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Judicial Intervention as a Psychiatric Therapy Tool

*Eleanor A. Blackley**

SOCIAL WORK DOES NOT OFTEN CREATE an innovation;¹ however, Cuyahoga County Probate Court Psychiatric Unit in Cleveland, Ohio, which is, as far as is known, unique both nationally and in Ohio, was established in October, 1961, by graduate social workers under the sponsorship of Frank J. Merrick, Presiding Judge of Cuyahoga County Probate Court. Ewing H. Crawfis, M.D., LL.B., was medical coordinator.² This relatively new, chiefly investigative unit presents an advanced concept in preventive law, psychiatry, and social work in the mental hygiene field.³

Although it deals with relatively circumscribed areas of public concern, involuntary hospitalization and the mentally ill, the Cuyahoga County probate court psychiatric unit is an important practical operation in the current trend towards expanding governmental recognition of civil rights, in this instance the rights⁴ of the mentally ill. The term "civil rights" embraces such privileges as the right to buy, sell, and hold property; en-

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¹ Kahn, "Current Conceptualizations of Social Work Practice: Their Significance for Social Work Education," in, *Education for Social Work Proceedings* (Jan. 1962) 28.

² Deceased December, 1965. Dr. Crawfis' successor has not yet been appointed by the Ohio State Department of Mental Hygiene and Correction. He was formerly superintendent of Fairhill Psychiatric Hospital, a public institution in Cleveland. Clinical authority for the psychiatric unit had stemmed from the medical coordinator.

³ This article concerns one major aspect of the court psychiatric unit: how to use legal intervention therapeutically. A therapeutic device evolves, and it is not imposed by laws although laws can be enabling. What constitutes a therapeutic use is, to some extent, arguable; however, certain basic tenets hold true, no matter how widely variant one's orientation might be.

⁴ Feature Press Service (October 2, 1961), 2. During 1961 in two separate appearances before the Subcommittee on Constitutional Rights of the Senate Judiciary Committee, the American Civil Liberties Union urged legislative action to remedy the frequent denial of due process of law to the mentally ill. The ACLU statement declared that

civil commitment proceedings . . . leave much to be desired in providing the safeguards against abuse and improvident or malicious action which a free citizenry has a right to expect.

titlement to a driver's license; the right to vote, hold office, practice a profession, or engage in a business; the right to enter into a marriage relationship, to institute divorce proceedings, or to sue for damages. The prime civil right is . . . freedom.⁵ Commitment to a mental institution by itself does not, in all states, suspend civil rights.⁶ The court psychiatric unit is an early outpost of a preventive, coordinative venture which gives, at long last, practical humane expression to protection of and consideration for the civil rights of the mentally ill adult involuntary patient whose condition obstructs his capacity to demand such safeguards himself. Persons suffering from mental disorders are frequently too disabled to claim their civil rights themselves.

Judge Frank J. Merrick's sponsorship of the innovation of a professional probate court psychiatric unit⁷ represents the organizational development of a dramatic change in prevailing social concepts concerning involuntary hospitalization of the adult who is allegedly suffering from a mental disorder. The court psychiatric unit is an outgrowth of landmark legislation⁸ enacted in the 104th Session of the Ohio Legislature, as a result of coordinated efforts of numerous lay and professional groups and individuals who wanted to translate their concern for more humane handling of the mentally ill into an operative system. These new mental hygiene laws⁹ opened the way for a court unit which would be preventive and investigative in purpose,¹⁰ with special emphasis on protecting and facilitating civil rights of the mentally ill.

The court psychiatric unit is a product of the increasingly popular movement towards long awaited *avant garde* legislation which embraces the critical thinking of representatives of the professional disciplines cited earlier. In actuality legislative enactment involved the participation of many community

⁵ Davidson, *Forensic Psychiatry* 271 (2d ed. 1965).

⁶ *Id.* at p. 272.

⁷ The court psychiatric unit serves all of Cuyahoga County. It is not a clinic and does not provide psychiatric treatment or examination.

