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JLS-19 ON THE TRAIL IN COLORADO

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and New York, New York  
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Mr. Richard H. Nolte  
Institute of Current World Affairs  
535 Fifth Avenue  
New York, New York 10017

Dear Mr. Nolte:

Appointment in Pueblo

Colorado's new civil commitment law came into effect on July 1. Buzzy, Joe and I journeyed 100 miles due south from Denver to Colorado State Hospital to find out how the new law is working, driving a car that Joe had wangled from the warden of the state penitentiary, driving past black, cloud-shrouded mountains, past the U.S. Air Force Academy, past the Garden of the Gods, dimly remembered from the childhood tour of our nation, past Colorado Springs, a recollected paradise now blanketed with tract development, and through a stretch of desert where Pueblo, population 97,000 lies. Our plan was to tour the hospital and talk with the superintendent. Then I would speak with several newly-admitted patients who were contesting their confinement while Joe and Buzzy visited the maximum security Forensic Ward.

On the way down, Joe and Buzzy talked animatedly about Colorado government and politics over the occasional squawk of the warden's two-way radio. Joseph de Raismes, First Assistant Attorney General of Colorado with authority over institutions, hospitals, and penitentiaries is an energetic and capable Harvard-trained lawyer who, when he was the ACLU's Rocky Mountain Regional Counsel, worked on, among other things, mental health cases. Joe is particularly concerned about Constitutional due process issues, including the right

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of inmates in "total institutions" to a formal hearing before they are disciplined or segregated in maximum security areas. Elizabeth ("Buzzy") Gibson, formerly executive director of the Colorado Civil Liberties Union, has just been appointed to help implement the new involuntary commitment law for Colorado's Director of Institutions. Buzzy is working with a committee of judges, lawyers, and state government officials drafting regulations under the law, and one of her first tasks will be to educate sheriffs throughout this vast and predominantly rural state about the new procedures.

I asked Joe and Buzzy about several Constitutional problems I thought the law raised, including a provision that patients committed before July 1, 1975, continue to be covered by the old law, which in some respects affords them lesser protections. I wondered whether the new law should not be retroactive, at least in the areas of patients' rights and mandatory periodic review of their status.

Joe said it sounded like a good idea to him, and seemed inclined to extend retroactivity even further. He told Buzzy that if she would write him an official letter on the question, he would issue a formal opinion of the Attorney General to the effect that the new law will be difficult to defend against Constitutional challenge unless it is applied even-handedly to all patients. I asked them whether the judiciary and mental health people would object that the legislature had not voted them the manpower to review the status of old patients and inform them of their rights. Joe thought it could be worked out. "And besides," he said, "that's how it has to be."

I also told Buzzy and Joe about a more worrisome problem with the timing of events under the new law.

A patient may be "certified" and kept at a mental hospital against his will if he is mentally ill and is dangerous to others, dangerous to himself, or "gravely disabled." A peace officer (which includes, among others, a wildlife conservation officer as well as a policeman) or a doctor or a psychologist who has good reason to believe that someone falls into one of these three categories may take him into custody. And if the fellow is not so imminently dangerous or disabled as to require immediate incarceration, anyone can apply to a court to compel him to appear for a screening session at a facility designated by the judge, who will review the screening report. In either event, if there is probable cause to believe that the fellow is either dangerous or gravely disabled, he may be sent to a mental health facility for a 72-hour stint

of "evaluation and treatment." After 72 hours the staff decides whether to release him or certify him for a further three months of treatment. If it certifies him as dangerous or disabled, the hospital must give him a copy of the certification, send one to his lawyer, if he has a lawyer, and file the original with the court. The court will appoint a lawyer, and either the lawyer or the patient may request a hearing to review the certification. If they do, a hearing is scheduled within 10 days. If they do not, there will be no judicial review of the certification, and the patient remains in the hospital for three months, unless the staff decides to release him sooner.

After a patient has been involuntarily hospitalized for three months, the hospital can extend the commitment for another three months, whereupon the patient has a right to a judicial hearing if he requests one. And 30 days before the end of the second three months, the hospital may petition the court for a long-term commitment of six more months; now a judicial review is mandatory, whether the patient requests it or not, but a full hearing will take place only if the patient requests one within 10 days of receiving a notice from the court.

To get an idea of the problems these procedures can cause, say that your wife calls the sheriff on the second day of October, a Thursday, and tells him that you are acting funny and threatened her with an electric carving knife. The sheriff may arrest you, take you down to Pueblo on Friday, October 3, if he can spare one of his deputies, and tell the admitting staff at the hospital what your wife said you did. Since the 72-hour treatment and evaluation period excludes weekends and holidays, the hospital can keep you until Tuesday evening, October 7, before they decide to certify you, and wait until the following Monday the 13th to file the paper in court. A judge will appoint a lawyer for you "forthwith", which may take a day or two, and the lawyer will probably get in touch with you on Thursday, October 16. Two weeks will have passed before anyone in the outside world--except the sheriff and the little woman--is aware of the pickle you are in.

Can you Constitutionally be held against your will for two weeks without a lawyer and three weeks without a court hearing--even when confinement is thought to be for your own good or for the protection of the community? The U.S. Supreme Court has not spoken on the issue as it concerns mental patients, but a three-judge Federal court in Wisconsin in the case of Lessard v. Schmidt thought otherwise. It ruled that 48 hours of confinement without a judicial probable cause hearing is

the maximum, that a full hearing on the necessity for commitment has to be held within two weeks, that you have to be present at both hearings, and that you have a right to counsel as soon after incarceration begins as is feasible, surely sooner than in the Colorado law. And how reliable must your wife's story be before a sheriff is justified in taking you into custody? If the probable cause standard in the Colorado law is taken seriously, the sheriff will need something more than your wife's say-so before the whole process can begin. If a decision like Lessard v. Schmidt were handed down in Colorado, the new civil commitment law would be in serious Constitutional trouble. Later in the day I was to meet a patient whose case raised every one of these issues.

In the late morning, Joe, Buzzy, and I pulled into the Colorado State Hospital parking lot and dashed from air-conditioned penitentiary car to air-conditioned administration building. Superintendent Charles Meredith welcomed us into his office and introduced us to Executive Assistant Ewing and Registrar Blair, who planned our itinerary and walked us through the General Adult Psychiatry Building, where I was shown a list of eight patients committed since July 1, when the new law came into effect. After hearing a brief account of each patient, I chose three to interview in the afternoon.

I suppose I had expected a teeming, antiquated lunatic asylum housed in a converted jail or army barracks. Instead I discovered a modern, spacious facility of high national repute with a highly-trained and highly-salaried professional staff, an enviable staff-to-patient ratio (1400 staff for 900 patients, down from 6000 patients since the early 'sixties), a leisurely admissions rate (averaging about one patient a day), and an ambiance in every way lighter and crisper and calmer than at the teeming, antiquated lunatic asylums of my beloved New York.

