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Comment

Trial by medication

Forcing people with mental health conditions to take medication so they can stand trial sounds barbaric. It’s not always that simple, says **Laura Spinney**

LLOYD BARRUS stands accused in Montana of five federal crimes, including accountability to deliberate homicide relating to the death of a police officer. The charges have to do with an incident in 2017 that appears to have started in a dispute about a traffic violation. By the end of it, both Barrus’s son and Broadwater County sheriff’s deputy Mason Moore were dead.

Barrus has yet to stand trial. In 2018, psychiatrists diagnosed him with multiple mental health conditions, including delusional disorder, and concluded that he was unfit to stand trial. In April, a judge ruled that he should be forcibly medicated, so he could give his account of the incident in court. His lawyers are appealing to Montana’s supreme court.

The case throws a public spotlight on a grey area of ethics and the law. Forcing someone to take medication so that they can stand trial and potentially be sent to prison, or even in some US states to their death, may seem barbaric. But when the question is how to balance the fair treatment of vulnerable defendants and the public right to protection, there are no easy answers.

The judge in the Barrus case was exercising her right under a controversial 2003 US Supreme Court ruling, *Sell v. United States*, to overrule a defendant’s refusal to be medicated. It comes with strict criteria: that the case is important enough, that the drugs are both medically appropriate and



“substantially likely” to achieve the desired effect, and that there is no less invasive method of achieving the same end.

In the UK, the 1983 Mental Health Act allows forcible medication of people deemed at risk of harm to themselves or others. If this has the side effect of making someone fit to stand trial, so be it. Increased use of the practice is now under discussion as part of ongoing legal reforms. One concern in the UK is that the bar to be declared incompetent to stand trial is so high that it may

not protect vulnerable people from an unfair trial. Another is that the price for being protected is often indefinite incarceration in a psychiatric facility. Forced medication may actually be in some defendants’ interests.

The US experience provides evidence that forced medication can work. A 2013 study of 132 individuals treated involuntarily in the US between 2003 and 2009 found that medication improved the condition of 79 per cent of them enough to stand trial, and concluded that the *Sell* ruling was

a “clear and convincing success”.

Whether you buy that partly depends on how much you think the other 21 per cent matter. But the figures demonstrate an obvious truth: that the *Sell* stipulation that the drugs must work is hard to prove before they are given. The judge at the Barrus hearing reached her decision in part because Barrus had been involved in a similar stand-off in 2000, and medication had improved his condition enough to stand trial and be convicted.

It also isn’t clear whether, in an overburdened justice system, the *Sell* criteria are always given proper consideration. Unusually, Barrus’s judge heard nearly a week of testimony. “Most of these cases are resolved in a few hours,” says forensic psychiatrist Alan Newman of the California Pacific Medical Center, who attended the hearing as an expert witness.

In the Barrus case, the lawyers are still arguing. Perhaps that is inevitable where the messy uncertainties of human psychiatry collide with the law’s need for binary certainty. The UK and other jurisdictions might want to reflect on that, before they go further down this route. If forcible medication is the answer, a rigorous system of checks and balances must ensure it enhances justice, rather than impedes it. ■



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