

Competency to Stand Trial and Criminal Responsibility

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Indiana Prosecuting Attorneys Council



THE NEW YORK MARATHON



AGENDA

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SCOTUS



Sonia Sotomayor, Stephen Breyer, Samuel Alito, Elena Kagan,
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Ruth Bader Ginsburg



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Life Running



Right to Evaluation



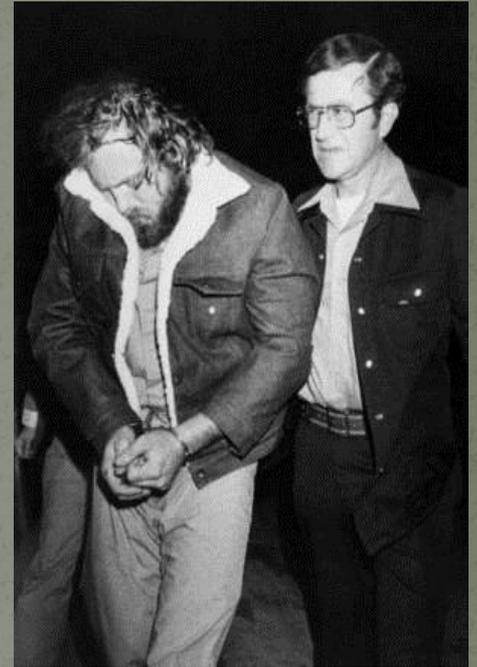
Ake v. Oklahoma, 470 U.S. 68 (1985)

Nature of Case

- Rights to prepare a defense.

Background

- Glen Burton Ake charged with murder.
- Bizarre behavior at arraignment - *sua sponte* order.
- Claimed to be “sword of vengeance of the Lord”, and that he will “sit at the left hand of God in heaven.”
- “Probable paranoid schizophrenic” and found ICST.



- Hospitalized and treated six weeks; then CST.
- Defense requested exam to assess sanity or MSO, but Ake had no money.
- Judge: no right to such assistance; denied motion for a psychiatric evaluation.
- Defense called psychiatrists who conducted CST eval, but none assessed MSO.



- MSO defense:
 - Jury: presume sanity unless evidence of not knowing “right from wrong.”
- Guilty; at sentencing government relied on psychiatrists testimony at trial he was a **“danger to society.”**
- Sentenced to death, plus 500 years for each intent to kill charge.
- On appeal, court ruled: *“The State does not have the responsibility of providing such services to indigents charged with capital crimes.”*

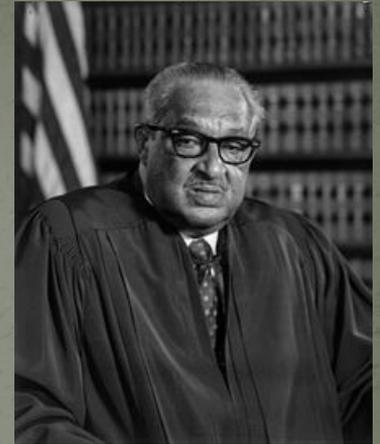


Issue

- Was fundamental fairness under the 14th Amendment violated in denying an evaluator?

Holding (8-1; Thurgood Marshall)

- Yes. With preliminary showing, the Constitution requires access to a psychiatrist's assistance “if the defendant cannot otherwise afford one.”



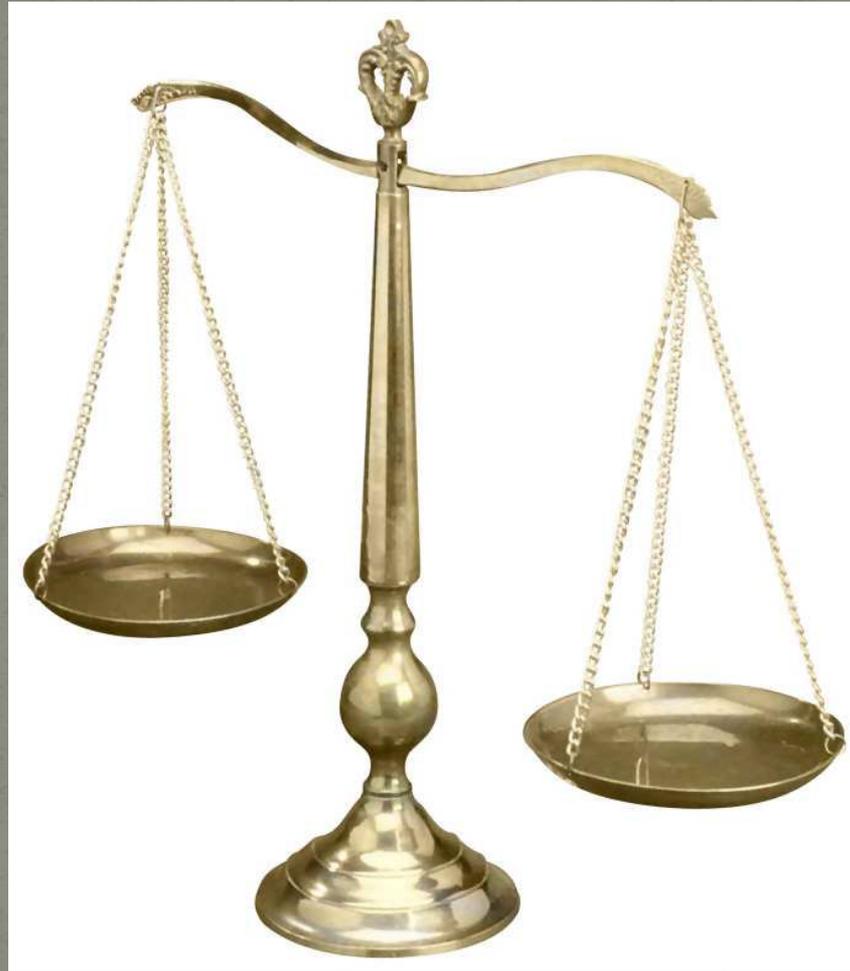
Rationale

- “Meaningful access to justice.”
- State’s interest “tempered with the interest in a fair and accurate adjudication of criminal cases.”
- Not a financial burden, although the State does not have to pay for a private evaluation.

- By comparison: transcript purchases; paternity tests.
- Over 40 states require a competent evaluator for indigent defendants.
- Justice Burger wanted limitation to capital cases, but it applies in all criminal matters.
- If the State argues dangerousness at sentencing, evaluator entitled for that purpose also.
- Dissenter? *William Rehnquist*



Standards and Burdens



Dusky v. U.S., 362 U.S. 402 (1960)

Nature of Case

- The standard or definition for CST.



Background

- Milton Dusky, age 33, charged with assisting rape of a 15-year old girl.
- He and two teen boys gave her a ride.
- Following the rape, they drove back into town.
- CST questioned; previously diagnosed alcoholism, depressive and anxiety problems at the VA and other hospitals.

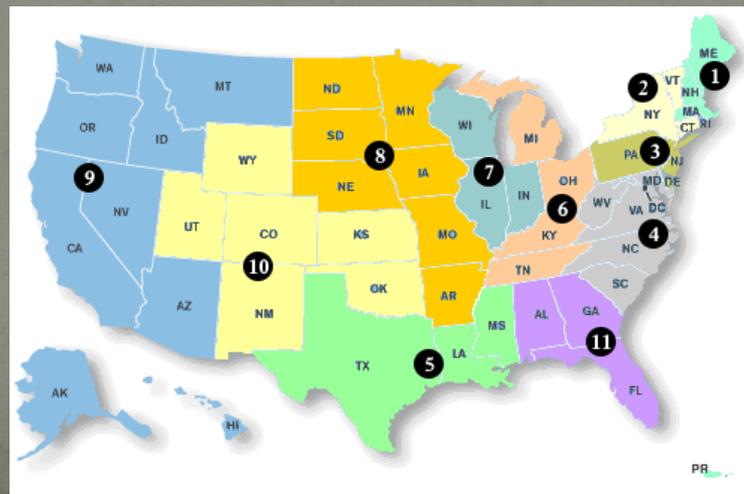
- “Schizophrenic Reaction” at USMCFP in Springfield, MO and prescribed Sparine.

Psychiatrist Dr. L. Moreau wrote:

“Psychological testing done at this institution on September 17, 22, and 24, 1958, indicate 'a personality which has decompensated to a psychotic degree of severity and thus implying the personality loss of capacity to master conflict situations and to meet reality demands.' Prominent among the test findings were evidences of fear, inadequacy, anxiety, impulsiveness, poor reality contact, lack of ego strength, auditory and visual hallucinations, depression, nervous tension, morbid preoccupation with hostility, suicide, murder, sexual indulgence succumbing to a state of insanity.

