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Clerk, Supreme Court of Appeals
Richmond, Va.

# Record No. 6401

## In the Supreme Court of Appeals of Virginia at Richmond

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## DR. JOSEPH R. BLALOCK, SUPT., ETC.

v.

## MERVIN MICHAEL MARKLEY, JR.

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FROM THE CIRCUIT COURT OF SMYTH COUNTY

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RULE 5:12—BRIEFS

§5. Number of Copies. Twenty-five copies of each brief shall be filed with the clerk of this Court and three copies shall be mailed or delivered by counsel to each other counsel as defined in Rule 1:13 on or before the day on which the brief is filed.

§6. Size and Type. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

HOWARD G. TURNER, Clerk.

Court opens at 9:30 a. m.; Adjourns at 1:00 p. m.

IN THE

# Supreme Court of Appeals of Virginia

AT RICHMOND

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## Record No. 6401

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VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Tuesday the 26th day of April, 1966.

DR. JOSEPH R. BLALOCK, SUPERINTENDENT OF THE SOUTHWESTERN STATE HOSPITAL,
Plaintiff in error,

*against*

MERVIN MICHAEL MARKLEY, JR., Defendant in error.

---

From the Circuit Court of Smyth County
J. Aubrey Matthews, Judge

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Upon the petition of Dr. Joseph R. Blalock, Superintendent of the Southwestern State Hospital, a writ of error is awarded him to a judgment entered by the Circuit Court of Smyth County on the 30th day of September, 1965, in a certain proceeding then therein depending, wherein Mervin Michael Markley, Jr., was plaintiff and the petitioner was defendant; no bond being required.

# RECORD

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Received July 19, 1965.

J. A. M.

## PETITION FOR A WRIT OF *HABEAS CORPUS, A. D. SUBJICIENDUM*

To: The Honorable J. Aubrey Matthews, Judge:

Comes now, Mervin M. Markley, the Petitioner in proper person and the petition seeking issue of the Writ of *Habeas Corpus, A. D. Subjiciendum,* to determine the legality of Petitioner's detention in the Southwestern State Hospital in the County of Smyth located at Marion, Virginia by Respondent, Joseph R. Blalock, M.D.

Your Petitioner offers the following to-wit:

* * * * *

page 7 } CLAUSE IX

These premises being met, your Petitioner respectfully prays and requests that a Writ of *Habeas Corpus A. D. Subjiciendum* be issued under the hand and seal of the court directing the Respondent in this cause of action, Joseph R. Blalock, M.D., superintendent of the Southwestern State Hospital to produce the body at a time and place to be designated by the court along with the cause if any there may be showing why your Petitioner should not be released from said hospital. Your Petitioner requests and prays that this Writ of *Habeas Corpus A. D. Subjiciendum* be granted.

* * * * *

page 18 } Virginia:

Circuit Court of the County of Smyth, on Thursday, the

30th day of September, in the year of our Lord, Nineteen Hundred and Sixty-Five.

* * * * *

This day came again Mervin Michael Markley, Jr., who was led to the bar in the custody of a guard of Southwestern State Hospital; came also Dr. Joseph R. Blalock, Superintendent, Southwestern State Hospital; came also Robert I. Asbury, Attorney for the Commonwealth; came also Marvin R. Perry, Court Reporter who was duly sworn.

And it appearing that on the 30th day of July, 1965, a hearing was conducted by this court on a petition for a Writ of *Habeas Corpus* and at the conclusion of which the Court not being advised as to the proper action to take on this matter took the same under advisement and continued the same to this date. On this day additional testimony was presented on behalf of petitioner and on behalf of Southwestern State Hospital.

At the conclusion of all of the testimony the Attorney for the Commonwealth moved the Court to dismiss the petition filed herein on the grounds that the Hustings Court of the City of Newport News retained jurisdiction over petitioner according to the terms of the order entered by said court and made a part of the record of this proceeding, such motion being overruled by the Court, to the action of the Court the Southwestern State Hospital, by counsel, excepted. Thereupon the Court, being of opinion that the petitioner is sane as shown by the transcript of the evidence filed herein and in accordance with the provisions of Section 37-123 doth order that petitioner be returned to the Hustings Court of the City of Newport News for such action as they may deem advisable.

Thereupon the Southwestern State Hospital, by page 19 } counsel, moved the Court to suspend execution of the aforesaid order for a period of 60 days to allow the Southwestern State Hospital or someone for it to appeal to the Supreme Court of Appeals for a writ of error to the aforesaid judgment, such motion being granted.

And petitioner is remanded to the custody of Southwestern State Hospital.

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## NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR

To Lloyd E. Currin, Clerk of the Circuit Court of the County of Smyth:

Counsel for respondent, the defendant in the above-styled case, hereby gives Notice of an Appeal from a final judgment entered herein on September 30th, 1965. The said Dr. Joseph R. Blalock, the defendant in the above-styled suit, will apply to the Supreme Court of Appeals of Virginia for a Writ of Error to said judgment, and herewith sets forth his Assignments of Error as follows:

1. The Court erred in overruling the motion to dismiss the Petition, made by Counsel for respondent, Dr. Joseph R. Blalock, at the conclusion of all the testimony.
2. The Court erred in exercising authority pursuant to provisions of Section 37-123 of the Code of Virginia of 1950, as amended.
3. The Court erred in ordering petitioner released from Southwestern State Hospital without testimony from Dr. Joseph R. Blalock, Superintendent of Southwestern State Hospital, where petitioner is detained, pursuant to Section 19.1-239, Code of Virginia of 1950, as amended, and testimony from at least one other Superintendent of a State Hospital in Virginia, concurring, that petitioner is sane and also safe to be at large.

