The Constitution v. the snakepit

By Walter Goodman

For most of history, it has been the fate of those whom we now call the "mentally ill" and the "mentally retarded" to be stowed away somewhere, in accord with the adage, out of mind, out of sight. Private hospitals and schools, with comfortable accommodations and attentive treatment, are available to those whose families can afford very large fees. But today, as ever, the less affluent must make do with publicly financed institutions whose main function is to keep their inmates—upwards of half a million people—from getting in the way of a society that has pretty much given up on them.

Some of the residents of most institutions for the mentally ill have come there voluntarily, for help or safe-keeping; others have been involuntarily committed by their families or the civil authorities. Most of the 200,000 institutionalized retarded have gotten where they are on the application of someone else, usually a relative. In the past few years, a band of young lawyers has been waging a forceful attack on the treatment or nontreatment of these so-called "involuntarily institutionalized," especially those people who have been placed in large state "schools" for the mentally retarded. These citizens are being deprived of their rights under the Constitution, maintain the lawyers, and mental health professionals are joining them in an ingenious effort to use legal means to improve, and possibly transform, the care of the mentally handicapped.

There is nothing novel about exposés of Bedlams and snake pits; they explode from time to time, arouse an hour's outrage, and subside, leaving conditions slightly improved, perhaps. But the present sustained attack is truly new. It is directed squarely at breaking down the big state schools and hospitals that serve as custodial shelters for thousands rather than as treatment centers for individuals. It was only in 1960 that Dr. Morton Birnbaum, an attorney and physician, advanced the thesis in the American Bar Association Journal that persons involuntarily committed to mental institutions have a "right to treatment." His idea was received with interest, but not with action.

The issue came to life a couple of years later when one Charles Rouse, aged 17, attracted the attention of Washington, D. C., policemen, unaccustomed to seeing a white pedestrian walking after dark through a black neighborhood. He was found to be carrying a loaded pistol and some ammunition. For this offense, Rouse, who had a modest juvenile record, might have gotten a year in jail. Instead, owing to an enlightened penology, he was acquitted by reason of insanity; was declared a "sociopath"—a catchall word for public nuisances, which tells less about the character of the individual so labeled than about the predicament of the labelers—and was awarded an indeterminate sentence at St. Elizabeth's Hospital, the capital's big facility for the mentally ill. There he remained for 4½ years. When his efforts to get free failed in Federal District Court, his Legal Aid attorney appealed and was lucky enough to have the plea heard by Judge David Bazelon, who would here confirm his reputation as an activist jurist. Judge Bazelon sent the case back to the lower court with the injunction that it look into the question of whether Rouse had not in fact been deprived of his "right to treatment."

To represent Rouse, Legal Aid called on Charles Halpern, a freshman member of the classy Washington firm of Arnold & Porter, who had been much impressed with courses on psychiatry and the law at Yale Law School. In his courtroom debut, Halpern elaborated on the right-to-treatment concept. He pointed up the anomaly of keeping somebody confined for years on a misdemeanor with no treatment to speak of, and suggested that constitutional issues were at stake. He was denied the satisfaction or disappointment of a decision on those interesting grounds when an appellate court ordered Rouse's release because his original insanity plea had been interposed over his objection. Still, the point had been made that patients were entitled to be treated; the record had been laid out, and the argument stirred speculation in legal precincts that mental institutions need not be off limits to lawyers.

Up to this time, there had still not been a "big" case having to do with the mentally handicapped, but in 1970, just such a case began to develop in Alabama. That fall, several score staff members who had been fired from Bryce Hospital in Tuscaloosa, one of the state's two large mental hospitals, were casting about for a lawyer to help them get their jobs back. Incidentally, they also hoped to prevent their state, whose per capita expenditure for the mentally handicapped ranked among the lowest in the nation, from further diminishing its level of care. They were drawn to George Dean, a native Alabaman of middle years, imposing mien and a flamboyant courtroom and extracourtroom manner.

Dean had never heard of Charlie Halpern or Charlie Rouse, but he had (Continued on Page 22)

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