Soviet Psychiatry and Human Rights: Reflections on the Report of the U.S. Delegation

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For more than 20 years, the Soviet Union has been charged with confining political and religious dissidents in psychiatric hospitals for other than medical reasons.[1] The repressive use of psychiatric hospitalization has been primarily associated with the maximum security "special hospitals," operated by the Ministry of Internal Affairs, to which dissidents have been committed after being found mentally nonresponsible for political crimes. In 1977, the World Psychiatric Association (WPA) condemned the Soviet Union for such abuses, and six years later the Soviet All-Union Society of Neuropathologists and Psychiatrists resigned from the WPA rather than face almost certain expulsion. Soviet psychiatric officials repeatedly denied these charges of political abuse and refused to permit international bodies or psychiatrists from other countries to see the patients and psychiatric hospitals in question.

In the spring of 1989, however, the Soviet government allowed an official delegation of psychiatrists and forensic experts from the United States to interview patients, selected by the delegation, in whose cases hospitalization was believed to have been politically motivated. Members of the delegation were also permitted to conduct unrestricted site visits at four hospitals (including two "special" hospitals) selected by the delegation only a week before its arrival in the Soviet Union. The U.S. delegation released a 100-page report in July, 1989[2] and the Soviet government issued an official response shortly thereafter.[3] This article briefly summarizes the delegation's findings and provides a personal assessment of the current state of coercive psychiatry in the U.S.S.R.

The Mission

Planning for the delegation's visit began in the spring of 1988 when the U.S.S.R. Ministry of Foreign Affairs, anxious to improve international perception of its human rights policy, issued an invitation for foreign psychiatrists to visit the U.S.S.R. The initial framework for the visit was developed in April 1988 during an exchange between U.S. and U.S.S.R. psychiatrists at a Human Rights Round Table in Moscow. During the fall of 1988, the possibility of such a visit took on greater interest because of ongoing bilateral discussions between the two governments in which the U.S. insisted, as a barometer of progress on human rights issues, that the U.S.S.R. release all "political prisoners," including those confined in mental hospitals. By late 1988, Soviet authorities stated that they had released all prisoners who had been incarcerated under certain political and religious articles of the Soviet criminal codes. In addition, approximately 50 persons thought to be political and religious prisoners were released from psychiatric hospitals in 1988, leaving an unknown number remaining. The possibility that some dissidents remained in hospitals was of particular concern to the U.S. Helsinki Commission (Commission on Security and Cooperation in Europe).

Meanwhile, during this same period of time, the Soviet government had also taken some initial steps to restructure the system of psychiatric services and to provide greater protection for patients' rights. In January, 1988, the Supreme Soviet of the U.S.S.R. enacted statutory protections for persons subject to involuntary hospitalization and transferred jurisdiction over the infamous "special" psychiatric hospitals from the Ministry of Internal Affairs to the Ministry of Health.[4] The Soviet Ministry of Health had also announced its intention to decrease the use of psychiatric hospitalization in the U.S.S.R. and to remove the names of millions of patients from the outpatient psychiatric register.[5]

The visit of the U.S. delegation was itself striking evidence of the changing political conditions then emerging in the Soviet Union. The delegation was given an unprecedented opportunity to interview and assess patients of its own choosing, to review the patients' medical records, to discuss their treatment with relatives, friends, and occasionally their treating psychiatrists, and to

Editor's Note: At the invitation of the Soviet Government, an official U.S. State Department delegation visited the U.S.S.R. from February 26 to March 12, 1989 to assess recent changes in Soviet psychiatry. The author was one of the two lawyers on the delegation.

inspect two special hospitals and two ordinary psychiatric hospitals.

For the most part, the U.S.S.R. complied with the terms of the agreement under which the visit was made, although the delegation did encounter some obstacles. For example, the patients' records were often incomplete and were not provided in a timely fashion; and some patients were discouraged by the Soviets from being interviewed. Overall, however, the degree of cooperation was sufficient to enable the delegation to accomplish the objectives of the mission, which were: (1) to provide a more systematic scientific foundation for assessing allegations of psychiatric abuse in the USSR than previously had been feasible; (2) to assess recent changes in Soviet forensic psychiatry, including the laws governing involuntary hospitalization; and (3) to assess mechanisms now in place to prevent future problems of abuse from arising.

Method and Findings

Method

To conduct the patient interviews, the leaders of the delegation assembled three clinical teams to administer standardized psychiatric interview instruments incorporating internationally accepted diagnostic criteria, and a separate instrument on the forensic and human rights aspects of the case. These interview instruments were translated into Russian, and Russian-speaking psychiatrists (who had emigrated to the U.S. from the Soviet Union) were recruited and trained to administer them. With patient consent, interviews were videotaped and audiotaped for later clinical review. Urine specimens were also collected from the patients to screen for drugs that could affect mental functioning.

