13+14 July 1976

4

POSITION STATEMENT ON THE CIVIL RIGHTS OF PSYCHIATRIC PATIENTS.

76/2055

1. Background.

A document on "Uniform Principles involved in Mental Health Legislation" was presented to the meeting of the Mental Health Committee held on 4th and 5th September, 1972. It contained sections on "Protection of Rights" and a discussion on "Detention and Control". It was stated in the first paragraph under the latter heading that "there are two distinct concepts in regard to this matter. One concept is that longer term detention is determined by the nature of the conduct of the patient and not by the mental illness he suffers. Detention and control are, therefore, a matter for a judge or magistrate and not for a medical practitioner. The other is that the behaviour is secondary to the mental illness, is a medical matter and the decision to detain should be a medical one appealable to a tribunal."

At its meeting on 13th September, 1973, the Committee was informed of the concern of the Minister of Health, Dr. Doug Everingham, in this matter. The subject was discussed at length in April, 1974. The Committee issued a general statement and made two recommendations. In September, 1974, it was reported that the National Health and Medical Research Council had amended these recommendations to underline its conclusions that the situation in the States was satisfactory and suggested that the matter be raised at the next Health Minister's Conference, when the possibility of an ombudsman could be introduced. At the meeting held on 11th and 12th

1. Background (cont'd)

September, 1975, members reiterated their concern for the protection of the Civil Rights of patients, but stated a point often overlooked was the distress of relatives and others who look after the mentally ill.

At the Seminar held in South Australia on 29th November, 1975, to discuss the Report of the Committee appointed by the Minister of Health to Review and make Recommendations to the Mental Health Act 1935-1974, extremes of view for the protection of the rights of the individual patient were put forward by the representatives of the South Australian Council of Civil Liberties and the Citizens Commission on Human Rights, along the lines of the document "A Declaration of Human Rights for Mental Patients" tabled by Dr. A. Ellis at the September, 1975, meeting of the Committee. The final consensus, while paying due attention to the civil rights of the patient, also took into account the right of the mentally ill to receive appropriate treatment, and the rights of the spouse, family, relatives, friends and the community, to relief from stress and for protection from harrassment.

2. The Civil Rights of Psychiatric Patients.

Historically, the civil rights of patients became submerged in two developments, both based on the most humane intentions: the divestment of the criminal law, and the broadening of the concept of mental illness.

(a) The causes for the divestment of the criminal law can be found in:

2. The Civil Rights of Psychiatric Patients (cont'd)

(1) Social reform and humanism,

(2) The absence of moral guilt,

(3) The inappropriateness of punishment,

(4) The inadequacy of criminal sanctions, and

(5) Prevention in lieu of suppression.

As the civil rights of the mentally ill offender are linked with the administration of the criminal law, it will be sufficient to state that a mentally ill offender should not be detained longer than the healthy offender simply on the grounds of mental illness. If held because he is considered dangerous to others, he should have the same rights of appeal as the mentally ill non-offender.

(b) Sir Aubrey Lewis said in 1953 that the extension of the doctor's province had gone very far in psychiatry. Baroness Wootton questioned "the issues - practical and philosophical and moral - raised by the rapid growth of psychiatric empires, and by the hazy definition of their frontiers". The broadening of the concept of mental illness may have serious implications if extended to the sphere of involuntary commitment, for it must be acknowledged that the doctor has the power to deprive only mentally ill patients of their civil liberties. It is considered, therefore, that the grounds on which the doctor can so act should be clearly defined and restricted. As Professor Kendell has stated: "psychiatrists might be well advised to reconsider where their sphere of responsibility should end."

The position adopted by the South Australian seminar was that a doctor should have the power to deprive a person of

2. The Civil Rights of Psychiatric Patients (cont'd)

his civil liberties only in the case of mental illness of such severity as to require treatment in a hospital and when involuntary admission is believed to be necessary in the interests of the patient's own health or for the protection of others. Such involuntary commitment also safeguards the patient's right to have proper treatment.

The maximum period of involuntary detention should be kept short, say no longer than 24 days, with the one exception that those few patients considered to be dangerous to others may be transferred involuntarily to a closed institution for a longer period.

The civil liberties of all patients can be safeguarded by providing avenues of appeal from the time of admission, and for regular review if the period of detention exceeds 24 days. Appeal should be to a Mental Health Review Tribunal and beyond that to a Court presided over by a Judge.

Though these provisions take care of the need for treatment and protection of the acutely mentally ill and to relieve stress in relatives, friends and the community around, there are other mentally handicapped persons who need care, treatment and protection in their own interests and to relieve the spouse, family, relatives and friends from undue stress and harrassment. This group includes cases of intellectual retardation, dementia from whatever organic cause, and chronic mental illness. Though the underlying mental disorder may be readily apparent, the reason for bringing

2. The Civil Rights of Psychiatric Patients (cont'd)

these patients under care and control is either their disturbing behaviour in the social context or evidence of their social dependence and inability to manage their own affairs. Because such behaviour has significance more in a social than in a medical sense, the civil rights of such patients are better safeguarded if the power for their involuntary detention is removed from the hands of doctors and put under the jurisdiction of a properly constituted Guardianship Board. Of course, there should be provision for the Board to be asked to reconsider any custodianship order it makes and for appeal to a Court presided over by a Judge.

The civil rights of patients are better protected if definitions of mental illness and mental handicap are avoided. Precise definitions tend to focus attention on the medical condition and to justify involuntary commitment on the need for treatment and for care and protection. They thus cloud the issue, for it is the behaviour of a mentally ill or mentally handicapped person in the social context that should determine his involuntary commitment for psychiatric treatment or his being placed under care and protection.

It should be the right of a psychiatric patient to have a say in his treatment. Except in an emergency, no treatment should be given to any patient without the consent of the patient, a relative, his legal representative, or the person to whom legal custody has been delegated. In an emergency, treatment should be provided in accordance with

2. The Civil Rights of Psychiatric Patients (cont'd)

medical requirements and in the patient's interests, if possible but not necessarily with the consent of the patient and/or relatives. Such treatment would exclude experimental procedures and psychosurgery.

No patient should compulsorily be detained in a hospital unless treatment likely to improve the patient or prevent deterioration is available.

3. References.

KENDELL, R. E. (1975). "The Concept of Disease and its Implications for Psychiatry". Brit. J. Psychiat., 127 : 305.

KITTRIE, N. N. (1971). "The Right to be Different". The Johns Hopkins Press, Baltimore and London.

LEWIS, A. (1953). "Health as a Social Concept". Brit. J. Sociol., 4 : 109.

WOOTTON, B. (1959). "Social Science and Social Pathology". George Allen and Unwin Ltd., London.

9/6/76

W. A. Dibden