INSTITUTE OF CURRENT WORLD AFFAIRS

JLS-22 In the Matter of Alberta Lessard -- I
(the first part of an eight-part series)

29 West 17th Street
New York, New York 10011
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Mr. Richard H. Nolte
Institute of Current World Affairs
535 Fifth Avenue
New York, New York 10017

Dear Mr. Nolte:

On the afternoon of October 29, 1971, police officers James Mejchar and Jack Schneider were cruising the streets of West Allis, Wisconsin, a working-class suburb of Milwaukee. At 4:21 they received a radio call that a woman was threatening to jump from the second-floor window-ledge of an apartment building at 9719 West Greenfield Street.

When they arrived, Miss Alberta Priscilla Lessard, fifty-one years old, was down from the ledge, unhurt, and inside the West Allis Trading Post, a hardware store and motorcycle shop on the ground floor of the two-story apartment building. The manager of the store (also Miss Lessard's landlord) told Officer Mejchar what had happened. Some minutes earlier he had heard Miss Lessard running along the second floor hallway above the West Allis Trading Post, banging on her neighbors' doors and shouting that the communists were taking over. Then one of his customers glanced out the window, noticed a pair of legs dangling down from above, and

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screamed. The manager dashed outside to find Alberta Lessard hanging by her fingertips from the concrete rain gutter. Her feet were only a yard or so from the ground, but he went to the rescue, climbing upon a snowmobile on display on the sidewalk and grabbing at Miss Lessard's legs. They both fell to the ground.

Officer Mejchar also talked with Miss Lessard, and as he recalled a few days later, "she was very panicky about the communists, Richard Nixon, and the NEA [National Education Association] taking over the country. This is an ex-teacher. She lives alone. She told us that she didn't want to live any more. Life wasn't worth living because the communists were taking over that night."

The officers checked with headquarters. According to entries in the day-book from the previous shifts, Miss Lessard had twice telephoned the police that day. At three in the morning three squad cars were dispatched after she reported someone on the roof above her apartment, but no one could be found. And at two-thirty that afternoon, she telephoned again: someone was in the hallway outside her door, someone who refused to identify himself. Again several squad cars were sent, and after they looked into the matter, the police concluded that the noises Miss Lessard had heard were made by a man delivering telephone books. Both entries in the day-book described Miss Lessard as panicky and excitable.

The officers immediately drove her to Milwaukee's North Division Mental Health Center and filled out a printed form entitled "Emergency Detention for Mental Observation." As the reason for detention they wrote, "Jumped out of window on second floor in a suicide attempt. Doesn't think life is worth living because the Communists are taking over the country."

Three days later, on the morning of November 1, the staff at North Division Mental Health Center interviewed Miss Lessard and diagnosed her as a paranoid schizophrenic. Without explaining her legal rights to her or presenting her case to a judge, the staff put her on a routine combination of medications including Prolixin Enanthate, Mellaril, and Akineton. Prolixin is a widely-prescribed "behavior modifier" used for the management of psychotic symptoms; it is highly potent, one injection lasting an average of two weeks. Mellaril, also widely-used to reduce a patient's agitation and initiative by inhibiting psychomotor functions, is administered four times a day. The common side effects of both these drugs are lethargy, drowsiness, nausea, vomiting, blurred vision, dryness of the mouth, and Parkinsonism-like tremors. Less common but more severe side effects listed in the "Physicians' Desk Reference" (a standard guide to drug products) include death from sudden and unexpected cardiac arrest and, especially in elderly women, irreversible tardive dyskinesia, a rhythmical involuntary protrusion of the tongue, sucking of the mouth and chewing motion sometimes accompanied by involuntary movements of the hands and feet. Akineton, administered several times daily, is sometimes effective in alleviating the Parkinsonian side effects of Prolixin and Mellaril, although it often exacerbates the patient's dryness of mouth to the point where speech is impossible. There is no known treatment for tardive dyskinesia.

Later the same day, Officer Mejchar appeared before a judge in the misdemeanor branch of Milwaukee County Court--the Honorable Christ T. Seraphim. He reported what the manager of the West Allis Trading Post and Miss Lessard had said to him, and the judge signed a "Mental Observation Order" authorizing the North Division Mental Health Center to keep Miss Lessard there for another ten days. After three days of mental observation, the acting director of North Division,

Dr. George Currier, prepared an "Application for Judicial Inquiry In the Matter of the Mental Condition of Alberta Lessard" and filed it with the chief deputy clerk of the misdemeanor and traffic court. This form officially starts up the legal machinery that may bring about the permanent commitment of a person to a mental hospital.