Patient Selection

Patients to be interviewed were selected by the U.S. State Department in consultation with the Commission on Security and Cooperation in Europe (CSCE), the American Psychiatric Association, and several international human rights organizations. A list of 48 patients was submitted to the U.S.S.R. several weeks before the delegation's scheduled arrival; this list included 37 hospitalized patients of concern to the CSCE and 11 patients known to have been discharged during the previous two years. Of the 37 hospitalized patients, four could not be interviewed because of death, immigration, imprisonment, or insufficient identifying information, and three others refused to give consent to be interviewed. (These refusals were confirmed by the delegation.) Of the 30 hospitalized patients available for interview, 17 were released between the time the U.S. delegation submitted the list in late December, 1988, and the completion of the delegation's visit on March 12, 1989. As a result, only 13 persons on the original list of 37 hospitalized patients were actually hospitalized when they were interviewed, and an additional two hospitalized patients were added to the list by mutual consent. In addition to these *15 hospitalized* patients, *12 discharged* patients were also interviewed, yielding a total of 27 *completed interviews*.

Prevalence of Mental Disorder

Among the 15 currently hospitalized patients examined by the delegation, the U.S. experts found evidence of a severe psychotic disorder in nine patients and a severe personality disorder in one patient. (These diagnoses generally corresponded with those of Soviet psychiatrists who also interviewed the patients at the time of the U.S. examination.) However, even though the Soviets had discharged half of the patients on the hospital list before the delegation arrived, five of the 15 still-hospitalized patients were found to have no mental disorder according to international diagnostic criteria. Of particular concern was one patient who had been hospitalized in December 1988 (two months before the delegation's visit) with a diagnosis of schizophrenia, following an intense period of human rights political activity. Because he was on the psychiatric register as a result of a prior hospitalization, it had been possible to rehospitalize him quickly.[6]

Among the 12 released patients interviewed by the delegation, the interviewers found no evidence of any past or current mental disorder in nine, and the remaining three had relatively mild symptoms that would not typically warrant involuntary hospitalization in Western countries.

Diagnostic Practice

Under the prevailing diagnostic system in the U.S.S.R., usually identified with Snezhnevsky,[7] the concept of schizophrenia includes mild ("sluggish") and moderate forms which are characterized not by active psychotic symptoms but rather by alterations of personality. As Andreasen has pointed out, "the Soviet concept of schizophrenia is clearly considerably broader than the American one." [8] The breadth and elasticity of this diagnosis was evident in the medical records of the 27 patients interviewed by the delegation, 24 of whom had been diagnosed as schizophrenic at one time or another. As the delegation pointed out in its report:

> Some of the symptoms incorporated into Soviet diagnostic criteria for mild ("sluggish") schizophrenia and, in part, moderate (paranoid) schizophrenia are not accepted as evidence of psychopathology in the U.S. or international diagnostic criteria. Specific idiosyncratic examples identified in the interviews included diagnosing

> individuals demonstrating for political causes as having a "delusion of reformism" or "heightened sense of self-esteem" in order to support a diagnosis of schizophrenia.[9]

These symptoms often led to involuntary hospitalization based upon a diagnosis of schizophrenia, even in the absence of any apparent confusion, illogical thinking or other impairment of the patients' understanding of their behavior.

In recent years, Soviet psychiatric officials have acknowledged that a pattern of "hyperdiagnosis" has resulted in inappropriate psychiatric labeling and unnecessary hospitalization in the U.S.S.R.[10] It was therefore noteworthy that Soviet psychiatrists who interviewed the 27 patients concurrently with the U.S. team diagnosed only nine of these patients as schizophrenic, and that these diagnoses were generally congruent with the assessments of the U.S. psychiatrists, who regarded all nine of these patients as having schizophrenia or some other psychotic disorder.

Equally noteworthy, however, is the fact that the Soviet psychiatrists still retained some psychiatric diagnosis for most of the patients who were thought to be without mental disorder by the U.S. psychiatrists. In this respect, the U.S. delegation found continuing evidence of "hyperdiagnosis," particularly in the tendency to characterize these patients as having "schizophrenia, in remission" or as manifesting "psychopathy," a term which seems to be roughly equivalent to the general concept of personality disorder. Specific examples of "psychopathy" symptoms identified in the interviews by Soviet psychiatrists included "unitary activity," which related to a high level of commitment to a single cause, such as political reform, and "failure to adapt to society," which was used to describe a dissident patient who was "unable to live in society without being subject to arrest for his behavior."

