

# Psychiatric Law Challenged

The administration of justice is complicated and sometimes hindered when the court turns over some of its obligations to psychiatrists—By Patricia McBroom

► **PSYCHIATRISTS** in the courtroom have complicated the administration of justice without solving any problems, a California psychiatrist and law lecturer said.

Once psychiatry became an established discipline, said Dr. John M. Suarez, professor of psychiatry and lecturer at the School of Law, University of California at Los Angeles, the legal system "gradually and subtly" unburdened itself of some of its responsibilities and placed them on the lap of psychiatry.

Particularly dangerous, said Dr. Suarez at the American Psychiatric Association's annual meeting in Atlantic City, N.J., is the court practice of asking psychiatrists to make final decisions about a defendant's competence or responsibility.

He noted that in one case, the court asked a psychiatrist to decide whether or not a defendant was a "sexually dangerous person" under state statute. The psychiatrist was unfamiliar with legal precedent in the case, and only vaguely familiar with the statute, Dr. Suarez said. The court had shifted its responsibility and made the psychiatrist both judge and jury.

A defendant may get the short end of justice, said Dr. Suarez. He said that he knows of many people who have spent decades in mental institutions for minor crimes because a testi-

fying psychiatrist judged them "incompetent."

As long as these practices prevail, Dr. Suarez said, psychiatrists will be "prevented from making their proper contribution (to law), whatever that may be."

This "proper contribution" was described by Dr. Peter W. Bowman, superintendent of the Pineland Hospital and Training Center, Pownal, Maine, and his legal colleague, Courtland D. Perry, assistant attorney general of Maine. They proposed that courts use psychiatric opinion in sentencing, but not in determining guilt.

Juries would simply decide whether or not a person was guilty of a crime—their normal and traditional responsibility. Then the judge could, if he felt the case warranted it, refer the defendant to a "diagnostic and treatment center." Psychiatrists there would analyze the convicted individual and recommend treatment to the judge. In such a system, judges would decide between punishment and treatment, not juries acting under the influence of often conflicting psychiatric opinion.

In addition the two men recommended reacceptance of the old M'Naghten rule now considered archaic by most scientific communities. The rule, established in 1870, allows a defendant to be acquitted of a

crime if it can be proved that he does not know the difference between right and wrong.

Juries can make this simple distinction and can pick out obvious psychotics, said Dr. Bowman. They are not qualified to make the many subtle and complicated decisions about mental illness now required of them.

In an attempt to be liberal, said Dr. Bowman, the State of Maine threw out the M'Naghten rule and brought in the Durham rule. Ironically this has only acted to make matters worse, he said.

The Durham rule so broadens the legal definition of insanity, it not only requires juries to make psychiatric decisions, but it can work to condemn defendants to institutions for life. Once the jury decides a person should be acquitted by "reason of mental illness" he is forthwith placed in an institution and he stays there until someone is willing to guarantee to the state that he is no longer a "dangerous person," Dr. Bowman said.

"I can't make that guarantee for anyone," he said.

• *Science News*, 89:385 May 21, 1966

## PSYCHIATRY

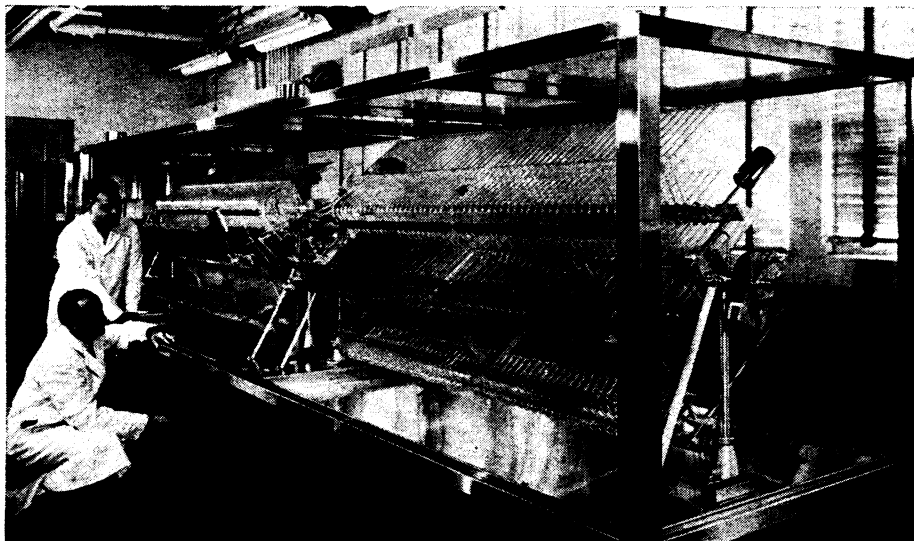
### Closed-Circuit TV Used In Hospital Psychiatry

► **FOR 30 MINUTES** a day, five days a week, a psychiatrist appears on television to advise, educate, calm and correct hospital aides working in mental wards. Once a month he travels 120 miles for a meeting with his staff and patients, the only time he ever sees them.

