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# California Supreme Court Limits the Fourth Amendment Rights of Women with Mental Disabilities

Rebecca Bedwell-Coll†

Women with mental disabilities are finding themselves in an unlikely struggle: to obtain the same Fourth Amendment protection as alleged criminals. On December 9, 1994, a California Supreme Court majority held that evidence procured in violation of the Fourth Amendment may be admitted in involuntary conservatorship proceedings.<sup>1</sup> Justice Mosk concurred and dissented, stating that while the admission of evidence was harmless error, the exclusionary rule should apply.

In *Conservatorship of Susan T.*, a mental health department employee entered and photographed Susan T.'s apartment while she was detained for a 72-hour psychiatric evaluation. In a subsequent involuntary conservatorship proceeding, the trial court admitted the photographs over counsel's objections, and the jury found Susan T. "gravely disabled." The court appointed the county's public guardian as her conservator.

This decision threatens the constitutional rights of women with disabilities. It may particularly affect women because the mental health care system administers more extreme and paternalistic treatment to women than men. Women are more likely to view psychological distress as an illness and seek a doctor's help.<sup>2</sup> Overall, women comprise up to two-thirds of the patients in private mental health facilities.<sup>3</sup> In addition, women are more likely than men to receive medication for emotional problems: women "receive 73 percent of all prescriptions written for psychotropic medication—and an incredible 90 percent when the prescribing physician is not a

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<sup>1</sup> *Conservatorship of Susan T.*, 884 P.2d 988, (Cal. 1994). Under the Lanterman-Petris-Short Act, the county may take a person into custody for a 72-hour treatment and evaluation, CAL. WELF. & INST. CODE § 5150 (West 1984), and appoint a conservator if the person is found to be "gravely disabled." CAL. WELF. & INST. CODE § 5350.

<sup>2</sup> WOMEN, HEALTH AND MEDICINE 146-47 (Rima D. Apple ed., 1990). Men, on the other hand, are more likely to turn to alcohol and drug abuse to cope with psychological distress. *Id.*

<sup>3</sup> LESLIE LAURENCE & BETH WEINHOUSE, OUTRAGEOUS PRACTICES: THE ALARMING TRUTH ABOUT HOW MEDICINE MISTREATS WOMEN 280 (1994). *But see* WOMEN, HEALTH AND MEDICINE, *supra* note 2, at 146 (denying that women are committed more often than men).

psychiatrist."<sup>4</sup> Male psychiatrists often make treatment decisions without the input of female patients.<sup>5</sup>

The photographic evidence used to appoint a conservator for Susan T. and commit her to an institution involuntarily was taken without a warrant. Susan T. was involuntarily taken to a psychiatric facility when her physician alerted the Lake County Mental Health Department ("the Department") that he considered Susan T. a danger to herself and others.<sup>6</sup> Several hours later, the Department sent an employee to Susan T.'s apartment to "take some pictures as evidence."<sup>7</sup> The employee gained access to her apartment by telling the property manager that she needed to take photographs of her belongings because the department was responsible for valuables.<sup>8</sup> The California Supreme Court determined that the employee entered "for the sole purpose of photographing the interior of the home to obtain evidence of the householder's mental disability."<sup>9</sup> The pictures taken were of rocks in the shower drain and sink and bags of excrement on the floor.<sup>10</sup>

The court adopted the parties' premise that the employee's entry constituted a search under the Fourth Amendment.<sup>11</sup> Susan T. argued that, as in criminal proceedings, evidence obtained in violation of the Fourth Amendment should be excluded.<sup>12</sup> However, the court found that, even assuming the search was in violation of the Fourth Amendment, the exclusionary rule did not apply.<sup>13</sup>

The court declined to use the exclusionary rule after applying two tests. First, the majority analyzed whether the Susan T. proceeding was analogous to a criminal proceeding. Originally a criminal law doctrine, the exclusionary rule does apply to some civil proceedings when those proceedings are "quasi-criminal."<sup>14</sup> The court held, however, that the involuntary conservatorship proceeding had no similarity to criminal law, and therefore was not quasi-criminal.

