Background

This Case began as a labor dispute in 1970 when reductions in revenue from Alabama's tax, on cigarettes precipitated a cut in the state's appropriations for mental health. Plans to cope with the problem included dismissal of ninety—nine employees from Bryce Hospital. These employees and a group of patients then filed suit in US District Court against the governor, the Mental Health Board, and several other state officials. In passing, plaintiffs alleged that reducing the staff would leave patients without adequate care.

At a pretrial conference in his chambers, the presiding judge, Frank M. Johnson, indicated that he thought that state courts could adequately protect any rights of employees possibly injured by the dismissals; but he also expressed concern about the general level of care at Bryce. Largely in response to these remarks, plaintiffs amended their suit to focus on the claim that patients had a constitutional right to adequate treatment, a right that Alabama was denying them. They asked the court to enjoin the state from sending any more patients to Bryce and to appoint a special master to determine the adequacy of current treatment at the mental hospital and the means the state should use to raise those practices to meet minimal medical and constitutional standards.

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[several pages devoted to the facts and procedural development of the case] ...

Bryce Hospital is located in Tuscaloosa, Alabama, and is a part of the mental health service delivery system for the State of Alabama. Bryce Hospital has approximately 5,000 patients, the majority of whom are involuntarily committed through civil proceedings by the various probate judges in Alabama. Approximately 1,600 employees were assigned to various duties at the Bryce Hospital facility when this case was heard on plaintiffs' motion for a preliminary injunction.

During October 1970, the Alabama Mental Health Board and the administration of the Department of Mental Health terminated 99 of these employees. These terminations were made *783 due to budgetary considerations and, according to the evidence, were necessary to bring the expenditures at Bryce Hospital within the framework of available resources. This budget cut at Bryce Hospital was allegedly necessary because of a reduction in the tax revenues available to the Department of Mental Health of the State of Alabama, and also because an adjustment in the pay periods for personnel which had been directed by the Alabama legislature would require additional expenditures. The employees who were terminated included 41 persons who were assigned to duties such as food service, maintenance, typing, and other functional duties not involving direct patient care in the hospital therapeutic programs. Twenty-six persons were discharged who were involved in patient activity and recreational programs. These workers were involved in planning social and other types of recreational programs for the patient population. The remaining 32 employees who were discharged included 9 in the department of psychology, 11 in the social service department, with varying degrees of educational background and experience, three registered nurses, two physicians, one dentist and six dental aides. After the termination of these employees, there remained at Bryce Hospital 17 physicians, approximately 850 psychiatric aides, 21 registered nurses, 12 patient activity workers, and 12 psychologists with varying academic qualifications and experience, together with 13 social service workers. Of the employees remaining whose duties involved direct patient care in the hospital therapeutic programs, there are only one Ph.D. clinical psychologist, three medical doctors with some psychiatric training (including one board eligible but no board-certified psychiatrist) and two M.S.W. social workers. ...

Included in the Bryce Hospital patient population are between 1,500 and 1,600 geriatric patients who are provided custodial care but no treatment. The evidence is without dispute that these patients are not

properly confined at Bryce Hospital since these geriatric patients cannot benefit from any psychiatric treatment or are not mentally ill. Also included in the Bryce patient population are approximately 1,000 mental retardates, most of whom receive only custodial care without any psychiatric treatment. Thus, the evidence reflects that there is considerable confusion regarding the primary mission and function of Bryce Hospital since certain nonpsychotic geriatric patients and the mental retardates, and perhaps other nonmentally ill persons, have been and remain committed there for a variety of reasons.

The evidence further reflects that Alabama ranks fiftieth among all the states in the Union in per-patient expenditures per day.[4] This Court must, and does, find from the evidence that the programs of treatment in use at Bryce Hospital prior to the reorganization that has resulted in the unit-team approach were scientifically and medically inadequate. These programs of treatment failed to conform to any known minimums established for providing treatment for the mentally ill.

