LANDMARK CASE SUMMARIES

Case Name: Frank O'Neal **ADDINGTON** v. State of TEXAS
Date, Location, Cite: 1979 TX
441 US 418, 99 S.Ct... 1804
US SUPREME COURT
Pt. committed under "clear & convincing" (& unequivocal) standard. Appealed to require "beyond a reasonable doubt" Supreme Court. said that "preponderance of evidence (PoE)" (51%) is too weak, "Beyond Reasonable Doubt"(99.9%) too strict, "Clear & Convincing" (~75%) best. Also struck the word "unequivocal" as too strict. This was a UNANIMOUS dec. Eleven states have laws that require "Beyond Reasonable Doubt". They are still valid; this case sets minimum. What would happen if a case were appealed from one of those 11? "Civil Commitment for any purpose ...requires due process protection." see also Vitek v. Jones and Cooper v. Oklahoma (criminal).

Case Name: **AETNA** v. Donald McCABE & Gale Greenberg
Date, Location, Cite: 1983 PA
536 F. Superintendent. 1342
US District Court, E.D. PA
Greenberg sued McCabe for Malpractice based on sexual contact & assault. (After she lived with him) Affair lasted 6 yrs. Aetna insured, defended him, then tried to dump based on "punitive damages belong to defendant" and sex not covered. Court said if they defended then they covered, but only for malpractice, not for punitive; also said 6 yr affair was one event. Malpractice "arose from" professional contact (Aetna contract wording), even if intentional battery. Award was $575,000, Aetna paid $250,000 of this (limit of their policy) cf Mazza v. Huffaker

Case Name: Glen Burton **AKE** v. OKLAHOMA
Date, Location, Cite: 1985 APPROVE
105 S.Ct... 1087 [BALDI-344 US 561]
US SUPREME COURT
Charged with Murder 1, 2 counts; Judge said INCOMPETENT TO STAND TRIAL-6 weeks later, Treated, returned Competent to Stand Trial/on chlorpromazine (Thorazine) no Mental State at time of offense exam was done-NGRI (Not Guilty by Reason of Insanity) plea entered, so Mental State at time of offense was *only* issue, State's Psychiatrists had no opinion since they did not examine. no testimony *On either Side* on Mental State at time of offense. Convicted, sentenced to death +1000 yrs. Appeals Court refused to hear. Supreme Court said Due Process requires the State to provide a Psychiatrist. cited. GIDEON v. WAINWRIGHT(right to assistance of counsel)-US v. BALDI (1953) says right to independent Expert, but not to Expert of Defendant's choice. More than 40 states have statutes permitting this already. cf Louisianna v. Perry

Case Name: NC v **ALFORD**
1970 NC
400 US 25, 91 S.Ct.. 160
US SUPREME COURT
Trial judge may accept a guilty plea from a competent defendant, even if Defendant continues to say he was innocent. Guilty plea was not "compelled" just because Defendant faced death penalty; was a logical choice for him. Afford was Black man charged with murder of White man, all-white jury.

Case Name: **ALLEN** v. ILLINOIS
Date, Location, Cite: 1986 IL
106 S.Ct... 2988
US SUPREME COURT
Defendant convicted of deviate sexual assault; then examined by 2 psychiatrists who said he was a sexually dangerous person. He appealed on 5th Amendment, said psychiatrist took data which incriminated him. Court said this was "civil" action, that just because he would be locked up for life in Maximum Security Forensic Hospital, it was for treatment for his own good, 5th Amendment didn't count. see SPECHT v. PATTERSON for reasonable discusion. 5-4 decision, hotly contested, and should be.

Case Name: STATE of Minnesota v. David **ANDRING**
1984 MN
342 NW 2d 128
MN Supreme Court
Defendant had some sort of sexual contact with stepdaughter & niece; voluntarily went to hospital, where he told nurse, medical student, Dr., and members of group therapy session about his acts. State subpoenaed hospital records. Court said "only name of child, parent/guardian, nature & extent of injuries, and name of reporter" can be obtained, ALL else is privileged. Groups are confidential & privileged.

Case Name: School Board of NASSAU CO FLA v. Gene H. **ARLINE**
Date, Location, Cite: 1987 FL
480 US 273
US SUPREME COURT

School teacher had reactivated Tuberculosis in '77; school fired her due to fear of contagion; she sued as a handicapped individual. under '73 Rehabilitation Act; Supreme Court said she was right; to make being contagious an exception would justify discrimination based on ignorance; "otherwise qualified, handicapped individuals are guaranteed equal treatment, due process" (this also protects the public) should be a precedent to AIDS

Case Name: Thomas A. **BAREFOOT** v. W.J. ESTELLE, Jr.
Date, Location, Cite: 1983 TX
463 US 880
US SUPREME COURT
In 1978 Barefoot was convicted of 1st degree Murder. AMERICAN PSYCHIATRIC ASSOCIATION filed Amicus Brief saying 1) Psychiatrists can't predict dangerousness 2) Psychiatrist should have to examine patient to give an opinion. The Supreme Court affirmed lower court & said "The fact that prediction of future dangerousness is difficult does not mean that it can not be made" (JUREK)-- also, hypothetical question was allowable; PSYCHIATRIST *CAN* TESTIFY TO ULTIMATE ISSUE- Justices Brennan & Marshall dissented.

Case Name: Johnnie K. **BAXSTROM** v. HEROLD
Date, Location, Cite: 1966 NY
383 US 107
US SUPREME COURT
Baxstrom was Prisoner, in a Department of Corrections psychiatric hospital; Civilly committed. at end of sentence, but left in DOC hospital because DMH didn't want him. Writs were dismissed, request for transfer denied. Supreme Court said he was denied equal protection. Other Civil committees had right to hearing, he didn't; also he was in prison after End of sentence. Led to "Operation Baxstrom." NOT SAME AS NGRI (Not Guilty by Reason of Insanity).

Case Name: Jerry W. **CANTERBURY** v. Wm SPENCE, MD & Washington Hospital Center
Date, Location, Cite: 1972 DC
464 Fed Rptr 2d 722
US Circuit Court of Appeals for DC
19 year old man had back pain. Defendant MD said he needed laminectomy & said it was no more serious than any other operation. Mother signed consent. Patient fell 1 day post-operation, became paraplegic & sued. The Court directed a verdict for defendants. On appeal it was reversed. The patient makes the decision, not thr Dr., so patient must be informed of risks. This set the "REASONABLE MAN" standard for informed consent for Rx. Many states use "reasonable Dr." cf TRUMAN v. THOMAS, (1980)-- Alabama uses reasonable man based on WINCHESTER v. BARTLETT (1988)

Case Name: James **CARTER** v. General Motors Corp. (Chevrolet. Gear & Axle)
Date, Location, Cite: 1960 MI
361 Michigan 575
Michigan Supreme Court
Plaintiff worked 1953-56 for GMC-had a "schizophrenic reaction" and claimed Workman's Compensation due to general daily emotional pressure, not a specific event. The MI Supreme Court affirmed. No single cause had to exist. Even pre-disposition wouldn't deny; benefits ended at time psychosis ended. GMC did not use an expert at all, case was decided on plaintiff's experts only. An early case. Would the Americans with Disabilities Act cover plaintiff now due to history of possible mental illness? State of MI changed laws to cover this.

