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Civil Commitment of Mentally Ill; Right to Treatment; Parens Patriae Power; Right to Liberty; Donaldson v. O'Connor

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CONSTITUTIONAL LAW

Civil Commitment of Mentally Ill · Right to Treatment Parens Patriae Power · Right to Liberty

Donaldson v. O'Connor, 95 S. Ct. 2486 (1975)

THE RESPONDENT, Kenneth Donaldson, was involuntarily civilly committed[1] as a mental patient[2] in the Florida State Hospital at Chattahoochee. He remained confined for almost 15 years.[3] During that time he received little or no psychiatric care or treatment. His confinement was a "simple regime of enforced custodial care, not a program designed to alleviate or cure his supposed illness."[4] Donaldson, who was not aggressive or belligerent,[5] repeatedly attempted to secure his release,[6] claiming that the defendants unjustifiably continued to confine him despite attempts by responsible parties to have him released to their custody.[7] In February, 1971, Donaldson filed suit under the Civil Rights Act of 1871[8] against five hospital and state mental

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[1] O'Connor v. Donaldson, 95 S. Ct. 2486, 2489 n.2 (1975). The judicial proceedings were initiated by Donaldson's father pursuant to the Florida Mental Health Act, FLA. STAT. § 394.22 (11) (1955) (repealed 1971). Donaldson was adjudged "incompetent" several days earlier under The Florida Mental Health Act, FLA. STAT. § 394.22(1) (1955) (repealed 1971).

[2] 95 S. Ct. at 2488. Donaldson was found to be suffering from "paranoid schizophrenia."

[3] *Id.* Prior to 1970 Donaldson had presented his claim for release unsuccessfully at least 12 times in state and federal courts. *See generally* Birnbaum, *A Rationale for the Right*, 57 GEO. L.J. 752,775 (1969). The United States Supreme Court had denied Donaldson habeas corpus relief four times. *See* Donaldson v. O'Connor, 400 U.S. 869 (1970); Donaldson v. O'Connor, 390 U.S. 971 (1968); Donaldson v. Florida, 371 U.S. 806 (1962); *In re* Donaldson, 364 U.S. 808 (1960). The hospital staff had the authority to initiate the release of Donaldson, but, despite many requests, refused to do so.

[4] 95 S. Ct. at 2490. Donaldson, a Christian Scientist, refused to take any medication or submit to electroshock treatments. In Donaldson v. O'Connor, 493 F.2d 507, 511, 513-14 (5th Cir. 1974), the court provides the following information: (1) psychiatric counseling, ground privileges, and occupational therapy were consistently withheld from Donaldson; (2) Donaldson was confined to a locked room containing 60 beds; (3) one-third of the occupants in Donaldson's wing were classified as criminals.

[5] 95 S. Ct. at 2490. The evidence further showed that Donaldson had never committed a violent act, was not suicidal, and could have earned a living on his own had he been released. Donaldson had been working prior to his commitment, and secured responsible employment immediately upon his release. *See also* Donaldson v. O'Connor, 493 F.2d at 517.

[6] *See* note 3 and accompanying text *supra*.

[7] 95 S. Ct. at 2490. *See* 493 F.2d at 515-17, for a detailed description of the efforts by various responsible parties to have Donaldson released.

[8] *See* 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 or other person within the jurisdiction thereof 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.

health officials, contending[9] that the fourteenth amendment guaranteed him a right to be treated or released.

