

INSTITUTE OF CURRENT WORLD AFFAIRS

The Case of Alfred Curt von Wolfersdorf

JLS-2

Man Who Was Held 21 Years

Without a Trial is Freed at 88

BINGHAMTON, N.Y. Dec. 28 (AP)--Eighty-eight-year-old Alfred Curt von Wolfersdorf was released yesterday from Binghamton State Hospital after spending 21 years in mental institutions because of a murder he was not convicted of and he says he did not commit.

Sporting a new ski jacket and new shoes, he left the hospital, escorted by his wife and daughter.

"Cross my heart, I never did anything wrong," Mr. von Wolfersdorf told a newsman several weeks ago when word was received that he would be released.

He and Joseph L. Paonessa were accused in the 1950 murder of 14-year-old Robert Leonard in Milan, N.Y., near Poughkeepsie, where Mr. von Wolfersdorf lived.

The boy's nude body was found in a shack, dead of a bullet to the head. Paonessa was executed in Sing Sing prison, but von Wolfersdorf was sent to Matteawan State Hospital for the Criminally Insane where he was held for 20 years without a trial. He was later transferred to Binghamton and freed on Wednesday.

Bruce Ennis, a lawyer for the American Civil Liberties Union, started the action that finally won von Wolfersdorf's freedom. A district attorney decided there was no evidence against him and a judge dismissed all charges. The judge said there was "no speck of evidence on which he could be tried."

New York Times, December 29, 1972

29 West 17th Street
New York, New York 10011
September 20, 1973

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

Dear Mr. Nolte,

The case of Alfred Curt von Wolfersdorf, routinely reported in an A.P. dispatch last December and relayed by the Times, was not an historic decision whose name will be on lawyer's lips for decades. But it raises so many of the issues in the field of psychiatry and law that I thought I would discuss it at some length.

I first learned about von W.'s plight from his lawyer, Bruce Ennis. The only evidence implicating von W. was the testimony of Joe Paonessa, who later confessed to the murder himself and was electrocuted for it. Paonessa's accounts of the crime were wildly inconsistent, sometimes implicating von W., sometimes not. It is likely that if von W. had been tried along with Paonessa, he would have been freed for lack of credible evidence against him, and in any event no court in the country would have convicted

him after the chief witness had been executed.

But von W. was never tried. The District Attorney had unaccountably requested a sanity examination, von W. was found mentally incompetent to stand trial, and as a corollary he was committed for an indeterminate stay at Matteawan. For the next twenty-one years von W. resided in various New York State mental institutions. He was innocent, but had been classified incompetent to prove his innocence. He had come up against one of the paradoxical binds in our mental health laws, a Catch-22. During his two decades of incarceration, no pretense was made to treat his "illness." He rarely had contact with psychiatrists, except when he periodically requested interviews to win his release and then stand trial and clear himself. Hospital records report that he was "clean and neat, quiet, agreeable, sociable with others, interested in ward activities...." Each entry in his record also includes a cryptic "no improvement."

What was von W.'s illness? The two psychiatrists who initially examined him found him intelligent, co-operative, and with a good memory. He was not distracted. He heard no voices, saw no visions. The one ground on which they judged him insane was his "absurd beliefs" in the existence of a secret society called the Civil and Political Correction Service and of an agent of the society named "Red." A bizarre belief, no doubt. But as it turns out, the belief was true. The Service did exist, was something like a remnant of the German-American Bund founded in the 'twenties, and "Red," a member, was a Poughkeepsie house painter named Clifford "Red" Zimmerman. The District Attorney knew these facts when von W. was found incompetent because of his "absurd beliefs" and when Judge John Schwartz sent him to Matteawan on March 25, 1951.