Dated this the 19th day of November, 1965.

DR. JOSEPH R. BLALOCK
By ROBERT I. ASBURY
Attorney for Commonwealth
County of Smyth, Virginia
Counsel.

* * * * *

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* * * * *

*Mervin Michael Markley.*

MR. MERVIN MICHAEL MARKLEY,
having been duly sworn, was examined and testified as follows:

The Court: All right, Mr. Markley, you may tell the Court why you think you should be released.

The Witness: Well, on April the 8th, I was arrested and I was taken back to Newport News where I had committed the crime and I was charged with attempted murder. I stayed in jail for approximately 6 weeks and the judge sent me up here for psychiatric examination and I stayed at the Southwestern State Hospital for a period of 3 months where I underwent psychiatric examinations and then I went to Staff two or three weeks later and I assume . . . (two or three talking) . . . for I was sent back to Newport News and approximately 2 months later I went on trial. While I was up at the hospital those charges were changed to malicious wounding.

On October the 16th I had my trial and Doctor Blalock was present and Doctor . . . (two or three talking) . . . They all testified at my trial that I was sane and fit to stand trial. Evidence was introduced by my lawyer to the fact that I had a rare form of epilepsy, more or less a type of psycho-motor epilepsy; a person does not go into convulsions necessarily but has a black-out period that occurs immediately before a convulsion.

Due to my background, I believe, and my conduct before I got into trouble, the jury found me not guilty by reason of insanity. I might point out here that the crime that I committed was completely strange to my behavior.

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The Judge committed me to here on the 2nd, I believe, and 2 days later I was brought up to Marion and admitted to the hospital. I was given medication in the form of phenobarbital and dilantin to combat the epilepsy. I took this medication for a period of a few weeks then they gave me an Electroencephalogram; they put me back on medication and took me off and gave me another Electroencephalogram to determine the effectiveness of the medicine. I have had no medication except during the day and I have had no seizures at all. I had an Electoencephalogram approximately 2 weeks ago and I have not heard the results of that one.

*Mervin Michael Markley.*

I feel that since I have had no seizures and Doctor Blalock testified under oath that I was sane, I believe that I should be released.

At my trial, Doctor Blalock testified that I had passive-aggressive personality traits and although, I don't guess this is an every-day-thing in everybody, that this did not constitute grounds . . . (two or three talking).

The Court: The charge was changed to *malicous* wounding?

The Witness: The first charge was attempted murder and I believe that while I was in the hospital that they changed it to malicious wounding. I am not exactly sure when it was changed.

The Court: Now, what is your age, Mr. Markley?

The Witness: I am 19.

The Court: And did you finish high school?

The Witness: Well, I finished high school up here at the hospital. Mr. Hankla came up and tutored me for 3 months and I received my diploma.

The Court: The malicious wounding was the
Vol. 1 wounding of some young girl?
7-30-65 The Witness: Yes, sir.
page 5 } The Court: Was that a girl friend of yours?
The Witness: No, sir, I did not know the girl.

The Court: And what did you do to her?

The Witness: I strangled her and I stabbed her.

The Court: And you did not know her?

The Witness: I did not.

The Court: Where did that take place?

The Witness: In a park just a few blocks from my home.

The Court: In the City of Newport News?

The Witness: Yes, sir.

The Court: Do you know the young girl's name now?

The Witness: Yes, sir, Pamela Wheat.

The Court: And you did not know her at that time?

The Witness: No, sir. She was a friend of my sister and I knew her brother but, I did not personally know the girl.

The Court: Well, if she was a friend of your sister then you had seen her, hadn't you?

The Witness: Well, I heard later . . . I might have seen her in the hall at the school for we went to the same high school but, as far as I can remember I had never seen her

before that. My sister told me later that she was a friend of *her's* and this was brought up as evidence in court.

The Court: What do your parents do?

The Witness: My mother is a housewife and my father works at . . . (incoherent) . . . Virginia.

The Court: And were you tried before a jury and acquitted by a jury?

The Witness: Yes, sir.

The Court: And the jury brought in a verdict of not guilty by virtue of insanity?

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The Witness: Yes, sir.

The Court: And thereafter the judge . . . Judge Garnett?

The Witness: Yes, sir, I believe that has his name.

The Court: He had you sent to the hospital here in Marion?

The Witness: Yes, sir. He said something to the effect that I was not safe to be at large. I have shown no bursts of violence of any form . . . I admit that I made a mistake several months ago but, even while I was gone I did not hurt no one and did not have any intention of hurting anyone and nothing similar to this has happened in the past two years.

The Court: What do you mean "you made a mistake"? When you left the hospital?

The Witness: Yes, sir.

The Court: Where did you go?

The Witness: To Missouri.

The Court: How did you get there?

The Witness: I walked down to Marion one Monday morning and caught a cab and it took me to Wytheville and I caught a bus there to Kansas City, Missouri and I took a local to Independence. I had lived there for 10 years before we moved out to Virginia. My father was transferred from one oil refinery to another.

The Court: Are you in the Finley Gayle Building now?

The Witness: Yes, sir, I have been in there ever since I was returned here.

The Court: How did you escape?

The Witness: I just walked off, Monday was my regular day off. We usually come out at 8 o'clock in the morning but that morning I came out a 6 o'clock and it was in the winter

*Mervin Michael Markley.*

time and it was rather dark outside and I just walked downtown and got a cab.

Vol. 1 7-30-65 page 7 } The Court: Do you know where this young lady is that you wounded?

The Witness: No, sir. I guess she is in Newport News and I don't know if she is okay or not; how she is or where she is or anything.

