

AMERICAN CIVIL LIBERTIES UNION OF VIRGINIA
1205 W. Main Street, Richmond, Virginia 23220

MENTAL HEALTH PROJECT

THE PROBLEM

Criminal Commitments - Defendants suspected of being incompetent to stand trial and charged with crimes, including minor offenses, are committed to Southwestern State Hospital in Marion or Central State Hospital in Petersburg for observation under Chapter 19.1, Sec. 228 of the Statutes of Virginia. If the defendant is found competent to stand trial, he is returned. If he is not competent to stand trial he remains in the hospital until he is competent with no periodic reviews required by the statutes of Virginia. The result has been that defendants have been "lost" for long periods of time, no matter how trivial the criminal charge might be against them.

The officials at Central State make every effort to get the defendants out but, up until now, there have been problems at Southwestern State. Because of the work load at Southwestern State, if the defendant "passes" in 90 days, he is returned to court. If not, he is reviewed the first year and if he does not pass is placed on the shelf.

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THE VISIT

On February 7, 1972, Dr. Kelly Shaver of William and Mary, Dr. Robert Ellsworth of the VA Hospital in Salem, Bob Berland and Gilbert Wells, Esquire, visited Dr. Allerton in Richmond and he brought out his top staff to talk with them. He was more than cooperative and asked what he could do for them and what they could do for Mental Health in Virginia.

They were told of worse abuses of justice than they were aware of, i.e., a Commonwealth's Attorney, accused of embezzlement, who was held 17 years in a mental hospital without trial because the judge had a grudge against him.

HABEAS CORPUS

Habeas Corpus has been found to be ineffective. The Virginia Statutes require that the petition must be brought in the county or adjoining county where the hospital is located. The local judges run the petitions through 20 or 30 at a time and all are dismissed. A number of inmates have gone as far as the 4th Circuit Court of Appeals and only one had any success at that level. In the case of Miller v. Blalock 356 F. 2d 273 (1966) the Fourth Circuit Court of Appeals said that Chapter 19.1, Sec. 228 of the Statutes of Virginia was unconstitutional on its face because it permits a person to be confined in an institution for the

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criminally insane for an indefinite period of time without notice and without a hearing. The court, however, did not release Sam Miller and permitted the Commonwealth of Virginia to wait three years until it got around to a 3-doctor Sanity Commission.

THE PROCEDURE

The best hope for liberation of defendants held more than a year without trial is a cooperative effort with the "good guys" in the system comprising:

(1) having the Commonwealth's attorney and/or judge in the county where the defendant was originally charged drop the charges by having the Assistant Attorney General or the Superintendent of the Hospital request it along with the ACLU; and then

(2) having the defendant transferred to the civil side of the hospital or a VA hospital where he can get some treatment.

THE CASES

Mr. A was sent to Central State Hospital by Judge B of Williamsburg after a judicial hearing wherein he was found to be retarded. The officials at Central State found that Mr. A had a low I.Q., but was not retarded and tried

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to have him sent back to Williamsburg. After being held about a year, an Assistant Attorney General was able to talk Judge B into returning Mr. A to society.

Mr. C was originally sentenced to 132 years for burglary in Norfolk. Mr. C has been yo-yoed between Central State Hospital and the C block at the State Penitentiary since 1967. The staff at Central State would say that Mr. C was past his psychotic phase and he would then be sent to the State Penitentiary. The chief guard at the State Penitentiary would then keep Mr. C in isolation until he went psychotic again and then ship him back to Central State. On appeal to the 4th Circuit Court of Appeals, Mr. C's original conviction was set aside, the Commonwealth's attorney has dropped the charges against him and he is now receiving treatment in the civil section of the Central State Hospital awaiting his release.

Mr. D was arrested in 1958 for assaulting his mother and father. His father subsequently died and probably as a result of the assault. Mr. D has filed Habeas Corpus in many courts of Virginia. In 1966 the Fourth Circuit Court of Appeals ordered that his committment was invalid and in 1969 a Sanity Commission committed him. He is now past his psychotic phase and will be returned to the Corporation Court in Norfolk for trial on March 29, 1972.

