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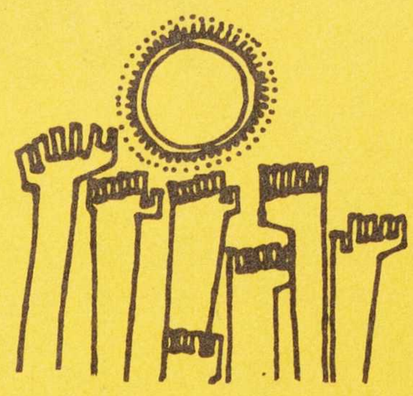

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RIGHT TO REFUSE IS DEFUSED

COURT SUPPORTS FORCED "TREATMENT"

--by Virginia Raymond

In November, the Federal Appeals Court for the First Circuit published a decision which, in the opinion of this "lay" observer, essentially gutted the right to refuse psychiatric "treatment" earlier declared by the District Court in Massachusetts, in Rogers v. Okin. The Appeals Court agreed that people do have a strong interest in not having psychiatric drugs forced upon them, but decided that those interests are not absolute, that they are to be weighed equally with the state's interests of police power and parens patrie,* and worst of all, that the balancing of the two competing sets of interests was best left up to the judgement of psychiatrists.

The plaintiffs/inmates in Rogers v. Okin, people the Appeals Court described as "far from normal" and the District Court pitied as "victims of fate shortchanged by life," do have an interest in not being forcibly drugged. But the new court decision states that interest in very weak terms, saying the source of the interest is unclear, but probably has something to do with the "penumbral right to privacy, bodily integrity, or personal security." The lower court had added First Amendment rights, but the Appeals Court found it "unnecessary" to decide whether there was any relation between the right to refuse "treatment" and freedom of speech.

The opinion gave far more emphasis to the other side--the state's inclination to force drugs on people who are "in many instances in desperate need of care and treatment, and in some cases, are dangerous to either themselves or others." The police power of the state is said to give "hospital" authorities the right to forcibly "medicate" people who may be dangerous to others. A critical difference between the original decision and the new one is the definition of "emergency." The lower court had required that there be a "substantial likelihood of physical harm" before anyone was forcibly drugged. The Appeals Court accepted the "hospital's" argument that this standard is too strict and unworkable. The "mental hospital" was described as a place "to which many individuals are involuntarily committed because of a demonstrated proclivity for committing acts of violence outside the hospital...a proclivity which the record shows often carries after commitment." (Strange that being committed doesn't calm 'em right down.)

Given the "volatility" of a situation where all of these crazy, violent people are brought together in one place, the state's interest in preventing violence is lent "immediacy." Selfless as usual, the defendents proffered (and the Court accepted), as part of their justification for forcibly drugging and people, the need to protect other inmates. The Court does not say that the state "hospital" is always in a state of "emergency" because of all the destructive nuts together in one place, but the scary repetition of phrases like "demonstrated proclivity for violence" creates that impression. Given the supposed dangers, the Court reasoned that "a single unitary standard" defining "emergency" was not appropriate. Instead, there should be only a finding that "the need to prevent violence outweighs the possible harm to the individual" (defined by whom?) and that "reasonable alternatives to the administration of antipsychotics...be ruled out" first. It's hard, though, to understand why, if the inmates are so terribly and demonstrably dangerous, the determination of "a substantial likelihood of physical harm" is so "unworkable."

* acting in one's "best interests."

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