



10-1981

## Youngberg v. Romeo

Lewis F. Powell Jr.

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Grant

GM 05/05/81

Pennhurst again!

This time CA 3 found liberty interests of mental patients were infringed by limitations on their freedom (i.e. confined - even "chained" to a bed), and imposed unprecedented standards of care.

There are said to be 150,000 mental patients in ~~the~~ state institutions. Petrs say this decision will impose new standards & result in many suits

PRELIMINARY MEMORANDUM

May 14, 1981 Conference  
List 3, Sheet 2  
No. 80-1429

Cert to CA 3 (en banc)  
(Adams for 5-judge majority;  
Seitz for 4-judge concurrence)

Youngberg (superintendent,  
Pennhurst State School), et. al\*

v.

\ again!

Romeo

Federal/civil

Timely

1. SUMMARY: Petrs contend that the CA 3 erred in holding that institutionalized, mentally retarded persons have substantive due process rights (1) to receive treatment which is the "least intrusive" treatment under the circumstances, (2) to be free of

\*no  
problem

Grant. GM



restraints absent "compelling necessity," and (3) to be protected from harm absent "substantial necessity." Petrs also contend that the CA 3 erred in refusing to dismiss this §1983 claim on the ground of qualified immunity.

2. FACTS and DECISION BELOW: This case arises from the same Pennhurst State School and Hospital at issue in the Court's recently decided Pennhurst v. Halderman, et al., Nos. 79-1404, etc (April 20, 1981). Petrs are the superintendent and two directors of Pennhurst. Resp, who was a member of the class in Pennhurst, is a profoundly mentally retarded resident of Pennhurst. (Although 30 years old, a chemical imbalance of the brain retarded resp's mental capacity at the level of an 18 month old). His mother requested that he be committed in 1974, when his father's death left his mother financially unable to care for him.

Resp has been injured at Pennhurst over 70 [sic] times, *What!?* both from self-infliction and from the attacks of other residents. Some of these attacks were in retaliation for resp's aggressive behavior. Some of resp's injuries became infected, either from inadequate medical attention or from contact with human excrement that had not been cleaned up from the Pennhurst wards. Resp's mother brought this §1983 suit in 1976 on resp's behalf, alleging that these injuries violated resp's constitutional rights. An amended complaint also alleged that resp had been shackled to a bed or chair for long periods each day, and that this too violated constitutional rights. According to the CA 3, resp's complaint did not specify the exact constitutional rights asserted, but the CA 3 read the complaint to allege violations of substantive due process



under the 14th Amendment and of the prohibition against cruel and unusual punishment under the 8th Amendment. The complaint sought compensatory and punitive damages.

At trial, the dist ct refused to permit testimony by two experts on resp's behalf. They would have testified that the lack of "programming and activities" on resp's ward accounted for the numerous injuries. One of the experts also would have testified that the shackling served no medical purpose and was used solely for the staff's convenience. The dist ct excluded this testimony on the ground that its admission would have turned this \$1983 claim into a malpractice suit. The dist ct also refused resp's proffered jury instructions, which maintained that resp had a "right to treatment in the least restrictive environment." Rather, the ct followed an 8th Amendment standard and instructed the jury that it should find petrs liable if they exhibited "deliberate indifference to serious medical needs." See Estelle v. Gamble, 429 U.S. 97 (1976). The jury returned a verdict for petrs.

The en banc CA 3 reversed. All nine judges agreed that the 14th Amendment's Due Process Clause rather than the 8th Amendment's Cruel and Unusual Punishments Clause governs this case, and all nine agreed that the dist ct's judgment should be vacated and a new trial be had. But the CA split 5-4 over the standard of liability mandated by the Due Process Clause.

The majority viewed resp's complaint as asserting three rights: (1) a right to be free from undue bodily restraint; (2) a right to personal security and protection; and (3) a right to adequate treatment. The following statement by the majority sums up



its decision as to the standards of liability for violating these rights: "The first two [rights] are undiluted legal concerns, relating to protected liberty interests; as such, they are entitled to heightened judicial scrutiny. The third entails mixed questions of law and medical judgment, and thus requires a more flexible standard of judicial review and suitable deference to informed medical opinion." More specifically, the CA decided as follows as to each right:

(1) Right to freedom from bodily restraint. According to the majority, resp's claim that he had been shackled to a bed or chair stated a claim of deprivation of a substantive liberty interest--i.e. the right to be free from bodily restraint. This is so because shackling is a type of punishment and because the liberty interest in the Due Process Clause protects those not committed of crimes from punishment. See Bell v. Wolfish, 441 U.S. 520 (1979). The majority held: "The trial judge, therefore, should instruct the jury [upon retrial] that such shackling may be justified only by a compelling necessity, i.e., that the shackling was essential to protect the patient or to treat him." In the alternative, the majority held that the trial court could charge the jury that petrs are not liable if shackling was the "least restrictive method of dealing with the patient in the light of his problems and surrounding." In the majority's view, "[a] 'least restrictive' charge will not only insure that compelling treatment explanations, as opposed to fiscal concerns or staff convenience, were the basis for shackling, but also that the institution considered and rejected



alternative methods of restraining the resident, if some restraint indeed was required."

(2) Right to personal security. The majority also held that the "concept of liberty...embrace[s] the 'right to be free from and to obtain judicial relief for unjustified intrusions on personal security.' Ingraham v. Wright, 430 U.S. 651, 673 (1977)." Resp stated a claim under this right by alleging that he had been attacked many times and that petrs knew or should have known of some of these attacks. A violation of this right, according to the majority, is justified by a "substantial necessity." The majority explained:

"Substantial necessity is more appropriate than the compelling necessity standard employed in connection with the shackling claim, for it enables a court and jury to distinguish between isolated incidents and inadvertent accidents, on the one hand, and persistent disregard for patients' needs, on the other. If the [petrs] disregarded [resp's] injuries or failed to take steps to protect [resp,] then they should be liable unless they can offer explanations based on important state interests."

Given this standard, the majority concluded that the trial ct had erred in excluding the testimony of resp's expert witnesses.

(3) Right to treatment. In the view of the majority, this right, unlike the first two, "does not present a purely legal issue," for courts must recognize their own limited knowledge and doctors' expertise. The majority also recognized that the "right to treatment" comprehends a broad spectrum of treatments--everything from minor, daily decisions about medication to "nonreversible physical operations" such as lobotomies. Thus, the majority concluded that judicial authority increases as the treatment becomes



more unalterable, for "whenever unalterable interferences with bodily integrity place deprivations of liberty in issue, the law and not medicine is the ultimate decision-maker." As to the applicable standard, the majority rejected resp's theory that he has a right to judicial review of every "day-to-day" decision, and it also rejected petrs' view that only deliberate indifference to medical needs constitutes a violation. Rather, the majority held: "It should be made clear to the jury that for the plaintiff to prevail it is necessary to find that an individual confined in a facility for the mentally retarded did not receive a form of treatment that is regarded as acceptable for him in light of present medical or other scientific knowledge."

In light of its decision to remand for new trial, the majority did not address resp's other claims of trial error. Nor did it decide the question whether petrs are immune from violations if the jury finds violations after the new trial. The majority did state, however, that the trial judge "should instruct the jury regarding the possibility of immunity with the caveat that defendants' reasonable belief is to be judged at the time their actions were taken" and that petrs "are not responsible for unforeseeable developments in the law."

The concurrence disagreed with the majority's delineation of differing standards of review depending on the right involved. In the concurrence's view, each of resp's rights involved mixed questions of law and medical judgment. Accordingly, the concurrence would judge resp's claims under one standard: whether petrs' conduct "was such a substantial departure from accepted professional



judgment, practice, or standards in the care and treatment of this plaintiff as to demonstrate that the [petrs] did not base their conduct on a professional judgment."

3. CONTENTIONS: Petrs contend that the CA's decision raises important questions which the CA decided incorrectly.

The questions are important, petrs contend, for at least three reasons:

First, petrs contend that the CA's decision goes far beyond anything this Court has decided about the rights of the mentally retarded or the competence of courts to determine liability for violations of those rights. In short, petrs contend that the CA has created a new constitutional tort out of state malpractice law. Petrs suggest that the CA went beyond (1) O'Connor v. Donaldson, 422 U.S. 563 (1974), in recognizing a right to treatment in the least intrusive manner, and (2) Bell v. Wolfish, 441 U.S. 520 (1979), in establishing "compelling necessity" and "substantial necessity" standards of liability under the Due Process Clause.

Second, petrs contend that the CA's decision will encourage federal litigation. There are approximately 150,000 mentally retarded persons in state institutions. Under the CA's decision, petrs contend, the federal courts will become "repositories for most, if not all, personal injury claims arising in those institutions."

Third, petrs contend that the CA's delineation of duties and standards of liability is so unclear that it will seriously hinder the care of the retarded. In this regard, petrs adopt the concurrence's view that physicians no longer will dare work at a



state institution, insurers no longer will dare insure them, and state executive officials no longer will dare fund them, all for fear of uncertain and unpredictable liability.

Beyond contending that the questions are important, petrs contend that the CA decided them incorrectly. In petrs' view, the CA's decision requires doctors and staff persons to engage in a delicate balancing of vague constitutional rights and standards everytime a decision must be made about the care of an institutionalized person. Furthermore, petrs contend that the decision actually places conflicting obligations upon doctors and staff persons. For example, resp's right to treatment in the least intrusive manner might mean that petrs should allow him to roam the institution relatively freely, but the right of other persons to personal security might mean that resp, who sometimes is aggressive, should be restrained from roaming. Finally, petrs contend that the CA's decision ignores the relative incompetence of courts and juries to decide whether medical judgments were proper or improper.

Beyond the merits of the constitutional questions, petrs contend that the CA should have directed the dist ct to dismiss the complaint on the ground that petrs are immune, under good-faith qualified immunity, even if they did violate resp's rights.

Resp does not dispute that the questions decided by the CA are important. But resp contends that these questions are not ripe for review. The CA remanded for new trial, at which the dist ct is to admit the testimony of resp's expert witnesses. Until their testimony is in the record, resp contends, (along with whatever testimony petrs might offer), this Court will not have an adequate



record upon which to the CA's decision. After trial, the record will contain testimony as to the availability, efficacy, and cost of different forms of care and treatment. As the record now stands, resp concludes, the legal questions raised are too abstract to allow the Court to make a sound decision in this important new area of the law.

Turning to the merits, resp contends that the CA was correct in deciding (1) that the 14th Amendment rather than the 8th Amendment governs, and (2) that institutionalized, mentally retarded persons have substantive due process rights to treatment, personal security, and freedom from restraint. Resp contends that most of the lower federal courts that have considered the questions have agreed with the CA here.

Finally, resp contends that the question of petrs' immunity must await the development of a factual record as to petrs' knowledge of resp's injuries and the law at the time.

There are two amicus briefs. The American Psychiatric Assoc urges a grant. In its view, the CA's decision may do more harm than good, for tempering or displacing medical judgments with legal ones is "neither required by the Constitution nor desirable as a method of upgrading state programs." The other amicus brief was filed by 35 states and American Samoa. They contend that nearly all of them are confronted with litigation raising exactly the issues in this case.

4. DISCUSSION: The questions obviously are important and difficult. In my view, the only reason not to grant would be to follow resp's suggestion of awaiting the development of a fuller



record at the new trial. But I am inclined to think that a fuller record would not enhance this Court's review materially, for the CA's decision is not pinned to the facts of this case. Rather, it is a broad and theoretical statement of law.

I therefore recommend a grant.

There is a response and two amici.

05/05/81

Morgan

Opin in petn.







Review - 1/4-5/82 - a thorough &  
perceptive discussion.

meb 01/04/82

BENCH MEMORANDUM

To: Mr. Justice Powell

January 4, 1982

From: Mary

No. 80-1429, Duane Youngberg, et al. (superintendent, et. al.),  
v. Nicholas Romeo, by his mother and next friend

Questions Presented

The major question presented is whether the involuntarily committed enjoy a constitutional right to affirmative treatment ("habilitation"). The petn presents two questions. The first is



whether the CA3 erred in holding that institutionalized mentally retarded persons have substantive due process rights (1) to receive treatment that is both acceptable in light of present medical or other scientific knowledge and which is the least intrusive treatment available under the circumstances; (2) to be free of restraints, whether for treatment or protection, absent a showing of compelling necessity; and (3) to be protected from harm, however caused, absent a showing of substantial necessity.

The second question is whether, when an appellate court admittedly creates a new constitutional right in an action for damages under 42 U.S.C. §1983, it must, as a matter of law, direct dismissal of that claim on the grounds of qualified immunity.

#### I. BACKGROUND

The Court has never determined whether involuntarily institutionalized mentally-retarded persons have a right to treatment under the Constitution. Last year in Pennhurst v. Halderman, 101 S. Ct. 1531 (1981), the Court considered whether 42 U.S.C. §6010<sup>1</sup> gives the mentally retarded a substantive right to "appropriate treatment" in "the least restrictive" environment. The Court concluded that it did not, and remanded for consideration of (1) whether the mentally retarded had standing to compel compliance with those conditions that are imposed on participating states by

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<sup>1</sup>Title 42 U.S.C. §6010 is a "bill-of-rights" provision in a federal-state grant program. It states that the mentally retarded "have a right to appropriate treatment, services, and habilitation" in "the setting that is least restrictive of ... personal liberty."



What is sought  
in this case 3.

the act, (2) federal constitutional claims, and (3) claims under another federal statute.

The patient in this case is a member of the class in Halderman, and his claims for injunctive relief are before the courts in that action, not this one. See Petn n.5 at 5. Here, resp Nicholas Romeo seeks only compensatory and punitive damages from the Director and two supervisors. Resp does not seek release or any procedural safeguards; he does not dispute his inability to survive on the outside. Instead, he seeks a substantive right to better (or different) treatment and conditions as a matter of constitutional law, a right enforceable in a §1983 suit for monetary damages.

A. The Facts and Proceedings Below

Resp is a profoundly-retarded 33-year old man, with an IQ estimated between 8 and 10 and the mental age of a child of 18-24 months. He lived at home with his parents until he was 26. During those years, Romeo suffered no serious injuries. Mrs. Romeo did testify, however, that she remembers seeing Romeo slap people when frustrated and that she and his father "may have been bruised by such slapping."<sup>2</sup> After his father died in May of 1974, his mother was unable to control him.

Initially, on May 22, 1974, he was admitted to Penn. Hospital Community Mental Health and Retardation Center. His admission report states that he was admitted "following assaultive,

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<sup>2</sup>Pltf's Anws to Dfts' first set of interrogatories at 2.



Who - admitted -

4.

uncontrollable behavior at home following the death of his father who had cared closely for him." R. 7-72. His physical condition was described as "basically good health except for multiple bruises and lacerations that were self-inflicted by banging himself against walls and other objects." His stay was described in these words: "He presented a severe management problem requiring constant nursing care, occasional wrist and ankle restraints. He responded well to attention and enjoyed a physical stimulation. Although he could not talk, he was able to learn a few small tasks of self-care. Eventually, a good relationship was established with him and he was transferred to Pennhurst without incident." R. 7-73.

The transfer to Pennhurst took place on June 12, 1974. Between that date and November of 1976, when the complaint was filed, Romeo was not without any medical care or treatment.

2 1/2  
yrs  
no care

Following his admission, he underwent a physical. Thereafter, he was hospitalized for hepatitis (12/10/74 to 12/27/74) and to treat a finger fracture (3/20/76 to 4/21/76).<sup>3</sup> He was treated nine times for boils, and nine times for diarrhea. He was also treated for acne, eye irritation, an eye infection, possible cellulitis of the elbow, and colds. In addition, he was treated for a "fissure R foot."

The finger fracture (3/20/76) apparently involved some laceration of the finger, and it is this event that began Mrs. Romeo's current dissatisfaction with her son's treatment. Shortly

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<sup>3</sup>Exhibit B attached to Pltf's answers to defts' first set of interrogatories.



before that event, in February of 1976, Romeo underwent Pennhurst's annual review. That report states that, although Romeo "likes attention from staff," he is "[a]busive to residents and staff; not cooperative; doesn't seem to respond to commands well; eats feces."<sup>4</sup>

His then-current program included a "2-hr toileting schedule" and a program to teach eating and dressing skills. A new program was regarded as necessary "to stop him from throwing his tray." A behavior-modification program was then designed for Romeo. This program was to teach him to stop throwing his tray (by having him pick-up everything thrown) and to decrease his violence by putting "mitts" on him for 15 minutes each occurrence. This was regarded as necessary (2/20/76) "[b]ecause of the number of injuries Nicky's hitting, pinching and scratching has [sic] caused and because of the danger that Nicky's behaviors present to other residents and staff."<sup>5</sup>

The program to restrain Romeo's violence was not, however, implemented because his mother would not agree to it.<sup>6</sup> R. 5-57 to 5-58. Shortly thereafter, his finger was fractured. The records indicate that Pennhurst does not know how it happened. Entries from the "daybook" and "progress notes" for this period indicate that Romeo was very violent to staff as well as other inmates. For

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<sup>4</sup>Id.

<sup>5</sup>Id.

<sup>6</sup>Earlier, in 1975, his mother requested that he be given a helmet, but she did not want him to have to wear it against his will. Pennhurst got the requested helmet for Romeo, but he would not wear it voluntarily. Id.



example, at 6:00 p.m. on April 21, 1976, he slapped an aide in the chest at 6 p.m. At 8:00 p.m., he slapped an LPN on the back and attempted to kick an aide in the face twice. On the following day, between 7:00 and 8:00 a.m., he slapped aides three times.

In July (the 13 & 18) of 1976, when Mrs. Romeo visited her son, she observed that his eyes were black and his lip split open with a hole where a tooth apparently went completely through. This set of injuries seems to have begun with a laceration above the eye on 6/18/76 (suffered when he slipped into a door). On 6/19/76, the laceration was reopened (no notation as to how). It was reopened again on 6/25 by Romeo banging his head on window. On 6/27, it was again reopened, and his chin was bleeding (both self-inflicted). Two days later, his mouth was bleeding from his own slapping. On 7/8, he pushed another patient and received another small laceration over the eye. On 7/10, he pushed another patient into a wall and received a lacerated upper lip and a nosebleed.<sup>7</sup> Apparently, Mrs. Romeo saw the cumulative result of these incidents (and presumably smaller, unreported incidents) when she visited in July.

By August of 1976, Pennhurst had received several complaints about the way in which Romeo was being treated. On the 6th, a log was kept of his behavior for 3 hrs and 7 min (8:25 a.m. to 11:32 a.m.). During that period, he slept for approximately one hour. In addition, he slapped others 20 times, grabbed or pinched others 22 times, hit himself 15 times; bit himself 8 times, "dug his

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<sup>7</sup>Id.



rectum" 15 times, hit the window or wall twice, scratched others once, banged his head twice, and was pushed by another 3 times.<sup>8</sup>

On Nov. 4, 1976, the complaint was filed. The complaint (at 3) alleged that "[d]uring the period July, 1974 to the present, pltf has suffered injuries on at least sixty-three occasions. These injuries include: a permanently deformed finger; broken bones; injuries to his sexual organs, boils, and human bites." The original complaint sought damages and injunctive relief from three of Pennhurst's supervisory officials, who allegedly knew that Romeo had suffered injuries and had failed to create procedures which would have prevented them from occurring, thus violating his rights under the eighth and fourteenth amendments.

After the complaint was filed, in late 1976, Romeo was transferred from his ward to the hospital for treatment for a broken arm suffered when he was being seated by a staff member. While in the infirmary, he was physically restrained during portions of the day. In Dec. of 1976, a second amended complaint was filed alleging that defts had kept him restrained in the infirmary for prolonged periods of time each day. In addition, he now sought damages for defts' alleged failure to provide him with appropriate treatment throughout his stay at Pennhurst.

An eight-day jury trial was held in Apr. of 1978. During the trial, the trial judge refused to allow testimony of experts proffered by Romeo to show that Romeo could have been effectively

*Jury  
trial*

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<sup>8</sup>Id.



treated under other programs (not involving restraints) and that the lack of programming in Romeo's ward was the cause of aggressive behavior. He would also have testified that psychologists are ethically bound to choose methods that do not use restraints and that there is no dispute in the literature on this point. The trial judge disallowed this testimony. He explained that it was relevant to a malpractice suit but that he did not consider it relevant to a §1983 constitutional claim.

At trial, in addition to evidence of the factual background discussed above, a Pennhurst aide testified that she had seen one of the other aides knock Romeo down in the shower and punch him repeatedly in the face. She reported this to the authorities, but they purportedly felt unable to act on the unsubstantiated testimony of one employee.

At the close of the trial, the judge instructed the jury *judge instructed jury* that "if any or all of the defendants were aware of and failed to take all reasonable steps to prevent repeated attacks upon Nicholas Romeo," such failure deprived him of constitutional rights. J.A. 73a. And the jury was instructed that if the depts shackled Romeo other than in a good faith effort to treat him, then his rights were violated. Ibid. Finally, the jury was instructed that if Romeo was denied programs "as a punishment for filing this lawsuit," or if depts were "deliberately indifferent to the medical and psychological needs of Nicholas Romeo," his constitutional rights were violated under the eighth amendment. Id., at 73a-75a.

The trial judge denied the jury instruction proposed by Romeo, which asserted that he had: (1) a right to "such treatment



*Jury verdict for Δs in  
Nov 1985 suit.*

*CA3 reversed & remanded<sup>9</sup>*

as will afford [him] a reasonable opportunity to acquire and maintain those life skills necessary to cope as effectively as [his] capacities permit," Petn. App. 94a-95a, and (2) a right to treatment "under the least restrictive conditions consistent with the purpose of the commitment," id., at 95a.

The jury returned a verdict for the defts. On appeal, the CA3 vacated the judgment of the DC and remanded for a new trial.

All of the judges agreed that the eighth amendment was inapplicable and that the expert testimony should have been admitted. The CA was, however, divided (5-4) as to the substantive rights of the institutionalized mentally retarded. *But divided*

With regard to the equal protection claim, the majority (Adams, Gibbons, Weis, Higginbotham, & Sloviter) held that failure of the defts to provide for the pltf's safety can be justified only by a showing of 'substantial necessity'. And, because physical restraint "raises a presumption of a punitive sanction," it can be justified only by a 'compelling necessity'. In addition, the majority held that the pltf is entitled to an instruction that the defts must show that restraint was the "least restrictive method of dealing with the patient, in light of his problems and the surrounding environment." Third, the majority divided the treatment claim into three categories. If a jury finds that no treatment has been administered, it may hold the defts liable unless they can provide a compelling explanation for the lack of treatment. If some treatment was administered, the defts will not be liable if that treatment was "acceptable in light of present medical or other scientific knowledge.... Thus, if defendants can demonstrate a coherent

*CA3  
5-4*



relationship between a particular treatment program and a resident's needs, they would not be liable." Finally, "least intrusive" analysis applies to the selection of a treatment approach if the jury finds that the approach subjected the plaintiff to "significant deprivations of liberty."

The minority (Seitz, Aldisert, Rosenn, & Garth) argued that the majority had erred in establishing its "multilevel standards" and that a unitary standard should be applied. They found the majority standards unreasonably strict and often indistinguishable from medical malpractice. They would have adopted this standard: was the defendants' conduct "such a substantial departure from accepted professional judgment, practice or standards in the care and treatment of this plaintiff as to demonstrate that the defendants did not base their conduct on a professional judgment." The minority concluded that the Constitution "only requires that the courts make certain that professional judgment in fact was exercised."

*Minority 4  
sub*

With regard to immunity, the majority noted that the defendants "are not responsible for unforeseeable developments in the law," and held that, on remand, the judge should instruct the jury that their reasonable good faith is to be judged as of the time they acted. The majority recognized that "[t]he present controversy inhabits the twilight area of developing law concerning the constitutional rights of the involuntarily committed mentally retarded." But the majority did not, apparently, regard the law as so unsettled as to necessarily provide defendants with a good faith immunity.

*But  
majority*

The portions of the CA3's decisions finding substantive



rights to treatment under the due process clause are discussed in the next section.

B. Substantive Due Process and the Right to Treatment

*a q of  
first  
impression*

As mentioned earlier, the Court has never directly addressed the question presented here although, in Sanchez v. New Mexico, 396 U.S. 276 (1970), the Court dismissed an appeal from a lower court decision holding that the involuntarily committed have no right to treatment. The appeal was dismissed for want of a substantial federal question.

The purpose of this section is to provide background information for resolving the right-to-treatment question. This section discusses (1) the analytic substance of substantive due process; (2) the S. Ct. cases dealing with (a) prisoners' substantive rights and (b) the rights of the involuntarily committed; and (3) the lower court decisions on right to treatment, including the decisions below.

1. The analytic substance of substantive due process. In recent years, the Court has used <sup>1</sup>substantive due process to protect activities relating to <sup>2</sup>marriage, <sup>3</sup>procreation, <sup>4</sup>contraception, family relationships, and childrearing and education. See, e.g., Roe v. Wade, 410 U.S. 494, 499 (1977) (right to abortion); Planned Parenthood v. Danforth, 428 U.S. 52 (1976) (abortions for minors and parental consent); Cleveland Bd. of Education v. LaFleur, 414 U.S. 632 (1974) (school board policy regarding pregnant teachers); Moore v. City of E. Cleveland, 431 U.S. 494, 499 (1977) (Powell, J.) (zoning ordinance cannot proscribe extended family unit from living



together); Carey v. Population Services Int'l, 431 U.S. 678 (1977) (right to contraceptives); Zabloci v. Redhail, 434 U.S. 374 (1978) (right to remarry though paying child support).

Analytically, these cases begin with a finding of a "fundamental right." In Moore v. City of East Cleveland, the Court began by examining the cases in which substantive due process had been applied. Beginning with Meyer v. Nebraska, 262 U.S. 632, 639-640 (1923) (reversing conviction of teacher for teaching German) and Pierce v. Society of Sisters, 268 U.S. 510, 534-535 (1925) (upholding challenge to Oregon law requiring all children to attend public schools), the Court cited a "host of cases" recognizing that "freedom of personal choice in matters of marriage and family life is one of the liberties protected by the Due Process Clause of the Fourteenth Amendment." Moore, 431 U.S. at 499.

It is, however, by no means clear what rights will be considered fundamental in addition to those already recognized by the Court. The Court has stopped "far short of any general recognition of a 'fundamental value' in individual autonomy." *Gunther* Gunther, Cases and Materials on Constitutional Law, at 607 (10th ed. 1981). Substantive due process claims based <sup>on</sup> such a right were rejected in Doe v. Commonwealth's Attorney, 425 U.S. 901 (1976) (affirming without opinion or argument lower court's decision upholding constitutionality of statute regulating consensual sexual behavior between adults) and Kelley v. Johnson, 425 U.S. 238 (1976) (regulation of length of policeman's hair sustained).

Once a fundamental right is found, the level of scrutiny to be applied seems to be, in the majority's view, the strictest. It



is true that in Moore, the Court did not state that only compelling state interests could justify the challenged regulation. Instead, the test was expressed as "whether the importance of the governmental interests advanced and the extent to which they are served by the challenged regulation" justify the interference with a fundamental right. Id., at 499. And in Eisenstadt v. Baird, 405 U.S. 438 (1972) (contraceptives) the Court articulated the rational-relationship test, though, in fact it may have exercised a somewhat stricter scrutiny than the usual deference to legislative decisions. See Gunther, Forward: [A] Model for a Newer Equal Protection, 46 Harv. L. Rev. 1 (1972). In Roe v. Wade, 410 U.S. 113 (1973), however, the Court stated "where certain 'fundamental rights' are involved, the Court has held that regulation limiting these rights may be justified only by a 'compelling state interest' [and] that legislative enactments must be narrowly drawn to express only the legitimate state interests at stake."

Post-Roe v. Wade, the majority of the Court seems to have adopted the 'compelling-state interest level of scrutiny' whenever a fundamental right is regulated as well as when it is totally frustrated. In Carey v. Population Services Int'l, 431 U.S. 678 (1977), the Court invalidated a number of restrictions on the distribution and advertising of nonprescription contraceptives. The statute prohibited the sale of such items by anyone other than a licensed pharmacist and prohibited their sale or distribution to minors. The majority (per Brennan, J.) used the compelling-state-interest standard: "'Compelling' is of course the key word; where a decision as fundamental as that whether to bear or beget a child is



involved, regulations imposing a burden on it may be justified only by compelling state interests, and must be narrowly drawn to express only those interests." Id., at 686 (citing Roe v. Wade).

In <sup>my</sup> your separate opinion, you rejected the proposition that strict scrutiny is the appropriate standard of review in all cases involving regulation of adult sexual relations: "In my view, the extraordinary protection the Court would give to all personal decisions in matters of sex is neither required by the Constitution nor supported by our prior decisions." Id., at 703. Actually, the strict-scrutiny standard had only been applied in cases involving substantial interference with constitutional rights. Id., at 703-704. As discussed above, your decision is Moore also failed to apply strict scrutiny, though it was decided after Roe v. Wade.

2. Supreme Court caselaw. (a). Substantive and procedural rights of pre-trial detainees. In Bell v. Wolfish, 441 U.S. 520 (1979) (Rehnquist, J.), discussed in greater detail below, pre-trial detainees challenged the constitutionality of their conditions of confinement. The lower courts held that a number of the conditions under which the pltfs were held were unconstitutional. The CA3 held that the pltfs, who had not been found guilty of any crime, could only be subjected to those "restrictions and privations" which "inhere in thier confinement itself or which are justified by compelling necessities of jail administration."

This Court reversed, rejecting the "compelling necessity" standard, and upholding the consitituionality of the conditions of



confinement because the restrictions were reasonably related to the institution's interest in security or other valid administrative interests.<sup>9</sup> The Court also noted that conditions did not violate the eighth amendment, observing that, "[a] fortiori, pretrial detainees, who have not been convicted of any crimes, retain at least those constitutional rights that we have held are enjoyed by convicted prisoners." Id., at 520.

In Jackson v. Indiana, 406 U.S. 715 (1972), discussed in greater detail in section II.A.2 infra, a pre-trial detainee was found incompetent at a competency hearing and then held indefinitely (until competent) in an institution for the mentally incompetent without either criminal process or civil commitment. It appeared unlikely that the detainee (who was very retarded) would ever be competent to stand trial. The Court held that the state could not continue to hold him without initiating civil commitment proceedings, noting that, as a minimum, due process at least "requires that the nature and duration of commitment bear some reasonable relation to the purpose of commitment." Id., at 738.

In summary, pre-trial detainees have a right to conditions reasonably-related to the security and administrative needs of the facility. And, although the eighth amendment does not apply directly to pre-trial detainees, they, a fortiori, have a right to confinement without cruel and unusual punishment (because they have

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<sup>9</sup>You joined the majority in Bell except insofar as it upheld routine body-cavity searches. 441 U.S., at 563.



the right to confinement without any punishment). Moreover, the nature and duration of confinement without criminal process must bear some reasonable relation to its purposes.

(b). The substantive rights of prisoners. In Estelle v. Gamble, 429 U.S. 97 (1976) (Marshall, J.), the Court considered the extent to which prisoners have a constitutional right to medical treatment. The decision rested on the eighth amendment rather than any substantive right to certain conditions of confinement. The Court concluded that "deliberate indifference to serious medical needs of prisoners constitutes the 'unnecessary and wanton infliction of pain'" proscribed by the eighth amendment. Id., at 104. The Court noted that its holding did not constitutionalize medical malpractice "merely because the <sup>e</sup>victim is a prisoner. ... [A] prisoner must allege acts or omissions sufficiently harmful to evidence deliberate indifference to serious medical needs. It is only such indifference that can offend 'evolving standards of decency' in violation of the Eighth Amendment." Id., at 106.

In Gamble, the prisoner had been seen by medical personnel 17 times during a 3-month period. They treated his back injury, high blood pressure, and heart problems. The complaint was based on their failure to provide the proper treatment; an x-ray or other tests would have revealed the true nature of that injury. The Court examined these facts and concluded that failing to order an x-ray "does not represent cruel and unusual punishment. At most, it is medical malpractice, and as such the proper forum is the state court under the Texas Tort Claims Act." Id., at 107.<sup>10</sup>

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Footnote(s) 10 will appear on following pages.



In Procunier v. Martinez, 416 U.S. 396 (1974) (Powell, J.), the Court considered the validity of prisoner-mail censorship regulations and a ban on the use of law students and legal para-professionals to conduct attorney-client interviews with inmates. The regulations were held invalid. Because the censorship regulations incidentally restricted speech, a first amendment right, they were sustainable only if (1) they furthered ~~one~~ or more important and substantial governmental interests in security, order, and the rehabilitation of inmates, and (2) they restricted speech no more than necessary to further the legitimate governmental interest involved. The censorship regulations went so far as proscribing criticism or expression of inflammatory religious view--and clearly failed to meet this standard.<sup>11</sup> In reaching this decision, the

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<sup>10</sup>In a footnote, 429 U.S., at 96 n.10, the Court cited four lower court decisions illustrating violations of the eighth amendment in the context of medical care:

"Williams v. Vincent, 508 F. ed 541 (CA2 1974) (doctor's choosing the 'easier and less efficacious treatment' of throwing away the prisoner's ear and stitching the stump may be attributable to 'deliberate indifference ... rather than an exercise of professional judgment'); Thomas v. Pate, 493 F. 2d 151, 158 (CA7), cert. denied sub nom. Thomas v. Cannon, 419 U.S. 879 (1974) (injection of penicillin with knowledge that prisoner was allergic, and refusal of doctor to treat allergic reaction); Jones v. Lockhart, 484 F. 2d 1192 (CA8 1973) (refusal of paramedic to provide treatment); Martinex v. Mancusi, 443 F. 2d 921 (CA2 1970) (prison physician refuses to administer the prescribed pain killer and renders leg surgery unsuccessful by requiring prisoner to stand despite contrary instructions of surgeon)."

<sup>11</sup>The restriction on the use of law students (not applicable to students employed by practicing attorneys) was an infringement of the due process clause because "[t]he constitutional guarantee of due

Footnote continued on next page.



last Term  
in Rhodes 18.

Court did not determine the extent to which prisoners enjoy the protection of the first amendment because the challenged regulations implicated the first amendment rights of those on the outside with whom the prisoners were communicating as well as the rights (if any) of the prisoners themselves. Id., at 408.

In Rhodes v. Chapman, 49 U.S.L.W. 4677 (No. 80-332 June 15, 1981) (Powell, J.), the Court rejected claims that double-bunking violated the eighth amendment. In reaching this conclusion, the Court noted that "[i]n assessing claims that conditions of confinement are cruel and unusual, courts must bear in mind that their inquiries spring from constitutional requirements and that judicial answers to them reflect that fact rather than a court's idea of how best to operate a detention facility." Id., at 4680 (quoting Bell v. Wolfish, 441 U.S., at 539) (footnote omitted).

In summary, prisoners have a right to conditions that do not constitute a cruel and unusual punishment under "the evolving standards of decency that mark the progress of a maturing society." Gregg v. Georgia, 428 U.S. 153, 173 (1976). Prisoners have a limited right to medical treatment; deliberate indifference to a serious medical need violates their right to be kept free from cruel and

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process of law has as a corollary the requirement that prisoners be afforded access to the courts in order to challenge unlawful convictions and to seek redress for violations of their constitutional rights. Id., at 419. Because the regulation

interfered with that right--a procedural, not a substantive, due process right--it was also declared unconstitutional.



unusual punishment. And regulation of prisoners' correspondence with those on the outside must satisfy the first amendment standards applicable to regulation (in contrast to prohibition) of speech. Finally, although the conditions under which prisoners are kept might constitute cruel and unusual punishment, double-bunking in itself does not.

(c). The rights of the involuntarily committed. In Addington v. Texas, 441 U.S. 418 (1979) (Burger, C.J.), the Court held that "clear unequivocal and convincing evidence" is required to commit a mentally ill person involuntarily for his own care and protection or the protection of others. The Court noted that, as parens patriae, the state has a legitimate interest in providing for its citizens who cannot care for themselves. And the state has authority, under its police power, to protect other citizens from injury. Although the Court rejected the "beyond reasonable doubt" standard provided in criminal process, it also concluded that a mere preponderance standard would fail to adequately protect the strong liberty interest of individuals being committed.

In O'Connor v. Donaldson, 422 U.S. 563 (1973) (Stewart, J.), the Court held that a state cannot constitutionally confine, without more, a non-dangerous individual who is capable of surviving in freedom by himself or with the help of willing and responsible family members and friends.

In Parnham v. J. R., 442 U.S. 584 (1979) (Burger, C.J.), the Court upheld a statute providing for commitment of minors by their parents without an adversarial hearing. An independent



*Prison cases on the rights  
of "involuntarily committed"*

medical evaluation was considered sufficient. The Court expressed doubt that the risks of error in this process would be significantly reduced by a more formal, judicial-type hearing.

In summary, the involuntarily committed have the right to a "clear and convincing" evidence standard in their commitment proceedings, and the state has no legitimate reason for committing involuntarily (for treatment) someone who is not dangerous and who can survive on the outside. And a minor can be committed by his parents without an adversarial hearing when there is an independent medical evaluation of his condition.

3. The CAs and the right to treatment. (a). The CADC. The CADC first recognized a right to treatment based on a DC statute. Rouse v. Cameron, 373 F. 2d 451 (CADC 1966). But in Covington v. Harris, 419 F. 2d 617 (CADC 1969) (Bazelon, Fahy, & McGowan), the CADC suggested that the right to treatment is independent of the DC statute:

*Origin of  
"least  
restrictive  
means"  
standard*

"The new legislation apart, however, the principle of the least restrictive alternative consistent with the legitimate purposes of commitment inheres in the very nature of civil commitment, which entails an extraordinary deprivation of liberty justifiable only when the respondent is 'mentally ill to the extent that he is likely to injure himself or other persons if allowed to remain at liberty.'" Id., at 623 (quoting D.C. Code).

As far as I can tell, this language is the original source for the proposition that the first amendment's principle of "least restrictive means"--a principle developed in cases reviewing statutes proscribing speech--applies to conditions of confinement of the involuntarily committed. In addition, it is the first support



No analysis supports Bayelon opinion 21.

for the proposition that any such substantive right exists independent of statute. There is no analysis developing either proposition. But the principles are immediately applied to treatment decisions within a hospital:

"The principle of the least restrictive alternative is equally applicable to alternate dispositions within a mental hospital. It makes little sense to guard zealously against the possibility of unwarranted deprivations prior to hospitalizations only to abandon the watch once the patient disappears behind hospital doors." Id., at 623-24.

In the context of determining whether patients have received the care to which they are constitutionally entitled, the least-restrictive-means principle presupposes, not only that it is an appropriate standard for making medical decisions relevant to treatment, but also that courts are competent to review such decisions and determine what treatment is best.

(b). CA5. In Donaldson v. O'Connor, 493 F. 2d 507 (CA 5 1974) (Rives, Wisdom, & Morgan), vacated and remanded, 422 U.S. 563 (1975) (state cannot confine non-dangerous mentally ill person who can survive on the outside, discussed above), the CA5 became the first circuit to find a right to treatment for the involuntarily committed in the absence of any statutory provision, solely on the basis of the due process clause of the fourteenth amendment. The CA5's substantive-due-process analysis began with noting "the indisputable fact that civil commitment entails a massive curtailment of liberty" in the constitutional sense." Id., at 520 (quoting Humphrey v. Cady, 405 U.S. 504, 509 (1972)).<sup>12</sup>

<sup>12</sup>Humphrey involved procedural due process. There, the pltf had been convicted of contributing to the delinquency of a minor.  
Footnote continued on next page.



Judge Wisdom then advanced the proposition that any substantial abridgment of "liberty" must be justified in terms of some permissible governmental goal. Three grounds for civil commitment are generally recognized: the need for (1) treatment, (2) care, (both parens patriae) and (3) the need to protect others (police power).

In Donaldson's case, the jury had found him harmless, both to himself and others. The only legitimate governmental reason to commit him was, therefore, treatment. Judge Wisdom concluded that it was a violation of due process to deprive a person of his liberty upon the theory that confinement would be therapeutic and then to fail to provide any treatment. Id., at 521.

Next, Judge Wisdom stated that long-term detention is generally permitted only when an individual is guilty of a specific act and has been accorded the protections of criminal process. When the government detains the incompetent by use of its police power for their own safety and that of others, there must be a quid pro

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In lieu of criminal sentence, he was committed to the "sex deviate facility" in the state prison for a potentially indefinite period pursuant to the Wisc. Sex Crimes Acct. At the time he sued, pltf's commitment was essentially equivalent to a civil commitment under Wisc.'s Mental Health Act, except that he would have had a jury if he had been civilly committed. (He had already served a term equal to the longest possible sentence--1 year--that could have been imposed as punishment for his misdemeanor conviction.)

The DC dismissed his claims, but the Court remanded for further development, noting that his equal protection claim would be persuasive if he had been deprived of a jury or other procedural protections merely by an arbitrary decision to seek commitment under one act rather than another. The Court's reference (per Marshall, J.) to "massive curtailment of liberty" was made in the context of the procedural protections afforded by Wisc. to ensure that involuntary commitment was justified. Id., at 509.



quo justifying the confinement given the absence of the protections of criminal process.<sup>13</sup>

In Wyatt v. Alderholt, 503 F. ed 1305 (CA5 1974) (Wisdom, Bell, & Coleman), the CA held that the state must provide treatment--treatment to help each be cured or improve his condition--to the civilly committed mentally retarded and mentally ill. Judge Wisdom rejected the argument that "the principal justification for commitment lies in the inability of the mentally ill and mentally retarded to care for themselves"--and that care, not treatment, is all that is necessary for the state to provide conditions consistent with the terms of commitment. Id., at 1312. In his view, "care" alone would not be sufficient justification for so "massive" a

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<sup>13</sup>To support this quid pro quo requirement, the CA5 cited 5 lines of cases. The first involved citizens held in penal institutions for nonpenal reasons, and these courts held such conduct impermissible (2 CADC, 1 Mich., 1 Mass.). A second set (2 CADC 1 CA4, 1 Mass.) extended this holding by requiring that such persons must be held where conditions are actually therapeutic. The third line are cases in which courts have upheld ex-offender and defective-delinquent status (providing for confinement of habitual offenders to protect society and to provide rehabilitative care. Some courts (1 CA4, 1 M.D. Ala.) have stated that the constitutionality of these statutes depends upon the realization of the statutory promise of rehabilitative treatment. The fourth set is the recent right to treatment caselaw, which, Judge Wisdom reports, neither recognizes nor rejects explicitly a constitutional right to treatment. When such a right is found, it rests on on both statutory and constitutional grounds or the case is ambiguous as to the precise ground (5 CADC, 1 Mass.). The fifth group consists of modern class actions challenging conditions in state institutions. The cited courts had, for one reason or another, not dismissed the actions. (1 CA5, 1 ND Ill., 1 ND Geo., 1 D. Minn., 1 C.A.7, 1 D R.I., 1 E.D. Tex., & 1 SDNY).

In addition, the CA5 cited, somewhat out of context, a S. Ct. case using "quid pro quo" in the context of a special statute for juveniles. See detailed discussion of this S. Ct. case in text following n.15 infra.



*The decision of CA3 in this case* <sup>2A</sup> (5-4)

"curtailment" of liberty. He also found that the hospitals of Ala. were not providing even adequate custodial care.

The CA5 may have abandoned its vanguard position in this area. In Morales v. Turnian, 562 F. 2d 993 (1977), the CA5 considered the appeal of a class action challenging the adequacy of Texas' programs for juvenile offenders. The DC ordered the submission of a curative plan. Because of intervening program changes, the CA5 remanded for the DC's reconsideration. In doing so, the CA5 (Ainsworth, Morgan, & Roney) stated that "we have considerable doubt about the legal theory of a right to treatment that was relied on so heavily by the District Court."

(c). The CA8. In Welsch v. Likins, 550 F. 2d 1122 (CA8 1977), the CA8 upheld a DC decision insofar as it held that due process compels that minimally adequate treatment be provided for involuntary patients in state institutions, but the CA8 did not explain the basis for this constitutional right. See also Goodman v. Parwatiker, 570 F. 2d 801 (CA8 1978) (Ross, Stephenson, & Webster).

(d). The decisions below. Like the CA5 in Donaldson v. O'Connor, the majority opinion in the case at bar began with the proposition that involuntary civil commitment entails a "massive curtailment of liberty," quoting Humphrey v. Cady, 405 U.S. 504, 509 (1972).<sup>14</sup> The CA then stated that as a consequence, involuntary commitment is circumscribed with due process protection, citing

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<sup>14</sup>For a discussion of the details of this procedural due process case, see n.12 infra.



*Then case*

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Addington v., Texas, discussed above, the procedural due process case requiring clear and convincing evidence. The court then explained that commitment does not extinguish all aspects of an individual's liberty interest--instead, the power of locomotion without restraint and the right to personal security and freedom from punishment are fundamental liberties that can only be encroached upon when justified by an overriding, non-punitive state interest related to the reasons for confinement.

*CA3*

The majority considered Romeo's claims in the light of this principle. The CA described his claims as (1) the right to be free from undue bodily restraint; (2) the right to personal security and protection; and (3) the right to adequate treatment. The CA continued by noting that the first claim was based on undue shackling, and it held that, though shackling may not be punishment per se, it raises a presumption of a punitive sanction. The court stated, without support, that "shackling" is not normally within the range of conditions of confinement contemplated in a "habilitative institutionalization." And the CA concluded that careful scrutiny is the proper judicial posture in reviewing such treatment--because there is a right to treatment under the least restrictive conditions consistent with the purpose of the commitment," and shackling can be justified only by compelling necessity.

With regard to the right to treatment, the CA simply stated that the individual's right to personal security and the state's interest in providing care "converge to support a right to protection from attack." Failure to provide for personal security could be justified in a §1983 case only by "substantial necessity."



With regard to Romeo's claimed right to treatment, the CA merely noted that the right to appropriate treatment was independent of the purpose of commitment (i.e., care, protection, treatment), and adopted the convoluted three-part standard described at 9-10 supra.

Judge Seitz's minority opinion gave even less consideration to the constitutional underpinnings of the right to treatment. He merely stated that the constitutional right is no longer disputed citing the cases of the other CAs (CADC, CA8, & CA5), discussed above.

## II. DISCUSSION

There are several ways in which the Court can resolve this case. <sup>①</sup> The most obvious way is by determining whether there is a right to treatment under the due process clause of the fourteenth amendment. A second is <sup>②</sup> by holding, instead, that the depts are necessarily covered by a good faith immunity because, at the time they acted, they could not reasonably have known that there is a right to treatment. A third way would be <sup>③</sup> to dispose of the case on the ground that the jury has already determined that the depts were not more than negligent, and that mere negligence, i.e., medical malpractice, cannot be a basis for a constitutional violation of a substantive due process right (or, more narrowly, cannot be a basis for a constitutional violation when the patient is involuntarily committed any more than when the patient is a prisoner). This section will discuss each of these possible dispositions in turn, and will then discuss the failure to allow the expert testimony



proffered by Romeo and the effect that failure should have on the disposition of the case. Finally, it will address resp's argument that the state has created a substantive liberty interest entitled to due process protection.

#### A. The Right to Treatment

1. The decisions of the lower courts. In finding a substantive due process right to treatment, the lower courts have not clearly distinguished procedural and substantive rights. They have found a fundamental right in liberty after commitment, and have used that "fundamental right" as the basis of their substantive due process analysis. But the courts have based their finding of that right on a procedural due process case: Humphrey v. Cady, 405 U.S. 504, 509 (1972) (discussed in detail in n.12 supra). Humphrey involved only a possible ~~possible~~ equal protection right to a jury determination on the question of commitment because one state statute provided for such process and another state statute (for no apparent reason) did not. The case was remanded for further development, without even a finding of a procedural right. Humphrey does not, therefore, provide much support for the notion that post-commitment conditions implicate a liberty interest that is "fundamental" in the sense in which that term is used in substantive due process cases.

We have not gone this far → As discussed above, the Court has stopped "far short of any general recognition of a "fundamental value" in individual autonomy," see discussion at 12 supra. The lower courts have ignored, however, the fact that post-commitment conditions are not



at all similar to the rights this Court has found in substantive due process cases. As discussed above, those cases have generally found substantive rights in areas closely related to the family, procreation, and child-rearing.<sup>15</sup>

The quid pro quo theory, relied on by the CA5 in finding an affirmative right to treatment in Donaldson v. O'Connor, 493 F. 2d 507 (CA5 1974), should also be rejected. The CA5 considered a right to treatment as part of the quid pro quo of confinement without the procedural safeguards of criminal process.

The Constitution requires, however, that criminal process be used only for criminal "commitments," not all commitments. There is no right to criminal process prior to civil commitment--see Aldington v. Texas, 441 U.S. 418 (1979) ("clear and convincing proof," rather than "beyond reasonable doubt," adequate for civil commitment).

The quid pro quo theory seems to have originated in a decision of this Court, In re Gault, 387 U.S. 1, 22 n.30 (1967),

<sup>15</sup>The Court has been criticized for treating such values, values neither explicitly stated in the Constitution nor based on the Carolene Products footnote as "fundamental." See Ely, The Supreme Court 1977 Term, 92 Harv. L. Rev. 5, 12 (1978) ("No Carolene Products Court this."). Ely's point is that the Carolene Products footnote limited post-Lochner deference to legislative decisions to instances in which the political process could be entrusted with the decision--but not those in which that process itself simply is not reliable--e.g., when the majority interferes with the rights of "discrete and insular minorities," or with the ability of others to use the political process is itself weakened. United States v. Carolene Products Co., 304 U.S. 144, 152 n.4 (1938). Fundamental (typically traditional) family values are widely held, and there is, therefore, no need for judicial interference on the ground that the political process itself cannot adequately protect these values. See Ely, supra.

*Ely: widely held family values are protected by political process*



quoted by the CA5, in which the Court explained that if juveniles are subjected to special procedures which are justified in terms of the special consideration and treatment thereby afforded them, juveniles should receive the promised treatment (the quid pro quo) and would probably be entitled to challenge custody following such special procedures on the ground that they were not actually receiving "any special treatment." Thus, the Court stated that if A is confined under X procedure because he will receive Y treatment, he can challenge his confinement if, in fact, he is not receiving Y. This quid pro quo principle can, however, be used as the basis for a right to treatment only by bootstrapping.

If a state confines a person to care and protect him, but not to treat him, that person is entitled to care and protection, not treatment. In Donaldson, the CA5 simply rejected the idea that "care" was a sufficient reason to curtail liberty so massively and stated that the "protection" goal was also shared by criminal confinement and therefore could be achieved without criminal process only by adding another goal. The CA gave no basis for this latter proposition. As to the former, the S. Ct. in O'Connor v. Donaldson held that treatment is not a sufficient basis for curtailing liberty. Surely even the CA5 would not now argue that the state cannot legitimately confine for care someone who is not dangerous but incapable of surviving on the outside.

Finally, Joel Klein's amicus brief on behalf of the American Psychiatric Ass'n (green, on merits) at 15-23, does an excellent job of arguing that the concepts of least restrictive means and "compelling necessity" (the latter was imposed by the CA3 as



the standard for justifying shackling) are "inscrutable in clinical terms." For example, it is difficult to tell "whether confinement to a room is more or less restrictive than the use of shackles or administration of a drug that permits the resident to remain with other residents in a group situation. The difficulty is made worse by the fact that some treatments may be more intensive but of shorter duration .... Furthermore, the lessening of restrictions for one resident may lead to an increase in restrictions on other residents." Id., at 21-23. And I cannot make any sense out of the CA's holding that a patient has a right to be free from harm in the absence of a showing of substantial necessity. What kind of necessity would justify harm? What kind of harm? Any accident? There is rarely a "need" for an accident--would this standard make every tort occurring in a mental hospital a constitutional violation?

2. Suggested substantive due process analysis. Under the express language of the Constitution, a state can curtail a person's liberty only after affording due process. And, under O'Connor v. Donaldson, 422 U.S. 563 (1975), the state can curtail liberty by institutionalizing someone to serve a legitimate state interest, but it cannot do so to treat a non-dangerous person capable of surviving on the outside. After Donaldson, there are two legitimate reasons for involuntary commitment: (1) to care for an individual who cannot care for himself on the outside; and (2) to protect an individual or others from his own violence. As discussed above, the Donaldson Court explicitly noted that these goals can be achieved through the legitimate exercise of the state's police power and



parens patriae power. Exercises of these powers, in the absence of a "fundamental right," can normally be justified ~~by~~ if there is a "rational relationship" between the legitimate governmental end and the means chosen to attain that end.

