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September 28, 2012

G. Douglas Bevelacqua, Inspector General
For Behavioral Health and Developmental Services
Office of the Inspector General
1220 Bank Street
Richmond, VA 23219-1797

Via U.S. Mail and Electronic Mail

Dear Mr. Bevelacqua:

I am writing to request your investigation pursuant to Virginia Code §2.2-309(A) and (B) of the officers and agencies involved in the recent involuntary civil commitment of decorated marine Brandon Raub in Chesterfield County. It appears that specific decisions and actions of Virginia officials and agencies which led to Raub's involuntary commitment represented, at best, a misuse of the Commonwealth's involuntary commitment statutes and, at worst, an abuse of those statutes to punish a citizen for speech that government officials found distasteful. The Rutherford Institute is also concerned that the entanglement of the Community Services Board ("CSB") in this sensitive process may represent a due process problem in need of systemic correction.

Brandon Raub is a United States Marine Corps veteran who was honorably discharged from service after tours of duty in Iraq and Afghanistan. He now resides in Chesterfield County, Virginia, where he manages two successful businesses. Like many Americans, Raub uses his Facebook page to air his political opinions, post song lyrics, and engage in virtual online games with friends.

On Thursday, August 16, 2012, police and FBI agents, among others, arrived at Raub's home and asked to speak with him about his Facebook posts. Raub cooperated fully with law enforcement and discussed his political views with them at length. While the officers apparently concluded that none of Raub's expressions rose to the level of being punishable by law, Chesterfield police officers reportedly issued a "paperless" Emergency Custody Order pursuant to Va. Code § 37.2-808(G) at 7:40 p.m. Officers then handcuffed Raub and transported him to police headquarters without informing him

of his rights. While records indicate that a Temporary Detention Order was drafted earlier that day, at approximately 3:30 p.m., a magistrate did not sign and issue the Order until 12:11 a.m. on August 17; more than four hours after Raub had been taken into custody. It is therefore apparent that Raub was detained pursuant to the ECO beyond the statutorily permitted time period, and without any record of police having requested or been granted an extension by the magistrate pursuant to Va. Code § 37.2-808(G).

Pursuant to express statutory direction, the magistrate's decision to issue the TDO was based, in part, upon the evaluation of a psychologist employed by the Community Services Board—a government agency.[1] In this evaluation, the psychologist's "Significant Clinical Findings" were limited to: (1) that Raub took long pauses before answering questions, and (2) that he was uncomfortable with the Secret Service. On this paltry clinical basis, the psychologist concluded that a TDO was appropriate.

Following Raub's transfer to John Randolph Medical Center, where he continued to be detained against his will pursuant to the TDO, the Chesterfield Police Department initially refused to inform Raub's mother, Cathleen Thomas, of the location where her son had been taken. Thomas was also denied other basic information—including the time of the hearing and the name of the doctor assigned to treat Raub—which she needed in order to act as an effective advocate for her son's interests. Despite the fact that Raub clearly had a right to obtain an independent evaluation and present his own expert witnesses, Thomas was informed that she would not be permitted to assist Raub in obtaining an independent evaluation for Raub from their own family's health care professionals.

Meanwhile, the physician assigned to treat Raub during his stay at John Randolph Medical Center repeatedly denied Raub's own requests to be evaluated and treated by a mental health professional of his own choosing. Allegedly, this doctor further informed Raub that he would force Raub to take medications against Raub's will if the doctor saw fit.

The involuntary commitment hearing was finally held on August 20 inside the confines of the Medical Center's psychiatric ward. The foregoing events and misinformation, however, precluded Raub from exercising his due process rights to present a meaningful defense to the commitment petition. The Special Justice repeatedly indicated that he was unable to hear the oral evidence given during the hearing, and while he recorded the proceeding on an old-fashioned dictaphone, Raub has been unable to obtain a copy of the recording to date—another denial of his statutory rights.[2] Ultimately, the Special Justice ignored Raub's explanations of the context of the allegedly "terroristic" Facebook posts—many of which were actually the lyrics of popular songs. The Special Justice then ordered Raub to be committed to the psychiatric

[1] Va. Code § 37.2-816.
[2] Va. Code § 37.2-818.

ward of the Veterans Administration Hospital in Salem, Virginia—some three (3) hours away from his family and attorneys—against his will and that of his family.

One week after Raub was forcefully taken from his home as a result of engaging in free speech that is fully protected by the First Amendment to the United States Constitution, attorneys for The Rutherford Institute were able to secure his release upon their first appearance before a Circuit Court judge. This judge, who was scheduled to hear only a procedural matter related to the appeal of the commitment order, immediately found that the petition for Raub's involuntary commitment was "so devoid of any factual allegations that it could not be reasonably expected to give rise to a case or controversy," and ordered Raub's release.

