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WYATT V. STICKNEY: DUE PROCESS, "CONFUSION," AND CONSEQUENCES

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"The essential prerequisite for a successful political and social future for the South is this: state government must begin to accept responsibility for its constitutional obligations. When a state fails to accept those obligations, it is very costly for everyone. People are deprived of their rights..."

— Judge Frank M. Johnson[†]

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[†] Frank M. Johnson, Jr., The Alabama Punting Syndrome: When Elected Officials Kick Their Problems to the Courts, JUDGES' J., Spring 1979, at 4.

I. INTRODUCTION

I served as one of the plaintiffs' counsel in *Wyatt v. Stickney* from 1992 through 2004 when the case concluded. Our reflection today naturally focuses on Judge Frank M. Johnson, his declaration of what came to be known as *Wyatt*'s "right to treatment," and the nature of civil liberties more broadly.[1] However, when I pause to reflect on the significance of *Wyatt*, I am moved by the experience of those whom I came to know who were confined by the state and how that experience affected them all the days of their lives.

Reflecting on his experience at Bryce Hospital as a teenager, Ricky Wyatt said he never would forget the sounds at night.[2]

Reflecting on his involuntary confinement at Partlow State School as a teenager, Robert Cotton answered a few questions before concluding, "I can't talk about it anymore."[3]

Ten years ago, in a similar setting, Michael Perlin asserted, "*Wyatt v. Stickney* is the most important institutional rights case litigated in the history of domestic mental disability law."[4]

Today, as we reflect on *Wyatt v. Stickney* and Judge Johnson's legacy, we also remember and honor individuals like Mr. Wyatt and Mr. Cotton when we consider

1. Wyatt v. Stickney, 325 F. Supp. 781 (M.D. Ala. 1971).

2. Ricky Wyatt died in 2011 at the age of 57. Douglas Martin, *Ricky Wyatt, 57, Dies; Plaintiff in Landmark Mental Care Suit*, N.Y. TIMES (Nov. 3, 2011), https://www.nytimes.com/2011/11/04/health/ricky-wyatt-57-dies-plaintiff-in-landmark-mental-care-suit.html?referringSource=articleShare. I delivered his eulogy just a few miles from Bryce Hospital. *See* Lawrence Downes, *Ricky Wyatt*, N.Y. TIMES (Nov. 17, 2011), https://www.nytimes.com/2011/11/18/opinion/ricky-wyatt.html?referringSource=articleShare.

3. Interview with Robert Cotton in Tuscaloosa, Ala. (1998). Like most *Wyatt* plaintiffs, Mr. Cotton's life has not been documented as well as Mr. Wyatt's. In 2003, just five years before she died at age 50, Harriet McBryde Johnson spoke at the University of Alabama Law School. See Harriet McBryde Johnson, Address at the University of Alabama School of Law Disability Law Symposium (Nov. 7, 2003) ("[I]nstitutional life, whether in a hospital, mental institution, nursing home, group home, prison, or segregated 'school,' has been the reality for most people with disabilities in the United States (and globally) for generations."); *see also* Harriet McBryde Johnson, *The Disability Gulag*, N.Y. TIMES (Nov. 23, 2003) ("[Such institutional life] characterizes isolation and control as care and protection, and the disappearances are often called voluntary placements. However, you don't vanish because that's what you want or need. You vanish because that's what the state offers. You make your choice from an array of one.").

4. Michael L. Perlin, *"Abandoned Love": The Impact of* Wyatt v. Stickney *on the Intersection Between International Human Rights and Domestic Mental Disability Law*, 35 L. & PSYCH. REV. 121 (2011).

"the 'real life' effect *Wyatt* had on the care and treatment of institutionalized persons with mental disabilities in Alabama"[5] and beyond.

