EDITORIAL COMMENT

MÉDECINS MALGRÉ LES AVOCATS!*

What is the matter with the writ of *habeas corpus?* The principle of *habeas corpus* has served English-speaking people well since a June day at Runnimede in the year 1215, when the barons wrested Magna Carta from King John.

Or is it, perhaps, the Oath of Hippocrates that is at fault? The physician cannot observe all of its provisions literally today; but its principles have set the highest ethical standards that we know —for any profession since the great days of ancient Greece.

Is it possible that, in contempt of possible writs and in wholesale disregard of their oaths (for psychiatrists are doctors long before they qualify as psychiatrists) many members of the medical staffs of New York State's institutions have entered into conspiracies to deprive helpless persons of their liberty on the false excuse that they are mentally ill? What else would explain an effort to cut red tape for a person to enter a mental hospital for treatment and leave when well, that was transformed immediately into a proposal to increase vastly the supervision of these institutions by the courts? Is the law more ethical than medicine?

There seems to be massive suspicion of psychiatry here. Has somebody been taking Wilkie Collins** as a text? Or one of his lesser imitators? The railroading of a normal person to an "insane asylum," while some villain went off with his money or his wife became a favorite plot element in later nineteenth-century fiction. It was, as this journal has noted several times before, a well-known theme in *The Thousand Nights and a Night,* where three perfectly sane "madmen" figure largely in *The Tale of the Royal Bastard*— two being confined for offenses against their wives, the third for pinching a princess' bottom. (All three stories ended "happily.")

The contemporary story, however, has the typical Wilkie Collins pattern; and anybody who doubts it is hereby invited to visit any of our large hospitals and inquire at random for patients who have been locked up because relatives wanted to steal their fortunes, or wives, or children. In the days before tranquilizers, one could hear

*Apologies to Molière.

**Collins, Wilkie: The Woman in White. (London. 1861.) With: The Moonstone. (London. 1868.) Modern Library. Random House. New York. 1937.

from behind the bars of almost any open window shrieks for help to get home to one's mansion and wealthy family. Among the persecuted, one can almost always find inventors whose patents have been stolen and whose rights have been trampled upon, kings whose kingdoms have been usurped, or even saints, exiled from heaven and punished for their protestations of sainthood by a skeptical world.

This is an argument for the continued and extended use of the writ of *habeas corpus* and for the court hearing where the director refuses discharge; but in any institution of fair size, one can find a dozen happily paranoid patients who would have little difficulty in persuading any nonmedical person to take up their "righteous fight for freedom," and—if there were not expert psychiatric testimony to the contrary—a good many such patients would win their freedom in court too. There are also others who would make a splendid impression on laymen in a court of law. There is the well-known patient who is perfectly well in the hospital and violently psychotic on release; there are alcoholics and manic-depressives in states of remission that the psychiatrist can confidently count on lasting from two days to two weeks in the community; and there are epileptics who have displayed severe episodic psychotic manifestations.

The present proposals for amendment of the New York State Mental Hygiene Law are calculated to set persons not well enough trained to recognize these conditions, in authority above those who are. The proposals have been watered down from the original plan to have automatic periodic judicial review of all cases in the mental hospital to a plan to set up a report service staffed by psychiatric social workers to *transmit* (sic) reports to the courts periodically on all involuntarily hospitalized cases.

In defense of the proposals as they now stand, Chairman J. Kenneth Campbell of the special committee, of the Association of the Bar of the City of New York, set up to study commitment procedures, remarks, "The fact remains, however, that the science of psychiatry is still inexact and that psychiatrists, like lawyers and all other humans, are capable of error." If there is an unpleasantly patronizing tone here, it is also a fact that psychiatrists have, in their turn, been unpleasantly patronizing. The M'Naghten rules for responsibility in a criminal case are unrealistic, unscientific, and thoroughly infuriating to the psychiatric expert witness;

and sometimes psychiatry appears to imply that if the law had the sense of a low-grade moron, there would be widespread recognition of the fact, and widespread acceptance of changes proposed by psychiatry. There have also been suggestions from psychiatry that it would be well if boards could be set up to make periodic checks on the mental normality of those in public office—from the alderman to the president of the United States (and the justices of the United States Supreme Court). A psychotic in high office can bring about disaster—as witness Hitler!

This journal believes that improved medical care, easier access to the machinery of *habeas corpus,* and easier entrance to, and discharge from, our mental hospitals are all matters greatly to be desired within the reasonable limits of professional capacity and human organization. Many more expert psychiatric personnel are needed; easier recourse to the law would be just as welcome. Where the procedure is carried out conscientiously the occasional patient who should have a court hearing is accorded a writ, or is heard with respect to "discharge on bond." No one can properly criticize these rights for the patient. Some years ago the Department of Mental Hygiene facilitated contacts with lawyers for patients and the preparation of petitions for writs. However and notwithstanding, in some 34 years of experience at three state hospitals, the editor has seen no patient benefit under this procedure.

The presently-proposed amended amendment would make more sense if it also provided that committees of nurses, dieticians and laboratory technicians were to report to the courts on diagnoses of pneumonia, cancer or pernicious anemia before doctors in general hospitals were allowed to admit patients and start treatment. When such a procedure saves lives and makes the lot of surviving patients easier, it will recommend itself better for acceptance in mental hospitals. As matters stand, the lawyer peering over the shoulder of the psychiatrist as he treats his patients (even the lawyer peering through a bevy of social workers) would be about as helpful as the psychiatrist peering over the shoulder of the district attorney as he prosecutes a case in court.

