court recognized that Mr. Blackwell's mental health needs may have influenced his conduct. Thus, the mental health aspects of this case highlight interesting barriers to mental health treatment for law students.

The March 2008 American Bar Association (ABA) mental health initiative indicated that lawyers are at higher risk for depression than the general population and that up to 40 percent of law students experience depression. Evidence of this is well established and supported by a landmark study in 1991 by John Hopkins University that ranked lawyers first in the rate of clinical depression among the 105 professions surveyed. Further complicating the matter is an individual's fear of seeking treatment due to stigmatization. Therefore, one could speculate that Mr. Blackwell declined to enter treatment for the same reason that many other law students avoid treatment—to prevent the need to disclose a psychiatric condition or treatment for admission to the bar examination. Although it does not diminish the importance of Mr. Blackwell's poor decision-making capacity and his test-taking improprieties, this case underscores the negative impact of mental health stigma and the importance of mental health education to combat the stigma.

Often, the impact of mental health stigma on daily functioning is grossly underestimated and the experience of stigma, whether actual or perceived, is associated with poorer quality of life, decreased psychological well-being, and decreased self-esteem. Thus, law students, or at least those in Ohio and other states with similar eligibility requirements, suffering from serious untreated psychiatric difficulties may ultimately have impaired abilities to fulfill the Essential Eligibility Requirements for the Practice of Law. But, because of the current standards of an invasive character and fitness review, students, many with treatable disorders, may be discouraged from seeking appropriate psychiatric services to lessen symptoms and improve functioning.

Character and fitness are considered among the most important components of the admission process, but they are a catch-22 for anyone with a prior or current history of mental health treatment. There is a need for all professions, including the legal profession, to continue to seek and utilize a fair system of balancing its gate-keeping function while maintaining the dignity of human experience.

Confidentiality of Commitment Records

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State and Federal Confidentiality Laws Do Not Prevent Disclosure of Some Commitment Records When Police Investigate False Information Provided on a Firearms Application.

In *U.S. v. Smith*, 511 F.3d 77 (1st Cir. 2007), the United States Court of Appeals for the First Circuit reviewed the decision of the U.S. District Court for the District of Maine to deny a motion to suppress police records and an emergency involuntary admission application. Law enforcement had obtained the records when investigating the information Christopher Smith had provided on a federal firearm purchase application. Mr. Smith had falsely reported that he had never been committed to a mental institution. He argued that the records should have been protected by state and federal confidentiality statutes.

Facts of the Case

On April 2, 2005, following a drug overdose and medical hospitalization, Mr. Smith was involuntarily admitted to a psychiatric hospital in Bangor, Maine, based on an Application for Emergency Involuntary Admission to a Mental Hospital, called a blue paper. This form had been initiated by Donna Huff, a nurse practitioner, certified by Dr. Victor Kelmenson, and endorsed by the Penobscot County probate judge.

On the form, Ms. Huff stated, "I believe Christopher Smith has a mental illness and due to mental illness, poses a likelihood of serious harm . . ." (*Smith*, p 79). Dr. Kelmenson reported that Mr. Smith "pose[d] a likelihood of serious harm due to a mental illness because [of] amphetamine overdosed psychosis, hx [history] of suicidal ideation and paranoia, [and] violent outbursts" (*Smith*, p 79). After the probate judge endorsed the application, Bangor police officers transported Mr. Smith to the psychi-

atric hospital, where he was hospitalized for about two weeks.

Less than four months later, Mr. Smith attempted to purchase a pistol from a pawnbroker in Bangor, Maine. To make this purchase, he was required to complete a Department of Treasury, Bureau of Alcohol, Tobacco and Firearms (ATF) transaction record (ATF Form 4473). On the form, he answered "no" to the question, "Have you ever been committed to a mental institution?" During his investigation of the application, Erik Tall, a Bangor police detective, discovered a police record from April 2, 2005, indicating that Mr. Smith had been transported by Bangor police officers. Det. Tall then obtained a police report specifying that Mr. Smith had been transported by police between two hospitals for the purpose of involuntary psychiatric hospitalization.

When Det. Tall later interviewed him, Mr. Smith admitted that he had been hospitalized involuntarily in April 2005. A magistrate judge then granted the government a court order directing the psychiatric hospital to release a copy of Mr. Smith's blue paper. On September 27, 2005, Mr. Smith was indicted for knowingly making a false statement on the ATF form. Following his indictment, Mr. Smith moved to suppress the police records and the blue paper. However, the district court denied Mr. Smith's motion, as recommended by the magistrate judge. After Mr. Smith entered a conditional guilty plea, reserving the right to appeal the denial of suppression, he was sentenced to 15 months in prison and three years of supervised release. Mr. Smith subsequently appealed the denial of his motion. On appeal, he also contended that the plea hearing was deficient.

Ruling and Reasoning

The U.S. Court of Appeals for the First Circuit affirmed the decision of the U.S. District Court for the District of Maine to deny Mr. Smith's motion to suppress the police records and blue paper based on its interpretation of federal and state laws.

At the appellate level, Mr. Smith presented the same arguments that he had made to the district court. In addition, he argued that the plea hearing, conducted by the district court pursuant to Federal Rule of Criminal Procedure 11 (Pleas), was deficient.

