

THE INSTITUTE OF LAW, PSYCHIATRY AND PUBLIC POLICY

at the University of Virginia

*"At the intersection of mental health law
& public policy for 20 years"*

1977-1997



MISSION STATEMENT

"The mission of the Institute of Law, Psychiatry and Public Policy is to

- ❖ understand, assess, prevent, and manage violence in society, with particular emphasis on violence among people with mental disorders;*
- ❖ promote human rights by developing and strengthening the ethical and legal foundations of the rights of persons who have or are perceived to have mental illnesses and disabilities;*
- ❖ improve law and policy by developing and shaping laws and public policies related to mental health and human development, including, for example, civil commitment, legal responsibility, competence, surrogate decision-making, confidentiality, child protection, and substance abuse; and*
- ❖ provide better information to the courts by improving the capacity of mental health disciplines to provide sound, reliable clinical and scientific information to civil and criminal courts, and assisting courts to make informed decisions."*

FACILITIES
 OPERATED BY THE
 DEPARTMENT OF MENTAL HEALTH
 MENTAL RETARDATION AND SUBSTANCE ABUSE
 SERVICES

In - investigated in accordance with authority vested by the State Mental Health Department and Substance Abuse Service as Board pursuant to Title 9, Chapter 68B, Code of Virginia (1980) as amended; and applicable sections of Chapter 64-1, Code of Virginia (1994) as amended known as the Administrative Code.

M.T.I. - Title 9, Code of Virginia (1994) as amended known as the Administrative Code after due notice and hearing as required therein.

STATE OF VIRGINIA
DEPARTMENT OF SOCIAL SERVICES

(113) 27 33 (100) 71

MAJOR FINDINGS



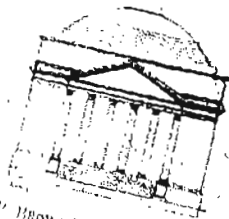
ЗАКОН
РОССИЙСКОЙ ФЕДЕРАЦИИ

ОТДЕЛЕНИЕ РУССКОЙ ПОМОЩИ
И ГАРАНТИИ ПРАВ ГРАЖДАН
ПРИ ОКАЗАНИИ

1 JUL 1966

1 PM 10:50

VIRGINIA
LAW REVIEW



THE P. BROOKING HOPKINS MEMORIAL
SYMPOSIUM ON LAW AND PSYCHIATRY
MENTAL HEALTH EXAMINATION
PROCEDURE

THE P. BROUWING HOFFMAN MEMORIAL SYMPOSIUM ON LAW AND PSYCHIATRY
THE ROLE OF MENTAL HEALTH PROFESSIONALS IN
THE CRIMINAL PROCESS: THE CASE FOR INFORMED
SPECULATION
CLINICAL EVALUATION
"OVERLAP"

*The Code of Professional Ethics of the
Russian Society of Psychiatrists*

THE
SOCIETY
OF
THE
SOCIETY

Russian Federation on ic Care and Guarantees of Rights in Its Provision

is the greatest of every
thing in part a far
more, he said that, himself,
toward a personal
thing that the absolute
may consider
uses, for that
and the
in view
of the law
necessity and in
the Supreme

Article 1. The main principles of its provisions.

(1) Psychiatric care is based on the basis of, and in accord with law and other laws of the Russian Federation, treatment, care, and medical rehabilitation of mental disorders.

THE BIRTH OF AN INSTITUTE

Persons with mental illness faced a much different legal landscape 20 years ago. Decisions bearing on their fundamental rights were made by psychiatrists without meaningful legal supervision. Conditions in many large public institutions were appalling. Equally disturbing, lawyers and the mental health professionals tended to view each other as antagonists in what was becoming a battleground for reform.

Fueled by the activist spirit of the 1960s, social reforms of all types began taking place around the nation. Not surprisingly, old assumptions about those with mental illness, and the laws and public policies governing their care, were being questioned by a new generation of mental health professionals and lawyers. This was an exciting period of intellectual ferment. One of the most energetic voices in this new generation of scholars was a brilliant young psychiatrist named P. Browning Hoffman.

Recruited to the University of Virginia in 1971 to hold a joint faculty appointment to the Schools of Medicine and

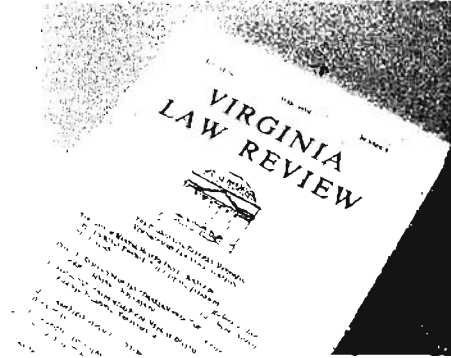
Law, Hoffman recognized that for true reform to occur, the relationship between law and behavioral science must be transformed. In his new faculty post, he immediately began working with law school professors Walter Wadlington, Charles Whitebread and Richard Bonnie. Together, they developed joint curricular and programmatic opportunities for the two disciplines.