The Court: And you strangled her and stabbed her?

The Witness: Yes, sir.

The Court: Do you know why you did that?

The Witness: I believe that it was pressure. For several years, or for quite a while rather, I had not been getting along at home and at school and I believe the pressure just kept building up and I don't believe the girl . . . I didn't do it just because of her; I believe that I just took it out on her. It wasn't anything personal.

Mr. Asbury: Before you attacked this girl did you feel an impulse to kill someone?

The Witness: Yes, sir, that day.

Mr. Asbury: How did you happen to pick out this girl?

The Witness: I went home and changed clothes and I picked up the hunting knife that I had in the car and I went to Deer Park, that is the name of the park, and she was there and so I did what I said I did.

Mr. Asbury: She was the first person that you saw at the Park?

The Witness: No, sir, but, she was the first person that I saw where I could get away with this. I didn't want to get caught and that is why I ran away at that time. After I had committed the crime I went home and changed clothes and headed West and I was caught in Covington.

Mr. Asbury: Well, let us back up for a minute, now. You felt the impulse to kill someone and you went home and got this knife and then you waited in the park?

Vol. 1 7-30-65 page 8 } The Witness: I didn't wait.

Mr. Asbury: You walked into the park and you saw other persons before you saw this girl but you were afraid that you couldn't kill them or what?

The Witness: Like I said, I didn't want to get caught. The other people were close to the entrance and close to other people and she just happened to be by herself.

Mr. Asbury: Well, you knew that what you were about to do was wrong, didn't you?

*Mervin Michael Markley.*

The Witness: Yes, sir, but, I don't believe that I was in a seizure when I did it.

Ms. Asbury: You don't believe what?

The Witness: That it was a epileptic seizure by which the court freed me or rather returned—

Mr. Asbury: In other words the jury believed what your doctor said about you but you don't think that is correct, is that right?

The Witness: No, sir, I don't. For my mother's sake and my father's sake I would agree that it was a lot more than epilepsy because I know that what I did was terrible.

Mr. Asbury: Well, do you think that what you did was a deliberate act on *you* part or due to some mental disease?

The Witness: I do not believe that it was mental disease but that it was on my own part. But, I don't go around . . . I hadn't went around *threating* people before; it was just the combination of pressure that had built up until one day at school I became angry and in fact about an hour later I decided or had the inpulse to do what I did. At no time did I black out or have convulsions. I had my faculties at all times.

Mr. Asbury: Did you testify at your hearing?

The Witness: No, sir, my lawyer thought it would be in the best interest not *too*.

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Mr. Ashbury: And you were sent here to the hospital then you ran away from the hospital and took some money that didn't belong to you and . . .

The Witness: And that money was paid back.

Mr. Asbury: All right.

The Witness: Since then I have taken correspondence courses . . . before that, I mean . . . I took correspondence courses from the University of Virginia in English and Mathematics and I have no desire to go back to Newport News even though my parents live there; that is why I went to Missouri this last time for all of my people are there and I talked with them and have written letters to them and I am confident that I can find a place to stay and I know that I can get a job and I plan on going to school to further my education.

Mr. Asbury: Do you feel any particular pressure up at the hospital now?

The Witness: No, sir, right after I committed the crime I did. It was just like everything had been lifted. That one act had taken care of all the frustrations that I had.

*Dr. Joseph R. Blalock.*

Mr. Asbury: Well, suppose you were released and you got under the same pressure again, wouldn't you do the same thing out there?

The Witness: No, sir, I would recognize the feeling if it were to happen again, which I doubt, and like I said, I have enough intelligence to do something about it this time but, the other time I did not believe that I could commit such a crime and so I just let everything go until it got to the point where it was too late.

Mr. Asbury: All right, sir.

The Court: I believe that you indicated that you were having some difficulties at home. Did you and your parents not get along very well?

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The Witness: We had minor disagreements like when I couldn't get the car or I didn't have enough money but I believe that it went deeper than that. I think that I resented them, subconsciously, for not . . . I believe that I felt like I was better than they were. Since I have been locked up . . . I was very *depending* on my parents when I was free . . . but, since I have been locked up . . . they still send me clothes and money but I have no way of getting them. I am confident that I could do without them, I mean, not being with them. I don't wish they were dead or something like that but I wouldn't have to rely on them if I was on the outside. I have grown to see just how much I have misjudged my character. I had no history of any . . . I mean I had lost my temper a few times in the past before I got locked up but, I had never come close to doing what I did.

The Court: All right.

(Witness excused)

DR. JOSEPH R. BLALOCK,

having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Asbury:

Q. Doctor, I want to ask you two or three preliminary questions before I ask you to go ahead with a general statement in

*Dr. Joseph R. Blalock.*

this case. As set out in the Statute, in your opinion is this man sane or mentally ill at this time?

A. This man came to us under court order. Following a period of observation and tests we arrived at the same diagnosis that we arrived at previously except we put in parenthesis "(with abnormal EEG)". This diagnosis of Personality Trait Disturbance, Passive-aggressive personality is a type of personality disturbance which does not constitute a psychosis. We still feel that he is not psychotic.

Vol. 1 The Court: Or insane?
7-30-65 The Witness: Or insane.
page 11 } The Court: Is he mentally deficient or an inebriate?

The Witness: He is not.

The Court: And I take it that the peculiar characters in his EEG . . . does that indicate a diagnosis of being epileptic?

The Witness: That, by itself, does not. He does not, in our opinion, manifest clinical evidence of epilepsy. About 15 per cent of the normal people have abnormal brain waves.

The Court: I take it that he was sent to your hosiptal by Judge Garnett under this section of the Code in which the judge has deemed that it would be dangerous to the public peace or safety and has ordered him committed to your hospital?

