right and concommitant responsibility of corporal punishment. Differing statutory schemes augmented by local regulation dot our legal landscape. With state law seemingly entrenched in the traditional views, opponents of corporal punishment are turning to the federal courts and the Constitution for help. So far, they have found little solace there. However, with the recent cases on prisoners' rights, application of due process principles to the schools, and a growing anti-corporal punishment sentiment the day may not be far off when reason rather than fear will reign in the nation's schools, and the last vestiges of corporal punishment in America will be gone.

WILLIAM IRWIN ARBUCKLE, III

Reforming the Mental Health Law of Ohio

INTRODUCTION

It was a cold, snowy day toward the end of November, 1859. C. P. Wolcott, one of Akron's prominent attorneys, bundled up on the seat of his "buckboard," was driving his team all about town, trying to obtain affidavits from various citizens of his community who could testify to his client's mad delusions, and thereby save him from execution for charges arising from his attempt to seize the federal army arsenal at Harper's Ferry, Virginia, the previous October 16th. John Brown, married and the father of 20 children, was sentenced to be hanged on December 2nd. The client sincerely believed that he was given instructions directly by his Creator to take the arsenal and thereby to touch off and to lead the war to free the slaves. His success was to be certain and was divinely promised; and moreover, divine direction as to the employment of the proper means to wage this great struggle were assured. He had a strong strain of madness in his family, possibly descending genetically from his mother.

Governor Wise remained unmoved, and the client and his attorney lost their race against time. John Brown was hanged, only 47 short days after his balloon of fantasy had burst.

His soul goes marching on, though, in perhaps more ways than one. In July, 1972, a stone's throw from where John Brown's home still stands in Akron, Ohio, J. A. Ciocia, a legal aid lawyer at the Hawthornden State Hospital, appeared before Judge Evan Reed, in the Common Pleas Court of Summit County, to argue on a petition for a writ of habeas corpus for the release of the "Hawthornden -7"; a group of hospitalized mental patients on whose behalf he claimed denial of counsel for their commitment proceedings, failure to conduct regular, periodic evaluations of their

1 H. Howe, Historical Collections of Ohio 650 (1907).
2 World Book Encyclopedia 534, 5 (1960 ed.).
conditions during the long years of their commitments, and continued confinement even though they were now well enough to be released. Again in 1972, as 113 unlucky years earlier, counsel for the “insane” lost his case.\(^3\) In the summer of 1973, he prevailed in his appeal to the next higher court.\(^4\) The matter still remains, for the Ohio Supreme Court to decide.

For almost a century and three-quarters, lawyers, legislators, judges, and jurists in Ohio have been grappling with the challenge presented to them by the problems of dealing with the mentally ill. This challenge, however, is not one solely to be met by those involved in the legal system. In order to effectively deal with the legal problems of the mentally ill the public at large must understand those problems and support the efforts of the legislators, lawyers, judges and attorneys who deal with mentally ill persons. In order to do so, members of the public must meet the challenge presented to them by overcoming the fears and animosity toward the mentally ill which are too often present in the minds of many persons—as is illustrated by the political leaflet shown in figure 1.

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**THE POLICE DEPARTMENT CALLS THEM “WALKERS”**

The "walkers" are mental patients sent to Long Beach from Pilgrim State Hospital with the blessings of the Caso administration and the local Republican Party.

On December 30, 1971 there were 108 mental patients in Long Beach. On October 15, 1973 there were 502 patients living in our city—**AN INCREASE OF 400%**. The Republican administration has sat by allowing this new menace in our midst.

The Democratic City Council Team will stop the shipping of mental patients to Long Beach with court action and strict enforcement.

**ON ELECTION DAY—NOV. 6**

**VOTE DEMOCRATIC—ROW B**

Paid for by the Long Beach, New York, Democratic Citizens Campaign Committee

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Article VII, section 1, of the Constitution of Ohio provides,

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"Institutions for the benefit of the insane . . . shall always be fostered and supported by the state; and be subject to such regulations as may be prescribed by the General Assembly." The courts of Ohio have repeatedly interpreted this provision over the years to require proper and adequate care for the mentally ill. In 1901, in the case of In re Emswiler, the court said, "It is the humane policy of the state to take care and provide for persons who are so unfortunate as to be afflicted with such mental infirmity which renders them unable to take care of and protect themselves in person and property." The opinion in Rice v. State, in 1918, states,

The constitution-makers of our state acted wisely and humanely when they provided for the fostering and support of institutions for the insane . . . and the legislature of Ohio exemplified its humanitarian spirit when it passed the law now before us for consideration, and thereby provided for the maintenance, support, and care of such unfortunate wards.

Reiterating, in 1926, State ex rel Goebel v. Brown said, "The constitution of Ohio places upon the state the obligation to care and provide for its insane wards." Also, in 1935, in Gollwitzer v. Gorman, the courts said, "There can be no question that under the provisions of this Article of the constitution that it is the duty of the state to care for the persons under consideration . . ." Most recently, in 1946, Hickey v. Burke said,

The people, through the state constitution, have conferred upon the General Assembly the legislative power of the state which embraces inter alia, the power to legislate for the public health, and that therefore it has the power to make provision by legislation for the mentally ill.

The courts had recognized these legislative powers in 1881, saying, in State v. Kiesewetter, "The provision of the Constitution is not self-executing, and that the mode in which institutions mentioned therein are to be fostered and supported is left to the discretion of the general assembly."

In 1905, in Doren v. Fleming, it was said,

The court will not assume the authority to prescribe rules for the governing of the state charitable and benevolent institutions; their authority to interfere arises only where it is shown that the rules are unreasonable and subversive of the purposes for which such institutions are established and maintained.

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5 Ohio Const. art. VII, § 1 (1851).
6 In re Emswiler, 8 Ohio N.P. 132, 133, 11, 13 Ohio Dec. 10 (P. Ct. 1901).
7 Rice v. State, 14 Ohio App. 9, 13 (1918).
8 State ex rel Goebel v. Brown, 4 Ohio L. Abs. 333 (Ct. App. 1926).
11 State v. Kiesewetter, 37 Ohio St. 546, 9 (1882).
It appears that the courts recognize the pre-eminence of the legislature in the administration of programs for the mentally ill, but that they still appear to reserve for themselves the power to review them. This "Doren Doctrine" could become applicable whenever a party aggrieved in a particular instance receives no relief from the state hospital system, and seeks his remedy before the bench.

WHAT IS MENTAL ILLNESS? CRIMINAL INSANITY?