II. BACKGROUND

A. Judge Frank Johnson

Judge Frank Johnson was appointed to the United States District Court for the Middle District of Alabama by President Eisenhower, a Republican, in 1955.[6] Johnson was a champion of civil rights, protecting individuals in institutional settings in the *Wyatt* case, ruling in favor of Rosa Parks in the 1956 Montgomery bus boycott case,[7] and ruling in favor of the protestors involved in the Selma to Montgomery voting rights march.[8] He was despised by most southern Democrats for these rulings and had to be protected by federal marshals for nearly two decades.[9] Former Chief Justice of the Alabama Supreme Court and United States Senator Howell Heflin declared that Judge Johnson's "unrelenting devotion to the rule of law" essentially desegregated Alabama.[10] Johnson's former law clerk, Bobby R. Segall, described Judge Johnson as "the embodiment of the Constitution in Alabama and throughout the United States."[11]

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5. *Id.* at 124.

6. *International Civil Rights Hall of Fame: Judge Frank Johnson*, NAT'L PARK SERV., https://www.nps.gov/features/malu/feat0002/wof/Frank_Johnson.htm (last visited Oct. 18, 2021).

7. Browder v. Gayle, 142 F. Supp. 707 (M.D. Ala. 1956).

8. Judge Johnson's ruling in *Williams v. Wallace*, 240 F. Supp. 100 (M.D. Ala. 1965), allowed the Selma to Montgomery march that led directly to passage of the 1965 Voting Rights Act, 52 U.S.C. § 10101, et seq. Reflecting on the legacy of Judge Johnson when the National Park Service dedicated the Frank M. Johnson, Jr., Federal Building as a National Historic Landmark, Judge Myron Thompson connected "Jim Crowism" and the denial of humane treatment for persons with mental illness and intellectual disabilities as "crimes against humanity." Judge Myron Thompson, Remarks at the Ceremony and Presentation Recognizing the Frank M. Johnson, Jr. Federal Building and United States Courthouse as a National Historic Landmark (July 20, 2015), *in* 77 ALA. LAW. 277, 280 (2016).

9. Associated Press, *Judge Johnson Buried in the Alabama Hills*, N.Y. TIMES, July 28, 1999, at C24.

10. *Id.* ("[F]ormer Senator Howell Heflin, Democrat of Alabama, said it was Judge Johnson's 'unrelenting devotion to the rule of law' that had helped him strike down segregation laws.").

11. *Id.* (providing the statement of Bobby R. Segall of Montgomery, a former law clerk of Judge Johnson). To appreciate just how far-reaching Judge Johnson's reputation was at the time, author Fran Sikora observes, "President Lyndon Johnson once remarked, 'I wouldn't have to be President, if my name was *Frank* Johnson.'" FRANK SIKORA, THE JUDGE: THE LIFE & OPINIONS OF ALABAMA'S FRANK M. JOHNSON, JR. at x. n.13 THE BLACK BELT PRESS (1st ed. 1992).

B. Unlikely Beginnings of Wyatt

Bryce Hospital was and is a publicly funded mental health institution in Tuscaloosa, Alabama.[12] The institution held more than 5,000 patients and employed approximately 1,600 people when *Wyatt* was filed.[13] In 1970, Alabama decided to cut its cigarette tax, which was earmarked for mental health services.[14] As a result, some of the staff at Bryce who were fired filed a lawsuit in the U.S. District Court for the Middle District of Alabama seeking reinstatement on the grounds that patients in the institution would receive inadequate treatment.[15] Judge Johnson held the employees could not bring a federal suit regarding only the staff layoffs, so one of the employees added her nephew, Ricky Wyatt, to the plaintiff class so they also could allege patient treatment suffered due to the staff layoffs.[16] This shifted the focus of the litigation from the rights of the employees to the rights of the residents.[17]

Wyatt was a fifteen-year-old who was moved from a children's group home to Bryce Hospital due to his alleged misbehavior.[18] Wyatt had no mental illness but was placed at the psychiatric institution by a juvenile court to improve his behavior.[19] He faced abysmal conditions at Bryce, including sleeping on wet floors and being locked in a cell-like room.[20] Other residents of Alabama's psychiatric institutions (Bryce and Searcy Hospitals) and an institution for people with developmental disabilities (Partlow State School) soon joined the plaintiff class.[21]

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12. *Bryce Hospital*, ALA. DEP'T OF MENTAL HEALTH, https://mh.alabama.gov/bryce-hospital/ (last visited Jan. 4, 2022).