⁸ Amended Substitute House Bill 529. Governor Michael V. DiSalle was then incumbent. In a statement to the press he referred to this bill as among the most important of the 104th Session.

⁹ Ohio, *Mental Hygiene Laws* (1963).

¹⁰ *Id.* Section 5122.13, p. 24.

representatives and leaders.¹¹ The court unit was established after years of struggle in defining legislation, programs and procedures regarding judicial intervention in hospitalizing mentally ill persons.

Bringing about significant social changes in broader court services is irrelevant unless we understand the connections these changes bear to the individual, to the law, and to society. The community's involvement in this area is crucial—as is the rule of law, which needs special consideration.¹²

Main objectives of the Court Psychiatric Unit are:

1. To help humanize procedures and case management in reference to the involuntary hospitalization of mentally ill adults.
2. To protect the civil rights of those adult persons who may require involuntary hospitalization because of a mental disorder.
3. To conduct psychiatric and social welfare oriented investigations of allegedly mentally ill persons in order to determine the need for involuntary hospitalization.
4. To prevent groundless and/or spite commitments.

The court unit's primary focus is upon humanizing, in the broadest sense of that word those principles and procedures which are involved in the Probate Court's various activities and responsibilities with respect to mentally ill persons. The psychiatric unit, which is itself part of the court, mediates for the court in giving appropriate short-term social work and clinically oriented services to such persons, to their families, and also to other parties concerned, when judicial action is necessary in order to hospitalize a person whose psychiatric condition demands this procedure for his own benefit and safety and for the welfare of society.

Equality before the law is a social work value.¹³ It is also

¹¹ Ohio Association of Probate Court Judges, Ohio State Medical Association, Cleveland Academy of Medicine, Cleveland Mental Health Association, Cleveland Welfare Federation, Ohio State Department of Mental Hygiene, hospital administrators, state legislators and other similar groups combined efforts to revise commitment laws of Ohio.

¹² Perlman, "Unmarried Mothers," in, *Building Social Work Knowledge, Report of a Conference 270* (N. Y. 1964).

¹³ Meier, "Child Neglect," in, *Social Work and Social Problems* (Cohen, ed.) 153 (1964).

a value of the legal profession. In reflecting the medical profession's attitudes Dr. William J. Curran advocates,

cutting through some of the constant overgrowth of laws to clear the ground for the natural movement of people. Certainly we have learned that every time we have removed shackles from the mentally ill they have improved.¹⁴

The basic philosophy guiding the court psychiatric unit was that of instrumenting the changed commitment laws in order that the patients' and their families' best interests might be served clinically, socially, and legally. Changes in the mental health laws were to protect the patient's civil rights, simultaneously reducing legalistic procedure as much as possible and emphasizing a therapeutic approach to investigations and to hospital admission procedures.

A potential psychiatric patient's civil rights should be recognized not only in law but in action. New legislation¹⁵ provided for an investigation prior to a court hearing to be made by trained social workers, authorized and deputized by probate court, who were to inquire into complaints received or referrals made of allegedly mentally ill adults who were subject to hospitalization but who were uncooperative and unwilling to have a psychiatric examination. (Involuntary hospitalization obviously deprives the person of certain liberties and hampers his exercising his civil rights; consequently, the statement that civil rights are protected seems at face value to be a contradiction. The person cannot use his rights temporarily but the situation is incidental to the protection achieved by hospitalization. For that reason the patient's temporary deprivation is humane.) The patient and his family or those who are significant in his life must adjust their relationships to these restraints which diminish their self-reliance and even add to the strain of the problem situation.¹⁶ This role can create a kind of secondary deviance that obfuscates the patient's original problem if his involuntary hospitalization is poorly managed or in error.¹⁷

¹⁴ Curran, *Progress in Mental Health Legislation*, 16 *Boston Med. Q.* 131 (December, 1965).

¹⁵ Secs. 5122.01-5122.99, Ohio Rev. Code. Procedures for hospitalization by judicial action are under Secs. 5122.11-5122.15. Sec. 5122.13 authorizes establishment of a psychiatric unit to make investigations.