One important initiative involved the recently established and innovative Forensic Psychiatry Clinic. This "trial balloon," as Hoffman later described the project in a paper co-written with fellow psychiatrist Robert Showalter, provided a clinical opportunity for law students, psychiatry residents and medical students to assist in the evaluation of clients facing special legal problems. By assisting in forensic evaluations to determine someone's competency to stand trial, for example, the respective parties not only gained a better appreciation for the complexities of forensic psychiatry, but they also grew to value and respect the other's contributions to the process.

The clinic proved hugely successful, but it only addressed one of Hoffman's several long-term goals. He also wanted to develop highly specialized, cross-professional educational programs for professionals in law and medicine. And he wanted to take the "paternalistic guesswork" out of decisions made on behalf of people with mental illness by designing and executing research programs that would produce solid empirical data where none previously existed.

Recognizing that these additional goals were ambitious for one small forensic clinic, Hoffman and his law school colleagues decided the time had come to create an independent, interdisciplinary program in mental health law at the University of Virginia. Over time, they hoped, its work would make an important contribution to mental health reform efforts taking place both domestically and internationally.

In 1977, the Institute of Law, Psychiatry and Public Policy was established, with Hoffman as its first director. Postgraduate fellowship programs in mental health law and forensic psychiatry were offered in collaboration with



the Schools of Medicine and Law and the University of Virginia Hospital.

Only one shadow darkened the birth of this new intellectual enterprise: the untimely death of Browning Hoffman in early 1979. Yet while his career was tragically brief, his vision continues to shape the Institute he founded.

Twenty years after its creation, the Institute of Law, Psychiatry and Public Policy can look on its contributions with pride. Its staff, fellows and associates have participated in nearly every important social reform to occur in law and psychiatry in the past two decades. Collectively, they have produced a body of literature that will influence mental health law and public policy reforms for years to come.

CIVIL COMMITMENT

As part of the mental health law revolution that began in the 1960s, statutes governing involuntary civil commitment were challenged in legislatures and courtrooms across the nation.

Under Virginia's civil commitment

system, for example, patients could be hospitalized for indefinite terms after highly informal hearings. In 1974, the Commonwealth revised its civil commitment statute, but whether those revisions had resulted in any noticeable changes in practice was unclear.

"...to improve law and policy by developing and shaping laws and public policies related to mental health and human development, including (for example) civil commitment..."

The Institute of Law, Psychiatry and Public Policy viewed the lack of data about civil commitment as an important research opportunity. In 1979, two fellows, Virginia Roddy and Ed Baxa, initiated a major empirical study of the effects and implementation of the 1974 revisions. They observed more than

200 commitment hearings and then, in 1980, they reported their initial findings at the annual meeting of the American Psychiatric Association. Another fellow, Nancy Ehrenreich, continued the project by carefully analyzing their data and completing an assessment of the commitment process in Virginia.

Over the next several years, the Institute served as a resource to a legislative subcommittee on civil commitment chaired by Del. Warren Stambaugh of Arlington. Del. Stambaugh and Richard Bonnie worked closely for several years on a series of legislative proposals to reform the commitment process. Although the comprehensive reform proposals were not enacted, many specific provisions were adopted over the next decade.

One particularly contentious aspect of commitment concerns the scope of parental authority to place minors in psychiatric hospitals. The Institute's involvement in this issue dates back to the mid-1970s, when the American Psychiatric Association's Commission on Judicial Action was formulating its position on lawsuits seeking to

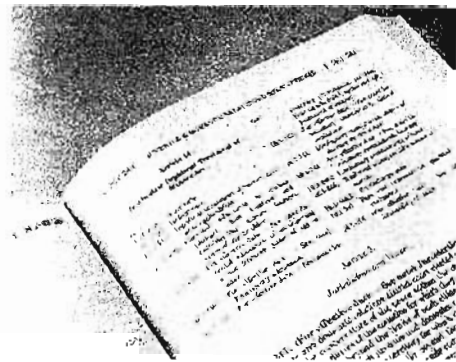
displace parental and psychiatric prerogatives. Browning Hoffman, a member of the commission, was committed to finding the proper balance between the conflicting interests at stake.

In 1977, a case challenging Virginia's laws regarding the hospitalization of minors was filed. The Institute wanted to assist, but found that no data existed about who was hospitalizing children in Virginia—their parents, their physicians, the courts?—and why. Hoffman and Bonnie recruited some of their students to conduct the necessary research. The results of this research project were eventually published and played an important role in the deliberations that led to the consent decree issued in the Virginia case.

Notwithstanding the consent decree, however, new legislation governing the hospitalization of minors was needed. As chairman of the State Human Rights Committee in 1983, Richard Bonnie appointed four task forces to review issues related to special populations and civil commitment, including one on the hospitalization of minors. The task force included

Elizabeth Scott and Lois Weithorn. Scott, who was then director of the Institute's Forensic Psychiatry Clinic and later was appointed to the University of Virginia law faculty, had recently co-written a child-custody consultation guide for the American Psychiatric Association Task Force on Child Custody. Weithorn, the Institute's research director from 1981 to 1983, had written her doctoral thesis comparing the abilities of minors and adults to render informed treatment decisions.

