Isaac Ray: Have We Learned His Lessons?

JACQUES M. QUEN, M.D.*

As one reviews the history of psychiatry, it becomes clear that, with the possible exception of Adolf Meyer, no psychiatrist in 19th century America approached Isaac Ray's stature, or the breadth or magnitude of his contributions. In his numerous publications, and by example, he provided a model for clear thinking, honest presentation and interpretation of facts, and critical self-examination. He insisted on protection and justice for the insane. He consistently tried to defend the insane from abuse, while acknowledging society's right to protect itself from those it had accorded non-responsibility and non-liability for their actions. His concern for the welfare of the insane and the society they lived in evolved into a concern for justice on a broader scale. He was a reformer in a profound sense of that word.

Ray was born in Beverly, Massachusetts, in 1807, the son of a Yankee sea-captain and his second wife. Their first-born, Isaac, was followed by two sisters and a brother. Albert, the youngest, died at the age of eight weeks, when Isaac was almost seven years old. Eight months later, Isaac Ray had a second tragedy to cope with, the death of his father. We know little else of his early years, except that he attended Phillips Academy at Andover.

Ray entered Bowdoin College in Brunswick, Maine, in 1822, at the age of 15. This was during Bowdoin's "Golden Decade," when its student body included Henry Wadsworth Longfellow, Nathaniel Hawthorne, William Pitt Fessenden, Franklin Pierce (our fourteenth president), and Luther V. Bell.[1] Bell later became Superintendent of the McLean Asylum and professional consultant to the founding Board of Trustees of Butler Hospital. It was Bell who suggested Isaac Ray for Butler's first Superintendent. Bell and Ray were among the original thirteen founders of the Association of Medical Superintendents of American Institutions for the Insane, later the American Psychiatric Association.

Ray dropped out of Bowdoin in 1824, perhaps due to ill health. He began the study of medicine, however, in that same year, with Dr. Samuel Hart of Beverly. In 1827 he received his medical degree from the Medical School of Maine at Bowdoin College. His dissertation, "Remarks on pathological anatomy," was a remarkably knowledgeable essay for an individual who had received his entire education in the America of that time.[2]

Ray wrote, in 1854, "At the tender age of 20, being a member of the medical profession in regular standing, I offered my services as practitioner of medicine and surgery to the people of Portland in 1827. They manifested no vehement desire to avail themselves of this privilege, and thinking my services might be better appreciated somewhere else, I removed in 1829 to Eastport, where I resided till 1841."[3] Two years after his move to Eastport, he married Abigail May Frothingham, daughter of a Portland judge. Their marriage endured through the births and deaths of their two children.

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* Jacques M. Quen, M.D., is clinical associate professor, Cornell University Medical College department of psychiatry, and associate director of the history of psychiatry and the behavioral sciences section.

A graduate of Brown University and Bethany College, Dr. Quen received his M.D. at Yale University, and is a graduate of the William Alanson White Psychoanalytic Institute.

He is the author of numerous publications, including "Isaac Ray and His Remarks on Pathological Anatomy," "Dr. Isaac Ray in Philadelphia, 1867-81," and "Isaac Ray on Drunkenness."

In 1838, Ray published his book, *A Treatise on the Medical Jurisprudence of Insanity*.[4] The following year an edition appeared in Edinburgh and another in London. This book was, and remains, exceptional on several counts. It was the first systematic exposition of medical thinking about insanity written in the United States. Although Benjamin Rush's *Medical Inquiries and Observations Upon the Diseases of the Mind* (1812)[5] was our first major psychiatric publication, it consisted of only the author's conceptions and, as such, was an idiosyncratic work. Ray presented an amalgam and synthesis of Western world thinking about insanity. Seven chapters are devoted to "such legal consequences as seem warranted by a humane and enlightened consideration of all the facts."[6] His book was the definitive psychiatric text and the definitive work on the medical jurisprudence of insanity for more than a generation. Winfred Overholser remarked in 1962, "We have not even yet fully caught up with the reforms he advocated."[7]

This book was written by a thirty-one-year-old general practitioner in a town of approximately twenty-five hundred, distant from any major medical or legal center. He had no training or significant experience in either psychiatry or law. The book was a work of genius in the strictest sense of the term. The essence of Ray's genius, beyond intellect, lay in his ability to penetrate to basic principles and to present his reasoning in a clear, simple, and lean style.

