

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
March 16, 1979

The sixty-first meeting of the Senate Judiciary Committee was called to order by Senator Everett R. Lensink, Chairman, in room 331 of the capitol building on the above date at 9:32 a.m.

ROLL CALL:

All members were present.

CONSIDERATION OF HOUSE BILL 860:

This is an act to require a claimant to first permit an alleged libel published in or broadcast by communications media to be corrected before claiming punitive damages, etc. Representative Scully gave an explanation of this bill.

Bill Merrick, representing the Montana Broadcasters, stated that they support this bill. He said that sometimes, it is impossible for them to control what goes on the air and he said that sometimes there are live broadcasts in the community and they may become a party to an action by something that is broadcast and this bill gives them an opportunity to reply to it.

Bud Blanchette, representing the Western Broadcasting Company, Missoula, read a statement. See Exhibit A.

Hal Stearnes, representing the Montana Press Association, said there was at least twenty cases where somebody was irritated about something in the paper and he said, in every case, it was a misprint. He said in one instance they wrote "bottle scarred" instead of "battle scarred" and the relatives felt that it was not a misprint.

Mike Meloy, representing Lee Newspapers and Montana Press Association, said that this was almost the same as an Oregon statute that was tested a number of years ago and was found to be constitutional. He also addressed other problems.

There were no further proponents and no opponents.

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Senator Van Valkenburg noted that this was a substantial change and he said there was no way the code commission could have come up with this.

Joan Mayer from the Legislative Council said that she did not know whether the courts will uphold it or not.

Senator Brown questioned how many lawsuits have been filed since it was declared unconstitutional. Mr. Meloy said none.

Senator Towe said there is punitive damages on page 1, but when you get over to page 3, it is not limited to punitive damages at all - it says "any damages" and he wondered if that was what was intended. He gave an explanation of general damages and punitive damages. Representative Scully said that in most libel suits, he has never seen a recovery over general damages.

Senator Towe questioned on page 2, line 25, the language "or misapprehension" and he wondered what does that mean and if they had any objections to taking that out.

There were no further questions and comments and the hearing on this bill was closed.

CONSIDERATION OF HOUSE BILL 691:

This is an act to permit the information of nonprofit corporations to provide prepaid legal services and to regulate the activities of such corporations. Representative Harrington explained the bill.

Les Loble, representing the Montana Legal Protection Plan Inc., and the State Bar of Montana, gave an explanation of this bill and said that this bill has been in for a number of years now. He explained the bill and what it would do.

J. C. Weingartner, representing the State Bar Association, stated that they support this bill.

There were no further proponents and no opponents.

Senator O'Hara questioned if they were quite sure that this would not solicit a lot of needless litigation. Mr. Loble stated that he did not think so.

Senator Anderson stated that you hammer the insurance department and then you don't want to pay them anything. Mr. Loble said he talked with the insurance people, and on page 14, and this was what we thought was a good solution. He said if a number of plans generate, a lot of money - if not much generated - not much to register.

Senator Towe questioned on page 15, line 3, - filing the annual report - 20 cents. He stated we fully eliminate this on the blues - we put in an amount to be determined by the application required by the legislature. Mr. Loble stated that in the case of the blues, that is a practical solution. He said that if those fees are not sufficient, they can be increased, but to make it an open-end matter, you will just break the plan.

Jo Driscoll, Chief Deputy Insurance Commissioner, stated that the budget appropriated one person to them and they asked for two. She said that she did not think the plan in the first year would create too much but they would like to at least anticipate enough money to hire another person.

It was noted that an amendment had been put in by the house on second reading (not in the copy of the bill used by the committee) that those fees shall be used to pay the costs of the duties imposed by this act.

Senator Towe stated that in general, page 3, line 3, prohibits profit organizations from doing that now, prohibiting attorneys from that type of organization. He asked Mr. Loble to comment on this. Mr. Loble stated that commitment is to an open panel plan, it was to be on a free choice of lawyers and we felt that such a group should not be profit oriented and they felt a group of people should have the option to go to whoever they want.

Senator Towe questioned if he saw any problems with annual retainers for law firms under the definition of legal services corporation under prepaid legal services or reimbursements. He wondered if a group receives an annual retainer, are they going to be banned under this law. Mr. Loble stated I hope not. He said he hoped that their corporation would be able to work under this law.

Senator Van Valkenburg questioned why on page 16, section 25, it requires malpractice insurance and he wondered why that was necessary. Mr. Loble stated that they felt it was necessary. Senator Van Valkenburg asked if it would not be sufficient if he advised his client that he never carried malpractice insurance and Mr. Loble said that it guessed it would. Senator Olson asked if most lawyers carry malpractice and Senator Van Valkenburg stated that about 20 per cent.

Senator Turnage asked if they were proposing to start out with \$60.00 fee - he said it was not in the bill. Mr. Loble said he thought it was and it comes out 1 cent per hour per person.

There were no further questions or comments and the hearing on this bill was closed.

CONSIDERATION OF HOUSE BILL 877:

This is an act to abolish the defense of mental disease or defect in criminal actions, etc. Representative Keedy stated that this bill was similar to SB 495 sponsored by Senator Towe, which was passed by the Senate. He stated that the effect would be to bring about a traumatic change in the psychological defense of a criminal. He gave an explanation of what this bill would do.

Marc Rocicot, representing the Montana County Attorneys' Association, stated that it was difficult for him to say whether he was a proponent or an opponent. He stated that he feels that we need to take a hard look at mental disease in our statutes. He stated they are somewhat concerned about the standard that is left in the statutes, but he thought Keedy's bill may be somewhat ambiguous and somewhat strict. He stated that he cannot say that this is the consensus of every other attorney. He also testified that he was somewhat concerned about the burden of proof being removed from the statute and preponderance of evidence and that this is a substantial deviation from present law. He also said that he did not see any substantial difference between this law and Senator Towe's bill.

Gladys Johnson, Great Falls, a member of the Cascade Crime Group, said that we are in support of the bills that will do something about correcting the errors and abuses of the laws of Montana for crimes against people.

Mike McCarte, from the attorney general's office, stated they opposed this bill somewhat reluctantly. He said that they agree with the principle of the bill, but they have some problems with psychiatric testimony being admitted in criminal cases. He gave further information about the problems they have with this bill.

Nick Roterling, chief counsel for the Department of Institutions, said that he recognized that there are abuses with the insanity defense and the department must bear the problems of the product afterwards. He testified that he felt this was premature and he still thinks there should be a study to examine these problems.

Jim Johnson, representing the Montana Legal Services, said that he is not a criminal lawyer, but for the last three years he has represented residents at Warm Springs and he stated that it is a myth that people are being found guilty by reason of mental defect on one day and turned out on the next day. He testified that that is a myth and that it doesn't happen here. He also stated that it is a myth that a significant number of people go through this procedure in the state of Montana and are so sophisticated that they can fool the professionals. He said he agreed with Representative Keedy that psychiatrists and psychologists are inexact, but we have to realize that they only give us a judgment in these areas. He also wondered what these bills do to the people in jails and prisons of this state.

He stated that he had a client, who not so many years ago in Billings, jammed out his eye with his thumb in the Billings jail, because of lack of treatment. He said he had another client in the prison in Deer Lodge, who almost lost an eye because another inmate jammed a broom at him. He said that he subsequently got treatment at Warm Springs Hospital and is now able to function.

He said there is one psychiatrist at Montana State Prison, who comes one day a week, there are two psychologists, who come three days a week and the state prison has a population of 700 inmates and is growing. He said that we need a study of this among the professionals involved.

There were no further opponents.

Representative Keedy said that he does not have any objections to amending this to clarify the burden of proof. He gave the committee some copies of reprints from the Great Falls Tribune. See Exhibit A.

