The Right To Treatment Case --That Wasn't

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precedential value, the Court’s decision not to take the case has been viewed as a silent endorsement of the anti-growth statute, possibly resulting in a profusion of such statutes among smaller communities in the near future.\textsuperscript{46}

If \textit{Warth} and \textit{Petaluma} are any indication of the Court’s attitude toward the merits of those cases, \textit{Metropolitan Housing} may well be reversed as a misapplication of the equal protection clause. Such a reversal, however, would be a mistake and a serious blow to the chances of equitable treatment of minority housing needs. What is needed is guidance for communities and courts in the application of equal protection to the zoning area—a topic the Court has not directly addressed in the 50 years since \textit{Euclid}.\textsuperscript{47} If communities are to be able to plan effectively for their growth, especially for the housing needs of those desiring to live in them, they cannot be fettered by the compelling state interest test. At the same time, low and moderate income classes, minority and otherwise, must be planned for in those housing needs. The courts must therefore have the tools to force communities to accept their fair share of the regional housing needs when they do not do so on their own. The Supreme Court’s review of \textit{Metropolitan Housing} is an excellent opportunity to provide the necessary guidance to the lower courts.

\textbf{RAYMOND M. PAETZOLD}

\textbf{The Right To Treatment Case—That Wasn’t}

In 1957 Kenneth Donaldson was civilly committed to a state hospital in Chattahoochee, Florida for “care, maintenance, and treatment” as a “paranoid schizophrenic.”\textsuperscript{1} For nearly 15 years Donaldson demanded his release, claiming that he was neither dangerous nor mentally ill, and that he was receiving no treatment. But his requests for release were continually denied by the hospital su-


\textsuperscript{47}. See text accompanying note 6 supra.

\textsuperscript{1}. Donaldson, who had been suffering from delusions, was committed by his father pursuant to \textsc{Fla. Stat.} § 394.22(11) (1955) (repealed by \textsc{Fla. Laws} 1971, ch. 71-131, effective July 1, 1972). Essentially the Act provided that a mentally incompetent person who requires confinement to prevent self-injury or violence to others should be committed for care, maintenance and treatment.
perintendent, Dr. O'Connor. In struggling to obtain his freedom, Donaldson had even instituted a number of court actions. In an action instituted in February 1971, Donaldson sued O'Connor and other members of the hospital staff on the ground that they had intentionally and maliciously deprived him of his constitutional right to liberty. Although Donaldson had already gained his release, the jury returned a verdict for both compensatory and punitive damages against O'Connor. The Court of Appeals for the Fifth Circuit affirmed. On certiorari, the United States Supreme Court held, vacated and remanded: A state's confinement of a non-dangerous individual who is capable of surviving safely in freedom, by himself or with the help of friends, violates such individual's constitutional right to liberty. The case was remanded to the fifth circuit solely to consider whether the judge's failure to instruct the jury as to the legal implications of O'Connor's claimed good faith defense.

2. There were two basic procedures for releasing patients. The first, a competency discharge, resulted from a staff conference and a determination by a majority of the medical staff that the patient had regained competency. The second was a procedure involving "trial visits" or "furloughs" to the outside world for gradually lengthened periods of time. This procedure did not require a staff conference and a determination of restoration of competency as conditions precedent to release.

3. The number of cases brought by Kenneth Donaldson has been estimated at between 15 and 20. Reply Brief for Petitioner at 14, O'Connor v. Donaldson, 422 U.S. 563 (1975) [hereinafter cited as Reply Brief for Petitioner].

4. Donaldson alleged that the state hospital officials had deprived him of his constitutional right to liberty since they knew he was not dangerous to himself nor to others, yet they had not restored him to liberty by either treatment or release. Therefore, he sued under 42 U.S.C. § 1983 (1970), which provides:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

The original complaint, filed as a class action on the behalf of Donaldson and fellow patients at Chattahoochee, requested damages, habeas corpus release, and declaratory and injunctive relief requiring treatment. The district court dismissed the class action after Donaldson's release as he was no longer a member of the class. He filed his first amended complaint on August 30, 1971 seeking damages, and declaratory and injunctive relief. Donaldson v. O'Connor, 493 F.2d 507, 512 (5th Cir. 1974), aff'd, 422 U.S. 563 (1975).