Psychiatric Treatment

Medical records and patient interviews provided persuasive evidence that relatively high doses of neuroleptic (antipsychotic) medication had been given to some patients who showed no evidence of psychosis. The medication had been used to treat "delusions of reformism" and "anti-Soviet thoughts." In addition, medical records and patient interviews also showed that Soviet psychiatrists have used a highly aversive drug called sulfazine for the ostensible purpose of enhancing treatment responses to neuroleptic medication. In the view of the U.S. psychiatrists, however, the severe pain, immobility, fever, and muscle necrosis produced by this medication, as well as the documented pattern of its use in 10 of the interviewed patients, strongly suggested that it had been used for punitive purposes. Other treatments, including insulin coma, strict physical restraints, and atropine injections, had been used for patients in whom the delegation found no evidence of psychotic or affective (mood) disorders.

The patients interviewed in depth, as well as a large number of patients interviewed by the hospital team, stated unequivocally, and without being asked, that antipsychotic drugs had been administered by injection for a period of 10 to 15 days for violations of hospital rules. The recurrence and similarity of these reports provides strong and credible support for the allegation that medication has been systematically used for punitive purposes in the special hospitals.

The delegation also ascertained, based on staff and patient interviews and its own observations of clinical interactions, that patients are virtually never consulted about their own treatment. Indeed, the response to the delegation's report by the Soviet Health Ministry stated: "In the medical practice of the USSR in general, and not only in psychiatry, it is not customary to discuss with patients the methods for treating them, except for cases in which the patient is a physician." [11] If any confirmation were needed of the incompatibility of authoritarian psychiatry and human rights, it is surely provided by the Soviet experience.

Legal Basis for Hospitalization

In common with other legal systems, Soviet law provides two mechanisms for coercive hospitalization, criminal and civil. A person charged with crime may be subjected to "custodial measures of a medical nature" if the criminal act is proven and the person is found "non-imputable" due to mental illness, a determination equivalent to an acquittal "by reason of insanity." [12] Non-imputable offenders may be placed in the special hospitals or in less restrictive conditions in ordinary hospitals depending on their social dangerousness.[13] Persons who have not committed a criminal act are subject to "urgent hospitalization" in ordinary hospitals, a process roughly equivalent to what is called "civil commitment" in U.S. law. Although the criminal process is effectuated by judicial orders, urgent hospitalization has traditionally been with the exclusive control of psychiatrists.

Reports of psychiatric abuse available in the West indicated, in most cases, that dissident patients were typically placed in special hospitals for long periods of confinement. This general picture was confirmed by the cases investigated by the U.S. delegation. Most of these patients had been charged with, and found non-imputable for, political crimes under Article 70 (anti-Soviet agitation or propaganda)[14] or Article 190-1 (defaming the Soviet state)[15] of the criminal code. Their offenses involved dissident behavior such as writing and distributing anti-Soviet

literature, political organizing, defending the rights of disabled groups, or furthering religious ideas. Virtually all of the patients at one time or another had been placed in special hospitals for lengthy periods of time, typically three to nine years. In perhaps the central finding of its report, the delegation found that there was no clinical basis for a finding of non-imputability for any of the 12 released patients or for five of the patients still hospitalized at the time of the delegation's visit. These patients are presumably representative of the many hundreds of others who have been found non-imputable for crimes of political or religious dissent over the past 20 years.

In five of the cases investigated by the delegation, the patients' most recent hospitalization had been effected through the civil procedure of urgent hospitalization. There is a risk in any legal system that the informal and highly discretionary process of civil hospitalization will be invoked to restrain individuals who exceed the community's tolerance for deviance, especially if they challenge or annoy employers or other authorities. The danger is all the more evident in the Soviet Union where a pattern of "hyperdiagnosis" has been officially acknowledged, where the psychiatric decision-making process has not been subject to any external review,[16] and where local political authorities exercise a wide range of control over all aspects of social life. Moreover, as current political and legal reforms close the door to criminal prosecution for political or religious dissent, it is evident that pressures for civil hospitalization will grow. Three of the patients interviewed by the delegation, whose hospitalizations had occurred in late 1987 or early 1988, illustrated this pattern. (In none of these cases did the delegation believe that hospitalization was clinically indicated.)

Forensic Practice

Although the delegation did not make a systematic study of forensic practice, its distinct impression, based on the discussions undertaken by the hospital team and the experience of the released patients, was that the major determinant of a finding of non-imputability is the diagnosis of mental illness. Even though the "legal" criterion of non-imputability (impairment of the person's capacity to understand the significance of his behavior or to control it) is similar to that used in U.S. law, it appears that, in practice, the connection between the diagnosis and the offender's criminal act is often ignored or taken for granted, both in forensic assessment and in court.

