J Forensic Sci, Jul. 1979, Vol. 24, No. 3

*Emanuel Tanay,*[1] *M.D.*

# The Baxstrom Affair and Psychiatry

Innumerable articles cite the Baxstrom case and the subsequent release or transfer of certain groups of patients as proof that psychiatrists predict dangerousness and do so without validity. The work of Dr. Steadman and Dr. Cocozza is the most frequent reference cited.

The purpose of this paper is to examine critically the work of Steadman and Cocozza, which gained widespread acceptance. Their findings have been published in a variety of papers. The most comprehensive presentation of their views is contained in the book *Careers of the Criminally Insane* [*1*].

In its 1966 decision in the case of *Baxstrom v. Herold* [*2*], the United States Supreme Court held that a prison inmate whose term of imprisonment is about to expire may not be subject to a different standard for commitment to a mental institution than any other civilly committed individual. The Baxstrom case, and some other related cases, have given rise to extensive literature concerned with both the ability of psychiatrists to predict dangerousness and the participation of psychiatrists in social control. To provide the background for a critical review of this book, an examination of the Baxstrom case is in order.

Mr. Chief Justice Warren lucidly summarizes the main facts of *Baxstrom v. Herold* in the first few paragraphs of the decision:

> Petitioner, Johnnie K. Baxstrom, was convicted of second degree assault in April 1959 and was sentenced to a term of two-and-one-half to three years in a New York prison. On June 1, 1961, he was certified as insane by a prison physician. He was then transferred from prison to Dannemora State Hospital, an institution under the jurisdiction and control of the New York Department of Correction and used for the purpose of confining and caring for male prisoners declared mentally ill while serving a criminal sentence. In November 1961, the Director of Dannemora filed a petition in the Surrogate's Court of Clinton County stating that Baxstrom's penal sentence was about to terminate and that he be civilly committed pursuant to Paragraph 384 of the New York Correction Law, McKinney's Consol. Laws c. 43. On December 6, 1961, a proceeding was held in the Surrogate's chambers. Medical certificates were submitted by the State which stated that in the opinion of two of its examining physicians, Baxstrom was still mentally ill and in need of hospital and institutional care. Respondent, then Assistant Director at Dannemora, testified that in his opinion Baxstrom was still mentally ill. Baxstrom, appearing alone, was accorded a brief opportunity to ask questions. Respondent and the Surrogate both stated that they had no objections to his being transferred from Dannemora to a civil hospital under the jurisdiction of the Department of Mental Hygiene. But the Surrogate pointed out that he had no jurisdiction to determine that question—that under Paragraph 384 the decision was entirely up to the Department of Mental Hygiene.

Let us add some detail to Mr. Chief Justice Warren's summary. As Warren points out, the Dannemora State Hospital was a branch of the New York Department of Correction, and Baxstrom was transferred from prison to the prison hospital on the basis of his being certified insane by a prision physician. In the 1969 *Schuster v. Herold* decision [*3*], Judge Kaufman describes the transfer procedure as

Presented at the 29th Annual Meeting of the American Academy of Forensic Sciences, San Diego, Calif., 16 Feb. 1977.

[1] Clinical professor of psychiatry, Wayne State University, Detroit, Mich.

> no more than a mere administrative matter. ... It represented a simple change in the place of detention and ... this action was beyond the purview of judicial review.

In the same decision, we can read:

> The prisoner could be transferred to Dannemora solely under the certification of a single doctor (even a non-psychiatrist) without a hearing or judicial review of any kind.

It should be emphasized here that whatever factors were involved in the decision to transfer an inmate from the general prison population to an institution such as Dannemora, psychiatrists and psychiatry were not among them. Judge Kaufman notes in the *Schuster v. Herold* decision,

> Schuster's commitment certificate [was] signed by Leaman H. Caswell, M.D., the physician at Clinton Prison, whose qualifications in psychiatry we are unable to determine from the record before us.

