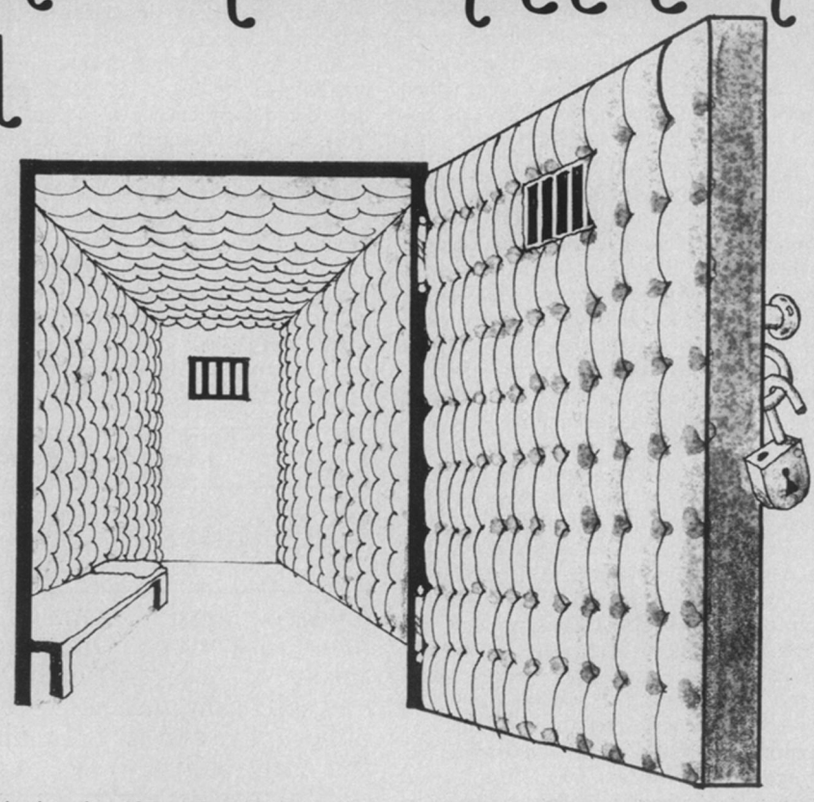
Open Sesame: The Constitution & Mental Institutions



A Supreme Court ruling opens the doors for thousands of involuntarily confined mental patients

BY ROBERT J. TROTTER

"We shall overcome," chanted civil rights activists of the sixties. And in many cases they did overcome. Racial and ethnic minorities made themselves heard and began to move forward from the back of the bus. Women's groups, gay liberationists and even football players began to demand and began to receive a fairer share of their constitutional and human rights.

But the back of the bus is still hot, crowded and uncomfortable for those left behind. Two groups, especially—the mentally handicapped and the emotionally disturbed—have only just begun to sing out for their rights. And their song is coming across loud and clear. On June 26, a United States Supreme Court ruling came down that could, potentially, force the release of more than 200,000 involuntarily confined individuals from mental institutions. The unanimous decision, written by Justice Potter Stewart, came in the case of *O'Connor v. Donaldson* (SN: 9/28/74, p. 198).

In 1957, at the age of 48, Kenneth Donaldson was committed to a state mental institution in Chatahoochee, Fla., at the request of his father. Supposedly suffering from delusions, Donaldson was diagnosed a paranoid schizophrenic and was incarcerated for "care, maintenance and treatment." Against his will, he remained confined for nearly 15 years. During that time he brought forth 15 different legal petitions before state and Federal courts. All were denied or refused, but Donaldson was finally released by the institution in 1971. The legal action, however, did not stop. Eventually, Donaldson won a $38,500 suit against J.B. O'Connor, superintendent of the institution and a co-defendent. The ruling was upheld by the Appeals Court. The Supreme Court followed suit and held that a state cannot constitutionally confine "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. . . ."