The patients at Bryce Hospital, for the most part, were involuntarily committed through noncriminal procedures and without the constitutional protections that are afforded defendants in criminal proceedings. When patients are so committed for treatment purposes they unquestionably have a constitutional right to receive such individual treatment as will give each of them a realistic opportunity to be cured or to improve his or her mental condition. Rouse v. Cameron, 125 U.S.App.D.C. 366, 373 F.2d 451; Covington v. Harris, 136 U.S.App.D.C. 35, 419 F.2d 617. Adequate and effective treatment is constitutionally required because, absent treatment, the hospital is transformed "into a penitentiary where one could be held indefinitely for no convicted offense." Ragsdale v. Overholser, 108 U.S.App.D. C. 308, 281 F.2d 943, 950 (1960). The purpose of involuntary hospitalization for treatment purposes is *treatment* and not mere custodial care or punishment. This is the only justification, from a constitutional standpoint, that allows civil commitments to mental institutions such as Bryce. According to the evidence in this case, the failure of Bryce Hospital to supply adequate treatment is due to a lack of operating funds. The failure to provide suitable and adequate treatment to the mentally ill cannot be justified by lack of staff or facilities. Rouse v. Cameron, supra. In *Rouse* the Court stated:
We are aware that shortage of psychiatric personnel is a most serious problem today in the care of the mentally ill. In the opinion of the American Psychiatric Association no tax-supported hospital in the United States can be considered adequately staffed. We also recognize that shortage cannot be remedied immediately. But indefinite delay cannot be approved. "The rights here asserted are * * * *present* rights * * * and, unless there is an overwhelming compelling reason, they are to be promptly fulfilled." Watson v. City of Memphis, 373 U.S. 526, 533, [83 S.Ct. 1314, 1318, 10 L.Ed.2d 529] (1963). (Emphasis in original.)

There can be no legal (or moral) justification for the State of Alabama's failing to afford treatment — and adequate treatment from a medical standpoint — to the several thousand patients who have been civilly committed to Bryce's for treatment purposes. To deprive any citizen of his or her liberty upon the altruistic theory that the confinement is for humane therapeutic reasons and then fail to provide adequate treatment violates the very fundamentals of due process.

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In addition to asking that their proposed standards be effectuated, plaintiffs and amici have requested other relief designed to guarantee the provision of constitutional and humane treatment. Pursuant to one such request for relief, this Court has determined that it is appropriate to order the initiation of human rights committees to function as standing committees of the Bryce and Searcy facilities. The Court will appoint the members of these committees who shall have review of all research proposals and all rehabilitation programs, to ensure that the dignity and the human rights of patients are preserved. The committees also shall advise and assist patients who allege that their legal rights have been infringed or that the Mental Health Board has failed to comply with judicially ordered guidelines. At their discretion, the committees may consult appropriate, independent specialists who shall be compensated by the defendant Board. Seven members shall comprise the human rights committee for each institution, the names and addresses of whom are set forth in Appendix B to this decree. Those who serve on the

committees shall be paid on a per diem basis and be reimbursed for travel expenses at the same rate as members of the Alabama Board of Mental Health.

This Court will reserve ruling upon other forms of relief advocated by plaintiffs and amici, including their prayer for the appointment of a master and a professional advisory committee to oversee the implementation of the *377 court-ordered minimum constitutional standards.[6] Federal courts are reluctant to assume control of any organization, but especially one operated by a state. This reluctance, combined with defendants' expressed intent that this order will be implemented forthwith and in good faith, causes the Court to withhold its decision on these appointments. Nevertheless, defendants, as well as the other parties and amici in this case, are placed on notice that unless defendants do comply satisfactorily with this order, the Court will be obligated to appoint a master.

Because the availability of financing may bear upon the implementation of this order, the Court is constrained to emphasize at this juncture that a failure by defendants to comply with this decree cannot be justified by a lack of operating funds. ...

Despite the possibility that defendants will encounter financial difficulties in the implementation of this order, this Court has decided to reserve ruling also upon plaintiffs' motion that defendant Mental Health Board be directed to sell or encumber portions of its land holdings in order to raise funds.[7] Similarly, this Court will reserve ruling on plaintiffs' motion seeking an injunction against the treasurer and the comptroller of the State authorizing expenditures for nonessential State functions, and on other aspects of plaintiffs' requested relief designed to ameliorate the financial problems incident to the implementation of this order. The Court stresses, however, the extreme importance and the grave immediacy of the need for proper funding of the State's public mental health facilities. The responsibility for appropriate funding ultimately must fall, of course, upon the State Legislature and, to a lesser degree, upon the defendant Mental Health Board of Alabama. For the present time, the Court will defer to those bodies in hopes that they will proceed with the realization and understanding that what is involved in this case is not representative of ordinary governmental functions such as paving roads and maintaining buildings. Rather, what is so inextricably intertwined with how the Legislature and Mental Health Board respond to the revelations of this litigation is the very preservation of human life and dignity. Not only are the lives of the patients currently confined at Bryce and Searcy at stake, but also at issue are the wellbeing *378 and security of every citizen of Alabama. As is true in the case of any disease, no one is immune from the peril of mental illness. The problem, therefore, cannot be overemphasized and a prompt response from the Legislature, the Mental Health Board and other responsible State officials, is imperative.