Second, the majority weighed the deterrent effect of excluding the evidence against the likely social costs of not admitting it. Costs included the hampering of a "prompt evaluation and treatment of persons who are gravely disabled," and the "protection of public safety."<sup>15</sup> The majority found that there would be no significant deterrent effect on future searches

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<sup>4</sup> LAURENCE & WEINHOUSE, *supra* note 3, at 276.

<sup>5</sup> *Id.* at 280.

<sup>6</sup> Conservatorship of Susan T., 884 P.2d 988, 989 (Cal. 1994).

<sup>7</sup> *Id.* at 990.

<sup>8</sup> *Id.* The Mental Health Department is responsible for safeguarding and securing the property of persons detained under § 5150. CAL. WELF. & INST. CODE § 5156 (West 1984).

<sup>9</sup> 884 P.2d at 992.

<sup>10</sup> *Id.* at 990.

<sup>11</sup> *Id.* at 992. The Department argued only that the exclusionary rule should not apply.

<sup>12</sup> *Id.* at 990-91.

<sup>13</sup> *Id.* at 997.

<sup>14</sup> *Id.* at 993.

<sup>15</sup> *Id.* at 996-97.

and concluded that this balance justified admittance of "the best and most complete evidence."<sup>16</sup>

### I. THE QUASI-CRIMINAL ANALYSIS

The exclusionary rule, which bars the admission of evidence obtained in violation of the Fourth Amendment, is usually applied in criminal cases.<sup>17</sup> The rule was judicially created to safeguard Fourth Amendment rights of alleged criminals.<sup>18</sup> Courts have extended the rule to some civil actions, such as proceedings for the revocation of medical licenses, civil commitments of narcotics addicts, and forfeiture proceedings.<sup>19</sup>

The majority noted that when a proceeding's purpose is to penalize, it may be deemed "quasi-criminal" and therefore subject to the exclusionary rule.<sup>20</sup> The California Supreme Court stated that it has "never extended the rule to exclude evidence from civil proceedings, but 'only to proceedings so closely identified with the aims of criminal prosecution as to be deemed 'quasi-criminal.'" <sup>21</sup> Under the majority's analysis, civil forfeiture proceedings, which have similar "aims and objectives" to criminal proceedings, are appropriate forums for the exclusionary rule.<sup>22</sup> In cases such as involuntary commitment of narcotics addicts, where the commitment is often in lieu of criminal prosecution, the exclusionary rule would apply.<sup>23</sup> The court emphasized that "[i]mposition of a conservatorship under the act, by contrast, is not dependent on either a charged or uncharged criminal act."<sup>24</sup>

Similarly, in 1979 the California Supreme Court found that an action for the involuntary commitment of a person with developmental disabilities was not sufficiently similar to a criminal proceeding to warrant the application of the privilege against being called as a witness.<sup>25</sup> The court held that the commitment was not related to any criminal acts, that it was "of limited duration" (one year), and that the "sole state interest, legislatively is the

<sup>16</sup> *Id.* at 991.

<sup>17</sup> *Mapp v. Ohio*, 367 U.S. 643, 648 (1961); *United States v. Janis*, 428 U.S. 433, 446 (1975).

<sup>18</sup> *Susan T.*, 884 P.2d at 991 (citing *United States v. Calandra*, 414 U.S. 338, 348 (1974)). The *Susan T.* court made a distinction between a personal constitutional right and a "remedy designed to safeguard Fourth Amendment rights generally through its deterrent effect." *Id.* (quoting *United States v. Calandra*, *supra*). Such a distinction allows judicial discretion about what method should be used to safeguard constitutional rights, but does not necessarily allow courts to safeguard rights of certain (nondisabled) citizens, and not those of other (mentally disabled) citizens.

<sup>19</sup> *See, e.g.*, *Elder v. Board of Medical Examiners*, 50 Cal. Rptr. 594 (1966) (administrative proceeding to revoke medical license); *People v. Moore*, 446 P.2d 800 (1968), *overruled on other grounds by* *People v. Thomas*, 566 P.2d 228 (1977) (civil commitment proceedings for narcotic addicts).