CONSIDERATION OF HOUSE BILL 870:

This is an act to provide that the existence of a mental state necessary for commission of a criminal offense may be inferred from the acts of the accused and the facts and circumstances connected with the offense and to provide that defenses relating to a lack of the required mental state must be proved by the defendant by a preponderance of the evidence, etc. Representative Keedy said that the only change is on page 1, lines 21 through 23 and on page 3, line 4 and 5.

Marc Racicot, representing the attorney general's office, said that they support this bill.

There were no further proponents and no opponents.

The questions asked were on either HB 877 or HB 870.

Senator Towe asked if the arguments he was raising were not irrelevant to the bill. He said your thoughts are all concerning mental disease and defect in the sentencing procedure. Representative Keedy said that the most significant difference between your bill and mine - feeling that this is a fraud and a myth - need to treat appropriate people who are sentenced - something of an idle ceremony.

Senator Towe said that it was his understanding that a subcommittee was set up to study this and they recommended that a study be made instead and he wondered if this had been adopted by the committee. Representative Keedy said that it was not, he stated that he objected to the subcommittee's report and it was rejected by the committee.

Senator O'Hara asked how does a criminal prove that he has a mental disease or defect now. He asked if one psychiatrist would do it. He said his problem is that he has worked with a lot of them and, like any profession,

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you can get a psychologist or psychiatrist to testify to most anything if you look far enough and long enough.

Senator Lensink asked Mr. Johnson if he would have come and asked for a resolution if these bills had not been introduced. Mr. Johnson said that he thinks in all fairness he would not have. He stated that they realize that revision has to be made but he thinks we are rushing into something that we are going to create a demand for reforms in the law and also in the way we treat these people. He stated that we cannot do this by a hall conference and we have to know where we are going.

There were no further questions or comments and the hearing on these bills was closed.

There being no further business, the meeting was adjourned.

SENATOR EVERETT R. LENSINK, Chairman
Senate Judiciary Committee

Date 3/16/79

ROLL CALL

LEGISLATIVE COMMITTEE

46th LEGISLATIVE SESSION - 1979

| NAME | PRESENT | ABSENT | EXCUSED |
|-------------------------------|---------|--------|---------|
| Lensink, Everett R., Chr. (R) | ✓ | | |
| Olson, S. A., V. Chr. (R) | ✓ | | |
| Turnage, Jean A. (R) | ✓ | | |
| O'Hara, Jesse A. (R) | ✓ | | |
| Anderson, Mike (R) | ✓ | | |
| Galt, Jack E. (R) | ✓ | | |
| Towe, Thomas E. (D) | ✓ | | |
| Brown, Steve (D) | ✓ | | |
| Van Valkenburg, Fred (D) | ✓ | | |
| Healy, John E. (Jack) (D) | ✓ | | |
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Each Day Attach to Minutes.

DATE. March 14, 1927

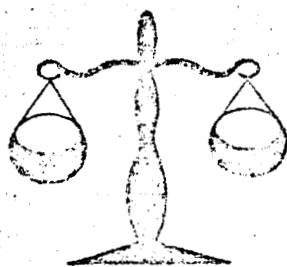
COMMITTEE ON Judiciary

VISITORS' REGISTER

| NAME | REPRESENTING | BILL # | Check One | |
|-----------------|-------------------------------|--------|-----------|-----|
| | | | Support | Opp |
| Kim Rittler | Anti-Child | | | |
| Nick Ratering | Dept of Institutions | HB 877 | | |
| Jim Fraser | Mont Legal Service | 877 | | |
| William Nell | Yellowstone Newspapers | | | |
| Karen M. Kott | League of Women Voters | 877 | | |
| Mike McCarty | AG's Office | 877 | | |
| Marc E. Racicot | MONTANA County Attorneys | 877 | ✓ | |
| W.A. Merritt | Montana Broadcasters | 860 | ✓ | |
| J.C. Wenceman | State Bar | 691 | ✓ | |
| Mike Meloy | Newspapers, Nat. Press Assoc. | 860 | ✓ | |
| Doc G. Hume | " " | 860 | ✓ | |

(Please leave prepared statement in file)

The program is the Utah Prepaid Legal Services Plan. It is a group approach to help defer the cost of legal services. It is sponsored by the Utah State Bar. There is no special arrangement, schedule of suggested charges, group rate, discount, with any attorney or law firm. You may go to any attorney you chose.



UTAH PREPAID LEGAL SERVICES PLAN

.....the Plan is designed to enable members to pay in advance for certain legal services. It is a group Plan for legal services.

HERE IS A SUMMARY OF THE PLAN

- 1) **ADVICE AND CONSULTATION:**up to four visits a year with the attorney of your choice, to discuss and review anything you wish.
You pay 0. The Plan pays \$25 per visit.
 - 2) **OFFICE WORK**wills, deeds, contracts, research, titles, abstracts, family law matters, probate, depositions, court costs, filing fees; anything that could be called office work.
You pay the first \$10. The Plan pays all amounts up to \$250.
 - 3) **JUDICIAL AND ADMINISTRATIVE PROCEEDINGS:**hearings or trials before any court, JP, administration, agency, commission, board, etc.,
You pay 0 if a defendant. The Plan pays \$400.
You pay the first \$25 if plaintiff. The Plan pays \$375.
 - 4) **MAJOR LEGAL:**as a defendant the Plan will cost-share all expenses over those outlined for the next \$1000 on an 80/20 basis, up to a max of \$800.
You pay amounts over Plan limits.
- IF, 1, 2, and 3, are not used during the first year of coverage, all those amounts of coverage double. (only two years may be carried over)

What is NOT covered:

- 1) *Known or existing matters*
- 2) *Fines and penalties*
- 3) *Class actions or Contingent Fee cases*

Covered Only under 1.

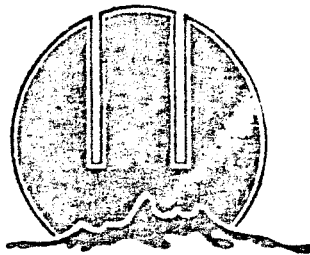
- 1) Business ventures (if you claim it as an IRS deduction)
- 2) Tax returns

THIS IS A SUMMARY OF THE UTAH PREPAID LEGAL SERVICES PLAN,
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phone: 487-5411 -- elsewhere in Utah toll free - 1-800-662-4212.

Ernie B



WESTERN BROADCASTING COMPANY

Phone 406-728-2850 Drawer M Missoula, Montana 59806

HB 860

My name is Bud Blanchette. I am Vice President of Western Broadcasting Company, Missoula, which owns and operates radio stations in Missoula (KGVO) and Helena (KCAP-AM-FM). I offer the following statement on behalf of Montana Broadcasters Association in support of HB 860.

It is the position of Montana Broadcasters Association that HB 860 is timely, reasonable and warranted legislation which merits the Committee's favorable consideration. News and commentary constitute radio and television's most valuable program commodity. Because of its vital importance to listeners and viewers, news development justifiably gets the lion's share of every station's program budget.

In the process of gathering, editing and delivering the news the area which requires the most time-consuming and frequently frustrating effort are source verification and story accuracy. In a state of vast distances and sometimes interrupted communication, this can be a grueling chore. Getting the news "first" is important but not nearly so important as getting it "right". However, even though news personnel may exert utmost effort to insure story accuracy, there is always the risk that details will be lacking or that honest mistakes may occur.

The factor which differentiates and sets broadcasting apart from all other communication forms is the Fairness Doctrine. Under the Fairness Doctrine, the broadcast licensee has a responsibility to (1) devote a reasonable amount of programming time to controversial issues of public importance and (2) offer a reasonable opportunity for the presentation of contrasting viewpoints. In other words, the broadcaster is required, as a condition of his license authorization, to engage in discussion of controversial issues. In the process of meeting that commitment, he becomes a dual target: not only to Fairness Doctrine obligations (which also include editorial content advertising), but to the threat of litigation for libel or defamation. And, since broadcasters are not privileged to censor communications by either local or network spokesmen for various viewpoints delivered over their stations, but are nevertheless held personally responsible for all program content, it places licensees in a particularly naked and vulnerable position when litigation arises. Libel and slander charges have a definite chilling effect on the broadcaster's mandate to serve the public interest and to fulfill the public's right to know.