In the trial of Daniel M'Naghten, in England, in 1843, the defence counsel "made extensive and almost exclusive reference to the work of the American physician, Isaac Ray. . . ."[8] It was the first time that an American authority was accorded such status in a British court. "It is safe to say that never since, in an English or an American courtroom, has a scientific work by a psychiatrist been treated with such respect as was *The Medical Jurisprudence of Insanity*."[9]

In 1841, Ray became Superintendent of the Maine Insane Hospital in Augusta. In 1845 he resigned his position to become Superintendent of the yet-to-be-built Butler Hospital, which opened in 1847. He used the intervening time to study the asylums of Europe.[10] Shortly after his return, the Rays' 14-year-old daughter, Abby, died of a consumptive disease. Their son, Benjamin Lincoln, became a physician and worked with his father at the hospital. Isaac Ray's relationship with the hospital Trustees was a uniquely close and collaborative one. Together, they made Butler Hospital internationally known and respected. In 1867, Ray reluctantly retired because of ill health and moved to Philadelphia.

Isaac Ray's retirement years were remarkably active and productive. He soon became a controversial figure in social reform and in hospital reform. Unfortunately, in 1879, Benjamin Lincoln Ray died of an unspecified "Brain Disease." The Rays were grief-stricken and severely depressed. Eliza Kirkbride described Mrs. Ray as appearing crushed and resigned; "one feels as if in such entire surrender her life must go before too long. In Dr. Ray one sees more of a struggle. . . . his talk was as earnest and clear as ever, yet with all its naturalness, I felt the hidden agony."[11] Almost a year later, Isaac Ray wrote to Dorothea L. Dix, an old friend of their family, "My poor brain is so torpid and my ribs so full of rheumatism, that I shrink from writing, even a letter. I sleep well and eat well, but I am good for little else. I can walk one square with much discomfort, and two causes distress. I have not written a line except as a letter since Lincoln died, and the sofa and easy-chair now furnish about all the day-comfort I have."[12] He died quietly in his sleep, on March 31st, 1881, of tuberculosis.[13] Mrs. Ray survived him by four years. They are buried, with Benjamin Lincoln, in the Swan Point Cemetery, adjacent to Butler Hospital. Much of their estate went to the hospital.

Ray's history of social awareness seems to have started in 1829, with an address on temperance in Eastport.[14] He played a key role in the founding of the Eastport Athenaeum, a social and self-improvement educational organization.[15] On his wedding eve, in 1831, he gave a public lecture advocating the establishment of legal channels for obtaining cadavers for medical study.[16] His *Treatise* was a major effort at reform of the

laws relating to the insane. His first Superintendent's report challenged his older and more experienced colleagues' pseudo-statistical use of the categories of "old" and "recent" cases.[17] In 1849 he published a paper on the statistics of insanity, criticising his colleagues for their naïve use and mis-use of numerical data.[18]

In 1863, in his book *Mental Hygiene*, written here at Butler Hospital, he said, ". . . while we are bringing to bear upon [the poor] all the kindly influences of learning and religion, let us not overlook those physical agencies which determine the efficiency of the brain as the material instrument of the mind. The tract and the missionary may do good service in the dwellings of the ignorant and depraved, but active ventilation, thorough sewerage, abundance of water, will be found, eventually, no less efficient in the work of reform and elevation. To check the increase of crime, improve, if you please, your penal legislation and penal discipline, but, above all things, improve the dwellings of the poor. Render industry and virtue as attractive as possible, but never cease by all practicable means, to prevent the production of tubercle, rickets, scrofula, and all defective or unequal developments."[19] A major emphasis of this book was on hereditary factors in insanity, including a strong support of eugenics, a concept that is not popular today. It was an expression of a sincere concern and respect for the yet-to-be-conceived human being's right to a better chance for a decent and gratifying life. It was integrated, too, with Ray's view that society should strive to improve itself and the quality of life it experienced as a community.

