Reflections on a Debate

EMANUEL TANAY, M.D.*

The 1979 great debate at the A.A.P.L. annual convention dealt with the question of whether psychiatrists should predict dangerousness. It was surprising that neither one of the debating teams asked whether psychiatrists do, in fact, predict dangerousness. Prediction is a probability statement about the occurrence of some event. Psychiatrists do not predict events, but diagnose clinical states.

The concept of dangerousness is a legal one; however, this fact does not preclude the existence of scientific knowledge which might give the concept some meaning. The legal concept of dangerousness is determined by legal factfinders. The information (evidence) which is provided can come from a variety of sources, including psychiatry. The dogmatic assertions of Steadman are more a product of strong, anti-psychiatric bias than research. His statistics are accurate; however, his categories are not comparable. Therefore, his conclusions are meaningless. I find it fascinating that he is employed by a psychiatric facility and gets regularly invited to address psychiatric gatherings. To me this does not prove the validity of his findings, but rather the masochism of psychiatrists. It is easy to be a statistical sage when no one in the audience has a rudimentary knowledge of statistics. Steadman, and some of his colleagues, have the notion that statistics is the only form of validating knowledge.

In the event that the masochistic needs of the audience were not fully gratified by the statistical flagellation, Mr. Perlin provided not mere criticism, but complete annihilation of forensic psychiatry. When are we going to learn that one cannot have a debate between two groups who do not speak a common language?

Perlin, and others like him, have insisted that the only criterion for commitment should be the concept of dangerousness, and then, they turn around and claim that this is what psychiatrists do; namely, use the concept of dangerousness to recommend commitment.

The concept of dangerousness is a legal test, and, therefore, remains undefined. Most important concepts in the law are deliberately left ambiguous and therefore cannot be endowed with precise scientific meaning. Therefore, the Supreme Court avoided defining the concept of dangerousness when they discussed the level of proof required to establish dangerousness. (*Texas v. Addington.*)

*Dr. Tanay is Clinical Professor of Psychiatry at Wayne State University, Detroit, Michigan.

The argument that psychiatrists should not be permitted to testify in commitment proceedings, because in 95 percent of cases their recommendation is followed by the courts, is strange, indeed. Perlin, and others, conclude that this demonstrates undue influence of psychiatrists. Would it not be more reasonable to infer from such a statistic that the recommendations for commitment are products of careful and thoughtful inquiry? Ideological needs demand that commitment proceedings be adversarial in nature. Reality does not comply with this need. An overwhelming majority of commitment hearings have no natural adversaries in them. The commitment hearing is not a beginning of a process, but an end of long-standing efforts of treatment and evaluation.

In jurisdictions which require dangerousness as the criterion for commitment, this is never the only issue. A showing of mental illness is also required. Therefore, the demand that psychiatric testimony be excluded from commitment proceedings is unreasonable on the face of it.

Dangerousness, in commitment proceedings, is analogous to the concept of insanity in a trial where criminal responsibility is at issue. In both instances, we are dealing with the legal guideline for the fact-finder which is to be applied by the fact-finder to the evidence presented. Expert witnesses do not determine insanity or dangerousness, even though they provide evidence which the fact-finder may rely upon in determining the issues.

It is erroneous to assume that psychiatrists who recommend commitment are predicting dangerousness. All that can be said is that, at the present time, legal fact-finders are instructed to be guided by a concept which is known under the name of dangerousness. We have gone through a similar period of confusion in dealing with the legal concept of irresistible impulse.

The legal test of dangerousness should not be confused with danger inherent in certain forms of mental illness. We have always known that depression is associated with an increased potential of suicide; certain conditions carry with them a risk of dangerous acting-out.

Every society recognizes the need to institutionalize persons suffering from certain forms of illness. The nature of these conditions has undergone little change over the ages and does not differ much from one society to another. The legal justification for the commitment has varied a great deal from time to time. A political system might choose to involuntarily hospitalize severe psychotics under a principle derived from totalitarian, democratic, or theocratic ideologies. The medical square peg has to be fitted into the round legal pigeon hole.

The adoption of psychiatric reality into legal requirements, whatever they might be, is a legal and not a psychiatric function. Therefore, to the extent that dangerousness is a legal concept, it is determined by law and not by psychiatry.