Exhibit A

Montana broadcasters are not in the character assassination business. Purposely impugning the character of a person just for the "shock value" derived does not square with our self-imposed requirements for responsible broadcast stewardship. We have rules circumscribing "news staging". We even have self-imposed policies governing investigative reporting.

Yet, even exercising utmost care and precautions to avoid inaccuracy, mistakes can occur. And, it is because of the inherent and ever-present risks associated with operating responsible communications media that this legislation, HB 860, is warranted and necessary.

The actual and potential costs of contesting charges of libel are enormous and can threaten the life-time investment of the small market broadcaster. Not only must he maintain and have in force, at all times, costly libel insurance, but he must retain expensive counsel to defend him and take precious time from a demanding enterprise, even when tenuous or irresponsible charges are leveled against him. In the event of adverse findings, he has the added financial burden of meeting fines and court costs. But it does not end there. The broadcaster must be prepared to describe and document, in his next license renewal application, all litigation in which he is involved. Such involvement could weigh heavily against his license renewal. In the final analysis, a broadcaster is damned if he is absolved and doubly-damned if he incurs damages.

HB 860 does not grant media immunity from libel. It simply establishes safeguards against unreasonable and punitive damages. Those safeguards include a 7-day time limitation for media to issue corrections or retractions and spell out requirements of content of the correctional statement. The bill further defines the extent to which a correction is a defense upon trial.

Montana broadcasters believe that the conditions imposed by this proposed legislation are reasonable and necessary to enable media to carry out the substantial responsibilities inherent to publishing and broadcasting. It establishes desirable, positive and equitable conditions, in the judgement of Montana Broadcasters Association, and I urge the Committee to give a "Do Pass" recommendation to HB 860.

Frank Adams

The psychiatrist as criminal accomplice

The Montana House has passed and sent to the Senate a revolutionary bill that would abolish insanity as a defense in criminal cases. Rep. Mike Keedy, D-Kalispell, sponsor of HB877, acknowledges that he was influenced by the writings of Dr. Thomas Szasz, professor of psychiatry at the State University of New York's medical school. Dr. Szasz presents some of his views on courtroom psychiatry in this guest column:

Since World War II, psychiatry has had an exceedingly good press, especially in the United States. A combination of physician and priest, the psychiatrist, it seemed, could do no wrong. He dealt with the most "difficult" patients and even if his methods were sometimes "heroic," his aim was always "therapeutic."

In the last few years, especially when looking at Russian psychiatry, the press has discarded its rose-colored glasses. The fact that, in the United States, psychiatrists not only do the same things their colleagues in Russia do, but, in addition, systematically act to exonerate individuals who have killed other, innocent individuals, seems so far to have escaped the attention of civil libertarians and journalists.

With respect to incarceration, psychiatry may be abused in two ways: by inculcating the innocent and by exculpating the guilty. For example, when a "mentally healthy" dissident is diagnosed as schizophrenic and committed to a mental hospital in Russia, we have an instance of the psychiatric inculcation of an innocent person as permanently insane. Such acts are now condemned by Western intellectuals, and journalists as the psychiatric abuses of a totalitarian government.

When, on the other hand, a so-called mad killer is diagnosed as suffering from some kind of insanity and is acquitted by reason of insanity, the

psychiatrist acts as an accessory to what — morally speaking — is a crime by the state; in the other, he acts as an accessory to what — morally speaking — is a crime by an individual. Moreover, since killing an innocent person is a graver offense than imprisoning him, the American psychiatrist who helps to acquit a killer as not guilty by reason of insanity should be regarded as having committed a graver "psychiatric abuse" than his Russian colleague who helps to imprison an innocent person as a schizophrenic.

THE DEATH OF Randolph Evans and the subsequent trial of his killer illustrate a typically American psychiatric abuse. Its professional acceptance and popular approval illustrate that Americans love their own "abuses" of psychiatry (which, of course, they regard as its "proper uses") at least as much as the Russians love theirs.

Evans, a 15-year-old from Brooklyn, was shot by policeman Robert Torsney Thanksgiving day in 1976. Torsney was charged with murder while on duty. He claimed self-defense, but his legal defense was that he was "insane because of an epileptic psychomotor seizure suffered at the time of the crime." He was found not guilty by reason of insanity, sent to a state mental institution for observation, and after a year was determined to be mentally well. His fate is still being wrangled over by psychiatrists and lawyers.

The facts speak for themselves. Randolph Evans, a 15-year-old black, is killed by a white policeman before numerous witnesses. The killing was unprovoked, a fact tacitly acknowledged by the defendant's own insanity plea (which implies that, but for his alleged insanity, he would be guilty of the killing). A white psychiatrist testifies for the defense that Torsney was "legally" insane at the

responsible for this stubborn and willful destruction of law and justice.

SUCH, AT LEAST, is the message I draw from these facts. When I say that "the facts speak for themselves," I speak, of course, metaphorically. Facts don't speak, only persons do. What, then, do other psychiatrists hear when listening to these facts? Remarkable on this same case, as well as on several other recent cases of "trying the mad" — such as that of the Michigan woman, also acquitted as not guilty by reason of insanity, who killed her husband by pouring gasoline on him while he was sleeping and then setting him on fire — Alan A. Stone, professor of law and psychiatry at Harvard University, comes to a totally different conclusion. "Reading about these developments," he writes in The New York Times, "the public seems to get angry at psychiatry and psychiatrists. Yet the current situation is the work of judges, lawyers and legislators; psychiatrists play a minor if inept role."

Although partly true, such a judgment exonerates psychiatrists of a responsibility that is, in my opinion, wholly theirs — that is, the responsibility for supporting the insanity defense. Let us again recall in this connection the accusations now so

fashionably leveled against Russian psychiatrists for "abusing their profession." Dr. Stone has not, to my knowledge, defended these Soviet psychiatrists by claiming that they "play a minor if inept role" in incarcerating dissidents in madhouses. Why not? Surely, because of the differences between Soviet and American societies, such an excuse would be more valid for Russian psychiatrists than for American psychiatrists. Why, then, should we accept Stone's plea of ineptness on behalf of his colleagues, the true nature of whose deeds is becoming increasingly difficult to disguise?

I submit that the courtroom psychiatrist who seeks to exonerate a killer of responsibility for his act is, from a moral point of view, an accomplice to the act of taking an innocent life. Psychiatrists choose whether to testify in court or not, just as people choose whether to kill or not. Psychiatrists who aid and abet the insanity defense are no more inept than their accomplices are insane. Instead of calling such acts inept or insane, we ought to call them wicked and immoral. Not until we do so will our homes and streets be safe from criminals, and our laws and courts from psychiatrists.

Exhibit A

Guilty Is Guilty, Insane or Not

By John White

HESHIRE, Conn. — Is a person responsible for his behavior if he is insane or brainwashed? Legislative and judicial proceedings answer no. To this I say that there is no substitute for personal accountability — nothing more dangerous for society than to allow a person, regardless of his state of mind, to escape the consequences of his actions.

Consider murder trials in which the accused have pleaded not guilty by reason of insanity. Admitted killers are literally gotten away with murder — legally. The insanity plea allowed judges to sentence them to mental hospitals for observation and treatment. There they were found sane and released because they can't be tried for the same crime.

Is legislative insanity that this could be allowed to happen!

In a free society, laws are made to control behavior, not states of mind. A defendant's mental state should have bearing on whether he is found

insane. This crucial distinction has led to the shameful and dangerous situation in which admitted murderers are released into society without punishment and without even simple justice for the victim's survivors.