13. Wyatt v. Stickney, 325 F. Supp. 781, 782 (M.D. Ala. 1971).

14. *Id.*

15. *Id.*

16. Lauren Wilson Carr, Wyatt v. Stickney*: A Landmark Decision,* ALA. DISABILITIES ADVOC. PROGRAM (July 2004), https://adap.ua.edu/ricky-wyatt.html.

17. D. Alexandria, *Willowbrook: The Last Great Disgrace – Geraldo Rivera 1972 Exposé – Full Short Documentary*, YOUTUBE (June 12, 2019), https://www.youtube.com/watch?v=bpVEjzO6Dd0 (providing a video that reflects the quality of care provided in a like institution at the time); *see also The Crown: The Hereditary Principle* (Netflix Nov. 15, 2020) (providing an artistic exploration of institutional conditions; here, a member of the royal family learns of the conditions of five cousins confined in a mental institution in the 20th Century).

18. *See* Carr, *supra* note 16.

19. *Id.* ("Fifteen-year-old Ricky Wyatt was the nephew of one of the laid-off employees at Bryce, Mrs. W.C. Rawlins. Ricky had been labeled as a juvenile delinquent and was placed in Bryce in 1969 because he had been misbehaving in a children's group home in Selma. The court that committed Ricky hoped Bryce would be able to make him behave. He did not have a mental illness.").

20. *Id.* ("Ricky stated in his testimony that he slept on wet floors and was locked in a cell-like room with the only light coming from slats in the door.").

21. Wyatt v. Stickney, 325 F. Supp. 781, 782 (M.D. Ala. 1971).

C. Conditions at Alabama's Facilities

Bryce Hospital was built in Tuscaloosa, Alabama in 1861 and originally was envisioned as a model for psychiatric institutions.[22] Patients routinely were involuntarily placed at Bryce through involuntary civil commitment proceedings.[23] In 1895, the New York Times described patients as being "treated as well as they can be," and attending "concerts, theatricals, and picnics" with no physical restraints used.[24] However, conditions at Bryce deteriorated from a model of its time into a cesspool over the next century.[25]

At the time of the *Wyatt* trial in 1971, Bryce held approximately 5,000 patients,[26] Searcy held approximately 2,500, and Partlow held over 3,000 individuals.[27] Bryce staff included "only one Ph.D. clinical psychologist, three medical doctors with some psychiatric training . . . and two M.S.W. social workers" to treat the mental health needs of the 5,200 patients confined at Bryce.[28] Many committed patients went decades without receiving mental health services; the patients, more accurately called residents, were simply warehoused.[29]

It is difficult to appreciate just how many individuals were held involuntarily in Alabama's mental health facilities when *Wyatt* was filed. In 1964, the combined population of Bryce and Searcy Hospitals peaked at 9,019 people.[30] By 1970, there were 5,200 patients at Bryce Hospital, 3,000 persons at Partlow, and 2,500 patients at Searcy Hospital.[31] Looking back now, fifty years later, it still is difficult to appreciate the degree to which the State of Alabama institutionalized its population at the time. Alabama's census in 1970 was 3,444,165.[32] Thus, one in just over every

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22. *Model Home for Insane*, N.Y. TIMES, Sept. 1, 1895, at 25, https://www.nytimes.com/1895/09/01/archives/model-home-for-insane-features-of-the-alabamabryce-hospital-in.html.

23. *Id.*

24. *Id.*

25. *The Alabama Case that Changed Mental Health Care*, AL.COM (May 6, 2019, 3:53 PM), https://www.al.com/news/2019/05/the-alabama-case-that-changed-mental-health-care.html.

26. Wyatt v. Stickney, 325 F. Supp. 781, 782 (M.D. Ala. 1971).

27. *See* Carr, *supra* note 16.