The Task Force Report provided a starting point for legislative action a few years later, when a joint legislative subcommittee began studying the impact of laws regulating the admission of minors to both public and private



psychiatric facilities. Kathleen Shaw, who was the Institute's 1987-88 fellow in mental health law, developed three survey instruments that were circulated to the chief operating officers of public and private psychiatric hospitals and general hospitals with psychiatric units. The inquiry produced important data on the civil commitment process, such as the age of the minor patient, the length of his or her hospital stay, factors relating to patient consent and judicial intervention, as well as hospital policies concerning the

legal aspects of psychiatric admissions of minors. Eventually, all of these efforts culminated in the Psychiatric Inpatient Treatment of Minors Act in 1990.

The Institute's work in the area of civil commitment continues. For example, Institute medical director Steven K. (Ken) Hoge spearheaded the American Psychiatric Association's activities in this area as member and chair of the APA's Council on Psychiatry and Law from 1991 to 1997.

Ground-Breaking Research on Minors

The Institute acquired a valuable asset when it successfully recruited Lois Weithorn, Ph.D., from the National Mental Health Association in 1981 to serve as its research director.

While earning her Ph.D. in clinical psychology at the University of Pittsburgh, Weithorn had written a ground-breaking doctoral dissertation comparing minors' and adults' capacity to render informed treatment decisions. As one of the earliest scientific studies comparing the cognitive capacity of children and adults, the work and its conclusions have been widely cited in debates involving the decision-making capacity of minors. Furthermore, her scholarship inspired several successor generations of empirical research on the topic, including studies on juvenile justice issues under the auspices of a MacArthur Foundation research network established in 1997.

Weithorn eventually left the Institute to pursue a J.D. at Stanford Law School in 1983. While there, she served as president of the *Stanford Law Review* and wrote an article calling attention to abuses involving the hospitalization of minors. Specifically, she attracted national attention to the fact that private psychiatric hospitals were admitting many children who didn't need hospitalization.

COERCION

Coercion plays a highly controversial role in the administration of mental health services around the world. Patient advocates argue that coercion strips patients of their moral rights to decision-making autonomy and human dignity. Family members, on the other hand, often simply want their loved ones to get well, regardless of what it takes to jump-start a therapeutic intervention.

*“...to improve law
and public policies
related to
mental health and
human
development...”*

In 1988 the John D. and Catherine T. MacArthur Foundation Research Network on Mental Health and the Law, chaired by John Monahan,

initiated an innovative study of coercion in mental health care. Institute medical director Ken Hoge was co-principal investigator for this important scientific research.

As a result of the study, valid research instruments now exist to measure the subjective “coerciveness” experienced by patients being admitted to a mental hospital, and many of the factors associated with that experience. Also, the study showed that coercion experienced by patients is strongly associated with whether or not they felt that they had a voice in the process.

As hoped, this research contributed to the ongoing dialogue about coercion. In 1991, members of the MacArthur Research Network’s coercion working group helped the National Institute of Mental Health draft its *National Plan of Research to Improve Services*. The MacArthur innovation led to further research on coercion in outpatient mental health settings and in non-psychiatric medical settings. Faculty psychiatrist Bruce Cohen and fellow Jessica Berg also contributed to these investigations.

Richard Bonnie

Law professor Richard Bonnie became the director of the Institute of Law, Psychiatry and Public Policy in 1979, but his involvement in the Institute dates back to 1973, when he became associated with the Forensic Psychiatry Clinic, the Institute's forerunner.

Throughout his academic career, Bonnie has been actively involved in public service. From 1971 to 1973, he served as associate director of the National Commission on Marihuana and Drug Abuse and, from 1975 to 1980, as a member of the National Advisory Council on Drug Abuse. In 1981, he was appointed to the advisory board for the American Bar Association's Criminal Justice Mental Health Standards Project and, beginning in 1988, served on the John D. and Catherine T. MacArthur Foundation Research Network on Mental Health and the Law. He has served as an advisor to the American Psychiatric Association's Council on Psychiatry and Law since 1979. In 1991, Bonnie was elected to the Institute of Medicine of the National Academy of Sciences.

Over the years, Bonnie has observed, participated in, written on and taught about numerous reforms in mental health law and public policy, both nationally and abroad. Yet, the one accomplishment he values above any other is his role in developing a human rights program to protect the rights of residents and clients in Virginia's public mental health and mental retardation services system.

COMPETENCE

The concept of “incompetence”—denoting substantial impairments of a person’s cognitive capacities to make decisions or engage in other tasks—lies at the heart of mental health law. The

“...to improve laws and public policies relating to mental health and human development, including competence ...”

Institute has contributed to knowledge on competence-related issues in numerous ways over the past two decades.

The MacArthur Foundation Research Network on Mental Health and the Law initiated two

ground-breaking studies on competence in 1988. Building on Richard Bonnie’s legal analysis, the Network’s Adjudicative Competence Study was designed to develop structured and standardized research measures that can be used to assess the ability of criminal defendants with mental illness to assist in their own defense. The Treatment Competence Study was designed to provide information to

policymakers and clinicians so that they could better address questions about the decision-making capabilities of people who are hospitalized with mental illness.

The Adjudicative Competence Study was located mainly at the Institute. The Treatment Competence Study was conducted entirely at the University of Massachusetts Medical Center in Worcester under the direction of Paul Appelbaum and Thomas Grisso, long-time colleagues and friends of the Institute.

