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# Constitutional Law: Pre-Trial Confinement of Federal Prisoners because of Mental Incompetency

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However, it may properly become a question of fact to determine whether a husband in a particular action is acting in his *representative* capacity, or whether he is acting in breach of his fiduciary duty. If it is found that he is not acting in good faith for the community, his actions should not preclude the wife from any rights she would have if it were not for the technicalities of the common ownership of property by husband and wife. If he is acting in good faith and within the limits set by the Legislature, the husband's right to manage and control community property (and incidentally to represent the community in legal actions concerning that property) is an absolute power and ends only with his death or a final decree of divorce.

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CONSTITUTIONAL LAW: PRE-TRIAL CONFINEMENT OF FEDERAL PRISONERS BECAUSE OF MENTAL INCOMPETENCY.—Recognizing the problem of questionable jurisdiction over federal prisoners under criminal indictment who are mentally incompetent to stand trial, Congress, in 1949, enacted legislation[1] giving the federal courts control over the custody of such persons. This legislation was adopted largely at the instance of the Judicial Conference of the United States and is based on recommendations made by the Conference after a prolonged study by a special committee of leading federal judges.[2]

The statutes enacted are found in Title 18 U.S.C., sections 4244-4248, inclusive. Section 4244 provides in part that:

> "Whenever after arrest and prior to the imposition of sentence . . . the United States Attorney has reasonable cause to believe that a person charged may be presently insane or otherwise so mentally incompetent as to be unable to understand the proceedings against him or properly assist in his own defense, he shall file a motion for a judicial determination of such mental competency. . . . Upon such a motion . . ., or upon its own motion, the court shall cause the accused . . . to be examined . . . by at least one qualified psychiatrist. . . . For the purpose of the examination the court may order the accused committeed for such reasonable period as the court may determine to a suitable hospital. . . . If the report of the psychiatrist indicates . . . such mental incompetency in the accused, the court shall hold a hearing . . . [for judicial determination of mental competency]. . . ."

Section 4246 of this title provides in part that:

> "Whenever the trial court shall determine . . . that an accused is or was mentally incompetent, the court may commit the accused to the custody of the Attorney General . . . until the accused shall be mentally competent to stand trial or until the pending charges against him are disposed of according to law. . . ."

Section 4248 prescribes the duration of the commitment:

> ". . . [The] commitment shall run until the sanity or mental competency of the person shall be restored or until the mental condition of the person is so improved that if he be released he will not endanger the safety of the officers, the property, or other interests of the United States, or until suitable arrangements have been made for the custody and care of the prisoner, whichever event shall first occur. . . ."

*Greenwood v. United States*,[3] a 1955 decision by the Eighth Circuit Court of Appeals, raised questions involving the interpretation and constitutionality of this legislation. This case was an appeal from an order of the district court[4] committing

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[1] 63 STAT. 686 (1949), entitled, "An Act: To provide for the care and custody of insane persons charged with or convicted of offenses against the United States, and for other purposes."

[2] The committee was created in 1942; its recommendations were approved by the Judicial Conference in 1946. REPORT OF THE JUDICIAL CONFERENCE, Sept. Session 1942, pp. 18-19; *id.*, Oct. Session 1946, p. 18.

[3] 219 F.2d 376 (8th Cir. 1955), *cert. granted*, 350 U.S. 821 (1955).

[4] United States v. Greenwood, 125 F. Supp. 777 (W.D. Mo. 1954).

defendant Greenwood to the custody of the Attorney General for an indeterminite time as provided for in section 4248.

The defendant was arrested in Cleveland, Ohio, the state of his residence, and transported to the District Court for the Western District of Missouri pursuant to an indictment charging him with the armed robbery of a Kansas City post office. Previous psychiatric proceedings which indicated that the defendant was mentally unfit for trial caused this court to order Greenwood sent to the United States Medical Center for Federal Prisoners at Springfield, Missouri[5] for an examination as to his mental condition.[6] The reports of the psychiatric staff during the following year showed that Greenwood was considered to be "legally insane"; that he might persist in criminal activities if released; and that it was unlikely that he would regain his sanity in the near future. It was recommended by the staff that the defendant be transferred to a state hospital in the state of his residence and the district court so ordered. The Ohio authorities had Greenwood examined by a psychiatrist and, upon his conclusion that the defendant was not "insane in any legal sense," ordered his release. Greenwood was again taken into federal custody and a hearing as to his mental competency, pursuant to section 4244, was ordered by the district court and counsel was appointed to represent the defendant. It was found by the court that: (1) the defendant was insane and mentally incompetent to stand trial; (2) that if released he would probably endanger the safety of the officers, the property, or other interests of the United States; and (3) that no suitable arrangements for the custody and care of the defendant, other than commitment to the custody of the Attorney General, were presently available.

