

January 1986

Book Review

E. Donald Shapiro

Follow this and additional works at: https://digitalcommons.nyls.edu/nyls_law_review

Recommended Citation

E. D. Shapiro, *Book Review*, 31 N.Y.L. SCH. L. REV. 867 (1986).

This Book Review is brought to you for free and open access by DigitalCommons@NYLS. It has been accepted for inclusion in NYLS Law Review by an authorized editor of DigitalCommons@NYLS. For more information, please contact camille.broussard@nyls.edu, farrah.nagrampa@nyls.edu.

BOOK REVIEW

DEFENDANT: A PSYCHIATRIST ON TRIAL FOR MEDICAL MALPRACTICE. By Sara C. Charles, M.D. and Eugene Kennedy. The Free Press, New York, New York: 1985. Pp. xvi, 230.

Reviewed by E. Donald Shapiro*

Defendant is the true story of a medical malpractice suit brought against a Chicago psychiatrist. The first three parts of the work are a detailed narrative of the trial of Dr. Sara Charles. The last section is a cutting exposé which reveals some surprising statistics about the current, much talked about, medical malpractice crisis. Dr. Charles, the "defendant," also expresses her view of malpractice actions in general and details the effects that this case has had upon her professional and personal life.

The description of the trial is presented by Eugene Kennedy, co-author and award winning biographer.¹ His account of each stage of the ten day trial reads much like a novel, enriched by detailed character and setting descriptions, metaphor, dramatic irony, and tense dialogue expertly transposed from court transcript to literary style.² He tells of the despair, frustration, and self-doubt that plagued Dr. Charles during the five years of litigation, which culminated in the dramatic trial and verdict of no liability.

The saga began on December 9, 1974, when Dr. Sara Charles took on a new patient. Terry Walker wanted to talk about her family life, her relationships with men, and her studies.³ Dr. Charles saw Terry regularly for over eleven months, until Terry's "accident."

Terry had been an outstanding student as an undergraduate at

* The Joseph Solomon Distinguished Professor of Law at New York Law School, Supernumerary Fellow of St. Cross College at Oxford University, and Visiting Distinguished Professor of Law at Bar-Ilan University.

1. S. CHARLES & E. KENNEDY, *DEFENDANT A PSYCHIATRIST ON TRIAL FOR MEDICAL MALPRACTICE* xvi (1985) [hereinafter *DEFENDANT*]. Mr. Kennedy is Dr. Charles' husband. He is also a novelist and Professor of Psychology at Loyola University. *Id.*

2. The trial dialogue was based upon a transcript of a tape recording made during the actual trial. *Id.* at xv. The reconstructed therapy sessions and thoughts attributed to the plaintiff were all based upon Dr. Charles' personal notes and the depositions of the various parties involved in the lawsuit. *Id.* at xv-xvi.

3. The patient's real name and the names of the other therapists, family members, and friends have all been changed. *Id.* at xvi.

Cornell University and, at the time she met Dr. Charles, was working on her graduate degree in clinical psychology.⁴ She complained to Dr. Charles of an unhappy, stressful family relationship. Her mother was impossible to please. Her father was a nonassertive, henpecked husband. Terry found relationships with men to be strained and unsatisfying.⁵ She craved acceptance from everyone, her professors, family members, boyfriends, and even her psychotherapist. She enjoyed being a student and excelled in academics. She was obsessed with being "number one" or nothing at all.⁶

Dr. Charles diagnosed Terry as having a "borderline personality disorder."⁷ Terry had difficulty controlling her emotions, particularly anger and frustration. She panicked easily. Her treatment consisted of regular weekly visits with Dr. Charles; neither medication nor hospitalization were prescribed.⁸

Dr. Charles had not been the first psychotherapist to treat Miss Walker. She had previously seen a New York psychologist who, unlike Dr. Charles, was not a medical doctor.⁹ In 1971, at the insistence of this psychologist and her family, Terry had been admitted to a psychiatric hospital for three months.¹⁰ That hospital stay had an enormous effect on Terry and was an important, perhaps determinative factor, in the outcome of her lawsuit against Dr. Charles.

