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- - - - - - - - to provide information and to stimulate discussion. Not to be attributed as official FAS policy unless specifically so indicated.

HEARINGS ON CIVIL RIGHTS OF MENTALLY ILL

The following is a series of excerpts from testimony before the Subcommittee on Constitutional Rights of the Committee on the Judiciary of the Senate, by Arthur Elson Cohen, on November 18, 1969. He spoke as a representative of the American Civil Liberties Union. FAS members in medical fields may find this subject of particular interest, since, as this testimony points out, such large numbers of people are detained on the opinions of experts, and such expertise involves social and political philosophy as well as scientific competence. The Senate hearings began on November 4.

We have traditionally thrown out any noisome ingredients [in the society] by doing just that: extruding them from our presence. A favorite American remedy for solving its ills has been segregation of the persons allegedly causing our troubles into ghetto neighborhoods, internment camps, and reservations; prison and juvenile institutions; poor houses; and last but far from least, large isolated mental institutions. At the deepest level, many hope that these people will stay where they have been put. But on the surface, we mouthe platitudes like americanization, youthful phases of growth, integration, rehabilitation, inpatient treatment and the like. Some of the more trusting and less informed from among us quite believe in the restorative power of these platitudes. Others among us have seen too much and sadly, know better. We know of the mouthed but unfulfilled promises. We know of the waste of precious human resources by making people into inmates living out too much if not all of their lives in essentially closed, ignored and inadequate compounds. We know of the chronicity which besets both the kept and their keepers. We know of the irreversability of the insistent process of dehumanization which characterizes the lives of almost all confined peoples. And we know of the life-long stigmatization which dogs those of the confined who eventually are released back into society. And this violence by one group of men against other groups and individuals is almost always carried out under full legal sanction and authority. It has been remarked that the humaneness of a civilization can be measured in direct relation to the way it treats its criminal offenders and its mentally ill persons. In short, its most serious deviants. Looking closely at our criminal rehabilitation and mental health treatment programs, America scores very low both on an absolute scale and also, more significantly, in relation to other nations and cultures.

Enough said. Those in power will attempt to find whatever legal authority they deem necessary to continue this extrusion, excision, and confinement process. Much of what has been contained in recent attempts to enact omnibus federal crime legislation in the name of law and order represents another attempt to beef up this extrusion process, to cut out the supposed cancers in our midst. Now the same process seems to be creeping into the mental health field with the proposed amendments to the D.C. mental health law. Mental health confinement can represent one of the most sophisticated ways to remove people who are different,

(Continued on page 4)

NIXON ANNOUNCES NEW CBW POLICY

Statement by the President. November 25, 1969

Soon after taking office I directed a comprehensive study of our chemical and biological defense policies and programs. There had been no such review in over 15 years. As a result, objectives and policies in this field were unclear and programs lacked definition and direction.

Under the auspices of the National Security Council, the Departments of State and Defense, the Arms Control and Disarmament Agency, the Office of Science and Technology, the intelligence community, and other agencies worked closely together on this study for over 6 months. These Government efforts were aided by contributions from the scientific community through the President's Science Advisory Committee.

This study has now been completed and its findings carefully considered by the National Security Council. I am now reporting the decisions taken on the basis of this review.

Chemical Warfare Program

As to our chemical warfare program, the United States:

—Reaffirms its oft-repeated renunciation of the first use of lethal chemical weapons.

—Extends this renunciation to the first use of incapacitating chemicals.

Consonant with these decisions, the administration will submit to the Senate, for its advice and consent to ratification, the Geneva Protocol of 1925 which prohibits the first use in war of "asphyxiating, poisonous or other Gases and of Bacteriological Methods of Warfare." The United States has long supported the principles and objectives of this Protocol. We take this step toward formal ratification to reinforce our continuing advocacy of international constraints on the use of these weapons.

Biological Research Program

Biological weapons have massive, unpredictable and potentially uncontrollable consequences. They may produce global epidemics and impair the health of future generations. I have therefore decided that:

—The United States shall renounce the use of lethal biological agents and weapons, and all other methods of biological warfare.

—The United States will confine its biological research to defensive measures such as immunization and safety measures.

—The Department of Defense has been asked to make recommendations as to the disposal of existing stocks of bacteriological weapons.

