Dr. Olders

last paragraph on page 83 that clearly states, "The most relevant issue of dangerous offender cases may not be the determination itself but whether the judge imposes a determinant or indeterminant sentence."

Reference

1. Zusman MD, Simon J. Differences in repeated psychiatric examinations of litigants to a law suit. Am J Psychiatry 1983; 140: 1300-1304.

Richard Rogers, Ph.D.
Elizabeth Lynett, Ed.D.
Toronto, Ontario

ALTERNATIVES TO CIVIL COMMITMENT

Dear Sir:

The article by Drs. Brouillette and Paris (1) effectively highlights the quandaries faced by psychiatrists who deal with dangerous patients. However, a point not emphasized sufficiently was that there are often alternatives to civil commitment which may have a number of advantages.

Discussions usually centre around the criteria which must be met before a person can be committed. Rarely is there mention of the fact that the law (at least in Quebec) does not *require* the person to be committed if the criteria are met; rather, it is worded to *prevent* commitment unless the person is judged to be dangerous (2).

Psychiatrists who fear legal or civil consequences for failing to commit a potentially dangerous person might keep in mind that legal precedents such as the California Tarasoff decision (3) refer not to the necessity to commit, but to protect the intended victim. The point is that the physician should be concerned with safety, rather than commitment. Safety concerns can be addressed in a number of ways, such as warning the victim; calling the police to have the person taken into custody; arranging for potential victims to be protected (for example, by shelters for battered women); or (in Quebec) contacting the Department of Youth Protection when children are involved.

It is also necessary to consider the consequences of failing to use appropriate mechanisms. When people are shielded from the usual and appropriate consequences of their behaviour, their behaviour may worsen. A person who makes threats or assaults someone would, in the absence of mental illness, normally be charged with a criminal offence and dealt with by the judicial system. This legal process can be initiated whether or not the person is committed. A failure to initiate judicial proceedings, if based on the belief that mental illness renders the person less responsible for their behaviour, is tantamount to the psychiatrist assuming the role of prosecutor, judge and jury — a role which he or she is ill-equipped to assume by training and (usually) by disposition. Furthermore, if the aggressive behaviour is not adequately dealt with, others may be put at risk.

Finally, there is the question of implicit or explicit collusion between the psychiatrist and the family. Again, in Quebec, the police are now obligated to press charges in cases of wife-battering, even when the victim refuses to make a complaint. Should the psychiatrist not insist that a similar process take place in other cases of family violence, such as the authors' example of the 23 year old man who repeatedly assaulted his parents? Is failure to do so not a form of collusion with a malfunctioning family system? Perhaps in such cases one might even consider committing those victims of family violence who, because of guilt feelings or other impediments, are unable to take appropriate steps to ensure their own safety and therefore might be considered dangerous to themselves.

References

1. Brouillette M-J, Paris J. The dangerousness criterion for civil commitment: the problem and a possible solution. Can J Psychiatry 1991; 36(4): 285-289.
2. *Mental Patients Protection Act*. R.S.Q., c. P-41. As amended by: 1989, c. 54 ss. 181 to 183. 1990 Oct 1.
3. Wettstein RM. Psychiatry and the law. In: Talbott JA, Hales RE, Yudofsky SC, eds. Textbook of psychiatry. Washington DC: American Psychiatric Press, Inc., 1988: 1081.

Martha Bishop
Henry Olders, M.D.
Verdun, Quebec

THE AUTHORS REPLY

Dear Sir:

Bishop and Olders agree with the main point of our article, but disagree on two issues. The first is that although there are few legal precedents under Canadian law, there have been law suits in the United States against psychiatrists for failure to commit patients who later committed violent acts (1). In one such case, the Court actually defined a "duty to commit" (2). Even if such cases are rare, the possibility is in the back of the minds of psychiatrists who work in clinical settings.

The second issue concerns the recommendation that the legal system be used to deal with threats of violence. In reality, if no crime has yet been committed, the system often fails. This is a difficult problem in social policy. However, it does not follow that psychiatrists should fill the gap through civil commitment.

References

1. Beck JC. The therapist's legal duty when the patient may be violent. Psychiatr Clin North Am 1988; 11: 665-679.
2. *Currie vs. United States*, 644 F Supp 1974 (M D N C 1986).

M.-J. Brouillette, M.D.
J. Paris, M.D.
Montreal, Quebec

PREVENTIVE DETENTION OF THE MENTALLY ILL

Dear Sir:

Drs. Brouillette and Paris (1) presented a clinically useful opinion on how mental health law could be changed so that psychiatrists do not feel like "jailers" and so that psychiatry does not become an instrument of social control.

I would like to make two comments. First, contrary to the statement made by Drs. Brouillette and Paris, the Canadian *Criminal Code*, Section 753, does permit preventive detention, and psychia-