



Law Offices of the  
Fresno County  
Public Defender

Ken Taniguchi  
Public Defender

May 15, 2008

Susan Lapsley, Director  
Office of Administrative Law  
300 Capital Mall, Suite 1250  
Sacramento, California 95814

Re: CTU2008-0129-01

Dear Ms. Lapsley:

I am a defense attorney employed by the Fresno County Public Defender's Office assigned to the representation of individuals alleged to be Sexually Violent Predators under Welfare and Institutions Code Sections 6600 et seq.

I am providing Public Comment in support of the Petition of Michael St. Martin. I have reviewed his petition and find that it succinctly sets forth the failure on the part of the Department of Mental Health to follow the procedure set forth in the Administrative Procedures Act. The "Clinical Evaluator Handbook" in question is a document which is treated as a bible by those individuals with whom the Department of Mental Health contracts to perform Sexually Violent Predator evaluations. I have personally spoken with, examined and cross-examined under oath these professionals who have each admitted that they are required to follow the protocols set for the in "Evaluator Handbook."

This "Evaluator Handbook" is clearly a regulation as defined in Government Code section 11342.600 and as such is subject to review through the Administrative Procedures Act. Further there is no exception which would exclude the "Evaluator Handbook" from consideration. This "Evaluator Handbook" is precisely the type of government protocol and procedure that should be scrutinized and subject to public comment before formal adoption since all state evaluators under the Sexually Violent Predator Act are required to adhere to its procedures.

Based upon the testimony and statements of the evaluators, they have no choice in the way they are to conduct and report their exams. They must follow the procedures and protocols set forth in the "Evaluator Handbook" even to the extent of quoting specific language in their reports to comply with the handbook. In Fresno County alone

there are over thirty individuals who have been subject to proceedings under the Sexually Violent Predator Act and in each and every case they have been evaluated by Psychologists who have been required to prepare evaluations in conformance with procedures and requisites of the "Evaluator Handbook."

Individuals coming within the purview of the Sexually Violent Predator Act must contend with communities which are fearful simply because of the label being applied to them. They are facing judges whose political lives depend upon dispensing justice with an iron hand and locking up those wrongdoers of society. The SVP respondent must also face prosecutors with political agendas to lock up those they claim are the most dangerous in society. Further with the state not providing funding for the defense of these cases there is no greater example of the overpowering might of the STATE inflicting its will on the individual. The scales of justice become more unfairly tipped when the entire premise of the case arises from a procedure and protocol dictated by a government agency which has refused to follow the law: The Administrative Procedures Act.

I would join with the petitioner in requesting that you seriously consider his claims and find in his favor. Void both present and all past editions of the "Evaluator Handbook" and require the Department of Mental Health to follow the same guidelines as all other governmental agencies and departments.

Sincerely,

Paul Hinkly  
Senior Defense Attorney

I certify that I have submitted a copy of this letter to:

Stephen W. Mayberg, Ph.D., Director  
California Department of Mental Health  
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