PARSONS (R. L.)

With the Compliments of the Author.

Objections to and Criticisms on the Majority Report of the Committee of the Medico-Legal Society on the Existing Law for the Commitment of the Insane.

—BY—

RALPH LYMAN PARSONS, A. M., M. D.;

Late Medical Superintendent of the New York City Lunatic Asylum; Late Physician in charge of the New York City Hospital for Epiletics and Paralytics; Member of the American Medico-Psychological Association; Member of the American Neurological Association; Member of the New York Neurological Society; Fellow of the New York Academy of Medicine; Member of the Medical Society of the County of New York; Member of the Medico-Legal Society; Member of the Society of Medical Jurisprudence, etc.

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OBJECTIONS TO AND CRITICISMS ON THE MAJORITY REPORT OF THE COMMITTEE OF THE MEDICO-LEGAL SOCIETY ON THE EXISTING LAW FOR THE COMMITMENT OF THE INSANE.

BY RALPH L. PARSONS, M. D.

The report of the majority of the Committee of the Medico-Legal Society to which was referred the consideration of Mr. Bach's proposed change in the existing law for the commitment of the insane, making Trial by Jury a necessity instead of an alternative preliminary, was placed in my hands for signature, as a member of the Committee, with the statement that every member, save Dr. Carpenter and myself, had approved and signed the Report.

In withholding my signature to this report, it is due to the other members of the Committee and to the Society that my reasons should be clearly set forth; and the rather since the substitute for what I consider the vicious Jury Trial Proposition was undoubtedly intended to be so drawn as to meet the hearty approval of every member of the Committee; it is a cause of additional regret, that some of the preliminary statements of the Report seem to be no less open to adverse criticism than the main propositions themselves.

The second paragraph of the Report is as follows, to wit: "The subject was first discussed at a special meeting of the Executive Committee, very largely attended, at which all

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the Superintendents of Hospitals for the Insane in the State and City of New York and its vicinity, and the Chairman of the State Lunacy Commission were invited, and eminent alienists and jurists." This sentence is preliminary and leading up to the following paragraph, stating what the discussion developed, and implying by its phraseology that the meeting was a representative one, and that the discussion was participated in by a considerable number of men of large experience pertaining to the insane. But, although it will be freely admitted that the legal gentlemen present were eminent in their profession, the eminent alienists of the State were not largely represented at the meeting. Indeed, in so far as I have been able to learn, none of them were there. If they had been there and had participated in the discussion, the majority Report that followed could not have been what it is.

The third paragraph of the Report commences as follows, to wit: "This discussion developed a general feeling of dissatisfaction with the law of commitment as it now stands in the public mind." This rather obscure and ambiguous sentence may be understood as a claim that the speakers were representatives of the state of public feeling in the matter, and that what they said was a proof that the great mass of the public was dissatisfied with the present law of commitment in this State. If this is the meaning of the clause quoted, I would interpose a denial that any such state of general dissatisfaction exists. For the purpose of the present discussion the great public may be divided into three clauses; (1) Those who have insane relatives and who already have a practical knowledge of the working of the law and of the management of our hospitals for the insane, (2) the greater portion of the public who have never been personally interested in the matter and who have given little attention to the subject, and (3) a

few persons who have had an exceptional and perhaps unfortunate experience, with a few others of a benevolent and suspicious temperament who are influenced by theories and unfounded statements rather than by facts. The first class, certainly, can have no fault to find with the present law of commitment, for it makes provision for the placing of their insane friends under humane care and treatment, without subjecting them to any preliminary causes of injury, disturbance, or excitement. This class of persons would be highly dissatisfied with a law, for instance, calling for a Jury Trial as a preliminary to the placing of their friends under care and treatment, but assuredly not with a method of proceedure which is especially adapted to their needs. And no evidence has been adduced to show that many of the second class, the great majority of the people who have given little attention to the subject and who, for the most part, do not clearly understand what the method of proceedure really is, are dissatisfied with the present law. If the dissatisfaction alleged did exist among this class of people it would certainly be a matter of common knowledge and report, which is not the case. But, unfortunately, these people are easily influenced by the opinions and statements of other people in whom they have confidence, and especially in matters like this of which they have no personal knowledge. And so, statements made by a body of professional men, like the members of the Medico-Legal Society, are liable to develop doubts and dissatisfaction where none had previously existed, and for which no valid reason ever had existed. For this reason, it is incumbent on such members of the Society as do not believe the statement of general dissatisfaction to be correct to make a vigorous protest. As an example of the influence a single individual may be able to exert on the class of citizens above mentioned, reference