Both studies produced important empirical results. They also led to the development of new interview tools for use in assessing adjudicative competence or competence to choose or refuse treatment. The MacArthur Competence Assessment Tool – Criminal Adjudication, for example, is a user-friendly assessment instrument that not only brings standardization to the assessment process, but also allows clinicians to assess adjudicative competence of criminal defendants

in about thirty minutes. In addition, the assessment tool for treatment has since been adapted to help clinicians assess a potential subject's competence to consent to speech.

The Institute's research on competence has also addressed the developmental abilities of children and adolescents. Initial efforts were undertaken by Lois Weithorn in the

early 1980s. A decade later, Elizabeth Scott, Dickon Reppucci and Jennifer Woolard called attention to the need to address developmental aspects of adolescent judgment. In 1996, under the leadership of Janet Warren and Lynda Frost, the Institute launched empirical studies, legal analysis and policy development in relation to the adjudicative competence of adolescent offenders.



COMMUNITY-BASED FORENSIC ASSESSMENT

Twenty years ago, forensic assessments were routinely conducted on an inpatient basis in public hospitals. Defendants being assessed often remained at the facility for weeks because of the chronic backlog of assessments, and

all too frequently, psychiatrists and psychologists conducting the assessments had insufficient training. At the same time, reformers around the country were clamoring for the deinstitutionalization of mental health services. A new model for conducting forensic evaluations more equitably, more quickly and less expensively was clearly needed.

"... to provide better information to the courts by improving the capacity of mental health disciplines to provide sound, reliable clinical and scientific information to civil and criminal courts ..."

Preparatory pilot work to develop a new model of outpatient evaluation began at the Institute in 1977 under the leadership of Elizabeth Scott and Gary Melton. In March 1980, the Virginia General

Assembly adopted House Joint Resolution No. 22, developed by the Institute, which called for the establishment of community-based forensic evaluation centers on an experimental basis. These centers would offer forensic evaluations on an outpatient basis, using staff that had been specially trained in forensic evaluations. The Institute's Forensic Evaluation Training and Research Center, under the direction of Christopher Slobogin, was responsible for implementing the resolution.

In setting up the pilot program, the Institute faced several challenges. Among them, it had to identify interested community agencies and find funding sources for those that agreed to participate in the pilot program. It had to develop educational materials and train the practicing mental health professionals at the community-based centers in conducting forensic examinations, plus elicit the support of legal professionals in making use of the centers. And it had to establish a mechanism for monitoring the quality of the forensic evaluations being conducted.

Two years after the innovative pilot project began, the General Assembly enacted legislation establishing the legal framework for a statewide system of community-based forensic evaluation. In addition, the Institute collaborated with the Virginia Department of Mental Health and Mental Retardation and the Virginia Supreme Court to develop a means of collecting data on all forensic evaluations performed in the Commonwealth. When program director Slobogin left the Institute to join the faculty of the University of Florida Law School, W. Lawrence Fitch replaced him as director of the Forensic Evaluation Training and Research Center.

Over the years, the Institute broadened the types of training

offered to forensic evaluators working in the community-based system. For example, programs include evaluation of sex offenders, special issues in capital cases and the assessment of violence risk in offenders acquitted by reason of insanity. Clinical psychologist Gary Hawk, director of the Forensic Psychiatry Clinic, and clinical social worker Janet Warren played key roles in providing these new training opportunities.

To assist the courts, the Institute also developed and maintains an expert directory listing all of the mental health professionals who have received specialized training in forensic assessment through its Forensic Evaluation Training and Research Center.

Gary Melton

Through the years, the Institute has conducted a variety of important empirical studies, which are grounded in the solid research program established by Gary Melton, the Institute's first research director.

Among those studies was a comprehensive evaluation of Virginia's community-based forensic evaluation system, which was set up by Melton before he left the Institute in 1980 to accept a professorship at the University of Nebraska. In 1985, the Institute's research on the community-based system led to the publication of an important book titled *Community Mental Health Centers and the Courts: An Evaluation of Community-Based Forensic Services*. It was co-authored by Melton; Lois Weithorn, who succeeded Melton as the Institute's second research director; and Christopher Slobogin, director of the Institute's Forensic Evaluation Training and Research Center.

Melton has continued to make important contributions to mental health law and policy. After directing the law and psychiatry program at the University of Nebraska, he became director of the Institute for Families in Society at the University of South Carolina. He has testified several times before the U.S. Congress, and his work has been cited by U.S. courts at all levels. He was the principal architect of the new national child protection strategy proposed by the U.S. Advisory Board on Child Abuse and Neglect. His efforts have earned him numerous awards, including the APA Award for Distinguished Contributions to Psychology in the Public Interest.

DEATH PENALTY

“... and assisting courts to make informed decisions.”

While mental health professionals are routinely called on to testify in all types of cases, the most controversial issues tend to arise in capital cases. After holding the death penalty in abeyance in the 1960s, the U.S. Supreme Court definitively upheld the constitutionality of the death penalty in 1976. Virginia, like most other states, reenacted capital punishment in the wake of that decision.

It was expected that routine psychiatric participation would be required in death cases, particularly in Virginia, which made “future dangerousness” an aggravating circumstance. The first case tried under the new Virginia statute involved a defendant named Michael Smith, who was accused of committing a rape-murder along the Colonial Parkway near Williamsburg. Smith’s attorney contacted Richard Bonnie at the Institute to discuss his potential concerns about the use of psychiatric testimony by the prosecution during the trial.

