

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

adequate release program, Mr. Stewart had failed to show 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.

*Ruling*

The Court of Appeals for the Third Circuit affirmed the district court's decision, finding that Mr. Stewart had not proven by clear and convincing evidence that his release would not pose a substantial risk of bodily injury to others or serious damage to property.

*Reasoning*

The court of appeals held that it had jurisdiction to hear Mr. Stewart's appeal and that its review was for clear error. According to the standard regarding clearly erroneous decisions, an appeals court can reverse a ruling only if, after reviewing the record, it is left "with the definite and firm conviction that a mistake has been committed." On appeal, Mr. Stewart argued that the district court had committed a clear error, because the evidence he presented clearly and convincingly established that his release would not create a substantial risk of bodily injury to another person or serious damage to property. The court found, however, that the trial judge did not commit a clear error in ruling that Mr. Stewart failed to establish his entitlement to release.

The appeals court found that Mr. Stewart had failed to provide clear and convincing evidence that his post-release plan would provide the structured and supervised environment needed to ensure his compliance with medication. These factors, coupled with his mental health, criminal history, and the difficulty of his transition to independent living supported the district court's findings.

*Discussion*

In this case, the Third Circuit Court of Appeals found that a district court's commitment order is a finding of fact that can be reversed only if clearly erroneous. Other circuits had previously upheld this standard. The standard grants district courts great latitude when determining whether a mentally ill defendant is ready to be released. While Mr. Stewart responded well to treatment, had committed no further violent acts, and had advanced through the mental health system, at trial he was unable to provide 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. Since the district court was not permitted to order a conditional release under the commitment statute, Mr. Stewart remained on a commitment.

Commitment statutes attempt to balance the rights of individuals with the maintenance of a safe society. Mr. Stewart was committed under 18 U.S.C. § 4243(e) (2005). That commitment left the district court authority either to commit him or to release him unconditionally. In contrast, 18 U.S.C. § 4243(f) (2005) authorizes the district court to order a conditional release after an individual has been committed pursuant to 4243(e). Mr. Stewart's counsel requested a hearing for release under 4243(f) and 4247(h) (1997), which would provide the court with authority to release him with conditions (e.g., "a prescribed regimen of medical, psychiatric, psychological care or treatment"). Forensic psychiatrists will increasingly be asked to translate their risk assessment evaluations into conditional-release program recommendations. By understanding commitment statutes and completing thorough evaluations, forensic psychiatrists aid the legal system by providing recommendations. It is crucial that post-release plans be appropriate and feasible, to balance the competing interests of public safety and individual rights.

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## Criminal Sentencing of Mentally Ill Persons

### ***Standards for Implementing a Downward Departure From the United States Sentencing Guidelines for Diminished Mental Capacity and for the Adjustment for Acceptance of Responsibility in Persons With Mental Illness***

In *United States v. Schneider*, 429 F.3d 888 (9th Cir. 2005), the United States District Court for the District of Oregon sentenced Mr. Schneider to 10