True enough, Dr. Caswell's knowledge of psychiatry cannot be inferred from the court record; however, the 1968 American Psychiatric Association's (APA) "Biographical Directory" does not list him as a member, and I presume there is no requirement that a doctor holding the position of prison physician be particularly knowledgeable or qualified in psychiatry. Thus, the transfer of Schuster and others from prison to Dannemora can hardly be called a psychiatric decision. Judge Kaufman is critical of Dr. Caswell for describing Schuster with "breathtaking simplicity." The doctor wrote that Schuster was "paranoid, suspicious, depressed." The judge was distressed that

> Dr. Caswell attempted no further diagnosis of Schuster's condition... although the certificate explicitly requested information as to whether the patient was "violent, dangerous, destructive, excited ... homicidal or suicidal."

The certificate did not call for a psychiatric diagnosis but a mere description of behavior that categorized the prisoner in the judgment of prison authorities unsuitable for confinement in one part of the prison system and required his transfer to another part of the prison system. The record clearly discloses that although a physician participated in the administrative decision to effect Baxstrom's transfer, there was no psychiatric input into the decision.

Just as there is no significant connection between the field of psychiatry and Baxstrom's commitment to Dannemora State Hospital, so there is little or no connection between the field of psychiatry and Baxstrom's treatment at Dannemora. A simple look into the 1968 edition of the "Biographical Directory" of the membership of the APA reveals that there were two members of the APA in residence in the town of Dannemora: Dr. Y and Dr. Z. A physician, however, is not generally considered to be a psychiatrist simply by virtue of being a member of the APA. Certification by the American Board of Psychiatry and Neurology is the most widely accepted criterion for being designated a psychiatrist. Dr. Y, according to the "Biographical Directory," was born in Germany in 1901 and was 65 when the Baxstrom decision was rendered. He received a Doctor of Dentistry degree from the University of Berlin in 1930 and an M.D. degree from the University of Turin in 1938. His involvement with psychiatry began late in his life, specifically in 1947, when he began working at the State Psychopathic Hospital in Syracuse, New York. He became assistant director of the Dannemora State Hospital in 1960. He is not certified by the American Board of Psychiatry and Neurology. Dr. Z was born in Poland in 1914. He graduated from the University of Paris in 1939. His psychiatric work consists of employment at the Helmuth State Hospital in New York (no dates given). He remained at Helmuth until he joined the staff of Dannemora State Hospital in 1962. As of 1968 he was not certified by the American Board of Psychiatry and Neurology.

Subsequent to his transfer to Dannemora, Mr. Baxstrom stayed in that institution for the remaining six months of his sentence, and then, in accordance with Paragraph 384 of the New York Correction Law, the hospital continued to keep him in custody after his sentence expired. The Supreme Court ruled in the Baxstrom case that Paragraph 384 was unconstitutional. New York law specified that a person may be committed to a mental hospital only after a judicial hearing has determined that he is dangerous, but under Paragraph 384 such a hearing was not required for the commitment of a prisoner whose sentence was about to expire. The Supreme Court stated [*2*]:

> Under Paragraph 384 the judge need only satisfy himself that the person "may require care and treatment in an institution for the mentally ill."

Such a finding having been made, the decision as to whether to commit the person to either a hospital maintained by the Department of Correction or to a civil hospital was completely in the hands of administrative officials. The Supreme Court [*2*] noted that persons such as Baxstrom were treated differently than other persons considered mentally ill simply because they were "nearing the end of a penal term." The Court stated:

> The capriciousness of the classification employed by the State is thrown sharply into focus by the fact that the full benefit of a judicial hearing to determine dangerous tendencies is withheld only in the case of civil commitment or one awaiting expiration of penal sentence.

The Supreme Court concluded:

> There is no conceivable basis for distinguishing the commitment of a person who is nearing the end of the penal term from all other civil commitments.

With the Baxstrom decision, the Supreme Court in effect ruled that after the expiration of his prison sentence the mentally ill ex-convict must be treated like any other citizen, that is, if he is to be civilly committed to a mental institution, he must have a standard hearing or jury trial. Furthermore, he may not remain under the control of the Department of Correction. This constitutes a change in legal procedure and does not represent a change in psychiatric thinking or practice.

