



TB and the Law Project

Souvannarath Case Study

The story of Hongkham Souvannarath has quickly become well known in the California TB control community.¹ From July 1998 through May 1999, Souvannarath was illegally detained in the Fresno county jail due to her alleged defiance of California's TB laws. Her incarceration involved a series of missteps by county officials, so upon her release, Souvannarath filed two court cases. The first case cost the county \$1.2 million in settlement funds,² and the second resulted in an appeals court opinion ordering the Fresno Human Services System ("HSS") to cease using the county jail as a civil detention site for noncompliant TB patients.³ The Souvannarath story serves as a sharp reminder that the law is implicated in the every-day actions of the public health community.

Background

Souvannarath and her six children fled their homeland of Laos in 1984 along with a wave of refugees who were caught up in the political aftermath of the Vietnam War. Souvannarath ultimately settled in California's Central Valley, which is home to a large number of Southeast Asian immigrants. Souvannarath lives with her four daughters, two of whom were minors as of 1998. She speaks very little English.

TB Diagnosis and DOT

In February 1998, Souvannarath was diagnosed with MDR TB. She received medical care from the county health department which operates a chest clinic to treat TB patients. The TB Controller, a physician, oversees the clinic. Health orders requested by the TB Controller are issued and enforced by the local health officer.

The TB Controller prescribed Souvannarath a combination of intravenous drugs and oral medications that caused severe side effects. Souvannarath had a dim understanding of her disease and course of treatment because the chest clinic provided a Hmong translator who spoke broken Laotian. Despite the serious side effects she was suffering and despite her lack of

¹ The information in this case study is drawn from the following sources: *Souvannarath v. Hadden*, 95 Cal. App. 4th 1115 (2002); John Roemer, Reclaiming a Soul, Daily Journal, Apr. 30, 2001; *Souvannarath v. Fresno*, Civ. F-99-6655 (1999) (plaintiff's early neutral evaluation brief); *Souvannarath v. Hadden*, No. 633425-4 (Aug. 26-Aug. 27, 1999) (hearing transcript).

² See John Roemer, Reclaiming a Soul, Daily Journal, Apr. 30, 2001.

³ See *Souvannarath v. Hadden*, 95 Cal. App. 4th 1115 (2002).

comprehension about her medical situation, Souvannarath cooperated with the health care workers who administered the intravenous drugs and who gave her oral medications under DOT.

Ohio Plans

After several months of complying with a treatment regimen that was causing her to feel increasingly ill, Souvannarath made plans to move to Ohio to live with one of her sons. In her culture, sons are considered better equipped than daughters to advocate and care for their parents, so Souvannarath hoped that she would improve if she lived with a son for awhile. She informed the chest clinic of her intentions, so a nurse removed her PICC line, the TB Controller gave her a supply of medications to take with her, and the chest clinic alerted its counterpart in Ohio to Souvannarath's impending arrival. The son who was planning to pick up Souvannarath was delayed by problems at work, and Souvannarath ran out of medications while she was waiting for him. As soon as she stopped taking the medications, she felt perfectly well. She thus decided to avoid the chest clinic until she left town. Souvannarath instructed her daughters not to disclose her whereabouts to any local authority.

In early July 1998, the chest clinic got word from Ohio that Souvannarath had not shown up at her son's house. The clinic staff was worried that Souvannarath could infect her family members (including a five-year-old granddaughter), so health workers quickly tried to track her down. Souvannarath's daughters denied knowing where she was, but they suggested that the health workers call Souvannarath's sons, who had more influence over their mother. The chest clinic did not contact the sons.

Order for Examination

A field nurse finally located Souvannarath approximately two weeks later, on July 23. The next day, an HSS communicable disease specialist visited Souvannarath with a translator. The specialist served Souvannarath with an English-language order for examination instructing her to appear at the chest clinic. He explained the meaning of the order, and he warned her that a failure to appear could result in detention. Souvannarath and her daughters had trouble understanding the translator. Souvannarath did not keep her appointment at the chest clinic on July 28.

Detention Order

Upon Souvannarath's failure to appear, the TB Controller requested that the health officer sign and issue a detention order. The health officer did so, directing that Souvannarath be detained in the county jail until she completed the prescribed course of treatment (which had the potential to extend for two years). The order did not state any reasons for the detention, and it contained no reference to Souvannarath's rights under the state TB control statute to a request for release, to a hearing, and to court appointed counsel.

Incarceration

On July 30, an HSS communicable disease specialist and two police officers arrested Souvannarath at her home. They took her at gun point to the county jail after promising her that that she was only going to the hospital. When she reluctantly agreed to proceed into the jail, she was strip searched. She was then confined in a cold and dark safety cell for three days because she cried that she was afraid she would die, and a Hmong translator interpreted her cry as a suicide threat.

Once she was released from the safety cell, Souvannarath was housed in the jail's infirmary for the six months that it took to complete the intravenous portion of her therapy. According to Souvannarath, the other inmates in the infirmary were allowed to exercise and go to church, but because she could not communicate with the jail personnel, she was unable to enjoy such privileges. The few times she was taken to the county chest clinic, she was forced to walk down a major thoroughfare shackled at her wrists, ankles, and waist.

Souvannarath was ultimately placed in the general population of the county jail, where she was subject to the same treatment as the other inmates. She was allowed one-half hour visits with her daughters twice a week through a glass security barrier. She was often too weak to climb to her assigned top bunk, and she had trouble obtaining her nausea medications. One guard was able to provide occasional translation services, but most of the time, Souvannarath could not communicate her problems to the prison staff.

Release

Ten months after her arrest, Souvannarath was served with a revised detention order and was given an attorney and a hearing date. The order was drawn from a new set of forms that the county had developed for use in civil detention cases in order to ensure that the county was complying with state TB control laws. At a May 27, 1999 hearing, Souvannarath was released from jail and placed on electronic monitoring, and at a July 19, 1999 review hearing, Souvannarath was unconditionally released from detention.

Litigation

Souvannarath ultimately filed two lawsuits, one in federal and one in state court. In the federal case, Souvannarath claimed that several HSS employees had violated provisions of the U.S. Constitution and of California state law, and that she was entitled to damages in light of what she had suffered. That case settled for \$1.2 million. In the state case, Souvannarath asked the court to order HSS to cease using the county jail as a civil detention site for noncompliant TB patients. The trial court granted her request, and a court of appeals affirmed this decision.

In a hearing relating to the state case, a county health official stated, "I did not dwell into [the] individual lives nor [the] legal issues" of the patients served by HSS. The official furthered, "We're not attorneys, we're just medical providers." Moreover, the official "could not say whether any patients detained in the jail were afforded due process protections as this is a legal matter and [the official] would be unaware of that."

Questions

- What statutory provisions were implicated by the county's use of translators who were hard for Souvannarath to understand?
- What statutory provisions and constitutional principles did the health officer fail to follow when issuing the order of detention?
- What statutory provisions and constitutional principles were implicated in Souvannarath's arrest and incarceration?
- How could the health department have handled Souvannarath's case differently?