We can agree that Jim Jones was insane, but does that mean that if he had lived he should have been found not guilty by reason of insanity? Or Adolf Eichmann?

The Nuremberg trials declared loud and clear that people must be responsible for their acts, even in time of war. Trials in America today, however, declare that people are not responsible for their acts because their state of mind excluded reason. Consequently, criminals have been handed legal means to get away with murder, and they, considering their lives are at stake, quite reasonably use it.

Legislators should correct this most gross miscarriage of justice — a miscarriage based on the foolish idea that your state of mind has a bearing on

'Criminals have been handed legal means to get away with murder, and they . . . quite reasonably use it'

of committing a crime. He may be sane, brainwashed, or even, as in the case of Sam-type cases, "possessed" by an evil demon (though "Son," and R. Berkowitz, now denies it) but should only be taken into account for the finding. If a person is genuinely unbalanced, he can be given a prison sentence that includes appropriate treatment to restore mental health, whether the treatment be psychiatry, deprogramming or exorcism. Even if treatment is successful, the person should serve the rest of his sentence unless the preponderance of expert opinion feels that pardon or commutation is in order. At that point compassion becomes proper — but not mercy. The legal system is intended to deliver justice, not compassion. Ignore

your innocence or guilt in criminal proceedings. If you did it, you're guilty — period. Whether you remember doing it or whether you could make a rational decision at the time doesn't matter at that point in the proceedings. Your state of mind and other possible mitigating circumstances should be taken into account only in passing sentence. Irresponsible behavior can never be condoned to the point of murder. The failure of legislators to recognize and correct this outrageous situation only contributes to the general deterioration of respect for law and social order.

John White is a journalist in the fields of science and parapsychology.

The New York Times WEEK IN REVIEW

STAR-BANNER

176 #

More support for you

THOMAS SZASZ

The freedom abusers

SINCE THE DEATH OF the Reverend Jim Jones, the diagnosis of paranoia has been falling on his memory like snowflakes in a winter storm in Syracuse. I suggest that we take another look at some of the facts reported about this Marxist-Christian minister before the sordid truths about his behavior and that of his followers are completely buried beneath a blanket of psychiatric speculations and diagnoses.

Virtually everyone who knew Jones—among them some prominent and presumably perceptive and intelligent men and women—regarded him as perfectly healthy mentally. For instance, during the 1976 Carter presidential campaign, Rosalynn Carter and Jim Jones dined together in San Francisco. Mrs. Carter, who is, as we know, one of America's foremost experts on mental health, found no sign of mental illness in Jones—on the contrary: In March 1977, she wrote him a letter praising his proposal to give medical aid to Cuba, and after the election she invited him to attend the inauguration, which he did.

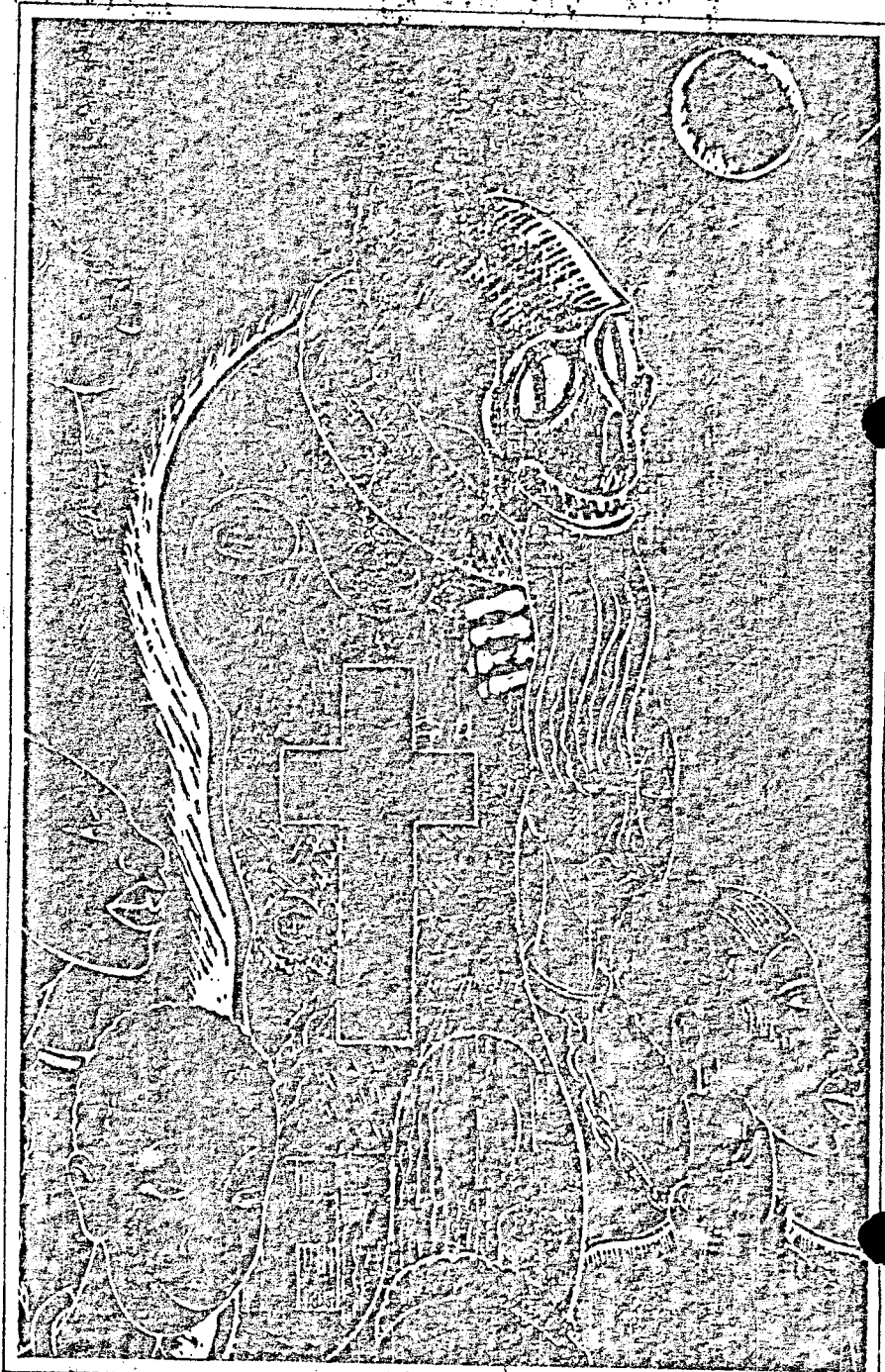
That Jones was accepted as at least "normal" in California liberal political circles has by now become notorious. That he was still widely regarded as both mentally healthy and morally admirable during the weeks and days immediately preceding the massacre is evident from the fact that a gala, \$25-a-plate dinner benefit for the Peoples Temple was planned in San Francisco for December 2, 1978. Called "A Struggle Against Oppression," the affair was to feature Dick Gregory and

the Temple's two lawyers, Mark Lane and Charles Garry, as speakers. It was endorsed by 75 prominent city leaders and politicians. It was cancelled after the massacre.

Actually, in view of Jones's impressive record of good "psychotherapeutic" works, the enthusiasm of evangelistic mental healthers for him should come as no surprise. Jones "cured drug

addicts." He "rehabilitated" aimless Americans and put them on the road to a communitarian salvation. He was, officially at least, even against suicide—when it was a course chosen on one's own. On Memorial Day in 1977 (only 18 months before the Jonestown massacre), Jones led a delegation of Peoples Temple members on a march onto the Golden Gate Bridge in San Francisco, demanding that the city build a suicide barrier on the bridge.

In addition to these testimonials to Jones's good mental health and commendable character, we also have the word of Jones's personal physician that the minister was both psychiatrically normal and morally admirable.