may be made to the case of Mrs. Packard of the State of Illinois. She was either insane, or had conducted so like an insane person, that she was pronounced insane, was placed in the Illinois Hospital for the Insane, and was considered insane by the expert physician at the head of that institution, and by his assistants. But after her release, sane, or insane, she constituted herself an Anti-Kidnaping Society; and by persistent work and by her representations of Asylum life and of the danger of incarceration as lunatics to which the citizens of the State were exposed, she procured the enactment of the law of that State providing for the trial of the insane by jury which remained the law of the State for twenty years, until two years ago, notwithstanding the protests and efforts to procure its annullment by those citizens who had knowledge of and were interested in the subject, the friends of the insane, the medical profession of the State, and the Medical Superintendents of the Hospitals for the Insane. And even now, so fossilized in the line of precedent do legal methods become; the old method of procedure by Jury Trial is still in general practice in nearly half the counties of the State.

Before proceeding to a consideration of the resolutions themselves, it may be well to review the method of proceedure now in practice in this State, together with some of the safeguards against mistakes, or malice, that go with the process of commitment and the subsequent confinement. Two examiners in lunacy first examine the patient, as physicians, and in such manner as to avoid wounding his susceptibilities. If satisfied that he is insane and a proper case for hospital detention and treatment, they make their affidavit to a paper setting forth their opinions and the explicit reasons on which these opinions are founded. This paper is brought before a judge of competent jurisdiction for his approval. If he is satisfied by the

statements of the document itself, or by a knowledge of the character and competence of the medical examiners, or both, that the person named in the affidavit is insane and a proper case for detention and care, he appends his official approval. Either before, or after admission to the Hospital the patient is informed of the nature of his malady and the legal nature of his removal from home and of his detention. A copy of the certificate is immediately sent to the office of the State Commissioners in Lunacy for their inspection and approval. The patient is allowed to write to the Commissioners, or to any State Official at any time and is allowed to write other letters at stated intervals. In addition to this, it is ordered that any patient who wishes to consult with the Commissioners in Lunacy be allowed to do so, whenever they visit the Hospital.

The first two resolutions adopted by the majority of the Committee an approved by such members of the Society as were present at the subsequent meeting are as follows: "That the present law is faulty in permitting any citizen to be committed and confined in an asylum, public, or private, or any institution, home, or retreat for the care and treatment of the insane upon the mere certificate of two physicians under oath," and "That such a commitment made in this manner before it has been approved by a Court, or Judge of competent jurisdiction is in direct violation of the organic law of the State and of the United States."

These resolutions are in opposition to a clause in the Lunacy Law enacted by the Legislature of the State and acted upon by Judges for the past twenty years without protest, to wit, the clause providing for the detention of a person whom the examining physicians have found to be insane for a period of five days, before obtaining the approval of a judge.

If, as stated in the resolution, this clause is unconstitutional, the matter would appear to be purely legal in character and hence not within the province of the Medico-Legal Society. But, as there is at least a medical side to the question and as the provision has a legal precedent of twenty years' practice, it is not improper that a medical man should state the medical reasons in favor of the provision.

When John Ordronaux, M. D., LL. D., formerly Commissioner in Lunacy for the State of New York, was preparing the draft of a new lunacy law, he consulted a medical man who had had some experience in the care of the insane in regard to any desirable provisions that might occur to him, from his experience. In reply, he was informed that sometimes patients were brought to the hospital in such a state of exhaustion from lack of food, or from the direct action of the disease that a few hours of promptness, or of delay in treatment might involve the issue of life, death, or recovery, or of life-long insanity; that the friends of patients sometimes delayed the taking of the necessary measures for their care and treatment until the safety of the patient, or the safety of others imperatively demanded that immediate steps be taken for their care and treatment; and that the time required to secure the approval of a judge might, and sometimes did seriously interfere with the promptness of action which had become necessary; that this urgency sometimes occurred even in large cities and was especially liable to occur in country districts. It is probable that other opinions on this point were secured. The law was passed with the probationary clause authorizing detention for a period of five days before securing the approval of a judge. The object of the five day clause was to provide for emergencies such as are above mentioned.

