



**Judi's Room Presented by  
MindFreedom International**  
Rights, Informed Choice, and How  
Do We Protect Ourselves?  
March 3, 2021



**Rights**  
by James B. (Jim) Gottstein, Esq.



**ALASKA  
LAW REVIEW**  
Volume XXV June 2008 Number 1

Available at:  
[PsychRights.Org](http://PsychRights.Org)

*Involuntary Commitment and Forced  
Psychiatric Drugging in the Trial Courts:  
Rights Violations as a Matter of Course*  
James B. Gottstein

**Hallmarks of Procedural  
Due Process**

Meaningful Notice, and  
Meaningful Opportunity to Be  
Heard,  
by a Neutral Decision Maker

*Hamdi v. Rumsfeld (2004)*  
542 U.S. 507, 124 S.Ct. 2633

**Constitutional Principles –  
Substantive Due Process**

- To Justify Deprivation of Fundamental Rights  
Substantive Due Process Requires:
  - Compelling State Interest
  - Least Restrictive/Intrusive Alternative
- Involuntary Commitment is a deprivation of a  
fundamental right under both the US and Alaska  
Constitutions
- Forced Drugging is probably a deprivation of a  
fundamental right under US Constitution and is under  
the Alaska Constitution.

**Involuntary Commitment  
Permissible Under US Constitution  
When:**

1. Confinement takes place pursuant to proper procedures and evidentiary standards,
2. Finding of "dangerousness either to one's self or to others," and
3. Proof of dangerousness is "coupled ... with the proof of some additional factor, such as a 'mental illness' or 'mental abnormality.'

*Kansas v. Crane*, 534 U.S. 407, 409-10, 122 S.Ct. 867, 869 (2002).

- Being unable to take care of oneself can constitute danger to self if "incapable of surviving safely in freedom." *Cooper v. Oklahoma*, 517 U.S. 348, 116 S.Ct. 1373, 1383 (1996).

**Forced Drugging under US  
Constitution: *Sell***

**Court Must Conclude:**

1. Important governmental interests are at stake,
2. Will significantly further those state interests - substantially unlikely to have side effects that will interfere significantly (with achieving state interest),
3. Necessary to further those interests. The court must find that any alternative, less intrusive treatments are unlikely to achieve substantially the same results, and
4. Medically appropriate, i.e., in the patient's best medical interest in light of his medical condition, considered on drug-by-drug basis.

*Sell v. United States*, 539 U.S. 166, 177-8, 123 S.Ct. 2174, 2183 (2003) (Competence to Stand Trial Case).

**Forced Drugging Defense Package**

- Form Legal papers
- Robert Whitaker, Dr. Peter Gøtzsche & Dr. Grace Jackson Affidavits
  - Certified Copies Available from MindFreedom

**Advance Directives**

- National Resource Center on Psychiatric Advance Directives
  - State by State Information

**MindFreedom Shield**

- Sarah Smith, MindFreedom



[www.mindfreedom.org/shield](http://www.mindfreedom.org/shield)