Case Name: Timothy Floyd **CLITIES** v. State of IOWA D.S.S.
Date, Location, Cite: 1982 IA
322 NW 2d 917
Iowa Court of Appeals
Plaintiff was born in '52, severely mentally retarded; in '63, was put in State Facility- from '70-'75 got neuroleptics, got tardive dyskinesia; suit filed '76, in '80 Court gave $385,000 future costs & $375,000 for pain & suffering. Appealed on notification issues & excess $. Court said polypharmacy bad, used PDR- no monitoring for 3 yrs., Rx was for staff convenience. not treatment. Action only against *State*; cf YOUNGBERG v. ROMEO (82) on restraints, RENNIE v. KLEIN (81) on excess medications and a Mass. case, ROGERS v. OKIN (79) on need for guardian's consent with an incompetent pt.

Case Name: COLORADO v. Francis Barry **CONNELLY**
Date, Location, Cite: 1986 CO
107 SC. 515 - 147 U.S. 157
US SUPREME COURT
Connelly confessed to a real murder, was Marinda-ized 2 ways, still gave details without attorney. Psychotic voices "made him confess." Trial Court suppressed his confession, said it was involuntary. CO Supreme Court affirmed. US Supreme Court reversed; "involuntary" means coercive POLICE action under 14th. Amendment. "5th Amendment not concerned with moral or mental pressure to confess, only official." Waiver of Miranda requires Preponderance of evidence (PoE=51%) but less than Beyond a reasonable doubt (~99+%) This is *THE* Case for Competent to Stand Trial but questionably COMPETENT to WAIVE MIRANDA. Competent to Stand Trial and COMPULSIVE at Confession DIFFERENT Issues. (Patient pled to second degree homicide, then left CO in 1990)

Case Name: Nancy Beth **CRUZAN** v. DIR, MISSOURI DEPT OF HEALTH
Date, Location, Cite: 1990 MO
760 S.W.2d 408 (Mo '88) afmd. 110 S.Ct.. 2841
US SUPREME COURT
State Courts usually decide Right to Die; (see QUINLAN,'76) Most have felt that competent patients have right to refuse treatment and that a surrogate can decide. MO Supreme Court said there was no Clear & Convincing (~75%) evidence of this particular patient's wishes, so refused her parent's request made for her. Supreme Court said RIGHT TO DIE includes even feeding, but MO law was NOT unconstitutional just because it was tight on 14th right to not be deprived of life without due process. US Does NOT REQUIRE Clear & Convincing (~75%); Just Says States CAN Make That Rule.(5-4 decision) Conclusion:MAKE A LIVING WILL!

Case Name: Wm **DAUBERT** v. MERRELL DOW PHARMACEUTICALS, INC
Date, Location, Cite: 1993 CA
113 S.Ct.. 2786
US SUPREME COURT
Federal Rules of Evidence supersede the Frye test (qv): "If scientific... or other tech knowledge will assist the trier of fact to understand the evidence.. a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise." Rule 702 Recently, the State of California, in People v. Leahy [882 P.2d 321] has held that Frye is still the standard at a state level, at least in their state.

Case Name: Joshua **DeSHANEY** (a minor) v. WINNEBAGO CO. Dept of Social Services (DSS)
Date, Location, Cite: 1989 WI
109 S.Ct... 998
US SUPREME COURT
Joshua was beaten many times by his father. DSS knew about it, did little for 2 yrs, At age 4 Joshua was beaten so badly he was rendered mentally defective for life. Mom sued, said DSS owed a duty to protect her son. Court said that duty was to persons held (prisoners, mentally ill) but *NOT* to persons at liberty. State does not have to ensure freedom from "private violence," only attempt to help. This seems to let DSS not do the job for which it is created, but some have argued that this case should have been filed in a different manner (state/ federal).

Case Name: Margery M. **DILLON**, et al v. David Luther LEGG
Date, Location, Cite: 1968 CA
68 Calif 2d 728
CA Supreme Court
Legg killed 2 year old daughter of Dillon with car. She saw and sued for wrongful death, but also for pain & suffering for herself. The trial court said mom was outside "Zone of Danger", CA Supreme Court reversed, said Zone of Danger doesn't cover tort case. Causation & foreseeability apply -this is a breech of duty- driver has a duty to pedestrians & those with them. This became a new cause of action. The Court said emotional trauma was limited to:
1. close relative who
2. actually saw injury
prior cases had ruled that plaintiff must be in physical danger. cf Thing v. LaChusa

Case Name: Jane **DOE** v. Joan ROE, M.D. & Peter POE, Ph.D.
Date, Location, Cite: 1977 NY
400 NY Superintendent 2d 668
none (but NY calls Circuit Court Supreme)
Roe was a psychiatrist, her husband a psychologist, Treated Doe; 8 yrs later published book with details of their lives. Sold 220 copies. Defendants said Doe gave oral consent. NY has specific Statute saying Dr can't disclose anything. Court gave damages & injunction to stop sale, said oral consent was no good. Dr. has implied covenant to keep confidence. This is not a free speech issue; the book was already published. Defendant failed to show scientific value to override injunction. Would probably get the same verdict without specific law due to Hippocratic. Oath. No effort was made to pursue malpractice complaint by Plaintiff. Would Professional Lability cover??

Case Name: **DONALDSON** v. O'CONNOR
Date, Location, Cite: 1974 FL
493 F.2d 507
US Circuit Court of Appeals, 5th Circuit
Donaldson held 15 years at Chattahootchee State Hospital, but refused all treatment as a "Christian Scientist." Got "Milieu Treatment." Had worked for 13 yrs prior to commitment, had friends who would take him, was not dangerous. Started as Class Action, dropped to individual suit. Trial Court awarded compensatory & punitive damages against Superintendent O'Connor & psychiatrist. Court of Appeals said "only purpose of commitment is treatment, and pt has a CONSTITUTIONAL right to treatment," based on WYATT. See also O'Connor v. Donaldson.

Case Name: James Ed. **DROPE** v. MISSOURI
Date, Location, Cite: 1975 MO
420 US 162, 95 S.Ct.. 896
US SUPREME COURT
Defendant raped his wife, and helped 2 others rape her. Psychiatrist saw for defense, said he was Incompetent to Stand Trial, Court refused further evaluation. Drope tried to kill himself during trial, Court said this was "voluntary absence," & continued trial. Supreme Court said "Evidence of defendant's irrational behavior, demeanor at trial, prior medical opinion

are all relevant in pursuing Competent to Stand Trial; even one of these factors standing alone may be sufficient to require further inquiry."

Case Name: Monte **DURHAM** v. U.S.
Date, Location, Cite: 1954 DC
214 Fed Rptr 2d 862
US Circuit Court of Appeals for DC
Durham was arrested in 1951 for burglary. He had a long history of Serious Mental Illness / arrests. Pled Not Guilty by Reason of Insanity(NGRI) - no jury. Judge at trial said burden was on defendant to prove mental state at the time of the crime. DC used Right / Wrong & irresistible impulse tests. Appeals reversed, said "law presumes person sane until some evidence is introduced to the contrary, then burden shifts to prosecution -never to defendant." Judge Bazelon created a new test : "Defendant not Criminally Responsible if unlawful act was a *product* of Mental Disease or Defect- if no Disease or Defect, or act not a product of them, then defendant is Criminally Responsible." [These are the 'Durham rules']

Case Name: **DUSKY** v. US
Date, Location, Cite: 1960 MO
362 US 402;80 S Ct 788
US SUPREME COURT
Milton Dusky, 33 year old man, assisted 2 teenagers in raping a 16 yr. old. He was charged with Kidnapping. He had CUT schizophrenia, was found Competent to Stand Trial, got 45 yrs. Supreme Court said Competent to Stand Trial means "Defendant has sufficient present ability to consult with lawyer with reasonable degree of rational & factual understanding of proceedings against him." It is not sufficient to find him oriented to time, place, and some events. On re-trial, he still got 20 yrs.