For the purpose of obtaining a statement of the experience and views of the Medical Superintendents of Hospitals for the Insane in this State regarding the five day clause and regarding the admission of improper subjects to their care, certain questions were submitted to them and ten replies were received.

The question regarding the five day clause was as follows: "In your opinion, is the five day clause useful and advisable, or not, briefly stating your views?"

The answers were as follows: 1. "Useful and advisable." 2. "Yes. Pray do not tinker with the commitment law as it works well. If there is to be a change, let it be along the line of greater liberty, so that the incipient insane may more easily receive care." 3. "There is no question in my mind about the value of such an emergency clause." 4. "Useful in many cases. Advisable and should be retained." 5. "I think the five day clause is often very useful, as it enables us to receive disturbed patients when it is difficult, or impossible to get the approval of a judge before the patient's admission." 6. "I believe the clause referred to to be advisable and useful as regards the purpose for which it is intended, as a provision for emergency cases." 7. "It is both useful and advisable, both for the patient and family in many cases, especially so in non-resident patients." 8. "Yes. It is often difficult to get the approval on the same day that the certificate is sworn to, and particularly on Saturdays and Sundays. Many patients are better and more conveniently cared for at the Hospital than at home, during the delay." 9. "I think the five day clause is useful and desirable as providing for legal detention of patients who have been examined in cases where a judge may be inaccessible for a day, or two on account of illness, or absence." 10. "I am inclined to think that the five day clause is useful and advisable."

And so, the Medical Superintendents of the Hospitals for the Insane of the State, in so far as appears, are unanimously of the opinion that the five day clause is useful and advisable. And it should be observed that the operation of this clause is a source of personal annoyance rather than a convenience to these Superintendents, save in so far as it is of advantage to the patients who are thus admitted to their care, inasmuch as it involves anxiety and watchfulness on their part, lest the examining physicians should fail to secure the approval of a judge, in due time.

The third Resolution adopted by a majority of the Committee was as follows, to wit: "That the qualifications specified in the law, as it exists, as to the competency of the certifying physicians, require only three years actual practice of his profession, and without requiring evidence of his experience, or practical knowledge of insanity, are entirely inadequate to protect the liberty of the citizen."

This resolution was presumably passed on the assumption, or under the belief that persons who are not insane are often declared lunatics and are committed to Hospitals, as such; and furthermore, that if experts were to be examiners in all cases, such mistakes would not occur. Without at this point calling this assumption in question, it is pertinent to call attention to the gross inconsistency of the advocates of a change in the law in calling for the appointment of examiners in lunacy such physicians only as are recognized as experts. The most radical and the most enthusiastically earnest of those members who are advocating a change in the lunacy laws are urging Trial by Jury as the most certain of all methods for the prevention of the incarceration of sane persons as lunatics. Indeed, some of these men have publicly declared it as their belief that any layman of good understanding is quite as competent to form a correct judgment on the question of insanity as

any physician is likely to be. And yet these same persons together with their more moderate colleagues are willing to publish it as their deliberate opinion that an educated physician of three years' experience is presumably quite untrustworthy for the performance of this duty. But, under modern methods of instruction in Medical Schools, the graduate of three years has probably been taught more and knows more of lunacy and more of the proper methods of examination than graduates of ten years' experience usually learned in former times. And, furthermore, it is of great importance to the public that the family physician should be reasonably well instructed in the diagnosis and probable course of incipient cases of insanity. But, the general practitioner would be greatly deterred from attempting to gain the necessary qualifications, if all cases of diagnosis were referred to such experts as would be required for the diagnosis of obscure cases of mental aberration.

