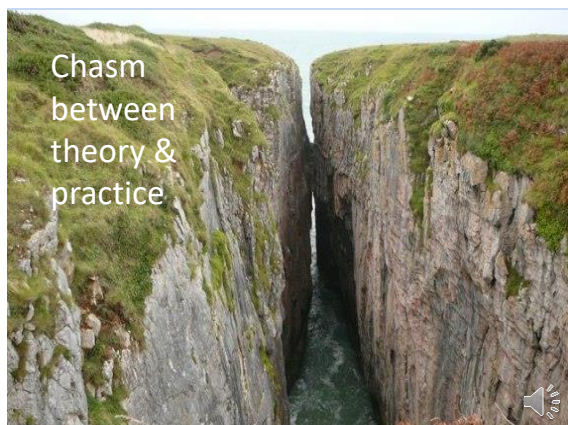


Health Law: Quality & Liability

Prof. Thaddeus Pope

Failure of informed
consent





Chasm
between
theory &
practice



Theory

Appellate opinions
re autonomy &
self-determination



Practice



No

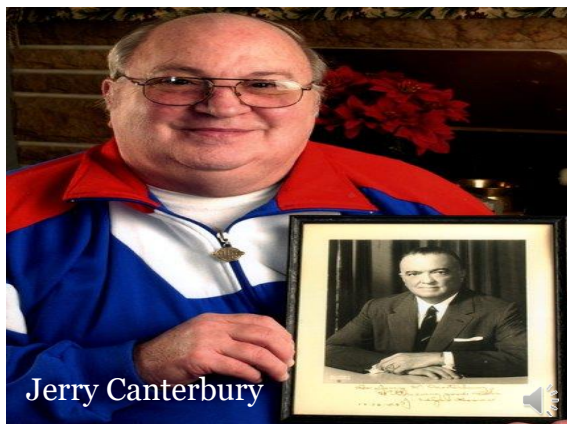
Not even close



Obituary
05/2017

The New York Times

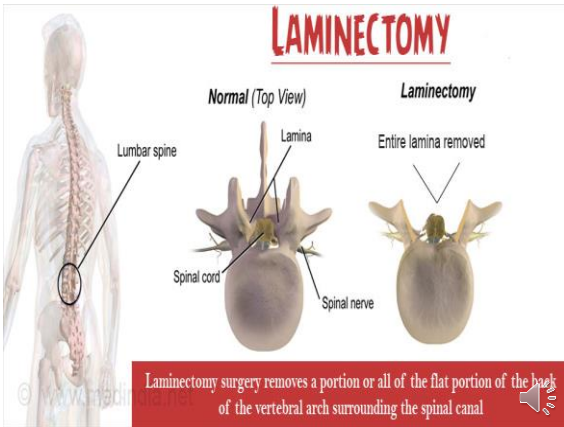




Jerry W. CANTERBURY, Appellant,
v.
William Thornton SPENCE and the Was-
ington Hospital Center, a body cor-
porate, Appellees.
No. 22099.
United States Court of Appeals,
District of Columbia Circuit.
Argued Dec. 18, 1969.
Decided May 19, 1972.
Rehearing Denied July 20, 1972.

“**landmark** . . . ruling
that **fundamentally**
transformed how
doctors deal with
patients”





1% risk
paralysis

MD did **not**
disclose to
Jerry



Appellate court
imposed **new**
legal **duty** on
physicians



Obtain not only
“bare” consent
but also
informed consent



Disclose all risks
a reasonable
patient would
find important



Remand to trial
court to **instruct**
jury on informed
consent





Obituary
05/2017

The New York Times



“last three decades in a wheelchair and bedbound . . . a lifetime of urinary incontinence”



“**comforted** to know that his lawsuit and suffering had **not** been in vain”



Not so fast,
Jerry



Maybe
lawsuit
was in vain



Much **smaller**
impact than
anticipated



Jerry W. CANTERBURY, Appellant,
v.
**William Thornton SPENCE and the Wash-
ington Hospital Center, a body cor-
porate, Appellees.**

1972

United States Court of Appeals,
District of Columbia Circuit.
Argued Dec 18, 1971.
Decided May 19, 1972.
Rehearing Denied July 20, 1972.

