

criteria to form his medical opinion and failed to find that Dr. Arbisi's diagnosis was "clearly erroneous." The court therefore concluded that the WCCA had no standing to reverse the compensation judge's ruling.

#### Discussion

In *Smith*, the Minnesota Supreme Court's opinion clarified the role of a compensation judge in legal proceedings in confirming an adequate factual basis of clinical opinions and ruling based solely on credibility and persuasiveness. The decision also underscores that clinical interpretation and decision-making fall within the domain of mental health experts, not judges.

The Minnesota legislature's 2013 amendment allowing for workers' compensation to PTSD diagnoses in employees will provide relief for those who meet the applicable diagnostic criteria. Prior to this amendment, mental disabilities were not eligible for workers' compensation. While adopting PTSD as a compensable illness is laudable, this case highlights residual imperfections in the state's workers' compensation law. For instance, in their evaluations, both Drs. Keller and Arbisi found that Mr. Smith was indeed experiencing disabling symptoms, including insomnia and emotional distress. But because Dr. Arbisi did not consider these symptoms to be consistent with the specific diagnosis of PTSD, Mr. Smith was determined to be ineligible for benefits.

In its ruling, the Minnesota Supreme Court highlighted the complexities of providing a psychiatric diagnosis. It further acknowledged that competing diagnoses submitted by opposing experts could each have an adequate foundation. Yet, under the current workers' compensation act in Minnesota, only a diagnosis of PTSD is eligible. Eligibility based merely on diagnosis rather than disability therefore introduces an arbitrary threshold that can be further addressed by the Minnesota legislature.

## Defense Experts for Indigent Defendants in Federal Courts

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### **Burden of Persuasion Requires Relevance for Funds for Mental Health Expert under the Federal Criminal Justice Act**

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In *United States v. Martinez*, 923 F.3d 806 (10th Cir. 2019), the Tenth Circuit Court of Appeals held that the district court's decision to deny the authorization of government funds to hire a forensic psychologist was not an abuse of the district court's discretion. The Tenth Circuit also affirmed the district court's decision that the defendant's mental health history was not relevant and, as a result, was inadmissible. The Tenth Circuit affirmed the conviction.

#### Facts of the Case

In July 2017, Christopher Lee Martinez was 27 years old when he responded to a personal advertisement posted in the "Casual Encounters" section of Craig's List by Special Agent Brent Metcalfe of the Wyoming Division of Criminal Investigation. Special Agent Metcalfe posed as a father soliciting a sexual encounter for his 12-year-old daughter while they visited Cheyenne during the Cheyenne Frontier Days festival. Mr. Martinez responded to the advertisement and engaged in online conversation with Special Agent Metcalfe, asking repeatedly if Special Agent Metcalfe was a "cop," as well as discussing possible sexual acts Mr. Martinez could engage in with the 12-year-old girl. When Mr. Martinez asked to send online messages directly to the girl, Special Agent Metcalfe assumed the daughter's identity in the online communications. Ultimately, Mr. Martinez agreed to meet at a motel to take the girl's virginity and bring a condom. When Mr. Metcalfe arrived, he was arrested in the motel parking lot and found in possession of the phone used in the online communications and a condom. Mr. Martinez admitted to sending the messages but claimed his intention was to call the police to turn in the father.

In the pretrial phase, Mr. Martinez's attorney requested that the court appoint a forensic psychologist at government expense under the Criminal Justice Act of 1964 (CJA) (18 U.S.C. § 3006A

(2010)). The CJA provides federal funding for services needed for adequate representation of indigent defendants. The motion noted that Mr. Martinez was receiving Social Security Disability income as a result of a mental disorder and that he had a history of mental health diagnoses (including bipolar disorder, schizophrenia, and depression), psychiatric symptoms (including attempted suicide at age 18 and hallucinations in his early 20s), and previous use of psychiatric medications (including antidepressants and antipsychotics). The district court denied the motion, stating that Mr. Martinez failed to link his mental condition to the need for a forensic evaluation as a component of his defense. Mr. Martinez's attorney did not renew the motion and provided no further justification for the request to the district court.

The government filed a motion *in limine*, which is a motion filed immediately before trial, to seek to prevent the jury from hearing evidence of Mr. Martinez's history of mental illness because the defense team was not presenting it to negate an element of the crime. In the final pretrial conference, the court asked the defense to justify its intent to introduce evidence of Mr. Martinez's mental illness at trial. The defense counsel argued that although Mr. Martinez was not pleading insanity, nonetheless the jury should consider "whether or not his [mental illness] affected his decision to do the things he did or not" (*Martinez*, p 811). The defense counsel argued that Mr. Martinez's past medical records would corroborate Mr. Martinez's testimony concerning "his own character and state of mind" (*Martinez*, p 811). The court granted the government's motion to exclude mental illness testimony, stating that it could potentially confuse jurors by implicating a justification for his actions. The court noted that psychiatric evidence that "negates the essential element of specific intent can be admissible" (*Martinez*, p 811) if there is clear demonstration of how such evidence would negate intent. The court concluded that without current medical records or a mental health expert, the defense lacked evidence of any "cognitive defect precluding him from forming the specific intent for the charged offense" (*Martinez*, p 811).

