SCOTUS: What about Mental Illness?

written by Kathleen M. Pike, PhD
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This was a big week for the Supreme Court of the United States (SCOTUS). Not only did the Court rule on Trump v. Hawaii, also known as the "travel ban" case, but Supreme Court Justice Anthony Kennedy announced his retirement effective July 31st.

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US Supreme Court Justices serve as the guardians and interpreters of the nation's Constitution. Their ultimate responsibility, as inscribed above the entrance of the Court, is to ensure "Equal Justice Under Law." All the activity this week got me thinking about the constitutional rights of individuals with mental illness. What does SCOTUS have to say?

1. On insanity. Insanity is not a mental health term. It is a legal term that refers to the inability to distinguish fantasy from reality at the time of the criminal offense. Following the "M'Naghten Rule" from 19th Century England, to be found *not guilty by reason of insanity* requires that the accused, due to "a defect of reason from disease of the mind," did not know the difference between right and wrong at the time the crime was committed.

One of the most famous Supreme Court cases of the insanity defense is United States v. Hinckley, 525 F. Supp. 1342 (D.D.C. 1981). In 1981, John W. Hinckley attempted to assassinate Ronald Reagan. Hinckley claimed his attack was designed to impress actress Jodie Foster with whom he was obsessed. Hinckley was ultimately found *not guilty by reason of insanity* and acquitted of his charges. The outrage after the court decision caused four states to eliminate the insanity defense: Montana, Utah, Idaho, and Kansas.

2. On getting treatment for individuals with mental illness. The Supreme Court case of Jackson v. Indiana 406 U.S. 715 (1972) resulted in requiring mental health treatment for defendants found incompetent to stand trial. Here's the story: In May 1968 at the age of 27, Theon Jackson was charged with two counts of robbery in the amounts of $4 and $5, respectively. Jackson had significant cognitive impairment and was deaf and mute. Upon examination by two psychiatrists, he was found to be incompetent to stand trial. Although this practice

was ostensibly to protect defendants, the reality was that such individuals were often given long-term, even lifetime, confinement in harsh facilities without any psychiatric care. In fact, they were often institutionalized much longer than if they had been found guilty of the crime they had committed. In Jackson v. Indiana, the Supreme Court said 'no more.' SCOTUS ruled that such individuals must receive treatment that offers a reasonable chance of enabling them to become competent to stand trial. If, after a substantial period of treatment, the individuals remained disabled for trial purposes, the state must proceed with civil commitment laws.

3. On limiting involuntary commitment. O'Connor v. Donaldson, 422 U.S. 563 (1975). In 1957, Kenneth Donaldson was involuntarily confined in a Florida State Hospital at Chattahoochee due to needs of "care, maintenance, and treatment." Almost fifteen years later, the ACLU argued the Supreme Court case on behalf of Donaldson, claiming that the hospital and staff members had robbed him of his constitutional rights, by confining him against his will. Donaldson was not dangerous and had received no medical treatment. A unanimous Supreme Court ruled that states cannot confine a non-dangerous individual who can survive on his own, or with help from family and friends. The case advanced the requirement that involuntary commitment requires evidence of imminent danger to self or others.

Approximately 20 years later, Foucha v. Louisiana, 504 U.S. 71 (1992) ruled that an individual who had been found *not guilty by reason of insanity* could not continue to be hospitalized involuntarily, even if one is deemed dangerous. A person may be held as long as she or he is both mentally ill and dangerous, but no longer.

4. On requiring access to mental health counsel. Ake v. Oklahoma 470 U.S. 68 (1985). Ake was an indigent Oklahoma citizen with mental illness charged with first-degree murder and shooting with intent to kill. At his arraignment, Ake was ordered to be examined by a psychiatrist who found him incompetent to stand trial. However, he was never examined to determine whether he met the criteria for *not guilty by reason of insanity,* and when he was ultimately cleared for trial, he was sentenced to death. The case made it to the Supreme Court, which ruled that when an indigent defendant's sanity becomes a major issue at trial, "the State must, at a minimum, assure the defendant access to a competent psychiatrist who will conduct an appropriate examination and assist in evaluation, preparation, and presentation of the defense."

5. On the right to refuse treatment. Sell v. United States, 539 U.S. 166 (2003). Charles Sell was a dentist charged with more than 60 counts of Medicaid fraud and attempted murder of the FBI who arrested him and of a former employee. He was clearly psychotic at the time of his arrest and was found incompetent to stand trial. Despite his psychosis, he refused medication and was taken to court by the hospital. Ultimately this case reached the Supreme Court, and in a decision authored by Justice Breyer, the opinion stated that permissible instances of involuntary medication for the purpose of restoring competency "may be rare." This was in stark contrast to the common practice at the time of forcibly medicating criminal defendants for the purpose of restoring them to competence. SCOTUS granted that forcible medication may be constitutional only if: 1) "important governmental interests" are at stake; 2) the medication must "significantly further those . . . interests"; 3) the medication must be "necessary to further those interests"; and 4) the drugs must be medically appropriate. (Id. at 180-81.)

Of course, many other Supreme Court cases impact the lives and care of individuals with mental illness, not the least of which are cases pertaining to substance use and incarceration. With the resignation of Justice Kennedy and the pending appointment of a new Justice, I can only hope that the Supreme Court aspiration of ensuring "equal justice under law" be anchored in our core national values and pursued with compassion rather than politics. We all need this to be so.