

GRAND ROUNDS

2024-2025

LOGISTICS:

- Please write comments or questions in Q&A
- Grand Rounds evaluation form. Link will be available when the webinar ends
- Next presentation – January 3rd

A. Benjamin Srivastava, MD

The Neural Circuitry of Negative Affect During Protracted Withdrawal in Alcohol Use Disorder

CIVIL COMMITMENT THROUGH THE ETHICS LENS: HOW WE GOT HERE

Philip Candilis, MD, DFAPA

December 13, 2024

Bruce Gage Annual Lecture in Forensic Mental Health

Sponsored by the Center for Mental Health, Policy, and the Law

The Center for Mental Health, Policy, and the Law (CMHPL) addresses a broad array of issues affecting justice-involved people with mental illness and criminal and civil legal matters related to mental health delivery.



Civil Commitment through the Ethics Lens

Philip Candilis, MD, DFAPA
Professor of Psychiatry

George Washington University School of Medicine

Director of Medical Affairs

Saint Elizabeths Hospital

Washington DC

DISCLOSURES

Today's speaker, Philip Candilis, has the following relevant relationships:

- > Stocks or stock options, excluding diversified mutual funds, from Merck, Pfizer, and Cigna

A planner of the series, Dr. Sarah Kopelovich, has the following relevant relationship:

- > Paid consultant, Lyssn.io, Inc.

None of the other planners have relevant financial relationship(s) to disclose with ineligible companies whose primary business is producing, marketing, selling, re-selling, or distributing healthcare products used by or on patients.

All relevant financial relationships have been mitigated.



Resources

PRIMER ON

Mental Health Practice and the Law

Ronald Schouten

Civil Commitment and the Mental Health Care Continuum:
Historical Trends and Principles for Law and Practice



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Hot Topics in Mental Health and Law: Civil Commitment

A+ A- | Reset



ALMOST A REVOLUTION

MENTAL HEALTH LAW AND THE LIMITS OF CHANGE

History



- **Hippocrates:** persons with mental disabilities “be confined in the wholesome atmosphere of a comfortable, sanitary, well-lighted place.” (SAMHSA 2019)
- **Rome:** guardians, with suspension during “lucidity”
- **England:** Crown responsible for “idiots” (no understanding “since their nativity”) and “lunaticks” (“who hath lost their reason”)
 - Lands, profits retained until death or recovery
 - **Bedlam:** Inpatient asylum (Testa & West 2010)
- Parentalism over rights