Given that this is not an area in which the Court has recognized "fundamental rights,"<sup>16</sup> one would expect the rational relationship test to apply: it is sufficient if there is a rational relationship between the terms and conditions of confinement and the purposes of confinement. Moreover, the application of this standard

*yes* <sup>16</sup>In cases such as the one at bar, the "fundamental rights" rhetoric is troubling. Fundamental rights include the right to send your child to private school, Pierce v. Society of Sisters, 268 U.S. 510 (1925), the right to teach while pregnant, Cleveland Bd. of Education v. LaFleur, 414 U.S. 632 (1974), and the right to remarry while paying child support, Zabloci v. Redhail, 434 U.S. 374 (1978). But one detained pending trial and subject to all manner of restraints, restrictions, and interferences, does not have a "fundamental" liberty interest in the conditions of confinement:

"And to the extent the [lower] court relied on the detainee's desire to be free from discomfort, it suffices to say that this desire simply does not rise to the level of those fundamental liberty interests delineated in cases such as Roe v. Wade, 410 U.S. 113 (1973) [abortions]; Eisentadt v. Baird, 405 U.S. 438 (1972) [contraceptives]; Stanley v. Illinois, 405 U.S. 645 (1972) [unmarried father's right to custody of children after death of mother]; Griswold v. Connecticut, 381 U.S. 479 (1965) [contraceptives]; Mayer v. Nebraska, 262 U.S. 390 (1923) [right to teach German in public school]." Bell v. Wolfish, 441 U.S. 520, 534 (1979).

The interests denominated "fundamental" seem like frosting on a cake compared to the interests of the involuntarily committed with regard to their conditions of confinement or the interests of Bell v. Wolfish's pre-trial detainees, who want to free of intrusions such as internal body-cavity searches. It may be that the detainee has no such "right" and that the Constitution does not protect every aspect of an involuntarily committed patient's confinement, but it is surely not because the interests involved are not "fundamental."



is supported by the two S. Ct. cases most relevant to the right-to-treatment question: Bell v. Wolfish, 441 U.S. 520 (1979)

(Rehnquist, J.) (discussed briefly above, dealing with the rights of pre-trial detainees with regard to the conditions of detention) and Jackson v. Indiana, 406 U.S. 715 (1972) (also discussed above).

In Jackson, in a competency hearing, a state criminal court found that Jackson was incompetent to stand trial (because he was profoundly retarded). At the time the case reached the Court, he had been held for 3 1/2 years in an institution for the mentally incompetent without either criminal process or civil commitment. Under state law, he could be held indefinitely--i.e., until such time as he became competent.

The Court held that the state could not continue to hold him without initiating civil commitment proceedings. In a way, this was purely a procedural due process case--the Court found that Jackson was entitled to additional procedures.

The case also involved, however, Jackson's substantive right to confinement conditions consistent with the terms of his confinement. Given the stability of his condition and the period that had already passed, Jackson could not reasonably be regarded as being temporarily confined until he became competent. Yet, the only procedure he had been afforded had been a competency hearing. The Court held that temporary commitment following a finding of incompetence at a competency hearing could not last beyond a reasonable period "necessary to determine whether there is a substantial probability that he will attain that capacity in the foreseeable future. If it is determined that this is not the case,



then the State must either institute the customary civil commitment proceeding ... or release [him] ... Furthermore, even if it is determined that the defendant probably soon will be able to stand trial, his continued commitment must be justified by progress toward that goal." Id., at 738.

The principle behind this conclusion was simply stated by the Court in Jackson:

"At the least, due process requires that the nature and duration of commitment bear some reasonable relation to the purpose of commitment." Ibid.

This is at once a procedural and a substantive right. Thus, if A is committed for care and safety, A cannot be held under purely punitive conditions. A has a substantive right to non-punitive conditions unless A has received criminal process.

Thus, Jackson supports the proposition that the involuntarily committed have a constitutional right to be held under conditions reasonably related to the purposes of commitment, a right that is procedural and substantive. If a person is committed for care, he should be confined in conditions reasonably related to that purpose--(i.e., providing at least some minimal, subsistence, level of care)--or else he should be accorded whatever procedures justify confinement under the actual conditions in which he is kept. At times, of course, as O'Connor v. Donaldson itself suggests, this will be purely a substantive right, rather than a procedural right--there are simply some purposes for which the state cannot legitimately confine a person no matter what procedures are used, e.g., confinement of a non-dangerous person for treatment.

In the case at bar, Romeo was committed for care and



protection. The conditions under which he is confined must be reasonably related to these ends or else he has not received procedural due process--he should receive instead the procedures appropriate to his actual confinement conditions. This can, or course, also be expressed as a substantive right--Romeo has a substantive right to conditions reasonably related to care and protection since he has been committed under procedures used by the state in confining persons for care and protection.

The other case supporting the application of the rational relationship test to the case at bar is Bell v. Wolfish, 441 U.S. 520 (1979). As discussed above, Wolfish involved a constitutional challenge to the conditions of confinement of pre-trial detainees. Like the case at bar, Wolfish involved persons who had not been accorded criminal process and was decided by reference to the due process clause. Like the involuntarily committed, the pre-trial detainees could not be punished at all because they had not been accorded the criminal process that was their due prior to punishment.

In Wolfish, pre-trial detainees challenged the constitutionality of their conditions of confinement. The lower courts held that a number of the conditions under which the pltfs were held were unconstitutional. The CA3 held that the pltfs, who had not been found guilty of any crime, could only be subjected to those "restrictions and privations" which "inhere in their confinement itself or which are justified by compelling necessities of jail administration."

This Court reversed, rejecting the "compelling necessity"



standard, and holding that the detainee's desire to be as free as possible from restrictions and discomfort was not a fundamental liberty interest entitled to the level of protection accorded under Roe v. Wade, et al. 441 U.S., at 534. All parties conceded that the government had a legitimate interest in detaining the pltfs to ensure their appearance for trial. The Court explained that under the eighth amendment, the detainees could not be actually punished because they had not yet been tried. Therefore, conditions could not "amount to punishment of the detainee." But the Court rejected the argument that every restriction placed on a detainee was a punishment; the relevant inquiry is whether the "particular condition or restriction of pretrial detention is reasonably related to a legitimate governmental objective." Id., at 539. If a condition or restriction is reasonably related to a legitimate governmental objective, it does not, "without more," amount to "punishment." Ibid (footnote omitted).

Under this approach, the terms and conditions of the confinement of the involuntarily committed should be considered to see if they are reasonably related to care and protection. With regard to the right to food and other non-medical confinement conditions, the involuntarily committed have a right to such food and conditions as can reasonably be expected to sustain them. With regard to medical care, the involuntarily committed are entitled to a level of care reasonably related to the state's purpose of caring for them. No medical care at all would clearly violate this standard. On the other hand, the Constitution requires only a reasonable relation, not a perfect fulfillment, of the state's



purpose. Perfect medical care would not, therefore, be mandated by the Constitution.

Can the standard of Estelle v. Gamble, establishing the level of medical care for prisoners under the eighth amendment be adopted as an appropriate level for patients involuntarily committed to receive "care"? The power of the state confines both against their will and makes it impossible for either to go independently to the doctor of his choice.

In Ingraham v. Wright, 430 U.S. 651 (1971) (Powell, J.), the Court held that the eighth amendment does not apply universally. There, the pltfs alleged that paddling school children constituted cruel and unusual punishment under the eighth amendment and the due process clause. In rejecting the eighth amendment claim, the Court examined the history of the amendment and the caselaw construing it and concluded that it was designed "to protect those convicted of crimes." Id., at 664. The Court declined to extend the amendment's protection beyond the criminal process, stressing that "[t]he prisoner and the school child stand in wholly different circumstances, separated by the harsh facts of criminal conviction and incarceration." Id., at 669. Unlike the prisoner, the school child is not classified as a criminal nor removed from family and friends. The Court concluded that the eighth amendment simply has no place in the school room.

The involuntarily committed have not been found guilty of crimes, so the eighth amendment does not apply directly to them. But, like the detainees in Wolfish, the state is not yet empowered to punish them in any way--let alone in a cruel and unusual way.



*convicted criminals - not to 376 groups*

And in Wolfish, the Court noted that "[a] fortiori, pretrial detainees, who have not been convicted of any crimes, retain at least those constitutional rights that we have held are enjoyed by convicted prisoners." Id., at 520.

I would argue that Ingraham stands for the proposition that some groups, e.g., school children, are in a situation so unlike that of prisoners that the eighth amendment is simply of no relevance to them. But Bell v. Wolfish stands for the proposition that other are so like prisoners that, a fortiori, they are entitled to at least those conditions of confinement to which the convicted are entitled, despite the fact that the eighth amendment does not directly apply. The involuntarily committed are much more like prisoners and pre-trial detainees than they are like school children. Like prisoners, and to a perhaps lesser extent pre-trial detainees, the involuntarily committed have been classified, stigmatized, and removed from their family and friends. They, like the pre-trial detainees in Wolfish, should therefore be accorded, a fortiori, at least those conditions mandated by the eighth amendment's proscription of cruel and unusual punishment.

But is the level of Estelle v. Gamble--deliberate indifference to medical needs or the unnecessary and wanton infliction of pain--a high enough standard for those who have not been accorded criminal process? It is precisely at this level--deliberate indifference to medical needs--that it is clear that the state is not confining the mental patient in conditions rationally related to the purpose (care) given for commitment. Moreover, on a policy level, there is no intuitively obvious reason a prisoner



should receive less medical care than the involuntarily-committed. I would therefore suggest the adoption of the Estelle v. Gamble standard. It is difficult to imagine any more generous standard that would not constitutionalize medical-malpractice torts whenever the patient has been involuntarily committed.

→ Applying these principles to the facts of the case at bar, it seems likely that the conditions under which Romeo was kept did not amount to punishment, let alone cruel and unusual punishment, and that the conditions were reasonably related to the purposes for which he was confined. The CA found that he was being punished because it considered shackling not within the range of conditions of confinement contemplated in a "habilitative institution" and, as a result, though not per se punishment, shackling raised a presumption of a punitive sanction.

There are several problems with this approach. First, there is the assumption that Romeo has a right to be in a "habilitative institution." The purposes for which he was committed--care and protection--do not require a habilitative institution. A custodial one will do. Next, it is by no means *True* clear that shackling is not within the range of conditions one would expect to find in even a "habilitative institution" for the profoundly retarded. Indeed, physical restraints appear to be widely used and are seen by some psychiatrists as necessary to control violent behavior. See H. Rosen & J. Digiacomo, The Role of Physical Restraint, 39 Jr. Clinical Psychiatry 228 (1978).<sup>17</sup>

<sup>17</sup>Romeo offered experts who would have testified that no ethical pshciatrist would have shackled a patient if any less-  
Footnote continued on next page.



Moreover, a closer look at the facts, as discussed in section I.A supra, reveals that restraints were used, not to punish Romeo but because in all likelihood the defts did not know how else to protect him from injury. When they did not use restraints, he was constantly being injured, and his mother filed this suit. Only thereafter, when the defts probably had no idea how to limit their liability, did they use restraints. Indeed, in this action, Romeo is seeking what may be impossible for anyone to provide him in an institutional setting: safety and freedom from restraints. The only time when these goals were both achieved seems to have been when he lived at home with his parents. After his father's death, however, his mother was unable to control his violence and keep him uninjured--see description of his condition when she first took him to the hospital, supra at 3-4. She now expects others to be able to do what she could not do, and to be able to do it in the context of a large institution.

If there is no presumption that shackling is punitive, shackling seems reasonably related to the purposes of Romeo's confinement. It protects him from injuries he would otherwise receive as a result of his own violence. The other conditions of Romeo's confinement also seem reasonably related to its purposes. Conditions were no doubt less than ideal; additional staff would no doubt have made his life easier, and perhaps additional programs

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restrictive alternative were available and that there is no dispute in the literature on this point. See discussion in section I.A supra. Both points are impeached by the article cited in text.



could effectively restrain his violence and teach him additional skills. But Romeo was not confined for treatment purposes and he had no right to treatment prior to confinement. When a state exercises its power to care for and protect an individual, there is no basis for imposing, as a matter of constitutional law, a duty to provide treatment also.

#### B. Immunity

If there is no affirmative right to treatment, the jury instructions appear to have been adequate.<sup>18</sup> But even if there is a constitutional right to treatment, the right was by no means clear at the time of the depts' acts, and they should, therefore, be covered by good faith immunity with regard to that right. This approach was taken by the CA5 in a recent case.

In Dilmore v. Stubbs, 636 F. 2d 966 (CA5 1981), the CA5 upheld the DC's dismissal of an action on the ground that officials of the Miss. state hospital could not have known that their policy of temporarily placing admittees in the most restrictive ward for

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<sup>18</sup>It is true that the instructions used the eighth amendment and the Estelle v. Gamble standard. And, as discussed above, neither applies directly as a limit to conditions of confinement for a group that has not received criminal process. But, as discussed above, there is no apparent reason why criminals should, as a matter of constitutional law, be entitled to less in the way of medical care than the involuntarily committed. And in Wolfish, the Court indicated that the eighth amendment standard of cruel and unusual punishment a fortiori sets limits on conditions under which detainees could be kept even though the amendment itself does not directly apply. See discussion at 36-37 supra. The references to the eighth amendment would seem to be harmless error and the Estelle v. Gamble standard appropriate unless you think there is a constitutional right to treatment.



observation and treatment would give rise to a constitutional violation and therefore such officials were immune from damages in a civil suit under §1983.

In Procunier v. Navarette, 434 U.S. 555 (1978), cert was granted on whether negligence in handling prisoners' mail violated the constitutional rights of prisoners. Rather than reaching this issue, however, the court held that the depts were immune from damages in a §1983 suit because they could not have known that their conduct would violate the constitutional rights of prisoners.

A similar approach could be taken in disposing of the case at bar. The jury was instructed that there was a right to an Estelle v. Gamble level of treatment, and there is no way the depts could have known that a higher standard would apply.

An argument can be made that the case should be disposed of on immunity grounds. Reaching the substantive merits of a claimed new constitutional right may be inappropriate in a case for monetary damages because of the inherent unfairness of assessing such an award against depts in such an action; that unfairness may create too strong a pressure against finding any such new right. I do not find this a compelling reason for ducking the issue on which cert was granted, however. Even if the new constitutional right is found, on remand, jury instructions on good-faith immunity will be given.

c. Negligence.

The Court has now granted cert three times to determine whether a §1983 claim can be based on mere negligence and has never



reached the issue. See Procunier v. Navarette, 434 U.S. 555 (1978); Baker v. McCollan, 443 U.S. 147 (1979); Parratt v. Taylor, \_\_\_\_\_ U.S.L.W. \_\_\_\_\_, No. 79-1734 (Mar. 2, 1981). It now appears unlikely that the Court will reach any across-the-board holding on a single standard of culpability for §1983 liability. In Parratt v. Taylor, you indicated that you would not necessarily give the §1983 intent requirement uniform treatment:

"The intent question cannot be given "a uniform answer across the entire spectrum of conceivable constitutional violations which might be the subject of a §1983 action," Baker v. McCollan, 443 U.S. 137, 139-40 (1979). Rather, we must give close attention to the nature of the particular constitutional violation asserted, in determining whether intent is a necessary element of such a violation." Parratt v. Taylor, slip op. at 2 (Powell, J., concurring in the result).

In Taylor, you did, however, indicate that in the context of substantive due process claims, you would not view negligence as a sufficient basis for finding a constitutional deprivation:

"As I do not consider a negligent act the kind of deprivation that implicates the procedural guarantees of the Due Process Clause, I certainly would not view negligent acts as violative of these substantive guarantees." Id., at 8.

This case could be used as the basis for holding that deliberate indifference, rather than negligence, is needed to hold an official liable for a violation of substantive due process. The rejection of negligence as the basis of liability would be based on the history and purpose of §1983 and would limit the dicta in Monroe v. Pape, 365 U.S. 167 (1961). In Monroe, the Court suggested that all tort concepts might be applicable in §1983 actions because it "should be read against the background of tort liability." Id., at 187. This language actually occurs in the context of rejecting the

you  
↙



importation of a criminal-law standard of "wilfulness" into §1983 and adopting instead the civil concept of intent (a man intends the natural consequences of his actions) found in tort law.

The "background of tort liability" language should be limited to the intent requirement, and its extension to incorporate other elements of tort law, i.e., negligence liability regardless of the underlying constitutional tort, should be rejected as inconsistent with the history and purposes of §1983, which indicate that the statute was not intended to constitutionalize tort law whenever a deft was a state official.

Thus, although the decision would not hold that negligence is never enough to express a claim under §1983, it would hold that negligence is not enough to state a substantive due process claim.

#### D. The Proffered Expert Testimony

During the trial, the trial judge refused to allow testimony of experts proffered by Romeo to show that Romeo could have been effectively treated under other programs (not involving restraints) and that the lack of programming in Romeo's ward was the cause of aggressive behavior. He would also have testified that psychologists are ethically bound to choose methods that do not use restraints and that there is no dispute in the literature on this point.<sup>19</sup> The trial judge disallowed this testimony. He explained

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<sup>19</sup>Even the most cursory glance through the literature reveals that the footnoted sentence is not true. See H. Rosen & J. Digiacomo, The Role of Restraint, 39 Jr. Clinical Psychiatry 228 (1978).



44.

that it was relevant to a malpractice suit but that he did not consider it relevant to a §1983 constitutional claim.

The CA3 did held that the trial judge erred in disallowing this testimony because it was relevant to the question of whether had been deprived of his substantive to treatment as delineated by the CA3. Petn at 26a-27a.

As a general matter, the admission of expert testimony rests within the sound discretion of the trial judge and will not be overturned absent manifest error. Spokane and Inland Empire Railroad Co. v. United States, 241 U.S. 351 (1915); Spring Co. v. Edgar, 99 U.S. 645, 656 (1878).

In Salem v. United States Lines Co., 370 U.S. 31, 35 (1962), the Court explained the general rule:

"[E]xpert testimony not only is unnecessary but indeed may properly be excluded in the discretion of the trial judge if all the primary facts can be accurately and intelligently described to the jury, and if they, as men of common understanding, are as capable of comprehending the primary facts and of drawing correct conclusions from them as are witnesses possessed of special or peculiar training, experience or observation in respect of the subject under investigation."

In Rhodes v. Chapman, 49 U.S.L.W. 4677, No. 80-332 (June 15, 1981) (Powell, J.), the Court upheld the exclusion of expert testimony on prison conditions:

"As we noted in Bell v. Wolfish, 441 U.S., at 543-544, n.27, [expert] opinions may be helpful and relevant with respect to some questions, but "they simply do not establish the constitutional minima; rather, they establish goals recommended by the organization in question." Rhodes v. Chapman, n.13.

Applying these principles to the case at bar, the key question is whether the jury could understand the primary facts



relevant to the constitutionally-mandated "minima" without the testimony of resp's experts. If so, the exclusion was not erroneous no matter how relevant the testimony. The answer turns, of course, on the "constitutional minima" one would find in the case at bar. If you agree that there is no affirmative right to treatment or to the least restrictive treatment method, then the trial judge did not abuse his discretion in disallowing the testimony. If you think that the involuntarily committed have a constitutional right to some affirmative level of treatment under the least restrictive conditions possible, then a jury is going to have no idea what the primary facts are without expert testimony.

E. Resp's State-created Substantive Liberty Right

Romeo argues that the state has created a right to treatment (a liberty interest) and that the failure to provide him with that treatment violates due process. Insofar as Romeo is only arguing that the state's deprivation of his liberty to "care and protect" him gives him a substantive right to conditions reasonably related to those purposes, I agree. See Resp. (red) at 15 (quoting Jackson v. Indiana). This principle is one of federal constitutional law, however, and is entirely independent of the particular language in any state commitment statute.

Resp makes another argument: Penn., by statute, as interpreted by the Pa. S. Ct., has given him a right to certain services and certain treatment. See id., at 27 (citing In re Schmidt, 429 A. 2d 631, 636 (Pa. 1981) (retarded persons are entitled to "live a life as close as possible to that which is



typical for the general population"). According to resp, the failure to accord him this right (a liberty right) is a violation of due process.

Resp argues that it is undisputed that state-created rights are entitled to due-process protection. The cases he cites involve--insofar as they involve state-created rights--procedural, not substantive, liberty rights. For example at 25, he states:

"[T]he state statute created a valid liberty interest in the expectation of care which the State may not thereafter arbitrarily abridge; See Vitek v. Jones, supra [procedural rights of convicted felon transgered from state prison to mental hospital]; Wolf v. McDonnell, supra [procedural rights attached to state-created interest in "good time"]; O'Connor v. Donaldson, supra (when the State confines a person for a stated purpose, it must fulfill that purpose) [state cannot confine involuntarily non-dangerous mentally-ill person who can survive on outside]; Jackson v. Indiana, supra [there must be a reasonable relation between the purposes of confinement and the conditions of confinement]."

As the bracketed descriptions indicated, none of these cases involve a state-created substantive liberty right.

Indeed, only Wolf v. McDonnell (right to procedures when "good time" taken away) involves a state-created right.

The right to conditions of confinement reasonably related to the purpose of confinement is a federal right independent of state law. O'Connor v. Donaldson held invalid a state law providing for commitment solely for purposes of treatment. After O'Connor v. Donaldson, the only relevance of state law to conditions of confinement is that state law defines the purpose of commitment, justifying, as a matter of federal constitutional law, the deprivation of liberty. Federal constitutional law recognizes only two purposes as legitimate: care or protection. If a state has



another purpose, it simply cannot deprive a person of liberty for that reason no matter how good it would be for them. And the fact that the state has additional purposes--e.g., treatment--does not automatically make the attainment of that that purpose a matter of federal constitutional law.

In the case at bar, Penn.'s civil commitment law provides for confinement for "care and treatment." Resp. (red) at 26. Conditions that provide custodial care are consistent with the purpose of "care," and more is not required by the federal Constitution. And the fact that the Pa. S. Ct. has stated that there is an affirmative right to "normalization" for the mentally retarded under that act does not make its achievement a federal issue.

Moreover, I do not understand how a state can possibly create a substantive liberty right. One is born with the substantive right to liberty. It does not depend on any beneficence conferred by the state. When the state releases a criminal to absolute liberty (without probation), it is not conferring liberty upon him, liberty which it can either give or withhold because it is truly the state's to dispose of. Rather, the state must release him when he has served the time the state legitimately imposed as punishment. A person out on bail enjoys liberty at the grace of the state, but he only has a procedural, not a substantive, right to that liberty. After the appropriate procedures, the state can take that liberty away again. I find the idea of substantive liberty turning on state law nonsense.

*State  
can  
create*

Finally, if resp's argument here works to make state-



created substantive "liberty" interests federal issues, I don't see where it would stop. Would every state created "liberty interest" (expectation?) be entitled to federal due-process protection? This could conceivably include every state-created hope. Resp has never included state-law claims in this action, and his argument would turn every state-law claim into a federal constitutional issue.

### III. CONCLUSION

There are three ways to decide this case: the substantive right to treatment; immunity; and the lack of the relevant intent.

On the first point, the state has legitimate reasons for committing resp in the exercise of its parens patriae and police power. As a general matter, exercises of these powers need only be rationally related to the purposes of the exercise. Unless you are willing to find a "fundamental right" (a substantive due process right) to treatment, the applicable constitutional standard is whether the conditions of Romeo's confinement are rationally related to the legitimate goals of care and protection. In applying this standard, the standard enunciated by Estelle v. Gamble would seem in appropriate to adopt: when those in a state institution are deliberately indifferent to a patient's needs, the state is not holding the patient in conditions reasonably related to the only legitimate reasons for commitment, care and protection. (If you think <sup>that</sup> there is no affirmative right to treatment and that the standard of Estelle v. Gamble is appropriate, then the trial judge did not abuse his discretion in refusing to admit resp's expert testimony.)

no

yes



On the next point, the Court could order the reinstatement of the jury verdict because the debts are covered by good faith immunity. The jury was instructed to find them liable if their conduct met the Estelle v. Gamble level of deliberate indifference. They could not reasonably have known, at the time they acted, that the Constitution would impose a higher standard, and the jury verdict should therefore be sustained on immunity grounds.

The case could also be decided on the ground that deliberate indifference is needed to state a §1983 claim for violation of a substantive due process right.



1/5/87 [82]

80-1429 Youngberg (Supt. State Hospital) v Romeo  
(Resp - involuntarily confined) Violent patient

CA 3 held (5-4) that an involuntarily confined mental patient had a "liberty interest" (substantive D/P right) that prevented her being "shackled" or confined except to meet a "compelling state interest," & that "least restrictive means" must be used.

Also, as to "treatment," there ~~also~~ is a D/P right, & if none is provided - State must justify by compelling interest.

Reverse (on basis of tentative views!)

1. State acted as paterfamilias & in exercise of police power (Resp is violent).

2. Resp is entitled to adequate housing & decent <sup>including med.</sup> care. ~~But~~

Errors of CA3 { State is not required to justify its <sup>care</sup> by a "compelling state interest", or to show "least restrictive means".

3. Standard is that of Estelle v Gamble (liable only for "deliberate indifference")  
x x v

→ Also could hold no Const Tort (no 1983 case) when only mere negligence is the conduct.



80-1429 YOUNGBERG v. ROMEO

Argued 1/11/82



"Compelling reason  
for ~~the~~ shackling  
or for providing  
no care."

As must  
show that  
shackling  
was least  
restrictive  
means



Callshore (Dep. AG of Pa)

CA 3 in banc had decided the  
"controlling" const. rights.

The "traditional" D/A standard  
should be applied; whether the treatment  
is rationally related to leg. state interest.

Altho case has not been tried,  
record is adequate to determine correct  
standard.

Conceder some "liberty interest."

CA 3 was wrong in saying  
there is a const. right to "treatment."  
But conceder a right to "care"

Distinction bet. ~~as~~ "medical case"  
& "psychiatric case". Conceder obligation  
to provide the former, but say the  
latter ~~is not~~ may blend into med. case.

~~Case~~

"Habilitation", as defined by CA 3,  
requires a treatment designed to  
enable a patient to attain his  
maxim capability.

Mentally retarded who are  
not dangerous to the themselves  
or others normally are not admitted.  
People are dangerous to themselves  
when they can't, alone, feed & care for  
themselves,  
~~CA 3~~

I find  
their  
argument  
convincing

7.



## Allshouse (cont.)

CA3 agreed ~~as~~ the Court imposes no obligation on a State ~~created~~ to undertake any care of mental patients.

## Troyak (Resp.)

Q is whether in addition to "care" there is a Const. right to "Treatment"

Argues case should be allowed to go to Trial.



To: Mr. Justice Powell

From: Mary

In re: No. 80-1429, Duane Youngberg, et al. (superintendent, et. al.), v. Nicholas Romeo, by his mother and next friend (*Damage suit vs three officials individually & officially*)

This memo discusses several possible articulations of the substantive rights of the involuntarily committed to care and protection.

1. Negligence. (a). To establish a medical-malpractice claim in an action against a treating physician, a pltf must establish: (1) the existence of the physician's duty to the pltf, usually based on the MD-client relationship; (2) the applicable standard of care and its violation; (3) a compensable injury; and (4) a causal connection between the violation of the standard of care and the harm complained of.

The standard of care imposed generally by negligence law is not one of acting in good faith, but rather of acting as would a reasonable man in like circumstances. For doctors, this objective standard is measured by the <sup>"</sup>acts of a reasonable doctor in similar circumstances.<sup>"</sup> The prevailing statement of the professional standard is referred to as the "customary practice" formulation: a



*malpractice standard of neg. in suits  
vs doctors*

2.

*Doctors*

doctor has a duty to use the degree of care and skill expected of a reasonably competent practitioner in same class (with the same specialty) and in the same or similar circumstances (which traditionally limits the comparison to MDs in the MD's geographic area). King, The Law of Medical Malpractice, at 37-44 (1977).

*Hospitals*

When the action is against the hospital, the negligence standard of care is articulated slightly differently. Private hospitals are not the guarantors of the safety or health of their patients. The duty imposed on private hospitals is a duty to exercise reasonable care in accordance with sound hospital practice to protect the health and safety of patients.

If doctors have a good-faith immunity, a substantive right to care under a negligence standard will not result in liability against a treating physician in the absence of a lack of good faith. And doctors in state institutions should have at least a good faith immunity. In past immunity decisions, the Court has refused to extend liability when it would interfere with the proper functioning of institutions. E.g., Imbler v. Pachtman, 424 U.S. 409, 426 (1976) (Powell, J.) (even qualified immunity for prosecutor would have adverse effect upon the functioning of the criminal justice system).

*you*

State institutions cannot be attractive places in which to work. If doctors are subject to personal liability on the basis of judgments and decisions made in good faith, it will be even harder for such institutions to attract and keep the competent professionals they need to provide patients with good care. A doctor should, therefore, be protected provided he has reasonable

*Distinguish bet. private & public action  
as the "deprivation" must be of a const  
right. And good faith immunity would exist  
Ward v. Strickland*



grounds for believing that his action does not work a constitutional deprivation. See Wood v. Strickland, 420 U.S. 308, 318 (1975) (White, J.).

*What about standard in suit for negligence*

Provided that doctors have this good faith defense, they will be protected regardless of the substantive standard. Would negligence then be the appropriate standard, applicable in actions for injunctive relief or instances in which a doctor acts without good faith? This would impose the "customary practice" standard on treating physicians and would obligate state institutions to provide reasonable care in accordance with sound hospital practice to ensure the safety of patients. This standard is doubtless desirable. But it would mean that states could only commit those they could care for at the generally accepted level afforded by private institutions. This would impose severe financial constraints on states and would constitutionalize medical malpractice in state institutions. The choice before a state would then be one of two extremes: either provide no care and protection or provide a fairly high level of care and protection. As a historical matter, the Constitution certainly has not been regarded as imposing this choice on states.

2. The standards applicable to prisoners. If the involuntarily committed are only entitled to the substantive standards afforded prisoners, their constitutional rights are not violated if their treating physicians and the administrators of their institutions are not deliberately indifferent to their serious medical needs. See Estelle v. Gamble, 429 U.S. 97 (1976)



(medical treatment of prisoners). They would also have the right to conditions that are not equivalent to "serious deprivations of basic human needs"--conditions "cruel and unusual under the contemporary standard of decency." Scheuer v. Rhodes, 49 U.S.L.W. 4677, 4679 (1981) (Powell, J.).

*8th doesn't apply*  
 The eighth amendment is not, however, the relevant limit on the ability of the state to subject the involuntarily committed to objectionable conditions. First, the state does not have the right to punish the involuntarily committed, and cannot, therefore, subject them to treatment or conditions as long as the conditions or treatment fall short of cruel and unusual punishment. Moreover, the state has committed these people to care and protect them. This is quite different from confinement to punish--confinement to care certainly suggests a higher substantive obligation on the state than that imposed after the state has afforded the procedures required prior to punishment.

In addition, the Estelle Court relied on the contemporary standard of decency manifest in modern legislation codifying the common-law view that "'it is but just that the public be required to care for the prisoner, who cannot, by reason of the deprivation of liberty, care for himself.'" 429 U.S., at 95-96. With the involuntarily committed, care should be given not just because the patients are unable to obtain it on their own due to their confinement, but because their very confinement--for care and treatment--is unjustified in the absence of that care and treatment. There is some force to the argument that, if a state cannot provide a reasonable level of care and protection, it should have to face



the political consequences of that inability, a pressure it will only feel if it is not allowed to confine the incompetent without such care.

3. Suggested standard. (a). General living conditions. Under Bell v. Wolfish (conditions of pre-trial detainees), at a minimum, the involuntarily confined are entitled to conditions reasonably related to their conditions of confinement, i.e., because they are confined for care and protection, they should receive at least decent and adequate food, living conditions, and clothing.

(b). Protection and medical care. Because they are committed for protection, the involuntarily committed have the right to conditions designed to afford some degree of safety. On the other hand, the fact that the state has confined them to protect them cannot mean that the state is strictly liable for every injury sustained. Articulation of even a standard is difficult. The patient in the private institution would have the right to the exercise of reasonable care in protecting the safety of patients by the hospital administration. As a minimum, under the "reasonably related" standard of Jackson v. Indiana, the involuntarily committed are entitled to conditions that can reasonably be expected to provide enough safety to justify commitment.

Similarly, because they are committed for care, the involuntarily committed have the right to medical care and attention, at least sufficient to justify their committal.



Is it possible to articulate the level of protection and of medical care and attention which, together with decent living conditions, would justify commitment to care and protect? In my bench memo, I suggested that it is at the point at which the authorities are "deliberately indifferent" to the needs of the involuntarily committed that the state is not providing conditions reasonably related to the purposes of confinement.

That standard may be too low. The "deliberate" part of deliberate indifference certainly suggests more than mere indifference--it suggests a studied, intentional, and cruel attitude. This is borne out by the examples of deliberate indifference given by the Estelle Court:

"See, e.g., Williams v. Vincent, 508 F. ed 541 (CA2 1974) (doctor's choosing the 'easier and less efficacious treatment' of throwing away the prisoner's ear and stitching the stump may be attributable to 'deliberate indifference ... rather than an exercise of professional judgment'); Thomas v. Pate, 493 F. 2d 151, 158 (CA7), cert. denied sub nom. Thomas v. Cannon, 419 U.S. 879 (1974) (injection of penicillin with knowledge that prisoner was allergic, and refusal of doctor to treat allergic reaction); Jones v. Lockhart, 484 F. 2d 1192 (CA8 1973) (refusal of paramedic to provide treatment); Martinex v. Mancusi, 443 F. 2d 921 (CA2 1970) (prison physician refuses to administer the prescribed pain killer and renders leg surgery unsuccessful by requiring prisoner to stand despite contrary instructions of surgeon)." 429 U.S. n.10, at 96.

Thus, by deliberate indifference (sufficient to be cruel and unusual punishment), the Court meant a rather extreme indifference to unnecessary pain by a doctor or the intentional denial or delay of access to medical care by others.

But if the doctors and supervisors in a state institution are simply indifferent to the medical needs and safety of their patients, has not the state failed to provide conditions reasonably



7.  
related to the care and protection for which they confined the individuals? This standard would be at least somewhat lower than the Estelle standard, because mere indifferent indifference--rather than the higher standard of deliberate indifference (with its overtones of intentional infliction of unnecessary pain) would violate the constitutional rights of the involuntarily committed. Another formulation might be that doctors are indifferent when they fail to make any attempt to provide decent conditions or care to residents of state institutions.

This standard would be far from the negligence standard. The question would not be, what treatment or conditions would be customary in a private hospital or in treatment from a private physician. Instead, the question would be whether those the state has employed to care for and protect the involuntarily committed have made at least a reasonable effort to do so.



The Chief Justice

Remand; we voted to Rev. & Remand  
(Did not vote ~~to~~ until after  
discussion of both cases - at length!)

Agree generally with ~~Serby~~ Serby's  
standard

We discussed 80-1417 (Mills) & then case  
together - a commingled discussion over  
my objection. Difficult to know which case  
one was talking about. My notes are not

Justice Brennan

Vacate Remand? <sup>reliably guides to</sup>  
Here we deal only with patients <sup>to where we stand</sup> considered to be  
wholly incapable of making decisions.

CA 3 went too far. Even counsel conceded CA 3's view  
should not be accepted.

Would hold that "basic care" is all that is  
necessary. (WJB did not ~~see~~ define "basic" care).

~~Difficult~~

Whether shackles are needed, should be left  
to med. staff.

~~CA 3~~ (WJB seems to be somewhere  
between Adams & Serby)

Justice White

Vacate  
Remand & remand

Agree with Serby

(BRW left during the discussion)



Rev &amp; Remand

X X V

After discussion, TM agreed  
with JRS & me to remand in Rbe

Vacate &amp; Remand.

The standard applied by CA3 is  
wrong.

There should be "flexible" review in  
medical cases - higher than rational  
but less than compelling.

 .

Vacate & Remand (probably after judgment  
& remand for trial on proper  
standard)  
Agree generally with Serby



Reverence

LA 3 went way too far.

Justice Stevens

~~Vocate & Remand~~ Reverence & Remand

Agree gen. with J. Sotomayor

The 14<sup>th</sup> Amend speaks of "deprivation" of liberty. This does not require highest level of care. Entitled to minimum med. care & decent care.

'Deliberate indifference' standard in 8<sup>th</sup> Amend

Standard ~~based on this~~ in case like this is min. care about as ~~related~~ by Sotomayor.

Justice O'Connor

Vocate &amp; Remand for trial on correct standards

Med. judg. normally should control

As to declaring a const. right of treatment, we should not include a const. right to any ~~to~~ particular level.

Sotomayor ok. far better than Adams.



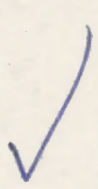
Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
THE CHIEF JUSTICE

January 13, 1982

MEMORANDUM TO THE CONFERENCE:

Re: No. 80-1429 - Youngberg v. Romeo

The above could well have been set back-to-back with No. 80-1417, Mills v. Rogers. Since I overlooked that the next best thing is to discuss them together. (Each involves a good bit of "insanity"!) 

Accordingly, I suggest discussion of Youngberg be laid over until Friday's conference.

Regards,

WAB



lfp/ss 02/22/82

file

MEMORANDUM

TO: Mary DATE: Feb. 22, 1982  
FROM: Lewis F. Powell, Jr.

80-1429 Youngberg v. Romeo

This memorandum, dictated at home on Sunday, reflects my initial reaction to your draft of Feb. 19. I should say that I am quite "cold" on the case, and on the eve of two weeks of argument I will have no opportunity to go back to the briefs or even to your fine bench memo. Thus, for the most part my comments are suggestive and inquisitive, rather than definitive.

My general impression is that the draft is quite a bit too long. In a case of this kind where there is no real guidance in our cases, and subjective judgments will be made by all of us, the less we write the more likely we are - in all probability - to obtain a Court.

I now comment briefly on the various parts of the draft.

Part I (p. 1-12)

This is an excellent statement of the case.

Part II (p. 12-24)

Subpart A (p. 13-18). The draft finds a liberty interest continues following commitment, makes clear that this is substantive rather than procedural, but reasons that



the Matthews v. Eldridge factors also apply for purpose of analysis. (13-17) Subject to some editing that I have undertaken, I think to this point, the draft is on target.

In stating, in accord with the Matthews formula, respondent's interests in the first full paragraph on page 17, I would think it desirable to state them in terms of respondent's three claims (see p. 10 of your draft). As now framed, this takes no account specifically of the claimed rights to be free of physical constraints or the right to safety and protection.

Subpart B (p. 19-24). My impression of these five pages in particular is that they are a bit discursive, and are not as sharply focused on the precise claims as may be desirable.

Would it make sense, Mary, to eliminate subpart B, and restructure Part III by identifying and addressing in order respondent's claims (i) to be free from physical restraint, (ii) to protection and safety, and (iii) to treatment. After all, these are the interests claimed in this case, and those that must be weighed against the state interests.

There does not now seem to be a logical flow from page 19 to the end of the draft. If we structure this around respondent's three claims, there would be a logical flow. Also, the draft could be substantially shortened.



I note, for example, that in Part III the draft returns - at least it seems to me - to what already has been said about the presence of a substantive due process claim and its distinction from procedural due process (see pp. 28-30).

It is clear that the state owes respondent a duty to take reasonable measures to protect him from violence by other patients. The state owes a duty to other patients to protect them from respondent's violence, and also to protect respondent himself from his own self mutilation. Thus, reasonable shackling - on the basis of this record - is necessary at times.

Medical care and treatment are quite different kinds of duties. I suppose care (other than medical care) could be defined or identified as suggested on p. 24, to mean food, shelter, clothing and reasonable safety. The state<sup>s</sup> concedes these duties. In view of respondent's specific allegations, and his profound handicap, special safety measures - in addition to those generally applicable - probably are required. I would address "safety" briefly as separate from the conceded duty to provide food, shelter and clothing.

The most difficult question is what level of medical care and treatment is required. Here, I think we are generally agreed that the substance of Chief Justice <sup>Judge</sup> ~~Justice~~



Seitz's formulation is about right. Perhaps you can frame it more felicitously. (Any help <sup>from</sup> here from amici briefs?)

Part IV (p. 32-33)

I understand that you have not concluded <sup>your</sup> draft of this part. My recollection is that Judge Seitz, and the judges who agreed with him, would remand this case for retrial under proper instructions with respect to the applicable standards. I believe Seitz also agreed with the majority that on a retrial the testimony of respondent's experts should be admitted. Perhaps the best things for us to do with respect to this is simply to say in a footnote that we have no reason to disagree with the view that such testimony should be admitted.

\* \* \*

I am aware, Mary, that restructuring the opinion as above suggested will require substantial rewriting. I emphasize that there is no time pressure whatever. It may be a good idea before you undertake changes in the organization of the opinion, to have David read the draft simply to have the benefit of his advice as to how to organize it. I may not have made the best suggestions.

This is not an easy case, and yet it is quite an important one. So take your time.

L.F.P., Jr.

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L.F.P., Jr.

ss



lfp/ss 03/26/82

MEMORANDUM

TO: Mary DATE: March 26, 1982  
FROM: Lewis F. Powell, Jr.

80-1429 Youngberg v. Romeo

Your revised draft of 3/24 is quite good and I congratulate you on putting together so well the "humpty dumpty" that I handed you a few days ago.

I have indicated on the left margin pages on which I have made an occasional "fly specking" editing change.

The only substantive point that still concerns me is our reliance on the Matthews v. Eldridge formula. In thinking further about this, I am not sure that it is useful. Of its three factors, the one that often is decisive in a procedural due process case concerns the "risk of error". This factor is not specifically involved in a substantive due process case. I have dictated a very rough alternative that would substitute for portions of pages 13-15. I suggest that you discuss with David whether my concern about ~~my~~ reliance on Matthews is well founded, and whether something along the lines of my rider is preferable. Of course, you will have to edit and clarify my rough draft. I omitted Parham altogether, and perhaps this should be included.



It is still also desirable to add a footnote indicating in a general way what we mean by "professionals". We can be reasonably certain that the average state mental institution is understaffed with genuine professionals. Rather, they use employees that a hospital like George Washington would characterize as "orderlies", or "interns" - sometimes people who have had no formal training. Yet, some people with practical experience are very good indeed. Try a draft of a rather broad definition to be added as a footnote, making clear that the term "professional" is not limited to graduate M.D.'s in medicine, psychiatry, or even physical therapy.

Subject to the foregoing, I think you have a fine draft. Let's have your editor review it and then move it to a printed Chambers draft promptly. I would like, if it seems reasonable, to circulate both your case and Mills before the Chief Justice makes assignments for the March arguments. This would mean circulating by April 2.

I have mentioned to Dick the importance of Mills and Romeo being entirely consistent, both in substance and terminology. In addition to David, you and Dick should collaborate. .

L.F.P.  
L.F.P., Jr.

ss

cc: David and Dick



lfp/ss 03/26/82

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L.F.P., Jr.

ss

cc: David and Dick



FM

df1 04/01/82

To: Justice Powell  
From: David, Mary, Dick  
Re: Youngberg v. Romeo: No. 80-1429

We are agreed that Part II of the opinion--in which you describe the competing interests of the state and the individual--needs some revision. The opinion needs to defend the proposition that a person who has been committed to a mental institution retains a "liberty" interest in safety, freedom from bodily restraint, and in training (the state concedes food and medical treatment).

It seems fairly easy to argue for a liberty interest in safety. First, there are cases that suggest as much. Second, it would shock the conscience to permit the state to house such patients in unsafe conditions. Third, the conditions in which persons are held must bear some reasonable relation to the state's purpose in confining them in the first place. So long as a person is confined because unable to take care of himself, the state can hardly hold him in conditions in which he is endangered. (However, if the State only confined someone because dangerous to others, then this third point would not be of any force.)

The argument that a patient retains a liberty interest in free movement is only slightly more difficult to



make. It is more difficult because whereas the commitment proceeding would not seem to reduce a patient's interest in safety, it clearly does restrict a patient's ability to move about--either outside or within the institution. Even so, it would seem fairly clear that the state cannot simply shackle someone to the bed for no reason at all. That would be tantamount to punishment. It would not be permitted in a prison; a fortiori it is impermissible here. In sum, we think you can argue persuasively that a patient retains a liberty interest in free movement. Yet the interest has been qualified by the commitment proceeding such that a "compelling necessity" standard for shackling--the standard adopted by the CA3-- is not appropriate.

Much more difficult is the claim that a patient has a liberty interest in training or "habilitation." The "right to treatment" question has been here before in O'Connor. Justice Stewart found there that there was "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." He characterized the question as a difficult one. In our current draft we simply assume that such a liberty interest exists. Given that the question is so important and controversial, the draft should address the question head on. We think you have three choices:

1. You can find a liberty interest in training by finding that civilized society recognizes such an interest.

| ya



The incorporation cases such as Palko and Adamson, Justice Harlan's dissent in Ullman, and Justice Frankfurter in Rochin establish the sort of rhetorical approach used in "natural right" or substantive due process cases. As you noted in Furman, the eighth amendment cases and the incorporation cases are essentially similar in approach: the Court looks to "objective" indications of contemporary ethics--state legislation, lower court decisions, expert writing etc. One can make out a fairly persuasive case for a right to training. Of course, you will be subject to the charge that you made it up. Also, if it is true that "contemporary morality" recognizes a right to treatment then it may be said that there is no reason for the Court to create a constitutional requirement.

2. Alternatively you can find that there is no right to training. If the State provides care--food, medical treatment, and shelter--and safety, it need not provide educational or habilitative programs as a constitutional matter. There are hard choices for a state to make as between educating Romeo (to tie his shoes or dress himself) and between providing better education for ghetto children in Philadelphia. The constitution does not require the state to provide for Romeo simply because the State has had the humanity to institutionalize him.

3. Finally, you can find a right to some minimal level of treatment as an incident of the right to safety,



*incident to safety*

care, and freedom from restraint. Even if you find that there is no broad right to treatment--subject to the same Seitz standard as the right to safety and freedom of movement-- you need not rule out all "right" to training. Although there would be no direct constitutional right to training, to the extent that training was necessary to safety it might be required. Moreover, when some minimal amount of treatment might significantly contribute to the comfort of a patient or might make shackling unnecessary or less necessary then it might be required as well. It will be somewhat difficult to give precision to this minimal "right" to treatment. But in any event there would be no general right to training such as the draft now proposes.

*I agree*

Kissinger always presented Nixon with 3 options--two of which were usually crazy. We have done the same! Probably the third of these alternatives is the most desirable, but it is unclear whether it would gain a Court. For that matter, it is unclear from the Conference which of the alternatives has the most support.

Finally--and however you choose--you may wish to sharpen the standard a bit, or express it in more traditional language. We are quite divided on how the standard should be stated. Perhaps we can discuss this further after you decide the right to training question.



lfp/ss 04/03/82

80-1429 Youngberg v. Romeo

Memo to Mary, David and Dick

Your memorandum, written on April Fools Day, leaves me little choice! In gentle language you warn me that, following Kissinger's practice with Nixon, you present three "options" - two of which are "crazy". One of the "crazy" options is the one that I incorporated in the draft opinion.

At least you treated me better than Kissinger treated Nixon. I cannot imagine his identifying for the President the "crazy" ones.

Kidding aside, I am not yet entirely persuaded to give up at least a part of my "crazy" view that there is an obligation to provide some "training". It may be that, in part at least, differences of view turn on definitions. I have taken another look at Joel Klein's amicus brief, and he argues for the following - stated in the briefest summary:

Civil commitment constitutes a significant deprivation of liberty. The mentally retarded therefore have a substantial liberty interest in not being confined without "habilitation". This is a new term for me. Joel



defines it as a term used by psychiatrists rather than the term "treatment":

"The word 'habilitation' rather than 'treatment', is used to refer to programs for the mentally retarded because mental retardation is . . . a learning disability and training impairment rather than an illness. While psychiatric treatment may comprise part of a program for the mentally retarded, the principal focus of habilitation is upon training and development of needed skills." (Brief, p. 4, n. 1).

The argument makes the following points: lack of habilitation will deny the only real chance the confined person has to regain freedom, as mental retardation does not lessen by itself. Habilitation is necessary to develop skills for the patient's own care, and a capability - where this is possible - for the patient to live independently or with the help of family. Even if this type of training does not lead to eventual release, it may increase the liberty achievable within the institution itself.

The analogy is drawn to the state's duty to provide medical care. In Estelle v. Gamble (429 U.S., at 97), we said that principles derived from the Eighth Amendment "establish the government's obligation to provide medical care for those whom it is punishing by



incarceration". The principal medical needs of a person in a mental institution are psychiatric. In this case the state concedes, as I understand it, a duty to provide medical care as this term is used for physical ailments. And, certainly in most cases, psychiatric care is provided by M.D.'s and is medical care also. This includes a great deal more than prescribing drugs.

Of course, psychiatric patients vary widely in their needs. My guess is that professional judgments would conclude that Romeo's condition is beyond the capacity of anyone to improve by treatment or training. But I would assume that a large percentage of patients can and do respond to programs designed to improve the patient's capacity to function more normally within the institution if not outside of it.

I put this question: if a confined person has a constitutionally based liberty interest in reasonable medical care, would this not embrace the type of such care that is the normal treatment provided by psychiatrists? Putting it differently, is the state's duty to patients confined in a mental institution limited to provide medical care for all health ailments except psychiatric care?

*Training v. psychiatric  
medical*

*Cost? ?*



It may be that our difficulty has arisen in part from viewing "training" as something separate and apart from the overall duty of "care", that concededly includes housing, food, clothing and medical care. If an inmate *would it* suffered a stroke, medical care would include physiotherapy. Specifically, where are we drawing the line and is it justified by any constitutional rationale?

I have not mentioned your discussion of "safety", as I agree with it. The safety of a patient - from injury to himself or by others - is certainly a liberty interest that a state owes even persons criminally convicted. Indeed, the term "care" viewed in its normal sense seems broad enough to include this and each of the needs that we have identified separately.

The foregoing reflects my concern as to the soundness of limiting the "sane" option as narrowly as I read your memo. What does my "braintrust" think?

\* \* \*

I add that when we agree on the type of care that the liberty interest requires, I would hold that a state discharges its duty when decisions are made by professionals as we have defined them.



Moreover, we should make clear that individual liability should not be imposed where the absence of reasonable care is attributable to the failure of the state itself to provide the necessary resources in terms of personnel and facilities. There would be a duty on the responsible people in an institution to make budget requests that would assure reasonably adequate staffing and facilities. But if a state legislature, for whatever reason, fails to provide the funds, personnel in the institution should not be subject to damage suit liability therefor. There would be injunctive remedies available.

May I conclude by thanking all three of you, and particularly Mary, for your patience and interest in finding a reasonable and principled basis for deciding this important case. I appreciate your making me face up more thoughtfully to the foregoing type of problems, and again - in fairness - Mary alerted me to these and similar ones in her bench memorandum.

L.F.P., Jr.

SS



meb 04/06/82

Mary:

To: Mr. Justice Powell

From: Mary, David, & Dick

At times these Chambers  
operate under democratic  
principles (but not many  
time). The vote is three  
to one against me, and

In re: No. 80-1429, Youngberg v. Romeo so I defer!

Let me see how you write

This memo assumes a liberty interest in safety and  
freedom from restraints along the lines discussed in our earlier  
memo; the focus here is on the right-to-treatment issue. In the  
first part of this memo, we articulate the rationale for the  
position that there is a right to treatment; the purpose of this  
section is primarily to make sure we understand this position as  
you described it in your memo. The second half defends the  
"middle position" suggested in our memo of last week.

Optine II

LFP  
4/7

I. THERE IS A RIGHT TO TREATMENT

A. Holding

Depending on the factual situation, one of two specific  
"rights" would be found.

(1) If "habilitation" would lead to the restoration of  
liberty, there would be a constitutional right to habilitation.  
This right would exist regardless of the purpose of confinement  
(care, protection, etc.). Thus, the federal Constitution would  
place a substantive limit on the state's ability to confine

And  
Thank to  
all of you  
- at least  
for now.



civilly: if a reasonable (or some level) of care (habilitation) can reasonably be expected to end the need for involuntary commitment, the state cannot commit without providing such care.

(2) If "habilitation," including self-care skills, would lead to greater liberty within the institution, there also would be a constitutional right to habilitation. Thus, the federal Constitution would place another substantive limit on the state's ability to confine for civil reasons: if a reasonable (or some level) of care (habilitation) can reasonably be expected to significantly increase the patient's ability to function independently within the institution (his liberty), then the state cannot commit without providing such care.

#### B. Rationale

What are the bases for these limits on state action? It is possible to draw some analogy to the duty to provide medical care to prisoners in Estelle. But in Estelle, the Court did not hold that prisoners have a right to reasonable medical treatment. Instead, the Court held that prisoners are constitutionally entitled to some level of medical care because contemporary standards would regard "deliberate indifference" to serious medical needs as cruel and unusual punishment. If Estelle were based on the state's duty to provide medical care, would not the constitutional right (though not, perhaps, the §1983 cause of action) have been some right to reasonable medical care, not just the absence of deliberate indifference? I think more support



than Estelle is needed, unless we are to adopt only the Estelle standard.

