

were violated entitles him to relief under 42 U.S.C. § 1983. More important for forensic psychiatrists, the court also did not decide whether conditioning the mere possibility of being selected for parole on taking medication constitutes involuntary administration of medication. The court left the door open for a future court to reason that linking parole eligibility to medication could constitute involuntary administration of medication and therefore could be a violation of a prisoner's liberty interest to be free of unwanted medication. If that were to happen, it is reasonable to forecast that the remedy would be a judicial or administrative hearing to determine the clinical appropriateness of the medication, as previously established in *Washington, Felce, and Williams*.

Bundy highlights the role of forensic psychiatrists in informing the courts about what may appear to be a confusing panoply of psychiatric medications. First, Mr. Bundy's original complaint appears to stem from an administrative decision within CDOC to switch the formulary selective serotonin reuptake inhibitor (SSRI) from Zoloft to Prozac. Whether the medication change was the factor that led to Mr. Bundy's eventual discharge from the SOTMP, Prozac and Zoloft are different medications with different pharmacokinetics and side effect profiles. This case demonstrates a potential pitfall of allowing an administrative decision to override clinical judgment and of treating all medications within a pharmacologic class as the same. Second, the Tenth Circuit makes particular note of the side effects of Prozac and calls Prozac an "antipsychotic medication" on several occasions. As an SSRI antidepressant, Prozac has a pharmacodynamic profile quite different from an antipsychotic and, although this confusion does not appear to have affected the court's decision in *Bundy*, it should remind forensic psychiatrists that effective consultation and testimony includes dispelling these uncertainties and misconceptions about psychiatric medications.

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Civil Commitment

Based on the Clinical Picture, Social Workers Had at Least Arguable Probable Cause for Involuntary Recommitment of the Plaintiff and Are Therefore Granted Qualified Immunity From Suit

In *Vallen v. Connelly*, 2006 Fed.Appx. 22 (2d Cir. 2006), the U.S. Court of Appeals for the Second Circuit affirmed the U.S. District Court for the Southern District of New York's summary judgment for the defendants in a 42 U.S.C. § 1983 (2005) complaint. The plaintiff alleged that the defendants had violated his constitutional rights when they re-committed him to a mental institution.

Facts of the Case

Barry Lee Vallen, a man under treatment for paranoid schizophrenia, was re-committed to a mental institution in 1994, under N.Y. Mental Hyg. Law § 9.45, by the defendant-social workers involved in his treatment. Their reasons for recommitment were partially based on Mr. Vallen's history, including his 1984 murder of his parents, for which he was found not responsible by reason of mental disease; his threatening behavior toward relatives; and his long history of repeated involuntary commitments. More immediately, the social workers were concerned that Mr. Vallen had not been complying with his conditions of release from a 1994 hospitalization and had an increasingly negative attitude. They had also received an anonymous tip that Mr. Vallen was armed and ready to resist a possible recommitment on the 10-year anniversary of killing his parents.

Mr. Vallen sued the defendants under 42 U.S.C. § 1983, alleging that the defendants made false statements during the recommitment process that caused him to be unlawfully arrested and re-committed. The U.S. District Court for the Southern District of New York granted summary judgment for the social workers based on qualified immunity due the social workers, because they had at least arguable probable cause to find that Mr. Vallen's mental illness had worsened to the point that it was likely to result in serious harm to Mr. Vallen or others. Mr. Vallen appealed to the U.S. Court of Appeals for the Second Circuit.

Ruling and Reasoning

The U.S. Court of Appeals for the Second Circuit affirmed the district court's summary judgment for the social workers because the circumstances leading

up to Mr. Vallen's recommitment gave the social workers at least arguable probable cause to conclude that Mr. Vallen was dangerous and needed involuntary care. Thus, the social workers were entitled to qualified immunity from liability under 42 U.S.C. § 1983. The Second Circuit did not reach the district court's alternative holding that a court finding that Mr. Vallen was dangerously mentally ill immediately after his commitment automatically established probable cause, because the undisputed circumstances leading up to the recommitment had already established probable cause and therefore rendered moot any further analysis.

The Second Circuit reasoned that the facts of the case gave the social workers at least arguable probable cause to find him dangerous, citing *Boyd v. City of New York*, 336 F.3d 72, 76 (2d Cir. 2003), and its explanation of the doctrine of qualified immunity. The appeals court highlighted the clinical features of Mr. Vallen's presentation—including a resistant attitude toward treatment, a fluctuating degree of symptoms, requests for multiple prescriptions, and a tip that he was prepared to resist any recommitment proceedings with force as the 10-year anniversary of his crime approached—as especially compelling.

The Second Circuit did not find Mr. Vallen's arguments compelling. He argued that the district court had incorrectly equated his treatment noncompliance with dangerousness. The Second Circuit explained that although his noncompliance with treatment did not, by itself, equate to dangerousness, "the cumulative nature of evidence" about Mr. Vallen's paranoid schizophrenia—including his treatment noncompliance—led to probable cause that he was dangerous. The Second Circuit also rebuffed Mr. Vallen's argument that the district court ignored the fact that his treatment team had acknowledged that he was not dangerous several times before his recommitment. The appeals court commended the social workers for being cautious in assessing Mr. Vallen and acknowledged that the "inherent uncertainty and temporary nature of any psychiatric assessment" made the social worker's prior evaluations of Mr. Vallen moot, given the new information regarding his dangerousness. Mr. Vallen's final argument that he was actually complying with his treatment program, even if true, would not argue against the social workers' having probable cause to conclude that he was dangerous, because they were acting on well-documented views of various treatment providers,

and that information had only to be reasonably trustworthy and sufficient to warrant a person of reasonable caution to believe that commitment was necessary, as in *O'Neill v. Town of Babylon*, 986 F.2d 646, 650 (2d Cir. 1993).