Criminal Procedure

Perhaps one of the most striking findings emerging from the delegation's interviews is how widely the criminal proceedings differed in practice from the requirements specified in Soviet law. According to virtually every patient questioned by the delegation about the details of the criminal process, they played no role in the criminal proceedings that resulted in their commitments. With the exception of one case, the patients never met with defense attorneys, even though lawyers usually had been appointed to represent them; only three patients reported seeing the investigative report; none reported being presented with the experts' findings; and all were tried in absentia.[17]

Conditions in the Special Hospitals

Notwithstanding the partially implemented transfer of jurisdiction over the Special Psychiatric Hospitals from the Ministry of Internal Affairs to the Ministry of Health, and the apparent goodwill of the administrators of the hospitals the delegation visited, these facilities continue to have many of the characteristics of psychiatric prisons. Patients are denied basic rights, such as the opportunity to keep a diary, are apparently subject to punitive use of medication, and are fearful of retaliation if they complain about their treatment, about abusive conduct by the staff, or about restrictive hospital rules or practices.

The Current Situation

The investigation by the U.S. delegation provided unequivocal proof that the system of coercive psychiatry has been used in the Soviet Union, even in recent years, to hospitalize persons who are not mentally ill and whose only social transgression was the expression of political or religious dissent. That issue is no longer debatable. Moreover, notwithstanding the numerous discharges of political cases before the delegation arrived, two patients arrested for political crimes in 1984 were still hospitalized at the time of the delegation's visit, and one patient had been subjected to civil hospitalization six months earlier for behavior that was essentially political and posed no danger to himself or others. Retention of these patients in the hospital shows that the problem of political abuse of psychiatric hospitalization had not yet ended at the time of the delegation's visit.

Yet there are positive signs. Virtually all of the patients on the delegation's list who were believed to have been victims of political abuse have now been discharged. Only one patient examined by the delegation had been unjustifiably hospitalized within the past year. The officially controlled Soviet press is now exposing, rather than covering up, allegations of abuse. Most significantly, the Soviet response to the delegation's Report acknowledged the "need for a restructuring of Soviet psychiatry" and welcomed the delegation's recommendations as a basis for "evaluat[ing] the processes occurring in Soviet psychiatry" and for "plan[ning] ways to eliminate short-

comings." Moreover, the Soviet response concluded, "extensive cooperation between Soviet and U.S. specialists is necessary to attain the ultimate objective—improvement of psychiatric care on a legal basis."[18]

The critical issue, of course, is whether these recent Soviet actions reflect an enduring change in policy and practice or rather a temporary concession to international pressures. What steps have been taken, or are being taken, to prevent a recurrence of repressive psychiatric practices, and, more generally, to "restructure Soviet psychiatry" in order to provide "improved psychiatric care on a legal basis"?

The Prospects for Enduring Change

Evil Doctors or Bad Medicine?

Assessments of the likelihood of future abuse might depend, to some extent, on the explanations for the abuses that have so clearly occurred. The U.S. delegation disclaimed any basis for speculating about the "causes" of the pattern of repressive hospitalizations documented in its report: "It is not possible in this type of study to determine whether the original or current Soviet diagnoses were based on idiosyncratic medical considerations alone or if political pressures influenced [the psychiatrists'] judgment, thus resulting in deliberate misuse of psychiatry for purposes of social control."[19] My own supposition is that both of these explanations have accounted for the observed pattern of abuse. In some cases, abuse has probably been attributable to intentional misdiagnosis and to knowing complicity by individual psychiatrists in an officially-directed effort to repress dissident behavior. In other cases, the elastic conception of mental disorder used in Soviet psychiatry was probably bent to political purposes, with individual psychiatrists closing their eyes to whatever doubts they may have had about the consequences of their actions. (Depending on the psychiatrists' degree of doubt, of course, the one explanation blurs into the other.)

To the extent that abuse has resulted from intentional misdiagnosis, the problem has less to do with psychiatry *per se*, than with the corruptness of the repressive political system of which the psychiatrists are a part. In this case, abuse will be erased only if it is no longer sought or condoned by Soviet political authorities. To the extent that abuses have been attributable to the broad diagnostic conceptions that prevail in Soviet psychiatry, however, it is clear that the risk of abuse can be reduced by bringing Soviet diagnostic practice into conformity with Western practice. This point was explicitly recognized in the delegation's Report: "The currently broad concepts for schizophrenia and psychopathy used in the U.S.S.R. appear to pose a higher risk of misuse for political purposes than do current Western criteria. Hence narrowing the Soviet criteria along the lines of [the current international classification system] would make it more likely that psychiatric diagnoses will be used only for appropriate medical indications."[20]

The same can be said about therapeutic practice. To the extent that sulfazine or neuroleptics have been administered to patients known to be mentally healthy, the psychiatrists have been guilty of blatantly unethical violations of human rights and have served as naked agents of psychiatric punishment. However, to the extent that the medication practices described by the delegation have been regarded by Soviet psychiatrists as clinically warranted, they reflect the primitive and authoritarian approach to psychiatric practice which prevails in the special hospitals; to this extent, the problem has been produced by bad psychiatry, not by evil psychiatrists. This line of explanation also supports the view that the dangers of psychiatric abuse of human rights can be reduced by bringing Soviet therapeutic practice into conformity with international standards.