In the spirit of these decisions, the United States associates itself with the principles and objectives of the United

(Continued on Page 2)

NEW CBW POLICY—continued

Kingdom Draft Convention which would ban the use of biological methods of warfare. We will seek, however, to clarify annoying, or threatening to us physically or psychologically. Almost every type of human behavior conceivable has found its way into the broad brush strokes of the American Psychiatric Association's Diagnostic and Statistical Manual with specific provisions of the draft to assure that necessary safeguards are included.

Neither our association with the Convention nor the limiting of our program to research will leave us vulnerable to surprise by an enemy who does not observe these rational restraints. Our intelligence community will continue to watch carefully the nature and extent of the biological programs of others.

These important decisions, which have been announced today, have been taken as an initiative toward peace. Mankind already carries in its own hands too many of the seeds of its own destruction. By the examples we set today, we hope to contribute to an atmosphere of peace and understanding between nations and among men.

(Weekly Compilation of Presidential Documents, 1 December 1969.)

The President's Remarks. November 25, 1969

I have just completed a meeting with the legislative leaders of the House and the Senate, the Foreign Relations and the Armed Services Committees.

In that meeting, we discussed some major initiatives in the disarmament field, initiatives that are the result of decisions that have been made after a Security Council meeting that was held last week.

I would like to summarize the decisions that have been made as a result of the Security Council meeting and the meetings with the legislative leaders, and also to indicate the actions that we hope will be taken by the Senate to affirm the decisions that the administration has made.

The United States is taking two steps today toward advancing the cause of peace and reducing the terror of war. Since this administration took office, the National Security Council has been reviewing our policy regarding chemical warfare and biological warfare. This has been the first thorough review ever undertaken of this subject at the Presidential level.

I recall during the 8 years that I sat on the National Security Council in the Eisenhower administration that these subjects, insofar as an appraisal of what the United States had, what our capability was, what other nations had, were really considered taboo.

And it was felt when we came into the administration that we should examine all of our defense policies and defense capabilities, because it has always been my conviction that what we don't know usually causes more fear than what we do know.

What we have tried to do in this examination by the Security Council, an unprecedented examination, is to find the facts and to develop the policies based on the facts as they are, rather than on our fears as to what the facts might be.

On the basis of this review, I made a number of decisions which I believe will sharply reduce the chance that these weapons, either chemical or bacteriological, will ever be used by any nation.

First, in the field of chemical warfare, I hereby reaffirm that the United States will never be the first country to use chemical weapons to kill. And I have also extended this renunciation to chemical weapons which incapacitate.

I am asking the United States Senate for its advice and consent in the ratification of the Geneva Protocol of 1925, which prohibits the first use in war of chemical warfare weapons.

Since 1925, this proposal has been affirmed by the United States as a matter of policy, but never approved by the United States Senate.

And I have asked the leaders this morning to expedite action in this field.

These steps should go a long way toward outlawing weapons whose use has been repugnant to the conscience of mankind.

Second, biological warfare, which is commonly called germ warfare—this has massive, unpredictable, and potentially uncontrollable consequences. It may produce global epidemics and profoundly affect the health of future generations.

Therefore, I have decided that the United States of America will renounce the use of any form of deadly biological weapons that either kill or incapacitate.

Our bacteriological programs in the future will be confined to research in biological defense, on techniques of immunization, and on measures of controlling and preventing the spread of disease.

I have ordered the Defense Department to make recommendations about the disposal of existing stocks of bacteriological weapons.

This program of research and development, incidentally, can have a very important byproduct for the United States and for the world, because we thereby, we think, can break new ground with regard to immunization for any kind of diseases that might spread either nationally or internationally.

The United States positively shall associate itself with the principles of the Draft Convention prohibiting the use of biological weapons of warfare presented by the United Kingdom and the U.N. Eighteen-Nation Disarmament Conference on August 26, 1969.

Up to this time, only Canada has indicated support of this United Kingdom initiative.

The United States, as of today, now indicates its support of this initiative and we hope that other nations will follow suit.

Mankind already carries in its own hands too many of the seeds of its own destruction. By the examples that we set today, we hope to contribute to an atmosphere of peace and understanding between all nations.

(Weekly Compilation of Presidential Documents, 1 December 1969.)

FAS NEWSLETTER

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Chairman ..... John Rasmussen

The FAS Newsletter is prepared in Washington.
Editor: Judith Eckerson.