Finally, the court concluded that its analysis would have been different if Mr. Vallen had provided any evidence of incompetence or ill intent on the part of his social workers, as opposed to arguing with their assessment of his condition.

Discussion

The legal interest in *Vallen v. Connelly* lies in the "qualified immunity" from liability under 42 U.S.C. § 1983 that was granted to the defendants for discharging their duties in treating and evaluating Mr. Vallen (for a brief review of 42 U.S.C. § 1983, please see the foregoing description and discussion of *Bundy v. Stommel*). The social workers' affirmative defense of qualified immunity from liability for taking away Mr. Vallen's liberty, as their clinical roles demanded, was successful at the district court level and affirmed on appeal. An individual actor is entitled to qualified immunity from liability and suit under 42 U.S.C. § 1983 unless the "act is so obviously wrong, in the light of preexisting law, that only a plainly incompetent officer or one who was knowingly violating the law would have done such a thing" (*Lassiter v. Alabama A & M University Board of Trustees*, 28 F.3d 1146 (11th Cir. 1994)).

The qualified immunity granted in this ruling should be of great comfort to those in the mental health profession who are charged with the often difficult task of determining the dangerousness of an individual with mental illness. Often, the roadblocks to getting a patient the appropriate psychiatric care are daunting, especially when the patient does not agree with the assessment and involuntary treatment is necessary. The threat of litigation under 42 U.S.C. § 1983 is real, and this decision affirms that mental health professionals, at least those acting in a governmental capacity, have real protections in the form of qualified immunity if they discharge their duties diligently.

The appeals court took care to point out several clinical factors that led the social workers to determine that Mr. Vallen was dangerous, including the anonymous tip that Mr. Vallen was armed and planning to resist recommitment and the 10-year anniversary of his crime. In fact, the court is complimen-

tary of the social workers for performing careful clinical evaluations of Mr. Vallen that did not find him dangerous earlier, given that at any time this finding would have deprived him of his freedom by triggering recommitment. It is refreshing to see cases in which mental health professionals are commended by the courts and supported by the law when they use their clinical judgment appropriately, to inform the discharge of their legally prescribed duties.

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U.S. District Court Exceeds Its Statutory Authority by Scheduling a Dangerousness Hearing: Defendant Ordered Released

Court of Appeals Narrows Interpretation of the Insanity Defense Reform Act in Competency Issues

In *United States v. Lapi*, 458 F.3d 555 (7th Cir. 2006), the Seventh Circuit Court of Appeals reversed a decision of a district court in northern Illinois that had found the defendant dangerous without a hearing. The court of appeals found that the district court exceeded its statutory authority in scheduling a dangerousness hearing under 18 U.S.C. § 4246 (2005) (Insanity Defense Reform Act of 1984).

Facts of the Case

In July 2002, Tony Lapi was indicted on one count of bank robbery in the Northern District of Illinois. The question of Mr. Lapi's competence was raised by the defense, and an expert evaluation was ordered by the court. The defendant was placed in the custody of the U.S. Attorney General for 30 days at the Federal Medical Center (FMC) in Rochester, Minnesota.

Mr. Lapi's diagnosis was schizoaffective disorder. After a 30-day commitment, the court found him

mentally incompetent to stand trial under 18 U.S.C. § 4241(d) (2005). Mr. Lapi was committed for restoration for two subsequent 120-day periods, after which his psychiatrist confirmed the earlier diagnosis of schizoaffective disorder and reported to the court that there was not a substantial probability that Mr. Lapi would be restored to competency in the foreseeable future. The court entered a finding of nonrestorability and ordered Mr. Lapi placed in the custody of the Attorney General of the United States, pending the resolution of proceedings under 18 U.S.C. § 4246.

Finding that Mr. Lapi met both requirements of § 4246 of the Insanity Reform Act—namely, that he had a mental disease or defect, as a result of which his release would create a substantial risk of bodily injury to another person or serious damage to property of another and that suitable arrangements for care in state custody were not available—the warden of the FMC filed a Certificate of Mental Disease or Defect and Dangerousness in the District Court for the District of Minnesota. Shortly thereafter, in October 2003, Mr. Lapi was accepted for transfer to the Elgin Mental Health Center (EMHC) in Illinois, and the petition was withdrawn. After approximately 30 days, he was discharged to a group home and then to a nursing home.

In May 2004, the government filed a motion in the Northern District of Illinois requesting a second competency evaluation. The court denied the motion, stating that it did not have the statutory authority to reassess Mr. Lapi's competency to stand trial. However, the court classified Mr. Lapi as a "fugitive" because "he was released without any bond ever being set." After his arrest, the government petitioned for another competency evaluation, which was denied.

In May 2005, without a motion from either the government or the defense, the court ordered a dangerousness hearing. The Northern District of Illinois held that the district court in Minnesota had erred when it did not hold a hearing after the FMC warden filed the certificate that he eventually withdrew. In October 2005, without scheduling the hearing, the court declared Mr. Lapi dangerous, and he was held in custody until the court of appeals' ruling in June 2006.

Mr. Lapi appealed, and the Seventh Circuit Court of Appeals denied the motion for release, but vacated the order of the Northern District of Illinois and remanded the case for further proceedings, consis-