The United States Fifth Circuit Court of Appeals affirmed the judgment of the District Court for the Southern District of Florida,[10] holding 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."[11]

The United States Supreme Court granted O'Connor's petition for certiorari.[12] While finding for the respondent, the Court unanimously vacated the decision of the appellate court, concluding that the analysis of the court of appeals was too "broad" and that many of the difficult issues of constitutional law to which that court addressed itself were "not presented by this case in its present posture."[13] The Supreme Court held that a "state cannot constitutionally confine without more a non-dangerous individual who is capable of surviving safely in freedom by himself or with the help of willing and responsible family members or friends."[14]

The concept that a mental patient has a constitutional right to treatment is of recent origin, being generally credited to Dr. Martin Birnbaum, who was the first to espouse such a right in a celebrated article published in 1960.[15] Prior to the article's publication, the courts were primarily concerned with ensuring that the mentally ill in need of confinement were placed in non-penal institutions.[16] However, the idea of a constitutional right to treatment in the wake of Dr. Birnbaum's article has received a significant amount of support among the

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[9] Donaldson's original complaint was filed as a class action seeking habeas corpus relief and damages. He also sought injunctive and declaratory relief requiring the hospital to provide adequate psychiatric treatment. The district court dismissed the class action and Donaldson amended his complaint to include individual compensatory and punitive damages. The prayer for declaratory and injunctive relief was eliminated prior to trial. 95 S. Ct. at 2488 n.1.

[10] 95 S. Ct. at 2492. A judgment of $28,500 in compensatory and $10,000 in punitive damages was awarded by the jury.

[11] 493 F.2d at 520.

[12] O'Connor v. Donaldson, 419 U.S. 894 (1974).

[13] 95 S. Ct. at 2492.

[14] *Id.* at 2494.

[15] *See* Birnbaum, *The Right to Treatment*, 46 A.B.A.J. 499, 502-03 (1960) [hereinafter cited as Birnbaum]. Dr. Birnbaum has been referred to as the "father" of the right to treatment doctrine. *See also* Editorial, *A New Right*, 46 A.B.A.J. 516 (1960).

[16] *See, e.g.*, Benton v. Reid, 231 F.2d 780 (D.C. Cir. 1956); Commonwealth v. Page, 339 Mass. 313, 159 N.E.2d 82 (1958); *In re* Maddox, 351 Mich. 358, 88 N.W.2d 470 (1959). *See generally* Birnbaum, *supra* note 15, at 502. *See also* Ross, *Commitment of the Mentally Ill: Problems of Law and Policy*, 57 MICH. L. REV. 945 (1959).

jurisprudence,[17] and a substantial spectrum of related court decisions.[18]

In *Rouse v. Cameron,*[19] a landmark case,[20] the Court of Appeals for the District of Columbia held that a patient, who was committed to a federal mental hospital as a result of an acquittal by reason of insanity, had a statutory right to treatment.[21] This right, the court explained, could be satisfied by bona fide efforts of the hospital staff to provide adequate treatment[22] consistent with the present state of medical knowledge.[23] While this right to treatment was not constitutionally based, the court in dicta alluded to possible due process and eighth amendment questions raised by an absence of treatment after commitment.[24]

Two years later, the Supreme Judicial Court of Massachusetts in *Nason v. Superintendent of Bridgewater State Hospital,*[25] acknowledged a constitutionally grounded right to treatment. *Nason* declared that the confinement of the mentally ill, who were not convicted of criminal acts, without treatment, would constitute a deprivation of liberty without due process of law.[26]

Rouse and *Nason* dealt with patients who were committed to mental institutions following criminal proceedings, and, therefore, did not directly address the issue of whether involuntarily civilly committed patients have a constitutional right to treatment. Recently, however, several district courts have considered this issue.[27]

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[17] *See, e.g.,* Bazelon, *Implementing the Right to Treatment,* 36 U. CHI. L. REV. 742 (1969); Katz, *The Right to Treatment—An Enchanting Legal Fiction,* 36 U. CHI. L. REV. 755 (1969); Note, *The Nascent Right to Treatment,* 53 VA. L. REV. 1134 (1967); *Symposium, The Right to Treatment,* 57 GEO. L.J. 673 (1969).

