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United States v. Leatherman: The Legality of the Administration of Psychotropic Drugs

H. Ward Classen

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An individual's right to due process of law is recognized by the fifth and fourteenth amendments to the United States Constitution. The concept of procedural due process has been found by the United State Supreme Court to require a defendant to be notified of any legal action brought against him and that he be permitted to set forth a defense to any charges. These particular due process requirements extend to all areas of personal freedom but have assumed significant importance in those actions involving the administration of psychotropic drugs.

In separate decisions, the United States Supreme Court has held that institutionalized individuals have a liberty interest in the involuntary administration of psychotropic drugs and that an individual found not guilty by reason of insanity can be indefinitely confined to a mental institution. The court has not resolved, however, what procedures, if any, are required to protect these interests. Recently, in Leatherman v. United States, the United States District Court for the District of Columbia confronted this problem. The court found that although an incompetent individual has the right to object to the administration of psychotropic drugs, a court will not bar a health care provider from administering psychotropic drugs where there is no evidence that the health care provider's procedures are inadequate to protect the patient's rights. Furthermore, it concluded that due process does not

1. U.S. CONST. amend. V ("nor shall any person be deprived of life, liberty, or property, without due process of law"); U.S. CONST. amend. XIV ("nor shall any State deprive any person of life, liberty, or property without due processes of law") (emphasis added).

2. Procedural due process mandates that all individuals have the right to be heard and notified. Included in this are such rights as the right to counsel for indigents, the right to confrontation and the right to a transcript. Substantive due process is the protection from arbitrary and unreasonable action.


4. See infra notes 11-13, 17-20, and accompanying text.

5. The term 'psychotropic' medication refers generally to drugs used in treating psychiatric problems. One subclass of the psychotropic drugs is the "antipsychotic" drugs, which are primarily used to treat thought disorders. Another subclass of the psychotropic drugs is medications such as lithium and antidepressants, which are primarily used to treat mood disorders.


8. Id. at 978.
require a delay in psychotropic drug treatment of a person pending the result of his hearing for release.\footnote{9}

\textbf{THE MORPHOGENESIS OF LEATHERMAN}

In 1983 in \textit{Jones v. United States},\footnote{10} the United States Supreme Court determined that when a criminal defendant establishes his innocence by reason of insanity and is acquitted, the Constitution allows the government, on the basis of his being found insane, to commit him to a mental institution until he has regained his sanity or ceases to be a threat to himself or society.\footnote{11} In finding that such an individual may be incarcerated for a longer period of time than if convicted, the Court emphasized that his commitment is intended to protect society and treat his mental illness. The Court determined that a verdict of not guilty was sufficiently determinative of the defendant's mental instability to justify his commitment.\footnote{12}

Prior to \textit{Jones}, \textit{Mills v. Rogers}\footnote{13} interpreted the Constitution as recognizing a liberty interest in refusing the undesired administration of psychotropic drugs.\footnote{14} The Supreme Court found that the liberty interest present involved both substantive and procedural issues. The substantive issue concerned the definition of the protected constitutional interest while the procedural issue involved the minimum procedures dictated by the constitution for resolving whether the individual's liberty interest was subjugated in a particular instance. The \textit{Mills} court, however, emphasized that both issues were irremediably intertwined with state law.\footnote{15}

On the same day the Supreme Court decided \textit{Mills}, it also presented its position on protecting the liberty interests of involuntarily committed individuals in \textit{Youngberg v. Romeo}.\footnote{16} \textit{Youngberg} concerned a profoundly retarded thirty-three year old man who, while institutionalized, experienced severe behavioral problems which resulted in injuries to himself and others. His mother, concerned about the injuries, filed a claim against the institution's officials in the federal district court, asserting that her son had a constitutional right to safe conditions and freedom from bodily restraint.\footnote{17}
Furthermore, she alleged that the officials failed to take appropriate preventive procedures thereby violating his constitutional rights under the eighth and fourteenth amendments.\(^\text{18}\)