The FAS, founded in 1946, is a national organization of scientists and engineers concerned with the impact of science on national and world affairs.

Sources of information (given in the articles in parentheses) are for further reference. Items reprinted directly from other publications are designated as such in an introductory paragraph.

SUGGESTIONS REGARDING ORGANIZATION OF THE FAS

Is the FAS still relevant? Does it—or can it—do anything better than other existing or yet-to-be-formed organizations? If so, what?

We think that the FAS can, in fact, make a unique contribution, but that its role requires some clarification if the current state of decline is to be reversed. The public image of the FAS, even among those who are rather familiar with it (such as the members) is fuzzy. For the proposed dues-doubling and drive for new members to be successful, a more clear-cut description is needed than appears in the blue recruiting folder.

In the general area of "concern with the impact of science on national and international affairs," one can identify three rather distinct services (apart from self-education) that the FAS has provided in the past. We propose that those functions are in fact valuable, that they are not duplicated by other groups, that they should be greatly expanded, and that they should be more explicitly recognized both in the recruiting literature and in the way the members think of the organization.

The three functions are:

(A) Lobbying in Washington for specific governmental actions that the FAS considers to be in the long-range national interest.

(B) Providing non-partisan scientific information to members of Congress and the Administration.

(C) Education of local governments and the public in some of the specific areas (civil defense, test ban, ABM, reactor siting) where science is having an impact on national and international affairs.

The first two functions have been performed by the national office, for the most part, which should continue to coördinate such activities. The third has largely been due to the efforts of local chapters—again probably the natural and proper state of affairs.

Regarding (A), which is after all our *raison d'être*, whatever lobbying effectiveness the FAS has had has been due principally to three factors: (1) The causes for which it lobbies are unrelated to (if not counter to) the personal financial and power interests of the members or spokesmen. (2) The spokesmen have been reasonable men and reputable scientists. (3) There has been at least some measure of grass-roots support from rank-and-file scientists.

All three of those factors are important, and must be preserved or strengthened. It would be a mistake, for instance, for the FAS to concern itself with scientists' salaries. A more difficult problem in this area is the appropriate FAS reaction to the current retrenchment in government funding of scientific research. Probably what the FAS should do here is to emphasize the specific work that needs to be done, while carefully avoiding blanket advocacy of "more money for science (i.e. for scientists)".

Increased effectiveness of the FAS will have to be based on increased membership—that is, on being able to speak for a larger fraction of the scientific community. The effect of increased membership will be threefold: (a) The stark fact that more scientists are represented will lend more weight to its pronouncements. (b) The financial condition will be improved. (c) It will be easier to persuade nationally known scientists to work with and within the FAS.

In its recruiting, the FAS should make a concerted appeal to biologists and social scientists, in view of the increasingly interdisciplinary nature of current problems.

On the assumption that effective recruiting and a reorganized national office will henceforth cause the FAS to grow and prosper, we propose that a major effort be made to amplify the consulting services that the FAS makes available to Congress: that the FAS be, and advertise itself as, willing and able to be a middle-man in putting individual Congressmen in touch with authorities who can answer their questions regarding known facts in as many areas as possible. This will have multiple benefits:

(1) More Congressmen will realize that they individually have access to scientific information—and hopefully more will realize that such information is relevant to the way they vote.

(2) A general increase in Congressional appreciation of scientific considerations can only be to the good.

(3) Those Congressmen who have received satisfactory service from the FAS—and also some of their colleagues who have not sought such information themselves—will listen with increased respect when FAS spokesmen are lobbying for specific causes.

The briefing-breakfast type of activity that the FAS has occasionally conducted in the past is one example of a very useful combination of the consulting and lobbying functions. Perhaps, with increased resources, such seminars could be made more regular. It would be well for Congressmen to be aware that the FAS exists all the time, not just when some arms-control issue is coming to a head.

A resolution, intended to help implement the above recommendations, follows:
Motion proposed [and passed] at FAS national council meeting, Sept. 7, 1969:

It is moved that the FAS National Council (1) approve in principle the idea of establishing standing (national and local) *Committees of Experts* in a variety of scientific (including sociological) areas, and (2) take steps to encourage the formation of such Committees of Experts. The Committees are to be available to answer questions that might be posed by members of Congress or by other Government officials, and to provide spokesmen to appear before formal Congressional committees or informal groups of Congressmen. Necessary travel and lodging expenses connected with such appearances are to be reimbursible by the FAS.

