for their exercise. Formal recognitions – laws, regulations, policies – may assist but do not suffice on their own. The thrust of our exploratory report into the making of psychiatric advance directives was twofold. First, when presented with the opportunity and a modicum of support, many service users prove eager and able to participate in planning for future treatment eventualities: taking inventory, lining up support and laying out preferences. But second, the invitation to draft needs to be a credible one. At least in the context we studied, the system of care appears to be woefully out of step with that readiness and ability.

In line with the first, we would join Dr Zinkler in welcoming all manner of collaborative arrangements and shared decision-making that represent practical steps towards a progressively more transparent and reciprocally accountable service system. In line with the second, however, we would underscore the formal importance of one critical ingredient in the programme that Henderson *et al* (2004) studied: the appointment of a designated third party to ensure that crisis plans are faithfully integrated into treatment.

Such positions serve two purposes. They are strategic mechanisms for expediting the formal agreement to negotiate mutually acceptable treatment plans, bridging the power differential and ensuring that each side is heard. They are also the administrative equivalent of 'earnest money' – the collateral or upfront investment that ratifies an institutional commitment. Once standardised, that small modification has the potential to build the necessary momentum to alter 'the way we do business here', which makes for sustainable change.

M. Amering Department of Psychiatry, University of Vienna, Austria
P. Stastny Bronx Psychiatric Center, New York, USA
K. Hopper Nathan S. Kline Institute for Psychiatric Research, New York, USA. E-mail: Hopper@nki.rfmh.org

Doctors and lawyers

Sarkar & Adshead (2005) present important issues regarding the nature of the relationship between psychiatrists and patients in the process of judicial hearings, focusing particularly on the conflict that may arise from differing roles. There are two points I wish to add.

First, the outcome of hearings is very much a result of the behaviour of all players present, and there are ways as clinicians we may work to reduce harm that may arise from them. During reform of the Mental Health Act in New Zealand in the early 1990s, very similar dynamics emerged between judges, counsel for patients (always provided in New Zealand), review tribunal members and psychiatrists acting as responsible clinicians under the Act. To address these difficulties, the New Zealand Law Society recommended that counsel take on a 'best outcomes' approach, assisting the patient to achieve the best they could, rather than strictly following the letter of the patient's instructions (McCarthy & Simpson, 1996). Such recommendations decreased damaging adversarial exchanges in committal and tribunal hearings, because of an awareness that 'juridogenic' harm could be long-lasting, and that such hearings were not criminal ones.

We also noted that the behaviour of clinicians could have a significant impact on how coercive or procedurally fair committal processes were for the patient. It came to be recommended that the psychiatrist shares their report to the tribunal with the patient and their counsel, and works through the issue of agreement or disagreement with the patient in advance of the hearing (Ministry of Health, 1997). This appears to have reduced possible negative impacts on the therapeutic relationship and may increase the patient's satisfaction because of their sense of having received an opportunity to voice their opinion and scrutinise the basis of their detention. Such an outcome can be achieved if the process is managed openly by psychiatrists, and in an inquisitorial but non-confrontational manner by legal officers.

Second, civil committal is not simply a loss of liberty, but a focused loss of liberty whose purpose is the restoration or maximising of autonomy, for a person whose competence is lowered by mental illness. Liberty is therefore restored through detention and treatment, unlike other forms of state-mandated detention (e.g. detention that is motivated as punishment and public protection). Sadly, civil committal is increasingly being misused overtly or covertly for primary public protective purposes alone, in the absence of a competence-lowering disorder. One senses that some of Sarkar & Adshead's concern relates to the committal hearings for the latter group of 'patients'. In 'dangerous and severe personality disorder' one is acting for security needs, with limited therapeutic health impact. In 'dangerous and severe schizophrenia' one is acting for the health needs of the patient, if the risk is symptom driven, and protecting the public is secondary. The due process protections necessary for these two different uses of civil committal may indeed need differing hearings.

McCarthy, S. & Simpson, A. I. F. (1996) *Running a Case Under the Mental Health Act 1992 and Related Legislation.* Wellington: New Zealand Law Society.

Ministry of Health (1997) *Guidelines to the Mental Health (Compulsory Assessment and Treatment) Act 1992.* Wellington: Ministry of Health.

Sarkar, S. P. & Adshead, G. (2005) Black robes and white coats: who will win the new mental health tribunals? *British Journal of Psychiatry*, **186**, 96–98.

A. I. F. Simpson Auckland Regional Forensic Psychiatry Service, PB 19986, Avondale, Auckland, New Zealand.
E-mail: sandy.simpson@waitematadhb.govt.nz

One hundred years ago

Dr. KRAFFT-EBING'S *Textbook of Insanity* [*Textbook of Insanity*. By Dr. von R. Krafft-Ebing, late Professor of Psychiatry and Nervous Diseases in the University of Vienna. Translated from the last German edition by Professor C. G. Chaddock, M.D., of St. Louis University, with introduction by Frederick Peterson, M.D., President of the New York State Commission in Lunacy. Philadelphia; F. A. Davis and Co. 1905. (Demy 8vo, pp. 654. 4 dollars.)] has enjoyed such wide popularity,