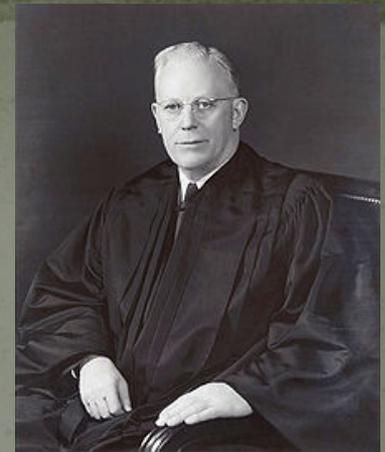


- Dr. Sturgell: ICST but had certain abilities, such as knowing the charges, the possible punishment, the role of his attorney.
- Judge ruled he was “*oriented to time and place and has some recollection of events.*”
- Pled NGRI, but was found guilty and received 45 year sentence.
- 8th Circuit denied - SCOTUS should address “sanity” definition.



Issue

- Was **due process** met by determining competency based on defendant's orientation and recollection?



Holding (9-0; Earl Warren)

- No. Minimum standard: must have a *"sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding"* and a *"rational as well as factual understanding of the proceedings against him."*
- Remanded to District Court for new hearing and a trial if CST.

Rationale

- Being oriented and able to recall details is not enough. Consultation with counsel is an essential component.
- The record was insufficient to determine CST.

AND...

- Dusky was re-evaluated and found to be CST (his attorney noted he was much better to work with).
- Found guilty and sentenced to 20 years, with parole eligibility in 5 years.
- He appealed on grounds the government did not prove he was “sane” beyond a reasonable doubt; however, the Appellate court affirmed the decision.
- No prior criminal history.
- Discharged from Navy for “psychoneurosis.”
- Co-defendants name was Richard Nixon.
- Died in 1976.

...

- Malingering?
- Letter to Red Cross:
 - "I am writing to let you know that the doctors here at the Medical Center have found me incompetent. Will this affect my compensation rating? It appears to me it should be increased. Would you please write and advise me on this matter."

Burns Ind. Code Ann. § 35-36-3-1

35-36-3-1. Ability to understand and assist in proceedings — Hearing — Appointment of medical experts — Admission of other evidence — Procedure on finding of inability.

(a) If at any time before the final submission of any criminal case to the court or the jury trying the case, the court has reasonable grounds for believing that the defendant lacks the ability to understand the proceedings and assist in the preparation of a defense, the court shall immediately fix a time for a hearing to determine whether the defendant has that ability. The court shall appoint two (2) or three (3) competent, disinterested:

(1) psychiatrists;

(2) psychologists endorsed by the Indiana state board of examiners in psychology as health service providers in psychology; or

(3) physicians;

who have expertise in determining competency. At least one (1) of the individuals appointed under this subsection must be a psychiatrist or psychologist. However, none may be an employee or a contractor of a state institution (as defined in IC 12-7-2-184). The individuals who are appointed shall examine the defendant and testify at the hearing as to whether the defendant can understand the proceedings and assist in the preparation of the defendant's defense.

(b) At the hearing, other evidence relevant to whether the defendant has the ability to understand the proceedings and assist in the preparation of the defendant's defense may be introduced. If the court finds that the defendant has the ability to understand the proceedings and assist in the preparation of the defendant's defense, the trial shall proceed. If the court finds that the defendant lacks this ability, it shall delay or continue the trial and order the defendant committed to the division of mental health and addiction. The division of mental health and addiction shall provide competency restoration services or enter into a contract for the provision of competency restoration services by a third party in the:

- (1) location where the defendant currently resides; or
- (2) least restrictive setting appropriate to the needs of the defendant and the safety of the defendant and others.

However, if the defendant is serving an unrelated executed sentence in the department of correction at the time the defendant is committed to the division of mental health and addiction under this section, the division of mental health and addiction shall provide competency restoration services or enter into a contract for the provision of competency restoration services by a third party at a department of correction facility agreed upon by the division of mental health and addiction or the third party contractor and the department of correction.

(c) If the court makes a finding under subsection (b), the court shall transmit any information required by the division of state court administration to the division of state court administration for transmission to the NICS (as defined in IC 35-47-2.5-2.5) in accordance with IC 33-24-6-3.

Pate v. Robinson 383 U.S. 375 (1966)

Nature of Case

- Referral threshold for CST evaluation.

Background

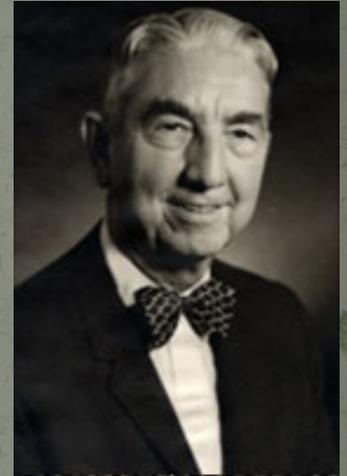
- Theodore Robinson killed his common law wife.
- CST was never requested, but competency questioned during sanity trial.
- Psychiatrist testified that 3 months earlier he was CST.
- Court said CST in light of “alertness and understanding” displayed in conversations with judge.
- TRIAL: Mom and four experts testified.



- He was convicted and sentenced to life imprisonment.

Issue

- Can a trial judge assess competency of the defendant merely by his demeanor at trial in spite of uncontradicted testimony irrational behavior?



Holding (7-2; Thomas C. Clark)

- No. A conviction of an incompetent defendant violates due process.
- The 14th Amendment requires the trial court to order an inquiry into CST any time there is a “*bona fide doubt*.”
- The prosecution or court may order an evaluation over the objection of the defense.

Rationale

- When sanity is introduced...CST must be explored.
- Fundamental fairness requires defendants not only be physically present during trial, but *mentally* present.



Drope v. Missouri 420 U.S. 162 (1975)

Nature of Case

- Standard for inquiry into CST.

Background

- James E. Drope was charged, along with four other men, with raping his wife.
- His wife testified he displayed “strange behavior.”
- Psychiatrist saw him before trial (but not for CST): “borderline mental deficiency” (as well as “Sociopathic personality” and chronic anxiety and depression).
 - **IMPRESSION:** “If it can be said that some people are born with a silver spoon in their mouth then it must be admitted that Mr. Drope was born with a fish hook in his. He has always led a marginal existence.”



- Pretrial evaluation of competency was denied.
- Day before trial, choked his wife; two days into trial he attempted suicide.
- Absence was “voluntary” and denied motion for a mistrial (even though State did not oppose).
- Convicted and sentenced to life even though he was not present for remainder of the trial.
- The Appellate court and Missouri Supreme Court affirmed.

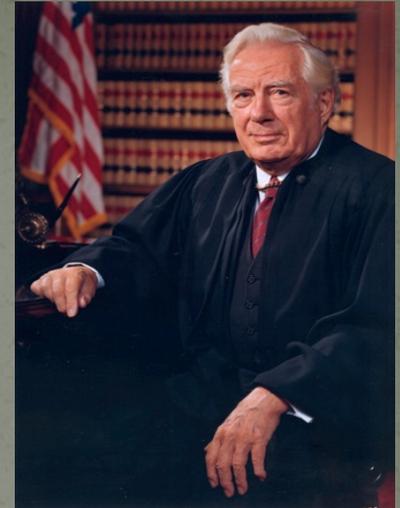
Issue



- Were defendant's due process rights violated by failure to order a competency evaluation?

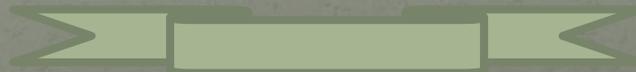
Holding (9-0; Warren E. Burger)

- Yes. Reversed and remanded.
- Missouri courts failed to give proper weight to the evidence and available data created a “*sufficient doubt*” of his competence.



Rationale

- There are “no immutable or fixed signs.”
- Suicide attempt and absence bore to his competency in two ways:
 - (1) it suggested mental instability;
 - (2) he could not be observed to determine his demeanor and ability to assist counsel.
- Demeanor during trial may be important, but “this reasoning offers no justification for ignoring the uncontradicted testimony.”



Godinez v. Moran, 509 U.S. 389 (1993)

Nature of Case

- Standard for pleading guilty and waiving counsel.

Background

- 1984 Richard Allan Moran shot and killed three people in the Red Pearl Saloon in Las Vegas.
- Found CST by two psychiatrists and pled not guilty.
- Later asked to discharge his attorneys and change plea to guilty.
- Court ruled he made his guilty pleas “*freely and voluntarily.*”
- Ultimately sentenced to death.



