# Reforming the Involuntary Commitment Process: A Multidisciplinary Effort

by Dawn Chase

The needs of people with mental illnesses touch the legal profession as heavily as they do the rest of society.

Lawyers serve as special justices to preside over involuntary commitment hearings. Lawyers represent respondents in those hearings. They serve as guardians *ad litem*. They defend mentally ill people charged with crimes. They counsel people with chronic mental illnesses and their families on an array of issues, including interventions and estate planning.

On December 9, 2005, lawyers who serve in those roles throughout the state met in Richmond with mental health professionals, law enforcement officers, hospital administrators and advocates for "Reforming the Involuntary Commitment Process: A Multidisciplinary Effort," a conference sponsored by the Supreme Court of Virginia and Virginia State Bar.

The conference was organized by a committee appointed in November 2004 by Chief Justice Leroy R. Hassell Sr. to study Virginia's civil commitment process and suggest improvements.

Hassell told 250 attendees at the Holiday Inn-Koger Center that the Supreme Court is "committed to an outstanding judicial process that is fair and impartial and that respects the rights of people who are subject to Virginia's involuntary civil commitment process."

Before the conference, one thousand surveys werre sent to Virginians involved in the commitment process. Many lawyers' answers focused on due process: "The limited time made available to interview detainees and the wholesale admissibility of hearsay by special justices." "Inadequate advance notice of the hearing to the respondent." "No prosecutors." "The appeals process is a mess." "[Need for] uniform protocol throughout the state." "Instead of formalizing the process, . . . more of a collaborative effort should be used. Due process doesn't help out a catatonic, delusional or psychotic patient."

Participating in the Supreme Court of Virginia's conference on reforming the commitment process were (l–r) Chief Justice Leroy R. Hassell Sr., Dr. Paul S. Appelbaum, Professor Richard J. Bonnie, attorney and former special justice Judith L. Rosenblatt and Gregory E. Lucyk, chief staff attorney to the Supreme Court.

Survey respondents also complained about mechanics: "Rotten pay for court-appointed attorneys." "I stopped doing this because of hassle getting paid, undesirable location and amount of time it took from my regular practice." "You can end up miles from your locale, making visitation very difficult." "Difficult clients."

At the conference, lawyers' perspectives were added to the other professionals'. Sheriffs talked about difficulty providing transportation and appropriate restraints. They complained about having to house and protect mentally ill people in jails when psychiatric hospital beds are not available. Mental health practitioners questioned the training in psychiatric problems provided to special justices and magistrates. They cited inadequate funding of community services boards that help people maintain therapies and medicines so they can avoid crises. Advocates expressed concern for respondents who suffer from other impairments, such as vision or hearing loss. They observed that many medications, while essential to control psychiatric symptoms, sometimes cause serious physical problems, and each patient must balance all considerations as he or she tries to cope with mental illness.

Richard J. Bonnie—a law professor and director of the University of Virginia Institute of Law, Psychiatry and Public Policy—gave his perspective as a veteran of mental health reform efforts in Virginia. "Here we are with many of the same complaints concerning lack of due process, lack of clarity, lack of uniformity in the interpretation of the Code, leading to a great deal of variation across the state and sometimes even within the same jurisdiction.

"And some problems, particularly on the services side, have gotten worse: A shortage of beds for evaluation and detention pending hearings, and occasionally for commitments themselves . . . .

*continued on page 16*

"The involuntary commitment process in Virginia does need to be reformed," Bonnie said. He summed up the needs: "More beds, higher fees and fewer handcuffs."

"From the perspective of civil commitment reform, specifically, I would sketch a three-part vision: One, close the services gaps, especially for people in crisis. Two, facilitate voluntary engagement to the maximum possible extent. Three, when coercion is necessary—as of course it will be in some cases—do it with a genuine commitment to due process."

Bonnie cautioned that the subjects of mental health commitment hearings are very rarely so disordered that they cannot participate meaningfully.

"Some will say that the trappings of due process in the context are a charade," he said. "That may be true of some patients, but it is not true of most. And patients will know, almost however disordered they are, whether they have been treated with dignity and respect and whether the judge and lawyers paid any attention to them, or even made eye contact with them."

A MacArthur Research Network study about ten years ago of acute psychiatric admissions in the United States found "one of the strongest predictors of whether patients perceived that they had been coerced was whether they felt that they had been treated fairly, and that the psychiatrist and judges had cared about hearing their side of the story," Bonnie said.