In Ohio, the legislature has created the Department of Mental Health and Retardation for the purpose of caring for the mentally ill. "Mentally ill" is defined by section 5122.01(A), of the Ohio Revised Code:

Mentally ill individual means an individual having an illness which substantially impairs the capacity of the person to use self-control, judgment, and discretion in the conduct of his affairs and social relations, and includes lunacy, unsoundness of mind, insanity, and also cases in which such lessening of capacity for control is caused by such addiction to alcohol, or by such use of a drug of abuse that the individual is or is in danger of becoming a drug dependent person, so as to make it necessary for such person to be under treatment, care, supervision, guidance, or control.\(^\text{13}\)

Chapter 5122 of the Code was drafted to make provision for the aforementioned "necessity," by placing upon the Probate Courts the duties of determining whether persons fall into that category, and of ordering them to be placed under the jurisdiction of the state system when appropriate. Paragraph (B) of the aforementioned section 5122.01 lays out the criteria by which the Probate Courts may reach such a finding:

"Mentally ill individual subject to hospitalization of court order" means a mentally ill individual who, because of his illness, is likely to injure himself or others if allowed to remain at liberty, or is in need of care or treatment in a mental hospital, and because of his illness lacks sufficient insight or capacity to make responsible decisions with respect to his hospitalization.\(^\text{14}\)

Mentally ill offenders prosecuted for crimes in the Common Pleas Courts are still generally judged in accordance with strict criteria which were first laid down during the trial of an assassin in England over a century and a quarter ago:

In London, in 1843, a man waited outside the home of Sir Robert Peel. He waited until he saw the door to Sir Robert's house being opened, and then he moved quickly. Seconds later a man lay dying on the sidewalk, shot down by a killer whose mind was obsessed with delusions of persecution. The killer's name was Daniel M'Naghten; the victim was Edward Drummond, private secretary to Sir Robert, who had been mistaken by the killer for the latter. At the trial of M'Naghten for murder, the defense was insanity. Substantial medical


evidence was introduced showing that the defendant was driven by morbid delusions of persecution beyond the power of self-control. Such delusions, it was argued, left him with no perception of right and wrong, and rendered him incapable of controlling his acts connected with such delusions. He was found not guilty, "on the ground of insanity."  

The English court said:

Jurors ought to be told in all cases that every man is to be presumed to be sane, and to possess a sufficient degree of reason to be responsible for his crimes, until the contrary be proved to their satisfaction; and that to establish a defense on the ground of insanity, it must be clearly proved that, at the time of the committing of the act, the party accused was labouring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing; or, if he did know it, that he did not know he was doing what was wrong. The mode of putting the latter part of the question to the jury... has generally been, whether the accused at the time of doing the act knew the difference between right and wrong... in respect to the very act with which he is charged...

And in that same year, 1843, the Ohio Supreme Court, in Clark v. State of Ohio, adopted what is now known as the "M'Naghten Rule" as Ohio's criterion for determination of insanity in criminal cases. This rule, however, received a scathing criticism in 1966 by the Common Pleas Court of Cuyahoga County, in State v. Colby, in the trial resulting from the unusually grisly crime whereby a housewife shot her neighbor's eight-year-old little boy in the back of his head with a revolver, after luring him into her home for a birthday party:

The court is well aware that at the present time the legal test of insanity in Ohio is a test of responsibility rather than a medical test as to insanity... The court is convinced, however, that, having carefully examined into all facets of the right and wrong test, it has a duty to speak out on the subject of Ohio's legal test for insanity in criminal cases. Unless and until some trial court under proper circumstances has the courage to point the way to a better method of submitting to the triers of the facts the issue of the insanity of the accused when insanity is tendered as a defense, then Ohio will continue to adhere to criteria which more and more are challenged as being false. The court has reached the conclusion that the present right and wrong test, the M'Naghten rules, for deciding criminal responsibility is "based on an entirely obsolete and misleading conception of the nature of insanity, since insanity does not only, or primarily, affect the cognitive or intellectual faculties, but affects the whole personality of the patient, including both the will and the emotions. An insane person may, therefore, know the nature and quality

16 McNaughton's Case, 10 Cl. & Fin. 200, 210, 8 Eng. Rep. 718, 722-23 (1843).
17 Clark v. State, 12 Ohio 483 (1843).
of his act and that it is wrong and forbidden by law, and yet commit it as a result of the mental disease." (Report of the Royal Commission on Capital Punishment, 1949-53, Cmd. No. 8932 at Pg. 80.)

In 1969, in the decision in the case of State v. Staten, the Ohio Supreme Court, retrospectively reviewing prior decisions involving the application of the M’Naghten Rule in Ohio, concluded that courts in the past had apparently broadened it somewhat:

[A] person should not be punished for what he does, if, by reason of mental disease, he either does not know that what he did was wrong or could not prevent himself from doing it; and that punishing such an irresponsible individual will deter neither him nor others from doing what he did.

Now a new dimension appears: even if the defendant did know right from wrong, he could still be found not guilty by reason of insanity if he could not restrain himself from committing his offense. But the court did not go so far as to say that it would favor the acquittal on grounds of insanity of a person whose capacity to judge right from wrong or to refrain from doing wrong was diminished by the fact that he was mentally ill. So here the line was drawn—the decision would still be between black and white, i.e., possession of capacity or lack of capacity. There would be no allowance for that grey area where many, if not most, criminals would fall. Thus, in the area where the greatest discretion would be required, no discretion would be allowed.

In December, 1972, the Ohio legislature passed a new criminal code, incorporating, among other provisions, one dealing with certain mentally ill offenders. Although it appears to leave the Staten application of the M’Naghten Rule untouched, it does tend to apply the theory of diminished capacity in the case of a capital offense, in section 2901.94(B):

When death may be imposed as a penalty for murder in the first degree, the court shall require a pre-sentence investigation and a psychiatric examination to be made and reports submitted to the court, pursuant to section 2947.06 of the Revised Code. Copies of the reports shall be furnished to the prosecutor and to the offender or his counsel. The court shall hear testimony and other evidence, the statement, if any, of the offender, and the arguments, if any, by counsel for the defense and prosecution, relevant to the penalty which should be imposed on the offender.

The court may find that the mitigating circumstance of insanity exists in accordance with section 2901.95(B)(3), if: "[t]he offense was primarily a product of the offender's psychosis or mental deficiency, though such

21 Id., enacting OHIO REV. CODE ANN. § 2901.94(B) (Page 1972).
condition is insufficient to establish the defense of insanity."