Eventually, the death sentence was returned, and the attorney once again called the Institute about the appeal. Wanting to call the Virginia Supreme Court’s attention to the constitutional difficulties presented by Virginia’s capital sentencing statute, particularly those involving psychiatric testimony and assessments of “dangerousness,” Bonnie decided to file an *amicus* brief. He was assisted in this task by John Petrila, the Institute’s first mental health law fellow.

Eventually, the Virginia Supreme Court affirmed Smith’s death sentence. It was clear that the court had considered the Institute’s *amicus* brief, because certain parts of its opinion took into account the issues that had been raised. Interestingly, however, the Supreme Court ignored some arguments raised in the brief concerning the admissibility of psychiatric testimony by the prosecution, because the defense attorney had failed to raise this issue on appeal.

Following the Virginia Supreme Court decision, Smith’s defense attorney asked Bonnie to take over the case. Eventually, in 1986, the case was argued before the nation’s

highest judicial body. The Supreme Court affirmed the death sentence, 5-4, stating in its majority opinion that any constitutional error involving psychiatric testimony had been defaulted in the state proceedings when the defending lawyer had failed to raise the claim in the Virginia Supreme Court—despite having been informed about just that risk in the Institute’s *amicus* brief.

Over the years, Institute faculty and associates have written widely on the use of psychiatric testimony in death cases. For example, Chris Slobogin, the director of the Institute’s Forensic Evaluation Training and Research Center from 1977 to 1982, wrote several important articles on the subject, such as “Constitutional Contours of

a Forensic Evaluation” and “Dangerousness and Expertise.”

Each year, the Institute sponsors two symposia on topics of interest to mental health professionals responsible for performing forensic evaluations. Through this forum, the Institute facilitates discussion of difficult ethical issues involving the death penalty, such as the permissibility of assessing the competency of condemned prisoners and of treating mentally ill prisoners to restore them to competency—a prerequisite for execution. Richard Bonnie wrote several influential articles on these issues, and he and Ken Hoge helped the American Psychiatric Association formulate its position in these debates.

The Institute's First Fellow—John Petrila

Since 1975, the Institute of Law, Psychiatry and Public Policy has offered competitive fellowships for advanced training. One, offered through the School of Law, is open to lawyers wanting to specialize in mental health law. Another, offered through the Health Sciences Center, Department of Psychiatric Medicine, is a post-residency program for psychiatrists wanting to specialize in forensic psychiatry.

These interdisciplinary fellowships have had an impact far beyond Charlottesville. For example, John Petrila, the Institute's first mental health law fellow, has made important contributions to the field over the course of his career.

Petrila's first job after completing his fellowship was that of assistant attorney general for the state of Missouri, which placed him in charge of the state's mental health portfolio. He soon found himself litigating cases involving conditions in state mental facilities, civil commitment laws, and other reform-driven issues then surfacing in the courts. Next, he became the Director of Forensic Services in the Missouri Department of Mental Hygiene, which was an uncommon honor for a lawyer, and testified to the quality of his interdisciplinary work at the Institute. He later became chief counsel of the Office of Mental Health in New York.

Petrila was eventually recruited as professor and chair of the Department of Mental Health Law and Policy at the University of South Florida's Louis de la Parte Florida Mental Health Institute.

INSANITY DEFENSE

... to improve law and public policies relating to mental health and human development, including ... legal responsibility ...

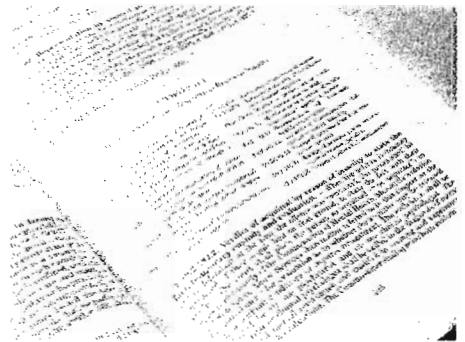
Soon after John W. Hinckley Jr. was arrested for attempting to assassinate President Ronald Reagan in 1981, the prosecution asked Dr. Park Dietz—soon to become the Institute's new medical director—to

assemble a team of experts to assess Hinckley's mental condition. John Monahan agreed to serve on the evaluation team, which eventually concluded that Hinckley was legally sane at the time of the offense. Dietz subsequently testified on behalf of the prosecution at

Hinckley's trial. As is well-known, the jury's verdict finding Hinckley not guilty by reason of insanity astounded many observers and provoked a stream of opposition to the insanity defense.

Over the next several years, legislatures all over the country grappled with proposals to abolish or otherwise alter the insanity defense. Institute faculty became actual participants in the debate. John Monahan testified in

Congress. Larry Fitch, the director of the Institute's Forensic Evaluation Training and Research Center, spearheaded a study commission in Virginia. Richard Bonnie testified in the U.S. Senate and played a pivotal role in the formulation of policy statements by the American Bar Association (ABA) and the American Psychiatric Association (APA). As a member of the Advisory Board for the ABA's Criminal Justice Mental Health Standards Project, and as an advisor to the APA's Insanity Defense Work Group, Bonnie championed the view that the insanity defense should be narrowed (but not abolished). This view was eventually endorsed by the APA Board of Trustees in December 1982 and the ABA's House of Delegates in February 1983. It was also codified as the Insanity Defense Reform Act adopted by Congress in 1984.