We had lunch with Meredith, Ewing, and Blair at the Holiday Inn buffet, ten minutes' drive from the hospital, all you can eat for \$2.39. As Superintendent Meredith and I ambled past the short-ribs of beef and the liver with onions, we overheard the conversation at a nearby table of young psychiatric residents and interns, some bearded, all dressed informally. "They're scared to death to certify anyone now," Meredith told me as we joined the rest of our party. "I've seen marginal cases where my residents were afraid to certify a patient who really needed treatment, because they couldn't swear the guy was 'gravely disabled'. We've seen several suicides happen that way. And I have to persuade them that unless they say

a patient's gravely disabled, they won't be able to treat him." I arched my eyebrows significantly and glanced around at Buzzy and Joe. Was Dr. Meredith unknowingly circumventing the new legislative standard?

The category "gravely disabled" gives Dr. Meredith and his staff so much trouble because it may not allow them to retain and treat some patients who they feel need their help. Under the old Colorado law, a fellow could be committed to a mental hospital on the statement of a physician that hospitalization was in the fellow's "best interests" or the finding of a court-appointed medical commission that the fellow's "own welfare" required it. This standard permitted the hospital staff to retain and treat practically anyone who they felt would benefit from hospitalization. But lawyers in the mental health field and judges and legislators have over the past ten years grown increasingly protective of a patient's right to be the ultimate judge of his own welfare unless he is dangerous or unable to care for himself on the outside. When the Colorado legislature changed the standard for non-dangerous mental patients to require that they be "gravely disabled" before a court will order them retained against their will, it defined gravely disabled as "a condition in which a person, as a result of mental illness, is unable to take care of his basic personal needs or lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person." The medical profession was thereby barred from availing itself of the state's police power to confine the large class of patients who can provide themselves with the necessities of life on the outside--food, shelter, clothing, and so forth--but whom it feels would nonetheless benefit from hospitalization. Yet doctors are trained to intervene in a man's life when in their judgment the intervention is required, and it seems to go against their nature to release a patient who they feel needs their help, simply because the patient has decided he wants to leave. (It remains to be seen, of course, how the Colorado courts will refine the fuzzy "gravely disabled" standard, and whether the judges will continue, as seems to be the case with some New York judges, to follow either their intuition or the old law.)

Meredith gestured toward the table of residents and interns. "They're doctors. They don't like to waste their time testifying in court. It takes a day to drive to some of the outlying judicial districts, and a day back." Ewing mentioned to Meredith that they had just received a subpoena to appear in court in Alamosa, 120 miles to the southwest near

the New Mexico border for a patient's hearing, one of the first under the new law. I recognized the name, Victor D., as one of the three patients I was to interview after lunch. Victor D.'s family had apparently told the local sheriff that he had threatened them, and the sheriff had held Victor in jail for three days before taking him up to the hospital in Pueblo.

From time to time thereafter the conversation reverted to the other burdens that Meredith and the others from the hospital felt the law and lawyers placed on them in the practice of their profession--the need to keep detailed records of each step in a patient's treatment, vulnerability to malpractice suits, procedures required to demonstrate that a patient has been informed of his rights. "You try and run a hospital where the staff spends half its time keeping records," Meredith complained. He mentioned, in contrast, the judge who had almost held him in contempt for releasing a patient before the short-term commitment period was up; the hospital is authorized by law to do this, but some judges, Meredith said, view the commitment period as a criminal sentence.

It struck me that, beneath the civility of our interchange, there simmered the ancient feud between the medical and legal professions. It may be that the Colorado legislature has prescribed an unnecessarily onerous and time-consuming set of safeguards and record-keeping requirements. But the conflict between doctors and lawyers, while it may abide for awhile on details and procedures, is fought on a grander battlefield and for higher stakes: professional autonomy and control. In so many areas today, the medical profession is confused and disordered by political demands that it yield a portion of its traditional sovereignty and grow more accountable to the people and their government. There is resistance and sometimes there is subversion of the new order. And yet, as Joe, Buzzy, and I discussed on the drive back from the Holiday Inn to the hospital, Dr. Meredith and his staff seem to have an overriding desire to do, in the end, what is right. Joe was optimistic that in Colorado at least, the conflicts could soon be resolved.

Summer Is Always the Craziest Time of Year

Back at the hospital, Joe and Buzzy went off to the Forensic Ward to learn something about the conditions there and the procedures the hospital follows before putting a patient in maximum security or under restraint. Dr. Meredith walked with me to the General Adult Psychiatry building, where I was to interview three patients. A social worker, Chris Hinz, led me to a large public room on the second floor where patients sat reading, or talking with each other, or staring off into space, or watching a huge color TV, adjusted so that everything on the screen went blue or purple. I asked Hinz to tell me only a bit about the patients before I spoke with them so that I would approach them with fewer preconceptions; afterwards he would give me a more complete story from the hospital's viewpoint. I wanted to find out how the patients saw their dilemma--why they thought they had been hospitalized, why they objected to it, how well they understood their legal remedies.

At the nurses' desk in the public room, Hinz introduced me to Peter, a friendly, good-looking young man dressed in jeans and a T-shirt. As Peter and I walked to a little office Hinz had provided us, I explained why I had come to Colorado State Hospital and what I hoped to learn. I began by asking Peter about his background.

"I'm a twenty-three year-old young man, and I'm getting tired. This is always happening to me. It usually happens in the summer. Because the summer is always the craziest time of year.

"Well, I live and work in Aspen. I work primarily during the ski season as a paramedic. I also work in Denver, St. Joseph's Hospital. I take X-Rays in the operating rooms. Before all that, I was a conscientious objector in the military. I served five months, twenty-eight days. I lacked two days for getting G.I. benefits. Prior to that I did 24 months of radiologic technology school and got my certification. Prior to that I did my normal high school. Prior to that I was an Army brat for seventeen years with my father. So I've known nothing but travel. I'm originally from Colorado Springs. My mother's family is originally from this area. My father's family is from the Amish-Menonite heritage in Pennsylvania.

"After I got drafted," Peter continued, "I opened up a Congressional investigation into a trainee death, during basic training. After I got the runaround with that, I decided to turn C.O. And I did, and I got it. Which is a hell of a thing. That's when my very first involvement with psychiatric evaluation or observation came into being, was when I was going through my Army training. Like I say, it's been every summer since then. This is my third summer in a row that I've been going through these little trips. This has been my worst summer yet. Last summer I was in Pennsylvania and my family felt that I should see a psychiatrist, so I did. It was a private hospital."

"You were hospitalized?" I asked.

"Yes I was. I did three weeks on Thorazine. Hated it. And that's what happened this time. They strapped me in seclusion, in restraints, and just pumped me full of Thorazine and said, 'Well, we think we need to slow you down.' And I'm fine. I do have anxieties, I do worry. I have all the normal emotions that people have, I'm sure of it. The only emotion I'm lacking right now, it seems, is love. Really."