During the trial, Mr. Martinez renewed his request to offer mental health evidence with the stated intention of providing background evidence to describe "who he is" and "his general makeup" and

why he was receiving Social Security Benefits (*Martinez*, p 811–12). The court held that Mr. Martinez's mental health may be relevant in sentencing mitigation but not at trial. The defense consisted of character witnesses testifying that Mr. Martinez was a law-abiding citizen and his own testimony that he was attempting to identify child exploitation with plans to alert the authorities. The jury convicted Mr. Martinez of one count of attempting to entice a minor to engage in illegal sexual activity, and he received the minimum mandatory sentence of ten years in prison.

#### Ruling and Reasoning

Mr. Martinez, with new legal counsel, appealed his conviction. In May 2019, the Tenth Circuit Court of Appeals held that the district court's decision to deny Mr. Martinez's motion for government-authorized funds to obtain a forensic psychologist under the CJA was not an abuse of the district court's discretion. Mr. Martinez's counsel argued that psychiatric testimony could have supported Mr. Martinez's defense that he was trying to catch a sexual predator. Mr. Martinez's explanation, characterized as bizarre by the government, might make sense if it were the result of a person with a mental illness who "may not proceed as a rational person would" (*Martinez*, p 813). The court declined to address this point because it had not been argued before the district court, which had provided ample opportunity for the defendant to explain the need for a forensic mental health expert.

Mr. Martinez also appealed on the grounds that he should have been allowed to present evidence of his mental health history. In the district court, the only proffered explanation was to provide background information to the jury. The defense specifically denied the intended use of a mental health defense. Upon appeal, defense counsel suggested that Mr. Martinez's mental health history could support the defense that his intent was to catch a sexual predator. The Tenth Circuit held that Mr. Martinez did not provide any evidence that would provide the fact finder with reason to make an inference as to the value of mental health testimony for his case. The Tenth Circuit also cautioned courts from including marginally relevant mental health evidence that may cause the jury to be unfairly prejudiced or perceive such evidence as an excuse for the behavior.

Discussion

In *Ake v. Oklahoma*, 470 U.S. 68 (1985), the U.S. Supreme Court delineated the principle of “a fair and accurate adjudication of criminal cases” (*Ake*, p 83), which requires a defendant to have access to appropriate resources to build an effective defense, to include “access to a competent psychiatrist who will conduct an appropriate examination and assist in evaluation, preparation, and presentation of the defense” (*Ake*, p 83). *Ake* required that the “defendant demonstrates to the trial judge that his sanity at the time of the offense is to be a significant factor at trial” (*Ake*, p 83). In federal court, the CJA provides government funding for certain indigent defendants who require the involvement of a mental health expert. In Mr. Martinez’s case, he failed to satisfy this requirement.

In the 1930s, the U.S. Supreme Court began to explore the constitutional right of an indigent defendant to have access to court-appointed counsel. In *Powell v. Alabama*, 287 U.S. 45 (1932), the Court ruled that indigent defendants charged with a capital crime must have access to assigned counsel. In *Johnson v. Zerbst*, 304 U.S. 458 (1938), the Court established the indigent defendant’s right to counsel in all federal cases. It was not until the 1960s, in *Gideon v. Wainwright*, 372 U.S. 335 (1963), that the Court established that indigent criminal defendants facing state charges had a constitutional right to assigned counsel. These decisions provided no funding for court-appointed attorneys, let alone expert witnesses or investigators.

The CJA of 1964 established a comprehensive system for payment of assigned counsel and public defenders for indigent defendants in federal criminal proceedings. The CJA also provided funding for other services required for adequate representation, including investigators, interpreters, and expert witnesses. In 2014, the Administrative Office of the U. S. Courts reported that nearly 90 percent of federal criminal defendants were aided by counsel or experts funded by the CJA (United States Courts: Criminal Justice Act: At 50 Years, a Landmark in the Right to Counsel. Available at: <https://www.uscourts.gov/news/2014/08/20/criminal-justice-act-50-years-landmark-right-counsel>. Accessed December 26, 2019). As utilization of the CJA has grown over the decades, ongoing challenges have arisen regarding funding. Inadequate funding may result in a higher threshold for approval of hiring experts to assist

indigent defendants and attack the integrity of the criminal justice system.

## Mental Capacity and Tolling the Statute of Limitations

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### Plaintiff Claims Insanity as Means to Toll the Statute of Limitations on Civil Case

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In *In re Mirapex Products Liability Litigation*, 912 F.3d 1129 (8th Cir. 2019), Marc Mancini appealed the decision of the District Court for the District of Minnesota that granted summary judgment. The district court found that the facts did not support his claims that the statute of limitations on his product liability was tolled by his insanity and that ongoing use of the product represented a separate and distinct “continuing violations” claim. The United States Court of Appeals for the Eighth Circuit upheld the district court’s ruling.

#### Facts of the Case

Marc Mancini, PhD, was a full-time college professor and chair of his department; in 2008, Dr. Mancini earned more than \$57,000 as a travel industry speaker and consultant. During that period, he also owned and managed two rental properties. Dr. Mancini was given a diagnosis of mild idiopathic Parkinson’s disease in June 2004. In January 2006, his neurologist, Dr. Mark Lew, prescribed the medication pramipexole (known as Mirapex), which is manufactured by defendant Boehringer Ingelheim Pharmaceuticals and approved by the Food and Drug Administration for treating adults with movement disorders and Parkinson’s disease.

Dr. Mancini reported to Dr. Lew on January 3, 2008, that he experienced increased compulsive behavior and gambling after taking the medication.