

psychosurgery

Psychosurgery on mental patient barred

Mental patient cannot consent to psychosurgery: An adult mental patient cannot give legally adequate consent to experimental brain surgery to relieve his uncontrollable aggression, a Michigan trial court ruled in a landmark case. The chief figure in the case was a mental patient who was charged in 1955 with the murder and rape of a student nurse at the state mental hospital, where he was a patient. That incident resulted in his being committed to another institution as a criminal sexual psychopath, without a trial on the charges. After more than 17 years as a patient in the state hospital, he was transferred to a clinic as a suitable research subject for a study of uncontrolled aggression. Briefly, the study was to be a comparison of "the effects of surgery on the amygdaloid portion of the limbic system of the brain with the effect of the drug cyproterone acetate on male hormone flow." The comparison was in-

tended to show which could be used in controlling aggression of males in institutional settings and to provide permanent relief from such aggression. But a suitable patient population was not found in the state system and the mental patient turned out to be the only appropriate candidate for surgery. Two committees gave their approval to the medical procedure and to the consent the patient had signed. The surgeons were preparing to proceed with the experiment when a member of a medical committee for human rights discovered the plan and informed a local newspaper. In the ensuing publicity, funds for the research project were stopped and the surgeons dropped their plans for an operation. A writ of habeas corpus was sought on behalf of the patient, alleging that he was being illegally detained in the clinic for experimental psychosurgery. In a 51-page opinion, including a 10-page appendix describing

the proposed surgery, the Michigan trial court held that the patient's detention was unconstitutional and ordered his release after a physician testified that he could be safely released to society. The court then examined the issue of legally adequate consent. Recognizing the complexity and high degree of interaction and integration of the brain, the court said the record in the case indicated that understanding of the limbic system of the brain was very limited. It noted the testimony of one physician that brain surgery was viewed as a treatment of last resort. The court concluded that there was no scientific basis for saying that removal of a portion of the limbic brain would have any direct therapeutic effect. As for the patient's consent, the court said it must be competent, knowing, and voluntary. Using the principles of the Nuremberg Code as guidance in considering consent for experimentation, the court ruled that the patient's

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capacity to consent was diminished by his incarceration and the phenomenon of institutionalization, which tends to strip an individual of his self-worth and mental integrity. The court said that knowledge of all the risks was certainly not present; also, the fact that the patient was in an inherently coercive atmosphere removed the voluntariness of his consent. Quoting several eminent jurists, the court discussed the fundamental freedom of speech and expression of ideas. It took a position that intrusion into one's intellect is an intrusion into one's constitutionally protected right of privacy. Before a state can violate such a right, it must show a compelling state interest, the court declared, adding that none was shown in this case. (*Kaimowitz v. Dept. of Mental Health for the State of Michigan*, Civil Action No. 73-19434-AW, Wayne Co. Cir.Ct., 1973)