"Why did your parents think you should see a psychiatrist?" I asked.

"At the end of the ski season, I go back to Pennsylvania. With my friends and everybody getting high all the time, and my parents worrying about me, they decided I should be seen by a psychiatrist and get on medication, rather than get on the streets. Not really the streets, but that's just a terminology. So this year I decided, I'm not going back to Pennsylvania, I'm going to a foreign country. I picked South America because a lot of people from the Aspen area talk about South America. So I went by myself, didn't know how to speak the language, and here I am trucking around the jungles not knowing what I'm doing. I had a good time. I always have a good time whatever I'm doing. I'm basically a happy person. I believe that. I get very uptight, though, when I'm told.... I rebel against authoritative figures because I assume, not assume, but most times I feel that I get pushed around, and that's why I want to fight back. I'm tired, I'm really tired, and I'm always fighting somehow, I'm always fighting. And now it's the legality I'm fighting."

"How did you get into this place?" I asked.

"EPC. Emergency Protective Custody. To protect myself from society or protect society from me. It's a general

categorization to admit patients through court orders."

"I'm not clear on the reason they got the court order to put you in here," I said.

"I'm not clear on that either," Peter replied. "That's why I'm contesting it. I don't feel that...just because... I don't know, I'm a 23-year-old young man, and I don't feel that every time that authoritative figures feel that I should be locked up that I can be. And I am, as you can plainly see. I've got my own responsibilities, I've got my own social life, I've got my own little way to live."

I was beginning to feel that Peter could or would not satisfy my curiosity about why he was in the hospital, but I resolved to pursue the matter. "Were you violent or suicidal?"

"They thought it would be for my own good if I spent a night in jail. I'm under prescribed medications, Noxitol, something like that. Prior to that I was on Dalmane and Senequin. That's more or less a hypnotic. I'm just, I feel like a squirrel in a cage, is what I feel like. An Indian walking backwards is what I feel like."

"Did they tell you your diagnosis?" I asked.

"When I first got here, I was placed in Forensic under maximum security."

"Must've been scary."

"It wasn't scary for me," Peter began and then, laughing, went on, "Yeah, it was kinda scary. Because I didn't know if I had really spaced out in Aspen and did do something wrong. Now, they do feel that I have a kind of mental problem. I would assume by the medication--I can read a PDR, my father's a pharmacist--that it's some sort of neurosis, some sort of anxiety, some sort of inability to sleep at night. I'm sure it's nothing major, because I feel that the staff here feels that I'm a competent person."

"I guess if you were in Forensic, they must have thought you were violent," I observed. The longer Peter held out, the more I seemed to become an adversary.

"I don't think I'm a threat to society or a threat to myself. They say that I do have a problem and apparently

I do. Because I'm always being placed in here. But last time I was released from here, they put me on no medications and I did fine."

"Then why did they say they brought you back?"

"Emergency Protective Custody."

"Did they give you a reason like, you were acting funny, talking funny?" I asked.

"Acting funny, talking funny, acting mixed up, that's it."

"How were you acting?"

"As far as I'm concerned, I was acting normal. Me -- I'm acting me. And if they don't understand it...."

"But what made them think you were not acting normal?"

"Just acting strange," Peter said. "Acting not normal, not myself." But Peter had just told me he had been acting normally, and if they did not understand, that was their problem. "You'll have to ask them," he continued. "Getting in fights maybe, getting drunk, going around with my friends. In Aspen there's a little clique, and this is my third summer, so I have a lot of friends. A lot of influential friends also, I would say. So if a court hearing ever came up, and I needed witnesses, I'd be calling in my family physician, calling in my Reverend, I'll be calling my friends, I'll be calling a lot of people. So there's no basis, as far as I'm concerned, for my Confine and Treat. And I feel very, very strongly about that. That's why I'm contesting. I have another staff meeting tomorrow. They're going to tell me what their plans are for me. And if I'm not discharged, I'm going to go ahead with the hearing. They take you all the way up to Pitkin County. I just want to get this mess cleared up. I don't like doing these things, or people doing these things to me."

My guess was that Peter had indeed got out of control in Aspen, got into fights, and been picked up by the sheriff; that he knew this and wished not to acknowledge it, and enlisted his roster of friends, whether his idea of their partisanship and influence were accurate or not, to help him believe in his basic sanity even if he had been violent, to believe in the likelihood of his release. Later I would ask Hinz about the hospital's view of what Peter had done to get into this predicament.

I changed the subject. "What do your parents think about this whole thing?"

"They get perturbed. Because they know me, they know me, I'm their son. They get upset, very upset. They worry--they're my parents."

"Have they spoken with the doctor?"

"No, it's a tight ward. They run a tight ward. As I say, I have my own responsibilities, I have my own friends, I have my own thing to do. Why do I always have to be shut up. be put away in institutions, which is what this is."

"How long have you been here in all?"

"I'd say totally now about three and a half or four weeks. After they released me last time, I still believe that I was doing fine. But the Pitkin County sheriff's department and this new program I'm involved with in Aspen called "Open Door"--I was talked into readmitting myself."

"Then it was voluntary?"

"Not really, not really. But what can you do when you're put in the hands of the authorities? Ever since my hassle with the military...let's say there was a lot of mental maturity in that little thing. Maybe it's just the way I've always been, when I say mental maturity." Peter began to laugh. "You'll have to talk to my psychiatrist about that. He doesn't talk to me hardly. Just bits and minutes between running in and out while he's busy. Life in here is very boring for me. Because I would rather be back in my job, rather be back with my friends, be back in the mountains. It's too hot down here. I'm looking for every possible means, every avenue to fight this Confine and Treat, to fight the people who.... I was just wondering if you could help me out."

"Is something wrong with your present lawyer?"

"I haven't been able to talk to him, for one."

"The law says they have to let you make phone calls."

"Phone calls. I don't know...they...I don't know what's going on. Maybe I'm a big secret case, I don't know. I doubt it. Yesterday was the first time I got to call him. After two minutes, they wanted to transfer the call to my psychiatrist. I was under the assumption that I was a volunteer patient. But they said, 'No Peter, you're still under the old law, under the old EPC because we put you on leave status.'

So I go, 'Wooww.' So I say, 'Let me talk to my lawyer.' So yesterday was my first chance, and I've been here over 72 hours. And if I had known at the time of admittance that I wasn't a volunteer patient, rather than being strapped down to a bed and being pumped full of Thorazine, I would have said, 'No, let me talk to my lawyer.' I would've, because I'm a responsible person."

Peter took several sheets of paper out of his pocket and handed them to me. "Here's everything that I'm concerned with. Here's my medication. Here's the Pitkin County sheriff's department, the ride I got down from there. District Judge Lorr is responsible for a court decision on me."

There was a knock at the door. A plump priest with a gray beard put his head into the room and asked when it would be free for him to speak with a patient. I told him we were almost done.