28. *Id.*

29. *Id.*

30. TRUSTEES OF ALABAMA STATE HOSPITALS, REPORT OF THE TRUSTEES OF THE ALABAMA STATE HOSPITALS TO THE GOVERNOR FOR THE YEAR ENDING SEPTEMBER 30TH, 1964 (1964), https://uab.contentdm.oclc.org/digital/collection/RAMJ/id/118/rec/15.

31. Marable v. Ala. Mental Health Bd., 297 F. Supp. 291 (M.D. Ala. 1969) (highlighting that Alabama's mental health facilities had only been desegregated in 1969).

32. U.S. DEP'T OF COM., 1970 CENSUS OF POPULATION 2-7 (1970).

300 members of the state's population was confined in the state's three mental health institutions.[33]

Annie Dillard attempts to comprehend corporate suffering in her book, *For the Time Being*.[34] She writes, "On April 30, 1991, . . . 138,000 people drowned in Bangladesh. At dinner I mentioned to our daughter, who was then seven years old, that it was hard to imagine 138,000 people drowning. 'No, it's easy,' she said. 'Lots and lots of dots, in blue water.'"[35]

How does one appreciate the extent of human suffering, the number of dots "in blue water"?[36]

The trial before Judge Johnson revealed conditions in the state institutions were dehumanizing, including barn-like dormitories, toilets without partitions, no sense of privacy, humiliating admissions procedures, and treatment consisting primarily of medications.[37] Hal Martin, editor of the Montgomery Advertiser, asserted the conditions at Bryce were like those of Nazi concentration camps.[38] Specific incidents at Paltrow State School included:

> (a) a resident was scalded to death by hydrant water; (b) a resident was restrained in a strait jacket for nine years in order to prevent hand and finger sucking; (c) a resident was inappropriately confined in seclusion for a period of years, and (d) a resident died from the insertion by another resident of a running water hose into his rectum.[39]

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33. To be precise, approximately one in 321.88 persons was institutionalized. For comparison, the number of Alabama residents confined in the state's mental health institutions in 2021 is approximately 504, meaning approximately one in 10,119 persons is institutionalized in the same manner today. *See Map of Alabama's Hospitals*, ALA. HOSP. ASS'N, https://www.alaha.org/resources/hospital-directory (last visited Oct. 18, 2021); U.S. DEP'T OF COM., 2020 CENSUS OF POPULATION (2020); Steven Raphael & Michael A. Stoll, *Assessing the Contribution of the Deinstitutionalization of the Mentally Ill to Growth in the U.S. Incarceration Rate*, 42 J. LEGAL STUD. 187 (2013) (regarding the broader subject of transinstitutionalization, a subject beyond the scope of this article).

34. *See generally* ANNIE DILLARD, FOR THE TIME BEING 20–21 (1999).

35. *Id.* at 37.

36. *Id.*

37. Wyatt v. Stickney, 334 F. Supp. 1341, 1343 (M.D. Ala. 1971).

38. *See* Carr, *supra* note 16 ("Remembering what he had seen during his coverage of the Nazi war trials, Hal Martin, the editor and publisher of the Montgomery Advertiser, went so far as to liken the conditions at Bryce and the state's other mental health institutions to those at concentration camps.").

39. Wyatt v. Stickney, 344 F. Supp. 387, 393 n.13 (M.D. Ala. 1972).

Judge Johnson wrote, "these incidents could have been avoided had adequate staff and facilities been available."[40] Paul Davis, an award-winning journalist from Alabama, reported in 1972 that the Alabama process for civil commitment was "painfully easy" and doctors at Bryce had "no psychiatric training."[41] Alabama's institutions were used as "dumping grounds for people that were considered problems for their families or society."[42] More than half of Bryce's patients did not even have a mental health diagnosis.[43] More than 1,500 nonpsychotic geriatric patients, approximately 1,000 individuals with intellectual disabilities, and possibly other nonmentally ill persons were housed at Bryce at the time of the trial.[44] Further, over fifty patients among the three facilities had tuberculosis.[45]

