ing the findings to the relevant legal standard, a standard that may vary from agency to agency and state to state. *Talavera* highlights the complex nature of this undertaking.

Disclosures of financial or other potential conflicts of interest: None.

Prisoners' Rights

Marc Libman MD
Fellow in Forensic Psychiatry

Robert Weisman, DO
Associate Professor of Psychiatry
Co-Director, Forensic Psychiatry Fellowship

University of Rochester Medical Center
Rochester, NY

An Inmate Transferred to a Psychiatric Hospital Is Still Considered a Prisoner as It Pertains to the Prison Litigation Reform Act

In *Gibson v. City Municipality of New York*, 692 F.3d 198 (2d Cir. 2012), the U.S. Court of Appeals for the Second Circuit considered whether a defendant in New York State being held under a temporary order of observation (that is, found not competent to stand trial and transferred to the custody of the Commissioner of the Office of Mental Health for the State of New York for treatment in a forensic hospital) is still considered a prisoner, as it pertains to legislation affecting prisoner rights.

Facts of the Case

Bennie Gibson was charged with criminal mischief in the third degree. Having been found not competent to stand trial, he was transferred from jail to Kirby Forensic Psychiatric Center, a state psychiatric hospital, on a Temporary Order of Observation (N.Y. Crim. Proc. Law § 730.40(1)).

While being detained on the forensic psychiatric unit, Mr. Gibson filed a complaint in federal district court alleging that various defendants had violated his civil rights. He requested to proceed *in forma pauperis* (i.e, without having to pay the required court fees). He was barred by the district court from filing his complaint *in forma pauperis*, in accordance with the Prison Litigation Reform Act (PLRA) of 1996 (Public L. No. 134 (1996)), because he had previously submitted more than three lawsuits that were deemed frivolous. On January 19, 2013, he appealed the denial of his motion to the United States Court of Appeals for the Second Circuit. He stated that he was not a prisoner while hospitalized and in the custody of the Commissioner of Mental Health, and therefore the rules of the PLRA should not apply to him.

Ruling and Reasoning

The judgment of the district court was affirmed by the appellate court. The term prisoner in the PLRA is defined as "any person incarcerated or detained in any facility who is accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms and conditions of parole, probation, pretrial release, or diversionary programs" (28 U.S.C. § 1915(h)). Mr. Gibson, having been found not competent to stand trial, was transferred to the custody of the state's mental health commissioner for restoration of competency. Although he was not confined in a jail or a prison at the time of his filing, he was a person detained at a facility with pending criminal charges. Per New York State law, criminal action is temporarily suspended while the defendant is having his capacity restored, but not terminated, unless the temporary order expires or the charges are dropped (N.Y. Crim. Proc. Law § 730.60(2)). Criminal action was suspended while Mr. Gibson was hospitalized for restoration of capacity; however, he was still an individual detained as a result of an accusation of a violation of criminal law. It was thus determined that he was still a prisoner within the intentions and common-sense reading of the PLRA.

Discussion

Gibson v. City Municipality of New York offers an opportunity to re-examine the dynamic balance between effectively and efficiently managing a court system while also protecting the rights of the increasing population of incarcerated people. The question at the heart of this case is whether an inmate transferred to a forensic psychiatric unit is still considered legally a prisoner, as the definition pertains to the PLRA. The Second Circuit Court determined the answer in the affirmative and felt that, by definition, this is a straightforward conclusion. Based on the language of the PLRA, it would be difficult to question the court's logic as it pertains to this narrow question. However, *Gibson* is also a useful opportunity to review the original context of the PLRA and its subsequent impact.

