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Constitutional Law - Criminal Law - Power of Federal Government to Commit Mentally Incompetent Persons Charged with Federal Crimes

William C. Becker S.Ed.
University of Michigan Law School

CONSTITUTIONAL LAW—CRIMINAL LAW—POWER OF FEDERAL GOVERNMENT TO COMMIT MENTALLY INCOMPETENT PERSONS CHARGED WITH FEDERAL CRIMES—Petitioner was indicted for robbery from a United States Post Office. After a series of hearings and examinations, the district court found petitioner so mentally incompetent that he could not stand trial, and that, if released, he would probably endanger the safety of the officers, property, or other interests of the United States. The district court ordered petitioner committed to the custody of the Attorney General for confinement in a mental institution.[1] This order was affirmed by the Court of

[1] United States v. Greenwood, (D.C. Mo. 1954) 125 F. Supp. 777, interpreting 18 U.S.C. (1952) §§4244 to 4248. Section 4244 provides for mental examination on motion of the United States attorney at any time after arrest and prior to sentence or prior to expiration of sentence and for the procedure to be followed by the district court in conducting this examination. Section 4245 provides for the director of prisons to cause an examination of prisoners believed incompetent at trial. Section 4246 provides that whenever the trial court shall determine in accordance with §§4244 and 4245 that an accused is or was mentally incompetent, the court may commit the accused to the custody of the Attorney General or his authorized representative, until the accused shall be mentally competent to stand trial or until the pending charges against him are disposed of accord-

Appeals for the Eighth Circuit, one judge dissenting.[2] On certiorari to the Supreme Court of the United States, *held,* affirmed. The petitioner was legally in the custody of the United States under its power to prosecute for federal crimes and this custody could continue even though there was little likelihood of petitioner's eventual mental recovery and prosecution. *Greenwood v. United States,* 350 U.S. 821, 76 S.Ct. 410 (1956).

The act of Congress upheld by the Supreme Court in this case was a result of long and careful study by a committee of eminent jurists.[3] Prior to its enactment in 1949 there existed little authority for, and much confusion concerning, the handling of mentally incompetent persons accused of federal crimes. It is a primary tenet of our law that a person found mentally incompetent by legal process may not, consonant with due process, be brought to trial or sentenced.[4] However, although power over the general field of lunacy is in the state governments as *parens patriae,*[5] it was generally felt that the federal government had no jurisdiction in this field.[6] If no state could be found to care for the accused, the federal authorities released them either before any trial,[7] or, if they became insane during confinement, at the conclusion of their sentence[8] regardless of the degree of danger to the rest of the community. The practical problems of disposition of individual criminal cases by the federal government prompted the adoption of the act in question. Once there is a determination of insanity under the terms of sections 4244 and 4245, section 4246 provides for commitment until the accused "shall be mentally competent" or until the disposition of the pending charges.[9] Temporary detention, with a view

ing to law. Section 4246 further provides that if the court after hearing as provided in the preceding sections determines that the conditions specified in §4247 are met (i.e., that if released, the prisoner would endanger the safety of the officers, the property, or other interests of the United States, and that suitable arrangements for the custody and care of the prisoner are not otherwise available), then the duration of the commitment is governed by §4248, and it may continue until the sanity or mental competency of the person is restored or until the mental condition of the person is so improved that if he is released he will not endanger the safety of the officers, property, or other interests of the United States or until suitable arrangements are made for the custody and care of the prisoner by the state of his residence. The district court in the principal case used §§4246 and 4248 after finding that the conditions required by §4247 had been met.

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

3 The history of the act is set forth in Greenwood v. United States, note 2 supra, at 380. The legislation was drafted by a committee appointed in 1942 by the Judicial Conference of the United States.

4 See Dession, "The Mentally Ill Offender in Federal Law and Administration," 53 YALE L. J. 684 (1944).

5 Shapely v. Cohoon, (D.C. Mass. 1918) 258 F. 752; United States v. Jackson, (D.C. Pa. 1936) 16 F. Supp. 126. See 41 IOWA L. REV. 303 (1956); 64 YALE L. J. 1070 (1955).

6 17 OP. ATTY. GEN. 211 (1881) (U.S. jurisdiction is only over those people within federal territory or those who are employees of the government). See also S. Hearings on S. 850, 80th Cong. 2d sess., p. 5 (1948).

7 See S. Hearings on S. 850, 80th Cong., 2d sess. p. 7 (1948).

8 See S. Hearings on S. 850, 80th Cong., 2d sess., p. 7 (1948); 30 OP. ATTY. GEN. 569 (1916); 35 OP. ATTY. GEN. 366 (1927); Dession, "The Mentally Ill Offender in Federal Law and Administration," 53 YALE L. J. 684 at 685 (1944).