Each Committee wil be formed, if possible, around at least one person of nationally recognized stature in an area relevant to the Committee's field of interest. The Committees will be expected to keep abreast of current developments in their areas of competence. They will be encouraged, although not obligated, to do original work, either on their own volition or in response to queries.

The FAS National Office will advertise to Congress those services that it can provide.

* * *

Some examples of areas that could support one or more such Committees are:

Proliferation and arms control
Effects of nuclear weapons
Ecological impact of pesticides
Function of national laboratories
Radiation and infant mortality
Implications of the SST
Science policy for the 70's
CBW
Genetic engineering
Reactor safety and siting

Contributed by Stanley L. Ruby, George S. Stanford, Alexander De Volpi, of the Chicago Chapter.

ANNOUNCEMENTS

The Coalition on National Priorities and Military Policy, of which FAS is a member organization, has published a financial statement (as of November 1969) which indicates that it is operating in the red and is in need of contributions if it is to continue operating with any effectiveness. One employee has worked 12 weeks without pay in the hope that a change in the financial condition would make it possible to pay the back wages. The address of the organization is 100 Maryland Avenue, N.E., Washington, D.C. 20002.

NEWS ITEMS

The American Psychological Association has again expressed its opposition to the Department of Health, Education and Welfare's practice of security clearance procedures for scientists serving on study sections, grant review boards and scientific panels.

In a letter to HEW Secretary Robert H. Finch, APA President George W. Albee stated: "A procedure that 'blacklists' a scientist without his knowledge and without giving him an opportunity to answer the allegations made is completely contrary to the American doctrine of due process."

Albee pointed out that "such blacklisting is particularly onerous because these people serve on panels dealing exclusively with non-sensitive matters. It thus deprives the government of the services of a large number of the most distinguished scientists in the country. Although some outstanding psychologists are included in the blacklists recently made public, the concern of the APA is directed to the entire system of 'suitability' procedures for *all* scientists."

The APA voiced similar concerns about the blacklisting last spring in a letter to Finch. Finch responded that the security investigations are designed "to provide fair, impartial, and equitable handling of these matters."

Albee called Finch's reply "totally unacceptable to our Association." He explained that the APA's Board of Scientific Affairs interviewed representatives from a number of HEW departments and concluded that "these practices could be abolished through administrative reinterpretation of the nature of the positions of part-time scientific consultants to the government."

The same letter was sent to Sen. Warren Magnuson, chairman of the Senate Subcommittee on Labor, Health, Education and Welfare and Related Agencies of the Senate Committee on Appropriations, and Robert E. Hampton, chairman of the Civil Service Commission. (*American Psychological Association news release, 3 December 1969.*)

The Senate voted $1 billion to clean up America's water supply—the largest anti-pollution expenditure ever approved. But the administration, which asked for only $214 million for matching grants with the states for water treatment plants, cannot be expected to spend the larger amount. The House of Representatives voted $600 million for the anti-pollution drive. The Senate measure, adopted on an 86-to-2 vote, now goes to a conference committee to work out a compromise sum. The final decision will require routine approval of both houses. The pollution control money was voted as part of a $4,993,428,500 appropriation for public works projects and agencies.

(*Washington Post, 13 November 1969.*)

Kyodo, the Japanese news agency, has reported that United States B-52 bombers with hydrogen bombs have been on regular patrol missions near Communist China and North Korea. It said the planes were based in Okinawa. Kyodo, quoting "reliable sources in Okinawa and here in Japan" said that eight-engine bombers had been placed on 24-hour alert. The sources believed that at least four of the B-52's at Kadena Air Base were assigned to carry hydrogen bombs. It has been reported that nuclear weapons are being stored in Okinawa and that B-52's had been stationed on the island since about 18 of them arrived at Kadena last year. The planes had flown in from Guam, ostensibly to take refuge from a typhoon that was approaching at the time. But they remained on Okinawa and were said to have been engaged in bombing missions over Vietnam. (*N.Y. Times, 24 October 1969.*)