5. Donaldson was eventually given a competency discharge under the authority of the new hospital superintendent who replaced O'Connor shortly after O'Connor retired in 1971. Brief for Respondent at 22 n.16, O'Connor v. Donaldson, 422 U.S. 563 (1975) [hereinafter cited as Brief for Respondent]. Donaldson's release did not moot the case, as it was still necessary to decide whether O'Connor was liable for damages for violating Donaldson's constitutional rights. See note 4 supra and accompanying text.

that his actions were based on state law,\textsuperscript{7} rendered inadequate the instructions as to O'Connor's liability for compensatory and punitive damages.\textsuperscript{8} \textit{O'Connor v. Donaldson}, 422 U.S. 563 (1975).\textsuperscript{9}

The Supreme Court had previously established due process rights for mentally ill persons committed to an institution. In \textit{Jackson v. Indiana},\textsuperscript{10} the Court found violative of due process the indefinite commitment of a mentally defective deaf-mute solely because he was incompetent to stand trial. The Court stated, "At the least, due process requires that the nature and duration of commitment bear some reasonable relation to the purpose for which the individual is committed";\textsuperscript{11} otherwise, there is an unconstitutional

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\item \textsuperscript{7} Neither court below had acted with the benefit of the recent Supreme Court ruling which defined the scope of qualified immunity for state officials. Wood v. Strickland, 420 U.S. 308 (1975). Prior to \textit{Strickland}, the doctrine of sovereign immunity might have prevented a suit against a state official. In Pierson v. Ray, 386 U.S. 547 (1967), the Court held that the plaintiffs could not recover damages from individual police officers for an unconstitutional arrest if the officers were acting in good faith and believed that the arrest was constitutional. Thus, if O'Connor could show that he had acted in good faith, even though Donaldson's confinement was unconstitutional, he might have escaped liability.

\textit{Strickland}, however, held that a school board member is not immune from liability for damages under section 1983 if he knew or reasonably should have known that the action he took within his sphere of official responsibility would violate the constitutional rights of the student affected, or if he took the action with a malicious intention to cause a deprivation of constitutional rights or other injury to the student.

Thus, if O'Connor knew or reasonably should have known that he was violating Donaldson's constitutional rights, or if he acted maliciously to violate them, under \textit{Strickland} he would be liable in a section 1983 action.

\item \textsuperscript{8} The oral charge to the jury included the following instructions as to O'Connor's guilt:

[The Plaintiff must establish] [t]hat the Defendants confined Plaintiff against his will, knowing that he was not mentally ill or dangerous or knowing that if mentally ill he was not receiving treatment for his alleged mental illness.

Brief for Respondent at 39 (emphasis in original).

It is important to note that the Court in \textit{Strickland} held that a compensatory award would be appropriate only if an official acted with such an "impermissible motivation or with such disregard of the student's clearly established constitutional rights that his action cannot reasonably be characterized as being in good faith." Wood v. Strickland, 420 U.S. 308, 322 (1975).

Thus, it would appear that although good faith might not be a defense to the action if O'Connor knew or reasonably should have known he was violating Donaldson's constitutional rights, the good faith doctrine may nevertheless be utilized to limit or escape liability from damages. The official is still not "charged with predicting the future course of constitutional law." Pierson v. Ray, 386 U.S. 547, 557 (1967).

The jury should have been charged to consider the question of "good faith" on the part of O'Connor in reference to his liability for compensatory and punitive damages.

\item \textsuperscript{9} The decision was unanimous; Chief Justice Burger, however, in his concurring opinion, expressed his disagreement with several issues decided by the fifth circuit.

\item \textsuperscript{10} 406 U.S. 715 (1972).

\item \textsuperscript{11} Id. at 738.
deprivation of liberty. The Court followed the *Jackson* decision in *McNeil v. Director, Patuxent Institution*12 where it was held that confining a person for an indeterminate period of observation to determine whether he would be permanently committed was violative of due process.

Although the Court in *Jackson* and *McNeil* recognized that due process required a rational relationship between the nature and duration of commitment and the purpose for commitment, it did not focus on whether there was a constitutional right to receive post-commitment treatment. Prior to *Donaldson*, there had been a growing movement urging the constitutional right to treatment for persons involuntarily confined in mental institutions.13 Although encouraged by the Fifth Circuit's ruling in *Donaldson* on the basis of a constitutional right to treatment, the movement was thwarted by the Supreme Court's decision in this case.