Former Faculty Continue to Have Impact

The Institute's research and training in forensic assessment, including the insanity defense, has been one of its strengths since the creation of the Forensic Psychiatry Clinic. Building on years of clinical experience, Institute faculty have published widely on all aspects of forensic assessment and have contributed to legislative and administrative policies at the interface of mental health and criminal justice in Virginia and elsewhere. Former faculty have also made important contributions in these areas.

When the ABA Criminal Justice Mental Health Standards Project needed a new reporter for its insanity defense task force in 1982, it turned to University of Florida Law School Professor Christopher Slobogin, who had been affiliated with the Institute from 1977 to 1981. After holding the Institute's second fellowship in mental health law, Slobogin had served as the first director of its Forensic Evaluation Training and Research Center. In that capacity, he drafted the basic structural legislation for Virginia's community-based evaluation system. After leaving Virginia, Slobogin co-authored the leading law school casebook on mental health law as well as the leading manual for forensic evaluation and is generally recognized as one of the leading scholars in the field.

In the years since his involvement with the Hinckley case, Park Dietz has earned the reputation as one of the country's leading forensic psychiatrists. After serving as the Institute's medical director, with joint appointments to the Schools of Law and Medicine from 1982 to 1989, Dietz founded the Threat Assessment Group, a violence prevention consultation firm in Newport Beach, California. He has participated in numerous criminal trials involving insanity claims, including those of Jeffrey Dahmer, Susan Smith, John DuPont, the New York Zodiac Killer, and the Unabomber, as well as the retrial of the Menendez brothers and the civil trial of O.J. Simpson. While at the Institute, Dietz served on the Attorney General's Commission on Pornography, and he subsequently served as president of the American Academy of Psychiatry and the Law.

HUMAN RIGHTS

Too often throughout history, people with mental illness have been deprived of their basic human rights—such as the ability to make their own choices about

treatment. Nationwide reform in this area was jump-started in 1971 by Federal District Judge Frank Johnson, who ordered Alabama state mental hospitals to improve conditions for patients and to create a human rights program to prevent future abuses. Other states voluntarily began setting up human rights programs to prevent similar federal intervention.

“... to promote human rights by developing and strengthening the ethical and legal foundations of the rights of persons who have or are perceived to have mental illnesses and disabilities ...”

In 1978, the Virginia General Assembly established a system composed of local human rights committees at each state-run mental hospital and one oversight body called the State Human Rights Committee. Browning Hoffman was asked to serve on the State Human Rights Committee, which

he did from 1978 until his death in early 1979. Following Hoffman's death, Bonnie was appointed to fill his seat on the State Human Rights Committee. Bonnie later served as chairman of the committee from 1982 to 1985.

Creating an organized human rights system, developing training materials for the people who would serve on the local committees and then educating the new committee members—many of whom had no background in either law or psychiatry—proved to be a challenging but rewarding experience for the Institute's faculty, who were heavily involved in the process.

One important task was preparation of comprehensive human rights regulations that went into effect in 1983. These regulations had been prepared by the committee over a two-year period under Bonnie's supervision, with the substantial drafting assistance of Willis Spaulding, who was then director of the Institute's Mental Health Law Training and Research Center. Fourteen years later, when the human rights system came under fire due to a highly publicized death

in one of the state hospitals, Institute faculty member Lynda Frost agreed to assist a state study commission in conducting a full-scale review of the human rights system.

Through the years, the Institute has developed a presence in international human rights efforts as well. Since 1989, Richard Bonnie has been actively involved in the process of legal reform in Central and Eastern Europe and the former Soviet Union. He and John Monahan participated in a State Department delegation that traveled to the Soviet Union in 1989 to examine mental patients alleged to be political dissidents. Bonnie also served on a World Psychiatric Association delegation which conducted a similar visit in 1991.

Lynda Frost, who became director of the Institute's Forensic Evaluation Training and Research Center in 1996, developed and implemented human rights education programs in Nicaragua, Colombia and several other countries before joining the Institute faculty. She continued to pursue these interests through a collaboration with Mental Disability Rights International, a non-governmental organization located in Washington, D.C., in developing a program of mental disability rights training for clinicians, attorneys, politicians and consumers in Latin America. Also participating in the Mental Disability Rights International project is Argentine lawyer Christian Courtis, who held the Institute's mental health law fellowship from 1992 to 1993.