As suggested in our earlier memo, one source for a right to treatment, including training or "habilitation," is a Harlan-Frankfurter-contemporary-standards substantive-due-process analysis. This analysis would conclude that, for those involuntarily committed, civil commitment does not extinguish the liberty interests described in #1 & #2, above. (#1 need not actually be mentioned, since it is not presented by the facts of this case).

Once that right is found--a right to reasonable habilitation if it can be expected that such habilitation will significantly improve the individual's ability to function independently within (or without) the institution--then the opinion could go on to hold that the state discharges its duty when these decisions are made by professionals. The opinion would also stress that in an action for damages, the professional is not personally liable if an inadequate treatment decision was due to lack of funds.

#### C. Problems with The Right to Treatment

Several of the possible problems with this approach were mentioned in the last memo. Use of the substantive-due-process approach always opens the Court open to the charge that it has "made up" a constitutional right. And, if this standard is dictated by contemporary morality, there may be little reason for



the Court to create a constitutional right as a limit on majoritarian decisionmaking.

Another problem is that, in an action for injunctive relief, the suggested right-to-treatment standard would not be an easy one with which to work. What if there are professionals in the institution, but they say (or others say) that their decisions are not professional ones because of lack of funds? Will the standard "degenerate" into medical malpractice: whether a reasonable professional have made this decision? Although our case does not involve injunctive relief, I don't see any basis for distinguishing the two if the rationale suggested above is adopted. Similar problems (in the context of suits for injunctive relief) could also be raised regarding rights to safety and freedom from restraints if the standard chosen is one of delegation of decisionmaking to professionals.

## II: NO RIGHT TO TREATMENT PER SE

The major criticism of the middle-of-the road position suggested in our earlier memo is: how can you find a constitutional basis or, indeed, any other basis, for distinguishing between forms of medical treatment (i.e., physical therapy following a stroke) which we would regard as required by the Constitution, on the one hand, and the habilitation Romeo wants on the other.

In response, it can be argued that this is no different from other "lines" with which we work, and no more unprincipled.



Even laymen usually can distinguish with ease between "training" or "education" (designed to teach an individual a skill he has never had) and medical treatment, designed to ensure health. At times, this line may be difficult--especially when one compares psychiatric medical treatment and the "habilitation" claimed by Romeo. But I do think that this line can be one maintained.

And the constitutional basis for finding no liberty interest in any right to treatment per se would be no different from the constitutional basis for the broader right to treatment, discussed above. The Court would note that no case has ever recognized such a right and would then turn to consider whether contemporary standards of decency nevertheless impose such a duty on the state. <sup>or</sup> Contemporary standards may not be offended by civil commitment of those in Romeo's condition even though the state does not assume any obligation to habilitate, at least when habilitation cannot lead to release (we can leave that harder case for another day). Whether to expend limited state resources on habilitation of those who can never be released simply so that they can be somewhat more independent within the institution is a decision which "we, as a nation," may have delegated to state legislatures. (paraphrasing Justice Harlan in Poe v. Ullman). (The opinion would, of course, recognize a protected liberty interest in safety and freedom from restraints--but it should be possible to do so on the basis of prior cases rather than substantive due process.).

If one considers the facts and claims in the case at bar, it is suprisingly easy to classify various forms of

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"training" as related to <sup>①</sup>medical care, <sup>②</sup>safety, or <sup>③</sup>reasonable use of restraints (and therefore constitutionally required without a right to treatment per se) and those forms of "training" which would not be constitutionally required in the absence of a specific right to treatment. For example, a behavior-modification program designed to curb Romeo's violence would be related to safety and restraints and thus constitutionally required (under the appropriate standard) regardless of whether there is any general right to treatment. Similar, toilet training would be related to medical care since Romeo's current behavior in this area causes infections. But teaching Romeo to tie his shoes or dress himself, rather than have another perform these tasks, would not be constitutionally required because such treatment would be "pure" training.

If the opinion were written along these lines, it could, of course, stress (in addition to those factors mentioned above) that the Court is not reaching the "right-to-treatment" question in a case in which treatment might lead to freedom. Here, it is conceded that Romeo cannot be trained to live in freedom--there is no need for the Court to consider whether treatment might not be constitutionally required when it could lead to freedom. In this other case, the state interest's would, of course, be much different from those in the case at bar since indefinite confinement will often cost the state more than "habilitative" treatment. And, of course, the individual's liberty interest in treatment would be clearer and stronger than in the case at bar since it could lead to actual physical freedom.



When you have chosen an approach, some further discussion of the appropriate standard would be helpful. Many of the problems mentioned above regarding application of the professional-judgment standard in suits for injunctive relief would apply also in the context of the right to safety and freedom from restraints.



meb 05/11/82

To: Mr. Justice Powell

From: Mary

In Re: Justice Brennan's note in No. 80-1429, Youngberg v. Romeo

Justice Brennan makes two points. One is that resp waived any right to treatment per se and the other that we should treat this case and Mills in the same manner. I attach a copy of the transcript of oral argument.

1. It is true that the resp did not argue for the Adams standard. But I do not think one can honestly argue that resp waived all rights to treatment other than those related to safety and restraints.

After we got the note, David went down to the Brennan chambers to argue with Mark Campisano, but Justice Brennan came in and David ended up arguing with him! Justice Brennan conceded that the waiver point was an unreasonably harsh reading of oral argument--it's based on a statement at 47 of oral argument, a statement by the lawyer during which Justice Brennan cutoff the lawyer. The lawyer's truncated statement cannot reasonably be regarded as an exhaustive description of the rights resp seeks (and therefore a



waiver of other rights). Cf. 28-29 of Oral Argument where the lawyer discusses the right to treatment.

In any event, David's discussion with Justice Brennan indicates that Justice Berennan will not press this waiver point again.

2. With regard to the state-law point, there are several points to note. First, Mills involved a claim to federal procedural protection based on state substantive law. And during the time the case was before the federal courts, state law appeared to have changed. In Youngberg, resp claims only federal substantive rights. And there has been no change in state law.

Second, resp in Youngberg claims only damages for breach of federal substantive rights. According to resp's lawyer at oral argument, the damage claim could not have been brought originally as a pendent state-law claim, at the time the complaint was filed, because of the then-existing Pa. soveign-immunity law, and would now be barred by the state statute of limitations. See Tr. of Oral Arg., at 36. At least in the brief in this Court, the Mills plaintiffs argued that their claims could be satisfied by Mass.'s new state law. No similar claim is made here because a suit for damages could not now be brought in Pa.

<sup>Thus,</sup>  
~~Because~~ the claims in Youngberg (federal substantive) are so different from the claims in Mills (federal procedural based on state-created rights and <sup>expanded</sup> varying with state interests), I have a hard time imagining what it means to treat this case like Mills.  
<sup>that probably were changed</sup>



In his discussion with David, Justice Brennan kept stressing how important it was that the states be free to experiment in this area. This point is also made in his memo. Perhaps this is another area like Fair Assessment (the tax case we heard earlier this year) in which he would have the federal courts abstain regardless of what arguments were or were not made by resp here.



Supreme Court of the United States  
Washington, D. C. 20543

✓  
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CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

May 11, 1982.

No. 80-1429 -- Youngberg v. Romeo.

Dear Lewis,

You have written a fine draft opinion in a very difficult case. My concerns focus on the position taken by respondent at oral argument, which to my mind made unnecessary the extensive discussion of respondent's constitutional rights that you have undertaken.

At pages 9-13 of your draft, you discuss respondent's claim of "a constitutional right to 'habilitation,'" Draft at 9, which leads you into a discussion of Rodriguez and Paul v. Davis. I do not think that this discussion is required, for two reasons. First, at oral argument, respondent withdrew completely from the position taken on this point in Judge Adams' opinion in the Third Circuit, as well as from the position that respondent himself took on this point in his brief filed in this Court: In fact, respondent pointedly refused to defend Judge Adams' opinion to the extent that it "announced a right to treatment in the sense of treatment to achieve maximum potential." Tr. of Oral Arg. 46-47, 48. Rather, he took the position -- which I gather is your own -- that petitioners were only "obligated to use behavioral programming to ... reduce violence and prevent aggressive [behavior]," and that this obligation was "a part of the minimum care that's required." Id., at 47. As a result, why do we need to ascribe to respondent the position that "the State ... has a constitutional duty to provide reasonable training, both to preserve existing skills and develop new ones," Draft at 9? Respondent has given up that posi-

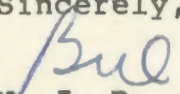


tion, and now presses a claim for "habilitation" only to the extent -- again as you suggest -- that such treatment is required to ensure "safe conditions" and to permit "freedom from bodily restraint" to the extent possible.

Second, and particularly significant, I think, respondent took the position in his brief and at oral argument that Pennsylvania law has created "a liberty interest in habilitation." Brief of Respondent 25-29, Tr. of Oral Arg. 36. Indeed, at oral argument I asked respondent, "Well, is it your view that ... the statute ... provides everything that you say constitutionally you're also entitled to?" Ibid. Respondent answered, "Yes, yes," ibid., and then launched into an explanation, irrelevant for our purposes, of why he had not made a statutory claim, id., at 36-37. As a result of respondent's position, is he not right that "there is no need for this Court in this case to decide whether the Constitution of its own force and without regard to state statutory law entitles retarded persons to minimally adequate habilitation when confined in state institutions"? Brief of Respondent 29.

I recall that at Conference some of our colleagues suggested that this field was best left to state experimentation, at least for the time being. That essentially was respondent's position at oral argument, and I see wisdom in it. Moreover, you are following that course in Mills v. Rogers: To be consistent, shouldn't we follow it here too?

Sincerely,

  
W. J. B., Jr.

Justice Powell.



May 12, 1982

80-1429 Youngberg v. Romeo

Dear Bill:

When I returned this morning, I found your letter of May 11. Thank you for writing, and I appreciate your making it a private letter.

I will now try to answer the two questions you raise.

1. I do not think we fairly can say that respondent waived the claim for "habilitation" (training) that clearly was in this case when we granted it. The absence of a waiver is clear, I think, from a reading of the transcript. I send to you with this letter the copy of the transcript that my clerk and I have used in preparing the draft. The critical pages are 46-49. As often happens at oral argument, it is not clear at all that you and Mr. Tiryak were understanding each other. It is clear, I think, that he supported Judge Adams' opinion.

I have again taken a look at respondent's brief. On page 7, he summarizes the three separate holdings of CA3, including "a right to habilitation that was acceptable in light of present medical or other scientific knowledge." At pages 23-28, respondent argues for "an independent constitutional right to minimally adequate habilitation".

Respondent's brief relies expressly on the brief of American Psychiatric Association in which "habilitation" is defined ("the principal focus of habilitation is upon training and development of needed skills" p. 4, fn. 1). Respondent's brief also stated that "the right to minimal adequate habilitation should depend upon the prospect of a cure rather than amelioration of the disabilities of retardation." Respondent, of course, argues that "the Court of Appeals (judgment) should be affirmed".



2. Your second suggestion is that we follow the course I propose in Mills v. Rogers and remand this case for a determination whether under Pennsylvania law there is a "liberty interest in habilitation". I would hesitate to propose this for several reasons. There are major differences between the two cases. Mills involved a claim to federal procedural protection that could not be decided properly without reference to state substantive law. Some five months after CAI decided Mills, and after we granted certiorari, the Supreme Judicial Court of Massachusetts decided Roe III. At least on its face, Roe III appears to make a substantial change in Massachusetts law. We remanded Mills to enable CAI "to determine how Roe III may have changed the law of Massachusetts and how any changes may affect this case". Draft of Mills, p. 14.

The situation in this case is entirely different. We have been advised of no change in Pennsylvania law. The courts below decided the case in light of their understanding of the Pennsylvania statute, as then interpreted. Moreover, the only claim before us in Youngberg is for damages for a violation of a substantive federal right. Respondent's counsel, at oral argument, advised that the damage claim could not have been brought originally as a pendent state-law claim because of the then existing Pennsylvania sovereign immunity law. The damage claim now would be barred by the state statute of limitations. See Tr. Oral Argument, at 36. In Mills, the plaintiffs argued that their claims could be satisfied under Massachusetts law.

Sincerely,

Justice Brennan

lfp/ss



Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

May 13, 1982



RE: No. 80-1429 Youngberg v. Romeo

Dear Lewis:

Thanks so much for your prompt response to my suggestions in the above.

I suppose my difficulties with this case count for my hope that we could find a way of disposing of it without having to answer how far treatment was constitutionally required. While I am not as sure in my own mind as apparently you are that "the absence of a waiver is clear", I can't say that a reading of the transcript supports a conclusion that he clearly did waive the claim for training. And I might say the same about the brief.

Respondent's basic argument was that what the Pennsylvania statute gave him the Federal Constitution also required. He sought damages for the denial of those claims. I suppose insofar as he relies on the statute he can't succeed because although Pennsylvania has now abolished sovereign immunity, the statute of limitations bars the claim. Hence he has to press the claim on the Constitution. That means I suppose that we'll have to decide what the Constitution gives him. I may finally agree that the Constitution goes no further than your opinion suggests. But I have not yet come to rest on that.

I am returning with thanks your copy of the transcript of the oral argument.

Sincerely,

*Bill*

Justice Powell



Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

✓

May 14, 1982

Re: No. 80-1429 Youngberg v. Romeo

Dear Lewis:

Please join me.

Sincerely,

*WHR*

Justice Powell

cc: The Conference



Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

May 20, 1982

No. 80-1429 Youngberg v. Romeo

Dear Lewis,

I generally agree with your excellent handling of the right-to-treatment claim. I am concerned about an issue which is not directly discussed.

In Jackson v. Indiana, 406 U.S. 715, 738 (1972), the Court held that, at a minimum, due process requires some rational relation between the nature of a mental health commitment and its purpose. In the present case, Pennsylvania has agreed to commit and care for Romeo because he cannot take care of himself, and his mother is also unable to do so. The purpose of his commitment, as I understand it, is to provide some reasonable degree of care, safety, and limited freedom of movement within the institution. Yet, if, as a result of the care and treatment, or lack thereof, in the institution, he loses some of the basic skills he had on commitment, he will have lost what little "liberty" he had left.

Absent reasonable care and training, necessary in the judgment of professionals charged with his care, the nature of Romeo's confinement may not be rationally related to the purpose of his confinement. This concept may fit comfortably within your conclusion that the respondent is entitled to "reasonably non-restrictive confinement conditions."

If you think you would be willing to address this problem in your opinion, I would hope to join. Otherwise, I may decide I should write something separately to address it.

Sincerely,

Sandra

Justice Powell

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Add ~~this~~ language  
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the institution.



Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

May 20, 1982

No. 80-1429 Youngberg v. Romeo

Dear Lewis,

I generally agree with your excellent handling of the right-to-treatment claim. I am concerned about an issue which is not directly discussed.

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Absent reasonable care and training, necessary in the judgment of professionals charged with his care, the nature of Romeo's confinement may not be rationally related to the purpose of his confinement. This concept may fit comfortably within your conclusion that the respondent is entitled to "reasonably non-restrictive confinement conditions."

If you think you would be willing to address this problem in your opinion, I would hope to join. Otherwise, I may decide I should write something separately to address it.

Sincerely,

*Sandra*

Justice Powell



Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

May 20, 1982.

No. 80-1429 -- Youngberg v. Romeo.

Dear Lewis,

Your draft opinion is a very fine job, and in most respects I find it quite persuasive. My principal concerns focus on Part II-B, Draft at 9-13. You conclude that Part by holding that "involuntarily-committed mentally retarded persons do not have a constitutionally protected liberty interest in training per se." Id., at 13. This holding differs, of course, from the analysis adopted by Chief Judge Seitz in his concurrence in the CA3:

"I believe that [Romeo] has a constitutional right to minimally adequate care and treatment. The existence of a constitutional right to care and treatment is no longer a novel legal proposition. See, e. g., Donaldson v. O'Connor, 493 F.2d 507 (5th Cir. 1974), rev'd on other grounds and remanded, 422 U.S. 563 (1975); Rouse v. Cameron, 373 F.2d 451 (D.C. Cir. 1966). Although the seminal right-to-treatment cases were concerned with the mentally ill, recent cases have extended this right to the mentally retarded. See, e. g., Welsch v. Likins, 550 F.2d 1122 (8th Cir. 1977); Wyatt v. Aderholt, 503 F.2d 1305 (5th Cir. 1974)." 644 F. 2d, at 176 (Seitz, C. J., concurring).

You expressly reject this analysis. Draft at 15, n. 29. But my recollection of our Conference discussion is that while no formal vote was taken, a majority of our colleagues were in favor of embracing Chief Judge Seitz's view on this issue, as on the other issues in



the case. If my recollection is accurate, then I would be willing to join that view and so could not join your opinion as Part II-B is currently written. I might add that since petitioners have already conceded that Romeo has a constitutionally protected liberty interest in personal security and freedom from bodily restraint, Draft at 8 & n. 17, this issue -- whether Romeo has a constitutional right to "training," id., at 9 & n. 19 -- seems to be the principal issue remaining in the case.

Of course we had no formal vote at Conference, and our colleagues will doubtless let you have their reaction in due course.

Sincerely,

*Bill*  
W. J. B., Jr.

Justice Powell.  
Copies to the Conference.



meb 05/22/82

To: Mr. Justice Powell

From: Mary

In Re: No. 80-1429, Youngberg v. Romeo (and Justice O'Connor's  
memo)

I don't understand what Justice O'Connor is talking about in her second paragraph. The institution is most unlikely to be able to maintain Romeo's skills, ability to interact, etc., at the level they were when he lived with his parents. Moreover, Justice O'Connor seems to suggest that any skill or ability is a "liberty" protected by the Fourteenth Amendment, though she gives no guidance as to the constitutional basis for this conclusion (a conclusion not unlike the holding of our earlier draft).

I think the language you suggest at the bottom of the memo is fine, but I am somewhat worried about also including Justice O'Connor's point about the purposes of commitment. In Jackson v. Indiana, 406 U.S. 715, 738 (1972), a person was incarcerated pending competency to stand trial; he was afforded neither civil commitment nor criminal process. Because his incompetency was due to mental retardation it was unlikely that he would ever be competent to stand trial. Yet, by the time the case reached this Court, he had been



involuntarily confined, without criminal process or civil commitment, for several years. In an opinion written by Justice Blackmun, the Court held that the State could not hold him indefinitely pending competency with no civil or criminal procedures and little or no likelihood that he would ever attain competency. In reaching this holding, the Court stated that, at a minimum, due process requires some relationship between the purpose of commitment and its terms or conditions. In that case, there was no such relationship because, though he was committed pending competency, there was little or no chance he would ever become competent.

Jackson v. Indiana did not deal with the conditions of confinement--and it is those conditions that are at issue in Romeo. Moreover, in Jackson, the deft was being held for only one constitutionally permissible reason--pending competency to stand trial--whereas in Romeo, the Pa. commitment statute states that any person needing commitment for care can be committed for care and treatment. And the state has conceded that Romeo is entitled to adequate food, clothing, shelter, and medical treatment. That may be all the "care and treatment" required by the state commitment statute. In any event, the meaning of care and treatment in that statute is purely a question of state law, and state law was cited by respondent for the first time in his reply brief to this Court. See n. 23 of our opinion (The Jackson v. Indiana and Pa.- commitment-statute argument was made by the Adams majority at the CA level, but they made it on their own--resp did not argue or even cite either the Pa. commitment statute or Jackson v. Indiana to the

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CA. And the Adams majority gave no guidance as to the meaning of the terms "care and guidance" at state law.).

To say that in Pa., the precise "purposes" of commitment under the commitment statute is unclear is an understatement, which is not surprising given the late point at which Pa. law is being argued. Resp cites two cases for the proposition that the commitment statute gives him substantive rights at state law, but neither of those Pa. cases actually construe the commitment statute. Indeed, a reading of those cases reveals that there is no reason for Pennsylvania courts to ever construe the commitment statute's substantive implications because there is another set of Pa. statutes, not cited by resp even now, giving him substantive rights. Presumably these statutes aren't cited because they don't fit in with the Jackson v. Indiana-type analysis, basing a federal right on the purpose of commitment.

As this discussion suggests, the precise purpose of Romeo's commitment under the relevant Pa. statute is unclear enough as a matter of state law that we might be better off avoiding any statements such as that suggested by Justice O'Connor (i.e., concerning the purposes of his commitment); such statements might end up giving Justice Brennan a real reason for remanding--to certify the question of the purpose of Romeo's commitment under the commitment statute as a matter of state law. Because the answer to that question probably would have no implications for state law given the other substantive state-law statutes give the mentally retarded the rights Romeo seems to seek, the rather bizarre effect would be to ask the state court to decide the federal question.



I think this approach incorrect, not only because of that aspect, but because, first of all, a state substantive right may create a federal procedural right but not a federal substantive right (and resp only argues that a state substantive right creates a federal substantive right). In addition, resp does not argue--as did the deft in Donaldson and Jackson, for either freedom or another procedure. He only wants substantive rights. 'Because Romeo could be committed solely for safety of others, and because he does not seek either release or, in the absence of release, another procedure, his Jackson v. Indiana argument should fail. Finally, as a matter of federal law, I don't think Romeo could be committed just for care and treatment (if he was capable of surviving on the outside and wanted to do so). See Addington v. Texas, 441 U.S. 418 (1979); O'Connor v. Donaldson, 422 U.S. 563, 576 (1975). Why should it matter, for federal substantive law, that the state has confined him for reasons in addition to those that are constitutionally permissible (i.e., for his own survival and the safety of himself and others). I think this point sharply distinguishes the case from Jackson, in which there was only one constitutionally permissible reason for confinement (confinement pending competency) and the Court required a rational relation between that single constitutionally-permissible reason for commitment and the "terms and conditions" of his confinement. Here, Romeo could be confined constitutionally purely for the safety of others. If that were done, under the Jackson v. Indiana rationale, he would only be entitled to high walls--not much of a federal right.

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Instead of saying something about the purposes of Romeo's commitment, what would you think of expanding footnote 23 to something along these lines? (most of this is actually from any earlier draft). Perhaps Justice O'Connor would then be willing to go along.

note 23, at 11 (first ¶ as in current opinion, with only slight changes).

Respondent does argue that he was committed for care and treatment under state law, and that he therefore has a state substantive right entitled to substantive, not procedural, protection under the Due Process Clause of the Federal Constitution. But this argument is made for the first time in respondent's brief to this Court. It was not advanced in the courts below, and was not argued to the Court of Appeals as a ground for reversing the trial Court. Given the uncertainty of Pennsylvania law and the lack of guidance from the lower federal courts as to the precise meaning of "care and treatment" under state law, we decline to consider respondent's argument now. See Dothard v. Rawlinson, 433 U.S. 321, 323 N.1 (1977); Duigman v. United States, 274 U.S. 195, 200 (1927); Old Jordan Milling Co. v. Societe Anonyme des Mines, 164 U.S. 2612, 264-265 (1896).

Moreover, there are serious problems with the substance of respondent's argument. Respondent relies primarily on Jackson v. Indiana, 406 U.S. 715 (1972). There, a mentally retarded person was



incarcerated pending competency to stand trial for a criminal offense. Given the cause of his incompetency, it was most unlikely that he would ever become competent, yet, by the time the case reached this Court, he had been held several years without either criminal process or civil-commitment proceedings. The Court held that he must be afforded civil-commitment proceedings since there was little, if any, likelihood he would ever be competent to stand trial. In reaching this decision, the Court stated that due process requires, at a minimum, terms and conditions of confinement that bear some rational relation to the purposes of confinement. Id., at 738.

Respondent argues that the wording of the relevant Pennsylvania commitment statute reveals the purposes for which he was committed--care and treatment--and that statute creates a state-created right to treatment entitled to federal protection under Jackson because due process requires some relationship between the conditions of confinement and its purposes. In Jackson, however, the Court was considering only the need for a relationship between the single reason justifying confinement as a matter of federal law--temporary confinement pending competency to stand trial--and the "terms and conditions" of confinement. It is most unlikely that, as a matter of federal law, Romeo could be committed for care and treatment if he were actually capable of surviving on the outside. See Addington v. Texas, O'Connor v. Donaldson. Romeo could, as a matter of federal law, be confined to protect others. See text and notes at n. 1 & n. 2, supra; Addington v. Texas, 441 U.S. 418, 426 (1979); O'Connor v. Donaldson, 422 U.S. 563, 573 (1975). Respondent



may have been confined for additional reasons under state law, but that would normally entitle him to state, not federal, substantive rights.

If respondent were seeking different conditions of confinement unless he were released or given additional procedures, we would be presented with a quite different case. But respondent is not seeking another state procedure, one that could commit him solely because he is violent, nor is he seeking release in the absence of an additional procedure. Cf. Jackson v. Indiana, 401 U.S., \_\_\_\_ (Jackson wanted another procedure); O'Connor v. Donaldson, 422 U.S., at 568 (Donaldson requested release).

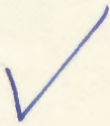
Moreover, we see no reason why a federal substantive right to treatment should vary with the wording of the relevant state commitment statute or with the precise reason given for commitment. Why, as a matter of federal law, should a mentally retarded person involuntarily committed to protect himself and others receive less treatment or inferior conditions than one involuntarily committed only because he is unable to care for himself? It is true that state substantive rights implicate federal procedural due process. And it is also true that we have never held explicitly that state substantive rights cannot be the basis for federal substantive rights under the Due Process Clause. In Smith v. Organization of Foster Families, 431 U.S. 816, 842 n. 48 (1977) (Brennan, J.), we indicated that even when a federal procedural right exists, the existence of a related federal substantive right is not automatic, but is an entirely distinct question.



Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

May 24, 1982

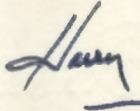


Re: No. 80-1429 - Youngberg v. Romeo

Dear Lewis:

My own views for this case coincide with those of Chief Judge Seitz. My notes and recollections may be in error, but I, too, thought that a majority favored the Seitz approach.

Sincerely,



Justice Powell

cc: The Conference



May 24, 1982

80-1429 Youngberg v. Romeo

Dear Sandra:

I am recirculating Youngberg this afternoon.

In addition to a few stylistic changes, those made in n. 27 on p. 14, and in the text on p. 18, will - I believe - comply with your suggestion that we make clear that this opinion is consistent with Jackson v. Indiana.

Of course, Jackson has very little to do with this case, as I think the addition in n. 27 makes clear.

I appreciate your bringing this to my attention.

Sincerely,

Justice O'Connor

LFP/vde



May 24, 1982

ROMEO SALLY-POW

80-1429 Younberg v. Romeo

Dear Bill:

It is good know that we may not be far apart in  
this case.

As I understand your concern, it relates to the  
extent of a constitutional right to "treatment". The term  
is synonymous with "habilitation" in the arcane world of  
psychiatry, and is defined in the brief of the American  
Psychiatric Association. See n. 1, p. 1, my draft  
opinion.

I gave a great deal of thought to how far we  
should go in holding, as a matter of federal  
constitutional right, that a state must provide training.

The proposed holding is stated on p. 18 of my 3rd draft as  
follows:

"Respondent thus enjoys constitutionally  
protected interests in conditions of reasonable  
care and safety, reasonably non-restrictive  
confinement conditions, and such training as may  
be required by these interests. These  
conditions of confinement comport fully with the  
purpose of respondent's commitment. Cf. Jackson  
v. Indiana, 406 U.S.715, 738 (1972); see n. 27,  
ante."

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Respondent apparently wants a more expansive "right" to training. Although, he never clearly spells this out, asserts a constitutional right to "reasonable training" both to preserve existing skills and develop new ones. It is clear that Respondent's "existing skills" - limited as they are - will be and improved preserved under the standards of my draft. It is equally clear, I think, that the state's obligations with respect to safety and personal confinement also will improve his ability to live within the institution. The state is presently providing training in this respect. See opinion p. 4 and n. 7.

It is not easy to define other limits to a state's duty. I find no basis for imposing a constitutional obligation on every state mental institution to provide for each patient all training that competent professionals think might possibly be desirable. I have left open, however, situations where training may enable the patient to live outside of an institution.

We could say simply that the duty is to impose "reasonable training" under the circumstances. This would be one way to write this case (and a rather inviting way),



but we would leave unanswered the question that we granted the case to resolve.

The draft opinion agrees with Chief Judge Seitz in important respects. See pp. 6, 15. But, the Seitz language that you quote, is too general to be very helpful: "constitutional right [exists] to minimally adequate care and treatment". This sheds no light on the difficult questions of what specifically what kind of treatment and for what purpose? Moreover, Judge Seitz bracketed "care and treatment", without making clear whether he was distinguishing between the two. The state has conceded a broad duty of care, including the right to provide adequate food, shelter, clothing and medical care. As you note, the principal issue remaining in the case is the right to "training", but we would accomplish little by simply adopting Judge Seitz's general language.

When we are construing "liberty interests" to create rights not specified in the Constitution, one tends to be cautious. It already is established by our cases that "liberty interests" include personal safety and a



right not to be shackled unless necessary. I thought it best to relate training to these established rights.

In sum, I have written the opinion in light of Romeo's condition and needs. We would have a different case where the liberty interest involves the prospect of the patient returning to life outside of an institution. I will be glad to consider any language you may suggest.

Sincerely,

Justice Brennan



May 25, 1982

80-1429 Youngberg v. Romeo

Dear Bill:

I have not overlooked replying to your letter of May 20. I had to speak at Washington & Lee University on Friday, and generally am behind in my opinion work.

I also agree largely with Chief Judge Seitz, and had not thought that my draft opinion departed substantially from his view. I will, however, take another careful look and be in touch with you.

Sincerely,

Justice Brennan

Copies to the Conference

LFP/vde



meh 5/26/82

To: Mr. Justice Powell

From: Mary

IN re: No. 80-1429, Youngberg v. Romeo

David and I are both a little worried that the rider for page 15 sounds like we may be reaching the entire "habilitation" issue. Unless the reader knows what we mean by the "purpose for which the individual is committed," i.e., in this case, Romeo was committed for care and safety by his mother, as n. 27 explains, I am not sure that this sentence will not be read as a broad holding of a right to minimally adequate habilitation." I am also troubled by tying the federal rights (any more than we have to to get Justice O'Connor's vote) to the purposes of commitment. What if Romeo's mother had stated that she was committing him because she could no longer care for him or provide safety for him and she wanted him to be habilitated (as much as possible) through participation in Pennhurst programs.

David and I would make the following suggestions--they are alternatives, with the favored suggestion first.

*Substitute for Rider A, P. 15*

See 1. "We have already determined that in this case we need not reach the difficult question whether someone involuntarily committed to a state institution for the mentally retarded has a constitutional right to treatment or habilitation unrelated to the need for safety and freedom from restraints. ante, at case mistakes." In this context, we hold that when the rights of the involuntarily committed mentally retarded are weighed against the legitimate interests of the State, including administrative and fiscal restraints, due process requires that ~~these individuals~~ <sup>(1)</sup> the State subject these individuals only to reasonable physical constraints, (ii) it provide them reasonably safe conditions, and (iii) it afford them such training as is necessary to achieve reasonable safety and freedom of movement within the institution. "

2. We could delete the "we hold" sentence at 15-16 entirely, and provide some other transition into the "deference to the professional" discussion, which comes next. The problem with this approach is that the constitutional right is then only stated in



terms of ~~life~~ a right to a professional decisionmaker, with great deference to that decisionmaker. In other words (in fact, in David's words) this gives one the constitutional right to a negligent professional decision. It sounds better to say there is a right to some reasonable level of care, safety, etc., but that great deference will be given to professionals to keep courts from running institutions, etc.



lfp/ss 05/27/82

MEMORANDUM

TO: Mary DATE: May 27, 1982  
FROM: Lewis F. Powell, Jr.

80-1429 Youngberg v. Romeo

Your editing of my rider A, page 8 has improved it.

I also have made some changes in Parts III-B and IV. I think the change included in my rider A for page 15 - though a major one - is necessary for consistency with what we say in the basic change set forth in our long rider, page 8. At this point (i.e., p. 15, 16) we are stating general rules rather than addressing Romeo's situation. We come to Romeo's case on page 18. There, I would omit the reference to training per se. Again the language in the first paragraph of p. 18 will be of general application. It is limited significantly by what we have said with respect to reasonableness being determined by the appropriate professional. If we can put a Court together on an opinion along the lines we are now discussing, we do leave questions open for the future. But I believe our emphasis of deference to a professional judgment - not the best available such judgments - adequately protects a state's legitimate interest.

If you and David are content with these changes, I suggest that you ask the print shop to incorporate them in what we might call either a second chambers draft or a



tentative fourth draft, giving us only a half a dozen copies for us to review in Chambers. Possibly, I would submit copies to Brennan and then to Rehnquist. If we can satisfy them, I am confident the large "silent" segment of the Court will be inclined to go along.

L.F.P., Jr.

SS



lfp/ss 05/27/82

MEMORANDUM

TO: Mary DATE: May 27, 1982  
FROM: Lewis F. Powell, Jr.

80-1429 Youngberg v. Romeo

Your editing of my rider A, page 8 has improved it.

I also have made some changes in Parts III-B and IV. I think the change included in my rider A for page 15 - though a major one - is necessary for consistency with what we say in the basic change set forth in our long rider, page 8. At this point (i.e., p. 15, 16) we are stating general rules rather than addressing Romeo's situation. We come to Romeo's case on page 18. There, I would omit the reference to training per se. Again the language in the first paragraph of p. 18 will be of general application. It is limited significantly by what we have said with respect to reasonableness being determined by the appropriate professional. If we can put a Court together on an opinion along the lines we are now discussing, we do leave questions open for the future. But I believe our emphasis of deference to a professional judgment - not the best available such judgments - adequately protects a state's legitimate interest.

If you and David are content with these changes, I suggest that you ask the print shop to incorporate them in what we might call either a second chambers draft or a



tentative fourth draft, giving us only a half a dozen copies for us to review in Chambers. Possibly, I would submit copies to Brennan and then to Rehnquist. If we can satisfy them, I am confident the large "silent" segment of the Court will be inclined to go along.

L.F.P., Jr.

SS



June 2, 1982

Dear Bill:

I am delivering a fourth draft of Youngberg in view of your kindness in being willing to take a precirculation look at it.

Our correspondence has prompted me to make substantial changes on page 8 and 9, and particularly pp. 10-16. As you will see, I have - as you suggested - drawn primarily on Chief Judge Seitz's opinion. Further consideration of the case also persuades me that I was trying to write too broadly. In this case, in view of Romeo's extremely unfortunate condition, he can never be released from an institution and the minimally adequate training that he seeks is related to his safety (from self abuse as well as by others), and to minimize physical restraints. No other specific training is sought in his complaint.

In sum, my opinion as revised decides this case only, and on its rather special facts. I have left open the question of what type of training may be appropriate in other cases.

Sincerely,

Justice Brennan

lfp/ss



copy to Mr Lived

THE C. J.	W. J. B.	B. R. W.	T. M.	H. A. B.	L. F. P.	W. H. R.	J. P. S.	S. D. O'C.
					1/25/82			
Con in Judgment 6/9/82	Join 27P 6/7/82	Join 27P 6/7/82	Join 27P 6/9/82	Join 17P 6/14/82	1st Draft 5/10/82 2nd Draft	Join 27P 5/14/82	Join 27P 6/8/82	Join 27P 6/7/82
Con in Judgment 6/11/82 1st printed Draft 6/14/82	Join HAB 6/15/82			typed Draft Con opinion 6/14/82 1st printed Draft 6/15/82 2nd Draft 6/16/82	5/12/82 3rd Draft 5/24/82 4th Draft 6/14/82 5th Draft 6/10/82 6th Draft 6/14/82			Join HAB 6/15/82
				80-1429 Youngberg v. Romeo				



June 17, 1982

80-1429 Youngberg v. Romeo

This case is here from CA3.

Respondent is a profoundly retarded person/  
involuntarily committed to a state institution. He argues  
that he is entitled to safety, /freedom from restraints, /and <sup>to</sup>  
training. <sup>by the Institution.</sup> He seeks monetary damages /from three of the  
Institution's administrators.

The Court of Appeals reversed a jury verdict in favor of  
<sup>the administrators.</sup> ~~of petitioners, holding~~ <sup>I + held</sup> that the Fourteenth Amendment,  
rather than the Eighth, provides the proper basis for the  
asserted rights.

Although we agree as to the applicability of the  
Fourteenth Amendment, /we disagree with the standard  
articulated by the Court of Appeals. We therefore vacate  
that decision /and remand for further proceedings.

We hold that respondent is entitled to reasonable  
safety <sup>to</sup> and freedom /from unreasonable restraints. Respondent  
also is entitled to training /reasonably necessary to provide  
such safety and freedom from restraints.

Finally, we hold



Finally, we hold<sup>have</sup> that in determining whether these rights have been violated, courts should give deference to decisions made by professionals<sup>have</sup> within the institution.

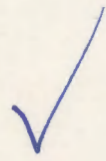
Justice Blackmun<sup>have</sup> filed a concurring opinion in which Justice Brennan and Justice O'Connor<sup>have</sup> joined. The Chief Justice filed an opinion, concurring in the judgment.



Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

June 15, 1982



No. 80-1429 Youngberg v. Romeo

Dear Harry,

Please join me in your concurring opinion.

Sincerely,

Justice Blackmun

Copies to the Conference



Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

June 15, 1982



RE: No. 80-1429 Youngberg v. Romeo

Dear Harry:

Please join me in your concurring opinion in  
the above.

Sincerely,

Justice Blackmun

cc: The Conference



meb 06/12/82

To: Mr. Justice Powell

From: Mary

In Re: No. 80-1429, Youngberg v. Romeo

*Mary - I would  
add as a new n 23,  
p 2 herof as I have  
edited it. We can  
leave it this way if  
CJ eliminates  
his n.1*

I have prepared the following footnote as a suggestion if you want to respond to the Chief Justice's contention that there is no way for the Court to avoid the right-to-treatment-per se issue on the basis of the record and pleadings before the Court. The footnote would be a new footnote 23, as marked at p. 11 (copy attached).

note 23: In his concurrence in the judgment, the Chief Justice gives two reasons <sup>for his view that</sup> the Court cannot avoid <sup>the per se</sup> ~~this~~ issue, <sup>in this</sup> ~~case~~. The first is that "[r]espondent asserts a right to 'minimally adequate' habilitation '[q]uite apart from its relationship to decent care.'" Post, at \_\_\_\_ (quoting Brief for Respondent 23). But the argument made at 23 of respondent's brief is not related to the types of training ~~to which he is entitled~~, but rather the sources of <sup>a</sup> ~~that~~ right to training. At 23, respondent argues that the right to training arises directly from the Due Process Clause of the Constitution, as well as from another source discussed at 12-23 of respondent's Brief (i.e., the State's duty to provide decent care to involuntarily confined retarded persons).



23.12 ~~The second reason given is that~~ "In the trial court, respondent asserted a broad claim to such treatment as [would] afford [him] a reasonable opportunity to acquire and maintain those life skills necessary to cope as effectively as [his] capacities permit." ~~Post at~~ n.1 (quoting App. to Petn. for Cert. 94). But this claim <sup>to a sweeping neg of right</sup> was dropped thereafter. In his brief to this Court, respondent does not <sup>repeat it</sup> make this claim and, at oral argument, respondent's <sup>counsel</sup> lawyer explicitly disavowed any claim that respondent is constitutionally entitled to such treatment as would enable him "to achieve his maximum potential." Tr. of Oral Arg. 46-48.

many get quoted  
right as to ~~the~~  
claim before  
trial court



Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
THE CHIEF JUSTICE

June 9, 1982

Re: No. 80-1429 - Youngberg v. Romeo

Dear Lewis:

The simple solution will be for me to join  
in the judgment in this case.

Regards,

WJB

Justice Powell



Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

June 9, 1982

Re: No. 80-1429 - Youngberg v. Romeo

Dear Lewis:

Please join me.

Sincerely,

*T.M.*  
T.M.

Justice Powell

cc: The Conference



As to n. 19, p. 9, the reference to "federal substantive right" is merely a claim by respondent. The note simply says that we do not address the claim.

In sum, I personally liked my first draft because it would have resolved more issues and - as you suggest - given more specific guidance. But I had no support for it from anyone except Bill Rehnquist. Footnote 24, p. 11, assures, however, that an "indentifiable liberty interest" must be found to support any particular type of training. The training approved in my opinion is limited to that related to the established liberty interests of safety and freedom from undue restraint.

This means there will be other cases. But this is the way the system works.

Sincerely,

The Chief Justice

lfp/ss



Supreme Court of the United States  
Washington, D. C. 20543

May 10

CHAMBERS OF  
THE CHIEF JUSTICE

June 8, 1982

Re: No. 80-1429 - Youngberg v. Romeo

Dear Lewis:

① ✓ I am concerned about some of the revisions you have made in the 4th draft of your opinion in this case. I agreed with your earlier drafts, that "involuntarily-committed mentally retarded persons do not have a constitutionally protected liberty interest in training per se." 3rd Draft, at 13. Now, however, although you purport to avoid the issue, the opinion states that "[a] court properly may start with the generalization that there is a right to minimally adequate training," 4th draft at 11, n. 24--defined loosely as such training as is "reasonable in light of identifiable liberty interests and the circumstances of the case," id. See also id., at 14.

② I fear that such a vague standard may subject numerous professional training and treatment decisions to intrusive scrutiny, and "second guessing," by the federal courts. You give some credence to this possibility when you suggest that Romeo's proffered expert testimony--indicating that "additional training programs, including self-care programs, were needed to reduce [his] aggressive behavior," 4th draft, at 10--might suffice to establish a violation of the "right" to "minimally adequate training." Although you later state that reviewing courts must "show deference to the judgment exercised by a qualified professional," 4th draft, at 14, I think further clarification may be required at pages 10-11 of the 4th draft.

③ Further explanation may also be in order as to why the case is being remanded, presumably for a new trial. 4th Draft, at 17. For example, the District Court instructed the jury that it should find petitioners liable if they "were aware of and failed to take all reasonable steps to prevent repeated attacks upon Nicholas Romeo." See 4th Draft, at 4. Certainly if petitioners took "all reasonable steps" to prevent such attacks, they did not deprive Romeo of his rights to "reasonably safe conditions" and to such training as was necessary to achieve reasonable safety. While this instruction may have been undercut by the District Court's other instructions concerning the "deliberate indifference" standard, see id., this is never discussed in your opinion. The mere fact that the trial court referred to the Eighth Amendment instead of the Fourteenth Amendment would not mandate a new trial if the jury was otherwise instructed on a proper theory of liability. I think the District Court deserves more guidance.

you  
may  
have  
point.



Finally, I have the following more minor concerns:

(a) At page 2, n. 3, you refer to Romeo as having been "incarcerated" in Pennhurst. This term seems inappropriate here; he is not really "incarcerated."

(b) At page 9, n. 19, you "decline to consider" respondent's claim that because state law creates a right to "care and treatment," he therefore has a federal substantive right to such "care and treatment" under the Due Process Clause. This loses me. The claim to a federal right to have some state right enforced seems to me so obviously without merit that it should either be rejected or not mentioned.

*I do  
say  
this.*

If every state right is federally enforceable, the line between state and federal courts vanishes.

Regards,

*WEB*

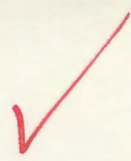
Justice Powell

*P.S. Can't we find an easier  
way to make a living!?*



Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS



June 8, 1982

Re: 80-1429 - Youngberg v. Romeo

Dear Lewis:

Please join me.

Respectfully,

A handwritten signature, likely of Justice Powell, is written below the word "Respectfully,".

Justice Powell

Copies to the Conference



Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

June 7, 1982

Re: 80-1429 - Youngberg v. Romeo

Dear Lewis:

If you can eliminate two sentences, neither of which is necessary to the decision, I will join your opinion.

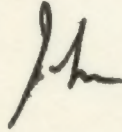
First, in footnote 18 you state that the Eighth Amendment "has no direct bearing on nonpenal institutions." Surely that statement is much broader than necessary because persons convicted of crimes may be kept in nonpenal institutions, at least temporarily, and, I should think, a state might provide for a system of punishment within a mental institution. Rather than trying to sort out the possible refinements, could we not simply omit the footnote.

Second, on page 14 you state that the professional judgment standard is higher than the deliberate indifference formulation applied in the context of penal institutions citing Estelle v. Gamble. Again, could we not omit this sentence. Its only purpose, as I would interpret it, would be to lower the standard applicable in prisons. I should think a failure to meet the professional judgment standard in a prison context would almost invariably constitute deliberate indifference. Even if the Court disagrees, I see no reason to endeavor to be this precise because in either context, it is clear that the standard is lower than a common law malpractice standard.



If you can make these two changes, I will join  
your opinion.

Respectfully,

A handwritten signature in dark ink, appearing to be 'JP' or similar initials, written in a cursive style.

Justice Powell

Copies to the Conference





Supreme Court of the United States  
Washington, D. C. 20543

✓

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

June 7, 1982

No. 80-1429 Youngberg v. Romeo

Dear Lewis,

Please join me in the 4th draft of your  
opinion of the Court.

Sincerely,

*Sandra*

Justice Powell

Copies to the Conference



Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

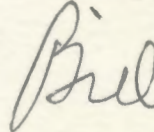
June 7, 1982

RE: No. 80-1429 Youngberg v. Romeo

Dear Lewis:

Please join me in your circulation of June 4.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bill".

Justice Powell

Copies to the Conference



Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE BYRON R. WHITE

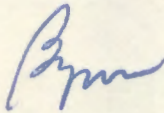
June 7, 1982

Re: 80-1429 - Youngberg v. Romeo

Dear Lewis,

Please join me.

Sincerely yours,

A handwritten signature in blue ink, appearing to be "Byron", written in a cursive style.

Justice Powell

Copies to the Conference

cpm



Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

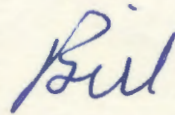
June 4, 1982

RE: No. 80-1429 Youngberg v. Romeo

Dear Lewis:

Thanks so much for your response. I am  
content. I'll be happy to join the previewed  
draft when circulated.

Sincerely,

A handwritten signature in blue ink, appearing to be "Bill", written in a cursive style.

Justice Powell



Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

June 4, 1982



RE: No. 80-1429 Youngberg v. Romeo

Dear Lewis:

Thanks so much for your response. I am content. I'll be happy to join the previewed draft when circulated.

Sincerely,

Justice Powell



June 4, 1982

80-1429 Youngberg v. Romeo

Dear Bill:

It was typically good of you to review my uncirculated draft in this tiresome case.

Chief Judge Seitz's language, that you quote, comes in the preliminary part of his opinion, prior to his considering the claim presented by respondent in this case. He quoted the broad psychiatric definition of "habilitation", used in some of the amici briefs, after emphasizing the difference "between the mentally ill and the mentally retarded". He did relate his use of the term "treatment" (synonymous in this case with "training") to the general definition.

Several pages later (id., at 181) Chief Judge Seitz addressed the merits of respondent's treatment claim. His earlier generalized definition was not a holding with respect to respondent. When he considered the merits, he did not identify any specific treatment beyond those considered in my draft opinion. In view of Romeo's condition, the allegations of his complaint, and the purpose of his commitment, I think it is appropriate - perhaps necessary - that we decide this case narrowly on its facts as I have tried to do. No doubt other, and more difficult cases, will come to us later.

What do you think?

Sincerely,

Justice Brennan

lfp/ss



June 4, 1982

80-1429 Youngberg v. Romeo

Dear Harry:

The substantial changes I have made in this case are responsive to the concerns Bill Brennan expressed, and which you also wrote me about.

The opinion now focuses narrowly on the facts of this most pathetic case, and leaves broader questions for another day.

Sincerely,

Justice Blackmun

lfp/ss



File

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

June 3, 1982.

No. 80-1429 -- Youngberg v. Romeo.

Dear Lewis,

This is a really hard case, but the changes in your most recent draft go pretty far towards meeting my problems. I expect to be able to join, but will be interested in what others may offer in the way of further refinements.

One question: Chief Judge Seitz states at one point in his concurring opinion that "habilitation"

"refers to 'that education, training and care required by retarded individuals to reach their maximum development' .... It is in this sense that I use the term 'treatment' in this opinion." 644 F. 2d, at 176 (citation omitted, emphasis added).

Your draft states that

"Chief Judge Seitz did not identify or otherwise define--beyond the right to reasonable safety and freedom from physical restraint--the 'minimally adequate care and treatment' that appropriately may be required for this respondent." Draft at 11.

In light of Chief Judge Seitz' statement, do you think that your statement is quite accurate?

Sincerely,

*Bill*

W. J. B., Jr.

Justice Powell.

*See my response that  
persuaded WJB.*



Wash. Post  
6/19/82  
P. 1

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tend was the prod-  
1960s-style grass-

roots campaign over the last 15  
months by civil rights groups work-  
ing with a coalition of Democratic  
and moderate Republican senators.

"This is another watershed in civil  
rights," said Sen. Robert J. Dole (R-  
Kan.), who joined Sens. Charles  
McC. Mathias Jr. (R-Md.) and Ed-  
ward M. Kennedy (D-Mass.) in au-  
thoring the final compromise. "It will  
stand the test of time and ease the  
fears" of its opponents, Dole said.

Reagan, who opposed the measure  
in its original form last year but em-  
braced it in the face of its over-

See VOTING, A9, Col. 1

substance of the policy to wage  
"economic warfare" against the So-  
viets.

One option before the president  
would have allowed U.S. companies  
to go through with deals made with  
the Soviets prior to Dec. 29. This  
would have enabled Caterpillar  
Tractor to sell \$90 million worth of  
pipelaying equipment and General  
Electric to sell more than \$100 mil-  
lion worth of gas turbine rotors.

Officials said this possibility, fa-  
vored by Haig, had been rejected in  
favor of the "toughest" option.

"The objective of the United  
States in imposing the sanctions has  
been and continues to be to advance

See PIPELINE, A10, Col. 1

## y Case Hands al Jury

L. Kiernan  
Staff Writer

John W. Hinckley  
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## Regan Sees Interest Rates Up, With Policy Change Possible

By John M. Berry  
Washington Post Staff Writer

Treasury Secretary Donald T.  
Regan, predicting that interest rates  
are headed higher, yesterday re-  
vealed that the Reagan administra-  
tion has begun a study of ways to  
change its economic policies if the  
high rates short-circuit the expected  
economic recovery.

"I don't think I'll talk about ...  
what our specific plans are, but ob-  
viously these are questions that we  
have addressed to ourselves over the  
past three months. We are trying to  
come up with solutions," Regan said  
during an interview at The Wash-  
ington Post.

"If interest rates don't come down

rather quickly, [and] unemployment  
hangs high, the obvious course of  
action [that] would be demanded, at  
least, from us by the Congress would  
be, do something, don't just stand  
there," he continued.

"I have a study on my desk ... of  
what other presidents did in similar  
circumstances ... We have to con-  
sider what our actions might be."

Another administration source  
described the policy reexamination  
as "far-reaching," but said it was "oc-  
curring within the framework of  
present presidential policies." How-  
ever, the source added, "Some of the  
options are not so routine."

Regan, as he has in the past, put

See REGAN, A2, Col. 5

## High Court Establishes Rights For Retarded in Institutions

By Fred Barbash  
Washington Post Staff Writer

The Supreme Court yesterday for  
the first time established constitu-  
tional rights for people committed to  
institutions for the mentally retard-  
ed, including unprecedented, but  
limited, guarantees of a minimum  
level of training.

The court also said institutions  
have an obligation, enforceable in  
the courts, to provide a reasonable  
amount of physical freedom as well  
as safety for involuntarily committed  
patients.

At the same time, Justice Lewis F.  
Powell Jr., writing for the 8-to-1 ma-  
jority, cautioned judges to respect  
the professional judgments and

budgetary restraints of the institu-  
tions and not require them to "make  
each decision in the shadow" of pos-  
sible lawsuits.

The opinion, carefully balancing  
the competing interests in one of the  
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term, applies directly to hospitals for  
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expected to affect mental hospitals.  
There are an estimated 150,000 peo-  
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"Persons who have been involun-  
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# Court Grants Rights to Mentall

COURT, From A1

ment are designed to punish," Powell said.

The decision left many questions unanswered, such as what constitutes reasonable freedom, and many points unclear, in an apparent attempt to allow flexibility for professional judgments. It also allowed numerous defenses for hospital officials sued for mistreatment, including a defense that the problems were caused by "budgetary restraints."

Nevertheless, the decision is a cornerstone in what has become a "patients' rights" movement comparable in many respects to the prisoners' and defendants' rights thrust of the '60s and '70s. Nearly all the states face litigation in this field.