In the event, though, that the Legislature fails to satisfy its well-defined constitutional obligation, and the Mental Health Board, because of lack of funding or any other legally insufficient reason, fails to implement fully the standards herein ordered, it will be necessary for the Court to take affirmative steps, including appointing a master, to ensure that proper funding is realized[8] and that adequate treatment is available for the mentally ill of Alabama.

This Court now must consider that aspect of plaintiffs' motion of March 15, 1972, seeking an injunction against further commitments to Bryce and Searcy until such time as adequate treatment is supplied in those hospitals. Indisputably, the evidence in this case reflects that no treatment program at the Bryce-Searcy facilities approaches constitutional standards. Nevertheless, because of the alternatives to commitment commonly utilized in Alabama, as well as in other states, the Court is fearful that granting plaintiffs' request at the present time would serve only to punish and further deprive Alabama's mentally ill....

To assist the Court in its determination of how to proceed henceforth, defendants will be directed to prepare and file a report within six months from the date of this decree detailing the implementation of each standard herein ordered. This report shall be comprehensive and shall include a statement of the progress made on each standard not yet completely implemented, specifying the reasons for incomplete performance. The report shall include also a statement of the financing secured since the issuance of this decree and of defendants' plans for procuring whatever additional financing might be required. Upon the

basis of this report and other available information, the Court will evaluate defendants' work and, in due course, determine the appropriateness of appointing a master and of granting other requested relief.

Accordingly, it is the order, judgment and decree of this Court:

1. That defendants be and they are hereby enjoined from failing to implement fully and with dispatch each of the standards set forth in Appendix A attached hereto and incorporated as a part of this decree;

2. That human rights committees be and are hereby designated and appointed. The members thereof are listed in Appendix B attached hereto and incorporated herein. These committees shall have the purposes, functions, and spheres of operation previously set forth in this order. The members of the committees shall be paid on a per diem basis and be reimbursed for travel expenses at the same rate as members of the Alabama Board of Mental Health;

***379** 3. That defendants, within six months from this date, prepare and file with this Court a report reflecting in detail the progress on the implementation of this order. This report shall be comprehensive and precise, and shall explain the reasons for incomplete performance in the event the defendants have not met a standard in its entirety. The report also shall include a financial statement and an up-to-date timetable for full compliance.

4. That the court costs incurred in this proceeding, including a reasonable attorneys' fee for plaintiffs' lawyers, be and they are hereby taxed against the defendants;

5. That jurisdiction of this cause be and the same is hereby specifically retained.

APPENDIX A

MINIMUM CONSTITUTIONAL STANDARDS FOR ADEQUATE TREATMENT OF THE MENTALLY ILL

... II. Humane Psychological and Physical Environment

1. Patients have a right to privacy and dignity.
2. Patients have a right to the least restrictive conditions necessary to achieve the purposes of commitment.
3. No person shall be deemed incompetent to manage his affairs, to contract, to hold professional or occupational or vehicle operator's licenses, to marry and obtain a divorce, to register and vote, or to make a will solely by reason of his admission or commitment to the hospital.
4. Patients shall have the same rights to visitation and telephone communications as patients at other public hospitals, except to the extent that the Qualified Mental Health Professional responsible for formulation of a particular patient's treatment plan writes an order imposing special restrictions. The written order must be renewed after each periodic review of the treatment plan if any restrictions are to be continued. Patients shall have an unrestricted right to visitation with attorneys and with private physicians and other health professionals.
5. Patients shall have an unrestricted right to send sealed mail. Patients shall have an unrestricted right to receive sealed mail from their attorneys, private physicians, and other mental health professionals, from courts, and government officials. Patients shall have a right to receive sealed mail from others, except to the extent that the Qualified Mental Health Professional responsible for formulation of a particular *380 patient's treatment plan writes an order imposing special restrictions on receipt of sealed mail. The written order must be renewed after each periodic review of the treatment plan if any restrictions are to be continued.
6. Patients have a right to be free from unnecessary or excessive medication. No medication shall be administered unless at the written order of a physician. ...
7. Patients have a right to be free from physical restraint and isolation. Except for emergency situations, in which it is likely that patients could harm themselves or others and in which less restrictive means of

restraint are not feasible, patients may be physically restrained or placed in isolation only on a Qualified Mental Health Professional's written order which explains the rationale for such action. ....

