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**When release is conditioned on drugging.**

Â Bill of Rights.Â (From the public domain.)Â Â More commonly when I was a public defender lawyer, from time to time I would have clients who were at great risk of being ordered by the judge for a psychological evaluation -- e.g.,Â for being seriously delusional, and, therefore, at risk for being found to be a harm to themselves or others, thus justifying involuntary commitment in a mental institution -- and then being warehoused in a psychiatric hospital through the duration of their case, if not longer. Â Some criminal defense lawyers might feel tempted to seek court assistance with such clients by asking for a psychological evaluation or by seeking a finding of not criminally responsible. It is one thing to seek such a path for a first degree murder case, but something quite different to do the same for a misdemeanor charge carrying the risk of much less incarceration time than indefinite incarceration in a mental institution on a finding that the person is a harm to himself or others. In such instances, it is important for the criminal defense lawyer to get the advice of a qualified and independent mental health professional. Â Many years ago, a client charged with a misdemeanor was very uncommunicative. When asked a question, he would say something completely unrelated; for instance "One right shoe; one left shoe." His father complained that this happens when he stops taking his psychological medication. A year later, I had him as a client for a new misdemeanor case. He seemed very lucid. When I asked him what caused the change, he said he was back on his medications. Â Since when do psychological medications not have significant side effects, whether it be sleeplessness,Â reduced libido, change in eating patterns, or anything else? Â Recently, the Fourth Circuit affirmed a District Court's order that during supervised release a defendant be injected with antipsychotic drugs, after he was forced to take such drugs in prison after heÂ threatened to kill himself and others, and did not voluntarily take his oral anti-psychotic medicines after his initial release. Between his initial release and being ordered to be injected while on supervised release, the defendant "was arrested several weeks [after his release], after he was found wandering aimlessly..." U.S. v. Holman, \_\_ F.3d \_\_ (4th Cir. July 7, 2008). Â Holman laid out the Supreme Court'sÂ standard as follows for determining when a defendant may be forced to take anti-psychotic drugs: Â The Supreme Court has made it clear that under the Due Process Clauses of the Fifth and Fourteenth Amendments, individuals (including pre-trial detainees and convicted criminals) have "a constitutionally protected liberty interest in avoiding involuntary administration of antipsychotic drugs" an interest that only an essential or overriding [governmental] interest might overcome." Sell v. United States, 539 U.S. 166, 178-79 (2003) (internal quotation marks omitted); see also Washington v. Harper, 494 U.S. 210, 221-22 (1990) ("We have no doubt that . . . respondent possesses a significant liberty interest in avoiding the unwanted administration of antipsychotic drugs under the Due Process Clause of the Fourteenth Amendment."). Among the governmental interests that in a given case may be sufficiently important to support an order for involuntary medication are the need to protect the individual and others from the individual's potentially dangerous behavior, see Riggins v. Nevada, 504 U.S. 127, 134-35 (1992); Harper, 494 U.S. at 225-26; and the government's interest in rendering a criminal defendant competent to stand trial, see Sell, 539 U.S. at 179-80.Â U.S. v. Holman, \_\_ F.3d \_\_ (4th Cir. July 7, 2008). Â The Fourth Circuit reasoned as follows in affirming the trial court's order for forced injection of anti-psychotic drugs: Â The evidence establishing Holman's dangerousness also establishes that the district court's order was narrowly tailored to the circumstances of this case. As the district court noted, Holman became a danger to himself and others when he was off his medication, and injections of long-lasting antipsychotic drugs provide the only means of insuring that Holman takes his medication. The special condition of supervised release thus significantly furthers and is clearly necessary to further the government's interests in protecting Holman and the public. See Sell, 539 U.S. at 181 (explaining that an order to involuntarily medicate an individual must "significantly further" overriding governmental interests and must be "necessary to further those interests" and that involuntary medication may be necessary if "any alternative, less intrusive treatments are unlikely to achieve substantially the same results").Â Holman, \_\_ F.3d \_\_. Â Judges, of course, are not mental health experts, so they rely on mental health professionals in deciding questions of forced drugging and detention for psychological reasons. Trial judges ordinarily have very busy dockets, which probably creates all the more of a tendency for them to place heavy reliance on the opinions of such psychological professionals, even if those opinions are wrong, and even if those opinions are influenced by the professionals' own biases about whether or not the United States is too de-institutionalized when it comes to mentally ill people. (For those born after One Flew Over the Cuckoo's Nest's 1962 publication, through the 1960's it was much easier to force people into mental hospitals in the United States. Of course, in the Soviet Union, many dissidents were wrongfully classified as mentally ill and forced to receive harmful psychological medicines.) Â Mr. Holman's situation may have been extreme enough for the trial and appellate judges to feel comfortable with okaying his forced anti-psychotic medications. (At the end of his supervised release period, Mr. Holman will not be under court order to receive further forced injections. What happens then?)Â What happens with defendants whose situations are less extreme? The foregoing case law certainly does not solve that problem well enough. Trial judges wield extraordinary power over the matter.Â Jon Katz

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