Immediately upon moving to Philadelphia, Ray became involved in the murder case of George W. Winnemore, an epileptic male.[20] Ray saw the trial as a gross miscarriage of justice determined by inept legal process and the use of non-qualified "expert witnesses." In conjunction with two other psychiatrists, he submitted a petition to the Governor, stating that Winnemore "shows indications of a mental condition which may be attributable to the epileptic fits to which he has been subject from infancy. In regard to its degree and kind, we feel unable to speak exactly, because one interview, though prolonged between two and three hours, was not sufficient for the purpose. . . . [There is reason to suspect that the] crime may have been committed in one of those abnormal conditions that are so often the sequel of epilepsy. In consideration of these facts, therefore, we respectfully request your Excellency to stay his execution for a few weeks, in order that a deliberate scientific investigation of Winnemore's case may be made by the undersigned."[21] The request was denied. Winnemore was executed punctually and legally. In his article, Ray said, "The fact of [an epileptic condition] . . . being established, is it going too far to say that the legal responsibility is presumptively annulled, and the burden of proof lies on the party that alleges the contrary? People are scarcely ready for it yet, perhaps, but to that complexion, they must come at last."[22]

In 1869, Ray helped to found the reform-oriented Philadelphia Social Science Association, forerunner of the American Academy of Political and Social Science. He served on its Public Health Committee. He was appointed to the Board of Guardians of the Poor of Philadelphia, the governing body of the Almshouse (later the Philadelphia General Hospital). Appalled by conditions in the Almshouse hospital, Ray said so, loudly and clearly, both at the closed meetings of the Board and in public. He presented a paper at the annual meeting of the Philadelphia Social Science Association in 1873, titled "What shall Philadelphia do for its paupers?"[23] It was a no-holds-barred, courageously outspoken attack on colleagues, neighbors, and the Board of Guardians, in defense of the right of the indigent ill to humane and decent treatment in public hospitals. He documented and damned, with measurements and numbers, the overcrowded, unsanitary, and repugnant conditions in the hospital. The paper fired one of the opening guns in the twenty-year fight to improve public hospital conditions in Philadelphia. Isaac Ray's appointment to the Board of Guardians was not renewed that year.

Ray adhered to the belief that the insane had to be removed from the pathogenic environment in which they had developed their disease. Throughout his career, he main-

tained that the first requirement of treatment was removal to a quiet, peaceful atmosphere away from the distractions and stresses of patients' families and of the cities. Not very different from R. D. Laing's method of treating schizophrenia patients away from their homes; nor very different from today's sociological concept that there are peculiarly urban stresses. Those historians, lawyers, and psychiatrists who self-righteously condemn the nineteenth century Americans for locating their asylums away from the cities as a way of removing and forgetting the undesirable deviant insane have never made adequate effort to determine the facts by reading the publications and correspondence of Isaac Ray and his colleagues. The early superintendents and reformers had great difficulty convincing state legislators to resist the temptations of political pork-barrelling, as cities vied for the money that asylums would bring into their treasuries, much as municipalities vied for V. A. hospitals twenty-five years ago.

Although not explicitly advanced as a reason at the time, the fact was that removal from the city also meant removal from those members of the public who wanted the "right" to enter the public asylums to watch the insane. The Butler Hospital never permitted this practice. In Philadelphia, Ray bitterly fought the Board of Guardians of the Poor, while himself a member, to abolish this practice. He succeeded only in limiting it.[24]

As I mentioned earlier, part of Ray's insistence on critical self-examination focused on the use of statistics by asylum superintendents. Although Edward Jarvis deserves recognition as the first American psychiatrist to devote the major part of his professional efforts to applying statistics to the problem of insanity, Ray's few publications in this area indicate a superior talent at analysing the significance of figures and the quality of raw data. He appreciated, early in his career, that non-standardised, poorly defined data would result only in "garbage in, garbage out." Although critical of many psychiatric practices regarding the use of numbers, Ray refused to take an extreme position. He criticised psychiatrist Pliny Earle for inflating the magnitude of statistical errors much as he criticised other colleagues for making them.