Judge Johnson remarked that these demographics reflected the "considerable confusion regarding the primary mission and function of Bryce Hospital."[46] As a direct result of that confusion, "[t]he constitutional standards he erected to protect the rights of mental patients and prison inmates were perhaps the most elaborate and detailed ever imposed by an American judge in any constitutional setting."[47]

III. *WYATT*: THE BEGINNINGS OF MENTAL DISABILITY LAW

A. Ruling: The Right to Treatment

Judge Johnson declared: "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."[48]

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40. *Id.*; *see also* Jack Drake, *The Constitution Comes to the State Residential Hospitals*, *in* VOICES OF CIVIL RIGHTS LAWYERS: REFLECTIONS FROM THE DEEP SOUTH, 1964–1980, at 347 (Kent Spriggs ed., 2017) (showing plaintiff counsel Jack Drake's recollections about the earliest facts of the case).

41. Paul Davis, Wyatt v. Stickney*: Did We Get It Right This Time?*, 35 Law & Psych. Rev. 143, 144 (2011) ("Alabama law allowed almost anyone to be put away, locked up, and left to die in a state hospital. If Aunt Bessie regularly burned the biscuits, or if Grandma Smith said the same things over and over again, a relative could simply go to a doctor and tell him that their kin needed to go to the mental hospital, citing whichever malady he might wish to use. Then the relative would go to the courthouse and meet with the probate judge, an elected official who really wanted to please the constituency. . . . The probate judge would sign the commitment papers, call the sheriff, and have him take the offending kin to the mental institution, generally to never be seen or heard from again. . . . Thanks to the ease of this system, over time the populations at Bryce, Partlow, and Searcy skyrocketed from hundreds to thousands.").

42. *See* Carr, *supra* note 16.

43. Wyatt v. Stickney, 325 F. Supp. 781, 784 (M.D. Ala. 1971).

44. *Id.*

45. *Wyatt*, 344 F. Supp. at 393 n.3.

46. *Wyatt*, 325 F. Supp. at 784.

47. Tinsley E. Yarbrough, *The Judge as Manager: The Case of Judge Frank Johnson*, 1 J. POL'Y ANALYSIS & MGMT. 386, 386–87 (1982).

48. *Wyatt*, 325 F. Supp. at 785.

Anticipating what came to be known as the *Wyatt* standards, Judge Johnson wrote in December 1971 that the three fundamental conditions necessary for adequate and effective treatment programs in public mental institutions are: "(1) a humane psychological and physical environment, (2) qualified staff in numbers sufficient to administer adequate treatment and (3) individualized treatment plans."[49] Judge Johnson found Alabama was "deficient in all three of these fundamental respects."[50]

Alabama was given six months to implement a program satisfying these principles and, when it failed to do so, the Court created and ordered the implementation of constitutional and medical minimums for the State to follow.[51] These orders required a humane psychological and physical environment, opportunities for therapeutic tasks and labor, qualified staff in sufficient numbers to provide adequate treatment, and the creation of individualized treatment plans.[52] The Court emphasized these standards were minimums and defendants "should dedicate themselves to providing physical conditions and treatment programs at Alabama's mental institutions that substantially exceed medical and constitutional minimums."[53]

The orders also required the establishment of Human Rights Committees to operate at Bryce, Searcy, and Partlow "to ensure that the dignity and the human rights of patients are preserved" and to "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."[54]

B. Evolution of Wyatt

In the 1970s, the goals of *Wyatt* litigation were protection from abuse and neglect in institutional settings and the right to treatment.[55] However, in the 1980s, there was a "dramatic shift away from care in the institutions" and an embrace of the "concept of community-based care."[56] In 1986, Judge Myron Thompson approved a consent decree directing the state to adhere to *Wyatt* standards, continue