The Supreme Court, on a technicality, sent Donaldson's damages ruling back to a lower court. But in what will be a far-reaching and historic decision, the court upheld the argument based on 14th Amendment grounds: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property without due process of law. . . ."

"A finding of 'mental illness' alone," the decision reads, "cannot justify a State's locking a person up against his will and keeping him indefinitely in simple custodial confinement. . . . May the State fence in the harmless mentally ill solely to save its citizens from exposure to those whose ways are different? One might as well ask if the State, to avoid public unease, could incarcerate all who are physically unattractive or socially eccentric. Mere public intolerance cannot constitutionally justify the deprivation of a person's physical liberty."

Bruce J. Ennis of the Mental Health Law Project in Washington, D.C., and the New York Civil Liberties Union was lead counsel for Donaldson. "The *Donaldson* case," he says, "is one of the very few cases in its almost 200-year history in which the Supreme Court has dealt with the constitutional rights of civilly committed mental patients. Traditionally, the mentally handicapped in our society have been treated as outcasts—one of our last and most under-represented minorities. The unanimous decision by the Supreme Court puts administrators and superintendents, legislators and the public, on notice that the mentally ill are citizens like the rest of us and that the Constitution protects them, too."

There are probably as many as 250,000 people confined in mental institutions at present. According to American Psychiatric Association figures, "at least 90 percent of those in state and county mental hospitals are not dangerous to themselves or others." Does the Supreme Court ruling mean that these thousands of people will be legally able to get up and walk out of institutions? Paul R. Friedman of the Mental Health Law Project helped prepare the *Donaldson* brief. He is a lawyer and has had psychoanalytic training. He answers: "Certainly all those who are in institutions as bad as Chatahoochee was—with essentially custodial confinement and no more programs than one would find in a prison—and who aren't dangerous to themselves or others and who could survive are entitled to be out."

And the MHLP is taking steps to see that those who want out at least are aware of their rights. The Project has asked Bertram S. Brown, director of the National Institute of Mental Health, to mail the opinion and a synopsis of it to the superintendents of every mental health institution. In addition, the MHLP is asking that a one-page, simplified statement of what the case means be posted in every institution. These steps will probably be taken in the very near future because the new ruling falls right in line with what Brown and NIMH have been pushing for—community mental health centers.

The ruling will put legal pressure on institutions to release a great many people. But such people can't just be dumped on the communities. In many cases, they will need follow-up treatment that could be provided by the community mental health centers that NIMH has been trying to establish. "We are moving away from the large state or county facility," says Brown, "and going to the concept of community health centers." More than 500 such centers have been set up during the past 10 years. Another 500 will probably be needed in the near future.

"The ruling," says Friedman, "gives advocates of community-based treatment a wonderful lever which we hope they will use to the hilt." And they will probably need to use it. The Administration is likely to veto any large request for community mental health funds. But with the Supreme Court behind it, Congress might be able to override such a veto. And legally, the *Donaldson* case could force drastic changes in the entire system of mental health care in the United States.

But what appears to be a silver cloud actually has a gray lining for those working for changes in the mental-health care system. One important question was left unanswered in the *Donaldson* decision. Do states have a constitutional obligation to provide treatment when they deprive individuals of their liberty? Stewart's opinion sidestepped this issue, but Chief Justice Burger, in concurring opinion, made it quite clear that he sees no constitutional grounds for the "right to treatment." And if Burger's had been the majority opinion, it would have meant the end of right to treatment and been a severe blow to the future of mental health law. The state, Burger says, "may confine individuals solely to protect society from the dangers of significant antisocial acts or communicable disease. . . . The classic example of this role is when a State undertakes to act as 'the general guardian of all infants, idiots and lunatics.'"

The "right to treatment" issue was established legally in a 1972 District Court decision *(Wyatt v. Stickney)* that forced Alabama's state institutions to set and enforce standards for treatment. In other words, confinement is not legally justifiable when certain standards of treatment are not provided. This issue, however, has not yet been ruled on by the Supreme Court and is only one of the many unanswered questions in the field of mental-health law.