Finding that an individual has a constitutionally protected interest under the Due Process Clause of the fourteenth amendment to a reasonable level of security during confinement, the Supreme Court concluded that the clause also guaranteed freedom from unreasonable bodily restraints.\(^\text{19}\) It asserted that whether an individual's constitutional rights were violated must be determined by balancing these liberty interests against the relevant state interests.\(^\text{20}\) The Court stressed that the correct standard for ascertaining whether the state adequately protected such rights is whether professional judgment was used.\(^\text{21}\) Furthermore, it held that in resolving what is "reasonable," courts must respect a professional's judgment, whose determination is presumptively valid.\(^\text{22}\)

The United States Court of Appeals for the District of Columbia Circuit addressed a similar problem in *Rouse v. Cameron*\(^\text{23}\) where an individual was institutionalized after being found not guilty, by reason of insanity, of carrying a dangerous weapon.\(^\text{24}\) The district court had refused even to consider whether an institution was providing a proper level of treatment for committed individuals. The court of appeals, in considering an institution's right to treat an involuntarily committed individual, upon being acquitted by reason of insanity, found that a hospital does not have to show that the treatment will improve his condition but only that there is a legitimate effort to do so.\(^\text{25}\) It continued that commitment carries with it an affirmative duty on the part of the institution to provide an individual with treatment that is adequate in light of present medical practices.\(^\text{26}\) The holding in *Rouse* will encourage

\(^{10}\) Id. at 311.

\(^{18}\) Id. at 315.

\(^{19}\) Id. at 315.


\(^{21}\) Youngberg, 457 U.S. at 322-24.

\(^{22}\) Id.

\(^{23}\) 373 F.2d 451 (D.C. Cir. 1966).

\(^{24}\) Id. at 452.

\(^{25}\) Id. at 456.

\(^{26}\) Id. at 457. In a related case the Court found that "[T]he only certain thing that can be said about the present state of knowledge and therapy regarding mental disease is that science has not reached finality of judgment." Greenwood v. United States, 350 U.S. 366, 375 (1956).
hospitals to medicate individuals to avoid potential liability for the failure to render a proper level of treatment. In turn this will result in the hospitals over-medicating patients in an attempt to avoid liability.

The United States Court of Appeals for the Third Circuit in *Rennie v. Klein*, 27 acknowledged that patients who are involuntarily committed maintain their constitutional rights to liberty. These liberties give patients the right to refuse any psychotropic drugs that may have permanent and severe side effects. 28 The court in its decision, stressed that a patient's constitutional right to refuse psychotropic drug treatment which presents a substantial threat to his health, may be infringed upon only by the least restrictive intrusion which does not exceed that necessitated by needed care or valid administrative concerns. 29 The means chosen to promote the state's substantial concerns, the court emphasized, must be carefully tailored to effectuate such objections with minimal infringement of the protected interest and such standards require the avoidance of intrusions which are unnecessary or whose cost benefit ratios weighed from the patient's standpoint are unacceptable. 30

An exception to the general rule allowing mental incompetents to be treated with psychotropic drugs was created by the District of Columbia Court of Appeals in *In Re Boyd*. 31 In *Boyd*, a patient who had been found mentally ill and incompetent appealed a decision authorizing the hospital to administer psychotropic drugs against her earlier stated intentions rejecting the use of any medication on religious grounds. 32 The court concluded that when a legally incompetent patient asserts his first amendment right not to receive psychotropic drugs which are unnecessary to save the patient's life, the trial court must implement the doctrine of "substituted judgment" 33 to