<sup>20</sup> 884 P.2d at 993.

<sup>21</sup> *Id.* at 994 (quoting *In re Lance W.*, 694 P.2d 744, 756 (1985)).

<sup>22</sup> *Id.* (quoting *People v. One 1960 Cadillac Coupe*, 396 P.2d 706 (1964)).

<sup>23</sup> *Id.* at 994-95.

<sup>24</sup> *Id.* at 995.

<sup>25</sup> *Cramer v. Tyars*, 588 P.2d 793, 796 (1979).

custodial care, diagnosis, treatment and protection of persons who are unable to take care of themselves . . . .”<sup>26</sup>

The majority failed to recognize the parallels between Susan T.’s involuntary conservatorship and a criminal prosecution. As Justice Mosk pointed out in his dissent, similar rights are at stake.<sup>27</sup> The dissent explained that conservatorship can lead to a curtailment of liberty just as severe as that faced by a criminal defendant. For example, the dissent noted that conservatees face possible involuntary commitment, loss of the right to vote, and the right to refuse or consent to any medical treatment, including procedures unrelated to their disabilities.<sup>28</sup>

In both an involuntary conservatorship proceeding and an involuntary commitment for a narcotics addict, a government official can potentially violate Fourth Amendment rights. In both cases, the consequence of admitting evidence found during illegal searches can be punitive and result in complete deprivation of the individual’s liberty. Historically, our legal system favors erring on the side of liberty for the accused. This rule should apply to persons with mental disabilities.

Furthermore, the court did not address the public policy rationale for limited application of the exclusionary rule to only criminal and quasi-criminal cases. To limit the application of the exclusionary rule to police searches in criminal proceedings is vastly under-inclusive. Our society has entered an administrative age, with a transference of power to many government agencies. Government officers such as the Lake County Mental Health Department employee in the *Susan T.* case have enormous power over those committed involuntarily. The law should reflect that power imbalance.

## II. THE DETERRENT EFFECT

Next, the *Susan T.* majority addressed the exclusionary rule’s purpose of deterring future illegal government intrusion.<sup>29</sup> The court weighed the likely social costs of excluding the evidence against the potential deterrent effect.

In the majority’s opinion, the social costs of applying the exclusionary rule were high. The court reasoned that to exclude all relevant evidence concerning Susan T. would be “to ignore a continuing state of grave disability.”<sup>30</sup> The court adopted the paternalistic view that the conservatorship could only be for Susan T.’s own good.

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<sup>26</sup> *Id.*

<sup>27</sup> 884 P.2d at 998-99.

<sup>28</sup> *Id.* at 999.

<sup>29</sup> *Id.* at 995.

<sup>30</sup> *Id.* at 997.

Against this high social cost the court weighed the deterrent effect of excluding the evidence. The majority relied upon two previous federal cases to aid in its balancing test. In the first, *U.S. v. Janis*,<sup>31</sup> the U.S. Supreme Court held that if evidence is seized in good faith, the deterrent effect is marginal and outweighs the cost of the suppression of the relevant evidence. Second, in *INS v. Lopez-Mendoza*,<sup>32</sup> the Court held that the exclusionary rule should not apply in deportation proceedings. Although the Court stressed that the deterrent effect was strong because the agency that acted unlawfully was the same agency that sought to use the evidence against the defendant, it held that the loss of probative evidence and the resulting "more cumbersome adjudication" precluded use of the exclusionary rule.<sup>33</sup>

Following *Lopez-Mendoza*, the majority acknowledged that the deterrent effect is higher in the *Susan T.* case because the department that searched Susan T.'s home was also her adversary.<sup>34</sup> The court reasoned that the deterrent effect is minimized when the agency searching the home does not know that the evidence will be used for a certain type of proceeding.<sup>35</sup> Therefore, because the Department could not have predicted that Susan T. would be entering an involuntary conservatorship, it would not have been deterred from collecting the evidence for that purpose. "Certainly not every detention under section 5150 leads to a conservatorship proceeding . . . . In such circumstances, the mental health worker is unlikely to shape his or her conduct in anticipation of the exclusion of evidence at such a proceeding."<sup>36</sup> The majority further reasoned that a case such as Susan T.'s is a rare occurrence. It noted that mental health workers usually secure the person with a mental illness for 14-day or 30-day certification, in which no exclusionary rule applies. It concluded that, because workers would expect no exclusionary rule to apply to subsequent proceedings, they would not be deterred from unlawful searches and seizures.<sup>37</sup>