Among the people asking such questions are the members of the MHLP, which was founded in 1972 by Charles Halpern, Friedman and Ennis who were then working on the *Wyatt* case. The MHLP now consists of seven lawyers and a number of mental health professionals who are attempting to define (through the courts) the legal rights due the mentally handicapped and emotionally disturbed. The evolution of mental-health law has come with an almost revolutionary momentum, explains Friedman. "Test cases in which the MHLP has been active have set important precedents and affirmed crucial rights in just three years." The *Wyatt* case was one of the first breakthroughs. Since then, similar decisions have been obtained in Minnesota and Massachusetts, and the standards for staff-patient ratios, nutrition levels, and so forth, have been applied in institutions in Utah, Nebraska, Ohio and other states. In another case, similar rights were obtained for behaviorally disturbed juveniles in Texas. The much-publicized Willowbrook case resulted in standards for care, habilitation and outplacement of mentally retarded residents of a large institution in New York.

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—from the 14th Amendment

Besides the right to treatment, several other issues are being forced into the courts by the MHLP:

- The right to the least restrictive alternative setting. A suit against HEW and the District of Columbia demands the development of sufficient quality community services—halfway houses, nursing homes, community mental-health centers, etc.—for patients unnecessarily confined to St. Elizabeth's hospital.
- The right to education. Another case against the District of Columbia is one of the leading test cases affirming the right of mentally handicapped children to appropriate publicly supported schooling.
- Employment rights. A recent case has obtained a decision to end the abuse of institutional peonage—the practice of assigning civilly committed mental patients to perform without pay the basic labor of institutions. An upcoming test case has to do with the problem of employment in the community, where the mentally handicapped are subjected to job discrimination.
- The right to live in the community. The MHLP intends to pursue assurances that zoning codes are not used to discriminate against the mentally handicapped.
- The right to refuse treatment. The issue of legal limitations upon the use of potentially hazardous, intrusive or experimental procedures, explains Friedman, is not inconsistent with the right to treatment. Safeguards are being sought to cover psychosurgery, electroconvulsive therapy, psychoactive medication and behavior modification techniques that utilize punishment and aversive stimuli.

So what is the bottom line? What are the mental-health lawyers trying to achieve with all of their litigation? Ennis is on record as seeking the total abolition of involuntary confinement. Whenever the authority for confinement exists in a society, there is always the possibility that it will be abused.

But not all members of the MHLP are willing to go that far. "Some people, and I include myself," says Friedman, "feel that institutions have been very badly abused and have failed as an approach. But I am not yet ready to throw out the idea that there might be some justification for involuntary commitment if the standards were drastically tightened and narrowed and if the time commitment were shortened. And it should only be for people who are actually dangerous to themselves or others. There ought to be some showing of overt acts, not just speculation and prediction—because no one knows how to predict dangerousness." Overtly dangerous acts, however, are usually covered by the criminal codes, and the issues of mental health need not always be brought up.

While there may not be total agreement as to the ultimate goals of the MHLP, "I think it is safe to say," Friedman goes on, "that everyone would like to see the system shift to an integrated, comprehensive system with lots of community-based alternatives. We all think that if we really had something like that, a lot of people would come out of the woodwork and use those facilities. There would be less stigma, . . . it would be safer and more permissible to seek help. If we had a good system and a better public attitude, the people would make use of such services on a voluntary basis. The very difficult constitutional issues would be much less important."

But until there is a better system, the constitutional battles will have to be fought. For the present, Donaldson, the members of the MHLP, other mental-health lawyers and advocates of community mental health have a victory to celebrate. The real victors, however, are the mentally disadvantaged citizens who are affected by the *Donaldson* decision. They have moved a few seats forward from the back of the bus and can begin to sing seriously about overcoming. □