49. Wyatt v. Stickney, 334 F. Supp. 1341, 1343 (M.D. Ala. 1971).
50. *Id.*
51. Wyatt v. Stickney, 344 F. Supp. 373, 378–79 (M.D. Ala. 1972).
52. *Id.* at 379–386 (Appendix A).
53. *Id.* at 376.
54. *Id.*
55. *See* Carr, *supra* note 16 ("By the early 90's, the state of Alabama had a growing community provider network and four Developmental Centers that provided institutional services for all geographic portions of the state.").
56. ALABAMA DEPARTMENT OF MENTAL HEALTH ANNUAL REPORT 6 (2000) [hereinafter MENTAL HEALTH ANNUAL REPORT].

deinstitutionalization efforts, and create an internal advocacy and quality assurance program.[57] Community-based services in Alabama became more accessible throughout the 1990s.[58]

In 2004, Judge Thompson ended the *Wyatt* litigation, reflecting "the enormity of what this case has accomplished cannot be overstated. The principles of humane treatment of people with mental illness and mental retardation embodied in this litigation have become part of the fabric of law in this country and, indeed, international law."[59] Nevertheless, Judge Thompson warned:

> [I]f the State fails to shoulder its responsibility, it will find itself back in court as sure as the night follows the day . . . In this sense . . . the *Wyatt* case has not ended; its principles . . . of humane treatment for people with mental illness and [intellectual disabilities] remain, ever present and hovering over the State.[60]

The legacy of *Wyatt* continues through advocacy to address institutionalization in the community and access to adequate care in state-run programs, such as the Department of Corrections.[61] In *Braggs v. Dunn*, Judge Thompson ruled that the Alabama Department of Corrections was violating the Eighth Amendment by providing "horrendously inadequate" mental-health care to mentally ill prisoners.[62] He outlined the "serious systemic deficiencies" caused by understaffing, overcrowding, and inadequate procedures that subject inmates to serious harm and increased risk of suicide.[63] As of Summer 2021, the *Braggs* case continues as the state struggles to provide adequate care persons in prison who need care for their mental health disabilities.

IV. Due Process, "Confusion," and Consequences

At their core, Judge Johnson's rulings in *Wyatt* anticipated the Americans with Disabilities Act,[64] its integration mandate in Title II, and the Supreme Court's

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57. Wyatt v. Wallis, No. 3195–N, 1986 WL 69194 (M.D. Ala. Sept. 22, 1986).

58. Carr, *supra* note 16 ("By the early 90's, the state of Alabama had a growing community provider network and four Developmental Centers that provided institutional services for all geographic portions of the state.").

59. Wyatt v. Sawyer, 219 F.R.D. 529, 531 (M.D. Ala. 2004).

60. *Id.* at 536–37.

61. *See generally* Judge David L. Bazelon Center for Mental Health Law, *Community Integration for People with Disabilities: Key Principles*, http://www.bazelon.org/our-work/mental-health-systems/community-integration/ (last visited Feb. 27, 2022).

62. Braggs v. Dunn, 257 F. Supp. 3d 1171, 1267 (M.D. Ala. 2017).

63. *Id.* at 1184–87.

64. Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. §§ 12101–12213.

interpretation of that mandate in *Olmstead v. L.C.*[65] But *Wyatt* began and ended strictly as a Constitutional due process case.[66]

Commenting on the legal mechanism of Constitutional due process and its fundamental importance for all persons, Judge Johnson declared, "[A]t issue are the well-being 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."[67] Indeed, Judge Johnson experienced mental illness directly, and tragically, in his own family.[68]

To illustrate what is at stake when we wrestle with what process is due, especially for groups of people identified chiefly by their disability, Dr. Philip Roos, upon whom Judge Johnson relied to craft the *Wyatt* ID standards, asserted in 1979: "[D]ue process, while purporting to ensure [people with ID] control over their lives, may work to their disadvantage."[69] Even as he served as an early expert in *Wyatt*, and even as he asserted that persons with intellectual disabilities should be served according to then-current professional standards, Dr. Roos ultimately questioned the relevance and limits of such protections.[70]

We wrestle with such concepts today.

