Correspondence

National Council of Social Workers with the Deaf

DEAR SIR

I have been in correspondence with the National Council of Social Workers with the Deaf which is anxious to publicize the names and addresses of branch secretaries who could act as points of contact where assistance is required in connection with prelingually deaf patients. In many areas contact is already well established but this is not so everywhere, and branch secretaries are able to advise whether or not a specialist social worker with the deaf is available in a particular area. I enclose a list of names and addresses indicating where assistance can be obtained by psychiatrists when they have to deal with a deaf patient.

National Secretary: Mrs V. Conway, The Vicarage, Fron Park Road, Holywell, Clwyd

Northern Counties: Mr R. S. Pringle, Social Services Department, Windmill Hills, Gateshead, NE8 1PJ

North West: Mr I. Kershaw, Centre for the Deaf, 32-40 Denton Green Lane, St. Helens

Yorkshire & Humberside: The Rev R. Bell, Social Services Department, Orchard House, Orchard Street, Lincoln

Midlands: Mrs S. Grew, Social Services Department, Civic Centre, Darwall Street, Walsall WS1 1RG

South East: Mr C. Palmer, Social Services Department, 17–23 Clements Road, Ilford, Essex 1G1 1BL

South West: The Rev M. Sabell, Centre for the Deaf, 18 Augustine Road, Southampton

Ireland: Mrs M. Breen, Social Services Office, Waterside Hospital Grounds, Londonderry

Scotland: Mrs. L. Grant, Centre for the Deaf, 36 Roseangle, Dundee

Wales: Mr K. Butterfield, Social Services Department, Cunliffe House, Rhosodu Road, Wrexham, Clwyd

ROBERT BLUGLASS

All Saints Hospital
Lodge Road
Birmingham B18 5SD

Representing the mentally ill and handicapped

DEAR SIR

It appears fashionable these days to make generalized attacks on MIND, which are notable only for their overstatement and disinterest in the details of MIND policy. I would not have expected a person of the usual fairness of Dr John Hamilton to join on an unconstructive and highly emotional bandwagon in his review of *Representing the Mentally Ill and Handicapped* (*Bulletin*, December 1980).

Dr Hamilton is apparently wholly opposed to the idea of effective representation as set out in the book and recommends it to psychiatrists on the principle of 'know thine enemy'. Dr Hamilton's view is not shared by those organizations and individuals who are responsible for the provision of legal, health and social services to psychiatric patients. MIND and the Law Society are implementing the principle of effective representation put forward in the book in a pilot project in the Oxford Region. The project has received support from, *inter alios*, the Secretary of State, the Royal College of Psychiatrists, the Association of Social Services Directors, the Probation Service, and the Council on Tribunals. Indeed, Dr Hamilton's own hospital, Broadmoor, has been constructive and cooperative, encouraging independent research into the area. This kind of support suggests that Dr Hamilton's admonition 'know thine enemy' is a highly personalized view; I hope Members of the College will bear this in mind when considering the merits of the review. *Representing the Mentally Ill and Handicapped* (partly funded by the DHSS) was based upon four years experience in operating a tribunal representation service for patients; it was widely welcomed in legal and academic circles as the only serious and comprehensive review of the law and practice of tribunals since their inception in 1960.

I should like to examine what I consider to be the logical errors in the review. It begins by a quote from Edmund Burke in 1774 about the political representation of Members of Parliament. This analogy could not be more inapposite to legal representation in the 1980s. The legal profession has standards of representation for individual clients which are qualitatively different from those of Members of Parliament who are representatives for their entire constituencies. I don't believe any right-minded individual would want his lawyer to represent him in court or before a tribunal in the same way his MP represents him in Parliament. The legal representative is directly accountable to his client while the MP has a large number of competing interests to follow which may subordinate the interests of any individual constituent.

The source of a representative's authority derives from the client; the representative is intended to speak on behalf of the client and not according to his own personal views of the merits of a case. It is not the role of the representative to make 'best interests' judgments. He does not have the expertise and experience in clinical and social matters to make such judgments. Moreover, even if he were capable, any decision would pre-judge the result of the case. The

https://doi.org/10.1192/S0140078900015285 Published online by Cambridge University Press

representative must not make a private decision prior to the hearing on exactly the question which the Act has delegated to the tribunal. Thus, MIND's view of an effective advocate is one who will responsibly discuss matters with the doctor and the tribunal, with the patient's full knowledge and consent. No one would condone a cosy chat between fellow professionals behind closed doors with the result that the representative might 'go easy' on the case.