Peter handed me another sheet of paper. "Everything is written down here regarding my problems, my own personal problems. And I'm aware that I do have problems with authoritative figureheads. I do have claustrophobia. I do have girlfriends. I do have personal friends. I do have a social life. I get insomnia. I do smoke. On the ward I smoke cigarettes, on the outside maybe I smoke a joint a day, maybe more than that if it's a party. And I do need some structure in my life, whether it be a job, a lady, whatever. I do need to have a structured life. But I am a responsible person. I'm a very conscientious person. I'm not a violent person. But I do cause trouble." Peter laughed. "Such as opening up Congressional investigations, such as being a conscientious objector, such as, if I see a wrong someplace, I'll try to correct it."

Glancing at my watch, I saw that we had talked for forty minutes. I shook hands with Peter and walked back to the public room with him to find Hinz, from whom I would learn what Peter had done to be hospitalized in the first place, what the staff felt was the matter with him, and whether in fact he was being kept from speaking with his lawyer.

We found Hinz at the nurse's station. "Hi," said Hinz. "Uh, Peter, your lawyer just called. He asked you to call back as soon as you have a minute." Peter went off to the telephone, and Hinz and I retired to another little office to discuss Peter.

"When he first came in here in June," Hinz began, "he was really inappropriate, bizarre, out of control. I think he even ripped up our admissions center, and they put him in Forensic. He was a really destructive person. This time he was picked up by the police. I believe he was really flipped out this time, as I recall." Hinz flipped through Peter's file. "It was reported that he was tearing up the town. There's a suspicion that he might be on drugs, but that's not confirmed." When I asked Hinz if he meant marijuana or harder stuff, he replied that he could tell from the way Peter holds his cigarettes that he smokes a lot of marijuana.

I asked about Peter's diagnosis. Hinz read from Peter's file. "Schizophrenic, chronic, possible drug-induced. Then we changed it to depressive neurosis. And I don't think we have a firm diagnosis at this point. Dr. Mosher has him diagnosed this time as toxic psychosis, secondary to hallucinogenic drugs. I would rule out schizophrenia at this point. He's really compensated very quickly. That would lead me to suspect that it's drug-induced. But I think that there's enough of a potential thought disorder there that he shouldn't be off medication. We're now trying to decide whether to release him or not."

I asked whether Peter had been kept from speaking with his lawyer. "That's bullshit," Hinz said. "He's in the process of talking to his attorney about having a hearing. I just talked with his lawyer. We're talking about releasing him next week. The attorney doesn't feel he can set up a hearing before then."

"What would you have done with Peter," I asked, "if his lawyer hadn't been negotiating with you?" I was thinking of Superintendent Meredith's remarks over lunch that the staff's reluctance to testify at judicial hearings leads them to release marginal patients who they feel need treatment, and of the common occurrence in New York and elsewhere that when a lawyer enters the picture, the hospital staff will often back down from the decision to commit, except with the most debilitated patients. Hinz replied that when the staff feels a patient needs to be in the hospital, they are willing to go and testify, and that they routinely win their cases in court. He added that given the time needed to arrange a hearing, some patients end up staying longer at the hospital than they would otherwise. This seemed an odd claim since, even when a patient requests a hearing, the hospital can release him any time it wants before the hearing and avoid the bother of going to court. I wondered whether this were an instance of the commonly

rumored tales that hospital staffs take punitive measures against patients who request a hearing. Somewhat in contradiction to what Hinz had said earlier about the staff's trying to decide whether to release Peter, he now said that they would have released him next week or sooner, with or without a lawyer.

"Our length of stay is about three weeks," Hinz continued. "So by the time they get here, really get settled down that they even know to ask for a hearing, and the hearing's set up, we're ready to release them anyhow. Now the new law, I don't have any idea. Part of the problems of these laws, you know, is we're going to spend all our time in court and running around this state, and none of the time in treatment. If we have to travel to each of the judicial districts in these little outlying towns, it's going to be murder."

"I guess there will be a rough shakedown period," I sympathized.

"Oh Lord, it's gonna be a mess."

Hinz left and returned with another patient, a 20-year-old mother named Mary. The interview was long and disjointed, and I shall only summarize it here. Mary spoke quickly and lucidly for the most part, sighing often and weeping twice.

Mary told me that the hospital staff had never informed her of her rights, unless it was during the first few days when, she said, she had been delirious. She had spoken with a lawyer once, but instead of asking him to request a hearing, had insisted that he sue the hospital for damages for "subjecting me to this." The lawyer was interested in taking the case. Mary told me that she very much wanted to leave the hospital. But she would not focus on my questions about what steps she might take to get a judicial hearing, even when I explained the new law to her.

Mary had been hospitalized twice before, for several months each time, once in New York where her parents live and once in Oregon. Before each of Mary's hospitalizations, she had apparently become extremely confused. Each time she was admitted on an emergency basis. Mary said that she objected to living in the hospital because, among other things, she saw lots of things that got her confused. "Just little things, like the medicine cabinets, people's rooms, other sick people, and stuff like that. And like why everything works so perfectly." I tried unavailingly to discover what Mary meant by "perfectly." She said that I should understand. "Just looking at you, I can tell that your life is perfect," she

said. I told her I wished she were right.

I asked Mary whether she had been told her diagnosis. "Oh," she replied immediately, "an Indifferent Schizophrenic."

"Undifferentiated schizophrenic?" I asked, thinking of DSM-II.

"No, they decided I was indifferent. Like I don't really care about what's going on."

"Is that true?"

"I don't know." Mary was exasperated with my question. "Sure I don't care what's going on. I'd like to, but I'll tell you why I don't care. Because one time, I asked why they put this girl in seclusion. I just asked the nurse why. She walked down the hall, stopped, and turned around, and said, 'Alright, we're putting you in seclusion too.' They put me in just for asking. They said it was none of my business." Mary began to cry. "So isn't that a good reason for being indifferent? So I go around and don't get involved anymore."

After an hour or so, Hinz interrupted my talk with Mary. She sprang up and bolted from the room. I was surprised because Mary had appeared to enjoy most of our conversation. I wondered whether Mary truly wanted to leave the hospital as she had said, and if she did want to leave, why she could not comprehend the means to win her release--asking the court-appointed lawyer for a hearing to determine if she is gravely disabled.

Hinz and I walked back to the public room, where he introduced me to Victor D., the patient whom Dr. Meredith had told us over lunch had been kept in jail for 72 hours before being brought to the hospital. Victor D. was contesting his confinement, and his lawyer would undoubtedly argue that the time in jail should be counted against the 72-hour evaluation and treatment period; that therefore the hospital had certified Victor three days too late, and that Victor should be released. Victor is an Hispano from southern Colorado, where his family has lived for several generations. (Hispanos trace their ancestry directly to Spain, rather than Mexico; their churches are said to be overseen by a Spanish prelate.) He stood rigid and without expression, except for what I took to be a pervasive suspicion in his dark eyes. He wore a red

nylon sport shirt, black corduroys, and worn black leather shoes. Victor looked 40, though I was later told that he is only 25. He spoke slowly and mournfully with long pauses between his short sentences.