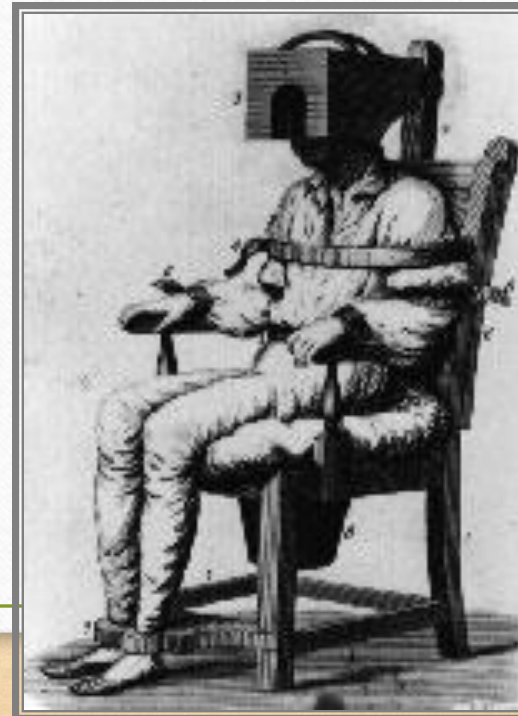
USA

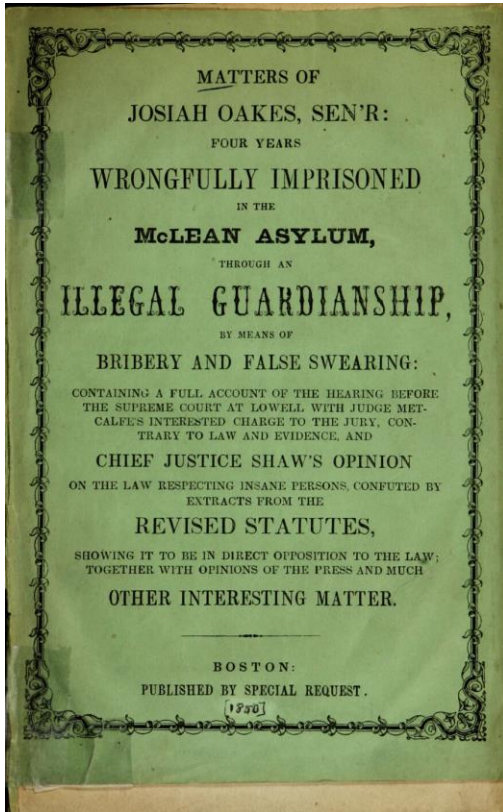


- The colonies
 - Jails, almshouses
 - Families/physicians decide (Appelbaum 1996)
- 1752: Pennsylvania Hospital
 - Easy commitment
 - Bleeding, purging, occupational therapy
 - Tours
- 1841: Moral treatment
 - Dorothea Dix

“...mental illness be freed from moral stigma and be treated with medicine rather than moralizing.”

Benjamin Rush



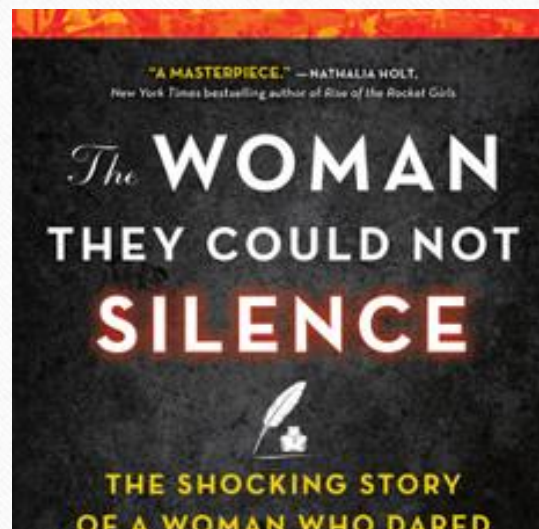


USA (cont.)

- Josiah Oakes (MA 1845)
 - Common law challenge to unwanted confinement
 - *Habeas corpus*, but rare
 - “[t]he question must then arise in each particular case, whether a patient’s own **safety**, or that of others, requires that he should be restrained for a certain time, and whether restraint is necessary for his restoration or will be conducive thereto.”
- Asylums: ESH (1773), WSH (1833), SEH (1855)
- NIMH 1951, Draft Act Governing Hospitalization of the Mentally Ill (medical decision)
- Washington DC Ervin Act (1964; **danger** + LRA)

Mrs. EPW Packard

- 1823: no jury trial for married women
- 1860 IL commitment “on the request of the husband”
- Religious opinion, personal travel
- 1864: *habeas corpus*, 7-minute jury deliberation
- A life of advocacy



