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Book Review

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aristocracy. He was speaking of individuals. But if lawyers are still the aristocracy of this country — which will be doubted and disputed — there is no reason why institutionalism and the organization which necessarily accompanies the super-firm should inevitably make the profession any less worthy of that accolade.

Both authors point out the increasing concern on the part of the large firms for the public issues involved in the work which they do for their powerful clients, and if there is criticism in their appraisals of corporate, governmental and legal power, it is tempered by admission of increasing awareness of these legal behemoths of their responsibility to society as a whole. Both books are reasonably well-documented. Each is an interesting mixture of history, lore, expertise, scandal, humor, ribaldry and information. While one could hardly call them scholarly in the sense that lawyers view scholarship, they are never dull, are reasonably objective and should be enjoyed by all lawyers and many laymen.

*Reviewed by Robin M. Kennedy**

PRISONERS OF PSYCHIATRY: MENTAL PATIENTS, PSYCHIATRISTS, AND THE LAW, by Bruce J. Ennis. New York, Harcourt, Brace, Jovanovich, 1972. 232 p. $6.95.

Twentieth Century America has witnessed with gratification the rise of the "therapeutic state."[1] The therapeutic state promotes order and well-being through therapy rather than criminal controls. Premised upon the ability of psychiatry to recognize and treat "mental illness" and the doctrine of *parens patriae*,[2] the laws and institutions of the therapeutic state seek to rehabilitate and protect those not felt to be criminally blameworthy who engage in deviant behavior. The insanity defense to criminal charges, juvenile courts, and civil mental hospitals are the chief examples of this order. Unfortunately, collective gratification in these seemingly liberal and enlightened psychosocial schemes is misplaced.

While it is humane to protect juveniles and persons emotionally distraught from the stigmatization of the criminal label, creeping paternalism has brought rampant overreaching of human dignity, self-determinism, privacy and freedom.

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[1] N. KITTRIE, THE RIGHT TO BE DIFFERENT (1971).

[2] *Parens patriae* is the doctrine of the state's sovereign power to act as guardian or benevolent father over disabled persons. See Ross, *Commitment of the Mentally Ill: Problems of Law and Policy*, 57 MICH. L. REV. 945 (1959).

This indictment is not entirely self-evident. Were it so, Bruce Ennis has labored in supererogation. *Prisoners of Psychiatry* is an effort to cultivate public awareness of the intrinsic limitations — no, the dangers — to freedom and dignity lurking in involuntary psychiatric hospitalizations. Mr. Ennis, a lawyer with the Civil Liberties and Mental Illness Project of the New York Civil Liberties Union, recounts case studies which burst the illusion of governmental beneficence in state mental facilities, expose the mendacity of "treatment" apologists, and identify publicly the real residuum of the therapeutic state — powerless, stigmatized, second-class citizens.

The stories which compel these conclusions are not scholastic treatises nor are they roadmaps for litigation. They are well-written, exoteric parables of a crying need for judicial attention to involuntary mental hospitalizations. Ennis writes in a clear, sympathetic style, presenting the profile of his clients in the context of their resources, family background, and history.

In Part I he depicts the plight of those labeled "criminally insane" and takes aim at the deeply rooted myth that the "mentally ill" as a class are much more dangerous than the mentally healthy. Ennis provides evidence to the contrary:

> A New York study of 5,000 released mental patients reported that those with no prior criminal record committed less than one-twelfth as many crimes as were committed by "average" members of society; the rate for serious crimes was lower still. Even those patients who did have prior criminal records (most mental patients do not) committed fewer crimes after release than persons with similar criminal records who had not been mental patients. Other studies have reached comparable conclusions.[3]

Teddy Neely was a victim of this myth. Though he had an alibi and was demonstrably different in appearance from the assailant, Neely was charged with criminal assault because he happened to be on pass from a civil mental hospital at the time of the shooting. A police dragnet of the mental hospitals turned up this fact and this defendant. He wished to move to dismiss the indictment against him, but because he had been found incompetent to stand trial, he was powerless to do so. Ennis secured an important judicial ruling that incompetence suspends proceedings *against* a defendant but not *by* him. The ruling was made after Neely died while imprisoned with the criminally insane, but the principle survives so that others may not similarly be deprived of justice.

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[3] Text, p. 26. For an example of one of the other corroborating studies, see Morris, *"Criminality" and the Right to Treatment*, 36 U. CHI. L. REV. 784 (1969).

In another case Ennis indicates that justice delayed is justice denied. Curt von Wolferdorf's case is the paradigm of harm that can obtain from a finding of incompetence to stand trial. He was confined in Matteawan, a hospital for the criminally insane, for twenty years because he was found incompetent to stand trial on the charge of murder. He was never convicted, but, more importantly, the real murderer had been convicted and executed eighteen years earlier. Von Wolfersdorf was warehoused through twenty years of psychiatric and judicial inattention until Ennis commenced proceedings objecting to his client's confinement in a penal facility and denial of a speedy trial. When von Wolfersdorf was released, the opinion by Federal Judge Marvin E. Frankel described Matteawan as "a place more likely to drive men mad than to cure the 'insane.' "

The outrage is that many other innocent incompetent defendants until now have had little relief. Von Wolferdorf's case was cited as grounds for the United States Supreme Court's decision in *Jackson v. Indiana*[4] in 1972. The court held that where there is no substantial probability that an accused's mental condition will permit him to participate fully in a trial, it is a violation of the due process clause to indefinitely commit him solely on account of incompetence to stand trial.