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28. 653 F.2d at 843. Antipsychotic drugs carry a significant risk of adverse side effects. These include such neurological syndromes as parkinsonisms, a clinical term for restlessness; dystonic reactions, including grimacing and muscle spasms, and tardive dyskinesia, a disease characterized in its mild form by involuntary muscle movements, especially around the mouth. For a thorough exposition on psychotropic drugs, see Byck, *Drugs and the Treatment of Psychiatric Disorders*, in *The Pharmalogical Basis of Therapeutics*, 152, 169 (L. Goodman & A. Gilman 5th ed. 1975). See also Plotkin, *Limiting the Therapeutic Orgy: Mental Patients Rights to Release Treatment*, 72 NW. U.L. REV. 461, 474-78 (1978); Rhoden, *The Right to Refuse Psychotropic Drugs*, 15 HARV. C. R.-C. L. L. REV. 363,375-82 (1980).
32. Id. at 746. As a Christian Scientist, Mrs. Boyd's rejected the use of any medication.
33. Substituted judgment involves the judiciary substituting its judgment for that of the mental incompetent. For a thorough discussion of substituted judgment see generally Classen,
determine what choice the individual, if competent, would make with respect to such treatment.\textsuperscript{34} Furthermore, where a patient objects on religious grounds the trial court should attempt to determine the action the patient would have taken if she were of sound mind.\textsuperscript{35} The court mandated that it was essential that the trial court give sufficient consideration to a patient's previously expressed religious views.\textsuperscript{36} \textit{Boyd} provides the single exception to the right of health care providers to administer psychotropic drugs against the wishes of an incompetent individual. This conflict between \textit{Boyd}, \textit{Rennie}, and \textit{Mills}, was resolved in \textit{United States v. Leatherman},\textsuperscript{37}

\section*{The Development of \textit{Leatherman}}

\textit{Leatherman} involved an individual who had been found not guilty by reason of insanity and subsequently institutionalized at St. Elizabeth's Hospital for treatment.\textsuperscript{38} The staff of St. Elizabeth's, after lengthy deliberation and extensive administrative review, determined that Leatherman required the use of Haldol,\textsuperscript{39} a psychotropic drug\textsuperscript{40} to stabilize his deteriorating condition. Leatherman refused, citing non-religious objections, and petitioned the court to prevent psychotropic drug treatment, asserting common law and due process constitutional rights.\textsuperscript{41}

The court record indicated that Leatherman was competent to participate in the judicial proceedings.\textsuperscript{42} Furthermore, the hospital conceded that no emergency existed and that Haldol was unnecessary to avoid physical harm to Leatherman or society.\textsuperscript{43} The hospital did assert, however, that Leatherman presented a threat to himself and society if released into the community and that he was incapable of making a rational decision regarding the implementation of medication therapy.\textsuperscript{44}

When the case reached the United States District Court for the District of

\begin{itemize}
  \item \textit{Boyd}, 403 A.2d at 749.
  \item \textit{Id.} at 752.
  \item \textit{Id.} at 752-753. \textit{See}, In re Osborne, 294 A.2d 372 (D.C. 1972).
  \item \textit{Id.} at 978.
  \item Medications such as Haldol, Thorazine, Mellaril, and Prolizin are used in treating psychoses, especially schizophrenia. \textit{See} Cole & Davis, \textit{Antipsychotic Drugs}, in 2A. \textit{Comprehensive Textbook of Psychiatry II}, 1921-22 (Freedman, H. Kaplan, & B. Sodock 2d ed. 1975).
  \item \textit{See supra} note 5.
  \item \textit{Leatherman}, 580 F. Supp. at 978.
  \item \textit{Id.}
  \item \textit{Id.}
  \item \textit{Id.}
\end{itemize}
Columbia, the court held that due process does not require a court to determine whether a person, committed following a determination of not guilty by reason of insanity, is competent to refuse psychotropic drug therapy where the hospital procedure provided for consultation with a patient advocate, the patient's family, and the completion of an independent administrative review before medication. The United States Court of Appeals for the District of Columbia Circuit dismissed the resulting appeal and remanded the case to the circuit court.

Considering previous case law, the court acknowledged that an individual involuntarily committed for psychiatric treatment in civil or criminal proceedings retained a liberty interest in determining whether to undergo psychotropic drug therapy, as long as that individual was competent to make such a decision. It rejected, however, the contention that due process requires that a determination of competency be made only by a court and that until the court has made such a decision the health care provider cannot administer such treatment over his objections.

