

more than a year at the time of formulating his report, which, furthermore, was incompatible with both Dr. Novick's and Dr. Hauptman's assessments, together provided enough evidence that she did not meet the disability criteria set by her insurance plan.

Discussion

The U.S. Supreme Court denied *certiorari* on December 1, 2008. Nevertheless, *Glazer v. Reliance* highlights the importance of a thorough assessment, while maintaining clinical objectivity in rendering opinions regarding disability. Very often, disability evaluations are performed by treating physicians who in addition to confronting a bias in trying to help the patient, may not perform an extensive record review and a detailed information analysis as a forensic clinician might. In rendering opinions, a treating clinician is at a risk of providing an assessment that may be based on partial information and is not fully substantiated by all medical evidence available. When treating clinicians are performing assessments for the purposes of disability determinations, they should be mindful of the fact that disability determinations are made by examining how medical symptoms affect the patient's occupational function. Therefore, descriptive language regarding symptoms and functioning can help establish a nexus that becomes an important factor in a disability determination.

Unconditional Release of Committed Insanity Acquittes

Mathews Thomas, MD
Fellow in Forensic Psychiatry

Paul Noroian, MD
Assistant Professor of Psychiatry
Director, Forensic Psychiatry Fellowship

Law and Psychiatry Program
University of Massachusetts Medical School
Worcester, MA

Eighth Circuit Reverses a Missouri Appeals Court Decision That Required an Insanity Acquittee to Show That He Would Not Become Mentally Ill and Dangerous in the Future in Order to Gain Unconditional Release

In *Revels v. Sanders*, 519 F.3d 734 (8th Cir. 2008), the U.S. Court of Appeals for the Eighth Circuit

reviewed the decision of the Missouri Court of Appeals to deny an insanity acquittee's request for unconditional release from the psychiatric facility to which he had been involuntarily committed. The issue before the Eighth Circuit was whether the standard used by the Missouri courts in rejecting the petitioner's request for unconditional release violated due process rights as set forth by the U.S. Supreme Court.

Facts of the Case

On June 22, 1988, Frederick Lee Revels killed three members of his family. At that time, he was hearing voices and abusing a controlled substance. In July 1988, a grand jury indicted Mr. Revels on two counts of first-degree murder, one count of second-degree murder, and three counts of armed criminal action. In August 1992, Mr. Revels entered a plea of not guilty by reason of insanity on all counts in the Circuit Court of Jackson County, Missouri. The circuit court accepted his plea, found him not guilty by reason of mental disease or defect excluding responsibility, and committed him to the care and custody of the Missouri Department of Mental Health.

In 1993, Mr. Revels applied to the Jackson County Circuit Court for a conditional release from Northwest Missouri Psychiatric Rehabilitation Center (NMPRC), where he had been hospitalized following his commitment. To obtain a conditional release, according to Missouri law, Mr. Revels bore the burden of proving, by clear and convincing evidence, that he was "not likely to be dangerous to others while on conditional release."

For an unconditional release, Missouri law requires that Mr. Revels show, by clear and convincing evidence, that he "does not have, and in the reasonable future is not likely to have, a mental disease or defect rendering [him] dangerous to the safety of himself or others." In addition, for both conditional and unconditional release, the court had to find that Mr. Revels was not likely in the reasonable future to commit another violent crime against another person because of his mental illness, that he was aware of the nature of the violent crime committed against another person, and that he possessed the capacity to appreciate the criminality of a violent crime against another person and had the capacity to conform his conduct to the requirements of the law in the future. Finally, in considering an application for release, Missouri law requires that the court consider a six-

part test to assess public safety. The six parts include the nature of the offense, behavior in the hospital, time of the last reported dangerous act, the nature of the proposed release plan, the availability of people in the community willing to help the applicant adhere to conditions, and previous conditional releases without incident. The circuit court granted Mr. Revels' application for conditional release on two occasions; however, it was revoked in 1994 and 1997, when he broke the terms of his release. In October 1997, Mr. Revels made his first application for unconditional release. The circuit court denied his application, and its decision was affirmed by the Missouri Supreme Court.

On June 19, 2003, Mr. Revels again applied to the Jackson County Circuit Court for unconditional release, which the Missouri Department of Health opposed. He also challenged the constitutionality of Chapter 552 of the Revised Statutes of the State of Missouri with regard to unconditional release. The circuit court conducted a hearing on the matter on June 20, 2003. The evidence at the hearing included the testimony of two psychiatrists who had evaluated Mr. Revels. The first, Dr. A. E. Daniel, testified that Mr. Revels had a diagnosis of a substance-induced psychotic disorder in remission and polysubstance dependence in full remission. The second psychiatrist, Dr. James Bradley Reynolds, did not disagree with Dr. Daniel's testimony with regard to Mr. Revels' diagnoses; however, Dr. Reynolds stated that a mental condition in remission is one that still exists and may become a problem again. With regard to Mr. Revels' then current mental condition, a medical and psychiatric assessment performed by Dr. Arnaldo Berges, in February 2003, concluded that Mr. Revels had not exhibited active psychotic symptoms since mid-1992 and that his symptoms of psychosis were in full remission with no acute need for antipsychotic treatment. Dr. Daniel stated that Mr. Revels showed no present symptoms of any mental disorder. Dr. Reynolds agreed. While Dr. Daniel opined that the unconditional release should be granted, Dr. Reynolds observed that he could not state that Mr. Revels was not likely to be dangerous, because there had been prior unsuccessful conditional releases, because he was likely to relapse and use illegal drugs, and because he, with a history of drug-induced delusions, was more likely to have such delusions in the event of subsequent drug use than was someone without a history of delusions.