¹⁶ Studt, *A Conceptual Approach to Teaching Materials* 161 (1965).

¹⁷ *Ibid.*

Part of the main intent of the new law was to prevent groundless and so-called "spite commitments"¹⁸ which had given impetus to public interest in changing the law. The Unit was responsible for detecting and preventing "spite commitments" and for stressing a psychiatric and social work approach to the hospital admission processes involving the involuntary patient. This section of the law is distinctive in Ohio, and as far as can be determined, distinctive nationally also.

It must be remembered that members of society also have a right to be protected from such serious infringements on their lives and liberties as may be precipitated by a mentally ill person because of his psychological condition and/or because of society's attitudes towards him and towards mentally ill persons generally. The interaction of intrapsychic and external social factors (such as family, business, church) with community agencies or resources forms the broader configuration confronting the probate court psychiatric unit social worker. If the social worker attempts to reduce this constellation to a simple internal psychiatric problem of an individual person, he may obscure the true social issue or issues which the court psychiatric unit was designed to meet. The social problems attendant upon matters of involuntary hospitalization are among the major reasons why social workers were appointed to establish this special court psychiatric unit rather than members of different though related disciplines.

Problems may be seen as occurring in the individual person or in the system of relationships that a person has with others (these have tended to be the dominant perception in social work), or they may reside in the social system as a whole, or in the value system which provides action guidelines for the society. In respect to most social problems the attack should be made on several levels.¹⁹

Dr. William J. Curran has commented that both psychiatry

¹⁸ Maisel, "The Tragedy of Sane People Who Get 'Put Away,'" in Reader's Digest (Feb. 1962), 98. Mr. Maisel has referred to tricky "reform" laws which he says can be interpreted "to rob . . . any well-behaved, non-violent individual of his freedom," and he promotes the idea that denials of justice can be eliminated "only by reforming the 'reform' laws, to accord to all accused of mental illness as fair a hearing as we routinely guarantee those accused of crime."

¹⁹ Sherrard, "Community Forces Affecting Social Work Practice," in, Proceedings of Pacific Northwest Regional Institute (Portland, Ore., July 1964) 1.

and the law are in the midst of revolution. Law is striving for better things, such as human rights and privileges.²⁰

Interpretation of individual state mental hygiene statutes pertains to existing values and philosophical systems of our society.

The law is an indispensable instrument of policy, and social workers must know how to use it and its special contributions and the limitations it imposes.²¹

Limitations pertain to legal policies and their relationship to tradition, norms, values, conventions, plus matters involving risks. Legal policy and interpretation are both fluid and dependent, not only upon the law but upon involvement of social controls and changes. It became evident early in the historical evolution of the court psychiatric unit that social and legal policies must be considered in the context of current legal and community norms, not exclusively in the context of social work ideals. Since controversial matters of legal policy came up repeatedly, it was obligatory to view policies flexibly if the true social problems were to be identified, confronted, and resolved, partially at least—if not wholly.

Social work in approaching community problems, must identify its goals and values and apply this knowledge effectively.²² The clinical approach alone in regard to individual investigations to determine whether a person needs to be hospitalized by court order is important but insufficient by itself. Responsibility of defining the problem may extend beyond the clinical understanding of the individual situation being studied. Without becoming lost in legalisms the court social worker has an obligation to distinguish social, legal and psychological elements in order to determine proper probate court jurisdiction. He must distinguish an identifiable, manageable social problem appropriate for the Court Psychiatric Unit's investigative service.

Specifying the nature of the problem as it appears in the life of an individual is required in all social work practice, in order to design effective intervention.²³

²⁰ Curran, *op. cit. supra* note 14.

²¹ Kahn, *op. cit. supra* note 1.

²² Cohen, "A Social Work Approach," in, *Social Work and Social Problems* (Cohen, ed.) 362 (1964).

²³ Studt, *op. cit. supra* note 16.