Case Name: W.J. **ESTELLE**, Jr. v. Ernest Benjamin SMITH
Date, Location, Cite: 1981 TX
451 US 454
US SUPREME COURT
Smith was arrested for Murder 1; examined by a Psychiatrist, found Competent to Stand Trial. He was found guilty & at sentencing, the same psychiatrist testified he would be a "danger to society." Smith had not been told this Dr. would testify on this. Supreme Court said 5th Amendment rights had been violated when the patient wasn't warned, 6th Amendment rights violated because Counsel didn't know Dr. would be used, couldn't advise defendant. Some Justices felt 14th Amendment due process was violated as well- 9-0 decision.
This psychiaterist was known as "Dr. Death" as he always found all defendants dangerous and recommended execution in every case. The court reversed every death row case in which he had testified in the past, released them all.

Case Name: W.J. **ESTELLE**, Jr. v. J.W. GAMBLE
Date, Location, Cite: 1976 TX
429 US 97
US SUPREME COURT
Gamble was inmate, injured '73 on prison work detail; worked 4 hrs after injury. At the hospital, Physician Assistant sent him to his cell; 2 hrs later, he complained of intense pain, nurse gave pain medications, and he saw the MD. He was sent to his cell to rest, then 2 days later, Dr said move to lower bunk (not done). In spite of complaints of pain & medications he was sent back to work in 24 days. He refused, & was placed in Administrative segregation. Then he saw a different MD, was kept on medications for 32 days(Rx lost for 4 days). He was put in solitary for refusal to work. His complaints were ignored by guards. The Supreme Court said Administration violated 8th Amendment rights against "cruel & unusual punishment." Drs. failure was questionably malpractice, but NOT an 8TH AMENDMENT violation.

Case Name: Ann **FASULO** & Marie BARBERI v. Mehadin K. ARAFEH
Date, Location, Cite: 1977 Ct
173 Conn 473
Conn Supreme Court
Both patient. committed to Conn Valley (State) Hospital; after 13 & 26 yrs, filed writs of Habeas Corpus; law then required the patient to prove they were NO LONGER ILL, or the Superintendant made decision. Conn SUPREME Court granted Writ hearings. Commitment. only means you are ill THEN, not forever; must safeguard 14th Amendment right. Court. questioned civil commitment as a violation of civil rights, a "scheme to set the Mentally Ill apart," but didn't rule on this specifically.

Case Name: Alvin Bernard **FORD** v. Louie L. WAINWRIGHT, FLA DOC
Date, Location, Cite: 1986 FL
477 US 399
US SUPREME COURT
Ford was convicted in 1974, no insanity claim; in '82 his behavior changed- in '83 a psychiatrist said he had Serious mental illness, didn't understand why he was being executed- 3 state psychiatrists said was able to understand (competnet to be executed) - Supreme Court said 8th Amendment bars execution of insane inmate- Due process requires a hearing- dissent wanted to defer to state laws, prohibit executions of mentally ill, but use less procedure. The court felt that execution of a mentally ill person has less retribution value, fails to set the desired example, is not likely to deter others, and just "offends humanity." interesting, in that *no* scientific data proves that *any* execution deters others, and since most of world bars executions, perhaps *any* death penality "offends humanity."

Case Name: Louis **FORRISI** v. Otis BOWEN
Date, Location, Cite: 1986 NC
794 F.2d 931
US Court of Appeals, 4th Circuit
Forrisi hired as utility repairman, which required climbing ladders; he said he couldn't due to acrophobia; fired as medically unable to do job. Sued as handicapped; Court said he had no impairment in anything except this one job, had no case.

Case Name: **FOUCHA** v. LOUISIANA
Date, Location, Cite: 1992 LA
112 S.Ct... 1780
US SUPREME Court
Terry Foucha was a patient at East Feliciana State Hospital (La Maximum Secure) - His chart used "dangerousness" alone to justify stay; Court said this was not enough, needed documentation of Mental illness as well. Dozens of patient released, most are back in system now; was a procedure problem, but it is important to remember that NGI patients must be *both* ill and dangerous to continue committment.
Recently, in LA v. Perez, [94-K-0130, Jan 27, 1995] the LA Supreme Court tightened up the extent to which a District Judge has discretion in the release of an insanity acquittee. Basically, they said that if a person is now stablized and is not resonably expected to be dangerous, he/she MUST be released.

Case Name: James **FRYE** v. US
Date, Location, Cite: 1923 DC
293 F. 1013
US Circuit Court of Appeals for DC
When the question involved is outside the range of common experience or knowledge, then [experts] are needed; the thing from which the deduction is made must be sufficiently established to have gained general acceptance in the field in which it belongs. cf Daubert v. Merrell Dow

Case Name: in re Gerald **GAULT**
Date, Location, Cite: 1967 AZ
387 US 1
US SUPREME COURT
GAULT (15 year old) was arrested for making lewd phone calls- in Court with his mom, the arresting officer & probation officer (who relayed victim's version) testified. Gault had no attorney. The Judge sent him to Reform School 'till he would be 21. State law allowed no appeal. Federal appeal was lost in lower Court, but the Supreme Court reversed, saying: "Juvenile hearings must measure up to the essentials of due process. This includes questioning only in safe place after notifying parents. JUVENILES have the SAME RIGHTS AS ADULTS EXCEPT TRIAL BY JURY.

Case Name: Application of Pres. and Board of Directors. of **GEORGETOWN** COLLEGE
Date, Location, Cite: 1964 DC
331 F 2d 1000 337 US 978
US circuit Court. of Appeals for DC
25 Year old Jessie Jones lost 2/3 of her blood due to an ulcer; was a Jehovah's Witness; refused transfusion; district court J. Tamm denied (no pending case); carried to J. Wright of Circuit Court of Appeals; he personally went to the hosp., decided pt. was in no mental state to decide; signed order. Jones (after was well) asked for an en banc re-hearing. Appeal denied, and again denied by Supreme Court.; patient. never refused trans/just consent. J. had 4 different reasons to refuse; should Court. have been involved? Court can always validate their own decisions

Case Name: Salvador **GODINEZ**, warden, v. Richard MORAN
Date, Location, Cite: 1993 NV
113 S.Ct. 2680
US SUPREME COURT
Moran killed 2 men in a bar, his wife, shot himself. Two Psychiatrists said he was Competent to Stand Trial. State sought the Death Penalty, defendant then said he wanted to plead Guilty. He was sentenced to death, then appealed, saying he had been incompetent to defend himself due to Mental Illness. Appeals Court said Competency to waive rights took higher standard than Competency to Stand Trial. Supreme Court overturned this and SIELING (qv), said Competency to Stand Trial is SAME as Competent to Plead Guilty.

Case Name: **HAWAII PSYCHIATRIC SOCIETY** v. Geo ARIYOSHI, Governor
Date, Location, Cite: 1979 HI
481 F. Superintendent 1028
US District. Court. for Hawaii
HI passed a law saying Medicaid could search records to look for fraud. The Psychiatric. Society said that was a violation of both patient & Dr's right to privacy. The Court said that right of privacy outweighs the State's interest in preventing fraud. It is difficult for a patient to bring this suit without violating their own privacy, so Society was right to file it. Supreme Court has expressed that Family, marriage, parenthood & sex are areas of protected privacy. Required. "Individual articulable suspicion" to get warrant for Psychiatric Records.