[18] *See* notes 19-37 and accompanying text *infra.*

[19] 373 F.2d 451 (D.C. Cir. 1966). Rouse sought a writ of habeas corpus on the ground that he was not receiving treatment during the three years of his confinement in the mental hospital. Had he been found guilty of the criminal charges he would have faced a maximum prison sentence of one year.

[20] The Rouse decision has been followed and approved in subsequent decisions. *See, e.g.,* Covington v. Harris, 419 F.2d 617 (D.C. Cir. 1969); United States *ex. rel.* Schuster v. Herold, 410 F.2d 1021 (2d Cir. 1969); Tribby v. Cameron, 379 F.2d 104 (D.C. Cir. 1967).

[21] Mentally Ill Act of 1964, D.C. CODE ANN. § 21-562 (Supp. V. 1966), providing for treatment of a person in a public hospital.

[22] Most courts define treatment in terms of a realistic opportunity or good faith effort to cure or improve the patient's condition. *See, e.g.,* Rouse v. Cameron, 373 F.2d 451, 456 (D.C. Cir. 1966); Wyatt v. Stickney, 344 F. Supp. 373, 374 (M.D. Ala. 1972), *aff'd sub nom.* Wyatt v. Aderholt, 503 F.2d 1305 (5th Cir. 1974).

[23] 373 F.2d at 456.

[24] *Id.* at 453.

[25] 353 Mass. 604, 233 N.E.2d 908 (1968) (*semble*).

[26] *Id.* at 612, 233 N.E.2d at 913.

[27] Holding that there is a right to treatment: Welsch v. Likins, 373 F. Supp. 487 (D. Minn. 1974); Stachulak v. Coughlin, 364 F. Supp. 686 (N.D. Ill. 1973); Wyatt v. Stickney, 325 F. Supp. 781 (M.D. Ala. 1971), *on submission of proposed standards by defendants* 334 F. Supp. 1341, *enforced* 344 F. Supp. 373 (1972), *aff'd sub nom.* Wyatt v. Aderholt, 503 F.2d 1305

Wyatt v. Stickney[28] was the first district court case to employ section 1983 of the Civil Rights Act of 1871,[29] rather than a habeas corpus petition,[30] to uphold a right to treatment for civilly committed mental patients. The court in *Wyatt* reasoned that since the purpose of involuntary confinement in mental institutions is not penal in nature, but rather rehabilitative, the only constitutional justification for civil commitment is treatment which will extend to each patient a realistic opportunity to cure or improve his condition. Otherwise, the hospital does not serve its function and is relegated to the status of a prison,[31] thereby denying the patient due process of the law.[32]

The court of appeals[33] in *Donaldson* found a constitutional right to treatment based upon the proposition that civil commitment entails a massive curtailment of liberty.[34] The fourteenth amendment guarantees that an individual's liberty shall not be denied or significantly restrained, without due process of law. Due process requires a state to prove a legitimate governmental interest in order to commit an individual to a mental institution.[35]

The court of appeals recognized three grounds for civil commitment that may qualify as legitimate governmental interests to justify a non-trivial abridgement of a person's freedom:[36] danger to others, danger to self, and the

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(5th Cir. 1974). Holding that there is no right to treatment: New York State Ass'n for Retarded Children v. Rockefeller, 357 F. Supp. 752 (E.D.N.Y. 1973); Burnham v. Department of Pub. Health, 349 F. Supp. 1335 (N.D. Ga. 1972).

[28] 325 F. Supp. 781 (M.D. Ala. 1971), *on submission of proposed standards by defendants* 334 F. Supp. 1341, *enforced* 344 F. Supp. 373 (M.D. Ala. 1972), *aff'd sub nom.* Wyatt v. Aderholt, 503 F.2d 1305 (5th Cir. 1974).