In sum, to the extent that the pattern of political abuse is attributable to bad psychiatry—to an expansive view of mental disorder that encompasses deviant political or religious ideas, to a primitive understanding of psychopharmacology, and to an authoritarian view of treatment decision-making that leaves no room for participation by the patient—the interests of Soviet patients are not well served by continuing to exclude Soviet psychiatry from the world psychiatric community.

Readmission to the WPA

These contrasting explanations for abuses of human rights in Soviet psychiatry were evident in the deliberations of the World Psychiatric Association in October, 1989. Believing that the Soviet practices described in the U.S. delegation's report were largely attributable to intentional abuses, human rights organizations and some member organizations of the WPA argued that readmission of the official Soviet psychiatric organization should be conditioned on an acknowledgment of past abuses and on replacement of the top leaders of Soviet psychiatry. Other participants in this debate, including myself, were inclined to leave the "restructuring" of Soviet psychiatry to internal political forces in the U.S.S.R. and to insist on only a single condition for readmission—a willingness to accept the principle of international accountability.

In the years preceding their withdrawal from the WPA, Soviet psychiatric officials had refused to permit access to patients or facilities by international psychiatric authorities seeking to investigate cases of alleged abuse. By permitting the visit of the U.S. delegation, however, the Soviet Union finally demonstrated its willingness to accept a degree of international accountability for the legal and humanitarian aspects of psychiatric practice.

The official Soviet response to the delegation's report also endorsed the U.S. proposal "to establish an international commission [to consider] purported abuses in psychiatric practice in any country."[21] In October, the Soviets explicitly accepted "the operational instrument" of the WPA Review Committee, under which the Review Committee is authorized to have direct access to patients for the purpose of investigating allegations of abuse in any nation.[22]

After intensive negotiation and debate, the WPA provisionally readmitted the All Union Society of Soviet Psychiatrists and Narcologists of the U.S.S.R., subject to a site visit, to be conducted within one year by a WPA review committee. If the review committee determines "that psychiatric abuse continues," a special session of the WPA General Assembly will be convened to consider suspension of the Soviet psychiatrists.[23] This was a sensible compromise. The prospect of continuing international scrutiny will strengthen the hand of the reformers within Soviet psychiatry, increasing the likelihood that the structural and legal changes promised in response to the delegation's report will actually be implemented. At the same time, the interests of Soviet citizens will be served by beginning to reintegrate Soviet psychiatry into the world scientific community.

Reintegration of Soviet psychiatry into the world scientific community will help to reduce the likelihood of political abuses of psychiatry. But this alone is not sufficient. Three other interrelated changes would help to establish conditions which are less conducive to abuse and under which human rights would be more fully respected in the Soviet mental health system.

Tolerance for Dissent

One essential condition is continued official tolerance for dissent. One of the Soviet psychiatrists was asked whether a patient whose hospitalization had been predicated on a violation of Article 70 (anti-Soviet agitation or propaganda) presented a danger to society. "Of course not," the psychiatrist responded. "Everything [the patient] distributed can be read in the newspapers now." In some ways, this observation says it all. The discharges of dissident patients over the last two years, and the scant evidence of new cases, are directly attributable to changes in Soviet politics, not to changes in Soviet psychiatry. It follows that the practice of psychiatric abuse could easily reemerge if *glasnost* is swept away by a more repressive policy. Indeed, in the absence of fundamental changes in psychiatry that have not yet occurred, I believe that renewed psychiatric abuse would then be inevitable. In short, when a broad and elastic notion of mental disorder is combined with a broad conception of social danger, the predictable consequence is an expansive use of involuntary psychiatric hospitalization as an instrument of social control. This proposition is confirmed by the Soviet experience.

Only time will tell whether the current liberalization of Soviet political life will continue, and whether it will reshape the authoritarian culture from which prevailing psychiatric conceptions of deviance have emerged. In the meantime, however, the Soviet regime has taken the most important institutional steps that can be taken to embody *glasnost* in Soviet law. It has modified the criminal code to repeal Article 190-1 (defaming the state) and to narrow Article 70 to cover only public calls for overthrowing the government (rather than anti-Soviet "agitation" and "propaganda").[24] Similar changes will have the effect of removing criminal prohibitions against expression of religious belief.[25] By removing the legal basis for criminal punishment, these changes also remove the legal basis for compulsory hospitalization through the criminal process, and therefore for commitment to special hospitals.

