

## CO-CHAIRS

Jessica Gabel  
Law, Georgia State  
University College of Law

## PANELISTS

Andre M. Davis  
Senior Judge, United States Court of  
Appeals for the Fourth Circuit

Felipe De Brigard  
Philosophy  
Duke University

Ekaterina Pivovarova  
Forensic Psychology  
Massachusetts General Hospital  
Harvard Medical School

Nicole Vincent  
Philosophy, Law and  
Neuroscience, Georgia State  
University

TWITTER  
#ANECneurolaw

## PANEL 3 TRIAL

### WHAT STANDARDS APPLY TO DANGEROUS, PRE-TRIAL DETAINEES WHEN IT COMES TO INVOLUNTARY NEUROINTERVENTION?

Jared Lee Loughner was diagnosed with schizophrenia while in custody on charge of murdering six people including a federal judge, and attempting to murder thirteen others including a Congresswoman, on Jan 8, 2011. Demonstrating violent behavior and suicidal ideation, he was found to be a danger to the community and to himself, and was medicated while detained pending trial. He argued against the lawfulness of this involuntary administration of antipsychotics. What standards apply when the individual is a pre-trial detainee? Should the Court consider competency to stand trial?

Antipsychotic medications administered to restore detainees' competency – whether voluntarily or involuntary – can have serious and even fatal side effects. For example, involuntary spasms of the upper body, tongue, throat, and eyes. Side effects can also include motor restlessness and irreversible neurological disorders.

Needless to say, an individual has a substantial liberty interest in avoiding such medication. However, these drugs are “one of the most effective means of treating and controlling a mental illness likely to cause violent behavior”, and alternatives are often inadequate or simply non-existent. Thus, detainees rely on procedural safeguards and judicial standards to protect them.

In 2012, the Ninth Circuit in *United States v. Loughner* found the Supreme Court's procedural and substantive standards in *Harper* (and not *Sell*) applied to pre-trial detainees as it did with convicted ones, when the pre-trial detainee was being medicated for their dangerousness.

Accordingly, an administrative determination (as opposed to a judicial hearing) was sufficient to observe due process in making treatment decisions. The Court also established that concerns surrounding involuntary medication orders under *Sell* need not be addressed until other procedures like *Harper* hearings (employed in cases of dangerousness) have been exhausted.

Under the current setup doctors, not lawyers or judges, determine whether an inmate should be involuntarily medicated to abate a detainee's dangerousness, and whether it is in their best interest to do so.

In making this determination, doctors relayed evidence that supported the

substantial probability that Loughner could be restored to trial competency in a reasonable period of time and would benefit from treatment:

- Loughner had not experienced any significant side effects from medication;
- Loughner was more rational and organized, holding conversations; A high percentage of individuals with
- Loughner's condition were restored to functioning competency
- In the absence of the antipsychotics, Loughner threw objects, lunged at his attorneys and suffered hallucinations;
- Minor tranquilizers or restraints are temporary in nature

