Legal Notes

on public health

Recent Judicial Decisions Relating to Mental Health

Two recent court decisions have considerable interest for public officials with responsibilities in the fields of mental health and law enforcement. The Supreme Court of Missouri has held unconstitutional a recent statute modernizing procedures for the hospitalization of the mentally ill. The United States Circuit Court of Appeals for the District of Columbia has discarded the traditional, and all but universal, legal definition of "insanity" (the "ability to distinguish between right and wrong" and the "irresistible impulse" tests) as a test of criminal responsibility in the District of Columbia and substituted for it the broad test whether the criminal act charged was the product of mental disease or mental defect.

Hospitalization for Mental Illness Without Prior Court Order

The case of *Missouri ex rel. Fuller* v. *Mullinax*, decided on June 14, 1954 (269 SW 2d 72), came to the Supreme Court of Missouri on an original writ of mandamus to compel admission of a patient to a State mental hospital after the superintendent had refused admission on the basis of advice that the Missouri statute was unconstitutional. In conformity with the statutory admission procedures, the patient's admission was applied for in writing by her mother; the application was accompanied with the required medical certification stating the belief that the patient was likely to injure herself or others if allowed to remain at liberty; and it was duly endorsed by a probate court judge.

The statute provided for hearing or release of the patient on request: No patient admitted without full judicial procedures could be detained more than 48 hours after his request for release unless within that time the hospital head certified to a court his belief that the patient's release would be unsafe for the patient himself or for others. The court could then authorize postponement of release for not more than 5 days to allow time for the commencement of judicial proceedings. The patient's right to release upon request or to the commencement of judicial proceedings is fortified by a statutory obligation imposed upon the head of the hospital "to provide reasonable means and arrangements for informing involuntary patients of their right to release . . . and for assisting them in making and presenting requests for release."

The court held that these admission procedures failed to satisfy the due process requirements of the Federal and Missouri constitutions because such procedures would permit persons to be deprived of their liberty without notice, hearing, or the opportunity of defending themselves on the issue of their sanity or mental illness. It further held that the deficiencies of the admission procedures were not cured by the provisions for hearing after request for release, although it did note a line of contrary cases from other jurisdictions.

The opinion repeats the established rule that the State, in the exercise of its police power, may provide for the apprehension of persons thought to be insane and for their temporary detention without notice or hearing until the truth of the allegation of insanity can be tested in a judicial proceeding. But the ruling in this case seems to say that a court proceeding is a constitutional requisite to any temporary hospitalization other than upon the patient's own application if the hospitalization extends beyond the immediate emergency, even though under the Missouri statute the patient could not have been kept in the hospital without a court order for more than 48 hours after her request for release. The inadequacy of these procedures, as viewed by the Missouri court, seems to lie in the omission of provisions which would make notice and hearing automatic in all

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cases, rather than contingent upon the patient's later request for release.

The challenged Missouri statute embodied the substance of a draft act "governing hospitalization of the mentally ill." This was developed in 1951, by a working group called together by the then Federal Security Agency, along the lines of the recommendations contained in a 1950 study report prepared by the Council of State Governments, in response to a request of the National Advisory Mental Health Council of the Public Health Service. (See A Draft Act Governing Hospitalization of the Mentally Ill, Public Health Service Publication No. 51, Washington, D. C., Government Printing Office, 1952; and also The Mental Health Programs of the Forty-eight States—A Report to the Governors' Conference, Chicago, The Council of State Governments, 1950.)

One of the major objectives of the draft act was the framing of procedures for the indeterminate hospitalization of persons in need of treatment for mental illness which, even though the patient does not affirmatively consent to his hospitalization, would nevertheless eliminate most, if not all, of the medically objectionable features of many current procedures. More specifically, it was sought to avoid both the criminal connotations and the damaging exposures of the usual judicial procedures and to make admissions for treatment in a mental hospital as similar as possible to admissions and treatment in any other hospital. In addition to the danger of damaging effects on the condition of disturbed patients, reliance upon formal judicial commitment procedures as the basic process for admission to mental hospitals was thought to be a serious deterrent to early care.

The 1950 report of the Council of State Governments shows 11 States with alternative involuntary commitment procedures for indefinite hospitalization, which rested upon medical certification without court intervention. Under these procedures, judicial machinery is not put in motion unless there is a subsequent application. Also, aside from emergency commitment procedures, 9 States (3 of which are in the group of 11) permitted temporary observational commitment on medical certification without judicial order, for a period limited by statute but usually longer than the time permitted under emergency procedures. (See The Mental Health Programs of the Forty-eight States, pp. 49–63.) At least two States—South Carolina and Kentucky—have recently revised their commitment legislation to shift the emphasis from legal to medical procedures for initial admissions (South Carolina Acts and Joint Resolutions, 1952, No. 836, p. 2042; and Kentucky Senate Bill No. 58, enacted March 1954). It is worth noting that the Interstate Clearinghouse on Mental Health of the Council of State Governments, 1313 East 60th Street, Chicago, Ill., has in prospect a compilation of State mental health legislation passed in 1954.