The probate court psychiatric unit found itself increasingly in a middleman's role; it also discovered that as an organization it seemed to be functioning almost in isolation.²⁴ Welfare agencies' and others' identification seems to depend solely upon their current value judgments, and the court psychiatric unit is often in an unpopular position, similar to the unpopularity of mentally ill persons in our culture. Whether or not the social worker gives direct client help, he still stands with and speaks for the persons being served,²⁵ and the investigating social worker must keep in mind who his clients are in a given circumstance, but he must also consider who the community regards as his proper clients. The unpopularity and confusion inherent in this role speak for themselves.

A social worker's task tends not to be highly valued by society.²⁶ Involuntary hospitalization of the mentally ill is a problem concerning an outcast group, the alienated, strange members of our western society. These two factors combined with the court psychiatric unit's middleman position and organizational isolation can gravely impede services unless the mediating role is understood to be appropriate by the social work mediator. Illustratively, neighbors may want the court to remove a difficult person who epitomizes a social problem as the community defines it. Despite community pressure the court has a duty to the individual subject of the neighbors' concern, to consider his rights plus such pertinent alternatives as private or public hospitalization (whenever hospitalization is indicated) and significance of his real and personal property within the framework of the total picture.

An individual constituting a danger to himself and/or to others because of an alleged mental condition may fill any one of many diagnostic slots in the continuum of mental disorders. The particular position he occupies may be influenced as much by the degree of social disruption around him as by his intrapsychic imbalance, *i.e.*, a particular combination of social factors at a given time may result, finally, in hospitalization for an emotionally disturbed person, who under different social circumstances, might have been able to maintain himself outside an institution.

²⁴ *Id.* at pp. 13-16.

²⁵ Bartlett, "Characteristics of Social Work," in, *Building Social Work Knowledge, Report of a Conference 1* (N. Y. 1964).

²⁶ *Ibid.*

Although a mentally ill person may want to enter a psychiatric hospital voluntarily, hospital admissions personnel may insist that he be admitted only on court order. Thus, social institutions may exercise questionable influence in determining whether an individual's hospitalization is to become a matter of court record. (It is also recognized that a person's wish for admission as a voluntary may be by-passed for clinical reasons.)

When social institutions arbitrarily exercise controls in deciding such a delicate issue, hampering the person's cooperation for his own benefit, preventive aspects of humanizing involuntary hospitalization are completely overlooked and denied. Social institutions may rationalize such attitudes and behavior by distortion of legal and social policies; consequently, bureaucracy as represented in our various institutions is one of the obstacles to a new organization in the mental health field such as the particular type of court psychiatric unit described here.

The following is a condensed delineation of the fairly complex organization known as the Probate Court Psychiatric Unit. The original plan called for a trained social worker and a secretary to be stationed in each of the four state system public hospitals located in the Cleveland area. At the time of this writing there are three trained social workers plus two case aides and three secretaries. Two social workers and a case aid plus two secretaries are stationed at one hospital, and a trained social worker and a case aide plus one secretary are stationed at another hospital. Probate Court Psychiatric Unit serves public and private hospitals although offices are located in the public hospitals only. All the staff members are deputized.

A referee, who is an attorney from the probate court, comes twice weekly to each state hospital in order to conduct hearings for newly admitted court patients in the hospitals. The hearing is ordinarily in the hospital in which the person is located and it is set up approximately one week from the date of hospitalization of the patient. The hearing is now conducted informally, and the atmosphere is one of greater freedom, warmth and flexibility.