> Patient demonstrates again (this is her fourth hospitalization) her persistent delusional thinking regarding the Milwaukee and West Allis School system rejecting her as a teacher. She is more Global in her Paranoid thinking, i.e.: talking about the Government & President Nixon needing her advice, especially since the newspapers 'agree with her'. Police detention read, 'Feels communists are taking over the country'. NO INSIGHT.
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> Diagnostic Impression: Schizophrenia - Chronic Paranoid.
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> Recommendation: Permanent Commitment to North Division.

In response to Dr. Currier's application, Judge Seraphim extended Miss Lessard's temporary confinement for ten days beginning November 4 and appointed two physicians, Drs. David Schuele and Bernard Schaeffer, to examine her and report on their findings.

Alberta Lessard was unaware of the flurry of legal business surrounding her until the following day, when Judge Seraphim and his court reporter paid her a call, unannounced, at North Division.

"How are you, Miss Lessard?" the judge began.

"Fine, thank you."

"Are you being treated well?"

"Yes."

"Any complaints at all?"

"Only that I'm here," Miss Lessard answered. "I would like to be home."

"I have appointed two doctors to examine you, Miss Lessard, and they will let me know whether you need further hospitalization. Now if they feel you do, are you willing to be hospitalized?"

"I don't feel I need to be hospitalized," Miss Lessard said. "I won't sign myself in, if that's what you're asking."

"No," the judge said, "I'm not asking you that. I am asking if the doctors feel it's necessary, are you willing to follow their recommendation? That's my question."

"Well, I don't know whether I would or not."

"I see. Well, do you want your own doctor to examine you? I would be willing to take his view into consideration."

"I don't have one at the moment."

"Well, if you do. I'm also appointing a lawyer for you, and he will consult with you and advise you as to your rights. Do you understand?"

"Yes, I do," replied Miss Lessard, and the interview was over. When he returned to his chambers, Judge Seraphim appointed Daniel A. Noonan, a recent law graduate with no experience in mental health cases, as guardian ad litem for Miss Lessard. Technically speaking, Judge Seraphim conveyed only part of the truth when he told Miss Lessard that he would appoint a "lawyer" for her. Under the laws of Wisconsin and many other states, a guardian ad litem is appointed for those who are traditionally thought to be incapable of handling their own legal affairs--minors, the

mentally ill and defective, and habitual drunkards. Unlike a private lawyer who is bound to advance singlemindedly his client's wishes, the guardian is instructed to foster "the best interests" of his ward, who is presumed not to understand where his own best interests lie, and in civil commitment proceedings a guardian ad litem may well oppose his ward's desire to return home from the hospital.

Then on November 10, twelve days after the police had taken her to North Division and before Daniel Noonan had found time to interview her, Alberta Lessard telephoned Robert Blondis, a twenty-seven year old staff attorney she knew at the federally-funded Milwaukee Legal Services Program, and asked for his help.

Blondis had graduated two years earlier from Marquette University Law School (which had offered no courses in mental health law), had never handled a commitment case, had never even read Wisconsin's commitment law. It was late on a Wednesday afternoon, and there were no clients in the office, and Blondis took Chapter 51 of the Wisconsin statutes down from the shelf and read it for the first time. He was appalled by what he found: it appeared that Alberta Lessard could be held against her will at North Division for 145 days before there would be a full judicial hearing on her case. And when the hearing was held, Chapter 51 permitted the judge, entirely in his own discretion, to exclude her from the hearing (and in fact not even to notify her of it). There was no provision for a lawyer to maintain her defense--to introduce evidence favorable to her, cross examine hostile witnesses, argue her case, and protect her legal rights. Even the appointment of a guardian ad litem was discretionary with the judge. And the standards for permanent commitment following the temporary detention period seemed to Blondis so vague that practically anyone could be committed if two doctors recommended it. All

the law required was for a judge to find Alberta Lessard "mentally ill" and "a proper subject for treatment." Chapter 51 defined mental illness as follows: "mental disease to such extent that a person so afflicted requires care and treatment for his own welfare, or the welfare of others, or of the community."

Chapter 51 in hand, Blondis wandered out into the hallway to find someone to talk the thing over with. Thomas Dixon, another lawyer at the Southside neighborhood office and a friend of Blondis' since their undergraduate days at Marquette, happened to be passing by, and Blondis told him about Alberta Lessard and handed him the statute to read. Dixon had just turned 27 and joined Milwaukee Legal Services as a full-time staff attorney only five months before, after graduating from the University of Wisconsin Law School, and he had no more experience in mental health law than his friend. He retired to his office with Chapter 51, and a half-hour later found Blondis.

