

*Mr Fields*

PUBLIC HEARING OF  
THE TEMPORARY COMMISSION ON REVISION OF THE PENAL LAW AND  
CRIMINAL CODE, TO BE HELD ON MONDAY, NOVEMBER 23, 1964, AT THE  
NEW YORK COUNTY LAWYERS ASSOCIATION, 14 VESEY STREET, NEW YORK,  
NEW YORK.

Statement of DAVID N. FIELDS on  
behalf of THE NEW YORK STATE  
ASSOCIATION FOR MENTAL HEALTH,  
INC.

The New York State Association for Mental Health, Inc. wishes to join the supporters of a change in the legal approach to the issue of criminal responsibility. We in the Association feel strongly that the McNaghten Rule has outlived its usefulness and should be replaced by a rule based on reality.

We do not understand the fear that a new rule would permit criminals to escape responsibility for their crimes through sham and pretense. Such fears beg the question and assume guilt before applying a criterion for determining whether a crime has in fact been committed.

There is no rule of criminal responsibility which cannot be abused, including the McNaghten Rule. We do not believe there is any statistical evidence that abuse is greater under the Durham and similar rules than under the McNaghten Rule.

The McNaghten Rule violates the fundamental notion that there must be a mens rea before an act can be deemed a crime. To prove a crime has been committed it has always been held that there must be a criminal intent or that the act is malum prohibitum. The supporters of McNaghten consciously, or in ignorance of what is implicit in their position, hold that an insane person can commit a crime even though he lacks the capacity to have criminal intent. That view is a necessary corollary of the "know the difference between right and wrong" rule. Those who consciously advocate punishment where there is no capacity to have a criminal intent have not explained why proof of criminal intent should be deemed a necessary ingredient to establish crime where the mentally well are involved, but should be dispensed with where the mentally sick are concerned. This kind of hypocrisy should not be permitted to frustrate the adoption of a rule based on modern psychiatric knowledge and a humane attitude to the emotionally disturbed.

We join the late Judge Cardozo and the Commission in the conclusion reached on page 18 of the Commission's Interim Report "that the time has come to frame a definition (of insanity) which does not palter with reality." We endorse the definition of insanity proposed by the American Law Institute in its Model Penal Code, to wit:

(1) A person may not be convicted of a crime for conduct for which he is not responsible.

(2) A person is not responsible for criminal conduct if at the time of such conduct as a result of mental disease or defect he lacks substantial capacity:

(a) to know or to appreciate the wrongfulness of his conduct; or

(b) to conform his conduct to the requirements of law.

We also approve the amendment of the Code of Criminal Procedure regarding psychiatrist's right to testify as to his diagnosis, opinion and the capacity of the accused to know the wrongfulness of his conduct or to conform his conduct to the requirements of law.

Basically the McNaghten Rule or any substitute will not determine whether or not the accused shall be imprisoned or quarantined, but rather where he shall be quarantined -- in a prison or in a mental hospital, and if in a mental hospital, shall it be one operated by the Department of Correction or by the Department of Mental Hygiene.

Under this view McNaghten is not the only rule which requires revision or repeal.

The common law rule that every man is presumed sane is codified in Penal Law, Section 815. In *People v. Russell*, a patient in a state mental hospital was indicted for manslaughter (2nd degree) for allegedly pushing another patient who fell, fractured his skull and died a month later. The hospital director did not consider the indicted patient dangerous. The district attorney who obtained the indictment admittedly was not seeking a conviction. He was seeking to substitute his judgment for that of the state hospital director as to the patient's mental condition and bring about a transfer from the Department of Mental Hygiene hospital to Matteawan State Hospital, operated by the Department of Correction. In pursuance of this objective he contended that in criminal prosecutions all defendants are presumed sane, including all the patients in mental hospitals. One of our ablest criminal court judges went along with this view. However, his strong sense of justice produced a dismissal of the indictment and frustration of the district attorney's proposal to make a medical decision under the guise of allegedly necessary criminal procedure. We submit that Penal Law, Section 815 should be modified to prevent another indictment of a patient for acts committed while in a mental hospital.