This still leaves the possibility of civil hospitalization as a response to political dissent, whistle-blowing or criticism of local authorities, and some of the patients interviewed by the delegation demonstrated that this concern is not entirely hypothetical. However, the 1988 law prohibits involuntary hospitalization in the absence of an "immediate danger to the patient or those around him" and the Ministry of Health has emphasized that danger to others requires proof that the person "represents a direct danger to those around him."[26] This is another important legal change which, if obeyed in practice, will reduce the likelihood of political abuse.

Increased Professional Independence

A second change, equally fundamental, would be to increase the professional autonomy of Soviet psychiatrists. Although I am not an expert on Soviet medicine, it is clear from the literature on the subject that the emphasis in medical ethics, as in all ethical discourse, is on conformity to socially promulgated moral norms, in which the good of society, as defined by the state, is the paramount value.[27] Indeed, the oath for physicians promulgated by the Presidium of the Supreme Soviet in 1971 specifically obligates the physician "to be guided in all my actions by the principles of communist morality, and to always bear in mind the high calling of a Soviet physician and my responsibility to the people and the Soviet state."[28] Socially promulgated norms leave no place either for individual conscience or for the autonomous ethical tradition to which Western physicians adhere.

It is well-recognized in Western ethical discourse that the physician's obligation to promote the well-being of his or her patient may sometimes come into conflict with countervailing obligations to society. When such conflicts arise, the dilemmas are exposed for debate in professional discourse, and often in the courtroom. It is also recognized that physicians employed by the state sometimes

find themselves in so-called "double agent" roles, and that these conflicts are especially pronounced in forensic psychiatry. Even in the face of these dilemmas, however, the physician's allegiance to professional ethical norms is acknowledged, and frequently respected, by courts and political authorities in the West.[29]

It would be foolhardy to believe that this tradition of professional autonomy could ever be replicated in a communist society, even a "restructured" one. However, it does seem plausible to envision a system in which the ethical contradictions and competing values are exposed, rather than suppressed, and in which the state establishes incentives for psychiatrists to resist political influence rather than yield to it.

Herein lies the symbolic importance of the provision of the 1988 law that makes it a criminal offense for a psychiatrist to commit an individual known to be mentally healthy to a psychiatric hospital. Further and more meaningful changes are now required to strengthen the hand of individual psychiatrists who refuse to diagnose as mentally ill individuals whom the local political authorities seek to hospitalize. What is needed, specifically, are statutory reforms requiring external review of coerced hospitalization decisions by agents of the legal system who are themselves not beholden to the local political structure. Even the prospect of such review can be expected to reinforce the expectation that examining psychiatrists will exercise truly independent clinical judgment.

Respecting the Rule of Law

What is needed, in short, is a true commitment to legality in the process of coercive hospitalization. Although the 1988 law brought the use of coercive psychiatry within reach of the rule of law, it did not go far enough. As the delegation noted in its Report, "The coercive use of psychiatry is too important to be left to psychiatrists. The experience of the U.S. over the last 20 years suggests that although there are tensions and disagreements, psychiatry and law both have important roles to play when hospitalization is involuntary and contrary to the patient's wishes."[30]

It is important to emphasize that this was a statement by a delegation of American *psychiatrists*. Debates continue in this country and elsewhere in the West about how much "legal formality" should be injected into institutional psychiatry and how much clinical discretion should be left unregulated; notwithstanding these residual disagreements, however, it is common ground that coercive psychiatric intervention must be subject to the rule of law. This commonly held conviction was strongly reinforced by the delegation's exposure to Soviet psychiatry where all of the risks inherent in psychiatric decision-making have actually been realized—broad conceptions of mental disorder and social danger, insensitivity to patient autonomy, an authoritarian attitude toward the patient and susceptibility to improper motivations and influences. All of this puts coercive psychiatry on a collision course with human rights.

To put the point in a more general way, the diagnostic and prognostic judgments upon which coercive psychiatric interventions are predicated are subject to an inherent and irreducible risk of error—and of "abuse," in the sense that the judgments might sometimes be shaped by the agendas and values of the psychiatrists (or those to whom the psychiatrists are beholden) rather than by the postulated legal norms. A commitment to the rule of law rests on the belief that the risk of error and abuse can be reduced by exposing the psychiatric judgments to the independent scrutiny of neutral decision-makers, both because the prospect of such scrutiny will discipline clinical decision-making and because the fact of external review serves as a safeguard against mistake.