Unlike the Fifth Circuit, the Supreme Court did not find it necessary to deal with "‘the far reaching question whether the Fourteenth Amendment guarantees a right to treatment to persons involuntarily civilly committed to state mental hospitals.'"14 The Court viewed the question before it more narrowly, noting that:

"[T]here is no reason now to decide whether mentally ill persons dangerous to themselves or to others have a right to treatment

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upon compulsory confinement by the State, or whether the State may compulsorily confine a nondangerous, mentally ill individual for the purpose of treatment.15

Since the "jury found that Donaldson was neither dangerous to himself nor dangerous to others, and also found that, if mentally ill, Donaldson had not received treatment,"16 the issue was limited to whether, under these circumstances, Donaldson was entitled to damages for the failure of the state officials to release him. The stated purpose for the confinement was treatment; therefore the Jackson and McNeil rationale required that treatment, in fact, be provided so that the confinement would bear a reasonable relation to its purpose. The Court decided that without such reasonable relation, no justification existed for keeping Donaldson in continued confinement.17

Chief Justice Burger's concurring opinion, on the other hand, focused on the constitutional right to treatment not discussed by the majority. He agreed that Donaldson should not have been confined, given the jury's findings that he was not dangerous to himself nor to others, and that he received no treatment. However, the Chief Justice rejected the Fifth Circuit's holding and stated that the Fifth Circuit's analysis had "no basis in the decisions of this court."18 Expanding the law, the Fifth Circuit had held that "a person involuntarily civilly committed to a state mental hospital has a constitutional right to receive such individual treatment as will give him a reasonable opportunity to be cured or to improve his mental condition."19 Recognizing that civil commitment entails a "massive curtailment of liberty,"20 the court of appeals formulated a two-part theory supporting the conclusion that the due process clause guarantees a right to treatment.

15. Id. at 573. Donaldson had contended that providing treatment was the purpose justifying his initial confinement. However, he did not challenge the mode of treatment nor whether treatment would be a permissible purpose to justify confinement. He chose to show the absence of a rational relationship between the purpose for his confinement and the nature of his confinement by demonstrating that he was receiving no treatment and, in fact, no longer needed treatment to function in society. Thus, the permissibility of the treatment purpose or the mode of treatment by one confined under the treatment rationale, were not issues before the Court in this case.
16. 422 U.S. at 573.
17. Id. at 575.
18. Id. at 580 (Burger, C.J., concurring).
Commitment of individuals has been justified under the police power of the states as necessary to protect society from dangerous mental defectives, or under the parens patriae rationale where the state’s interest is theoretically beneficent. The court of appeals in Donaldson focused initially on the parens patriae rationale which justified confinement in a state mental institution for nondangerous individuals. Under this rationale, the “due process clause requires that minimally adequate treatment be in fact provided” so that there is a rational relationship between the basis for the confinement and the nature of it.

Secondly, the Fifth Circuit supported its right-to-treatment view by acknowledging the quid pro quo theory: involuntary confinement violates the due process right to liberty; hence, violation of the right must be justified by a compelling state interest. If a person has not committed an anti-social act or has not been found to be “dangerous,” the police power rationale of incarceration, i.e., to protect society, cannot serve as the compelling state interest. If the nondangerous person is confined, it must be for treatment; if treatment is the compelling state interest which justifies the confinement, then the patient must receive it.

According to the Fifth Circuit, this quid pro quo theory for the mental health area was derived from the rationale expounded in previous cases involving non-penal detention. The Fifth Circuit

23. 493 F.2d at 521.
24. Id. at 522.
26. The relevant cases have arisen in five major procedural contexts.
First, where detention is “non-penal” in theory, the minimim requirement is that the persons be confined in a non-prison facility. Donaldson v. O’Connor, 493 F.2d 507, 522-23 (5th Cir. 1974), citing Benton v. Reid, 231 F.2d 780 (D.C. Cir. 1956) and Commonwealth v. Page, 339 Mass. 313, 159 N.E.2d 82 (1959).

Second, persons held under “non-penal” detention must be placed in facilities where conditions are classified as actually therapeutic. Id. at 523, citing Ragsdale v. Overholser, 281 F.2d 943, 950 (D.C. Cir. 1960) (Fahy, J., concurring) and Sas v. Maryland, 334 F.2d 506, 517 (4th Cir. 1964), cert. dismissed as improvidently granted sub nom. Murel v. Baltimore City Crim. Ct., 407 U.S. 355 (1972).

concluded that “these . . . [previous] cases constitute a near unanimous recognition that governments must afford a *quid pro quo* when they confine citizens in circumstances where the conventional limitations of the criminal process are inapplicable.”

