

"THE CIVIL COMMITTAL PROCESS"

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John Dawson's paper confirms the long held view of this Association that the psychiatric patient is placed by that label into a clearly inferior situation. Such a situation involves a denial of help and legal rights that would not be tolerated for an instant in the case of the most patently guilty criminal offender. Ironically enough, the argument in favour of the status quo is that these rights are not necessary, as the patient is not guilty of anything, but is under a medical not a penal regime.

Despite this pious rationalisation of the patient's status, the results of medical intervention in a patient's life can be as drastic as most things that the courts can dispense - in fact the caring sentence can involve medical and surgical interference with a patient not possible in respect of a criminal. This having been said, it is obvious that the treatment given to patients is usually designed for their own good, as seen by the medical or paramedical people they are in contact with. It is true also that most people who are designated as psychiatric patients have a problem, and sometimes treatment can help them. But the complete absence of a friend at court, of independent advice to the patient, friend or family, the rigid opposition of the Department of Health to any suggestion of legal help at committal hearings - these underline a serious defect in the approach to the people we are talking about.

We believe it is intolerable that at committal hearings not only is the patient excluded from evidence in favour of committal, and rarely are there any witnesses on the patient's behalf, but that the medical evidence is taken as infallible on face value.

In 1980 our Association conducted a seminar in Wellington on the general issue of patients rights. A deputy superintendent of a psychiatric hospital told us his disquiet at some medical certificates he had seen that led to the committal of patients.

He suggested "The time is ripe for real headway in seeing patients get a better deal, which could mean little more than preserving their right to be an ordinary citizen in spite of being patients, psychiatric or committed".

The report of that same seminar recorded the conclusion that legal representation, or advocacy by someone who has had a chance to look at the situation from the patient's view, is a fundamental requirement. True, this would likely mean many committals would proceed as they do now; but we are certain that some would not. And even in those cases where things proceeded as at present, society would have the assurance that legal measures taken against people on medical grounds, would have been subject to a check from someone there to look at the patient's case from entirely the patient's viewpoint.

The very presence of such a check would also ensure the greatest care by all concerned in procedures that can confine and compel. We are sure of the latter proposition through the fact that every serious investigation of New Zealand psychiatric institutions in recent times has brought to light some defects ranging from important to very serious indeed. The need for someone to interfere in the public interest, as well as the individual patient's is, we consider, patently established.

In the case of patients with cultural differences to the dominating European culture, the need is greater than usual. This calls for some kind of representation from "friends at court" who come from the same ethnic background as the patient.

We do not see this as purely a legal matter, or purely a medical one. Finally it is up to a legal officer to decide whether or not to commit the patient. Our stance is that such a hearing, and any other type of review, should only take place when someone with standing before the hearing has reported on the patient's side of the story. And such a person must be separate from the institution or person seeking committal or opposing a review. This must be the patient's friend at court. It is not a new idea - just one that, from the recent review of the Mental Health Act, has evoked the fixed opposition of the Department of Health.

Perhaps the Department needs an examination by two (independent) doctors.

John Dawson mentions the possibility of new mental health laws. Some of those proposed increase rather than diminish the need for the widest possible range of facts at committal hearings. If we do make our law more precise, and decide only to commit those who are a danger to themselves or to others, this introduces judgements that call for much more than the hearsay that often suffices at present in committal hearings according to John Dawson's paper. Judgements on potential actions of patients can never be infallible either way, pessimistic or optimistic, but as a society we have to feel sure that what we do is the best we can do.

In conclusion our Association would advocate a serious discussion by all affected parties, on the premise that the patient must have a better deal than now in representation, advice and support, in all stages of psychiatric procedures.