2017

Patients often do
not know what
they are getting

Patients **usually**
do not know what
they are getting



Terrible
outcomes



Most are
seriously
misinformed



Just **6**
examples
(of many)



1



PEC
PATIENT EDUCATION & COUNSELING
The Leading International Journal for Communication in Healthcare

Claire K. Ankuda et al,
Measuring critical deficits
in shared decision making
before elective surgery
(2014)

1034 preoperative patients
in preoperative clinic **after**
signed informed consent



46%

deficits - not knowing the procedure being performed or risks & benefits



2





149 patients undergoing elective surgery under general anesthesia

Informed 4 risks - death, pneumonia, heart attack and stroke



Day of scheduled surgery, **63%** could not recall any risks



3



Only **5 in 100** understand cancer diagnosis



4



Only **10 in 100**
can answer basic
questions about
their spine surgery



5



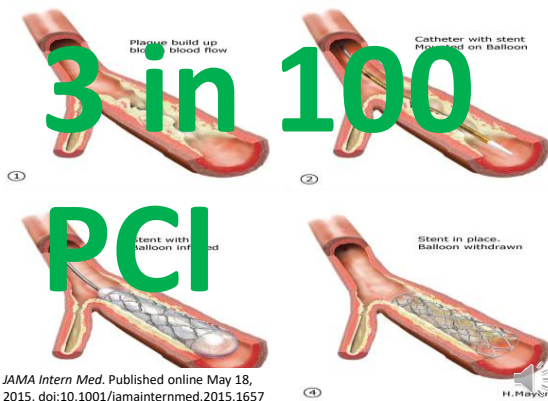
Only **12 in 100**
understand
cardiac
catheterization



6



Carotid Artery Stent Insertion



3 in 100

PCI

JAMA Intern Med. Published online May 18, 2015. doi:10.1001/jamainternmed.2015.1657

H. Mayer

>90%
fail rate



**Big
problems**



How is this
possible?



There is a legal
duty to inform





Thank you,
Jerry



Wrong
info



Incomplete
Inaccurate
Outdated



What



Even if
accurate &
complete
(but often is not)



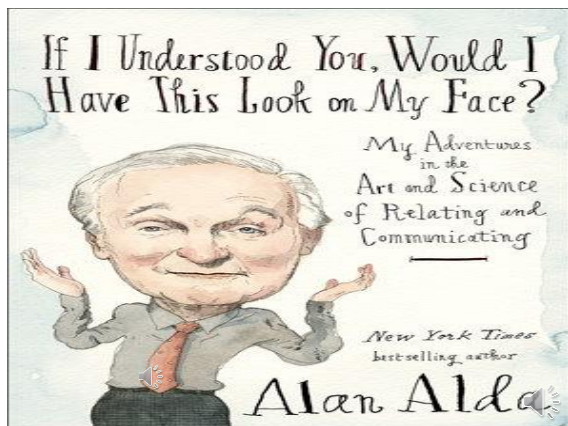
How

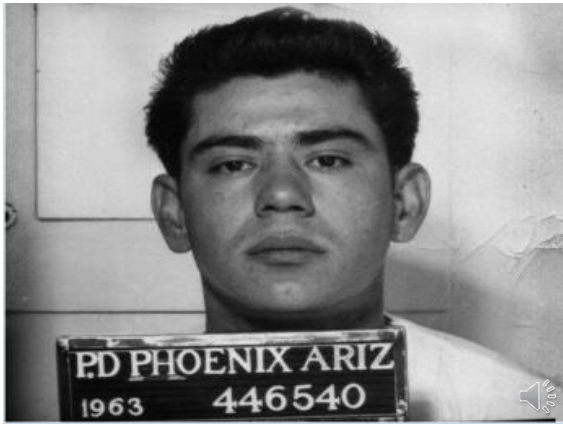


Not meaningfully
conveyed

Not understood









Vast numbers
of uninformed
patients

Deluge of UMT



Assess in
terms of
outcomes



Informed Consent

Process Problem



Who's been out
to dinner in past
few weeks?





Too much
Too fast
Too complex



Also in
medicine



1972





Jerry
Canterbur





“lengthy
polsyllabic
discourse”

2017



“lengthy
polsyllabic
discourse”



Still





**Stalled
45 years**



Worse



Informed consent law was not even **designed** to deal with this







Informed consent
not done **with**
patients



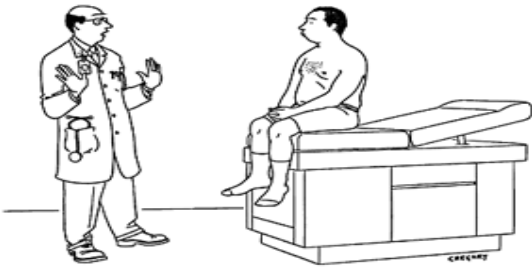
It is done **to**
patients



“Consent the
patient!”



© Cartoonbank.com



"Whoa—way too much information!"





Like other consumer disclosures



www.Vecto.rs - 20202