# Dangerous Offenders A Critique of Kozol et al. April 6, 1973 TO THE EDITOR

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symptom of the community's failures in interaction with the individual offender's personality. The way offenders behave should lead anyone, including Greenberg, to question their qualifications for determining their needs, to say nothing of their ability to use their vouchers in a much more efficient, effective, and fair manner than prison officials can. Although I would agree with him that institutionalization is dysfunctional and that correctional officials have not always been the knights in shining armor that they ought to be, jumping to the conclusion that inmates are made of purer stuff is unrealistic.

The concept of a voucher system for the purchase of services has its greatest potential in community correction, where offenders are, so to speak, in partnership with correctional agents. My objection to the Greenberg article is its subtle concept that offenders can do a better job *alone* in the gearing of services to needs and that correctional agents would be dysfunctional in this task. Progress in correction will come via a cooperative arrangement between offenders and correctional agents. A naive article like Greenberg's is dangerous; it separates the two parties that have a vested interest in correction.

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## Dangerous Offenders
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TO THE EDITOR:

"The Diagnosis and Treatment of Dangerousness," by Dr. Harry L. Kozol, Richard J. Boucher, and Ralph F. Garofalo (*Crime and Delinquency,* October 1972, pp. 371-92), reported the most extensive study to date on the prediction and treatment of dangerousness in criminal offenders. The authors rightly point to the central importance of these matters in criminal justice and deserve praise for their pioneering work in this difficult and uncharted region lying on the border between mental health and the law.

However, the principal conclusion of Kozol, Boucher, and Garofalo—that "dangerousness can be reliably diagnosed and effectively treated" (p. 392)—is, at best, misleading and is largely refuted by their own data. Let us consider first the issue of "reliable diagnosis" and then the question of "effective treatment."

1. Since the study presents no relevant data, no conclusions on the reliability (in the standard statistical sense) of the diagnosis of dangerousness can be drawn from it. Although the opportunity to obtain reliability coefficients appears to have been excellent—clinical examinations were made "independently by at least two psychiatrists, two psychologists, a social worker, and others" (p. 383)—no data on interjudge reliability are available. If this is so because the diagnoses were not made independently but rather emerged through staff consensus, they may reflect more the dynamics of small-group interaction than the scientific prediction of a future event.

Should we assume that the authors are actually referring to the *validity* rather than the reliability of their predictive diagnoses, we may avail ourselves of their data on subsequent

recidivism. They report that, of those subjects diagnosed (by the Center for the Diagnosis and Treatment of Dangerous Persons) as not dangerous and recommended for release, 8 per cent later committed a serious assaultive crime, whereas, of those subjects diagnosed as dangerous but released by the court, 34.7 per cent later committed such a crime. While no statistical tests appear to have been performed on the difference in recidivism rates, the increased validity accruing to the diagnosis is evident.

The authors make brief mention that "65 per cent of the forty-nine patients whose release we opposed have not committed serious assaultive crimes during nearly five years of freedom" (p. 392). The practical significance of a false positive rate of 65 per cent can hardly be overstated. When an extraordinarily thorough clinical examination by at least five mental health professionals combined with an extensive social history and psychological test battery is inaccurate in two out of every three predictions of dangerousnes, one cannot conclude that "reliable diagnosis" of dangerousness has been achieved.

2. Kozol, Boucher, and Garofalo assert that "treatment was successful in modifying the dangerous potential of 94 per cent of the patients we recommended for discharge after treatment for an average period of forty-three months" (p. 392).

Attributing success to a particular treatment, however, can be done only in the context of an appropriate control group to provide baseline data from which to measure improvement. If we can assume that those individuals released from treatment against the Center's advice were those for whom the treatment was judged unsuccessful, such a control group is available. Seventy-two per cent of those who were released by the courts after an average treatment of thirty months, "despite our insistence that they were still dangerous" (p. 391), did not become recidivists during the follow up period.

Considering that the base rate for success was 72 per cent, attributing the obtained 94 per cent success rate to the treatment seems highly unwarranted. Without even delving into the problems created by the nonrandom assignment of subjects into treatment conditions and the fact that subjects in the "successful treatment" and "unsuccessful treatment" groups are essentially self-selected, one can attribute to the treatment at best only 22 per cent (94 per cent minus 72 per cent) of the success in remaining free of serious assaultive crime.

Thus we must conclude that Kozol, Boucher, and Garofalo arrived at conclusions that cannot withstand scrutiny. Their findings actually lend support to a growing conviction in legal circles that confidence in the ability of mental health professionals to predict and treat dangerous behavior is largely unfounded. (For example, see Norval Morris, "Psychiatry and the Dangerous Criminal," *Southern California Law Review,* vol. 41, 1968, p. 536; Alan Dershowitz, "Psychiatrist's Power in Civil Commitment," *Psychology Today,* vol. 2, 1969, p. 47; Herbert Packer, "Enemies of Progress," *New York Review of Books,* 23 October 1969.) As Halleck puts it in his *Psychiatry and the Dilemmas of Crime* (p. 348), "our criteria for predicting who will commit a dan-

gerous act are totally inadequate and our efforts at treatment are pitiful."

Since so many issues in criminal justice—indeterminate sentencing, involuntary mental hospitalization, "criminal sexual psychopath" statutes, preventive detention—revolve around the ability of mental health professionals to predict and treat dangerousness, the implications of the findings by Kozol *et al.* (as distinct from their conclusions) are far-reaching. If for every correct psychiatric prediction of dangerousness there are two incorrect ones, the right of the "false positives" to remain free of unnecessary incarceration becomes a central consideration.

By all means let us follow the lead of Kozol *et al.* in attempting to improve the accuracy of predicting dangerousness and increase the efficacy of treating it. But until the time comes when mental health professionals can make even reasonably accurate predictions of dangerousness, it would be foolhardy to place primary reliance on their judgments in making decisions about an offender's incarceration.

In the words of another group of investigators (Ernst A. Wenk, James O. Robison, and Gerald W. Smith, "Can Violence be Predicted?" *Crime and Delinquency,* October 1972, p. 402) who failed to make valid predictions of dangerousness in offenders:

> Confidence in the ability to predict violence serves to legitimate intrusive types of social control. Our demonstration of the *futility* of such prediction should have consequences as great for the protection of individual liberty as a demonstration of the utility of violence prediction would have for the protection of society.

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