From this order, Greenwood appealed, charging that: (1) the statutory provisions authorizing such proceedings and commitment were unconstitutional as violative of the due process clause of the fifth amendment or were encroachments upon the powers reserved to the states by the tenth amendment; and (2) that these provisions, if consitutional with regard to *temporary* mental incompetency, may not be so extended to include cases where it appears that the incompetency is, or may be, *permanent.* After discussing the legislative history of section 4244 *et seq.*, the court, with one dissent, concluded that the legislation was not in conflict with the Constitution and that the order appealed from was valid. The question of probable duration of the mental incompetency was resolved as immaterial to the applicability of the sections involved.

Regarding the alleged denial of due process, the court had little difficulty in sustaining the ruling of the district court. It appears unlikely that exceptions taken on these grounds can be successful. The provisions of the statute,[7] if properly followed, adequately safeguard the right of the defendant to be heard and to defend himself and the proceedings provided for are suitable and appropriate to the nature of the case. Similar conclusions have been reached by other courts ruling upon this issue.[8]

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[5] The location of this hospital explains why many cases cited are from the Missouri District Court.

[6] Authorized by 18 U.S.C. § 4244 (1947).

[7] 18 U.S.C. § 4247 (1947) provides in part that: ". . . At such hearing the designated psychiatrist or psychiatrists shall submit his or their reports, and the report of the board of examiners and other institutional records relating to the prisoner's mental condition shall be admissible in evidence. All of the psychiatrists and members of the board who have examined the prisoner may be called as witnesses, and be available for . . . cross-examination. . . ."

[8] Craig v. Steele, 123 F. Supp. 153 (W.D. Mo. 1954). Also see Higgins v. McGrath, 98 F. Supp. 670 (W.D. Mo. 1951).

Whether or not the subject matter of this legislation is properly within congressional control as regards the *tenth* amendment, however, is a question which has frequently troubled the federal courts. Despite two federal cases[9] that seemingly[10] held that federal power does not exist over mental incompetents who have not been convicted of any offense, authority to the effect that the government *does* have constitutionally sanctioned control within this area appears to be overwhelming.[11] In following this authority, the court in the principal case found that such control was necessarily incidental to enumerated federal powers.[12] The court stated that:

> "The national government has the undoubted right to define federal crimes; to provide for the administration and enforcement of its criminal laws; to inscribe the penalties which will be incurred by those violating them; to furnish institutions where such violators can be confined; and generally do whatever reasonably and lawfully can be done to protect society from such offenders. We have no doubt that as a necessary incident to the power to provide for the enforcement of the criminal laws of the United States, Congress had the power to enact the legislation in suit. . . ."[13]

Both on reason and authority, then, it seems clear that the federal courts are free to exercise at least limited control over mental incompetents. This is entirely proper. A rule which prevented the temporary care and custody of federal prisoners who would soon be capable of standing trial would unnecessarily and unreasonably hamper the courts. Such a rule would serve no good purpose—nor would it materially alter the ultimate proceedings, since the defendant in either event would be brought to trial within a short period of time. Its only result would be to require the temporary transfer of the defendant to a state hospital, or, if the hospital were unwilling to take custody, to make necessary his outright release until such time as sanity has been restored. As long as the primary objective of the confinement is the forthcoming prosecution, and such confinement may be classified as a mere temporary delay, it is not difficult to include the custody of these prisoners within the purview of incidental powers. Hence, the doctrine of authority by virtue of necessarily incidental power finds particular application with regard to temporary incompetency. Federal control over prisoners who will soon be capable of standing trial is warranted as a practical and reasonable solution of the not infrequent cases involving shock or temporary mental breakdown following, or concurrent with, the commission of a crime.

But the question remains as to the limitation, if such exists, on this control with regard to the probable duration of incompetency. Where the defendant is, or may be,

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[9] Edwards v. Steele, 112 F. Supp. 382 (W.D. Mo. 1952); Dixon v. Steele, 104 F. Supp. 904 (W.D. Mo. 1951).

[10] Both of these cases have been distinguished as being unnecessarily expansive in ruling on the confinement of both the temporarily incompetent and the permanently incompetent, since the defendants apparently fell within the latter class. It is claimed by the dissenting judge in the principal case that both cases have the effect of finding federal authority existent only over temporary incompetency, 219 F.2d 376, 388 (8th Cir. 1955). Distinguished similarly in Kitchens v. Steele, 112 F. Supp. 383, 385 (W.D. Mo. 1953). Dixon v. Steele (*supra* note 9), distinguished regarding this point in United States v. Miller, 131 F. Supp. 88, 94 (Vt. 1955).