Subsequent to the decision of the Supreme Court, the state transferred 967 patients from Dannemora to a civil mental hospital in the so-called Operation Baxstrom. Baxstrom himself died in New York City two weeks after his discharge, most likely as the result of lack of care for his epilepsy.

The 1969 *Schuster v. Herold* decision [*3*], which was mentioned earlier, is related to the Baxstrom case. Judge Kaufman broadened the Baxstrom principle by ruling that prisoners whose terms had *not* expired, as well as prisoners whose terms were about to expire, should have the benefit of a sanity hearing prior to transfer to an institution for the care of mentally ill prisoners within the Department of Correction. Judge Kaufman stated in his decision that Mr. Schuster should not have been transferred from prison to Dannemora without the benefit of

> a hearing on the question of his sanity with substantially all the procedures granted to noncriminals who are involuntarily committed as patients in civil mental hospitals. If these procedures result in a determination that Schuster is not mentally ill, he is to be returned to Clinton State Prison.

Observing that the prisoner had not had such a hearing, the judge went on to make the following comment about Dannemora and other institutions like it:

> There is considerable evidence that a prolonged commitment in an institution providing only custodial confinement for the "mentally sick" and nothing more may itself cause serious psychological harm or exacerbate any pre-existing condition.

Judge Kaufman referred to one psychiatrist's statement:

> Under prevailing conditions, we superimpose new disabilities on exisitng disabilities—at least in many cases—when we forcibly commit sick people to places called mental hospitals which in reality remain custodial asylums.

And the judge repeated another psychiatrist's warning:

> There is repetitive evidence that once a patient has remained in a large mental hospital for two years or more, he is quite unlikely to leave except by death. He becomes one of the large mass of so-called "chronic patients."

Judge Kaufman further stated:

> In considering the problem posed, we are faced with the obvious but terrifying possibility that the transferred prisoner may not be mentally ill at all, yet he will be confined with men who are not only mad but dangerously so. As the New York courts have themselves indicated, he will be exposed to physical, emotional and general mental agony, confined with those who are insane, told repeatedly that he too is insane, and, indeed, treated as insane. It does not take much for a man to question his own sanity and in the end to succumb to some mental aberration. Moreover, the facts reveal that there always lurks the grizzly possibility that the prisoner placed in Dannemora will be marooned and forsaken.

The judge persuaded himself that the part of the prison system dedicated to the care of mentally ill prisoners would have been bad for the mental health of Mr. Schuster. Thus, without the benefit of empirical data, and with the use of questionable legal reasoning, the judge ordered that the prisoner be returned to the general population of Clinton State Prison.

The Baxstrom and Schuster decisions set aside both of the legal provisions that had been the basis for the transfer of Mr. Baxstrom to Dannemora. The inadequate effort to care for mentally ill prison inmates was in these cases set aside in favor of no care at all [*4*]. It is apparent that these changes were based on legal criteria and judicial determinations. Although psychiatrists are quoted in the judicial decisions and mentally ill individuals are affected by them, there is no connection between these decisions and psychiatric theory and practice.

Subsequent to the Baxstrom decision, the New York Department of Mental Hygiene hired a sociologist, Dr. Henry J. Steadman, to study the consequences of the Baxstrom decision. Steadman has written a number of papers on the subject and in 1974, together with another sociologist, Dr. Joseph J. Cocozza, published *Careers of the Criminally Insane* [*1*]. In reviewing the content of the book, let us first summarize some of the facts it presents. We are given essentially three empirical statements:

1. A group of individuals was held in two institutions operated by the New York Department of Correction. The detention of these individuals was in accordance with New York Correction Law, which provided in Paragraph 384 that

> the judge need only satisfy himself that the person "may require care and treatment in an institution for the mentally ill." Having made such a finding, the decision whether to commit that person to a hospital maintained by the Department of Correction or to a civil hospital is completely in the hands of administrative officials.

2. The United States Supreme Court declared the statutory procedure provided in Paragraph 384 unconstitutional.

3. Nine hundred sixty-seven of the inmates were transferred to a civil mental hospital subsequent to the Baxstrom decision, and those who were subsequently released to the community showed a relatively low incidence of arrests.