These facts may not be typical--they include, for instance, a District Attorney pressured by public outrage to arrest a suspect who then became an embarrassment when the real culprit confessed. But the issues they raise are of a general nature: Shouldn't the Sixth Amendment right to a speedy trial apply to a man judged incompetent to stand trial? That is, shouldn't he be permitted to stand trial even though "incompetent" if he might prove his innocence despite his mental disability? Even if the psychiatrists who originally interviewed von W. had been correct, even if by some intelligible standard he was "insane" in 1951, no one denies that he could take care of himself, that he could even assist in his defense and could understand the charges against him--the two basic ingredients of competency to stand trial. Why, then, lock him up without a trial? And whether or not a reasonable psychiatrist might have had grounds for calling him insane, who is more qualified to decide whether he is fit to stand trial, his own lawyer or a psychiatrist barely acquainted with the requirements of preparing a defense? If an accused man is presumed innocent under our Anglo-Saxon system of justice, why should he be incarcerated in a hospital for the criminally insane? Whose job should it be to set the standards for legal sanity and insanity--institutional psychiatrists on the prison system payroll, the psychiatric profession at large, our legislative representatives? Have we a right to incarcerate a man for mental disability without insuring that he receive at least some treatment for the disability?

Test cases concerning these and related legal issues are now in state and Federal courts, sponsored by a growing number of lawyers and projects in psychiatry and law. Most of these cases seek to ensure that mistakes get undone, and a few cases go a bit further. They begin

to question the usefulness of the categories "sane" and "insane" and the social consequences we attach to them.

When a man is accused of a crime alone, he is guaranteed a multitude of procedural safeguards to insure fairness and objectivity before, during, and after his trial: right to a jury, right to counsel, restrictive rules of evidence, definite sentences, and so forth. Only then may we deprive him of his liberty. But when a man is accused of insanity, regardless of whether he is also accused of a crime, we typically ignore these protections and instead entrust the question of his liberty to a doctor or two. The fact of madness is complicated and frightening, and we find it a comfort to turn to experts entrusted with esoteric knowledge and arcane skills who can define madness in general and determine when a given man belongs in that category. Yet most men are not so conveniently categorized as mad or sane. And whether we should deprive a man of his liberty simply because a doctor labels him mad is another question altogether.

What we may in fact be asking of the psychiatrist is whether the man under examination is likely to be dangerous in the future. Is the psychiatrist likely to give us a reliable prediction? Probably not--there is some statistical evidence that psychiatrists are less accurate than the toss of a coin at predicting a man's potential for violence. And mental patients have been shown to be statistically less likely than average to commit violent crimes. Is it proper under our system to guess the potential for violence in a man simply because he has been accused of a crime he may not have committed (and which we presume he did not commit) and not to do so with all men?

Psychiatrists as a group are no doubt good at answering a variety of useful questions, but when they are hired to answer questions beyond their present and foreseeable skills to understand and predict, they do no better than the rest of us might, and maybe worse. I am told that it is not uncommon for a psychiatrist to label a man insane because, as in von W.'s case, the doctor doesn't believe a story that turns out to be true. And there is no shortage of psychiatrists willing to take on this and several other impossible tasks of prediction and classification, both in prison and outside. According to a study reported in Science magazine (January 19, 1973), arbitrary determinations of mental illness appear to be the general rule in a variety of hospitals. The hospital setting alone instills a presumption of mental illness against all those who present themselves or are presented against their will for examination.

Some writers have charged that institutional psychiatry is the 20th century analogue to the Spanish Inquisition or the leper houses of 16th century Europe, fulfilling a public need for the creation and persecution of a pariah class. Others argue that the power and prestige of medicine is used for social control. Involuntary hospitalization has been and is still used in the U.S.S.R. to repress dissidents. And hospitalization has, from time to time, been used in this country to similar ends. Under an 1851 Illinois statute, for example, a husband could have his wife committed to the state asylum "without evidence of insanity required in other cases." Is this simply a glaring instance of the common rule, that institutional psychiatry is commonly used as an instrument of power?

While I have little doubt that insanity is a social (not a medical) concept often recruited in the service of social ends, I don't think that either of these charges explains our current attitudes or points clearly to an alternate future. It is one of my aims to arrive at a fuller explanation.

Sincerely,

A handwritten signature in cursive script, reading "Jeffrey Steingarten". The signature is written in black ink and is positioned above the printed name.

Jeffrey Steingarten

Received in New York on September 20, 1973.