Drawing on this perspective, the U.S. delegation recommended expeditious external review of the necessity for civil hospitalization and mandatory judicial review within at least six months in cases involving prolonged hospitalization. In the context of criminal hospitalization, the delegation also recommended meaningful independent review of the continued need for hospitalization, with subsequent mandatory court review. Finally, the Soviets were also urged to bring the rule of law into the hospitals by enacting a patient "bill of rights" and by establishing an independent mechanism for enforcing it. All of these recommendations were designed to reinforce the position of the lawyers from the Institute of State and Law who had criticized the 1988 law.[31] It is again worthy of note, as a sign of future prospects, that the official Soviet response to the legal portion of the delegation's Report, which endorsed these proposals, was written by the lawyers from the Institute of State and Law who are preparing drafts of the necessary legislation.[32] Whether these changes will be enacted and implemented remains to be seen. As of this writing, however, it appears that Soviet psychiatry remains largely unreformed.

A Final Thought: Political Abuse and Human Rights

In light of the historical context in which the visit of the U.S. delegation took place, the emphasis was on the political abuse of psychiatry. It should be clear, however, that the abuses of human rights documented in the delegation's Report are symptomatic of more profound problems with the system of coercive psychiatry in the Soviet Union. Implementation of the delegation's recommendations would help to reduce the likelihood of political abuse. But they have a larger purpose—to assure that the system of coercive psychiatry in the Soviet Union is properly respectful of fundamental human rights, whether or not the patients have engaged in political or religious dissent.

References

1. See, e.g., Sidney Bloch and Peter Reddaway, *Soviet Psychiatric Abuse: The Shadow over World Psychiatry.* (Boulder, Colorado: Westview Press, 1985); Anatoly Koryagin, "Unwilling Patients," *Lancet* 1981:821.

2. Report of the U.S. Delegation to Assess Recent Changes in Soviet Psychiatry, July 12, 1989. (Report presented to the Assistant Secretary of State for Human Rights and Humanitarian Affairs, U.S. Department of State)(Hereinafter, "Report of U.S. Delegation").

3. Commentary on the Report "Assessment of Recent Changes in Soviet Psychiatry" prepared by the U.S. Delegation on the Results of Its Visit to the U.S.S.R. (Translation by U.S. Department of State)(Hereinafter "Soviet Response").

4. "Statute on Conditions and Procedures for the Provision of Psychiatric Assistance," Ratified by a Decree of the Presidium of the U.S.S.R. Supreme Soviet, January 5, 1988, Ved. Verkh. Sov. SSSR, No. 2 [2440], (Jan. 13, 1988) (effective March 1, 1988), Item 19, at 22-27 (U.S.S.R.), reprinted in "New Law Broadens Mental Patients' Rights," *Current Dig. Soviet Press* 40 (1988): 11-15.

5. "Psychiatry: Law and Practice," *Pravda*, March 1, 1989.

6. Within a few months after its departure from the U.S.S.R., the U.S. delegation received confirmed reports that this patient and three other hospitalized patients who were found to have no mental disorder by the U.S. psychiatrists had been released. The fifth hospitalized patient found to have no mental disorder was soon transferred from a special psychiatric hospital to an ordinary psychiatric hospital.

7. Andrei V. Sneznevsky, "The Symptomatology, Clinical Forms and Nosology of Schizophrenia," in J.G. Howells (ed.) *Modern Perspectives in World Psychiatry* (Edinburgh and London: Oliver & Boyd, Ltd., 1968):425-447.

8. Nancy Andreasen, "The American Concept of Schizophrenia," *Schizophrenia Bulletin* 15 (1989):519-531, at 527.

9. Report of U.S. Delegation at 30.

10. "Psychiatry and Politics" (Interview with Alexander Churkin, Chief Psychiatrist of the U.S.S.R. Ministry of Health), *New Times* 43 (1988): 41-43.

11. Soviet Response at 25.

12. See, e.g., R.S.F.S.R. Criminal Code, Article 11. The Soviet Codes appear in translation in various sources. See e.g., Harold V. Berman, *Soviet Criminal Law and Procedure. The R.S.F.S.R. Codes* (2nd Ed.)(Cambridge, Mass.: Harvard University Press, 1972).

13. R.S.F.S.R. Code of Criminal Procedure, Chapter 33, Proceedings for the Application of Compulsory Measures of a Medical Nature, Articles 403-413.

14. Article 70 provides in pertinent part:

Article 70. Anti-Soviet Agitation and Propaganda. Agitation or propaganda carried on for the purpose of subverting or weakening the Soviet regime [*vlast*] or of committing particular, especially dangerous crimes against the state, or the circulation, for the same purpose of slanderous fabrications which defame the Soviet state and social system or the circulation or preparation or keeping, for the same purpose, of literature of such content, shall be punished by deprivation of freedom for a term of six months to seven years, with or without additional exile for a term of two to five years, or by exile for a term of two to five years.

Under a decree of the Presidium of the Supreme Soviet of the U.S.S.R., issued on April 8, 1989, Article 70 has been revised.