Throughout the eleven months of psychotherapy with Dr. Charles, Terry seemed to be steadily improving. It came as a surprise to Dr. Charles, therefore, when Terry asked for an antidepressant.¹¹ What Dr. Charles did not then know was that Terry was still in contact with her former therapist, who had recommended the drug.¹² Dr. Charles felt the medication was unnecessary, and her decision not to prescribe it proved a critical aspect of the ensuing lawsuit. It was later that day, November 15, 1975, that Terry Walker, during a purposeless stroll,

4. *Id.* at 3.

5. *See, e.g., id.* at 124-25.

6. *Id.* at 129-30. Terry Walker even wanted to be a perfect patient. *Id.* "Being first in her class, being regarded as the best by her superiors and supervisors—these were the landfalls she sought." *Id.* at 130.

7. *Id.* at 19. A borderline personality disorder's "essential feature is a personality disorder in which there is instability in a variety of areas, including interpersonal behavior, mood and self-image." *Id.* at 79 (citing AMERICAN PSYCHIATRIC ASSOCIATION, THE DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS 321 (3d ed. 1980)).

8. *Id.* at 19-21.

9. *Id.* at 34-35.

10. *Id.* at 14.

11. *Id.* at 146-48. Terry requested Mellaril as a sleeping medication. Dr. Charles informed her that Mellaril is an "antipsychotic drug" unsuitable for use as a sleeping medication. *Id.* at 147. Miss Walker refused an alternative prescription for Librium. *Id.*

12. *Id.* at 154-55.

slipped from a roof four stories high.¹³

As a result of the fall, Terry Walker suffered severe injuries that would confine her to a wheelchair for the rest of her life.¹⁴ Was this accident due to the negligence of Dr. Charles? Had Dr. Charles, as Terry alleged, committed a clinical error by failing to provide her patient with an antidepressant and leaving her unsupervised that day? Or were Terry Walker's injuries the result of her conversation with the psychologist who had treated her years before? Did she jump because he had told her that she was "much sicker than she thought,"¹⁵ and that her father was enroute from New York, bringing the medication that Dr. Charles had refused to prescribe?¹⁶

These are the facts and issues presented in the trial of the case upon which *Defendant* is based. Although the trial is not depicted—as many dramatic court scenes have been—as a battle of the attorneys' wits, the adversaries come across clearly as villain and hero.¹⁷ Plaintiff's counsel, as villain, harasses adverse/hostile witnesses, resorts to underhanded, dubious tactics and poses far too many objections.¹⁸ Defendant's lawyer, naturally, is the understated, likeable, yet clever underdog.¹⁹

Terry Walker's life story and her relationship with Dr. Charles are presented through the testimony of witnesses, including Terry's mother, father, sister, and physician brother-in-law. As in many medical malpractice cases, there is also an interesting battle of the expert witnesses. The authors devote an entire section of the book to the expert testimony presented. Among other things, the various experts disagree about whether or not Terry should have been treated with medication. Naturally, the plaintiff's expert found that Dr. Charles was negligent when she refused to prescribe Mellaril.²⁰ The defendant's ex-

13. *Id.* at 68-69.

14. *Id.* at 17-18.

15. *Id.* at 20. Dr. Waxman, the plaintiff's previous psychologist, spoke with her a number of times on the day she attempted suicide. During a phone conversation, he told Miss Walker that she was "in great need of medication" and that her condition was "very serious." *Id.* at 155.

16. *Id.* at 156-57.

17. See, e.g., *id.* at 18 (plaintiff's lawyer characterized as a "streetfighter" while the defendant's attorney is the "lone eagle").

18. For instance, during the closing arguments, the plaintiff's attorney repeatedly interrupted opposing counsel and ultimately was castigated by the presiding judge. *Id.* at 164.