The United States and Canada have announced separately that they will greatly reduce most domestic uses of DDT within the next year or two. An announcement from Ottawa said measures would be taken to reduce the use of the pesticide by 90 percent next year. The number of cultivated food plants on which it may be used will be reduced from 62 to 12 beginning January 1. Also, the tolerance levels in various foodstuffs are to be substantially reduced. Prime Minister Trudeau, making the announcement in the House of Commons, said the Government was acting on the basis of studies showing effects of DDT on birds and fish. Long-term effects of the pesticide on human life are still unknown, he said. The Prime Minister noted that the Canadian diet contained on the average only one-fifth of the maximum daily intake of DDT (0.7 milligrams) accepted as safe by the World Health Organization. The Nixon administration announced nine days later that it intends to phase out most domestic use of DDT over the next two years, curbing the further buildup of the poisonous substance in food products and human bodies. HEW Secretary Robert H. Finch, who made the announcement, said restrictive action may also be taken against other so-called "hard" pesticides that have a long-lived toxic effect and can build up a residual poison in plants and animals. (*N.Y. Times, 4 and 13 November 1969.*)

HEARINGS—(Continued from Page 1)

its nomenclature of mental disorders. To the most learned and experienced phychiatrists, all men are normally capable of almost all the symptomatology described in the Manual. What is mental illness in one culture may be mental health in another. And the same of course applies to subcultures, of which there are many in the United States. But within our own borders, what qualifies one man for the label of "within normal limits" and another as "mentally ill" has to do with his total personality, the complex of his behavior traits over time, and his ability to function in everyday life. It is not that he exhibits on occasion each of the symptoms in the Manual. It is rather that he exhibits one or more of them in the extreme, either in magnitude or over a period of time or both, and that this seriously impairs his abilities to function. Thus, we must write our legal tests carefully for that mental illness sufficient to justify confinement through nonvoluntary commitment procedures. We must devise exacting means by which to insure that the notion of "mentally ill and commitable" is available only when needed psychiatrically and not to serve some all-encompassing paranoid construct of public safety. To so limit the test for commitability will of course mean that some unsafe persons will not be picked up by the mental health screen. So be it. We have other screens for doing that. But no matter what the screen, mental health, criminal law, public welfare, the waters should not be muddied by any inordinate embracing of preventive detention. For life itself is unsafe, risky. If we attempt to provide absolutely for the public safety, we will lose too much else in the process. No such concept can be properly implemented except in a relative sense. And ironically, any attempt to provide absolutely for the public safety must end by threatening that very safety itself. It is no mistake that the first and grandest symbolic act of the French revolution was the storming of the Bastille. Up until then, France had been kept safe from the machinations of the political and other prisoners

who were confined there. Those very acts of confinement helped to inflame the people to revolutionary acts.

For those in backlash, the actions of student activists, black nationalists, Mexican-American grape pickers can be viewed as mentally ill by those who would rather throw out these ingredients than to work with or at least tolerate this dissent and these forces for change. Why, they might say, these kids and these minorities are acting out; they're paranoid; they're hooked on marihuana and other drugs; they're sex maniacs; they're conducting themselves in a bizarre and disorderly manner by holding protest demonstrations and marches which they try to pass off as the right of each citizen to petition his government and peaceably assemble. These kids and these minorities, or at least their leaders, are seen as mentally ill and in need of treatment. And since they won't seek such treatment voluntarily, we'll see to it that they're committed. Others are more cold-blooded and result-oriented in redesigning the system to throw out these ingredients. They fully appreciate the vagueness of many terms of art and concepts used by mental health professionals. They know or maybe don't care that these kids and minorities aren't mentally ill by any reasonable standards, but that the mental health screen is a much more convenient and devastating one to use than the criminal screen. After all, it's hard to pin serious criminal acts on these people, but we all know that they're likely to injure themselves or others if not committed. And, so the argument goes, anyone likely to produce such injury must be mentally ill. Therefore commitment, or at least the threat of it can proceed apace. That should help restore the order that we've always had in America. Such is the thinking of many of those in the midst of backlash.

Thus we witness the current attempt to broaden and ease up the legal authority to commit mentally ill persons in the District of Columbia in this session of the Congress, only five years after a new mental health law was enacted for the District by that same Congress. Why is this so important? After all, the District of Columbia is only one small local jurisdiction in this big country of ours. That is true, but any Congressional legislative action on the District of Columbia must be endorsed by a majority of the whole Congress in which sit elected representatives from all over the country. This provides great visibility for any local D.C. laws for many other eyes to see. Also, the 1964 law which the current proposals seek to amend was intended as a model for the country. If that model is now to be changed by amendment, perhaps this example will be followed other places as well. Finally, D.C. is important because, as the seat of the federal government, it is host to many of the demonstrations and protests of the young and of the minority groups. These are precisely the kinds of activities for which mental health laws could be used and abused as means for preventive detention.