The Witness: He has.

The Court: Now, as Superintendent of the hospital, Doctor, in your professional opinion is the Petitioner sane and safe to be at large?

The Witness: In my opinion he is sane but, I have not arrived at any conclusion, in my own mind, as to whether or not it is safe for him to be at large.

The Court: Doctor, have you taken this matter up with any other psychiatrists at any of the other State Hospitals or with the Hospital Board?

The Witness: I have discussed it with Dr. Benedict Nagler, Superintendent of Lynchburg Training School and Hospital and I talked with him at the time of the trial concerning this young man and kept in touch with him from time to time since and I saw him recently when he came to the State Hospital Board Meeting. I did not organize this as a Com-

*Dr. Joseph R. Blalock.*

mission of State Hospital Superintendents but I was anxious to have his observations at this point.

The Court: And what was his observation at that time?

The Witness: He felt as I did. I got the im-
Vol. 1 pression that he felt that such danger as he con-
7-30-65 stituted to the public was not part of epilepsy but
page 12 } a part of his personality, in the framework of his personality . . .

The Court: You say that he felt that "such danger as he constituted to the public." Would you care to enlarge upon that? I believe that you said that you hadn't arrived at an opinion or a conclusion as to that.

The Witness: I hadn't arrived at the point of committing myself on it. I am inclined to agree with him but I hadn't gone all the way yet. It wasn't my intention, yet, to bring him up before a Commission to determine this. Of course, he has a right to file a *Habeas Corpus* at any time which I sent right on and I tried to give the picture, as well as I could, in the letter accompanying it.

The Court: I have your letter, and the letter is filed, in which you stated that you testified at his trial that he was not psychotic . . . he was not insane.

The Witness: That is correct.

The Court: (Continuing) And that there was nothing that had changed your views since that time as to your diagnosis that he was not psychotic nor was he insane.

The Witness: That is correct.

The Court: Then the only point is, since he isn't psychotic, insane, epileptic, feeble minded, or inebriate . . . we come back to 19.1-239 of the Code under which he was sent to your hospital by the Judge of the Corporation Court of the City of Hampton or Newport News? Newport News, I believe, and to be kept by you until he was sane and safe to be at large.

The Witness: Until he had been determined to be that by two State Hospital Superintendents, myself and one other.

The Court: Yes. Now, your diagnosis on that,
Vol. 1 at this time, or your opinion is that he is sane.
7-30-65 Now, if he is sane why would he be any more dan-
page 13 } gerous to be at large than any other individual?

The Witness: Some people who are not psychotic are more dangerous to be at large than others, depend-

ing on their own personality, their own drives and instincts.

The Court: Well, based on your diagnosis and your examination that he is sane, that he is not mentally ill and that he is not psychotic, is he more dangerous to be at large than any other individual who is sane and not mentally ill or psychotic?

The Witness: If you take a cross section, because of his potentialities arising in the frame-work of his personality, then he is more dangerous than the average cross-section.

The Court: Why?

The Witness: Because of his internal personality drives, his makeup.

The Court: But those traits are not sufficient to diagnose him as psychotic or insane?

The Witness: No.

The Court: Mr. Asbury, do you have any further questions?

By Mr. Asbury:

Q. Doctor, due to his personality makeup, do you think that he is safe to be at large? I don't want to pressure you on that point. You said that you hadn't arrived at an official opinion on it. If you don't want to answer that . . .

A. I don't feel that I can answer it at this time.

Q. Is there some question about it in *you* mind at this time?

A. I am not willing to assume that responsibiliy.

Mr. Asbury: All right, sir.

The Court: Doctor, you are not willing to assume the responsibility of stating that he is safe to be at large? I mean, to answer the question in your opinion?

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The Witness: In my opinion I am not at the point now where I feel like I could state that he is safe to be at large.

The Court: All right. Now, let me take that one step further. What amount of testing or what additional information will you gather by retaining the custody of this young man that will enable you to arrive at an opinion? I take it that it would have to be something that occurs in the hospital because any history, so far as this particular case is concerned, is history and there will be no more history as long as he is at the hospital. Is that correct?

*Dr. Joseph R. Blalock.*

The Witness: That is correct. Following his return on this court order, I put him out to prove that he was safe to be at large by giving him ground privileges, to a certain extent, in which he could walk off at any time and when he was out working in the hospital canteen and I think he showed moods but I don't know how much of one and how much of the other right now. That is the policy that I have followed successfully in a number of other cases here on the same type of court order—safe and sane to be at large. I have had people clerking in the Canteen for about 2 years and they have gone out and so far as I know from my records have been 100 per cent in their judgment and so far as I know they continued to not get into further difficulty.

After a few months he took a French leave and took funds from the Canteen which were later replaced by the father and the side affects on the Newport News Community and on the victim, the young lady, created quite a disturbance. He returned in a cooperative manner but he has been rather flagmatic about the seriousness of this. He doesn't seem to take it as seriously as . . . but, that is not evidence of psychosis or insanity. It is his personality. I haven't felt justified in putting him out again nor in making a commitment about it.

He asked me when and said that he would like . . .

Vol. 1 7-30-65 page 15 } The Court: How long has he been back from that unauthorized leave or escape?

Mr. Markley: I came back or was brought back rather on December the 11th.

The Court: 1964?

Mr. Markley: Yes, sir.

The Court: Mr. Asbury, do you have any further questions to ask Doctor Blalock?

By Mr. Asbury:

Q. Doctor, I take it that before you arrive at an official opinion on the question of whether or not it is safe for this man to be at large, that it is your practice and you would prefer to take it up with another Superintendent, in detail, before announcing that decision, is that correct?