Twenty-one, fearing federal judges would soon begin looking excessively over their shoulders, asked the Supreme Court to resolve the issues, preserving to the extent possible maximum flexibility for their state institutions.

Yesterday's case began with a suit brought on behalf of Nicholas Romeo, 33, a man with the mental capacity of an 18-month-old child. Romeo's mother had him legally committed in May, 1974, to the Pennhurst State School and Hospital near Philadelphia. That state-run institution has been the subject of numerous suits and complaints of mistreatment.

She became concerned about her son's treatment after learning that he had been injured at least 70 times both by his own hand and by others reacting to his aggressive behavior. She also learned that officials had repeatedly confined him in physical arm restraints during portions of each day.

She sued the officials for damages under federal civil rights laws, seeking broad constitutional guar-

antees for patients to be free of physical restraints, and guaranteed rights to comprehensive training and development programs.

She lost at trial, but the 3rd U.S. Circuit Court of Appeals, in a divided ruling, ordered a new trial because of misinterpretations of constitutional law by the District Court.

Pennhurst appealed, but yesterday the Supreme Court agreed with the appeals court and issued its own guidelines for these cases. The justices agreed unanimously that the case should be returned to the lower court for a new trial.

Chief Justice Warren E. Burger agreed with much of the ruling, but dissented from any right to treatment.

Powell said that the patients should have at least the constitutional protections afforded prisoners, such as a right to safe conditions and the right to be free from unnecessary physical restraints. He noted that unlike prison inmates, the patients at issue in yesterday's case "may not be punished at all."

The right to treatment is a more difficult problem, Powell said, because the Constitution guarantees no substantive services to anyone. He said the least that could be demanded, however, was that the involuntarily committed receive the training they need to function safely in the hospital, without hurting themselves or others. This would also help them avoid the need for shackling and physical confinement.

Powell based his ruling on the due process clause of the 14th Amendment, which protects the personal physical liberty of individuals from unfair or unreasonable incursions by the states. The question, he said, was how to determine what is fair in this situation.

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## Supreme Court Rules in Favor of

By Ruth Marcus

Washington Post Staff Writer

Prosecutors who file more serious charges against defendants after they request a jury trial are not automatically subject to a "presumption of prosecutorial vindictiveness," the Supreme Court ruled yesterday.

In an opinion written by Justice John Paul Stevens, the court ruled, 6 to 3, that the risk of prosecutors imposing a penalty of more severe charges on defendants who assert their right to a jury trial is too low to make that presumption.

## Filing of More Serious Charges Held Valid After a Defendant Requests a Jury Trial

The ruling came in the case of Learley Reed Goodwin, who attempted to flee police after being stopped for speeding on the Baltimore-Washington Parkway and was charged with various misdemeanors and petty offenses.

After Goodwin insisted on a trial by jury rather than appear

William J. Brennan Jr. and Thurgood Marshall dissented, arguing that prosecutors "would almost always prefer" that defendants waive their "troublesome" right to jury trial, and that a prosecutor's elevation of charges against a defendant who refuses to do so "manifestly" was a retaliation.



# Grants Rights to Mentally Retarded

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tion is a cornerstone in ients' rights" movement ects to the prisoners' and t of the '60s and '70s. litigation in this field. deral judges would soon y over their shoulders, rt to resolve the issues, possible maximum flex- itutions.

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Pennhurst appealed, but yesterday the Su- preme Court agreed with the appeals court and issued its own guidelines for these cases. The jus- tices agreed unanimously that the case should be returned to the lower court for a new trial.

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The right to treatment is a more difficult prob- lem, Powell said, because the Constitution guar- antees no substantive services to anyone. He said the least that could be demanded, however, was that the involuntarily committed receive the train- ing they need to function safely in the hospital, without hurting themselves or others. This would also help them avoid the need for shackling and physical confinement.

Powell based his ruling on the due process clause of the 14th Amendment, which protects the personal physical liberty of individuals from un- fair or unreasonable incursions by the states. The question, he said, was how to determine what is fair in this situation.

"... In determining what is reasonable," he said, "we emphasize that courts must show def- erence to the judgment exercised by a qualified professional. By so limiting judicial review of chal- lenges to conditions in state institutions, interfe- rence by the federal judiciary with the internal op- erations of these institutions should be minimized. Moreover, there certainly is no reason to think judges or juries are better qualified than appro- priate professionals in making such decisions."

The decisions of the professionals should be considered generally valid by the courts, Powell said, unless there is "such a substantial departure from accepted professional judgment, practice or standards as to demonstrate that the person re- sponsible actually did not base the decision on such a judgment."

Experts in mental health law said yesterday that even with its ambiguities, the ruling in *Youngberg v. Romeo* was an important change in the law.

"It is a positive step in the right direction," said Norman S. Rosenberg, director of the Mental Health Law Project. Rosenberg said it was the first time the court had said that such institutions have to do anything besides basic maintenance for patients, the first time any "affirmative right" to training had been granted. Joel Klein, who filed a friend of the court brief for the American Psychi- atric Association expressing concern about main- taining professional autonomy for hospital offi- cials, said he felt that need had been satisfied.

The court also disposed yesterday of a related case. The court said an intervening decision of the Massachusetts Supreme Court required return of *Mills v. Rogers* for further consideration in the lower courts.

## eme Court Rules in Favor of Prosecutors

Marcus  
Staff Writer

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### Filing of More Serious Charges Held Valid After a Defendant Requests a Jury Trial

The ruling came in the case of Learley Reed Goodwin, who at- tempted to flee police after being stopped for speeding on the Bal- timore-Washington Parkway and was charged with various misde- meanors and petty offenses.

After Goodwin insisted on a trial by jury rather than appear before a federal magistrate, his case was transferred to a prosecu- tor, who obtained a four-count fel- ony and misdemeanor indictment.

William J. Brennan Jr. and Thurgood Marshall dissented, ar- guing that prosecutors "would al- most always prefer" that defen- dants waive their "troublesome" right to jury trial, and that a pros- ecutor's elevation of charges against a defendant who refuses to do so "manifestly poses a realistic likelihood of vindictiveness."

Justice Harry A. Blackmun agreed with the dissenters that there should be an automatic pre-

said, the government had ade- quately "dispelled the appearance of vindictiveness" in the case.

In another action the court con- tinued a trend of deferring to states by sharply limiting the power of federal courts to declare state taxes unconstitutional.

Justice Sandra D. O'Connor, in a 7-to-2 opinion, held that the fed- eral Tax Injunction Act bars U.S. courts from declaring state taxes unconstitutional and from enjo- ining their collection.

The opinion overturned a lower court ruling that California cannot constitutionally require religious schools unaffiliated with a church to pay unemployment taxes. O'Connor avoided the issue of

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## Special to The New York Times



George F. Will

Post 6/27/82

## Granting Rights to the Retarded (Romeo)

In his 33 years, Nicholas Romeo has not been given much. Recently, however, he, and approximately 135,000 persons similarly situated, acquired some rights.

The word "landmark" is used too casually concerning Supreme Court rulings. But in its ruling in Romeo's case, the court stepped, gingerly but unanimously, into new territory. For the first time it has affirmed substantive rights of involuntarily committed retarded persons in institutions. In this context, "involuntarily" does not mean against the individual's will, but rather that the individual's will was not engaged.

Romeo is profoundly retarded. Since the death of his father seven years ago, he has been a resident of Pennsylvania's much-criticized Pennhurst institution. He cannot talk and lacks basic self-care skills. When petitioning for his admission to Pennhurst, his mother said: "He becomes violent—kicks, punches, breaks glass. He can't speak—wants to express himself but can't."

In Pennhurst, he was injured 63 times, by his own violence or that of other residents, in the two years before his mother went to court. When in Pennhurst's infirmary for treatment of a broken arm, he was physically restrained in bed during

parts of the day, with "soft" restraints on his arms. The staff said this was not for punishment but for his protection, and that of other patients.

Now the court has held that there are constitutionally required conditions of confinement, derived from the 14th Amendment. The ruling is a delicate assertion of judicial oversight, tempered by assertions of deference to professionals in the field of institutional care.

The opinion, written by Justice Lewis Powell, affirms three rights: to safety, to freedom of movement and to training. The first two "needs" are rights conditioned by institutional necessities, and the right to training is defined, minimally, as training necessary for enjoyment of the first two rights. But Romeo claimed only a right to "minimally adequate habilitation."

The court calls even this claim "troubling," for several reasons. One is that "as a general matter, no state has a constitutional duty to provide substantive services for those within its border." The court says the term "habilitation" is defined neither precisely nor consistently in psychiatry. (Actually, it is unclear how such habilitation is a psychiatric matter.) The court also says that professionals differ "strongly" as

to whether effective training of all severely or profoundly retarded persons is possible.

The court does not know what the experience of recent years proves: that pessimistic prognoses, even by professionals, concerning all kinds of retardation, are apt to be wrong (although, alas, somewhat self-fulfilling). But the court knows that an institutionalized person requires rights—enforceable claims—because he or she is wholly dependent on the state.

All Romeo sought, and all the court affirmed, is a right to "training suited to" the two "needs" of bodily safety and minimum physical restraint. The court stressed that "This case does not present the difficult question whether a mentally retarded person, involuntarily committed to a state institution, has some general constitutional right to training per se." The court actually pruned a lower court ruling, which it considered so broad as to permit excessive judicial intrusiveness. The court said there is a "presumption of correctness" regarding the decisions of professionals, who "shall not be required to make each decision in the shadow of an action for damages."

Nevertheless, this ruling will, like a hovering angel, cast a comforting shadow on the approxi-

mately 135,000 retarded persons in institutions, many of whom are living in stomach-turning conditions. Furthermore, it expresses, and thereby nourishes, a social sensibility important to 6 million other retarded citizens.

The affecting surge of gratitude among friends of retarded citizens, including friends whose retarded friends are not institutionalized, is perhaps disproportionate to the rights affirmed by the ruling. But the satisfaction is commensurate with the expressive, as distinct from the technical, power of the ruling.

Americans are litigious, but not lawyer-like. American society is not animated by the dry distinctions that characterize judicial craftsmanship. Rulings like this one, and *Brown v. Board of Education*, the 1954 school desegregation decision, are examples of law's tutelary functions.

In 1954, the elemental message was: blacks are full citizens. In 1982, the message is: retarded people, too, are members of the community that the Constitution constitutes. The fact that these messages have had to be sent down from the Supreme Court—the Mount Sinai of American government—is a measure of how bad things were then, and are in some places today.



*Mary - Apart from occasional light editing, and my suggestion as to the paragraph on p 18, this looks good to me. L.F.P.*

*Changes: 3-5, 7-8, 10-19.*

Respondents use the word "resident" rather than "inmate" or "patient." I have tried to use "resident," rather than either of the other two words, throughout.

To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Rehnquist  
Justice Stevens  
Justice O'Connor

From: Justice Powell 5/5

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CHAMBERS DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 80-1429

DUANE YOUNGBERG, ETC., ET AL., PETITIONERS v.  
NICHOLAS ROMEO, AN INCOMPETENT, BY HIS  
MOTHER AND NEXT FRIEND, PAULA ROMEO

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE THIRD CIRCUIT

[May —, 1982]

JUSTICE POWELL delivered the opinion of the Court.

The question presented is whether respondent, involuntarily committed to a state institution for the mentally retarded, has substantive rights under the Due Process Clause of the Fourteenth Amendment to (i) safe conditions of confinement; (ii) freedom from bodily restraints; and (iii) training or "habilitation."<sup>1</sup> Respondent sued under 42 U. S. C. § 1983 against three administrators of the institution, claiming damages for the alleged breach of his constitutional rights.

### I

Respondent Nicholas Romeo is profoundly retarded. Although 33 years old, he has the mental capacity of an eighteen-month old child. He cannot talk and lacks the most basic self-care skills. Until he was 26, respondent lived with his parents in Philadelphia. But after the death of his father

<sup>1</sup>The American Psychiatric Association explains that "[t]he word 'habilitation,' is used to refer to programs for the mentally retarded because mental retardation is . . . a learning disability and training impairment rather than an illness. . . . [T]he principal focus of habilitation is upon training and development of needed skills." Brief of American Psychiatric Association as Amicus Curiae, at 4 n. 1.



in May 1974, his mother was unable to control his violence. Within two weeks of the father's death, respondent's mother sought his temporary admission to a nearby Pennsylvania hospital.

Shortly thereafter, she asked the Philadelphia County Court of Common Pleas to admit Romeo to a state facility on a permanent basis. Her petition to the court explained that she was unable to care for Romeo or control his violence.<sup>2</sup> As part of the commitment process, Romeo was examined by a physician and a psychologist. They both certified that respondent was severely retarded and unable to care for himself. App. 21a-22a and 28a-29a. On June 11, 1974, the Court of Common Pleas committed respondent to the Pennhurst State School and Hospital, pursuant to the applicable involuntary commitment provision of the Pennsylvania Mental Health and Mental Retardation Act, Pa. Stat. Ann. tit. 50 § 4406.

At Pennhurst, Romeo was injured on numerous occasions, both by his own violence and by the reactions of other residents to him. Mrs. Romeo became concerned about these injuries. After objecting to respondent's treatment several times, she filed this complaint on November 4, 1976, in the United States District Court for the Eastern District of Pennsylvania as his next friend. The complaint alleged that "[d]uring the period July, 1974 to the present, plaintiff has suffered injuries on at least sixty-three occasions." The complaint originally sought damages and injunctive relief from Pennhurst's director and two supervisors<sup>3</sup>; it alleged

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<sup>2</sup> Mrs. Romeo's petition to the Court of Common Pleas stated: "Since my husband's death I am unable to handle him. He becomes violent—Kicks, punches, breaks glass; He can't speak—wants to express himself but can't. He is [a] constant 24 hr. care. [W]ithout my husband I am unable to care for him." App. 18a.

<sup>3</sup> Petitioner Duane Youngberg was the Superintendent of Pennhurst; he had supervisory authority over the entire facility. Respondent Richard Matthews was the Director of Resident Life at Pennhurst. Respondent



that these officials knew, or should have known, that Romeo was suffering injuries and failed to institute appropriate preventive procedures, thus violating his rights under the Eighth and Fourteenth Amendments.

Thereafter, in late 1976, Romeo was transferred from his ward to the hospital for treatment of a broken arm. While in the infirmary, and by order of a doctor, he was physically restrained during portions of each day.<sup>4</sup> These restraints were ordered by Dr. Gabroy, not a defendant here, to protect Romeo and others in the hospital, some of whom were in traction or were being treated intravenously. 7 Record 40, 49, 76-78. Although respondent normally would have returned to his ward when his arm healed, the parties to this litigation agreed that he should remain in the hospital due to the pending law suit. 5 Record 248, 6 R. 57-58 and 137. Nevertheless, in December 1977, a second amended complaint was filed alleging that the defendants were restraining respondent for prolonged periods on a routine basis. The second amended complaint also added a claim for damages to compensate Romeo for the defendants' failure to provide him with appropriate "treatment <sup>or</sup> ~~and~~ programs for his mental retardation." All claims for injunctive relief were dropped prior to trial because respondent is a member of the class seeking such relief in another action.<sup>5</sup>

An eight-day jury trial was held in April 1978. Petitioners introduced evidence that respondent participated in several

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Marguerite Conley was Unit Director for the unit in which respondent was incarcerated. According to respondent, petitioners are administrators, not medical doctors. See Brief of Respondent 2. Youngberg and Matthews are no longer at Pennhurst.

<sup>4</sup>Although the Court of Appeals described these restraints as "shackles," "soft" restraints, for the arms only, were generally used. 7 Record 53-55.

<sup>5</sup>*Pennhurst State School and Hospital v. Halderman*, 451 U. S. 1 (1981) (remanded for further proceedings).

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programs teaching basic self-care skills.<sup>6</sup> A comprehensive behavior-modification program was designed by staff members to reduce Romeo's aggressive behavior,<sup>7</sup> but that program was never implemented because of his mother's objections.<sup>8</sup> Respondent introduced evidence of his injuries and of conditions in his unit.<sup>9</sup>

At the close of the trial, the court instructed the jury that "if any or all of the defendants were aware of and failed to take all reasonable steps to prevent repeated attacks upon Nicholas Romeo," such failure deprived him of his constitutional rights. App. to Pet. for Cert. 110a. The jury also was instructed that if the defendants shackled Romeo or denied him treatment "as a punishment for filing this lawsuit," his constitutional rights were violated under the Eighth Amendment. *Id.*, at 73a-75a. Finally, the jury was instructed that if they found the defendants "deliberately indifferent to the medical and psychological needs of Nicholas Romeo," they might find that Romeo's Eighth and Four-

<sup>6</sup> Prior to his transfer to Pennhurst's hospital ward, Romeo participated in programs dealing with feeding, showering, drying, dressing, self control, and toilet training, as well as a program providing interaction with staff members. Defendants' exhibit 10; 3 Record 69-70, 5 Record 44-56, 242-250, 6 Record 162-166; 7 Record 41-48.

Some programs continued while respondent was in the hospital, 5 Record 227, 248, 256; 6 Record 50, 162-166, Record 32, 34, 41-48, and they reduced respondent's aggressive behavior to some extent, 7 Record 45.

<sup>7</sup> 2 Record 7, 5 Record 88-90; 6 Record 88, 200-203; Defendants' Exhibit 1, at 9. The program called for short periods of separation from other residents and for use of "muffs" on plaintiff's hands for short periods of time, *i. e.*, 5 minutes, to prevent him from harming himself or others.

<sup>8</sup> 1 Record 53; 4 Record 25; 6 Record 204.

<sup>9</sup> The District Judge refused to allow testimony by two of Romeo's witnesses—trained professionals—indicating that Romeo would have benefited from more or different training programs. The trial judge explained that evidence of the advantages of alternative forms of treatment might be relevant to a malpractice suit, but was not relevant to a constitutional claim under § 1983. App. to Pet. for Cert. 101a.

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teenth Amendment rights were violated. *Id.*, at 111a. The jury returned a verdict for the defendants, on which judgment was entered.

The Court of Appeals for the Third Circuit, sitting en banc, reversed and remanded for a new trial. 644 F. 2d 147 (1980). The court held that the Eighth Amendment, prohibiting cruel and unusual punishment of those convicted of crimes, was not an appropriate source for determining the rights of the involuntarily committed. Rather, the Fourteenth Amendment and the liberty interest protected by that amendment was the proper constitutional basis for these rights. In applying the Fourteenth Amendment, the court found that the involuntarily committed retain liberty interests in freedom of movement and in personal security. These were "fundamental liberties" that ~~could~~ be limited only by an "overriding," non-punitive state interest. 644 F. 2d, at 157-159. It further found that the involuntarily committed have a liberty interest in training or habilitation designed to "treat" their mental retardation.

The en banc court did not, however, agree on the relevant standard to be used in determining whether Romeo's rights had been violated.<sup>10</sup> Because physical restraint "raises a presumption of a punitive sanction," the majority of the Court of Appeals concluded that it can be justified only by "compelling necessity." *Id.*, at 159-160. A somewhat different standard was appropriate for the failure to provide for a resident's safety. The majority considered that such a failure must be justified by a showing of "substantial necessity." *Id.*, at 164. Finally, the majority held that when treatment

<sup>10</sup> The existence of a qualified immunity defense was not at issue on appeal. The defendants had received instructions on this defense, App. 76a, and it was not challenged by respondent. 644 F. 2d, at 173 n. 1. After citing *Pierson v. Ray*, 386 U. S. 547 (1967) and *Scheuer v. Rhodes*, 416 U. S. 232 (1974), the majority of the Court of Appeals noted that such instructions should be given again on the remand. 644 F. 2d, at 171-172.

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has been administered, those responsible are liable only if the treatment is not "acceptable in the light of present medical or other scientific knowledge." *Id.*, at 166-167 and 173.<sup>11</sup>

Chief Judge Seitz, writing for the minority, considered the standards articulated by the majority as indistinguishable from those applicable to medical malpractice claims. In Chief Judge Seitz's view, the Constitution "only requires that the courts make certain that professional judgment in fact was exercised." 644 F. 2d, at 178. He concluded that the appropriate standard was whether the defendants' conduct was "such a substantial departure from accepted professional judgment, practice or standards in the care and treatment of this plaintiff as to demonstrate that the defendants did not base their conduct on a professional judgment." 644 F. 2d, at 178.<sup>12</sup>

<sup>11</sup> Actually, the court divided the right-to-treatment claim into three categories and adopted three standards, but only the standard described in text is at issue before this Court. The Court of Appeals also stated that if a jury finds that no treatment has been administered, it may hold the institution's administrators liable unless they can provide a compelling explanation for the lack of treatment, 644 F. 2d at 165, 173, but respondent does not discuss this precise standard in his brief and it does not appear to be relevant to the facts of this case. In addition, the court considered "least restrictive analysis" appropriate to justify severe intrusions on individual dignity, such as permanent physical alteration or surgical intervention, *id.*, at 165-166, and 173, but respondent concedes that this issue is not present in this case.

<sup>12</sup> Judge Aldisert joined Chief Judge Seitz's opinion, but wrote separately to emphasize the nature of the difference between the majority opinion and that of the Chief Judge. On a conceptual level, Judge Aldisert criticized the majority for abandoning the common-law method of deciding the case at bar rather than articulating broad principles unconnected with the facts of the case and of uncertain meaning. 644 F. 2d, at 182-183. And, on a pragmatic level, Judge Aldisert warned that neither juries nor those administering state institutions would receive guidance from the "amorphous constitutional law tenets" articulated by the majority. *Id.*, at 184. See *id.*, at 183-185.

Judge Garth also joined Chief Judge Seitz's opinion, and wrote separately to criticize the majority for addressing issues not raised by the facts

*opinion*

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We granted the petition for certiorari because of the importance of the question presented to the administration of state institutions for the mentally retarded. 451 U. S. 982 (1981). We now reverse.

## II

We consider here for the first time the substantive rights of the involuntarily committed under the Fourteenth Amendment to the Constitution.<sup>13</sup> In this case, respondent has been committed under the laws of Pennsylvania, and he does not challenge the commitment. Rather, he argues that he has a constitutionally protected liberty interest in safety, freedom of movement, and training within the institution; and that petitioners infringed on these rights by failing to provide constitutionally required conditions of confinement.

The mere fact that Romeo has been committed under proper procedures does not deprive him of all substantive liberty interest under the Fourteenth Amendment. See, *e. g.*, *Vitek v. Jones*, 445 U. S. 480, 491–494 (1980). Indeed, the state concedes that respondent has a right to adequate food, shelter, clothing, and medical care.<sup>14</sup> We must decide whether liberty interests also exist in safety, freedom of movement, ~~or~~ training and, if so, under what circumstances these interests are infringed in violation of due process.

and

## A

Respondent's first two claims involve liberty interests recognized by prior decisions of this Court, interests that invol-

of this case. 644 F. 2d, at 186.

<sup>13</sup> In pertinent part, that Amendment provides that a state cannot deprive "any person of life, liberty, or property, without due process of law. . . ." U. S. Const., Amend. XIV, § 1.

Respondent no longer relies on the Eighth Amendment as a direct source of constitutional rights, Brief of Respondent 13 n. 12.

<sup>14</sup> Brief of Petitioners 8, 11, 12 and n. 10; Brief of Respondent 15–16. See also *Amici Curiae* Brief of Connecticut and Twenty Other States 8. Petitioners argue that they have fully protected these interests.

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untary commitment proceedings do not extinguish—indeed, petitioners do not argue on principle to the contrary.<sup>15</sup> The first is a claim to safe conditions. In the past, this Court has noted that the right to personal security constitutes an “historic liberty interest” protected substantively by the Due Process Clause. *Ingraham v. Wright*, 430 U. S. 651, 673 (1977). And that right is not extinguished by lawful confinement, even for penal purposes.<sup>16</sup> See *Hutto v. Finney*, 437 U. S. 678 (1978). If it is cruel and unusual punishment to hold convicted criminals in unsafe conditions, it must be unconstitutional to confine the involuntarily committed—who may not be punished at all—in unsafe conditions.

Next, respondent claims a right to freedom from bodily restraint. In other contexts, the existence of such an interest is clear in the prior decisions of this Court. Indeed, “[l]iberty from bodily restraint always has been recognized as the core of the liberty protected by the Due Process Clause from arbitrary governmental action.” *Greenholtz v. Nebraska Penal Inmates*, 442 U. S. 1, 18–19 (1979) (POWELL, J., concurring). This interest survives criminal conviction and incarceration. Similarly, it must also survive involuntary commitment proceedings.

## B

Respondent’s remaining claim is more troubling: a constitutional right to “habilitation,” *i. e.*, training to improve

<sup>15</sup> See Brief of Petitioner 27–31.

<sup>16</sup> It is true that in cases dealing with prisoners, analysis begins with the Eighth Amendment’s proscription of cruel and unusual punishment, and that amendment has no direct bearing on non-penal institutions. See *Ingraham v. Wright*, 430 U. S. 651, — (1977). But the Eighth Amendment has been applied to the states through the Due Process Clause of the Fourteenth Amendment. If prisoners in state institutions have a federal right to some degree of safety, it is because their safety implicates a liberty interest protected by the Fourteenth Amendment’s Due Process Clause. See, *e. g.*, *Adamson v. California*, 332 U. S. 46 (1947); *Palko v. Connecticut*, 302 U. S. 319 (1937).

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reference to n. 4  
as unnecessary.



his ability to function within Pennhurst. Respondent concedes that no amount of training will make possible his release. Moreover, respondent does not argue that if he were still at home, he would have a right to training at the expense of the state. See Tr. Oral Arg. 33. And, since we already have found constitutionally protected liberty interests in freedom from restraints and safety, some training<sup>17</sup> may be necessary to avoid unconstitutional infringement of those rights regardless of whether respondent also enjoys a constitutional right to training *per se*. We therefore decide only the narrow question of whether one who has been committed involuntarily has a right to additional training—other than that related to safety or the ability to function free of restraints—when such training might improve his capacity to function more independently within the institution, but cannot make possible his release.

Respondent argues that, once a person has been confined, he has “no one but the state to turn to for help in gaining additional skills or, at least, preserving whatever skills and abilities” he has. Brief of Respondent 23. Respondent concludes that the state therefore has a constitutional duty to provide reasonable training, both to preserve existing skills and develop new ones. In making this argument, respondent compares mental retardation to an infectious disease, for which the state has quarantined the individual, and cannot then deny appropriate treatment. Mental retardation is not, however, a disease. Rather, it is a description of a certain level of intellectual ability,<sup>18</sup> and the “habilitation” respondent

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<sup>17</sup> We use the term “training” as synonymous with “habilitation,” with its “principal focus”—certainly in a case like Romeo’s—being on “training and development of needed skills.” See n. 1, *supra*.

<sup>18</sup> See A. Baumeister, *American Residential Institutions*, at 21–22, as printed in *Residential Facilities for the Mentally Retarded* (Baumeister, ed. 1970); H. Best, *Public Provision for the Mentally Retarded in the United States*, at 1 (1965). See also Brief American Psychiatric Association as *Amicus Curiae*, at 4 n. 1 (quoted in n. 1, *supra*)



seeks, such as training to teach him for the first time skills he does not possess, correlates more closely to education than to medical treatment.<sup>19</sup> And we have never found a right to education under the Constitution.<sup>20</sup>

As a general matter, a state is under no constitutional duty to provide services for those within its borders. See, e. g., *Harris v. McCrae*, 448 U. S. 297 (1980) (publicly funded abortions); *Maher v. Roe*, 432 U. S. 464 (1977) (medical treatment). When states do choose to provide services, they generally are given wide latitude in doing so. See *Richardson v. Belcher*, 404 U. S. 78, 83–84 (1971); *Dandridge v. Williams*, 397 U. S. 471, 478 (1970). Specifically, states need not “choose between attacking every aspect of a problem or not attacking the problem at all.” *Id.*, at 486–487. Here, the state has committed respondent who concededly cannot survive on the outside. It is willing to provide food, shelter, clothing, and medical care, as well as reasonable conditions of safety and reasonable freedom from bodily restraint. The narrow question presented is whether it also must afford him training to develop particular skills, even though it is not claimed that any level of training could enable respondent to live outside the institution.

As a result of a congenital chemical imbalance in his brain, Romeo has an IQ of 8–10 and is therefore classified as a profoundly retarded person. There is no known way in which to correct the chemical imbalance and increase Romeo’s IQ.

<sup>19</sup> There may be cases in which it is difficult to distinguish between claims to medical treatment and claims to training in the development of skills. This is not, however, such a case. Indeed, Romeo does not raise any issues related to medical care—for example, he does not complain that he received inadequate medical treatment in the infirmary ward. And his claims to training are either related to safety and freedom from restraints or purely educational, i. e., training to make him less violent (related to safety and freedom from restraints) and training in self-care skills (educational).

<sup>20</sup> See *San Antonio Ind. School Dist. v. Rodriguez*, 411 U. S. 1 (1973). Respondent does not argue that he is denied training or habilitation available to others in Pennsylvania institutions.

Pennhurst.

slight wording change

slight wording change

I added this ¶ to respond to your question, but I am not quite sure whether this satisfies your concern. YJB

clarification



We hesitate to find a new liberty interest cognizable under the Fourteenth Amendment in this instance. As we noted in determining that there is no general right to education in *San Antonio School District v. Rodriguez*, 411 U. S. 1 (1973):

“It is not the province of this Court to create substantive constitutional rights in the name of guaranteeing equal protection of the laws. . . . Rather, the answer lies in assessing whether there is a right to education explicitly or implicitly guaranteed by the Constitution.” *Id.*, at 33–34.

Clause

A similar restraint is seen in cases considering new “liberties” under the due process. In *Paul v. Davis*, 424 U. S. 693 (1976), we noted that the liberties protected by the Fourteenth Amendment have their origins either in state law—for purposes of procedural due process—or in the guarantees of the Bill of Rights that have been “incorporated” to apply to the states. *Id.*, at 710–711. In addition, as noted earlier, some liberty interests are implicit in our historic notion of the meaning of that word itself, *i. e.*, freedom from bodily restraint by the state. But a right to training fits none of these categories. Respondent is not seeking procedural due process.<sup>21</sup> Nor does he claim a right historically regarded as

*slight wording change*

<sup>21</sup> Respondent does argue that the Pennsylvania commitment statute provides a state-law basis for a federal *substantive*, not *procedural*, right. He maintains that he was committed for care and treatment under state law, and he therefore has a state substantive right entitled to substantive, not just procedural, protection under the Due Process Clause of the Federal Constitution. But this argument is made for the first time in respondent’s brief to this Court. It was not advanced in the courts below, and was not argued to the Court of Appeals as a ground for reversing the trial court. Given the uncertainty of Pennsylvania law and the lack of any guidance on this issue from the lower federal courts, we decline to consider it now. See *Dothard v. Rawlinson*, 433 U. S. 321, 3273 n. 1 (1977); *Duigman v. United States*, 274 U. S. 196, 200 (1927); *Jordan Mining Co. v. Societe des Mines*, 164 U. S. 261, 264–265 (1921).



within the meaning of the concept of "liberty." And respondent points to no right to training either implicit or explicit in the guarantees of the Bill of Rights.

The right respondent claims is a substantive due process right. Only when an action of a state against an individual is sharply at odds with our common sense of "liberty and justice," will the Due Process Clause of the Fourteenth Amendment bar the action. *Palko v. Connecticut*, 302 U. S. 319, — (1937).<sup>22</sup> In deciding whether to provide individuals such as Romeo with habilitative training, the state must make a difficult decision regarding the allocation of its resources. We cannot say that due process requires that such individuals must be given training in the development of skills that cannot lead to freedom. The decision whether to commit scarce resources on programs to attempt to train a ~~Romeo~~<sup>23</sup> or on other social and welfare programs of manifest merit, is a difficult one that state and federal governments must face. The Constitution does not dictate an answer, and this is not a decision that courts are competent to make.

<sup>22</sup> See also *Adamson v. California*, 332 U. S. 46, — (1947) (Frankfurter, J., concurring) (In order to determine whether the defendant was accorded due process under the Fourteenth Amendment, it is necessary "to ascertain whether [the proceedings] offend those canons of decency and fairness which express the notions of justice of English-speaking peoples."); *Palko v. Connecticut*, 302 U. S., at, at — (Under the Due Process Clause of the Fourteenth Amendment, the standard is whether a state has "subjected [an individual] to a hardship so acute and shocking that our polity will not endure it.").

<sup>23</sup> Professionals in the habilitation of the mentally retarded disagree strongly on the question whether effective training of all severely or profoundly retarded individuals is even possible. See, e. g., Favell, Risley, Wolfe, Riddle, & Rasmussen, *The Limits of Habilitation*, 1 Analysis and Intervention in Developmental Disabilities, 37 (1981); Bailey, *Wanted: A Rational Search for the Limiting Conditions of Habilitation in the Retarded*, 1 Analysis and Intervention in Developmental Disabilities, 37 (1981); Kauffman & Krause, *The Cult of Educability: Searching for the Substance of Things Hoped for; The Evidence of Things Not Seen*, 1 Analysis and Intervention in Developmental Disabilities, 37 (1981).

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persons We therefore conclude that involuntarily-committed mentally retarded do not have a constitutionally protected liberty interest in training *per se*. As noted above, they do have constitutionally protected interests in safety and freedom from bodily restraints, and those interests may require some kinds of training. We turn next to consider the whether Pennsylvania may have violated these two rights.

## III

## A

We have established that Romeo retains liberty interests in safety and freedom from bodily restraint that survive his commitment. Yet these interests are not absolute, indeed to some extent they are in conflict. In operating an institution such as Pennhurst, there are occasions in which it is necessary for the state to restrain the movement of residents—for example, to protect them as well as others from violence.<sup>24</sup> Similar restraints may also be appropriate in a training program. And an institution cannot protect its residents from all danger of violence if it is to permit them any freedom of movement. The question then is not simply whether a liberty interest has been infringed but whether the extent or nature of the restraint or lack of absolute safety is such as to violate due process.

In determining whether a substantive right protected by the Due Process Clause has been violated, it is necessary to balance “the liberty of the individual” and “the demands of an organized society.” *Poe v. Ullman*, 367 U. S. 497, 522, 542 (1961) (Harlan, J., dissenting). In seeking this balance in other cases, the Court has weighed the individual’s interest in liberty against the state’s asserted reasons for restraining individual liberty. In *Bell v. Wolfish*, 441 U. S. 520, 539 (1979), for example, we considered a challenge to pre-trial detainees’ confinement conditions. We agreed that the detain-

<sup>24</sup> In Romeo’s case, there can be no question that physical restraint was necessary at times. See n. 2, *supra*.

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ees, not yet convicted of the crime charged, could not be punished. But we upheld those restrictions on liberty that were reasonably related to legitimate government objectives and not tantamount to punishment.<sup>25</sup> And we have taken a similar approach in deciding procedural due-process challenges to civil commitment proceedings. In *Parham v. J.R.*, 442 U. S. 584 (1979), for example, we considered a challenge to state procedures for commitment of a minor with parental consent. In determining that *procedural* due process did not mandate an adversarial hearing, we weighed the liberty interest of the individual against the legitimate interests of the state, including the fiscal and administrative burdens additional procedures would entail.<sup>26</sup> *Id.*, at 599–600.

Accordingly, whether respondent's constitutional rights have been violated must be determined by balancing his liberty interests against various state interests. If there is to be any uniformity in protecting these interests, this balancing cannot be left to the unguided discretion of a judge or jury. We therefore turn to consider the proper standard for determining whether a state has adequately protected the rights of the involuntarily-committed mentally retarded.

### B

We think the standard articulated by Chief Judge Seitz affords the necessary guidance and reflects the proper balance between the legitimate interests of the state and the rights of the involuntarily committed to reasonable conditions of

<sup>25</sup> See also *Jackson v. Indiana*, 406 U. S. 713, 738 (1972) (holding that an incompetent pre-trial detainee cannot, after a competency hearing, be held indefinitely without either criminal process or civil commitment; due process requires, at a minimum, some rational relation between the nature and duration of commitment and its purpose).

<sup>26</sup> See also *Addington v. Texas*, 441 U. S. 418 (1979). In that case, we held that the state must prove the need for commitment by "clear and convincing evidence." We reached this decision by weighing the individual's liberty interest against the state's legitimate interests in confinement.

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safety and freedom from unreasonable restraints. He would have held that "the Constitution only requires that the courts make certain that professional judgment in fact was exercised. It is not appropriate for the courts to specify which of several professionally acceptable choices should have been made."<sup>27</sup> 644 F. 2d, at 178. This standard is higher than the deliberate indifference formulation applied in the context of penal institutions. Persons who have been involuntarily committed are entitled to more considerate treatment and conditions of confinement than criminals whose conditions of confinement are designed to punish. It is lower than the standard of "compelling" or "substantial" necessity considered necessary by the Court of Appeals to justify use of restraints or conditions of less than absolute safety. We think that such a standard would place an undue burden on the administration of institutions such as Pennhurst and also would restrict unnecessarily the exercise of professional judgment as to the needs of residents.

We hold that when the rights of the involuntarily committed mentally retarded are weighed against the legitimate interests of the state, including administrative and fiscal constraints, due process requires that (i) the state subject these individuals only to reasonable physical constraints; (ii) it provide them reasonable safety conditions, and (iii) it afford them such training as is reasonably necessary to achieve these ends.<sup>28</sup> We recognize that this holding may impose

<sup>27</sup> Our only disagreement with Chief Judge Seitz, ~~holding is with regard~~ *view as* to the existence of a right to ~~treatment~~ *view as* *per se*. He finds that such a right does exist, whereas we find no such right cognizable as a liberty interest protected by the Fourteenth Amendment. See 644 F. 2d, at ~~17~~.

<sup>28</sup> We have expressed the constitutional right enjoyed by respondent in somewhat different language from that used by Chief Judge Seitz. Rather than stating that the involuntarily committed enjoy the right to have certain decisions made by professionals, see 644 F. 2d, at —, we hold that they are entitled to conditions of reasonable safety and reasonable freedom from bodily restraints, but we go on to hold that once such a

(other standards used for right to treatment)

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176 (Chief Judge Seitz use the word "treatment" rather than "training.")

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some additional burdens on states. In determining what is "reasonable," however, we emphasize that courts must show deference to the judgment exercised by a qualified professional.<sup>29</sup>

By so limiting judicial review of challenges to conditions in state institutions, interference by the federal judiciary with the internal operations of these institutions will be minimized.<sup>30</sup> Moreover, there certainly is no reason to think

decision is made by a professional in the exercise of his judgment, courts will defer to it. We do not view this holding as substantially different in operation from that stated by Chief Judge Seitz.

<sup>29</sup> Our holding entitles respondent to a right that also can be characterized as procedural. We hold that the involuntary committed are entitled to an informal, non-adversarial "hearing" by a professional exercising his professional judgment—a "procedure" not unlike that upheld in *Parham v. J.R.*, 442 U. S. 584 (1979), a procedural due process case discussed in text at —, *supra*.

<sup>30</sup> See *Parham v. J.R.*, 442 U. S. 584, 608 n. 16 (1979) (In limiting judicial review of medical decisions made by professionals: "[I]t is incumbent on courts to design procedures that protect the rights of individuals without unduly burdening the legitimate efforts of the states to deal with difficult social problems."). See also *Rhodes v. Chapman*, 452 U. S. 337, — (1981) ("[C]ourts cannot assume that state legislatures and prison officials are insensitive to the requirements of the Constitution or to the perplexing sociological problems of how best to achieve the goals of the penal function in the criminal justice system. . . ."); *Bell v. Wolfish*, 441 U. S. 520, 539 (1979) (In context of conditions of confinement of pre-trial detainees: "[C]ourts must be mindful that these inquiries spring from constitutional requirements and that judicial answers to them must reflect that fact rather than a court's idea of how best to operate a detention facility."); *Wolf v. McDonnell*, 418 U. S. 539, 556 (1974) (In considering procedural due process claim in context of prison: "[T]here must be mutual accommodation between institutional needs and objectives and the provisions of the Constitution of general application."); *Procunier v. Martinez*, 416 U. S. 396, 404–405, 406 (1974) ("[T]he problems of prisons in America are complex and intractable, and, more to the point, they are not readily susceptible to resolution by degree. Most require expertise, comprehensive planning, and the commitment of resources, all of which are peculiarly within the province of the legislative and executive branches of the govern-

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clarification

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judges or juries are better qualified than the appropriate professional in making such decisions.<sup>31</sup> See *Parham v. J.R.*, 442 U. S. 584, 607 (1979); *Bell v. Wolfish*, 441 U. S. 520, 544 (1979) (Courts should not "second-guess administrators on matters on which they are better informed."). For these reasons, the decision, if made by a professional,<sup>32</sup> is presumptively valid; liability may be imposed only when the decision by the professional is such a substantial departure from accepted professional judgment, practice or standards as to demonstrate that the person responsible actually did not base the decision on such a judgment. In an action for damages against a professional in his individual capacity, however, the professional will not be liable if he was unable to exercise his professional judgment because of budgetary constraints in such a situation, good-faith immunity would bar liability.

ment.") See also Townsend & Mattson, *The Interaction of Law and Special Education*, 1 Analysis and intervention in Developmental disabilities 75 (1981) (judicial resolution of rights of the handicapped can have adverse as well as positive effects on social change).

<sup>31</sup> It may not be immediately apparent that decisions regarding safety conditions, the use of restraints, and related training programs involve the exercise of professional judgment ~~by the institution's staff~~. But, for example, professional judgment is exercised in determining whether a certain training program can reasonably be expected to facilitate a resident's interaction with staff and other patients without violence. Similarly, professional judgment is exercised in determining whether a resident, whose violent tendencies have not been entirely curbed, should be allowed to interact with others or whether the risks of injury to self and others justify isolation or even the use of restraints.

<sup>32</sup> By 'professional' decision-maker, we mean a person competent, whether by education, training or experience, to make the particular decision at issue. Long term treatment decisions normally should be made by persons with degrees in medicine or nursing, or with appropriate training in areas such as psychology, physical therapy, or the care and training of the retarded. Of course, day-to-day decisions regarding care—including decisions that must be made without delay—necessarily will be made in many instances by employees without formal training but who are subject to the supervision of qualified persons.

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80-1429—OPINION

18

YOUNGBERG v. ROMEO

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IV

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In deciding this case, we have weighed those post-commitment interests cognizable as liberty interests under the Due Process Clause of the Fourteenth Amendment against legitimate state interests and the constraints under which most state institutions necessarily operate. We repeat that the state concedes a duty to provide adequate food, shelter, clothing and medical care. The state also has the unquestioned duty to provide reasonable safety for all residents and personnel within the institution, and may not restrain residents in the absence of a legitimate state interest. We hold, however, that there is no constitutional right to habilitative training *per se*. Yet we should not be understood to hold that the state is under no obligation to provide some training. The state is under a duty to provide respondent with such treatment as the appropriate professional considers reasonable to ensure his safety and to facilitate his ability to function free from bodily restraints. It may well be unreasonable not to provide training when training could significantly reduce the need for restraints or the likelihood of violence.

Respondent thus enjoys constitutionally protected interests in conditions of reasonable safety, reasonably non-restrictive confinement conditions, and such training as may be required by these interests. In determining whether these rights have been violated, decisions made by the appropriate professional are entitled to a strong presumption of correctness. Such a presumption is necessary to enable institutions of this type—often, unfortunately, overcrowded and understaffed—to continue to function. A single professional may have to make decisions with respect to a number of residents with widely varying needs and problems in the course of a normal day. The administrators, and particularly professional personnel, should not be required to make each decision in the shadow of an action for damages.

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In this case, we conclude that the jury was erroneously instructed on the assumption that the proper standard of liability was that of the Eighth Amendment. Accordingly, we remand for further proceedings consistent with this decision.

It is so ordered.①



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6 (question)

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To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Rehnquist  
Justice Stevens  
Justice O'Connor

L.F.P.

From: Justice Powell

Circulated: MAY 10 1982

Recirculated: \_\_\_\_\_

1st DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 80-1429

DUANE YOUNGBERG, ETC., ET AL., PETITIONERS v.  
NICHOLAS ROMEO, AN INCOMPETENT, BY HIS  
MOTHER AND NEXT FRIEND, PAULA ROMEO

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE THIRD CIRCUIT

[May —, 1982]

JUSTICE POWELL delivered the opinion of the Court.

The question presented is whether respondent, involuntarily committed to a state institution for the mentally retarded, has substantive rights under the Due Process Clause of the Fourteenth Amendment to (i) safe conditions of confinement; (ii) freedom from bodily restraints; and (iii) training or "habilitation."<sup>1</sup> Respondent sued under 42 U. S. C. § 1983 against three administrators of the institution, claiming damages for the alleged breach of his constitutional rights.

### I

Respondent Nicholas Romeo is profoundly retarded. Although 33 years old, he has the mental capacity of an eighteen-month old child. He cannot talk and lacks the most basic self-care skills. Until he was 26, respondent lived with his parents in Philadelphia. But after the death of his father

<sup>1</sup>The American Psychiatric Association explains that "[t]he word 'habilitation,' . . . is commonly used to refer to programs for the mentally-retarded because mental retardation is . . . a learning disability and training impairment rather than an illness. . . . [T]he principal focus of habilitation is upon training and development of needed skills." Brief of American Psychiatric Association as *Amicus Curiae*, at 4 n. 1.



in May 1974, his mother was unable to care for him. Within two weeks of the father's death, respondent's mother sought his temporary admission to a nearby Pennsylvania hospital.

Shortly thereafter, she asked the Philadelphia County Court of Common Pleas to admit Romeo to a state facility on a permanent basis. Her petition to the court explained that she was unable to care for Romeo or control his violence.<sup>2</sup> As part of the commitment process, Romeo was examined by a physician and a psychologist. They both certified that respondent was severely retarded and unable to care for himself. App. 21a-22a and 28a-29a. On June 11, 1974, the Court of Common Pleas committed respondent to the Pennhurst State School and Hospital, pursuant to the applicable involuntary commitment provision of the Pennsylvania Mental Health and Mental Retardation Act, Pa. Stat. Ann. tit. 50 § 4406.

At Pennhurst, Romeo was injured on numerous occasions, both by his own violence and by the reactions of other residents to him. Respondent's mother became concerned about these injuries. After objecting to respondent's treatment several times, she filed this complaint on November 4, 1976, in the United States District Court for the Eastern District of Pennsylvania as his next friend. The complaint alleged that "[d]uring the period July, 1974 to the present, plaintiff has suffered injuries on at least sixty-three occasions." The complaint originally sought damages and injunctive relief from Pennhurst's director and two supervisors<sup>3</sup>; it alleged that these officials knew, or should have known, that Romeo

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<sup>2</sup> Mrs. Romeo's petition to the Court of Common Pleas stated: "Since my husband's death I am unable to handle him. He becomes violent—Kicks, punches, breaks glass; He can't speak—wants to express himself but can't. He is [a] constant 24 hr. care. [W]ithout my husband I am unable to care for him." App. 18a.

<sup>3</sup> Petitioner Duane Youngberg was the Superintendent of Pennhurst; he had supervisory authority over the entire facility. Respondent Richard Matthews was the Director of Resident Life at Pennhurst. Respondent Marguerite Conley was Unit Director for the unit in which respondent was



was suffering injuries and that they failed to institute appropriate preventive procedures, thus violating his rights under the Eighth and Fourteenth Amendments.

Thereafter, in late 1976, Romeo was transferred from his ward to the hospital for treatment of a broken arm. While in the infirmary, and by order of a doctor, he was physically restrained during portions of each day.<sup>4</sup> These restraints were ordered by Dr. Gabroy, not a defendant here, to protect Romeo and others in the hospital, some of whom were in traction or were being treated intravenously. 7 Record 40, 49, 76-78. Although respondent normally would have returned to his ward when his arm healed, the parties to this litigation agreed that he should remain in the hospital due to the pending law suit. 5 Record 248, 6 R. 57-58 and 137. Nevertheless, in December 1977, a second amended complaint was filed alleging that the defendants were restraining respondent for prolonged periods on a routine basis. The second amended complaint also added a claim for damages to compensate Romeo for the defendants' failure to provide him with appropriate "treatment or programs for his mental retardation."<sup>5</sup> All claims for injunctive relief were dropped prior to trial because respondent is a member of the class seeking such relief in another action.<sup>6</sup>

An eight-day jury trial was held in April 1978. Petitioners introduced evidence that respondent participated in several

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incarcerated. According to respondent, petitioners are administrators, not medical doctors. See Brief for Respondent 2. Youngberg and Matthews are no longer at Pennhurst.

<sup>4</sup> Although the Court of Appeals described these restraints as "shackles," "soft" restraints, for the arms only, were generally used. 7 Record 53-55.

<sup>5</sup> Respondent uses "treatment" as synonymous with "habilitation" or "training." See Brief for Respondents 21-23.

<sup>6</sup> *Pennhurst State School and Hospital v. Halderman*, 451 U. S. 1 (1981) (remanded for further proceedings).



programs teaching basic self-care skills.<sup>7</sup> A comprehensive behavior-modification program was designed by staff members to reduce Romeo's aggressive behavior,<sup>8</sup> but that program was never implemented because of his mother's objections.<sup>9</sup> Respondent introduced evidence of his injuries and of conditions in his unit.<sup>10</sup>

At the close of the trial, the court instructed the jury that "if any or all of the defendants were aware of and failed to take all reasonable steps to prevent repeated attacks upon Nicholas Romeo," such failure deprived him of constitutional rights. App. to Pet. for Cert. 110a. The jury also was instructed that if the defendants shackled Romeo or denied him treatment "as a punishment for filing this lawsuit," his constitutional rights were violated under the Eighth Amendment. *Id.*, at 73a-75a. Finally, the jury was instructed that if they found the defendants "deliberately indifferent to the medical and psychological needs of Nicholas Romeo," they might find that Romeo's Eighth and Four-

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<sup>7</sup> Prior to his transfer to Pennhurst's hospital ward, Romeo participated in programs dealing with feeding, showering, drying, dressing, self control, and toilet training, as well as a program providing interaction with staff members. Defendants' exhibit 10; 3 Record 69-70, 5 Record 44-56, 242-250, 6 Record 162-166; 7 Record 41-48.

Some programs continued while respondent was in the hospital, 5 Record 227, 248, 256; 6 Record 50, 162-166, Record 32, 34, 41-48, and they reduced respondent's aggressive behavior to some extent, 7 Record 45.

<sup>8</sup> 2 Record 7, 5 Record 88-90; 6 Record 88, 200-203; Defendants' Exhibit 1, at 9. The program called for short periods of separation from other residents and for use of "muffs" on plaintiff's hands for short periods of time, *i. e.*, 5 minutes, to prevent him from harming himself or others.

<sup>9</sup> 1 Record 53; 4 Record 25; 6 Record 204.

<sup>10</sup> The District Judge refused to allow testimony by two of Romeo's witnesses—trained professionals—indicating that Romeo would have benefited from more or different training programs. The trial judge explained that evidence of the advantages of alternative forms of treatment might be relevant to a malpractice suit, but was not relevant to a constitutional claim under § 1983. App. to Pet. for Cert. 101a.



teenth Amendment rights were violated. *Id.*, at 111a. The jury returned a verdict for the defendants, on which judgment was entered.

The Court of Appeals for the Third Circuit, sitting en banc, reversed and remanded for a new trial. 644 F. 2d 147 (1980). The court held that the Eighth Amendment, prohibiting cruel and unusual punishment of those convicted of crimes, was not an appropriate source for determining the rights of the involuntarily committed. Rather, the Fourteenth Amendment and the liberty interest protected by that amendment provided the proper constitutional basis for these rights. In applying the Fourteenth Amendment, the court found that the involuntarily committed retain liberty interests in freedom of movement and in personal security. These were "fundamental liberties" that can be limited only by an "overriding, non-punitive" state interest. 644 F. 2d, at 157-158 (footnote omitted). It further found that the involuntarily committed have a liberty interest in habilitation designed to "treat" their mental retardation. *Id.*, at 164-170.<sup>11</sup>

The en banc court did not, however, agree on the relevant standard to be used in determining whether Romeo's rights had been violated.<sup>12</sup> Because physical restraint "raises a presumption of a punitive sanction," the majority of the Court of Appeals concluded that it can be justified only by "compelling necessity." *Id.*, at 159-160. A somewhat different standard was appropriate for the failure to provide for

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<sup>11</sup> The Court of Appeals used "habilitation" and "treatment" as synonymous, thought it regarded "habilitation" as more accurate in describing treatment needed by the mentally retarded. See 644 F. 2d, at 165 and n. 40.

<sup>12</sup> The existence of a qualified immunity defense was not at issue on appeal. The defendants had received instructions on this defense, App. 76a, and it was not challenged by respondent. 644 F. 2d, at 173 n. 1. After citing *Pierson v. Ray*, 386 U. S. 547 (1967) and *Scheuer v. Rhodes*, 416 U. S. 232 (1974), the majority of the Court of Appeals noted that such instructions should be given again on the remand. 644 F. 2d, at 171-172.