If this degree of mitigating insanity is found, the offender will be sentenced to life imprisonment instead of death. This recognition of a condition of mental illness which is not serious enough to destroy the offender's capacity to judge right from wrong, but which will result in the production of his criminal act is most certainly a step in the right direction.

A test was applied by the Municipal Court of Franklin County in a case involving a violation of a Columbus lewdness ordinance; a trans-sexual male was arrested for wearing clothes appropriate to the female sex. The court, posing a more enlightened criterion of insanity defense than the previous Staten ruling, acknowledged trans-sexuality to be a form of mental disorder and said,

An accused is not criminally responsible if his unlawful act is the product of a mental disease or defect. Criminal responsibility attaches to those who, of their own free will and with evil intent, commit acts which violate the law. On the facts of this case, we cannot hold the defendant criminally liable and therefore the charges brought against him are dismissed.

It would seem that an enactment of this test into the law as an insanity defense or its adoption by the Ohio Supreme Court would be needed to assure that it would be applied to all cases where it could be appropriately used to safeguard the rights of the criminally insane. This still leaves open the question of how the courts are to go about determining, in civil commitment by Probate hearing, or in criminal proceedings at a Common Pleas trial, whether the person before the bench is actually mentally ill, and whether he can take care of himself in society and refrain from harming himself or others, or whether he should be under supervision by the state. Unless the courts make their decisions as to these factors based on advice from experts in the field of mental health who are equipped to apply the latest technology to their craft, the person suspected of being mentally ill may receive less than that due process of law to which he is entitled. Such technology must necessarily include the ability, through scientific testing, to present substantial, concrete evidence to the court of the allegedly mentally ill person's particular disabilities.

Psychiatric examination alone, a totally empirical, variegated process, may not always be conclusive. In the words of Judge Tom R. Blaine,

[a] psychiatrist... called as a witness in court, frequently where a jury has to decide the issue involved, will testify that he does not recognize the words "sane" or "insane"; that these are legal, not medical words. The witness will then go into a psychoanalytical

22 Id., enacting Ohio Rev. Code Ann. § 2901.95(B) (3) (Page 1972).
lecture that soars completely over the heads of the judge and jurors; all they will remember of the doctor's testimony will be something about a person being able or not able to adjust to his environment. The truth of the matter is that the standards of conduct prescribed by law for persons in both civil and criminal cases are not recognized by the Freudians; consequently, their conclusions and deductions are of no value to judges and jurors in court.24

In addition to rapid advancements in the field of biochemical or orthomolecular psychiatry, new developments in the field of psychological testing, which have been advancing as rapidly as those in the biochemical realm, present far more scientific methods of determining the manifestations of mental illness than have been available to the courts until this time. One of these tests, the Hoffer-Osmond Diagnostic Test, is a simple, true-or-false vehicle which can be filled out in counsel's offices or judge's chambers by the individual who is believed to be mentally ill in less than 20 minutes, which can be scored in a few more minutes, and which can reveal clearly to any layman the extent to which that individual is experiencing mental problems. Where more time is available, and where more sophisticated accuracy is desired, a psychologist can administer such testing as the Experiential World Inventory (E.W.I.), which was recently developed at the New Jersey Neuropsychiatric Institute. The results of this test are entered in a two-page report which, after a few hours of training, any lawyer can understand.

STATUTES AUTHORIZING INCARCERATION

There are two types of process in the law of Ohio through which a mentally ill person may lose his liberty and become incarcerated in an institution: civil process, which is embodied in Chapter 5122 of the Ohio Revised Code, and criminal process, which is embodied in Chapter 2945. There are five forms of civil process, each of which is designed to deal with a different situation in which the mentally ill patient is found. Section 5122.0225 provides for the patient who wants to be voluntarily admitted to a hospital, to apply therefore in writing, i.e., "to sign himself in." He can, as a matter of course, "sign himself out," if he wishes, under the provisions of section 5122.03,26 unless the hospital staff decides that they wish to retain him there against his will. Then this section provides for a 10-day period of time during which the hospital can file an affidavit in the Probate Court to the effect, "that the patient is mentally ill and the release of the patient would be unsafe or detrimental for the patient or others." If the court finds for the hospital, his voluntary status ends, and he becomes committed. The only way he can avoid this plight is to cooperate with the hospital until the staff releases him of their own accord; the statute provides that no judicial proceedings for his commit-

25 OHIo REv. CODE ANN. § 5122.02 (Page 1972).
26 OHIo REv. CODE ANN. § 5122.03 (Page 1963).
ment can be commenced unless he exercises his option to leave against the recommendations of the staff. So the patient must play a "guessing game." Does the staff feel strongly enough about detaining him to file an affidavit, if he serves notice to them that he wants to leave? Suppose they "call his bluff?"

Section 5122.06 provides for the hospitalization of a person who does not object in writing for a period of 90 days, if two licensed physicians certify that he is "a mentally ill individual subject to hospitalization by court order," that "because of his illness he is likely to injure himself or others if allowed to remain at liberty, or is in need of care or treatment in a mental hospital, and because of his illness lacks sufficient insight or capacity to make responsible decisions with respect to his hospitalization." While the "voluntary" statute, 5122.03, provides that the hospital must provide reasonable means and arrangements for informing patients of their rights to release, and that it must assist them in making and presenting such requests, the aforementioned "no-contest" statute, section 5122.06, provides no such protection; although the patient can theoretically object to the process, he is not always informed that he can, in the rush of enthusiastic social workers, doctors, relatives, friends, or neighbors to get him quickly behind the institutional walls. When one takes into account the fact that this is a non-judicial form of incarceration, i.e., that the person is not entitled to a hearing before a court of law until 90 days of incarceration have passed, a clear issue of deprivation of due process presents itself. In the case of Bronaugh v. Harding Hospital, Inc., a doctor was incarcerated through this procedure in a private mental institution, and the fur was still flying when the court said in 231 N.E.2d at 492:

A statute such as section 5122.06, Revised Code, providing for the admission of a person to a hospital without notice to him and without any judicial process constitutes an invasion of the basic common-law rights of a citizen and therefore must be strictly construed . . . traditionally our courts have strictly applied the statutes dealing with the insane (now mentally ill) in such matters as the giving of notice and otherwise.

