side the advisory guidelines. The Supreme Court rejected the standards of extraordinary circumstances and proportionality, endorsing instead the broader abuse-of-discretion standard. In so doing, the Court emphasized its faith in district courts to use appropriate discretion when varying from the guidelines.

Although the focus of the Supreme Court's review of *Gall* was clearly to establish the standards for appellate review of district court sentencing, there are undercurrents in this case that speak more directly to matters pertaining to mental health and theories of development. In his justification of sentence, the district judge made explicit reference to the age of Mr. Gall at the time of the offense (21) and hence his lack of maturity. The judge went even further in making reference to "studies on the development of the human brain [which] conclude that human brain development may not become complete until the age of twenty-five" (*Gall*, p 600). In his dissent, Justice Alito directly confronts the question of age, arguing that such a consideration, in fact, is directly at odds with the judgment of the Sentencing Commission when it determined what should be considered in departing from the guidelines and what should not. He elaborates, "The Sentencing Commission issued policy statements concluding that 'age,' 'family ties,' and 'community ties' are relevant to sentencing only in unusual cases" (*Gall*, p 608). In dissenting, Justice Alito clearly was of the opinion that this case was not unusual in that regard. Nor per the citation of the majority opinion of the Court does it appear that the district judge had argued that Mr. Gall's case was exceptional with regard to his age. To the contrary, the judge argued that age should be taken into account in general. "While age does not excuse behavior, a sentencing court should account for age when inquiring into the conduct of a defendant" (*Gall*, p 601, quoting App. 123, n.2.). The Court clearly agreed with this reasoning: "it was not unreasonable for the District Judge to view Gall's immaturity at the time of the offense as a mitigating factor" (*Gall*, p 601).

The Court appears to be establishing more firmly a trend in applying the results of scientific studies to its analysis of how the law can most fairly and justly address criminal conduct, particularly in special populations. This new direction is further illustrated by its recent holding in *Roper v. Simmons*, 543 U.S. 551 (2005), where the Court expressly forbade the imposition of the death penalty on offenders committing crimes before the age of 18. The scientific community of psychologists, psychiatrists, neuroscientists, and others must do its best to maintain the rigor of its science and its drawn conclusions, while helping other institutions—whether they be judicial, legislative, or other—to avoid misinterpreting or overinterpreting studies whose results may be less than conclusive. To do otherwise would be to invite a backlash of skepticism as was expressed by Justice Scalia in a recent case related to competency to represent oneself when, in response to a reference to a psychiatric study made by Justice Breyer, he bristled, "Are there any psychiatric studies that show how accurate psychiatric studies are?"

Civil Commitment in Puerto Rico: Private Versus State Action

Gilberto De Jesús-Rentas, MD
Fellow in Forensic Psychiatry

Joseph D. Bloom, MD
Professor Emeritus

Department of Psychiatry
Oregon Health and Science University
Portland, OR

Civil Commitment Laws in Puerto Rico Challenged by a Woman Involuntarily Committed by Her Son

In the Commonwealth of Puerto Rico, any person 18 years old or older may file a petition in the court requesting the involuntary commitment of an individual. The petition must be certified by a psychiatrist indicating the need of the individual in question. Ms. Clara Estades-Negroni, after being involuntary committed, claimed that her constitutional rights under 42 Section 1983 had been violated and that the institution and the psychiatrist should be held liable.

In *Estades-Negroni v. CPC Hospital San Juan Capestrano*, 412 F.3d. 1 (1st Cir. 2005), the U.S. Court of Appeals for the First Circuit affirmed the district court's dismissal of the *Estades-Negroni* federal action. The court expressed no opinion as to whether the allegations in the complaint, if true, state a viable claim or viable claims under the Puerto Rico law. Ms. Estades-Negroni alleged that after being involun-

tarily committed to Community Psychiatric Centers San Juan Capistrano Hospital (CPC Hospital), her rights under the United States Constitution had been violated and asserted that the appellees were liable under the Constitution and the laws of Puerto Rico.

Facts of the Case

Ms. Clara Estades-Negroni, a resident of Puerto Rico, was treated for diagnosed depression and subsequently was involuntarily committed to a psychiatric hospital under Puerto Rico Code 116. (The Mental Health Code of Puerto Rico 116, created on June 12 1980, was amended in 2000 and renamed Law 408 Mental Health Law of Puerto Rico.) She began to receive psychiatric treatment in September 1996 from a private psychiatrist. Her medical care was covered by health insurance provided by the government of Puerto Rico for medically indigent patients. On April 1997, her mental health deteriorated, and her psychiatrist began to discuss her condition with her son, including the possibility of admitting her to a psychiatric hospital.