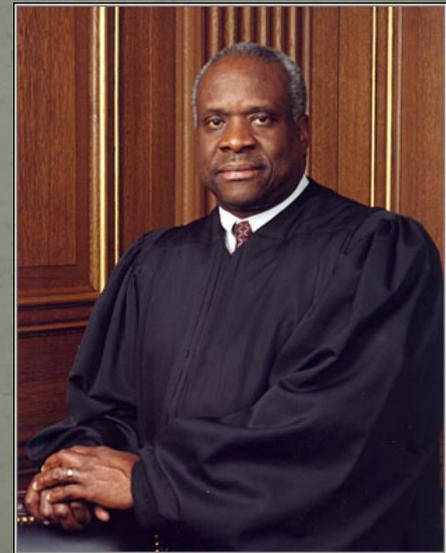
- Appeal: claimed not competent to represent himself.
- Federal District Court denied *writ of habeas corpus*.
- Reversed by Court of Appeals:
 - Due process required hearing before court accepted his decisions to waive counsel and plead guilty.
 - Wrong legal standard was used: competency to waive constitutional rights requires a higher level of mental functioning.

Issue

- Was Due Process violated by not utilizing a higher standard?

Holding (7-2; Clarence Thomas)

- No. Pleading guilty and waiving counsel does not require a higher standard.



Rationale

- Decision to plead guilty is profound, but not more so than other decisions a defendant is asked to make.
- Standard for waiving counsel or pleading guilty is no higher than that for waiving other constitutional rights.
- The “rational understanding” standard is sufficient for those who plead not guilty and guilty.
- *Dissent:* (Justice Blackmun, with Stevens)
 - “I believe the majority’s analysis is both contrary to common sense and longstanding case law.”
 - CST evaluations only addressed ability to assist counsel.
 - He wished to dismiss counsel in order to mount no defense.
 - He was on four medications and “didn’t care” what happened.
 - Competency for one purpose does not mean competency for another.



AND...

- Executed 3/30/96 by lethal injection

"You can't even begin to imagine what it feels like to know you've killed somebody," Moran said.

"Innocent people, you know, not self-defense, not some scumbag who was beating his wife and you were coming to her rescue or something."

...it's like you turned in your membership card to the human race."

"I can't say how sorry I am for what I did. I'm ashamed of myself," he said, adding that he wrote recently to a family member of one of the victims to express his remorse.



Richard Allan Moran

"My execution isn't going to fix it, but maybe it will help them ... have some peace," he said. "I'd be glad to pay that debt to them. If that helps them get a little more sleep at night, execute me today."

Cooper v. Oklahoma 517 U.S. 348 (1996)

Nature of Case

- Standard of proof in CST hearings.

Background

- 1989 Brian Keith Cooper charged with murder.
- CST was questioned on five separate occasions before and during trial.
- Despite initially ICST and conflicting testimony, court ruled he did not meet the burden by “*clear and convincing evidence*.”
- Convicted and sentenced to death.
- “Onerous burden” argument on appeal.

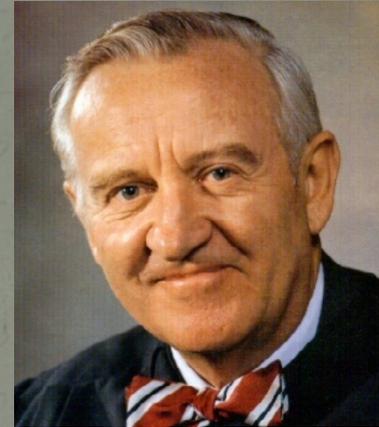


Issue

- Is due process violated if the accused has to prove incompetence by “clear and convincing evidence?”

Holding (9-0; John Paul Stevens)

- Yes. SCOTUS reversed, ruling clear and convincing standard violated due process.



Rationale

- Clear and convincing was not historically practiced by most courts; *preponderance* more widespread.
- Heightened standard posed a significant risk of an erroneous determination, while an erroneous conclusion of incompetence only presented a modest risk.

- A defendant could be put through a trial even when it is more likely than not he is incompetent.



Colorado v. Connelly, 497 U.S. 1957 (1986)

Nature of Case

- Voluntary confessions.



Background

- August 1983, Francis Connelly approached an off-duty officer in Denver and confessed to murder.
- Connelly reported he flew to Denver the previous night from Boston to confess to the killing of Mary Ann Junta in November 1982.
- After Mirandized, he was questioned as to his mental state: he denied under the influence, but acknowledged prior psychiatric inpatient.
- He was questioned a second time when a detective arrived on the scene.

- Connelly escorted officers to the crime scene.
- No symptoms during questioning, but decompensated and by the next morning claimed AH compelled him to confess or to kill himself.
- Diagnosed schizophrenia and found ICST; treated at a state hospital.
- When restored, Connelly moved to suppress his prior statements.
- Connelly's treating psychiatrist stated his command hallucinations impaired his *volitional* abilities, but not his cognitive abilities.



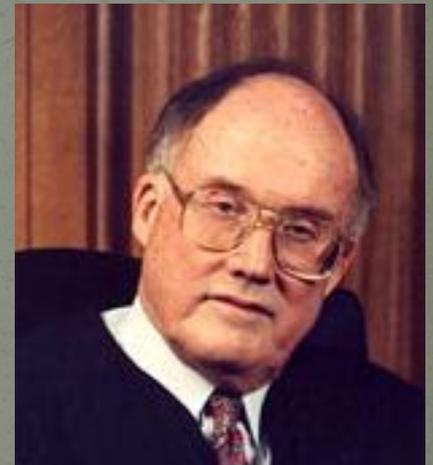
- Trial court suppressed Connelly's confession and the Colorado Supreme Court affirmed.
 - Although no police coercion was present, the admission was inadmissible.

Issue

- Is the admission of a confession made by an individual lacking free will due to mental illness, without any police coercion, a violation of the due process?

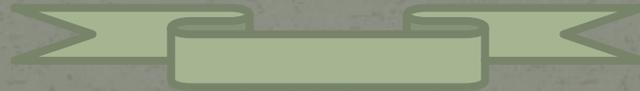
Holding (7-2; William Rehnquist)

- No. Reversed. Absent police coercion, the admission of Connelly's confession does not violate due process.
- The waiver of his Miranda rights was *voluntary*.



Rationale

- Under the Due Process Clause, certain police misconduct offends the system of law.
- Connelly's lack of free will is irrelevant to Miranda, since these rights are founded on **preventing government coercion**.
- Mental illness alone cannot make a confession involuntary, otherwise “sweeping inquiries” would need to be conducted to determine a confession's validity, which is a task better left to state evidentiary law.



Commitment and Hospitalization



Involuntary Treatment



Burns Ind. Code Ann. § 35-36-3-3

3-3. Substantial probability of attaining ability within foreseeable future — Certification to court — Temporary retention of defendant.

(a) Within ninety (90) days after:

(1) a defendant's admission to a state institution (as defined in IC 12-7-2-184); or

(2) the initiation of competency restoration services to a defendant by a third party contractor; the superintendent of the state institution (as defined in IC 12-7-2-184) or the director or medical director of the third party contractor, if the division of mental health and addiction has entered into a contract for the provision of competency restoration services by a third party, shall certify to the proper court whether the defendant has a substantial probability of attaining the ability to understand the proceedings and assist in the preparation of the defendant's defense within the foreseeable future.

(b) If a substantial probability does not exist, the state institution (as defined in IC 12-7-2-184) or the third party contractor shall initiate regular commitment proceedings under IC 12-26. If a substantial probability does exist, the state institution (as defined in IC 12-7-2-184) or third party contractor shall retain the defendant:

(1) until the defendant attains the ability to understand the proceedings and assist in the preparation of the defendant's defense and is returned to the proper court for trial; or

(2) for six (6) months from the date of the:

(A) defendant's admission to a state institution (as defined in IC 12-7-2-184); or

(B) initiation of competency restoration services by a third party contractor; whichever first occurs.

Riggins v. Nevada, 524 U.S. 127 (1992)

Nature of Case

- Involuntary treatment to maintain trial competency.



Background

- David Riggins entered a man's apartment and stabbed him to death.
- While awaiting capital trial, he complained of AH and sleep problems.
- Psychiatrist Rx Mellaril, which he taken in the past. Dose was titrated to 800 mg/day.
- After CST finding, Riggins motioned to suspend the Mellaril until after his trial, as he planned to enter a NGRI plea.

