

THE RIGHTS OF PERSONS IN STATE INSTITUTIONS
A Presentation to the
Minnesota Constitutional Study Commission
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Today we are recognizing that those rights guaranteed under the constitution do not, in fact, apply equally to all groups of citizens. In recent years, many of those who are being discriminated against, particularly women and members of minority groups, are calling public attention to the rights they are being denied. However, I am here today to speak on behalf of another group of citizens where the denial of rights is not always as visible as is the case in race or sex discrimination. Neither do many of those I speak for have the freedom of movement or the freedom for decision-making which would allow them the opportunity to bring their plight or concerns to the attention of appropriate persons or agencies. I^{am} speaking of those individuals who bear the label of being or having been mentally ill or mentally retarded. Fortunately, attention is now also being focused on their rights -- and some recent court cases have helped to point out how and why these rights have been and are being violated.

I will be speaking today about the rights of persons who are or have been in our state public hospitals for the mentally ill and mentally retarded. These large public institutions unfortunately lend themselves to the kinds of practices which can and often do impinge upon the individual's rights and dignities and can very easily become closed worlds. Because of the limited time I have to cover the subject, I will be limiting my presentation to five areas with which we are primarily concerned and will attempt to give a brief example to enlarge upon each of them. The first is with human rights. The second is with regard to civil rights and due process -- particularly as related to admission and retention in state hospitals. Third I will discuss briefly the area dealing with in-hospital practices. The fourth area is that of the right to treatment.

And the fifth will deal with confidentiality and privacy of information.

I selected the area of human rights to start with because the question we are addressing does not involve solely constitutional rights. Actually it goes to the heart of value problems and involves such things as free will, responsibility, liberty, and knowing and doing that which is right. We are concerned not alone with civil rights, but with human rights because we are dealing with human beings. In reading some of the material written by the late Dr. David Vail on this subject, he pointed out that in our attack on the problem of dehumanization, we reached the sad conclusion that much has taken place and still takes place with regard to the mentally disabled which might lead one to conclude that there is an assumption by some people that the mentally ill and mentally retarded are less or other than human. In the area of human rights we would merely ask that consideration be given to those practices and procedures which adversely affect the dignity of the human being.

The second area of concern is with regard to civil and due process particularly as related to the commitment and retention of persons. In 1967 Minnesota passed the Minnesota Hospitalization and Commitment Act, a significant step in attempting to right some of the wrongs in the area of admission of patients. Through the leadership of the late Dr. David Vail and his concern for patients, for their right to treatment and through his attention of the problems of dehumanization, Minnesota is undoubtedly ahead of many states but there continue to be instances where an individual's rights are being denied merely because of the fact his behavior has been given the label of mental illness or mental retardation and he has been placed in a state institution. In quoting from a recent issue of Bench and Bar of Minnesota, an article on "Involuntary Commitment in Minnesota", the authors of the article say in part "despite such substantive and procedural protections granted by the act, since the effective

date of the act in 1968 many patients have not been afforded a full and fair commitment hearing. Reports by review boards at state hospitals, complaints filed by patients, studies undertaken by mental health associations regarding commitment practices and several law suits raising the issue of fair hearing and adequate representation, all lead to the conclusion that some present practices violate the mandate of the act." So we can see that even the passage of this kind of statute does not guarantee that all persons who enter our system involuntarily do in fact have their constitutional rights protected as adequately as they should.

A third area for which we have considerable concern is the in-hospital treatment area. This includes to some degree the rights to self determination, the right to know about your treatment program, to be involved in decision-making to the extent that it is possible, the right to accept or refuse certain treatments in particular such things as electric shock, insulin shock, lobotomy, aversion therapy or drugs producing unwanted side effects or stupefying results. In this connection, there have been a number of groups who have drawn up a declaration of human rights for mental patients and they have included such things as:

1. You are a human being and are entitled to be treated as such with as much decency and respect as is accorded to any other human being.
2. You are an American citizen and are entitled to every right established by the Declaration of Independence and guaranteed by the Constitution of the United States of America.
3. You have the right to the integrity of your own mind and the integrity of your own body.
4. Treatment and medication could be administered only with your consent. You have the right to demand to know all relevant information regarding said treatment and/or medication.
5. You have the right to have access to your own legal and medical counsel.
6. You

have the right to refuse to work in a mental hospital and/or to choose what work you shall do and have the right to receive the minimum wage for such work as is set by the state labor laws. 7. You have the right to decent medical attention when you feel you need it just as any other human being has that right. 8. You have the right to uncensored communication by phone, letter and in person with whomever you wish. 9. You have the right not to be treated like a criminal, not to be locked up against your will, not to be committed involuntarily and not to be fingerprinted or mugged.(photographed). 10. You have the right to decent living conditions. 11. You have the right to retain your own personal property. 12. You have the right to bring grievances against those who have mistreated you and the right to counsel and a court hearing and you are entitled to protection by the law against retaliation. 13. You have the right to refuse to be a guinea pig for experimental drugs and treatments and to refuse to be used as learning material for students. 14. You have the right to request an alternative to legal commitment or incarceration in a mental hospital. Here I would also point out briefly that when patients are on provisional discharge from a hospital, they lose all of the legal rights which are guaranteed to them under the Hospitalization and Commitment Act while they are on the provisional discharge status so that this may be an area that needs to be recognized also.

The next area of our concern is the right to treatment. This implies that if it has been determined that hospitalization is necessary that there must be an individualized plan of treatment stating clearly the goals and the procedures and that such treatment plans should be reviewed at reasonably frequent intervals. To be placed in a state hospital without such active and appropriate treatment,

is tantamount to incarceration. One group speaking on behalf of patients stated it this way, "If the state has determined that it has the right to detain anyone for mental illness or mental deficiency, then it must provide the services, facilities and staff to properly care for those whom it has detained. If the state cannot/^{properly}provide such, then it has no right to so detain anyone on the basis that it is for the individual's welfare that he is detained. The above rights are deemed absolutely essential for human conditions. Any other conditions are inhuman and should not be tolerated, condoned or supported.

The last area is that ^{dealing} ~~feeling~~ with privacy and confidentiality. Included in a declaration of human rights for mental patients is the right to have no stigma attached to one's reputation by reason of having been in a mental institution. Or, as another group put it, the right not to have your character questioned or defamed. Unfortunately for many persons who bear the label, the stigma of having once been mentally incapacitated has its effect on the individual's freedom of movement and employment because of this kind of information being passed on in the form of employment applications and other forms asking the question as to whether the individual has ever been mentally ill.

We realize that many of the concerns we have expressed today, might be handled through the enactment of specific statutes. However, statutes can be easily repealed and certain rights taken away and, therefore, it is our thought that perhaps the rights of the mentally ill and mentally retarded should be approached through constitutional revision with the specific concern for these individuals mentioned.