On May 4, 1997, Ms. Estades-Negroni was taken to the CPC Hospital by her son. She expressed a desire to leave and was restrained, injected with medication, and placed in a seclusion room. Her son filed a petition in the Court of First Instance for San Juan, Puerto Rico, requesting her involuntary hospitalization according to Puerto Rico Law 116. The request was supported by the psychiatrists at the CPC Hospital, and Ms. Estades-Negroni was involuntary committed for 19 days. She later alleged that during the period of hospitalization she was secluded from other patients, physically restrained, involuntary medicated, and physically and mentally mistreated by hospital employees. She also alleged that she was coerced into agreeing that her commitment was voluntary.

After discharge Ms. Estades-Negroni brought a lawsuit against the CPC Hospital, her psychiatrist, and others physicians who had interacted with her during the hospitalization. In the complaint she asserted federal and state causes of action against each of the parties, including a Section 1983 claim of violation of her Constitutional Rights. The U.S. District Court dismissed these counts based on the fact that Ms. Estades-Negroni was unable to prove that the parties were "state actors" and subject to suit under Section 1983. The District Court also determined that Ms. Estades-Negroni could not show state action under any of the three tests employed to determine if a private party should be treated as a state actor: the State Compulsion Test, the Nexus/Joint Action Test, and the Public Function Test. Acting pursuant to 28 U.S.C. § 1367, the District Court also refused to exercise a supplemental jurisdiction over the state law claims, and consequently, dismissed the entire action.

Ruling and Reasoning

The case was appealed to the United States Court of Appeals for the First Circuit in regard to the Section 1983 claim. The court noted that Section 1983 protects individuals from deprivation of rights secured by the Constitution and Laws of the United States, when this deprivation takes places "under any statute, ordinance, regulation, custom or usage, of any State. . ." (*Lugar v. Edmondson Oil Co.*, 457 U.S. 922 (1982)). In the case of the Commonwealth of Puerto Rico, "for the purposes of Section 1983, Puerto Rico enjoys the functional equivalent of statehood, and thus the term state law includes Puerto Rico law" (*Barrios-Velazquez v. Asociación De Empleados Del Estado Libre Asociado De Puerto Rico*, 84 F.3d 487 (1st Cir. 1996)). According to the First Circuit, Ms. Estades-Negroni failed to present facts to establish that the alleged deprivation of her federal rights was caused by the defendants' acting under the color of state law. The First Circuit did not dispute that the involuntary commitment was a deprivation of a federal right to liberty. (See, for example, *Harvey v. Harvey*, 949 F.2d 1127 (11th Cir. 1992), holding that an individual who is involuntarily committed is deprived of his or her constitutional right to liberty.) However, the First Circuit disagreed with the allegation that the actions of the hospital and physicians were "fairly attributable to the State" (*Lugar*, p 937).

In *Lugar*, the U.S. Supreme Court determined that there is a two-part test that must be satisfied before "the conduct allegedly causing the deprivation of a federal right [is] fairly attributable to the State." The first part of this test requires that the deprivation be caused by the exercise of some right or privilege created by the state or by a rule of conduct imposed by the state or by a person for whom the state is responsible. The First Circuit determined that this part of the test was satisfied by the facts presented by Ms. Estades-Negroni. The second part of the test is to determine whether the party charged with the de-

privation is a person who may fairly be said to be a state actor. The court of appeals focused on this part of the test. The First Circuit determined that Ms. Estades-Negroni did not present enough facts that either the CPC Hospital or the psychiatrists involved were state actors at the time of the involuntary hospitalization.

The First Circuit noted that "only in rare circumstances" (*Harvey*, p 1130) can private parties be viewed as state actors and decided to employ three tests to determine if that was the situation in this case. The First Circuit employed the State Compulsion Test, the Nexus/Joint Action Test, and the Public Function Test (see *Rockwell v. Cape Cod Hospital*, 26 F.3d 254 (1st Cir. 1994) and *Perkins v. Londonderry Basketball Club*, 196 F.3d 13, 18–21 (1st Cir. 1999) for discussions of the three tests.) These were the same tests that the District Court applied to their analysis of this case, and the court of appeals stated that if any of them applied in this case, then they would meet the state action requirement.

