

# *Lessard v. Schmidt* at 40 Years: “Ruling Gone Awry” or Sound Public Policy?

By:

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# *Lessard v. Schmidt:* Magna Carta of Mental Health Law

- *Lessard v. Schmidt* (1972) limited civil commitment to persons with mental illness who were adjudged dangerous to self or others.
- The U.S. Supreme Court held in *O'Connor v. Donaldson* (1975) that the State could not civilly commit a “*nondangerous individual who is capable of surviving safely in freedom by himself or with the help of willing and responsible family members or friends.*”

# Wisconsin Post-*Lessard* Statutory Definitions of Dangerousness

- Acts or attempts at suicide, bodily harm.
- Acts or threats of violence or fear thereof.
- Impaired judgment leading to self-harm.
- Unable to satisfy basic needs.
- Incompetent re treatment needed to prevent disability/deterioration, has treatment history, and risks mental, emotional, or physical harm that would result in loss of independent living or loss of cognitive or volitional control.

# Is *Lessard v. Schmidt* a “Legal Ruling Gone Awry”

- The *Milwaukee Journal Sentinel* “Imminent Danger” series links the *Lessard* decision with homicides committed by persons with mental illness: “[T]he *Lessard* case ... opened the gates to a cascade of unintended consequences -- some of them tragic.”
- Is this suggested causal link legitimate?
- Are the legal facts presented by the series accurate and do they support this link?

## Inaccuracies in *Journal-Sentinel Imminent Danger Series*

- FICTION: “Laws written after the *Lessard* decision, meant to eliminate abuses of power, prohibit anyone but police officers from bringing a person in for commitment.”
- FACTS:
  - Ch. 51 allows any 3 adults to petition a court for the immediate detention and civil commitment of an allegedly mentally ill person.
  - Hospital treatment directors can detain a voluntary patient who requests discharge.

# Inaccuracies in *Journal-Sentinel Imminent Danger Series*

- FICTION: “What had been mainly a medical matter was now being decided by police officers and judges.”
- FACTS:
  - A psychiatrist or psychologist must co-sign every emergency detention statement and testify at the probable cause hearing.
  - A psychiatrist and a psychologist must evaluate the person and testify at the final hearing.

## Inaccuracies in *Journal-Sentinel Imminent Danger Series*

- FICTION: “A 2008 study found as many as 10% of homicides were committed by people with untreated mental illness.”
- FACT: Noting that only 95 subjects were in this study, the study authors warned, “Generalizing the findings from homicides in one state to all homicides committed in the recent past in the United States is misleading.”

## Inaccuracies in *Journal-Sentinel Imminent Danger Series*

- **FICTION:** “The threshold for getting most people with mental illness into care -- imminent danger -- was established in 1972 in a federal court case brought by Alberta Lessard, a West Allis school teacher.”
- **FACT:** This statement reflects the bias that most people with mental illness need to receive mental health care via civil commitment – a misguided approach that is used in Milwaukee County but should not be.

# Inaccuracies in *Journal-Sentinel Imminent Danger Series*

- **FICTION:** The series implies that civilly committing Jared Loughner and Seung-Hui Cho would have prevented the massacres they perpetrated.
- **FACTS:**
  - No attempts were made by public mental health professionals to provide Loughner with voluntary or mandated mental health services.
  - Cho was court-ordered into mental health treatment, but treatment providers failed to provide follow-up.
  - These were failures of mental health service delivery, not failures of the civil commitment laws.

## Inaccuracies in *Journal-Sentinel Imminent Danger Series*

- MISLEADING (from editorial): “The standard set by the *Lessard* case is wholly inadequate for determining who is severely mentally ill and who needs to be protected and hospitalized for his or her own good and the good of others... Consider for a moment Richard Wilson. The teenager wasn't forced into treatment until after he was ruled incompetent to stand trial in the killing of his grandfather. There must be a better way.”

## Inaccuracies in *Journal-Sentinel Imminent Danger Series*

- FACT: The editorial writer knew that Wilson *had been* subject to civil commitment before the murder. The only thing that prevented Wilson's civil commitment was the decision of a Milwaukee County psychiatrist to unconditionally discharge him rather than hospitalizing him and/or releasing him on the condition that he follow treatment orders, as the law allows. Was this fact omitted because it contradicted the "*Lessard* causes tragedy" false premise of the series?

## Have Homicides by Persons With Mental Illness Increased Post-*Lessard*?

- There is no evidence that homicide rates by persons with mental illness increased following *Lessard*.
- In the 25 years following *Lessard*, the violent crime rate for persons with schizophrenia paralleled the rate for nonschizophrenics (Wallace, *et al.*, 2004).

# Why is It Harmful to Falsely Link Civil Commitment With Homicide?

- Advocating easier civil commitment by falsely linking homicides to *Lessard* is unsupported by objective evidence.
- Frightening headlines (“Imminent Danger”) juxtaposed with sensationalistic imagery (Loughner’s crazed grin) only serve to reinforce false stereotypes that most persons with mental illness are dangerous, thereby increasing social stigma.

# Mental Illness is Not Predictive of Violence. What About Other Factors?

- A diagnosis of mental illness by itself is not predictive of violence.
- Other risk factors, such as assault weapon possession, are much more predictive.
- Loughner and Cho both used a Glock – a semi-automatic pistol that holds 33 bullets in one magazine. Why not have better screening?
- Because Cho was court-ordered to receive mental health treatment, the Brady Act required that his name be entered into the National Instant Criminal Background Check System. If that had been done, he would not have been able to buy guns.

# Why is Over-Emphasis on Civil Commitment Harmful?

- Historically, Milwaukee County has put inordinate resources into civil commitment as a means of mental health care delivery.
- Milwaukee County has used civil commitment as the portal to the public mental health system.
  - In 2010, Milwaukee County had 8274 emergency detentions. Dane County had 332.
  - Milwaukee Co. is only 1.94 times the size of Dane Co., yet it has 25 times more ED's – almost 13 times as many ED's per capita!

# Why is Over-Emphasis on Civil Commitment Harmful?

- Civil commitment is the least effective and most expensive means of providing care.
- It requires the high costs of lawyers, judges, expert witnesses, and often needless inpatient hospitalization.
- By soaking up scarce mental health dollars, civilly committing one person means that 80 others are denied more effective voluntary care.

# What is the Alternative to Forced Psychiatric Treatment?

- I have worked with thousands of individuals considered to be mentally ill and resistant to treatment.
- Over 90% of the people I represented in civil commitment cases agreed to voluntary care.
- When they are approached by nonjudgmental professionals, they eventually acknowledge having problems in living and begin to accept help in small steps.

# What is the Alternative to Forced Psychiatric Treatment?

- It is not necessary for such persons to accept a psychiatric diagnosis to achieve behavioral change.
- As trust between the professional and the individual grows, the individual becomes increasingly willing to accept such services as person-centered counseling, case management, medication, supervised housing, etc.
- Providing individuals with nonjudgmental outreach and an array of choices avoids the need for civil commitment in all but the rarest of cases.

# Concluding Words from *Lessard v. Schmidt*

“[A] court should order full-time involuntary hospitalization only as a last resort ... Perhaps the most basic and fundamental right is the right to be free from unwanted restraint.”

349 F. Supp. 1078, 1095-1096 (1972)

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