- Argued it infringed upon his freedom; its effect on his *demeanor and mental state* during trial would deny him due process; he had the right to show jurors his true mental state.
- Three doctors reached different conclusions, and the trial court denied the motion with a one page order which gave no rationale.

- Riggins testified, claiming “Wade” was trying to kill him and the voices told him that killing Wade was justified as self defense.
- Convicted and sentenced to death.
- In affirming, the State Supreme Court held, *inter alia*, that expert testimony presented at trial was sufficient to inform the jury of the Mellaril's effect on Riggins' demeanor and testimony.

inter alia = among other things

Issue

- Did forced administration of antipsychotic medication violate Riggins' trial-related rights guaranteed by the 6th and 14th Amendments.

Holding (7-2; Sandra Day O'Connor)

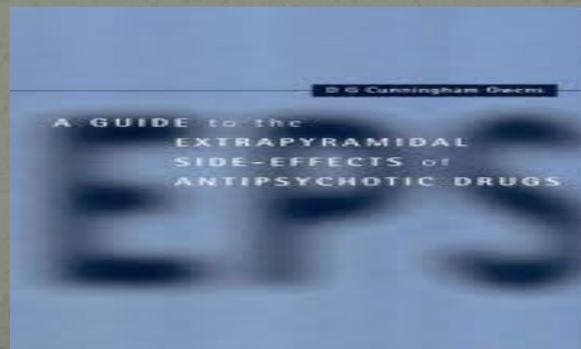
- Yes. Reversed and remanded.

Rationale

- A pretrial detainee has an interest in avoiding involuntary administration of antipsychotic drugs that is protected under the Due Process Clause (*Washington v. Harper*, 1990).
- Once Riggins moved to terminate his treatment, the State became obligated to establish both the need for Mellaril and its medical appropriateness.
- Due process would have been satisfied had the State shown medical appropriateness and considered less intrusive alternatives essential for Riggins' own safety or the safety of others.



- The State might have been able to justify treatment if shown *adjudication* could not be obtained using less intrusive means.
- Trial court also failed to acknowledge Riggins' liberty interest in freedom from antipsychotic drugs.
- Mellaril's side effects may have impacted:
 - his outward appearance;
 - his testimony's content;
 - his ability to follow the proceedings;
 - substance of his communication with counsel.



- Even if expert testimony described demeanor fairly, an “*unacceptable risk*” remained.
- Trial prejudice can sometimes be justified by an essential state interest; not on record here.



Mace J. Yampolsky



Sell v. United States, 539 U.S. 166 (2003)

Nature of Case

- Involuntary treatment to restore CST in non-dangerous defendant.

Background

- 1997 Charles Thomas Sell charged: fifty-six counts of mail fraud, medicaid fraud and money laundering.
- A dentist from St. Louis with no prior criminal history,
- History of mental illness, so federal Magistrate judge ordered psych eval.
- Deemed “currently competent”, but at risk to suffer “a psychotic episode” in the future. He was subsequently released on bail.



- Mental status deteriorated, bail revoked in 1998.
- Also indicted for plot to murder FBI agent and a witness.
- Defense requested CST eval: Magistrate found him ICST and ordered hospitalized.



- Diagnosed **Delusional Disorder** at USMCFP and recommended antipsychotic medication.
- Government sought forced medication; several hearings.
- District Court confirmed magistrate's finding to involuntarily treat (but disagreed he was dangerous).

CONFIRMED

CONFIRMED

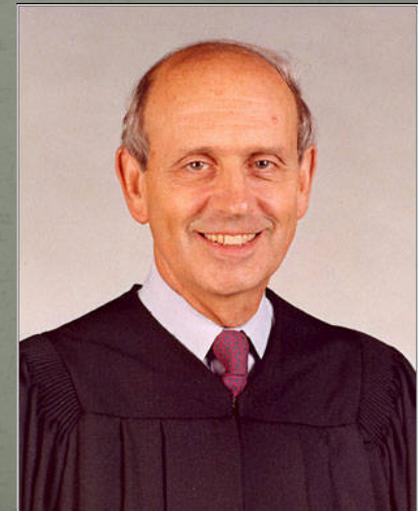
- Court of Appeals: affirmed not dangerous but he could be involuntarily medicated.
- In 2001 a request for certiorari was submitted claiming violations of the First, Fifth, and Sixth Amendments.

Issue

- Does the Constitution permit the federal government to forcibly administer antipsychotic medication to a mentally ill, but not dangerous, criminal defendant for the sole purpose of rendering him CST for serious but nonviolent crimes?

Holding (6-3; Justice Stephen Breyer)

- Yes, “in limited circumstances” and when certain criteria are met.
- Vacated and remanded on the issue of dangerousness.



Courts must find the following four factors:

1. Important **governmental interests**.
2. “**Substantially likely**” drugs will render the defendant CST; substantially unlikely side effects will interfere.
3. Alternative, **less intrusive** treatments are unlikely to achieve “substantially the same results.”
4. **Medically appropriate** (i.e., in the patient’s “best medical interest in light of his medical condition”).



Rationale

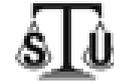
- 8th Circuit erred in allowing treatment because based it on Sell's dangerousness.
- Focus was mainly on dangerousness; not enough evidence in the record regarding the possible effect of the medication on Sell's ability to obtain a fair trial.
- Involuntary treatment for CST not necessary if alternative grounds:
 - *Washington v. Harper* (1990): danger to self, others, or gravely disabled in custody.
- Lower courts did not consider Sell had already been confined a lengthy period, and likely longer with continued drug refusal.

- On April 18, 2005, Sell pleaded no contest to fraud and conspiracy to kill a federal agent, after serving eight years without trial in federal prison.
- U.S. District Judge sentenced him to time served, six months in a halfway house and three years on parole.

Pro se and Independent Decision Making

Stu's Views

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I have a
Constitutional
right to
represent
myself.



And I have a
Constitutional
duty to advise you
that exercising
that right makes
you an idiot.



Whalem v. U.S., 346 F2d 812 (1965)

Nature of Case

- Threshold for CST hearing; imposing the insanity defense.

Background

- Thomas Whalem was charged with robbery and attempted rape.
- On *convalescent leave* from St. Elizabeth's; civilly committed in 1956.
- Government requested a CST evaluation, and he was returned to St. E's.
- Diagnosed Schizophrenic Reaction, Catatonic Type (in remission), but doctor opined the crimes were not *product* of this disease and he was CST.

- Sent to D.C. General Hospital for another evaluation.
- Report noted: “passive aggressive character disorder” and a low I.Q., but was CST.
- Neither side objected to the findings and a hearing was not requested.
- At trial no issue of insanity was raised based on Whalem’s instructions and counsel's judgment.
- Convicted by jury.
- Argued: 1956 commitment created a presumption of continuing incompetency and insanity; therefore a hearing was required.

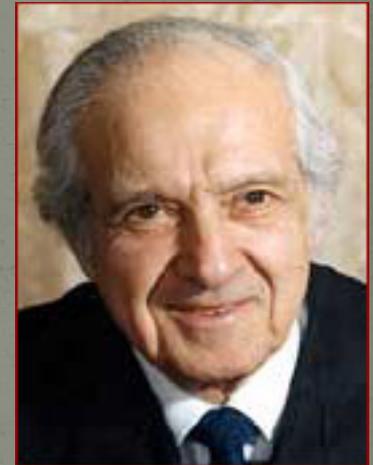


Issue

1. Whether the trial judge erred in proceeding to trial without holding a hearing to determine CST.
2. Whether the court erred by not imposing an insanity defense over the defendant's objection?

Holding (Judge David Bazelon)

1. Nothing in the record suggested "abuse of discretion" by not conducting hearing.
2. The court did not err by not imposing the insanity defense over the defendant's objections.



Rationale

- D.C. Code § 24-301(a) deals with the procedure to follow when a defendant is found *incompetent*.



- If the accused or government had objected, a hearing would be necessary.
- Congress may have “attached more horrendous consequences” to being committed than to being certified CST.
- Even though he was committed to St. E’s, he was never found incompetent.
- A trial judge is free to pursue “whatever inquiry” into the question of an accused's competency she feels necessary.

- Sanity: *“Just as the judge must insist that the **corpus delicti** be proved before a defendant who has confessed may be convicted, so too must the judge forestall the conviction of one who in the eyes of the law is not mentally responsible for his otherwise criminal acts.”*
- However, question is whether combination of factors required the judge to inject the insanity issue:
 - both hospitals negated an insanity defense;
 - the trial judge reminded the defense during trial to raise the insanity issue if they planned to do so;
 - defense counsel and the defendant agreed during the trial not to raise the issue;
 - no request for insanity instructions for the jury was made.