Mr. Smith argued that the police records were acquired by the police in violation of Maine law, which states that "all orders of commitment, medical and administrative records, applications and reports, and facts contained in them, pertaining to any client shall be kept confidential . . . except that: . . . Information may be disclosed if ordered by a court of record" (Me. Rev. Stat. Ann. tit. 34-B, § 1207(1)). However, the court found that this statute only protects records "pertaining to a client" of the Maine Department of Behavioral and Developmental Services or agencies falling under the jurisdiction of this department. The court concluded that since the Bangor Police Department does not fall under such jurisdiction, Mr. Smith would not be considered a "client" as defined by the Maine statute. Therefore, in acquiring the police report and releasing it to the government, Det. Tall did not violate state law.

Mr. Smith argued that the blue paper should be suppressed because it was the product of a police report, which he argued had been illegally obtained. He also argued that the blue paper should be suppressed because it contained information about substance abuse treatment, which is protected as confidential by the Public Health Service Act (PHSA), 42 U.S.C. § 290dd-2 (2006), and the regulations that implement it. The PHSA restricts the release of patient records regarding substance abuse treatment at federally assisted programs. Because it had found that the police records were not illegally obtained, the court rejected Mr. Smith's argument that the blue paper should have been suppressed as the product of an illegally obtained police report. It also rejected Mr. Smith's argument that the blue paper should have been suppressed as confidential by the PHSA. The court pointed out that the intent of law enforcement in obtaining the blue paper had been to provide evidence about involuntary commitment, not to obtain information about drug treatment. It conceded that the blue paper as a whole had information about Mr. Smith's drug history and that this information had been obtained from a psychiatric hospital that receives federal assistance. However, the court found that Maine's decision to combine three discrete forms (the application, certification, and judicial endorsement) into one form did not transform the judicial endorsement from a judicial order, which was admissible, into a patient record, which would not be admissible under the PHSA. Although Mr. Smith argued that the plea hearing was deficient, the court found no evidence to support that conclusion.

Discussion

This case raises several concerns about the acquisition and use of mental health records by law enforcement and the judicial system. There is considerable social stigma attached to psychiatric treatment, and involuntary psychiatric hospitalization carries even more stigma. Therefore, privacy laws, hospital policies, and mental health providers strive to limit the release of mental health records. Preserving the confidentiality of mental health records is critical to bolstering the patient's relationship with the mental health provider.

This case hinged on the right to maintain confidentiality of mental health records and demonstrated the different, and sometimes opposing, goals of law enforcement and health care providers. Physicians and other providers must certainly obey the law, but they also have an obligation to their patients, including ensuring confidentiality if possible.

There are limits to this confidentiality, however. Public safety sometimes necessitates the violation of patient confidentiality. In the aftermath of the Virginia Tech campus shootings, increased attention was given to disclosing mental health information to prevent the purchase of firearms by the mentally ill. Since this tragic incident, there has been increasing demand that government ensure that people who have been involuntarily hospitalized for mental health reasons are placed on a registry that prevents them from obtaining firearms.

There are other limits to confidentiality of mental health commitment and other records, including applications for licensure and employment. State medical licensing boards may inquire about a history of mental health treatment when a physician applies for a medical license. In Virginia, for example, Question 15 on the medical license application asks, "Do you have a physical disease, mental disorder, or any condition which could affect your performance of professional duties? If so, provide a letter from your treating professional to include diagnosis, treatment, prognosis, and fitness to practice." A state's legal bar may ask about mental health history when an attorney applies to take the bar examination. For example, the application for the bar examination in Connecticut asks several questions about mental health history. Question 34 asks, "Since you graduated from college or for the past five years, whichever is shorter, have you been hospitalized for treatment of a mental, emotional, or nervous disorder or condition?" Question 35 asks the applicant about treatment in the past five years for any number of psychiatric disorders, including major depressive disorder. Government and private job applications may also include questions with similar content, all of which may discourage individuals from seeking mental health treatment.

A person who has received mental health treatment may be faced with a difficult decision when presented with an application or interview in which he is asked about past commitment or other forms of psychiatric treatment. By revealing this information, he is risking a disclosure that may have a financial or occupational impact. Because of the social stigma attached to mental health problems, the person may also feel embarrassed about providing this information. Whatever the motive for providing false information for a federal firearms purchase—wanting to obtain a firearm, financial or occupational considerations, social stigma, or embarrassment—we see in this case that a person is held accountable for knowingly making such a false statement.

Disclaimer: The views expressed in this article are those of the authors and do not reflect the official policy or position of the United States Air Force, Department of Defense, or the U.S. Government.

Repeated Threats in Therapy

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Psychotherapist-Patient Privilege Is Inapplicable When There Is No Reasonable Expectation of Confidentiality

In *U.S. v. Auster*, 517 F.3d 312 (5th Cir. 2008), the United States Court of Appeals for the Fifth Circuit reversed an interim order of the United States District Court for the Eastern District of Louisiana that suppressed communications involving a threat of harm relayed by John C. Auster to his psychologist, Dr. Fred Davis.