Assignment #2 - Writing Assignment

Writing Assignment - You Be The Judge: using your best skills of analysis, play the role of an appellate court judge. Write a brief Holding in which you tell me a) what is the outcome (re: should the decision of the trial court stand [affirmed], or should it be overturned [reversed]) and, b) why? But remember – it is not your "opinion" that matters. Instead, it is only the law. So, in writing your holding, your reasoning must be based solely on the application of the law to the facts. In other words, you are telling me a) whether or not the trial court should have done what it did and why, and b) if the trial court acted improperly (re: erred), whether or not the original defendant should be liable and why. You will be assessed not only on what you decide, but how you got there. This will be submitted in class.

Elk Grove Unified School District v. Newdow

Facts: In March 2000, Michael Newdow filed suit in the US District Court. At the time, Newdow's daughter was enrolled in kindergarten in the Elk Grove Unified School District. As a student, she participated in the daily recitation of the Pledge of Allegiance. (NOTE: Under California law, every public elementary school must begin each day with appropriate patriotic exercises, including reciting the Pledge. The school district does allow students who object on religious grounds to abstain.)

Newdow is an atheist and an ordained minister in the Universal Life Church and founder of a group called FACTS (First Atheist Church of True Science).

Newdow's complaint sought to declare the Congressional Act of June 1954 that added the words "under God" to the pledge was a violation of the both the Establishment Clause and Free Exercise Clause of the First Amendment of the United States Constitution, as well as an injunction against the School District's policy of requiring daily recitation of the Pledge. Newdow alleges in his complaint that he has standing to sue on his own behalf and on behalf of his daughter as "next friend."

In review of the complaint, a Magistrate Judge concluded the Pledge does not violate the Establishment Clause. The District Court adopted that conclusion and dismissed the complaint.

Newdow filed for an appeal.

The 9th Circuit Court of Appeals would reversed and issued three separate decisions discussing the merits and Newdow's standing.

In its first opinion, the court unanimously held Newdow has standing as a parent to challenge a practice that interferes with his right to direct the religious education of his daughter. (NOTE: this allows Newdow to challenge both the policy and the 1954 Act because it is technically "his" injury.) On the merits, the court split 2-1. The majority held both the 1954 Act and the policy violated the Establishment Clause.

After 9th Circuit issued its opinion, Sandra Banning, mother of Newdow's daughter, filed a motion for leave to intervene, or alternatively to dismiss the complaint in CA Superior Court. She declared that although she and Newdow shared physical custody of their daughter, a state court granted her exclusive legal custody of the child. (NOTE: legal custody includes right to represent the child's legal interests, and make all decision(s) about her education and welfare.) Banning further state that her daughter is a Christian who believes in God and has no objection either to reciting or hearing others recite the Pledge or reference to God. She also expressed the belief that her daughter would be harmed if the litigation were permitted to proceed, because others might perceive the child as sharing her father's atheist views. The court granted order enjoining Newdow from including his daughter in his claim.

In reconsidering its decision of standing in light of Banning's motion, the 9th Circuit would issue its second opinion. It noted the Newdow no longer claimed the right to represent his daughter, but that the grant of sole legal custody did not deprive Newdow, as a noncustodial parent, of standing. (NOTE: under CA law,

noncustodial parents retain the right to expose children to their particular religious views even if those views contradict those of custodial parent.)

Based on this opinion, Newdow filed a request for judgment on the issue of injunctive relief regarding the constitutionality of the 1954 Act.

In its third opinion, the 9th Circuit omitted its first position on standing, but declined to do to grant injunctive relief.

The School District filed a petition for a writ of certiorari with the SCOTUS.

Issue: Whether Newdow has standing as a noncustodial parent to challenge the School District's policy?

NOTE: to answer this successfully, you will need to review the law of standing in its entirety.