Another instance of Ray's refusal to be polarized was his position in the Anglo-American non-restraint controversy. In 1839, Robert G. Hill, a British psychiatrist, published a book advocating the abolition of all mechanical restraints from asylums.[25] The non-restraint system, as it was called, created intense controversy, both in England and in America. American superintendents were criticised for refusing to "take the pledge" to ban all mechanical restraints. Ray, who was the most thoughtful spokesman for the American position, maintained that the use of mechanical restraints, adjusted to the patient by the Superintendent, was far safer and more reliably humane than the uncontrolled hands of attendants. He reiterated the moral treatment (in the sense of psychological treatment) practice in America, calling for minimal use of mechanical restraints. He pointed out certain conditions in which mechanical restraint was life-saving, such as manic excitements. Considering the limitations of the pharmacopeia of the period, and the fact that the British returned to liberal, if not excessive use of restraints by the end of the nineteenth century, it appears that Ray's position reflected an accurate estimate of the limitations of nineteenth century Anglo-American psychiatry.

Between the publication of Ray's *Treatise* in 1838 and his retirement from Butler Hospital in 1867, the public attitude toward the asylums underwent a radical change. Since 1833 the asylums had been under attack by ex-patients publishing accounts of abuse, cruelty, persecution, and unjustified commitment. Most of those written in the first half of the nineteenth century were clearly products of delusional systems.[26] Public response to these complaints, however, began to grow sufficiently to threaten effective treatment in the asylums. Undoubtedly, this controversy played a role in determining the tone of Ray's address at the dedication of the Danville, Pennsylvania, asylum in 1869. He reminded the audience that the quality of asylum care would be a reflection of public interest and involvement. He also requested them to anticipate human error in the asylum and to distinguish between honest mistakes and "culpable remissness."[27]

The late 1860's and 1870's brought a wave of concern about malevolent incarceration of sane individuals in state hospitals. One of the most vocal and effective in reinforcing this concern was Mrs. Elizabeth Packard, an ex-patient of the Illinois State Hospital at Jacksonville. She succeeded in having the legislature enact a "personal liberty" bill, which required a jury trial for commitment.[28]

In his paper "Confinement of the insane," published in 1869, Isaac Ray discusses the unanticipated penalties of such laws, including the public violence done to the private and personal lives of the patients and their families.[29] In 1946, Overholser and Weihofen felt that the most emphatic way to end their report on commitment of the insane was to quote from Isaac Ray's paper, written more than 75 years earlier.[30]

> In the first place, the law should put no hindrance in the way of the prompt use of those instrumentalities which are regarded as most effectual in promoting the comfort and restoration of the patient. Secondly, it should spare all unnecessary exposure of private troubles, and all unnecessary conflict with popular prejudices. Thirdly, it should protect individuals from wrongful imprisonment. It would be objection enough to any legal provision, that it failed to secure these objects, in the completest possible manner.[31]

In a paper sub-titled "The backlash of a broken chain," C. H. Hardin Branch, while president of the American Psychiatric Association in 1963, discussed the same kinds of problems that concerned Ray in his paper almost 100 years earlier.[32] Hardin Branch makes clear that modern abuses and destructiveness of our legal remedies for the illegal confinement of the insane seem to be far worse than any abuse they were designed to correct.

Ray's paper has a history of interest to modern students of the question of involuntary commitment. This history begins with the correspondence between him and Judge Charles Doe. A New Hampshire Supreme Court judge, Doe was one of the two men to whom John Henry Wigmore dedicated his classic work on the law of evidence.[33] It was Doe who researched, developed, and established the New Hampshire doctrine of criminal responsibility of the insane, which relegated that issue to the fact-finding function of the jury. This doctrine, its origins, principles, and functioning, have been carefully studied and analysed in an instructive series of papers by New York University Law Professor John P. Reid.[34] Among other things, he demonstrates the vital differences between the century-old New Hampshire ruling and the now defunct *Durham* rule. In 1953, Dr. Louis E. Reik, of Butler Hospital, published extracts of the Doe-Ray correspondence relating to their collaboration on the New Hampshire doctrine.[35] What Reik does not state is that the preservation and availability of this invaluable correspondence were largely due to his efforts. Other matters discussed in the unpublished correspondence relate to Ray's paper on confinement.[36]