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Mr. E was arrested July 19, 1958 for rape and murder and has been held continuously in the Central State Hospital because he is incompetent to stand trial. Mr. E. was arrested in Portsmouth, Virginia and Judge B of the Police Court sent him off for observation. His attorney is dead and he has filed numerous Habeas Corpus petitions on his own. When they visited Mr. E in September of 1971 he appeared to be improving but now he has relapsed into a psychotic state. The Commonwealth's Attorney is not inclined to drop the charges against him.

Mr. F was arrested June 25, 1967 for robbery and was sentenced to ten years. He has been in and out of Central State Hospital because of drug addiction and attempted suicide. While in prison he has prepared a manuscript which discloses how drugs are obtained in the prison system and he desires to have his manuscript published. At the moment Mr. F should be eligable for parole but because he is held in Central State Hospital, the Parole Board will not review his case. The head of the Parole Board has been contacted regarding the possibility of having Mr. F paroled to the Drug Rehabilitaiton Center located at Central State Hospital. Unfortunately, it does not look like this can be accomplished.

Mr. G was arrested about March of 1969 in Leesburg, Va., and charged with incestious relationships with his two daughters. Mr. G states it is a put-up job and

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that his wife has gotten rid of him in this way. As a veteran he is eligable for treatment in the VA hospital but cannot receive this treatment as long as charges are pending against him. The Commonwealth's attorney has refused to drop the charges against him.

Mr. H. was arrested February 1968 and charged with armed robbery and sentenced to seven years. He arrived at Southwestern State Hospital about October 1969 after an attempted suicide. Whenever the hospital attempts to transfer him back to the prison system, he again attempts suicide because he states that upon return to the prison system he must be isolated for from two to three weeks and he would rather die than have to go through this isolation. Mr. H will probably serve the full seven years of his sentence at Southwestern State Hospital.

Mr. I was arrested April of 1970 and charged in the Bedford County Circuit Court with "curse and abuse of his mother-in-law. Mr. I is a high manic and cannot obtain the proper therapy to keep him out of the manic phase. His wife is trying to get a divorce and does not want him back. The Commonwealth's attorney, however, has agreed to drop the charges against him by a letter dated February 16, 1972 so that Mr. I can return home to the funeral of his grandmother.

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Mr. J was arrested in Chesterfield County in 1944 and charged with attempted murder. He has been at Southwestern State Hospital since his arrest. Although 79 years old, Mr. J is in good physical condition and we also believe he is in good mental condition. By a letter, the Acting Assistant Superintendent at Southwestern State Hospital has informed the Commonwealth's attorney that "I see no reason why the charges could not be nolle prossed and the patient transferred to Central State Hospital." He was sent here from Chesterfield County at a time when we had segregation and, therefore, should really be in Central State Hospital. He is apparently quite paranoid regarding public officials, particularly Commonwealth attorneys and judges, but seems to have no other ideas, at this time, of persons working against him except the above mentioned ones. We believe this letter will result in the charges being dropped against Mr. J. A copy of this letter will appear in the list of exhibits.

Mr. K was arrested in November of 1923 and charged by the Roanoke County Circuit Court in Salem with murder. He has been at Southwestern State Hospital since April 26, 1924. Mr. K has filed Habeas Corpus petitions in the Supreme Court of Virginia, U.S. District Court of the Western District of Virginia and the U.S. 4th Circuit Court of Appeals.

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All of these have been denied. Mr. K desires constructive work outside the prison and would like to be transferred to Goodwill Industries.

Mr. L was arrested November 22, 1969 and charged in the Arlington County Court with trespassing. He was committed to Southwestern State Hospital in December 1969 for observation and has been "lost" ever since. Judge B of the Arlington County Court was contacted regarding this case and the Judge promised to have the charges dropped against the defendant so that he could be transferred to the civil side of the State hospital. The status of this case was checked with the Judge's secretary on March 9th and she reported that it was the intention of the Judge to contact the Commonwealth's attorney regarding dropping the charges.

Mr. M is also being held in Southwestern State Hospital after being sent there for observation by the Arlington County Court some time in 1970. Judge B also agreed to look into his case.

Mr. N was also "lost" at Southwestern State Hospital after having been arrested for burning his mattress in Arlington County some time in 1968. It appears that Mr. N is an alcoholic and is eligable for veteran's benefits and treatment in a VA hospital. Judge B is also looking into this case.

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Our emphasis at the moment is liberating those people being held more than one year without trial. After we have thinned out the ranks of those being held at Southwestern State Hospital, we then propose to emphasize the inequities in the civil commitment procedures.