During the height of the COVID 19 pandemic, Alison Barkoff, Acting Administrator and Assistant Secretary for Aging, U.S. Administration for Community Living, wrote:

> COVID-19 has been devastating for people living in congregate settings, with residents experiencing among the highest rates of infection and comprising nearly one-third of deaths. They have been isolated from friends and families throughout the pandemic, and many who wanted to transition to smaller, safer settings in the community have faced barriers due to COVID-19.[71]

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65. Olmstead v. L.C., 527 U.S. 581 (1999).

66. Wyatt v. Stickney, 325 F. Supp. 781, 784 (M.D. Ala. 1971) ("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") (internal citations omitted); Wyatt v. Rogers, 985 F. Supp. 1356, 1385 (M.D. Ala. 1997) (considering remedies for Constitutional violations); *see also* Drake, *supra* note 40.

67. Wyatt v. Stickney, 344 F. Supp. 373, 377–78 (M.D. Ala. 1972).

68. Judge Johnson's adult son "took his own life" in 1975. SIKORA, *supra* note 11.

69. Philip Roos, *An Uncertain Future*, 31 STAN. L. REV. 613, 618 (1979).

70. *Id.*

71. Alison Barkoff, *ACL Policy Update: What You Need to Know About CMS' New Covid-19 Vaccine Rule*, DEVELOPMENTAL DISABILITIES OF OKLA., https://okddc.ok.gov/articles/acl-policy-

Advocacy for moves to more integrated community settings continue. In 2018, for example, parties filed a supplemental agreement to an earlier landmark settlement, in which the United States Department of Justice, lawyers representing the class of adult home residents, and the state reached an agreement that required the State of New York to provide as many scattered-site, supported housing units as necessary to afford all adult home residents with serious mental illnesses the opportunity to live in the most integrated setting appropriate to their needs, and provide and maintain community services and support.[72] In the settlement, the state agreed to improve the process for helping New York City adult home residents with mental illness transition to the community by, among other things, creating a Peer Bridger Program for those adults.[73]

What process is due when, to this day, an attorney who represents a person subject to involuntary commitment can waive that person's presence at the commitment hearing?[74]

What process is due when a state legislature considers a bill authorizing law enforcement officers to bypass the "traditional" involuntary commitment process to take an individual whom the officer believes has a mental illness into protective custody and shields from civil liability those law enforcement officers, as well as medical facilities and medical personnel?[75]

What process is due when an individual's behavior demonstrates the need for mental health supports, not an arrest? Prompted by consideration of the Black Lives Matter movement, Hathaway and Markovits, of Yale Law School, wrote in June 2020:

> "[D]efund the police" . . . means different things to different people, but it includes . . . redirecting [public] money to government or nonprofit community-based programs that serve and empower rather than tyrannizing communities of color: public education, enhanced social services for the poor, and, importantly, mental health services. It means reforming emergency services to recognize that an officer with a gun is not

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update-what-you-need-know-about-cms%E2%80%99-new-covid-19-vaccine-rule (last visited July 23, 2021).

72. *See* Second Amended Stipulation and Order of Settlement, *United States. v. New York*, No. 13-cv-4165, 2014 WL 1028982 (E.D.N.Y. Mar. 17, 2014), https://secureservercdn.net/198.71.233.111/d25.2ac.myftpupload.com/wp-content/uploads/2017/03/2017-5-4-SECOND-AMENDED-STIPULATION-AND-ORDER-OF-SETTLEMENT.pdf.

73. *Id.*

74. *See* Ala. Code § 22-52-9(1) (2021).