19. Physical Facilities
A patient has a right to a humane psychological and physical environment within the hospital facilities. These facilities shall be designed to afford patients with comfort and safety, promote dignity, and ensure privacy. The facilities shall be designed to make a positive contribution to the efficient attainment of the treatment goals of the hospital.

A. Resident Unit
The number of patients in a multi-patient room shall not exceed six persons. There shall be allocated a minimum of 80 square feet of floor space per patient in a multi-patient room. Screens or curtains shall be provided to ensure privacy within the resident unit. Single rooms shall have a minimum of 100 square feet of floor space. Each patient will be furnished *382 with a comfortable bed with adequate changes of linen, a closet or locker for his personal belongings, a chair, and a bedside table.

B. Toilets and Lavatories
There will be one toilet provided for each eight patients and one lavatory for each six patients. A lavatory will be provided with each toilet facility. The toilets will be installed in separate stalls to ensure privacy, will be clean and free of odor, and will be equipped with appropriate safety devices for the physically handicapped.

C. Showers
There will be one tub or shower for each 15 patients. If a central bathing area is provided, each shower area will be divided by curtains to ensure privacy. Showers and tubs will be equipped with adequate safety accessories.

D. Day Room
The minimum day room area shall be 40 square feet per patient. Day rooms will be attractive and adequately furnished with reading lamps, tables, chairs, television and other recreational facilities. They will be conveniently located to patients' bedrooms and shall have outside windows. There shall be at least one day room area on each bedroom floor in a multi-story hospital. Areas used for corridor traffic cannot be counted as day room space; nor can a chapel with fixed pews be counted as a day room area.

E. Dining Facilities
The minimum dining room area shall be ten square feet per patient. The dining room shall be separate from the kitchen and will be furnished with comfortable chairs and tables with hard, washable surfaces.

Impacts of Wyatt in the short term

Source: Harvard Law Review V86, p1282 (1973) Case Comment

"In Wyatt v. Stickney,' the District Court for the Middle District of Alabama took the most extensive action to date in defining and enforcing the constitutional right of civilly committed mental patients to receive adequate treatment. Wyatt was a class action brought on behalf of patients in Alabama's three state institutions for the mentally impaired.2 Ruling on a motion for preliminary injunctive relief, the court originally held that the due process clause of the fourteenth amendment requires that an involuntarily committed patient receive such treatment as will give him a "realistic opportunity" to improve or be cured, and that Alabama's institutions failed to conform to "any known minimums" for the treatment of the mentally impaired.3 Action on the injunction was reserved, however, and the court ordered the defendant Mental Health Board to file a report within six months setting forth minimum standards of adequate care and outlining its progress toward meeting them. Upon receiving the report, the court found that the institutions continued to infringe the plaintiff's rights by failing to provide a proper physical and

psychological environment, sufficient numbers of qualified staff, or individual treatment plans.4 The court conducted extended hearings at which national medical organizations, other amici,5 and individual experts testified, and considered a Memorandum of Agreement by the parties detailing minimum standards of treatment. It then issued its final decree.

This latest order articulated minimum "medical and constitutional" requirements to be met with dispatch.6 The decree set forth standards guaranteeing basic patient rights to privacy, presumption of competency, communication with outsiders, compensation for labor, freedom from unnecessary medication or restraint, and freedom from treatment or experimentation with- out informed consent. Requirements were established governing staff-to-patient ratios, educational opportunities, floor space, sanitary facilities and nutrition. The court also ordered that individual treatment plans be developed, that written medication and restraint orders be filed, and that these be periodically reviewed.7 Finally, the court required that the defendants submit a progress report, declared that lack of financial resources would not excuse noncompliance, and appointed permanent outside committees to review treatment and implement patients' rights under the order.8

The Wyatt court reasoned that civilly committed patients have a constitutional right to treatment because confining a person on the "altruistic theory" that he must receive treatment and then failing to provide it violates due process, and because confining a patient without treatment transforms hospitalization into indefinite punishment without a criminal charge.9 However, in Burnham v. Department of Public Health,10 a federal district court recently rejected the Wyatt view that there is a constitutional right to treatment and went on to declare that even if there were such a right, courts are not suited to enforce it."