The question of having medical experts in lunacy, only, as examiners was investigated some years ago in England; such men as Lord Shaftsbury, Henry Maudsley, John Bucknill, Hack Tuck, and J. Lockhart Robertson having been examined under oath. In England all the qualification required of medical examiners was that they should be physicians. Their findings were not required to be approved by judicial, nor by any other authority. Dr. J. Creighton Brown, Lord Chancellor's Visitor in Lunacy, testified in reply to the following questions. "Might not some system of medical referees_____possibly be established, instead of taking any chance medical man that came first?" "Might there not be some persons who should pass an examination in mental diseases to whom all these cases might be referred?" Answer: "I think it would rather tend to diminish public confidence to have special-

ists signing certificates. The public would come to associate them with mad doctors, and my impression is that it is better to have general practitioners sign certificates. The public have more confidence in the decision of the ordinary family doctor." Dr. Brown testified to the great value of early treatment. Dr. Charles Bucknill said, "I think the principle should be to make the admission as easy as possible, in order to provide for early treatment." * * * Question: "Can you tell us what the American law is? Answer: "It varies in every State. The State of New York seems to have made the best change." Question: "You think that in all cases it is a great object to get early treatment?" Answer: "I think it is the greatest point to aim at." The testimony of others was of similar import. And it is pertinent to state at this point that if the procedure for the confinement of the insane to Hospitals were made more public and more difficult than it now is, the friends of such patients would certainly delay the necessary steps in a multitude of instances and to such an extent that the damage done to such patients, by delaying, or preventing their recovery, would a thousand-fold counterbalance the advantage gained by the possible prevention of now and then a mistaken diagnosis.

Now admitting that mistakes may be made and are sometimes made in the diagnosis of insanity, it is of importance in considering the methods of commitment to enquire how often and how such mistakes are made, under the present method. To this end the following questions were propounded: "How many patients who proved not to be insane were admitted to your care during the year ending September 30th, 1894? Of these, if any, how many were so free from evidences of insanity that in your opinion the commitment might have been avoided, if droper care and skill had been used by the examining phy-

sicians? How many of these, if any, were in your opinion thus committed through improper motives; as malice, the desire to obtain control of property, to avoid the burden of support, etc.?"

To the last question each of the ten Superintendents replied, "None." One of them answered as follows: "I have never known a case in my fifteen years' experience in four different asylums where a patient was admitted through improper motives, or collusion. As you know, in order to accomplish this it would be necessary to induce two physicians to swear falsely, as well as to induce the Judge to approve the certificate." He might have added that it would be necessary to bribe the physicians and nurses of the Hospital and the Commissioners in Lunacy in order to diminish the danger of detection. At this point it is proper to state that the Commissioners in Lunacy have never found such a case in their official experience.

To the first two questions six Superintendents replied, "None." The other four Superintendents reported the admission of nine patients who were discharged as not insane. All these cases, with two possible exceptions, were reported as having manifested such symptoms of mental disturbance as fairly to justify the assumption that they were insane and proper subjects for detention. All of these were cases of alcoholism which could not be managed at home, save one, and this was the case of a woman who was reported as suffering from acute frenzy. None of them could have been injured and all of them were probably benefitted by the detention, care and treatment.

One of the most active and eminent of the advocates of the resolutions has written as follows regarding the possibility of mistakes in the making of commitments, to wit, "The law should be so framed that such commitments

would be impossible." Statements like this lead to the enquiry whether it is possible that this gentlemen and his learned colleagues have forgotten the proverbial uncertainties of the law; how juries disagree in their verdicts, on the same evidence an the same rulings; how decisions of the Courts are reversed by higher Courts, and then by still higher Courts until the Court of last resort has been reached, and even then with a lingering doubt of the correctness of the decision; how lawyers are constantly injuring their clients by doing the wrong thing, or by failing to do the right thing in the management of their cases; how physicians sometimes make mistakes in the diagnosis of diseases, as when they send patients ill with Chicken pox to the Small pox Hospital; that "To err is human." It may be true that if sufficient obstacles and delays were interposed some of these mistakes would not be made. But then, a lifetime of delay might elapse in some of the legal cases, small pox might become an epidemic, and many cases of insanity might, and some of them would die, or become incurable, as a result of the delay.

