted only on court order, after a hearing in which the patient is represented by counsel.

This is a fairly tough regimen, but it seems to me that we have to do things that way in a free

society. Everything I say really depends on a general recognition of the rather obvious principle of human liberty: "My freedom is never in greater danger than at the hands of someone who tells me that what he wants to do to me is for my own good."

AUTHORITIES

This paper was addressed to a group of hospital administrators -- it is not a scholarly presentation. However, its ideas and principles are not novel, and are even widely held in the health professions and among lawyers and judges. The following sources of information were, for the most part, consulted as the address was being prepared. All are useful for further reading on the subject.

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