

1988

Melinda Rollins, personal representative of the Estate of Marcel Schopf, and Royal Insurance Company v. Jon Michael Petersen and State of Utah, State Hospital : Brief of Appellant

Utah Supreme Court

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UTAH SUPREME COURT

DOCUMENT

BRIEF IN THE SUPREME COURT OF UTAH

880280
CKET NO:

MELINDA ROLLINS, personal :
representative of the :
Estate of Marcel Schopf, :
and ROYAL INSURANCE COMPANY, :

Plaintiffs/Appellants. :

Case No. 880280
Category No. 14b

vs. :

JON MICHAEL PETERSEN and :
STATE OF UTAH, STATE HOSPITAL, :

Defendants/Respondents. :

BRIEF OF APPELLANTS

AN APPEAL FROM A FINAL ORDER GRANTING SUMMARY JUDGMENT
TO DEFENDANTS DALE AND SUZETTE BROWN AND THE STATE OF UTAH
IN THE FOURTH JUDICIAL DISTRICT COURT
OF UTAH COUNTY, STATE OF UTAH
The Honorable Ray M. Harding, Sr., Presiding

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LIST OF PARTIES

Appellant: Melinda Rollins, personal representative of the
Estate of Marcel Schopf, and Royal Insurance
Company

Respondents: State of Utah, Utah State Hospital
Dale R. and Suzette Brown

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IN THE SUPREME COURT OF UTAH

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	:	
JON MICHAEL PETERSEN and	:	
STATE OF UTAH, STATE HOSPITAL,	:	
Defendants/Respondents.	:	

BRIEF OF APPELLANTS

JURISDICTION

This Court has jurisdiction over this appeal pursuant to §78-2-2(3)(j) U.C.A. as this is an appeal from an order of the District Court over which the Court of Appeals does not have original appellate jurisdiction.

STATEMENT OF ISSUES

1. What is the appropriate standard of review?
2. Whether the Browns owe a duty to Marcel Schopf to properly secure the automobile.

A. Whether U.C.A. §41-6-105 imposes a duty upon the Browns to secure their automobile so as to protect Marcel Schopf and other similarly situated from the hazards of a stolen automobile.

B. Does common law impose a duty on the Browns?

3. Whether the issue of proximate cause of the Brown's negligence is an issue for the trier of fact.

4. Whether or not the acts which give rise to plaintiff's cause of action against State of Utah and Utah State Hospital is barred by the incarceration exception to the statutory waiver of immunity for negligence within the meaning of §63-30-10(10).

5. Whether the State of Utah and Utah State Hospital owe a duty to protect Marcel Schopf from the acts of Jon Petersen.

DETERMINATIVE STATUTES AND RULES

See Statutory Appendix.

STATEMENT OF THE CASE

This is an action filed by the personal representative of the heirs of Marcel Schopf against respondents, the State of Utah, Utah State Hospital, Dale R. and Suzette Brown, and Jon Petersen to recover damages for the wrongful death of

Marcel Schopf as a result of the fatal injuries from an automobile homicide committed by Jon Petersen. (R.1-2)

Appellant maintained this action against Dale R. and Suzette Brown for their negligence in failing to properly secure their automobile. Specifically, plaintiff alleged the Browns negligently left the automobile unattended on a public street with the doors unlocked, keys in the ignition and the engine running. (R.1-2)

Appellant submits that as a direct and proximate result of the Browns negligence, Jon Petersen was allowed to steal their automobile. Shortly thereafter, in an unbroken sequence of events resulting in a high speed chase, Petersen drove the Brown automobile head on into the vehicle driven by Marcel Schopf causing Schopf's death. (R.1-2)

Appellant maintained this action against the State of Utah and Utah State Hospital for their negligence in failing to comply with the established policies of the Hospital and Jon Petersen's ward in allowing Petersen to walk away from the facility and in failing to discover the AWOL or to institute AWOL procedures as required by their own rules and regulations. (R.32-35, R.242)

Appellant submits that as a direct and proximate result of respondent State of Utah's negligence, Petersen was allowed to go AWOL and remain free long enough to cause the death of Marcel Schopf.

Prior to discovery, the Browns filed a motion for summary judgment based upon the theory that they owed no duty to Schopf and that their negligence, if any, was not the proximate cause of Schopf's death as a matter of law. (R.130-141) The Honorable Ray M. Harding granted the Browns motion for summary judgment. (R.176-179) The plaintiff petitioned for an interlocutory appeal and the petition was denied.

Prior to discovery, the State of Utah and Utah State Hospital filed a motion to dismiss on the grounds that the State was immune from suit pursuant to the provisions of §63-30-10(1) and §63-30-10(10). (R.94-122) The state also argued that it owed no duty to Schopf. The parties stipulated that the motion be treated as a motion for summary judgment and discovery proceeded. (R.128) After discovery plaintiff filed a response and the State filed their reply to plaintiff's response. (R.220-254 & 261-278) After oral argument the trial court granted the State's motion for

summary judgment on the grounds that the acts complained of arose out of the incarceration of an individual as defined in §63-30-10(10) and therefore defendant Utah State Hospital was immune from suit. (R.298-299) The Court also ruled that the State owed no duty to Marcel Schopf. (R.298) The Court did not address the parties arguments as to the discretionary function exception to the waiver of immunity provisions. (R.298) Jon Petersen was dismissed without prejudice. (R.315)

Plaintiff appealed Judge Harding's final orders dismissing the Browns and the State of Utah defendants. (R.317) The plaintiff asks that this Court reverse the District Court orders granting defendants summary judgment.

STATEMENT OF FACTS

I. JON PETERSEN'S ACTIONS OF NOVEMBER 1, 1986 RESULTING IN THE DEATH OF MARCEL SCHOPF.

1. At approximately 1 p.m. on November 1, 1986, Dale R. Brown drove his A.M.C. automobile to a friends home on 500 East 100 North in Provo, Utah to pick up his son. Mr. Brown left the car parked unlocked and unattended on a public street next to the curb with the engine running and keys in the ignition. (See Affidavit of Dale R. Brown attached as Exhibit A.)

2. While Brown was inside his friend's house, Jon Petersen got into the A.M.C. vehicle and drove off. Mr. Brown saw Petersen drive off in his vehicle and got in his friend's vehicle to pursue. Mr. Brown followed Petersen but when Petersen saw Brown he sped off at a high rate of speed. By this time law enforcement authorities had been notified that an auto theft was in progress. (See Exhibit A and Utah County Sheriff's Incident Report attached as Exhibit B)

3. Deputy Harris of the Utah County Sheriff's Office and Trooper Hunt of the Utah Highway Patrol spotted Petersen's vehicle as it entered I-15 Southbound and pursued the stolen vehicle. (Exhibit B)

4. Trooper Hunt turned on his red take down lights in an effort to pull Petersen over. Petersen saw the take down lights and accelerated to 85+ miles per hour. (Exhibit B)

5. Trooper Hunt pulled even with Petersen in order to visually identify the driver of the stolen vehicle. Upon seeing the Trooper on his right side, Petersen flipped the bird at the Trooper and yelled "fuck you!" (Exhibit B)

6. While expressing himself to Trooper Hunt, Petersen lost control of the vehicle and careened across three lanes of traffic before crossing the median striking the van driven by Marcel Schopf. (Exhibit B)

7. Marcel Schopf was traveling in the center lane in the opposite direction when Petersen's vehicle struck his van on the left front drivers side. The impact caused massive injury and tearing to Schopf's internal organs, including a torn aeorta, resulting in Marcel Schopf bleeding to death from internal injuries. (Exhibit B)

II. BACKGROUND AND CRIMINAL HISTORY OF JON PETERSEN.

8. Jon Petersen has a history of psychotic behavior resulting in antisocial and violent behavioral traits. (See Exhibits 1-17, Bishop depo.)

9. Petersen was committed to the Utah State Hospital in 1979 for attempted suicide wherein he jumped from a building but survived. (See Exhibit 1, Bishop depo.) (Addendum A-1)

10. On or about May 24, 1982, Jon Petersen attempted to kill his roommate. Petersen held his roommate hostage at knife point for several hours. The hostage incident ended with Petersen stabbed his roommate four times. (See Exhibit 1 to Bishop depo.) (Addendum A-1)

11. Petersen has been intermittently committed to the Utah State Hospital four times prior to the May 1982 attempted murder. The most recent being a two month commitment in 1981. (See Exhibit 1 to Bishop depo.) (Addendum A-1)

III. PSYCHOLOGICAL HISTORY OF JON PETERSEN.

12. Following the attempted murder incident, Petersen was committed to the Hospital by the Court for an indeterminate period. According to a Hospital evaluation, Petersen was diagnosed as acutely psychotic resulting in assaultive injurious behavioral history. (Psychological Evaluation dated September 23, 1983, Exhibit 1 to Bishop depo.)

13. Petersen's psychosis was evidenced inter alia by (a) auditory hallucinations - he hears voices, (b) homicidal ideatus - he roommates and writes songs about killing people and about knives and guns, (c) bizarre ideation - speaks of wanting to poke girl's eyes out. (Psychological Report, June 2, 1983 - Exhibit 2 to Bishop depo.) (Addendum A-2)

14. Petersen continued to exhibit assaultive behavior and verbal threats of violence:

This patient continues to have what is described as hypo-manic run episodes that result in great agitation and irritability including verbal threats of aggressions and violence, etc. This is especially significant for this patient which has been mentioned before due to his assaultive-injurious behavioral history. Most recently it should be mentioned, that this patient has become thoroughly aggressive and on two episodes was put into the seclusion room because of his verbal threats of violence.

(Psychological Report, September 19, 1983, Exhibit 5 to Bishop depo.) (Addendum A-3)

15. During an interview in 1983 Petersen admitted to his propensity toward verbal intimidation and potentially violent behavior:

Patient also behaved in a very macho masculine manner and stated he felt dangerous, that he was a tough macho guy and that people had to be afraid of him.

Patient does require trained staff supervision or he becomes a behavioral management problem and in [sic] (is) potentially dangerous. This is manifested not only by his aggressive episodes from time to time but his continual illumination and thinking of aggressive and violent acts and stating these to both staff and patients. (Emphasis added)

(Psychological Reporter, September 19, 1983, Exhibit 5 to Bishop depo.) (Addendum A-3)

16. Petersen has poor impulse control. (Forsyth depo. p.6; Wilkinson depo. p.35) (Addendum A-4)

17. Petersen exhibits poor anger management. (Forsyth depo. p.6-7) (Addendum A-4)

IV. KNOWN MOTIVES, PERSONALITY TRAITS AND PERSONAL FACTORS LEADING TO THE AUTOMOBILE THEFT AND ACCIDENT RESULTING IN THE DEATH OF MARCEL SCHOPF.

A. Petersen's History of Assaultive Behavior.

18. In 1982 Petersen held his roommate hostage at knife point and stabbed him four times. (Fact 10)

19. Petersen would get physically abusive when he was ordered to do something and refused. Help would be called in

and Petersen would fight and struggle when being placed in a more restrictive environment. (Bishop depo. p.22, lines 7-25)(Add.A-4)

20. In the summer of 1984, psych tech Andrew Forsyth was forced to take Petersen's cigarettes away because his smoking privileges had been revoked. When Petersen didn't get his cigarettes, he struck an attendant. While assisting in the restraining of Petersen, Petersen kicked Forsyth in the face fracturing his jaw. (Forsyth depo. p.5-6) (Addendum A-4)

21. Petersen is frequently physically restrained. (Forsyth depo. p.6; Bishop depo. p.22) (Addendum A-4, A-5)

22. In September of 1986, less than three months prior to the AWOL incident, Petersen became involved in a violent confrontation with other inmates resulting in injuries to himself. (Wilkinson depo. p.30-31) (Addendum A-6)

B. Petersen's propensity toward verbal abuse, a short temper, and impulsive behavior.

23. Petersen is quick to anger and is described as having a short fuse. (Forsyth depo. p.5; Wilkinson depo. p.40)(Add.A-4)

24. Petersen becomes loud and verbally abusive almost on a daily basis. Verbal abuse includes insults, threats and foul language. (Messersmith depo. p.5; Forsyth depo. p.5) (Add.A-8,A-9)

25. Petersen's verbal intimidation and abuse would occasionally result in physical confrontations with other patients. (Messersmith depo. p.5; Forsyth depo. p.5-6) (Adden. A-8,A-4)

26. Petersen exhibited poor impulse control wanting certain things immediately. (Bishop depo. p.36)(Addendum A-9)

27. Petersen is very unpredictable. (Messersmith depo. p.5) (Addendum A-8)

28. In one incident, Petersen barricaded himself in a room and started the carpet on fire when he did not get his way. (Bishop depo. p.39)(Addendum A-10)

C. Petersen as an AWOL risk.

29. In September of 1983, one year after Petersen's most recent commitment, Petersen went AWOL (Absent Without Official Leave) from the Hospital. After two hours, Petersen phoned the Hospital asking to be picked up. (Bishop depo. Exhibit 7)(Addendum A-11)

30. In 1985, Petersen against went AWOL from the ARTV Treatment Program in Salt Lake City. He ran away to his sister's home and was subsequently returned to the Hospital. (Wilkinson depo. p.51-52)(Addendum A-12)

31. Petersen was listed as an AWOL risk in every psychological evaluation prepared by his evaluation team. (See Exhibits 1-20 to Bishop depo.) Although it was listed as "in

remission" from August 1985 on, Petersen still was a potential AWOL risk after that date. (Bishop depo. p.40) (Addendum A-13)

V. MISSION OF THE HOSPITAL.

32. In addition to treating mentally ill patients, it is also a mission of the Hospital to protect the community by separating the dangerously mentally ill from the community. (Paul Thorpe, Administrator, p.8-9) (Addendum A-14)

VI. EVENTS OF NOVEMBER 1, 1986, UP TO THE POINT PETERSEN STOLE THE CAR.

33. On the morning of November 1, 1986, Jon Petersen refused to get out of bed and take his medications. His privileges were revoked. (Messersmith depo. p.7-8) (Addendum A-15)

34. Any time a patient leaves the ward, the patient must sign out and have the slip approved. The sign out records the patient's destination, clothing, and expected time of return. (Wilkinson depo. p.23; Messersmith depo. p.18-19; Taylor depo. p.19) (Addendum A-16)

35. The ward policies and procedures mandates that a patient sign out whenever they leave the ward. (Wilkinson depo. p.20, 23, lines 10-18): (Addendum A-17)

We have a system on the unit that requires at any time someone is using there pass or going to their industrial or whatever, they must sign out. And there is a form for them to do that. On the form is included what they are wearing, what their destination is, who they are going

with, a description of their clothing. If an individual is not signed back in within five minutes of that time then we consider them a potential AWOL.

(Emphasis added)

36. From the time Petersen left to take the dishes back at anytime between 12:15 and 12:30 until he stole the car, sometime after 1 p.m., an estimated 30 to 50 minutes transpired. (Exhibit A)

37. Had the Ward followed written, established procedures, Petersen's AWOL could have been discovered at least 20 minutes to 40 minutes prior to the time he stole the car. It would have taken a patrol car 3 to 5 minutes to drive the distance between the Hospital and Maeser School had procedures been followed. There is a good likelihood that had AWOL procedures been followed, Petersen would have been apprehended prior to stealing the car.

SUMMARY OF ARGUMENT

Point I: Point I is the standard of review regarding summary judgment.

Point II: The Browns owed plaintiff and all other motorists a duty to properly secure their vehicle. This duty is imposed by U.C.A. §41-6-105, Utah's Unattended Motor Vehicle law, and common law duty to vehicle owners to take

reasonable precautions to prevent the unauthorized dangerous operation of the owners vehicle.

