1 Introduction

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In 1962, the Association of the Bar of the City of New York commissioned a panel of 13 experts – 3 physicians and 10 attorneys – to assess the civil liberties of psychiatric patients in New York State.[1] The committee's more than 300-page assessment is most memorable for one of its conclusions, which it specifically applied to the hospitalization process, but which pertained as well to many aspects of its findings regarding mental health care: "No one represents the patient."[2] That bleak judgment summed up the legal protections afforded to psychiatric patients across the nation. As recently as the early 1960s, most states guaranteed few if any rights to patients with mental disorders. Large state institutions like Bryce Hospital in Tuscaloosa, Alabama, and Central State Hospital in Milledgeville, Georgia, became holding pens of last resort for society's most vulnerable members. Writing of the Alabama facility, where three psychiatrists served 15,000 residents, former United States Attorney Ira Dent wrote:

> Anybody who was unwanted was put in Bryce. They had a geriatric ward where people like your and my parents and grandparents were just warehoused because their children did not care to take care of them in the outside world, and probate judges would admit them and commit them to Bryce on a phone call, on a letter from a physician saying that they could not take care of themselves … Bryce had become a mere dumping ground for socially undesirables, for severely mentally ill, profoundly mentally ill people, and for geriatrics.[3]

In many jurisdictions, patients could be committed for indefinite periods of time – without any independent review – on the authority of one psychiatrist. Rules applied to mental patients often stood unchanged from those of an earlier era when "lunatics" and "madmen" were thought to deserve few if any legal rights. At best, caring psychiatrists provided treatment that nearly always valued beneficence and the patient's welfare over autonomy and the patient's wishes. At worst, the system offered no opportunity for patients to challenge significant limitations to their freedom and impositions on their bodily integrity – conditions captured for the public imagination in Ken Kesey's 1962 novel, *One Flew Over the Cuckoo's Nest*.

A similar attitude of benevolent paternalism – "Doctor knows best" – pervaded much of medicine in the middle decades of the 20th century. Many physicians routinely withheld pertinent information regarding diagnosis and treatment from patients. As late as 1961, a survey of Chicago physicians found that only 10% would tell a patient of a terminal cancer diagnosis.[4] When Tennessee Williams depicted this phenomenon in his Pulitzer Prize–winning drama *Cat on a Hot Tin Roof*, the decision to keep a fatal diagnosis secret from the main character and his wife reflected routine medical practice. Patients and their family members often received broad and blanket reassurances designed to garner blind compliance and "spare" the patient further suffering. In a landmark case discussed in Chapter 7 of this book, *Canterbury v. Spence*, a surgeon responded to specific questions about a dangerous procedure with the dismissive remark that the operation was "no more serious than any other operation."[5] One of the authors of this book relates a similar episode: When his wife asked a physician for details about the nature and side effects of a medication in 1960, the provider responded, "I'm the doctor. Just take it."[6] By today's norms, such a response seems both callous and grossly incompatible with informed medical decision-making. At the time, it passed as the standard of care.

Over the next three decades, both medicine and psychiatry changed radically. A generation of young attorneys, veterans of the campaign for African American liberties that culminated in the passage of the Civil Rights Act of 1965, pursued justice for other disenfranchised populations, including the mentally ill. A liberal-minded Supreme Court under Chief Justice Earl Warren, and progressive federal judges like Alabama's Frank Johnson and Spottswood Robinson of the United States Court of Appeals of the D.C. Circuit, approached the authority of institutions and of medical professionals with skeptical eyes, often imposing new and radical doctrines whole-cloth. Most important, individual patients suffering from mental illness courageously sought to make their voices heard and to press from below for systematic reforms. After 15 years confined against his will to a hospital in Florida, Kenneth Donaldson managed to persuade a series of judges, including a unanimous Supreme Court, that his indefinite hospitalization defied the Constitution. In Massachusetts, Ruby Rogers won her fight to require physicians to obtain judicial approval before forcing psychotropic medications on objecting patients. The family of Nancy Cruzan waged a seven-year legal battle to remove her from life support, paving the way for the relatives of other incompetent patients to resist unwanted care. What follows are the stories of these people – the lawyers, judges, and individual litigants who transformed medicine and psychiatry over the past five decades.