To ascertain whether a court hearing is required, the court considered the interest of the government and the risk of an erroneous decision in relation to an individual's interest. It found that the interest of the government clearly dictated leaving the determination of an individual's competency to refuse treatment with the hospital rather than the court system. The Leatherman court asserted that if required to decide such issues, the court system would become embroiled in never-ending controversies and be asked to make judgments it was not fully qualified to make. Furthermore, these additional responsibilities would only serve to tax the overburdened court system. The court found that the competency of an individual to take part in treatment could vary from day to day and that the long backlog of court cases could alter the situation by the time the court reached its decision.

45. Id. at 979.
46. 729 F.2d 863 (D.C. Cir. 1984).
47. See supra notes 11-13, 22-31 and accompanying text. See also, Rogers v. Okin, 634 F.2d 650 (1st Cir. 1980), vacated and remanded on other grounds sub. nom. Mills v. Rogers, 457 U.S. 291 (1982).
50. 580 F. Supp. at 979.
51. The court in its reasoning stated: "For the hospital the inevitable continuous shuttle of doctors and patients back and forth from treatment rooms to courtrooms would hamper the hospital's ability to perform its mandated duty to provide adequate treatment to those committed to its charge."
52. 580 F. Supp. at 980.
53. Id. at 979.
The hospital, it concluded, was in a much stronger position to make an accurate determination of the patient's needs. In essence, efficiency and effective treatment of the patient dictated against requiring a judicial determination of a patient's competency to refuse treatment.

ANATOMIZING Leatherman

The *Leatherman* decision incorporates previous court decisions while advancing the interests of both the health care providers and the incompetent individual. It reaffirms previous efforts to set forth a workable integration with earlier Supreme Court decisions. The decision guarantees an individual's due process rights while providing guidelines for health care providers. The enumeration of such guidelines will enable the courts and health care providers to more efficiently and effectively consider an individual's rights. *Leatherman* is a logical conclusion to earlier decisions as it acknowledges the liberty interest an individual possesses in the unwanted administration of psychotropic drugs. The court's decision, however, goes one step further, by allowing the health care provider to determine the competency of a patient to refuse treatment.

*Leatherman* does create the risk, however, that the rights of institutionalized individuals will be subordinated in the name of efficiency. Because the drawbacks of psychotropic therapy are severe, questions of a patient's competency to decide upon the administration of such therapy should not be entrusted solely to the health care provider.

In its decision, the *Leatherman* court noted the similarities between *Leatherman*, *Youngberg*, and *Vitek*, but failed to address the factual dissimilarities. In *Vitek*, the petitioner was a prison inmate who had already been deemed to be deprived of his social liberties. *Youngberg* involved a severely retarded individual, prone to extreme acts of violence, who filed suit only after he had suffered injuries at the treating institution. These

54. *Id.* at 980.
55. *Id.*
56. *See supra* notes 7-18 and accompanying text.
58. *See supra* note 23.
60. 445 U.S. 480 (1980). The *Vitek* Court considered whether an inmate should be transferred to a mental institution, a decision directly concerned with the inmate's mental state. In its decision, the *Vitek* Court concluded that "the independent decision-maker conducting the transfer hearing need not come from outside the prison or hospital administration." 445 U.S. at 496.
61. *Id.* at 484-85.
63. *Id.* at 310-11.
differences reflect upon the *Leatherman* court's application of *Youngberg* and *Vitek*. *Youngberg* and *Vitek* together provide the foundation of the *Leatherman* court's decision to allow the hospital to solely determine an individual's competency. The misinterpretation of these cases, however, exposes the court's decision to criticism as potentially being founded on faulty reasoning.

**CONCLUSION**

*United States v. Leatherman* will have a major effect on the ability and willingness of health care providers to administer psychotropic drugs to incompetent individuals. It provides for the protection of the individual's constitutional rights while also serving the best interests of the health care provider. Furthermore, it acknowledges the sanctity of an individual's religious beliefs as expanded in *Boyd*. Although the *Leatherman* decision raises the extreme possibility that an individual's due process rights could be infringed upon, it allows a health care provider to operate more efficiently while reducing the potential case load of the court system.

*H. Ward Classen*