Ray was concerned about the dangers of what he saw as some judges' professional negligence, complacency, and insensitivity to their own limitations. He told Judge Doe that he wanted to write a paper reviewing judicial judgment in habeas corpus cases. "I wish you could inoculate with your views the judges of [Philadelphia] who issue writs of habeas corpus and have the patients of the insane hospitals brought before them, examining them personally and *thus* deciding whether they ought to remanded to the hospital or discharged. . . . but I ought to say, in justice, that this indicates an improvement upon the past as exemplified in the *Hinchman* case . . . where the court instructed the jury that tho it was, undoubtedly, a very laudable thing, per se, to shut up a crazy man, yet if by so doing the acting parties could even incidentally derive any benefit from the act, then it would become an indictable offense!"[37]

Ray inquired about a specific judicial decision involving illegal confinement of an insane person. Judge Doe said, "The decision in *Colby v. Jackson* is a mere recital of common law principles so elementary and so general, that no lawyer . . . can doubt its

correctness. . . . the common law allows persons dangerous to themselves or others, or to property, by reason of intoxication or insanity, to be deprived of their liberty by anybody for the purpose of averting the apprehended danger, until it can be averted by regular authority [i.e., legal process]. But this power of arrest and imprisonment, is given . . . only when, and only because, it is necessary, and the power ceases when the necessity in which it originated and upon which it depends, ceases."[38] Ray persisted in questioning the Judge's position. The judge answered, ". . . there are no authorities which hold that friends, or any others, may, at common law, confine an insane person when the insanity is not an imminent danger to person or property. Confinement is never allowed by the common law for the purpose of curing the disease of insanity, but only for the purpose of protecting person and property from the violent attacks and wrongful acts of the insane. . . . The 'imminent danger' to avoid which the common law authorizes the confinement of the insane, is not the danger of increasing the disease, but the danger of injurious acts produced by the disease. In this respect, the law makes no distinction between insanity and other diseases; it does not authorize confinement for the purpose of treating disease—scrofula, or gout, or yellow fever, or insanity. . . . my clear conviction that such confinement is not authorized by the common law has probably led me to take a hasty and superficial view of the real extent of *Colby v. Jackson*; and upon further reflection I entertain doubt whether this decision did not go too far. If a sane man assails my person or property, and I can overcome him, I may deprive him of liberty so long as is necessary for preventing the immediate execution of his attempt. The duration of such confinement would ordinarily be very short. But if the danger comes from an insane man, the case is very different. The existence of the disease as the cause of the danger, gives a totally different character to . . . the danger, making it generally much more durable and continuous. . . . the insanity might make it necessary for me . . . to continue [confinement] for a much longer time. . . . suppose the manifestation of a man's insanity is a continuous persistent, ceaseless desire and effort to set fire to my house—certainly I may confine him . . . and deprive him of all means of setting fire. The question is how long can I imprison him? If it is said that I must turn him into the street at the end of every month, and immediately upon his renewed attempt to set fire, I may imprison him again,—the regular monthly enactment of such a farce, does not accord with the general theory of the law. . . . [as for] the constitutionality of our statute [authorizing] parents or friends to send to the asylum a person over twenty one years of age, for the sole purpose of treating his disease, [it] might, I think be a serious question in the minds of many of our best lawyers, who are accustomed to laying great stress on . . . Article V . . . of the Constitution. . . ."[39]

Ray could be a stubborn cuss, and he knew that. He also knew that there was more than simple objective fact determining the ongoing controversy between law and psychiatry. He observed to Judge Doe, "The very different style of mental training to which lawyers and doctors have been accustomed prevents them often, I think, most effectually, from arriving at the same conclusions, instead of remaining wide as the poles asunder. With my friend, the late Chief Judge [Samuel] Ames of R.I. I used to discuss the current questions of medical jurisprudence, and though he was a man singularly free from professional narrowness, yet to my unspeakable chagrin, I could not always make him see the force of my arguments. The correctness with which we discern and appreciate the truth depends solely, I apprehend, on the relation existing between certain kinds of truth and our habits of thinking. . . . If I have sometimes failed to see the force of your reasoning, I would hope that you will attribute it to this cause. . ."[40]