This volume has three distinct goals. First, the authors hope that by exploring the origins of contemporary rules and standards through landmark cases, readers will gain an understanding of why we present-day psychiatrists practice the way we do. Each of these cases is designed to answer specific questions regarding contemporary practice. Five of these cases helped reshape inpatient psychiatric practice. In *Wyatt v. Stickney*, the federal courts laid out minimum standards of care for patients in state-run institutions. Five years later, in *O'Connor v. Donaldson*, the Supreme Court established principles regarding when patients could be retained in such institutions. *Olmstead v. L. C.* clarified when institutionalized patients had a right to placement in the community. *Rogers v. Commissioner of Mental Health*, a Massachusetts case that drew national attention, secured judicial review for involuntary treatment decisions. *Parham v. J. R.* addressed aspects of the commitment process unique to children. Four other cases have significant implications for those practicing in both inpatient and outpatient settings. *Tarasoff v. Regents of the University of California* established rules governing a psychiatrist's duty to protect the interests of third parties. *Jaffee v. Redmond* for the first time established a testimonial privilege that ensures the confidentiality of psychotherapy against court interference. *Roy v. Hartogs* publicly confronted the sexual exploitation of the psychiatrist–patient relationship by rogue practitioners and led to increased awareness regarding therapeutic boundaries.

We have also included four cases from general medical and pediatric practice that have a significant bearing on psychiatric practice. In *Canterbury v. Spence*, a federal appeals court established principles for informed consent that have gained widespread acceptance across the mental health professions. *Cruzan v. Director, Missouri Department of Health*, a high-profile case regarding the right to terminate care, led to the widespread acceptance of advance directives and health care proxies in medical decision-making. Finally, *United States v. Hinckley*, arguably the most widely known of these cases, reshaped public attitudes toward the insanity defense and led to considerable change in laws regarding the criminal responsibility of those with psychiatric illness.

A second purpose of this volume is to explain how these landmark cases shaped the day-to-day practice of psychiatry. The authors make no claim that these are the only important cases shaping current psychiatric practice, or even that they are the most important. Any such determination will prove inherently subjective. However, the authors do believe that these cases have demonstrated a widespread and lasting impact. For example, if you are a second-year resident wondering why you write treatment plans, *Wyatt v. Stickney* offers the answer. If you are a therapist

in a private office wondering how to answer a federal subpoena for your process notes, *Jaffee v. Redmond* provides essential guidance regarding your duties and prerogatives. And if you are a psychiatric nurse completing a health care proxy form with a patient, you are likely charged with this responsibility as a result of the Nancy Cruzan case. This is, at its core, a book of questions and answers: How did it happen that we as mental health professionals need to acquire informed consent? Why is civil commitment limited to certain circumstances? When and why do psychiatrists have a duty to protect third parties from danger? Only by studying landmark cases can a provider come to understand the reasons mental health professionals do what we do.

The third purpose of this volume is to share the stories of the men and women behind these landmark cases. Every legal case is also a human story, a deeply personal drama shaped by history, social context, and individual personalities. Unlike law textbooks, which often confine themselves to "the facts of the case," this book strives to explore the distinctive human factors that ultimately shaped the law. Whenever possible, we also follow the lives of the litigants after their encounters with the legal system: Many mental health practitioners, at some point in their careers, wonder what happened to Ricky Wyatt and Kenneth Donaldson and Mary Lu Redmond. We have made every effort to find out.

The authors hope you find these stories informative and inspiring. We also hope you find them as compelling as we have.

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