The court continued, after citing as precedent the rulings in In re Koenigshoff and State ex rel. Parsons v. Bushong. The opening sentence in section 5122.06, Revised Code, says: "Any individual who does not object in writing may be admitted to a hospital, . . ." Such a provision clearly suggests that the individual must be advised of that right and be afforded the means of making such a writing, otherwise the provision is totally futile. The

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Legislature failed in Section 5102.06, Revised Code, to put the burden on the head of the hospital to advise a patient of his rights and to supply writing material, except that it might have done so by implication.

Dr. Bronaugh claimed in this case that not only was his objection to hospitalization ignored in violation of statute, but that “the hospital and the doctor persistently refused him permission to call an attorney, call doctors of his own choice, or to leave the hospital until August 16, 1962, on which date he was allowed to leave after 14 days of unlawful detention.” Moreover, one of the two medical certificates did not state the required criterion for involuntary hospitalization, that the patient would be likely to injure himself or others if not hospitalized, and the other noted “suicidal tendencies,” but was not written until three days after the patient was confined! One might note in passing that Dr. Bronaugh was still very much alive over a year later, when he filed suit against the hospital for damages for false imprisonment and for three broken ribs sustained there, and he personally testified in his own behalf when his case was later tried. Harding Hospital is still widely renowned as one of the finest private mental institutions in the state, if not the nation. If such a dreadful denial of a physician’s civil rights could occur there, it would be difficult to adequately assess the possibilities and magnitude of abuse which could conceivably interfere with the rights of a layman in the massive and monolithic state hospital system. The need for counsel and for readily comprehensible information brochures describing the laws bearing on mental hospitalization, to be available to all patients, becomes strikingly obvious. Until such an availability is established, liberty and justice stand continuously in peril.

Sections 5122.08 and 5122.10 provide for emergency hospitalization procedures when a person is not expected to voluntarily enter the hospital or to refrain from contesting his incarceration. Under 5122.08,31 he can be confined up to 60 days if there is a written application to the hospital stating, “belief that the individual is likely to cause injury to himself or others if not immediately restrained, and the grounds for such belief,” and a certification by a physician that he has found him to be in such circumstances. Under section 5122.10,32 no certification by a doctor is necessary; any health or law enforcement officer can order a person incarcerated for up to five days if he “has reason to believe that an individual is mentally ill, and because of his illness, is likely to injure himself or others if allowed to remain at liberty pending examination and certification by a licensed physician.” Section 5122.1133 is the only one which provides for the bringing of the patient’s plight before a court—before the hospital gates close on the world behind him. Here an affidavit

31 OHIO REV. CODE ANN. § 5122.08 (Page 1972).
is filed, and the court can either order him immediately locked up for a reasonable period of time before it schedules a hearing, or it can let him be at liberty until his hearing.

Regardless of which of the sections a patient is hospitalized under, he is eventually guaranteed his day in court by section 5122.15, which provides for a hearing during which the Probate Court determines his fitness for hospitalization. He is afforded notice, although it is of questionable value if he is confined, and he is helpless to do anything but try to secure legal counsel, if he can afford it. He is not afforded counsel as a matter of right, as his hearing is considered to be ex parte. The recent decisions of In re Popp and In re Fisher, in two different Ohio courts of appeals, tend to question the propriety of this, in light of the requirements of due process. Thousands of inmates in the institutions of Ohio are eagerly yearning for a Supreme Court decision from Columbus to finally ascertain their right to counsel.

The final procedural defect with regard to competency hearings involves the fact that most patients who attend such hearings are under medication at the time the hearing is conducted. This is quite significant in that much of the medication employed is of the nature so as to produce a physiological reaction whereby the patient is functioning at less than normal capacity. As a result, most patients are in no physiological position to adequately respond to the substance of the hearing. This factor becomes more crucial and significant in that, due to the fact that the court officials have no basic comprehension of the medical data within the report used by them, the patient's outward appearance and demeanor may often determine the result of the hearing. This is due to the fact that the court officials are, in effect, forced to rely significantly on the patient's outward demeanor. As a result, in numerous hearings, a determination is made which is significantly based on the patient's demeanor and response to questions presented. The patient, due to the medication influence, is destined to portray a less than favorable impression. The end product, therefore, is a hearing which is destined to be conducted in an arbitrary and capricious manner.

If a person's mental illness has so deranged his mind as to result in the commission of a crime and his apprehension therefor, his society feels a desperate need to protect itself against further possible depradations by him; yet also, it is governed at least to some extent by humanitarian ideals which eschew punishment for offenses where the offender cannot be held blameworthy, due to his illness. Most such offenders rarely get

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36 In re Fisher, supra notes 3 and 4.
37 J. Murphy, Study for Administrative Process Course at the University of Akron Law School (May 6, 1972) at 38 (unpublished paper in Akron Law Review office).
past the procedure whereby they are found too sick to stand trial, and are then incarcerated in Lima State Hospital for the Criminally Insane, if and until such time as they might recover. Section 2945.37 of the Ohio Revised Code states:

If the attorney for a person accused of crime whose cause is pending in the court of common pleas, before or after trial suggests to the court that such person is not then sane, and a certificate of a reputable physician to that effect is presented to the court, or if the grand jury represents to the court that any such person is not then sane or if it otherwise comes to the notice of the court that such person is not then sane, the court shall proceed to examine into the question of the sanity or insanity of said person, or in its discretion may impanel a jury for such purpose. . . .

It must be emphasized that this statutory section applies when the present sanity of the accused is questioned—at this stage of the proceedings, there would not yet have been made a plea of not guilty by reason of insanity at the time of the commission of the crime. At issue is the mental fitness of the defendant to stand trial after the criminal act. The criteria by which such fitness is judged were set forth in the case of State ex rel Townshend v. Bushong, later cited in Krauter v. Maxwell.

The well settled common law rule that a person while insane cannot be tried, sentenced, or punished for an alleged crime, and that the only issue presented at a preliminary trial of present insanity is whether the accused has sufficient soundness of mind to comprehend his position, to appreciate the charges against him, and the proceedings thereon, and to enable him to make a proper and rational defense.