The respect and esteem in which they held each other is apparent in every letter of this correspondence. When Ray's article on confinement first appeared, Judge Doe wrote to him, "The law, public welfare, and humanity are greatly indebted to you for your article in the January number of the *American Law Review*. I understand and appreciate, and feel the full force of your views, and my interest in the cause leads me to

suggest one or two points of captious criticism, in which some technical lawyers might indulge, and which, in any republication of your article, could be easily avoided without any diminution of force." He then went on to explain suggested changes in wording.[41]

Ray knew that, short of criminality, members of the judiciary are not liable to the victims of their professional negligence or misfeasances. For Ray, the solution lay in appropriate legislation. He argued for a law establishing the right of family or friends to commit an insane individual in need of treatment, without the bizarre booby-trap of the judicial ruling in the *Hinchman* case. He also wanted to minimize the likelihood of capricious issuances of writs of habeas corpus for those actually insane, writs which too often were destructive to individual patients and their families.

I think that Ray would have paid careful attention to the case of *Rouse v. Cameron*.[42] Rouse, an eighteen-year-old wandering the streets of Washington, D.C. at 1:45 a.m., was carrying a fully loaded .45 caliber pistol, several hundred rounds of ammunition, two electric power drills, hacksaws and other such equipment, when arrested. The majority opinion said "Purpose of involuntary hospitalization is treatment, not punishment." It makes only peripheral reference, buried in a footnote, to the common law principle referred to by Judge Doe. Furthermore, the position in the case of *Rouse*, that the remedy for the violation of the right to treatment is issuance of a writ of habeas corpus, would have struck Isaac Ray as a judicial guarantee of continued deprivation of that right. People with Rouse's problems are unlikely to seek treatment voluntarily, while their histories, such as Rouse had, of repeated wrongful acts, augur poorly.

Convinced of the validity of an absolute moral right to treatment, Ray thought that the remedy for the violation of that right was to provide that treatment. If alive today, he would have read carefully the dissenting opinion in *Rouse*, and then wondered about the majority opinion's minimizing the record cited more fully in the dissent. Rouse had been showing significant improvement in group therapy when he exercised his right to refuse that effective treatment. The majority of the court was prepared to remedy this self-determined deprivation of his right to treatment. And so the court minimized the demonstrated adequacy of treatment offered and encouraged, but not imposed. Well might Ray have been concerned about programmatic judges and their hidden agendas, social and political. Reinforcement for such concern is found in Judge Danaher's observation that the court was "deciding a case that is not before us."[43] Further reinforcement is found in the footnote inserted for Judge Fahy at the re-hearing of *Rouse*, that, in effect, he reversed his former opinion and agreed with Judge Danaher's observation.[44] The first *Rouse* hearing was before a three-judge court. It was argued in March, 1966, and decided in October, 1966. Two months before the decision was announced, "In August, 1966, one mentally ill Charles Whitman, as was notoriously publicized, from a University of Texas tower, killed or wounded at least 36 people after having shot his wife and mother. What Rouse with his loaded .45 pistol was to do with his hundreds of rounds of ammunition, we do not know."[45] But the majority decided that the common law principle referred to by Judge Doe did not have enough relevance to warrant any discussion in the *Rouse* opinion.

Ray's insistence on evaluating judicial decisions for himself, coupled with his commitment to the treatment of the insane and the protection of their human rights, would have led him to Justice Tom Clark's dissent in the Supreme Court decision in *Lynch v. Overholser*,[46] a decision interpreting the District of Columbia mandatory commitment statute as applying only to a defendant who has personally affirmatively relied on a defense that he was insane when the act was committed, and who is acquitted on that ground. The decision implied a right to choose criminal conviction and jail confinement instead of acquittal and hospitalization. Justice Clark pointed out that "A defendant's plea neither proves nor affects his guilt or insanity. To make the commitment procedure effective only on the defendant's option limits the statute's [intended] protection of the public, forces an unfortunate choice on attorneys appointed to represent defendants,

convicts those who are innocent by reason of insanity and deprives them of the treatment afforded by a humanitarian public policy. . . . the right of a court to refuse a plea of guilty is based on the principle that in a free society it is as important that the court make certain that the innocent go free as it is that the guilty be punished."[47] In his 1964 Lowell Institute Lecture, Judge David Bazelon observed that "If criminals nominate themselves, we elect them."[48] *Lynch v. Overholser* sounds like the judiciary extending to the insane the option for criminal self-election.