[29] 42 U.S.C. § 1983 (1970). *See also* Knecht v. Gillman, 488 F.2d 1136 (8th Cir. 1973); Welsch v. Likins, 373 F. Supp. 487 (D. Minn. 1974); Stachulak v. Coughlin, 364 F. Supp. 686 (N.D. Ill. 1973); Burckett v. Power, 355 F. Supp. 1278 (D. Ariz. 1973). *But cf.* Burnham v. Department of Pub. Health, 349 F. Supp. 1335 (N.D. Ga. 1972).

[30] *See, e.g.,* Rouse v. Cameron, 373 F.2d 451 (D.C. Cir. 1966); Stachulak v. Coughlin, 364 F. Supp. 686 (N.D. Ill. 1973).

[31] 325 F. Supp. at 785.

[32] Several courts have suggested that in addition to a due process argument there are eighth amendment arguments applicable to cases of civil commitment without treatment. *See, e.g.,* Welsch v. Likins, 373 F. Supp. 487 (D. Minn. 1974); Stachulak v. Coughlin, 364 F. Supp. 686 (N.D. Ill. 1973); Wyatt v. Stickney, 325 F. Supp. 781 (M.D. Ala. 1971), *aff'd sub. nom.* Wyatt v. Aderholt, 503 F.2d 1305 (5th Cir. 1974). *See also* Rouse v. Cameron, 373 F.2d 451 (D.C. Cir. 1966); United States v. Pardue, 354 F. Supp. 1377 (D. Conn. 1973). *Cf.* Robinson v. California, 370 U.S. 660 (1962).

[33] Donaldson v. O'Connor, 493 F.2d 507 (1974).

[34] *Id.* at 520, *citing,* Board of Regents v. Roth, 408 U.S. 564 (1972); Humphrey v. Cady, 405 U.S. 504 (1972). "Civil Commitment, because it is for an indefinite term, may involve a more serious abridgement of personal freedom than imprisonment for commission of a crime usually does." 493 F.2d at 520.

[35] *See* note 43 and accompanying text *infra.*

[36] 493 F.2d at 520. *See* Tribe, *Foreword—Toward a Model of Rules in Due Process of Life and Law,* 87 HARV. L. REV. 1, 17 (1973). *See also* Roe v. Wade, 410 U.S. 113, 172-73 (1973),

need for treatment.[37] These grounds fall within two general categories; one being the "police power" of the state to protect society from danger, and the other being the *parens patriae*[38] power of the state to assume the guardianship of all persons who are incompetent to care for themselves.

On the foundation of the above principles the court of appeals proceeded to formulate two rationales for the "right to treatment" theory. The first is a substantive due process theory based upon *parens patriae* grounds, while the second is the *quid pro quo* theory, which is framed in a procedural context.

Under the *parens patriae* doctrine, if an individual is unable to adequately care for himself the state has the power to assume his guardianship.[39] The court interpreted this power of guardianship as requiring the state to properly exercise its responsibility to extend treatment to a non-dangerous civilly committed patient.[40] The court of appeals relied upon the case of *Jackson v. Indiana*[41] to support its position. In *Jackson,* the United States Supreme Court required that the duration and nature of the confinement bear some reasonable relation to the purposes for which the individual was committed.[42] Therefore, the court reasoned, when the sole basis for civil commitment of a mentally ill person is his need for treatment, as was the case with Donaldson, then due process to be satisfied requires that adequate treatment in fact be provided.[43]

Secondly, the court of appeals formulated a *quid pro quo* theory of a due process right to treatment which embraced both *parens patriae* and police power rationales for civil commitment.[44] Unlike the *parens patriae* rationale

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noted in Ely, *The Wages of Crying Wolf: A Comment on Roe v. Wade,* 82 YALE L.J. 920, 935 (1973).

[37] 493 F.2d at 520, *citing* Jackson v. Indiana 406 U.S. 715, 737 (1972).

[38] 493 F.2d at 521. *See* Comment, *Developments in the Law—Civil Commitment of the Mentally Ill,* 87 HARV. L. REV. 1190, 1209 nn. 55 & 56 (1974), which is an excellent and comprehensive analysis of the state of the law in the area of civil commitments.