From this set of facts, Steadman and Cocozza have brought forth, like Athena from the head of Zeus, an array of far-reaching conclusions. The essential theme of the authors' study is that the Baxstrom patients were victims of psychiatric "conservatism" and of the unreliability of psychiatric predictions of dangerous behavior.

The book is an examination of an interaction between two groups: one labeled "psychiatrists," and the other labeled "patients." The term "psychiatrist" is never defined by the authors, but it appears to designate the physicians who participated in any manner in the care of the prisoners detained in Dannemora State Hospital. The term "patient" appears to designate the persons confined in the institutions under study; a related term "criminally insane" is defined in the following way in the foreword of the book [*1*, p. xiii]:

> The research reported in this book provides an opportunity to find out what the phrase "criminally insane" really means.
>
> Who are the criminally insane? They are persons involuntarily held in special security hospitals (often operated by a correctional agency), hospitals more oriented to custody than to treatment.

The authors further state [*1*, p. 2]:

> All individuals diverted into the mental health system from the criminal justice system before, during or after trial tend to become grouped under the term "criminally insane."

The authors describe four categories of individuals admitted to such institutions [*1*, p. xiii]:

> (1) those found not guilty by reason of insanity, (2) those considered "dangerously mentally ill" and transferred from a "civil hospital to a hospital-prison for the criminally insane," (3) those admitted because they are unable by legal criteria to stand trial, and (4) those prisoners who become mentally ill while incarcerated.

If these generalizations are meant to apply to the commitment of "criminally insane" individuals in the country as a whole, then it should be noted that it is not the case that these are the four categories of persons admitted to hospitals for the criminally insane. In fact, there is no uniform system. In some jurisdications, mentally ill prisoners are not transferred from the penal institutions where they are held. In other jurisdictions, special institutions for mentally ill inmates are operated by the Department of Mental Health. In New York, there were two so-called hospitals for the criminally insane, one operated by the Department of Mental Health and the other operated by the Department of Correction.

Steadman and Cocozza base many of their arguments on the supposition that the "Baxstrom patients" are a representative sample of the mentally ill convicts under treatment in institutions throughout the United States. The authors state [*1*, p. 3]:

> The Baxstrom patients are important in themselves from both clinical and substantive perspectives and in general because they were in 1966, and to a great extent remained in 1974, typical of patients in traditional hospitals for the criminally insane throughout the United States.

This is not an accurate statement. Dannemora State Hospital was an institution unique to the State of New York. The population of inmates detained at Dannemora formed a special, distinctive category hardly typical of the mentally ill who are involuntarily hospitalized throughout the country. The Baxstrom patients were men who had become mentally ill while incarcerated in prison and they did not represent the four categories of individuals that according to Steadman and Cocozza compose the "criminally insane."

The authors examined the incidence of violence and arrest among 967 chronic psychotics in a four-year period subsequent to transfer from one institution to another. They studied one dimension of a mentally ill prison population, using the sociological, statistical approach. Their findings were not unexpected. The chronic, regressed schizophrenics have never been

considered violence-prone, but the conclusions the authors draw from their findings are extremely questionable.

Having examined the handling of prisoners in the state of New York who suffer from mental illness, the authors offer broad, global conclusions about the field of psychiatry. Steadman and Cocozza describe psychiatrists as conservative agents of social control who maintain their position of power by inappropriately detaining patients [*1*, p. 183]:

> One of the methods of social control that has developed in the United States is involuntary psychiatic treatment. . . .

From p. 8:

> Psychiatric conservatism in ideology and in decision-making very much relates to the history of their participation in institutions of social control as mental hospitalization replaced burning at the stake and incarceration. . . . Functioning as agents of social control to a certain extent, psychiatry developed a position of power that was diminished only when they incorrectly released rather than inappropriately detained patients.