Closed-circuit television was cited as one radical solution to the manpower shortage that exists in some state mental hospitals.

Drs. Emmet M. Kenney of the University of Nebraska School of Medicine, Omaha, and Robert Osborne, clinical director of the Norfolk State Hospital in Nebraska, told psychiatrists at the annual American Psychiatric Association meeting that the staffing situation at Norfolk Hospital had become so serious that there were only four psychiatrists and two general practitioners in the entire 1,000-bed facility. Although the hospital had 12 nurses, only five worked directly with patients.

Since the 100-bed Nebraska School of Medicine in Omaha, only 120 miles away, was amply staffed, the doctors



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instituted a closed-circuit TV system to help the Norfolk Hospital.

The first experiment was tried in a high security ward for women, including chronically ill and brain-damaged patients, who had been known to assault hospital aides. From 120 miles away, the Omaha psychiatrist took charge of the ward, and began training aides and the nurse in charge to handle the patients.

At first, the psychiatrist prescribed drugs to calm the patients. He listened to reports given by the staff and attempted to solve their immediate problems. Ten minutes a day were given to handling incidents reported by the aides, 10 minutes to education and 10 minutes to the patients themselves.

The Nebraska doctors claim that their project was a success. It was subsequently broadened to a total of eight wards with 350 patients. They said that the project involved the staff "more meaningfully with the patients," since they now saw themselves as "treatment personnel rather than jailers."

The patients also like the system, the doctors said.

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## PSYCHIATRY

### Psychiatrists Condemn Capital Punishment

► CAPITAL PUNISHMENT was vigorously condemned by psychiatrists who called on members of their profession to take a more active stand against it.

Besides being outdated, immoral, expensive, cruel and unfair, the death penalty has other evil, more complex effects, Dr. Louis Jolyon West of the Oklahoma School of Medicine, Oklahoma City, told colleagues attending the American Psychiatric Association meeting.

"Legal extermination of human beings in any society generates a profound tendency among the citizens to accept killing as a solution to human problems," Dr. West said. "Its official existence symbolizes the fact that it is permissible—even desirable—to resolve issues by murder." More specifically, he charged, capital punishment may serve as an incentive to murder for those who want to die but do not have the courage to commit suicide.

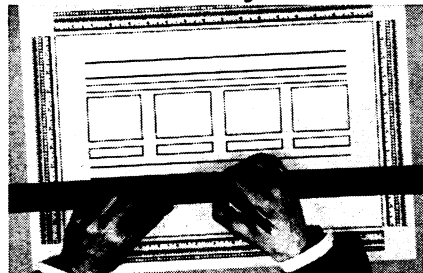
Dr. West cited the case of Howard Otis Lowery who requested an Oklahoma judge to sentence him to the electric chair in 1964. Mr. Lowery, who had pleaded guilty to a previous murder in 1961, warned that if one jury would not give him death, he would get it from another.

James French, who wantonly killed a motorist, was sentenced to death, and after three years on death row murdered his cell mate. In an interview, Mr. French told Dr. West his motive for the second killing was to force the state to deliver the promised electrocution.

Many others may be found in which the "promise of the death penalty consciously or unconsciously invites violence," the psychiatrist said.

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## Questions

How can some stellar distances be measured with new precision? p. 387.

What recent advances have scientists made in understanding the human growth hormone? p. 393.

How old are the recently discovered life forms in Transvaal, South Africa? p. 395.

## SCIENCE NEWS

SCIENCE NEWS LETTER

VOL. 89

MAY 21, 1966

No. 21

Edited by WATSON DAVIS

The Weekly Summary of Current Science, published every Saturday by SCIENCE SERVICE, Inc., 1719 N St., N.W., Washington, D. C. 20036. NOrth 7-2255. Cable Address: SCIENSERV.

Subscription rate: 1 yr., \$5.50; 2 yrs., \$10.00; 3 yrs., \$14.50. Special trial offer for new subscribers only: 41 weeks, \$3.13. Ten or more copies in one package to one address, 7½ cents per copy per week; single copy, 15 cents, more than six months old, 25 cents. No charge for foreign postage. Change of address: Three weeks notice is required. Please state exactly how magazine is addressed. Include zip code.

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Printed in U.S.A. Second class postage paid at Washington, D. C. Established in mimeograph form March 13, 1922. Title registered as trademark U. S. and Canadian Patent offices. Indexed in Reader's Guide to Periodical Literature, Abridged Guide, and the Engineering Index. Member of Audit Bureau of Circulation.

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