If a patient were truly unable to give instructions a *guardian ad litem* should be appointed. That is what the law provides; it would not, however, countenance the advocate directly going against the client's express wishes and making best interests judgments. It was somewhat unfair for Dr Hamilton to present these arguments in such an unbalanced way as if the issues were not discussed in the book.

Dr Hamilton devotes considerable space in his review to knocking down what he sees to be two emotional and unsubstantiated proposals in the book. Allow me to explore the parameters of these so called unsubstantiated proposals. The first is for automatic reviews to Mental Health Review Tribunals at periodic intervals. To begin with this proposal was not introduced in *Representing the Mentally Ill and Handicapped* but was first put forward as a MIND proposal in 1975 in volume 1 of *A Human Condition*. The proposal was accepted in the White Paper, *A Review of the Mental Health Act, 1959*, and will no doubt be incorporated in some form in an amended Mental Health Act.

The second proposal was based upon the principle of 'unmet need for legal services' and the importance of representation at Mental Health Review Tribunals. Allow me to remind you of the legal, medical and social organizations which have welcomed the Oxford Scheme, based upon these same principles. Moreover, following MIND submissions, the Lord Chancellor's Advisory Committe on Legal Aid called Mental Health Review Tribunals a high priority in granting legal aid for representation.

While criticizing the two proposals explained above, Dr Hamilton stated that 'the authors fail to point out (it does not suit their case) that 90 per cent of these [20,000 compulsorily detained patients] are on short term orders'. This is an example of a perhaps intentionally misleading and very serious criticism of the integrity of the authors. It bears no resemblance to the truth. Indeed on page 3 of the book we refer to the fact that only 10 per cent of those compulsorily detained are on long term orders and therefore eligible for tribunals. More complete figures are given in subsequent chapters of the book.

When Dr Hamilton states that the book ignores the basic premise in the Act that those suffering from mental disorders should be treated in the same way as physically ill patients, he misses the point. No one was ever suggesting that the book applied to informal patients who are in the same position as physically ill patients. The book concerns itself solely with representation at Mental Health Review Tribunals. MIND has repeatedly endorsed the principle first enunciated by the Royal Commission.

MIND is then implicitly criticized for 'ignoring Scotland completely'. We also ignore all other sovereign and different legal jurisdictions. It would be presumptious for us to write on a subject where we do not have sufficient knowledge and experience.

Dr Hamilton maintains that there is no need for legal services for family and business affairs because patients are looked after by doctors, nurses and social workers who care for all the needs and problems of patients. This may well be partly true, but the experience of CABs, CHCs and Law Centres visiting local and special hospitals suggests that patients, like other members of the community, do have legal problems and concerns and that they should not be impeded in seeking legal advice and assistance.

Dr Hamilton ends by informing us of the current black joke among psychiatrists as to the need for an alternative edition or 'Representing the Psychiatrist'. Indeed, the psychiatrist is well represented by the well paid and highly specialized lawyers in the Medical Defence Union and Medical Protection Society. However, if this is a veiled comment as to the need to be protected from patients (or from MIND) it is well not to forget that psychiatrists receive almost total protection under section 141 of the Mental Health Act in respect of any action or judgement taken in pursuance of the Mental Health Act. This may suggest something to the lay observer about the equality and balance of the doctor/patient relationship and where the authority lies. I wonder if this also suggests something about the fundamental principle referred to in the review that psychiatric patients should be placed on the same footing as those in general hospitals?

LARRY GOSTIN
MIND
22 Harley Street
London W1N 2ED

Dr Gavin Shaw

Dr Gavin Shaw received a CBE in the recent New Year Honours List. He is President of the Royal College of Physicians and Surgeons of Glasgow and was made an Honorary Fellow of the College at the College Annual Meeting in 1980.

https://doi.org/10.1192/S0140078900015285 Published online by Cambridge University Press