

someone has been charged with a nonviolent crime and competency is an obvious issue from the start, the government seems more willing to negotiate and pursue other options” (personal communication with Mary Higgins Judge, Esq., December 6, 2006).

Mr. Lapi’s charges were eventually dismissed because the government had no further recourse once he was ordered released. The only time-specific provision was the statute of limitation relevant to each charge. If the government chose not to dismiss charges and the defendant remained incompetent until the date of limitation had passed, the charges would be dismissed automatically.

It remains unseen as to how far this decision will reach. Nevertheless, it more clearly illustrates the federal courts’ role in handling mentally ill defendants who are incompetent and is consistent with previous rulings in other districts.

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Sex Offender Laws: Commitment and Treatment of Individuals Deemed to be Sexually Violent Predators

Constitutional Rights of Individuals Committed as Sexually Violent Predators Outlined

In *Hydrick v. Hunter*, 449 F.3d 978 (9th Cir. 2006), civilly committed inmates and those awaiting commitment pursuant to California’s Sexually Violent Predators (SVP) Act brought a class action against public officials alleging violation of their constitutional rights. The district court denied the officials’ motion to dismiss. The court of appeals held that the officials had qualified immunity from suit on *ex post facto*, double jeopardy, and Eighth Amendment claims. On all other claims, the denial of dismissal was affirmed.

Facts of the Case

California’s SVP Act defines an SVP as an individual who has been convicted of a sexually violent offense against at least two victims, has received a determinate sentence, and has a mental disorder that makes the person a danger to others. Before completing the sentence, the person is evaluated by the Department of Corrections and Department of Mental Health. If they agree that the person may be an SVP, a petition for commitment may be filed. If a jury finds the person to be a danger, he or she is civilly committed. This commitment commences after the criminal sentence is fulfilled. Each year, the person has a right to a hearing to determine whether commitment should be continued. Once committed, the person undergoes a five-phase treatment program. During Phase 1, the SVP is required to participate in treatment sessions or his or her access level is reduced. Failure to participate is used against the SVP in future hearings, and the SVP cannot advance to Phase 2. The SVP cannot advance beyond Phase 1 unless he or she signs a statement acknowledging an illness that requires treatment.

On September 2, 1998, the plaintiffs filed a *pro se* class action on the grounds that the policies and procedures governing their confinement and treatment violated their constitutional rights. In March 1999, the district court appointed counsel who later filed an amended complaint. The defendants’ motion to dismiss was denied. The plaintiffs later filed a second amended complaint. Both amended complaints alleged that the defendants violated the plaintiffs’ rights by forcibly medicating them in nonemergency situations; reducing their privileges as a form of punishment for refusing to participate in treatment sessions or as retaliation for filing lawsuits; putting them in restraints for non-threatening and/or nondisruptive conduct; subjecting them to public strip searches; failing to protect them from abuse of other patients or employees; failing to provide constitutionally satisfactory conditions of confinement; forcing them to participate in treatment; and denying adequate treatment, thereby converting the civil confinement to a *de facto* extension of the prison sentence. Again, the defendants’ motion to dismiss was denied. They appealed, arguing that the district court erred by failing to rule that the Eleventh Amendment, state abstention doctrine, or qualified immunity barred the suit.

Ruling and Reasoning

The Ninth Circuit noted that, in its review, all allegations of material fact were accepted as true and should be construed in the light most favorable to the plaintiffs. The court noted difficulty in deciding a motion to dismiss on qualified immunity grounds at this stage, explaining that they must evaluate the merits of the qualified immunity defense before knowing the full extent of the alleged abuses, the reason behind the policy, or the involvement of the defendants in creating the conditions. The court agreed that the Eleventh Amendment bars suits for monetary damages against state officials in their official capacity, but noted that it does not bar such suits against officials in their personal capacities. Qualified immunity provides immunity from a suit for damages, not from a suit for declarative or injunctive relief. To withstand the defendants' claim, the plaintiffs must allege violation of a right that was clearly established at the time of the alleged violation. The defendants argued that damages were not appropriate, as the laws applicable to SVPs are still evolving. While the court agreed that the suit was unique, the majority held that the claims could not be dismissed at this stage.

The court noted that civilly detained individuals must be afforded more considerate treatment and conditions of confinement than are criminals detained under conditions designed to punish. The ruling held that it followed that rights afforded to prisoners set a floor for the rights that must be provided to SVPs. Therefore, if the defendants have violated a right clearly established in the prison context, then it must be established for SVPs. The court noted that SVPs are civilly committed after a criminal conviction and have been found to represent a danger to others, and so their rights might not be coextensive with those of other civilly committed individuals. After having framed the analysis, the court found that the plaintiffs might be able to prove that they had been punished in retaliation for exercise of their First and Fourteenth Amendment rights to file grievances about confinement. However, the defendants had qualified immunity to the extent that the claims relied on a First Amendment right to refuse to participate in treatment sessions, since the law was not clearly established on this point. The court held that plaintiffs might be able to prove violations of Fourth Amendment rights to protection from unreasonable searches, seizures, and unnecessary use of force. The

ruling noted that this right had been extended to prisoners and thus held that it extended to SVPs. It found that the *ex post facto* and double jeopardy claims were foreclosed by other rulings and that the Eighth Amendment was not the proper means of challenging conditions of civil commitment.