Consequences I ..... in Alabama

Source http://www.clearinghouse.net/detail.php?id=404

"On October 23, 1970, patients involuntarily confined for mental treatment purposes at Bryce Hospital in Tuscaloosa, Alabama, filed a class action lawsuit under 42 U.S.C. § 1983 against the Alabama Department of Mental Health and Mental Retardation (DMH/MR) in the U.S. District Court for the Middle District of Alabama, Northern Division. The plaintiffs, represented by the American Civil Liberties Union and private counsel, asked the court for declaratory and injunctive relief, alleging that conditions at facilities operated by DMH/MR violated residents' rights under state and federal law.

In the 33-year span of this litigation, this case became one of the most celebrated mental health cases.

On March 12, 1971, the District Court (Judge Frank M. Johnson, Jr.) held that the patients were being denied their right to treatment and granted the defendants six months in which to raise the level of care at Bryce. Wyatt v. Stickney, 325 F. Supp. 781 (M.D. Ala. 1971). Judge Johnson reasoned that involuntarily committed patients unquestionably have a constitutional right to receive such individual treatment as will give each of them a realistic opportunity to be cured or in to improve his or her mental condition.î On August 12, 1971, Judge Johnson enlarged the plaintiff class to include patients involuntarily confined at Searcy Hospital and at Partlow State School and Hospital. After the defendants filed their final report, on December 10, 1971, Judge Johnson concluded that the treatment program was deficient for failing to provide (a) a humane psychological and physical environment, (b) qualified staff in number sufficient to administer adequate treatment, and (c) individualized treatment plans. Wyatt v. Stickney, 334 F. Supp. 1341 (M.D. Ala. 1971).

On April 13, 1972, the District Court (Judge Johnson) filed two opinions. In the first, Judge Johnson concluded that the plaintiffs had been denied the right of habilitation, and ordered that minimum standards had to be effectuated at the institutions immediately. Wyatt v. Stickney, 344 F. Supp. 387 (M.D. Ala. 1972). In the second, Judge Johnson issued orders establishing minimal constitutional standards for treatment of persons with mental illness and persons with mental retardation. Wyatt v. Stickney, 344 F.

Supp. 373 (M.D. Ala. 1972). The defendants appealed.

On November 8, 1974, the Fifth Circuit Court of Appeals (Judge John Minor Wisdom) affirmed in relevant part the District Court's April 13, 1972, decisions. Wyatt v. Aderholt, 503 F.2d 1305 (5th Cir. 1974).

In June 1977, the plaintiffs succeeded in obtaining a federal court office to monitor compliance with the Wyatt standards. And on January 15, 1980, the District Court (Judge unknown) entered an order placing DMH/MR in receivership.

The parties engaged in extended negotiations and, in 1986, the parties entered into a consent decree requiring all state facilities to achieve JCAHO accreditation and Title XIX certification. On September 22, 1986, the District Court (Judge Myron H. Thompson) approved the consent decree. Wyatt v. Wallis, No. 3195-N, 1986 WL 69194 (M.D. Ala. Sept. 22, 1986). Under the consent decree, DMH/MR was required to make substantial progress in outplacing persons from state facilities, as well as to develop a system of internal advocacy and quality assurance of care.

Judge Thompson subsequently approved further consent decrees that clarified the licensing requirements, development of treatment plans, supervision of treatment at state mental health facilities, creation and modification of an expert panel, and allowed further plaintiffs to intervene. Wyatt v. Horsley, No. 3195-N (M.D. Ala. July 2, 1991); Wyatt v. King, No. 3195-N (M.D. Ala. Oct. 25, 1991); Wyatt v. King, 793 F. Supp. 1058 (M.D. Ala. 1992).

On July 22, 1991, the District Court found that Alabama's indefinite institutionalization of the involuntarily civilly committed was unconstitutional and ordered the defendants to conduct periodic post-commitment judicial reviews under certain standards. Wyatt v. King, 773 F. Supp. 1508 (M.D. Ala. 1991).

On January 23, 1993, the plaintiffs moved to enforce the 1986 consent decree, claiming that DMH/MR had failed to comply with the 1986 decree and was violating the recently enacted Americans with Disabilities Act of 1990. And on December 22, 1994, the District Court (Judge Thompson) recertified the plaintiff class.