Schopf was a member of the class the "Unattended Motor Vehicle" statute was enacted to protect and that statute therefore imposed upon the Browns a duty to secure their vehicle. This duty runs to the benefit of all motorist, including plaintiff. Malan v. Lewis, 693 P.2d 661, 673 (Utah 1984). The trial court committed reversible error in holding that the Browns owed plaintiff no duty.

Point III: Whether the negligence of the Browns is a proximate cause of Schopf's death is an issue for the trier of fact. Statistical evidence demonstrates that a stolen car is 200 times more likely to be involved in an accident than is the regular car. Moreover, whether it is foreseeable that a car would be stolen if left unattended with the engine running and the keys in the ignition is a question of fact.

Point IV: The incarceration exception to the waiver of immunity for negligence does not bar this cause of action against the State of Utah because the exception was enacted only to bar lawsuits by prisoners. The legislature did not intend on barring third party lawsuits and to the extent dicta in Epting v. State is contrary, it should be limited. Doe v. Arguelles implicitly

limits the scope of the incarceration exception. Moreover, the incarceration exception does not apply because Petersen was not incarcerated at the time the negligence occurred.

Point V: The State owed Schopf a clearly defined duty to restrain Petersen because it assumed control of a dangerous individual by means of a court ordered involuntary commitment. Section 319 of the Restatement of Torts (Second) imposes this duty as does this Court's decisions in Little v. Division of Family Services and Doe v. Arguelles. Moreover, it is foreseeable that Petersen would act in the manner he did due to his history of verbal abuse, physical violence, impulsive behavior and antisocial psychotic personality. The issue of foreseeability is an issue for the trier of fact.

ARGUMENT

POINT I

STANDARD OF REVIEW.

Plaintiff appeals the trial court's ruling granting defendants' motions for summary judgment. In reviewing a case disposed of in the District Court by summary judgment this Court considers the evidence and facts in the light most favorable to the losing party and affirms only where it appears there is no genuine dispute as to any material issues

of fact. Themy v. Seagull Enterprises. Inc., 595 P.2d 526 (Utah 1979); Briggs v. Holcomb, 740 P.2d 281 (Utah App. 1987).

POINT II

DEFENDANTS DALE R. AND SUZETTE BROWN OWED PLAINTIFF A DUTY OF CARE TO PROPERLY SECURE THEIR AUTOMOBILE.

A finding of negligence requires the presence of duty between the parties. Hughes v. Housley, 599 P.2d 1250 (Utah 1979). The existence of a duty is an issue of law for the Court to decide. Little v. Utah State Division of Family Services, 667 P.2d 49 (Utah 1983). Duty may be imposed by the Court under an analysis which takes into consideration public policy considerations. Hughes v. Housley, 599 P.2d 1250 (Utah 1979) A duty may also be imposed by statute. Langlois v. Rees, 10 Utah2d 272, 357 P.2d 638 (1960).

In this case, U.C.A. §41-6-105 imposed a duty on the Browns to turn off the engine and remove the keys from the ignition when they leave their car unattended. U.C.A. §41-6-105 provides:

No person driving or in charge of a motor vehicle shall permit it to stand unattended without first stopping the engine, locking the ignition and removing the key, . . .

In this case, by his own admission, Mr. Brown stated that he violated the statute. (See Brown Affidavit, Appendix A)

(R.140-141) The trial court rejected plaintiff's argument that the statute was enacted to prevent auto theft and ruled that the statute does not apply to the facts of this case. (R.176-177) This ruling ignores the express purpose of the "lock and remove key" statute is to prevent injury due to auto theft.

Although there are no Utah cases discussing the purpose of this statute, other courts have construed similar statutes and imposed a duty on owners of stolen vehicles who have violated the statutes. In Davis v. Thornton, 384 Mich 138, 180 N.W.2d 11, 15 A.L.R.3d 778 (1970), the Michigan Supreme Court faced a question remarkably similar to the issues before this Court, including the interpretation of a similar unattended vehicle law. Davis involved an action for negligence resulting in injuries caused by a thief who stole a car which was left unattended with the keys in the ignition. As the court stated the facts:

On the evening of April 4, 1965, defendant Williams was driving the car of his employer, defendant Thornton, while on his employers business. He parked his car near the intersection of Miami and Beatrice Streets on Detroit's lower west side, left the keys in the ignition, failed to lock the doors and may have left the motor running. While so left, a group of minors took the car for a "joyride" and, while joyriding, they crossed the centerline of

a highway and collided with plaintiff's car, killing one and injuring five of the other occupants of plaintiff's car.

Davis, 45 A.L.R.3d at 780.

The trial court awarded the defendant's motion to dismiss and plaintiff appealed.

The Davis court examined the effect of a Detroit ordinance that went as follows:

No operator, except those of commercial vehicles, shall leave the vehicle unattended at the curb or other place to which the public has access unless the operator shall first shut off the motor and lock the motor vehicle or some part thereof as to prevent the starting and operation of the motor vehicle.

City of Detroit Code §38-8-5

The Davis court stated the purpose of this ordinance:

Such an ordinance exists by virtue of the police power of the city government to promote the health, safety and welfare of its citizens. The ordinance contemplates that a key left in the ignition is dangerous, not because it is then harmful, but because it creates a condition likely to cause harm. The instrument of actual cause of harm would necessarily be a person who would start the engine. Such a person could be an inexperienced child, a joyriding youth or a thief. The harm that could be caused presupposes a meddler who will necessarily harm the owner of the vehicle but far more importantly, the theft threatens society. (Emphasis added)

The court then cited statistics showing that of total cars stolen, the key had been left either in the ignition or in the car in 42.3 percent of the cases. Moreover, "the accident rate for stolen cars is 200 times the normal accident rate." Davis, 45 A.L.R.3d at 782. The court thus held that the ordinance imposed a duty of due care on the defendant and it was a jury to decide whether that breach of duty cause plaintiff's injuries. Davis, 45 A.L.R.3d at 785.

In Vining v. Avis Rent-A-Car Systems, Inc., 354 So.2d 54 (Fla 1978), the Florida Supreme Court was faced with the exact issue that is before this Court. As the Court stated:

This case presents the issue of whether the owner of a car, who leaves it unlocked with the key in the ignition in violation of Florida's Unattended Motor Vehicle Statute, Section 316097 (Fla Statutes 1975) is liable for the conduct of a thief who steals the car and subsequently injures someone while negligently operating the stolen vehicle.

In holding that the Florida statute imposed a duty upon the owner to third parties, the Court stated:

The legislature recognized that an automobile placed in the hands of an unauthorized person was more likely to be operated in a manner hazardous to the well being of the general public. Statistical data provided strong support for this position. See Gaither v. Myers, 131 U.S. App. D.C. 216, 404 F.2d 216, 222-23 (1968).

Turning to plaintiff's complaint he is clearly a member of the class Florida's "Unattended Motor Vehicle" Statutes was intended to protect. Also, the injuries he sustained were the type the statute was designed to prevent. If plaintiff can establish that the violation of the statute was the proximate cause of his injury, he is entitled to recover.

Id. at 56. (Emphasis added) Accord Baginski v. New York Telephone Company, 515 N.Y.S.2d 23 (A.D. 1 Dept. 1987)

Other courts have imposed a duty even in the absence of a statutory obligation. Mezyk v. National Repossessions, Inc., 405 P.2d 840 (Or. 1965); State Farm Mutual Automobile Insurance Company v. Grain Belt Breweries, Inc., 245 N.W.2d 186 (Minn 1976); and Zinck v. Whelan, 120 N.J. Super 432, 294 A.2d 727 (1972).

In Zinck v. Whelan, 294 A.2d 727 (NJ 1972), the Court imposed a duty by extensively analyzing the statistical evidence which showed the enormous increase in injuries occurring as a result of the negligent operation of stolen automobiles. Id. at 294 A.2d 735-36. As the Court stated:

The fact that 23 state legislatures and countless municipal governing bodies have for a long time deemed it necessary as a matter of public safety to prohibit leaving ignition keys in unattended unlocked cars attests to the widespread general recognition of the hazard in question and its potential for great harm to innocent users of the highways. . . . A cause reasonably to be anticipated or guarded against

may be found to include the theft of a car in a situation as here and the negligent injury of others on the highway by the thief.

Id. at 736.

In this case defendants Brown argue that they owed no duty to Schopf to take reasonable steps to prevent a thief from stealing their automobile and that §41-6-105 U.C.A. was not enacted to protect motorists from negligent injuries caused by thieves driving stolen cars.

This argument ignores the fact that Utah's unattended vehicle law contains the exact or similar language as the Florida, Minnesota, Michigan, New York, and New Jersey statutes which one court stated "clearly" was intended to protect motorists from the inherent recklessness of automobile thieves. Vining v. Avis Rent-A-Car Systems, Inc., 354 A.2d at 56.

Moreover, public policy considerations support the above conclusion as the Davis and Zinck courts noted of all cars stolen, the key had been left in the ignition or in the car 42 percent of the time. Zinck, 294 A.2d at 735. Moreover, and of utmost importance, "the accident rate for stolen cars is 200 times the normal accident rate." Davis, 45 A.L.R.3d at 782. The above statistics strongly support the

imposition of a duty. Indeed this court has already stated "a driver owes a duty of due care to all other persons on the highway." Malan v. Lewis, 693 P.2d 661, 673 (Utah 1984). This Court should extend the above statements to include a duty to properly secure one's automobile as required by U.C.A. §41-6-105 so as to take reasonable steps to prevent automobile theft and its subsequent hazard to the general public.

POINT III

THE QUESTION OF WHETHER THE NEGLIGENCE OF THE BROWNS WAS A PROXIMATE CAUSE OF THE DEATH OF MARCEL SCHOPF IS A QUESTION OF FACT TO BE DECIDED BY THE TRIER OF FACT.

Proximate cause is generally a matter of fact to be determined by the jury. Provo v. Godesky, 690 P.2d 541, 544 (Utah 1984); Walters v. Query, 626 P.2d 455, 457-458 (Utah 1981).

Courts reviewing the issue of whether a car owner's negligence in leaving the keys in the ignition and the car is stolen causing injuries to third parties is a proximate cause of plaintiff's injuries have held that proximate cause is an issue for the jury. Rulye v. Reynolds, 357 N.E.2d 804, 808 (Ill.App. 1976); Vining v. Avis Rent-A-Car Systems, Inc., 354 So.2d 54, 56 (Fla 1976); Mezyk v. National Repossessions, Inc., 405 P.2d 840, 842 (Or. 1965).

Defendants appear to be arguing that the actions of Jon Petersen in stealing the car constitute a superseding cause of plaintiff's injury as a matter of law. This Supreme Court has recently reviewed at length the status of an intervening cause on the chain of causation and when an intervening cause rises to the level of a superseding cause as a matter of law.

In Williams v. Melby, 699 P.2d 723, 728 (Utah 1985), the Court discussed what constitutes a superseding cause. Specifically the Court stated:

The issue of what constitutes a superseding cause can not be determined by a simplistic formula that the cause which occurs last in time is, as a matter of law, a superseding cause. Indeed, conduct may be negligent simply because subsequent negligent conduct by another is foreseeable.

Id. at 728.

As the Court stated in a recent case:

A persons negligence is not superseded by the negligence of another if the subsequent negligence of another is foreseeable.

Harris v. Utah Transit Authority, 671 P.2d 217, 219 (Utah 1983)

Moreover, this Supreme Court has held that the criminal conduct of a third party may be foreseeable.

Mitchell v. Pearson Enterprises, 697 P.2d 240, 243 (Utah 1985). Mitchell involved an action against a hotel for failure to reasonably provide for the safety of hotel patrons and a patron was killed as a result of that negligence. The trial court granted the defendants motion for summary judgment inter alia, based upon the fact that the murder was not reasonably foreseeable and the death was caused by the intervening independent criminal act of a third person. Id. at 243.

Although this Court affirmed summary judgment for lack of evidence, this Court stated:

In the context of the hotel/guest relationship, it is foreseeable that an inkeepers failure to maintain adequate security measures not only permits but may even encourage intruders to rob, assault or murder hotel patrons.

In the case at hand it is a question for the jury to decide whether the actions of Jon Petersen were foreseeable. Moreover, it is also a question of fact as to whether Dale Brown's failure to secure his car led to a sequence of events resulting in Marcel Schopf's death. The facts indicate that Jon Petersen was involved in an unbroken pursuit from the time he stole the car until he collided with Marcel Schopf. (See Exhibit B) The question of proximate cause in this case is a question for the trier of fact.

POINT IV

THE TRIAL COURT ERRED BY HOLDING BY HOLDING THE INCARCERATION EXCEPTION TO THE STATUTORY WAIVER OF IMMUNITY FOR NEGLIGENCE BARS THIS ACTION AGAINST THE STATE OF UTAH AND UTAH STATE HOSPITAL.

The trial court granted the State's motion for summary judgment on the basis this action is barred by §63-30-10(10) because the injury "arises out of the incarceration of any person in any state prison, county or city jail or other place of legal confinement." The court relied on this Court's decision in Emery v. State, 483 P.2d 1296 (Utah 1971) and Epting v. State, 546 P.2d 242 (Utah 1976). For the following reasons Epting is inapplicable to this action.

A. Epting v. State is not controlling.

Epting v. State, 546 P.2d 242 (Utah 1976), involved a case where a state prisoner was allowed to leave the prison on a daily basis on a work release program. While on work release, the inmate, Michael Hart, murdered Cynthia Epting Mitchell. The children of Epting filed an action against the State alleging that the state negligently placed Hart in a work release program. This Court ruled against plaintiff's under a discretionary function analysis holding: "that the handling of the prisoner Michael Hart was something which arises out of the exercise of a discretionary function for

which subsection (1) of §63-30-10 quoted above has retained sovereign immunity." Id. at 24 (Emphasis added)

The State however relied on Epting for its argument that plaintiff's cause of action is barred by the incarceration exception to waiver. The Court however stated:

The foregoing (discretionary function analysis) adequately supports the ruling of the trial court. But the ruling was also based upon subsection (10) of Section 63-30-10 quoted above, which leaves the protection of sovereign immunity for injuries which arise out of incarceration in state prison. We therefore make this additional comment:

As to the status of Michael Hart vis-a-vis the State Prison, there seems to be two alternatives either (a) He had totally escaped the control of the prison and was thus acting on his own so that the prison was not responsible for him; or (b) He was still under the control of the prison authorities so that his conduct would "arise out of the incarceration of any person in [the] State Prison . . ." in which latter instance the prison is immune from suit under the statute.

Id. at 24 (Emphasis added)

The Court quite clearly was adding dicta to its decision under a discretionary function analysis by the above underlined statement. Moreover, this Court has implicitly modified subsection (a) of the above Epting dicta in Doe v. Arguelles, 716 P.2d 279 (Utah 1985), where this Court held that the state may be responsible for the actions of inmates

after they have left the actual physical incarceration of the state. Doe, 716 P.2d at 283.

A careful reading of a long line of cases interpreting the incarceration exception indicates that the purpose of the exception is to prevent lawsuits filed by prisoners and other incarcerated individuals or their heirs. With the exception of the Epting dicta, no case has applied the incarceration exception to lawsuits filed by third parties. See Lancaster v. Utah State Prison, 740 P.2d 261 (Utah 1987) (lawsuit by prisoner for personal injuries); Madsen v. State, 583 P.2d 92 (Utah 1978) (wrongful death - action by heirs of prisoner who died after alleged negligent surgery at prison hospital); Schmitt v. Billings, 600 P.2d 516 (Utah 1979) (action by prisoner for conversion of personal property).