In his review [*5*] of Steadman and Cocozza's book, Halpern pointed out:

> We are reminded no less than 110 times of the blatant deficiencies of "psychiatrists," "psychiatry," the "medical model" and the "mental health system" in phrases such as "conservative tendencies of mental health agents" (p. 51), "psychiatry developed in a position of power" (p. 8), "transfers to civil hospitals were never approved by psychiatrists" (p. 9), "psychiatrists were reluctant to transfer or release them" (p. xiv), "psychiatric decision-making" (pp. 6, 77, 113, 115, 187), "psychiatric conservatism" (p. 8, 33, 53, 110, 111), "psychiatrically approved for transfer" (p. 64), [and] "including evidently the psychiatrists responsible for this group of criminally insane patients" (p. 94).

Clearly, then, Steadman and Cocozza believe that the data they have gathered is sufficient basis for a critique of the field of psychiatry.

Let us examine some of the faults in the reasoning that led the authors to their conclusions. The generalize about psychiatry on the strength of information concerning the 967 Baxstrom patients. Steadman and Cocozza, therefore, must have assumed that those prisoners were typical psychiatric patients. In reality, the patients were all criminal offenders who had developed mental illness. They can hardly be considered typical psychiatric patients. Furthermore, as was demonstrated earlier in this article, the treatment received by prisoners at Dannemora had little, if any, connection with psychiatry. This fact becomes even more clear when we compare the language in Steadman and Cocozza's book with the language in Mr. Chief Justice Warren's decision on the Baxstrom case. While Steadman and Cocozza speak of psychiatrists, the Court makes reference merely to "a prison physician" or "examining physicians." While Steadman and Cocozza speak of the treatment and social control of patients, the Court's decision makes reference to "confining and caring for male prisoners declared mentally ill while serving a criminal sentence."

The authors demonstrated that the Baxstrom group was younger than the pre-Baxstrom group transferred to regular state hospitals. This then leads to the following conclusion [*1*, p. 92]:

> It would appear that from a psychiatrist's point of view a patient under 40 is practically always dangerous and a patient over 69 is no longer dangerous, regardless of any other factors including a history of violent crime convictions.

Two pages later we read [p. 94]:

> Why was age of these patients such an important factor in the psychiatrists' evaluation? Why is it that the principle for the most part seems to be if the patient is young, he is dangerous; if the patient is old, there is nothing to fear?

And then [p. 95]:

> The data would appear to indicate that in order to assure their prediction that transferred patients were no longer dangerous, the psychiatrists were "rehabilitating" them by letting them grow old in the institution.

The authors' own data indicate "The average age of the entire Baxstrom sample at the time of transfer was 47."

As they go on, the authors' conviction that "the psychiatrists relied upon age as a criterion" becomes more outspoken [p. 108]:

> The apparent use of patients' age by the psychiatrists seems to be somewhat justified.

From p. 110:

> Our analysis of the data indicated that Baxstrom patients as a whole were passed over for transfer at least partially because of their young age; yet, as we have seen in 85 percent of the cases this decision was inappropriate since that many were never assaultive. . . . This tendency to institutionalize many in order to prevent the actions of a few leads directly to the issue of psychiatric conservatism.

They quote with approval this statement by Dershowitz [*1*, p. 110]:

> Among every group of inmates presently confined on the basis of psychiatric prediction of violence, there are only a few who would, and many more who would not, actually engage in such conduct if released.

Then, the assumption that psychiatrists use "the criteria of age" is no longer treated as an assumption but as an established fact [p. 110]:

> Although the criteria of age used by the psychiatrists was related to patients' behavior, so few of the transferred patients proved to be assaultive or in need of the special security afforded by the criminally insane hospitals that it is hard to perceive their retention as justifiable.

From p. 118:

> It was evident in our chapter on transfer that the psychiatrists were influenced by the age of the patient in evaluating the suitability of an individual for residence in a civil hospital.

From p. 122:

> One of the two main factors related to why patients were seen as suitable for transfer to a civil hospital was their age.

From p. 134:

> Younger patients are not likely to be transferred to the civil hospital. Other patients are, but are then not likely to be released from the civil hospital. The Baxstrom decision, as we have seen, helped to break this pattern by leading to the transfer of patients from the correctional hospitals when their criminal sentences expired rather than when they got old.