Case Name: STATE of NJ v. Paul **HURD**
Date, Location, Cite: 1981 NJ
86 NJ 525
NJ Supreme Court
Jane Sell was attacked 1978, knifed. There was no robbery or rape. She was alone, Mr. Sell was asleep in the Living room. She had been married to Hurd. She didn't know who attacked her afterwards, said a "stranger." When under Hypnosis, she said it was Hurd, but after much leading. This then becames a question of recall v. confabulation- Court said for hypnotized witness must:
1. Use Trained Dr
2. Use an Expert who is independent
3. have written notification from Expert
4. have detailed story from witness by expert *before* hypnosis All contacts recorded
5. have only Expert & witness present.

Without these, hypnosis witness can't testify in NJ- well done opinion, probably good precedent.
cf People v Shirley and Rock v Arkansas

Case Name: Beverly **IBN-TAMAS** v. US
Date, Location, Cite: 1979 DC
407 Atl Rpt 2d 626
US Circuit Court of Appeals for DC
Defendant. married to husband who beat her often, had history of violence to women. Wife was pregnant when husband beat her. She shot him, was charged with Murder 2. She argued self-defense. A witness said husband begged her not to shoot. A PhD testified on "battered woman syndrome, " but judge refused to let testimony be herd saying victim was not on trial. Appeals reversed, said "expert can testify, *EVEN* TO ultimate question, where subject matter is beyond the understanding of the average layman."

Case Name: **IRVING** Independent School District v. Henri TATRO for Amber Tatro
Date, Location, Cite: 1984 TX
104 S.Ct... 3371
US SUPREME COURT
Amber was born with spina bifida, needed intermittent catherization to stay in school; school said they couldn't do this, it was medical, but Court said lay person or nurse could do it, school had to provide. However, did NOT allow parents to recover attorney's fees.

Case Name: Meghan Corinne **JABLONSKI** v. US
Date, Location, Cite: 1983 CA
712 Fed 2d 391
US Court of Appeals, 9th. Circuit.
Plaintiff's mom was dating Jablonski; In 1978(7/7) he tried to rape Plaintiff's Grand mom; went to VA (7/10) for outpatient TREATMENT; MD warned mom to "leave him." no prior records obtained; these would have showed "psychotic, homicidal, dangerous." On 7/12, Grand mom complained of long wait for next visit, so Dr. said he would see 7/14. On 7/12, Plaintiff & mom moved out; on 7/14, Dr. thought he was dangerous, but *not committable*, other Dr told mom to "stay away from Jablonski" on 7/16, Jablonski killed mom. Court. said Drs. negligent, had DUTY TO WARN even tho no spec threat, because she was foreseeable victim-EXTENDED DUTY TO WARN - cf. Tarasoff

Case Name: Theon **JACKSON** v. State of INDIANA
Date, Location, Cite: 1972 IND
406 US 715; 92 S Ct 1845
US SUPREME COURT
Mentally Retarded deaf mute, charged with 2 robberies; could not read, write, or communicate. Committed as Incompetent to Stand Trial. He said was "life sentence." IND Court said no, Supreme Court said yes; violates Due Process; If an Incompetent to Stand Trial patient can not become competent, he must either be civilly committed or released; violates right to speedy trial and also to right to be confined as a criminal only after being judged guilty. "Due process requires that nature & duration of commitment bear some reasonable relation to the purpose of commitment." Alabama requires report to Court every 90 days on any long term IST patient.

Case Name: Michael **JONES** v. US
Date, Location, Cite: 1983 DC
463 US 354, 103 S.Ct... 3043
US SUPREME COURT
Defendant arrested in 1975 for petty larceny, max 1 yr term. He was sent to St Elizabeths Hospital, then found Competent to Stand Trial in '76, found Not Guilty by reason of Insanity (NGI). He was committed back to St. Elizabeths. In '80 he sued, saying he should be held only to max time for which he could have been sentenced, then meet civil standard or be released. *ALL* appeals were denied. The Supreme Court said finding of Not Guilty by reason of Insanity (NGI) by Preponderance of Evidence (51+%) standard was enough to justify holding; indeed, Not Guilty by reason of Insanity (NGI) proves defendant is not Responsible; "sentence" is hypothetical, since Not Guilty by reason of Insanity (NGI) means he was not Guilty. The Court refused to separate violent/non-violent crime, said all are bad, all justify commitment. [State of Conn uses hypothetical sentence as standard; says civil commitment "against" pt, Not Guilty by reason of Insanity (NGI) advanced by him, different standard] this was 5-4 case; minority for Clear & Convincing (~75%) as standard for defining ill / dangerous

Case Name: **KAIMOWITZ** v. MICHIGAN Dept. of Mental Health
Date, Location, Cite: 1973 MI
#73-19434-AW(text @ 1 Men Disease Law Rptr 147)
no appeal - trial court
Lewis Smith committed as Criminal Sexual Psychopath in 1965 after he murdered & raped a student nurse. There was no hearing. In '72 he went to Lafayette Clinic as research subject to compare amygdaloidotomy v. Cyproterone Rx; Smith signed consent, his parents signed, 3 member panel reviewed & approved; Kaimowitz was attorney (also inmate?)with no connection to case, who said Smith was being illegally held- Court agreed, voided consent; violation of due process, if no hearing, no determination of guilt; Inmate or Incompetent Civilly Committed pt can't give free consent to dangerous experiment.

Case Name: COMMONWEALTH v. Kenneth **KOBRIN**, M.D.
Date, Location, Cite: 1985 MA
479 NE 2d 674
MA Supreme Court
Similar to ZUNIGA, but MA Supreme. Court. said
1. based on Psychiatric-patient privilege, patient records were not subject to disclosure to Grand Jury, but
2. records documenting appointments, fees, diagnosis, treatment plan, and somatic therapy could be required.

Case Name: **LAKE** v. Dale CAMERON, Superintendent., St. Elizabeth's Hospital
Date, Location, Cite: 1966 DC
364 F.2d 657
US Court of Appeals for DC
Bazelon Case; Senile old woman committed to St E's; family wanted her out, had no place for her, she finally died in hospital; Judge Bazelon ordered the Hospital to provide a "full range of services" to allow the "least restrictive alternative" as place to be committed.

Case Name: Gita **LANDEROS** [by her guardian] v. A.J. FLOOD, MD, etal
Date, Location, Cite: 1976 CA
131 California 69
CA Supreme Court
Plaintiff Child was born in 1970, beaten many times.; in Apr,'71, was taken to San Jose Hosp., saw Dr. Flood- lots of fractures- no x-rays or report. In July,'71, a different hospital diagnosed battered child syndrome. The parents prosecuted. (? who battered child) Action v. Flood based on negligence--pain & suffering. Trial Court dismissed, said "negligence not malpractice," but the Ca Supreme Court said further injury was foreseeable and a Jury should decide. This type law exists in every state; where therapeutic alliance ends & duty to warn begins is always a queation - failure to report is a crime

Case Name: Alberta **LESSARD**, et al v. Wilbur SCHMIDT et al
Date, Location, Cite: 1972 WIS
349 F. Superintendent. 1078
US District Court., Eastern Wisconsin
Old law allowed 145 days detention with loss of all civil rights. Court held that 10-14 days was max before a hearing; law unconstitutional. Parens patriae not arbitrary. Commitment requires at least as much protection as criminal. This case said BEYOND A REASONABLE DOUBT was standard. States that psychiatrist MUST WARN patient of 5th Amendment RIGHTS when questioning FOR COURT.