It is easy to understand why the legal members of the Medico-Legal Society should be earnest and persistent in their advocacy of personal liberty; but to the medical members who are especially conversant with the insane and with their needs, it is a matter of great surprise that the lawyers should be so anxious about the remote possibility that some citizen of sane mind may be mistakenly pronounced insane and so placed under restraint, while they appear utterly oblivious to the fact that citizens are constantly imprisoned by the State, on charges that are never proved; placed under the necessity of making their own defense, and then after suffering an unjust incarceration, being ruined in their business and reputation, and after having expended their means and the means of their

friends in securing their liberty, are left by the State, by their fellow citizens who ought justly to make full restitution for the wrongs they have suffered, entirely without redress; and that mere witnesses of an unlawfnl act are often placed in durance, without redress for the injustice they have suffered.

The fourth resolution adopted by the majority of the Committee is as follows, to wit: "That the statutory qualifications of the certifying physicians, as was stated in the law, would not be sufficient to enable said physicians to testify as experts in a Court of Justice when the question of insanity was at issue."

And yet the same men who are so anxious about the high grade of qualifications on the part of the examining physicians are equally, or even more anxious to have a petit jury decide the case on the evidence given by others. A surgeon, or an ordinary practitioner of medicine may be quite competent to decide upon, and to perform a clearly required operation in surgery while they might not be able to elucidate the highest principles of the art, in a questionable case. But this is no reason why the most learned expert should be called in every case. The general practitioner is presumsd to be wise enough to call in an expert to his assistance in cases that are beyond his skill; and so, an examiner in lunacy, barring possible mistakes in judgment, is presumably wise enough to call in the aid of an expert in difficult cases, whenever such aid is available.

The fifth resolution is as follows: "That in our opinion confinement of the insane in an asylum is not necessary, beneficial, or even prudent in all cases; and that before a judge signs a warrant of commitment, the law should require him to be satisfied by competent evidence, that the insane person, if at large, would be dangerous to himself,

or to others; or that treatment in an asylum would be beneficial to him."

The first part of this resolution is a mere platitude. It never has been considered necessary and it has never been the practice to seclude all persons who are deranged in mind. There is a general impression that the asylums in existence could not contain them. If the statement on the contrary had been, that there are many persons at large who ought to be confined in hospitals for the insane for their own safety and for the safety of the public, as evidenced by the great frequency with which assaults, homicides, and suicides are committed by persons at large who were indubitably insane, the question would have had a practical pertinence. The present form of commitment explicitly states that the examiners certify to the fact that A. B. is insane and a proper person for care and treatment in some institution for the insane, "as an insane person under the provision of the statute." And this means that if at large he would be dangerous to himself, or others either by actual performance, or by lack of performance. And the Judge is supposed to satisfy himself by the statement of the commitment or by the testimony of the examing physicians, or by both, that this is the case. The law implicitly so requires; and if judges fail to do their duty in this regard, this failure is not a fault of the law, but of the judges themselves, and is a matter of legal rather than of medico-legal import.

The sixth resolution is as follows, to wit: "That in all cases of doubtful insanity, judges before signing warrants of commitment should assign counsel for the alleged lunatic, when he is not otherwise represented."

If the case of doubtful insanity is that of a crank, or paranoiac, who has committed some overt act constituting a crime, or a public scandal, and who is desirous of vindi-

cation, there appears to be no reason why he should not have a judicial investigation of some sort, with the aid of legal counsel. Insane persons of this class are not likely to be injured by such an investigation, and an adverse legal decision may be of some benefit by removing the force of the claim that an opportunity for defense has not been afforded. But, if the case is, for instance, one of incipient insanity in which the symptoms thus far are so illy defined that an exact diagnosis is difficult, and yet the progress of the malady and the surroundings of the patient are such as to demand prompt and skillful care and treatment, the interposition of a lawyer into the case would be an outrage. What is needed in such a case of doubtful insanity would be the additional counsel of men who are especially learned and have had a special experience in diseases of the mind.

The seventh of these resolutions is as follows, to wit, "That in our opinion, in the matter of commitment of the insane, the duty of medical men should be limited to giving medical evidence and the responsibility for the commitment should rest upon the Judge, and not upon the physician; that the medical profession has greatly suffered in public estimation by the practical working of the present law which throws upon the certifying physicians the opprobrium of the unfortunate, or ill-advised commitments."