In Madsen and Schmitt this Court held that actual incarceration and control were a prerequisite to application of the incarceration exception. Madsen, 583 P.2d at 93; Schmitt, 600 P.2d at 518. This Court has not yet ruled on whether §63-30-10(10) bars a claim arising outside the prison or state hospital as does this action. As previously argued, Epting did not so hold and does not bind this Court through stare decisis to its dicta.

In Madsen v. State, 583 P.2d 92 (Utah 1978), the Court was presented with legislative debate that indicated that subsection (10) was intended to prevent lawsuits by prisoners which would disrupt orderly prison administration. See recording of Senate Proceedings, January 20, 1965, Part III, Side 1, Lieutenant Governor's office. This section therefore was not enacted to prevent innocent third parties from suing the state for negligence and subsection (10) does not apply to bar this lawsuit.

POINT V

THE STATE OWED A CLEARLY DEFINED DUTY TO PROTECT MARCEL SCHOPF AND OTHERS SIMILARLY SITUATED FROM THE ACTS OF JON PETERSEN.

The State, by affirmatively undertaking the responsibility to involuntarily commit the dangerous mentally ill, has undertaken a duty to protect both the public at large and individual citizens who might foreseeably be harmed by the actions of said patients. Petersen's acts leading to Marcel Schopf's death were not only foreseeable but should have reasonably been expected. The Hospital's employees' failure to act within the authority of their defined area of responsibility and failure to promptly discover Petersen's absence substantially contributed to the chain of events resulting in Schopf's death.

A. This Court should adopt Section 319, Restatement (Second) of Torts on the issue of duty.

There is no controlling Utah case law on the issue of duty in a mental patient setting. The better-reasoned cases following the Restatement (Second) of Torts §319, which states:

Duty of Those in Charge of Person Having Dangerous Propensities. One who takes charge of a third person whom he knows or should know to be likely to cause bodily harm to others if not controlled is under a duty to exercise reasonable care to control the third person to prevent him from doing harm.

This Court recognized the Restatement of Torts as controlling authority in defining duty in Beach v. University of Utah, 726 P.2d 413 (Utah 1986), and should continue to follow the Restatement analysis here.

The basis for applying different standards under the "public duty" rule generally and the mental patient release situation specifically is discussed in Nelson, Victims' Suits Against Government Entities and Officials for Reckless Release, 29 Am.U.L.Rev. 595, 614-15 (1980):

By voluntarily assuming control over inmates, the government also assumes the obligation to control their behavior . . .

The (public duty) rule, however, should not apply to the release of inmates from government detention facilities. The rule is generally used to deny claims against the government for

failure to provide public services designed to benefit the community at large, such as police protection. The duty to control the conduct of another based on the relationship between the parties does not arise in cases involving the failure to provide services. When a victim is attacked by an assailant, against whom police protection had been refused, there is no duty owed to the victim because there is no relationship between the police and the assailant. Furthermore, there is clearly no voluntary assumption of a duty by the police when they fail to provide protection to a citizen. In release situations, however, the government has voluntarily assumed the control of an inmate by placing him in a detentional facility. A duty to the victim arises out of this voluntary assumption of custodial responsibility by the government.

Citations omitted; emphasis added.

In Semler v. Psychiatric Institute of Washington D.C., 538 F.2d 121 (11th Cir. 1976), plaintiff, mother of a young girl killed by a Virginia probationer who had been under a court order to undergo treatment at the psychiatric institute, filed an action against the institute for failing to confine the defendant as ordered by the court. The court did not approve the probationer's outpatient status. The institute filed a motion to dismiss arguing that the order created no duty on their part to plaintiff. Rejecting this argument, the Court stated:

It is apparent that the decision to release Gilreath was not simply a medical judgment based upon the state of his mental health. The decision would also entail a judgment by the court as to whether his release would be in the best interest of the community. The special relationship created by the probation order, therefore, imposed a duty upon the appellants to protect the public from the reasonably foreseeable risk of harm at Gilreath's hands that the state judge had already recognized.

Id. at 121 (Emphasis added)

The Court then adopted Section 319 of Restatement (Second) of Torts quoted supra and further stated:

The Restatement measures a custodian's duty by the standard of reasonable care. . . . The appellants were to retain custody of Gilreath until he was released from the institute by order of the court. No lesser measure of care will suffice. This obligation is not absolute of course. The appellants would not be liable had Gilreath escaped despite their exercise of reasonable care. . .

Id. 538 F.2d at 121

Other cases adopting Section 319 of Restatement (Second) of Torts as it applies to a duty owed third parties in a custodial mental patient relationship are Beck v. Kansas University of Psychiatric Foundation, 580 F.Supp. 527, 534 (D.Kan. 1984); Brady v. Hopkins, 570 F.Supp. 1333,1337 (D.Colo. 1983), Affirmed 751 F.2d 329 (10th Cir. 1984) (acknowledging duty to third parties but found evidence

insufficient as to foreseeability of harm); Bradley Center, Inc. v. Wessner, 250 Ga. 199, 296 S.E.2d 693, 696 (1982); Knight v. State, 99 Mich.App. 226, 297 N.W.2d 889, 894 (1980); Lundgren v. Fultz, 354 N.W.2d 25, 27 (Minn. 1984); Allentown State Hospital v. Gill, 88 Pa. Commonwealth 331, 488 A.2d 1211 (1985).

Other State Supreme Court decisions discussing or adopting the special duty for correctional release situations of Restatement of Torts (Second) §319 include: Division of Corrections v. Neakok, 721 P.2d 1121 (Alaska 1986); Cansler v. State of Kansas, 234 Kan. 554, 675 P.2d 57 (1984); White v. State, 661 P.2d 1272 (Mont. 1983); Grimm v. Arizona Board of Pardons and Paroles, 115 Ariz. 260, 564 P.2d 1227 (Ariz. 1977); State v. Silva, 86 Nev. 911, 478 P.2d 591 (1971); and Upchurch v. State, 51 Hawaii 150, 454 P.2d 112 (1969).

In Doe v. Arguelles, supra, this Court cited Semler as authority for the proposition that acts implementing policy must be considered on a case by case basis to determine whether they are discretionary or ministerial. Doe at 716 P.2d at 283. The Court could not have reached the discretionary analysis unless duty was present.

Thus, §319 of Restatement of Torts (Second) has received widespread adoption as to the duty owed innocent third parties in a custodial release or escape situation. In order to clarify the status of the law in Utah, this Court should expressly adopt the restatement as it applies to duty.

B. The State owed a duty to Schopf because it assumed a special relationship to protect Schopf by depriving him and others of reasonable means of self protection.

The State claims that it owed Schopf no duty. This is not in accord with recent Court decisions. This Court's latest discussion upon the issue of duty is found in Beach v. University of Utah, 726 P.2d 413 (Utah 1986) wherein this Court held:

The law imposes upon one party an affirmative duty to act only when certain special relationships exist between the parties. These relationships generally arise when one assumes responsibility for another's safety or deprives another of his or her normal opportunities for self-protection. The essence of a special relationship is dependence by one party upon the other or mutual dependence between the parties.

Id. at 32; citations omitted; emphasis added.

There is no question the State has assumed a special relationship of protecting the community and the individuals who make up that community. The State has imposed upon itself

a duty to protect the general public. The State assumed the duty of protecting the public from mentally ill patients who are a danger to themselves or others. Specifically, §64-7-8 states:

The objectives of the Utah State Hospital and other mental health facilities shall be to care for all persons within the State who are subject to the provisions of this act, and to furnish them proper attendance, medical treatment, seclusion, rest, restraint, amusement, occupation and support conducive to their physical and mental well being. (Emphasis added)

Moreover, it is clear from three other sections of Title 64 that the State assumed a duty to protect the public. U.C.A. §64-7-24.5 provides for criminal penalties for any person involuntarily committed to leave the hospital without legal permissions. U.C.A. §64-7-34 and 36(10)(b) provides for involuntary commitment of patients if they are a danger to self or others. Petersen was involuntarily committed after holding his roommate hostage at knife point. (Fact 10)

Utah State Hospital administrator Paul Thorpe freely acknowledged that it is the Hospital's additional responsibility to protect the public from the dangerously mentally ill:

Q (By Mr. Souvall) It is also a mission of the hospital that you are here to protect the surrounding community from those who could be dangerous, disruptive, difficult to manage mentally ill?

A That's a role of the hospital that we are here to provide a setting for the patient that is dangerous to self and others.

Q In addition to then helping the patient to enter the community again, then there is also a role for the hospital that involves separating that individual from the community. Is that correct?

A Yes. There is a responsibility.

Thorpe depo. p.8-9

The State accepted the responsibility of keeping the public safe from Petersen and, by failing to follow its own policies and procedure, deprived the public of their "normal opportunities for self-protection", Beach at 32, thereby establishing "the essence of a special relationship" which is "dependence by one party upon the other." Id. Once such a special relationship is established, "the law imposes upon one party"; i.e., the State, "an affirmative duty to act." As the Court stated in Semler, supra, "the special relationship created by the probation order therefore imposed a duty on appellants to protect the public from the reasonably foreseeable risk of harm at Gilreath's hands that the state judge had already recognized." Id. 538 F.2d at 121. (Emphasis added)

C. Foreseeability of Petersen's acts is an issue for the trier of fact.

In the context of Petersen's case the State argues that it has no duty because the acts of Petersen were not reasonably foreseeable. Specially the State argues the foreseeability of a particular type of injury to a specific plaintiff is necessary before a duty is said to exit. In Rees v. Albertson's Inc., 587 P.2d 130 (Utah 1978), the Court discussed foreseeability in the context of a proximate cause, not duty, and stated the following standard for foreseeability analysis:

What is necessary to meet the test of negligence and proximate cause is that it be reasonably foreseeable, not that the particular accident would occur, but only that there is a likelihood of an occurrence of the same general nature. In that connection, it is to be had in mind that the jury is entitled to base its judgment, not only upon the facts shown, but to indulge such reasonable inferences as may be fairly drawn therefrom. Considered in that light, we think reasonable minds could believe that in selling beer to a minor, such as plaintiff, the defendant reasonably should have foreseen the likelihood of it being combined with an automobile and result in some occurrence such as eventuated here.

To be considered in connection with what has been said above are these principles;: that the questions relating to negligence and proximate cause are generally for the fact-trier, court or jury, to determine. A party should not be deprived of the privilege of having such an

adjudication of his claims unless it appears that even upon the facts claimed by him he could not establish a basis for recovery. Moreover, when there is doubt about the matter, it should be resolved in favor of permitting the party to go to trial.

Id. at 133 (Emphasis added)

Thus, the particular injury need not be foreseeable, i.e., Petersen stealing a car and running in to decedent, killing him. As the facts indicate, Petersen's actions are quite foreseeable. Petersen was initially committed for holding his roommate hostage at knife point. (Fact 10) After involuntary commitment to the hospital, Petersen was diagnosed as being acutely psychotic resulting in assaultive injurious behavioral history. (Fact 12) Petersen's psychosis was evidenced by homicidal ruminations. (Fact 13) Petersen had a history of violent behavior. (Facts 10, 14, 15, 18-22) Moreover, he exhibited poor impulse control and was quite impulsive. (Facts 23-27) and he as an AWOL risk. (Facts 29-31) It is reasonably foreseeable that these personality traits could result in mischief if Petersen was turned loose unsupervised in the general populace. Petersen's actions were predictable in light of his aforementioned personality traits.

Moreover, foreseeability is a question of proximate cause under Rees v. Albertson's, Inc., 587 P.2d at 133, which

is a question for the trier of fact and summary judgment on the issue of foreseeability is improper.

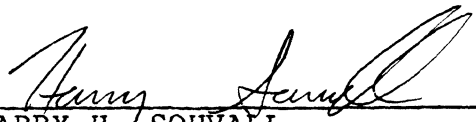
Thus the State assumed a clearly defined duty to Schopf by depriving him of the ability to protect himself from Petersen. The injury that resulted was foreseeable when Petersen's past AWOL, psychological and personality histories are reviewed.

CONCLUSION

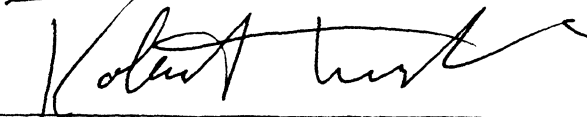
For the above reasons plaintiff/appellant respectfully requests that this Court reverse the final order of the District Court granting Dale R. and Suzette Brown and the State of Utah summary judgment and remand this matter for trial.

Respectfully submitted this 16th day of November, 1988.

McRAE & DeLAND



HARRY H. SOUVALL
Attorney for Appellant



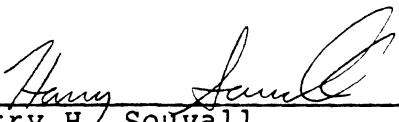
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CERTIFICATE OF MAILING

I do hereby certify that I mailed, postage prepaid, four (4) true and correct copies of the foregoing Brief of Appellant to the following on this 16th day of November, 1988:

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Harry H. Souvall

state highway unless the Department of Transportation has determined that the roadway is of sufficient width to permit angle parking without interfering with the free movement of traffic.

(4) The Department of Transportation with respect to highways under its jurisdiction may place traffic-control devices prohibiting or restricting the stopping, standing, or parking of vehicles on any highway where in its opinion such stopping, standing, or parking is dangerous to those using the highway or where the stopping, standing, or parking of vehicles would unduly interfere with the free movement of traffic. No person shall stop, stand, or park any vehicle in violation of the restriction indicated by such devices.

History: L. 1941, ch. 52, § 91; C. 1943, 57-7-168; L. 1949, ch. 65, § 1; 1975, ch. 207, § 44; 1978, ch. 33, § 35. **Cross-References.** — Disabled persons, parking privileges, § 41-1-49.9.

COLLATERAL REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d Automobiles and Highway Traffic §§ 274, 275. **C.J.S.** — 60A C.J.S. Motor Vehicles § 336. **Key Numbers.** — Automobiles ⇐ 173(2).

ARTICLE 15

MISCELLANEOUS RULES

41-6-105. Motor vehicle left unattended — Requirements.

No person driving or in charge of a motor vehicle shall permit it to stand unattended without first stopping the engine, locking the ignition and removing the key, placing the transmission in "park" or the gears in "low" or "reverse" if the vehicle has a manual shift, or effectively setting the brakes thereon; and, when standing upon any perceptible grade, turning the front wheels to the curb or side of the highway.

History: L. 1941, ch. 52, § 92; C. 1943, 57-7-169; L. 1969, ch. 112, § 1.

NOTES TO DECISIONS

ANALYSIS

Contributory negligence.
Jury question.

Contributory negligence.

In action for injuries suffered by driver of city garbage truck, when parking brake on the garbage truck, of which he was in charge, suddenly gave way so that he was unable to get back into and control the garbage truck, issues of whether the driver had left the truck unattended in violation of this section and whether his conduct proximately contributed to his own injuries were issues on which the defendant manufacturer of the garbage truck had the burden of proof and it was the duty of the trial

court to submit such issues to a jury if there was any reasonable basis for doing so. *Thompson v. Ford Motor Co.*, 16 Utah 2d 30, 395 P.2d 62 (1964).

Jury question.

Where there was a lack of certainty as to plaintiff's attention to truck involved in collision and whether plaintiff was close enough to control the truck, a jury question existed as to whether the truck was left "unattended" within the meaning of this section. *Thompson*

for driver's injuries caused as result of obstruction. *Stevens v. Salt Lake County*, 25 Utah 2d 168, 478 P.2d 496 (1970).

Nondelegable duty.

A city is charged with a nondelegable duty to

exercise due care in maintaining its streets and sidewalks in a reasonably safe condition and may incur tort liability for breach of this duty by virtue of this section. *Murray v. Ogden City*, 548 P.2d 896 (Utah 1976).

