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Comments to Swartz Speech

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COMMENTS TO SWARTZ SPEECH

MR. MYERS:

The sexual psychopath commitment program cannot be overlooked and the problems that have been experienced there may well appear in alcoholism programs. A few years ago in Ohio a maximum security facility handled all sexual psychopaths, and the facility had only one physician. He was superintendent and primarily responsible for administration. Under such arrangements commitment in Ohio could result in no treatment and a life sentence. Perhaps Professor Swartz would comment on the *Robinson v. California* decision.

PROFESSOR SWARTZ:

That was the case in which the Supreme Court said that California cannot make it a crime to be a narcotic addict. You cannot make being sick a crime. It seems to me, that although the *Robinson* case may be limited in its application that we may have here a run-a-way doctrine. Narcotic addiction seems to be a violation of conduct norms or it could be referred to as conduct disorder. At any rate, why not simply say that a man who commits burglary, or a man who gets into a fight with another person, or a man who stabs someone, whether on one occasion or on many occasions, is sick because of his socially unacceptable behavior and his sickness cannot be an offense. The Court in *Robinson* may have a "bear by the tail" and may not have considered, as carefully as I think will have to be considered, the questions of where to draw the line and whether there are any logical places for drawing the line between the kind of perpetuation involved in narcotic cases and regarding as illness any other criminal conduct. In *Robinson* there was no act with which the defendant was charged. Simply being an addict was the offense, so that on *actus reus* grounds the conviction could have been struck down.

PROFESSOR STARRS:

When discussing alcoholism commitment programs we are usually talking about persons presently charged with misdemeanors. You might ask what is the impact of that on criminal

law. I am not too disturbed by the fact that they may be sent away for a number of years, but this seems to me to be twisting language. What you are really saying is that the punishment is increased. In narcotics cases California officials claim to send a person to an adult authority and they decide where and how he should be treated. Why not use the same system for all offenders? Why do it by what I consider to be a perversion of criminal law? With increased loss of personal freedom, commitment proceedings usually dispense with the usual procedural safeguards of criminal trials.

PROFESSOR SWARTZ:

I think that some of your concern certainly is justified. You have indicated a basic problem. We have discussed the possibility of loss of liberty for life, without providing the resources of genuine medical treatment. In terms of actual experience this has been a very real danger. But there is a tougher question. Let us presume that in a sexual psychopath or alcoholic case involving indefinite commitment, that we had a very well-trained treatment team that spends a great deal of time with every single person committed. But the limitations of present knowledge being what they are, it might be that sufficient knowledge may not develop to substantially help our patient. In addition to the question of devoting sufficient resources to treating the individual when liberty is taken away, we have to face the problem that we may never, or not for some time to come, gain the knowledge necessary to deal effectively with some of these things. Resources alone do not solve many of the open questions about keeping that man locked up indefinitely.

PROFESSOR MYERS:

With that—we will conclude then the Institute, I certainly appreciate your participation.