Pending Legal Reforms

Perhaps the first substantial work of legal writing on reform of mental health law in Ohio appeared in the Cleveland Marshall Law Review in 1960. Here in a symposium of articles by a number of forensic psychiatrists, a number of reforms were proposed. Thomas Szasz, one of the most noteworthy and controversial experts in this field, proposed that the patient to be examined for purposes of commitment should be informed of the consequences of pathological findings; that he should be provided with counsel; and that his commitment hearing not be ex parte in nature, but that he be allowed to defend himself; and that the State be required to present its findings in support of his incarceration. Ewing H. Crawfis suggested that there should be a separation between an

40 Krauter v. Maxwell, 3 Ohio St. 2d 142, 209 N.E.2d 571 (1965).
42 Szasz, Civil Liberties and the Mentally Ill, Id. at 399.
order for hospitalization and an adjudication of incompetency. For all intents and purposes both of these occur simultaneously at the present time, despite the obvious fact that some people are fit subjects for commitment, while still being adequately lucid for the handling of their affairs and the transaction of business, such as those who may be depressed or who are suffering from extreme anxiety. Irvin N. Perr disclaimed the unnecessary use of restraints, constant observation, and other restrictions of privacy in hospitals, drawing from his years of experience in state hospital systems the conclusion that if hospital conditions were generally as pleasant as possible for the patients, they would rarely require such drastic measures to keep them from hurting themselves or others. Henry Davidson suggested three criteria to be used to determine incompetence in a proceeding separate from the commitment. The patient would have to have a diagnosable disorder of thinking, this disorder would have to be impairing his judgment, and this impairment would have to be such that it leads to squandering, hoarding, or undue gullibility.

In 1961, writing in the Ohio State Law Journal, Robert A. Haines and Webster Myers, Jr., two of the draftsmen of the present mental health law embodied in Chapter 5122, stated that they, too, would have favored a provision in it establishing separate procedures for hospitalization and for declaration of incompetency.

Another article appearing in the Ohio State Law Journal in 1965, written by Thomas Tyack, attacked the Ascherman Act for disposition of psychopathic offenders, claiming that the term, "psychopathic personality," itself, was no longer considered meaningful in the field of psychiatry. Nevertheless, he advocated, if this concept was to be continued as a legal process, the defendant should be afforded counsel, the right to freedom from self-incrimination, and a separate hearing specially designed to determine the issue of psychopathy. It should only be activated after the accused would be convicted. Incarceration should not be indefinite, but instead the prisoner should be afforded a new hearing upon the expiration of his sentence. In the event that he should recover before his sentence had expired, he should be released at that time. Most important—he should be administered adequate treatment for his condition, rather than just being "caged-up" like an animal.

Douglas L. Custis, writing in the University of Cincinnati Law
REVIEW in 1966,49 further discredited the Ascherman Act, stating that the concept of psychopathy is too poorly defined, that any diagnosis would depend upon the subjectivity of the diagnostician, and that there is a dearth of practitioners and facilities in Ohio to afford criminal offenders any substantial degree of treatment for their afflictions.

Perhaps the finest article ever written on the subject of reform of mental health law in Ohio was published in the CLEARINGHOUSE REVIEW by David N. Strand, a staff attorney of the Cleveland Legal Aid Society, in December, 1972.50 In this article, Mr. Strand delves deeply into the various problems which must be resolved by legal reform, and he presents a detailed summary of the legislation which his organization helped to draft and to introduce into the Ohio legislature during the last session.51 This piece of proposed legislation has been revised and re-introduced during the present session; and as this study goes to print, the House Judiciary Committee is presently considering the feasibility of its enactment into law.52

Constituting one of the broadest and most far-reaching reforms of state mental health legislation in the history of Ohio, and to a certain extent, the United States as well, House Bill No. MH-984 will attempt to assure adequate treatment to mentally ill persons, to provide for the maximum use of least restrictive treatment settings for the adequate treatment of mental illness, and for the maximum use of voluntary hospitalization where hospitalization is appropriate, to provide orderly and reliable procedures consistent with due process of law for the commitment of persons to hospitals for the mentally ill in the State of Ohio, and to provide for the protection of the rights of patients hospitalized pursuant to the laws of the State of Ohio.53

A brief summary of some of the 38 sections of the proposal will be presented, to acquaint the reader with its salient points.

Section 2111.01 would establish a separate definition for incompetency as an inability to take proper care of one's self or one's property, or to provide for his family, or for other persons for whom he is charged by law to provide.54 Section 5122.01 would repeal section 5122.01(A) of the OHIO REVISED CODE, pertaining to the definition of a mentally ill individual; and subsection (B), pertaining to the definition of a person so sick as to be subject to incarceration,55 would be revised to define such a person as one who presents a substantial risk of harm to himself or others

50 Strand, Legal Aid for Patients in State Mental Institutions: The Cleveland Experience, 6 CLEARINGHOUSE REVIEW 483 (1972).
53 Id. at Title Page.
54 Id. at 1.
55 Id. at 3.
as evidenced by certain manifestations of behavior, or who manifests certain evidence of being unable to provide for his physical needs, or to live a socially viable life. Although these would be more specific criteria upon which to base a decision to incarcerate someone in a hospital than those presently employed, it might be suggested that if a commission of experts were appointed to establish and regularly update criteria for diagnosis of presence of mental illness derived from such precise factors as psychiatric examination, psychological evaluation, and biochemical testing, such a decision could then be based on far more objective and concrete grounds. Judging whether there is a substantial risk of the patient harming himself or others or whether he can care for himself or function viably in his community would be greatly assisted by having such information available and considered relevant. It would seem that both the individual and his society should have the additional protection afforded by what advanced technology is available; and moreover, the legal imperatives of due process should demand it.

Section 5122.40 would establish a Legal Advocacy Service to provide legal counsel for the mentally afflicted, so as to protect their rights while involved with the system, and so as to protect them from abuse. This agency would be headed by a nine-member board of trustees, and would be completely independent of the state hospital system and the Attorney-General’s office, thereby being able to function without susceptibility to intra-governmental political pressures.

Section 5122.02 would amend its predecessor in the existing code by, among other things, requiring that any patient under 16 years of age or incompetent who has a parent or guardian apply for voluntary admission to a hospital on his behalf, be brought to the attention of the Legal Advocacy Service immediately, so that it can take the necessary steps to protect his rights.

Section 5122.03, revising further the voluntary admissions procedure of the present system, would cut down from 10 days to two days the time during which a hospital can retain a person against his will who was admitted voluntarily earlier, where he has submitted a request for his release. Within these two days, the hospital must either file an affidavit with the court for a hearing or release the patient forthwith.

Sections 5122.04 and 5122.041 relate to the powers and duties of the State Department of Mental Health and Retardation, the latter of which would prescribe the establishment of special facilities for handling

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56 Id. at 3, 4.
57 Id. at 48-51.
58 Id. at 7.
59 Id. at 8.
60 Id. at 9-10.
61 Id. at 10.
cases of drug abuse.