75. *See* H.R. 284, 2021 Leg., Reg. Sess. (Ala. 2021).

always the right person to respond to every call. It requires getting armed officers out of our schools, where they fuel the school-to-prison pipeline.[76]

Judge Thompson wrestled with similar questions twenty-five years before when he addressed the state's demonstrated "confusion" in how it institutionalized involuntarily confined youth at the Eufaula Adolescent Center.[77] He declared:

> Although envisioned as a facility for treatment of mentally-ill adolescents in a secure environment, the Eufaula Adolescent Center evolved in the 1980s into a "penal" facility for "antisocial adolescent, conduct disorder patients who get in trouble with the law, and are sent to a secure psychiatric facility as a less restrictive alternative to incarceration." . . . The Center was essentially a "correctional facility" with a "penal atmosphere." Its program was "punitive" and "not nearly so therapeutic as it might have been." Therefore, the Center's mission was, to speak kindly, confusing: in theory, it was a treatment facility; but, in reality, it was essentially a penal institution.[78]

Questions falling at the intersection of how a state treats, to use Judge Johnson's words, "every citizen," not one of whom is "immune from the peril of mental illness,"[79] inevitably are exacerbated when the state persists in its confusion regarding its duty to its own citizens.

Writing twenty-three years apart, Judge Johnson and Judge Thompson highlighted the state's confusion about its mission in supporting persons with disabilities when the state's courts explicitly had given the state the responsibility to protect and support those persons the state deemed vulnerable.

V. CONCLUSION

In 1971, a federal court in Alabama held for the first time that persons who are involuntarily committed to state institutions because of mental illness, or placed in such facilities because of developmental disabilities, have a constitutional right to treatment or habilitation that will afford them a realistic opportunity to return to society.[80] Just as important, Judge Johnson declared, "The evidence is without

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76. Oona Hathaway & Daniel Markovits, *Black Lives Matter Might Just Rescue American Democracy*, JUST SEC. (June 16, 2020), https://www.justsecurity.org/70805/black-lives-matter-might-just-rescue-american-democracy/.

77. Wyatt v. Poundstone, 892 F. Supp. 1410, 1413 (M.D. Ala. 1995).

78. *Id.* at 1412–13.

79. Wyatt v. Stickney, 344 F. Supp. 373, 378 (M.D. Ala. 1972).

80. *Id.*

dispute that [more than 1,500] patients are not properly confined at Bryce Hospital since [they] cannot benefit from any psychiatric treatment or are not mentally ill."[81]

Judge Johnson addressed, in the earliest dawn of *Wyatt*, the state's confusion about, and distinction between, patients who could benefit from a right to treatment and those who did not need treatment.[82]

Reflecting on the broader cultural significance of Judge Johnson's rulings, one commentator observed:

> *Wyatt v. Stickney* . . . was the first and most consequential of the legal challenges to the abuse and neglect that had doomed hundreds of thousands of patients to hellish lives in public psychiatric hospitals. It threw open the doors to treatment and to new homes in the community and, for the first time, established standards of adequate care and patients' rights to receive it.[83]

Another commentator, Ira Burnim, declared simply: "*Wyatt v. Stickney* created the field of mental disability law."[84]

Over the period 1970–2004, two federal judges in Alabama presided over *Wyatt*.[85] Each, in his own way and time, held the state responsible for its repeated failures to protect those who were detained in congregate institutions from abuse and neglect.[86] Each also required the state to provide adequate supports in less restrictive community placements.[87] Both judges addressed the state's "confusion" about its obligations when they declared, then enforced, the "right to treatment," and identified what that right meant then and today.[88]

Mr. Wyatt, Mr. Cotton, and untold others paid a steep price for the state's somnambulant confusion. For them, the state's failure to accept responsibility for its constitutional obligations was very costly. But Judge Johnson declares such failures are very costly for everyone.[89]

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81. Wyatt v. Stickney, 325 F. Supp. 781, 784 (M.D. Ala. 1971).
82. *Id.* at 785.
83. *See* Downes, *supra* note 2.
84. *See* MENTAL HEALTH ANNUAL REPORT, *supra* note 56.
85. *See Wyatt*, 325 F. Supp. at 781; *see also* Wyatt v. Sawyer, 219 F.R.D. 529 (M.D. Ala. 2004).
86. *Wyatt*, 325 F. Supp. at 784 ("These programs of treatment failed to conform to any known minimums established for providing treatment . . . .").
87. *Id.*
88. *Id.* at 784–85.
89. Wyatt v. Stickney, 344 F. Supp. 387, 409 (M.D. Ala. 1972).

Everyone.