The Jackson County Circuit Court accepted the accuracy of both psychiatrists' testimony, but found Dr. Reynolds's testimony more credible than Dr. Daniel's as to Mr. Revels' dangerousness and susceptibility to relapse. On June 21, 2004, the circuit court denied Mr. Revels' application for unconditional release, citing that he had a mental illness in remission and that he had not met the burden of showing that he was not likely to be dangerous if released. In reviewing the six-part statutory safety factors, the court concluded that the factors did not warrant his unconditional release. The Missouri Court of Appeals summarily upheld the denial of release on August 16, 2005.

The court found that the record supported the trial court's finding that Mr. Revels had failed to show, by clear and convincing evidence, that he did not then have a mental disease or defect and that he was not then potentially dangerous to himself and others, with the court noting specifically that the danger was "due to his drug and alcohol dependence and prior abuse of drugs and alcohol." With regard to Mr. Revels' claim that he was entitled to unconditional release because both psychiatrists agreed that he currently showed no signs of mental disability and as a result, his future dangerousness was irrelevant, the court of appeals stated that:

... [I]t [is] not enough to prove present absence from mental defect, but the person seeking unconditional release must show that he is not likely to suffer from a mental disease or defect in the reasonable future, and also establish by clear and convincing evidence the mandate of Section 552.040 that he will not be a danger to himself or others.

The court of appeals also rejected Mr. Revels' contention that he was entitled to release because he had passed the six-part statutory safety test. Thus, the Missouri Court of Appeals denied all of his claims. His application for transfer to the Missouri Supreme Court was denied on October 4, 2005.

On November 15, 2005, Mr. Revels filed a petition for a writ of *habeas corpus* in the United States District Court for the Western District of Missouri. In his petition, he asserted that he should be released from confinement because he no longer had a mental disorder, had not since 1992, and had not required antipsychotic medication since 1997; that on April 23, 2005, the NMPRC medical director considered him to be recovered and unlikely to suffer a psychotic disorder in the absence of drug use; and that the dictates of Missouri law as to what an insanity acquittee must show to obtain release violate the due pro-

cess standard set forth by the United States Supreme Court in *Foucha v. Louisiana*, 504 U.S. 71 (1992). The district court dismissed Mr. Revels' petition for a writ of *habeas corpus* with prejudice. He then turned to the Eighth Circuit Court of Appeals for *habeas* relief.

Ruling and Reasoning

The United States Court of Appeals for the Eighth Circuit granted a certificate of appealability as to Mr. Revels' claim that his due process rights were violated when his June 2003 application for release was denied. This was based on whether the Missouri Court of Appeals' conclusion that he was required to show that he "currently does not suffer from mental illness and [is] not likely to have a mental disease or defect in the reasonable future and that he . . . no longer . . . poses a danger to society" (*Revels*, p 739) was wrong in light of the U.S. Supreme Court's decision in *Foucha v. Louisiana*.

The Eighth Circuit emphasized that commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection (*Jones v. United States*, 463 U.S. 354 (1983)). The court reviewed the ruling of the Supreme Court in *Foucha* and found it to be the applicable precedent in the substantive due process protections for insanity acquittees. The Supreme Court held in *Foucha* that an insanity acquittee could be held only so long as he is both mentally ill and dangerous, and no longer. It also held that future dangerousness, without mental illness, is not a proper basis for continued confinement of an insanity acquittee and that the continued confinement of an insanity acquittee, in the absence of present mental illness, constitutes punishment.

In reviewing the decision of the Missouri Court of Appeals, the Eighth Circuit held that the lower court violated Mr. Revels' due process rights by applying a standard for unconditional release that was more restrictive than that set by Supreme Court in *Foucha*. It reversed the judgment of the lower court and remanded the case with instructions that the district court order that Mr. Revels be released from state custody unless the State of Missouri afforded him a new hearing within a reasonable time as set by the district court. Regarding the question of commitment, the Eighth Circuit quoted the finding in *Foucha* that unless an acquittee has an identifiable mental condition, he cannot be held by the state merely because he may be dangerous.

Discussion

Mr. Revels was unable to meet the burden of proof demonstrating that he would not be mentally ill and dangerous in the reasonable future. The Eighth Circuit held that the requirement that Mr. Revels show the absence of probability of mental illness and dangerousness in the reasonable future was stepping beyond the standard drawn by the U.S. Supreme Court in *Foucha*.

Although the Missouri standard was overturned, it would be interesting from an academic standpoint to note whether mental health professionals in that state were asked to give opinions on the probability of mental illness and dangerousness in the "reasonable" future. The term reasonable future is not defined in this case, and there is certainly potential that it could mean many years in cases involving violent crimes. Also, the task of assessing the probability of future mental illness in an individual without apparent present mental illness (such as Mr. Revels) would present practical and ethics-related challenges to psychiatrists and other mental health professionals. Would mental illness include substance-induced psychotic disorders? What experience and training do mental health professionals have to make accurate evaluations about future mental illness? These are interesting academic questions. Ultimately, the decision of the Eighth Circuit made these questions moot, as it removed the issue of future mental illness in commitment and release decision-making.

Admissibility of Demeanor Evidence From a Police Interrogation Videotape

Thomas R. Hoffman, MD
Fellow in Forensic Psychiatry
University of Colorado Denver
Denver Health Medical Center

Hal S. Wortzel, MD
Assistant Professor
University of Colorado Denver
VISN 19 MIRECC, Denver Veterans Hospital

Richard Martinez, MD, MH
Robert D. Miller Professor of Psychiatry and Law
University of Colorado Denver
Denver Health Medical Center