Raymond R. Ratke—chief deputy commissioner of the Virginia Department of Mental Health, Mental Retardation and Substance Abuse Services—emphasized that the commitment process can itself inflict trauma that respondents must recover from. "It's stigmatizing. You become the illness," he said.

More than 50 percent of people with serious mental illness "have experienced abuse or other trauma in their lives. The process that we have . . . of people going into the hospital may, in fact, be retraumatizing and be something that people need to get over."

Several speakers said that the bar for involuntary commitments—danger to self or others or inability to care for one's self because of mental illness—should be lowered. Some endorsed alternatives such as mental health courts—in which a judge oversees compliance with treatment regimes for mental illness—or a process for commitment to outpatient services.

Insurance companies and Medicaid also set too high a bar for coverage of crisis services, Ratke said. "You have to get really bad off to get services . . . . You have to get to a place where other alternatives don't necessarily exist."

Bonnie said, "By embracing dangerousness as the sole clinical indication for hospitalization, many managed care plans have been too restrictive, especially when their plans do not cover intensive crisis stabilization services."

Dr. Paul S. Appelbaum, the A.F. Zeleznik professor of psychiatry and director of the Law and Psychiatry Program at the University of Massachusetts Medical School, described the history of how Americans have treated the mentally ill.

Other states, like Virginia, have dealt with patient dumping—people released from mental hospitals were transported across a county or state line and told not to come back. And they have endured the effects of the deinstitutionalization movement of the 1960s, when state systems discharged disabled people from hospitals into communities without providing adequate outpatient services to help them.

Panels of judges, special justices, mental health professionals and law-enforcement officials discussed their perspectives of involuntary commitment and the variations from locality to locality.

In closing, Hassell said the multidisciplinary discussion will continue.

"Lawyers of this commonwealth would be very, very proud because [the conference] was funded by lawyers' dues," he said. The participants are on a mutual "journey to improve how we treat people" with mental illness.

The Supreme Court of Virginia will provide training to special justices, magistrates, judges and lawyers, he said. And "we will have conferences in the future . . . . It is very important that we hear all voices . . . as we seek to improve Virginia's mental health system." ⚖

# Legal Fiction Contest Announced

SEAK Inc., a Massachusetts-based company that provides training and publications for professionals, is sponsoring its fifth annual National Legal Fiction Writing Competition for Lawyers. First prize is one thousand dollars and lunch on Cape Cod with lawyer authors Lisa Scottoline and Stephen Horn.

The contest is open to short stories or novels of 2,500 or fewer words in the legal fiction genre by U.S.-licensed attorneys. Entries (one per attorney) are due by June 30, 2006, and should be sent to SEAK Inc. Legal Fiction Competition, Attention: Steven Babitsky, President, Post Office Box 726, Falmouth, Massachusetts 02541.

For more information, contact Kevin J. Driscsoll at (508) 548-4542 or **kevin.driscoll@verizon.net**.

## IN MEMORIAM

**John Muse Bareford Sr.**
Saluda
November 1919–March 2005

**Jerry T. Batts Jr.**
Sun City West, Arizona
March 1912–October 2003

**Herbert Berl**
Washington, D.C.
January 1913–December 2005

**H. Brice Graves**
Richmond
September 1912–October 2005

**Chris E. Hagberg**
Vienna
December 1949–October 2005

**Jo Hambrick Kittner**
Glen Allen
September 1959–August 2005

**Henry I. Lipsky**
Arlington
November 1921–May 2005

**Peter Leo McCloud**
Lexington
December 1950–July 2005

**Harold C. Skeen**
Richmond
February 1925–December 2004

**John Thurston Wassom**
Richmond
October 1916–January 2006

**James Woolls**
Alexandria
May 1933–September 2005

**Colins Denny White**
Richmond
March 1914–January 2005

## Free and Low-Cost Pro Bono Training

Visit the Pro Bono page on the VSB Web site for free and low-cost pro bono trainings and volunteer opportunities: **www.vsb.org/probono/**.

## For Seniors About Seniors By Seniors

Designed to meet the needs of Virginia's elder citizens, the *Senior Citizens Handbook* contains information about:

- Social Security
- Food Stamps
- Estate and Gift Taxes
- Medicare & Medicaid
- Alzheimer's Disease
- Choosing a Care Facility
- Landlord/Tenant Issues
- Advance Directives
- Protecting Yourself as a Consumer
- Age & Disability Discrimination
- Elder Abuse
- Helpful Contacts

To order copies contact Joy Harvey at **harvey@vsb.org** or (804) 775-0548.

**Available online at www.vsb.org/publications.**