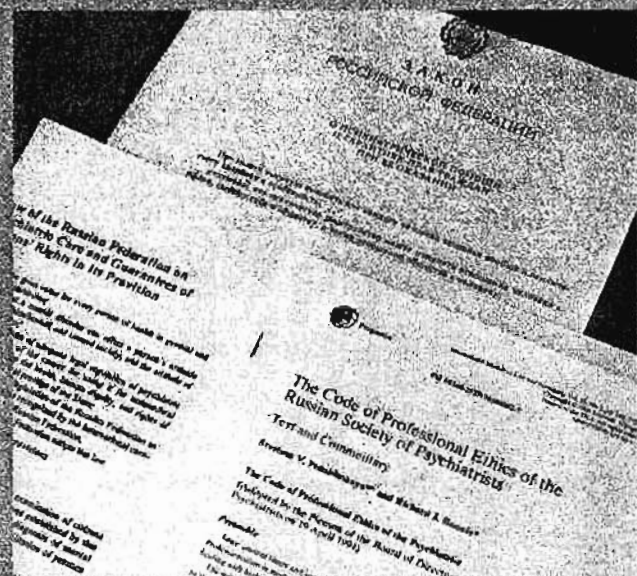
Institute Helps Soviets

In 1989, when Richard Bonnie and John Monahan served on the State Department delegation to the Soviet Union, mental health law reform efforts within the communist country were being spearheaded by two academic lawyers within the Institute of State and Law of the U.S.S.R. Academy of Sciences. One of those lawyers was Sverlana Polubinskaya, who was familiar with the human rights developments that had occurred in America and wanted to implement similar reforms in her own country.

With great courage, Polubinskaya ran interference for the U.S. delegation in 1989, and then again for the World Psychiatric Association delegation, which also included Bonnie, in 1991. She took many risks, despite the political uncertainties then plaguing her country.

Since first visiting the U.S. as a member of a Soviet delegation in 1990, Polubinskaya has returned to this country on several occasions as a visiting scholar at the Institute and as a guest of the American Psychiatric Association. She continues to take what she has learned about developments

in mental health law back to her country, where she remains involved in reform efforts. She was the principal drafter of the Russian Mental Health Law adopted in 1992, and she also helped formulate an ethical code adopted by the Russian Society of Psychiatrists in 1994.



Paul A. Lombardo

Concerns about the rights of people with mental disabilities are rooted in lingering memories of abuse suffered by patients in the past. Thus the Institute's interest in human rights also involves historical inquiry.

From the turn of the 20th century to the 1970s, state laws allowed the involuntary sterilization of the mentally ill and developmentally disabled under the rubric of "eugenics." Virginia's law was challenged in the 1927 case of *Buck v. Bell*, in which Oliver Wendell Holmes wrote one of the Supreme Court's most infamous decisions upholding the law and declaring that "Three generations of imbeciles are enough."

In the early 1980s, Paul Lombardo wrote a Ph.D. dissertation exploring the history of the *Buck* case. Later, as a law student, Lombardo worked as a research assistant at the Institute. In that role, he wrote a lead article in the Institute newsletter *Developments in Mental Health Law* and a law review article on the history of the *Buck* case. Both pieces analyzed Virginia's "sterilization era" and the role of Virginia psychiatrists who operated on residents of state facilities.

Lombardo returned to the Institute in 1990 as director of the Center for Mental Health Law Training and Research. His continuing interest in the history of eugenics led to involvement in an NIH-funded program to introduce appellate judges and journalists to the legal and ethical issues raised by the new techniques of genetic research. A significant part of that program focused on the flawed "genetic" assumptions upon which eugenical legislation had been based.

Lombardo continues to lecture to appellate judges and other audiences about the current relevance of the eugenics laws as examples of legally sanctioned violations of human rights. Insights from practices in our own state's history inform our analysis of legal proposals that would affect the fundamental rights of residents of mental health institutions.

VIOLENCE

There is a prevailing societal assumption that people with mental illness are more prone to violence than other citizens. Not surprisingly, much of the Institute's research in the area of violence has been conducted to examine the validity of that assumption.

The Institute's contributions in violence research begin with John Monahan, who joined the law school faculty and became associate director of the Institute in 1980. In 1981, the National Institute of Mental Health published his widely praised monograph, *Clinical Prediction of Violence*. Based on his contributions to research on violence and mental disorder, Monahan was asked to direct the John D. and Catherine T. MacArthur Research Network on Mental Health and the

"... to understand, assess, prevent, and manage violence in society, with particular emphasis on violence among people with mental disorders ..."

Law in 1988. One of the network's most ambitious projects was a major study on the risk of violence among discharged mental patients.

Institute research has also contributed to the body of knowledge about the

psychopathology of criminals. One of the Institute's first significant projects aimed at understanding violent behavior was conducted by Park Elliott Dietz, a forensic psychiatrist and sociologist who became the Institute's medical director in 1982. As principal investigator of a 1985 National Institute of Justice-sponsored grant, Dietz, with the help of two Institute colleagues—Janet Warren and psychiatry fellow Jaye Crowder—conducted the nation's first major study to focus on threatening communications received by public figures (other than those protected by the Secret Service). As a result of this research, law enforcement officers and security firms can now better predict which of the people who write inappropriate or threatening letters to celebrities and other public figures are most likely to try to get physically close to that person.

Dietz also collaborated with the behavioral science staff of the FBI's training academy to generate several important studies on previously under-researched aspects of criminal behavior, such as sexual sadism and crime and, in the aftermath of the 1982 Tylenol® poisonings in Chicago, product tampering.

Janet Warren

After joining the Institute faculty in 1981, Janet Warren collaborated with Park Dietz on many of the Institute's early studies of psychopathology and criminal violence. As the Institute's liaison with the FBI Behavioral Science Unit, she has continued to make impressive contributions in this area. She designed and implemented several research projects involving various aspects of sexual assault, such as the cognitive mapping and temporal sequencing of serial rapists.