While we are pleased to have secured Raub's release from this unlawful and unjust detainment, we have grave concerns that his case represents what may already be or could easily become a disturbing trend: the misuse of civil commitment statutes by government officials to punish free speech and the denial of basic due process rights. Indeed, since The Rutherford Institute began assisting Brandon Raub, we have been inundated with phone calls and e-mails from veterans who report that they have been subjected to similar atrocities. State civil commitment processes appear to be a ripe venue for ensuring that persons with what are considered unsavory political views by certain government officials are quarantined. By invoking these statutes, officials can sidestep the regular judiciary process and the rigorous procedural and jurisprudential protections that would apply if they were to bring actual charges against the accused that implicate First Amendment interests. By contrast, the civil commitment process is stunningly common and pervasive: more than 20,000 civil commitments were made in Virginia last year.

This is why we are seeking your intervention. In particular, we request that you initiate an immediate investigation of the following issues with regard to the involuntary civil commitment process:

1. Failure of Agencies/Officers to take First Amendment rights into account.

This case clearly implicates the core First Amendment rights of citizens to be critical of their government. While communications that constitute "true threats" toward others are not considered protected speech, the records in this case contain no information whatsoever suggesting that Raub's Facebook posts were "true threats." Indeed, if law enforcement had considered them such, they could have properly brought criminal charges against Raub rather than invoking the involuntary civil commitment statutes. But the concern we wish to flag for your particular attention is that neither law enforcement nor CSB personnel appeared to even consider this inquiry relevant. To the extent that government officers and agents do not consider this critical question, they are facilitating the detention of citizens in violation of the First Amendment, a practice which represents

an abuse of the Commonwealth's involuntary commitment statutes and must be ended immediately.

2. Failure of Officers to abide by statutorily-prescribed time limit for detention pursuant to Emergency Custody Order.

Again, the record reveals that officers detained Raub beyond the statutory limit of four (4) hours.[3] This is a concrete abuse of the involuntary commitment statutes that demands your intervention.

3. *De Facto* Denial of meaningful Due Process protections.

In light of the gravity of the deprivations of liberty contemplated by the involuntary commitment proceedings, it is essential that those subject to these proceedings be provided with actual, meaningful protections of their rights to the due process of law—including the ability to put on a substantive defense. At the most basic level, this requires the subject's being informed of his right to and actually *allowed* to obtain his own expert evaluations. It also requires that when the subject so wishes, his family members and witnesses be informed of the details of the hearing in sufficient time to allow their participation.

4. Failure to provide copy of recording as required by statute.

While the Clerk's office of the Hopewell Circuit Court admits having custody of the tape containing the recording of the hearing, it has informed Raub's legal counsel that it has no way of making a copy of the tape and that the tape must therefore remain under seal. This, of course, has precluded Raub's legal counsel from obtaining evidence that is critical to Raub's pursuit of judicial remedies for the gross violations of his civil liberties. This may, indeed, be simply a technical problem. However, it is one that demands immediate systemic correction in order to protect the due process rights of citizens and to fulfill the statutory requirements of Va. Code. § 37.2-808(G).

5. Lack of Impartiality of Mental Health Evaluators.

Finally, we are concerned about the considerable involvement of the CSB—a government agency—in the involuntary commitment process. As you know, Virginia law *requires* that the prescreening report be performed by a CSB agent.[4] But the law further allows the "independent" evaluation to also be performed by a CSB agent.[5] Where this happens, the current system enables the magistrate or a special justice to order a citizen's involuntary civil commitment (which may be premised entirely on the citizen's speech under certain circumstances) to be based entirely upon the evidence of

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[3] Va. Code § 37.2-808(G).
[4] Va. Code § 37.2-816.
[5] Va. Code § 37.2-815.

government officials and agents. This is a systemic violation of detainees' due process rights under the Fourteenth Amendment.

We ask that you take immediate steps to ensure that these significant flaws are corrected, and that Virginia's involuntary civil commitment process does not continue to serve as a pathway for government officials and agencies—whether purposefully or inadvertently—to tread upon Virginians' most cherished civil liberties. Thank you for your prompt attention to this critically important matter.

Sincerely yours,

John W. Whitehead
President

THE RUTHERFORD INSTITUTE

cc: Attorney General Ken Cuccinelli
Governor Bob McDonnell
Brandon Raub