The Chief Justice’s initial criticism was directed at the Fifth Circuit’s failure to explain its conclusion that Donaldson had been committed because he needed treatment. He stated:

The Florida Statutes in effect during the period of [Donaldson’s] confinement did not require that a person who had been adjudicated incompetent and ordered committed either be provided with psychiatric treatment or released, and there was no such condition in [Donaldson’s] order of commitment.

More importantly, Burger stated that the instructions did not require the jury to make any findings regarding the specific reasons for confinement or to focus on any rights Donaldson may have had under state law. The validity of this criticism is questionable since the jury, before finding for Donaldson, first must have found that he was not dangerous to himself or others and that O’Connor knew of his nondangerous character. The jury had been so instructed by the trial court:

Now, the purpose of involuntary hospitalization is treatment and not mere custodial care or punishment if a patient is not a danger to himself or others. Without such treatment there is no justification from a constitutional standpoint for continued confinement unless you should also find that the Plaintiff was dangerous either to himself or others.

Thus, the court of appeals could reasonably assume that the evidence showed that Donaldson was not dangerous to himself or others, and thus that he was confined under the *parens patriae*

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27. 493 F.2d at 524.
28. 422 U.S. at 581 (Burger, C.J., concurring).
29. Brief for Respondent at 40.
rationale rather than the police power rationale. The Fifth Circuit, in fact, took this position. 30

Chief Justice Burger further concluded that the court of appeals had interpreted the \textit{parens patriae} rationale as limiting the state's power to confine a nondangerous mentally ill person solely to situations where the patient would be provided treatment. 31 He claimed, however, that this interpretation was "of very recent origin," and found "no historical basis for imposing such a limitation on state power." 32 His reasoning was based on the notion "that in the exercise of its police power a State may confine individuals solely to protect society from the dangers of significant antisocial acts or communicable disease." 33

This argument would be valid if it were applied to dangerous individuals who were committed under the police power to protect others from harm. However, the Fifth Circuit specifically limited its holding to nondangerous patients, and thus the initial commitment would flow from the \textit{parens patriae} rationale, not from the police power rationale. Furthermore, the criticism is contrary to the reasoning in many recent decisions which have acknowledged that custodial confinement without treatment raises "substantial" constitutional issues. 34

Secondly, Chief Justice Burger attacked the \textit{quid pro quo} theory as propounded by the Fifth Circuit. Due process, he reasoned, is not an "inflexible concept"; its requirements are determined "in particular instances by identifying and accommodating the interests of the individual and society." 35 Furthermore, the \textit{quid pro quo} theory was defective because it "presupposes that essentially the same interests are involved in every situation where a state seeks to confine an individual." 36

However, it is difficult to conceive of valid interests involved beyond those of restoring the nondangerous mentally ill person's

\begin{footnotes}
30. 493 F.2d at 521.
31. 422 U.S. at 581 (Burger, C.J., concurring).
32. \textit{Id.} at 582.
33. \textit{Id.} at 582-83.
35. 422 U.S. at 585-86 (Burger, C.J., concurring).
36. \textit{Id.} at 586.
\end{footnotes}
competency and of returning him to society. The "treatment" may vary from case to case, but the "treatment" is not the purpose for the confinement. The purpose for the confinement of a nondangerous patient is to cure or improve his condition; treatment is merely a means to that end. Thus, the state's interest in each case of involuntary commitment of a nondangerous patient is essentially the same—not different as Chief Justice Burger would maintain. The state must provide treatment to a nondangerous person for a constitutionally valid relationship to exist between the compelling state interest, which justified the initial commitment, and the nature of the confinement. Justice Burger concluded this argument by stating:

Given the present state of medical knowledge regarding abnormal human behavior and its treatment, few things would be more fraught with peril than to irrevocably condition a State's power to protect the mentally ill upon the providing of "such treatment as will give [them] a realistic opportunity to be cured." Nor can I accept the theory that a State may lawfully confine an individual thought to need treatment and justify that deprivation of liberty solely by providing some treatment.