9 18 U.S.C. (1952) §§4244 to 4248.

toward further proceedings in regard to the prisoner seems to be contemplated by the wording of these sections. However, section 4246 also allows for commitment under the conditions of section 4247 with the time of commitment governed by section 4248.[10] Section 4247 provides that after a finding that a prisoner would be a danger to the United States if released, he may be committed under section 4248 until his sanity or mental competency shall be restored, or until so improved that he will not endanger the United States. The duration of detention contemplated by these sections seems to be of a more permanent character and not anticipatory of further action on any particular charge. It is under these sections that petitioner in the principal case was committed. The courts which have interpreted the provisions of this act have split as to its constitutionality. One line of decisions[11] permits commitment by the federal authorities. According to some writers, authority for such commitment is found in Congress' power to define federal crimes and provide for the administration and enforcement of the criminal laws which are "necessary and proper" to the powers enumerated in the Constitution.[12] This is the basis adopted by the Supreme Court to uphold the constitutionality of the act in the principal case. Additional support for allowing the federal government to make such commitments can be found in the theory that the government has a duty to care for the mentally incompetent among those persons under its power, e.g., military personnel and citizens of the territories.[13] In another group of earlier decisions, the legislation under discussion was held invalid or was severely circumscribed in its effect. Some of these decisions[14] held that the states alone had power in the general field of lunacy and that the federal government could not confine the mentally incompetent. Other courts, while conceding the right of federal courts to confine until trial, held that the confinement must be a temporary one.[15] If the

[10] Ibid. After a finding under §4247 that the prisoner, if released, will probably endanger the safety of the officers, the property or other interests of the United States, the prisoner may be committed to the custody of the attorney general until his sanity or mental competency shall be restored, or until the mental condition 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 by the state of his residence, whichever event shall first occur (§4248).

[11] Higgins v. McGrath, (D.C. Mo. 1951) 98 F. Supp. 670; Craig v. Steele, (D.C. Mo. 1954) 123 F. Supp. 153; Kitchens v. Steele, (D.C. Mo. 1953) 112 F. Supp. 383 (Congress has provided for protection of the United States against the acts of the criminally insane).

[12] CORWIN, CONSTITUTION OF THE UNITED STATES OF AMERICA 308 (1953). Although not expressed as a power in the Constitution, the power to create, define and punish crime is universally conceded under art. 1, §8, clause 18. Higgins v. McGrath, Craig v. Steele, and Kitchens v. Steele, note 11 supra.

[13] See Dession, "The Mentally Ill Offender in Federal Law and Administration," 53 YALE L.J. 684 at 692 (1944).

[14] Edwards v. Steele, (D.C. Mo. 1952) 112 F. Supp. 382; Dixon v. Steele, (D.C. Mo. 1951) 104 F. Supp. 904; Wright v. Steele, (D.C. Mo. 1954) 125 F. Supp. 1; Higgins v. United States, (9th Cir. 1953) 205 F. (2d) 650; Wells v. Attorney General of United States, (10th Cir. 1953) 201 F. (2d) 556.

[15] Higgins v. United States; Wright v. Steele, note 14 supra.

prisoner were found to be permanently insane, he had to be released.[16] The rationale for this view is that "the criminal power cannot, by definition, uphold confinement of an incompetent who has not been convicted of a criminal act and who, by the terms of the statute, is not being held in anticipation of a criminal trial."[17] Even if this latter argument were accepted, however, authority for commitment might still be found in the inherent power of any government to protect itself against persons who would endanger its safety.[18] The test for commitment set out in section 4247 was in fact drafted with a view to this power.[19] Although it rested its decision on a ground which is somewhat questionable, the Court achieved the result for which the statute was drafted and solved most of the technical procedural problems in the handling of permanently insane prisoners.[20]

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16 Ibid.

17 64 YALE L.J. 1070 at 1077 (1955).

18 Burroughs and Cannon v. United States, 290 U.S. 534, 54 S.Ct. 287 (1934) [Congress undoubtedly possesses that power (of self protection) as it possesses every other power essential to preserve the departments and institutions of the general government from impairment or destruction]; United States v. Metzdorf, (D.C. Mont. 1918) 252 F. 933 (federal government has only those powers expressly set out or necessarily implied, but the power to have officers and to conduct a government implies necessarily the power to preserve and protect that government and those officers).

19 S. Hearings on S. 850, 80th Cong., 2d sess. (1948).

20 See opinion in Greenwood v. United States, note 2 supra.