"They brought you here a little while ago?" I asked.

"No, it's gonna be about two weeks and some days. I'm trying to get out. They just gave me a slip awhile ago, and they told me that I could only go out by doctor's orders. And I don't know if that's the truth or not."

"Have you seen a lawyer yet?"

"Yeh, I contacted a lawyer. The lawyer came right here, came to talk to me, an hour, an hour and a half. 'As soon as you feel better,' that's what he said, 'we go to court, got to go to court.'"

"When do you think that will happen?"

"Tomorrow, maybe, maybe tomorrow. I...I got that paper right now. If you want for me to show it, I can show it to you." I looked at the piece of paper, a notice from the District Court in Alamosa, and explained to Victor that the hearing would not take place until August 21. Victor was not inclined to believe me. "The paper says I got to go to court in Alamosa. And I don't even know how am I gonna go. If I don't get out pretty soon, today, I won't be able to make it to court." I told him that the hospital would arrange for transportation, and someone from the staff would also have to attend the hearing. "I don't know," said Victor. "They haven't told me that."

"Have you asked someone?"

"No. I'll ask somebody."

"You want to get out badly," I said.

"I've got enough to do at home. I don't like it up here. It's just like being in a prison for me. I've been in once before, but I stayed for two weeks. Then I went out. Now I came again. It's getting terrible for me. I just can't stand it in here no more."

Victor's sadness was getting to me, and I said, aimlessly, "I've never stayed in a mental hospital."

"This is a mental hospital?" Victor stopped and looked away. "I don't like this kind of hospitals. I'd rather stay home, and do my work, whatever I got to do. I just can't stay sitting down."

"Why do you think they put you in here?"

"Because I was drinking."

"Were you violent?"

"No. I don't like it in this hospital. I don't know why. I just like to stay outside of here. The longer I stay out of here, the better for me. The doctor told me I should wait until I had an attorney. And I already spoke to him. He said to speak with some of the staffs. I've been doing that. They never did tell me nothing when am I gonna go out. Nothing like that. I've been talking to the doctor. He says, 'I think you better stay here a little bit more.' And I don't know why."

"Maybe they feel you need to be on medication."

"They told me they were going to transfer the medication back over there. Whenever I go out, they're gonna transfer it over there." He inclined his head toward the window.

"Do you think it did you some good to come here?" I asked.

"I think it done some worse to me. I miss doing my work. I work on a farm. I work everywhere where there's a little job that's got to be done. I'm always available to help, and they pay me. Here, I can't sleep very much. Whenever I'm in a state hospital, I just can't sleep. In the daytime, I feel sort of like anxious, worried, looks like something is bothering me inside. I don't feel that way back home. I know every person that's in the ward. And it's kind of boring to talk the same things over and over again. Once you tell them what happened to you and why did you come over here, that's all they talk about."

"Do you watch a lot of television?" I asked, thinking of the crowd around the color TV in the public room.

"Televisions--that's another reason I don't like to stay here too. Because on televisions, I even hear my

name once in awhile. I don't like that. I hear different kinds of voices in the television. And on the radio. And that's what I don't like."

"You don't hear your name on the radio at home?"

"Yeah, I do. But over here, I ain't got nothing to do. Just sit down and smoke. Watch television. And radio. Maybe talk to people if they talk to you back. And at home, I always keep busy. I told the doctor about that. He said it was nothing but the imagination. I don't think so."

"What do you think it is?" I asked.

"I don't know what it is to be. Maybe it would be that those voices are after you sometimes. They want to kill you, or something like that. Maybe it's a woman's voice that you hear all the time. Woman and man's voice, both of them. I hear both of them. I just wish I don't hear them no more again. That's why I don't sleep."

"Are you able to sleep at home?"

"No. Once in a while or two." Victor looked out of the window. "I think I'm going to have to get together with my wife. I'm not with my wife now. I'm separate from her. My wife lives in Alamosa. Whenever I'm with my wife, I go visit her, take a look at her, and I feel much, much better. I don't hear nothing. I'm active, and everything."

"When were you separated?"

"Three years ago. And I started to hear the voices. And I came in the first time, two years ago. And now I'm still kind of hearing some voices. But not as bad."

"Do you think the medicine they're giving you has helped?"

Victor became angry. "I don't know. I don't know. I don't really know that. All I want to do is have a good life with my wife and my kid. That's all I want to do. Or with whomever I'm with. I think the lawyer will get me out. 'I'll handle the whole business,' he said."

There was a knock at the door and Hinz's voice saying that I was due back at Dr. Meredith's office to meet up with Joe and Buzzy. "Do you think they'll let me go?" Victor asked me as we moved to the door. I did not know what to say. I wished him good luck and shook his hand.

Hinz and I walked downstairs and out into the hot, dry Colorado air. I asked him about Victor.

"Schizophrenic, chronic undifferentiated. He's a nice guy, no problem. He's very chronic. He's very rigid. He's very uncommunicative. He's on Prolixin, not a high dose, and Haldol. He's a fairly typical chronic schizophrenic. Needs support. He was brought up from San Luis, small town. Apparently he had been brought up by the sheriff under an Emergency Protective Custody order after the mother complained to the sheriff that he'd been fighting with them for some time, and had threatened to kill them. So they brought him to the hospital under the new law. He doesn't see any reason for him to be here. And he denies that he threatened his family. But we're very certain that he did. We've talked with the family and things like that."

We walked along in silence for awhile, and I wondered how the hospital staff could be so sure that Victor had threatened his family and whether the threat involved more than words and what evidence the sheriff had had to go on when he picked up Victor and why some people get put away on the basis of what may only be rumors. Then Hinz went on, "He asked his lawyer for a hearing. Which has developed into much more than just a routine hearing. It's much more technical, more complicated."

"I hear he was held in jail for 72 hours before the sheriff brought him here," I said.

"Yes, that's what happened. Somebody's going to have to do something about that. That's not my problem. I'm going to go to court, but it's not my problem."

"What's your plan for Victor?" I asked.

"Oh, we'll stabilize him on some medication. He's really not very motivated to work, he's on welfare. Stabilize him on some meds for a few weeks and send him home. There isn't much back there. But that's where he wants to go. We're trying to get him to reflect a little more affect. We'll talk with him about some of the problems in drinking that cause

it. But that's not very realistic 'cause that town, a town of about 200 people, the only entertainment's in the bars. I think it's the drinking and the schizophrenia--when he drinks, he loses any judgment that he might have whatsoever. Becomes upset with the family. He has a severe thinking disorder. His affect is flat. He's not hallucinating right now, but he's very guarded. Paranoid."

Had Victor admitted his hallucinations to me but not to the hospital staff, so that they would let him go home? "Victor really wants to get out," I said.