After a 35-day summary proceeding, on July 11, 1995, the District Court (Judge Thompson) granted the plaintiffs motion for a preliminary injunction and denied the defendants motions to disqualify the judge and to decertify the class. Wyatt v. Rogers, 892 F. Supp. 1410 (M.D. Ala. 1995). The defendants appealed. Judge Thompson held that the injunction was warranted to correct DMH/MRs failure to deal the gang activity, physical and sexual abuse on the part of staff, as well as use of improper methods to restrain children. The defendants appealed.

On August 8, 1996, the Eleventh Circuit Court of Appeals (Judge Gerald Bald Tjoflat) dismissed the appeal. Wyatt v. Rogers, 92 F.3d 1074 (11th Cir. 1996). The Court held that the appeal was rendered moot since the facility was closed during the pendency of the appeal, negating the court's jurisdiction. The Court also set forth procedures the plaintiffs had to follow in order to obtain DMH/MR's compliance with the decree."

Source http://www.clearinghouse.net/detail.php?id=404

Consequences II
…. the USA.

The Donaldson Decision – O'Connor v Donaldson 1975

Source:
http://www.treatmentadvocacycenter.org/component/content/article/341

“Background:
Kenneth Donaldson was 34, married with three children, and working in a General Electric defense plant when he had his first episode in 1943. Hospitalized at Marcy State Hospital, he was given 23 electro-shock treatments and resumed normal life. In the mid-1950s he developed paranoid delusions that he was being poisoned. At his parents' instigation, he was committed to Florida's Chattahoochee State Hospital in 1956. He remained there for fifteen years. Donaldson lacked insight (i.e., suffered anosognosia), and steadfastly denying he was ill, refused all treatment once he was hospitalized. He had a high degree of motivation, persistence and intelligence, and through the years persistently petitioned the courts for his release.

While he was in Chattahoochee, there were repeated offers - both from a halfway house in Minneapolis and a friend of Donaldson's in Syracuse - to provide a home and supervision for him.

Donaldson's own (probably correct) view was that the hospital's doctors would not release him because he refused to play what he called "the game" of thanking the doctors for making him better. Instead, he adamantly denied he was or ever had been ill.

The Decision:
The Supreme Court said the case raised "a single, relatively simple, but nonetheless important question concerning every man's constitutional right to liberty."

The key paragraph in the decision reads: "A finding of 'mental illness' alone cannot justify a State's locking a person up against his will and keeping him indefinitely in simple custodial confinement... In short, a state cannot constitutionally confine without more a nondangerous individual who is capable of surviving safely in freedom by himself or with the help of willing and responsible family members or friends."

Significance:
The mental health bar, spearheaded by the ACLU, has interpreted this decision to mean that it is unconstitutional to commit for treatment an individual who is not (imminently) dangerous, and have maintained the individual must be considered "capable of surviving safely in freedom" if his life is not in immediate danger. This interpretation has been important in hampering efforts to implement changes in civil commitment law. In a number of states where the law has been broadened to include some variation of a "need for treatment" standard, those implementing the law for the most part still insist the individual meet the "dangerousness" standard. An important reason is that they accept the ACLU's interpretation of the Donaldson case.

The Donaldson case is also significant because of its role in determining the outcome of another key case, Wyatt v. Stickney (described elsewhere). This is because, in the lower courts, Donaldson was argued and decided as a "right to treatment" case. Donaldson's attorney, lawyer-physician-reformer Morton Birnbaum, had taken the case as part of his campaign to win court recognition of a "right to treatment," a concept Birnbaum pioneered, believing it would improve the state hospital system. At the trial level, the judge accepted the "right to treatment" argument (although at this point there was no such thing in law as a right to treatment). The judge instructed the jury it should rule for Donaldson (who was now free but suing two of his doctors) if it found he was not given such "treatment as will give him a realistic opportunity to be cured or to improve his mental condition."

The lower court decision in favor of Donaldson was then appealed to the U.S. District Court of Appeals, which upheld it, the "patient had constitutional right to such treatment as would help him to be cured or to improve his mental condition." That same court had been sitting on Alabama's appeal of the trial judge's decision in Wyatt v. Stickney for two years. It now affirmed the Wyatt decision – which would precipitate massive deinstitutionalization -- on the basis of Donaldson.