Case Name: In re Joseph E. **LIFSCHUTZ**, MD, on Habeas Corpus
Date, Location, Cite: 1970 CA
85 Cal Rptr 829
CA Supreme Court
Dr. Lifschutz treated Housek, who later sued 3rd party for emotional distress; that defendant subpoenaed Dr L's records- Dr L appeared but refused to testify, claiming Dr/pt relationship, tho' pt had not asserted it;(L. thought pt was masochistic) Dr. put in jail on Contempt- CA Supreme Court agreed- Privilege belongs to PATIENT, not DR. Since pt. disclosed treatment, Court had right to them- he intentionally refused court order

Case Name: Ruth Ann **LIPARI** & Bank of Elkhorn v. SEARS, & SEARS v.US
Date, Location, Cite: 1980 NE
497 F.Supp 185
US District Court, NE
Ulysses L. Cribbs, Jr. bought shotgun from Sears in Belview, NE in Sep,'77- had been involuntary. pt & was receiving treatment at VA. After bought gun, continued in treatment until Oct '77, quit treatment- in Nov, went into an Omaha nightclub, fired gun, killed Dennis Lipari; Wife & bank sued Sears for negligence in selling gun- Sears sued VA- then Ms. Lipari sued US- US Court, sent to trial- No duty to warn specific victims, but the public at large was at risk - should have committed. cf McINTOSH & TARASOFF.

Case Name: Jeffrey **MAZZA** v. Robt HUFFAKER, M.D. & Med. Mutual Ins.
Date, Location, Cite: 1984 NC
319 SE 2d 217
NC Supreme Court

Huffaker had sex with wife of his patient, Mazza. Mr. Mazza sued & won. He then sued to make Insurance co. pay everything *including* punative damages, Ins co fought. Court said language of contract said "all damages," this meant punitive as well. Case hinges on technical wording, ie, exact phrases, Dr. did not intend to cause harm, was negligent. Vague insurance policy is "always decided in favor of INSURED."
(see Aetna v. McCabe.)

Case Name: REX v. **McNAGHTEN** (spelling varies)
Date, Location, Cite: 1843 ENGLAND
8 Eng. Rep. 718; 10 Clark & Fin 200,210
Law Lords Council
McNaghten was a Scottish Wood-turner; he felt persecuted; killed Pvt. Secretary of Robert Peel, the Prime Minister; wanted to stop plot against him; Secretary was shot in back; died of medical malpractice (due to bleeding with leeches); Judge Tindall presided.; 9 experts-ALL found him insane; found NGRI (Not Guilty by Reason of Insanity), sent to Bedlam, went to Broadmoor in 1863, died there. Dr. Ed Monro testified; press ridiculed, even tho' both sides agreed;
FIRST APPELLATE CASE TO GIVE SUBSTANTIVE TEST FOR INSANITY.
See also McNaghten Rules

Case Name: Erik **MENENDEZ** v. SUPERIOR COURT of Los Angeles
Date, Location, Cite: 1992 CA
834 P2d 786
CA Supreme Court
Erik & Lyle Menendez killed their parents on 20 Aug, 1989. L.J. Oziel, PhD, saw both; Between 10/31 & 12/11, they told Dr.Oziel of murders, and that they would kill him, his wife, &/or his lover if he told anyone. Per Tarasoff, he warned potential victims. Court subpoenaed tapes of sessions, they said was privileged. Court said once privileged stuff told, never privileged again, and other sessions referring to those also open. Court referred to WHARTON, qv; also said can act even if therapist only one threatened.
You may see photos on Court TV

Case Name: Venkataramana **NAIDU** v. Ann D. LAIRD
Date, Location, Cite: 1988 DE
Del Supr. 539 A.2d 1064
Del Supreme Court
Dr. Naidu treated Hilton Putney at DE State Hospital. 5 1/2 months after discharge, Putney rammed car of Mr. Laird, killed him. found Not Guilty by reason of Insanity (NGI). Mrs. Laird sued state hospital for negligent release, won $1,400,000. Experts testified both ways on "should have committed." Court said decision was jury's; also, *time by itself does NOT preclude proximate cause.* Dept of Mental Health as an agency was excluded by sovereign immunity. Putney had 18 prior hospitalizations with violent behavior, had rammed others with cars while psychotic.

Case Name: Irma **NATANSON** v. John KLINE, M.D.
Date, Location, Cite: 1960 KS
350 P.2d 1093
Kansas Supreme Court
Kline gave Cobalt Rx to Natanson for breast CA. Natanson had lots of necrosis, and sued on a lack of informed consent. KS Supreme Court reversed trial Court, said first issue was *if* informed consent was obtained, then next if *negligence* occurred. Long review of medical practioner rule for informed consent. Also addressed Respondeat Superior issue.

Case Name: J.B. **O'CONNOR** v. Kenneth DONALDSON
Date, Location, Cite: 1975 FL
422 US 563, 95 S.Ct... 2486
US SUPREME COURT
Follow up to Donaldson v. O'Connor. Supreme Court side-stepped right to treatment question, saw this as liberty issue only. Used the phrase, "can't commit without more." ?? what they meant by 'more.' Said superintendent NOT personally responsible unless he knew or was malicious. Vacated damages against O'Connor. Limits the right of the State to commit & confine; put Mental illness under Fed. Civil Rights statute. See also Vitek v. Jones

Case Name: Mark Wendell PAINTER by Harold **PAINTER** v. Dwight & Margaret BANNISTER
Date, Location, Cite: 1966
IA 258 Iowa 1390
Iowa Supreme Court
Child's mom died in 1962. He lived with his dad for 1 year, then the dad left him with his Grand Parents. Father then re-married in 1964, and wanted him back. Grand Parents refused, said dad was 'flaky,' (he lived in 1/2 old building in California) Grand parents had nice farm. At trial, a psychologist said the Grand father was a "father figure." Trial Court gave custody to dad and Grand Parents appealed. IA Supreme Court gave to Grand Parents based on "best interest of child." Child actually wound up living with dad. Grand Parents didn't appeal, but under Uniform Child Custody Act, California would now have to yield to Iowa decision, unless there were new facts.

Case Name: James **PARHAM** v. J.R. etal
Date, Location, Cite: 1979 GA
442 US 584
US SUPREME COURT

GA had no specific law about release of a minor even if well; original. Court. said unconstitutional; Supreme Court said parent, or state if guardian, can act in best interest of child, even if child doesn't like it. Stopped short of requiring full hearing, but instructed GA to create periodic post-hospital reviews by neutral party. Reversed KREMENS v. BARTLEY, 1977, PA "there is a substantial liberty interest in not being confined unnecessarily for treatment"

Case Name: PEOPLE of New York v. Gordon G. **PATTERSON**
Date, Location, Cite: 1977 NY
39 NY 2d 288; 432 U.S.197
NY Court of Appeals (Highest NY Court)
Defendant killed estranged wife's lover with rifle; Psychiatrist testified to "extreme emotional disturbance," meeting NY law for manslaughter; Jury said he was Guilty, all appeals affirmed. Defendant said his due process right was violated by placing burden of proof on HIM. NY Court said that burden was on Prosecution to prove guilt, but mitigating circumstances were not the same thing, not a violation of 14th Amendment. Jury finding is one of fact, not law, not open to change. It is all right for a jury to reject an expert even without other expert if they want to.

Case Name: **PAYNE** v. TENNESSEE
Date, Location, Cite: 1991 TN
111 S.Ct... 2597
US SUPREME Court
Payne brutally killed a 28 yr old woman & her small child. Jury in death penalty hearing told of impact on rest of family. The Supreme Court *REVERSED ITSELF*, overturned Booth v. Md & SC v. Gathers, said impact *WAS* important to justice. Also said *didn't* violate 8th Amendment. Apparently, if you kill an important person, it is a more serious crime than killing someone who is unloved and unimportant!