There is no doubt that Chief Justice Burger is correct in his conclusion that there is a "wide divergence of medical opinion regarding the diagnosis of and proper therapy for mental abnormalities." He apparently reasons that this divergence of medical opinion makes the right to treatment, in effect, judicially unenforceable. However, Judge Bazelon addressed in a recent article, the issue of whether a judge could prescribe or evaluate treatment modes for the mentally ill, writing:

No judge would claim the ability to prescribe a particular therapy for a "chronic undifferentiated schizophrenic." But neither would any judge allocate AM frequencies to avoid interference. . . . To focus more closely upon the right to treatment, the judge must decide only whether the patient is receiving carefully chosen therapy which respectable professional opinion regards as within the

38. 422 U.S. 588-89 (Burger, C.J., concurring).
40. 422 U.S. at 587 (Burger, C.J., concurring).
range of appropriate treatment alternatives, not whether the patient is receiving the best of all possible treatment in the best of all possible mental hospitals.\textsuperscript{41}

The right to treatment does not mean that a judge must require a guarantee that the patient, in fact, be cured.\textsuperscript{42} It is therefore submitted that Chief Justice Burger erroneously stated that the court of appeals' decision should be read to "irreversibly condition a State's power to protect the mentally ill upon the providing of 'such treatment as will give [them] a realistic opportunity to be cured.'"\textsuperscript{43} Under the court of appeals' reasoning, persons who are beyond rehabilitation need not be guaranteed treatment that will cure them. As the Fifth Circuit noted, it is only necessary that the person receive "treatment as will give him a reasonable opportunity to be cured or to improve his mental condition."\textsuperscript{44}

The Supreme Court's decision in \textit{Donaldson} was enthusiastically received by the media when it was announced.\textsuperscript{45} Although no longer heralded as the "right to treatment case," the Court's ruling was hailed as a "landmark legal victory in the effort to oppose involuntary commitment of mental patients" by the New York Civil Liberties Union.\textsuperscript{46} This enthusiasm, however, is ill-founded. First, it has been suggested that one of the implications of the case is that

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\item \textsuperscript{41} Bazelon, \textit{supra} note 21, at 745.
\item \textsuperscript{42} The following guidelines for defining the right to treatment have emerged:
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\item First, judicial enforcement of the right has not, thus far, required doctors to demonstrate that a particular course of treatment would cure or improve the patient's mental condition, but only to show that there was a \textit{bona fide} effort and a reasonable opportunity to cure or improve that condition. See, e.g., Rouse v. Cameron, 373 F.2d 451, 456-57 (D.C. Cir. 1966); Wyatt v. Stickney, 325 F. Supp. 781, 785, aff'd sub nom. Wyatt v. Aderholt, 503 F.2d 1305 (1974).
\item Second, courts have allowed state authorities broad discretion, within the range of present knowledge, in their efforts to treat the mentally ill. Rouse v. Cameron, 373 F.2d 451, 456 (government authorities have an obligation to provide treatment that comes within the range of "present knowledge").
\item Third, courts have not required state officials to provide the "best possible treatment" but only treatment that is "adequate" or "reasonable" within the range of accepted professional practice. Tribbey v. Cameron, 379 F.2d 104, 105 (D.C. Cir. 1967); \textit{In re Jones}, 338 F. Supp. 428, 429 (D.D.C. 1972) (additional citations omitted).
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"states will have to adopt meaningful procedures for periodic review of those people involuntarily confined." 47

This statement may not accurately portray the effect of Donaldson in that even if states must provide for periodic review of a patient's condition, a mere summary examination by a physician would probably suffice. If the same doctor is involved in each instance, the practical effect is that there would be no action taken without a court battle. For Donaldson to have substantial impact, courts must specify clear guidelines for implementing the periodic review in a truly meaningful manner.

Secondly, the greatest ramification of Donaldson is that hospital administrators and doctors may be put on notice of possible liability for damages for confining a nondangerous patient who is receiving no treatment. However, the patient would still have to prove that he was "nondangerous." This may be a difficult, if not impossible task considering that even psychiatrists often cannot accurately predict who is dangerous and who is not. 48 Thus, a psychiatrist may claim that in his "professional judgment" the patient was "dangerous"; thereby relieving a hospital official who relied on such diagnosis from liability.