A. Yes, the usual procedure would be for me to ask the Commissioner to designate another to join me in examining him and at the moment I think my preference would be Doctor Nagler because he has *know* him for some time and also because of his experience.

*Dr. Joseph R. Blalock.*

Mr. Asbury: That is all that I have to ask the Doctor.

A. (Continuing) I might say that within the past two weeks we have done another Electroencephalogram, after keeping him off of medication, and it showed some slight changes that were not present before.

The Court: All right, young man, you may question Doctor Blalock.

Mr. Markley: Doctor, you stated before that approximately 15 per cent of all normal people had abnormal patterns in brain waves. Does this new development in my brain waves, two weeks ago, indicate . . .?

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The Witness: I only mentioned this new development just to keep the Court informed and I felt that you should know too. I don't think Doctor Funkhouser has committed himself on what value that might have. He is not disturbed about it but . . .

Mr. Markley: Well, going back to the ground privileges that I was given. I started out—we clean up in the front of the Finley Gayle Building, in the nurse's office and the doctor's office, and the front desk; for six months I was allowed to work there by myself every day and then after that I was given a job in the Canteen for approximately 4 months and in that whole time, to the best of my knowledge, there was not a blemish on my record. When I did run away, I had every opportunity to hurt someone else if I had wanted too; I had no warrants issued from any place across half the country as to that and I had no intentions of hurting anyone, I just wanted to go home—not to Newport News for I realized that was out of the question because of the general condition that prevailed there.

I feel like right now—I have had no testing at all since they brought me back except the ground privileges and I have done no violent acts, no fights or anything of that sort, and if I am not safe now then I will be the same in another year or 2 years. I don't believe there is any way of testing whether a person is safe or not.

The Witness: I disagree with that. I think that time is of value but as to how much time I . . .

Mr. Markley: That is what I am getting at. There is no

set time. I could stay here for the rest of my life and stay just like I am and still be classified as not safe.

The Court: Do you have any further questions?

Mr. Markley: No, sir.

The Court: Well, why did you leave without permission?

Vol. 1 7-30-65 page 17 } Mr. Markley: Well, it was a combination of many different factors. I know it may sound immature but, they are my reasons. For one, I had just about given up hope. I had heard nothing, one way or the other, and I thought that I had conducted myself like a person should on the outside or inside, and I just took off. I didn't take the money just to be . . . I used it for a purpose. I knew that I would be caught or I thought that I would but, I didn't think I would be caught so fast, I will be truthful there. I had no intentions of staying away for the rest of my life or trying to; I just wanted to go back and see those people again. There was, in no way, an epileptic seizure, in my opinion, and I had no intentions of hurting anyone and in my opinion I am safe.

Due to past experience, if the same pressures somehow *develope* again, I believe that I would not let them *develope* and do the same thing.

The Court: Is your family advised that you filed this petition?

Mr. Markley: No, sir.

Doctor Blalock: I wrote the father and said that he could use his judgment in letting Mr. Peyton, his attorney, know. I didn't hear anything from either one of them.

Mr. Markley: The Writ was my own idea except for the one reference in one article. The rest of it is in my own writing and I thought it up, except for the form which I had to get from someone else.

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MERVIN MICHAEL MARKLEY, JR.,

having previously been sworn, was examined and testified as follows:

*Mervin Michael Markley, Jr.*

DIRECT EXAMINATION.

By the Court:

Mr. Markley: Well, the first bit of information concerns a trip to Roanoke which was instituted by the Hospital, I assume, where I saw Doctor Varner, a neurosurgeon, and I was given a neurological examination and Doctor Varner told me, I have no proof to substantiate what I am going to say but, he told me that he could find nothing wrong.

The Court: I take it that since the last hearing you have been examined by a neurosurgeon namely, Doctor Varner in Roanoke?

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Mr. Markley: Yes, sir.

The Court: I might ask you if you have a copy of his report or if you have seen a copy of his report?

Mr. Markley: No, sir.

Mr. Asbury: We have a copy of it, sir.

The Court: To expedite this matter, do you intend to file this report or a copy of it with the Court?

Mr. Asbury: We can read it into the record if you wish.

The Court: I think it should be read into the record. Do you have any objection to that, Mr. Markley?

Mr. Markley: No, sir.

The Court: Well, we will interrupt you at this time and have that read into the record and for the benefit of the Court.

Mr. Asbury: I will ask Doctor Blalcok to read it because of the technical nature of it.

Doctor Blalock: This is a letter from Doctor John D. Varner, M.D., Roanoke, dated August 25, 1965, addressed to me and concerning Mr. Mervin Michael Merkley, Jr. "Dear Doctor Blalock: Mr. Markley was examined on the 24th of August, 1965. He had no complaint at this time. He stated that he had no headache nor did he have any symptoms referable to central nervous system. He has had no neurological symptoms that I could elicit. He has never had a 'blackout spell', he stated, nor has he ever had a grand mal convulsion.

He told me that he had been examined by several physicians and that he had seven Electroencephalograms done. He told me that he was examined by Doctor Thomson, in Norfolk, two years ago.

*Mervin Michael Markley, Jr.*

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On examination of the head, neck, ears, eyes, nose, and throat nothing abnormal was noted except the acneform lesions. The fundi do not show any evidence of papilledema. The optic nerves appeared normal. The cranial nerve examination was entirely normal. The reflexes were normal and equal bilaterally. There were no pathological reflexes present. The station, gait, and coordination were normal. The sensory examination was normal.

From the history that I obtained in my examination, I could find no evidence of an organic disease of the nervous system. I do not think that he has an expanding lesion or a brain tumor as mentioned in one of the letters.

