

PROVIDING EFFECTIVE LEGAL REPRESENTATION FOR INDIVIDUALS FACING
INVOLUNTARY HOSPITALIZATION

[Bill Brooks](#), NARPA 2022
CITATIONS FOR WORKSHOP

[Ughetto v. Acrish](#), 130 A.D.2d 12 (2d Dept. 1987) (right of civil committee to presence of counsel during psychiatric examinations by psychiatrist who will testify at commitment hearing).

[U.S. v. Wade](#), 388 U.S. 218, 226 (1967) (right to counsel under Sixth Amendment guarantees that individual need not stand alone against state at any stage of proceeding, formal or informal, in court or out, where counsel's absence may derogate from defendant's right to a fair trial. Serves as authority for arguing that presence of counsel at psychiatric interview is required because absence of counsel significantly impacts on ability to cross-examine testifying physician).

[Ake v. Oklahoma](#), 470 U.S. 68 (1985) (right of insanity acquittee to expert psychiatric assistance to assist him in putting forth claim of not guilty or responsible by reason of insanity – serves as a basis to argue that civil committees are entitled to similar psychiatric assistance).

[Parham v. J.R.](#), 442 U.S. 585, 604-05 (1979) (state has interest in limiting “its costly mental health facilities to cases of genuine need” - supports argument that providing expert assistance furthers state's interest because it enhances accuracy of commitment determination and hence, lessens number of unnecessary costly hospitalizations).

[Goetz v. Crosson](#), 967 F.2d 29 (2d Cir. 1992) (court holds that civil committees have a right to the appointment of an independent psychiatrist when a court finds that such appointment is necessary for a reliable determination of commitment case, but there is no right to an expert to assist the subject of the commitment hearing as was the case in *Ake*).

[Dolan v. City of Tigard](#), 512 U.S. 374, 385 (1994) (government cannot condition the exercise of one right or privilege upon the forfeiture of another right – supports argument that appointment of a psychiatrist by a court in a commitment hearing cannot delay the proceeding for any appreciable amount of time because it adversely impacts the commitment subject's right to a prompt hearing).

[Daubert v. Merrill Dow Pharmaceuticals](#), 509 U.S. 579 (1993) (sets standards for expert opinion testimony in federal and some state courts - trial judge must consider the following criteria to determine the admissibility of expert opinions: whether the scientific theory or technique can be, or has been, tested, whether the theory or technique has been subject to peer review and publication; the known rate of error for any particular technique; and the general rate of acceptance with the relevant scientific community; court can also examine whether existing standards control the technique's operation).

[Frye v. U.S.](#), 293 F.1013 (D.C. Cir. 1923) (sets forth standard for expert opinion testimony in remaining jurisdictions – when question involved does not lie within range of common experience or knowledge but requires special experience or knowledge, then opinions of witnesses of skilled in that particular science, art or trade to which question relates are admissible in evidence).

[28 C.F.R. § 35.130](#)(d) (known as community integration mandate) (public entity shall administer services, programs and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities).

[Mary Jo C. v. NYSLRS](#), 707 F. 3d 144, 157-59 (2d Cir. 2013) (qualified individuals with a disability must meet essential eligibility requirements for program at issue; to determine what constitutes an essential eligibility requirement, court must look to importance of the requirement in question to the program).

[Mental Disability Law Clinic v. Hogan](#), 2008 WL 4104460 (E.D.N.Y. Aug. 29, 2008) (organizational plaintiff set forth cause of action when it alleged exclusion of some individuals from state's out-patient commitment law violated 28 C.F.R. § 35.130(d) because exclusion can result in some individuals being hospitalized when they would not be if subject to out-patient commitment).

[Preiser v. Rodriguez](#), 411 U.S. 475 (1973) (when individual raises civil rights claims relating to the legality of confinement that has taken place, individual is raising a habeas corpus claim regardless of the actual framing of the complaint. This means that such an individual must set forth claims in a habeas corpus action, which requires the exhaustion of state remedies.)