In his dissent, Justice Mosk applied a different balancing test, weighing three factors: the magnitude of the consequences for the individual involved, the social cost of excluding the evidence, and the deterrent effect of excluding the evidence. While similar to the test of the majority, the dissent's analysis explicitly considered the magnitude of consequences to Susan T. and her legal rights. The majority did not mention her rights or the harm to Susan T., perhaps believing such considerations irrelevant, or perhaps lumping them under the amorphous "social benefit" consideration.

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<sup>31</sup> *United States v. Janis*, 428 U.S. 433 (1975).

<sup>32</sup> *INS v. Lopez-Mendoza*, 468 U.S. 1032 (1984).

<sup>33</sup> *Id.* at 1041.

<sup>34</sup> 884 P.2d at 995.

<sup>35</sup> *Id.* at 996.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.* at 996-97.

The magnitude of the potential personal consequences in an involuntary conservatorship proceeding can not be underestimated. As the dissent noted, “[b]ecause involuntary confinement for mental illness, whether civil or criminal, involves a loss of liberty and substantial stigma, we have extended many of the same protections to potential conservatees as to criminal defendants.”<sup>38</sup> Perhaps most significant is the social stigma that attaches to women with severe mental disabilities.

The social costs of admitting the evidence against Susan T. are also significant. Women with mental disabilities should be encouraged to seek out help without the fear that their physicians will prompt searches of their living rooms. Further, the dissent notes that the likelihood of error can be extremely high in involuntary conservatorship proceedings. To protect those who are not severely disabled from unnecessary searches should be a high priority.

Finally, the dissent rejected the majority’s underestimation of the deterrent effect. In response to the majority, Justice Mosk stressed that the agency who searched Susan T.’s home was the same agency who acted as her adversary in the conservatorship proceedings. In fact, “mental health officials are statutorily required to act as evidence-gatherers and witnesses against prospective conservatees.”<sup>39</sup> Mosk concluded that the deterrent effect of excluding the evidence in Susan T.’s case would be “direct,” and that mental health officials would be more likely to obtain warrants in the future.<sup>40</sup>

In addition, the majority focused on the rarity of involuntary conservatorship proceedings, which they believed would reduce the deterrent effect of exclusion. Although many cases of 72-hour detentions doubtless lead to proceedings other than involuntary conservatorships, it is clear that involuntary conservatorship proceedings do sometimes result from 72-hour detentions. The dissent noted that:

Indeed, the rate of contested conservatorship hearings is apparently substantial. Certainly, even if, as the majority conjecture, some mental health workers may be interested in securing only interim treatment for a detainee, there is no reason to conclude that conservatorship proceedings are so unusual that mental health workers would as a general rule be heedless of the privacy rights of detainees regardless of the exclusionary rule.<sup>41</sup>

Despite the rarity of involuntary conservatorship proceedings, the deterrent effect is still significant.

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<sup>38</sup> 884 P.2d at 998-99 (citing *Conservatorship of Roulet*, 590 P.2d 1 (1979) (applying reasonable doubt standard to findings of defendant’s mental condition); *Conservatorship of Baber*, 200 Cal. Rptr. 262 (1984) (extending right to confront witnesses, right to introduce evidence, and right to appointed counsel to conservatees).

<sup>39</sup> 884 P.2d at 1001.

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

Involuntary conservatorship proceedings can lead to a permanent loss of civil rights and personal freedom. In these proceedings, the need to protect constitutional rights is critical. In analyzing the search of Susan T.'s home, the majority failed to recognize the potential harm to Susan T. personally and to persons with disabilities in general. Even if involuntary commitment is the answer to an individual's problems, the government must protect that person's constitutional rights.