"Oh yeah," Hinz laughed. "Everybody wants to get out. Typically you have two kinds of patients. The patients that are crazy and need to be here and want to leave. And the patients that want to stay here and aren't crazy and we want them to leave."

Back at the administration building we found Joe and Buzzy sipping Cokes with Executive Assitant Ewing and talking over Joe's proposal that formal procedures be established to govern transfer of patients to the Forensic Ward. Ewing agreed in principle. But, he added, Joe would have to help him reeducate 250 people on the staff. It was 4:30. Joe, Buzzy, and I thanked our hosts for devoting so much of their day to our visit. "Come back any time," Ewing said. "We're not besieged by visitors. We tend to be off the beaten track down here in Pueblo."

Before heading north, Joe drove us into downtown Pueblo to an outpost of the Colorado Attorney General's office where one of Joe's assistants is stationed, to pick up the legal papers in Victor D.'s case. Joe planned to represent the hospital himself on the 21st and would drive the 200 miles from Denver to Alamosa District Court. Joe gathered from the papers that Victor's case might raise a host of Constitutional issues concerning involuntary detention before a judicial hearing--how much evidence the sheriff and the hospital need to incarcerate a man, and how long the man may be held without a judicial determination.

We drove north through a dusty drizzle, stopping once to buy gas, three chocolate milkshakes and some French-fried onion rings at a little diner; dropped Buzzy off at her house in Denver, at sunset; and, as the huge sky darkened into evening, continued on to Boulder, where Joe lives, discussing the developing law of due process within institutions, an area in

which Joe is likely to play an innovating part.

I wondered about the three patients I had spoken with. Victor D. may have been read his rights and given a copy of the certification, but he had no idea why he was in the hospital (or even that it was a mental hospital) or how to get released, until a lawyer was appointed, and even then he got the date of the hearing wrong and worried how he would get to Alamosa. Mary did not remember having been read her rights, wanted to leave the hospital but did not comprehend the very first step she could take to win her release. And Peter, the most knowledgeable of the three in the ways of the Law and the details of the Colorado statute, thought he was being kept from speaking with his lawyer, had little idea about why he was hospitalized, and resorted to a grand image of his influential friends to stave off his fear of being hospitalized interminably, his feeling of helplessness.

Buzzy had told me that inmates at the state penitentiary whom she knew understood their legal rights more precisely than most lawyers would, and we were puzzled that the patients I had interviewed were so different. Perhaps it is the drugs they are given, or the problem that got them committed in the first place, or the relatively short time they are hospitalized before legal remedies are open to them, or the traditional lack of militancy among those who are assigned the label "sick." Reading a newly-committed patient his rights and guaranteeing him a hearing if he asks for it may satisfy some Constitutional requirements, but in practical terms it is only when a lawyer appears that these rights gain meaning. Under the Colorado law, a lawyer will not be appointed until at least 8 days have passed, and in Victor's case it apparently took far longer. For all the defects in the New York commitment law, the presence of counsel in the hospital and their actively seeking out clients seems a much surer way of guaranteeing a patient his rights.

Of course, that still leaves Mary in the hospital. A lawyer had called her after she was certified--she didn't remember his name--and must have told her she could have a hearing if she wanted one, but Mary insisted instead on suing the hospital for damages and had no understanding of what a hearing might accomplish. A lawyer stationed at the hospital might have done more, but there is a limit. Earlier I wrote that the new "gravely disabled" standard in Colorado means that if a patient is not considered dangerous, he must be released unless he is unable to provide himself the necessities of life--

food, shelter, clothing. But in a bureaucratic society, perhaps the necessities of life include the ability to understand a lawyer when he explains one's legal remedies. Mary will stay at Colorado State Hospital until she understands her rights or is well enough in other respects that the hospital releases her.

### Muddle in Alamosa

On the day of his hearing, Victor D. gathered his clothing and effects and packed his bags for the trip to Alamosa. Two doctors told him there was no need to bring his things, that he would be back at the hospital for dinner. But Victor would not listen. "No," he told them, "I think I'm not," and as it turned out, Victor was right.

Fate took me far from Alamosa that day. But Chris Hinz was there, and Joe and Buzzy, and Victor D., of course, and his lawyer Kenneth Selby, and Judge Witford Myers, and from them all I collected the story of Victor and his hearing.

Victor lives with his mother and his sister and has been a problem for them for some years now, getting drunk, threatening them, shooing them out of the house, twice injuring his mother, neither time recently. Some say that Victor is an advanced alcoholic, others say that he merely medicates his schizophrenia with alcohol but does not show the signs of alcoholism--tolerance, for example. Victor's friends and relatives, even his cousin the deputy sheriff, do not consider him violent, just hostile, but they are worried about him. San Luis is one of the oldest and poorest towns in Colorado--761 people living in small adobe houses--and alcoholic brawls are the young men's weekend entertainment. Victor's friends at the local bars feel he has gotten strange and remote lately, not much fun to be with, and Victor has become a solitary drinker. Now Victor's sister is pregnant (and unmarried), and this upsets him.

On Friday evening, July 22, Victor chased his mother and sister out of the house as he had done on so many weekends before. In the past they would take refuge at Victor's aunt's

house until he calmed down, but Victor's uncle was recently released from Colorado State Hospital, the aunt had her hands full, and Victor's family had nowhere to go. Later on Friday night they returned home to find Victor in bed and a knife on the couch in the living room. They called the sheriff. Victor was taken into custody, lodged in the Costilla County Jail.

The next day the sheriff drove an hour to Alamosa to find out what to do with Victor under the new civil commitment law. The people at the mental health center there, upon hearing that the sheriff had picked up a violent and ill man, handed the sheriff the appropriate forms and told him to take the man right up to the State Hospital in Pueblo. The local District Attorney apparently agreed, and the sheriff returned home at the close of what must have been a confusing and wasteful day and tried to figure out how he could free up a deputy--he has only two--for the six hour round-trip to Pueblo.

On Monday the 25th of July, Victor was driven to the hospital. Based on what the sheriff said the family had told him and on Victor's psychiatric history and what Hinz described as his violent state on arrival, the admitting staff took him in for 72 hours of evaluation and treatment. The hospital decided to certify him at the end of the 72 hours, and read him his rights, probably on the 29th or 30th of July. The hospital sent a notice of the certification to the District Court of Costilla County, which is not the headquarters of Judge Witford Myers, who had jurisdiction over the case, and the notice did not find its way to Judge Myers until the fifth of August. This was the first case under the new law before the judge, who spent a day reviewing the law and finding a lawyer for Victor. Attorney Kenneth Selby drove up to Pueblo the afternoon of the 7th, interviewed Victor at the hospital, and on the following Monday filed a writ of habeas corpus for Victor's release. Victor D. had been incarcerated against his will for 16 days before he spoke with a lawyer. A hearing was set for the 21st of August, ten days later--and a full four weeks after Victor's mother and sister, returning home to find a knife on the living room couch, had called the sheriff.