Yes, but we are told not to forget that the proposed amendments are merely "essentially procedural" in nature, according to the United States in September before the Senate Committee on the District of Columbia, and in October before the same committee of the House of Representatives. In observing the legislative process, one learns that a most revealing expression to look for in assessing the importance of proposed legislative changes is the one which tells us that the changes are merely procedural. Whenever an important public figure invokes this expression, he is usually referring to another one of the many attempts in a long tradition in our country to make significant inroads upon the civil liberties of individual citizens. After all, it has to be done quietly. How else can one mask and conceal its real character and thus minimize any controversy?

Finally, the argument is: these amendments are needed to enhance administrative convenience and to cover special cases which were not covered under the former law. To this, one can only reply that administrative convenience must always be weighed against preservation of individual liberty, and that to legislate for a few special cases opens up the possibility of overzealous widespread application to the more ordinary, not-so-special cases.

It is a truism that the federal and state governments have at their disposal considerable machinery and staff to enforce the laws. This includes mental health laws which, in the case of hospitalization and competency, are enacted under the authority provided by the police power reserved to sovereign governments. While the federal and all state constitutions contain a bill of individual rights as well as a check on the power of the government, enforcement machinery is skimpier for the individual. This problem of imbalance, although not unique to the area of mental health laws, is terribly acute for the mentally ill in general and for those who are hospitalized in particular. Such has been the experience of many in the District of Columbia even under the improvements made by the 1964 Hospitalization of the Mentally Ill Act.

A pervasive legislative problem is that almost no legislation is self-enforcing. To activate the judicial and even the administrative ajudicatory processes of government on behalf of the individual, one needs the familiar case or controversy, standing to sue, an informed and persistent litigant, a lawyer to represent him, and a forum which will bother listening to argument. These conditions are difficult to meet for the average patient confined in a mental institution such as St. Elizabeths Hospital.

First, there is the devastating imbalance of power between the mental patient and the medical and paramedical personnel administering the activities of the hospital. This results from the very labelling of mental hospital users as "patients," particularly as "mental patients," for all that these patients attempt to do and say can be written off in the minds of the administrators as "sick" behavior. It would be the rare administrator who, upon encountering disagreement or opposition from a patient to something he wanted to do, would not be tempted to say that the patient's sickness prevents him from knowing that this is good for him. In Saint Elizabeths, the author of this statement frequently encountered medical doctors working in the surgical part of the hospital who considered patients incompetent because they failed to agree that they should have some surgery done (non-emergency surgery) which the doctors thought was medically indicated.

Second, enforcement is difficult because many patient rights would be enforced against their keepers, so many of the keepers do not see it as in their interest to encourage such enforcement. Unless the patient is quite lucid and in contact and also can develop ways to inform himself of his rights, this reluctance on the part of the keepers can effectively defeat any enforcement of such rights. Although the 1964 Act requires that patients be notified of all the procedures and rights under the Act, it is questioned whether Saint Elizabeths Hospital has yet *informed* all patients in the full sense of that word. The small handbook distributed to patients and their families was originally printed in February, 1966 and contained no discussion of patients' rights vis-a-vis mechanical restraints, and inadequate discussion about the subject of legal incompetency and the appointment of conservators. Nor is the right to treatment sufficiently treated in the handbook. When describing a court-ordered continued hospitalization for an emergency patient, the handbook does not indicate that the period for such non-voluntary hospitalization is seven (7) days, which can be extended only if the person is held for further proceedings under judicial hospitalization provisions. The handbook also *erroneously* indicates that voluntary patients may be held beyond the forty-eight hours after they have requested release if proceedings for court-ordered hospitalization have been initiated. Finally, the handbook fails to inform the patient about his rights to petition a court for release under certain conditions after he has received a periodic examination. The author has been informed that the handbook has just recently been revised and that it is presently at the printers, but it is not clear that all of the above deficiencies

have been corrected in the latest version. This failure to adequately notify patients coupled with the low visibility of administrative decisions in a large mental hospital like Saint Elizabeths prevents full enforcement of individual rights. An example of such a low visibility decision is the psychiatrist's regulating how much money a patient can take out of his own account to spend during a day of shopping in town. The new mail rules under the 1964 Act may have helped increase the visibility of some hospital decisions, however. It has also been suggested that an independent agency be created which would, among other things, implement this notification process better "from outside" than would probably be done from inside a hospital.