Procedure

The following steps are routinely taken in most instances when the social worker receives a request for service:

Investigation

- (a) If, after initial exploration during the intake period, the court social worker deems it appropriate, the worker is free to explore the complaint further, according to his own best judgment. He has extensive freedom in conducting the investigation.
- (b) He makes field visits as necessary, interviews various persons and consults with others.
- (c) If hospitalization is finally indicated, he may emphasize voluntary hospitalization rather than involuntary, in order to enlist the person's own strength in deciding to take the step of entering a hospital for help. This is an important aspect of the social worker's therapeutic intervention.
- (d) If judicial action must be taken, it is initiated by the filing of an affidavit.²⁷ Customarily the court social worker tries to contact a relative or friend of the individual to file, although it is possible for the social worker to file on the person. The latter action is ordinarily not taken except in those instances in which there are no affiants or in which available affiants are unacceptable because of their attitudes or their own mental status.
- (e) Individuals may be placed in both public and private hospitals by Orders of Detention, the above procedures being developed and implemented by trained personnel with special knowledge of therapeutic management of the case. An Order of Detention is not written unless availability of a hospital bed has first been verified. This tends to eliminate unnecessary shuttling back and forth of the person.
- (f) A hearing date is set at the time the Order of Detention is issued, and it is usually one week from the date of the order's issuance. Notices of hearing are sent to the patient and to next of kin of legal age living in Cuyahoga County. A notice of hearing may also be

²⁷ Sec. 5122.11, Ohio Rev. Code. (The affiant is not liable, nor does he become responsible for the patient's hospital bills by the act of filing. Sec. 5122.34, Ohio Rev. Code).

sent to certain other individuals such as attorneys and guardians.

Essentially the program is designed to put good social work practice into effect in those sections of the law which deal with involuntary hospitalization of the mentally ill adult, the social worker applying his casework skills in the entirety of the operation from the intake decision up to the court hearing, after which the psychiatric unit's jurisdiction ceases. The court psychiatric unit was intended to be operative with special reference to involuntary hospital admissions of adults.²⁸ Confidential information²⁹ obtained by the social worker in the course of the investigation is sent to that hospital which is to receive the patient, and information other than a court journal entry and court docket entry is kept confidential within the probate court.

The court social work investigator who works out of a psychiatric hospital is not part of a hospital team in the conventional sense. More circumscribed services are offered by the court, and these are almost entirely confined to admissions and preadmissions areas, and to that initial period within the hospital up to the time of the court hearing.

New laws emphasize voluntary and nonjudicial admissions. In addition, they emphasize transition from a legalistic to a clinical and psychiatric approach.

General public good is an accepted value in the interpretation and administration of mental health laws. The individual has rights too, however, and the public good versus individual rights conflict may seriously interfere with the social worker's intervention in what was originally reported to the court investigator as solely a clinical situation. Such problems as these are obviously far more simply stated than resolved, and their working out requires the exercise of much thoughtful discretion as to how best to intervene.

²⁸ Admission policies among private and public hospitals are their responsibilities, and development of such policies is not directly the court psychiatric unit's responsibility. In order to comply with the intent of the Code, however, the psychiatric unit staff usually suggests that effort be made to explore every admission category with the hospital concerned before considering judicial action.

²⁹ Sec. 5122.31, Ohio Rev. Code, which provides that, upon proper inquiry, information as to the patient's current medical condition may be given to members of the family.

In judicial hospitalization, social work intervention is equated with legal intervention since the social worker, being deputized, has the legal power to support his decision with action. Grounds for legal intervention are outlined in the statutes,³⁰ but the act of intervening itself to some extent represents a value judgment by the social worker.³¹ The social worker blends legal policy with social work values in his approach to and identification of the social problem, and he does this within a dynamic legal frame.³² Subtleties may enter into justification of that specific application of the law which results in the social worker's decision to hospitalize someone by court order. The social worker must justify and support his decision. A simple marshalling of the factual evidence may be sufficient to comply with the mental health statute, but community welfare issues may demand more than mere compliance with statutory requirements. Such factors as these must be considered for intervention to be realistically therapeutic.

The task of humanizing involuntary hospitalization of adults with mental disorders is affected by the community's implied and expressed attitudes. On occasion community norms are at cross-purposes with social work values, and since legal policy allows leeway in interpretation and application of the mental health code, how is the social worker to weigh these values and facts?