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a resident's safety. The majority considered that such a failure must be justified by a showing of "substantial necessity." *Id.*, at 164. Finally, the majority held that when treatment has been administered, those responsible are liable only if the treatment is not "acceptable in the light of present medical or other scientific knowledge." *Id.*, at 166-167 and 173.<sup>13</sup>

Chief Judge Seitz, concurring in the judgment, considered the standards articulated by the majority as indistinguishable from those applicable to medical malpractice claims. In Chief Judge Seitz's view, the Constitution "only requires that the courts make certain that professional judgment in fact was exercised." 644 F. 2d, at 178. He concluded that the appropriate standard was whether the defendants' conduct was "such a substantial departure from accepted professional judgment, practice or standards in the care and treatment of this plaintiff as to demonstrate that the defendants did not base their conduct on a professional judgment." 644 F. 2d, at 178.<sup>14</sup>

<sup>13</sup> Actually, the court divided the right-to-treatment claim into three categories and adopted three standards, but only the standard described in text is at issue before this Court. The Court of Appeals also stated that if a jury finds that *no* treatment has been administered, it may hold the institution's administrators liable unless they can provide a compelling explanation for the lack of treatment, 644 F. 2d at 165, 173, but respondent does not discuss this precise standard in his brief and it does not appear to be relevant to the facts of this case. In addition, the court considered "least intrusive" analysis appropriate to justify severe intrusions on individual dignity, such as permanent physical alteration or surgical intervention, *id.*, at 165-166, and 173, but respondent concedes that this issue is not present in this case.

<sup>14</sup> Judge Aldisert joined Chief Judge Seitz's opinion, but wrote separately to emphasize the nature of the difference between the majority opinion and that of the Chief Judge. On a conceptual level, Judge Aldisert thought that the court erred in abandoning the common-law method of deciding the case at bar rather than articulating broad principles unconnected with the facts of the case and of uncertain meaning. 644 F. 2d, at 182-183. And,

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We granted the petition for certiorari because of the importance of the question presented to the administration of state institutions for the mentally retarded. 451 U. S. 982 (1981).

## II

We consider here for the first time the substantive rights of the involuntarily committed under the Fourteenth Amendment to the Constitution.<sup>15</sup> In this case, respondent has been committed under the laws of Pennsylvania, and he does not challenge the commitment. Rather, he argues that he has a constitutionally protected liberty interest in safety, freedom of movement, and training within the institution; and that petitioners infringed on these rights by failing to provide constitutionally required conditions of confinement.

The mere fact that Romeo has been committed under proper procedures does not deprive him of all substantive liberty interests under the Fourteenth Amendment. See, e. g., *Vitek v. Jones*, 445 U. S. 480, 491–494 (1980). Indeed, the state concedes that respondent has a right to adequate food, shelter, clothing, and medical care.<sup>16</sup> We must decide

on a pragmatic level, Judge Aldisert warned that neither juries nor those administering state institutions would receive guidance from the “amorphous constitutional law tenets” articulated in the majority opinion. *Id.*, at 184. See *id.*, at 183–185.

Judge Garth also joined Chief Judge Seitz’s opinion, and wrote separately to criticize the majority for addressing issues not raised by the facts of this case. 644 F. 2d, at 186.

<sup>15</sup> In pertinent part, that Amendment provides that a State cannot deprive “any person of life, liberty, or property, without due process of law. . . .” U. S. Const., Amend. XIV, § 1.

Respondent no longer relies on the Eighth Amendment as a direct source of constitutional rights. See Brief for Respondent 13 n. 12.

<sup>16</sup> Brief for Petitioners 8, 11, 12 and n. 10; Brief for Respondent 15–16. See also Brief for Connecticut and Twenty Other States as *Amici Curiae* 8. Petitioners argue that they have fully protected these interests.



whether liberty interests also exist in safety, freedom of movement, and training. If such interests do exist, we must further decide whether particular interferences with these interests offend due process.

## A

Respondent's first two claims involve liberty interests recognized by prior decisions of this Court, interests that involuntary commitment proceedings do not extinguish.<sup>17</sup> The first is a claim to safe conditions. In the past, this Court has noted that the right to personal security constitutes an "historic liberty interest" protected substantively by the Due Process Clause. *Ingraham v. Wright*, 430 U. S. 651, 673 (1977). And that right is not extinguished by lawful confinement, even for penal purposes.<sup>18</sup> See *Hutto v. Finney*, 437 U. S. 678 (1978). If it is cruel and unusual punishment to hold convicted criminals in unsafe conditions, it must be unconstitutional to confine the involuntarily committed—who may not be punished at all—in unsafe conditions.

Next, respondent claims a right to freedom from bodily restraint. In other contexts, the existence of such an interest is clear in the prior decisions of this Court. Indeed, "[l]iberty from bodily restraint always has been recognized as the core of the liberty protected by the Due Process Clause from

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<sup>17</sup> Petitioners do not appear to argue to the contrary. See Brief for Petitioners 27-31.

<sup>18</sup> It is true that in cases dealing with prisoners, analysis begins with the Eighth Amendment's proscription of cruel and unusual punishment, and the Eighth Amendment has no direct bearing on non-penal institutions. See *Ingraham v. Wright*, 430 U. S. 651, 667-668 (1977). But the Eighth Amendment has been applied to the States through the Due Process Clause of the Fourteenth Amendment. If prisoners in state institutions have a federal right to some degree of safety, it is because their safety implicates a liberty interest protected by the Fourteenth Amendment's Due Process Clause. See, e. g., *Adamson v. California*, 332 U. S. 46 (1947); *Palko v. Connecticut*, 302 U. S. 319 (1937).



arbitrary governmental action." *Greenholtz v. Nebraska Penal Inmates*, 442 U. S. 1, 18 (1979) (POWELL, J., concurring). This interest survives criminal conviction and incarceration. Similarly, it must also survive involuntary commitment.

## B

Respondent's remaining claim is more troubling: a constitutional right to "habilitation," *i. e.*, training to improve his ability to function within Pennhurst. Respondent concedes that no amount of training will make possible his release. Moreover, respondent does not argue that if he were still at home, he would have a right to training at the expense of the State. See Tr. of Oral Arg. 33. And, since we already have found constitutionally protected liberty interests in freedom from restraints and safety, some training<sup>19</sup> may be necessary to avoid unconstitutional infringement of those rights regardless of whether respondent also enjoys a constitutional right to training *per se*. We therefore decide only the narrow question whether ~~one who has been~~ committed involuntarily has a right to additional training—other than that related to safety or the ability to function free of restraints—when such training might improve his capacity to function more independently within the institution, but cannot make possible his release.

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Respondent argues that, once a person has been confined, he has "no one but the State to turn to for help in gaining additional skills or, at least, preserving whatever skills and abilities" he has. Brief for Respondent 23. Respondent concludes that the State therefore has a constitutional duty to provide reasonable training, both to preserve existing skills and develop new ones. In making this argument, re-

<sup>19</sup> We use the term "training" as synonymous with "habilitation," with its "principal focus"—certainly in a case like Romeo's—being on "training and development of needed skills." See n. 1, *supra*.



spondent compares mental retardation to an infectious disease, for which the State has quarantined the individual, and cannot then deny appropriate treatment. Mental retardation is not, however, a disease. Rather, it is a description of a certain level of intellectual ability,<sup>20</sup> and the “habilitation” respondent seeks, such as training to teach him for the first time skills he does not possess, correlates more closely to education than to medical treatment.<sup>21</sup> And we have never found a right to education under the Constitution.<sup>22</sup>

As a general matter, a State is under no constitutional duty to provide services for those within its borders. See, *e. g.*, *Harris v. McRae*, 448 U. S. 297, 318 (1980) (publicly funded abortions); *Maher v. Roe*, 432 U. S. 464, 469 (1977) (medical treatment). When States do choose to provide services, they generally are given wide latitude in doing so. See *Richardson v. Belcher*, 404 U. S. 78, 83–84 (1971); *Dandridge v. Williams*, 397 U. S. 471, 478 (1970). Specifically, States

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<sup>20</sup> See A. Baumeister, *The American Residential Institution: Its History and Character* 21–22 in *Residential Facilities for the Mentally Retarded* (Baumeister, ed. 1970); H. Best, *Public Provision for the Mentally Retarded in the United States* 3 (1965). See also Brief for American Psychiatric Association as *Amicus Curiae*, at 4 n. 1 (quoted in n. 1, *supra*).

As a result of a congenital chemical imbalance in his brain, Romeo has an IQ of 8–10 and is therefore classified as a profoundly retarded person. There is no known way in which to correct the chemical imbalance and increase Romeo’s IQ.

<sup>21</sup> There may be cases in which it is difficult to distinguish between claims to medical treatment and claims to training in the development of skills. This is not, however, such a case. Indeed, Romeo does not raise any issues related to medical care—for example, he does not complain that he received inadequate medical treatment in the infirmary ward. And his claims to training are either related to safety and freedom from restraints or purely educational, *i. e.*, training to make him less violent (related to safety and freedom from restraints) and training in self-care skills (educational).

<sup>22</sup> See *San Antonio Ind. School Dist. v. Rodriguez*, 411 U. S. 1 (1973). Respondent does not argue that he is denied training or habilitation available to others in Pennhurst.



need not “choose between attacking every aspect of a problem or not attacking the problem at all.” *Id.*, at 486–487. Here, the State has committed respondent, who concedely cannot survive on the outside. It is willing to provide food, shelter, clothing, and medical care, as well as reasonable conditions of safety and reasonable freedom from bodily restraint.

Under these circumstances, we hesitate to find a new liberty interest in “training” in skills unlikely to lead to a patient’s release from involuntary confinement. As we noted in determining that there is no general right to education in *San Antonio Independent School District v. Rodriguez*, 411 U. S. 1, 33–34 (1973):

“It is not the province of this Court to create substantive constitutional rights in the name of guaranteeing equal protection of the laws. . . . Rather, the answer lies in assessing whether there is a right to education explicitly or implicitly guaranteed by the Constitution.”

A similar restraint is seen in this Court’s cases involving claimed “discoveries” of new “liberties” under the Due Process Clause. In *Paul v. Davis*, 424 U. S. 693 (1976), we noted that the liberties protected by the Fourteenth Amendment have their origins either in state law—for puposes of procedural due process—or in the guarantees of the Bill of Rights that have been “incorporated” to apply to the States. *Id.*, at 710–711 and n. 5. In addition, as noted earlier, some liberty interests are implicit in our historic notion of the meaning of that word itself—for example, freedom from bodily restraint by the State. But a right to training fits none of these categories. Respondent is not seeking procedural due process.<sup>23</sup> Nor does he claim a right historically

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<sup>23</sup> Respondent does argue that he was committed for care and treatment under state law, and that he therefore has a state substantive right entitled to substantive, not procedural, protection under the Due Process Clause of



regarded as within the meaning of the concept of "liberty." And respondent points to no right to training either implicit or explicit in the guarantees of the Bill of Rights.

The right respondent claims is a substantive due process right. Only when an action of a State against an individual is sharply at odds with our "fundamental principles of liberty and justice," will the Due Process Clause of the Fourteenth Amendment bar the action. *Palko v. Connecticut*, 302 U. S. 319, 328 (1937) (quoting *Herbert v. Louisiana*, 272 U. S. 312, 316 (1926)).<sup>24</sup> In deciding whether to provide individuals such as Romeo with habilitative training, the state must make a difficult decision regarding the allocation of its resources. We cannot say that due process requires that such individuals must be given training in the development of skills that cannot lead to freedom. The decision whether to commit scarce resources on programs to attempt to train the profoundly retarded,<sup>25</sup> or on other social and welfare programs of

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the Federal Constitution. But this argument is made for the first time in respondent's brief to this Court. It was not advanced in the courts below, and was not argued to the Court of Appeals as a ground for reversing the trial court. Given the uncertainty of Pennsylvania law and the lack of any guidance on this issue from the lower federal courts, we decline to consider it now. See *Dothard v. Rawlinson*, 433 U. S. 321, 323 n. 1 (1977); *Duignan v. United States*, 274 U. S. 195, 200 (1927); *Old Jordan Milling Co. v. Societe Anonyme des Mines*, 164 U. S. 261, 264-265 (1896).

<sup>24</sup> See also *Adamson v. California*, 332 U. S. 46, 59, 67 (1947) (Frankfurter, J., concurring) (In order to determine whether the defendant was accorded due process under the Fourteenth Amendment, it is necessary "to ascertain whether [the proceedings] offend those canons of decency and fairness which express the notions of justice of English-speaking peoples. . . ."); *Palko v. Connecticut*, 302 U. S., at 328 (Under the Due Process Clause of the Fourteenth Amendment, the standard is whether a state has "subjected [an individual] to a hardship so acute and shocking that our polity will not endure it.").

<sup>25</sup> Professionals in the habilitation of the mentally retarded disagree strongly on the question whether effective training of all severely or profoundly retarded individuals is even possible. See, e. g., Favell, Risley,



manifest merit, is a difficult one that state and federal governments must face. The Constitution does not dictate an answer, and this is not a decision that courts are competent to make.

We therefore conclude that involuntarily-committed mentally retarded persons do not have a constitutionally protected liberty interest in training *per se*. As noted above, they do have constitutionally protected interests in safety and freedom from bodily restraints, and those interests may require some kinds of training. We turn next to consider whether Pennsylvania may have violated these two rights.

### III

#### A

We have established that Romeo retains liberty interests in safety and freedom from bodily restraint. Yet these interests are not absolute, indeed to some extent they are in conflict. In operating an institution such as Pennhurst, there are occasions in which it is necessary for the State to restrain the movement of residents—for example, to protect them as well as others from violence.<sup>26</sup> Similar restraints may also be appropriate in a training program. And an institution cannot protect its residents from all danger of violence if it is to permit them to have any freedom of movement. The question then is not simply whether a liberty interest has

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Wolfe, Riddle, & Rasmussen, *The Limits of Habilitation: How Can We Identify Them and How Can We Change Them?*, 1 *Analysis and Intervention in Developmental Disabilities* 37 (1981); Bailey, *Wanted: A Rational Search for the Limiting Conditions of Habilitation in the Retarded*, 1 *Analysis and Intervention in Developmental Disabilities* 45 (1981); Kauffman & Krouse, *The Cult of Educability: Searching for the Substance of Things Hoped for; The Evidence of Things Not Seen*, 1 *Analysis and Intervention in Developmental Disabilities* 53 (1981).

<sup>26</sup> In Romeo's case, there can be no question that physical restraint was necessary at times. See n. 2, *supra*.



been infringed but whether the extent or nature of the restraint or lack of absolute safety is such as to violate due process.

In determining whether a substantive right protected by the Due Process Clause has been violated, it is necessary to balance “the liberty of the individual” and “the demands of an organized society.” *Poe v. Ullman*, 367 U. S. 497, 522, 542 (1961) (Harlan, J., dissenting). In seeking this balance in other cases, the Court has weighed the individual’s interest in liberty against the State’s asserted reasons for restraining individual liberty. In *Bell v. Wolfish*, 441 U. S. 520 (1979), for example, we considered a challenge to pre-trial detainees’ confinement conditions. We agreed that the detainees, not yet convicted of the crime charged, could not be punished. But we upheld those restrictions on liberty that were reasonably related to legitimate government objectives and not tantamount to punishment.<sup>27</sup> See *id.*, at 539. We have taken a similar approach in deciding procedural due-process challenges to civil commitment proceedings. In *Parham v. J.R.*, 442 U. S. 584 (1979), for example, we considered a challenge to state procedures for commitment of a minor with parental consent. In determining that *procedural* due process did not mandate an adversarial hearing, we weighed the liberty interest of the individual against the legitimate interests of the State, including the fiscal and administrative burdens additional procedures would entail.<sup>28</sup> *Id.*, at 599–600.

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<sup>27</sup> See also *Jackson v. Indiana*, 406 U. S. 715, 738 (1972) (holding that an incompetent pre-trial detainee cannot, after a competency hearing, be held indefinitely without either criminal process or civil commitment; due process requires, at a minimum, some rational relation between the nature and duration of commitment and its purpose).

<sup>28</sup> See also *Addington v. Texas*, 441 U. S. 418 (1979). In that case, we held that the state must prove the need for commitment by “clear and convincing” evidence. See *id.*, at 431–432. We reached this decision by weighing the individual’s liberty interest against the state’s legitimate interests in confinement.



*The relevant*

Accordingly, whether respondent's constitutional rights have been violated must be determined by balancing his liberty interests against ~~various~~ state interests. If there is to be any uniformity in protecting these interests, this balancing cannot be left to the unguided discretion of a judge or jury. We therefore turn to consider the proper standard for determining whether a State adequately has protected the rights of the involuntarily-committed mentally retarded.

## B

We think the standard articulated by Chief Judge Seitz affords the necessary guidance and reflects the proper balance between the legitimate interests of the State and the rights of the involuntarily committed to reasonable conditions of safety and freedom from unreasonable restraints. He would have held that "the Constitution only requires that the courts make certain that professional judgment in fact was exercised. It is not appropriate for the courts to specify which of several professionally acceptable choices should have been made."<sup>29</sup> 644 F. 2d, at 178. This standard is higher than the deliberate indifference formulation applied in the context of penal institutions. See *Estelle v. Gamble*, 429 U. S. 97 (1976). Persons who have been involuntarily committed are entitled to more considerate treatment and conditions of confinement than criminals whose conditions of confinement are designed to punish. At the same time, this standard is lower than the "compelling" or "substantial" necessity test ~~considered necessary~~ by the Court of Appeals to justify use of restraints or conditions of less than absolute safety. We think ~~that the formula adopted by the Court of Appeals would place~~

*would require a State to meet*

<sup>29</sup> We do disagree with Chief Judge Seitz's view as to the existence of a right to training *per se*. He finds that such a right does exist, whereas we find no such right cognizable as a liberty interest protected by the Fourteenth Amendment. See 644 F. 2d, at 176 (Chief Judge Seitz uses "treatment" rather than "training.").

*this requirement*



an undue burden on the administration of institutions such as Pennhurst and also would restrict unnecessarily the exercise of professional judgment as to the needs of residents.

We hold that when the rights of the involuntarily committed mentally retarded are weighed against the legitimate interests of the State, including administrative and fiscal constraints, due process requires that (i) the State subject these individuals only to reasonable physical constraints; (ii) it provide them reasonably safe conditions, and (iii) it afford them such training as is ~~reasonably~~ necessary to achieve reasonable safety and reasonable freedom of movement within the institution.<sup>30</sup> We recognize that this holding may impose some additional burdens on States. In determining what is "reasonable," however, we emphasize that courts must show deference to the judgment exercised by a qualified professional.<sup>31</sup>

By so limiting judicial review of challenges to conditions in state institutions, interference by the federal judiciary with the internal operations of these institutions should be minimized.<sup>32</sup> Moreover, there certainly is no reason to think

<sup>30</sup> We have expressed the constitutional right enjoyed by respondent in somewhat different language from that used by Chief Judge Seitz. Rather than stating that the involuntarily committed enjoy the right to have certain decisions made by professionals, see 644 F. 2d, at 178, 180-181, we hold that they are entitled to conditions of reasonable safety and reasonable freedom from bodily restraints, but we go on to hold that once such a decision is made by a professional in the exercise of reasonable professional judgment, courts will defer to it.

<sup>31</sup> Our holding entitles respondent to a right that also can be characterized as procedural. We hold that the involuntarily committed are entitled to an informal, non-adversarial "hearing" by a professional exercising his professional judgment—a "procedure" not unlike that upheld in *Parham v. J.R.*, 442 U. S. 584 (1979), a procedural due process case discussed in text at —, *supra*, and in note 30, *infra*.

<sup>32</sup> See *Parham v. J.R.*, *supra*, 442 U. S., at 608 n. 16 (In limiting judicial review of medical decisions made by professionals, "it is incumbent on courts to design procedures that protect the rights of individuals without

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judges or juries are better qualified than appropriate professionals in making such decisions. See *Parham v. J.R.*, 442 U. S. 584, 607 (1979); *Bell v. Wolfish*, *supra*, 441 U. S., at 544 (Courts should not “second-guess the expert administrators on matters on which they are better informed.”). For these reasons, the decision, if made by a professional,<sup>33</sup> is presumptively valid; liability may be imposed only when the decision by the professional is such a substantial departure from accepted professional judgment, practice or standards as to demonstrate that the person responsible actually did not base the decision on such a judgment. In an action for

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unduly burdening the legitimate efforts of the states to deal with difficult social problems.”). See also *Rhodes v. Chapman*, 452 U. S. 337, — (1981) (“[C]ourts cannot assume that state legislatures and prison officials are insensitive to the requirements of the Constitution or to the perplexing sociological problems of how best to achieve the goals of the penal function in the criminal justice system. . . .”); *Bell v. Wolfish*, 441 U. S. 520, 539 (1979) (In context of conditions of confinement of pre-trial detainees, “courts must be mindful that these inquiries spring from constitutional requirements and that judicial answers to them must reflect that fact rather than a court’s idea of how best to operate a detention facility.”); *Wolff v. McDonnell*, 418 U. S. 539, 556 (1974) (In considering procedural due process claim in context of prison, “there must be mutual accommodation between institutional needs and objectives and the provisions of the Constitution that are of general application.”). See also Townsend & Mattson, *The Interaction of Law and Special Education: Observing the Emperor’s New Clothes*, 1 *Analysis and Intervention in Developmental Disabilities* 75 (1981) (judicial resolution of rights of the handicapped can have adverse as well as positive effects on social change).

<sup>33</sup> By ‘professional’ decision-maker, we mean a person competent, whether by education, training or experience, to make the particular decision at issue. Long term treatment decisions normally should be made by persons with degrees in medicine or nursing, or with appropriate training in areas such as psychology, physical therapy, or the care and training of the retarded. Of course, day-to-day decisions regarding care—including decisions that must be made without delay—necessarily will be made in many instances by employees without formal training but who are subject to the supervision of qualified persons.



damages against a professional in his individual capacity, however, the professional will not be liable if he was unable to satisfy his normal professional standards because of budgetary constraints; in such a situation, good-faith immunity would bar liability. See note 10, *supra*.

#### IV

In deciding this case, we have weighed those post-commitment interests cognizable as liberty interests under the Due Process Clause of the Fourteenth Amendment against legitimate state interests and in light of the constraints under which most state institutions necessarily operate. We repeat that the state concedes a duty to provide adequate food, shelter, clothing and medical care. The state also has the unquestioned duty to provide reasonable safety for all residents and personnel within the institution. And it may not restrain residents except when and to the extent professional judgment deems this necessary to assure such safety. We hold, however, that there is no constitutional right to habilitative training *per se*, though we should not be understood as holding that the state is never under any obligation to provide training. The state is under a duty to provide respondent with such training as an appropriate professional would consider reasonable to ensure his safety and to facilitate his ability to function free from bodily restraints. It may well be unreasonable not to provide training when training could significantly reduce the need for restraints or the likelihood of violence.

Respondent thus enjoys constitutionally protected interests in conditions of reasonable safety, reasonably non-restrictive confinement conditions, and such training as may be required by these interests. In determining whether these rights have been violated, decisions made by the appropriate professional are entitled to a strong presumption of correctness. Such a presumption is necessary to enable institutions



of this type—often, unfortunately, overcrowded and understaffed—to continue to function. A single professional may have to make decisions with respect to a number of residents with widely varying needs and problems in the course of a normal day. The administrators, and particularly professional personnel, should not be required to make each decision in the shadow of an action for damages.

In this case, we conclude that the jury was erroneously instructed on the assumption that the proper standard of liability was that of the Eighth Amendment. Accordingly, we vacate the decision of the Court of Appeals and remand for further proceedings consistent with this decision.

So ordered.



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To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Rehnquist  
Justice Stevens  
Justice O'Connor

L.F.

From: Justice Powell

Circulated: \_\_\_\_\_

Recirculated: MAY 11 1982

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-1429

DUANE YOUNGBERG, ETC., ET AL., PETITIONERS, v.  
NICHOLAS ROMEO, AN INCOMPETENT, BY HIS  
MOTHER AND NEXT FRIEND, PAULA ROMEO

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE THIRD CIRCUIT

[May —, 1982]

JUSTICE POWELL delivered the opinion of the Court.

The question presented is whether respondent, involuntarily committed to a state institution for the mentally retarded, has substantive rights under the Due Process Clause of the Fourteenth Amendment to (i) safe conditions of confinement; (ii) freedom from bodily restraints; and (iii) training or "habilitation."<sup>1</sup> Respondent sued under 42 U. S. C. § 1983 against three administrators of the institution, claiming damages for the alleged breach of his constitutional rights.

I

Respondent Nicholas Romeo is profoundly retarded. Although 33 years old, he has the mental capacity of an eighteen-month old child. He cannot talk and lacks the most basic self-care skills. Until he was 26, respondent lived with his parents in Philadelphia. But after the death of his father

<sup>1</sup>The American Psychiatric Association explains that "[t]he word 'habilitation,' . . . is commonly used to refer to programs for the mentally-retarded because mental retardation is . . . a learning disability and training impairment rather than an illness. . . . [T]he principal focus of habilitation is upon training and development of needed skills." Brief of American Psychiatric Association as *Amicus Curiae*, at 4 n. 1.

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in May 1974, his mother was unable to care for him. Within two weeks of the father's death, respondent's mother sought his temporary admission to a nearby Pennsylvania hospital.

Shortly thereafter, she asked the Philadelphia County Court of Common Pleas to admit Romeo to a state facility on a permanent basis. Her petition to the court explained that she was unable to care for Romeo or control his violence.<sup>2</sup> As part of the commitment process, Romeo was examined by a physician and a psychologist. They both certified that respondent was severely retarded and unable to care for himself. App. 21a-22a and 28a-29a. On June 11, 1974, the Court of Common Pleas committed respondent to the Pennhurst State School and Hospital, pursuant to the applicable involuntary commitment provision of the Pennsylvania Mental Health and Mental Retardation Act, Pa. Stat. Ann. tit. 50 § 4406.

At Pennhurst, Romeo was injured on numerous occasions, both by his own violence and by the reactions of other residents to him. Respondent's mother became concerned about these injuries. After objecting to respondent's treatment several times, she filed this complaint on November 4, 1976, in the United States District Court for the Eastern District of Pennsylvania as his next friend. The complaint alleged that "[d]uring the period July, 1974 to the present, plaintiff has suffered injuries on at least sixty-three occasions." The complaint originally sought damages and injunctive relief from Pennhurst's director and two supervisors<sup>3</sup>; it alleged that these officials knew, or should have known, that Romeo

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<sup>2</sup> Mrs. Romeo's petition to the Court of Common Pleas stated: "Since my husband's death I am unable to handle him. He becomes violent—Kicks, punches, breaks glass; He can't speak—wants to express himself but can't. He is [a] constant 24 hr. care. [W]ithout my husband I am unable to care for him." App. 18a.

<sup>3</sup> Petitioner Duane Youngberg was the Superintendent of Pennhurst; he had supervisory authority over the entire facility. Respondent Richard Matthews was the Director of Resident Life at Pennhurst. Respondent Marguerite Conley was Unit Director for the unit in which respondent was



was suffering injuries and that they failed to institute appropriate preventive procedures, thus violating his rights under the Eighth and Fourteenth Amendments.

Thereafter, in late 1976, Romeo was transferred from his ward to the hospital for treatment of a broken arm. While in the infirmary, and by order of a doctor, he was physically restrained during portions of each day.<sup>4</sup> These restraints were ordered by Dr. Gabroy, not a defendant here, to protect Romeo and others in the hospital, some of whom were in traction or were being treated intravenously. 7 Record 40, 49, 76-78. Although respondent normally would have returned to his ward when his arm healed, the parties to this litigation agreed that he should remain in the hospital due to the pending law suit. 5 Record 248, 6 R. 57-58 and 137. Nevertheless, in December 1977, a second amended complaint was filed alleging that the defendants were restraining respondent for prolonged periods on a routine basis. The second amended complaint also added a claim for damages to compensate Romeo for the defendants' failure to provide him with appropriate "treatment or programs for his mental retardation."<sup>5</sup> All claims for injunctive relief were dropped prior to trial because respondent is a member of the class seeking such relief in another action.<sup>6</sup>

An eight-day jury trial was held in April 1978. Petitioners introduced evidence that respondent participated in several

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incarcerated. According to respondent, petitioners are administrators, not medical doctors. See Brief for Respondent 2. Youngberg and Matthews are no longer at Pennhurst.

<sup>4</sup> Although the Court of Appeals described these restraints as "shackles," "soft" restraints, for the arms only, were generally used. 7 Record 53-55.

<sup>5</sup> Respondent uses "treatment" as synonymous with "habilitation" or "training." See Brief for Respondents 21-23.

<sup>6</sup> *Pennhurst State School and Hospital v. Halderman*, 451 U. S. 1 (1981) (remanded for further proceedings).



programs teaching basic self-care skills.<sup>7</sup> A comprehensive behavior-modification program was designed by staff members to reduce Romeo's aggressive behavior,<sup>8</sup> but that program was never implemented because of his mother's objections.<sup>9</sup> Respondent introduced evidence of his injuries and of conditions in his unit.<sup>10</sup>

At the close of the trial, the court instructed the jury that "if any or all of the defendants were aware of and failed to take all reasonable steps to prevent repeated attacks upon Nicholas Romeo," such failure deprived him of constitutional rights. App. to Pet. for Cert. 110a. The jury also was instructed that if the defendants shackled Romeo or denied him treatment "as a punishment for filing this lawsuit," his constitutional rights were violated under the Eighth Amendment. *Id.*, at 73a-75a. Finally, the jury was instructed that if they found the defendants "deliberately indifferent to the medical and psychological needs of Nicholas Romeo," they might find that Romeo's Eighth and Four-

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<sup>7</sup> Prior to his transfer to Pennhurst's hospital ward, Romeo participated in programs dealing with feeding, showering, drying, dressing, self control, and toilet training, as well as a program providing interaction with staff members. Defendants' exhibit 10; 3 Record 69-70, 5 Record 44-56, 242-250, 6 Record 162-166; 7 Record 41-48.

Some programs continued while respondent was in the hospital, 5 Record 227, 248, 256; 6 Record 50, 162-166, Record 32, 34, 41-48, and they reduced respondent's aggressive behavior to some extent, 7 Record 45.

<sup>8</sup> 2 Record 7, 5 Record 88-90; 6 Record 88, 200-203; Defendants' Exhibit 1, at 9. The program called for short periods of separation from other residents and for use of "muffs" on plaintiff's hands for short periods of time, *i. e.*, 5 minutes, to prevent him from harming himself or others.

<sup>9</sup> 1 Record 53; 4 Record 25; 6 Record 204.

<sup>10</sup> The District Judge refused to allow testimony by two of Romeo's witnesses—trained professionals—indicating that Romeo would have benefited from more or different training programs. The trial judge explained that evidence of the advantages of alternative forms of treatment might be relevant to a malpractice suit, but was not relevant to a constitutional claim under § 1983. App. to Pet. for Cert. 101a.



teenth Amendment rights were violated. *Id.*, at 111a. The jury returned a verdict for the defendants, on which judgment was entered.

The Court of Appeals for the Third Circuit, sitting en banc, reversed and remanded for a new trial. 644 F. 2d 147 (1980). The court held that the Eighth Amendment, prohibiting cruel and unusual punishment of those convicted of crimes, was not an appropriate source for determining the rights of the involuntarily committed. Rather, the Fourteenth Amendment and the liberty interest protected by that amendment provided the proper constitutional basis for these rights. In applying the Fourteenth Amendment, the court found that the involuntarily committed retain liberty interests in freedom of movement and in personal security. These were "fundamental liberties" that can be limited only by an "overriding, non-punitive" state interest. 644 F. 2d, at 157-158 (footnote omitted). It further found that the involuntarily committed have a liberty interest in habilitation designed to "treat" their mental retardation. *Id.*, at 164-170.<sup>11</sup>

The en banc court did not, however, agree on the relevant standard to be used in determining whether Romeo's rights had been violated.<sup>12</sup> Because physical restraint "raises a presumption of a punitive sanction," the majority of the Court of Appeals concluded that it can be justified only by "compelling necessity." *Id.*, at 159-160. A somewhat different standard was appropriate for the failure to provide for

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<sup>11</sup>The Court of Appeals used "habilitation" and "treatment" as synonymous, thought it regarded "habilitation" as more accurate in describing treatment needed by the mentally retarded. See 644 F. 2d, at 165 and n. 40.

<sup>12</sup>The existence of a qualified immunity defense was not at issue on appeal. The defendants had received instructions on this defense, App. 76a, and it was not challenged by respondent. 644 F. 2d, at 173 n. 1. After citing *Pierson v. Ray*, 386 U. S. 547 (1967) and *Scheuer v. Rhodes*, 416 U. S. 232 (1974), the majority of the Court of Appeals noted that such instructions should be given again on the remand. 644 F. 2d, at 171-172.



a resident's safety. The majority considered that such a failure must be justified by a showing of "substantial necessity." *Id.*, at 164. Finally, the majority held that when treatment has been administered, those responsible are liable only if the treatment is not "acceptable in the light of present medical or other scientific knowledge." *Id.*, at 166-167 and 173.<sup>13</sup>

Chief Judge Seitz, concurring in the judgment, considered the standards articulated by the majority as indistinguishable from those applicable to medical malpractice claims. In Chief Judge Seitz's view, the Constitution "only requires that the courts make certain that professional judgment in fact was exercised." 644 F. 2d, at 178. He concluded that the appropriate standard was whether the defendants' conduct was "such a substantial departure from accepted professional judgment, practice or standards in the care and treatment of this plaintiff as to demonstrate that the defendants did not base their conduct on a professional judgment." 644 F. 2d, at 178.<sup>14</sup>

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<sup>13</sup> Actually, the court divided the right-to-treatment claim into three categories and adopted three standards, but only the standard described in text is at issue before this Court. The Court of Appeals also stated that if a jury finds that *no* treatment has been administered, it may hold the institution's administrators liable unless they can provide a compelling explanation for the lack of treatment, 644 F. 2d at 165, 173, but respondent does not discuss this precise standard in his brief and it does not appear to be relevant to the facts of this case. In addition, the court considered "least intrusive" analysis appropriate to justify severe intrusions on individual dignity, such as permanent physical alteration or surgical intervention, *id.*, at 165-166, and 173, but respondent concedes that this issue is not present in this case.

<sup>14</sup> Judge Aldisert joined Chief Judge Seitz's opinion, but wrote separately to emphasize the nature of the difference between the majority opinion and that of the Chief Judge. On a conceptual level, Judge Aldisert thought that the court erred in abandoning the common-law method of deciding the case at bar rather than articulating broad principles unconnected with the facts of the case and of uncertain meaning. 644 F. 2d, at 182-183. And, on a pragmatic level, Judge Aldisert warned that neither juries nor those administering state institutions would receive guidance from the "amor-



We granted the petition for certiorari because of the importance of the question presented to the administration of state institutions for the mentally retarded. 451 U. S. 982 (1981).

## II

We consider here for the first time the substantive rights of involuntarily-committed mentally retarded persons under the Fourteenth Amendment to the Constitution.<sup>15</sup> In this case, respondent has been committed under the laws of Pennsylvania, and he does not challenge the commitment. Rather, he argues that he has a constitutionally protected liberty interest in safety, freedom of movement, and training within the institution; and that petitioners infringed on these rights by failing to provide constitutionally required conditions of confinement.

The mere fact that Romeo has been committed under proper procedures does not deprive him of all substantive liberty interests under the Fourteenth Amendment. See, *e. g.*, *Vitek v. Jones*, 445 U. S. 480, 491–494 (1980). Indeed, the state concedes that respondent has a right to adequate food, shelter, clothing, and medical care.<sup>16</sup> We must decide whether liberty interests also exist in safety, freedom of movement, and training. If such interests do exist, we must

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phous constitutional law tenets” articulated in the majority opinion. *Id.*, at 184. See *id.*, at 183–185

Judge Garth also joined Chief Judge Seitz’s opinion, and wrote separately to criticize the majority for addressing issues not raised by the facts of this case. 644 F. 2d, at 186.

<sup>15</sup> In pertinent part, that Amendment provides that a State cannot deprive “any person of life, liberty, or property, without due process of law. . . .” U. S. Const., Amend. XIV, § 1.

Respondent no longer relies on the Eighth Amendment as a direct source of constitutional rights. See Brief for Respondent 13 n. 12.

<sup>16</sup> Brief for Petitioners 8, 11, 12 and n. 10; Brief for Respondent 15–16. See also Brief for Connecticut and Twenty Other States as *Amici Curiae* 8. Petitioners argue that they have fully protected these interests.



further decide whether particular interferences with these interests offend due process.

## A

Respondent's first two claims involve liberty interests recognized by prior decisions of this Court, interests that involuntary commitment proceedings do not extinguish.<sup>17</sup> The first is a claim to safe conditions. In the past, this Court has noted that the right to personal security constitutes an "historic liberty interest" protected substantively by the Due Process Clause. *Ingraham v. Wright*, 430 U. S. 651, 673 (1977). And that right is not extinguished by lawful confinement, even for penal purposes.<sup>18</sup> See *Hutto v. Finney*, 437 U. S. 678 (1978). If it is cruel and unusual punishment to hold convicted criminals in unsafe conditions, it must be unconstitutional to confine the involuntarily committed—who may not be punished at all—in unsafe conditions.

Next, respondent claims a right to freedom from bodily restraint. In other contexts, the existence of such an interest is clear in the prior decisions of this Court. Indeed, "[l]iberty from bodily restraint always has been recognized as the core of the liberty protected by the Due Process Clause from arbitrary governmental action." *Greenholtz v. Nebraska Penal Inmates*, 442 U. S. 1, 18 (1979) (POWELL, J., concur-

<sup>17</sup> Petitioners do not appear to argue to the contrary. See Brief for Petitioners 27–31.

<sup>18</sup> It is true that in cases dealing with prisoners, analysis begins with the Eighth Amendment's proscription of cruel and unusual punishment, and the Eighth Amendment has no direct bearing on non-penal institutions. See *Ingraham v. Wright*, 430 U. S. 651, 667–668 (1977). [But the Eighth Amendment has been applied to the States through the Due Process Clause of the Fourteenth Amendment. If prisoners in state institutions have a federal right to some degree of safety, it is because their safety implicates a liberty interest protected by the Fourteenth Amendment's Due Process Clause. See, *e. g.*, *Adamson v. California*, 332 U. S. 46 (1947); *Palko v. Connecticut*, 302 U. S. 319 (1937).]



ring). This interest survives criminal conviction and incarceration. Similarly, it must also survive involuntary commitment.

B

Respondent's remaining claim is more troubling: a constitutional right to "habilitation," *i. e.*, training to improve his ability to function within Pennhurst. Respondent concedes that no amount of training will make possible his release. Moreover, respondent does not argue that if he were still at home, he would have a right to training at the expense of the State. See Tr. of Oral Arg. 33. And, since we already have found constitutionally protected liberty interests in freedom from restraints and safety, some training<sup>19</sup> may be necessary to avoid unconstitutional infringement of those rights regardless of whether respondent also enjoys a constitutional right to training *per se*. We therefore decide only the narrow question whether a mentally retarded person, committed involuntarily, has a right to additional training—other than that related to safety or the ability to function free of restraints—when such training might improve his capacity to function more independently within the institution, but cannot make possible his release.

Respondent argues that, once a person has been confined, he has "no one but the State to turn to for help in gaining additional skills or, at least, preserving whatever skills and abilities" he has. Brief for Respondent 23. Respondent concludes that the State therefore has a constitutional duty to provide reasonable training, both to preserve existing skills and develop new ones. In making this argument, respondent compares mental retardation to an infectious disease, for which the State has quarantined the individual, and

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<sup>19</sup> We use the term "training" as synonymous with "habilitation," with its "principal focus"—certainly in a case like Romeo's—being on "training and development of needed skills." See n. 1, *supra*.



cannot then deny appropriate treatment. Mental retardation is not, however, a disease. Rather, it is a description of a certain level of intellectual ability,<sup>20</sup> and the “habilitation” respondent seeks, such as training to teach him for the first time skills he does not possess, correlates more closely to education than to medical treatment.<sup>21</sup> And we have never found a right to education under the Constitution.<sup>22</sup>

As a general matter, a State is under no constitutional duty to provide services for those within its borders. See, *e. g.*, *Harris v. McRae*, 448 U. S. 297, 318 (1980) (publicly funded abortions); *Maher v. Roe*, 432 U. S. 464, 469 (1977) (medical treatment). When States do choose to provide services, they generally are given wide latitude in doing so. See *Richardson v. Belcher*, 404 U. S. 78, 83–84 (1971); *Dandridge v. Williams*, 397 U. S. 471, 478 (1970). Specifically, States need not “choose between attacking every aspect of a problem or not attacking the problem at all.” *Id.*, at 486–487.

<sup>20</sup> See A. Baumeister, *The American Residential Institution: Its History and Character* 21–22 in *Residential Facilities for the Mentally Retarded* (Baumeister, ed. 1970); H. Best, *Public Provision for the Mentally Retarded in the United States* 3 (1965). See also Brief for American Psychiatric Association as *Amicus Curiae*, at 4 n. 1 (quoted in n. 1, *supra*).

As a result of a congenital chemical imbalance in his brain, Romeo has an IQ of 8–10 and is therefore classified as a profoundly retarded person. There is no known way in which to correct the chemical imbalance and increase Romeo’s IQ.

<sup>21</sup> There may be cases in which it is difficult to distinguish between claims to medical treatment and claims to training in the development of skills. This is not, however, such a case. Indeed, Romeo does not raise any issues related to medical care—for example, he does not complain that he received inadequate medical treatment in the infirmary ward. And his claims to training are either related to safety and freedom from restraints or purely educational, *i. e.*, training to make him less violent (related to safety and freedom from restraints) and training in self-care skills (educational).

<sup>22</sup> See *San Antonio Ind. School Dist. v. Rodriguez*, 411 U. S. 1 (1973). Respondent does not argue that he is denied training or habilitation available to others in Pennhurst.



Here, the State has committed respondent, who concedely cannot survive on the outside. It is willing to provide food, shelter, clothing, and medical care, as well as reasonable conditions of safety and reasonable freedom from bodily restraint.

Under these circumstances, we hesitate to find a new liberty interest in “training” in skills unlikely to lead to a patient’s release from involuntary confinement. As we noted in determining that there is no general right to education in *San Antonio Independent School District v. Rodriguez*, 411 U. S. 1, 33–34 (1973):

“It is not the province of this Court to create substantive constitutional rights in the name of guaranteeing equal protection of the laws. . . . Rather, the answer lies in assessing whether there is a right to education explicitly or implicitly guaranteed by the Constitution.”

A similar restraint is seen in this Court’s cases involving claimed “discoveries” of new “liberties” under the Due Process Clause. In *Paul v. Davis*, 424 U. S. 693 (1976), we noted that the liberties protected by the Fourteenth Amendment have their origins either in state law—for puposes of procedural due process—or in the guarantees of the Bill of Rights that have been “incorporated” to apply to the States. *Id.*, at 710–711 and n. 5. In addition, as noted earlier, some liberty interests are implicit in our historic notion of the meaning of that word itself—for example, freedom from bodily restraint by the State. But a right to training fits none of these categories. Respondent is not seeking procedural due process.<sup>23</sup> Nor does he claim a right historically

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<sup>23</sup> Respondent does argue that he was committed for care and treatment under state law, and that he therefore has a state substantive right entitled to substantive, not procedural, protection under the Due Process Clause of the Federal Constitution. But this argument is made for the first time in respondent’s brief to this Court. It was not advanced in the courts below, and was not argued to the Court of Appeals as a ground for reversing the



regarded as within the meaning of the concept of "liberty." And respondent points to no right to training either implicit or explicit in the guarantees of the Bill of Rights.

The right respondent claims is a substantive due process right. Only when an action of a State against an individual is sharply at odds with our "fundamental principles of liberty and justice," will the Due Process Clause of the Fourteenth Amendment bar the action. *Palko v. Connecticut*, 302 U. S. 319, 328 (1937) (quoting *Herbert v. Louisiana*, 272 U. S. 312, 316 (1926)).<sup>24</sup> In deciding whether to provide individuals such as Romeo with habilitative training, the state must make a difficult decision regarding the allocation of its resources. We cannot say that due process requires that such individuals must be given training in the development of skills that cannot lead to freedom. The decision whether to commit scarce resources on programs to attempt to train the profoundly retarded,<sup>25</sup> or on other social and welfare programs of

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trial court. Given the uncertainty of Pennsylvania law and the lack of any guidance on this issue from the lower federal courts, we decline to consider it now. See *Dothard v. Rawlinson*, 433 U. S. 321, 323 n. 1 (1977); *Duignan v. United States*, 274 U. S. 195, 200 (1927); *Old Jordan Milling Co. v. Societe Anonyme des Mines*, 164 U. S. 261, 264-265 (1896).

<sup>24</sup>See also *Adamson v. California*, 332 U. S. 46, 59, 67 (1947) (Frankfurter, J., concurring) (In order to determine whether the defendant was accorded due process under the Fourteenth Amendment, it is necessary "to ascertain whether [the proceedings] offend those canons of decency and fairness which express the notions of justice of English-speaking peoples. . . ."); *Palko v. Connecticut*, 302 U. S., at 328 (Under the Due Process Clause of the Fourteenth Amendment, the standard is whether a state has "subjected [an individual] to a hardship so acute and shocking that our polity will not endure it.").

<sup>25</sup>Professionals in the habilitation of the mentally retarded disagree strongly on the question whether effective training of all severely or profoundly retarded individuals is even possible. See, e. g., Favell, Risley, Wolfe, Riddle, & Rasmussen, *The Limits of Habilitation: How Can We Identify Them and How Can We Change Them?*, 1 *Analysis and Intervention in Developmental Disabilities* 37 (1981); Bailey, *Wanted: A Rational Search for the Limiting Conditions of Habilitation in the Retarded*, 1 *Analysis and Intervention in Developmental Disabilities* 45 (1981); Kauffman &



manifest merit, is a difficult one that state and federal governments must face. The Constitution does not dictate an answer, and this is not a decision that courts are competent to make.

We therefore conclude that involuntarily-committed mentally retarded persons do not have a constitutionally protected liberty interest in training *per se*. As noted above, they do have constitutionally protected interests in safety and freedom from bodily restraints, and those interests may require some kinds of training. We turn next to consider whether Pennsylvania may have violated these two rights.

### III

#### A

We have established that Romeo retains liberty interests in safety and freedom from bodily restraint. Yet these interests are not absolute, indeed to some extent they are in conflict. In operating an institution such as Pennhurst, there are occasions in which it is necessary for the State to restrain the movement of residents—for example, to protect them as well as others from violence.<sup>26</sup> Similar restraints may also be appropriate in a training program. And an institution cannot protect its residents from all danger of violence if it is to permit them to have any freedom of movement. The question then is not simply whether a liberty interest has been infringed but whether the extent or nature of the restraint or lack of absolute safety is such as to violate due process.

In determining whether a substantive right protected by the Due Process Clause has been violated, it is necessary to balance “the liberty of the individual” and “the demands of an

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Krouse, *The Cult of Educability: Searching for the Substance of Things Hoped for; The Evidence of Things Not Seen*, 1 *Analysis and Intervention in Developmental Disabilities* 53 (1981).

<sup>26</sup> In Romeo’s case, there can be no question that physical restraint was necessary at times. See n. 2, *supra*.



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← This case differs in critical respects from  
Jackson, a procedural due process case involving <sup>the validity of</sup> an  
involuntary commitment. Here, petitioner was committed by  
a court on petition of his mother who averred that in view  
of Romeo's condition she could neither care for him nor  
control his violence. Ante, at 2. Thus, the purpose of  
petitioner's commitment basically was to provide  
reasonable care and safety, conditions not available to  
him outside of an instituion.

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organized society.” *Poe v. Ullman*, 367 U. S. 497, 522, 542 (1961) (Harlan, J., dissenting). In seeking this balance in other cases, the Court has weighed the individual’s interest in liberty against the State’s asserted reasons for restraining individual liberty. In *Bell v. Wolfish*, 441 U. S. 520 (1979), for example, we considered a challenge to pre-trial detainees’ confinement conditions. We agreed that the detainees, not yet convicted of the crime charged, could not be punished. But we upheld those restrictions on liberty that were reasonably related to legitimate government objectives and not tantamount to punishment.<sup>27</sup> See *id.*, at 539. We have taken a similar approach in deciding procedural due-process challenges to civil commitment proceedings. In *Parham v. J.R.*, 442 U. S. 584 (1979), for example, we considered a challenge to state procedures for commitment of a minor with parental consent. In determining that *procedural* due process did not mandate an adversarial hearing, we weighed the liberty interest of the individual against the legitimate interests of the State, including the fiscal and administrative burdens additional procedures would entail.<sup>28</sup> *Id.*, at 599–600.

Accordingly, whether respondent’s constitutional rights have been violated must be determined by balancing his liberty interests against the relevant state interests. If there is to be any uniformity in protecting these interests, this balancing cannot be left to the unguided discretion of a judge or jury. We therefore turn to consider the proper standard for

<sup>27</sup> See also *Jackson v. Indiana*, 406 U. S. 715, 738 (1972) (holding that an incompetent pre-trial detainee cannot, after a competency hearing, be held indefinitely without either criminal process or civil commitment; due process requires, at a minimum, some rational relation between the nature and duration of commitment and its purpose).

<sup>28</sup> See also *Addington v. Texas*, 441 U. S. 418 (1979). In that case, we held that the state must prove the need for commitment by “clear and convincing” evidence. See *id.*, at 431–432. We reached this decision by weighing the individual’s liberty interest against the state’s legitimate interests in confinement.

Rider  
A



determining whether a State adequately has protected the rights of the involuntarily-committed mentally retarded.

B

We think the standard articulated by Chief Judge Seitz affords the necessary guidance and reflects the proper balance between the legitimate interests of the State and the rights of the involuntarily committed to reasonable conditions of safety and freedom from unreasonable restraints. He would have held that "the Constitution only requires that the courts make certain that professional judgment in fact was exercised. It is not appropriate for the courts to specify which of several professionally acceptable choices should have been made."<sup>29</sup> 644 F. 2d, at 178. This standard is higher than the deliberate indifference formulation applied in the context of penal institutions. See *Estelle v. Gamble*, 429 U. S. 97 (1976). Persons who have been involuntarily committed are entitled to more considerate treatment and conditions of confinement than criminals whose conditions of confinement are designed to punish. At the same time, this standard is lower than the "compelling" or "substantial" necessity tests the Court of Appeals would require a state to meet to justify use of restraints or conditions of less than absolute safety. We think this requirement would place an undue burden on the administration of institutions such as Pennhurst and also would restrict unnecessarily the exercise of professional judgment as to the needs of residents.

We hold that when the rights of the involuntarily committed mentally retarded are weighed against the legitimate interests of the State, including administrative and fiscal con-

*Holding*

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<sup>29</sup> We do disagree with Chief Judge Seitz's view as to the *existence* of a right to training *per se*. He finds that such a right does exist, whereas we find no such right cognizable as a liberty interest protected by the Fourteenth Amendment. See 644 F. 2d, at 176 (Chief Judge Seitz uses "treatment" rather than "training.>").



straints, due process requires that (i) the State subject these individuals only to reasonable physical constraints; (ii) it provide them reasonably safe conditions, and (iii) it afford them such training as is necessary to achieve reasonable safety and reasonable freedom of movement within the institution.<sup>30</sup> We recognize that this holding may impose some additional burdens on States. In determining what is "reasonable," however, we emphasize that courts must show deference to the judgment exercised by a qualified professional.<sup>31</sup>

By so limiting judicial review of challenges to conditions in state institutions, interference by the federal judiciary with the internal operations of these institutions should be minimized.<sup>32</sup> Moreover, there certainly is no reason to think

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<sup>30</sup> We have expressed the constitutional right enjoyed by respondent in somewhat different language from that used by Chief Judge Seitz. Rather than stating that the involuntarily committed enjoy the right to have certain decisions made by professionals, see 644 F. 2d, at 178, 180-181, we hold that they are entitled to conditions of reasonable safety and reasonable freedom from bodily restraints, but we go on to hold that once such a decision is made by a professional in the exercise of reasonable professional judgment, courts will defer to it.

<sup>31</sup> Our holding entitles respondent to a right that also can be characterized as procedural. We hold that the involuntary committed are entitled to an informal, non-adversarial "hearing" by a professional exercising his professional judgment—a "procedure" not unlike that upheld in *Parham v. J.R.*, 442 U. S. 584 (1979), a procedural due process case discussed in text at —, *supra*, and in note 30, *infra*.