[39] *See* Hawaii v. Standard Oil Co., 405 U.S. 251 (1971); Johnson v. State, 18 N.J. 422, 114 A.2d 1, 5 (1955).

[40] 493 F.2d at 520-21. *See also* Stachulak v. Coughlin, 364 F. Supp. 686 (N.D. Ill. 1973); Horacek v. 357 F. Supp. 71 (D. Neb. 1973).

[41] 406 U.S. 715 (1972).

[42] *Id. at* 738. *See* Note, *The Nascent Right to Treatment,* 53 VA. L. REV. 1134, 1141 (1967).

[43] "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." 493 F.2d at 521, *quoting* Wyatt v. Stickney, 325 F. Supp. 781, 785 (M.D. Ala. 1971).

[44] 493 F.2d at 521-25. Since Donaldson's commitment was not based upon any police power rationale, the court's *quid pro quo* analysis is largely dictum. Presumably the court wanted to formulate a theory which would serve as a guideline for future courts deciding upon the confinement of mental patients regardless of the initial grounds.

which is limited in application to non-dangerous persons, the *quid pro quo* theory includes both dangerous and non-dangerous patients.[45]

Since there is a lack of procedural safeguards in civil commitments,[46] a patient's continuing confinement must be justified by receiving something in return. The court stated that there are "central limitations" upon the detention power of the state—that detention be in retribution for a specific offense, the term of confinement be fixed, and that it be permitted only after a hearing where fundamental procedural safeguards are observed.[47] Where these limitations are absent, the abridgement of procedural rights could only be justified by the existence of a *quid pro quo* extended to the individual by the government to justify confinement. The court further stated that the *quid pro quo* traditionally recognized to be sufficient in the case of confinement for mental illness was rehabilitative or adequate and effective treatment beyond the level of custodial care provided by penal institutions.[48]

The United States Supreme Court, in vacating the opinion of the court of appeals, rejected the view that a person confined against his will in a mental institution has a constitutional right to treatment regardless of the original grounds for commitment.[49] Viewing the issue narrowly, the Court held that Donaldson's right to liberty was being denied by the state because the evidence showed that none of the accepted grounds for continued confinement remained present in his case.[50]

Assuming *arguendo,* that respondent Donaldson's original commitment was proper, the Court stated that it could not constitutionally be allowed to continue after that basis no longer existed.[51] The Court rejected arguments that the state may indefinitely confine the mentally ill against their will solely due to their illness when they are capable of safely existing outside a mental health facility.[52]

The Supreme Court in limiting its holding to the particular facts of the Donaldson case,[53] rejected the court of appeals' analysis that when

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[45] *See* 493 F.2d at 521-25.

[46] *See* text accompanying note 47 *infra.*

[47] *Id.* at 522.

[48] *Id.* at 522-25.

[49] 95 S. Ct. 2492.

[50] *Id.* at 2493. *See* note 5 and accompanying text *supra.*

[51] *See* McNeil v. Director, Patuxent Institution, 407 U.S. 245 (1972); Jackson v. Indiana, 406 U.S. 715, 738 (1972); *cf.* Powell v. Texas, 392 U.S. 514 (1968); Robinson v. California, 370 U.S. 660 (1962).

[52] 95 S. Ct. at 2493, *citing* Cohen v. California, 403 U.S. 15, 24-26 (1971); Shelton v. Tucker, 364 U.S. 479, 488-90 (1960).