In O'Connor v. Donaldson, the Supreme Court, however, deliberately steered clear of the issue of a right to treatment. Chief Justice Burger objected that "to condition a State's power to protect the mentally ill upon providing of 'such treatment as will give a realistic opportunity to be cured'" would: make commitment

too difficult (what if the individual was incurable?), or too easy (if he were treatable but functioned well in society without treatment)."

The Youngberg v Romeo (1982) Decision

Source: Phyllis Podolsky Dietz, "NOTE: The Constitutional Right to Treatment in Light of *Youngberg v. Romeo."* 72 Geo. L.J. 1785 (1984).

"In *Youngberg v. Romeo,* n1 the Supreme Court held that the due process clause of the fourteenth amendment to the U.S. Constitution n2 protects liberty interests of the mentally retarded. According to the Court, mentally retarded individuals who have been involuntarily committed to a state institution are entitled to receive "minimally adequate or reasonable training to ensure safety and freedom from undue restraint." n3 The Court expressly declined to decide whether or not a right to "treatment *per se*" exists without respect to personal safety or the absence or presence of actual physical restraint. n4 The concept of "treatment *per se*" n5 encompasses that level of treatment or habilitation required to enable mentally retarded persons to achieve their maximum level of functioning. .....

A. MAJORITY OPINION
Writing for the majority in *Youngberg,* Justice Powell focused on the individual's fourteenth amendment liberty interests and the right to freedom from undue physical restraint. n38 *Youngberg* involved a profoundly retarded adult who had been involuntarily committed to a state facility for the mentally retarded. n39 The original complaint alleged that, in a period of less than two-and-a-half years, Nicholas Romeo had been injured on at least sixty-three occasions, due to either his own violence or to "the reactions of other residents to him." n40 The plaintiff n41 sought damages and injunctive relief, n42 alleging that the defendants, officials of the institution, n43 knew or should have known of [*1794] these injuries and that they failed to take appropriate preventive measures, in violation of Romeo's rights under the eighth and fourteenth amendments. n44 A second amended complaint alleged that the defendants were restraining Romeo for prolonged periods of time on a routine basis and sought compensation for the institution's "failure to provide [Romeo] with appropriate 'treatment or programs for his mental retardation.'" n45 The right to treatment question had not been raised in the initial complaint.

The Court premised its opinion on the understanding that an involuntarily committed person has a right to food, shelter, clothing, and medical care. n46 Therefore, it framed the issue narrowly, asking "[w]hether liberty interests also exist in safety, freedom of movement, and training." n47 The opinion acknowledged the "personal security" rights to be afforded *any* individual, asserting that if a criminal conviction and confinement could not nullify the right to personal safety, then neither should confinement for nonpenal reasons. n48
Justice Powell, writing for the Court, described as "more troubling" the issue of whether there exists a constitutional right to minimally adequate habilitation. n49 Agreeing that involuntary commitment by the state triggers a duty on the state's part to provide "certain services and care," n50 the Court interpreted Romeo's claim as one seeking only training related to promoting "bodily [*1795] safety and a minimum of physical restraint." n51 Because Romeo had not asserted any right to habilitation or training unrelated to safety or freedom from bodily restraints, the Court expressly limited its decision to exclude these questions. n52 It concluded that "this case does not present the difficult question whether a mentally retarded person, involuntarily committed to a state institution, has some general constitutional right to training *per se* even where no type or amount of training would lead to freedom." n53 The Court held, however, "that [Romeo's] liberty interests require the state to provide minimally adequate or reasonable training to ensure safety and freedom from undue restraint." n54
Although the Court's holding is narrow, it is not necessarily inconsistent with prior lower court decisions which recognized a broader right to treatment *per se*. n55 Furthermore, the Court did *not* decide that situations involving bodily restraint are the *only* ones in which training is constitutionally required; it merely stated that the Court was called upon to consider only those situations. n56

A balancing test, weighing the individual's interest in bodily freedom with the state's interest in

controlling violent behavior, conditions the majority's holding with respect to the right to minimally adequate training. n57 The Court determined that the proper standard for deciding if the correct balance has been struck is whether "'professional judgment in fact was exercised.'" n58 It adopted the position of the United States Court of Appeals for the Third Circuit that "'[i]t is not appropriate for the courts to specify which of several professionally acceptable choices should have been made.'" n59 In defining [*1796] what is to be considered a "reasonable" restraint, Justice Powell concluded that courts should defer to the judgment of professionals, whose decisions are presumptively valid. n60"