To recapitulate, Ray would have been wholeheartedly behind Dr. Morton Birnbaum's fight to establish the right to treatment, and he would have been equally opposed to Dr. Birnbaum's initial suggestion of the remedy of habeas corpus. Ray's correspondence with Dorothea L. Dix, favoring her 1854 bill for federal support of treatment for the insane (which was passed by Congress and vetoed by President Franklin Pierce), shows that he would have joined forces with Dr. Birnbaum in his present fight to require federal payments to state hospitals.[49] Such a course aims at a true remedy for the violation of an individual's right to treatment. It allows for adequate treatment facilities and personnel, as contrasted with the unwittingly destructive remedy of habeas corpus. Ray would have seconded Judge David Bazelon's opinion that "many examples of judicial misfeasance are the products of judges attempting to struggle with problems quite beyond their competence."[50]

Perhaps the major lesson that came out of Ray's *Treatise* was the idea that the educated professional should examine the primary data and evaluate them for himself. Ray read the law and judicial decisions with a questioning and critical mind. The history of the law made it clear to him that not all judges have an adequate familiarity with the law; that they, as humans, are quite capable of negligence, error, and personal bias. Issac Ray would have rejected Judge Bazelon's suggestion that "if the interaction between courts and hospital administrators [i.e., psychiatrists] is to be constructive, administrators must accept in good faith the law as announced by judges and legislators."[51]

After his own personal examination and evaluation of the M'Naghten rules, Ray saw little reason for acceptance "in good faith" of the law as announced by the judges in their inconsistent, contradictory, non-legal, and somewhat inhuman pronouncement of the law in these rules, nor in the dedicated support of these rules by the American judiciary during the following century. Nor did he see reason for accepting "in good faith" the trial and hanging of the psychotic John Bellingham in 1812, nor the trial and hanging of the insane Kentucky physician Abner Baker in 1845, nor the trial and hanging of George Winnemore in 1869, nor the aforementioned Hinchman case. Ray's correspondence with U.S. Senator Charles Sumner suggests that, along with Sumner, he found little reason to accept announcement of the Fugitive Slave Law of the 1850's "in good faith." More currently, Ray's position would have aligned him with Supreme Court Justice Tom Clark in calling the *Lynch v. Overholser* decision a "disingenuous evasion."[52] Ray probably would have breathed a sigh of relief and of hope on reading *Wyatt v. Stickney*,[53] though he might have wondered if it was necessary to have specified three rolls of antacids as a standard of adequate psychiatric care. He woud have been struck by the agreement with the mid-1840's Superintendents' recommendation that a patient population of 250 was the optimum size for a psychiatric administrative unit. Ray might have been irked by the potpourri of historical errors, legal and psychiatric, in the presentation of the *M'Naghten* case in the decision in *U.S. v. Freeman*;[54] particularly where the court blames the M'Naghten rules for the loss of "Dr. Ray's insights. . . to the common law for over one hundred years . . ."[55]

Ray's *Treatise* went through five editions in the United States, the last in 1871. It was probably the fourth edition that led Judge Doe to reconsider the legal concepts of insanity.[56] The *M'Naghten* rules did not forbid any American judge to read any of the several editions of Ray's *Treatise*, nor any of the approximately fifteen law journal articles he published, nor the numerous sections he wrote relating to the jurisprudence

of insanity in the 1868 edition of *Bouvier's Law Dictionary*.[57] The loss of Ray's insights to the common law was a function of the level of performance of the American judiciary, who needn't have been bound by *M'Naghten*. I think Ray would have preferred, as an arrangement for a constructive relationship between the courts, the legislators, and psychiatrists, a willingness to learn from each other's experience and criticisms, rather than a requirement of unthinking authoritarian acceptance "in good faith."