THOMAS SZASZ, a contributing editor, writes a monthly column for INQUIRY. His most recent book is *The Myth of Psychotherapy*.

Dr. Carlton Goodlett, identified as a "prominent black doctor" in San Francisco who had also attended Jones in Guyana, told the *New York Times*: "I was convinced that Jones was involved in a brilliant experiment in Guyana that actually put people in better shape down there than they had been in San Francisco." Even after the massacre Dr. Goodlett offered this psychiatric opinion—not about Jones, but about his disenchanted followers: "The deserters from the church had come to me, but they were just a neurotic fringe."

To say that Jim Jones was widely regarded as mentally healthy, is indeed an understatement: He was regarded as a brilliant healer of minds, a great "therapist." Many of his followers were former drug users. Two survived the massacre. One of them, Tim Carter, told the *Times* he had been "heavily involved in drugs in California" and was cured by Jones. Tim's father, Francis Carter (both of whose sons were "on drugs"), praised Jones's treatment of drug abuse to a *Times* reporter: After joining the temple "they gave up drugs, became rehabilitated, and got better." Odell Rhodes, another survivor, "had been a heroin addict from the Detroit ghetto. [W]ith the help of Jim Jones's power he had beat heroin, he said. He felt he needed his mentor to keep him straight."

AFTER THE BUTCHERY
In Guyana, Jones's followers and friends were eager to dismiss him as "paranoid." Steven Jones lost no time diagnosing his father as psychotic, an opinion he kept carefully to himself until "dad" was dead. Why did Steven Jones think his father was mad? Because he destroyed the concentration camp that young Jones evidently loved dearly. "He has destroyed everything I've worked for," said Steven Jones.

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This instant metamorphosis of Jones from prophet to psychotic now conceals—as did previously the deliberate denial of the significance of his everyday behavior by those who knew him—the self-evident evil that animated this bestial tyrant long before his supposed “degeneration into paranoia.” That is the phrase used by *Time* magazine, where Jones is described as an “Indiana-born humanitarian who degenerated into egomania and paranoia.” *Newsweek* confirms the diagnosis: Jones’s “mind,” we are informed, “deteriorated into paranoia.”

I object. It is fundamentally false and distorting to view every gesture to help the poor—regardless of motives, methods, and consequences—as “humanitarian.” What tyrant has not claimed to be motivated by a desire to help the helpless? We know only too well that to those hungry for power, the prospect of “helping” life’s victims presents a great temptation; one that complements the temptation that the prospect of oblivion through alcohol or drugs presents to those hungry for a simple solution to life’s problems. That is why these two types of persons are drawn to each other so powerfully, and why each regards the competent, self-reliant person as his enemy. So much for Jones’s “humanitarianism.”

AS FOR JONES’S “PARANOIA,” we accept the proverbial wisdom that one man’s meat is another man’s poison. Similarly, we should accept that one man’s prophet is another man’s paranoid. It is simply not true that Jones “degenerated into paranoia.” Jones was the same person on November 18, 1978 (the date of the mass murder and suicide), that he was the day before, the month before, the year before. Jones did not suddenly change. What did change suddenly was the opinion certain people entertained and expressed about him.

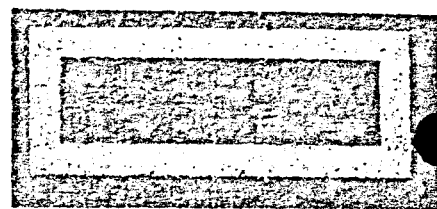
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The ultimate ugly and undeniable facts are that of the 909 bodies at Jonestown, 260 were those of children, butchered by the peaceloving, “humanitarian” followers of the Reverend Jones; and that, like their leader, these butchers hated the open society and “fled” their homeland to settle in a socialist country. The men and women of Jonestown rejected liberty; it is as if they had turned Patrick Henry’s maxim, “Give me liberty or give me death!” on its head, and had sworn allegiance to the maxim, “Give me death rather than liberty!”

As for Congressman Ryan and his party, they paid a heavy price for their naiveté and miscalculation, but, after being warned repeatedly about Jonestown and after being emphatically disinvited by the inhabitants, their attempt to “liberate” would-be defectors without adequate arms was as ill-advised as would be an attempt to scale the Alps without proper shoes or clothing. When Congressman Ryan insisted on staging his inspection-invasion to foist on them the liberty they loathed, the Jonestown patriots proved that they had the courage of their convictions. The point is not merely that actions speak louder than words, which is obvious enough; it is rather that in the base rhetoric of butchers—regardless of whether they come garbed as priests, politicians, or physicians—“love” means “hate”; “I will take care of you” means “I will kill you.”



JOEL KOTKIN &
DOROTHY J. SAMUELS

Reefer madness revisited

AFTER SEVERAL YEARS of lying low, ducking the fire of congressional committees and citizens’ groups, the federal government’s drug enforcement officials are up to their old tricks again.

Back in the days of Nixon, as Edward Jay Epstein showed in his book, *Agency of Fear*, the administration and the nation’s top narcs helped devise and carry out the infamous “war on drugs,” complete with stormtrooper-style raids on innocent families and other abuses of domestic civil liberties. Stirring up a nationwide heroin scare, then exploiting the public’s dread of drugs to consolidate power, Nixon’s drug officials built a network of agents beyond constitutional control.

Now, the Justice Department’s Drug Enforcement Administration (DEA), the bureaucratic offspring of Nixon’s campaign against drugs, has launched an offensive against marijuana. In a speech last fall before the International Association of Chiefs of Police in New York City, DEA chief Peter Bensinger fired the opening shot in this new battle, making various misleading claims about the “real perils of marijuana smoking.” It was just the first thrust of a concerted drive to reverse the trend toward decriminalization and eventual legalization of the country’s favorite weed, and to build political support for stiffer drug penalties and, not incidentally, the DEA empire.

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THOMAS SZASZ

The freedom abusers

SINCE THE DEATH OF the Reverend Jim Jones, the diagnosis of paranoia has been falling on his memory like snowflakes in a winter storm in Syracuse. I suggest that we take another look at some of the facts reported about this Marxist-Christian minister before the sordid truths about his behavior and that of his followers are completely buried beneath a blanket of psychiatric speculations and diagnoses.

Virtually everyone who knew Jones—among them some prominent and presumably perceptive and intelligent men and women—regarded him as perfectly healthy mentally. For instance, during the 1976 Carter presidential campaign, Rosalynn Carter and Jim Jones dined together in San Francisco. Mrs. Carter, who is, as we know, one of America's foremost experts on mental health, found no sign of mental illness in Jones—on the contrary: In March 1977, she wrote him a letter praising his proposal to give medical aid to Cuba, and after the election she invited him to attend the inauguration, which he did.