63-30-9. Waiver of immunity for injury from dangerous or defective public building, structure, or other public improvement — Exception.

Immunity from suit of all governmental entities is waived for any injury caused from a dangerous or defective condition of any public building, structure, dam, reservoir or other public improvement. Immunity is not waived for latent defective conditions.

History: L. 1965, ch. 139, § 9.

NOTES TO DECISIONS

ANALYSIS

Latent defective condition.

Legislative intent.

Negligent construction.

Notice to city.

Other public improvement.

Latent defective condition.

Defect in a county storm drain that was discoverable by a reasonable inspection was not a latent defect. *Vincent v. Salt Lake County*, 583 P.2d 105 (Utah 1978).

Legislative intent.

Intent of legislature was to include within the waiver of immunity an action for private nuisance in so far as the action is predicated on a dangerous or defective condition of a public improvement that unreasonably interferes with the use and enjoyment of the claimant's property. *Sanford v. University of Utah*, 26 Utah 2d 285, 488 P.2d 741 (1971).

Negligent construction.

Where university construction diverted flow of surface water, flooding basement and caus-

ing other damage to adjoining landowner, governmental immunity was waived and university was liable to landowner. *Sanford v. University of Utah*, 26 Utah 2d 285, 488 P.2d 741 (1971).

Notice to city.

Requirement that notice of claim be given to political subdivision within ninety days (now one year) in § 63-30-13 is applicable to this section. *Parrish v. Layton City Corp.*, 542 P.2d 1086 (Utah 1975) (decided under former law).

Other public improvement.

Damages to house and basement partially incurred from defective conditions of sewer drain and canal fell under purview of this section. *Parrish v. Layton City Corp.*, 542 P.2d 1086 (Utah 1975).

63-30-10. Waiver of immunity for injury caused by negligent act or omission of employee — Exceptions — Waiver for injury caused by violation of fourth amendment rights.

(1) Immunity from suit of all governmental entities is waived for injury proximately caused by a negligent act or omission of an employee committed within the scope of employment except if the injury:

(a) arises out of the exercise or performance or the failure to exercise or perform a discretionary function, whether or not the discretion is abused; or

(b) arises out of assault, battery, false imprisonment, false arrest, malicious prosecution, intentional trespass, abuse of process, libel, slander, deceit, interference with contract rights, infliction of mental anguish, or civil rights; or

(c) arises out of the issuance, denial, suspension, or revocation of, or by the failure or refusal to issue, deny, suspend, or revoke, any permit, license, certificate, approval, order, or similar authorization; or

(d) arises out of a failure to make an inspection, or by reason of making an inadequate or negligent inspection of any property; or

(e) arises out of the institution or prosecution of any judicial or administrative proceeding, even if malicious or without probable cause; or

(f) arises out of a misrepresentation by the employee whether or not it is negligent or intentional; or

(g) arises out of or results from riots, unlawful assemblies, public demonstrations, mob violence, and civil disturbances; or

(h) arises out of or in connection with the collection of and assessment of taxes; or

(i) arises out of the activities of the Utah National Guard; or

(j) arises out of the incarceration of any person in any state prison, county, or city jail or other place of legal confinement; or

(k) arises from any natural condition on state lands or the result of any activity authorized by the State Land Board; or

(l) arises out of the activities of providing emergency medical assistance, fighting fire, handling hazardous materials, or emergency evacuations.

(2) Immunity from suit of all governmental entities is waived for injury proximately caused or arising out of a violation of protected fourth amendment rights as provided in Chapter 16, Title 78 which shall be the exclusive remedy for injuries to those protected rights. If § 78-16-5 or Subsection 77-35-12(g) or any parts thereof are held invalid or unconstitutional, this Subsection (2) shall be void and governmental entities shall remain immune from suit for violations of fourth amendment rights.

History: L. 1965, ch. 139, § 10; 1975, ch. 194, § 11; 1982, ch. 10, § 1; 1985, ch. 169, § 1.

Amendment Notes. — The 1982 amendment designated the former section as Subsection (1); substituted letters for numbers as subdivision designations; and added Subsection (2).

The 1985 amendment, effective March 18, 1985, added Subsection (1)(l) and made minor changes in phraseology.

Cross-References. — Indemnification of public officers and employees, §§ 63-30-36 to 63-30-38.

64-7-7.1. Responsibility for education of school-aged children at hospital — Responsibility for noninstructional services.

(1) The State Board of Education is responsible for the education of school-aged children at the Utah State Hospital.

(2) In order to fulfill its responsibility under Subsection (1), the board may contract with local school districts or other appropriate agencies to provide educational and related administrative services.

(3) Medical, residential, and other noninstructional services are the responsibility of the division.

History: C. 1953, 64-7-7.1, enacted by L. 1986, ch. 6, § 2.

Effective Dates. — Laws 1986, ch. 6, § 4 makes the act effective on July 1, 1986.

Cross-References. — State Board of Education, Chapter 2 of Title 53.

64-7-7.3. Transfer of supplies, equipment, and budgetary funds to board.

All supplies, equipment, furniture, and budgetary funds which were, before the effective date of this act, under the Department of Social Services but, because of this act, now come under the jurisdiction of the State Board of Education, shall be transferred to the board as of the effective date of this act.

History: C. 1953, 64-7-7.3, enacted by L. 1986, ch. 6, § 3.

Meaning of "this act". — The term "this act," referred to in this section, means Laws 1986, ch. 6, §§ 1 to 3, which appear as §§ 53-18-9.5, 64-7-7.1, and 64-7-7.3.

Effective Dates. — Laws 1986, ch. 6, § 4 makes the act effective on July 1, 1986.

Cross-References. — Transfer of powers, duties and functions to division, § 64-7-4.

64-7-8. Objectives of facilities.

The objectives of the Utah State Hospital and other mental health facilities shall be to care for all persons within the state who are subject to the provisions of this act, and to furnish them proper attendance, medical treatment, seclusion, rest, restraint, amusement, occupation, and support conducive to their physical and mental well-being.

History: R.S. 1898, § 2154; L. 1903, ch. 115, § 1; C.L. 1907, § 2154; L. 1909, ch. 29, § 1; C.L. 1917, § 5384; R.S. 1933, 85-7-10; L. 1935, ch. 95, § 1; C. 1943, 85-7-10; L. 1951, ch. 113, § 2; 1971, ch. 172, § 1; 1975, ch. 198, § 5.

Meaning of "this act". — The term "this

act," referred to in this section, means Laws 1951, ch. 113, §§ 2 to 4, which appear as various sections throughout this title. See Table of Session Laws in Parallel Tables volume.

Cross-References. — Commitment and care of criminally insane, § 64-7-54.

64-7-5. Rules and regulations.

Compiler's Notes. — For similar provisions, see §§ 62A-12-205 to 62A-12-208.

64-7-6. Record of board proceedings — Maintenance buildings — Expenses for treatment.

Compiler's Notes. — For similar provisions, see §§ 62A-12-205 to 62A-12-208.

64-7-7. Supervision and treatment of mentally ill person by division.

Compiler's Notes. — For similar provisions, see §§ 62A-12-205 to 62A-12-208.

64-7-7.1. Responsibility for education of school-aged children at hospital — Responsibility for noninstructional services.

Compiler's Notes. — For similar provisions, see §§ 62A-12-205 to 62A-12-208.

64-7-7.3. Repealed.

Repeals. — Laws 1988, ch. 1, § 407 repeals § 64-7-7.3, as enacted by Laws 1986, ch. 6, § 3, relating to transfer of supplies, equipment and budgetary funds to the State Board of Education, effective January 19, 1988.

64-7-8 to 64-7-24.

Compiler's Notes. — For similar provisions, see §§ 62A-12-209 to 62A-12-225.

64-7-24.5. Escape of criminals.

Any person committed to the Utah State Hospital under the provisions of Title 77, Chapter 48 or 49 [Chapter 15 or 16], or under the provisions of Section 77-24-15, who escapes or leaves without proper legal authority is guilty of a class A misdemeanor.

History: L. 1973, ch. 175, § 1; 1979, ch. 97, § 10; 1987, ch. 92, § 135.

Amendment Notes. — The 1987 amendment substituted "is" for "shall be deemed" and made a minor change in the first statutory reference.

Compiler's Notes. — See note following same catchline in notes to this section in the bound volume.

For similar proceedings, see § 62A-12-226.

Cross-References. — Sentencing for misdemeanors, §§ 76-3-201, 76-3-204, 76-3-301.

History: C. 1943, 85-7-58, enacted by L. 1951, ch. 113, § 3; L. 1953, ch. 124, § 2; 1971, ch. 172, § 6 [b]; 1975, ch. 198, § 20; 1979, ch. 97, § 14.

Cross-References. — Inquiry into defendant's sanity, Chapter 15 of Title 77.

Limitation of application as to criminally insane, § 64-7-54.

COLLATERAL REFERENCES

Am. Jur. 2d. — 41 Am. Jur. 2d Incompetent Persons §§ 8 to 25, 39 to 42.

C.J.S. — 44 C.J.S. Insane Persons §§ 14 to 34.

Key Numbers. — Mental Health ⇐ 37 to 46.

64-7-33. Repealed.

Repeals. — Section 64-7-33 (C. 1943, 85-7-59, enacted by L. 1951, ch. 113, § 3; L. 1953, ch. 124, § 2; 1963, ch. 159, § 1; 1967, ch. 174, § 130; 1971, ch. 172, § 7), relating to ad-

mission to the Utah State Hospital on certification by examiners, was repealed by Laws 1975, ch. 198, § 35.

64-7-34. Temporary admission to mental health facility — Requirements and procedures — Costs.

(1) Any individual may temporarily be admitted to a mental health facility upon:

(a) written application by a responsible person who has reason to know, stating a belief that the individual is likely to cause serious injury to self or others if not immediately restrained, and the personal knowledge of the individual's condition or circumstances which lead to such belief, and

(b) a certification by a licensed physician or designated examiner stating that the physician or designated examiner has examined the individual within a three-day period immediately preceding said certification and is of the opinion that the individual is mentally ill and, because of the individual's mental illness, is likely to injure self or others if not immediately restrained.

Such an application and certificate shall authorize any mental health or peace officer to take the individual into custody and transport the individual to a mental health facility.

(2) If a duly authorized mental health officer or peace officer observes a person involved in conduct which leads the officer to have probable cause to believe that such person is mentally ill, as defined by this act, and that, because of such apparent mental illness and conduct, there is a substantial likelihood of serious harm to that person or to others pending proceedings for examination and certification as provided in this act, the officer may take the person into protective custody. A peace officer may transport a patient pursuant to this provision either on the basis of his own observation or on the basis of the observation of a mental health officer, reported to him by the mental health officer. Immediately thereafter, the officer shall transport the person to a mental health facility and there make application for the person's admission therein. The application shall be upon a prescribed form and shall include the following:

(a) a statement by the officer that the officer believes on the basis of personal observation or on the basis of the observation of a mental health officer reported to him by the mental health officer that the person is, as a

result of a mental illness, a substantial and immediate danger to self or others.

(b) the specific nature of the danger.

(c) a summary of the observations upon which the statement of danger is based.

(d) a statement of facts which called the person to the attention of the officer.

(3) Any person admitted under this section may be held for a maximum of 24 hours excluding Saturdays, Sundays and legal holidays. At the expiration of that time period, the person shall be released unless application for involuntary hospitalization has been commenced pursuant to § 64-7-36. If such application has been made, an order of detention may be entered pursuant to Subsection (3) of § 64-7-36. If no order of detention is issued, the patient shall be released, except when the patient has made voluntary application for admission.

(4) Cost of all diagnosis and treatment under this section shall be paid by the county in which such person is found, unless the county participates in the state social services medical program as outlined in § 55-15a-3, in which event the state shall pay, or unless the person is financially able to pay the same in which event that person shall pay.

History: C. 1943, 85-7-60, enacted by L. 1951, ch. 113, § 3; L. 1953, ch. 124, § 2; 1963, ch. 159, § 1; 1971, ch. 172, § 8; 1975, ch. 198, § 21; 1979, ch. 97, § 15; 1981, ch. 261, § 1.

Amendment Notes. — The 1981 amendment deleted "upon endorsement for such purpose by a judge of the district court or a member of the board of county commissioners of the county in which the individual is present" after "certificate" in the second paragraph of Subsection (1); inserted "officer" after "mental health" in the first sentence of Subsection (2); inserted the second sentence of Subsection (2); and inserted "or on the basis of the observation

of a mental health officer reported to him by the mental health officer" in Subsection (2)(a).

Meaning of "this act". — The term "this act," referred to in this section, means Laws 1975, ch. 198, §§ 1 to 34, which appear as various sections throughout Titles 26 and 64. See Table of Session Laws in Parallel Tables volume.

Compiler's Notes. — Section 55-15a-3, cited in Subsection (4), is repealed. See § 26-18-10.

Cross-References. Limitation of application as to criminally insane, § 64-7-54.

COLLATERAL REFERENCES

Am. Jur. 2d. — 41 Am. Jur. 2d Incompetent Persons §§ 8 to 25, 39 to 42.

C.J.S. — 44 C.J.S. Insane Persons §§ 14 to 34.

Key Numbers. — Mental Health ⇨ 37 to 46.

64-7-35. Mental health commissioner — Appointment Qualifications — Duties.

The court is authorized to appoint a mental health commissioner to assist in the conduct of hospitalization proceedings who shall be an attorney licensed to practice law in this state and knowledgeable about mental health. In any case in which the court refers an application to the commissioner, the commissioner shall promptly cause the proposed patient to be examined and, on the basis thereof, shall either recommend dismissal of the application or hold a hearing as provided in this chapter and make findings of fact and recommen-

dations to the court regarding the order for involuntary hospitalization of the proposed patient.

History: C. 1953, 64-7-35, enacted by L. 1953, ch. 124, § 2; 1971, ch. 172, § 9), relating to protective custody pending examination and certification.

Compiler's Notes. — Laws 1975, ch. 198, § 35 repealed former § 64-7-35 (C. 1943, 85-7-61, enacted by L. 1951, ch. 113, § 3; L. 1953, ch. 124, § 2; 1971, ch. 172, § 9), relating to protective custody pending examination and certification.

Cross-References. — Admission to practice law, § 78-51-10.

64-7-36. Involuntary hospitalization on court order — Examination of patient — Hearing — Power of court — Findings — Costs.

(1) Proceedings for the involuntary hospitalization of an individual may be commenced by the filing of a written application with the district court of the county in which the proposed patient resides or is found, by a responsible person who has reason to know of the condition or circumstances of the proposed patient which lead to the belief that the individual is mentally ill and should be involuntarily hospitalized. Any such application shall be accompanied by:

(a) a certificate of a licensed physician or a designated examiner stating that within a seven-day period immediately preceding the certification the physician or designated examiner has examined the individual and is of the opinion that the individual is mentally ill and should be involuntarily hospitalized; or

(b) a written statement by the applicant that the individual has been requested to but has refused to submit to an examination of mental condition by a licensed physician or designated examiner. Said application shall be sworn to under oath and shall state the facts upon which the application is based.

(2) Prior to issuing a judicial order, the court may require the applicant to consult a mental health facility or may direct a mental health professional from a mental health facility to interview the applicant and the proposed patient to determine the existing facts and report them to the court.