Case Name: State of LOUISIANA v. Michael **PERRY**
Date, Location, Cite: 1992 LA
610 So2d 746
LA Supreme Court
Perry was psychotic in '81. In '83 he murdered parents, cousins, 2 year old nephew; entered Not Guilty plea over attorney's objections; In '85 was sentenced to death; went to Supreme Court, sent back without opinion; finally LA Supreme Court said "you can't execute insane" but can *NOT* force treatment in order to execute. This was position held by American Psychiatric Association, though they also wanted a Supreme Court decision requiring automatic life sentence to replace death penality for the insane, didn't get it. No one knows why Supreme Court just sent it back, but they probably couldn't decide, and didn't want to rule on such an issue without a consensus. cf AKE v. OK

Case Name: Cynthia E. **PETERSEN** v. STATE OF WASHINGTON
Date, Location, Cite: 1983 WA
100 Wash 2d 1016
Washington State Supreme Court
Burglary; 5 days after discharge, he had wreck; had flushed medications; trial Court. found for Plaintiff, State appealed, said there was no duty to warn when victim could not be foreseen; Wash Supreme Court said TARASOFF was guide; pt. was too dangerous to release, should have been committed; also said *res ipsa loquitur*; Plaintiff didn't need expert; state hospital Drs. held to same standard as private psychiatrists.

Case Name: **POWELL** v. State of TEXAS
Date, Location, Cite: 1968 TX
392 US 514
US SUPREME COURT
Defendant arrested for public drunk; said he was alcoholic, couldn't help it, cited ROBINSON v. CALIF; Court affirmed, said ROBINSON made being alcoholic (status) a crime, POWELL only made public drunk a crime; also said alcoholism not a disease, not treatable; if decided today, probably would be different, as alcoholism is in DSM-IV, Rx centers exist; most states now don't have public drunkeness, police use disorderly conduct instead. Prosecution used no expert testimony.

Case Name: John **RENNIE** v. KLEIN
Date, Location, Cite: 1981 NJ
635 F 2d 836
US Court of Appeals, 3rd Circuit
Rennie was a paranoid who refused medications; Court. said this was limited, but pt needed independent psych; Addition of medications major change; The Court gave outline to follow:
1. try to show rationale, get pt to agree
2. Treatment team does same
3. Medical Director personally examines pt. then Rx if needed
4. Medical Director must check weekly
5. Medical Director May get independent Psychiatrist.

(vacated by Youngberg v. Romeo)

Case Name: In re: Jerome **RICHARDSON**; Leonard CADE: US v. In re: Carlton ELLERBEE
Date, Location, Cite: 1984 DC
Nos. 82-940,82-942,83-146
DC Court of Appeals
DC case only; says that already committed patients can be re-hospitalized without a hearing, providing that ex parte court review occurs within 24 hours, and full hearing in 5 days. Protects Due Process.

Case Name: Lawrence **ROBINSON** v. CALIFORNIA
Date, Location, Cite: 1962 CA
370 US 660
US SUPREME COURT
CA had a law against being an addict; Larry R. was convicted based on testimony of 2 cops who said he had needle marks and admitted addiction; he said was unconstitutional- Supreme Court agreed; can't make "status" a crime, Rx and punishment different goals- POWELL v. TEXAS had act of being drunk a crime, not alcoholism This case supported move to de-criminalize public drunks

Case Name: Vickie Lorene **ROCK** v. ARKANSAS
Date, Location, Cite: 1987 AR
107 S. Ct. 2704
US SUPREME COURT
Rock shot her husband after a fight; couldn't remember details, but with hypnosis, remembered her "finger was not on trigger, gun just went off"; gun expert said this could happen with this gun; AR law precluded hypnosis per se; Supreme Court said *total* bar restricted 14th Amendment right to due process & 6th Amendment right to call witnesses; though hypnosis has weaknesses, total exclusion arbitrary; NOT THE SAME AS NON-PARTY WITNESS UNDER HYPNOSIS (see NJ v.HURD and People v. Shirley)

Case Name: In re Guardianship of Richard **ROE**, III
Date, Location, Cite: 1980 MA
421 N. EAST RPTR 40
MASS Supreme Court
Roe was pt. @ Northhampton State Hospital due to robbery & attempted Assault. He had already been diagnosed with Schizophrenia. He refused medications, said he was a "Christian. Scientist," not true. Court appointed his father to be Guardian, approve medications. MA Supreme Court said it was ok to get a Guardian, but NOT for a Guardian to decide Rx against his wishes. This can *only* be done by a Court. which must make a factual determination of patient's wishes, side effects, consequences if not treated, prognosis with Rx, religious beliefs, impact on family. Parens Patriae of State is greater than the Right to refuse treatment if COURT thinks it is needed; Court also said a Guardian should be appointed on Preponderance of Evidence (51+%) standard, *not* Beyond Reasonable Doubt. Beyond Reasonable Doubt was proper for Civil commitment. [LAW ONLY IN MASS & WORKS POORLY!!]

Case Name: Rubie **ROGERS**, etal. v. COMMISSIONER of DMH, etal.
Date, Location, Cite: 1983 MA
390 Mass 489
MA Supreme Court via US Supreme Court order
Follow up of Rogers v. Okin - Class Action over restraint/seclusion/involuntary medications-MA Supreme Court. eventually said:
1-involuntary commitment does not=incompetent to decide Rx;
2-Incompetency MUST be determined by *Court*;
3-must be adjudicated incompetent BEFORE Rx;
4-*JUDGE* MUST make substituted Judgment BASED ON ROE;
5-in non-emergency, *nothing* justifies medications without permission;
6- forced medications appropriate to prevent "immediate, substantial, & irreversible deterioration of a Serious mental illness" [LAW ONLY IN MASS-BAD CASES MAKE BAD LAW-IGNORES DANGER TO SELF OR OTHERS OR STAFF, UNREALISTIC; SO FAR WORKS POORLY!] cf Clities

Case Name: Charles C. **ROUSE** v. Dale C. CAMERON, Supt., St. Elizabeth's
Date, Location, Cite: 1966 DC
373 Fed. 2d. 451
US Circuit Court of Appeals for DC
Bazelon Case; NGRI (Not Guilty by Reason of Insanity) patient must either get Rx or be released, unless such release would present a real social menace. Rouse spent >4 yrs. in hospital on a crime that carried a max of 1 yr [tho' "sentence" not related to detention of dangerous NGRI (Not Guilty by Reason of Insanity)] This establishes right to Writ of Habeas Corpus.

Case Name: BOARD OF EDUCATION (Westchester Co, NY) v. Amy **ROWLEY**
Date, Location, Cite: 1982 NY
102 S.Ct... 3034
US SUPREME COURT
Amy was deaf; her parents wanted a signer in her classes. School said wasn't needed, had experts to back them. Parents sued. Court said *Education for All Handicapped Children Act* required a "free appropriate public education" but this did not

include services to maximize child's potential, only to get them adequate and personalized education. Amy made good grades and passed easily. 6-3 decision.