As Federal Judge Marvin Frankel has pointed out in his book, ambiguously titled *Criminal Sentences*,[58] a pressing need exists for more rigorous standards of legal and judicial education, both qualifying and continuing, in depth and in breadth. I have dwelt on some examples of judicial error to demonstrate another need. As long as the American judiciary is not liable to the victims of its professional negligences, misfeasances, or individual prejudices, some corrective is necessary. A need exists for an educating, critical, and constructively respectful "loyal opposition" to the judiciary in the area of forensic psychiatry. Isaac Ray attempted to fill this need throughout his career.

I believe that Isaac Ray would have pointed out, as well, that many of the historical errors of law and psychiatry in the *Freeman* decision are repeated on page 12 of the *Amicus Curiae* brief of the American Psychiatric Association in *Brawner*.[59] Although it was signed by a lawyer, it appears that none of the forensic psychiatrists who, presumably, saw that brief before it was submitted in the name of their organization, were familiar enough with the history of their own discipline to correct these errors. Furthermore, Isaac Ray would have insisted that no psychiatrist be considered qualified until he or she could present the results of a psychiatric examination, and the mode of evaluation, in consistently clear, non-jargon English, with a logical exposition. If psychiatrists cannot adequately communicate their knowledge and its basis to juries, how can we enlist the necessary aid of the public or the legislatures in drafting laws more just and more helpful to our patients?

Isaac Ray began his book on forensic psychiatry by studying historical precedents and the cogency of judicial reasoning. It is only by such detailed study that one can see the logic to the development of the legal concept of insanity. This logic, along with its inconsistencies, was traced by Isaac Ray, and in more scholarly depth by Judge Charles Doe in his opinion in *Boardman v. Woodman*.[60] This logic and its development were not exclusive of a humane concern for the consequences of legal intervention for all involved parties, individuals and society.

Before I close, I would like to touch briefly on three other questions of current concern in law and psychiatry. I have said nothing about Isaac Ray's position regarding criminals and penology, although this area is a major concern of the membership of the American Academy of Psychiatry and the Law, the major organization of forensic psychiatrists in this country. Ray drew a sharp distinction between the criminally insane and the insane criminal. The former was an innocent victim of disease, who, when cured, would return to his pre-morbid state of respectable citizenship, but the insane criminal would revert to his pre-morbid socially destructive state, a threat to the community, not responsive to psychiatric treatment. Also, in the early 19th century, physicians concerned with enlisting public aid for improved care of the insane were impeded by the association in the public mind between criminals and the insane. They avoided public involvement with criminals to protect and further their primary cause, improved treatment facilities for the insane. In 1873 and 1876, Ray published two articles indicating an awakening interest in the plight of the criminal. Had Ray lived longer, it is likely that he would have become involved in prison reform.

Regarding predictions of dangerousness of the insane, Ray supported reliance on psychiatric opinion. Today, with the experience of *Baxstrom*[61] behind us, we can recognize that other behavioral sciences, as illustrated by the nature of the work of the sociologist Henry Steadman,[62] may well provide more reliable predictive data. Too many

conscientious psychiatrists find that they do not feel equipped to make such predictions with any degree of confidence.

As for differences among expert witnesses, Ray did not feel that disagreements should weaken their role in legal process. Frequent 5-4 votes do not weaken the force of the Supreme Court, which is, in the final analysis, nine experts offering opinions that frequently disagree. Ray also quoted Lord Thurlow, who said that "the decrees of the Scotch [*sic*] judges were least to be respected when they were unanimous, as in that case they probably, without thought, had followed the first of their number who had expressed an opinion; whereas, when they were divided, they might be expected to have paid some attention to the subject."[63]

It is time to close this discussion of Isaac Ray, the first Superintendent of Butler Hospital and the pre-eminent 19th century American psychiatrist. Throughout his life, Isaac Ray was a sincere friend and student of the insane, dedicated to the protection of their human rights and their welfare. May the future be able to say as much of us here today.

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