(3) If the court finds from the application, any other statements under oath, or any reports from a mental health professional that there is a reasonable basis to believe that the proposed patient's mental condition and immediate danger to self, others or property requires involuntary hospitalization pending examination and hearing, or if the proposed patient has refused to submit to an interview with a mental health professional as directed by the court, or to go to a treatment facility voluntarily, the court may issue an order directed to a mental health officer or peace officer to immediately take the proposed patient to any mental health facility, or a temporary emergency facility as provided in Section [Subsection] 64-7-38(2), there to be detained for the purpose of examination. Within 24 hours of the issuance of the order for examination, the clinical director of a mental health facility or a designee shall report to the court orally or in writing whether the patient is, in the opinion of the examiners, mentally ill, whether the patient has agreed to become a voluntary patient pursuant to § 64-7-29, and whether treatment programs are available and acceptable without court proceedings. Based on such information, the court may without taking any further action terminate the proceed-

ings and dismiss the application. In any event, if the examiner reports orally, the examiner shall immediately send the report in writing to the clerk of the court.

(4) Notice of the commencement of proceedings for involuntary hospitalization, setting forth the allegations of the application and any reported facts together with a copy of any official order of detention, shall be provided by the court to a proposed patient prior to, or upon, admission to a mental health facility or, with respect to any individual presently in a mental health facility whose status is being changed from voluntary to involuntary, upon the filing of an application for that purpose with the court. A copy of such order of detention must be maintained at the place of detention.

(5) Notice of the commencement of such proceedings shall be provided by the court as soon as practicable to the applicant, any legal guardian, any immediate adult family members, the legal counsel for the parties involved, and any other persons the proposed patient or the court shall designate, and shall advise such persons that a hearing thereon may be held within the time provided by law, unless the patient has refused to permit release of such information in which case the extent of notice shall be determined by the court.

(6) Proceedings for the involuntary hospitalization of an individual under the age of eighteen years who is under the continuing jurisdiction of the juvenile court may be commenced by the filing of a written application with the juvenile court in accordance with the provisions of this section and said court shall have jurisdiction to proceed in such case in the same manner and with the same authority as the district court.

(7) If there are no appropriate mental health resources within the district, the court may in its discretion transfer the case or patient's custody to any other district court within the state of Utah provided that said transfer will not be adverse to the interest of the proposed patient.

(8) Within twenty-four hours, excluding Saturdays, Sundays, and legal holidays, of the issuance of a judicial order or after admission at a mental health facility of a proposed patient under court order for detention or examination, the court shall appoint two designated examiners to examine the proposed patient. If requested by the proposed patient's counsel, the court shall appoint as one of the examiners a reasonably available qualified person designated by counsel. The examinations, to be conducted separately, shall be held at the home of the proposed patient, a hospital or other medical facility, or at any other suitable place not likely to have a harmful effect on the patient's health.

A time shall be set for a hearing to be held within ten court days of the appointment of the designated examiners unless said examiners or the clinical director of the mental health facility shall inform the court prior to said hearing date that the patient is not mentally ill, that the patient has agreed to become a voluntary patient pursuant to § 64-7-29, or that treatment programs are available and acceptable without court proceedings in which event the court may without taking any further action terminate the proceedings and dismiss the application.

(9) Prior to the hearing, an opportunity to be represented by counsel shall be afforded to every proposed patient, and if neither the patient nor others provide counsel, the court shall appoint counsel and allow sufficient time to consult with the patient prior to the hearing. In the case of an indigent patient, the payment of reasonable attorney's fees for counsel as determined by

the court shall be made by the county in which the patient resides or was found. The proposed patient, the applicant, and all other persons to whom notice is required to be given shall be afforded an opportunity to appear at the hearing, to testify, and to present and cross-examine witnesses, and the court may in its discretion receive the testimony of any other person. The court may allow a waiver of the patient's right to appear only for good cause shown, which cause shall be made a matter of court record. The court is authorized to exclude all persons not necessary for the conduct of the proceedings and may, upon motion of counsel, require the testimony of each examiner to be given out of the presence of any other examiners. The hearing shall be conducted in as informal a manner as may be consistent with orderly procedure and in a physical setting not likely to have a harmful effect on the mental health of the proposed patient. The court shall receive all relevant and material evidence which may be offered subject to the rules of evidence.

The mental health facility or the physician in charge of the patient's care shall provide to the court at the time of the hearing the following information: the detention order, the admission notes, the diagnosis, any doctors' orders, the progress notes, the nursing notes and the medication records pertaining to the current hospitalization. Said information shall also be supplied to the patient's counsel at the time of the hearing and at any time prior thereto upon request.

(10) The court shall order hospitalization if, upon completion of the hearing and consideration of the record, the court finds by clear and convincing evidence that:

(a) The proposed patient has a mental illness; and

(b) Because of the patient's illness the proposed patient poses an immediate danger of physical injury to others or self, which may include the inability to provide the basic necessities of life, such as food, clothing, and shelter, if allowed to remain at liberty; and

(c) The patient lacks the ability to engage in a rational decision-making process regarding the acceptance of mental treatment as demonstrated by evidence of inability to weigh the possible costs and benefits of treatment; and

(d) There is no appropriate less restrictive alternative to a court order of hospitalization; and

(e) The hospital or mental health facility in which the individual is to be hospitalized pursuant to this act can provide the individual with treatment that is adequate and appropriate to the individual's conditions and needs. In the absence of the required findings of the court after the hearing, the court shall forthwith dismiss the proceedings.

(11) (a) The order of hospitalization shall designate the period for which the individual shall be treated. When the individual is not under an order of hospitalization at the time of the hearing, this period shall not exceed six months without benefit of a review hearing. Upon such a review hearing, to be commenced prior to the expiration of the previous order, an order for hospitalization may be for an indeterminate period, if the court finds by clear and convincing evidence that the required conditions in Section [Subsection] 64-7-36(10) will last for an indeterminate period.

(b) The court shall maintain a current list of all patients under its order of hospitalization, which list shall be reviewed to determine those patients who have been under an order of hospitalization for the desig-

nated period. At least two weeks prior to the expiration of the designated period of any order of hospitalization still in effect, the court that entered the original order shall so inform the clinical director of the mental health facility responsible for the care of such patient. The director shall immediately reexamine the reasons upon which the order of hospitalization was based. If the director and staff determine that the conditions justifying such hospitalization no longer exist, the director shall discharge the patient from involuntary treatment and make an immediate report thereof to the court and to the Division of Mental Health. Otherwise, the court shall immediately appoint two designated examiners and proceed under Subsections (8) through (10) of this section.

(c) The clinical director of a mental health facility or a designee responsible for the care of a patient under an order of hospitalization for an indeterminate period shall at six-month intervals reexamine the reasons upon which the order of indeterminate hospitalization was based. If the clinical director or the designee determine that the conditions justifying such hospitalization no longer exist, the director shall discharge the patient from involuntary treatment and make an immediate report thereof to the court and the Division of Mental Health. If the clinical director or designee has determined that the conditions justifying such hospitalization continue to exist, the director shall send a written report of such findings to the court and to the Division of Mental Health. The patient and the patient's counsel of record shall be notified in writing that the involuntary treatment will be continued, the reasons for such, and that the patient has the right to a review hearing by making a request to the court. Upon receiving the request, the court shall immediately appoint two designated examiners and proceed under Subsections (8) through (10) of this section.

(12) In the event that the designated examiners are unable, because of refusal of a proposed patient to submit to an examination, to complete such examination upon the first attempt to conduct the same, the court shall fix a reasonable compensation to be paid to such designated examiners for services in the cause.

(13) Any person hospitalized under this act or a person's legally designated representative who is aggrieved by the findings, conclusions and order of the court, shall have the right to a rehearing upon a petition filed with the court within thirty days of the entry of the court order. In the event the petition alleges error or mistake in the findings, the court shall appoint three impartial designated examiners previously unrelated to the case who shall conduct an additional examination of the patient. The rehearing shall in all other respects be conducted in the manner otherwise permitted.

(14) Costs of all proceedings under this section shall be paid by the county in which the proposed patient resides or is found.

History: C. 1943, 85-7-82, enacted by L. 1951, ch. 113, § 3; L. 1953, ch. 124, § 2; 1963, ch. 60, § 1; 1967, ch. 174, § 131; 1971, ch. 172, § 10; 1975, ch. 198, § 22; 1979, ch. 97, § 17; 1981, ch. 261, § 2.

Amendment Notes. — The 1981 amend-

ment substituted "issuing a judicial order" in Subsection (2) for "filing the application"; inserted "or to go to a treatment facility voluntarily" and "or a temporary emergency facility as provided in section 64-7-38(2)" in the first sentence of Subsection (3); added the last three

History: L. 1951, ch. 58, § 1; C. 1943, Supp., 104-2-1; 1969, ch. 247, § 1; 1986, ch. 47, § 40; 1988, ch. 248, § 4.

Amendment Notes. — The 1988 amendment, effective April 25, 1988, in Subsection (2), rewrote the former second sentence which

read "Thereafter, the term of office of a justice of the Supreme Court is ten years and until his successor is appointed and approved in accordance with Section 20-1-7.1" and, in Subsection (6), substituted "determines" for "decides" at the end of the fourth sentence.

78-2-2. Supreme Court jurisdiction.

(1) The Supreme Court has original jurisdiction to answer questions of state law certified by a court of the United States.

(2) The Supreme Court has original jurisdiction to issue all extraordinary writs and authority to issue all writs and process necessary to carry into effect its orders, judgments, and decrees or in aid of its jurisdiction.

(3) The Supreme Court has appellate jurisdiction, including jurisdiction of interlocutory appeals, over:

- (a) a judgment of the Court of Appeals;
- (b) cases certified to the Supreme Court by the Court of Appeals prior to final judgment by the Court of Appeals;
- (c) discipline of lawyers;
- (d) final orders of the Judicial Conduct Commission;
- (e) final orders and decrees in formal adjudicative proceedings, originating with:

- (i) the Public Service Commission;
- (ii) the State Tax Commission;
- (iii) the Board of State Lands;
- (iv) the Board of Oil, Gas, and Mining;
- (v) the state engineer;
- (f) final orders and decrees of the district court review of informal adjudicative proceedings of agencies under Subsection (e);
- (g) a final judgment or decree of any court of record holding a statute of the United States or this state unconstitutional on its face under the Constitution of the United States or the Utah Constitution;
- (h) interlocutory appeals from any court of record involving a charge of a first degree or capital felony;
- (i) appeals from the district court involving a conviction of a first degree or capital felony; and
- (j) orders, judgments, and decrees of any court of record over which the Court of Appeals does not have original appellate jurisdiction.

(4) The Supreme Court may transfer to the Court of Appeals any of the matters over which the Supreme Court has original appellate jurisdiction, except the following:

- (a) first degree and capital felony convictions;
- (b) election and voting contests;
- (c) reapportionment of election districts;
- (d) retention or removal of public officers;
- (e) general water adjudication;
- (f) taxation and revenue; and
- (g) those matters described in Subsection (3)(a) through (i).

(5) The Supreme Court has sole discretion in granting or denying a petition for writ of certiorari for the review of a Court of Appeals adjudication, but the

Supreme Court shall review those cases certified to it by the Court of App under Subsection (3)(b).

(6) The Supreme Court shall comply with the requirements of Chapter 4 Title 63, in its review of agency adjudicative proceedings.

History: C. 1953, 78-2-2, enacted by L. 1986, ch. 47, § 41; 1987, ch. 161, § 303; 1988, ch. 248, § 5.

Amendment Notes. — The 1988 amendment, effective April 25, 1988, substituted "formal adjudicative proceedings" for "cases" in

Subsection (3)(e); added Subsection (3)(f); designated former Subsections (3)(f) to (3)(i) accordingly; substituted "(i)" for "(h)" at the of Subsection (4)(g); and made minor stylistic changes.

NOTES TO DECISIONS

ANALYSIS

Docketing statement.
—Reference to subsection.
Cited.

Docketing statement.
—Reference to subsection.

In all cases appealed after January 1, 1987, reference in the docketing statement to this section will be considered insufficient; instead the appropriate subsection must be included to alert the Supreme Court that it has original

appellate jurisdiction over the case. Gregory Fourtwest Invs., Ltd., 735 P.2d 33 (Utah 1987).

Cited in Conder v. A.L. Williams & Associates, 739 P.2d 634 (Utah Ct. App. 1987).

78-2-4. Supreme Court — Rulemaking, judges pro tempore, and practice of law.

NOTES TO DECISIONS

Cited in Stewart v. Coffman, 73 Utah Adv. Rep. 119 (Ct. App. 1988).

COLLATERAL REFERENCES

Utah Law Review. — Recent Developments in Utah Law — Judicial Decisions — Criminal Law, 1987 Utah L. Rev. 137.

78-2-5. Repealed.

Repeals. — Laws 1988, ch. 248, § 50 repeals § 78-2-5, Utah Code Annotated 1953, providing that the Supreme Court is always open, effective April 25, 1988.

78-2-7.5. Service of sheriff to court.

The court may at any time require the attendance and services of any sheriff in the state.

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IN THE FOURTH JUDICIAL DISTRICT COURT OF UTAH COUNTY
STATE OF UTAH

ESTATE OF MARCEL SCHOPF,

Plaintiff,

vs.

AFFIDAVIT OF
DALE R. BROWN

JON MICHAEL PETERSEN, DALE R.
BROWN and SUSETTE A BROWN, and
STATE OF UTAH, STATE HOSPITAL,

Defendants.

Civil No. CV 87-999

_____/

STATE OF CALIFORNIA)
 : ss.
COUNTY OF _____)

COMES NOW, Dale R. Brown, and being first duly sworn,
deposes and states as follows:

1. I am one of the named defendants in the above-
entitled matter.

2. At the time of the accident which is the subject
matter of this action, I owned with my wife Susette A. Brown,
a 1980 AMC Concord.

3. On November 1, 1986, shortly before 1:00 p.m., I drove my car to return a VCR and then pick up my son, Jason, at a nearby friend's home where Jason had been attending a primary party.

4. I parked my car in front of my friend's home at approximately 500 East 100 North in Provo.

5. I left the motor running and the keys in the ignition because I was only going to the door to get Jason and would only be away from the car momentarily.

6. As I pulled up in front of my friend's house, I saw a neighbor, John Ringer, outside about two houses away and waved to him.

7. I did not notice anyone else in the vicinity.

8. I left the car unattended for less than one minute.

9. When I returned, my car had been stolen.

10. I later learned the identity of the man who stole my car as Jon Michael Petersen, one of the defendants in this action.

11. I never authorized or permitted Mr. Petersen to drive my car.

12. I did not know that Mr. Petersen intended to drive my car prior to him stealing it.

13. Mr. Petersen was not and has never been my agent employee.

14. Mr. Petersen was not acting in my behalf when he
tole my vehicle.

FURTHER your affiant sayeth not.

DATED and signed this first day of ^{October}~~September~~, 1987.

Dale R. Brown

Dale R. Brown

Subscribed and sworn to before me this first day of
~~October~~
~~September~~, 1987.