Broadly speaking, what social work can do about a problem depends on the community's understanding, interpretation of, and feeling of involvement in the problem as represented in a given issue.³³ Social work is not practiced in isolation and all-powerfully in reference to judicial hospitalization of the mentally ill. It shares with other related professions and fields a concern about advancing human welfare.³⁴ In the Cuyahoga County Probate Court Psychiatric Unit it is inherent in the social worker's investigations that he coordinate his practice with that of attorneys, physicians, health and welfare agencies, all of which means that the social worker must look beyond the complainant-defendant dyad.

³⁰ Meier, *op. cit. supra* note 13.

³¹ *Ibid.*

³² Secs. 5122.11-5122.13, Ohio Rev. Code.

³³ Perlman, *op. cit. supra* note 12.

³⁴ Cohen, *op. cit. supra* note 22.

A tendency exists to regard the law as fixed and inviolable even though it is modifiable. Those who provide direct service in instrumenting the mental health code learn how to apply the statute in effecting social changes since they realize that laws are subject to interpretation and precedent, neither of which is necessarily binding. Legal policy can be an inhibitory force when it is reduced to minor procedural matters. The writer is not minimizing procedure (since unquestionably procedures constitute safeguards), but rather viewing procedural matters from a meld of legal and social perspectives.

The end-product resulting from the unification of legal/social policy with case individualization is a dynamic social and legal service whereby the court psychiatric unit meets therapeutically a definable human need. This organization represents the means of obtaining a new, practical, imaginative remedy for a social problem. The remedy involves application of social, legal and psychiatric concepts. The social change objective is to prevent spite and groundless court hospitalizations, to help protect civil rights of mentally ill adults, and to humanize involuntary hospitalization of these persons.

The psychiatric unit social worker possesses legal authority empowering him to act on his opinion and decision in making an investigation and finally in hospitalizing or not the person for observation and treatment. Helen Perlman has aptly stated that,

Professional opinion is held to be "authoritative" in direct proportion to its actual or ascribed powers.³⁵

Further, she stated that social work does not generally possess the power or authority attributed to it.³⁶ Her statement is remarkable if applied to the court psychiatric unit which does have real power although not to the extent the community seems to believe. The authority is written in the statute and pertains to areas of investigation and pre-hospitalization.

Although this complex problem of humanizing involuntary hospitalization of the mentally ill is within the purview of social work, it is also very properly within the scope of law and psychiatry. There is no sound alternative for any one of the professions other than collaboration with the others.

³⁵ Perlman, *op. cit. supra* note 12.

³⁶ *Ibid.*

Competent social work must be able to assess situations from a broad social work viewpoint, freed from limitations of any specific method,³⁷ the purpose of such assessment being to determine which intervention methods are best for dealing with the particular problems.³⁸ New intervention techniques for social problems may be incorporated into practice very slowly if their application requires radical changes in the structure of services or in habits of work.³⁹ Professor Alfred J. Kahn has emphasized that we shall continue to be handicapped in evaluating a strategy for implementing human rights and institutionalizing social welfare provisions unless there is considerable stepping-up of joint teaching and cooperative research with members of our law school faculties.⁴⁰

In helping individuals and groups to achieve self-fulfillment, social work is in a particularly sensitive position to support other activities which promote that goal.⁴¹ From the broader view of related social issues, community structure is affected by the changes occurring as the new service evolves. As is true of all innovations, the court psychiatric unit is subject to controversy and criticism. Within the framework of a system which embodies a coordinative venture of the law, psychiatry, and social work, the psychiatric unit works towards clarifying interaction between psychiatry, the law, social work, and current social changes as reflected in actual administration of this trial-blazing program.

³⁷ Bartlett, *op. cit. supra* note 25. Although the casework approach is followed in much of the work, other methods are used as indicated.

³⁸ *Ibid.*

³⁹ Meier, *op. cit. supra* note 13.

⁴⁰ Kahn, *op. cit. supra* note 1.

⁴¹ Lourie, "Poverty," in, *Social Work and Social Problems* (Cohen, ed.) 1 (1964).