The authors conclude [p. 140]:

> The whole body of evidence examined clearly indicates that these patients did not behave in the violent, dangerous way anticipated by many and implied by their label of criminally insane.

This and other similar statements reveal that Steadman and Cocozza assume that danger-

ousness was the reason for the retention of the inmates in the hospital by "psychiatric decision makers."

In reality, the disposition of convict-patients like those at Dannemora is in the hands of the criminal justice system. The decisions made within the criminal justice system are governed by legal principles, rendered by judges and administered by prison officials. They are, therefore, legal and not psychiatric decisions.

The authors appear to be oblivious to the fact that within our system conviction for criminal behavior, particularly criminal behavior of a violent nature, changes the legal status of an individual. Within the criminal justice system, past criminal behavior of a violent nature becomes a legal fact controlling the disposition of the individual. Such issues as granting parole, placing a defendant on bond, and sentencing are often, by statute, determined by previous criminal behavior. The criminal justice system, for a variety of complex reasons, is not receptive to even advisory input from psychiatrists.

Most of the inmates of Dannemora State Hospital had past criminal records and, therefore, represented a separate class for dispositional purposes within the criminal justice system. It is, therefore, misleading when Steadman and Cocozza imply that "psychiatric decision makers" detained the Baxstrom patients until the courts liberated them "against psychiatric advice" [*1*, p. 9]. Although the authors emphasize "the tendency of psychiatrists toward conservatism and over-prediction of dangerousness," the fact is that dangerousness was neither predicted nor used as a criterion for detention [*6*]. The authors dealt with a population that was not homogenous. The subjects of their study were individuals transferred from civil hospitals because of their violent behavior and individuals who were transferred from prison because of their psychotic behavior. The patients found themselves in Dannemora not because of prediction of dangerousness but because the civil hospitals could not handle them or because the prison authorities found them to be sick. The decisions involved in placing these patients in Dannemora were not made by psychiatrists and were not consistent with psychiatric principles.

The segregation of mentally ill prisoners from the normal prison population is appropriate from the standpoint of prison administrators who are charged with the responsibility of maintaining order within the prison community. Furthermore, it is a humane act designed to protect the mentally ill prisoners from the inevitable abuse heaped on psychotic inmates in a prison setting. Treatment in the traditional sense of the word was not the purpose of the segregation of mentally ill inmates within the Department of Correction. The Department should not be criticized for having established Dannemora; on the contrary, inadequate as that facility might have been, it was far advanced of the care provided for mentally ill prisoners in other states. Most state penal systems keep these prisoners within the general prison population, where they are victims of abuse by other inmates.

Steadman and Cocozza, however, seem to decry the fact that the Baxstrom patients were "diverted from the criminal justice system" [*1*, p. 2]. Regardless of whether it is desirable to divert mentally ill prisoners from the criminal justice system, the fact is that the Baxstrom patients were not diverted from but treated within the criminal justice system.

In drawing their conclusions about psychiatry, the authors rely heavily on the fact that subsequent to transfer from Dannemora to a civil hospital, a significant number of the patients studied were discharged to the community. The authors conclude that the staff of Dannemora was acting inappropriately by not transferring these patients prior to the Baxstrom decision [*1*, p. 53]:

> Without ... judicial intervention, most of these patients, who had been passed over for transfer for an average of eight years beyong the expiration of their maximum actual or possible criminal sentence, would have remained in hospitals for the criminally insane. On the basis of this Supreme Court decision, these 967 people were transferred against psychiatric advice.

