

## *Care or Custody? Mentally Disordered Offenders in the Criminal Justice System by Judith M Laing.*

*Published by Oxford University Press 1999, £45.*

This book is divided into two parts, the first part relates to mental health law, - albeit slipping over mental health law over the past 100 years - and the history and general principles about how the criminal justice system deals with mentally disordered offenders. Essentially this section is a review that can be found elsewhere. The second part of the book, and the more interesting, is an empirical study of six court-based diversion schemes operating in West Yorkshire in 1993-95.

I approached this book with much interest and expectation that some light might be shed on why there are still so many mentally disordered offenders in our prisons. However, I was generally disappointed with the study in two respects. First, the findings of this somewhat limited empirical study conducted for a Ph.D failed to find anything new about the depressing process whereby mentally vulnerable people are diverted into either one system or another. Secondly, there are inaccuracies in the text, and a failure by the author to properly understand some key issues.

The author has two explanations for “..the high levels of mental illness still in prison”. First it “may be accounted for by the fact that there are significantly more people in prison in the late 1990s”. Secondly “the reason could also be that these offenders may not be sufficiently ill to meet the criteria for transfer under the Mental Health Act 1983, which reinforces the urgent need dramatically to improve the health care facilities and support which is provided in the prison system” (p. 318). Such simplistic explanations do not conform with the publisher’s description of the book as being “..a comprehensive and scholarly text..”.

A further example of a failure by the author to fully comprehend some key issues can be found in her analysis of the use of the appropriate adult for mentally disordered detainees. The use of the appropriate adult for mentally vulnerable people detained in the police station is central to how they are processed through the criminal justice system. The author states: “If the police suspect that a person in police custody is mentally disordered, they must seek a medical opinion to assess if he or she is fit to be interviewed or requires the assistance of an appropriate adult. The police will inevitably call out the FME [Forensic Medical Examiner]...” (p. 97). Although Laing goes onto to criticise the FME (for example, the lack of training most FMEs (commonly known as police surgeons) have regarding mental illness), she fails to grasp or reveal to us the fundamental point about the FME and the use or non-use of the appropriate adult for mentally disordered suspects. Research has shown - indeed the author references these studies - that the FME invariably declares that many mentally vulnerable suspects are ‘fit for detention and interview’, with the consequence that the use of the appropriate adult is forgotten by the custody officer and/or declared unnecessary by the FME. But the decision to call an appropriate adult is not a medical decision. The presence of the appropriate adult is justified not because the suspect is unfit to be detained or unfit to be questioned. If that were the case there would be no role for them at all, least of all one which took them into the interview room with the suspect<sup>1</sup>.

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<sup>1</sup> Bean P.T. and Nemitz T. (1993) ‘Out of Depth and Out of Sight’, London: MENCAP.

There are other disturbing inaccuracies to be found in the book. For example on page 31 the author asserts that mental health review tribunals were established under the Mental Health Act 1983. And one *faux pas*, although not as worrying as the others, reveals a certain lack of editorial observation. It is found on page 132 (n.315), namely the statement that on 12/11/93 Jim MacKeith gave the Robert Maxwell Memorial Lecture. It was of course the first Memorial Lecture for Bob Baxter!

As stated earlier, the first part of the book can be found elsewhere and much is now out of date. However as most of the evaluations of diversion schemes have taken place in and around London, the fact that the research which underpins the book was conducted elsewhere in itself makes it worthy of consideration.

Dr Teresa Nemitz,

Midlands Centre for Criminology and Criminal Justice, Loughborough University.