AND...

- Judge Bazelon was the youngest appointee to the D.C. court at age 40.
- He and the D.C. court was among the most influential outside of SCOTUS.
- He authored several mental health and social science decisions, including treatment in the least restrictive environment (*Lake v. Cameron, 1967*).
- He was the only non-psychiatrist included in the first U.S. Mission on Mental Health to the USSR in 1967.
- A lecturer in law and psychiatry at Johns Hopkins University, the University of Pennsylvania and the Menninger Clinic.
- He was an active member of the American Orthopsychiatric Association, serving as its president from 1967-1970.

Faretta v. California, 422 U.S. 806 (1975)

Nature of Case

- Right of competent defendant to proceed *pro se*.



Background

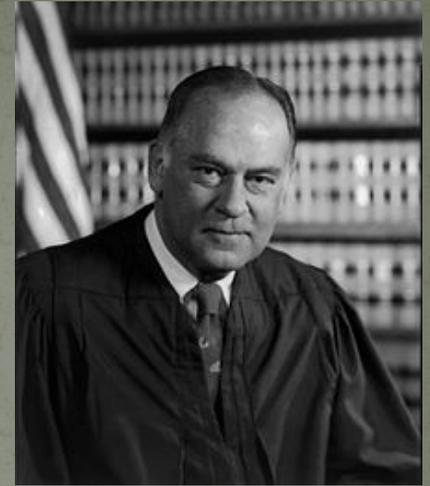
- Anthony Faretta was accused of grand theft in Los Angeles.
- Before trial, he requested permission to represent himself.
- Questioning by the judge revealed:
 - Faretta had once represented himself;
 - he had a high school education;
 - he did not want to be represented by the public defender because that office had "...had a heavy case load."
- After admonition, the court granted his request, but reserved the right to reverse its ruling at a later date.

- Several weeks later: *sua sponte* hearing into his ability to conduct a defense.
- The judge questioned him about both the hearsay rule and challenging jurors.
- Court considered his answers and demeanor: ruled he had **not** made an “intelligent and knowing” waiver.
- Also ruled: no constitutional right to conduct his own defense.
- Jury conviction.
- Judgment was affirmed by the Court of Appeal, and the Supreme Court of California denied review.



Issue

- Did the trial court err by denying Faretta's right to self representation under the Sixth Amendment?



Holding (6-3; Potter Stewart)

- Yes. A defendant in a state criminal trial has the constitutional right to refuse appointed counsel and conduct the trial when he or she *voluntarily* and *intelligently* elects to do so.
- However, such a defendant may not later complain he received ineffective assistance of counsel.
- Technical knowledge not necessary.

Rationale

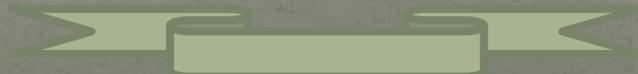
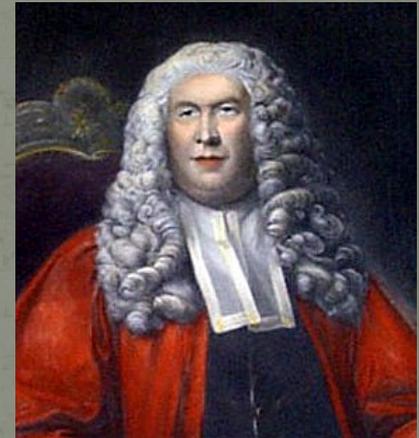
- The Constitutions of 36 States explicitly confer that right.

- Many state courts have expressed the view the Constitution grants the right.
- The right of self-representation “finds support in the structure of the **Sixth Amendment**,” as well as in English and colonial jurisprudence.

Sixth Amendment

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

- The court brought analogies to the **Star Chamber**, saying "the Star Chamber has, for centuries, symbolized disregard of basic individual rights."
 - English court of law that sat at the royal Palace of Westminster until 1641.
 - Set up to ensure the fair enforcement of laws against prominent people.
 - Court sessions were held in secret, with no indictments, no right of appeal, no juries, and no witnesses.
- Dissent: Justice Blackmun: "If there is any truth to the old proverb 'one who is his own lawyer has a fool for a client,' the Court by its opinion today now bestows a *constitutional* right on one to make a fool of himself."



Freundak v. U.S., 408 A.2d 364 (D.C. 1979)

Nature of Case

- Competency to waive the insanity defense.

Background

- Paula Freundak was charged with the murder of her coworker on January 15, 1974.
- She fled the U.S. but was arrested approximately one month later in Abu Dhabi.
- Her CST was evaluated four times, with the final determination being CST.
- After being found guilty of murder, the court held a second hearing regarding NGRI



- Expert and lay testimony supporting an insanity defense was introduced; in contrast, Friendak maintained her innocence and argued she was being framed.
- Despite her opposition, the judge imposed the insanity defense.
 - Based on *Whalem v. U.S.* (1965), arguing the judge has the responsibility of ensuring that an unjust punishment is not imposed.
- Friendak appealed her decision and the validity of the *Whalem* rule, in which she was joined by the government.

Issue

- May the court impose the insanity defense upon a defendant who has been found competent to stand trial?

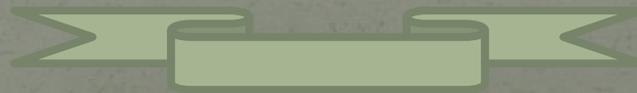
Holding (John M. Ferren)

- No. The court must respect the right of a competent defendant to reject an insanity defense.
- But CST is not sufficient to show defendant has this capacity; rather the judge must also assess if defendant can intelligently and voluntarily make this decision.

Rationale

- Case law post-*Whalem* emphasized defendants' rights to make decisions central to their defense, and thus casted doubt on the validity of the *Whalem* rule.
 - *North Carolina v. Alford* (1970)
 - *Faretta v. California* (1975)
- Decision did not abolish the *Whalem* rule, but instead required courts to “conduct an inquiry” into the quality of a defendant’s decision before imposing the insanity defense.

- The court listed several advantages to rejecting the insanity defense, including:
 1. an insanity acquittal may increase the period of confinement over prison sentence;
 2. better treatment may be received in a prison than a mental hospital;
 3. the defendant may want to avoid the stigma associated with a mental disorder;
 4. commitment may result in loss of other rights, such as a driver's license;
 5. the defendant may regard the crime as a political or religious act.



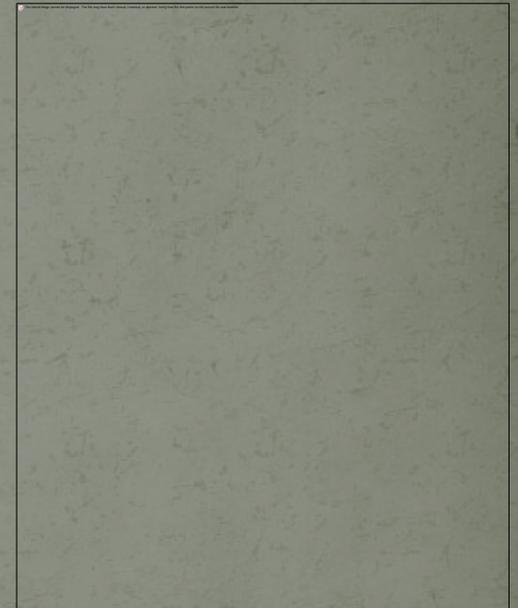
Indiana v. Edwards, 554 U.S. 208 (2008)

Nature of Case

- Requiring higher standard for self-representation.

Background

- On July 12, 1999 Ammad Edwards was charged with attempted murder, battery with a deadly weapon, and criminal recklessness and theft during an attempt to steal a pair of shoes.
- Three hearings regarding CST held, which resulted in two hospital commitments.
- Following treatment and an improved mental state, he was found CST.
- He then requested to represent himself and time to prepare his defense.



- Court denied both requests; Edwards was convicted of criminal recklessness and theft.
- Jury could not reach a verdict on the murder and battery charge, so the State retried him.
- He again requested to represent himself and was denied.
- He was convicted of battery and murder.

Issues

1. May States adopt a higher standard for measuring competency to represent oneself at trial than for measuring competency to stand trial?

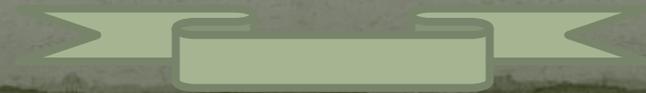
Holding (7-2; Stephen Breyer)

- Yes. Constitution allows the State to consider the defendant's mental capacities when determining whether to permit a defendant to represent himself.
- Competence of self-representation is more rigorous than that required to stand trial.