Case Name: Julie **ROY** v. Renatus HARTOGS, M.D.
Date, Location, Cite: 1976 NY
381 NYS 2d 587
NY Appellate Court
Hartogs treated Roy from 1969 - '70 with sex. The plaintiff said she was emotionally injured. Dr. Hartogs said there was no law against seduction. The Court awarded both Compensatory & Punitive damages. Appeals Court affirmed, said this was malpractice, not seduction, but dropped punitive damages, because, they said, he was incompetent, not malicious. Dr. Hartogs sued his insurance company, they said treatment with sex was not covered under professional Rx, was not "treatment"; they won. The case was made into a book & movie; Dr. Hartogs got no royalties.

Case Name: Superintendent of BELCHERTOWN state school v. Jos. **SAIKEWICZ**
Date, Location, Cite: 1977 MA
370 N.E. Reptr 2d 417
MASS Supreme Court
Defendant was 67 year old with IQ 10. Couldn't talk of communicate. Diagnosed with AMM leukemia-100% fatal, chemotherapy 50% chance of partial remission-Probate Court. appointed Guardian, who said let him die -appeal to MA Supreme Court. for definitive policy-affirmed. "Substituted Judgement Doctrine" as the right of the Court (and no one else) to determine what would have been decided by Defendant. Value of life does NOT equal quality. Cited QUINLAN ; she couldn't feel pain-Saikewicz could, needed guardian & hearing.

Case Name: People of CALIFORNIA v Manuel Jesus **SAILLE**
Date, Location, Cite: 1991 CA
54 Cal 3d 1103
CA Supreme Court
Defendant got drunk, thrown out of bar, said "I'm gonna kill you." Went home, got Assault Rifle, returned, said "I'm back" opened fire. Killed an innocent bystander, wounded guard. Convicted of murder 1st; appealed due to judge's lack of instructing jury on intoxication as a mitigating circumstance which could give a decreased sentence; Court said there is no Diminished Capacity in CA from voluntary intoxication unless it was proved to affect ability to form intent. Generally reflects a "hard stand" by the court at this time on intoxication.

Case Name: John & Annie **SANTOSKY** v. Bernhardt KRAMER, Commissioner of Social Services
Date, Location, Cite: 1982 NY
102 S.Ct... 1388
US SUPREME COURT
Children removed for neglect; NY had law that said Preponderance of Evidence (PoE =~ 51%) was rule, family appealed as they lost all contact forever with kids, said it was too serious for Preponderance of Evidence (51+%). Court agreed, said 35 states use Clear & Convincing (C&C ~75%), Federal Courts use Beyond Reasonable Doubt (Brd~95+%); therefore C&C was proper.

Case Name: Gilbert **SEILING** v. Frank EYMAN, warden, AZ state prison
Date, Location, Cite: 1973 AZ
478 F 2d 211
US Court of Appeals, 9th Circuit.
Seiling charged with Assault with deadly weapon (3 counts), Assault to commit murder (5 counts); 3/3 examining psychiatrists said was Insane on Mental State at time of offense, 2/3 said Competent to Stand Trial. Just before trail, Defendant changed plea to Guilty. later appealed, saying he was not competent to waive rights. Appeal Court said Competent to Stand Trial does *NOT* equal Competent Plead Guilty.
cf Godinez v. Moran

Case Name: PEOPLE of California v. Donald Lee **SHIRLEY**
Date, Location, Cite: 1982 CA
31 Calif 3rd 18
Ca Supreme Court
The testimony of a hypnotized witness is not generally admissible; relied on HURD, but felt that hypnosis is not even generally recognized as being at all accurate.
cf Rock v. Arkansas
(This case is fun to read, because the people are straight out of a soap-opera)

Case Name: **SPECHT** v. PATTERSON, as warden
Date, Location, Cite: 1967 CO
386 US 605
US SUPREME COURT
Specht convicted of "indecent liberties" & sentenced to 10 years; CO sex offenders act said sex offenders were a threat to the public, and could be held up to life, based on psychiatric evaluation- Supreme Court said this was a violation of due process, he had a right to trial, with attorney, right to cross-examine, appeal, etc. "sex offender has the same rights as a

defendant in murder trial"- therefore CO law was unconstitutional.
cf. Allen v. Illinois. - The more recent Hendricks v. Kansas finding subverts this.

Case Name: PEOPLE of California v. C.W. **STRITZINGER**
Date, Location, Cite: 1983 CA
688 P.2d 738
CA Supreme Court
Defendant had sexual contact with 14 year old stepdaughter, agreed for self & daughter to see psychologist who then reported daughter's comments to Sheriff. Then reported Defendant's own session; testified of these at trial. Daughter was excused from trial due to mom saying she was too upset. Supreme Court said
1. Defendant's sessions were privileged &
2. Required medical testimony to say daughter was unable to testify.

Case Name: Vitaly **TARASOFF** v. REGENTS OF UNIV OF CA., etal
Date, Location, Cite: 1976 CA
131 Cal Rptr 14, 551 p2d 334
CA Supreme Court
Prosenjit Poddartold student health he wanted to kill Tatiana Tarasoff. The psychologist told the supervising psychiatrist, who told campus cops, who checked & let Poddar go. Poddar killed Tatiana. Parents sued for "failure to warn." Trial Court said no such duty existed, but CA Supreme Court cited Simenson v Swensen, ordered trial; heard twice:
"Tarasoff #I" -"Privilege ends where public peril begins"
"Tarasoff #II"- therapist has an obligation to use reasonable care to protect potential victim. SUPER LAND MARK--created whole new cause for action, but based on Simenson v Swensen. [Links on names go to photos, thanks to Ralph Slovenko]

Case Name: Maria **THING** v. James LA CHUSA
Date, Location, Cite: 1989 CA
48 Cal 3d 644
CA Supreme Court
Ms. Thing's son was injured by car driven by La Chusa; she did not see or hear the accident, but came up shortly after and saw her son, thought he was dead; sued for negligent infliction of emotional damage. Court said requires plaintiff to observe injury when injured is
1. closely related
2. present and knows injury is occurring
3. as a result suffers serious emotional distress.
Said DILLON was hopelessly arbitrary, that most states use Zone of Danger anyway. Issue remains cloudy.

Case Name: US v. John J. **TORNIERO**
Date, Location, Cite: 1984 NY
735 Fed 2d 725
US Court of Appeals, 2nd. Circuit.
Defendant charged with interstate trans of stolen jewelry ($750,000); claimed insanity due to "Compulsive Gambling"; lots of witnesses both ways; Trial Court refused to let Compulsive Gambling defense go to jury; found guilty; appealed on grounds jury should have heard Compulsive Gambling; no connection between gambling per se and inter state trans; Court responded to HINCKLEY; refused to let Compulsive Gambling be illness; Am J Psychiatric said Compulsive Gamblers still responsible for their acts; Court commented on ALI defense (can't conform) in case where not conforming IS the crime.

Case Name: Gary L. **TRUMAN**, Jr. v. Claude R. THOMAS, M.D.
Date, Location, Cite: 1980 CA
165 Cal. Rptr 308
California Supreme Court
Defendant was a General Practitioner who saw the patient from 1963-'69. In '69 an OB-GYN Dr. found Cancer of the Cervix. The pt. died in '70, age 30. Children sued for failure to ever do a PAP smear. Defendant admitted this was usual, but was not done - appealed on failure to instruct and liability since he should have done PAP - CA Supreme Court said Dr. should give enough data for Reasonable Pt to make choice; must know dangers for Rx *AND* for not having Rx; not required to do test; didn't said if you ignored Dr., put self at peril.
cf Canterbury v. Spence

Case Name: Joseph **VITEK** v. Larry D. JONES
Date, Location, Cite: 1980 NE
445 US 480
US SUPREME COURT
Jones was mentally ill prisioner who was transferred to state hospital without a hearing. Trial Court said was unconstitutional; Supreme Court agreed. Said even a convicted felon retained the right to not be stigmatized without due process. Commitment to Mental Hosp entails a "massive curtailment of liberty" and requires due process protection. see ADDINGTON v. TEXAS & O'CONNOR v. DONALDSON

Case Name: Thomas H. **WASHINGTON** v. US
Date, Location, Cite: 1967 DC
390 FED 2D 444
US Circuit Court of Appeals for DC
Bazelon Case; Washington pled Not Guilty by Reason of Insanity(NGI) to rape, Robbery, assault; found Guilty; appealed because Psychiatrist for Defendant said mentally ill (2 for prosecution said no)- Court. said no, jury decides- expert CAN'T testify to Ultimate Question- this is a minority opinion, most courts want full testimony, as long as logical & explained; DURHAM rules were in effect.