At the present time, there is no way of knowing exactly how many nondangerous patients in state mental institutions are receiving only custodial care; therefore, it is impossible to gauge accurately the practical effects of this decision. The problems involved in ascertaining "dangerousness" would seem to indicate that a meaningful decision regarding the right to treatment would have to delineate, at least, a method for objectively judging "dangerousness" as it relates to the question of the basis for confinement and subsequent treatment.

The Supreme Court chose not to deal with the right to treatment question in its decision. 49 It is fortunate, though, that no death

48. One psychiatrist has noted that there is no empirical support for the belief that psychiatrists can predict dangerous behavior. To the contrary, even with "the most careful, painstaking . . . approach to the prediction of dangerousness, false positives may be at a minimum of 60 to 70%." In other words, even under controlled conditions, at least 60 to 70 percent of the people whom psychiatrists judge to be dangerous may, in fact, be harmless.
49. See note 14 supra, and accompanying text.
blow to the constitutional right to treatment was delivered by the
majority of the Court, but only attempted by Chief Justice Burger
in his concurring opinion.

Although a state could easily justify, by means of its police
power, the retention of “dangerous” persons, those who are only
receiving “treatment” such as “milieu therapy” continue to face
the prospect of confinement for an indeterminate period of time. At
the very least, such patients should be afforded the right to a good
faith effort of treatment so that those who respond favorably to such
treatment may be returned to society. Unfortunately, the specific
holding of Donaldson does nothing to alleviate their plight. In fact,
under most state civil commitment statutes the treatment does not
have to be designed to improve their condition, nor are hospitals
obligated to provide an individual treatment plan.51

Certainly not all problems involving confinement of individuals
in state mental institutions would be solved if the Court were to hold
that one has a constitutional right to treatment. However, if the
right to treatment were given a constitutional basis, the public
would become acutely aware of the problems currently existing in
mental hospitals. The public indignation could serve as a needed
catalyst for state legislatures to grant the mental hospitals the funds
needed to comply with the prescribed standards for adequate
treatment that would be set by the courts.53

50. “Milieu therapy” involves the patient’s interacting with the environment or “milieu”
of the hospital. Doctors frequently rely on “milieu therapy” to rebut claims by patients that
they are receiving inadequate treatment. Halpern, A Practicing Lawyer Views the Right to

51. See generally Comment, Developments in the Law—Civil Commitment of the Men-
tally Ill, 87 Harv. L. Rev. 1190 (1974).

The importance of an individual treatment plan has been stated as follows:

The need for an individualized treatment plan cannot be overemphasized. With-
out such a plan, there can be no evidence that the hospital has singled out the
patient for treatment as an individual with his own unique problems. And unless
the plan is refined and improved . . . there can be no guarantee that the promise
of treatment has taken root in reality.

Bazelon, supra note 21, at 746.

52. “But once let rumor spread about a man or woman illegally committed to a mental
hospital and newspaper headlines will scream; the public will seethe with indignation; inves-
tigations and punitive expeditions will be demanded.” A. Deutsch, The Mentally Ill in
America 418 (1st ed. 1937).

53. In too many cases, the efficacy of modern medicine is dependent upon a
legislative decision rather than upon medical knowledge. If the legislature appro-
priates sufficient funds . . . the effect of [commitment in a mental hospital] is
decided to a great extent by the limitations of medical knowledge. If the legisla-
Until the right to treatment is deemed a constitutional right, there are many persons who, lacking the tenacity and inner strength of Kenneth Donaldson, will live their lives in exile; they will wrongfully be exposed every day to an unremitting terror that may only have the final effect of depriving them of whatever sanity they might still possess.\textsuperscript{54}

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\footnotesize{ture appropriates insufficient funds, the effect of institutionalization is decided to a great extent by legislative fiat. Birnbaum, }The Right to Treatment,\textsuperscript{54} 46 A.B.A.J. 499 (1960).

54. It is, perhaps, appropriate at this point to quote from Kenneth Donaldson's testimony concerning the conditions under which he was confined:

Q. Were you able to get a good night's sleep?
A. No.
Q. Why not?
A. On all the wards there was the same mixture of patients. There were some patients who had fits during the night. There were some patients who would torment other patients, screaming and hollering, and the fear, always the fear you have in your mind, I suppose, when you go to sleep that maybe somebody will jump on you during the night.

They never did, but you think about those things. It was a lunatic asylum. 493 F.2d at 512 n.5.