Our code of criminal procedure contains a hodge-podge of laws dealing with mentally ill persons who are unable to stand trial. Some go to Department of Mental Hygiene hospitals, some to Matteawan. The different practices have developed through historical accident rather than through a well conceived statutory scheme for dealing with such persons. There is a need to examine these statutes

and make him uniform. Some of the existing laws, because of this disparity of procedure, are discriminatory and deny equal protection of the laws. It is quite probable that some of these statutes are unconstitutional under the rationale of U.S. ex rel Carroll v. McNeill, a recent Federal case dealing with N. Y. Correction Laws as applied to the mentally ill.

The McNaghten rule deals with the question of criminal responsibility at the time of the commission of an act alleged to be a crime. Various other statutes require persons found to be insane to be admitted to Matteawan State Hospital, Dannemora State Hospital and the psychiatric hospitals operated by the New York State Department of Mental Hygiene. They ease the way into these institutions and just as effectively block the way out.

Most of the statutes carefully provide for psychiatric examination and judicial procedure as part of the admission procedure into Matteawan and other institutions, but make no provision for legal assistance or expert testimony when the patient wishes to seek his release on the ground that he is sane enough to stand trial or well enough to be transferred to a civil hospital or be given his freedom.

Patients committed to Matteawan under the criminal court procedures can easily get hearings in the Dutchess County Supreme Court, but the hearings are generally meaningless because the patients are regularly denied the right to assigned counsel and regularly denied examination by impartial psychiatrists even though the court has the power under Section 32 of the Judiciary Act to require examination by such independent psychiatrists.

The result is that a patient who obtains a habeas corpus proceeding in Dutchess County finds that he must act as his own attorney and finds that the psychiatrist who treats him will be the only person to testify in court and in fact has the role of reviewing his own prior decisions. Clearly this is not due process of law. In hearings such as described the trial judge could hardly do other than accept the recommendation of the lone witness.

Under the "Gideon" case the U.S. Supreme Court has established the guide lines that must control criminal court proceedings before, during and immediately after the trial proceedings. No doubt the U.S. Supreme Court will one day hold that a habeas corpus proceeding for a Matteawan patient who is committed there under a criminal court order is a part of the original criminal court proceeding and that the patient is therefore entitled to an assigned counsel. Up to this point, however, there are no such decisions.

To make the habeas corpus proceeding which patients now obtain meaningful, requires legislative enactment which will provide services similar to the Mental Health Information Services which are now part of the Mental Hygiene Law under an act adopted by the New York State Legislature during 1964.

As of this moment the patients in Matteawan are in a judicial no-mans land. They do not have the protection of the Gideon case, nor do they have the protection given the patients in civil hospitals under the new laws. A crash program to provide the patients in Matteawan with counsel and expert testimony seems to be needed. This was dramatized by a recent case in which a patient, Paul Shappet, who was committed to Matteawan at the age of 18, was found to have been committed there in error 15 years later. The patient has been released and is now living in New York City. His sudden dramatic liberation points up the need for competent assigned counsel and for expert testimony for all patients in Matteawan who may request such aid.

Almost 150 patients at Matteawan have written to me for legal aid in getting out of Matteawan. As stated above, most wish to be transferred to civil hospitals, some wish to be returned to the committing criminal court for trial or sentence because they have already been in Matteawan for a longer period of time than they would have spent in prison if convicted and sentenced. Some simply claim they are not insane and desire their freedom. What they have in common is a desire for a meaningful day in court which is not now available. We give lip service to their right to due process. As a moral issue we believe they should have due process. What shall be done until the time when the U.S. Supreme Court extends the rule of the Gideon case to Matteawan patients? We have no right to wait for that day. Our duty is NOW. We dare not postpone the day of action. The case of Paul Shappet is too tragic to permit us to procrastinate. Only a crash program can ensure that if there are any other Paul Shappets in Matteawan their cases should be brought to light immediately.

A crash program requires immediate temporary legislation to provide a public defender for patients at Matteawan and expert objective psychiatric testimony at the expense of the state government. Anything short of such a program means the continuation of a situation which constitutes a mockery of justice.

While there is no question of the need to replace the McNaghten rule, there is an equally great need to prevent future Paul Shappet cases.