



GOVERNOR GRAY DAVIS

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Special Counsel on County of Santa Clara
DEPUTY

March 3, 2003

The Honorable Robert Allen Baines
Superior Court, Dept. 13
191 N. First Street
San Jose, CA 95113

Dear Judge Baines:

Dr. Stephen Mayberg, Director of the Department of Mental Health, has communicated his concerns about the Court's February 24, 2003 order, finding Mr. Brian DeVries suitable for outpatient treatment. Dr. Mayberg has concluded that no set of terms and conditions can adequately ensure that Mr. DeVries will not be a danger to the health and safety of others,

More fundamentally, I believe the Court erred in concluding that the Sexually Violent Predator (SVP) statute, under which the Court's order would place Mr. DeVries in outpatient treatment, contemplates the kind of custodial constraints required for placing him in the community. I have been advised that, given the Court's order, the Department has drafted the strictest possible terms and conditions for the conditional release of Mr. DeVries in order to best mitigate the risk he poses to the public health and safety. These terms include round-the-clock electronic monitoring, severe limitations on his ability to travel, inspections, counseling and drug testing.

I certainly agree that absent the strictest of terms, any community placement for Mr. DeVries would be even more ill-advised. But my question is whether the SVP statute ever contemplated this level of government oversight when it authorized the conditional release of SVPs "under supervision and treatment in the community." I do not believe that it did. If an SVP such as Mr. DeVries cannot be safely released into the community without the most extreme measures, this is not community treatment - it is community confinement. The result is excessive costs

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to the State that, in the guise of "supervision and treatment in the community," is being asked to establish what amounts to treatment institutions in the community. That could not be what the Legislature had in mind when it enacted the SVP statute.

Given his risk of re-offense, Mr. DeVries and the State would be better served if he remained at Atascadero State Hospital. I urge you to reconsider your February 24 order.

Sincerely,



GRAY DAVIS