The driving force behind the Prison Litigation Reform Act of 1995 was the perception that an explosion in the growth of inmate litigation was clogging up the courts, costing taxpayers money, and, some felt, giving federal judges too many opportunities to intervene in the operation of state prison systems. The PLRA was a product of the Republican Congress's 1994 Contract with America and came with a media campaign in which the intent was stated to cure the "sudden epidemic of frivolous lawsuits" (Slutsky A: Totally exhausted. . . . *Fordham L Rev* 73:2289–320, 2005, p 2295). The tone of the media campaign was about being tough on crime and prisoners. Of note, some attorneys general also argued in favor of the PLRA from a perspective that the legislation was pro prisoners' rights, in that it promoted judicial efficiency (Ayers J: To plead or not to plead. . . . *UC Davis L Rev* 39:247–79, 2005); reducing the time and resources wasted on frivolous lawsuits leaves more time for the consideration of valid suits.

Prisoners' rights activists questioned the necessity of PLRA, pointing out that the explosion in prison litigation was concomitant with and proportional to the explosion in the rates of incarceration. Statistical analyses have shown that, for example, between 1972 and 1998, every increase in the state prisoner population of 10,000 inmates was associated with an increase of 269 lawsuits (Cheesman F, *et al.*: The tale of two laws. . . . *Law Policy* 22:89–113, 2000). An increase in prison litigation, in the context of the soaring prison population, is no less expected than the increased demand for food, towels, and pillowcases (Schlanger M, Shay G: Preserving the rule of law in America's jails and prisons. . . . *U Pa J Const L* 11: 139, 2000). Although a remedy may well have been necessary, there is tension between limiting the number of frivolous lawsuits and protecting the legitimate rights of prisoners.

The key provision of the PLRA that applies in *Gibson* is a change in the availability of *in forma pauperis* (IFP) status. IFP is a status typically granted by a judge without a hearing, entitling a person to waive the normal costs associated with litigation. Prior to PLRA, prisoners were allowed to file lawsuits IFP if they filed an affidavit stating that they were unable to pay costs. Most prisoner civil rights lawsuits are filed IFP (Mueller K: Inmates' civil rights cases and the federal courts. . . . *Creighton L Rev* 28:1255–309, 1995). PLRA rewrote the process, in part by creating more paperwork and a higher burden of proof for prisoners to claim that they were unable to pay. Several appeal court decisions have affirmed that these filing fees do not deprive prisoners of meaningful access to the courts (Belbot B: Report on the Prison Litigation Reform Act. . . . *Prison J* 84:290–316, 2004). The critical issue in the appeal of *Gibson* was what has become known as the three-strikes restriction. This stipulation precludes a prisoner from proceeding IFP if he, while incarcerated or detained, has, on three or more occasions, brought an action or appeal that was dismissed on the grounds that it was frivolous, malicious, or failed to state a claim on which relief could be granted.

Those critical of the PLRA's three-strikes provision have argued that the statute is in violation of the Equal Protection Clause. That is, it fails to provide indigent prisoners the same access to the courts as is provided prisoners who are not indigent, as well as to the general population. However, this argument has failed to persuade the courts (Jeffrey RS: Restricting prisoners' equal access to the federal courts. . . . *Buffalo L Rev* 49:1099–161, 2001). The three-strikes provision has been challenged on the basis of due process right of access to courts, the Equal Protection Clause, and the First Amendment right to petition of redress of grievances, with the courts consistently deciding in favor of the PLRA. Despite these critiques, appellate courts have supported the authority of Congress to limit pursuit of civil lawsuits on the basis that proceeding IFP in civil actions is a privilege and not a right (Jeffrey, *Buffalo L Rev*, 2001).

Striking the right balance between the courts' need to operate efficiently and the need to protect the rights of prisoners is far more than an academic argument. The gravity of the three-strikes provisions becomes clearer when considering the role of class-action lawsuits in establishing and shaping mental health systems in prisons. Litigation played a critical role in exposing correctional institutions to scrutiny. By 1984, as a result of class-action lawsuits, 24 percent of prisons nationwide were under court orders to make reforms. This state of affairs was criticized by many as another example of judicial activism. However, even critics of federal court intervention, including Justice Rehnquist, were on the record acknowledging "deplorable conditions and Draconian restrictions" in some prisons (Shay G, Kalb J: More stories of jurisdiction-stripping and executive power. . . . *Cardozo L Rev* 29:291–329, 2007).