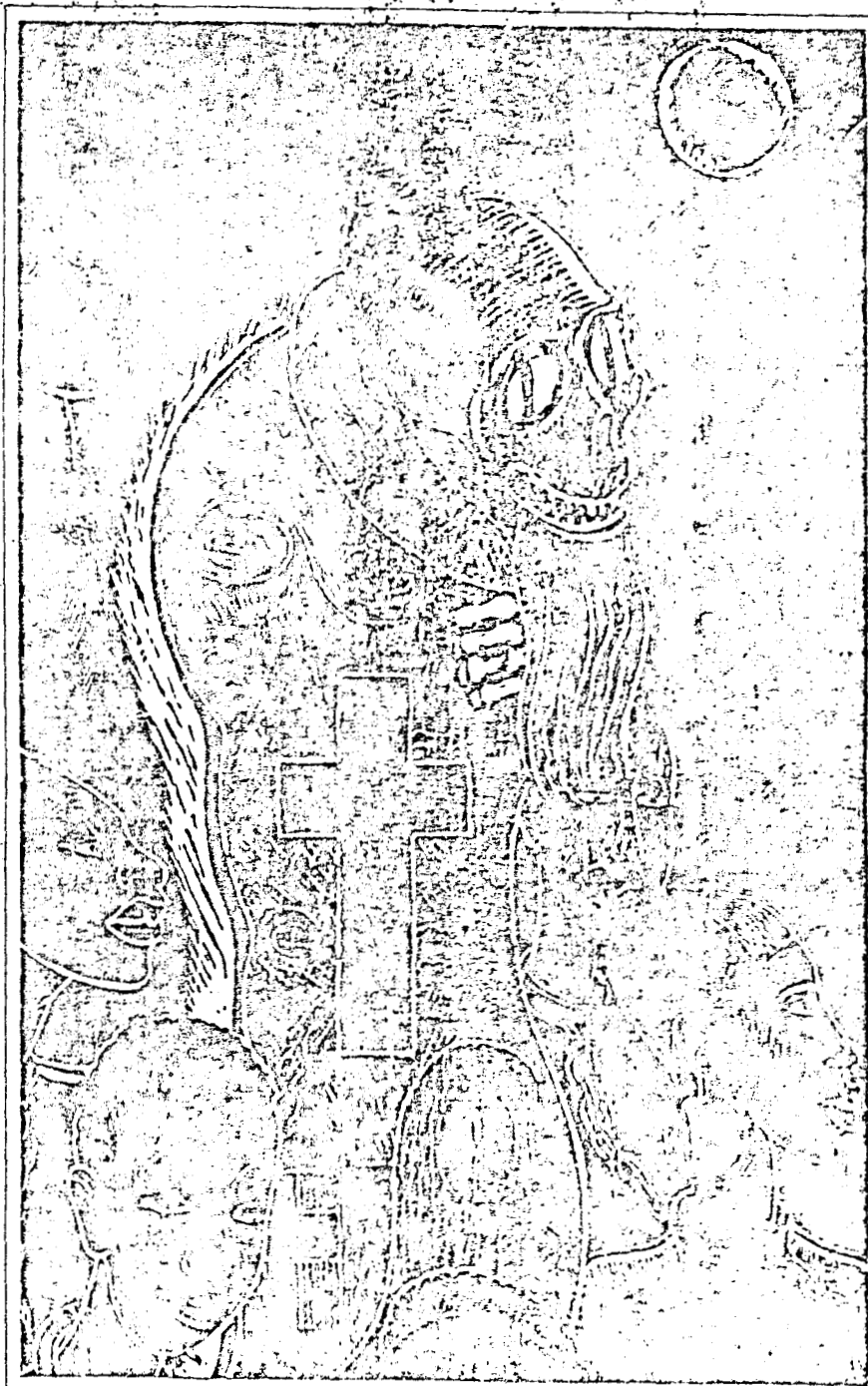
That Jones was accepted as at least "normal" in California liberal political circles has by now become notorious. That he was still widely regarded as both mentally healthy and morally admirable during the weeks and days immediately preceding the massacre is evident from the fact that a gala, \$25-a-plate dinner benefit for the Peoples Temple was planned in San Francisco for December 2, 1978. Called "A Struggle Against Oppression," the affair was to feature Dick Gregory and

the Temple's two lawyers, Mark Lane and Charles Garry, as speakers. It was endorsed by 75 prominent city leaders and politicians. It was cancelled after the massacre.

Actually, in view of Jones's impressive record of good "psychotherapeutic" works, the enthusiasm of evangelistic mental healthers for him should come as no surprise. Jones "cured drug

addicts." He "rehabilitated" aimless Americans and put them on the road to a communitarian salvation. He was, officially at least, even against suicide—when it was a course chosen on one's own. On Memorial Day in 1977 (only 18 months before the Jonestown massacre) Jones led a delegation of Peoples Temple members on a march onto the Golden Gate Bridge in San Francisco, demanding that the city build a suicide barrier on the bridge.

In addition to these testimonials to Jones's good mental health and commendable character, we also have the word of Jones's personal physician that the minister was both psychiatrically normal and morally admirable.



THOMAS SZASZ, a contributing editor, writes a monthly column for INQUIRY. His most recent book is *The Myth of Psychotherapy*.

Dr. Carlton Goodlett, identified as a "prominent black doctor" in San Francisco who had also attended Jones in Guyana, told the *New York Times*: "I was convinced that Jones was involved in a brilliant experiment in Guyana that actually put people in better shape down there than they had been in San Francisco." Even after the massacre Dr. Goodlett offered this psychiatric opinion—not about Jones, but about his disenchanted followers: "The deserters from the church had come to me, but they were just a neurotic fringe."

To say that Jim Jones was widely regarded as mentally healthy, is indeed an understatement: He was regarded as a brilliant healer of minds, a great "therapist." Many of his followers were former drug users. Two survived the massacre. One of them, Tim Carter, told the *Times* he had been "heavily involved in drugs in California" and was cured by Jones. Tim's father, Francis Carter (both of whose sons were "on drugs"), praised Jones's treatment of drug abuse to a *Times* reporter: After joining the temple "they gave up drugs, became rehabilitated, and got better." Odell Rhodes, another survivor, "had been a heroin addict from the Detroit ghetto. [W]ith the help of Jim Jones's power he had beat heroin, he said. He felt he needed his mentor to keep him straight."

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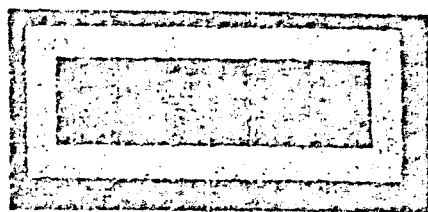
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Sydney Harris

A new class of insanity

The trouble with the word "insanity" is that it has never been a medical or scientific word, but purely a legal one. The way the law is worded in any particular state defines the condition, and up to now no unanimously satisfactory definition has been found.

Is a man who kills and buries a score of youths "sane" or "insane"? We might say that anyone who could bring himself to do this is per se insane; on the other hand, we might say that the cunning and deliberation indicated he was sane.

How do we resolve this? There is no way out of this true dilemma, except by escaping through the horns. And that is by creating another category, a *tertium quid*, as the ancient philosophers put it, called "moral insanity." I have long advocated such a class of offenses.

For instance, was Hitler sane or insane? On one level, he suffered from paranoia and megalomania, accompanied by hysteria and melancholia. But should he have been acquitted of his crimes, and adjudged "mentally incapable" because of these personality defects?

He was also a wicked man, by any standard you care to use — not merely in what he did to his professed enemies but in what he did to Germany, to his own people, deluded and mesmerized by him.

People like him suffer from "moral insanity" as well as whatever mental quirks they may possess. Others are not real to them, others exist only to be used, manipulated or disposed of, in pursuit of some obscure egocentric goal.

Most heinous criminals, whether leaders of gangs or of nations, possess this enormous blind spot. They are not lunatics in any clinical sense of the word, in that they function well and often brilliantly; but they are cracked and disjointed in their area of sympathy for their fellow creatures, driven by the need to dominate and destroy.

A mass-murderer is crazy to do what he does, but not crazy in the way he does it, or conceals it, or manages to live with it until he is discovered or disposed. Stalin, as well as Hitler, possessed this kind of moral insanity toward anyone he felt was in his way. Most despots are merely criminals in

a larger theater of action.

The law, as it now stands, will get absolutely nowhere trying to decide if the killer of a score of youths is "insane" or not. Mental health for illness is not a sharply defined science, and perhaps can never be. A moral lunatic is someone who is utterly mad and frightfully sane at the same time — and our present system of jurisprudence and criminology does not know what to do with him.

Whitetail man dies in Sunday accident

HELENA (AP) — Jimmy R. Johnson, 19, of the Daniels County community of Whitetail, was killed early Sunday in a one-car rollover on Interstate 15 just east of the Helena city limits.

Lewis & Clark County Coroner Micky Nelson said Johnson was alone in the car when he apparently lost control. The vehicle rolled several times and wound up in the median between the lanes of the highway, Nelson said.