<sup>32</sup> See *Parham v. J.R.*, *supra*, 442 U. S., at 608 n. 16 (In limiting judicial review of medical decisions made by professionals, "it is incumbent on courts to design procedures that protect the rights of individuals without unduly burdening the legitimate efforts of the states to deal with difficult social problems."). See also *Rhodes v. Chapman*, 452 U. S. 337, — (1981) ("[C]ourts cannot assume that state legislatures and prison officials are insensitive to the requirements of the Constitution or to the perplexing sociological problems of how best to achieve the goals of the penal function in the criminal justice system. . . ."); *Bell v. Wolfish*, 441 U. S. 520, 539 (1979) (In context of conditions of confinement of pre-trial detainees, "courts must be mindful that these inquiries spring from constitutional requirements and that judicial answers to them must reflect that fact rather than a court's idea of how best to operate a detention facility."); *Wolff v.*



judges or juries are better qualified than appropriate professionals in making such decisions. See *Parham v. J.R.*, 442 U. S. 584, 607 (1979); *Bell v. Wolfish*, *supra*, 441 U. S., at 544 (Courts should not “second-guess the expert administrators on matters on which they are better informed.”). For these reasons, the decision, if made by a professional,<sup>33</sup> is presumptively valid; liability may be imposed only when the decision by the professional is such a substantial departure from accepted professional judgment, practice or standards as to demonstrate that the person responsible actually did not base the decision on such a judgment. In an action for damages against a professional in his individual capacity, however, the professional will not be liable if he was unable to satisfy his normal professional standards because of budgetary constraints; in such a situation, good-faith immunity would bar liability. See note 10, *supra*.

#### IV

In deciding this case, we have weighed those post-commitment interests cognizable as liberty interests under the Due Process Clause of the Fourteenth Amendment against legiti-

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*McDonnell*, 418 U. S. 539, 556 (1974) (In considering procedural due process claim in context of prison, “there must be mutual accommodation between institutional needs and objectives and the provisions of the Constitution that are of general application.”). See also Townsend & Mattson, *The Interaction of Law and Special Education: Observing the Emperor’s New Clothes*, 1 *Analysis and Intervention in Developmental Disabilities* 75 (1981) (judicial resolution of rights of the handicapped can have adverse as well as positive effects on social change).

<sup>33</sup> By ‘professional’ decision-maker, we mean a person competent, whether by education, training or experience, to make the particular decision at issue. Long term treatment decisions normally should be made by persons with degrees in medicine or nursing, or with appropriate training in areas such as psychology, physical therapy, or the care and training of the retarded. Of course, day-to-day decisions regarding care—including decisions that must be made without delay—necessarily will be made in many instances by employees without formal training but who are subject to the supervision of qualified persons.



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lfp/ss 05/23/82

Rider A, p. 18 (Romeo)

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These are the essential<sup>s</sup> of the care that the state must provide.

lfp/ss 05/23/82

Rider B, p. 18 (Romeo)

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← These conditions of confinement comport fully with the purpose of respondent's commitment. Cf. Jackson v. Indiana, 406 U.S. 715, 738 (1972); ~~see~~ n. 27, ante, In determining whether the state has met its obligations in these respects,



mate state interests and in light of the constraints under which most state institutions necessarily operate. We repeat that the state concedes a duty to provide adequate food, shelter, clothing and medical care. The state also has the unquestioned duty to provide reasonable safety for all residents and personnel within the institution. And it may not restrain residents except when and to the extent professional judgment deems this necessary to assure such safety. We hold, however, that there is no constitutional right to habilitative training *per se*, though we should not be understood as holding that the state is never under any obligation to provide training. The state is under a duty to provide respondent with such training as an appropriate professional would consider reasonable to ensure his safety and to facilitate his ability to function free from bodily restraints. It may well be unreasonable not to provide training when training could significantly reduce the need for restraints or the likelihood of violence.

Respondent thus enjoys constitutionally protected interests in conditions of reasonable safety, reasonably non-restrictive confinement conditions, and such training as may be required by these interests. In determining whether these rights have been violated, decisions made by the appropriate professional are entitled to a strong presumption of correctness. Such a presumption is necessary to enable institutions of this type—often, unfortunately, overcrowded and understaffed—to continue to function. A single professional may have to make decisions with respect to a number of residents with widely varying needs and problems in the course of a normal day. The administrators, and particularly professional personnel, should not be required to make each decision in the shadow of an action for damages.

In this case, we conclude that the jury was erroneously instructed on the assumption that the proper standard of liabil-

Holding  
Rider A

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Holding  
Rider B



ity was that of the Eighth Amendment. Accordingly, we vacate the decision of the Court of Appeals and remand for further proceedings consistent with this decision.

*So ordered.*



Changes: 8, 14, 18

To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Rehnquist  
Justice Stevens  
Justice O'Connor

From: Justice Powell

Circulated: 5/24

Recirculated: \_\_\_\_\_

3rd DRAFT

5/24

# SUPREME COURT OF THE UNITED STATES

No. 80-1429

DUANE YOUNGBERG, ETC., ET AL., PETITIONERS, v.  
NICHOLAS ROMEO, AN INCOMPETENT, BY HIS  
MOTHER AND NEXT FRIEND, PAULA ROMEO

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE THIRD CIRCUIT

[May —, 1982]

JUSTICE POWELL delivered the opinion of the Court.

The question presented is whether respondent, involuntarily committed to a state institution for the mentally retarded, has substantive rights under the Due Process Clause of the Fourteenth Amendment to (i) safe conditions of confinement; (ii) freedom from bodily restraints; and (iii) training or "habilitation."<sup>1</sup> Respondent sued under 42 U. S. C. § 1983 against three administrators of the institution, claiming damages for the alleged breach of his constitutional rights.

## I

Respondent Nicholas Romeo is profoundly retarded. Although 33 years old, he has the mental capacity of an eighteen-month old child. He cannot talk and lacks the most basic self-care skills. Until he was 26, respondent lived with his parents in Philadelphia. But after the death of his father

<sup>1</sup>The American Psychiatric Association explains that "[t]he word 'habilitation,' . . . is commonly used to refer to programs for the mentally-retarded because mental retardation is . . . a learning disability and training impairment rather than an illness. . . . [T]he principal focus of habilitation is upon training and development of needed skills." Brief of American Psychiatric Association as *Amicus Curiae*, at 4 n. 1.



in May 1974, his mother was unable to care for him. Within two weeks of the father's death, respondent's mother sought his temporary admission to a nearby Pennsylvania hospital.

Shortly thereafter, she asked the Philadelphia County Court of Common Pleas to admit Romeo to a state facility on a permanent basis. Her petition to the court explained that she was unable to care for Romeo or control his violence.<sup>2</sup> As part of the commitment process, Romeo was examined by a physician and a psychologist. They both certified that respondent was severely retarded and unable to care for himself. App. 21a-22a and 28a-29a. On June 11, 1974, the Court of Common Pleas committed respondent to the Pennhurst State School and Hospital, pursuant to the applicable involuntary commitment provision of the Pennsylvania Mental Health and Mental Retardation Act, Pa. Stat. Ann. tit. 50 § 4406.

At Pennhurst, Romeo was injured on numerous occasions, both by his own violence and by the reactions of other residents to him. Respondent's mother became concerned about these injuries. After objecting to respondent's treatment several times, she filed this complaint on November 4, 1976, in the United States District Court for the Eastern District of Pennsylvania as his next friend. The complaint alleged that "[d]uring the period July, 1974 to the present, plaintiff has suffered injuries on at least sixty-three occasions." The complaint originally sought damages and injunctive relief from Pennhurst's director and two supervisors<sup>3</sup>; it alleged that these officials knew, or should have known, that Romeo

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<sup>2</sup> Mrs. Romeo's petition to the Court of Common Pleas stated: "Since my husband's death I am unable to handle him. He becomes violent—Kicks, punches, breaks glass; He can't speak—wants to express himself but can't. He is [a] constant 24 hr. care. [W]ithout my husband I am unable to care for him." App. 18a.

<sup>3</sup> Petitioner Duane Youngberg was the Superintendent of Pennhurst; he had supervisory authority over the entire facility. Respondent Richard Matthews was the Director of Resident Life at Pennhurst. Respondent Marguerite Conley was Unit Director for the unit in which respondent was



was suffering injuries and that they failed to institute appropriate preventive procedures, thus violating his rights under the Eighth and Fourteenth Amendments.

Thereafter, in late 1976, Romeo was transferred from his ward to the hospital for treatment of a broken arm. While in the infirmary, and by order of a doctor, he was physically restrained during portions of each day.<sup>4</sup> These restraints were ordered by Dr. Gabroy, not a defendant here, to protect Romeo and others in the hospital, some of whom were in traction or were being treated intravenously. 7 Record 40, 49, 76-78. Although respondent normally would have returned to his ward when his arm healed, the parties to this litigation agreed that he should remain in the hospital due to the pending law suit. 5 Record 248, 6 R. 57-58 and 137. Nevertheless, in December 1977, a second amended complaint was filed alleging that the defendants were restraining respondent for prolonged periods on a routine basis. The second amended complaint also added a claim for damages to compensate Romeo for the defendants' failure to provide him with appropriate "treatment or programs for his mental retardation."<sup>5</sup> All claims for injunctive relief were dropped prior to trial because respondent is a member of the class seeking such relief in another action.<sup>6</sup>

An eight-day jury trial was held in April 1978. Petitioners introduced evidence that respondent participated in several

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incarcerated. According to respondent, petitioners are administrators, not medical doctors. See Brief for Respondent 2. Youngberg and Matthews are no longer at Pennhurst.

<sup>4</sup>Although the Court of Appeals described these restraints as "shackles," "soft" restraints, for the arms only, were generally used. 7 Record 53-55.

<sup>5</sup>Respondent uses "treatment" as synonymous with "habilitation" or "training." See Brief for Respondents 21-23.

<sup>6</sup>*Pennhurst State School and Hospital v. Halderman*, 451 U. S. 1 (1981) (remanded for further proceedings).



programs teaching basic self-care skills.<sup>7</sup> A comprehensive behavior-modification program was designed by staff members to reduce Romeo's aggressive behavior,<sup>8</sup> but that program was never implemented because of his mother's objections.<sup>9</sup> Respondent introduced evidence of his injuries and of conditions in his unit.<sup>10</sup>

At the close of the trial, the court instructed the jury that "if any or all of the defendants were aware of and failed to take all reasonable steps to prevent repeated attacks upon Nicholas Romeo," such failure deprived him of constitutional rights. App. to Pet. for Cert. 110a. The jury also was instructed that if the defendants shackled Romeo or denied him treatment "as a punishment for filing this lawsuit," his constitutional rights were violated under the Eighth Amendment. *Id.*, at 73a-75a. Finally, the jury was instructed that if they found the defendants "deliberately indifferent to the medical and psychological needs of Nicholas Romeo," they might find that Romeo's Eighth and Four-

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<sup>7</sup> Prior to his transfer to Pennhurst's hospital ward, Romeo participated in programs dealing with feeding, showering, drying, dressing, self control, and toilet training, as well as a program providing interaction with staff members. Defendants' exhibit 10; 3 Record 69-70, 5 Record 44-56, 242-250, 6 Record 162-166; 7 Record 41-48.

Some programs continued while respondent was in the hospital, 5 Record 227, 248, 256; 6 Record 50, 162-166, Record 32,34, 41-48, and they reduced respondent's aggressive behavior to some extent, 7 Record 45.

<sup>8</sup> 2 Record 7, 5 Record 88-90; 6 Record 88, 200-203; Defendants' Exhibit 1, at 9. The program called for short periods of separation from other residents and for use of "muffs" on plaintiff's hands for short periods of time, *i. e.*, 5 minutes, to prevent him from harming himself or others.

<sup>9</sup> 1 Record 53; 4 Record 25; 6 Record 204.

<sup>10</sup> The District Judge refused to allow testimony by two of Romeo's witnesses—trained professionals—indicating that Romeo would have benefited from more or different training programs. The trial judge explained that evidence of the advantages of alternative forms of treatment might be relevant to a malpractice suit, but was not relevant to a constitutional claim under § 1983. App. to Pet. for Cert. 101a.



teenth Amendment rights were violated. *Id.*, at 111a. The jury returned a verdict for the defendants, on which judgment was entered.

The Court of Appeals for the Third Circuit, sitting en banc, reversed and remanded for a new trial. 644 F. 2d 147 (1980). The court held that the Eighth Amendment, prohibiting cruel and unusual punishment of those convicted of crimes, was not an appropriate source for determining the rights of the involuntarily committed. Rather, the Fourteenth Amendment and the liberty interest protected by that amendment provided the proper constitutional basis for these rights. In applying the Fourteenth Amendment, the court found that the involuntarily committed retain liberty interests in freedom of movement and in personal security. These were "fundamental liberties" that can be limited only by an "overriding, non-punitive" state interest. 644 F. 2d, at 157-158 (footnote omitted). It further found that the involuntarily committed have a liberty interest in habilitation designed to "treat" their mental retardation. *Id.*, at 164-170.<sup>11</sup>

The en banc court did not, however, agree on the relevant standard to be used in determining whether Romeo's rights had been violated.<sup>12</sup> Because physical restraint "raises a presumption of a punitive sanction," the majority of the Court of Appeals concluded that it can be justified only by "compelling necessity." *Id.*, at 159-160. A somewhat different standard was appropriate for the failure to provide for

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<sup>11</sup> The Court of Appeals used "habilitation" and "treatment" as synonymous, though it regarded "habilitation" as more accurate in describing treatment needed by the mentally retarded. See 644 F. 2d, at 165 and n. 40.

<sup>12</sup> The existence of a qualified immunity defense was not at issue on appeal. The defendants had received instructions on this defense, App. 76a, and it was not challenged by respondent. 644 F. 2d, at 173 n. 1. After citing *Pierson v. Ray*, 386 U. S. 547 (1967) and *Scheuer v. Rhodes*, 416 U. S. 232 (1974), the majority of the Court of Appeals noted that such instructions should be given again on the remand. 644 F. 2d, at 171-172.



a resident's safety. The majority considered that such a failure must be justified by a showing of "substantial necessity." *Id.*, at 164. Finally, the majority held that when treatment has been administered, those responsible are liable only if the treatment is not "acceptable in the light of present medical or other scientific knowledge." *Id.*, at 166-167 and 173.<sup>13</sup>

Chief Judge Seitz, concurring in the judgment, considered the standards articulated by the majority as indistinguishable from those applicable to medical malpractice claims. In Chief Judge Seitz's view, the Constitution "only requires that the courts make certain that professional judgment in fact was exercised." 644 F. 2d, at 178. He concluded that the appropriate standard was whether the defendants' conduct was "such a substantial departure from accepted professional judgment, practice or standards in the care and treatment of this plaintiff as to demonstrate that the defendants did not base their conduct on a professional judgment." 644 F. 2d, at 178.<sup>14</sup>

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<sup>13</sup> Actually, the court divided the right-to-treatment claim into three categories and adopted three standards, but only the standard described in text is at issue before this Court. The Court of Appeals also stated that if a jury finds that *no* treatment has been administered, it may hold the institution's administrators liable unless they can provide a compelling explanation for the lack of treatment, 644 F. 2d at 165, 173, but respondent does not discuss this precise standard in his brief and it does not appear to be relevant to the facts of this case. In addition, the court considered "least intrusive" analysis appropriate to justify severe intrusions on individual dignity, such as permanent physical alteration or surgical intervention, *id.*, at 165-166, and 173, but respondent concedes that this issue is not present in this case.

<sup>14</sup> Judge Aldisert joined Chief Judge Seitz's opinion, but wrote separately to emphasize the nature of the difference between the majority opinion and that of the Chief Judge. On a conceptual level, Judge Aldisert thought that the court erred in abandoning the common-law method of deciding the case at bar rather than articulating broad principles unconnected with the facts of the case and of uncertain meaning. 644 F. 2d, at 182-183. And, on a pragmatic level, Judge Aldisert warned that neither juries nor those administering state institutions would receive guidance from the "amor-



We granted the petition for certiorari because of the importance of the question presented to the administration of state institutions for the mentally retarded. 451 U. S. 982 (1981).

## II

We consider here for the first time the substantive rights of involuntarily-committed mentally retarded persons under the Fourteenth Amendment to the Constitution.<sup>15</sup> In this case, respondent has been committed under the laws of Pennsylvania, and he does not challenge the commitment. Rather, he argues that he has a constitutionally protected liberty interest in safety, freedom of movement, and training within the institution; and that petitioners infringed on these rights by failing to provide constitutionally required conditions of confinement.

The mere fact that Romeo has been committed under proper procedures does not deprive him of all substantive liberty interests under the Fourteenth Amendment. See, e. g., *Vitek v. Jones*, 445 U. S. 480, 491–494 (1980). Indeed, the state concedes that respondent has a right to adequate food, shelter, clothing, and medical care.<sup>16</sup> We must decide whether liberty interests also exist in safety, freedom of movement, and training. If such interests do exist, we must

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phous constitutional law tenets” articulated in the majority opinion. *Id.*, at 184. See *id.*, at 183–185.

Judge Garth also joined Chief Judge Seitz’s opinion, and wrote separately to criticize the majority for addressing issues not raised by the facts of this case. 644 F. 2d, at 186.

<sup>15</sup> In pertinent part, that Amendment provides that a State cannot deprive “any person of life, liberty, or property, without due process of law. . . .” U. S. Const., Amend. XIV, § 1.

Respondent no longer relies on the Eighth Amendment as a direct source of constitutional rights. See Brief for Respondent 13 n. 12.

<sup>16</sup> Brief for Petitioners 8, 11, 12 and n. 10; Brief for Respondent 15–16. See also Brief for Connecticut and Twenty Other States as *Amici Curiae* 8. Petitioners argue that they have fully protected these interests.



further decide whether particular interferences with these interests offend due process.

## A

Respondent's first two claims involve liberty interests recognized by prior decisions of this Court, interests that involuntary commitment proceedings do not extinguish.<sup>17</sup> The first is a claim to safe conditions. In the past, this Court has noted that the right to personal security constitutes an "historic liberty interest" protected substantively by the Due Process Clause. *Ingraham v. Wright*, 430 U. S. 651, 673 (1977). And that right is not extinguished by lawful confinement, even for penal purposes.<sup>18</sup> See *Hutto v. Finney*, 437 U. S. 678 (1978). If it is cruel and unusual punishment to hold convicted criminals in unsafe conditions, it must be unconstitutional to confine the involuntarily committed—who may not be punished at all—in unsafe conditions.

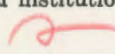
Next, respondent claims a right to freedom from bodily restraint. In other contexts, the existence of such an interest is clear in the prior decisions of this Court. Indeed, "[l]iberty from bodily restraint always has been recognized as the core of the liberty protected by the Due Process Clause from arbitrary governmental action." *Greenholtz v. Nebraska Penal Inmates*, 442 U. S. 1, 18 (1979) (POWELL, J., concurring). This interest survives criminal conviction and incarceration. Similarly, it must also survive involuntary commitment.

## B

Respondent's remaining claim is more troubling: a constitutional right to "habilitation," *i. e.*, training to improve

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<sup>17</sup> Petitioners do not appear to argue to the contrary. See Brief for Petitioners 27-31.

<sup>18</sup> It is true that in cases dealing with prisoners, analysis begins with the Eighth Amendment's proscription of cruel and unusual punishment, and the Eighth Amendment has no direct bearing on non-penal institutions. See *Ingraham v. Wright*, 430 U. S. 651, 667-668 (1977). 



his ability to function within Pennhurst. Respondent concedes that no amount of training will make possible his release. Moreover, respondent does not argue that if he were still at home, he would have a right to training at the expense of the State. See Tr. of Oral Arg. 33. And, since we already have found constitutionally protected liberty interests in freedom from restraints and safety, some training<sup>19</sup> may be necessary to avoid unconstitutional infringement of those rights regardless of whether respondent also enjoys a constitutional right to training *per se*. We therefore decide only the narrow question whether a mentally retarded person, committed involuntarily, has a right to additional training—other than that related to safety or the ability to function free of restraints—when such training might improve his capacity to function more independently within the institution, but cannot make possible his release.

Respondent argues that, once a person has been confined, he has “no one but the State to turn to for help in gaining additional skills or, at least, preserving whatever skills and abilities” he has. Brief for Respondent 23. Respondent concludes that the State therefore has a constitutional duty to provide reasonable training, both to preserve existing skills and develop new ones. In making this argument, respondent compares mental retardation to an infectious disease, for which the State has quarantined the individual, and cannot then deny appropriate treatment. Mental retardation is not, however, a disease. Rather, it is a description of a certain level of intellectual ability,<sup>20</sup> and the “habilitation”

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<sup>19</sup> We use the term “training” as synonymous with “habilitation,” with its “principal focus”—certainly in a case like Romeo’s—being on “training and development of needed skills.” See n. 1, *supra*.

<sup>20</sup> See A. Baumeister, *The American Residential Institution: Its History and Character* 21–22 in *Residential Facilities for the Mentally Retarded* (Baumeister, ed. 1970); H. Best, *Public Provision for the Mentally Retarded in the United States* 3 (1965). See also Brief for American Psychiatric Association as *Amicus Curiae*, at 4 n. 1 (quoted in n. 1, *supra*)

As a result of a congenital chemical imbalance in his brain, Romeo has an



respondent seeks, such as training to teach him for the first time skills he does not possess, correlates more closely to education than to medical treatment.<sup>21</sup> And we have never found a right to education under the Constitution.<sup>22</sup>

As a general matter, a State is under no constitutional duty to provide services for those within its borders. See, e. g., *Harris v. McRae*, 448 U. S. 297, 318 (1980) (publicly funded abortions); *Maher v. Roe*, 432 U. S. 464, 469 (1977) (medical treatment). When States do choose to provide services, they generally are given wide latitude in doing so. See *Richardson v. Belcher*, 404 U. S. 78, 83–84 (1971); *Dandridge v. Williams*, 397 U. S. 471, 478 (1970). Specifically, States need not “choose between attacking every aspect of a problem or not attacking the problem at all.” *Id.*, at 486–487. Here, the State has committed respondent, who concededly cannot survive on the outside. It is willing to provide food, shelter, clothing, and medical care, as well as reasonable conditions of safety and reasonable freedom from bodily restraint.

Under these circumstances, we hesitate to find a new liberty interest in “training” in skills unlikely to lead to a patient’s release from involuntary confinement. As we noted

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IQ of 8–10 and is therefore classified as a profoundly retarded person. There is no known way in which to correct the chemical imbalance and increase Romeo’s IQ.

<sup>21</sup> There may be cases in which it is difficult to distinguish between claims to medical treatment and claims to training in the development of skills. This is not, however, such a case. Indeed, Romeo does not raise any issues related to medical care—for example, he does not complain that he received inadequate medical treatment in the infirmary ward. And his claims to training are either related to safety and freedom from restraints or purely educational, i. e., training to make him less violent (related to safety and freedom from restraints) and training in self-care skills (educational).

<sup>22</sup> See *San Antonio Ind. School Dist. v. Rodriguez*, 411 U. S. 1 (1973). Respondent does not argue that he is denied training or habilitation available to others in Pennhurst.



in determining that there is no general right to education in *San Antonio Independent School District v. Rodriguez*, 411 U. S. 1, 33-34 (1973):

“It is not the province of this Court to create substantive constitutional rights in the name of guaranteeing equal protection of the laws. . . . Rather, the answer lies in assessing whether there is a right to education explicitly or implicitly guaranteed by the Constitution.”

A similar restraint is seen in this Court's cases involving claimed “discoveries” of new “liberties” under the Due Process Clause. In *Paul v. Davis*, 424 U. S. 693 (1976), we noted that the liberties protected by the Fourteenth Amendment have their origins either in state law—for puposes of procedural due process—or in the guarantees of the Bill of Rights that have been “incorporated” to apply to the States. *Id.*, at 710-711 and n. 5. In addition, as noted earlier, some liberty interests are implicit in our historic notion of the meaning of that word itself—for example, freedom from bodily restraint by the State. But a right to training fits none of these categories. Respondent is not seeking procedural due process.<sup>23</sup> Nor does he claim a right historically regarded as within the meaning of the concept of “liberty.” And respondent points to no right to training either implicit or explicit in the guarantees of the Bill of Rights.

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<sup>23</sup> Respondent does argue that he was committed for care and treatment under state law, and that he therefore has a state substantive right entitled to substantive, not procedural, protection under the Due Process Clause of the Federal Constitution. But this argument is made for the first time in respondent's brief to this Court. It was not advanced in the courts below, and was not argued to the Court of Appeals as a ground for reversing the trial court. Given the uncertainty of Pennsylvannia law and the lack of any guidance on this issue from the lower federal courts, we decline to consider it now. See *Dothard v. Rawlinson*, 433 U. S. 321, 323 n. 1 (1977); *Duignan v. United States*, 274 U. S. 195, 200 (1927); *Old Jordan Milling Co. v. Societe Anonyme des Mines*, 164 U. S. 261, 264-265 (1896).



The right respondent claims is a substantive due process right. Only when an action of a State against an individual is sharply at odds with our "fundamental principles of liberty and justice," will the Due Process Clause of the Fourteenth Amendment bar the action. *Palko v. Connecticut*, 302 U. S. 319, 328 (1937) (quoting *Herbert v. Louisiana*, 272 U. S. 312, 316 (1926)).<sup>24</sup> In deciding whether to provide individuals such as Romeo with habilitative training, the state must make a difficult decision regarding the allocation of its resources. We cannot say that due process requires that such individuals must be given training in the development of skills that cannot lead to freedom. The decision whether to commit scarce resources on programs to attempt to train the profoundly retarded,<sup>25</sup> or on other social and welfare programs of manifest merit, is a difficult one that state and federal governments must face. The Constitution does not dictate an answer, and this is not a decision that courts are competent to make.

<sup>24</sup> See also *Adamson v. California*, 332 U. S. 46, 59, 67 (1947) (Frankfurter, J., concurring) (In order to determine whether the defendant was accorded due process under the Fourteenth Amendment, it is necessary "to ascertain whether [the proceedings] offend those canons of decency and fairness which express the notions of justice of English-speaking peoples. . . ."); *Palko v. Connecticut*, 302 U. S., at 328 (Under the Due Process Clause of the Fourteenth Amendment, the standard is whether a state has "subjected [an individual] to a hardship so acute and shocking that our polity will not endure it.").

<sup>25</sup> Professionals in the habilitation of the mentally retarded disagree strongly on the question whether effective training of all severely or profoundly retarded individuals is even possible. See, e. g., Favell, Risley, Wolfe, Riddle, & Rasmussen, *The Limits of Habilitation: How Can We Identify Them and How Can We Change Them?*, 1 *Analysis and Intervention in Developmental Disabilities* 37 (1981); Bailey, *Wanted: A Rational Search for the Limiting Conditions of Habilitation in the Retarded*, 1 *Analysis and Intervention in Developmental Disabilities* 45 (1981); Kauffman & Krouse, *The Cult of Educability: Searching for the Substance of Things Hoped for; The Evidence of Things Not Seen*, 1 *Analysis and Intervention in Developmental Disabilities* 53 (1981).



We therefore conclude that involuntarily-committed mentally retarded persons do not have a constitutionally protected liberty interest in training *per se*. As noted above, they do have constitutionally protected interests in safety and freedom from bodily restraints, and those interests may require some kinds of training. We turn next to consider whether Pennsylvania may have violated these two rights.

### III

#### A

We have established that Romeo retains liberty interests in safety and freedom from bodily restraint. Yet these interests are not absolute, indeed to some extent they are in conflict. In operating an institution such as Pennhurst, there are occasions in which it is necessary for the State to restrain the movement of residents—for example, to protect them as well as others from violence.<sup>26</sup> Similar restraints may also be appropriate in a training program. And an institution cannot protect its residents from all danger of violence if it is to permit them to have any freedom of movement. The question then is not simply whether a liberty interest has been infringed but whether the extent or nature of the restraint or lack of absolute safety is such as to violate due process.

In determining whether a substantive right protected by the Due Process Clause has been violated, it is necessary to balance “the liberty of the individual” and “the demands of an organized society.” *Poe v. Ullman*, 367 U. S. 497, 522, 542 (1961) (Harlan, J., dissenting). In seeking this balance in other cases, the Court has weighed the individual’s interest in liberty against the State’s asserted reasons for restraining individual liberty. In *Bell v. Wolfish*, 441 U. S. 520 (1979),

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<sup>26</sup> In Romeo’s case, there can be no question that physical restraint was necessary at times. See n. 2, *supra*.



for example, we considered a challenge to pre-trial detainees' confinement conditions. We agreed that the detainees, not yet convicted of the crime charged, could not be punished. But we upheld those restrictions on liberty that were reasonably related to legitimate government objectives and not tantamount to punishment.<sup>27</sup> See *id.*, at 539. We have taken a similar approach in deciding procedural due-process challenges to civil commitment proceedings. In *Parham v. J.R.*, 442 U. S. 584 (1979), for example, we considered a challenge to state procedures for commitment of a minor with parental consent. In determining that *procedural* due process did not mandate an adversarial hearing, we weighed the liberty interest of the individual against the legitimate interests of the State, including the fiscal and administrative burdens additional procedures would entail.<sup>28</sup> *Id.*, at 599-600.

Accordingly, whether respondent's constitutional rights have been violated must be determined by balancing his liberty interests against the relevant state interests. If there is to be any uniformity in protecting these interests, this balancing cannot be left to the unguided discretion of a judge or

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<sup>27</sup> See also *Jackson v. Indiana*, 406 U. S. 715, 738 (1972) (holding that an incompetent pre-trial detainee cannot, after a competency hearing, be held indefinitely without either criminal process or civil commitment; due process requires, at a minimum, some rational relation between the nature and duration of commitment and its purpose). This case differs in critical respects from *Jackson*, a procedural due process case involving the validity of an involuntary commitment. Here, petitioner was committed by a court on petition of his mother who averred that in view of Romeo's condition she could neither care for him nor control his violence. *Ante*, at 2. Thus, the purpose of petitioner's commitment basically was to provide reasonable care and safety, conditions not available to him outside of an institution.

<sup>28</sup> See also *Addington v. Texas*, 441 U. S. 418 (1979). In that case, we held that the state must prove the need for commitment by "clear and convincing" evidence. See *id.*, at 431-432. We reached this decision by weighing the individual's liberty interest against the state's legitimate interests in confinement.



jury. We therefore turn to consider the proper standard for determining whether a State adequately has protected the rights of the involuntarily-committed mentally retarded.

B

We think the standard articulated by Chief Judge Seitz affords the necessary guidance and reflects the proper balance between the legitimate interests of the State and the rights of the involuntarily committed to reasonable conditions of safety and freedom from unreasonable restraints. He would have held that "the Constitution only requires that the courts make certain that professional judgment in fact was exercised. It is not appropriate for the courts to specify which of several professionally acceptable choices should have been made."<sup>29</sup> 644 F. 2d, at 178. This standard is higher than the deliberate indifference formulation applied in the context of penal institutions. See *Estelle v. Gamble*, 429 U. S. 97 (1976). Persons who have been involuntarily committed are entitled to more considerate treatment and conditions of confinement than criminals whose conditions of confinement are designed to punish. At the same time, this standard is lower than the "compelling" or "substantial" necessity tests the Court of Appeals would require a state to meet to justify use of restraints or conditions of less than absolute safety. We think this requirement would place an undue burden on the administration of institutions such as Pennhurst and also would restrict unnecessarily the exercise of professional judgment as to the needs of residents.

We hold that when the rights of the involuntarily committed mentally retarded are weighed against the legitimate in-

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<sup>29</sup> We do disagree with Chief Judge Seitz's view as to the *existence* of a right to training *per se*. He finds that such a right does exist, whereas we find no such right cognizable as a liberty interest protected by the Fourteenth Amendment. See 644 F. 2d, at 176 (Chief Judge Seitz uses "treatment" rather than "training.").



terests of the State, including administrative and fiscal constraints, due process requires that (i) the State subject these individuals only to reasonable physical constraints; (ii) it provide them reasonably safe conditions, and (iii) it afford them such training as is necessary to achieve reasonable safety and reasonable freedom of movement within the institution.<sup>30</sup> We recognize that this holding may impose some additional burdens on States. In determining what is “reasonable,” however, we emphasize that courts must show deference to the judgment exercised by a qualified professional.<sup>31</sup>

By so limiting judicial review of challenges to conditions in state institutions, interference by the federal judiciary with the internal operations of these institutions should be minimized.<sup>32</sup> Moreover, there certainly is no reason to think

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<sup>30</sup> We have expressed the constitutional right enjoyed by respondent in somewhat different language from that used by Chief Judge Seitz. Rather than stating that the involuntarily committed enjoy the right to have certain decisions made by professionals, see 644 F. 2d, at 178, 180–181, we hold that they are entitled to conditions of reasonable safety and reasonable freedom from bodily restraints, but we go on to hold that once such a decision is made by a professional in the exercise of reasonable professional judgment, courts will defer to it.

<sup>31</sup> Our holding entitles respondent to a right that also can be characterized as procedural. We hold that the involuntary committed are entitled to an informal, non-adversarial “hearing” by a professional exercising his professional judgment—a “procedure” not unlike that upheld in *Parham v. J.R.*, 442 U. S. 584 (1979), a procedural due process case discussed in text at —, *supra*, and in note 30, *infra*.

<sup>32</sup> See *Parham v. J.R.*, *supra*, 442 U. S., at 608 n. 16 (In limiting judicial review of medical decisions made by professionals, “it is incumbent on courts to design procedures that protect the rights of individuals without unduly burdening the legitimate efforts of the states to deal with difficult social problems.”). See also *Rhodes v. Chapman*, 452 U. S. 337, — (1981) (“[C]ourts cannot assume that state legislatures and prison officials are insensitive to the requirements of the Constitution or to the perplexing sociological problems of how best to achieve the goals of the penal function in the criminal justice system. . . .”); *Bell v. Wolfish*, 441 U. S. 520, 539



judges or juries are better qualified than appropriate professionals in making such decisions. See *Parham v. J.R.*, 442 U. S. 584, 607 (1979); *Bell v. Wolfish*, *supra*, 441 U. S., at 544 (Courts should not “second-guess the expert administrators on matters on which they are better informed.”). For these reasons, the decision, if made by a professional,<sup>33</sup> is presumptively valid; liability may be imposed only when the decision by the professional is such a substantial departure from accepted professional judgment, practice or standards as to demonstrate that the person responsible actually did not base the decision on such a judgment. In an action for damages against a professional in his individual capacity, however, the professional will not be liable if he was unable to satisfy his normal professional standards because of budgetary constraints; in such a situation, good-faith immunity would bar liability. See note 10, *supra*.

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(1979) (In context of conditions of confinement of pre-trial detainees, “courts must be mindful that these inquiries spring from constitutional requirements and that judicial answers to them must reflect that fact rather than a court’s idea of how best to operate a detention facility.”); *Wolff v. McDonnell*, 418 U. S. 539, 556 (1974) (In considering procedural due process claim in context of prison, “there must be mutual accommodation between institutional needs and objectives and the provisions of the Constitution that are of general application.”). See also Townsend & Mattson, *The Interaction of Law and Special Education: Observing the Emperor’s New Clothes*, 1 *Analysis and Intervention in Developmental Disabilities* 75 (1981) (judicial resolution of rights of the handicapped can have adverse as well as positive effects on social change).

<sup>33</sup> By ‘professional’ decision-maker, we mean a person competent, whether by education, training or experience, to make the particular decision at issue. Long term treatment decisions normally should be made by persons with degrees in medicine or nursing, or with appropriate training in areas such as psychology, physical therapy, or the care and training of the retarded. Of course, day-to-day decisions regarding care—including decisions that must be made without delay—necessarily will be made in many instances by employees without formal training but who are subject to the supervision of qualified persons.



## IV

In deciding this case, we have weighed those post-commitment interests cognizable as liberty interests under the Due Process Clause of the Fourteenth Amendment against legitimate state interests and in light of the constraints under which most state institutions necessarily operate. We repeat that the state concedes a duty to provide adequate food, shelter, clothing and medical care. These are the essentials of the care that the state must provide.

← The state also has the unquestioned duty to provide reasonable safety for all residents and personnel within the institution. And it may not restrain residents except when and to the extent professional judgment deems this necessary to assure such safety or to provide needed training. We hold, however, that there is no constitutional right to habilitative training *per se*, though we should not be understood as holding that the state is never under any obligation to provide training. The state is under a duty to provide respondent with such training as an appropriate professional would consider reasonable to ensure his safety and to facilitate his ability to function free from bodily restraints. It may well be unreasonable not to provide training when training could significantly reduce the need for restraints or the likelihood of violence.

Respondent thus enjoys constitutionally protected interests in conditions of reasonable care and safety, reasonably non-restrictive confinement conditions, and such training as may be required by these interests. These conditions of confinement comport fully with the purpose of respondent's commitment. Cf. *Jackson v. Indiana*, 406 U. S. 715, 738 (1972); see n. 27, *ante*. In determining whether the state has met its obligations in these respects, decisions made by the appropriate professional are entitled to a strong presumption of correctness. Such a presumption is necessary to enable in-



stitutions of this type—often, unfortunately, overcrowded and understaffed—to continue to function. A single professional may have to make decisions with respect to a number of residents with widely varying needs and problems in the course of a normal day. The administrators, and particularly professional personnel, should not be required to make each decision in the shadow of an action for damages.

In this case, we conclude that the jury was erroneously instructed on the assumption that the proper standard of liability was that of the Eighth Amendment. Accordingly, we vacate the decision of the Court of Appeals and remand for further proceedings consistent with this decision.

*So ordered.*



Justice Powell,

[RE MAY 24, 1982]

Here are suggested changes to  
Youngberg. Attached is your original

Rider A and an edited Rider A.

In the ~~typed~~ printed draft,

8-12 are replaced by Rider A

(though footnotes 23 + 25 are  
retained and placed in Rider A).

Other changes to reflect the changes  
are at 15 and 18. Mary

3rd DRAFT

To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Rehnquist  
Justice Stevens  
Justice O'Connor

Master  
5/27

From: Justice Powell

Circulated: \_\_\_\_\_

Recirculated: MAY 24 1982

~~changes 8-12,~~  
~~15, 18.~~

Changes for  
4<sup>th</sup> Draft:

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## SUPREME COURT OF THE UNITED STATES

No. 80-1429

DUANE YOUNGBERG, ETC., ET AL., PETITIONERS, v.  
NICHOLAS ROMEO, AN INCOMPETENT, BY HIS  
MOTHER AND NEXT FRIEND, PAULA ROMEO

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE THIRD CIRCUIT

[May —, 1982]

JUSTICE POWELL delivered the opinion of the Court.

The question presented is whether respondent, involun-  
tarily committed to a state institution for the mentally re-  
tarded, has substantive rights under the Due Process Clause  
of the Fourteenth Amendment to (i) safe conditions of con-  
finement; (ii) freedom from bodily restraints; and (iii) training  
or "habilitation."<sup>1</sup> Respondent sued under 42 U. S. C.  
§ 1983 ~~against~~ three administrators of the institution, claim-  
ing damages for the alleged breach of his constitutional  
rights.

### I

Respondent Nicholas Romeo is profoundly retarded. Al-  
though 33 years old, he has the mental capacity of an eigh-  
teen-month old child. He cannot talk and lacks the most  
basic self-care skills. Until he was 26, respondent lived with  
his parents in Philadelphia. But after the death of his father

<sup>1</sup>The American Psychiatric Association explains that "[t]he word 'habili-  
tation,' . . . is commonly used to refer to programs for the  
mentally-retarded because mental retardation is . . . a learning disability  
and training impairment rather than an illness. . . . [T]he principal focus of  
habilitation is upon training and development of needed skills." Brief of  
American Psychiatric Association as *Amicus Curiae*, at 4 n. 1.



in May 1974, his mother was unable to care for him. Within two weeks of the father's death, respondent's mother sought his temporary admission to a nearby Pennsylvania hospital.

Shortly thereafter, she asked the Philadelphia County Court of Common Pleas to admit Romeo to a state facility on a permanent basis. Her petition to the court explained that she was unable to care for Romeo or control his violence.<sup>2</sup> As part of the commitment process, Romeo was examined by a physician and a psychologist. They both certified that respondent was severely retarded and unable to care for himself. App. 21a-22a and 28a-29a. On June 11, 1974, the Court of Common Pleas committed respondent to the Pennhurst State School and Hospital, pursuant to the applicable involuntary commitment provision of the Pennsylvania Mental Health and Mental Retardation Act, Pa. Stat. Ann. tit. 50 § 4406.

At Pennhurst, Romeo was injured on numerous occasions, both by his own violence and by the reactions of other residents to him. Respondent's mother became concerned about these injuries. After objecting to respondent's treatment several times, she filed this complaint on November 4, 1976, in the United States District Court for the Eastern District of Pennsylvania as his next friend. The complaint alleged that "[d]uring the period July, 1974 to the present, plaintiff has suffered injuries on at least sixty-three occasions." The complaint originally sought damages and injunctive relief from Pennhurst's director and two supervisors<sup>3</sup>; it alleged that these officials knew, or should have known, that Romeo

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<sup>2</sup> Mrs. Romeo's petition to the Court of Common Pleas stated: "Since my husband's death I am unable to handle him. He becomes violent—Kicks, punches, breaks glass; He can't speak—wants to express himself but can't. He is [a] constant 24 hr. care. [W]ithout my husband I am unable to care for him." App. 18a.

<sup>3</sup> Petitioner Duane Youngberg was the Superintendent of Pennhurst; he had supervisory authority over the entire facility. Respondent Richard Matthews was the Director of Resident Life at Pennhurst. Respondent Marguerite Conley was Unit Director for the unit in which respondent was



was suffering injuries and that they failed to institute appropriate preventive procedures, thus violating his rights under the Eighth and Fourteenth Amendments.

Thereafter, in late 1976, Romeo was transferred from his ward to the hospital for treatment of a broken arm. While in the infirmary, and by order of a doctor, he was physically restrained during portions of each day.<sup>4</sup> These restraints were ordered by Dr. Gabroy, not a defendant here, to protect Romeo and others in the hospital, some of whom were in traction or were being treated intravenously. 7 Record 40, 49, 76-78. Although respondent normally would have returned to his ward when his arm healed, the parties to this litigation agreed that he should remain in the hospital due to the pending law suit. 5 Record 248, 6 R. 57-58 and 137. Nevertheless, in December 1977, a second amended complaint was filed alleging that the defendants were restraining respondent for prolonged periods on a routine basis. The second amended complaint also added a claim for damages to compensate Romeo for the defendants' failure to provide him with appropriate "treatment or programs for his mental retardation."<sup>5</sup> All claims for injunctive relief were dropped prior to trial because respondent is a member of the class seeking such relief in another action.<sup>6</sup>

An eight-day jury trial was held in April 1978. Petitioners introduced evidence that respondent participated in several

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incarcerated. According to respondent, petitioners are administrators, not medical doctors. See Brief for Respondent 2. Youngberg and Matthews are no longer at Pennhurst.

<sup>4</sup> Although the Court of Appeals described these restraints as "shackles," "soft" restraints, for the arms only, were generally used. 7 Record 53-55.

<sup>5</sup> Respondent uses "treatment" as synonymous with "habilitation" or "training." See Brief for Respondents 21-23.

<sup>6</sup> *Pennhurst State School and Hospital v. Halderman*, 451 U. S. 1 (1981) (remanded for further proceedings).



programs teaching basic self-care skills.<sup>7</sup> A comprehensive behavior-modification program was designed by staff members to reduce Romeo's aggressive behavior,<sup>8</sup> but that program was never implemented because of his mother's objections.<sup>9</sup> Respondent introduced evidence of his injuries and of conditions in his unit.<sup>10</sup>

At the close of the trial, the court instructed the jury that "if any or all of the defendants were aware of and failed to take all reasonable steps to prevent repeated attacks upon Nicholas Romeo," such failure deprived him of constitutional rights. App. to Pet. for Cert. 110a. The jury also was instructed that if the defendants shackled Romeo or denied him treatment "as a punishment for filing this lawsuit," his constitutional rights were violated under the Eighth Amendment. *Id.*, at 73a-75a. Finally, the jury was instructed that if they found the defendants "deliberately indifferent to the medical and psychological needs of Nicholas Romeo," they might find that Romeo's Eighth and Four-

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<sup>7</sup> Prior to his transfer to Pennhurst's hospital ward, Romeo participated in programs dealing with feeding, showering, drying, dressing, self control, and toilet training, as well as a program providing interaction with staff members. Defendants' exhibit 10; 3 Record 69-70, 5 Record 44-56, 242-250, 6 Record 162-166; 7 Record 41-48.

Some programs continued while respondent was in the hospital, 5 Record 227, 248, 256; 6 Record 50, 162-166, Record 32,34, 41-48, and they reduced respondent's aggressive behavior to some extent, 7 Record 45.

<sup>8</sup> 2 Record 7, 5 Record 88-90; 6 Record 88, 200-203; Defendants' Exhibit 1, at 9. The program called for short periods of separation from other residents and for use of "muffs" on plaintiff's hands for short periods of time, *i. e.*, 5 minutes, to prevent him from harming himself or others.

<sup>9</sup> 1 Record 53; 4 Record 25; 6 Record 204.

<sup>10</sup> The District Judge refused to allow testimony by two of Romeo's witnesses—trained professionals—indicating that Romeo would have benefited from more or different training programs. The trial judge explained that evidence of the advantages of alternative forms of treatment might be relevant to a malpractice suit, but was not relevant to a constitutional claim under § 1983. App. to Pet. for Cert. 101a.



teenth Amendment rights were violated. *Id.*, at 111a. The jury returned a verdict for the defendants, on which judgment was entered.

The Court of Appeals for the Third Circuit, sitting en banc, reversed and remanded for a new trial. 644 F. 2d 147 (1980). The court held that the Eighth Amendment, prohibiting cruel and unusual punishment of those convicted of crimes, was not an appropriate source for determining the rights of the involuntarily committed. Rather, the Fourteenth Amendment and the liberty interest protected by that amendment provided the proper constitutional basis for these rights. In applying the Fourteenth Amendment, the court found that the involuntarily committed retain liberty interests in freedom of movement and in personal security. These were "fundamental liberties" that can be limited only by an "overriding, non-punitive" state interest. 644 F. 2d, at 157-158 (footnote omitted). It further found that the involuntarily committed have a liberty interest in habilitation designed to "treat" their mental retardation. *Id.*, at 164-170.<sup>11</sup>

The en banc court did not, however, agree on the relevant standard to be used in determining whether Romeo's rights had been violated.<sup>12</sup> Because physical restraint "raises a presumption of a punitive sanction," the majority of the Court of Appeals concluded that it can be justified only by "compelling necessity." *Id.*, at 159-160. A somewhat different standard was appropriate for the failure to provide for

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<sup>11</sup>The Court of Appeals used "habilitation" and "treatment" as synonymous, though it regarded "habilitation" as more accurate in describing treatment needed by the mentally retarded. See 644 F. 2d, at 165 and n. 40.

<sup>12</sup>The existence of a qualified immunity defense was not at issue on appeal. The defendants had received instructions on this defense, App. 76a, and it was not challenged by respondent. 644 F. 2d, at 173 n. 1. After citing *Pierson v. Ray*, 386 U. S. 547 (1967) and *Scheuer v. Rhodes*, 416 U. S. 232 (1974), the majority of the Court of Appeals noted that such instructions should be given again on the remand. 644 F. 2d, at 171-172.



a resident's safety. The majority considered that such a failure must be justified by a showing of "substantial necessity." *Id.*, at 164. Finally, the majority held that when treatment has been administered, those responsible are liable only if the treatment is not "acceptable in the light of present medical or other scientific knowledge." *Id.*, at 166-167 and 173.<sup>13</sup>

Chief Judge Seitz, concurring in the judgment, considered the standards articulated by the majority as indistinguishable from those applicable to medical malpractice claims. In Chief Judge Seitz's view, the Constitution "only requires that the courts make certain that professional judgment in fact was exercised." 644 F. 2d, at 178. He concluded that the appropriate standard was whether the defendants' conduct was "such a substantial departure from accepted professional judgment, practice or standards in the care and treatment of this plaintiff as to demonstrate that the defendants did not base their conduct on a professional judgment." 644 F. 2d, at 178.<sup>14</sup>

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<sup>13</sup> Actually, the court divided the right-to-treatment claim into three categories and adopted three standards, but only the standard described in text is at issue before this Court. The Court of Appeals also stated that if a jury finds that *no* treatment has been administered, it may hold the institution's administrators liable unless they can provide a compelling explanation for the lack of treatment, 644 F. 2d at 165, 173, but respondent does not discuss this precise standard in his brief and it does not appear to be relevant to the facts of this case. In addition, the court considered "least intrusive" analysis appropriate to justify severe intrusions on individual dignity, such as permanent physical alteration or surgical intervention, *id.*, at 165-166, and 173, but respondent concedes that this issue is not present in this case.

<sup>14</sup> Judge Aldisert joined Chief Judge Seitz's opinion, but wrote separately to emphasize the nature of the difference between the majority opinion and that of the Chief Judge. On a conceptual level, Judge Aldisert thought that the court erred in abandoning the common-law method of deciding the case at bar rather than articulating broad principles unconnected with the facts of the case and of uncertain meaning. 644 F. 2d, at 182-183. And, on a pragmatic level, Judge Aldisert warned that neither juries nor those administering state institutions would receive guidance from the "amor-



We granted the petition for certiorari because of the importance of the question presented to the administration of state institutions for the mentally retarded. 451 U. S. 982 (1981).

## II

We consider here for the first time the substantive rights of involuntarily-committed mentally retarded persons under the Fourteenth Amendment to the Constitution.<sup>15</sup> In this case, respondent has been committed under the laws of Pennsylvania, and he does not challenge the commitment. Rather, he argues that he has a constitutionally protected liberty interest in safety, freedom of movement, and training within the institution; and that petitioners infringed on these rights by failing to provide constitutionally required conditions of confinement.

The mere fact that Romeo has been committed under proper procedures does not deprive him of all substantive liberty interests under the Fourteenth Amendment. See, e. g., *Vitek v. Jones*, 445 U. S. 480, 491-494 (1980). Indeed, the state concedes that respondent has a right to adequate food, shelter, clothing, and medical care.<sup>16</sup> We must decide whether liberty interests also exist in safety, freedom of movement, and training. If such interests do exist, we must

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phous constitutional law tenets" articulated in the majority opinion. *Id.*, at 184. See *id.*, at 183-185.

Judge Garth also joined Chief Judge Seitz's opinion, and wrote separately to criticize the majority for addressing issues not raised by the facts of this case. 644 F. 2d, at 186.

<sup>15</sup>In pertinent part, that Amendment provides that a State cannot deprive "any person of life, liberty, or property, without due process of law. . . ." U. S. Const., Amend. XIV, § 1.

Respondent no longer relies on the Eighth Amendment as a direct source of constitutional rights. See Brief for Respondent 13 n. 12.

<sup>16</sup>Brief for Petitioners 8, 11, 12 and n. 10; Brief for Respondent 15-16. See also Brief for Connecticut and Twenty Other States as *Amici Curiae* 8. Petitioners argue that they have fully protected these interests.



further decide whether ~~particular interferences with these interests offend due process.~~

They have  
been infringed  
in this case.

## A

Respondent's first two claims involve liberty interests recognized by prior decisions of this Court, interests that involuntary commitment proceedings do not extinguish.<sup>17</sup> The first is a claim to safe conditions. In the past, this Court has noted that the right to personal security constitutes an "historic liberty interest" protected substantively by the Due Process Clause. *Ingraham v. Wright*, 430 U. S. 651, 673 (1977). And that right is not extinguished by lawful confinement, even for penal purposes.<sup>18</sup> See *Hutto v. Finney*, 437 U. S. 678 (1978). If it is cruel and unusual punishment to hold convicted criminals in unsafe conditions, it must be unconstitutional to confine the involuntarily committed—who may not be punished at all—in unsafe conditions.

Next, respondent claims a right to freedom from bodily restraint. In other contexts, the existence of such an interest is clear in the prior decisions of this Court. Indeed, "[l]iberty from bodily restraint always has been recognized as the core of the liberty protected by the Due Process Clause from arbitrary governmental action." *Greenholtz v. Nebraska Penal Inmates*, 442 U. S. 1, 18 (1979) (POWELL, J., concurring). This interest survives criminal conviction and incarceration. Similarly, it must also survive involuntary commitment.

## B

Respondent's remaining claim is more troubling: a constitutional right to "habilitation," *i. e.*, training to improve

<sup>17</sup> Petitioners do not appear to argue to the contrary. See Brief for Petitioners 27–31.