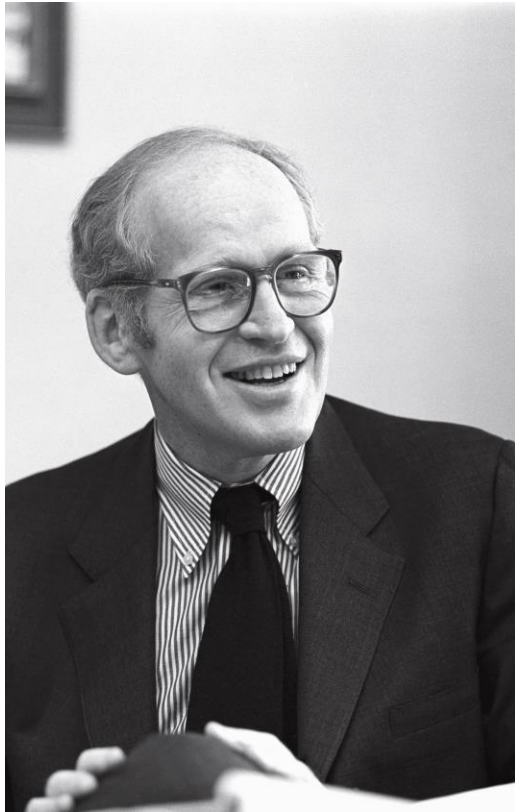


Mrs. Lessard

- WI, 1971

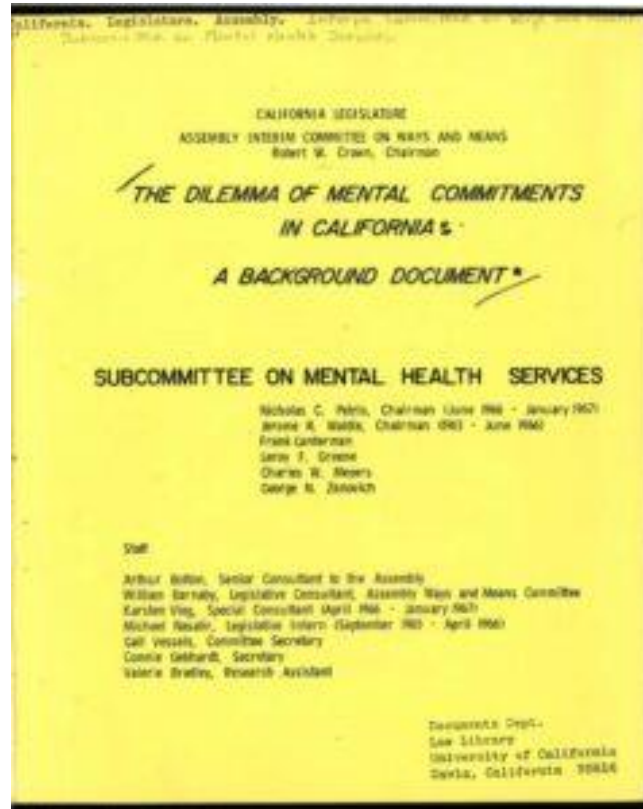
- Behavior? (“mentally ill... and a proper subject for custody, treatment”)
- Ψ : “permanent commitment”
- Hired own attorney, filed federal class action
- The degree of **dangerousness** necessary for commitment must be great enough to justify a “massive curtailment of liberty.” (JS Mill)
- Dangerousness “immediate;” “recent overt act, attempt, threat of substantial harm to oneself/another;” BRD