Under the Fourteenth Amendment, the court held that SVPs may be deprived of certain privileges, but this may not occur without notice and a chance to be heard. The decision held that, "at a minimum," an SVP has a right to due process before being forcibly medicated in nonemergency situations. The court held that the plaintiffs might have a liberty interest in the access levels and classifications affecting their privileges; that the Fourteenth Amendment requires that civilly committed individuals not be placed under conditions that amount to punishment; and that the plaintiffs raised questionable classifications and the court could not dismiss equal protection claims. The plaintiffs claimed that they were unable to correspond privately or have telephone conversations with counsel and were hindered in their ability to prepare for hearings. The court held that the plaintiffs might be able to state a violation in this context and with regard to a Fourteenth Amendment right to privacy. The court did not believe that the defendants could claim that their conduct was objectively reasonable, explaining that SVPs are not entirely dissimilar to other civilly committed people and that the plaintiffs had made allegations of treatment that would be unconstitutional if directed at any prisoner.

Discussion

Aside from the questions of qualified immunity, this case raises concerns important to forensic psychiatrists. The Ninth Circuit analyzed rights established for individuals detained in other contexts and attempted to determine which would apply to individuals committed pursuant to the California SVP scheme. Thus, the court took a step toward delineating the constitutional rights of such individuals. The majority opinion made clear that individuals committed as SVPs are civilly committed and that individuals detained civilly should not to be held in conditions that amount to punishment. In examining the rights of SVPs, the court used the rights of prisoners as a floor level for the rights of SVPs. The court clearly attempted to balance the needs for preserving individual liberty, for protecting society, for treat-

ment, and for institutional control. As this case and others like it proceed, psychiatrists should take an active role in helping the courts understand the rationale for treatment of individuals committed as SVPs as well as helping the courts understand the policies governing the conditions of confinement. By doing so, psychiatrists can help courts arrive at a better balance in considering these concerns.

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Commitment Following a Finding of Not Guilty by Reason of Insanity

A District Court's Order Committing an Individual to the Attorney General's Custody After an Acquittal by Reason of Insanity is Appealable

In *United States v. Stewart*, 452 F.3d 266 (3d Cir. 2006), the United States Court of Appeals for the Third Circuit considered the appeal of a commitment order rendered after a defendant was found not guilty by reason of insanity. Questions regarding court jurisdiction and the standards for review of appeals were addressed.

Facts of the Case

On April 29, 1999, Anthony Stewart approached and stabbed a customer in a New Jersey post office. The victim suffered a 10-cm laceration to the back of her head. Mr. Stewart was apprehended a short distance from the post office, charged with "knowingly committing an assault resulting in serious bodily injury," and committed to the custody of the U.S. Attorney General for psychiatric evaluation. Evaluators found him incompetent to stand trial, and he was sent to Federal Medical Center (FMC) Devens. After six months of treatment, his competence was restored. He was transferred to a county jail where his mental state deteriorated. In February 2002, he was evaluated and found to be incompetent to stand trial. On July 29, 2002, a psychiatric examination was

conducted to determine whether Mr. Stewart was mentally ill at the time of the offense. The evaluators concluded that, at the time of the offense, he had severe mental disease and, as a result, was unable to appreciate the nature, quality, and wrongfulness of his actions. On October 24, 2004, Mr. Stewart was found not guilty by reason of insanity by the United States District Court for the District of New Jersey and was recommitted to FMC Devens.

Following recommitment, Mr. Stewart was evaluated regarding his future risk of violent behavior. Evaluators noted a correlation between his psychiatric decompensation and a gradual escalation in criminal behavior throughout the years. On December 30, 2004, a Risk Assessment Panel Report was filed. The report concluded that he was a moderate risk for violent behavior and that the risk of future violence increased, "especially if he becomes noncompliant in taking his prescribed psychotropic medication." The evaluators opined that he would not be dangerous if properly medicated in a supervised environment. On May 3, 2005, the court conducted a hearing to determine whether Mr. Stewart should be released from custody. He had the burden of proving by clear and convincing evidence that his release would not create a substantial risk of bodily injury to another person or serious damage to the property of another due to a present mental disease or defect.

Dr. Becotte, Chief Forensic Psychologist at FMC Devens, testified that Mr. Stewart had recently acknowledged his mental illness and his need for ongoing medication. Dr. Becotte stated that Mr. Stewart's prognosis was good and that, at the time of the hearing, he did not pose a substantial risk of danger to the public. Dr. Becotte clearly expressed the opinion that Mr. Stewart's medication regimen was crucial to his stability. The doctor opined that a supervised environment would give Mr. Stewart the "best chance of success." Mr. Stewart's attorney presented evidence that there would be "safeguards" in place to provide a structured and supervised environment. However, testimony raised doubts about the level of structure and support these resources would truly provide. The district court denied Mr. Stewart's release. The court found that, although he was currently doing well, he was still a "moderate risk" for violent behavior; this risk would be increased if he were not properly medicated; and there were few assurances that the voluntary program would provide the supervision needed. Without demonstrating an