Warren's research has also addressed campus and workplace violence. Together with Don Brown, chairman of the University of Virginia's systems engineering department, she developed a computer network that permits crime data (and analysis of the data, such as statistical assessments of changes in crime patterns) to be shared among law enforcement agencies. With this data, the agencies can assign personnel and other resources geographically based on current (and continuously updated) crime statistics.

John Monahan

Over the years, the faculty and associates of the Institute of Law, Psychiatry and Public Policy have made significant contributions to the body of literature on mental health law and policy. The Institute's most accomplished scientific scholar is John Monahan, who has served on the law faculty and as associate director of the Institute since 1980.

Most of Monahan's books, articles and chapters deal with the risk assessment of violence, such as his 1981 *Clinical Prediction of Violent Behavior*, which won the Manfred Guttmacher Award of the American Academy of Psychiatry and the Law and the American Psychiatric Association. Other important books include two that appeared in 1994: *Social Science in Law* (3rd edition with Laurens Walker) and *Violence and Mental Disorder: Developments in Risk Assessment* (with Henry Steadman). In 1996, he published *Coercion and Aggressive Community Treatment* (with Deborah Dennis) and, one year later, *Mental Disorder, Work Disability, and the Law* (with institute director Richard Bonnie).

In addition to his scholarship, Monahan was the founding president of the American Psychological Association's Division of Psychology and Law and the recipient of several prestigious awards.

Monahan directed the John D. and Catherine T. MacArthur Foundation's Research Network on Mental Health and the Law from 1988 to 1997.

OTHER ACTIVITIES

One of the more subtle, but most powerful influences that the Institute of Law, Psychiatry and Public Policy has had on the field of mental health law has been through its ongoing education of new generations of specialists. Every year, law students, psychiatry and psychology residents and graduate students attending the University of Virginia benefit from interdisciplinary courses taught by Institute faculty. In addition, these faculty regularly supervise the dissertations and theses of students who, through their own intellectual inquiries, are routinely making important scholarly contributions to the field.

Once a year, the Institute hosts a symposium on Mental Health and the Law covering major developments in the field, plus the biennial P. Browning Hoffman Memorial Lecture in Law and Psychiatry, which was established as a tribute to the life and work of its founding director.

Semi-annually, the Institute hosts forensic symposia as a form of continuing education for mental health professionals performing forensic evaluations.

Twice a year, the Institute also publishes the *Developments in Mental Health Law* newsletter, edited successively by Willis Spaulding and Paul Lombardo, which provides analysis and summary of constitutional and statutory issues in mental health law. It is distributed free of charge to mental health professionals throughout Virginia.

The Institute's success would not have been achieved without the strong support of the Deans of the Schools of Law (Emerson Spies, Richard Merrill, Thomas Jackson and Robert Scott) and Medicine (Norman Knorr and Robert Carey), as well as its unique partnership with the Virginia Department of Mental Health, Mental Retardation and Substance Abuse Services and the Office of the Virginia Attorney General. The stability of this relationship over twenty years has provided a secure foundation for many important innovations in program and policy. These achievements owe much to the vision of successive commissioners, especially Joseph J. Bevilacqua, and forensic services directors, including Joel Dvoskin, Russell Petrella and Patricia Griffin.

ASPIRING TO IMPROVE THE HUMAN CONDITION

In a memorial tribute to the Institute's founding director that was published in the April 1980 *Virginia Law Review*, Richard Bonnie wrote, "Browning Hoffman believed, as do idealists of any age, that institutions can be shaped to improve the human condition." The Institute of Law, Psychiatry and Public Policy stands as a testament to that optimistic vision.

As this booklet reveals, the Institute, through its faculty, staff and alumni, has played a central role in many of the most important reforms to have occurred in mental health law and policy over the past two decades.

Still, as the saying goes: the more things change, the more they stay the same. Major issues on the agenda in 1977—the role of psychiatric testimony in death cases, the ethics of unregulated research using cognitively impaired subjects and the proper balance between parental authority and juvenile rights—are major issues in 1997

and will continue to be debated far into the future.

And new issues will continue to surface. For instance, the unmistakable connection between drug use and psychopathology—supported by data collected by the MacArthur Foundation Research Network on Mental Health and the Law—will undoubtedly become a focal point for future debates on mental health reforms. And the Institute will just as undoubtedly become a key voice in those debates.

Thank you for taking the time to learn more about the Institute of Law, Psychiatry and Public Policy. For additional information, please contact:

Administrator
Institute of Law, Psychiatry and
Public Policy
Box 100, Blue Ridge Hospital
Charlottesville, VA 22901
Ph: 804-924-9848
Fx: 804-924-5788
E-Mail: ilppp@virginia.edu

*This publication was made possible by a generous grant
from the University of Virginia School of Law.*

Kathleen D. Valenzi, Red Hill Communications

Lotta Helleberg, Helleberg Graphic Design

Erin Garvey

Kaminer & Thomson, 1997

Institute of Law, Psychiatry & Public Policy

Box 100, Blue Ridge Hospital

Charlottesville, VA 22901

Phone: 804-924-9848

Fax: 804-924-5788

E-Mail: ilppp@virginia.edu

Web Site: www.ilppp.virginia.edu/ilppp