<sup>18</sup> It is true that in cases dealing with prisoners, analysis begins with the Eighth Amendment's proscription of cruel and unusual punishment, and the Eighth Amendment has no direct bearing on non-penal institutions. See *Ingraham v. Wright*, 430 U. S. 651, 667–668 (1977).

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his ability to function within Pennhurst. Respondent concedes that no amount of training will make possible his release. Moreover, respondent does not argue that if he were still at home, he would have a right to training at the expense of the State. See Tr. of Oral Arg. 33. And, since we already have found constitutionally protected liberty interests in freedom from restraints and safety, some training<sup>19</sup> may be necessary to avoid unconstitutional infringement of those rights regardless of whether respondent also enjoys a constitutional right to training *per se*. We therefore decide only the narrow question whether a mentally retarded person, committed involuntarily, has a right to additional training—other than that related to safety or the ability to function free of restraints—when such training might improve his capacity to function more independently within the institution, but cannot make possible his release.

Respondent argues that, once a person has been confined, he has “no one but the State to turn to for help in gaining additional skills or, at least, preserving whatever skills and abilities” he has. Brief for Respondent 23. Respondent concludes that the State therefore has a constitutional duty to provide reasonable training, both to preserve existing skills and develop new ones. In making this argument, respondent compares mental retardation to an infectious disease, for which the State has quarantined the individual, and cannot then deny appropriate treatment. Mental retardation is not, however, a disease. Rather, it is a description of a certain level of intellectual ability,<sup>20</sup> and the “habilitation”

<sup>19</sup> We use the term “training” as synonymous with “habilitation,” with its “principal focus”—certainly in a case like Romeo’s—being on “training and development of needed skills.” See n. 1, *supra*.

<sup>20</sup> See A. Baumeister, *The American Residential Institution: Its History and Character* 21–22 in *Residential Facilities for the Mentally Retarded* (Baumeister, ed. 1970); H. Best, *Public Provision for the Mentally Retarded in the United States* 3 (1965). See also Brief for American Psychiatric Association as *Amicus Curiae*, at 4 n. 1 (quoted in n. 1, *supra*).

As a result of a congenital chemical imbalance in his brain, Romeo has an

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respondent seeks, such as training to teach him for the first time skills he does not possess, correlates more closely to education than to medical treatment.<sup>21</sup> And we have never found a right to education under the Constitution.<sup>22</sup>

As a general matter, a State is under no constitutional duty to provide services for those within its borders. See, *e. g.*, *Harris v. McRae*, 448 U. S. 297, 318 (1980) (publicly funded abortions); *Maher v. Roe*, 432 U. S. 464, 469 (1977) (medical treatment). When States do choose to provide services, they generally are given wide latitude in doing so. See *Richardson v. Belcher*, 404 U. S. 78, 83–84 (1971); *Dandridge v. Williams*, 397 U. S. 471, 478 (1970). Specifically, States need not “choose between attacking every aspect of a problem or not attacking the problem at all.” *Id.*, at 486–487. Here, the State has committed respondent, who concedely cannot survive on the outside. It is willing to provide food, shelter, clothing, and medical care, as well as reasonable conditions of safety and reasonable freedom from bodily restraint.

Under these circumstances, we hesitate to find a new liberty interest in “training” in skills unlikely to lead to a patient’s release from involuntary confinement. As we noted

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IQ of 8–10 and is therefore classified as a profoundly retarded person. There is no known way in which to correct the chemical imbalance and increase Romeo’s IQ.

<sup>21</sup> There may be cases in which it is difficult to distinguish between claims to medical treatment and claims to training in the development of skills. This is not, however, such a case. Indeed, Romeo does not raise any issues related to medical care—for example, he does not complain that he received inadequate medical treatment in the infirmary ward. And his claims to training are either related to safety and freedom from restraints or purely educational, *i. e.*, training to make him less violent (related to safety and freedom from restraints) and training in self-care skills (educational).

<sup>22</sup> See *San Antonio Ind. School Dist. v. Rodriguez*, 411 U. S. 1 (1973). Respondent does not argue that he is denied training or habilitation available to others in Pennhurst.

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in determining that there is no general right to education in *San Antonio Independent School District v. Rodriguez*, 411 U. S. 1, 33-34 (1973):

"It is not the province of this Court to create substantive constitutional rights in the name of guaranteeing equal protection of the laws. . . . Rather, the answer lies in assessing whether there is a right to education explicitly or implicitly guaranteed by the Constitution."

A similar restraint is seen in this Court's cases involving claimed "discoveries" of new "liberties" under the Due Process Clause. In *Paul v. Davis*, 424 U. S. 693 (1976), we noted that the liberties protected by the Fourteenth Amendment have their origins either in state law—for purposes of procedural due process—or in the guarantees of the Bill of Rights that have been "incorporated" to apply to the States. *Id.*, at 710-711 and n. 5. In addition, as noted earlier, some liberty interests are implicit in our historic notion of the meaning of that word itself—for example, freedom from bodily restraint by the State. But a right to training fits none of these categories. Respondent is not seeking procedural due process.<sup>23</sup> Nor does he claim a right historically regarded as within the meaning of the concept of "liberty." And respondent points to no right to training either implicit or explicit in the guarantees of the Bill of Rights.

<sup>23</sup> Respondent <sup>also</sup> ~~does~~ <sup>is</sup> argue that he was committed for care and treatment under state law, and that he therefore has a state substantive right entitled to substantive, not procedural, protection under the Due Process Clause of the Federal Constitution. But this argument is made for the first time in respondent's brief to this Court. It was not advanced in the courts below, and was not argued to the Court of Appeals as a ground for reversing the trial court. Given the uncertainty of Pennsylvania law and the lack of any guidance on this issue from the lower federal courts, we decline to consider it now. See *Dothard v. Rawlinson*, 433 U. S. 321, 323 n. 1 (1977); *Duignan v. United States*, 274 U. S. 195, 200 (1927); *Old Jordan Milling Co. v. Societe Anonyme des Mines*, 164 U. S. 261, 264-265 (1896).

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The right respondent claims is a substantive due process right. Only when an action of a State against an individual is sharply at odds with our "fundamental principles of liberty and justice," will the Due Process Clause of the Fourteenth Amendment bar the action. *Palko v. Connecticut*, 302 U. S. 319, 328 (1937) (quoting *Herbert v. Louisiana*, 272 U. S. 312, 316 (1926)).<sup>24</sup> In deciding whether to provide individuals such as Romeo with habilitative training, the state must make a difficult decision regarding the allocation of its resources. We cannot say that due process requires that such individuals must be given training in the development of skills that cannot lead to freedom. The decision whether to commit scarce resources on programs to attempt to train the profoundly retarded,<sup>25</sup> or on other social and welfare programs of manifest merit, is a difficult one that state and federal governments must face. The Constitution does not dictate an answer, and this is not a decision that courts are competent to make.

<sup>24</sup> See also *Adamson v. California*, 332 U. S. 46, 59, 67 (1947) (Frankfurter, J., concurring) (In order to determine whether the defendant was accorded due process under the Fourteenth Amendment, it is necessary "to ascertain whether [the proceedings] offend those canons of decency and fairness which express the notions of justice of English-speaking peoples. . . ."); *Palko v. Connecticut*, 302 U. S., at 328 (Under the Due Process Clause of the Fourteenth Amendment, the standard is whether a state has "subjected [an individual] to a hardship so acute and shocking that our polity will not endure it.").

<sup>25</sup> Professionals in the habilitation of the mentally retarded disagree strongly on the question whether effective training of all severely or profoundly retarded individuals is even possible. See, e. g., Favell, Risley, Wolfe, Riddle, & Rasmussen, *The Limits of Habilitation: How Can We Identify Them and How Can We Change Them?*, 1 *Analysis and Intervention in Developmental Disabilities* 37 (1981); Bailey, *Wanted: A Rational Search for the Limiting Conditions of Habilitation in the Retarded*, 1 *Analysis and Intervention in Developmental Disabilities* 45 (1981); Kauffman & Krouse, *The Cult of Educability: Searching for the Substance of Things Hoped for; The Evidence of Things Not Seen*, 1 *Analysis and Intervention in Developmental Disabilities* 53 (1981).

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We therefore conclude that involuntarily-committed mentally retarded persons do not have a constitutionally protected liberty interest in training *per se*. As noted above, they do have constitutionally protected interests in safety and freedom from bodily restraints, and those interests may require some kinds of training. We turn next to consider whether Pennsylvania may have violated these two rights.

## III

## A

We have established that Romeo retains liberty interests in safety and freedom from bodily restraint. Yet these interests are not absolute, indeed to some extent they are in conflict. In operating an institution such as Pennhurst, there are occasions in which it is necessary for the State to restrain the movement of residents—for example, to protect them as well as others from violence.<sup>28</sup> Similar restraints may also be appropriate in a training program. And an institution cannot protect its residents from all danger of violence if it is to permit them to have any freedom of movement. The question then is not simply whether a liberty interest has been infringed but whether the extent or nature of the restraint or lack of absolute safety is such as to violate due process.

In determining whether a substantive right protected by the Due Process Clause has been violated, it is necessary to balance “the liberty of the individual” and “the demands of an organized society.” *Poe v. Ullman*, 367 U. S. 497, 522, 542 (1961) (Harlan, J., dissenting). In seeking this balance in other cases, the Court has weighed the individual’s interest in liberty against the State’s asserted reasons for restraining individual liberty. In *Bell v. Wolfish*, 441 U. S. 520 (1979),

<sup>28</sup> In Romeo’s case, there can be no question that physical restraint was necessary at times. See n. 2, *supra*.



for example, we considered a challenge to pre-trial detainees' confinement conditions. We agreed that the detainees, not yet convicted of the crime charged, could not be punished. But we upheld those restrictions on liberty that were reasonably related to legitimate government objectives and not tantamount to punishment.<sup>27</sup> See *id.*, at 539. We have taken a similar approach in deciding procedural due-process challenges to civil commitment proceedings. In *Parham v. J.R.*, 442 U. S. 584 (1979), for example, we considered a challenge to state procedures for commitment of a minor with parental consent. In determining that *procedural* due process did not mandate an adversarial hearing, we weighed the liberty interest of the individual against the legitimate interests of the State, including the fiscal and administrative burdens additional procedures would entail.<sup>28</sup> *Id.*, at 599-600.

Accordingly, whether respondent's constitutional rights have been violated must be determined by balancing his liberty interests against the relevant state interests. If there is to be any uniformity in protecting these interests, this balancing cannot be left to the unguided discretion of a judge or

<sup>27</sup> See also *Jackson v. Indiana*, 406 U. S. 715, 738 (1972) (holding that an incompetent pre-trial detainee cannot, after a competency hearing, be held indefinitely without either criminal process or civil commitment; due process requires, at a minimum, some rational relation between the nature and duration of commitment and its purpose). This case differs in critical respects from *Jackson*, a procedural due process case involving the validity of an involuntary commitment. Here, petitioner was committed by a court on petition of his mother who averred that in view of Romeo's condition she could neither care for him nor control his violence. *Ante*, at 2. Thus, the purpose of petitioner's commitment ~~basically~~ was to provide reasonable care and safety, conditions not available to him outside of an institution.

<sup>28</sup> See also *Addington v. Texas*, 441 U. S. 418 (1979). In that case, we held that the state must prove the need for commitment by "clear and convincing" evidence. See *id.*, at 431-432. We reached this decision by weighing the individual's liberty interest against the state's legitimate interests in confinement.



## YOUNGBERG v. ROMEO

jury. We therefore turn to consider the proper standard for determining whether a State adequately has protected the rights of the involuntarily-committed mentally retarded.

## B

We think the standard articulated by Chief Judge Seitz affords the necessary guidance and reflects the proper balance between the interests of the State and the rights of the individual under the conditions of

*Out voted!*

lfp/ss 05/27/82

Rider A, p. 15 (Romeo)

ROMEO15 SALLY-POW

We hold, when the rights of the involuntarily committed mentally retarded are weighed against the legitimate interests of the state, including administrative and fiscal constraints, that their liberty interests require minimally adequate habilitation or training in light of the purpose for which the individual is committed.



OS 1429 G7

lfp/ss 05/28/82

Rider A, p. 16 (Romeo)

ROME016 SALLY-POW

~~as in the attached~~

In this case, we agree that the minimally  
adequate training required is such training as may be  
reasonable in light of respondent's liberty interests in  
safety and freedom from unreasonable restraints. In  
determining what is "reasonable" - in this and in any case  
presenting a claim for training by a state - we emphasize  
that courts must show deference to the judgment exercised  
by a qualified professional. 31 28

2



terests of the State, including administrative and fiscal constraints, due process requires that (i) the State subject these individuals only to reasonable physical constraints; (ii) it provide them reasonably safe conditions, and (iii) it afford them such training as is necessary to achieve reasonable safety and reasonable freedom of movement within the institution.<sup>30</sup>

We recognize that this holding may impose some additional burdens on States. In determining what is "reasonable," however, we emphasize that courts must show deference to the judgment exercised by a qualified professional.<sup>31</sup>

By so limiting judicial review of challenges to conditions in state institutions, interference by the federal judiciary with the internal operations of these institutions should be minimized.<sup>32</sup> Moreover, there certainly is no reason to think

<sup>30</sup> We have expressed the constitutional right enjoyed by respondent in somewhat different language from that used by Chief Judge Seitz. Rather than stating that the involuntarily committed enjoy the right to have certain decisions made by professionals, see 644 F. 2d, at 178, 180-181, we hold that they are entitled to conditions of reasonable safety and reasonable freedom from bodily restraints, but we go on to hold that once such a decision is made by a professional in the exercise of reasonable professional judgment, courts will defer to it.

<sup>31</sup> Our holding entitles respondent to a right that also can be characterized as procedural. We hold that the involuntary committed are entitled to an informal, non-adversarial "hearing" by a professional exercising his professional judgment—a "procedure" not unlike that upheld in *Parham v. J.R.*, 442 U. S. 584 (1979), a procedural due process case discussed in text at —, *supra*, and in note 30, *infra*.

<sup>32</sup> See *Parham v. J.R.*, *supra*, 442 U. S., at 608 n. 16 (In limiting judicial review of medical decisions made by professionals, "it is incumbent on courts to design procedures that protect the rights of individuals without unduly burdening the legitimate efforts of the states to deal with difficult social problems."). See also *Rhodes v. Chapman*, 452 U. S. 337, — (1981) ("[C]ourts cannot assume that state legislatures and prison officials are insensitive to the requirements of the Constitution or to the perplexing sociological problems of how best to achieve the goals of the penal function in the criminal justice system. . . ."); *Bell v. Wolfish*, 441 U. S. 520, 539

Puder  
A



judges or juries are better qualified than appropriate professionals in making such decisions. See *Parham v. J.R.*, 442 U. S. 584, 607 (1979); *Bell v. Wolfish*, *supra*, 441 U. S., at 544 (Courts should not “second-guess the expert administrators on matters on which they are better informed.”). For these reasons, the decision, if made by a professional,<sup>33</sup> is presumptively valid; liability may be imposed only when the decision by the professional is such a substantial departure from accepted professional judgment, practice or standards as to demonstrate that the person responsible actually did not base the decision on such a judgment. In an action for damages against a professional in his individual capacity, however, the professional will not be liable if he was unable to satisfy his normal professional standards because of budgetary constraints; in such a situation, good-faith immunity would bar liability. See note 10, *supra*.

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(1979) (In context of conditions of confinement of pre-trial detainees, “courts must be mindful that these inquiries spring from constitutional requirements and that judicial answers to them must reflect that fact rather than a court’s idea of how best to operate a detention facility.”); *Wolff v. McDonnell*, 418 U. S. 539, 556 (1974) (In considering procedural due process claim in context of prison, “there must be mutual accommodation between institutional needs and objectives and the provisions of the Constitution that are of general application.”). See also Townsend & Mattson, *The Interaction of Law and Special Education: Observing the Emperor’s New Clothes*, 1 *Analysis and Intervention in Developmental Disabilities* 75 (1981) (judicial resolution of rights of the handicapped can have adverse as well as positive effects on social change).

<sup>33</sup> By ‘professional’ decision-maker, we mean a person competent, whether by education, training or experience, to make the particular decision at issue. Long term treatment decisions normally should be made by persons with degrees in medicine or nursing, or with appropriate training in areas such as psychology, physical therapy, or the care and training of the retarded. Of course, day-to-day decisions regarding care—including decisions that must be made without delay—necessarily will be made in many instances by employees without formal training but who are subject to the supervision of qualified persons.



## IV

In deciding this case, we have weighed those post-commitment interests cognizable as liberty interests under the Due Process Clause of the Fourteenth Amendment against legitimate state interests and in light of the constraints under which most state institutions necessarily operate. We repeat that the state concedes a duty to provide adequate food, shelter, clothing and medical care. These are the essentials of the care that the state must provide.

← The state also has the unquestioned duty to provide reasonable safety for all residents and personnel within the institution. And it may not restrain residents except when and to the extent professional judgment deems this necessary to assure such safety or to provide needed training. We hold,

however, that there is ~~no~~ constitutional right to habilitative training *per se*, though we should not be understood as holding that the state is never under any obligation to provide trainings. The state is under a duty to provide respondent

with such training as an appropriate professional would consider reasonable to ensure his safety and to facilitate his ability to function free from bodily restraints. It ~~may well~~ be unreasonable not to provide training when training could significantly reduce the need for restraints or the likelihood of violence.

Respondent thus enjoys constitutionally protected interests in conditions of reasonable care and safety, reasonably non-restrictive confinement conditions, and such training as may be required by these interests. These conditions of confinement comport fully with the purpose of respondent's commitment. Cf. *Jackson v. Indiana*, 406 U. S. 715, 738 (1972); see n. 27, *ante*. In determining whether the state has met its obligations in these respects, decisions made by the appropriate professional are entitled to a ~~strong~~ presumption of correctness. Such a presumption is necessary to enable in-

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stitutions of this type—often, unfortunately, overcrowded and understaffed—to continue to function. A single professional may have to make decisions with respect to a number of residents with widely varying needs and problems in the course of a normal day. The administrators, and particularly professional personnel, should not be required to make each decision in the shadow of an action for damages.

In this case, we conclude that the jury was erroneously instructed on the assumption that the proper standard of liability was that of the Eighth Amendment. Accordingly, we vacate the decision of the Court of Appeals and remand for further proceedings consistent with this decision.

*So ordered.*



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## SUPREME COURT OF THE UNITED STATES

No. 80-1429

DUANE YOUNGBERG, ETC., ET AL., PETITIONERS, v.  
NICHOLAS ROMEO, AN INCOMPETENT, BY HIS  
MOTHER AND NEXT FRIEND, PAULA ROMEO

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE THIRD CIRCUIT

[May —, 1982]

JUSTICE POWELL delivered the opinion of the Court.

The question presented is whether respondent, involuntarily committed to a state institution for the mentally retarded, has substantive rights under the Due Process Clause of the Fourteenth Amendment to (i) safe conditions of confinement; (ii) freedom from bodily restraints; and (iii) training or "habilitation."<sup>1</sup> Respondent sued under 42 U. S. C. § 1983 against three administrators of the institution, claiming damages for the alleged breach of his constitutional rights.

### I

Respondent Nicholas Romeo is profoundly retarded. Although 33 years old, he has the mental capacity of an eighteen-month old child. He cannot talk and lacks the most basic self-care skills. Until he was 26, respondent lived with his parents in Philadelphia. But after the death of his father

<sup>1</sup>The American Psychiatric Association explains that "[t]he word 'habilitation,' . . . is commonly used to refer to programs for the mentally-retarded because mental retardation is . . . a learning disability and training impairment rather than an illness. . . . [T]he principal focus of habilitation is upon training and development of needed skills." Brief of American Psychiatric Association as *Amicus Curiae*, at 4 n. 1.

To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Rehnquist  
Justice Stevens  
Justice O'Connor

From: Justice Powell

Circulated: \_\_\_\_\_

Recirculated: MAY 24 1982

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in May 1974, his mother was unable to care for him. Within two weeks of the father's death, respondent's mother sought his temporary admission to a nearby Pennsylvania hospital.

Shortly thereafter, she asked the Philadelphia County Court of Common Pleas to admit Romeo to a state facility on a permanent basis. Her petition to the court explained that she was unable to care for Romeo or control his violence.<sup>2</sup> As part of the commitment process, Romeo was examined by a physician and a psychologist. They both certified that respondent was severely retarded and unable to care for himself. App. 21a-22a and 28a-29a. On June 11, 1974, the Court of Common Pleas committed respondent to the Pennhurst State School and Hospital, pursuant to the applicable involuntary commitment provision of the Pennsylvania Mental Health and Mental Retardation Act, Pa. Stat. Ann. tit. 50 § 4406.

At Pennhurst, Romeo was injured on numerous occasions, both by his own violence and by the reactions of other residents to him. Respondent's mother became concerned about these injuries. After objecting to respondent's treatment several times, she filed this complaint on November 4, 1976, in the United States District Court for the Eastern District of Pennsylvania as his next friend. The complaint alleged that "[d]uring the period July, 1974 to the present, plaintiff has suffered injuries on at least sixty-three occasions." The complaint originally sought damages and injunctive relief from Pennhurst's director and two supervisors<sup>3</sup>; it alleged that these officials knew, or should have known, that Romeo

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<sup>2</sup> Mrs. Romeo's petition to the Court of Common Pleas stated: "Since my husband's death I am unable to handle him. He becomes violent—Kicks, punches, breaks glass; He can't speak—wants to express himself but can't. He is [a] constant 24 hr. care. [W]ithout my husband I am unable to care for him." App. 18a.

<sup>3</sup> Petitioner Duane Youngberg was the Superintendent of Pennhurst; he had supervisory authority over the entire facility. Respondent Richard Matthews was the Director of Resident Life at Pennhurst. Respondent Marguerite Conley was Unit Director for the unit in which respondent was



was suffering injuries and that they failed to institute appropriate preventive procedures, thus violating his rights under the Eighth and Fourteenth Amendments.

Thereafter, in late 1976, Romeo was transferred from his ward to the hospital for treatment of a broken arm. While in the infirmary, and by order of a doctor, he was physically restrained during portions of each day.<sup>4</sup> These restraints were ordered by Dr. Gabroy, not a defendant here, to protect Romeo and others in the hospital, some of whom were in traction or were being treated intravenously. 7 Record 40, 49, 76-78. Although respondent normally would have returned to his ward when his arm healed, the parties to this litigation agreed that he should remain in the hospital due to the pending law suit. 5 Record 248, 6 R. 57-58 and 137. Nevertheless, in December 1977, a second amended complaint was filed alleging that the defendants were restraining respondent for prolonged periods on a routine basis. The second amended complaint also added a claim for damages to compensate Romeo for the defendants' failure to provide him with appropriate "treatment or programs for his mental retardation."<sup>5</sup> All claims for injunctive relief were dropped prior to trial because respondent is a member of the class seeking such relief in another action.<sup>6</sup>

An eight-day jury trial was held in April 1978. Petitioners introduced evidence that respondent participated in several

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incarcerated. According to respondent, petitioners are administrators, not medical doctors. See Brief for Respondent 2. Youngberg and Matthews are no longer at Pennhurst.

<sup>4</sup>Although the Court of Appeals described these restraints as "shackles," "soft" restraints, for the arms only, were generally used. 7 Record 53-55.

<sup>5</sup>Respondent uses "treatment" as synonymous with "habilitation" or "training." See Brief for Respondents 21-23.

<sup>6</sup>*Pennhurst State School and Hospital v. Halderman*, 451 U. S. 1 (1981) (remanded for further proceedings).



programs teaching basic self-care skills.<sup>7</sup> A comprehensive behavior-modification program was designed by staff members to reduce Romeo's aggressive behavior,<sup>8</sup> but that program was never implemented because of his mother's objections.<sup>9</sup> Respondent introduced evidence of his injuries and of conditions in his unit.<sup>10</sup>

At the close of the trial, the court instructed the jury that "if any or all of the defendants were aware of and failed to take all reasonable steps to prevent repeated attacks upon Nicholas Romeo," such failure deprived him of constitutional rights. App. to Pet. for Cert. 110a. The jury also was instructed that if the defendants shackled Romeo or denied him treatment "as a punishment for filing this lawsuit," his constitutional rights were violated under the Eighth Amendment. *Id.*, at 73a-75a. Finally, the jury was instructed that if they found the defendants "deliberately indifferent to the medical and psychological needs of Nicholas Romeo," they might find that Romeo's Eighth and Four-

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<sup>7</sup> Prior to his transfer to Pennhurst's hospital ward, Romeo participated in programs dealing with feeding, showering, drying, dressing, self control, and toilet training, as well as a program providing interaction with staff members. Defendants' exhibit 10; 3 Record 69-70, 5 Record 44-56, 242-250, 6 Record 162-166; 7 Record 41-48.

Some programs continued while respondent was in the hospital, 5 Record 227, 248, 256; 6 Record 50, 162-166, Record 32,34, 41-48, and they reduced respondent's aggressive behavior to some extent, 7 Record 45.

<sup>8</sup> 2 Record 7, 5 Record 88-90; 6 Record 88, 200-203; Defendants' Exhibit 1, at 9. The program called for short periods of separation from other residents and for use of "muffs" on plaintiff's hands for short periods of time, *i. e.*, 5 minutes, to prevent him from harming himself or others.

<sup>9</sup> 1 Record 53; 4 Record 25; 6 Record 204.

<sup>10</sup> The District Judge refused to allow testimony by two of Romeo's witnesses—trained professionals—indicating that Romeo would have benefited from more or different training programs. The trial judge explained that evidence of the advantages of alternative forms of treatment might be relevant to a malpractice suit, but was not relevant to a constitutional claim under § 1983. App. to Pet. for Cert. 101a.



teenth Amendment rights were violated. *Id.*, at 111a. The jury returned a verdict for the defendants, on which judgment was entered.

The Court of Appeals for the Third Circuit, sitting en banc, reversed and remanded for a new trial. 644 F. 2d 147 (1980). The court held that the Eighth Amendment, prohibiting cruel and unusual punishment of those convicted of crimes, was not an appropriate source for determining the rights of the involuntarily committed. Rather, the Fourteenth Amendment and the liberty interest protected by that amendment provided the proper constitutional basis for these rights. In applying the Fourteenth Amendment, the court found that the involuntarily committed retain liberty interests in freedom of movement and in personal security. These were "fundamental liberties" that can be limited only by an "overriding, non-punitive" state interest. 644 F. 2d, at 157-158 (footnote omitted). It further found that the involuntarily committed have a liberty interest in habilitation designed to "treat" their mental retardation. *Id.*, at 164-170.<sup>11</sup>

The en banc court did not, however, agree on the relevant standard to be used in determining whether Romeo's rights had been violated.<sup>12</sup> Because physical restraint "raises a presumption of a punitive sanction," the majority of the Court of Appeals concluded that it can be justified only by "compelling necessity." *Id.*, at 159-160. A somewhat different standard was appropriate for the failure to provide for

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<sup>11</sup>The Court of Appeals used "habilitation" and "treatment" as synonymous, though it regarded "habilitation" as more accurate in describing treatment needed by the mentally retarded. See 644 F. 2d, at 165 and n. 40.

<sup>12</sup>The existence of a qualified immunity defense was not at issue on appeal. The defendants had received instructions on this defense, App. 76a, and it was not challenged by respondent. 644 F. 2d, at 173 n. 1. After citing *Pierson v. Ray*, 386 U. S. 547 (1967) and *Scheuer v. Rhodes*, 416 U. S. 232 (1974), the majority of the Court of Appeals noted that such instructions should be given again on the remand. 644 F. 2d, at 171-172.



a resident's safety. The majority considered that such a failure must be justified by a showing of "substantial necessity." *Id.*, at 164. Finally, the majority held that when treatment has been administered, those responsible are liable only if the treatment is not "acceptable in the light of present medical or other scientific knowledge." *Id.*, at 166-167 and 173.<sup>13</sup>

Chief Judge Seitz, concurring in the judgment, considered the standards articulated by the majority as indistinguishable from those applicable to medical malpractice claims. In Chief Judge Seitz's view, the Constitution "only requires that the courts make certain that professional judgment in fact was exercised." 644 F. 2d, at 178. He concluded that the appropriate standard was whether the defendants' conduct was "such a substantial departure from accepted professional judgment, practice or standards in the care and treatment of this plaintiff as to demonstrate that the defendants did not base their conduct on a professional judgment." 644 F. 2d, at 178.<sup>14</sup>

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<sup>13</sup> Actually, the court divided the right-to-treatment claim into three categories and adopted three standards, but only the standard described in text is at issue before this Court. The Court of Appeals also stated that if a jury finds that *no* treatment has been administered, it may hold the institution's administrators liable unless they can provide a compelling explanation for the lack of treatment, 644 F. 2d at 165, 173, but respondent does not discuss this precise standard in his brief and it does not appear to be relevant to the facts of this case. In addition, the court considered "least intrusive" analysis appropriate to justify severe intrusions on individual dignity, such as permanent physical alteration or surgical intervention, *id.*, at 165-166, and 173, but respondent concedes that this issue is not present in this case.

<sup>14</sup> Judge Aldisert joined Chief Judge Seitz's opinion, but wrote separately to emphasize the nature of the difference between the majority opinion and that of the Chief Judge. On a conceptual level, Judge Aldisert thought that the court erred in abandoning the common-law method of deciding the case at bar rather than articulating broad principles unconnected with the facts of the case and of uncertain meaning. 644 F. 2d, at 182-183. And, on a pragmatic level, Judge Aldisert warned that neither juries nor those administering state institutions would receive guidance from the "amor-



We granted the petition for certiorari because of the importance of the question presented to the administration of state institutions for the mentally retarded. 451 U. S. 982 (1981).

## II

We consider here for the first time the substantive rights of involuntarily-committed mentally retarded persons under the Fourteenth Amendment to the Constitution.<sup>15</sup> In this case, respondent has been committed under the laws of Pennsylvania, and he does not challenge the commitment. Rather, he argues that he has a constitutionally protected liberty interest in safety, freedom of movement, and training within the institution; and that petitioners infringed on these rights by failing to provide constitutionally required conditions of confinement.

The mere fact that Romeo has been committed under proper procedures does not deprive him of all substantive liberty interests under the Fourteenth Amendment. See, e. g., *Vitek v. Jones*, 445 U. S. 480, 491-494 (1980). Indeed, the state concedes that respondent has a right to adequate food, shelter, clothing, and medical care.<sup>16</sup> We must decide whether liberty interests also exist in safety, freedom of movement, and training. If such interests do exist, we must

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phous constitutional law tenets" articulated in the majority opinion. *Id.*, at 184. See *id.*, at 183-185.

Judge Garth also joined Chief Judge Seitz's opinion, and wrote separately to criticize the majority for addressing issues not raised by the facts of this case. 644 F. 2d, at 186.

<sup>15</sup>In pertinent part, that Amendment provides that a State cannot deprive "any person of life, liberty, or property, without due process of law. . . ." U. S. Const., Amend. XIV, § 1.

Respondent no longer relies on the Eighth Amendment as a direct source of constitutional rights. See Brief for Respondent 13 n. 12.

<sup>16</sup>Brief for Petitioners 8, 11, 12 and n. 10; Brief for Respondent 15-16. See also Brief for Connecticut and Twenty Other States as *Amici Curiae* 8. Petitioners argue that they have fully protected these interests.



they have been  
infringed in this case.

further decide whether ~~particular interferences with these~~  
~~interests offend due process.~~

## A

Respondent's first two claims involve liberty interests recognized by prior decisions of this Court, interests that involuntary commitment proceedings do not extinguish.<sup>17</sup> The first is a claim to safe conditions. In the past, this Court has noted that the right to personal security constitutes an "historic liberty interest" protected substantively by the Due Process Clause. *Ingraham v. Wright*, 430 U. S. 651, 673 (1977). And that right is not extinguished by lawful confinement, even for penal purposes.<sup>18</sup> See *Hutto v. Finney*, 437 U. S. 678 (1978). If it is cruel and unusual punishment to hold convicted criminals in unsafe conditions, it must be unconstitutional to confine the involuntarily committed—who may not be punished at all—in unsafe conditions.

Next, respondent claims a right to freedom from bodily restraint. In other contexts, the existence of such an interest is clear in the prior decisions of this Court. Indeed, "[l]iberty from bodily restraint always has been recognized as the core of the liberty protected by the Due Process Clause from arbitrary governmental action." *Greenholtz v. Nebraska Penal Inmates*, 442 U. S. 1, 18 (1979) (POWELL, J., concurring). This interest survives criminal conviction and incarceration. Similarly, it must also survive involuntary commitment.

## B

Respondent's remaining claim is more troubling: a constitutional right to "habilitation," i. e., training to improve

<sup>17</sup> Petitioners do not appear to argue to the contrary. See Brief for Petitioners 27-31.

<sup>18</sup> It is true that in cases dealing with prisoners, analysis begins with the Eighth Amendment's proscription of cruel and unusual punishment, and the Eighth Amendment has no direct bearing on non-penal institutions. See *Ingraham v. Wright*, 430 U. S. 651, 667-668 (1977).

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with  
OB 1429 G-5 (text)  
OB 1429 G-6 (notes)

Note: OB 1429 G-6 (notes) only includes new notes.  
~~for~~ The text (OB 1429 G-5) also calls 2 old notes,  
note 23 (now 19) and 25 (now 20). All other notes  
in the revised portion of the text (OB 1429 G-5, 8-13)  
-will no longer appear. (B)



his ability to function within Pennhurst. Respondent concedes that no amount of training will make possible his release. Moreover, respondent does not argue that if he were still at home, he would have a right to training at the expense of the State. See Tr. of Oral Arg. 33. And, since we already have found constitutionally protected liberty interests in freedom from restraints and safety, some training<sup>19</sup> may be necessary to avoid unconstitutional infringement of those rights regardless of whether respondent also enjoys a constitutional right to training *per se*. We therefore decide only the narrow question whether a mentally retarded person, committed involuntarily, has a right to additional training—other than that related to safety or the ability to function free of restraints—when such training might improve his capacity to function more independently within the institution, but cannot make possible his release.

Respondent argues that, once a person has been confined, he has “no one but the State to turn to for help in gaining additional skills or, at least, preserving whatever skills and abilities” he has. Brief for Respondent 23. Respondent concludes that the State therefore has a constitutional duty to provide reasonable training, both to preserve existing skills and develop new ones. In making this argument, respondent compares mental retardation to an infectious disease, for which the State has quarantined the individual, and cannot then deny appropriate treatment. Mental retardation is not, however, a disease. Rather, it is a description of a certain level of intellectual ability,<sup>20</sup> and the “habilitation”

<sup>19</sup> We use the term “training” as synonymous with “habilitation,” with its “principal focus”—certainly in a case like Romeo’s—being on “training and development of needed skills.” See n. 1, *supra*.

<sup>20</sup> See A. Baumeister, *The American Residential Institution: Its History and Character* 21–22 in *Residential Facilities for the Mentally Retarded* (Baumeister, ed. 1970); H. Best, *Public Provision for the Mentally Retarded in the United States* 3 (1965). See also Brief for American Psychiatric Association as *Amicus Curiae*, at 4 n. 1 (quoted in n. 1, *supra*).

As a result of a congenital chemical imbalance in his brain, Romeo has an

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respondent seeks, such as training to teach him for the first time skills he does not possess, correlates more closely to education than to medical treatment.<sup>21</sup> And we have never found a right to education under the Constitution.<sup>22</sup>

As a general matter, a State is under no constitutional duty to provide services for those within its borders. See, e. g., *Harris v. McRae*, 448 U. S. 297, 318 (1980) (publicly funded abortions); *Maier v. Roe*, 432 U. S. 464, 469 (1977) (medical treatment). When States do choose to provide services, they generally are given wide latitude in doing so. See *Richardson v. Belcher*, 404 U. S. 78, 83-84 (1971); *Dandridge v. Williams*, 397 U. S. 471, 478 (1970). Specifically, States need not "choose between attacking every aspect of a problem or not attacking the problem at all." *Id.*, at 486-487. Here, the State has committed respondent, who concededly cannot survive on the outside. It is willing to provide food, shelter, clothing, and medical care, as well as reasonable conditions of safety and reasonable freedom from bodily restraint.

Under these circumstances, we hesitate to find a new liberty interest in "training" in skills unlikely to lead to a patient's release from involuntary confinement. As we noted

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IQ of 8-10 and is therefore classified as a profoundly retarded person. There is no known way in which to correct the chemical imbalance and increase Romeo's IQ.

<sup>21</sup> There may be cases in which it is difficult to distinguish between claims to medical treatment and claims to training in the development of skills. This is not, however, such a case. Indeed, Romeo does not raise any issues related to medical care—for example, he does not complain that he received inadequate medical treatment in the infirmary ward. And his claims to training are either related to safety and freedom from restraints or purely educational, i. e., training to make him less violent (related to safety and freedom from restraints) and training in self-care skills (educational).

<sup>22</sup> See *San Antonio Ind. School Dist. v. Rodriguez*, 411 U. S. 1 (1973). Respondent does not argue that he is denied training or habilitation available to others in Pennhurst.

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in determining that there is no general right to education in *San Antonio Independent School District v. Rodriguez*, 411 U. S. 1, 33-34 (1973):

"It is not the province of this Court to create substantive constitutional rights in the name of guaranteeing equal protection of the laws. . . . Rather, the answer lies in assessing whether there is a right to education explicitly or implicitly guaranteed by the Constitution."

A similar restraint is seen in this Court's cases involving claimed "discoveries" of new "liberties" under the Due Process Clause. In *Paul v. Davis*, 424 U. S. 693 (1976), we noted that the liberties protected by the Fourteenth Amendment have their origins either in state law—for purposes of procedural due process—or in the guarantees of the Bill of Rights that have been "incorporated" to apply to the States. *Id.*, at 710-711 and n. 5. In addition, as noted earlier, some liberty interests are implicit in our historic notion of the meaning of that word itself—for example, freedom from bodily restraint by the State. But a right to training fits none of these categories. Respondent is not seeking procedural due process.<sup>23</sup> Nor does he claim a right historically regarded as within the meaning of the concept of "liberty." And respondent points to no right to training either implicit or explicit in the guarantees of the Bill of Rights.

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<sup>also</sup> Respondent ~~does~~ <sup>is</sup> argue that he was committed for care and treatment under state law, and that he therefore has a state substantive right entitled to substantive, not procedural, protection under the Due Process Clause of the Federal Constitution. But this argument is made for the first time in respondent's brief to this Court. It was not advanced in the courts below, and was not argued to the Court of Appeals as a ground for reversing the trial court. Given the uncertainty of Pennsylvania law and the lack of any guidance on this issue from the lower federal courts, we decline to consider it now. See *Dothard v. Rawlinson*, 433 U. S. 321, 323 n. 1 (1977); *Duignan v. United States*, 274 U. S. 195, 200 (1927); *Old Jordan Milling Co. v. Societe Anonyme des Mines*, 164 U. S. 261, 264-265 (1896).

to habilitation

Stet



The right respondent claims is a substantive due process right. Only when an action of a State against an individual is sharply at odds with our "fundamental principles of liberty and justice," will the Due Process Clause of the Fourteenth Amendment bar the action. *Palko v. Connecticut*, 302 U. S. 319, 328 (1937) (quoting *Herbert v. Louisiana*, 272 U. S. 312, 316 (1926)).<sup>24</sup> In deciding whether to provide individuals such as Romeo with habilitative training, the state must make a difficult decision regarding the allocation of its resources. We cannot say that due process requires that such individuals must be given training in the development of skills that cannot lead to freedom. The decision whether to commit scarce resources on programs to attempt to train the profoundly retarded,<sup>25</sup> or on other social and welfare programs of manifest merit, is a difficult one that state and federal governments must face. The Constitution does not dictate an answer, and this is not a decision that courts are competent to make.

<sup>24</sup> See also *Adamson v. California*, 332 U. S. 46, 59, 67 (1947) (Frankfurter, J., concurring) (In order to determine whether the defendant was accorded due process under the Fourteenth Amendment, it is necessary "to ascertain whether [the proceedings] offend those canons of decency and fairness which express the notions of justice of English-speaking peoples. . . ."); *Palko v. Connecticut*, 302 U. S., at 328 (Under the Due Process Clause of the Fourteenth Amendment, the standard is whether a state has "subjected [an individual] to a hardship so acute and shocking that our polity will not endure it.").

<sup>25</sup> Professionals in the habilitation of the mentally retarded disagree strongly on the question whether effective training of all severely or profoundly retarded individuals is even possible. See, e. g., Favell, Risley, Wolfe, Riddle, & Rasmussen, *The Limits of Habilitation: How Can We Identify Them and How Can We Change Them?*, 1 *Analysis and Intervention in Developmental Disabilities* 37 (1981); Bailey, *Wanted: A Rational Search for the Limiting Conditions of Habilitation in the Retarded*, 1 *Analysis and Intervention in Developmental Disabilities* 45 (1981); Kauffman & Krouse, *The Cult of Educability: Searching for the Substance of Things Hoped for; The Evidence of Things Not Seen*, 1 *Analysis and Intervention in Developmental Disabilities* 53 (1981).

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~~We therefore conclude that involuntarily-committed mentally retarded persons do not have a constitutionally protected liberty interest in training *per se*. As noted above, they do have constitutionally protected interests in safety and freedom from bodily restraints, and these interests may require some kinds of training. We turn next to consider whether Pennsylvania may have violated these two rights.~~

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## III

## A

We have established that Romeo retains liberty interests in safety and freedom from bodily restraint. Yet these interests are not absolute, indeed to some extent they are in conflict. In operating an institution such as Pennhurst, there are occasions in which it is necessary for the State to restrain the movement of residents—for example, to protect them as well as others from violence. <sup>25</sup> Similar restraints may also be appropriate in a training program. And an institution cannot protect its residents from all danger of violence if it is to permit them to have any freedom of movement. The question then is not simply whether a liberty interest has been infringed but whether the extent or nature of the restraint or lack of absolute safety is such as to violate due process.

In determining whether a substantive right protected by the Due Process Clause has been violated, it is necessary to balance “the liberty of the individual” and “the demands of an organized society.” *Poe v. Ullman*, 367 U. S. 497, 522, 542 (1961) (Harlan, J., dissenting). In seeking this balance in other cases, the Court has weighed the individual’s interest in liberty against the State’s asserted reasons for restraining individual liberty. In *Bell v. Wolfish*, 441 U. S. 520 (1979),

<sup>25</sup> In Romeo’s case, there can be no question that physical restraint was necessary at times. See n. 2, *supra*.

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for example, we considered a challenge to pre-trial detainees' confinement conditions. We agreed that the detainees, not yet convicted of the crime charged, could not be punished. But we upheld those restrictions on liberty that were reasonably related to legitimate government objectives and not tantamount to punishment. <sup>26</sup> See *id.*, at 539. We have taken a similar approach in deciding procedural due-process challenges to civil commitment proceedings. In *Parham v. J.R.*, 442 U. S. 584 (1979), for example, we considered a challenge to state procedures for commitment of a minor with parental consent. In determining that *procedural* due process did not mandate an adversarial hearing, we weighed the liberty interest of the individual against the legitimate interests of the State, including the fiscal and administrative burdens additional procedures would entail. <sup>27</sup> *Id.*, at 599-600.

Accordingly, whether respondent's constitutional rights have been violated must be determined by balancing his liberty interests against the relevant state interests. If there is to be any uniformity in protecting these interests, this balancing cannot be left to the unguided discretion of a judge or

<sup>26</sup> See also *Jackson v. Indiana*, 406 U. S. 715, 738 (1972) (holding that an incompetent pre-trial detainee cannot, after a competency hearing, be held indefinitely without either criminal process or civil commitment; due process requires, at a minimum, some rational relation between the nature and duration of commitment and its purpose). This case differs in critical respects from *Jackson*, a procedural due process case involving the validity of an involuntary commitment. Here, petitioner was committed by a court on petition of his mother who averred that in view of Romeo's condition she could neither care for him nor control his violence. *Ante*, at 2. Thus, the purpose of petitioner's commitment ~~basically~~ was to provide reasonable care and safety, conditions not available to him outside of an institution.

<sup>27</sup> See also *Addington v. Texas*, 441 U. S. 418 (1979). In that case, we held that the state must prove the need for commitment by "clear and convincing" evidence. See *id.*, at 431-432. We reached this decision by weighing the individual's liberty interest against the state's legitimate interests in confinement.



jury. We therefore turn to consider the proper standard for determining whether a State adequately has protected the rights of the involuntarily-committed mentally retarded.

## B

We think the standard articulated by Chief Judge Seitz affords the necessary guidance and reflects the proper balance between the legitimate interests of the State and the rights of the involuntarily committed to reasonable conditions of safety and freedom from unreasonable restraints. He would have held that "the Constitution only requires that the courts make certain that professional judgment in fact was exercised. It is not appropriate for the courts to specify which of several professionally acceptable choices should have been made."<sup>20</sup> 644 F. 2d, at 178. This standard is higher than the deliberate indifference formulation applied in the context of penal institutions. See *Estelle v. Gamble*, 429 U. S. 97 (1976). Persons who have been involuntarily committed are entitled to more considerate treatment and conditions of confinement than criminals whose conditions of confinement are designed to punish. At the same time, this standard is lower than the "compelling" or "substantial" necessity tests the Court of Appeals would require a state to meet to justify use of restraints or conditions of less than absolute safety. We think this requirement would place an undue burden on the administration of institutions such as Pennhurst and also would restrict unnecessarily the exercise of professional judgment as to the needs of residents.

~~We hold that when the rights of the involuntarily committed mentally retarded are weighed against the legitimate in-~~

<sup>20</sup> We do disagree with Chief Judge Seitz's view as to the existence of a right to training *per se*. He finds that such a right does exist, whereas we find no such right cognizable as a liberty interest protected by the Fourteenth Amendment. See 644 F. 2d, at 176 (Chief Judge Seitz uses "treatment" rather than "training.").

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terests of the State, including administrative and fiscal constraints, due process requires that (i) the State subject these individuals only to reasonable physical constraints, (ii) it provide them reasonably safe conditions, and (iii) it afford them such training as is necessary to achieve reasonable safety and reasonable freedom of movement within the institution.<sup>30</sup> We recognize that this holding may impose some additional burdens on States. In determining what is "reasonable," however, we emphasize that courts must show deference to the judgment exercised by a qualified professional.<sup>31</sup>

By so limiting judicial review of challenges to conditions in state institutions, interference by the federal judiciary with the internal operations of these institutions should be minimized.<sup>29</sup> Moreover, there certainly is no reason to think

~~\* We have expressed the constitutional right enjoyed by respondent in somewhat different language from that used by Chief Judge Seitz. Rather than stating that the involuntarily committed enjoy the right to have certain decisions made by professionals, see 644 F. 2d, at 178, 180-181, we hold that they are entitled to conditions of reasonable safety and reasonable freedom from bodily restraints, but we go on to hold that once such a decision is made by a professional in the exercise of reasonable professional judgment, courts will defer to it.~~

Our holding entitles respondent to a right that also can be characterized as procedural. We hold that the involuntary committed are entitled to an informal, non-adversarial "hearing" by a professional exercising his professional judgment—a "procedure" not unlike that upheld in *Parham v. J.R.*, 442 U. S. 584 (1979), a procedural due process case discussed in text at —, *supra*, and in note 30, *infra*.

<sup>29</sup> See *Parham v. J.R.*, *supra*, 442 U. S., at 608 n. 16 (In limiting judicial review of medical decisions made by professionals, "it is incumbent on courts to design procedures that protect the rights of individuals without unduly burdening the legitimate efforts of the states to deal with difficult social problems."). See also *Rhodes v. Chapman*, 452 U. S. 337, — (1981) ("[C]ourts cannot assume that state legislatures and prison officials are insensitive to the requirements of the Constitution or to the perplexing sociological problems of how best to achieve the goals of the penal function in the criminal justice system. . . ."); *Bell v. Wolfish*, 441 U. S. 520, 539

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judges or juries are better qualified than appropriate professionals in making such decisions. See *Parham v. J.R.*, 442 U. S. 584, 607 (1979); *Bell v. Wolfish*, *supra*, 441 U. S., at 544 (Courts should not “second-guess the expert administrators on matters on which they are better informed.”). For these reasons, the decision, if made by a professional,<sup>33</sup> is presumptively valid; liability may be imposed only when the decision by the professional is such a substantial departure from accepted professional judgment, practice or standards as to demonstrate that the person responsible actually did not base the decision on such a judgment. In an action for damages against a professional in his individual capacity, however, the professional will not be liable if he was unable to satisfy his normal professional standards because of budgetary constraints; in such a situation, good-faith immunity would bar liability. See note 10, *supra*.

(1979) (In context of conditions of confinement of pre-trial detainees, “courts must be mindful that these inquiries spring from constitutional requirements and that judicial answers to them must reflect that fact rather than a court’s idea of how best to operate a detention facility.”); *Wolff v. McDonnell*, 418 U. S. 539, 556 (1974) (In considering procedural due process claim in context of prison, “there must be mutual accommodation between institutional needs and objectives and the provisions of the Constitution that are of general application.”). See also Townsend & Mattson, *The Interaction of Law and Special Education: Observing the Emperor’s New Clothes*, 1 *Analysis and Intervention in Developmental Disabilities* 75 (1981) (judicial resolution of rights of the handicapped can have adverse as well as positive effects on social change).

30 ✓ By ‘professional’ decision-maker, we mean a person competent, whether by education, training or experience, to make the particular decision at issue. Long term treatment decisions normally should be made by persons with degrees in medicine or nursing, or with appropriate training in areas such as psychology, physical therapy, or the care and training of the retarded. Of course, day-to-day decisions regarding care—including decisions that must be made without delay—necessarily will be made in many instances by employees without formal training but who are subject to the supervision of qualified persons.

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## IV

In deciding this case, we have weighed those post-commitment interests cognizable as liberty interests under the Due Process Clause of the Fourteenth Amendment against legitimate state interests and in light of the constraints under which most state institutions necessarily operate. We repeat that the state concedes a duty to provide adequate food, shelter, clothing and medical care. These are the essentials of the care that the state must provide. NOT

~~The state also has the unquestioned duty to provide reasonable safety for all residents and personnel within the institution. And it may not restrain residents except when and to the extent professional judgment deems this necessary to assure such safety or to provide needed training. We hold, however, that there is no constitutional right to habilitative training per se, though we should not be understood as holding that the state is never under any obligation to provide training.~~

The state is under a duty to provide respondent with such training as an appropriate professional would consider reasonable to ensure his safety and to facilitate his ability to function free from bodily restraints. It may well be unreasonable not to provide training when training could significantly reduce the need for restraints or the likelihood of violence.

Respondent thus enjoys constitutionally protected interests in conditions of reasonable care and safety, reasonably non-restrictive confinement conditions, and such training as may be required by these interests. ~~These~~ conditions of confinement comport fully with the purpose of respondent's commitment. Cf. *Jackson v. Indiana*, 406 U. S. 715, 738 (1972); see n. 27, *ante*. In determining whether the state has met its obligations in these respects, decisions made by the appropriate professional are entitled to a ~~strong~~ presumption of correctness. Such a presumption is necessary to enable in-

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stitutions of this type—often, unfortunately, overcrowded and understaffed—to continue to function. A single professional may have to make decisions with respect to a number of residents with widely varying needs and problems in the course of a normal day. The administrators, and particularly professional personnel, should not be required to make each decision in the shadow of an action for damages.

In this case, we conclude that the jury was erroneously instructed on the assumption that the proper standard of liability was that of the Eighth Amendment. Accordingly, we vacate the decision of the Court of Appeals and remand for further proceedings consistent with this decision.

*So ordered.*



In this case, we agree that the minimally adequate training required is such training as may be reasonable in light of respondent's liberty interests in safety and freedom from unreasonable restraints. In determining what is "reasonable"--in this and in any case presenting a claim for training by a state--we emphasize that courts must show deference to the judgment exercised by a qualified professional.

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<sup>21</sup>See, e.g., description of complaint at \_\_\_\_-\_\_\_\_,  
supra.

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<sup>22</sup>See also Resondent's Brief, as Appellant, to the  
Court of Appeals for te Third Circuit, at 11-14, 20-21, &  
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<sup>23</sup>Chief Judge Seitz used the term "treatment" as  
synonyous with training or habilitation. See 644 F. 2d,  
at \_\_\_\_ (petn 65a-67a, end of Seitz's opinion).

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<sup>24</sup>It is not feasible, as is evident from the variety of  
language and formulations in the opinions below and the  
various briefs here, to define or identify the type of  
training that may be required in every case. A court  
properly may start with the generalization that there is a  
right to minimally adequate training. The basic  
requirement of adequacy, in terms more familiar to courts,  
may be stated as that training which is reasonable in  
light of identifiable liberty interests and the  
circumstances of the case. A federal court, of course,  
must identify a constitutional predicate for the  
imposition of any affirmative duty on a state.