Case Name: **WASHINGTON** v. HARPER
Date, Location, Cite: 1990 WA
110 S.Ct... 1028
US SUPREME COURT
Court said state can treat a Mentally Ill Inmate against his/her will, but state must first establish that
1. prisoner is dangerous to himself or others, or
2. seriously disruptive to environment *AND* TREATMENT is in his "medical interest."
Also did not require hearing, relied on Dr's. judgement.

Case Name: Robert P. **WHALEN** as Commissioner of Health of NY v. Richard ROE infant
Date, Location, Cite: 1977 NY
429 U.S. 589
US SUPREME COURT
NY passed law to require a copy of every Rx with a legal & illegal market- Patient. & Drs. sued, said it was Needless broad intrusion into privacy, violated. "zone of Privacy" 2 ways, both personal & right to make Rx decisions, without Government intervention- Supreme Court said this was a reasonable exercise of police powers; since info was not public, was adequate. safeguard- patient routinely disclose to Insurance Co., Health Dept; Suit that right to practice was impaired was "frivolous" Court. chose right of society to stop drug abuse over individual pt's rights.

Case Name: People of CALIFORNIA v. George **WHARTON**
Date, Location, Cite: 1991 CA
53 Cal 3d 522, 809 P.2d 290
CA Supreme Court
Wharton killed Linda Smith, convicted of Capital Murder. Defendant had seen J. Hamilton, PhD & D. Patterson, M.D., told them he might hurt her, they had warned her long before murder. At penalty phase, prosecution used the fact of this warning to help prove "premeditation" which would make it a Capital offense. Court said once a warning was made, it was not confidential; stays non-confidential after patient's death; but *ONLY* statements that "trigger" warning can be disclosed. In *THIS SPECIFIC* case, Defendant tried to use mental state, and so waived all Privilege, but warning is non-Privilege in *ANY* case.
cf Menendez

Case Name: Lois **WICKLINE** v. State of CALIFORNIA
Date, Location, Cite: 1986 CA
239 Cal Rptr 810
Ca Court of Appeals
Wickline had peripheral vascular disease, sent to hospital for an Aorto-Femoral graft. Post operation, she required re-operation, had a stormy course. Surgeon asked Medi-Cal for 8 more days. An RN said no, only 4; presented to Medi-Cal Dr over phone, he agreed. Wickline discharged, her graft clotted,she lost her leg, sued State for discharging her; Appeals Court said:
1. discharge met standard of care for Dr.
2. Medi-Cal wasn't a corporation
3. cost-containment had "not [been] allowed to corrupt
4. medical judgement."
Dr. must appeal HMO denials or is liable for problems. CF Wilson

Case Name: **WILSON** v. US
Date, Location, Cite: 1968 DC
391 F 2d 460
US Court of Appeals for DC
Defendant suffered severe head injury after crime; had true organic amnesia; Court. said "extrinsic information" was available, he could assist lawyer, was Competent to Stand Trial. On appeal, Appeal Court said yes, IF there was plenty of extrinsic data; if an amnesia victim has a "substantial possibility [he could] but for amnesia, establish a defense" he is Incompetent to stand trial

Case Name**: Howard WILSON** v. BLUE CROSS of SO. CALIFORNIA
Date, Location, Cite: 1990 CA
271 Cal Rptr 876
CA Court of Appeals
Howard Wilson, Jr was discharged form psychiatric unit after only 10 days treatment, with diagnosis of depression; Dr. wanted 4 weeks, but BLUE CROSS said no. Pt suicided. Family sued BLUE CROSS, trial Court dismissed; Court of Appeals said review agent was not entitled to dismissal just because Dr. didn't ask for review. Technically, policy (BLUE

CROSS of AL) did not require utilization review anyway. Key here is the specific contract, Dr. said BLUE CROSS had "terminated stay" by saying they would not pay for more days. Settled out of Court before re-trail. cf Wickline.

Case Name: Ricky **WYATT** by his aunt Mrs. W.C. Rawlings v. ADERHOLT (STICKNEY)
Date, Location, Cite: 1974 AL
503 Fed 2d 1305
US Court of Appeals, 5th Circuit
Started in 1970. The cigarette tax income which was earmarked for mental health,dropped, so 99 staff were fired. Bryce State Hospital had 5,000 patients, grossly inadequate living conditions. Lower Court granted an injunction and the State appealed; the 5th Circuit Court affirmed. Judge Johnson became the first Federal Judge to opine that "civilly committed patients have a constitutional right to individual treatment." (Same Judge forced Wallace to allow ML King, Jr, to march from Selma to Montgomery) Wyatt Committee was formed to watch-dog the State. The American Psychiatric Association, US Dept of Justice, and many others worked to force improved conditions. As a result, Al rebuilt ALL patient care areas, hired many new Drs., now has one of best Departments of MH in country. *All* AL DMH hospitals are JCAHO certified. If you want information on working in Alabama, click here..

Case Name: **YOUNGBERG**, Supt Pennhurst State School v. Nicholas ROMEO by his mom
Date, Location, Cite: 1982 PA
457 US 307
US SUPREME COURT
Romeo was profoundly retard, couldn't talk, do basic self care; mom worried about injuries he got, sued on 8th Amendment & 14th Amendment; right to safe conditions, freedom from restraints, and to "habilitation." Trial Court said 8th Amendment was violated, appeals reversed, US Supreme Court agreed. Said "patients have a Constitutional Right to reasonably safe conditions, etc. -*REASONABLE IS DEFINED BY QUALIFIED PROFESSIONAL - Court. must defer to Prof. Opinion;* cf. Rennie v. Klein

Case Name: **ZINERMON** v. BURCH
Date, Location, Cite: 1990 FL
110 S.Ct... 975
US SUPREME Court
Burch was admitted to Florida state hospital while "medicated & disoriented" as a "voluntary" patient. He sued for deprivation of liberty without due process. The court said he wasn't competent, but primarily looked only at deprivation of liberty as being adequately addressed with tort law. They said Fl did not fulfil its duty to protect patient, and couldn't say this was just a random act of an employee who failed to follow procedure.

Case Name: In re Subpoena on Jorge **ZUNIGA**, M.D., & Gary PIERCE, M.D.
Date, Location, Cite: 1983 MI
714 Fed R 2d 553
US Court of Appeals, 6th Circuit
Zuniga & Pierce, separately, refused Federal subpoenas duces tecum for investigation of Medicaid/Blue Cross fraud. subpoena's asked for names, dates, services to compare to records. Cases heard together, Court said these data did not fall in dr-patient privilege, this request did not violate right to privacy, 5th Amendment didn't count here because they were professional corporations, not individuals. Federal Court doesn't have any blanket privilege for Dr.
cf Commonwealth v Kobrin