[53] *See* 95 S. Ct. at 2492 where the court stated:

non-dangerous persons are involuntarily civilly committed as mental patients the state has no power to continue to confine them unless they are provided with treatment.[54] Chief Justice Burger noted in his concurring opinion that only recently did the concept arise that a state may not confine the mentally ill except as to provide them with treatment,[55] and that traditionally, the states were concerned with providing a more humane place of confinement as well as providing treatment, recognizing that for many types of mental illness, no effective therapy is available.[56] Specifically, Chief Justice Burger found that due process limitations do not limit the *parens patriae* power of the states to confine a non-dangerous mentally ill person only when treatment is provided.[57]

Chief Justice Burger also stated that as a rationale for a constitutional right to treatment the *quid pro quo* theory has serious deficiencies, in that due process was never intended to be an inflexible concept.[58] The requirements of due process are "determined in particular instances by identifying and accommodating the interests of the individual and society."[59] Chief Justice Burger criticized the *quid pro quo* theory on the basis that it presupposes an incorrect postulate, that the same interests are present in every situation where a state seeks to confine an individual.[60] Furthermore, he denounced the theory on the basis that it elevates procedural safeguards into substantive rights by accepting the absence of such safeguards and insisting that in

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> Specifically, there is no reason now to decide whether mentally ill persons dangerous to themselves or to others have a right to treatment upon compulsory confinement by the state, or whether the state may compulsorily confine a non dangerous, mentally ill individual for the purpose of treatment. As we view it, this case raises a single, relatively simple, but nonetheless important question concerning every man's constitutional right to liberty.

See also note 13 and accompanying text *supra.*

[54] 95 S. Ct. at 2497 (Burger, C.J., concurring).

[55] *See* Editorial, *A New Right,* 46 A.B.A.J. 516 (1960); Comment, *Development in the Law—Civil Commitment of the Mentally Ill,* 87 HARV. L. REV. 1190 (1974).

[56] 95 S. Ct. at 2497-98 (Burger, C.J., concurring). *See* A. DEUTSCH, THE MENTALLY ILL IN AMERICA, 38-54, 114-31, 228-71 (2d ed. 1949); Schwitzgebel, *The Right to Effective Treatment,* 62 CALIF. L. REV. 936, 941-48 (1974).

[57] 95 S. Ct. at 2497-98. Chief Justice Burger takes cognizance of the uncertainty of diagnosis and treatment in the field of mental illness. He also notes the common phenomenon of patients refusing to acknowledge their illness—a universally recognized first step to effective treatment. Chief Justice Burger further notes that many mental patients who are incapable of being treated are also incapable of existing independently in society, and, thus, the state may legitimately provide custodial confinement. *See generally* Greenwood v. United States, 350 U.S. 366, 375 (1956); Katz, *The Right to Treatment—An Enchanted Legal Fiction?* 36 U. CHI. L. REV. 755, 768-69 (1969).

[58] 95 S. Ct. at 2499.

[59] *See, e.g.,* Morrissey v. Brewer, 408 U.S. 471, 480-84 (1972); McNeil v. Director, Patuxent Institution, 407 U.S. 245, 249-50 (1972); McKiever v. Pennsylvania, 403 U.S. 528, 545-55 (1971).

[60] 95 S. Ct. at 2499 (Burger, C.J., concurring).

exchange, treatment be provided as compensation.[61]

In limiting the holding in the instant case to its facts, the Supreme Court appears reluctant to step into a quagmire of mental illness issues which it considers to be largely within the province of the legislature. Chief Justice Burger quoted the principle declared in *In re Gault*,[62] that the "courts may not substitute for the judgment of legislators their own understanding of the public welfare, but must instead concern themselves with the validity of methods which the legislature has selected." A major consideration for denying a constitutional right to treatment for all civilly committed mental patients is the great uncertainty of medical knowledge in the field of mental illness, particularly with reference to the formulation of objective standards with which to gauge the adequacy of treatment.[63] Presumably, the Court does not relish the prospect of deciding a multitude of cases in which mental patients would claim that they were being denied adequate treatment.