Rationale

- Precedent (e.g., *Dusky*, *Faretta*) indirectly suggests competency to defend oneself is separate from CST.
- Mental illness is fluid and variable, and has the potential to affect various competencies differently.
- Proceeding without counsel creates different circumstances than those intended by these definitions.

- Many existing definitions of competency emphasize the presence of legal counsel.
 - Florida:
“...disclose to counsel facts pertinent to the proceedings at issue”
 - Georgia:
“whether the accused is capable of rendering to counsel assistance in providing a proper defense.”
 - Alaska:
“A defendant is able to assist in the defense even though the defendant's memory may be impaired, the defendant refuses to accept a course of action that counsel or the court believes is in the defendant's best interest, or the defendant is unable to suggest a particular strategy or to choose among alternative defenses.
- Self-representation without competency fails to uphold the dignity of the court and defendant's right to a fair trial.





Criminal Responsibility



INSANITY DEFENSE

i'm working on it

Themes in criminal responsibility:

- Evil Intent – *mens rea*
- Knowledge (M’Naghten)
- Product (Durham rule)
- Volition – irresistible impulse or lack of will (ALI)

Weather

Today—Mostly sunny and pleasant, high 75-80, low tonight 48-54. Chance of rain is near zero today, 30 percent tonight. Wednesday—Showers and mild, high 72-76. Yesterday—3 p.m. AQL: 25; temp. range: 67-60. Details on Page B2.

The Washington Post

FINAL

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104th Year No. 116

1981 Washington Post Co.

TUESDAY, MARCH 31, 1981

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20c

Reagan Wounded by Assailant's Bullet; Prognosis Is 'Excellent'; 3 Others Shot

By David S. Broder
Washington Post Staff Writer

President Reagan survived an assassination attempt yesterday when a revolver-wielding gunman waiting among reporters and photographers on the sidewalk outside the Washington Hilton hotel fired a bullet into his chest.

The same assailant critically wounded White House press secretary James S. Brady and felled a Secret Service man and a Washington policeman.

In the 70th day of his presidency, Reagan underwent three hours of surgery at George Washington University Hospital to remove the bullet that entered under his left armpit, struck his seventh rib and burrowed three inches into his left lung.

On his way into surgery, the president gamely reassured friends: "Don't worry about me. I'll make it."

At 7:25 p.m., five hours after the shooting, the president was out of surgery and in stable condition. Dr. Dennis O'Leary told reporters the 70-year-old chief executive's "prognosis is excellent," adding that "at no time was he in serious danger." O'Leary said the president was "clear of head and should be able to make decisions by tomorrow." But he said Reagan may be in the hospital for two weeks and would not be "fully recovered" for perhaps three months.



Secret Service agents shove President Reagan into his limousine after he was shot. At right, John W. Hinckley Jr., of Evergreen, Colo., was held in shooting.

The president's good spirits survived the traumatic day. At 8:50 p.m., according to White House aide Lynn Noviger, with drainage tubes still in his throat, Reagan wrote a note to his doctors saying: "All in all, I'd rather be in Philadelphia." The line is a classic uttered by W.C. Fields when facing a lynching in "My Little Chickadee."

Vice President Bush, at a White House briefing held after his rushed return to the city, said he was encouraged by the medical reports and anticipates a "complete recovery" by the president.

"I can reassure this nation and a watching world that this government is functioning fully and effectively," Bush said.

Police subdued the suspected assailant on the scene. He was later identified as John Warnock Hinckley Jr., the 25-year-old son of a wealthy Evergreen, Colo., oil executive.

About midnight, Hinckley was formally charged in U.S. District Court here with the attempted assassination of a president and assault on a federal employee, the Secret Ser-

vice agent. The suspect was being held without bond at an undisclosed location, and U.S. Magistrate Arthur L. Burnett, at the government's request, ordered that Hinckley undergo a psychiatric examination today and return for a preliminary hearing Thursday.

Sources said last night that the initial determination of the Justice Department was that the suspect had been acting alone.

Police said six shots were fired from a .22-caliber blue-steel revolver that Hinckley had purchased from Rocky's Pawn Shop in Dallas last Oct. 13.

A spokesman for the Hinckley family told reporters the suspect had been under psychiatric care, but offered no further details. A family spokesman in Colorado, attorney James Robinson, said the young man's family is "grieving and heartbroken by the tragedy. They love their son and will stick by him. Their hearts and prayers go out to the president and other victims of the shooting."

The Nashville Tennessean reported that a man of that name had been arrested at that city's airport last Oct. 9 with three guns in a suitcase. Two of the guns confiscated in Nashville were the same model .22-caliber revolvers used in the attempt on Reagan yesterday. President Carter had arrived in Nashville two hours before the arrest.

See PRESIDENT, A8, Col. 1



Recently Under Psychiatric Care

Suspected Gunman: An Aimless Drifter

By Ron Shaffer and Neil Henry
Washington Post Staff Writers

John Warnock Hinckley Jr., charged in the attempted assassination of President Reagan, had been

Law enforcement officials said that Hinckley had been in Washington only one day before the assassination attempt, staying at the Park Central Hotel at 18th and G streets NW. He

man for the Hinckley family, said in Colorado that Hinckley had been under psychiatric care, but he refused to provide any other details last night.

Although the exact date of his

Weather

Today—Mostly sunny, with a chance of evening showers. High 83-85, low tonight 60-65. Chance of rain is 30 percent this evening. Wednesday—Mostly sunny, high 75-80. Yesterday—4 p.m. AQI: 60; temp. range: 87-67. Details, C2.

The Washington Post

FINAL

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105th Year

No. 199

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25c

Hinckley Found Not Guilty, Insane

Courtroom Erupts With the Verdict

By Neil Henry
Washington Post Staff Writer

At 7:54 last night John W. Hinckley Jr. rocked gently on his heels as he stood before judge and jury in the center of Courtroom 19. His hands were clasped tightly before him. His head was shaking slightly from side to side. He glanced to the ceiling for a moment, then down at the floor as the jury's verdict was rendered aloud.

"As to the first count," began Judge Barrington D. Parker in a gruff and staccato voice, "not guilty by reason of insanity."

The courtroom, only seconds earlier so tense and silent, suddenly erupted in a myriad of emotions. There were gasps of astonishment from the gallery, increasing with every not guilty count announced by the judge. A defense attorney could not suppress a wide smile. Hinckley's parents, seated stiffly in the second row, held their hands to their faces and began weeping softly. Their son, clad in a beige suit and brown tie, took a deep and audible sigh, then closed his eyes and tilted his head back as if in prayer.

Within a few minutes the verdict was in: not guilty by reason of insanity on all 13 counts.

The parents embraced. The defendant lowered his head. The courtroom was alive with the electricity of the moment. Anxious whispers and interjections came from everywhere. Judge Parker, inate over the emotional response in his chambers, admonished security workers. "Mr. Marshall," he growled, "if you can't keep order then get someone who can."

Minutes later the judge left the bench, the jury filed out, Hinckley was again escorted to the basement cellblock by seven U.S. marshals, and reporters dashed for the hallways. The stunned prosecutors disappeared through a side exit without comment and the Hinckleys, still hugging and weeping, were left alone in the quiet of the court.

So ended the odyssey of John W. Hinckley Jr., a confused 27-year-old wanderer and would-be artist from suburban Denver whose disturbed

See SCENE, A12, Col. 1



By Andy Siskin for The Washington Post

John W. Hinckley Jr. shook his head, sighed, looked up at the judge and then wiped tears from his eyes as he heard the verdict.

Sanity Evidence Was Lacking, Juror Says

By Martin Weil and Judith Valente
Washington Post Staff Writers

A lack of firm evidence indicating that John W. Hinckley Jr. was actually sane, as the prosecution contended, was cited last night by one of the jurors in his trial as a main reason for their not guilty verdict.

"There was not enough evidence that he was sane," juror Virginia N. Smith told a reporter from her brick house in the middle-class Woodridge section of Northeast Washington.

"All the psychiatrists found that there was a mental disorder," Smith said. In reviewing the six weeks of testimony heard during the highly publicized trial,

"The defense psychiatrists, the prosecution psychiatrists all found a mental disorder," the 61-year-old juror said. "... it was the consensus of all the psychiatrists that there was a mental disorder."

In discussing her role and that of her fellow jurors in the trial, which had been seen as a crucial test of the insanity defense, Smith said, "You have to go on the evidence, not your personal feelings."