Under the State Compulsion Test, the First Circuit found that there was no evidence that the State attempted to coerce or encourage the hospital or psychiatrists to pursue or participate in Ms. Estades-Negroni's involuntary commitment. Puerto Rican law provides that every person over 18 years of age who is subject to involuntary commitment and immediate hospitalization be admitted to a mental health facility in accordance with the P.R. Laws Ann. Tit. 24, § 6001. Before a court can order the involuntary commitment, it must be requested by "any person 18 years old or over" and a certificate from a psychiatrist indicating that the subject has the need for it. Thus, the First Circuit found that Ms. Estades-Negroni's allegation did not demonstrate that the state actively encouraged this involuntary commitment.

Next, the First Circuit found that the complaint did not demonstrate a state position of interdependency with the hospital defendants that would be necessary to validate the Nexus/Joint Action Test. The complaint alleged that the state statues provide the mechanism for involuntary commitment, that the hospital defendants received money derived from the state health care plan, and that they sought court authorization for the commitment. However, the First Circuit found that even if these allegations were true, it could not justify a finding that the hospital defendants are state actors. "The fact that the defendants invoked the assistance of the courts is not sufficient to show a nexus between the defendants and the state" (*Rockwell*, p 243).

The last test, the Public Function Test, determines that state action exists if the hospital and psychiatrists performed a public function with Ms. Estades-Negroni's involuntary commitment that was "traditionally the exclusive prerogative of the State" (*Blum v. Yaretsky*, 457 U.S. 991, 1005 (1982)). In the complaint and in the appeal process, Ms. Estades-Negroni alleged that the hospital defendants performed a public function with her involuntary commitment and by providing medical and psychiatric treatment for an indigent person. However, the First Circuit determined that there was no finding of state action because mental health law in Puerto Rico allowed involuntary commitments that were routinely performed by private parties. The First Circuit determined that the second allegation also failed because the provision of health services is not and has never been the exclusive province of the state in Puerto Rico.

Discussion

As far as we know, *Estades-Negroni v. CPC Hospital* is the only First Circuit Court of Appeals case related to civil commitment to come from Puerto Rico. It is an instructive case in regard to the definition of state action in civil commitment cases. In this case, both the Federal District Court and the Court of Appeals for the First Circuit rejected a claim that Ms. Estades-Negroni's constitutional rights were violated because the defendants, both the hospital and physicians, were operating "under color of state law." The Civil Rights Act 42 U.S.C. Section 1983 of the U.S. Code states that:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

The first thing that Ms. Estades-Negroni had to establish in the appeal was that the hospital and psy-

chiatrists were state actors. Both the hospital and the private psychiatrists had provided health care services under a state health insurance plan. The court established that this fact alone did not make them state actors for the purposes of the statute, but mentioned that in rare circumstance private parties could be viewed as state actors. Because of this, the First Circuit decided to apply the three tests.

Under the State Compulsion Test, a private party is characterized as a state actor when the state has exercised coercion or has provided a significant encouragement, either overt or covert, that the action may be compelled by the State. In this case the actors were not influenced by coercion or encouragement on the part of the government of the Commonwealth of Puerto Rico.

The Nexus/Joint Action Test considered that a private party can be held to be a state actor if the actions of the private parties and the state were interdependent. It was true that the psychiatrist and the hospital were part of a network of providers for residents of Puerto Rico under the Puerto Rico Health Reform Plan and that they were able to generate income from the services provided to the clients of this health insurance, but it was not clear to the court of appeals that the income generated from this health insurance created a dependency.

In the Public Function Test, a private party is a state actor if the plaintiff is able to establish that the action of the private party performed a public function that belongs to the state. In this case the action of the hospital and the psychiatrists were not viewed as a public function because both the hospital and the psychiatrists were private and an admission of a patient for treatment is not considered a public function.

Although we have long associated civil commitment with state mental health authorities and the hospitals that they run, this case illustrates that merely providing a civil commitment statute does not make the state an integral part of how that statute is implemented. In many states, civil commitment remains a state function. However, as this case illustrates, in Puerto Rico and in other states cited in this decision, it is strictly a matter for the private sector. In this case, the First Circuit noted that decisions of the Sixth, Seventh, and Ninth Circuits all reach the same conclusion.

Finally, the First Circuit offered no opinion as to whether the allegations in the complaint, if true, constitute a potential claim or claims under Puerto Rican law. Ms. Estades-Negroni was thus free to pursue other actions regarding her treatment in the courts of the Commonwealth.