Pridgen v. Boston Housing Authority

Facts: On June 28, 1966, Joseph was eleven years old and lived with his mother at 114 Heath Street, Jamaica Plain, in an apartment building which is part of the Bromley Heath housing project owned by the authority. On the afternoon of that day he went to visit a friend who lived at 20 Bickford Street in another apartment building also owned by the authority and located in the same housing project. Joseph, his friend and one other boy entered the elevator in the Bickford Street building, climbed up through an escape hatch opening in the ceiling of the elevator car, and got onto the platform which formed the top or roof of the car. While they were on the car roof, Joseph's friend caused the car to move up and down by pressing a button located on the top of the car. At some point during this process Joseph slipped from the roof platform into the elevator shaft and was caught on metal brackets extending out from the shaft walls. He was trapped with his legs straddling the brackets and he was looking up toward the elevator. While he was in this position, the elevator moved down and struck him, crushing him and injuring him severely. An emergency call was made to the Boston Fire Department whose members arrived, turned off the electrical power to the elevator, removed Joseph from the elevator shaft and took him to the hospital.

Joseph's mother, the plaintiff Minnie Lee Pridgen, testified that she had returned home about 4 P.M. on the day of the accident and that her son had gone out to play immediately thereafter. A few minutes later, one of her son's friends ran into her house and told her that Joseph was "in the elevator." She went immediately to the project building where the elevator was located (the building at 20 Bickford Street) and called to her son in the elevator shaft. She saw a man standing in the hallway and asked him for help but he answered that there was nothing he could do, and he did not respond to her second request that he get help for her. She then asked him how to turn off "the lights" in the elevator shaft. At this point a policeman entered the building and asked her if "the lights" were turned off, and she answered that they were not. The policeman asked the man from whom Mrs. Pridgen had requested help if he worked there and he answered that he did. The policeman then asked him how to turn off "the lights"; he answered "down these stairs," and the policeman ordered him to go turn off "the lights." Mrs. Pridgen saw the man head down the stairs, although she did not know whether he turned off "the lights" as she was ordered by the firemen to leave the building almost immediately thereafter. At a point after she had asked the man in the hallway for help, but before the policeman arrived, she heard the elevator move and her son scream that he was "meshed."

At the trial Mrs. Pridgen identified a man sitting in the court room as the one to whom she had spoken in the hallway of the Bickford Street building, and she said he was called Bill. It was undisputed that the man so identified was named William Carney, and that he was in fact employed by the authority as a janitor or maintenance man at its Bromley Heath housing project at the time of the accident.

The judge allowed the two counts alleging negligence on the part of the authority to go to the jury. However, by his instructions he limited the jury to the consideration and determination whether the authority was guilty of negligence by reason of anything which it or its agents, servants or employees did or failed to do after learning that Joseph had slipped off the roof of the elevator car and had become trapped in the elevator shaft. The jury apparently found that the

authority was guilty of such negligence and they returned a verdict for Joseph in the amount of $175,000 and one for his mother in the amount of $25,000. The judge took the two verdicts under leave reserved and later, on motion of the authority, he ordered that they be set aside and that a verdict be entered for the authority on each of these two counts.

Issue: Whether the trial court erred in setting aside the jury's verdict?

[**NOTE: the trial judge granted a Motion of Judgment Not Withstanding the Verdict (JNOV**). **JNOV can only be using in cases decided by a jury. As a general rule, JNOV is only proper when the court finds the party bearing the Burden of Proof (most often PL, but can be D as well) fails to make a *Prima Facie* case (re: one that on first appearance will prevail unless contradicted by evidence). Under the MA Rules of Civil Procedure, a party may only receive a JNOV if it first files a Motion for Directed Verdict (DV) at the close of the evidence offered by an opponent and it is denied. FYI: If the court does grant a DV, it in effect finds that evidence presented is insufficient to support the claim and, by doing so, finds for the moving party without any assent for the jury.]**

Tarasoff v. Regents of the University of California
Facts: On October 27, 1969, Prosenjit Poddar killed Tatiana Tarasoff. Plaintiffs, Tatiana's parents, allege that two months earlier Poddar confided his intention to kill Tatiana to Dr. Lawrence Moore, a psychologist employed by the Cowell Memorial Hospital at the University of California at Berkeley. They allege that on Moore's request, the campus police briefly detained Poddar, but released him when he appeared rational. They further claim that Dr. Harvey Powelson, Moore's superior, then directed that no further action be taken to detain Poddar. No one warned plaintiffs of Tatiana's peril.