If there is further information that you desire please advise me. Yours very truly, John D. Varner, M.D."

The Court: All right, you may proceed, Mr. Markley.

Mr. Markley: I have in my possession two letters. After I was brought down here in July I sent a letter of inquiry to my aunt in Missouri, at Independence, Missouri, Mrs. Margaret Clovery, and inquired about my status concerning whether or not I would be welcome in that town as well as in her home and I have the letter with me in which she states that I would be welcome to stay in her home for not as long as I wanted to but until I could find a place of my own. She also is the woman who turned me into the police when I made my mistake last December and went to Missouri.

I also have a letter from my father, which is dated just a few days ago, in which he stated that he had received a letter from Your Honor telling him that I would be brought down here on the 30th of this month. He stated that if I was turned loose or set free that he and my mother wished me to come to Richmond where they could see me free for a few minutes or a half a day or so and then to go on to Missouri after they had given me some money so I would not have to depend upon someone else.

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I realize that my father could have been here and he would have been here if I had requested it but my mother has been ill and I felt that the trip would not do her any good and I truthfully didn't think that his presence would help me a great deal and since I have the letter showing his intentions.

The Court: Would you check that letter again and see who advised him of your hearing?

Mr. Markley: I am sorry, Your Honor. I received this

letter and a post card the same day and the post card is the one that told me that he had received a copy of a letter that you sent me and I had assumed that Your Honor had sent it.

Mr. Asbury: Doctor Blalock advised his parents and his lawyer of this hearing.

Mr. Markley: I am sorry. This (indicating) is the letter that states that they wish me, upon my release, to come to Richmond and to meet me for a short time.

There is just one more thing that—there is nothing else concrete that I can offer because I am as sane now as I was two months ago when Doctor Blalock testified to that fact and I will let my record stand for itself, that I have been into no fights or displayed no violent outbursts in the last few months or in the last two and one-half years for that matter. I feel that a sane man, any sane man, so determined or adjudged by a psychiatrist should be as safe as anyone else to be outside and if my aunt in Missouri, who turned me in in the first place, would be willing to take me into her own home then surely she doesn't think that I am dangerous for she saw me. So, I feel that I should be turned loose or set free.

## CROSS EXAMINATION.

By Mr. Asbury:

Q. Mr. Markley, your contention is, at this time and always has been, that you have never been mentally ill?

A. Yes, sir. That is correct.

Vol. 2 9-30-65 page 7 } Q. Did you tell us at the previous hearing what you did to this little girl with a hunting knife?

A. I believe that I did.

Q. And you weren't mentally ill at that time?

A. In my opinion I was not.

Q. Neither *you* father, your mother, nor your lawyer, Senator Bateman have contacted you since September the 16th?

A. Of this year?

Q. Since July the 21st, I beg your pardon?

A. Concerning what?

Q. Concerning this hearing here today?

A. Yes, sir. I have written them several times.

Q. Well, I say your mother, your father, nor your attorney are here, is that correct?

A. No, sir, they are not here. They would have been, I pre-

sume, if I had requested them too but I told my father specificially that I did not think that it was necessary for him to be present. I didn't want the Court to think that I had to lean on someone in order to get turned loose.

Mr. Asbury: All right, sir.
The Court: Any additional questions?
Mr. Asbury: No, sir.
The Court: Do you have anything else, Mr. Markley?
Mr. Markley: No, sir.
The Court: Is there anything further from Doctor Blalock? We have the letter from Doctor Varner and you may want to have an explanation of why that was done, Mr. Asbury.
Mr. Asbury: Well, first, before we go into that; we offered the letter because he said that he didn't have it and it was technical in nature and we wanted him to have whatever we had.

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The Court: I think that it is proper that the Court have all the medical information—
Mr. Asbury: Yes, sir, and that is the reason that I offered it.
The Court: I am sure that you are not trying to hide anything and—
Mr. Asbury: That is right, sir, and I appreciate that. Now, if it please the Court, I wish to make a motion to dismiss the petition filed herein by Mr. Markley for this reason: an attested copy of the order whereby Mr. Markley was sent to Southwestern State Hospital is contained in the Hospital file.
The Court: Would you read that order into the record?
Mr. Asbury: Yes, sir.
The Court: It is not in the record to the best of my knowledge.
Mr. Asbury: This is—there are two orders if I may read them both so that we will have the record complete: "Virginia: Hustings Court of the City of Newport News, Thursday, the 17th day of October, 1963. Present: The Honorable Henry D. Garnett, Judge Designate. Commonwealth against Mervin Michael Markley, Jr. Indictment for Felonious Stabbing. A Felony. A True Bill. B. B. Underwood, Foreman. This day came the Attorney for the Commonwealth and the accused was led to the bar in the custody of the Sergeant of

this City and as such, jailor and the jury heretofore *empaneled* in this cause again appeared and took their seats in the jury box and after hearing fully the evidence of the accused the accused, by his attorney, moved the Court to reduce the charge to Malicious Cutting which motion of the accused the Court doth overrule and the Commonwealth continued with rebuttal and after hearing this evidence of the Commonwealth, the accused, by his attorney, moved the Court to strike from the record the testimony of Doctor Joseph R. Blalock, a Commonwealth witness, for various reasons stated to the Court which motion of the accused the Court doth overrule to which ruling of the Court, the accused, by his attorney, excepted and after hearing fully the evidence, instructions of the Court, and argument by counsel, the jury retired to their room to consider of their verdict and after some time returned into court and having found the following verdict: 'We the jury find the defendant not guilty by reason of insanity. Hugh D. Adams, Foreman.' And proclamation having been made by the Sergeant and nothing further being offered or alleged by the Commonwealth against the accused, it is ordered that the said Mervin Michael Markley, Jr., be discharged from this indictment. Whereupon the Court being of the opinion that the discharge of the accused from custody is dangerous to the public peace and safety the Court doth order that the accused be committed to one of the state hospitals for the insane and there to be confined under special observation and custody until the superintendent of that hospital and the superintendent of any other state hospital or feeble minded colony shall pronounce him sane and safe to be at large; and upon motion of the accused, by his counsel, this cause was continued generally for the purpose of presenting argument as to which state hospital to which the accused should be committed and the accused was remanded to jail there to be held and incarcerated under maximum security pending final disposition by this Court. Signed: Henry D. Garnett, Judge."