Kathleen W. Barnes

Notary Public

Residing at: Hanford AFB, Md 01731

y Commission Expires:

Kathleen W. Barnes

Notary Public

Commission Expires April 30, 1993

RT CONTINUATION - NARRATIVE

CASE NO.- 86-51485

M. Petersen, an escapee from the Utah State Hospital had stolen a vehicle from east 100 North in Provo. Owner of the stolen vehicle followed suspect onto I-15, bound as far as 12th South Orem exit. Highway Patrol Dispatch advised that the n vehicle was north-bound, approximately 2 miles north of their office and the driver red intoxicated. At 500 East American Fork interchange, Trooper Hunt observed the n vehicle. Deputy Harris fell in behind Trooper Hunt at 500 East I-15 to assist the stolen vehicle. The stolen vehicle accelerated and the driving pattern was erratic, suspect vehicle was weaving back and forth. Suspect Petersen said he saw trooper behind him with his lights on. Suspect Petersen said he decided to run from ooper, so he accelerated as fast as the car could go. Suspect Petersen said he was 85 miles per hour. Trooper Hunt pulled along the side of the suspect to get a ive identification of the suspect, Trooper Hunt stated that the suspect was flipping he bird. Suspect said as Trooper Hunt pulled along the side of him, he flipped rooper the bird and yelled, "Fuck You". Suspect said while he was flipping the at the Trooper, he lost control of the car, and the next thing that he remembers hen he crashed. Suspect Petersen said he had no intention what-so-ever of stopping. Trooper Hunt and Deputy Harris observed the suspect's vehicle drifting off to the edge of the roadway. The suspect then over-corrected and took the vehicle across lanes of travel into the median strip, and into the path of south-bound traffic. d of suspect's vehicle was 80+). The victim- Marcel Schopf was going south-bound e center lane at about 65 miles per hour \pm 2 miles per hour. The suspects vehicle he median sending a great deal of debris up into the air with it, as it went air- . The suspect's vehicle hit the front left corner (or driver's side) of the wagon Van, thus pushing the van to the side (west) and hitting a small Red Datsun up. The debris that came up when the suspect's vehicle went air-bound, hit the oyota causing damage to the windshield and front quarter pannel. The Toyota was ont of the white Volkswagon while going south-bound. Both American Fork and Lehi ances assisted. Victim- Marcel Schopf was pinned in the front seat of the vehicle, s extracated from the vehicle and taken to American Fork Hospital. Marcel Schopf

REPORT CONTINUATION - NARRATIVE

CASE NO.- 86-51485

was pronounced dead at the Hospital. Suspect - John M. Petersen was underneath the yellow AMC, and was also taken to the American Fork Hospital. Suspect Petersen was placed under arrest, both blood and urine samples were taken. Suspect was released by the Emergency Room physician and by our Deputies, back into the custody of the Utah State Hospital. Accident investigation, pictures, & witness statements were completed at the scene. Deputies of the Utah County Sheriff's Department attended the autopsy. Positive identification of the victim has been made by both the brother, and friends.

-J.D. Harris

Badge # 1J27

Utah County Sheriff's Department

APPROPRIATE BOX:

Yearly Social History Update
Readmission Note
New Admission Note

Date September 10, 1983

A-

DEPOSITION
EXHIBIT

3-4-88

No. 1

Include:

Identifying
Information

Source of
Information

Reason for Con-
tinued Stay,
Readmission or
New Admission

Information
Relative to
Patient
Admission(s)

Relevant Back-
ground Information

Other Headings
Deemed
Appropriate)

Disposi-
tion Plans

Present Psycho-
logical Assessment

IDENTIFYING INFORMATION

Jon Michael Peterson is a 21 year old, single, white male admitted for the fifth time on May 24, 1982. The last admission to this facility was in September of 1981 for two months.

INFORMATION SOURCES

Records from the University Medical Center
Records from Granite Mental Health
Records of prior admissions to the Utah State Hospital
Interview with patient who is a moderately reliable source
Recent Utah State Hospital records.

REASON FOR CONTINUED STAY

The precipitating event for this admission to the hospital occurred when Jon held a friend hostage at knife point then tried to kill him. The friend was stabbed superficially about four times and Jon cut his own hand accidentally during the incident. The reason for Jon's continued stay at this facility is due to a lack of a consistent absence of sub-acute psychotic symptoms. This patient has quite frequent hypo-manic run episodes which result in greater agitation, irritability, and other threats of violence. This is especially significant for this patient due to his assaultive-injurious behavioral history. This patient also does not manifest the necessary insight to recognize the dangerous state that he becomes when he manifests acute psychotic symptomatology. Mr. Peterson is also on an undeterminate court commitment.

INFORMATION RELATIVE TO EARLIER ADMISSIONS

When previously released from this facility on November 30, 1981. Jon went to live and ANE Nursing Home in Salt Lake City. He received treatment at Granite Mental Health, and in early 1982 he moved to an apartment where the incident occurred. It appears that any disposition planning will have to necessarily include a placement at a residential treatment setting, one that is secure enough to monitor his progress and to decide whether or not independent community living is an appropriate option. Might we mention here that due to his severe threatening behavior state that this may not be an appropriate option due to this present condition. This patient is a moderate danger when he becomes acutely ill and such caution needs to be exercised when considering an appropriate disposition plan.

UTAH HOSPITAL

WORK SERVICES

CONFIDENTIAL INFORMATION

PATIENT

IDENTIFICATION

PETERSEN, JOHN M

528-98-1503 M

17 MAY 1982

DATE AND TIME OF EVALUATION: September 10, 1983

PERTINENT BACKGROUND INFORMATION

Jon states that there have been no changes in his family milieu since the original social history. Might we add here though, that both of Jon's parents are deaf and that any communication that we attempt is through Jon's brothers who then act as communicators to the parents. It could also be mentioned that Jon's two brothers appear to be responsible, functioning, young adults who live quite successfully in the community.

POSSIBLE DISCHARGE PLANS

As mentioned, Jon will require a firm secure residential treatment setting once he leaves the hospital. Again, we will mention that Jon has a history of assaultive behavior and suicide attempts. It should also be mentioned that the only time that Jon lived independently was the time when he quickly decompensated and became quite dangerous and resulted in the homicide attempt. Such secure residential treatment facilities might include ARTU, ITU, or some other fairly secure residential treatment facility. It should be mentioned however, that Jon will remain hospitalized here until there is no such evidence of the dangerous behaviors that have been illuded to here to for.

CURRENT PSYCHOSOCIAL ASSESSMENT

Jon Michael Peterson is quite an energetic-vivacious young, single white male. When he is not acutely ill, Jon can be quite pleasant and does maintain good grooming and hygiene. Jon faces many limitations due to the early onset of his illness, lack of insight, lack of reasoning and judgement and the dangerous potential of violent behavior when he becomes acutely psychotic. Jon lacks interpersonal skills, perception, and any significant job skills and he also has deficits in his ability to learn at this time. The prognosis is poor and Jon will most likely require some sort of institutional living for the remainder of his life. Our recommendation is that Jon remain hospitalized until there is no evidence of the acute symptomatology which renders him a danger to the outside community.

CONFIDENTIAL INFO.
To Be Used For I
Of This Patient
DO NOT RE...


THOMAS S. BOLLARD, SSW

as

STATE HOSPITAL
IAL HISTORY

PATIENT

PETERSEN, JOHN M
523-22-1503 M 171
STATE

ATC EXHIBIT 2 TO DISPO Depo,

Date of Admission May 24, 1982

Date of Current Summary September 10, 1982

MEMBERS ATTENDING TREATMENT PLAN CONFERENCE:

Arno, MSW; John Kliarsky, MSW; Tony Gillette, MD; Cherie Cooper, PT; Suzanne Sandrock, OTR. Ballard, SSW.

BY OF CURRENT ASSESSMENTS: FROM THE VIEWPOINTS OF STAFF, PATIENT AND SIGNIFICANT OTHERS
s evidenced little change during the last three months. He remains highly nervous and
agitated, and acknowledges auditory hallucinations. He continues to ruminate about
g people, and occasionally writes songs about guns and knives, and using these weapons
l someone.

recautions should be maintained due to high assaultive risk and potential danger to the
ity. Despite the continued homicidal ideation, Jon is cooperative on the ward and there
een no incidents of aggression or acting-out.

IT STRENGTHS:

pleasant personality when not psychotic.
od grooming and hygiene.

IT LIMITATIONS:

arly onset of illness.
cks insight and judgement.

SIS:

phrenia, paranoid type. 295.33

SIS:

DEPOSITION
EXHIBIT

3-4-88

1/62

CONFIDENTIAL INFORMATION
TO BE USED FOR EVIDENCE
OF THIS COURT ONLY
DO NOT RELEASE

TATE HOSPITAL

DUAL COMPREHENSIVE TREATMENT PLAN
MENT SUMMARY, STRENGTHS, LIMITATIONS,

PETERSEN, JON M.
PATIENT 522-22-1503

17 MAY 1982

PATIENT INTERVIEW NOTES

of interview October 8, 1982 Interview conducted by Gail Arno, MSW

The patient came in and sat down on a chair. He appeared nervous, fidgeting in his chair and moving his hands restlessly.

Asked about his family, he said his parents are both deaf; his father works at Hill Air Force Base and his mother works as a cook in an elementary school in Salt Lake City. He went to Cottonwood High School for about one week and then quit school to get a job.

Asked if he went out with girls, he said that he likes girls. He doesn't have a girlfriend but would like to have one. He denied being attracted to boys.

Asked if he ever has fears that he might be homosexual, he stated that all four of his brothers thought he was queer. One brother asked their father if Jon is queer, but the father said that Jon is just sexy. He did not know why his brothers would think he is homosexual. He denied that the friend he stabbed might be homosexual.

Talking about this made Jon uncomfortable and the interview was terminated.

ORIGINAL FILED IN
JUL 11 1983
CITY OF SALT LAKE
DIRECTOR'S OFFICE

STATE HOSPITAL

INDIVIDUAL COMPREHENSIVE TREATMENT PLAN
PATIENT INTERVIEW NOTES

PATIENT IDENTIFICATION. ★ PETERSEN, JON H.
★ 522-2-1573

1742 v.

Date	Prob. No.	Problem Descripti
6-11-82	1.	Psychosis as evidenced by the following:
		A. Auditory hallucinations--hears voices, two
		B. Pressured speech.
		C. Agitated behavior.
		D. Flat affect.
		E. Inappropriate laughter and smiling.
		F. Bizarre ideation--speaks of wanting to poke
		G. Homicidal ideation--ruminates and writes so
		people, killing people, and about knives an
6-11-82	2.	Assaultive by history--stabbed roommate and sel
		University of Utah Medical Center.
6-11-82	3.	History of sexually inappropriate behavior--four
		the University Medical Center, sexual inuendo's
6-11-82	4.	History of suicide attempts--jumped from a windo
		1979 and fractured his leg.
6-11-82	5.	Physical problems:
		A. Ear infection--resolved.
		B. Wound infection on hand--resolved.
		C. Other.
		D. Ankle broken in 1979--pins are still there, c
6-11-82	6.	Disposition planning--deferred until homicidal id
		level for at least ^{six} three months.
6-11-82	7.	Inadequate education--did not complete high schoo

UTAH STATE HOSPITAL

INDIVIDUAL COMPREHENSIVE TREATMENT PLAN

PROBLEM LIST

PAGE ____ OF ____

PETER

PATIENT

<u>Specific Behavioral Goals</u>	<u>Date/Time</u>	<u>Treatments</u>	
Patient performance, method of observation	to be Achieved <i>off</i>	Descriptions, location, frequency	Staff assignments
Psychosis will be stabilized	3-11-83 12-11-82	Medication, participation	T. Gillette, MD
as observed by clinical staff.		in community processes, re-	G. Arno, MSW
		creational activities, and	D. Johnson, MTRS
		structured groups, seclusion	S. Sandrock, OTR
		time-out and/or restraints	
		as needed.	
Behavior will be reduced to a	3-11-83 12-11-82	Medication, seclusion,	T. Gillette, MD
zero level. As observed by		time-out and/or restraints	G. Arno, MSW
clinical staff.		as needed.	
Behavior will remain at a	3-11-83 12-11-82	4 cigarettes per-day for	G. Arno, MSW
zero level. As observed by		inappropriate sexual be-	E. Green. HA
clinical staff.		havior.	
Suicidal ideation will remain	3-11-83 12-11-82	Medication, suicide pre-	G. Arno, MSW
at a zero level. As observed		cautions as needed.	
by clinical staff.			
Symptoms will be reduced to a	12-11-82	Treatment as needed.	T. Gillette, MD
zero level. As observed by			
medical staff.			
Deferred.	3-11-83 12-11-82	Placement at Granite MHC.	G. Arno, MSW
Patient will obtain GED	12-11-82	Classes with Adult	M. Hansen
		Education.	

STATE HOSPITAL

QUAL COMPREHENSIVE TREATMENT PLAN
IC BEHAVIORAL GOALS, TREATMENT, ASSIGNMENTS
OF _____

PATIENT
IDENTIFICATION: *PRSEN, JOH N.*
52 - 21 - 1503 M 12 MAY 1983

To Be Used For
Of This Patient Only
DO NOT RELEASE

RANGE GOALS:

Completion of GED requirements

CRITERIA FOR DISCHARGE:

Aggravative behavior and homicidal ideation will remain at a zero level for at least ~~three~~ ^{six} months.

TERMINATION AND AFTERCARE PLANS:

Aftercare with Granite Mental Health Center.

Under the direction of the attending physician:

Signature

Anthony Gillette, MD

Signature of treatment coordinator

G. Arno, MSW

Signature of representative of agency providing aftercare:

Name of agency Granite Mental Health Center

Signature of patient Patient not asked to sign.

Jon Petersen

Comments

9-11-82 T. 9-11-82 /mm

STATE HOSPITAL

INDIVIDUAL COMPREHENSIVE TREATMENT PLAN
RANGE GOALS, TERMINATION PLAN,

PATIENT

PETERSEN, JON M.
*523-9--1503 M

17 MAY 1982

DATE: September 14, 1983

PRESENT: Tom Bollard, SSW; Jay Steineckert, MSW; Mike Koplin, MSW; Ethel Green,
Head Attendant, Kathy Cameron, RN; Joseph Mihalik, MD; Max Dastrup, MTRS.

SUMMARY OF CURRENT ASSESSMENT (INCLUDING PATIENT INPUT):

Jon Peterson is a 21 year old, white, single male who was admitted for the fifth time on the 24th of May 1982. This patient continues to remain hospitalized due to the manifestation of sub-acute psychotic symptoms. This patient continues to have what is described as hypo-manic run episodes that result in greater agitation and irritability including verbal threats of aggression and violence, etc. This is especially significant for this patient which has been mentioned before due to his assaultive-injurious behavioral history. Most recently it should be mentioned, that this patient has become thoroughly aggressive and on two episodes was put into the seclusion room because of his verbal threats of violence, etc. Also this patient has shown a greater impulsive behavioral responses in that earlier in the month of September while out on a walk, he went AWOL leaving the hospital grounds. This patient two hours after going AWOL, called the hospital in one of the local shopping centers

DIAGNOSIS:

(continued)

Schizo-affective disorder

PATIENT INTERVIEW:

Patient was quite excited and demonstrated an elevation in mood during the interview. He again demonstrates lack of insight into his illness and into some of the behavioral concerns that we have. Patient also behaved in a very macho masculine manner and stated that he felt dangerous, that he was a tough macho guy and that people had to be afraid of him.

DEPOSITION
EXHIBIT

3-4-88 No 1

UTAH STATE HOSPITAL
INDIVIDUAL COMPREHENSIVE
TREATMENT PLAN

PATIENT
PETERSEN, JOHN M

PETERSEN, JOHN M
620-21-1523 M 17 MAY 1986

SUMMARY OF CURRENT ASSESSMENT (INCLUDING PATIENT INPUT): (Continued)

and was eventually picked up and returned to the Unit. This patient was then restricted to the ward for a 10-day period of time following that AWOL.

Our treatment focus presently will be to be more conscientious with security and not letting him leave the ward unattended, that is requiring staff escort when he does leave the ward. Our treatment focus will also include evaluation of the treatment potential that Jon may realize on this ward. There is some discussion and consideration that Jon may be better suited in a more secure ward setting. This is not conclusive presently and further discussion and consideration will be made regarding this issue. Also, we are trying to engage Jon in those activities and those counseling efforts that will improve his self image, self-esteem and hopefully aid him in trying to imitate more acceptable more productive social behaviors, etc. Jon manifests peculiar and excentric interpersonal style. He lacks perception of others and that is very evident in his involvement in relationships and quickly identifies him as someone who is mentally disturbed. Jon also lacks vocational skills and opportunities for vocational training are limited due to required supervision of his aggression and tolerance of his excentric behavior, his labile mood and his grandiose thinking. Patient does require trained staff supervision or he becomes a behavioral management problem and is potentially dangerous. This is manifested not only by his aggressive episodes from time to time but his continual lamination and thinking of aggressive and violent acts and stating these to both staff and patients. No immediate disposition or discharge planning is being considered at this time.