19. The defense attorney is portrayed as being so considerate that he called a recess because he noted that the plaintiff appeared tired. *Id.* at 73.

20. *Id.* at 99. Dr. Bernard Rubin, an Illinois psychiatrist, testified that the defendant deviated from the accepted standard of care when she failed to prescribe an antipsychotic or an antidepressant. *Id.* Without hesitation, the expert concluded that Dr. Charles' mistreatment of the plaintiff was the proximate cause of her suicide attempt. *Id.*

pert, on the other hand, stated that medication was properly withheld.²¹

By far the most riveting portion of the story is the defendant's own account, as illustrated by her notes, of the therapy sessions and what they revealed about Terry Walker's personal and family life. The chronicle of Terry's analysis is recreated effectively throughout the work and includes reconstruction of conversations which took place during the actual therapy sessions.²² In an interesting and realistic manner the authors outline the progression of Terry Walker's therapy. The reader is involved in this doctor-patient relationship from the day Miss Walker first enters Dr. Charles' office to the date of their final therapy session.²³ In this manner, the authors successfully convey the thoughts and feelings of both doctor and patient during Terry's analysis.

In the final chapters of *Defendant*, the authors quite naturally express their disenchantment with the medical malpractice Bar and the entire legal profession. The authors argue that the present medical malpractice "crisis" is a result of conflicts between the legal and insurance systems rather than from the present standards of medical practice.²⁴ Also, they state that any attempts at self-policing by the medical profession itself have been thwarted by the legal system.²⁵ Physicians who have been sued for malpractice become "constrained and cautious" in their treatment of patients.²⁶ Ultimately, according to the authors, the patient is the one who suffers as a result of a malpractice claim.²⁷ Although one can understand and sympathize with Dr. Charles, medical malpractice is not that black and white. It is one of the fastest developing fields of law and one of the most dreaded by the medical profession.

Dr. Charles and her co-author make the unfair statement that lawyers identify any bad medical outcome with medical negligence.²⁸ They

at 100.

21. *Id.* at 113. The defendant's expert testified that drugs were generally overused in the treatment of patients suffering from a borderline personality disorder. *Id.*

22. *See, e.g., id.* at 141-42.

23. *Id.* at 3-4, 146-47.

24. *Id.* at 206-08.

25. *Id.* at 203. Specifically, the authors state that medical groups are unable to remove incompetent physicians because of resulting litigation. The accused doctors are often successful in proving that removal deprives them of "their basic right to earn a living." *Id.*

26. *Id.* at 212. After being sued for malpractice, 48.9 % of the physicians will refuse certain types of patients and 42.9 % were considering early retirement. *Id.* at 218 (citing Charles, *Sued and Non-Sued Physicians' Self-Reported Reactions to Medical Litigation*, 142 AM. J. PSYCHIATRY 437-40 (April 1985)).

27. *Id.* at 214-16.

28. *Id.* at 190. The authors state that the legal definition of medical negligence has

further state that the public (*i.e.* all persons who are “non-health care workers/professionals”) has “come to regard health care as a right” that creates the correlative right to sue when it is not obtained.²⁹ This reviewer’s response is that medical malpractice is not solely the invention of greedy trial lawyers and a public sated with television cures. If it were, it would not present the social, legal, and medical problem that it does. Unfortunately, medical malpractice has resulted from a medical and social problem with which the medical profession itself has not dealt effectively. Indeed, to deny its existence and attempt to legislate the action out of being is to foreclose any possibility of a reasoned solution to a very real problem. As studies such as the one by the Cornell Medical School have illustrated, there are a substantial number of unnecessary operative procedures being performed each year, as well as many necessary procedures that fail to conform to the standards of the medical profession itself.³⁰ Denying the injured parties redress through the judicial system cannot be the answer.

come “to include the behavior of anybody associated in any way with an adverse medical result.” *Id.*

29. *Id.* at 188.

30. See Brody, *More Screening for the Last Word on Second Opinions*, N.Y. Times, Feb. 8, 1981, § 4, at 7, col. 3.