There is little disagreement in the literature that a significant number of prisoners' civil rights lawsuits are frivolous. The disagreement is about the most appropriate way to balance pragmatic considerations of overburdened courts with the rights of individual prisoners. Through one lens, the PLRA simply calls for a narrow interpretation of the constitutional protections available to prisoners. Viewed from the perspective of those critical of the PLRA, it is seen as a tool that restricts the ability of prisoners to access courts and then limits the ability of a judge to remedy any injustices that might be exposed. In *Gibson*, where the courts upheld Mr. Gibson's being barred from filing a lawsuit *in forma pauperis*, there is another opportunity to consider what is at stake within this tension.

Disclosures of financial or other potential conflicts of interest: None.

Not Mentally Ill, Not Dangerous . . . and Not Discharged?

Cristina Sanchez-Jaquez, MD
Fellow in Forensic Psychiatry

Victoria M. Dreisbach, DO
Clinical Assistant Professor of Psychiatry

Law and Psychiatry Division
Yale University School of Medicine
New Haven, CT

Insanity Acquittee Denied Unconditional Release Met Exhaustion Requirements in Missouri State Court and Is Entitled to Federal Review of His Commitment

In *Grass v. Reitz,* 643 F.3d 579 (8th Cir. 2011), the Court of Appeals for the Eighth District considered whether a person committed to the custody of the Missouri Department of Mental Health after an insanity acquittal had exhausted state remedies for petitioning for release and was entitled to a *habeas corpus* review.

Facts of the Case

In 1992, Lloyd Grass stabbed his wife to death and was subsequently charged with first-degree murder. After an examination of his mental state at the time of the crime, his diagnosis was psychotic disorder, not otherwise specified, in partial remission. He was found not guilty by reason of mental disease or defect and committed to the custody of the Missouri Department of Mental Health, pursuant to Mo. Rev. Stat. **§** 552.040.2 (1992).

§ 552.040 stipulates that an individual may petition for release in two ways: under conditional release status or unconditionally from the hospital. To be eligible for conditional release, it must be shown by clear and convincing evidence that the petitioner "is not likely to be dangerous to others while on conditional release" (Mo. Rev. Stat. § 552.040.12(6) (1992)). "A conditional release implies that despite a mental disease or disorder [the committed person is] eligible for limited freedom from a mental health facility, subject to certain conditions" (*Greeno v. State*, 59 S.W.3d 500 (Mo. 2001), p 504). Unconditional release can only be approved if the petitioner shows by the same evidentiary standard 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" (Mo. Rev. Stat. § 552.040.7 (1992)).

A person committed pursuant to the acquittal of first-degree murder must meet additional criteria. For either conditional or unconditional release, the court also must find that the acquittee, "is not now and not likely in the reasonable future to commit a violent crime" and "is aware of the nature of the violent crime committed and possesses the capacity to appreciate the criminality of the violent crime and to conform [his] conduct to the requirements of the law in the future" (Mo. Rev. Stat. § 552.040.20 (1994)).

Mr. Grass unsuccessfully petitioned for release over the first several years of his commitment. In March 1995, he was transferred to a less restrictive unit of St. Louis Hospital. In 1996 he escaped and was later sentenced, served time, and was subsequently paroled back to the Department of Mental Health.

In February 2003, Mr. Grass applied for unconditional release; the Circuit Court of Warren County denied the application. Mr. Grass filed new motions for conditional and unconditional release in 2004. The Warren County court consolidated the petition and entered judgment denying Mr. Grass's petition for unconditional release but granting conditional release. This court found that Mr. Grass was not mentally ill, that he did not pose a danger to himself or others, and that he was not likely at the time or in