When the hearing was convened, Attorney Selby asked for a jury, to which Victor had a right under the statute. And the remainder of the morning was taken up with testimony about how it takes fourteen days to assemble a jury in Alamosa, and how the court reporter had bronchitis and his doctor wanted to hospitalize him, and how the judge would have to wait three

weeks for a replacement from Denver. Finally Selby waived the jury trial. As the substantive testimony about Victor's commitment was about to commence, Judge Myers called a brief recess.

When the court reconvened, Joe announced to the judge that his client, the hospital, was withdrawing Victor's certification. Joe and Selby had settled the case in the hallway during the recess. Victor D. is now back home with his mother and sister, who very much wanted him back, and in treatment at the local mental health center--a shot of Prolixin every two weeks and talks with the social worker three times a week.

The details of the compromise and how it was reached are confused, and reveal something of the underlying issues, some legal and some not, that informed the proceedings--issues that are now better exposed but by no means resolved. Kenneth Selby was the first to describe the hearing to me.

"When we got to the District Court, we were prepared to go forward with the doctors, the attendants, and so forth. They called in Mr. de Raismes, First Assitant Attorney General, to handle the matter. After we got the basic foundation laid to proceed, we had the clerk tell us why it was not possible for him to have a jury of six." Selby laughed. "You can't do that in less than 10 days, like the law requires. Why it normally takes fourteen days to get together a jury in the Valley."

I asked Selby what his interest was in raising the issue. "I did it for the purpose of showing the assininity of this statute. After I had made a record, I agreed to procede without one, over my objection of course. Then after all that was done, the young man from the Attorney General's office moved to withdraw the certification and everything was then moot." Selby chuckled with satisfaction. I asked him how the compromise was worked out. "Oh, we didn't compromise. He wanted us to leave Victor in the hospital for another week or ten days, and we told him no. Afterwards, we did talk to Victor off the record and persuaded him to go to the local mental health center and put himself on voluntary treatment. There's no question he needs medication. But there was no compromise--it was a withdrawal of the certification, unconditionally."

Now, my friend Joe is an experienced and able trial lawyer, and I was not willing to accept Selby's version of the

settlement. Everyone else at the hearing thinks a compromise with Selby was worked out before Joe withdrew the certification because Joe's client would probably not have agreed to let Victor go home without a promise that he would seek treatment in Alamosa. As Hinz put it, "I don't think we would have let the patient go in the normal routine of things. I think he would have benefited from another few days in the hospital. But our feeling was that to drag this hearing on for two days, which it looked like it could easily go, made less sense than to release the patient to the mental health center down there."

Joe was concerned all along that the hospital's case was weak. "The statute encourages voluntary treatment," he told me, "and requires the least restrictive means of treatment, and, frankly, under the facts as I heard them, we couldn't demonstrate that Victor needs to be in Pueblo. In the background, the evidence on dangerousness was quite flaky. It consisted primarily of threats. The assaults we could demonstrate were primarily assaults on other men in the community, alcoholic brawls that didn't relate to his disease. Both of his past assaults on his mother were really old, and she didn't even want to talk to us about that stuff. You can't rely on the hearsay of a doctor, and if the witnesses are unwilling to testify, you've got real problems. Beforehand, Selby and I discussed a release after another week of treatment in the hospital, and he didn't go for that. So after my client had talked to the local mental health people to determine if they could take care of Victor there instead, I talked to Selby about that during recess, and he went for it."

Most of the people in the courtroom came away with the impression that Kenneth Selby and Judge Myers had viewed Victor D.'s case as a good opportunity to challenge the new law on Constitutional grounds and that much of the morning's proceedings were part of a drama staged for this purpose. I asked Selby why he is hostile to the new law.

"Here is a statute," he began, "that sets the stage for, as I look at it, complete abuse of due process. Here's a man 28 days to a hearing without ever having had any of his Constitutional rights."

"But couldn't you have gotten a writ of habeas corpus after the first few days?" I asked.

"Who knew about him? We didn't know about him until the seventh of August. Under the old law there had to be a petition filed with the court, a statement of probable cause

before anybody could move, and then a guardian ad litem was appointed, and he interviewed the man before they took the man away, and could call immediately for a hearing. We were arguing all the issues, hitting them with a broad shotgun, on Constitutional grounds. I was after the statute, real frankly. And nothing had been done to implement the act, not even writing the official forms. And Judge Myers wanted clarification. He and I were in complete agreement about that."

"What will you do to clarify the law, now that this case has been settled without the issues being resolved?"

"We'll wait for the next case. There'll be another one, you can be sure, day after tomorrow."

I asked Selby whether he had been interested in civil liberties issues before Victor's case. "No," he replied, "I'm just a plain old country lawyer." I told Selby that I had heard that line somewhere before.

When I spoke with Judge Myers, he confirmed that he had been hoping to force Victor's case to the State Supreme Court. "Let's put it this way, Mr. Steingarten. Had you been the guy, believe me, you would have been out. You probably have the resources to have gotten out in very short order. Victor D. didn't have anything. You saw him. You talked with him. You can see what a humble soul he is. And his rights? When the hospital says they've told a man his rights, and the man is in a drugged state, how is the court going to receive that? And with a criminal defendant, are you going to tell me that you're going to be able to give him the Miranda rights, everything under Miranda-Escobedo, the whole darn works, and he'll understand it?"

But Judge Myers seemed less concerned about how long a patient may Constitutionally be held without a hearing than with the financial and administrative burdens the new law places on rural judges and rural counties. "We don't have a standing jury in these small counties. A clerk has to work a day and a half to get the notices mailed out to the people to get a jury. When they put this ten-day limitation on there, they're forgetting the limitations of the court. We're in an agricultural area. You're gonna drop and run down to the courthouse just because they called you? Lose your entire crop? They wrote the law from the point of view of Denver. Colorado has been notorious for this. And this causes a great deal of conflict between rural jurisdictions and laws that are promulgated

by the legislature. And you expect a poverty-ridden county to underwrite the expense of transporting patients to Pueblo? Where the law is not augmented by financial powers, then you are left high and dry. Not only is Victor D. left high and dry, so is the court. We're all in deep water."

I was puzzled by Judge Myers's and Selby's complaints about the difficulty of getting a jury trial together. A jury was available under the old law and, after all, the ten days between the lawyer's request for a hearing and the hearing itself should surely be enough to assemble a jury. But I share their concern about due process under the new law.

A week or two after Victor's hearing, I spoke with Chris Hinz, who told me that there had been six other hearings since then. The hospital had lost most of them on what he called technicalities, miswordings in the hospital's petition or the fact that one of their psychiatric residents lacks a Colorado license. "There's been a lot of responsibility placed on us at the hospital," Hinz said, "to make legal distinctions, and that's not our job. But I understand that the county will be appointing one attorney just to deal with these cases. There's one tomorrow. Hopefully we're going to win one this time."