The original proposed amendment to the Mental Hygiene Law governing admissions to New York state hospitals was criticized from many quarters very vigorously last December. The current amendment of this amendment dilutes some of the most objectionable changes which were urged, but it still presents many objection-

able features, both from the standpoint of the lawyer and from the standpoint of the psychiatrist, as has been pointed out. Just as there are irreconcilable viewpoints concerning criminal responsibility, there will be continuing dissatisfacton with any procedure which tries to build legal manipulations into the medical treatment of serious illnesses.

For varying conscious and unconscious reasons, a number of persons have been urging a wholesale rehashing of the New York State Mental Hygiene Law. The two amendments cited here however are a product of a special committee on the study of commitment procedures set up by the Association of the Bar of the City of New York. Eminent jurists and eminent psychiatrists served on that committee.

It should be recalled, however, that for about one hundred years, judges have committed patients to hospitals, and doctors have treated and discharged those patients. It is the editor's belief that in general a good job has been done. Fairly uniform statistics confirm this impression. During this period the Mental Hygiene Law has not been static—many progressive changes have been made. For the "forgotten patient," provision was also made in 1954 at each hospital for the position of release officer. The function of these experienced psychiatrists was primarily to seek out patients who might be eligible for release. Until the hospitals fell on hard times, this function was fully performed by these officers.

It is frequently forgotten that almost 50 per cent of New York's admissions consist of patients who suffer with actual senile and arteriosclerotic brain disorders. Despite some of the claptrap that is regularly dispensed by certain "authorities," the vast majority of these patients are clearly psychotic within the meaning of the law, are entitled to good medical treatment under psychiatric supervision, and generally cannot be cared for in the average nursing home or chronic disease hospital. The very nature of their illness weakens their minds so that they cannot choose to enter a hospital voluntarily and must be certified involuntarily. By the same token, they are not competent enough to decide for themselves when they are well enough to leave the hospital.*

*For an exposition of the legal and medical opposing views of this complex subject, see the Letters to the Editor from Dr. Leon Kankoff and Supreme Court Court Justice Benjamin Brenner beginning on Page 2577 of the *New York State Journal of Medicine* for September 1, 1963.

Against this figure, one must place the fact that about 34 per cent of New York's total patients come to the hospitals voluntarily —which leaves a very small proportion of patients outside the senile-arteriosclerotic group who require certification. More of these could come voluntarily, and with better public education, there will no doubt be more in the future. The hospitals will be pleased to receive them in this manner if they apply in good conscience and are determined to stay until they are well. From the standpoint of the hospital, however, the period for treatment currently provided in the law is much too short for a genuine, therapeutic effort.

Much is made in the full report of the committee about the commitment procedure. However, the burden of producing and hearing full data concerning each proposed admission should not be shifted to the hospital. The primary step should be to require the judge in each instance to hold a hearing. There is no doubt that notice should be given in almost every case. If the judge has any reservation at all about the facts recited in the medical certificate, he should have a doctor present them verbally one by one. Here comes the rub, however: These examinations are not made by psychiatrists; with few exceptions, not enough psychiatrists are available in each community. Until there are enough psychiatrists in private practice who will leave their offices to perform this function for the courts, this procedure will be unsatisfactory in the opinion of many in the legal, and medical, professions. The presiding justice should also require that the patient have counsel if he believes that this will in any way safeguard the patient's rights.

However, it must be emphasized that the burden of producing the pertinent information for each patient involuntarily committed, should not be shifted to the already overloaded state hospital staff. At the end of August 1963, the state hospitals lacked 232 psychiatrists. Under such circumstances, how can the hospitals give very much more than "custodial care," let alone take on more paper work and court appearances? In the current amendment, there is very free provision for hearings, and rehearings, at which, again, the time of the psychiatrist will be taken away from the treatment of patients for appearance at such multiple hearings, and for the preparation of reports to the proposed mental health reporting service.

It is now argued that this proposed service will be staffed by social workers. Here it should be said that the New York State Department of Mental Hygiene currently is short 95 such social workers, who represent about 20 per cent of its strength. This reflects the general shortage of psychiatric social workers too. Remembering that social workers (like probation officers) depend upon psychiatrists for estimations of psychiatric conditions and progress, here again will be another infringement on physicians' treatment time. Considering that each year more than 12,000 patients are certified to the New York state hospitals, the additional secretarial work and the tons of paper required by the new procedures in the making out and the giving of notices, the preparation of reports and petitions, the forwarding of demands for hearings, and the correspondence with respect to conferences between patients and review service staff members are appalling.

In truth, if there has been a fault, it has been the too early release of certain patients in recent years. Whether there is recovery from illness, is still a medical decision. Apparently the committee did not learn that in the medium-sized state hospital, for example, at least one-half day is spent each week in which 30 patients proposed for release by their doctors are seen personally by experienced psychiatrists, and their records reviewed. The figures for such releases are matters of public record. Is this function to be aborted lightly?

The logic of injecting trial by jury of the question of the mental illness of the patient authorized to be retained at the hospital is very difficult to understand. Jurors are not doctors and again would have to depend on doctors for expert testimony.

Instead of the proposals here contained, the State of New York should secure by *whatever means are necessary* enough psychiatrists so that each patient will be treated and followed adequately, and enough psychiatrists at the senior level to screen every individual patient for possible release at frequent intervals. This is the point where dollars and physicians' time should be spent—not on report services.

Lying right within the presiding justice's hand are the remedies for any faults in the certifying procedure. He can demand notice, a hearing, professional testimony and counsel for the alleged patient, before he "commits" him.

THE EDITOR