Plaintiffs' complaints predicate liability on two grounds: defendants' failure to warn plaintiffs of the impending danger and their failure to bring about Poddar's confinement. Defendants, in turn, assert that they owed no duty of reasonable care to Tatiana and that they are immune from suit.

On August 20, 1969, Poddar was a voluntary outpatient receiving therapy at Cowell Memorial Hospital. Poddar informed Moore, his therapist, that he was going to kill an unnamed girl, readily identifiable as Tatiana, when she returned home from spending the summer in Brazil. Moore, with the concurrence of Dr. Gold, who had initially examined Poddar, and Dr. Yandell, assistant to the director of the department of psychiatry, decided that Poddar should be committed for observation in a mental hospital. Moore orally notified Officers Atkinson and Teel of the campus police that he would request commitment. He then sent a letter to Police Chief William Beall requesting the assistance of the police department in securing Poddar's confinement. Officers Atkinson, Brownrigg, and Halleran took Poddar into custody, but, satisfied that Poddar was rational, released him on his promise to stay away from Tatiana. Powelson, director of the department of psychiatry at Cowell Memorial Hospital, then asked the police to return Moore's letter, directed that all copies of the letter and notes that Moore had taken as therapist be destroyed, and "ordered no action to place Prosenjit Poddar in 72-hour treatment and evaluation facility."

Plaintiff adds the assertion that defendants negligently permitted Poddar to be released from police custody without "notifying the parents of Tatiana Tarasoff that their daughter was in grave danger from Posenjit Poddar." Later, Poddar persuaded Tatiana's brother to share an apartment with him near Tatiana's residence; shortly after her return from Brazil, Poddar went to her residence and killed her.

Defendants contend, however, that imposition of a duty to exercise reasonable care to protect third persons is unworkable because therapists cannot accurately predict whether or not a patient will resort to violence. In support of this argument ***amicus*** representing the American Psychiatric Association and other professional societies cites numerous articles which indicate that therapists, in the present state of the art, are unable reliably to predict violent acts; their forecasts, amicus claims, tend consistently to over-predict violence, and indeed are more often wrong than right. **(NOTE: an amicus curiae is a brief written someone not tied to nor solicited to contribute to the case by either party. Instead it is a party, typically special interest groups, that wishes to offer useful information to the court. If accepted by the court, it becomes part of the official court record.)** Since predictions of violence are often erroneous, amicus concludes, the courts should not render rulings that predicate the liability of therapists upon the validity of such predictions.

The role of the psychiatrist, who is indeed a practitioner of medicine, and that of the psychologist who performs an allied function, are like that of the physician who must conform to the standards of the profession and who must often make diagnoses and predictions based upon such evaluations. Thus the judgment of the therapist in diagnosing emotional disorders and in predicting whether a patient presents a serious danger of violence is comparable to the judgment which doctors and professionals must regularly render under accepted rules of responsibility
Concluding that these facts set forth causes of action against neither therapists and policemen involved, nor against the Regents of the University of California as their employer, the superior court sustained defendants' demurrers to plaintiffs complaints.

Issue: Whether the trial court erred is sustaining defendants' demurrers to plaintiffs' complaints?

NOTE: a demurrer is a type of answer used within the pleading stage of the trail. Commonly used by defendants to escape liability, it, on one hand, admits the truth of the plaintiff's set of facts, but, on the other hand, it contends that those facts are insufficient to grant the complaint in favor of the plaintiff. To put it another way, a demurrer states that the complaint does not set forth enough facts to justify the legal relief sought. In a sense, it is an assertion that, even though plaintiff's facts are accurate, the defendant should not have to answer them or proceed with the case because there is not enough there for a reasonable minded jury to ever find for the plaintiff.