

Review of:

The Criminal Courts: Dumping Ground for the Mentally Ill

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Stephen J. Bright, JD, is the Director of the Southern Center for Human Rights, a legal project which provides representation to persons facing the death penalty and to prisons in challenges to cruel and unusual conditions of confinement in 11 southern states. A champion for the civil rights of the poor, he teaches courses on criminal law and the death sentences at both Yale and Harvard. He has testified before the US Congress and the US Supreme Court. He has authored numerous law review articles and books and is a recipient of the Thurgood Marshall award.

His presentation, The Criminal Courts: Dumping Ground for the Mentally Ill, was well received by the AAPL audience. His use of humor and vignettes to deliver his material and to present his ideas made it a joy to attend. His passionate delivery was powerful and with clear conviction. One audience member compared his delivery to that of an inspired Baptist preacher.

Mr. Bright began by focusing on the need for both attorneys and evaluators to go much deeper into learning about the client, family history and to know more in depth about the person one is representing, with a respect for forensic psychiatrists and how we are trained to do this type of work. His belief that there is a lack of funding for the necessary investigators and experts was transparent. Citing Justice Black and the role that money plays in getting a good lawyer, experts and defense all contribute to the poor getting a different form of justice than those who are not so fortunate.

Mentally ill prisoners are commonly managed by staff lacking sufficient if any training. Guards are not trained and decompensation in places without any programming is the norm. Prisons are frequently located in remote places which further hinders availability of professionals to those most in need. Inmates are punished for behavioral problems, including self-injurious behavior, when in fact they should get treatment. This often results in them being victimized by other inmates, being easier prey in these settings and in a clinically decompensated state. In America today, the largest mental institutions are actually our jails.

Often lawyers, especially court appointed counsel, have no experience in representing mentally ill defendants or persons with traumatic brain injury and therefore do not even know what are the correct questions. He noted that there have been capital cases in Texas where defendants were executed despite the lawyer at trial being drunk, having Alzheimer's Disease or sleeping during the trial. He gave examples of appointed defense lawyers not spending enough time with a client to even recognize moderate-severe mental retardation.

The question that often decides if the person is executed is whether or not the person is likely to be dangerous in the future. Yet, many of the persons put to death by the testimony of a specific expert who has never examined the defendant yet testified based on record review or literature on this literature. Future dangerousness should be based on the specifics of the individual and not merely epidemiology or statistical predictions based on group data. The later tends to especially result in proliferation of racial, ethnic and cultural stigma.

Mr. Bright opined that the overall level of sophistication in the legal system is so low as to be laughable, were it not for the reality that hundreds of people have been put to death based on such inadequate representation. Further, The standard for legal practice in criminal cases as set by the US Supreme Court allows for incompetent lawyers to practice without redress. The imbalance in available resources stacks the deck against a poor criminal defendant; the prosecution has far more resources for experts than does the defense.

It is time for the legal and medical professions to become the voice for those who cannot advocate for themselves and lobby for their own needs. These people deserve appropriate evaluation and representation. They deserve better quality care in both hospitals and prisons. Funding for these programs is desperate, particularly for those who have been abandoned by their families, and often even their lawyers in the justice system. Society would do well to heed his admonishment: "Doing right and pursuing equal justice for all is a mandate that we should never abandon."

Mr. Bright concluded with the following suggestions for "fixing the system:"

1. Assure proper representation as is constitutionally mandated (but often not done)
2. Provide structure (create legal clinics) to allow interested young lawyers to do the work
3. Allocate adequate financial resources for experts and proper investigation
4. Set a standard of representation similar to the standard of care we have in medicine
5. Establish accountability for lawyers, similar to what exists in the medical world