The fact that minimal numbers of inmates were transferred or discharged from Dannemora prior to the Baxstrom decision is more likely the result of necessity than the consequence of choices made by "psychiatric decision makers." Decision-making requires the freedom to choose among alternatives, and the staff of the New York hospitals for the criminally insane were faced with the absence of options in the disposition of most of the patients under their care. Prior to the Baxstrom decision, a convict could not be transferred from Dannemora State Hospital to a civil hospital while serving a sentence. And once a patient was committed after his sentence had expired, he was then not acceptable to the civil hospitals. The Baxstrom decision tells us that the respondent in the case, the assistant director of Dannemora, had no objections to the transfer of Baxstrom to a civil hospital; however, established procedure prevented such a transfer. As Justice Warren said, "The Department of Mental Hygiene had already determined ex-parte that Baxstrom was not suitable for care in a civil hospital" [2]. The staff of the New York hospitals for the criminally insane in most cases had no alternative but to keep the patients where they were. Halpern [5] points out that Steadman and Cocozza failed to make reference to data published in 1968 indicating that the Dannemora staff

> recommended 222 patients for transfer as of May 1965, almost a year prior to the Baxstrom decision. Of these, only two had, in fact, been transferred by August 1965. The refusal by the Department of Mental Hygiene to authorize transfer was on the grounds that the patients were "objectionable," not dangerous, and the decision was an administrative not a psychiatric one.

It is therefore obvious that contrary to their claims the authors did not study the decision process of psychiatrists—rather, they observed the vicissitudes of a legal procedure.

Even if one accepts the claim of the authors that "psychiatrists" had the power to transfer psychotic inmates into the civil state hospital, then at best their study deals with the reasons for the failure to transfer patients from one hospital setting to another. This hardly justifies their global conclusions about psychiatry as a field. The only way that one could end up with the conclusions offered by the authors is to consider Dannemora a psychiatric institution and the institutions to which the patients were transferred non-psychiatric. If we consider that to be the case, then Steadman and Cocozza have at best demonstrated that Dannemora was a stronghold of "psychiatric conservatism" represented by a few physicians. If, however, we assume that in both hospitals we are dealing with "psychiatrists," then all that has been established is that one group of "psychiatrists" was more "conservative," to use the authors' term, than the other. Another possible explanation not mentioned by the authors is that the "psychiatrists" at the civil hospital, operating under less restrictive legal criteria than the Dannemora staff, could be more freely guided by clinical data. Instead of considering this possibility, the authors create a dichotomy of good guys versus bad guys; the bad guys are the "psychiatrists" at Dannemora, and this characterization is generalized to psychiatry as a field. The good guys—"the psychiatrist" at the hospital to which the Baxstrom patients were transferred—are treated as not representative of the field of psychiatry.

Thus, we can see that Steadman and Cocozza used the designation "psychiatrist" in a very selective fashion; they used it to describe the people who, in their opinion, refused to transfer patients from an institution for the criminally insane to a civil mental hospital where their release to the community would be a possibility. It is by defining the term "psychiatrist" in this way that the authors managed to conclude that psychiatrists are conservative, poor diagnosticians, terrible therapists, and generally bad guys, prone to ordering the "inappropriate detention of healthy people" in mental hospitals for the purpose of exercising social control. Clearly, the data studied by Steadman and Cocozza lent themselves less to conclusions about psychiatric conservatism than to conclusions

about a change mandated by the United States Supreme Court regarding the legal procedure for commitment of prisoners and ex-prisoners to mental institutions.

## References

[1] Steadman, H. J. and Cocozza, J. J., *Careers of the Criminally Insane,* D. C. Heath and Co., Lexington, Mass., 1974.
[2] *Baxstrom v. Herold,* 383 U.S. 107, 15 L. Ed. 2d 620, 86 S. Ct. 760 (1966).
[3] *Schuster v. Herold,* 396 U.S. 847, 24 L. Ed. 2d 96, 90 S. Ct. 81 (1969).
[4] Tanay, E., "Psychiatric Morbidity and Treatment of Prison Inmates," *Journal of Forensic Sciences,* Vol. 18, No. 1, Jan. 1973, pp. 53-59.
[5] Halpern, A. L., "Book Review of *Careers of the Criminally Insane* by Henry J. Steadman and Joseph J. Cocozza," *Bulletin of the American Academy of Psychiatry and Law,* in press.
[6] Tanay, E., "Dangerousness and Psychiatry," *Current Concepts in Psychiatry,* Vol. 1, No. 1, Oct. 1975, pp. 17-26.

Address requests for reprints or additional information to
Emanuel Tanay, M.D.
852 Fisher Bldg.
Detroit, Mich. 48202