

BACKGROUND PAPER ON U.S. SUPREME COURT CASE
CHALLENGING WASHINGTON STATE'S SEXUALLY VIOLENT
PREDATOR LAW

Mark Seling, Superintendent, Special Commitment Center v. Andre Brigham Young

In 1990, the Washington Legislature enacted a mental health law known as the Sexually Violent Predators Statute. This law, the first of its kind in the country, allows courts to civilly commit and treat accused or convicted sex offenders who suffer from disorders that make them likely to commit future acts of sexual violence. The law is not intended to punish sex offenders for their crimes, but to protect the public and provide treatment for those who are committed. Since the law was enacted, 75 persons have been committed as sexually violent predators, and another 59 are awaiting commitment proceedings (figures current as of October 2000). The law has prevented some of the state's most dangerous sexual predators from committing new acts of sexual violence. Since passage of Washington's law, 15 other states have passed similar legislation.

Case Background

Andre Brigham Young is a convicted sex offender who committed six violent rapes of adult female strangers over the course of 31 years. In 1990, the state initiated sexually violent predator commitment proceedings against Young under Washington's newly enacted statute. After weighing the evidence, a unanimous jury determined beyond a reasonable doubt that Young was a sexually violent predator. An order committing him to the "control, care, and treatment" of the state Department of Social and Health Services was entered by the trial court. Pursuant to that order, DSHS placed Young in the Special Commitment Center for sexually violent predators.

Legal History

Young appealed his commitment directly to the Washington Supreme Court, arguing that the statute violated the U.S. Constitution's prohibitions on double jeopardy and *ex post facto*, or "after the fact" criminal laws. In August 1993, the court upheld the constitutionality of Washington's Sexually Violent Predators Statute.

Young then filed a habeas corpus petition in U.S. District Court for the Western District of Washington. On August 25, 1995, the federal court held the state statute unconstitutional on double jeopardy, *ex post facto* and other grounds.

In 1997, while the state was appealing that decision to the 9th U.S. Circuit Court of Appeals, a U.S. Supreme Court decision in the case of *Kansas v. Hendricks* upheld the constitutionality of a Kansas law that was virtually identical to Washington's sexual predator statute. In light of the *Hendricks* decision, the 9th Circuit remanded Young's

case to the district court for reconsideration. Based on the *Hendricks* decision, the district court rejected all of Young's claims and dismissed his petition.

On appeal, the 9th Circuit agreed that the Washington law was constitutional on its face based on the *Hendricks* decision. However, it reasoned that if the conditions of Young's confinement were punitive, then the manner in which the law was being applied to Young would render the law unconstitutional, based on the Constitution's double jeopardy and *ex post facto* clauses. As a result, the court remanded the case to the district court for an evidentiary hearing on whether the conditions of Young's confinement were punitive. The state filed a petition with the U.S. Supreme Court for review of the 9th Circuit's decision. The petition was granted on March 20, 2000.

Summary of State Arguments before the U.S. Supreme Court:

The Supreme Court will decide whether an otherwise constitutional sexually violent predator law can be rendered unconstitutional if the conditions of confinement in a facility housing committed sexual predators are determined to be punitive. The state argues that such conditions would not render the law unconstitutional. While residents are entitled to be free from punitive conditions of confinement, the appropriate solution in such a case is for a court to require improvements in the program, not to declare the law unconstitutional.

State Attorneys: Senior Assistant Attorney General Maureen Hart, Senior Assistant Attorney General William Berggren Collins, Assistant Attorney General Sarah Blackman Sappington, Special Assistant Attorney General David J.W. Hackett.

Argument:

Tuesday, October 31, 2000; United States Supreme Court

Amicus Briefs

Amicus Brief filed on Behalf of State

States of Alabama, Arizona, Arkansas, California, Colorado, Florida, Illinois, Iowa, Louisiana, Maryland, Massachusetts, Michigan, Mississippi, Missouri, Montana, Nebraska, Nevada, New Jersey, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Utah, Virginia, Wisconsin.

Amicus Briefs filed on Behalf of Andre Brigham Young

National Association of Criminal Defense Lawyers

California Atascadero State Hospital Section 6600 Civil Committees