"I couldn't believe it," he recalls. "I had been dealing in the other areas of poverty law where your right to due process with regard to property in welfare and consumer credit cases had already been litigated. And this involved a person's liberty. It just blew my mind that people could be thrown into a mental hospital so easily and with so few protections." They decided to work on the case together.

As Blondis and Dixon were soon to discover, Chapter 51 offered no fewer procedural protections than the laws in most places. When Alberta Lessard was taken to North Division Mental Health Center, only half our states had guaranteed even the minimum of safeguards required in all criminal proceedings--the mandatory right of a patient to be present at his hearing,

to be represented by court-appointed adversary counsel, and to be informed of the specific charges against him. And only a half-dozen state and federal courts had scrutinized the traditional reasons for denying these assurances of accuracy to those accused of mental illness.

As recently as 1960, the Iowa Supreme Court held that involuntary civil commitment is not "such a loss of liberty as is within the meaning of the constitutional provision that 'no person shall be deprived of life, liberty, or property without due process of law.'" It hardly seems possible that the Iowa judges were unaware of the irretrievable harm that an incorrect or unfair commitment decision can inflict. What the Iowa judges might have meant, and what most other courts have assumed, is that although an involuntary patient does lose his liberty (and several other rights as well), the state's interest in carcerating the mentally ill overrides the need for strict procedural niceties. The purpose of commitment is benevolent rather than punitive, the patient's interest and the state's interest in the patient are identical--not in adversity--and that full-scale legal proceedings would in any event have a traumatic effect on the confused patient.

In most states, like Wisconsin, an involuntary patient is committed for an indefinite period, and in several states an average patient will remain in the hospital for a good portion of his life--almost sixteen years in West Virginia; in 1969, over half the patients at Washington's St. Elizabeth's Hospital had been there for over five years. Since 1960, though, there has been a downward trend nationwide in the average length of stay, and most patients are now released within six months of their arrival. (Between a third and a half of them will enter the hospital again.) But liberty, of course, is a value of transcending importance to Americans,

and the loss of liberty whether for six months or six days also infringes other constitutionally significant values--the freedom of association, the right to travel, the right to privacy, and on occasion, the right to life itself.

A hospitalized patient is confined within the walls of the institution, and his freedom to move about within these walls will also be strictly regulated--for reasons of safety or discipline or simple bureaucratic convenience. His life is regimented and under constant scrutiny by his fellow patients and hospital staff. Many state and county hospitals are still crowded, understaffed, and poorly maintained, and a patient may be at considerable risk of brutality from his attendants and colleagues. Statistics compiled in 1966 showed that a hospitalized mental patient stands ten times the chance of dying in the institution as he would on the outside, and the difference is not explained by the advanced age of the average patient. (Ironically enough, the ratio of doctors to patients in many mental hospitals is lower than the ratio of doctors to the general population at large.)

When an involuntary patient is let out on a pass or transferred to out-patient care at a community facility, the restrictions on his movements will resemble those in the parole of prisoners--he will be subject to summary rehospitalization and period psychiatric testing, and he may need his doctor's approval before choosing a job or a place to live. Even when he is released, he may find himself subject to greater civil disabilities than if he were a convicted felon. Apart from the abstract stigma of having been hospitalized (which becomes more concrete for ex-patients like Senator Thomas Eagleton, George McGovern's first choice for running mate in 1972, and indeed for most other ex-patients looking for work), the ex-patient may lose, depending on what part of the country he lives in, the right to vote, to be a

candidate for public office, to serve on a jury, to practice medicine, law, dentistry, or nursing, to obtain a driver's license, and to make a will, a lease, or a contract. In Alberta Lessard's Wisconsin, a judge's finding of mental illness carries along with it by automatic operation of law every one of these disabilities and additionally imposes three years in jail or a $200 fine for trying to vote in any election (whether for the president or the school board), prohibits an ex-patient from becoming, of all things, a dental hygienist, and denies him the right to sue and be sued. (While incompetency to be sued may seem at first blush rather a welcome privilege, consider the ex-patient's chances of getting a loan from a finance company that will have no recourse in court for non-payment of the monthly installments.) Some states do guarantee full restoration of rights when a patient is released; some even permit patients to vote while in the hospital; others empower the hospital director to determine which civil rights a patient will regain on release. In states like Wisconsin, involuntary commitment creates a rebuttable presumption that the ex-patient is incompetent to resume the incidents of citizenship--rebuttable, that is, at the patient's expense and with the burden of proof on him.

If Bob Blondis and Tom Dixon had known more about commitment law, they would not have been so surprised that a person's liberty and civil rights may be taken away without the customary procedural protections. And they might have left Alberta Lessard's case to the young guardian whom Judge Seraphim had appointed.

Received in New York on April 12 1976.