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Now, the next order is as follows: "Virginia: Hustings Court of the City of Newport News, Tuesday, the 22nd day of October, 1963. Present: The Honorable Henry D. Garnett, Judge Designate. Commonwealth against Mervin Michael Markley, Jr. Indictment for Felonious Stabbing. A Felony.

A True Bill. B. B. Underwood, Foreman. This day came the Attorney for the Commonwealth and Fred W. Bateman, counsel for Mervin Michael Markley, Jr., and the said Mervin Michael Markley, Jr., was led to the bar in the custody of the Sergeant of this City and as such, jailor. The said Mervin Michael Markley, Jr., having been remanded to jail by order of this court on the 17th day of October, 1963, in which order the Court had announced its decision to commit the said Mervin Michael Markley, Jr., to one of the state hospitals for the insane and arguments of counsel being heard as to the appropriate institution to receive the said Mervin Michael Markley, Jr., the Court, being of the opinion that the discharge of the accused from custody is dangerous to the public peace and safety, the Court doth order that Mervin Michael Markley, Jr., be committed to Southwestern State Hospital at Marion, Virginia, the same being a state hospital for the insane, and there be confined under special observation and custody until the Superintendent of that Hospital and the superintendent of any other state hospital or feeble minded colony shall pronounce him sane and safe to be at large and the Sergeant of this City is directed forthwith to convey and deliver the said Mervin Michael Markley, Jr., to the authorities of Southwestern State Hospital at Marion, Virginia, together with certified copies of this order and the order heretofore entered on the 17th day of October, 1963."

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I call the Court's attention especially to the remaining part of this order. "This court retains jurisdiction of this matter and it is further ordered that the said Mervin Michael Markley, Jr., is not to be furloughed nor released from confinement in said Hospital until this court has been first notified and further that if and when he shall have been pronounced sane and safe to be at large within the dictates of this order he shall be returned to this court; and the said Mervin Michael Markley, Jr., is remanded to jail. Henry D. Garnett, Jr., Judge."

If it please the Court, I respectfully submit that this petition should be dismissed on the grounds that the jurisdiction in this case is in the Hustings Court of the City of Newport News; that this is not a case which should be properly heard by this Court under Title 37-123 of the Code. Confinement—

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The Court: Do you say that this man cannot test the legality of his detention in this court, Mr. Asbury?

*Doctor Joseph R. Blalock.*

Mr. Asbury: Yes, that is my position, Your Honor, due to the fact that he was sent here by the authorities in Newport News, Virginia, pursuant to Section 19.139 of the Code which provides not only the question of sanity but the question of safety to be at large and it has the proviso of the persons who may determine that question.

The Court: I overrule your motion, sir. I think this court has, and properly so, jurisdiction and I think that Mr. Markley has filed his petition in the correct court, sir.

Mr. Asbury: We respectfully except to the ruling of the Court in refusing to dismiss this petition for the grounds stated.

The Court: Do you have anything additional that you want to present to the Court?

Mr. Asbury: No, sir.

The Court: Doctor Blalock, come around, please. The Court wants to quiz you if the Commonwealth doesn't.

DOCTOR JOSEPH R. BLALOCK,
having previously been sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By the Court:

The Court: Do you have any question, Mr. Asbury?

Mr. Asbury: No, sir.

The Court: Doctor Blalock, I have read the transcript heretofore. I want to ask you if you have had any further consultation and examination with a superintendent of any other hospital or colony—state hospital or colony?

Doctor Blalock: Not since the last hearing here.

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The Court: Not since July the 30th. Well, that is the first and the last hearing so far as the Court is advised.

Doctor Blalock: Doctor Nagler saw him but not as a member of a commission but that was before the last hearing.

The Court: All right, sir. Now, Doctor Blalock, you have heretofore testified that Mr. Markley, in your opinion, is not mentally ill, insane, epileptic, inebriate nor mentally retarded as I recall, is that correct?

Doctor Blalock: As I recall I testified that he was not in-

*Doctor Joseph R. Blalock.*

sane. I don't know whether I added those other catagories or not.

The Court: I am fairly confident that you did. Doctor, give me your close attention. In your opinion will the release of Mr. Markley from your custody be fraught with danger to himself or to others?

Mr. Asbury: (Objection) If it please the Court, before he answers, we object to that question.

The Court: You may object but the Court is still going to ask it, Mr. Asbury.

Mr. Asbury: We will like to show in the record that we object by reason that it has already been pointed out to the Court of the special statute that this man is confined under.

The Court: I understand that and you have that objection and you can object to that question and let the record show your objection.

Mr. Asbury: All right, sir.

The Court: Now, Doctor, in your opinion will the release of Mr. Markley from custody be fraught with danger to himself or to others?

Doctor Blalock: I still don't feel like I should commit myself on that point. I don't think that he is insane.

The Court: And you have no opinion as to whether his release would be dangerous to himself or to the public?