CONCLUSION

While the Court does not consider judicial review of the adequacy of treatment to be a nonjusticiable question,[64] it also does not desire to "abandon the traditional limitations on the scope of judicial review."[65] The Court appears content to decide whether civilly committed patients have been denied due process on a case-by-case basis using the test enunciated in *Jackson*.[66] The Court there required that the nature and duration of the commitment bear some reasonable relation to the purposes for which the individual was committed. Thus, if any significant improvement in the qualitative and quantitative levels of treatment in mental facilities is to occur, the impetus will largely have to arise from the legislature as the Supreme Court is reluctant to create or expand constitutional rights of individuals in this area of the law. In effect, the Court has left the door open to entertain suits of this nature, but has declined to issue an invitation to do so. The brevity and general lack of supporting rationale in the Court's opinion is vivid testimony to its reluctance in alleviating the plight of civilly committed mental patients in the shadow of legislative procrastination and indifference. However, this deference to the concept of separation of powers appears in part to be motivated by a desire not to review the adequacy of legislative appropriations and the measures

[61] *See In re* Gault, 387, U.S. 1, 71 (1967) (Harlan, J., concurring and dissenting in part). *See also* Comment, *Developments in the Law—Civil Commitment of the Mentally Ill*, 87 HARV. L. REV. 1190, 1325 n. 39 (1974).

[62] 387 U.S. 1, 71 (1967).

[63] 95 S. Ct. at 2499 (Burger, C.J., concurring). *See* cases cited note 58 *supra*.

[64] 95 S. Ct. at 2493 n.10.

[65] 95 S. Ct. at 2500 (Burger, C.J., concurring).

[66] 406 U.S. 715 (1972).

which the states have provided for the care of mental patients; a situation which conceivably could pose as many difficulties in terms of judicial policing as have resulted from *Brown v. Board of Education*[67] and its progeny.

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[67] 349 U.S. 294 (1955).

REMEDIES

Awarding Counsel Fees · American Rule · Equitable Exceptions · Private Attorney General Theory · Limitations

Alyeska Pipeline Service Co. v. Wilderness Society, 95 S. Ct. 1616 (1975)

THE UNITED STATES SUPREME COURT, in its decision in *Alyeska Pipeline Service Co. v. Wilderness Society*,[1] denied the federal courts the power to assess attorney's fees against a party to a suit, solely upon the court's appraisement of the social value of a successful plaintiff's suit.

The *Alyeska* case arose out of the litigation to enjoin construction of the trans-Alaska oil pipeline. The plaintiffs, three environmentalist groups,[2] brought action in March, 1970, in the District Court for the District of Columbia, to enjoin the defendant, the Secretary of the Interior, from issuing permits to the Trans-Alaska Pipeline System,[3] which would allow construction of the pipeline across public lands.[4] The plaintiffs alleged that the Department of the Interior had failed to file an adequate "environmental impact statement" as required under the National Environmental Policy Act of 1969,[5] and that the Secretary of Interior could not grant any request for temporary land-use permits adjacent to a permanent right-of-way without violating the provisions of the Mineral Leasing Act of 1920.[6]

[1] Wilderness Soc'y v. Morton, 495 F.2d 1026 (D.C. Cir. 1974), *rev'd sub. nom.* Alyeska Pipeline Serv. Co. v. Wilderness Soc'y, 95 S. Ct. 1612 (1975).

[2] The three environmental groups involved were the Wilderness Society, the Environmental Defense Fund, and the Friends of the Earth.

[3] A subsidiary of the oil company consortium developing the North Slope, later changed to Alyeska Pipeline Service Co.

[4] Wilderness Soc'y v. Hickel, 325 F. Supp. 422 (D.D.C. 1970).

[5] 42 U.S.C. § 4321 *et seq.* (1970).

[6] 30 U.S.C. § 185 (1970), provides in part that:

> Rights of way through the public lands, including the forest reserves of the United States, may be granted by the Secretary of the Interior for pipeline purposes for the transportation of oil or natural gas to any applicant possessing the qualifications provided in section 181 of this title, to the extent of the ground occupied by the said