Tensions



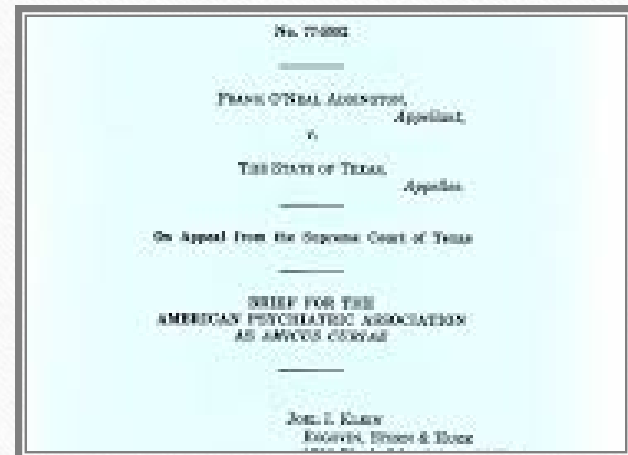
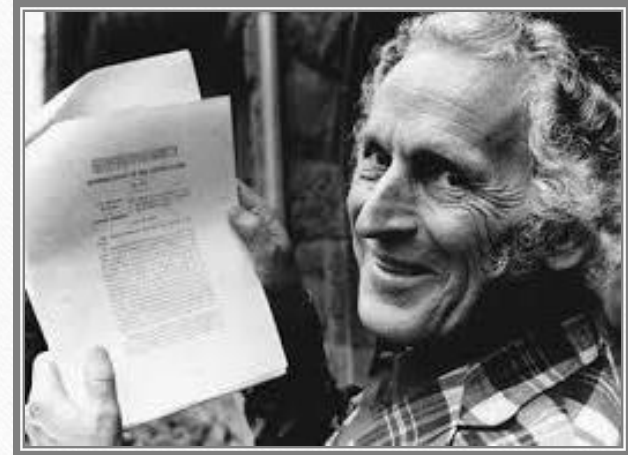
- Clinical intervention v legal process (Schouten, Candilis 2017)
 - Treatment/safety v deprivation of liberty
 - Negotiated solutions
- *Parens patriae* to...
- Police power
- Mental illness not enough (APA model code, 1982)
 - Treatment availability, incompetence, reasonable person (Alan Stone)
- Mental health courts v commitment courts (Perlin 2018)

Lanterman-Petris-Short



- CA, 1967
- Assembly report
- Danger + grave disability
- Increased procedural protections
- Connected Rx to confinement
- Inspired de-institutionalization

USSC



- O'Connor v Donaldson (422 U.S. 563 (1975))
- “A State cannot constitutionally confine, **without more**, a non-dangerous individual who is capable of surviving safely in freedom by himself or with the help of willing and responsible family members or friends.”
- Addington v Texas (441 U.S. 418 (1978))
- Clear and convincing “strikes a fair balance between the rights of the individual and the legitimate concerns of the state.”

Criteria

- Mental Illness (SA, ID, dementia); WA: “Any organic, mental, or emotional impairment which has substantial adverse effects on a person's cognitive or volitional functions.” (Chapter 71.05 Revised Code of WA)
- Danger (WA, feds: property; “substantial risk physical harm will be inflicted;” also “reasonable fear”)
- Criteria for Danger (self/others, WA/DC: “likelihood of harm)
- Need for/Benefit from Rx (MA: “deterioration”)
- Gravely Disabled (WA: “provide for essential needs;” “severe deterioration”)
- Capacity

AOT/OPC/CTO

- Civil orders (transport for eval; no invol meds)
- Minor violence prevention, re-hospitalization
- Research
 - Intensive services (↓arrests, ↑med possession, ±hospitalization)
 - Adequate duration
- Controversy: resources, race
- APA (2015): “...under what conditions, and for whom, can involuntary outpatient commitment orders be effective?”



Voluntariness

- Absence of pressure
 - Threats
 - Force
 - Unduly forceful persuasion
- Supports authentic, stable choice
- What is a threat?
- What is coercion?

Coercion, cases



- Newgate Prison, 1722
 - Smallpox vaccine or death: welcome offer or coercion?
- Kaimowitz v. DMH, 1973
 - “The inherently coercive atmosphere to which the involuntarily detained mental patient is subjected has bearing on the voluntariness of his consent... They are not able to voluntarily give informed consent because of the inherent inequality of their position.”
- National Commission, 1976
 - “Although prisoners may not regard consent as coercive, research must be prohibited because adequate monitoring of consent is impossible.”

Coercion, definitions

- Whether ordinary person finds an offer irresistible (Beauchamp & Faden)
- Whether offer is inherently unfair and “moral baseline” is illegitimate (Appelbaum)
- Whether there is a threat of severe negative sanction (Gert, Nozick)

Ethics Analysis



- It's not about autonomy!
- Or balancing.
- Principlism (beneficence, justice, autonomy)
- Narrative (Griffith)
- Vulnerable people and values (Candilis, Martinez)
- Human rights (Buchanan)



Questions?