The draft act was built on this general pattern of newer State legislation, but gives greater attention to subsequent safeguards against unwarranted detention than some of the State statutes existing at the time. An important purpose of the new procedures was to encourage the hospitalization of nonobjecting, as well as of voluntary, patients by assuring prospective patients and their families that admission to a mental hospital for treatment was not a forfeiture of liberty. At the same time, it was necessary to provide some means of dealing temporarily with patients who could not safely be allowed to go unrestrained and to provide opportunity for prompt recourse to judicial proceedings for protection against wrongful detention.

The ruling in the Missouri case seems to foreclose, in that jurisdiction, opportunity for indeterminate hospitalization, not initiated by the patient himself, without formal judicial action. The opinion stresses the issue of an adequate basis for indefinite detention, rather than adequacy of the basis for admission and of subsequent protection against continued detention of an objecting patient. This contrasts with the basic principles of the draft act: ready access to needed care on the basis of medical judgments, with safeguards to assure prompt discharge when the patient's condition permits, and in all cases of admissions not pursuant to court order, release upon request unless judicial procedures are at once begun. The practical result of the decision is that if admission had been permitted the patient could have either left the hospital or have had her need for treatment established by court proceeding if she or her

parents requested her discharge. Now her treatment must wait until the need for hospitalization has been established by more formal procedures.

The Issue of "Insanity" In the District of Columbia

Since 1882, the ability to distinguish between "right and wrong" has been the basic test of insanity in the District of Columbia for purposes of establishing criminal responsibility. In 1929, the "irresistible impulse" test was approved as a supplementary test.

In *Durham* v. *United States*, decided on July 1, 1954 (23 Law Week 2003), the United States Court of Appeals for the District of Columbia held that these tests were outmoded and unsatisfactory in the light of our present-day knowledge. For the future, the court declared the rule to be "simply that an accused is not criminally responsible if his unlawful act was the product of mental disease or mental defect."

The opinion reviews the history of the right-wrong test and the long effort to secure its revision; and concludes that the scientific and other authorities examined present "convincing evidence that the right-and-wrong test is 'based on an entirely obsolete and misleading conception of the nature of insanity.' The science of psychiatry now recognizes that a man is an integrated personality and that reason, which is only one element in that personality, is not the sole determinant of his conduct. The right-wrong test, which considers knowledge or reason alone, is therefore an inadequate guide to mental responsibility in criminal behavior." But, for the court, the fundamental objection was "not that criminal irresponsibility is made to rest upon an inadequate, invalid or indeterminable symptom or manifestation, but that it is made to rest upon *any* particular symptom. . . . In this field of law as in others, the fact finder should be free to consider all information advanced by relevant scientific disciplines."

The opinion presents, as a guide for the application of the new District of Columbia rule, the substance of appropriate instructions to the jury, which ends as follows: ". . . your task would not be completed upon finding, if you did, that the accused suffered from a mental disease or defect. He would still be responsible for his unlawful act if there was no causal connection between such mental abnormality and the act. These questions must be determined by you from the facts which you find to be fairly deducible from the testimony and the evidence in the case."

In an interesting case—*Stewart* v. *United States*, decided on July 15, 1954 (23 Law Week 2034), which was considered with the *Durham* case for the purpose of reexamining the test of criminal resposibility when insanity is an issue—the court rejected a rule of "diminished responsibility," to be applied in capital cases, for mental disorder short of insanity. "Under such a rule, if the jury found (1) that the accused suffered from a mental disorder not amounting to insanity sufficient to excuse him from criminal responsibility under applicable tests, and (2) that such mental disorder deprived him of the requisite 'sound memory and discretion' essential for conviction of first degree murder, it could convict him of the lesser crime of second degree murder."

The court in the *Stewart* case recognized the force of arguments advanced for a rule of diminished responsibility—that it would accord with modern psychiatric knowledge which denies that people are either absolutely responsible or absolutely irresponsible, and that inability to deliberate or premeditate owing to mental disorder should, as when caused by drunkenness, preclude a conviction when the degree of the offense charged requires capacity to deliberate or premeditate or requires "sound memory and discretion." Nevertheless, the court concluded that reconsideration of the adoption of the rule in the District of Columbia should await appraisal of the results of the broadened test announced in the *Durham* case. "Only upon such an appraisal," said the court, "will it be possible to determine whether need for the rule remains."

A footnote to the opinion points to a survey (made by the amicus curiae) of State statutes and decisions related to the limited responsibility principle which showed that the doctrine had been accepted in 9 States, probably accepted in 5 more, rejected in 6, and probably rejected in 5.