CURRENT PROBLEM LIST:

Current problem list remains the same. (see last ICTP)

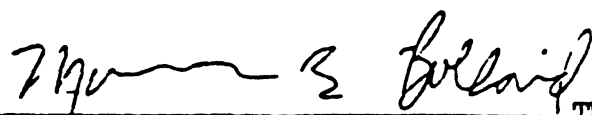
GOALS & TREATMENT:

Current goals and treatments remain the same. (see last ICTP).

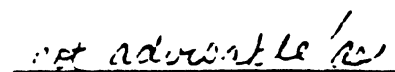
DISCHARGE & AFTERCARE PLANS:

Aftercare with Granite Mental Health Center, as arranged through Don Fennimore, liaison worker for Granite Mental Health Center. Possible placement at ARTU/ITU structured treatment facility.

This patient will definitely require a residential treatment program following release from this hospital to further assure satisfactory adjustments and appropriateness for community living.


TREATMENT COORDINATOR

THOMAS S. BOLLARD, SSW


PATIENT'S SIGNATURE
Jon Peterson


ATTENDING PHYSICIAN

JOSEPH MIHALIK, MD

1 Dorm for about ten months, but that was not paid employment.

2 Q When did you first become acquainted with Jon Petersen?

3 A It would be July of 1984 when I started.

4 Q Are you fairly familiar with Mr. Petersen's case, then?

5 A Fairly familiar, yes. He and I have had several
6 interactions through the whole time. Quite often.

7 Q Are these interactions, have any of them involved verbal
8 altercations between you and Mr. Petersen?

9 A I'd say several of them.

10 Q Is Mr. Petersen short-fused? Is he quick to anger?

11 A That's a good way to describe his personality.

12 Q Have you seen him in a physical altercation with either
13 other patients or staff members?

14 A Yes, I have.

15 Q Can you relate those incidents? You know, first of
16 all, starting with the earliest and moving forward.

17 A The earliest, the one that's indelibley in my mind,
18 is when he was--had his cigarette privileges taken away
19 from him, being able to carry his cigarettes.

20 Q Do you remember when that was?

21 A This was, I would say, 1984, that summer sometime.

22 And he demanded them back, and when he wasn't given them
23 back, he struck out at one of the attendants. And I was

24 in the proximity and helped take him down. And I related

25 this earlier, when he kicked me in the face. So I have

1 that indelibly recorded. And I had a fractured jaw as
2 a result. And other incidences were of a less--well, I
3 can recall several times that he had to be taken--forcibly
4 restrained when he provoked patients, other patients.

5 As far as staff, I can't recall any other time when
6 he's attacked a staff member. But I have been involved
7 with him, observed him being physically restrained. But
8 as far as verbal altercations, they were daily. So I
9 couldn't recall anything that sticks out in my mind.

10 Q On these physical altercations, is it fair to say
11 they're essentially two types? One is when he's denied
12 something that he wants?

13 A That's one time.

14 Q Would the other be when he is insulted, where he
15 insults? I mean, what are the other ones? I'll put it
16 that way.

17 A Okay--

18 MR. SORENSON: Object for lack of foundation as
19 to the extent.

20 Q (By Mr. Souvall) Why don't I ask you this. Aside
21 from the instance involving the cigarette and other times
22 where he's denied something that he would like, what else
23 has Jon Petersen done that has resulted in physical
24 confrontation with either staff or patients?

25 A I can't recall specifics beyond just--as far as under

1 management. I don't recall exactly what else has set him
2 off.

3 Q Would you define more specifically what you mean by
4 poor anger management?

5 A Well, if he doesn't get his way or something goes poorly
6 for him or he's frustrated in some way by someone else,
7 he has a hard time working that through without him getting
8 angry.

9 Q Now, let's go to the events of 11-1-86. Were you on
10 shift that day?

11 A Yes, I was.

12 Q What time did you come on shift?

13 A 6:30 a.m.

14 Q Who else was on shift with you?

15 A Scott Halversen, Leona Oreal, and the R.N. was Lisa
16 Taylor. The LPN was Diane Messersmith.

17 Q What were your responsibilities on that day, if you
18 can give me a general--they don't need to vary, but--

19 A Given a weekend, especially a Saturday, there is very
20 little organized activities. So it would be more patient
21 supervision and making sure that they followed through with
22 whatever tasks were required of them on the weekends.

23 Q Are you familiar with the revocation of Jon Petersen's
24 privileges that day?

25 A I was aware that they were revoked, yes.

1 somewhat of a regular basis in situations where he
2 didn't get his way threaten physical violence?

3 A. Here again I would have to go back to the
4 record and see just how often that occurred.

5 Q. Wouldn't that situation arise if Jon
6 Petersen were outside the confines of the hospital
7 in the general public though?

8 MR. SORENSON: Object as speculative.

9 A. Not necessarily because a good deal of
10 his verbal threatening had nothing to do with
11 physical violence that he was threatening but just
12 abusive language, violent and abusive language. And
13 what proportion of that would be to threats of
14 physical violence I couldn't tell you without
15 looking at the record.

16 Q. Can you explain Mr. Petersen's disorder
17 in laymen terms, something that would be perhaps
18 understandable by myself and others who are not
19 atune to psychological terminology?

20 A. The symptomology, in other words?

21 Q. Yes.

22 A. Low impulse control, eradic behavior.

23 Q. First, what does low impulse control
24 mean?

25 A. Low impulse control simply meaning that

1 playful tussles with some of the staff, becomes more
2 and more vigorous and pushing things until he is
3 finally ordered to cease"?

4 MR. SORENSON: I will stipulate that's
5 what the document says.

6 MR. SOUVALL: Okay.

7 Q. Are there specific instances that you are
8 aware of where Jon Petersen became physically
9 violent during the time period just prior to this
10 report?

11 A. Would you clarify what you mean by
12 physically violent?

13 Q. Well, let's say using physical force as
14 in shoving, tackling, hitting either open fisted or
15 closed fisted. And if you need to delineate the
16 various levels of violence feel free to.

17 A. He was violent in that when he didn't get
18 his way, he was told to do certain things and he
19 would refuse to do them and so then help would be
20 called in and he would fight and struggle as he was
21 being taken to a more restrictive environment.

22 Q. What kind of struggling was involved?
23 Was he merely trying to get out of the grasp of the
24 people restraining him or did he actually strike
25 them?

1 Q. Was Jon Petersen placed into a restraint
2 or seclusion situation?

3 MR. SORENSON: Following this particular
4 incident?

5 MR. SOUVALL: Yes.

6 A. Here again I could refer to any time an
7 individual is placed into a seclusion or restraint
8 situation there is what we call a special progress
9 note entered into the chart which is not necessarily
10 a progress note of this nature but is on a separate
11 form, so in order to answer that totally I would
12 have to find the special progress note.

13 MR. SOUVALL: Off the record.

14 (Discussion off the record.)

15 Q. You have before you what appears to be, I
16 think it was called a Special Incident Report?

17 A. Yes, Special Progress Note.

18 Q. Special Progress Note regarding this
19 incident. Do you know the drafter of that document?

20 A. Carol Hoffman, yes.

21 Q. What is the nature of the Special
22 Progress Report?

23 A. Would you like me to read it?

24 Q. Please, if you would like.

25 A. The event description includes a

1 statement that, "During the disagreement and scuffle
2 patient was taken down by the posse".

3 Q. What is the posse?

4 A. The posse is a security team of
5 patients. They are supervised in any security
6 measure by staff but they are an on-ward security.

7 "The posse was too rough and patient was
8 bruised and lacerated. Immediate actions taken.
9 Patients right-upper inner arm is bruised in
10 four-by-four inch area. Patient also has three or
11 four fingernail scrapes on right side of his neck.
12 He has a small lesion on chin and lips. Alcohol
13 applied to wounds."

14 Q. Does it indicate any punishment or
15 consequences so to speak for this action?

16 A. No.

17 Q. Was there any confinement say of any kind
18 for this?

19 A. Not according to this.

20 Q. Let's go on to the next incident
21 involving September 3rd, I believe, and I think
22 that's the next Special Incident Report.

23 MR. SORENSON: You are working backwards
24 in time now?

25 MR. SOUVALL: Yes.

1 individual resulting from any of those previous past
2 ones?

3 A. On the past one on 9-1-83 he was gone
4 approximately two hours. I would have to check.
5 And he was gone for approximately two hours and he
6 called us to come and get him.

7 Q. On the fourth paragraph of Exhibit 1 you
8 mention participating in several camp trips. Are
9 those sponsored and are those conducted by the
10 hospital personnel?

11 A. Yes.

12 Q. You mention working at the Castle. What
13 is the Castle?

14 A. The Castle is a recreation project that
15 we do each year in order to generate some funds for
16 the recreation program. As we determine who will be
17 participants in the Castle we clear names. That
18 sounds -- that's hospital terminology but we
19 determine who is -- who has progressed far enough
20 that they can be included in that because it is at
21 night and there is a very strong potential for AWOL.

22 Q. What is the nature of that activity?

23 A. What we do is we have five to seven
24 nights where we invite the public to come. They buy
25 tickets and each of the units sets up a room very

1 Q Have you seen any involvement, physical altercations,
2 where he started out as play and the force involved becomes
3 something along the lines of anger behind it?

4 A Not that he initiated, no.

5 Q But that he became involved in and struck back?

6 A Struck is a pretty powerful term. I didn't ever see
7 him actually directly hit. It was more in defense than
8 fighting off someone else.

9 Q How would these fights start?

10 A Jon is very good at verbal intimidation.

11 Q Would he initiate this verbal intimidation?

12 A Yes.

13 Q Were there some incidents involving verbal intimidation
14 that resulted in physical action that you remember, either
15 against him or by him?

16 A By him, I saw--he loved to intimidate you. He would
17 get right in your face, call you a name or pick up on some
18 little thing you hadn't done that day that you knew you
19 were supposed to have done--he's very familiar with hospital
20 rules--to see just how far he could push you to get your
21 goat, so to speak.

22 Q How often would something like this occur?

23 A Maybe three times a week. Jon is very unpredictable.
24 I don't know. He had weeks of good periods and weeks when
25 he wouldn't. I'll give you an average of three times a

1 become conceivably -- if at some time Jon could
2 become accountable for his actions, more accountable
3 for his actions an effort would be made to place
4 him. The aim is to get him back in the community if
5 he can be a considerably responsible person. So
6 that's always held out there but that does not
7 indicate we were in the process of doing that.

8 Q. Also this document under current problem
9 number 12 says, "poor impulse control". What did
10 you mean by that?

11 A. When he doesn't get his own way he stomps
12 off, yells, uses vulgar language. If he has a
13 package of cigarettes he smokes them all right now.
14 If he has some money he doesn't consider the
15 future. He will spend all of his money right now.

16 MR. SOUVALL: I have no further questions
17 regarding this document only to mark as Exhibit 17.

18 (Deposition Exhibit No. 17 was marked.)

19 Q. I have before me a document dated
20 8-22-86. It indicates that you are present and
21 presenting.

22 A. Do you have one of these?

23 Q. I want to make sure that we have the same
24 document, yes.

25 Q. Regarding the diagnosis section it says

1 MR. SOUVALL: Yes.

2 A. I don't know if it was in this time or it
3 was probably before this time, but something as
4 serious as setting fire in the smoking room. That's
5 the most serious thing that comes on mind.

6 Q. Can you provide us with details of what
7 occurred in that incident, what details you recall?

8 A. I can't except that he became distraught
9 about or upset about something and barricaded the
10 door and set fire to the carpet in the corner of the
11 smoke room.

12 Q. When people came into the room did he
13 confront them physically?

14 A. I don't remember.

15 Q. Now, next page discusses interpersonal
16 skills team TC. Problem description, "Jon does not
17 get his way. When he perceives that others are
18 saying things about him that reflect he is less than
19 perfect he loses his temper as evidenced by
20 yelling, name calling and stomping off 60 times per
21 month." And then the specific goals that he will
22 not lose his temper more than 30 times per month.
23 Did these temper tantrums, so to speak, reflect
24 anything other than yelling, name calling and
25 stomping to your recollection?

Date of Admission May 24, 1982

Date of Current Summary March 7, 1984

MEMBERS ATTENDING TREATMENT PLAN CONFERENCE: D: 3-7-84 T: 3-7-84
Arno, ACSW; MaryAnn Kraemer, RN; Anthony Gillett, MD; Mary Ellen Wilkinson, MSW;
Pershin, OTR; Leona Oryall, PT; Bob Hunter, Head Attendant; Tom Bollard, SSW; Four
ident Nurses.

SUMMARY OF CURRENT ASSESSMENTS: FROM THE VIEWPOINTS OF STAFF, PATIENT AND SIGNIFICANT OTHERS
During the last year, this patient has made no observable progress. Homocidal ideation
still present; however patient is more reluctant to talk about it. He continues to
hear voices, is continually agitated, and has frequent assaultive episodes. Speech is
disorganized. In September 1983, he went AWOL but called the ward after two hours and asked
someone to come get him. During the next two months, he decompensated, becoming more
threatening and assaultive. In November, he was transferred to State III due to the aggressive
behavior. In this ward he has been cooperative and anxious to please but continued
to have episodes of becoming paranoid and threatening. Discharge plan is to place him
in a group home or similar structured environment. However, this is deferred until
homocidal, ideation and assaultive behavior have been absent for at least six months.

GLOBAL ASSESSMENT SCALE RATING: NA

IDENTIFIED STRENGTHS:

Stable personality when not psychotic
Good grooming and hygiene.

IDENTIFIED LIMITATIONS:

Late onset of illness.
Lack of insight and judgment.

DIAGNOSIS:

Bipolar affective disorder 295.70

PROGNOSIS:

**DEPOSITION
EXHIBIT**

3-4-88
Bishop N/O.7

STATE HOSPITAL

INDIVIDUAL COMPREHENSIVE TREATMENT PLAN
ASSESSMENT SUMMARY, STRENGTHS, LIMITATIONS,
DIAGNOSIS, PROGNOSIS

PATIENT

ADULTS TRN/SZ DR. TILL
S. HAY 52-2
12 MAY

PATIENT INTERVIEW NOTES

te of interview Mrch 7, 1984 Interview conducted by Gail Arno

on came in and sat down, choosing a chair that he could rock in; he rocked rapidly throughout the interview.

atient stated he is doing well; he likes to keep busy and gets bored when not busy. He would like another job for the mornings, like at the laundry. "I would like to get in the morning, do my ward work and everything, then go to work at the laundry, eat lunch, then work with Blake in the afternoon. I like it when I'm busy." Asked what he does with his time when not working, he replied, "play pool." He doesn't read because he can't see well with his glasses anymore.

Asked what goals he has for himself, he stated, "live in my own apartment, I had fun in my own apartment." He also wants to get a driver's license, "I know how to drive a car, my Dad let me drive his car once." He has also driven his father's truck.

Asked if he had gone home for visits when on State I, he replied, "yeah." They went pretty good."

Asked if he had questions, he wanted to know when he would be able to move someplace else. He would like to go to Opportunity House. It was explained to him that he needs to get a red and blue pass and also needs to be thinking more clearly. He was satisfied with this and the interview was terminated.