In Part II Ennis decries the lack of objective treatment standards in state civil mental hospitals. All too often medications, restraints, seclusion, neglect, or abuse hide under the label of therapy. Ennis describes his participation in the landmark case of *Wyatt v. Stickney*[5] in which a federal court in Alabama held that patients confined in state mental hospitals in Alabama have a constitutional right to adequate and effective treatment. The conditions deplored by the court in *Wyatt* are unfortunately not unique and the mandate of *Wyatt* has not yet found compliance elsewhere.[6] Kenneth Donaldson, for example, remained a patient at Florida State Hospital for fifteen years because no one cared to get him out. He had never, before nor during his confinement, committed any violent act. Moreover, at his commitment hearing he had no lawyer, nor any opportunity to cross-examine the doctor. Yet he was confined for *treatment* in a hospital that had been understaffed and overcrowded for fifty years. Its 5,000 patients rarely if ever saw a doctor, and most of the doctors were foreign-born or foreign-trained. The buildings were completely obsolete and a serious fire hazard. Life on the wards was "governed by untrained

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[4] 406 U.S. 715 (1972).

[5] 344 F. Supp. 373 (M.D. Ala. 1972).

[6] For example, a recent study shows that none of the state mental hospitals in Ohio has sufficient therapy personnel: OHIO. CITIZEN'S TASK FORCE ON MENTAL HEALTH AND MENTAL RETARDATION. DESIGN FOR A COORDINATED SYSTEM OF SERVICES TO THE MENTALLY ILL AND MENTALLY RETARDED IN OHIO (1971?).

and occasionally brutal attendants." In short there was no treatment. Ennis was able to obtain Donaldson's release but not to restore the lost fifteen years.

Part III concerns the stigmatization of the mentally ill. Ennis reports that in the public mind mental illness is irreversible: "once mad, always mad. In the job market, it is better to be an ex-convict than an ex-mental patient." These stories are recommended to psychiatrists and judges, for in painfully clear fashion they illustrate the prodigious problems encumbering patients after their release from institutions supposedly designed to help.

Part IV scrutinizes the constitutionality of state statutes governing involuntary hospitalizations. The justifications for civil commitment are dangerousness and need for treatment *(parens patriae)*.[7] Historically, procedural laxity has characterized these proceedings because states purport to act in the best interests of patients by making "treatment" easily, though involuntarily, available. Predictably, informal procedures increase the probability of wrongful hospitalizations, a dreadful result given the woeful conditions of mental hospitals. Once persons are hospitalized, doctors have difficulty distinguishing the healthy from the ill,[8] and many remain hospitalized to their detriment for long periods. Ennis persuasively urges in two cases that patients faced with commitment should be accorded the minimal due process standards that the worst criminals receive, and that before liberty is surrendered to mental hospitals, less restrictive alternatives such as outpatient care be explored and employed.

In a recent landmark case decided after the publication date of *Prisoners of Psychiatry*, a federal district court held in *Lessard v. Schmidt*[9] that the fourteenth amendment requires criminal due process safeguards in commitment hearings including: the right to court-appointed counsel of indigents; the privilege against self-incrimination; and the right to a standard of proof beyond a reasonable doubt of the need for hospitalization. However, many states including Ohio still fail to provide these rights.[10] Thus, the constitutional challenges to involuntary commitment proceedings suggested by Ennis and successful in *Lessard* still need to be raised, heard and hopefully approved.

In Part V and the Epilogue, Ennis surveys several statistics and vignettes of dehumanization and absurdity that characterize invol-

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[7] Livermore, Malmquist, and Meehl, *On the Justifications for Civil Commitment*, 117 U. PA. L. REV. 75 (1968).

[8] For a report of an experiment in which sane subjects feigned selected symptoms of mental illness, were admitted to mental hospitals, and experienced difficulties in obtaining release, see Rosenhan, *On Being Sane in Insane Places*, 179 SCIENCE 250 (1973).

[9] 349 F. Supp. 1078 (E.D. Wis. 1972).

[10] S. BRAKEL AND R. ROCK, THE MENTALLY DISABLED AND THE LAW 125 (Rev. 1971).

untary hospitalization. One story that highlights the formidable communication problem between lower class "street people" and foreign doctors is of the Japanese doctor who asked a prospective patient, "What does mean, a stitch in time gathers no moss?" The patient, who was dumbfounded by the question, was eventually committed.

The imperative of the therapeutic state is health. The "mentally ill" are invited, then pushed to treatment by well-meaning judges, psychiatrists, and lawyers. But as is all too clear, the casualties of this undertaking are the subjects of the stories Ennis tells. The warning of Justice Brandeis resounds throughout the text:

> Experience should teach us to be most on our guard to protect liberty when the government's purposes are beneficent. Men born to freedom are naturally alert to repel invasion of their liberty by evil-minded rulers. The greatest danger to liberty lurks in insidious encroachment by men of zeal, well-meaning, but without understanding.[11]

*Reviewed by Miles J. Zaremski**

NEW DIRECTIONS IN LEGAL EDUCATION, by Herbert L. Packer and Thomas Ehrlich, with the assistance of Stephen Pepper. New York, McGraw-Hill, 1972. 384 p. $10.00

New Directions in Legal Education represents another attempt to examine the function, purpose, and direction of legal education. The book was originally prepared by Professors Packer and Ehrlich, both of the Stanford Law School, as a report for the Carnegie Commission on Higher Education. The reason for its publication is indicated in a note on the reverse of the title page:

> The Carnegie Commission . . . has sponsored preparation of this report as a part of a continuing effort to obtain and present significant information for public discussion. The views expressed are those of the authors.

The authors in turn state in the preface:

> We make no pretensions that this study is exhaustive. We do try to consider, at least briefly, the major issues that in our view are unique to law training as opposed to other areas of higher education . . . The "research" on which this study is based did not include field studies, questionnaires, or opinion polls. Rather, our method consisted of asking the

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[11] Olmstead v. U.S., 277 U.S. 438, 479 (1928) (dissenting opinion).

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