Johnson was an airman stationed at Malmstrom Air Force Base, Nelson said.

The death was the 44th on Montana roads this year, compared with 31 through March 12, 1978.

Tapes on market

ROCKY BOY — Two new tapes originating on the Rocky Boy Reservation have been released by Canyon Records of Phoenix, Ariz.

One is by "The Parker Singers," consisting of 12 powwow songs of the Chippewa-Creek Tribe. This is the group's second album for Canyon Records.

The Parker Singers are members of the Standing Rock family — Vidal, Doug, Kenny and Russell.

The second, "Peyote Songs from Rocky Boy," is a collection of 10 peyote sets, made up of 40 songs. It is said to be the first peyote album by an Indian group from this region.

say you're going to cut taxes on everyone's budget," says Menahan. "But when you get here you find out it's not quite as easily done as all that. It's rather hard for me as a member of the Appropriations Committee to take a pen and just wipe out employees that are now on board in a lot of these areas."

This is Menahan's first session on the Appropriations Committee and also on the Labor Committee. He has previously served on Livestock and

Helena Capital

HELENA (AP) — The controversial book "Our Bodies, Ourselves" will remain in the Capital High School Library on a restricted-use basis.

The Helena District 1 trustees decided over the weekend that the book should be available to students for use as a resource or reference book or at the written direction of a teacher, counselor and only after the student parents have given approval for

Roundup flooding controlled for now

ROUNDUP (AP) — For now, flood situation in Roundup appears to have stabilized, but spring-like temperatures could cause additional jamming along the Musselshell River with additional high water, Musselshell County officials say.

A sheriff's department spokesman said Sunday that the situation "has worsened, thank God," but flooding continued in portions of the county. Ice jamming up in the backed water over stream banks.

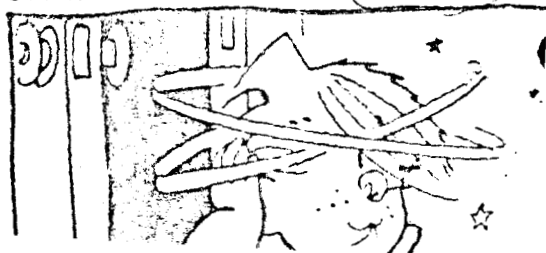
The Montana Highway Department said traffic had resumed along U.S. 87 through Roundup with short detour but about three inch water continued to flow across roadway.

Some of the estimated 200 placed persons were trying to get to their homes where possible.

The flooding was the worst reported in the area, although significant damage was caused by high water in 1967.

Some residents had to boil domestic drinking water supply because of possible well-water contamination.

DENNIS THE MENACE



THE FAMILY CIRCUS

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Frank Adams

Legal psychiatry: 'a fraud'

WARNICK

SYRACUSE, N.Y. — Kerwin Shaw of Fort Shaw was acquitted of murdering his father with a shovel in 1973 because of mental disease or defect. He was released two weeks ago from the state mental hospital by Great Falls Judge Joel Roth on the opinion of three Montana psychiatrists that he is no longer dangerous.

It happens all the time — declarations by psychiatrists that a killer was not responsible for his deed, and declarations by psychiatrists that killers "won't do it again."

But there's a school of thought that the psychiatrists who make such declarations are themselves criminals — that "they are destroyers of American law and American morality because they have no business doing it."

That quote is from a psychiatrist: Dr. Thomas Szasz, one of the most articulate and published spokesmen for the thinking that legal psychiatry is "a complete fraud."

Dr. Szasz consented to an interview from the State University of New York at Syracuse, where he is a professor of psychiatry.

Why don't you think psychiatrists should declare a person no longer dangerous? I asked with a touch of disbelief in my voice.

"For the same reason you wouldn't think priests should, would you?"

No, I replied, not really wanting to become the interviewee.

"Why not?" Dr. Szasz pursued.

Well, they're not qualified to, I said.

"What qualifies a priest?" he continued.

I don't know.

"Well, I've answered your question.

People used to think a priest knew the soul of people — he knew who went to heaven and who didn't. I use the analogy in my writings — I've been writing about this 25 years — because psychiatrists are very much a modern priesthood. Priests know certain things, but they certainly don't know who will go to heaven. A psychiatrist knows some things, but he certainly doesn't know who's going to kill someone. They can give someone a tranquilizer, they can talk to somebody and maybe make him feel better by analyzing his feelings and so on. But they cannot make this kind of judicial-political determination."

Do you think psychiatrists should stay out of the criminology field altogether? "My feeling is much stronger about it: I think psychiatrists should not stay out of it, they should not be allowed in. A priest could not go to court and say 'I know who is dangerous and who isn't.' It is the legislatures which legitimize psychiatrists as experts."

The present practice of psychiatry in the courtroom is a scientific and medical replacement for the concept of demon possession, says Szasz. "The Inquisitors or priests used to go and explain to people who was possessed and who wasn't. And this is a complete duplication. (One of Szasz' many books is descriptively titled "The Manufacture of Madness; a Comparative Study of the Inquisition and the Mental Health Movement.")

"But you can't go to the court and say you're possessed by the Devil. But you can go to court and say you're possessed by schizophrenia. It's a complete fraud.

"How many thousands, perhaps hundreds of thousands, perhaps millions of dollars of taxpayers' money has already been spent in New York state on examining Son of Sam? What are they looking for, the psychiatrists? I'm a psychiatrist, and I can tell you that psychiatrists who do this are out and out liars. Crooks. Right out of Barnum and Bailey: a sucker is born every day. Now the American people are the suckers. The taxpayers. Same thing in Patty Hearst. All these famous cases, one after the other."

Do you think there are cases where a person is mentally ill or deranged or something and what he does, if he kills somebody or whatever, he's not responsible for it and shouldn't be punished? "No, I don't believe that either." Why not? "Because people do certain things because he wants to do them. I mean, I don't believe in mental illness, I don't believe in the whole mythology of psychiatry. I only believe that people do certain things which is well explained by Shakespeare or Mark Twain or common sense."

If your views were widely adopted, there wouldn't be any psychiatry, would there? "That's correct, as we know it. But that doesn't mean there wouldn't be any healing of people who are in trouble. The inquisition has disappeared, but Christianity hasn't disappeared. There is a place for helping people who have trouble. That is, talking, or drugs, or whatever it is they want voluntarily to have done. But psychiatry as I see it would completely disappear because obviously you couldn't have all this legal psychiatry and you couldn't have any involuntary psychiatry. In other words, you couldn't have any mental hospitalization against a person's will — commitment and all that."

But very few schizophrenics show up at the hospital on their own, don't they? "Now we are coming to the gist of it. You see, there is no schizophrenia. There are only people who are called schizophrenics, and some of them don't bother anybody. In my various books I have documented that there is hardly a famous person who has not been called schizophrenic by people who don't like them. Very often a 'schizophrenic' is someone who does bad things. Like Son of Sam. There is

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Frank Adams

Legal psychiatry: 'a fraud'

WARNICK

SYRACUSE, N.Y. — Kerwin Shaw of Fort Shaw was acquitted of murdering his father with a shovel in 1973 because of mental disease or defect. He was released two weeks ago from the state mental hospital by Great Falls Judge Joel Roth on the opinion of three Montana psychiatrists that he is no longer dangerous.

It happens all the time — declarations by psychiatrists that a killer was not responsible for his deed, and declarations by psychiatrists that killers "won't do it again."

But there's a school of thought that the psychiatrists who make such declarations are themselves criminals — that "they are destroyers of American law and American morality because they have no business doing it."

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Handwritten initials "H.A." in a circle.

THE THERAPEUTIC STATE

THOMAS SZASZ

The psychiatrist as accomplice

SINCE WORLD WAR II PSYCHIATRY has had an exceedingly good press, especially in the United States. A combination of physician and priest, the psychiatrist, it seemed, could do no wrong. He dealt with the most "difficult" patients and even if his methods were sometimes "heroic," his aim was always "therapeutic."