Smith, listed as a retired government employee, said she believed Hinckley "was a disturbed person mentally." Only the degree of his disturbance was in dispute, she said.

None of the jurors reached by The Post discussed the process used by the jury during the 24 hours of deliberations, conducted over four days, that led to the verdict that Hinckley was not guilty because he was legally insane when he shot President Reagan and three others.

But it appeared the intensity of deliberations reached a peak yesterday. Contacted by telephone, the mother of juror Lawrence H. Coffey said her son looked away and drained when he returned last night to their Annapolis home.

"Mama, you just don't know what we went through today," she quoted her 22-year-old son as saying.

Will Be Committed To St. Elizabeths

By Laura A. Kiernan and Eric Finin
Washington Post Staff Writers

John W. Hinckley Jr. is not guilty of attempting to assassinate the president because he was legally insane at the time he shot President Reagan and three others, a federal jury found last night.

Hinckley, his hands shaking, began to wipe his eyes as Judge Barrington D. Parker declared in a brusque voice that the jury had found Hinckley "not guilty by reason of insanity" on each of 13 counts in connection with the wounding of Reagan, presidential press secretary James Brady, D.C. police officer Thomas K. Delahanty and U.S. Secret Service agent Timothy McCarthy on March 30, 1981.

The jury's verdict, which cannot be appealed, means that Hinckley, a 27-year-old college dropout who faced life in prison if he had been convicted, will be committed by the court to St. Elizabeths Hospital for the mentally ill.

Within 60 days, the court must hold a hearing to decide whether he should be released because he is no longer a danger to himself or the community due to mental illness. If the court determines that Hinckley is dangerous he will remain at St. Elizabeths.

In that event, he will have the right to request a rehearing on his mental status every six months.

The jury reached its verdict at 6:30 p.m. yesterday after 24 hours of deliberation over four days. It took nearly 1 1/2 hours from the time the verdict was decided for marshals to assemble the prosecution and defense teams, Hinckley's parents and a large group of reporters in the courtroom.

While marshals hushed the crowd, the jurors filed in at 7:50 p.m. Moments later, a stern-faced Parker entered and announced that a verdict had been reached. The jury foreman and Hinckley were ordered to stand. Juror Lawrence H. Coffey, 21, stood and turned over the verdict to Parker's courtroom clerk, who handed it up to the judge.

See HINCKLEY, A12, Col. 1

“John Hinckley Jr. is as sane as any member of the President’s Cabinet.”

Attorney General Edwin Meese, 1981



Insanity Defense Reform Act, 1984 (IDRA)

- Federal standard changed:
 - As a result of a severe mental disease or defect, the defendant was “unable to appreciate the nature and quality or the wrongfulness of his acts. Mental disease or defect does not otherwise constitute a defense.”
- Burden shifted to defense to establish by “*clear and convincing evidence*;”
- Limited the scope of expert testimony on ultimate legal issues;
- Eliminated the defense of diminished capacity;
- Created a special verdict of “not guilty only by reason of insanity,” which triggers a commitment proceeding.

Clark v. Arizona, 548 U.S. 735 (2006)

Nature of Case

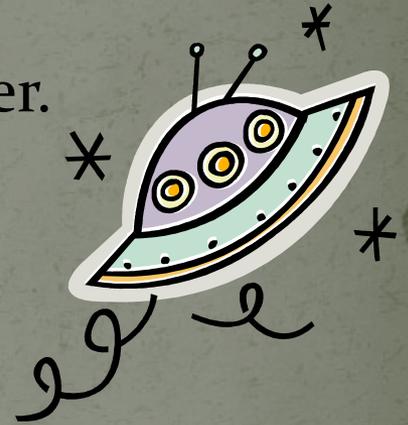
- The constitutionality of Arizona's insanity defense and the right to present evidence.

Background

- On June 21st, 2001 in Flagstaff 17-year old Eric Clark drove his brother's truck around the neighborhood for 40 minutes, blasting music.
- Officer Jeffrey Moritz responded to 9-1-1 calls.
- When he pulled his vehicle over, Clark shot him several times and he died.
- By all accounts, Clark suffered from Paranoid Schizophrenia and was psychotic at the time.



- Delusions involved aliens invading Earth who were impersonating police officers trying to capture and kill him.
- Clark was found ICST but restored two years later.
- 1993 Arizona law: “guilty except insane” if he did not know the criminal act was **wrong**.
- During bench trial, the defense argued Clark did not have the *specific intent*.
- Prosecutor urged under *State v. Mott* (1997): delusional evidence would be considered “*diminished capacity*.”
- Arizona law did not permit evidence on *mens rea*.



- Guilty of 1st degree murder, and found he knew right from wrong.
- Defense challenged a 1993 amendment to Arizona's insanity rule, which removed reference to the cognitive element of the M'Naghten test.

Issue

- Did Arizona's law violate Clark's 14th Amendment right to due process by excluding evidence to rebut *mens rea* (criminal intent)?

Holding (5-4; David Souter)

- No. Affirmed.
- Due process does not prohibit Arizona's use of the insanity test solely in terms of the capacity to understand a crime as right or wrong.



David Souter. Source: Wikimedia Commons.

Rationale

- History showed no deference to M'Naghten that could elevate its formula to the level of “**fundamental principle.**”
- There are significant different approaches to the sanity test, with several strains.
 - 14 States and the Federal Government use M'Naghten.
 - 25 States and D.C. use ALI standard.
 - There are diverse insanity verdicts as well.
- Since allowing mental disease evidence on *mens rea* could easily mislead, it was not unreasonable to confine to insanity defense.
- Evidence going to cognitive incapacity has the same significance under the abbreviated version of the test.
 - *If a defendant did not know what he was doing, he could not have known it was wrong.*

- "If [Clark] did not know he was shooting at a police officer, or believed he had to shoot or be shot, even though his belief was not based in reality, this would establish that he did not know what he was doing was wrong."
- Clark could point to no evidence bearing on insanity that was excluded.
- Evidence tended to support a description of Clark as lacking the capacity to understand that the police officer was a human being.
- DISSENT: (Kennedy)
 - "In my submission the Court is incorrect in holding that Arizona may convict petitioner Eric Clark of first-degree murder for the intentional or knowing killing of a police officer when Mr. Clark was not permitted to introduce critical and reliable evidence showing he did not have that intent or knowledge ."

Commitment and Hospitalization



Jones v. U.S. 463 U.S. 354 (1983)

Nature of Case

- Standard of proof and length of involuntary commitment for NGRI acquittees.



Background

- On September 19, 1975, Michael Jones was arrested for attempting to steal a jacket from a department store.
- Arraigned the next day in the D.C. Superior Court on attempted petit larceny charge (a misdemeanor with a maximum sentence of one year).
- Committed to St. Elizabeth's hospital for CST eval.
- On March 1, 1976, the psychologist opined CST, but his alleged offense was "the product of his mental illness (Schizophrenia, paranoid)."

- After declared CST, Jones pled NGRI and the Government did not contest the plea.
- The Superior Court found Jones NGRI and committed him back to St. Elizabeth's.
- On May 25, a 50-day hearing was held, and Jones was found to be “a danger to himself or others” because of his mental illness.
- On February 22, 1977, at second release hearing (with new counsel), Jones' counsel demanded his release unconditionally or have a civil-commitment hearing.
- The Superior Court denied the civil-commitment hearing and reaffirmed Jones' continued commitment.



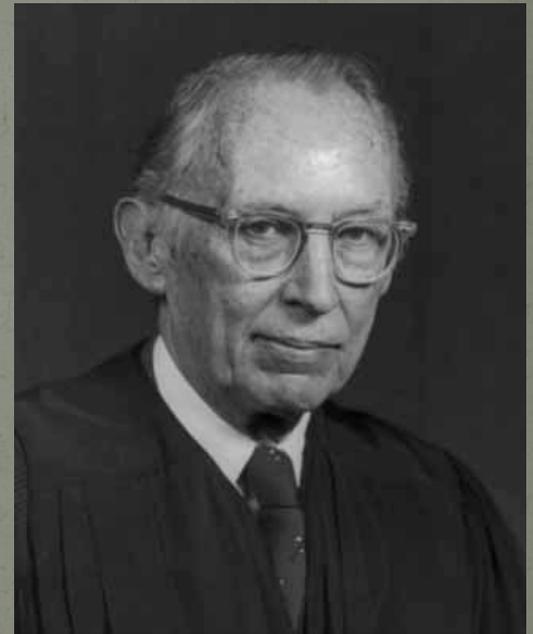
- Appealed to the D.C. Court of Appeals, which affirmed Superior Court's decision.