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page 13 } Doctor Blalock: I do not.

Mr. Asbury: Is that all that you have to ask the Doctor, sir?

The Court: Yes, sir.

## DIRECT EXAMINATION.

By Mr. Asbury:

Q. Doctor, do you feel that further time and study as well as consultation with another superintendent is necessary before you, in your professional opinion, can arrive at an opinion on that matter?

A. I think that consultation with another superintendent as a member of a commission. I would be glad to have one and have him go over it with me but I am not committed on whether or not he is safe to be at large. I am inclined to believe that his actions would be based, as I did the other time,

on his personality and not on an abnormal psychomotor epilepsy or a condition allied to epilepsy but I am not positive about that yet.

Mr. Markley: Your Honor—

The Court: Just a minute, Mr. Markley. Anything further, Mr. Asbury?

Mr. Asbury: No, sir.

RE-DIRECT EXAMINATION.

By the Court:

The Court: Doctor, who calls this commission that you referred to and as required by 239 of the Code, Section 19.1-239?

Doctor Blalock: I request the appointment of another member of the commission from the Commissioner, Doctor Hiram Davis.

The Court: Have you done that?

Doctor Blalock: He appoints someone. I have not done that in this case yet.

Vol. 2 9-30-65 page 14 } The Court: Do you anticipate doing that in the immediate future?

Doctor Blalock: Yes. I hadn't—I don't have any special date in mind but I am quite willing to go ahead and do that.

The Court: Well, if you are willing to do that then you, at that time, will have to express your opinion concerning the quote "safe to be at large", won't you?

Doctor Blalock: Yes, sir.

The Court: Well, if you are willing to do that in the immediate future, I take it that you, in your own mind, know what your opinion will be at this time?

Doctor Blalock: I lean in a certain direction but—

Mr. Asbury: Just a moment, Doctor. What was the question, Judge?

The Court: Well, Doctor Blalock told the Court that he was willing, in the immediate future, to request a commission to—as required by the Code Section and that commission will have to pass on quote "safe to be at large". If he is ready to call that commission I asked him if he hasn't already made up his mind as to what his feelings would be or

*Doctor Joseph R. Blalock.*

what his opinion would be when the commission convened.

Mr. Asbury: (Objection) If it please the Court, I object to that question as—

The Court: Mr. Asbury, we want to get at the meat of this thing—

Mr. Asbury: Yes, sir.

The Court: (Continuing) and Mr. Markley doesn't have an attorney and the Court is going to—

Mr. Asbury: If it please the Court, I ask that he be appointed an attorney because it is most difficult for us to cope with the Court in this case which is of a civil nature.

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The Court: I think it is a very pertinent matter; the oldest Writ known to the Common Law, Mr. Asbury, and the Court is going to do all in its power to see that these people have a hearing and a fair one.

Mr. Asbury: I am not trying to obstruct a fair hearing; I just want one that is conducted according to law as we understand it. Doctor Blalock has already testified here that he has not arrived at an opinion and I think that the Court, by its questioning, is attempting to coerse him at this time.

The Court: No, I am not attempting to coerse him. I am attempting to find out whether or not this is going to be done in the immediate future.

Mr. Asbury: Well, as I understood the Court's questioning, it was whether or not he had already made up his mind what his opinion was going to be when the commission was held.

The Court: That is right.

Mr. Asbury: I object to that.

The Court: Well, he can say yes or no; whether he has or has not.

Doctor Blalock: I think that there is an implication that if I ask for a commission then I have a certain opinion. I don't think that I ought to be held to that. I think that in a doubtful case I could even have the assistance of this other member of the commission in further consideration of the matter in order to arrived at a definite conclusion. My official conclusion is, at the moment, that I have no opinion as to his *safe* to be at large.

The Court: All right. Mr. Markley, do you have any questions to ask Doctor Blalock?

Mr. Markley: Well, I would like to say something if I may but it is not in the exact form of a question. I have been

*Doctor Joseph R. Blalock.*

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committed close to two years at the hospital and so far as I know I have been sane and Doctor Blalock has agreed that I have been sane that entire period. I have displayed no violent outbursts of any kind and even though I did escape and ran away to Missouri I still did not perform any violent acts of any kind and I am wondering why I haven't been brought before a commission before. Two years, in my opinion even though it is just a layman's opinion, is enough time to determine the safety of a person, under strict observation.

The Court: Do you have anything else?

Mr. Markley: No, sir.

The Court: Mr. Asbury?

Mr. Asbury: No, sir.

The Court: Gentlemen, as I see the matter, based on the orders that have been entered on this matter at Newport News, whether the orders are rightly entered or wrongly entered I don't know and I am not testing that part of it but I cannot order your release, Mr. Markley. If I ordered anything then it would have to be your return to the Hustings Court of the City of Newport News for final disposition. I didn't know of that order until this hearing.

Mr. Asbury: Well, I hadn't caught that part of it before. I had read it but I wasn't aware of that part of it.

The Court: Be it right or be it wrong, that will have to do. Gentlemen, I have thought about this matter, based on the evidence heretofore adduced, for a considerable period of time and the Court is of the opinion that Section 37-123 of the Code is controlling in this matter as in all other hearings from the Southwestern State Hospital and based on the evidence adduced to the Court that the petitioner is not, at this time, insane, mentally ill, epileptic, mentally deficient nor inebriate, the order of this Court will be that he be returned

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to the Hustings Court of the City of Newport News for such action as that court deems advisable under the order heretofore entered. Mr. Clerk, if you will write that order and give it to Doctor Blalock so that he can advise the court at Newport News of the ruling in this matter.

A Copy—Teste:

H. G. TURNER, Clerk.

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