Section 5122.05 would allow any patient involuntarily detained or admitted into the hospital a reasonable number of telephone calls to obtain counsel and outside medical assistance, and it would afford him this counsel and independent psychiatric evaluation even if he is indigent. Moreover, he would be informed by the hospital staff of these rights, and the Legal Advocacy Service would be informed of his admission, so as to be able to assist him. Such involuntary admission, under the proposed law, could occur through emergency procedure with medical certificate, emergency procedure without medical certificate, or judicial procedure. The “no-contest” procedure for admission under the present section 5122.06, where the patient could be admitted for up to 90 days if he posed no objection, would not be retained. This will eliminate a major source of abuse, whereby patients may have refrained from objecting to their incarceration due to fear, pressure from hospital staff or family members, or simply due to ignorance of their rights. Section 5122.08 would cut down from 60 days to 20 days the period during which a patient may be retained in the hospital through emergency procedures based on medical certification. In this case, as in others, the Legal Advocacy Service would be notified immediately upon admission, and furnished with copies of the medical certification papers. Section 5122.10 would cut down from five court days to two, the time during which a patient may be incarcerated through emergency hospitalization procedure without any medical certification, and would require that in addition to being a fit subject for hospitalization under the new definition in section 5122.01, the patient must also present a substantial risk of causing harm to himself or others. He must be taken into custody as inconspicuously as possible, to avoid embarrassment and damage to his reputation.

After the expiration of the periods prescribed in the aforementioned involuntary commitment sections, the incarcerated patient would be afforded his day in court, in accordance with the new sections 5122.11 to 5122.15. The days of "assembly-line" hearings would be over, and those "railroad tracks" to the state hospitals would be torn up to comply with section 5122.051, which does away with the so-called ex-parte hearing, where the patient is not deemed to be facing an adversary, and thus not deemed to be in need of counsel to protect any interests. This section would prescribe that the state hospital system "shall present the case on behalf of the state at the hearing . . . ," and earlier cited sections

62 Id. at 10-12.
65 Id. at 14-15.
66 Id. at 3.
67 Id. at 12.
would provide for the patient's representation by the Legal Advocacy Service. If the patient were at large, and if it were desirable to hospitalize him, but there were no emergency need for this, there would be filed in the Probate Court an affidavit in accordance with section 5122.11, alleging that the patient is a fit subject for hospitalization because his condition falls under one or more of the specific categories set forth in section 5122.01. The court may require that this affidavit be supported by a medical certificate or an affirmation that the patient will not submit to an examination, and may upon probable cause issue a temporary detention order allowing his hospitalization, until such time as either a hearing for probable cause or a hearing for determination of whether he is a fit subject for involuntary hospitalization is held.

Upon receipt of the affidavit, the court would give written notice to the patient, his guardian, if any, his spouse, if the address is known, the affiant, a person designated by the patient or, if he makes no selection, to an adult next-of-kin other than the affiant, the patient's counsel, the hospital involved, and to the Legal Advocacy Service, as would be prescribed in section 5122.12. It is readily observed that these new provisions for notice would allow for a greater degree of certainty that the patient's interests will be protected than do the present provisions. Even if nobody else would speak up for him, at least the patient would have counsel to protect his rights. Section 5122.13, improving upon the present procedure, would require the court to have an investigation of the allegations of the affidavit made by the county welfare department, a competent social worker, or another investigator whom the court may appoint. Not only would this investigation be mandatory, but there would be a full record of the report of the investigation made, thus avoiding a situation whereby the results could be made orally in chambers to the judge or his deputy, beyond the scrutiny of the patient or his counsel. The proposed section 5122.14 would provide for the immediate appointment of an examining physician after acceptance of the affidavit to certify the condition of the patient, if it had not been so certified beforehand, either while he was in the hospital or outside. The court would have the option of ordering such an examination even if one had already been conducted. One might suggest further that the proposed section might provide even more protection for the patient if it were to include requirements for a routine series of biochemical testing, psychological evaluation, and psychiatric examination. If the patient were well, this would be more concrete evidence in his favor; if he were sick, the results could inform him, his family, his counsel, and the court from the outset.

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68 Id. at 15.
69 Id. at 3.
70 Id. at 16-17.
71 Id. at 17-18.
72 Id. at 18-19.
as to what the nature of his illness was and thus what course of treatment he should look forward to receiving, as a matter of right.

Section 5122.141 of the proposed legislation would provide for something entirely new to Ohio mental health law—the "hearing to determine whether there is probable cause to believe that the respondent is a mentally ill person subject to hospitalization by court order,"73 to be held whenever possible before the respondent is taken into custody. In any event, the respondent would have a right to have this hearing within two court days after his request, or that of his counsel or the Legal Advocacy Service, once any proceedings have commenced against him, or he has been admitted or involuntarily detained in the hospital. The hearing would be conducted in the same manner as the one discussed previously, with the respondent afforded counsel and an independent psychiatric evaluation, at court expense if he would be indigent. This hearing could be continued for good cause for a period of not more than three days, upon request of the respondent, his counsel, or the hospital staff. If the court finds upon hearing the matter that there is probable cause to believe that the respondent is a mentally ill person subject to hospitalization by court order, it can order an interim order of detention until a final hearing can be held—within 10 days under section 5122.15; otherwise, the case is dismissed and all record of the proceedings would be expunged from the record. Other than raising the ticklish legal question of whether any court could be empowered to expunge records of its own proceedings, thus frustrating review by higher courts, this proposed probable cause hearing does provide for a substantial degree of protection of respondents who might otherwise be incarcerated when they may not be ill or may not be so ill as to require it.