Issue

- Must an insanity acquittee be released from hospitalization after having served longer than if convicted?

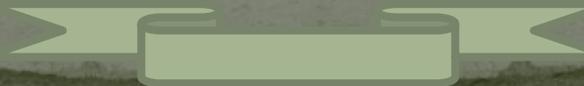
Holding (5-4; Lewis Powell)

- No. SCOTUS affirmed the Constitution permits the Government to confine a an NGRI acquittee to a mental institution until s/he regains “sanity” or is no longer a danger to self or society.



Rationale

- NGRI verdict means the person committed a criminal act - it eliminates the risk that the person is being committed for mere “**idiosyncratic behavior.**”
- Therefore, it is justifiable to commit for the purposes of *treatment* and the *protection* of society.
- An insanity acquittee is not entitled to release merely because he has been hospitalized for a period longer than a sentence if convicted - the purpose of commitment is not punishment.
- Indefinite commitment based on proof of insanity by preponderance meets the due process right.



Foucha v. Louisiana, 504 U.S. 71 (1992)

Nature of Case

- Commitment of NGRI acquittees who are no longer mentally ill, but considered dangerous.

Background

- Terry Foucha was charged with Aggravated Burglary and illegal Discharge of a Firearm.
- Rendered ICST and four months later determined CST; subsequently found NGRI and hospitalized in 1984.
- In 1988, staff recommended conditional discharge.
- Doctors testified: remission from **drug-induced psychosis**; antisocial personality which is not a mental disease and is untreatable.



- Several altercations while institutionalized and was still considered dangerous.
- Continued commitment and Court of Appeals and the State Supreme Court affirmed the decision.

Issue



- Are Louisiana statutes permitting indefinite detention of insanity acquittees who are no longer mentally ill but dangerous a violation of Due Process or Equal Protection Clauses under the 14th Amendment?

Holding (5-4; Byron White)

- Yes. Reversed and remanded.
- The committed acquittee is entitled to release when his sanity is recovered or he is no longer dangerous.

Rationale

- He was not provided constitutionally adequate procedures to establish grounds for his confinement.
- No testimony to illustrate with *clear and convincing* evidence he was dangerous (only that he had acted out while in prison).
- If he committed criminal acts while institutionalized, he should have been subjected to normal punitive sanctions.
- Other criminals do not have to demonstrate they are not dangerous in order to be released.



Burns Ind. Code Ann. § 35-36-2-2

**35-36-2-2. Evidence of defendant's sanity —
Appointment of medical experts — Cross-
examination of medical witnesses.**

(a) At the trial of a criminal case in which the defendant intends to interpose the defense of insanity, evidence may be introduced to prove the defendant's sanity or insanity at the time at which the defendant is alleged to have committed the offense charged in the indictment or information.

(b) When notice of an insanity defense is filed in a case in which the defendant is not charged with a homicide offense under IC 35-42-1, the court shall appoint two (2) or three (3) competent disinterested:

(1) psychiatrists;

(2) psychologists endorsed by the state psychology board as health service providers in psychology; or

(3) physicians;

who have expertise in determining insanity. At least one (1) of the individuals appointed under this subsection must be a psychiatrist or psychologist. The individuals appointed under this subsection shall examine the defendant and testify at the trial. This testimony shall follow the presentation of the evidence for the prosecution and for the defense, including the testimony of any mental health experts employed by the state or by the defense.

(c) When notice of an insanity defense is filed in a case in which the defendant is charged with a homicide offense under IC 35-42-1, the court shall appoint two (2) or three (3) competent disinterested:

(1) psychiatrists;

(2) psychologists endorsed by the state psychology board as health service providers in psychology; or

(3) physicians;

who have expertise in determining insanity. At least one (1) individual appointed under this subsection must be a psychiatrist and at least one (1) individual appointed under this subsection must be a psychologist.

The individuals appointed under this subsection shall examine the defendant and testify at the trial. This testimony must follow the presentation of the evidence for the prosecution and for the defense, including the testimony of any mental health experts employed by the state or by the defense.

(d) If a defendant does not adequately communicate, participate, and cooperate with the mental health witnesses appointed by the court after being ordered to do so by the court, the defendant may not present as evidence the testimony of any other mental health witness:

(1) with whom the defendant adequately communicated, participated, and cooperated; and

(2) whose opinion is based upon examinations of the defendant;

unless the defendant shows by a preponderance of the evidence that the defendant's failure to communicate, participate, or cooperate with the mental health witnesses appointed by the court was caused by the defendant's mental illness.

(e) The mental health witnesses appointed by the court may be cross-examined by both the prosecution and the defense, and each side may introduce evidence in rebuttal to the testimony of a mental health witness.

Diminished Capacity

Burns Ind. Code Ann. § 35-36-2-4

35-36-2-4. Commitment proceedings.

(a) Whenever a defendant is found not responsible by reason of insanity at the time of the crime, the prosecuting attorney shall file a written petition with the court under IC 12-26-6-2(a)(3) or under IC 12-26-7.

If a petition is filed under IC 12-26-6-2(a)(3), the court shall hold a commitment hearing under IC 12-26-6.

If a petition is filed under IC 12-26-7, the court shall hold a commitment hearing under IC 12-26-7.

(b) The hearing shall be conducted at the earliest opportunity after the finding of not responsible by reason of insanity at the time of the crime, and the defendant shall be detained in custody until the completion of the hearing.

(c) The defendant has all the rights provided by the provisions of IC 12-26 under which the petition against the defendant was filed. The prosecuting attorney may cross-examine the witnesses and present relevant evidence concerning the issues presented at the hearing.

(d) If a court orders an individual to be committed under IC 12-26-6 or IC 12-26-7 following a verdict of not responsible by reason of insanity at the time of the crime, the superintendent of the facility to which the individual is committed and the attending physician are subject to the requirements of IC 12-26-15-1.

(e) If a defendant is found not responsible by reason of insanity, the court shall transmit any information required by the division of state court administration to the division of state court administration for transmission to the NICS (as defined in IC 35-47-2.5-2.5) in accordance with IC 33-24-6-3.

Burns Ind. Code Ann. § 35-36-2-5

35-36-2-5. Sentencing of defendant found guilty but mentally ill —Exception for mentally retarded individuals.

(a) Except as provided by subsection (e), whenever a defendant is found guilty but mentally ill at the time of the crime or enters a plea to that effect that is accepted by the court, the court shall sentence the defendant in the same manner as a defendant found guilty of the offense.

(b) Before sentencing the defendant under subsection (a), the court shall require the defendant to be evaluated by a physician licensed under IC 25-22.5 who practices psychiatric medicine, a licensed psychologist, or a community mental health center (as defined in IC 12-7-2-38). However, the court may waive this requirement if the defendant was evaluated by a physician licensed under IC 25-22.5 who practices psychiatric medicine, a licensed psychologist, or a community mental health center and the evaluation is contained in the record of the defendant's trial or plea agreement hearing.

(c) If a defendant who is found guilty but mentally ill at the time of the crime is committed to the department of correction, the defendant shall be further evaluated and then treated in such a manner as is psychiatrically indicated for the defendant's mental illness. Treatment may be provided by:

- (1) the department of correction; or
- (2) the division of mental health and addiction after transfer under IC 11-10-4.

(d) If a defendant who is found guilty but mentally ill at the time of the crime is placed on probation, the court may, in accordance with IC 35-38-2-2.3, require that the defendant undergo treatment.

(e) As used in this subsection, “individual with an intellectual disability” means an individual who, before becoming twenty-two (22) years of age, manifests:

- (1) significantly sub average intellectual functioning; and
- (2) substantial impairment of adaptive behavior;

that is documented in a court ordered evaluative report. If a court determines under IC 35-36-9 that a defendant who is charged with a murder for which the state seeks a death sentence is an individual with an intellectual disability, the court shall sentence the defendant under IC 35-50-2-3(a).

(f) If a defendant is found guilty but mentally ill, the court shall transmit any information required by the division of state court administration to the division of state court administration for transmission to the NICS (as defined in IC 35-47-2.5-2.5) in accordance with IC 33-24-6-3.

Resources

- The Oyez Project at IIT Chicago-Kent College of Law. (U.S. Supreme Court Media)
 - www.oyez.org
- Official U.S. Court sites:
 - www.supremecourt.gov
 - www.uscourts.gov
- Legal research – cases and statutes:
 - www.law.cornell.edu
 - www.westlaw.com
 - www.findlaw.com
 - www.justia.com
- *Minds on Trial: Great Cases in Law and Psychology* (Ewing and McCann, 2006)