The reply to this is that, with the exception of the five day clause, which has already been discussed, the duty of physicians under the present law is limited to giving medical evidence, with the investigations necessary thereto; and that the responsibility for the commitment does rest upon the judge. If it be claimed that the physicians should be quite relieved from responsibility, the physicians must be left out of the case altogether. The performance

of his functions involves responsibilities; and he cannot escape these responsibilities if he retains his connection with the case, as a physician. The truth of the latter part of this resolution is emphatically denied.

My signature of approval, then, was withheld for the reasons heretofore stated; and, in brief, because, in my opinion, the Report was ill-considered, unwise, inconsistent, lacking in uniformity of purpose, and is calculated to bring about that distrust in hospitals for the insane which it deprecates.

This paper was prepared by Dr. Parsons under the following circumstances:

At the April, 1895, meeting, of the Medico-Legal Society, the report of the committee on the amendments, proposed by Mr. Albert Bach, to the existing law of commitments of the insane in New York, was read with the unanimous approval of the Executive Committee. The report was, on motion, accepted. On the motion to adopt the same the report was discussed by Drs. E. C. Mann, Vice-President S. B. W. McLeod, H. W. Mitchell, M. D., Vice-President Albert Bach, Esq.

The report was signed by the following gentlemen: Clark Bell, Chairman, Judge Calvin E. Pratt, New York Supreme Court, Bettini de Moise, M. D., H. W. Mitchell, M. D., Albert Bach, Esq. and Ex-Judge Abram H. Dailey.

Mr. Clark Bell, Chairman of the Committee, in submitting the report of the majority of the committee, said: The committee has given a large share of attention to the subject. It was at first discussed at a very full session of the Executive Committee; then by arrangement the subject was again discussed at a meeting of the full Executive Committee, at dinner, to which a large number of guests were invited, and an entire evening spent in general discussion, Dr. Parsons being present. That the Committee had formulated a series of propositions which they had submitted to the Society for its approval, and that in declining to report favorably upon the bill proposed by Mr. Albert Bach, they had obtained the signature of the mover of the proposed amendment to this Report. Mr. Bell called attention to the fact that the Report was not signed by Dr. Ralph Parsons, of the Committee, who was strongly opposed to the bill proposed by Mr. Bach, nor by Dr. E. N. Carpenter, who also had not signed the Report, and who had written the Secretary that he was unwilling to sign it.

The amendment proposed by Mr. Albert Bach and the Report of the Committee declining to approve of Mr. Bach's recommendations as made, and formulating eight resolutions on the subject, were published in the June No. Medico-Legal Journal, 1895.

In the discussion of the Report Vice-President S. B. W. McLeod, M. D., said that he had not fully considered the subject, at least sufficient to pass on all the resolutions prepared, which he favored in the main. He

related some interesting cases from his own practice, of commitments of persons not insane.

Mr. Albert Bach, mover of the proposed legislation, said that he was as strong as ever in the faith of the propriety of the legislation he had suggested. He explained why he had assented to the Report which, while it did not go as far as it should in the needed reform, was a most important advance upon the existing law.

President H. W. Mitchelll, M. D., related some interesting cases from his personal experience and practice, of improper commitments of persons who should not have been sent to an insane asylum at all.

The Report was unanimously approved, and the Resolutions as recommended by the Committee, unanimously adopted.

At the May meeting, 1895, Dr. R. L. Parsons occupied the chair during the Session and the following action was taken:

Dr. R. L. Parsons called Dr. Ira O. Tracy, M. D., to the chair and explained that he had not signed the report of the majority committee in relation to the committee of the insane, which had been approved at April meeting, and that he did not approve certain of the provisions of the report. He was invited to prepare a paper giving his views, for the June meeting or the September Congress.

The foregoing paper was prepared and read by Dr. Parsons in response to this action.

It will be observed that the Committee took no action whatever regarding the question of Jury Trials as to insanity.

It was believed that in view of the recent amendments to the law of Commitments of the Insane passed in New York since this action, that the views of Dr. Parsons should be published in the Bulletin of the Congress, as forming an interesting part of the discussion of this interesting question.