The proposed final hearing under section 5122.1574 would be conducted after notice was properly given, after the respondent had been afforded counsel, after the results of the investigation and psychiatric examination were available, and after a hearing for probable cause, if any, had occurred. All documents, information, and evidence relating to the respondent would be made available for his defense, including that in the possession of the hospital system or other treatment facilities or practitioners. Respondent would have the right to attend his hearing, unless unusual circumstances or compelling medical reasons would abjure this and the respondent, himself, does not wish to attend. He also would have the right to testify in his behalf, to confront adverse witnesses, to subpoena other witnesses to testify, and to present and to cross-examine witnesses. It is presumed that this section, above all others, would provoke the most vehement opposition of the entrenched bureaucracy of fossilized Freudsians who run the state hospital system. For the first time, their

73 Id. at 19.
74 Id. at 21-30.
modus operandi for the diagnosis of mental illness and for the development of a rationale for incarcerating their prey will be exposed to the full scrutiny of the patient, his family, and counsel, for the record, and will be readily assailable in all of its weaknesses. Great benefit to the public should inure, however, as incarcerations upon inadequate grounds and faulty diagnoses would be avoided, and the level of psychiatric practice in the state hospital system would rise to the high degree presently observed in other fields of medicine. Section 5122.15 also would provide for all other rights for the respondent enjoyed by defendants in other adversary procedures, and for the court's safeguarding those rights by diligent inquiry as to whether they were being implemented, to include the continuous process of advising the respondent of these rights as each step in the commitment procedure was arrived at. Upon completion of the hearing, the court must either find beyond a reasonable doubt that the respondent is fit subject for hospitalization, or dismiss the case and order him released forthwith. If the former finding is reached, the court may order him for a period not exceeding 90 days to a hospital, clinic, or to a practitioner for a program of treatment least restrictive in nature of his liberty, consistent with the needs of the program. If more treatment is still needed at the end of 90 days, another hearing must be held. Subsequent periods of commitment not to exceed 90 days may be ordered without a hearing, if none is requested, but a hearing must be held at least every two years thereafter, to avoid situations like that in which one Miss Martha Nelson was discovered to have been incarcerated in Orient State Hospital for 98 years.

It would appear that section 5122.15 would offer a high degree of protection of the patient's right to treatment, as well as of his right to be retained in a hospital or other program only if he needs it. With utilization of new biochemical technology of therapy, the first few months are very critical—it is during this period that the patient must be diagnosed as to the precise imbalances in his body chemistry and metabolic systems, and an attempt must be made to bring these back into balance. During this period, frequent hearings will enable the court, the patient's counsel, and the medical staff of the hospital as well, to observe how well he is coming along. Any problems in the progress of his treatment or in his adjustment to his new environment which would call for legal resolutions could then be ironed out. Also, the availability of precise, concrete, biochemical test results, to supplement the psychological evaluation and psychiatric examinations administered to the patient, will enable the jury, if one is requested by a patient for his hearing as is provided for in this section, to more readily reach a conclusion, despite their being laymen and having no prior exposure to the mental health field. They would not have to rely solely on confusing and variegated testimony of an empirical nature by the psychiatrists and psychologists. This would be most important, in a case where three-fourths of an eight-man jury must concur to continue commitment.
Section 5122.29 of the proposed legislation, covering patients' rights, would thrust directly into the issue of the right to treatment.\textsuperscript{78} Section 5122.27, mentioned earlier in this study, already had placed on the books the requirement that patients be afforded treatment "in accordance with the highest standards of medical practice."\textsuperscript{76} One would think that this unmistakably clear criterion, when combined with the also earlier mentioned state constitutional provision and subsequent court interpretations thereof, would have resulted in a diligent effort by the state hospital system to deliver what it was supposed to deliver in the way of mental health care. The recent findings of the Citizens Task Force on Mental Health and Retardation, which submitted its report on October 4, 1972, indicated the contrary to be true, however:

The Department provides little more than the most primitive form of custodial, institutional care for the 19,000 patients and inmates in Ohio's mental health and mental retardation and psychiatric criminology institutions. There has never been sufficient personnel to provide programs of rehabilitation and resocialization, so that patients can be returned to their communities. Direct care represents the weakest link in the chain of services.\textsuperscript{77}

As for the caliber of the doctors entrusted with the patients' therapy, the task force reported: "almost half the number of physicians employed are in danger of dismissal by the State Medical Board because they do not meet necessary qualifications."\textsuperscript{78} The tragic irony of it all is, that within the confines of the present budget, there are adequate numbers of qualified personnel and ample modalities of therapy to adequately care for Ohio's mentally ill, within the "availability" limitations of section 5122.27, if biochemical technology were used.

The proposed section 5122.29\textsuperscript{79} would strike at the heart of these heinous abuses, requiring written treatment plans, which would be available to the patient, his family, and his counsel, for their review, and which would set forth diagnosis, prognosis, and treatment goals to be pursued. Moreover, the proposal would prescribe prompt and adequate treatment for any physical ailments contracted, and provision for the patients to have a certain degree of privacy, to wear personal clothing of their own, to maintain possession of personal belongings, to be afforded storage space for them, and to have uncensored access to reading materials. They would be entitled to receive visitors, including their counsel and personal physician, and to engage in unopened written

\textsuperscript{75} Id. at 37-45.
\textsuperscript{76} OHIO REV. CODE ANN. § 5122.27 (Page 1970).
\textsuperscript{77} Citizens' Task Force on Mental Health and Mental Retardation, Findings and Recommendations: Design for a Coordinated System of Services to the Mentally Ill and Mentally Retarded in Ohio, pt. V, at p. 63 (1972).
\textsuperscript{78} Id. at 90.
correspondence and confidential telephone conversations. Moreover, they would be entitled to have these basic modes of human dignity financially provided for by the state if they are too indigent to afford them. They would be entitled to engage in "interaction" (whatever that means) with members of the same sex or opposite sexes under adequate supervision. The patient would have the right to refuse brain or psycho-surgery, shock treatments, aversion therapy, and other dangerous modalities, and he would have the right to receive current information on his treatment program and as to expectations of progress in terms he can understand. He would have a right to refuse excessive medication—the "chemical straightjacket." It might be assumed that if the patient, his family, and counsel have the right to access to his treatment plans formulated by the hospital, they will readily observe any deficiencies therein and take steps against the hospital staff to have them corrected. In the light of the recent discoveries in the field of orthomolecular psychiatry, and the availability of treatment modalities derived therefrom, and in the light of the poor quality of medical personnel revealed in the Citizens Task Force Report, it may often be necessary for strong measures to be taken to upgrade the patient's treatment plan. To accomplish this, both he, his family, and his counsel will have to educate themselves in the basics of better alternate modalities of therapy, so as to challenge the judgment of his physicians before the courts. And the courts are going to face the necessity of delving into medical, psychiatric and biochemical matters in order to assure the patient of the highest standards in treatment. In the words of the court which decided the case of National Investment Company v. Kohn: "The time must never come when, because of frustration with concepts foreign to their legal training, courts abdicate their judicial responsibility to protect the . . . rights of individual citizens."80 Much as the new psychochemical discoveries discussed earlier in this study may boggle the mind of the judiciary, judges must learn to enforce implementation of them by the state hospital system when patients aggrieved by malpractice come before them; otherwise, all of the procedural protection contained in the new legislative proposal will be enacted in vain. A patient can be incarcerated in a hospital in such a manner that all conceivable procedural rights which could be afforded him are protected; yet, if he doesn't have the most technologically advanced therapeutic modalities applied to treat his affliction, he will be deprived of the most important right he could possibly have—the right to get well. Readers of the new proposal, particularly legislators who will be faced with the decision of whether to enact it and judges who will be entrusted with the duty to enforce it, would do well to recall the words of the draftsmen of the presently existing mental health legislation, spoken in 1961 at the time of its enactment:

But it is not the final answer. The modern perspective of

hospitalization and treatment of the mentally ill is in its infancy. Psychiatric care techniques may be discovered in this decade which will completely antiquate Ohio's new effort. Those in the mental health program must be cautious against complacency. Change must be prompt and welcomed. An obstructive law in this field is less tolerable than in another field, because a lack of the best treatment available adds to the tragic misery and despair of those afflicted with mental illness.81

Slightly more than a decade after these remarkably prophetic words were written, Dr. David Hawkins, director of the North Nassau Mental Health Center in Manhasset, Long Island, wrote

Before the adoption of orthomolecular methods, schizophrenic patients were seen three times per week, 48 weeks per year, for a total of 144 visits per year. Additional visits with family and emergency visits brought the average close to 150 visits per year. With the use of orthomolecular methods, schizophrenic patients are now seen, on the average, 15 visits per year—one-tenth the former number. With an annual budget of $300,000, the Clinic's cost per patient per year in 1971 was only $200, including diagnostic laboratory work.82

Will Ohio's legislature, mental health system, bench, and bar be capable of appreciating the significance of such findings and of working together to implement them in a state-wide effort to reduce spiraling mental health care costs and bring speedier relief to her mentally afflicted?

In the event that the patient can have his illness brought under control, the sweeping civil rights provisions of the proposed section 5122.29 would afford him a degree of protection sorely needed if he is to pick up the pieces of his shattered life in the outside world. He could not be denied employment or licenses to practice his occupation solely by reason of his having been treated for mental illness. Nor could any record of his treatment therefore be released to any party without his permission. Even while hospitalized, he could not be denied such processes as the right to sue, to make a will, to marry, or to seek a divorce, unless he were to be adjudicated incompetent in a separate hearing. In compliance with the urgings of legal reformers cited earlier in this chapter, and others, incompetency would no longer be inferred from the fact of involuntary hospitalization. In a further reform, this section would greatly restrict the hospital's arbitrarily confining the patient in straightjackets, other restraints, or in solitary confinement.

The proposed section 5122.17 would also severely restrict the confinement of mentally ill persons in jails or other penal institutions, presumably except for short emergency periods until they could be

81 Supra note 46, at 682.
transferred to appropriate facilities for their care. In the event that it would become necessary to transfer a patient from one treatment facility to another, section 5122.20 would provide for the notification of his family or guardian, his counsel, or the Legal Advocacy Service. Before effectuating any such transfer, due consideration would have to be given to the convenience of the new location for visits from his family, friends, counsel, and other interested parties. The patient would also be given the right to object to his transfer on such grounds, and to have a hearing on the merits thereof. Ninety-day limits are placed on trial visits by section 5122.22. Presumably, at the end of this period the hospital staff would have to make up their minds as to whether they want to give their charge a full release or terminate the visit, thus avoiding some of the virtually interminable trial visits which some patients are limited to, rather than being given their full liberty. In the event that an escaped patient is apprehended, proposed section 5122.26 would provide for the Legal Advocacy Service to be notified immediately, so as to be able to provide legal counsel during this trying period for both the patient and the hospital to which he is returned. Where a patient would be subjected to an illegal involuntary hospitalization, or another deprivation of rights, section 5122.34 would award him with a cause of action against the State of Ohio.

In view of the recent episode at the Lima State Institution for the Criminally Insane, where a grand jury investigating charges of brutality found barbarous cruelties being inflicted on patients which best resembled the infamous Marquis de Sade epic of eighteenth century France, and indicted over 30 asylum guards, it might be advisable to enact into law both stiff criminal and civil sanctions which might be available to deter and, if necessary, to prosecute future degradations by such nefarious predators. To clear up the confusion over the question of whether doctors would be liable to malpractice suits if their malfeasance were done while in the scope of state employment, legislation subjecting them to sanctions as well should be enacted. Only such drastic means would assure patients and their families that Ohio has indeed entered a new era insofar as protection of the mentally ill from abuse is concerned.

CONCLUSION

It could be properly argued that there are relatively few cases whereby persons are incarcerated in mental institutions who are not actually sick enough to be there, or offenders sentenced to prison who should be hospitalized, and that the addition of more procedural

84 Id. at 32-33.
85 Id. at 34-35.
86 Id. at 37.
87 Id. at 47.
88 Widman, New Rules Seek Curb on Lima State Abuses, Cleveland Plain Dealer, June 30, 1973, at 6-C.
safeguards in these areas would be prohibitively costly in relation to the number of cases of injuries which would be prevented. It is the age-old balance every society has had to weigh between the values of expediency versus justice. But, is this the only issue involved? If all persons brought before the courts for consideration of a mental problem were to be administered through psychiatric examinations, psychological evaluations, and biochemical testing, these results would be available to point the way to treatment appropriate to the diagnosed cause of their disorder. If this proper treatment would be administered for all patients, it is probable that many, if not most, would recover enough to regain their liberty and save the people of the State of Ohio millions of dollars in future years, which would greatly outweigh the costs of the legal safeguards proposed herein.

Over and above the cost factor, however, there exists the question of humanitarianism. How can the degree of civilization of a society be better judged than on how well it takes care of its afflicted brethren?

At its beginning, this study recounted the tale of John Brown. It would end with the saga of another man, whose name must remain buried in the archaeological past, but whose community possessed a set of standards for care of their infirm which the people of Ohio might well be challenged to emulate:

Forty thousand years ago in the bleak uplands of southwestern Asia, a man, a Neanderthal man, once labeled by the Darwinian proponents of struggle as a ferocious ancestral beast—a man whose face might cause you some slight uneasiness if he sat beside you—a man of this sort existed with a fearful body handicap in that ice-age world. He had lost an arm, but still he lived and was cared for. Somebody, some group of human beings, in a hard, violent, and stony world, loved this maimed creature enough to cherish him.89

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