CONFIDENTIAL INTERVIEW
To Be Used For
Of This Patient
DO NOT RELEASE

STATE HOSPITAL

INDIVIDUAL COMPREHENSIVE TREATMENT PLAN
PATIENT INTERVIEW NOTES

PATIENT
IDENTIFICATION: *

2-11-84 5:12 PM/SS DR. BILL
52-9-11
17 MAR 84

te	Prob. No.	
34	1.	Psychosis as evidenced by the following:
		A. Auditory hallucinations--hears voices, two women and occasionally a man.
		B. Pressured speech
		C. Agitated behavior
		D. Flat affect
		E. Inappropriate laughter and smiling.
		F. Bizarre ideation--speaks of wanting to poke girl's eyes out.
		G. Homicidal ideation--tired to kill best friend; ruminates and write songs about stabbing and shooting people, killing people, and about knives and guns.
	2.	Assaultive behavior--stabbed best friend prior to admission.
	3.	History of sexually inappropriate behavior found kissing female patient at the University Medical Center; homosexual activity with male patients.
	4.	History of suicide attempts--jumped from a window at Granite Inpatient in 1979 and fractured his leg; occasional suicidal ideation.
	5.	Physical problems:
		A. Ear infection--resolved.
		B. Wound infection on hand--resolved
		C. Other.
		D. Ankle broken in 1979--pins are still there, occasional pain and discomfort.
	6.	Disposition planning--deferred until homicidal ideation is reduced to a zero level for at least six months; placement in a group home or similar structured environment.
	7.	Inadequate education--did not complete high school
	8.	Inadequate independent living skills
	9.	No job skills or employment history
	10.	AWOL risk--patient went AWOL in September 1983.
	11	

STATE HOSPITAL

INDIVIDUAL COMPREHENSIVE TREATMENT PLAN
FORM LIST

PATIENT
IDENTIFICATION

ADULT 5 TBM/53 DR. GILLET
* 2-12-83 523-97-1573
* 1-1-83-75 17 MAR 1983

Specific Behavioral GoalsTreatments

Patient performance, method of observation	Date/Time to be Achieved	Descriptions, location, frequency	Staff assignment
Psychosis will be stabilized As observed by clinical staff.	8-8-84	Medication, participation in community processes, recrea- tional activities, and structured groups, seclusion time-out and/or restraints as needed. G. Restricted from all sharps.	A. Gillett, MD G. Arno, ACSW B. Hunter, PT
Suicidal ideation will be absent for at least six months.			
Behavior will be reduced to a zero level. As observed by clinical staff.	8-8-84	Medication, seclusion, time- out and/or restraints as needed.	A. Gillett, MD G. Arno, ACSW B. Hunter, PT
Behavior will remain at a zero level. As observed by clinical staff.	8-8-84	Four cigarettes per day for inappropriate sexual behavior.	G. Arno, ACSW B. Hunter, PT
Suicidal ideation will remain at a zero level. As observed by clinical staff.	8-8-84	Medication, suicide precau- tions as needed. Restricted from all sharps.	G. Arno, ACSW B. Hunter, PT
Symptoms will be reduced to a zero level. As observed by medical staff.	8-8-84	Medical treatment as needed.	A. Gillett, MD M. Kraemer, RN
Deferred	8-8-84	Placement in a group home or similar structured environment	G. Arno, ACSW
Patient will obtain GED-- Deferred until patient agita- tion is reduced sufficiently to be able to concentrate on written material.	Deferred	Classes with adult education	K. C. Lunceford G. Arno, ACSW
Skills will be improved by 50%. As observed by clinical staff.	8-8-84	Activities of Daily Living Group, Social skills and craft groups, other groups as deemed appropriate.	G. Arno, ACSW T. Bollard, SS B. Hunter, PT

E HOSPITAL

GENERAL COMPREHENSIVE TREATMENT PLAN

PATIENT

C BEHAVIORAL GOALS, TREATMENT, ASSIGNMENTS IDENTIFICATION: *

OF

To Be Used For Benefit

ADULT S. TAM/SS DR. GILLET

CAUTIONS

[illegible]

RANGE GOALS:.

letion of GED requirements

ERIA FOR DISCHARGE:

cidal and assaultive ideation will remain absent for at least six months.

ARATION AND AFTERCARE PLANS:

ement in a group home or similar structured environment. Aftercare arranged through
t Valley Mental Health Center.

ler the direction of the attending physician.

Signature

Anthony Gillett
Gail Arno, ACSW

ANTHONY GILLETT, MD, MPH
Clinical Director, State I

nature of treatment coordinator

GAIL ARNO, ACSW
Social Worker

gnature of representative of agency providing aftercare:

_____ Name of agency. West Valley Mental Health

gnature of patient patient was not asked to sign

ments

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NOT RELEASED

STATE HOSPITAL

DIVIDUAL COMPREHENSIVE TREATMENT PLAN
NG RANGE GOALS, TERMINATION PLAN,

PATIENT IDENTIFICATION: *ADULT S TRM/53 *2-14Y-2 *2-14Y-25 DR. GILLET 523-99-1503 17 MAY 1982

1 commitment?

2 A. Involuntary.

3 Q. Did you have occasion prior to this,
4 prior to the latest AWOL to observe Mr. Petersen
5 when he became angry?

6 A. Yes.

7 Q. At those times when you observed him to
8 be angry did you have occasion to observe whether
9 that condition lasted for a long time?

10 A. Here again defining long time, in my own
11 personal, you know, when I was actually there seeing
12 that happen they were always of very short duration,
13 and by very short I mean three to four sentence time
14 frame.

15 Q. Did he seem to harbor a grudge after
16 those incidents based on your observation?

17 A. As a general rule?

18 Q. Yes.

19 A. No, not generally.

20 MR. SORENSON: I think that's all I
21 have.

22

23 RE-EXAMINATION

24 BY MR. SOUVALL:

25 Q. During, I believe, the record indicates

1 in 1985 -- I am referring to Exhibit 1 -- that he
2 went AWOL from another facility. What facility was
3 that again?

4 A. I believe it was R-2 which stands for --

5 MR. SORENSON: I think when she says R-2

6 --

7 Q. ARTU?

8 A. Yes. It's a halfway house in Salt Lake
9 but it's a residential treatment unit run and
10 supervised by the Community Mental Health System.

11 MR. SORENSON: What does the "A" stand
12 for, adult?

13 THE WITNESS: Yes, I think it is, Adult
14 Residential Treatment Unit.

15 Q. Now, it says on 2-4, "Put on therapeutic
16 leave to ARTU." And then on 2-9-85, this is on page
17 two, it says "Return to State I after going AWOL
18 from ARTU." And then on 2-22, "Transfer to State
19 III." What does State I and State III mean?

20 A. On this date what is now was called Adult
21 II was then State III and that was based on some
22 logistical things that occurred before I got here.
23 And when we moved to a different floor the name was
24 changed and that's really all it reflects.

25 Q. Prior to the incidents of November 1 is

1 A. To my recollection, no.

2 Q. Does he ever throw things?

3 A. To my recollection he didn't throw
4 things.

5 Q. Now, I don't see a problem statement on
6 this. Is there one? I mean something like the
7 others where they are numbered.

8 A. This took the place of those.

9 Q. Now, since this report had been prepared
10 and prior to the incident on November 1, 1986 what
11 other instances were there of Jon's behavior
12 becoming violent or physical other than stomping,
13 tantrums, the yelling and stomping tantrums? Were
14 there incidents involving physical altercations you
15 were aware of?

16 A. I am not aware of any.

17 Q. Was Jon considered an AWOL risk prior to
18 November 1, 1986?

19 A. Prior to the time that he went AWOL?

20 Q. Yes.

21 A. I think I have alluded to the back of our
22 mind we always considered that there was the
23 possibility that Jon could go AWOL.

24 Q. Are you aware of the procedure, AWOL
25 procedures for your unit?

1 Q Are you generally familiar with the course of treatment
2 that was being undertaken in regards to Jon Petersen as
3 of November of '86, prior to the incident that the lawsuit
4 is--

5 A I'm generally aware, but I'm not familiar with the
6 specific treatment.

7 Q Based on your general familiarity--and we understand
8 that you're not familiar with the day to day specifics--
9 but based on your general familiarity, do you have a
10 conclusion as to whether the course of treatment that was
11 being afforded Jon Petersen was in line with the mission
12 of the hospital as you've articulated?

13 A Yes, I believe it was. I can see no deviation from
14 that in terms of his needs or what we were providing.

15 MR. SORENSON: That's all I have.

16 EXAMINATION BY MR. SOUVALL

17 Q Is it also a mission of the hospital that you are here
18 to protect the surrounding community from those who could
19 be dangerous, disruptive, difficult to manage mentally ill?

20 A That's a role of the hospital that we are here to
21 provide a setting for the patient that is dangerous to self
22 and others.

23 Q In addition to then helping the patient to enter the
24 community again, though, there is also a role for the
25 hospital that involves separating that individual from the

1 community. Is that correct?

2 A Yes. There is a responsibility.

3 Q Have there been discussions during your period as an
4 administrator of building fences around perimeters or posting
5 a guard or some sort of a checkin station at the front gate?

6 A You mean formal discussions of that?

7 Q Yes.

8 A No.

9 Q Informal?

10 A Not that I've been part of.

11 Q Would you oppose something like that?

12 A Yes. I very much would oppose that.

13 Q How many AWOL's are you aware of that have occurred
14 here at the hospital since you've been supervisor--or, I
15 don't want to mischaracterize your title. Is it
16 administrator?

17 A Superintendent.

18 Q All right. Since you've been superintendent.

19 A I would have no idea. I couldn't give you a specific
20 number. Several.

21 Q Do they all come to your attention, or is this something
22 that you--

23 A We have a quality assurance office within the hospital
24 and a quality assurance director. All AWOL's, any situation
25 that could pose a threat to the patient, are directed to

1 Q Can you please give us a detailed account--well, when
2 did you first see Jon that day, that morning, see or come
3 in contact with him?

4 A I saw Jon about 9:00 a.m., 9:05. I went down to his
5 room to wake him up for medication time.

6 Q What did he say at that point?

7 A "I don't want to get up. I don't need my medication.
8 I worked at the castle last night. I was up late. I want
9 to sleep. I'm not going to get up."

10 Q What did you tell him at that point?

11 A Told him he needed to come and get his medication,
12 or he would lose his privileges for the day.

13 Q By losing his privileges for the day, what does that
14 mean? What privileges does that entail?

15 A Soda pops, candy bars, being able to go to the canteen,
16 off grounds visits, go out for walks that he would have
17 done on his own time.

18 Q So did you in fact pull his privileges?

19 A Not at that time.

20 Q When did you pull his privileges?

21 A He came later to the office. It seems that it was
22 between 9:30 a.m. and 9:45 a.m., and he come to the door
23 and finally got his medications and requested a cigarette.
24 And we told him, no, he was too late for cigarettes.
25 Cigarettes are given on the hour for those who don't carry

1 their own. And he said, "Well, why not?" And we told him
2 he had to wait 15 more minutes. And we gave him this
3 medication at that time, and we told him at that time that
4 his privileges were pulled because he hadn't got up to get
5 his medication.

6 Q What did Jon say and do after he found out his
7 privileges had been pulled?

8 A At that time he went back to his room and went back
9 to bed.

10 Q When did you next see him awake?

11 A About 10:30. 10:30, 10:45.

12 Q What happened then?

13 A He wanted to go to the canteen.

14 Q Did he ask you to go to the canteen?

15 A No.

16 Q Did he ask you for permission to go to the canteen?

17 A Yes.

18 Q What did you tell him?

19 A We told him his privileges had been pulled, and he
20 already knew that.

21 Q So what did he say to that? How did he reply?

22 A "I don't care."

23 Q Did he say anything else?

24 A Not that I recall.

25 Q Did he show anger?

1 the procedure manual and make certain of that.

2 Q. Do you know if there is a minimum time
3 period that a person must be missing prior to being
4 declared AWOL?

5 A. Yes, but I don't know what it is. On our
6 unit, and here again this may not specifically be
7 what the policy says but we have -- if we know that
8 someone is not there -- can I back up and explain
9 this a different way?

10 We have a system on the unit that
11 requires at any time someone is using their pass o-
12 going to their industrial or whatever, they must
13 sign out. And there is a form provided for them to
14 do that. On the form is included what they are
15 wearing, what their destination is, who they are
16 going with, a description of their clothing. If an
17 individual is not signed back in within five minutes
18 of that time then we consider them a potential AWOL.

19 Q. Let's move on to Jon Petersen now. First
20 of all, let's talk about his industrial program. Is
21 that what it's called?

22 A. Yes.

23 Q. Are you familiar with his industrial
24 program prior to November 1, 1986?

25 A. Not specifically.

1 to do his tray detail?

2 A No. Anytime someone's privileges are pulled, that
3 does not mean that they couldn't complete their industrial.
4 Industrials is considered a responsibility, not a privilege.

5 MR. SORENSON: That's all I have.

6 EXAMINATION BY MR. SOUVALL

7 Q Isn't it the policy of Unit II, though, that whenever
8 a patient is leaving the unit area, the ward, that they
9 are supposed to sign out?

10 MR. SORENSON: Object. Asked and answered. But
11 go ahead and answer the question.

12 A Yes. Sometimes.

13 Q (By Mr. Souvall) Sometimes what?

14 A Can I confer with you on that?

15 MR. SORENSON: Sure.

16 (Conference.)

17 A Sometimes there is a white signout slip that we have
18 that is on a clipboard in the office that a person taking
19 a patient out, say a treatment coordinator, to do individual
20 therapy with them, the other side signs them out on that.

21 Q In order to be signed out on the white sheet, do you
22 need to be accompanied then by a staff member?

23 A Yes.

24 Q Was Jon Petersen signed out on a white sheet on that
25 day?

1 A No.

2 Q Is it written anywhere that there is an exception on
3 the signout requirement of any kind?

4 A No.

5 Q (By Mr. Souvall) No further questions.

6 EXAMINATION BY MR. SORENSON

7 Q As of November 1 of '86 would you have expected Jon
8 Petersen to sign out on the white signout sheet on the
9 clipboard when he took the trays back to the kitchen?

10 A No.

11 Q Had he done that before?

12 A No.

13 Q In your experience, Diane, had he ever delayed or failed
14 to return timely from a tray detail before November 1 of
15 '86?

16 A No.

17 Q In your experience, is the treatment team given a fairly
18 broad range of discretion in determining the form that the
19 individual patient treatment will take?

20 A Say that again real slow.

21 Q Does the treatment team have a pretty broad range of
22 discretion in deciding what course of treatment will be
23 followed for a particular patient?

24 A Yes.

25 Q When I say course of treatment, am I using that term

1 going on, he came to me and reported to me what had
2 happened at that point.

3 Q. Now, should Jon have been let out of the
4 unit without having his blue slip signed?

5 A. Technically, no.

6 Q. Are there any written rules that specify
7 what procedures patients should go through in order
8 to get out of the unit with a blue slip?

9 A. I am not familiar with the exact rules
10 but I am sure they are in our ward rules but I don't
11 have them memorized.

12 Q. But you have been instructed that
13 patients are not to leave the unit without first
14 filling out the blue slip procedures?

15 A. Now, they are allowed to leave with a
16 staff member without a blue slip if they are going
17 with the staff member and returning with the staff
18 member.

19 Q. How long should it have taken Jon to
20 complete the task had he started it of bringing the
21 trays back downstairs?

22 A. Probably within ten minutes.

23 Q. So say by 12:40 he should have returned
24 according to this?

25 A. He should have returned.

1 the procedure manual and make certain of that.

2 Q. Do you know if there is a minimum time
3 period that a person must be missing prior to being
4 declared AWOL?

5 A. Yes, but I don't know what it is. On our
6 unit, and here again this may not specifically be
7 what the policy says but we have -- if we know that
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