Another enforcement problem results from patient cases washed or mooted out by the government because they would require too much trouble for the government to oppose. According to lawyers of the D.C. Legal Aid Agency, this would be the case with patient requests for jury trials during commitment proceedings and for a court hearing to obtain release under the periodic release provisions of the 1964 Act (see *Practice Manual for Cases Before the Commission on Mental Health*, Legal Aid Agency for the District of Columbia, April 1969, pages 29, 32, introduced as Exhibit No. 2 with this statement). This may be just fine for the individual litigant in terms of the result he seeks but it leaves unresolved important judicial interpretation of provisions of and practices under the 1964 Act.

Finally, the patients at Saint Elizabeths lack proper legal representation, more because of the small quantity of lawyers available to help them rather than because of any question of quality of representation (other than the dilution of quality which results from too heavy caseloads). The Neighborhood Legal Services Program does provide some representation for selected patients in civil matters while they are hospitalized, and the Legal Aid Agency represents patients who are being nonvoluntarily committed or who are seeking release, but one of these agencies has indicated that they can only scratch the surface in meeting the need for legal representation. . . .

Ever since the 1946 mental health law took effect in the District of Columbia, there has been a much higher number of voluntary admittees into Saint Elizabeths Hospital relative to nonvoluntary admittees. The chief explanation for this has been that the new law set up for the first time within the District a simple voluntary admission procedure which was coupled with automatic voluntary release if requested by the patient. A forty-eight hour lag period was permitted between the time a request was made and the time the hospital was compelled to release the patient. This was done in order to permit hospital authorities to have a reasonable amount of time in which to attempt to persuade a patient to remain in the hospital if they felt that a release was not in order. It also provided some time for the patient to change his mind on his own if he chose to do so. Although it may appear strange to discuss release of voluntary patients under the heading of voluntary admission, such joint consideration is crucial. For any patient entering Saint Elizabeths Hospital voluntarily for the first time, and particularly for those who are entering on a repeat visit, self-admission would hardly seem voluntary if it did not include within it the option for voluntary self-release. Like the person seeking private psychotherapy, the volunteer admittee should be able to "fire the hospital" and disengage himself from it as freely as he engaged the hospital to help him in the first place. This thinking clearly emerged from the extensive hearings held in 1961 and 1963 which provided the basis for the 1964 Act.

The new amendments seek to change S. 21-512(a) of the 1964 Act described above to permit the hospital authorities to detain a voluntary patient on an emergency basis for further nonvoluntary hospitalization if, after the patient has requested release, the chief of service believes the patient is likely to injure himself or others because of his mental illness unless he is detained. Thus, the voluntary entrance procedure is modified to permit a nonvoluntary exit procedure. The patient may not be able to voluntarily leave or disengage himself from the hospital. The reason for this suggested change is probably to cover the extremely suicidal patient who enters voluntarily seeking help and then decides to leave in order to be able to make a suicide attempt. Although such patients do enter the mental hospital system, they are comparatively rare. Even if they were not rare, and not addressing the question of the right to commit suicide and the fact that someone who really wishes to kill himself will usually find a way willy-nilly, the hospital under the 1964 law already has ways in which the person can be hospitalized involuntarily. For instance, if during the forty-eight hours, the suicidal patient will not change his mind on his own or be persuaded by others, the hospital can prepare machinery for getting the patient into emergency status just as he is leaving the hospital grounds. This has been done at Saint Elizabeths Hospital. Admittedly, it is cumbersome and requires some administrative inconvenience for the hospital and other agencies involved (e.g., the police). But one must ask whether this administrative inconvenience is more important to avoid than erosion of the spirit of the current voluntary entry and exit procedure under the 1964 Act. For if this amendment were enacted, it is likely that current and prospective voluntary patients at Saint Elizabeths Hospital would choose not to avail themselves of a procedure which permitted them to enter at will without necessarily being able to leave at will. For the above reasons, the American Civil Liberties Union opposes this proposed amendment.

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