"After you lose a few on technicalities," I observed, "you want to win a few just for the sake of winning. That seems too bad."

"I agree. It's really detrimental. We're obviously not perfect, and there are times when you do need the courts to protect people's rights, and I think that's fine. But at the same time, when somebody's blatantly psychotic, I really question the need for all this."

"But under the new law, there may be patients whom you consider blatantly psychotic, but who may not be 'gravely disabled,' and you may still have to release them."

"You may be right," Hinz replied, "but we've never even gotten an interpretation of 'gravely disabled,' we've never gotten that far down the road. And we haven't yet lost a case for that reason. That's the frustrating part of it right now."

As a result of the compromise in Victor's case, none of the issues was settled in Judge Myers' court, and I imagine that Joe was relieved, that he welcomed the opportunity to

solve some of the problems administratively before an appeal gets up to the Colorado Supreme Court. Joe and Buzzy are hard at work ironing out some of the new law's wrinkles.

"When the hospital decided to certify Victor D. as dangerous," Joe explained, "the real basis for the characterization of the guy--besides the fact that he caused quite a ruckus for the admissions people--was the hearsay from the sheriff when he brought the guy in. Some of which panned out and some of which didn't. The problem is, what documentary records do the doctors have to go on? In most cases, it's a very brief, completely insufficient statement by the sheriff on admission. When the hospital's attorney gets the case, he has to start investigating, but the case should already have been put together for the doctor, because the doctor, instead of the judge, is making the initial determination of probable cause. We're about to require notarized affidavits demonstrating sufficient facts to the satisfaction of the admitting officer to demonstrate dangerousness or gravely disabled."

I told Joe how certain the hospital staff had been that Victor had threatened his family with a knife, when in fact he had not. If the hospital had had the information that Joe's affidavits may require, Victor might never have been admitted as dangerous. But while the need for a notarized affidavit may make a sheriff or an admitting officer think twice, this seems a poor substitute for a speedier judicial hearing than the new law currently provides for. Something needs to be done to shorten the wait between the first day of incarceration and the determination by a judge that incarceration is warranted. I asked Joe whether in cases like Victor's the 72-hour evaluation period should begin to run as soon as the patient is picked up by a sheriff.

"That can't be the case," Joe replied. "Fortunately that didn't come up at the hearing. The statute can be interpreted that way, but the problem is that if you interpret it strictly, there are a lot of cases in rural Colorado where that won't work. Right now it's our position that a patient can be 'habeased' during that period, but that unless that happens, the hospital can hold the guy for 72 hours if it needs that much time. If it doesn't, it should release the guy as soon as it decides not to certify him. But the thing is complicated. According to an opinion of the City Attorney of Denver, the hospital has to wait the full 72 hours before they can certify, on the reasoning that the guy might get better before the end of the period, so you ought to give him the benefit of the doubt. My point of view is that if you know you're going to certify him, you should do it right away."

"And there's another problem," Joe continued, "whether they can medicate a patient during the 72 hours. The thing that really bothers me is that they don't wait for them to act out. They medicate on the basis of hearsay, what the sheriff or the family told them. And as a result they take away the possibility of their having any real first-hand evidence to put into the certification. The hospital is opposed to my view. But there's a crucial issue here because a patient may have a Constitutional right to refuse treatment until there has been a judicial determination."

I can understand why the hospital would not agree. If there is a Constitutional right to refuse treatment until a judicial determination, it seems inevitable that the current procedure will have to be changed to insure a speedier hearing. Even if the hospital files the certification with the court immediately after the 72-hour evaluation period, and the court immediately appoints a lawyer, who immediately requests a hearing, the patient will have been in the hospital for two weeks before a judicial determination--and before the hospital may "medicate" him. A two-week wait may be highly impractical and costly for Colorado State Hospital, where the average length of stay is now only three weeks. And under current psychiatric theory it may not be beneficial to some patients to stew in their hallucinations for two weeks before medication suppresses them.

And whether or not there is a right to refuse treatment, the Colorado statute still would be threatened by a decision like that in Lessard v. Schmidt and similar cases in four or five other jurisdictions. Reasoning that the characterization of commitment proceedings as "civil" is spurious when, in fact, a man is threatened with the loss of his liberty, Lessard v. Schmidt granted mental patients most of the procedural rights of criminal defendants: a judicial probable cause hearing within 48-hours of detention with the patient present; a full hearing on the necessity for commitment within two weeks, again with the patient present; the right to counsel at the earliest feasible time; prior notice to the patient and his lawyer of the "charges" justifying detention and of the witnesses to be called and the substance of their testimony; exclusion of hearsay testimony; a warning to the patient that anything he tells the psychiatrist may be used against him in court; and proof beyond a reasonable doubt of the facts justifying commitment. The Federal district court in Wisconsin that decided that case in 1972 does not, of course, have jurisdiction in Colorado. And many if not most state civil commitment statutes, including New York's, would be

unconstitutional under its standards.

The dilemma facing Joe and Buzzy is to figure out how far Colorado should go to anticipate a similar decision there, and how much they themselves can accomplish administratively, without an amendment of the law.

Satisfying the requirement for a full hearing within two weeks of detention on the necessity for commitment may be possible even under the current provisions of the law. If a patients' lawyer, presumably stationed at the hospital, could request a hearing immediately upon certification without waiting for the certification papers to reach the court, the two-week limit would be just barely satisfied. This practice might be instituted administratively, with the cooperation of the courts and the hospital. Under the new law, the court with jurisdiction in a given patient's case is located in the patient's home county or the county where the sheriff picked him up. An accelerated timetable may be difficult to achieve when the hearing takes place in a county far from Pueblo unless that court is willing to schedule a hearing in six or seven days.

Holding a probable cause hearing within 48 hours (some cases say within 5 days) may be a bit trickier. For patients like Victor D. who are considered so imminently dangerous or disabled that they are brought directly to Pueblo by a sheriff, a hearing might be conducted during the 72-hour evaluation period by a local judge, who could visit the hospital twice a week for an hour or two. (Colorado State Hospital averages an admission a day, and some of these are voluntary.) Treatment might be permissible at this point.

Patients who are not imminently dangerous or disabled arrive for their 72 hours of evaluation only after having undergone a judicially-ordered screening session near their home at which a doctor or psychologist determines whether there is probable cause to believe them dangerous or gravely disabled. Under the new law, the judge reviews this determination without holding a hearing and decides whether to order evaluation and treatment. If a hearing with the patient present and represented by counsel were mandatory at this stage, the probable cause requirement of Lessard v. Schmidt would be satisfied. Whether Joe can accomplish this with an opinion of the Attorney General is another matter.

There were many unanswered questions in the air as I took leave of Joe and Buzzy to rejoin my typewriter in Manhattan. "We'll be waiting for you to come out here again," they said, "after we've had a few months' more experience. We'll have lots more to talk about then. Hasta luego."

*Jeff Stenger*

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