In the last few years, especially when looking at Russian psychiatry, the press has discarded its rose-colored glasses. The fact that, in the United States, psychiatrists not only do the same things their colleagues in Russia do, but, in addition, systematically act to exonerate individuals who have killed other, innocent individuals, seems so far to have escaped the attention of civil libertarians and journalists.

There are countless ways in which psychiatry may be "abused." With respect to incarceration, psychiatry may be abused in two ways: by inculcating the innocent and by exculpating the guilty. For example, when a "mentally healthy" dissident is diagnosed as schizophrenic and committed to a mental hospital in Russia, we have an instance of the psychiatric inculcation of an innocent person as permanently insane. Such acts are now condemned by Western intellectuals and journalists as the psychiatric abuses of a totalitarian government. When, on the other hand, a so-called mad killer is diagnosed as suffering from some form of mental illness and is acquitted by reason of insanity in America, we have an instance of the psychiatric exculpation of a person as temporarily insane. Such acts are

now praised by Western intellectuals and journalists as the scientific applications of humane psychiatry. In my opinion these two sets of acts are symmetrical: In the one, the psychiatrist acts as an accessory to what—morally speaking—is a crime by the state; in the other, he acts as an accessory to what—morally speaking—is a crime by an individual. Moreover, since killing an innocent person is a graver offense than imprisoning him, the American psychiatrist who helps to acquit a killer as not guilty by reason of insanity should be regarded as having committed a graver "psychiatric abuse" than his Russian colleague who helps to imprison an innocent person as a schizophrenic.

The death of Randolph Evans and the subsequent trial of his killer illustrate a typically American psychiatric abuse. Its professional acceptance and popular approval illustrate that Americans love their own "abuses" of psychiatry (which, of course, they regard as its "proper uses") at least as much as the Russians love theirs.

Randolph Evans was a black youth

WHY WAS EVANS KILLED?
Why was Torsney acquitted? The shooting took place shortly before midnight, when Officer Torsney and his partner answered a radio report of an armed man in an East New York housing development where young Evans lived with his family. As the policemen left the building, Torsney was approached by the boy and five others. According to the *New York Times*, "Young Evans paused to speak to Officer Torsney, who pulled his gun from his holster, and shot the boy in the head. He died several hours later."

Although Torsney claimed that he acted in self-defense, his legal defense was that "he was insane because of an epileptic psychomotor seizure suffered at the time of the crime." The 32-year-old policeman had no record of any previous epileptic attacks. Until the homicide, according to police personnel files, Torsney "had never fired his gun, had an unblemished record, and had no signs of emotional handicap." On the witness stand, the policeman testified that he had shot Evans "after he saw the boy reach into his waistband for what appeared to be a gun." No gun was found and none was seen by witnesses.

To maintain a defense of insanity, the accused needs a psychiatrist to support the claimed defense by means of

Courtroom psychiatrists who seek to exonerate killers are, morally speaking, accomplices to the taking of an innocent life.

who lived in Brooklyn. On Thanksgiving Day in 1976, when he was 15 years old, he was shot and killed by a white policeman named Robert H. Torsney. Officer Torsney was charged with murder while on duty. He pleaded insanity. On December 1, 1977, an all-white jury acquitted Torsney as not guilty by reason of insanity. To my knowledge, no reporter, no politician, no civil libertarian, domestic or foreign, has denounced the Torsney verdict as another instance of the American abuse of psychiatry.

expert testimony. Torsney had such a psychiatrist in the person of Dr. Daniel Schwartz, chief of forensic psychiatry at Kings County Medical Center (who had earlier testified that David Berkowitz, otherwise known as the Son of Sam, was schizophrenic and was psychiatrically unfit to stand trial). Dr. Schwartz lent his prestige and persuasive powers to the task of convincing the jury to acquit Torsney. Not only did he claim that Torsney suffered from psychomotor epilepsy, but also that the policeman had had an attack at the



moment of the shooting, that the shooting was the result of the epilepsy, and that Torsney "acted automatically and suffered from organically caused amnesia."

It is, of course, the task of the prosecution to demolish such psychiatric claims. In this case, however, the prosecution called on a psychiatrist who believes that virtually everyone is mentally ill. Dr. Herbert Spiegel, clinical professor of psychiatry at the Columbia University College of Physicians and Surgeons and a well-known "hypnotist," testified that the policeman "suffered from hysterical dissociation, an emotional rather than an organic disorder that is not categorizable as legal insanity."

The judge gave the jury a choice among five possible verdicts: second-degree murder; first-degree manslaughter mitigated by extreme emotional disturbance; second-degree manslaughter; not guilty by reason of insanity; or self-defense. The jury brought in a verdict of not guilty by reason of insanity.

Torsney has been ordered confined

for observation for 60 days in a facility of the State Mental Hygiene Department to determine whether he is a "danger to himself or to the community." According to the *New York Times*, because Torsney's "insanity had a specific organic cause," he may retire from the police force on a full medical disability pension.

THE FACTS SPEAK FOR themselves. Randolph Evans, a 15-year-old black, is killed by a white policeman before numerous witnesses. The killing was unprovoked, a fact tacitly acknowledged by the defendant's own insanity plea (which implies that, but for his alleged insanity, he would be guilty of the killing). A white psychiatrist testifies for the defense that Robert Torsney was "legally" insane at the time of the offense; another white psychiatrist testifies for the prosecution that Torsney was "illegally" insane. Finally, a white jury acquits Torsney, leaving the unprovoked killing of an innocent person unpunished. I hold my fellow psychiatrists largely responsible for this stub-

born and willful destruction of law and justice.

Such, at least, is the message I draw from these facts. When I say that "the facts speak for themselves," I speak, of course, metaphorically. Facts don't speak, only persons do. What, then, do other psychiatrists hear when listening to these facts? Remarking on this same case, as well as on several other recent cases of "trying the mad"—such as that of the Michigan woman, also acquitted as not guilty by reason of insanity, who killed her husband by pouring gasoline on him while he was sleeping and then setting him on fire—Alan A. Stone, professor of law and psychiatry at Harvard University, comes to a totally different conclusion. "Reading about these developments," he writes in the *New York Times*, "the public seems to get angry at psychiatry and psychiatrists. Yet the current situation is the work of judges, lawyers, and legislators: psychiatrists play a minor if inept role."

Although partly true, such a judgment exonerates psychiatrists of a responsibility that is, in my opinion, wholly theirs—that is, the responsibility for supporting the insanity defense. Let us again recall in this connection the accusations now so fashionably leveled against Russian psychiatrists for "abusing their profession." Dr. Stone has not, to my knowledge, defended these Soviet psychiatrists by claiming that they "play a minor if inept role" in incarcerating dissidents in madhouses. Why not? Surely, because of the differences between Soviet and American societies, such an excuse would be more valid for Russian psychiatrists than for American psychiatrists. Why, then, should we accept Stone's plea of ineptness on behalf of his colleagues, the true nature of whose deeds is becoming increasingly difficult to disguise?

I submit that the courtroom psychiatrist who seeks to exonerate a killer of responsibility for his act is, from a moral point of view, an accomplice to the act of taking an innocent life. Psychiatrists choose whether to testify in court or not, just as people choose whether to kill or not. Psychiatrists who aid and abet the insanity defense are no more inept than their accomplices are insane. Instead of calling such acts inept or insane, we ought to call them wicked and immoral. Not until we do so will our homes and streets be safe from criminals, and our laws and courts from psychiatrists.

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REPRESENTING WHOM? Montana Legal Protection Plan, Inc

APPEARING ON WHICH PROPOSAL: 69th 1

DO YOU: SUPPORT? ☒ AMEND? ☐ OPPOSE? ☐

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

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