[11] Higgins v. United States, 205 F.2d 650 (9th Cir. 1953); Wells, by Gillig v. Attorney General, 201 F.2d 556 (10th Cir. 1953); United States v. Miller, 131 F. Supp. 88 (Vt. 1955); Wright v. Steele, 125 F. Supp. 1 (W.D. Mo. 1954); Craig v. Steele, 123 F. Supp. 153 (W.D. Mo. 1954); Kitchens v. Steele, 112 F. Supp. 383 (W.D. Mo. 1953); Higgins v. McGrath, 98 F. Supp. 670 (W.D. Mo. 1951).

[12] U.S. CONST. art. I, § 8, cl. 18, "[The Congress shall have Power] To make all Laws which shall be necessary and proper for carrying into Execution . . . all . . . Powers vested by this Constitution in the Government of the United States. . . ."

[13] Greenwood v. United States, 219 F.2d 376, 387 (8th Cir. 1955).

permanently insane, commitment for the duration of his incompetency cannot be justified as bearing any practical relation to eventual prosecution. On the contrary, extension of federal control to this class of prisoners represents a departure from the administration of criminal justice and an entry by the government into the general field of civil commitment of the insane.

Jurisdiction over the persons and property of the insane has long been established as an exclusive right of the states.[14] This control is a function of the police powers reserved to the states by the tenth amendment and any intrusion within this area by the federal government must be considered an encroachment upon the sovereign powers of the states. At that point where confinement ceases to constitute a *mere delay in prosecution,* federal jurisdiction over the defendant terminates for want of constitutional authority.

*Greenwood v. United States* squarely holds that no such distinction exists between temporary and permanent incompetency insofar as requisite constitutional authority is concerned. Following an extensive treatment of the legislative history of the sections involved, the court points out the practical gains made possible by the legislation upon the administration of justice in the federal courts. The court concludes that it has no doubt that the required congressional authority is derived "as a necessary incident to the power to provide for the enforcement of the criminal laws of the United States." But the opinion omits to clarify precisely how an insane prisoner who has not been convicted of crime may be committed and confined under the guise of criminal jurisdiction. Although discussed in the dissenting opinion, the majority fails to mention or explain the very tenuous connection between confinement of the permanently incompetent and eventual prosecution. Apparently the basis for the decision encompasses no more than a refusal to declare invalid procedures which greatly facilitate the disposition of all cases involving mental incompetency.

Authority in support of this finding is not impressive. It includes three district court opinions[15] by the same judge (one of which cases reached a contrary result on subsequent proceedings[16]) and the dissenting opinion in a circuit court decision.[17] Contrary cases holding that federal control is limited to temporary incompetency include decisions in district courts[18] as well as two circuit court cases. *Higgins v. United States*[19] and *Wells, by Gillig v. Attorney General,*[20] decisions in the Ninth and Tenth Circuit Courts of Appeal, respectively, are cases on equal appellate level standing with the principal case which are clearly in conflict with this decision. In the *Higgins* case, the court quoted with approval from the *Wells* opinion as follows:

> "While the care of insane persons is essentially the function of the *states* in their sovereign capacity as *parens patriae,* and while the federal government has neither constitutional nor inherent power to enter the general field of lunacy, Congress has the

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[14] 28 AM. JUR., *Insane and Other Incompetent Persons,* § 25 (1940), also citing cases.

[15] Craig v. Steele, 123 F. Supp. 153 (W.D. Mo. 1954); Kitchens v. Steele, 112 F. Supp. 383 (W.D. Mo. 1953); Higgins v. McGrath, 98 F. Supp. 670 (W.D. Mo. 1951).

[16] Higgins v. McGrath, *supra* note 15. Higgins ultimately was found to be unlawfully confined if it should be determined ". . . that defendant is not, and will not within a reasonable time, be able to stand trial by reason of mental incompetency. . . ." Higgins v. United States, 205 F.2d 650 (9th Cir. 1953).

[17] Wells, by Gillig v. Attorney General, 201 F.2d 556 (10th Cir. 1953).

[18] Wright v. Steele, 125 F. Supp. 1 (W.D. Mo. 1954); Edwards v. Steele and Dixon v. Steele, qualified and cited at *supra* note 10. Also see United States v. Miller, 131 F. Supp. 88 (Vt. 1955).

[19] 205 F.2d 650 (9th Cir. 1953).

[20] 201 F.2d 556 (10th Cir. 1953).