15. Article 190-1 provides in pertinent part:

Article 190-1. Circulation of Fabrications Known to be False Which Defame Soviet State and Social System. The systematic circulation in an oral form of fabrications known to be false which defame the Soviet state and social system and, likewise, the preparation or circulation in written, printed or any other form of works of such content shall be punished by deprivation of freedom for a term not exceeding three years, or by correctional tasks for a term not exceeding one year, or by a fine not exceeding 100 rubles.

This article was repealed by a decree of the Presidium of the Supreme Soviet of the U.S.S.R. issued on April 8, 1989.

16. The U.S. Delegation summarized the relevant law as follows:

Until January, 1988, there was no legislation in the U.S.S.R. governing involuntary psychiatric treatment outside the criminal process. The only source of authoritative directives regarding "urgent hospitalization" was the Ministry of Health, which had issued instructions on the subject, but with limited circulation (Urgent Hospitalization of the Socially Dangerous Mentally Ill, 1971). According to all reports, the process of involuntary hospitalization was regarded as largely within the sphere of psychiatric discretion....

The main operative effect of the 1988 law was to codify the decision-making procedures that had been prescribed by the Health Ministry's 1971 guidelines on "Urgent Hospitalization." The statute requires review by a psychiatric commission at least monthly for the first six months and every six months thereafter. In addition, the new law provides mechanisms for external review that did not previously exist. First, the patient or his or her relative or legal representative is entitled to include a psychiatrist of his or her choice on the commission; second, the patient or his or her relative or legal representative may appeal the commission's decision to the chief psychiatrist of the region; third, the decision of the chief psychiatrist may be appealed to court; and finally, supervisory responsibility over the legal aspects of this process is lodged with the procuracy.

Report of the U.S. Delegation at 64-65. The Delegation went on to point out, however, that these legal protections "have not yet become operational." Id. at 70.

17. The Soviet response to the delegation's report was straightforward on the gap between law and practice:

[C]riminal procedural law contains sufficiently detailed guidelines for legal proceedings in this category of cases and provides for additional procedural safeguards for the rights of persons who may be subjected to coercive medical measures. In individual cases, however, these legal norms have not always been observed. At the present time we are attempting to change this situation....

Soviet Response at 14.

18. Soviet Response at 25-26.

19. Report of U.S. Delegation at 31.

20. Id. at 33-34.

21. Soviet Response at 2.

22. Statement by the All Union Society of Soviet Psychiatrists and Narcologists of the U.S.S.R. before the World Psychiatric Association General Assembly in Athens, October 18, 1989. The Soviets also acknowledged "that previous political conditions in the U.S.S.R. created an environment in which psychiatric abuse occurred for non-medical, including political, reasons." Id.

23. Resolution adopted by the WPA, October 18, 1989.

24. "Revisions and Supplements to the Law of the U.S.S.R. 'Criminal Liability for State Crimes and Certain Other

Legislative Acts of the U.S.S.R.,' " decree enacted by the Presidium of the U.S.S.R. Supreme Soviet issued April 8, 1989 modifying article 70. "Revisions and Supplements to the Criminal and Criminal Procedural Codes of the RSFSR," decree enacted by the Presidium of the RSFSR Supreme Soviet on April 8, 1989, repealing Article 190-1.

25. Article 27 of the R.S.F.S.R. Criminal Code (infringement of the person and rights of citizens under the appearance of performing religious ceremonies) will be repealed, and Articles 142 and 143 (pertaining to violation of the laws on separation of church and state, and of school and church, and hindering of religious worship) will be revised to "eliminate the possibility of indictment of persons for their religious beliefs." Soviet Response at 10.

26. "Psychiatry: Law and Practice," *Pravda*, March 1, 1989.

27. See generally Richard T. DeGeorge, *Soviet Ethics and Morality*, (Ann Arbor, Mich.: U. of Michigan Press, 1969).

28. Ralph Crawshaw, "Medical Deontology in the Soviet Union," *Archives of Internal Medicine* 134 (1974): 592.

29. See generally American Bar Association Criminal Justice Mental Health Standards, Std. 7-1.1 and commentary (1989) 4-15; Thomas Gutheil and Paul S. Appelbaum, *Clinical Handbook of Psychiatry and the Law* (New York: McGraw- Hill, 1982) at 289.

30. Report of U.S. Delegation at 67.

31. See, e.g., *Komsomolskaya Pravda*, July 16, 1988 (quoting S.V. Polubinskaya), reproduced in International Association on the Political Use of Psychiatry, Information Bulletin No. 19, Sept. 1988.

32. S.V. Polubinskaya and S.V. Borodin, staff members of the Institute of State and Law of the U.S.S.R. Academy of Sciences, signed legal commentary in the preliminary Soviet Response to the Report of the U.S. Delegation, dated June 28, 1989.