Respondent's remaining claim is more troubling.

In his words, he asserts a "constitutional right to minimally adequate habilitation." Brief, 8, 23, 45. This is a substantive due process claim that is said to be grounded in the liberty component of the Due Process Clause of the Fourteenth Amendment.<sup>19</sup> ✓ The term "habilitation", used in psychiatry is not defined precisely or consistently in the opinions below or in the briefs of the parties or the amici.<sup>20</sup> ✓ As noted previously, at n. 1, supra, the term refers to "training and development of needed skills." Respondent emphasizes that the right he asserts is for "minimal" training, see Brief of Respondent at 34, and he would leave the type and extent of training to be determined on a case-by-case basis "in light of present medical or other scientific knowledge," id., at 45.

In addressing the asserted right to training, we start from established principles. As a general matter, a State is under no constitutional duty to provide substantive services for those within its border. See, Harris v. McRae, 448 U.S. 297, 318 (1980) (publicly funded



abortions); Maier v. Roe, 432 U.S. 464, 469 (1977) (medical treatment). When a person is institutionalized--and wholly dependent on the State--it is conceded by petitioner that a duty to provide certain services and care does exist, although even then a State necessarily has considerable discretion in determining the nature and scope of its responsibilities. See Richardson v. Belcher, 404 U.S. 78, 83-84 (1971); Dandridge v. Williams, 397 U.S. 471, 478 (1970). Nor must a State "choose between attacking every aspect of a problem or not attacking the problem at all." Id., at 486-487.

Respondent, in light of the severe character of his retardation, concedes that no amount of training will make possible his release. Nor does he argue that if he were still at home, the State would have an obligation to provide training at its expense. See Tr. of Oral Arg. 33. The record reveals that respondent's primary needs are bodily safety and a minimum of physical restraint, and respondent clearly claims training related to these needs. <sup>21</sup> As we have recognized that there is a constitutionally protected liberty interest in safety and

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freedom from restraint, ante at \_\_\_\_; training may be necessary to avoid unconsitutional infringement of those rights. On the basis of the record before us, it is quite uncertain whether respondent seeks any "habilitation" or training unrelated to safety and freedom from bodily restraints. In his brief to this Court, he indicates that even the self-care programs Romeo seeks are needed to reduce his aggressive behavior. See Reply Brief of Respondent at 21-22, 50. And in his offer of proof to the trial court, respondent repeatedly indicated that, if allowed to testify, his experts would show that additional training programs, including self-care programs, were needed to reduce Romeo's aggressive behavior. Petition for Certiorari 98a-104a. <sup>22</sup> If, as seems the case, respondent seeks only training related to safety and freedom from restraints, this case does not present the difficult question whether a mentally retarded person involuntarily committed to a state institution has some general consitutional right to training per se, even when no type or amount of training would lead to freedom.

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Chief Judge Seitz, in language apparently adopted  
by respondent, observed:

"I believe that the plaintiff has a constitutional right to minimally adequate care and treatment. The existence of a constitutional right to care and treatment is no longer a novel legal proposition." 644 F.2d, \_\_\_\_ (Pet. 54a).

Chief Judge Seitz did not identify or otherwise define--  
beyond the right to reasonable safety and freedom from  
physical restraint--the "minimally adequate care and  
treatment" that appropriately may be required for this  
respondent.<sup>23</sup> ✓ In the circumstances presented by this case,  
and on the basis of the record developed to date, we agree  
with his view and conclude that respondent's liberty  
interests require the State to provide minimally adequate  
or reasonable training to ensure safety and freedom from  
undue restraint. In view of the kinds of treatment  
sought by respondent and the evidence of record, we need  
go no further in this case.<sup>62</sup> ✓<sup>24</sup>

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Justice Brennan  
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4th DRAFT ①

SUPREME COURT OF THE UNITED STATES

No. 80-1429

DUANE YOUNGBERG, ETC., ET AL., PETITIONERS, v.  
NICHOLAS ROMEO, AN INCOMPETENT, BY HIS  
MOTHER AND NEXT FRIEND, PAULA ROMEO

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE THIRD CIRCUIT

[May —, 1982]

JUSTICE POWELL delivered the opinion of the Court.

The question presented is whether respondent, involuntarily committed to a state institution for the mentally retarded, has substantive rights under the Due Process Clause of the Fourteenth Amendment to (i) safe conditions of confinement; (ii) freedom from bodily restraints; and (iii) training or "habilitation."<sup>1</sup> Respondent sued under 42 U. S. C. § 1983 three administrators of the institution, claiming damages for the alleged breach of his constitutional rights.

I

Respondent Nicholas Romeo is profoundly retarded. Although 33 years old, he has the mental capacity of an eighteen-month old child. He cannot talk and lacks the most basic self-care skills. Until he was 26, respondent lived with his parents in Philadelphia. But after the death of his father in May 1974, his mother was unable to care for him. Within

<sup>1</sup>The American Psychiatric Association explains that "[t]he word 'habilitation,' . . . is commonly used to refer to programs for the mentally-retarded because mental retardation is . . . a learning disability and training impairment rather than an illness. . . . [T]he principal focus of habilitation is upon training and development of needed skills." Brief of American Psychiatric Association as *Amicus Curiae*, at 4, n. 1.

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two weeks of the father's death, respondent's mother sought his temporary admission to a nearby Pennsylvania hospital.

Shortly thereafter, she asked the Philadelphia County Court of Common Pleas to admit Romeo to a state facility on a permanent basis. Her petition to the court explained that she was unable to care for Romeo or control his violence.<sup>2</sup> As part of the commitment process, Romeo was examined by a physician and a psychologist. They both certified that respondent was severely retarded and unable to care for himself. App. 21a-22a and 28a-29a. On June 11, 1974, the Court of Common Pleas committed respondent to the Pennhurst State School and Hospital, pursuant to the applicable involuntary commitment provision of the Pennsylvania Mental Health and Mental Retardation Act, Pa. Stat. Ann. tit. 50 § 4406.

At Pennhurst, Romeo was injured on numerous occasions, both by his own violence and by the reactions of other residents to him. Respondent's mother became concerned about these injuries. After objecting to respondent's treatment several times, she filed this complaint on November 4, 1976, in the United States District Court for the Eastern District of Pennsylvania as his next friend. The complaint alleged that "[d]uring the period July, 1974 to the present, plaintiff has suffered injuries on at least sixty-three occasions." The complaint originally sought damages and injunctive relief from Pennhurst's director and two supervisors<sup>3</sup>; it alleged

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<sup>2</sup> Mrs. Romeo's petition to the Court of Common Pleas stated: "Since my husband's death I am unable to handle him. He becomes violent—Kicks, punches, breaks glass; He can't speak—wants to express himself but can't. He is [a] constant 24 hr. care. [W]ithout my husband I am unable to care for him." App. 18a.

<sup>3</sup> Petitioner Duane Youngberg was the Superintendent of Pennhurst; he had supervisory authority over the entire facility. Respondent Richard Matthews was the Director of Resident Life at Pennhurst. Respondent Marguerite Conley was Unit Director for the unit in which respondent was incarcerated. According to respondent, petitioners are administrators.



that these officials knew, or should have known, that Romeo was suffering injuries and that they failed to institute appropriate preventive procedures, thus violating his rights under the Eighth and Fourteenth Amendments.

Thereafter, in late 1976, Romeo was transferred from his ward to the hospital for treatment of a broken arm. While in the infirmary, and by order of a doctor, he was physically restrained during portions of each day.<sup>4</sup> These restraints were ordered by Dr. Gabroy, not a defendant here, to protect Romeo and others in the hospital, some of whom were in traction or were being treated intravenously. 7 Record 40, 49, 76-78. Although respondent normally would have returned to his ward when his arm healed, the parties to this litigation agreed that he should remain in the hospital due to the pending law suit. 5 Record 248, 6 R. 57-58 and 137. Nevertheless, in December 1977, a second amended complaint was filed alleging that the defendants were restraining respondent for prolonged periods on a routine basis. The second amended complaint also added a claim for damages to compensate Romeo for the defendants' failure to provide him with appropriate "treatment or programs for his mental retardation."<sup>5</sup> All claims for injunctive relief were dropped prior to trial because respondent is a member of the class seeking such relief in another action.<sup>6</sup>

An eight-day jury trial was held in April 1978. Petitioners introduced evidence that respondent participated in several

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not medical doctors. See Brief for Respondent 2. Youngberg and Matthews are no longer at Pennhurst.

<sup>4</sup>Although the Court of Appeals described these restraints as "shackles," "soft" restraints, for the arms only, were generally used. 7 Record 53-55.

<sup>5</sup>Respondent uses "treatment" as synonymous with "habilitation" or "training." See Brief for Respondents 21-23.

<sup>6</sup>*Pennhurst State School and Hospital v. Halderman*, 451 U. S. 1 (1981) (remanded for further proceedings).



programs teaching basic self-care skills.<sup>7</sup> A comprehensive behavior-modification program was designed by staff members to reduce Romeo's aggressive behavior,<sup>8</sup> but that program was never implemented because of his mother's objections.<sup>9</sup> Respondent introduced evidence of his injuries and of conditions in his unit.<sup>10</sup>

At the close of the trial, the court instructed the jury that "if any or all of the defendants were aware of and failed to take all reasonable steps to prevent repeated attacks upon Nicholas Romeo," such failure deprived him of constitutional rights. App. to Pet. for Cert. 110a. The jury also was instructed that if the defendants shackled Romeo or denied him treatment "as a punishment for filing this lawsuit," his constitutional rights were violated under the Eighth Amendment. *Id.*, at 73a-75a. Finally, the jury was instructed that if they found the defendants "deliberately indifferent to the medical and psychological needs of Nicholas Romeo," they might find that Romeo's Eighth and Four-

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<sup>7</sup> Prior to his transfer to Pennhurst's hospital ward, Romeo participated in programs dealing with feeding, showering, drying, dressing, self control, and toilet training, as well as a program providing interaction with staff members. Defendants' exhibit 10; 3 Record 69-70, 5 Record 44-56, 242-250, 6 Record 162-166; 7 Record 41-48.

Some programs continued while respondent was in the hospital, 5 Record 227, 248, 256; 6 Record 50, 162-166, Record 32, 34, 41-48, and they reduced respondent's aggressive behavior to some extent, 7 Record 45.

<sup>8</sup> 2 Record 7, 5 Record 88-90; 6 Record 88, 200-203; Defendants' Exhibit 1, at 9. The program called for short periods of separation from other residents and for use of "muffs" on plaintiff's hands for short periods of time, *i. e.*, 5 minutes, to prevent him from harming himself or others.

<sup>9</sup> 1 Record 53; 4 Record 25; 6 Record 204.

<sup>10</sup> The District Judge refused to allow testimony by two of Romeo's witnesses—trained professionals—indicating that Romeo would have benefited from more or different training programs. The trial judge explained that evidence of the advantages of alternative forms of treatment might be relevant to a malpractice suit, but was not relevant to a constitutional claim under § 1983. App. to Pet. for Cert. 101a.



teenth Amendment rights were violated. *Id.*, at 111a. The jury returned a verdict for the defendants, on which judgment was entered.

The Court of Appeals for the Third Circuit, sitting en banc, reversed and remanded for a new trial. 644 F. 2d 147 (1980). The court held that the Eighth Amendment, prohibiting cruel and unusual punishment of those convicted of crimes, was not an appropriate source for determining the rights of the involuntarily committed. Rather, the Fourteenth Amendment and the liberty interest protected by that amendment provided the proper constitutional basis for these rights. In applying the Fourteenth Amendment, the court found that the involuntarily committed retain liberty interests in freedom of movement and in personal security. These were "fundamental liberties" that can be limited only by an "overriding, non-punitive" state interest. 644 F. 2d, at 157-158 (footnote omitted). It further found that the involuntarily committed have a liberty interest in habilitation designed to "treat" their mental retardation. *Id.*, at 164-170."

The en banc court did not, however, agree on the relevant standard to be used in determining whether Romeo's rights had been violated.<sup>12</sup> Because physical restraint "raises a presumption of a punitive sanction," the majority of the Court of Appeals concluded that it can be justified only by "compelling necessity." *Id.*, at 159-160. A somewhat different standard was appropriate for the failure to provide for

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<sup>11</sup> The Court of Appeals used "habilitation" and "treatment" as synonymous, though it regarded "habilitation" as more accurate in describing treatment needed by the mentally retarded. See 644 F. 2d, at 165 and n. 40.

<sup>12</sup> The existence of a qualified immunity defense was not at issue on appeal. The defendants had received instructions on this defense, App. 76a, and it was not challenged by respondent. 644 F. 2d, at 173, n. 1. After citing *Pierson v. Ray*, 386 U. S. 547 (1967) and *Scheuer v. Rhodes*, 416 U. S. 232 (1974), the majority of the Court of Appeals noted that such instructions should be given again on the remand. 644 F. 2d, at 171-172..



a resident's safety. The majority considered that such a failure must be justified by a showing of "substantial necessity." *Id.*, at 164. Finally, the majority held that when treatment has been administered, those responsible are liable only if the treatment is not "acceptable in the light of present medical or other scientific knowledge." *Id.*, at 166-167 and 173.<sup>13</sup>

Chief Judge Seitz, concurring in the judgment, considered the standards articulated by the majority as indistinguishable from those applicable to medical malpractice claims. In Chief Judge Seitz's view, the Constitution "only requires that the courts make certain that professional judgment in fact was exercised." 644 F. 2d, at 178. He concluded that the appropriate standard was whether the defendants' conduct was "such a substantial departure from accepted professional judgment, practice or standards in the care and treatment of this plaintiff as to demonstrate that the defendants did not base their conduct on a professional judgment." 644 F. 2d, at 178.<sup>14</sup>

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<sup>13</sup> Actually, the court divided the right-to-treatment claim into three categories and adopted three standards, but only the standard described in text is at issue before this Court. The Court of Appeals also stated that if a jury finds that no treatment has been administered, it may hold the institution's administrators liable unless they can provide a compelling explanation for the lack of treatment, 644 F. 2d at 165, 173, but respondent does not discuss this precise standard in his brief and it does not appear to be relevant to the facts of this case. In addition, the court considered "least intrusive" analysis appropriate to justify severe intrusions on individual dignity, such as permanent physical alteration or surgical intervention, *id.*, at 165-166, and 173, but respondent concedes that this issue is not present in this case.

<sup>14</sup> Judge Aldisert joined Chief Judge Seitz's opinion, but wrote separately to emphasize the nature of the difference between the majority opinion and that of the Chief Judge. On a conceptual level, Judge Aldisert thought that the court erred in abandoning the common-law method of deciding the case at bar rather than articulating broad principles unconnected with the facts of the case and of uncertain meaning. 644 F. 2d, at 182-183. And,



We granted the petition for certiorari because of the importance of the question presented to the administration of state institutions for the mentally retarded. 451 U. S. 982 (1981).

## II

We consider here for the first time the substantive rights of involuntarily-committed mentally retarded persons under the Fourteenth Amendment to the Constitution.<sup>15</sup> In this case, respondent has been committed under the laws of Pennsylvania, and he does not challenge the commitment. Rather, he argues that he has a constitutionally protected liberty interest in safety, freedom of movement, and training within the institution; and that petitioners infringed on these rights by failing to provide constitutionally required conditions of confinement.

The mere fact that Romeo has been committed under proper procedures does not deprive him of all substantive liberty interests under the Fourteenth Amendment. See, e. g., *Vitek v. Jones*, 445 U. S. 480, 491-494 (1980). Indeed, the state concedes that respondent has a right to adequate food, shelter, clothing, and medical care.<sup>16</sup> We must decide

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on a pragmatic level, Judge Aldisert warned that neither juries nor those administering state institutions would receive guidance from the "amorphous constitutional law tenets" articulated in the majority opinion. *Id.*, at 184. See *id.*, at 183-185.

Judge Garth also joined Chief Judge Seitz's opinion, and wrote separately to criticize the majority for addressing issues not raised by the facts of this case. 644 F. 2d, at 186.

<sup>15</sup>In pertinent part, that Amendment provides that a State cannot deprive "any person of life, liberty, or property, without due process of law. . . ." U. S. Const., Amend. XIV, § 1.

Respondent no longer relies on the Eighth Amendment as a direct source of constitutional rights. See Brief for Respondent 13 n. 12.

<sup>16</sup>Brief for Petitioners 8, 11, 12 and n. 10; Brief for Respondent 15-16. See also Brief for Connecticut and Twenty Other States as *Amici Curiae* 8.



whether liberty interests also exist in safety, freedom of movement, and training. If such interests do exist, we must further decide whether they have been infringed in this case.

## A

Respondent's first two claims involve liberty interests recognized by prior decisions of this Court, interests that involuntary commitment proceedings do not extinguish.<sup>17</sup> The first is a claim to safe conditions. In the past, this Court has noted that the right to personal security constitutes an "historic liberty interest" protected substantively by the Due Process Clause. *Ingraham v. Wright*, 430 U. S. 651, 673 (1977). And that right is not extinguished by lawful confinement, even for penal purposes.<sup>18</sup> See *Hutto v. Finney*, 437 U. S. 678 (1978). If it is cruel and unusual punishment to hold convicted criminals in unsafe conditions, it must be unconstitutional to confine the involuntarily committed—who may not be punished at all—in unsafe conditions.

Next, respondent claims a right to freedom from bodily restraint. In other contexts, the existence of such an interest is clear in the prior decisions of this Court. Indeed, "[l]iberty from bodily restraint always has been recognized as the core of the liberty protected by the Due Process Clause from arbitrary governmental action." *Greenholtz v. Nebraska Penal Inmates*, 442 U. S. 1, 18 (1979) (POWELL, J., concurring). This interest survives criminal conviction and incarceration. Similarly, it must also survive involuntary commitment.

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Petitioners argue that they have fully protected these interests.

<sup>17</sup> Petitioners do not appear to argue to the contrary. See Brief for Petitioners 27-31.

<sup>18</sup> It is true that in cases dealing with prisoners, analysis begins with the Eighth Amendment's proscription of cruel and unusual punishment, and the Eighth Amendment has no direct bearing on non-penal institutions. See *Ingraham v. Wright*, 430 U. S. 651, 667-668 (1977).



## B

Respondent's remaining claim is more troubling. In his words, he asserts a "constitutional right to minimally adequate habilitation." Brief, 8, 23, 45. This is a substantive due process claim that is said to be grounded in the liberty component of the Due Process Clause of the Fourteenth Amendment.<sup>19</sup> The term "habilitation", used in psychiatry is not defined precisely or consistently in the opinions below or in the briefs of the parties or the amici.<sup>20</sup> As noted previously, at n. 1, *supra*, the term refers to "training and development of needed skills." Respondent emphasizes that the right he asserts is for "minimal" training, see Brief of Respondent at 34, and he would leave the type and extent of training to be determined on a case-by-case basis "in light of present medical or other scientific knowledge," *id.*, at 45.

<sup>19</sup> Respondent also argues that he was committed for care and treatment under state law, and that he therefore has a state substantive right to habilitation entitled to substantive, not procedural, protection under the Due Process Clause of the Federal Constitution. But this argument is made for the first time in respondent's brief to this Court. It was not advanced in the courts below, and was not argued to the Court of Appeals as a ground for reversing the trial court. Given the uncertainty of Pennsylvania law and the lack of any guidance on this issue from the lower federal courts, we decline to consider it now. See *Dothard v. Rawlinson*, 433 U. S. 321, 323 n. 1 (1977); *Duignan v. United States*, 274 U. S. 195, 200 (1927); *Old Jordan Milling Co. v. Societe Anonyme des Mines*, 164 U. S. 261, 264-265 (1896).

<sup>20</sup> Professionals in the habilitation of the mentally retarded disagree strongly on the question whether effective training of all severely or profoundly retarded individuals is even possible. See, e. g., Favell, Risley, Wolfe, Riddle, & Rasmussen, *The Limits of Habilitation: How Can We Identify Them and How Can We Change Them?*, 1 *Analysis and Intervention in Developmental Disabilities* 37 (1981); Bailey, *Wanted: A Rational Search for the Limiting Conditions of Habilitation in the Retarded*, 1 *Analysis and Intervention in Developmental Disabilities* 45 (1981); Kauffman & Krouse, *The Cult of Educability: Searching for the Substance of Things Hoped for; The Evidence of Things Not Seen*, 1 *Analysis and Intervention in Developmental Disabilities* 53 (1981).



In addressing the asserted right to training, we start from established principles. As a general matter, a State is under no constitutional duty to provide substantive services for those within its border. See, *Harris v. McRae*, 448 U. S. 297, 318 (1980) (publicly funded abortions); *Maier v. Roe*, 432 U. S. 464, 469 (1977) (medical treatment). When a person is institutionalized—and wholly dependent on the State—it is conceded by petitioner that a duty to provide certain services and care does exist, although even then a State necessarily has considerable discretion in determining the nature and scope of its responsibilities. See *Richardson v. Belcher*, 404 U. S. 78, 83–84 (1971); *Dandridge v. Williams*, 397 U. S. 471, 478 (1970). Nor must a State “choose between attacking every aspect of a problem or not attacking the problem at all.” *Id.*, at 486–487.

Respondent, in light of the severe character of his retardation, concedes that no amount of training will make possible his release. Nor does he argue that if he were still at home, the State would have an obligation to provide training at its expense. See Tr. of Oral Arg. 33. The record reveals that respondent’s primary needs are bodily safety and a minimum of physical restraint, and respondent clearly claims training related to these needs.<sup>21</sup> As we have recognized that there is a constitutionally protected liberty interest in safety and freedom from restraint, *ante* at — training may be necessary to avoid unconstitutional infringement of those rights. On the basis of the record before us, it is quite uncertain whether respondent seeks any “habilitation” or training unrelated to safety and freedom from bodily restraints. In his brief to this Court, he indicates that even the self-care programs Romeo seeks are needed to reduce his aggressive behavior. See Reply Brief of Respondent at 21–22, 50. And in his offer of proof to the trial court, respondent repeatedly indicated that, if allowed to testify, his experts would show

<sup>21</sup> See, *e. g.*, description of complaint at —, *supra*.



that additional training programs, including self-care programs, were needed to reduce Romeo's aggressive behavior. Petition for Certiorari 98a-104a.<sup>22</sup> If, as seems the case, respondent seeks only training related to safety and freedom from restraints, this case does not present the difficult question whether a mentally retarded person involuntarily committed to a state institution has some general constitutional right to training *per se*, even when no type or amount of training would lead to freedom.

Chief Judge Seitz, in language apparently adopted by respondent, observed:

"I believe that the plaintiff has a constitutional right to minimally adequate care and treatment. The existence of a constitutional right to care and treatment is no longer a novel legal proposition." 644 F. 2d, — (Pet. 54a).

Chief Judge Seitz did not identify or otherwise define—beyond the right to reasonable safety and freedom from physical restraint—the "minimally adequate care and treatment" that appropriately may be required for this respondent.<sup>23</sup> In the circumstances presented by this case, and on the basis of the record developed to date, we agree with his view and conclude that respondent's liberty interests require the State to provide minimally adequate or reasonable training to ensure safety and freedom from undue restraint. In view of the kinds of treatment sought by respondent and the evidence of record, we need go no further in this case.<sup>24</sup>

<sup>22</sup> See also Respondent's Brief, as Appellant, to the Court of Appeals for the Third Circuit, at 11-14, 20-21, and 24.

<sup>23</sup> Chief Judge Seitz used the term "treatment" as synonymous with training or habilitation. See 644 F. 2d, at — (petn 65a-67a, end of Seitz's opinion). 1810

<sup>24</sup> It is not feasible, as is evident from the variety of language and formulations in the opinions below and the various briefs here, to define or identify the type of training that may be required in every case. A court



## III

## A

We have established that Romeo retains liberty interests in safety and freedom from bodily restraint. Yet these interests are not absolute, indeed to some extent they are in conflict. In operating an institution such as Pennhurst, there are occasions in which it is necessary for the State to restrain the movement of residents—for example, to protect them as well as others from violence.<sup>25</sup> Similar restraints may also be appropriate in a training program. And an institution cannot protect its residents from all danger of violence if it is to permit them to have any freedom of movement. The question then is not simply whether a liberty interest has been infringed but whether the extent or nature of the restraint or lack of absolute safety is such as to violate due process.

In determining whether a substantive right protected by the Due Process Clause has been violated, it is necessary to balance “the liberty of the individual” and “the demands of an organized society.” *Poe v. Ullman*, 367 U. S. 497, 522, 542 (1961) (Harlan, J., dissenting). In seeking this balance in other cases, the Court has weighed the individual’s interest in liberty against the State’s asserted reasons for restraining individual liberty. In *Bell v. Wolfish*, 441 U. S. 520 (1979), for example, we considered a challenge to pre-trial detainees’ confinement conditions. We agreed that the detainees, not yet convicted of the crime charged, could not be punished.

properly may start with the generalization that there is a right to minimally adequate training. The basic requirement of adequacy, in terms more familiar to courts, may be stated as that training which is reasonable in light of identifiable liberty interests and the circumstances of the case. A federal court, of course, must identify a constitutional predicate for the imposition of any affirmative duty on a state.

<sup>25</sup> In Romeo’s case, there can be no question that physical restraint was necessary at times. See n. 2, *supra*.

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But we upheld those restrictions on liberty that were reasonably related to legitimate government objectives and not tantamount to punishment.<sup>26</sup> See *id.*, at 539. We have taken a similar approach in deciding procedural due-process challenges to civil commitment proceedings. In *Parham v. J.R.*, 442 U. S. 584 (1979), for example, we considered a challenge to state procedures for commitment of a minor with parental consent. In determining that *procedural* due process did not mandate an adversarial hearing, we weighed the liberty interest of the individual against the legitimate interests of the State, including the fiscal and administrative burdens additional procedures would entail.<sup>27</sup> *Id.*, at 599-600.

Accordingly, whether respondent's constitutional rights have been violated must be determined by balancing his liberty interests against the relevant state interests. If there is to be any uniformity in protecting these interests, this balancing cannot be left to the unguided discretion of a judge or jury. We therefore turn to consider the proper standard for determining whether a State adequately has protected the rights of the involuntarily-committed mentally retarded.

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<sup>26</sup> See also *Jackson v. Indiana*, 406 U. S. 715, 738 (1972) (holding that an incompetent pre-trial detainee cannot, after a competency hearing, be held indefinitely without either criminal process or civil commitment; due process requires, at a minimum, some rational relation between the nature and duration of commitment and its purpose). This case differs in critical respects from *Jackson*, a procedural due process case involving the validity of an involuntary commitment. Here, petitioner was committed by a court on petition of his mother who averred that in view of Romeo's condition she could neither care for him nor control his violence. *Ante*, at 2. Thus, the purpose of petitioner's commitment was to provide reasonable care and safety, conditions not available to him outside of an institution.

<sup>27</sup> See also *Addington v. Texas*, 441 U. S. 418 (1979). In that case, we held that the state must prove the need for commitment by "clear and convincing" evidence. See *id.*, at 431-432. We reached this decision by weighing the individual's liberty interest against the state's legitimate interests in confinement.

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Justice Powell,

This is a suggestion from David  
and ~~me~~ <sup>me</sup> designed to make the  
transition smoother and to avoid  
the implication that C. J. Seitz  
~~who~~ would agree that resp  
is only entitled to training related  
to safety and freedom from  
restraints. **Good suggestion!**  
Mary



## B

We think the standard articulated by Chief Judge Seitz affords the necessary guidance and reflects the proper balance between the legitimate interests of the State and the rights of the involuntarily committed to reasonable conditions of safety and freedom from unreasonable restraints. He would have held that "the Constitution only requires that the courts make certain that professional judgment in fact was exercised. It is not appropriate for the courts to specify which of several professionally acceptable choices should have been made." 644 F. 2d, at 178. This standard is higher than the deliberate indifference formulation applied in the context of penal institutions. See *Estelle v. Gamble*, 429 U. S. 97 (1976). Persons who have been involuntarily committed are entitled to more considerate treatment and conditions of confinement than criminals whose conditions of confinement are designed to punish. At the same time, this standard is lower than the "compelling" or "substantial" necessity tests the Court of Appeals would require a state to meet to justify use of restraints or conditions of less than absolute safety. We think this requirement would place an undue burden on the administration of institutions such as Pennhurst and also would restrict unnecessarily the exercise of professional judgment as to the needs of residents.

In this case, ~~we agree that~~ the minimally adequate training required is such training as may be reasonable in light of respondent's liberty interests in safety and freedom from unreasonable restraints. In determining what is "reasonable"—in this and in any case presenting a claim for training by a state—we emphasize that courts must show deference to the judgment exercised by a qualified professional.<sup>28</sup> ~~Not~~

<sup>28</sup> Our holding entitles respondent to a right that also can be characterized as procedural. We hold that the involuntary committed are entitled to an informal, non-adversarial "hearing" by a professional exercising his professional judgment—a "procedure" not unlike that upheld in *Parham v.*

Moreover, we agree that respondent is entitled to minimally adequate training.

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## B

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←By so limiting judicial review of challenges to conditions in state institutions, interference by the federal judiciary with the internal operations of these institutions should be minimized.<sup>29</sup> Moreover, there certainly is no reason to think judges or juries are better qualified than appropriate professionals in making such decisions. See *Parham v. J.R.*, 442 U. S. 584, 607 (1979); *Bell v. Wolfish*, *supra*, 441 U. S., at 544 (Courts should not “second-guess the expert administrators on matters on which they are better informed.”). For these reasons, the decision, if made by a professional,<sup>30</sup> is

*J.R.*, 442 U. S. 584 (1979), a procedural due process case discussed in text at —, *supra*, and in note 30, *infra*.

<sup>29</sup> See *Parham v. J.R.*, *supra*, 442 U. S., at 608 n. 16 (In limiting judicial review of medical decisions made by professionals, “it is incumbent on courts to design procedures that protect the rights of individuals without unduly burdening the legitimate efforts of the states to deal with difficult social problems.”). See also *Rhodes v. Chapman*, 452 U. S. 337, — (1981) (“[C]ourts cannot assume that state legislatures and prison officials are insensitive to the requirements of the Constitution or to the perplexing sociological problems of how best to achieve the goals of the penal function in the criminal justice system. . . .”); *Bell v. Wolfish*, 441 U. S. 520, 539 (1979) (In context of conditions of confinement of pre-trial detainees, “courts must be mindful that these inquiries spring from constitutional requirements and that judicial answers to them must reflect that fact rather than a court’s idea of how best to operate a detention facility.”); *Wolff v. McDonnell*, 418 U. S. 539, 556 (1974) (In considering procedural due process claim in context of prison, “there must be mutual accommodation between institutional needs and objectives and the provisions of the Constitution that are of general application.”). See also Townsend & Mattson, *The Interaction of Law and Special Education: Observing the Emperor’s New Clothes*, 1 *Analysis and Intervention in Developmental Disabilities* 75 (1981) (judicial resolution of rights of the handicapped can have adverse as well as positive effects on social change).

<sup>30</sup> By ‘professional’ decision-maker, we mean a person competent, whether by education, training or experience, to make the particular decision at issue. Long term treatment decisions normally should be made by persons with degrees in medicine or nursing, or with appropriate training in areas such as psychology, physical therapy, or the care and training of the retarded. Of course, day-to-day decisions regarding care—including



presumptively valid; liability may be imposed only when the decision by the professional is such a substantial departure from accepted professional judgment, practice or standards as to demonstrate that the person responsible actually did not base the decision on such a judgment. In an action for damages against a professional in his individual capacity, however, the professional will not be liable if he was unable to satisfy his normal professional standards because of budgetary constraints; in such a situation, good-faith immunity would bar liability. See note 10, *supra*.

## IV

In deciding this case, we have weighed those post-commitment interests cognizable as liberty interests under the Due Process Clause of the Fourteenth Amendment against legitimate state interests and in light of the constraints under which most state institutions necessarily operate. We repeat that the state concedes a duty to provide adequate food, shelter, clothing and medical care. These are the essentials of the care that the state must provide. The state also has the unquestioned duty to provide reasonable safety for all residents and personnel within the institution. And it may not restrain residents except when and to the extent professional judgment deems this necessary to assure such safety or to provide needed training. In this case, therefore, the state is under a duty to provide respondent with such training as an appropriate professional would consider reasonable to ensure his safety and to facilitate his ability to function free from bodily restraints. It may well be unreasonable not to provide training when training could significantly reduce the need for restraints or the likelihood of violence.

Respondent thus enjoys constitutionally protected interests in conditions of reasonable care and safety, reasonably

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decisions that must be made without delay—necessarily will be made in many instances by employees without formal training but who are subject to the supervision of qualified persons.



non-restrictive confinement conditions, and such training as may be required by these interests. Such conditions of confinement would comport fully with the purpose of respondent's commitment. Cf. *Jackson v. Indiana*, 406 U. S. 715, 738 (1972); see n. 27, *ante*. In determining whether the state has met its obligations in these respects, decisions made by the appropriate professional are entitled to a presumption of correctness. Such a presumption is necessary to enable institutions of this type—often, unfortunately, overcrowded and understaffed—to continue to function. A single professional may have to make decisions with respect to a number of residents with widely varying needs and problems in the course of a normal day. The administrators, and particularly professional personnel, should not be required to make each decision in the shadow of an action for damages.

In this case, we conclude that the jury was erroneously instructed on the assumption that the proper standard of liability was that of the Eighth Amendment. Accordingly, we vacate the decision of the Court of Appeals and remand for further proceedings consistent with this decision.

*So ordered.*



Many - Looker fine to me. I have only one suggestion & a question.

1. Judge Aldermet & Garth both criticized the CA3 majority for writing an opinion "~~too~~" unconnected with the facts. Let's add a second ¶ to n 24, p 12, that says:

As the facts in ~~these~~ cases ~~vary~~ ~~from~~ ~~of~~ ~~confinement~~ of mentally retarded patients vary widely, ~~almost~~ ~~widely~~, ~~sweeping~~ ~~generalizations~~ ~~are~~ ~~inappropriate~~ as to the training in particular should be avoided. As Judge Aldermet said in this case:

quote

~~Garth~~ Judge Garth, agreed:

2. My Q is there a need to say anything about the excluded expert testimony?     x x x

When we get a clean copy from Printer, I'll show it to WJB.



Justice Brennan  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Rehnquist  
Justice Stevens  
Justice O'Connor

From: Justice Powell

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Mary Becker

X, 23072

Changes 2, 4-5, 7, 9, 12, 14-16

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4th DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 80-1429

DUANE YOUNGBERG, ETC., ET AL., PETITIONERS, v.  
NICHOLAS ROMEO, AN INCOMPETENT, BY HIS  
MOTHER AND NEXT FRIEND, PAULA ROMEO

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE THIRD CIRCUIT

[May —, 1982]

JUSTICE POWELL delivered the opinion of the Court.

The question presented is whether respondent, involuntarily committed to a state institution for the mentally retarded, has substantive rights under the Due Process Clause of the Fourteenth Amendment to (i) safe conditions of confinement; (ii) freedom from bodily restraints; and (iii) training or "habilitation."<sup>1</sup> Respondent sued under 42 U. S. C. § 1983 three administrators of the institution, claiming damages for the alleged breach of his constitutional rights.

### I

Respondent Nicholas Romeo is profoundly retarded. Although 33 years old, he has the mental capacity of an eighteen-month old child. He cannot talk and lacks the most basic self-care skills. Until he was 26, respondent lived with his parents in Philadelphia. But after the death of his father in May 1974, his mother was unable to care for him. Within

<sup>1</sup>The American Psychiatric Association explains that "[t]he word 'habilitation,' . . . is commonly used to refer to programs for the mentally-retarded because mental retardation is . . . a learning disability and training impairment rather than an illness. . . . [T]he principal focus of habilitation is upon training and development of needed skills." Brief of American Psychiatric Association as *Amicus Curiae*, at 4, n. 1.

2 new files sent

OB 1429 G-8 is new & at end of n. 24, p. 12.

OB 1429 G-9 is new footnote 30.

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two weeks of the father's death, respondent's mother sought his temporary admission to a nearby Pennsylvania hospital.

Shortly thereafter, she asked the Philadelphia County Court of Common Pleas to admit Romeo to a state facility on a permanent basis. Her petition to the court explained that she was unable to care for Romeo or control his violence.<sup>2</sup> As part of the commitment process, Romeo was examined by a physician and a psychologist. They both certified that respondent was severely retarded and unable to care for himself. App. 21~~4~~-22~~4~~ and 28~~4~~-29~~4~~. On June 11, 1974, the Court of Common Pleas committed respondent to the Pennhurst State School and Hospital, pursuant to the applicable involuntary commitment provision of the Pennsylvania Mental Health and Mental Retardation Act, Pa. Stat. Ann. tit. 50 § 4406. ✓✓✓✓

At Pennhurst, Romeo was injured on numerous occasions, both by his own violence and by the reactions of other residents to him. Respondent's mother became concerned about these injuries. After objecting to respondent's treatment several times, she filed this complaint on November 4, 1976, in the United States District Court for the Eastern District of Pennsylvania as his next friend. The complaint alleged that "[d]uring the period July, 1974 to the present, plaintiff has suffered injuries on at least sixty-three occasions." The complaint originally sought damages and injunctive relief from Pennhurst's director and two supervisors<sup>3</sup>; it alleged

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<sup>2</sup> Mrs. Romeo's petition to the Court of Common Pleas stated: "Since my husband's death I am unable to handle him. He becomes violent—Kicks, punches, breaks glass; He can't speak—wants to express himself but can't. He is [a] constant 24 hr. care. [W]ithout my husband I am unable to care for him." App. 18~~4~~. ✓

<sup>3</sup> Petitioner Duane Youngberg was the Superintendent of Pennhurst; he had supervisory authority over the entire facility. Respondent Richard Matthews was the Director of Resident Life at Pennhurst. Respondent Marguerite Conley was Unit Director for the unit in which respondent was incarcerated. According to respondent, petitioners are administrators.



that these officials knew, or should have known, that Romeo was suffering injuries and that they failed to institute appropriate preventive procedures, thus violating his rights under the Eighth and Fourteenth Amendments.

Thereafter, in late 1976, Romeo was transferred from his ward to the hospital for treatment of a broken arm. While in the infirmary, and by order of a doctor, he was physically restrained during portions of each day.<sup>4</sup> These restraints were ordered by Dr. Gabroy, not a defendant here, to protect Romeo and others in the hospital, some of whom were in traction or were being treated intravenously. 7 Record 40, 49, 76-78. Although respondent normally would have returned to his ward when his arm healed, the parties to this litigation agreed that he should remain in the hospital due to the pending law suit. 5 Record 248, 6 R. 57-58 and 137. Nevertheless, in December 1977, a second amended complaint was filed alleging that the defendants were restraining respondent for prolonged periods on a routine basis. The second amended complaint also added a claim for damages to compensate Romeo for the defendants' failure to provide him with appropriate "treatment or programs for his mental retardation."<sup>5</sup> All claims for injunctive relief were dropped prior to trial because respondent is a member of the class seeking such relief in another action.<sup>6</sup>

An eight-day jury trial was held in April 1978. Petitioners introduced evidence that respondent participated in several

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not medical doctors. See Brief for Respondent 2. Youngberg and Matthews are no longer at Pennhurst.

<sup>4</sup>Although the Court of Appeals described these restraints as "shackles," "soft" restraints, for the arms only, were generally used. 7 Record 53-55.

<sup>5</sup>Respondent uses "treatment" as synonymous with "habilitation" or "training." See Brief for Respondents 21-23.

<sup>6</sup>*Pennhurst State School and Hospital v. Halderman*, 451 U. S. 1 (1981) (remanded for further proceedings).



programs teaching basic self-care skills.<sup>7</sup> A comprehensive behavior-modification program was designed by staff members to reduce Romeo's aggressive behavior,<sup>8</sup> but that program was never implemented because of his mother's objections.<sup>9</sup> Respondent introduced evidence of his injuries and of conditions in his unit.<sup>10</sup>

At the close of the trial, the court instructed the jury that "if any or all of the defendants were aware of and failed to take all reasonable steps to prevent repeated attacks upon Nicholas Romeo," such failure deprived him of constitutional rights. App. to Pet. for Cert. 110a. The jury also was instructed that if the defendants shackled Romeo or denied him treatment "as a punishment for filing this lawsuit," his constitutional rights were violated under the Eighth Amendment. *Id.*, at 73a-75a. Finally, the jury was instructed that if they found the defendants "deliberately indifferent to the medical and psychological needs of Nicholas Romeo," they might find that Romeo's Eighth and Four-

<sup>7</sup> Prior to his transfer to Pennhurst's hospital ward, Romeo participated in programs dealing with feeding, showering, drying, dressing, self control, and toilet training, as well as a program providing interaction with staff members. Defendants' exhibit 10; 3 Record 69-70, 5 Record 44-56, 242-250, 6 Record 162-166; 7 Record 41-48.

Some programs continued while respondent was in the hospital, 5 Record 227, 248, 256; 6 Record 50, 162-166, Record 32, 34, 41-48, and they reduced respondent's aggressive behavior to some extent, 7 Record 45.

<sup>8</sup> 2 Record 7, 5 Record 88-90; 6 Record 88, 200-203; Defendants' Exhibit 1, at 9. The program called for short periods of separation from other residents and for use of "muffs" on plaintiff's hands for short periods of time, *i. e.*, 5 minutes, to prevent him from harming himself or others.

<sup>9</sup> 1 Record 53; 4 Record 25; 6 Record 204.

<sup>10</sup> The District Judge refused to allow testimony by two of Romeo's witnesses—trained professionals—indicating that Romeo would have benefited from more or different training programs. The trial judge explained that evidence of the advantages of alternative forms of treatment might be relevant to a malpractice suit, but was not relevant to a constitutional claim under § 1983. App. to Pet. for Cert. 101a.



teenth Amendment rights were violated. *Id.*, at 111a. The jury returned a verdict for the defendants, on which judgment was entered.

The Court of Appeals for the Third Circuit, sitting en banc, reversed and remanded for a new trial. 644 F. 2d 147 (1980). The court held that the Eighth Amendment, prohibiting cruel and unusual punishment of those convicted of crimes, was not an appropriate source for determining the rights of the involuntarily committed. Rather, the Fourteenth Amendment and the liberty interest protected by that amendment provided the proper constitutional basis for these rights. In applying the Fourteenth Amendment, the court found that the involuntarily committed retain liberty interests in freedom of movement and in personal security. These were "fundamental liberties" that can be limited only by an "overriding, non-punitive" state interest. 644 F. 2d, at 157-158 (footnote omitted). It further found that the involuntarily committed have a liberty interest in habilitation designed to "treat" their mental retardation. *Id.*, at 164-170.<sup>11</sup>

The en banc court did not, however, agree on the relevant standard to be used in determining whether Romeo's rights had been violated.<sup>12</sup> Because physical restraint "raises a presumption of a punitive sanction," the majority of the Court of Appeals concluded that it can be justified only by "compelling necessity." *Id.*, at 159-160. A somewhat different standard was appropriate for the failure to provide for

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<sup>11</sup>The Court of Appeals used "habilitation" and "treatment" as synonymous, though it regarded "habilitation" as more accurate in describing treatment needed by the mentally retarded. See 644 F. 2d, at 165 and n. 40.

<sup>12</sup>The existence of a qualified immunity defense was not at issue on appeal. The defendants had received instructions on this defense, App. 76a, and it was not challenged by respondent. 644 F. 2d, at 173, n. 1. After citing *Pierson v. Ray*, 386 U. S. 547 (1967) and *Scheuer v. Rhodes*, 416 U. S. 232 (1974), the majority of the Court of Appeals noted that such instructions should be given again on the remand. 644 F. 2d, at 171-172.



a resident's safety. The majority considered that such a failure must be justified by a showing of "substantial necessity." *Id.*, at 164. Finally, the majority held that when treatment has been administered, those responsible are liable only if the treatment is not "acceptable in the light of present medical or other scientific knowledge." *Id.*, at 166-167 and 173.<sup>13</sup>

Chief Judge Seitz, concurring in the judgment, considered the standards articulated by the majority as indistinguishable from those applicable to medical malpractice claims. In Chief Judge Seitz's view, the Constitution "only requires that the courts make certain that professional judgment in fact was exercised." 644 F. 2d, at 178. He concluded that the appropriate standard was whether the defendants' conduct was "such a substantial departure from accepted professional judgment, practice or standards in the care and treatment of this plaintiff as to demonstrate that the defendants did not base their conduct on a professional judgment." 644 F. 2d, at 178.<sup>14</sup>

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<sup>13</sup> Actually, the court divided the right-to-treatment claim into three categories and adopted three standards, but only the standard described in text is at issue before this Court. The Court of Appeals also stated that if a jury finds that *no* treatment has been administered, it may hold the institution's administrators liable unless they can provide a compelling explanation for the lack of treatment, 644 F. 2d at 165, 173, but respondent does not discuss this precise standard in his brief and it does not appear to be relevant to the facts of this case. In addition, the court considered "least intrusive" analysis appropriate to justify severe intrusions on individual dignity, such as permanent physical alteration or surgical intervention, *id.*, at 165-166, and 173, but respondent concedes that this issue is not present in this case.

<sup>14</sup> Judge Aldisert joined Chief Judge Seitz's opinion, but wrote separately to emphasize the nature of the difference between the majority opinion and that of the Chief Judge. On a conceptual level, Judge Aldisert thought that the court erred in abandoning the common-law method of deciding the case at bar rather than articulating broad principles unconnected with the facts of the case and of uncertain meaning. 644 F. 2d, at 182-183. And,



We granted the petition for certiorari because of the importance of the question presented to the administration of state institutions for the mentally retarded. 451 U. S. 982 (1981).

## II

We consider here for the first time the substantive rights of involuntarily-committed mentally retarded persons under the Fourteenth Amendment to the Constitution.<sup>15</sup> In this case, respondent has been committed under the laws of Pennsylvania, and he does not challenge the commitment. Rather, he argues that he has a constitutionally protected liberty interest in safety, freedom of movement, and training within the institution; and that petitioners infringed ~~of~~ these rights by failing to provide constitutionally required conditions of confinement. ✓

The mere fact that Romeo has been committed under proper procedures does not deprive him of all substantive liberty interests under the Fourteenth Amendment. See, e. g., *Vitek v. Jones*, 445 U. S. 480, 491-494 (1980). Indeed, the state concedes that respondent has a right to adequate food, shelter, clothing, and medical care.<sup>16</sup> We must decide

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on a pragmatic level, Judge Aldisert warned that neither juries nor those administering state institutions would receive guidance from the "amorphous constitutional law tenets" articulated in the majority opinion. *Id.*, at 184. See *id.*, at 183-185.

Judge Garth also joined Chief Judge Seitz's opinion, and wrote separately to criticize the majority for addressing issues not raised by the facts of this case. 644 F. 2d, at 186.

<sup>15</sup>In pertinent part, that Amendment provides that a State cannot deprive "any person of life, liberty, or property, without due process of law. . . ." U. S. Const., Amend. XIV, § 1.

Respondent no longer relies on the Eighth Amendment as a direct source of constitutional rights. See Brief for Respondent 13 n. 12.

<sup>16</sup>Brief for Petitioners 8, 11, 12 and n. 10; Brief for Respondent 15-16. See also Brief for Connecticut and Twenty Other States as *Amici Curiae* 8.



whether liberty interests also exist in safety, freedom of movement, and training. If such interests do exist, we must further decide whether they have been infringed in this case.

## A

Respondent's first two claims involve liberty interests recognized by prior decisions of this Court, interests that involuntary commitment proceedings do not extinguish.<sup>17</sup> The first is a claim to safe conditions. In the past, this Court has noted that the right to personal security constitutes an "historic liberty interest" protected substantively by the Due Process Clause. *Ingraham v. Wright*, 430 U. S. 651, 673 (1977). And that right is not extinguished by lawful confinement, even for penal purposes.<sup>18</sup> See *Hutto v. Finney*, 437 U. S. 678 (1978). If it is cruel and unusual punishment to hold convicted criminals in unsafe conditions, it must be unconstitutional to confine the involuntarily committed—who may not be punished at all—in unsafe conditions.

Next, respondent claims a right to freedom from bodily restraint. In other contexts, the existence of such an interest is clear in the prior decisions of this Court. Indeed, "[l]iberty from bodily restraint always has been recognized as the core of the liberty protected by the Due Process Clause from arbitrary governmental action." *Greenholtz v. Nebraska Penal Inmates*, 442 U. S. 1, 18 (1979) (POWELL, J., concurring). This interest survives criminal conviction and incarceration. Similarly, it must also survive involuntary commitment.

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Petitioners argue that they have fully protected these interests.

<sup>17</sup> Petitioners do not appear to argue to the contrary. See Brief for Petitioners 27-31.

<sup>18</sup> It is true that in cases dealing with prisoners, analysis begins with the Eighth Amendment's proscription of cruel and unusual punishment, and the Eighth Amendment has no direct bearing on non-penal institutions. See *Ingraham v. Wright*, 430 U. S. 651, 667-668 (1977).



## B

Respondent's remaining claim is more troubling. In his words, he asserts a "constitutional right to minimally adequate habilitation." Brief, 8, 23, 45. This is a substantive due process claim that is said to be grounded in the liberty component of the Due Process Clause of the Fourteenth Amendment.<sup>19</sup> The term "habilitation", used in psychiatry, is not defined precisely or consistently in the opinions below or in the briefs of the parties or the amici.<sup>20</sup> As noted previously, at n. 1, *supra*, the term refers to "training and development of needed skills." Respondent emphasizes that the right he asserts is for "minimal" training, see Brief of Respondent at 34, and he would leave the type and extent of training to be determined on a case-by-case basis "in light of present medical or other scientific knowledge," *id.*, at 45.

Comma

<sup>19</sup> Respondent also argues that he was committed for care and treatment under state law, and that he therefore has a state substantive right to habilitation entitled to substantive, not procedural, protection under the Due Process Clause of the Federal Constitution. But this argument is made for the first time in respondent's brief to this Court. It was not advanced in the courts below, and was not argued to the Court of Appeals as a ground for reversing the trial court. Given the uncertainty of Pennsylvania law and the lack of any guidance on this issue from the lower federal courts, we decline to consider it now. See *Dothard v. Rawlinson*, 433 U. S. 321, 323 n. 1 (1977); *Duignan v. United States*, 274 U. S. 195, 200 (1927); *Old Jordan Milling Co. v. Societe Anonyme des Mines*, 164 U. S. 261, 264-265 (1896).

<sup>20</sup> Professionals in the habilitation of the mentally retarded disagree strongly on the question whether effective training of all severely or profoundly retarded individuals is even possible. See, e. g., Favell, Risley, Wolfe, Riddle, & Rasmussen, *The Limits of Habilitation: How Can We Identify Them and How Can We Change Them?*, 1 *Analysis and Intervention in Developmental Disabilities* 37 (1981); Bailey, *Wanted: A Rational Search for the Limiting Conditions of Habilitation in the Retarded*, 1 *Analysis and Intervention in Developmental Disabilities* 45 (1981); Kauffman & Krouse, *The Cult of Educability: Searching for the Substance of Things Hoped for; The Evidence of Things Not Seen*, 1 *Analysis and Intervention in Developmental Disabilities* 53 (1981).



In addressing the asserted right to training, we start from established principles. As a general matter, a State is under no constitutional duty to provide substantive services for those within its border. See, *Harris v. McRae*, 448 U. S. 297, 318 (1980) (publicly funded abortions); *Maier v. Roe*, 432 U. S. 464, 469 (1977) (medical treatment). When a person is institutionalized—and wholly dependent on the State—it is conceded by petitioner that a duty to provide certain services and care does exist, although even then a State necessarily has considerable discretion in determining the nature and scope of its responsibilities. See *Richardson v. Belcher*, 404 U. S. 78, 83–84 (1971); *Dandridge v. Williams*, 397 U. S. 471, 478 (1970). Nor must a State “choose between attacking every aspect of a problem or not attacking the problem at all.” *Id.*, at 486–487.

Respondent, in light of the severe character of his retardation, concedes that no amount of training will make possible his release. <sup>And he</sup> Nor does <sup>not</sup> he argue that if he were still at home, the State would have an obligation to provide training at its expense. See Tr. of Oral Arg. 33. The record reveals that respondent’s primary needs are bodily safety and a minimum of physical restraint, and respondent clearly claims training related to these needs.<sup>21</sup> As we have recognized that there is a constitutionally protected liberty interest in safety and freedom from restraint, *ante* at — <sup>Comma</sup> training may be necessary to avoid unconstitutional infringement of those rights. On the basis of the record before us, it is quite uncertain whether respondent seeks any “habilitation” or training unrelated to safety and freedom from bodily restraints. In his brief to this Court, <sup>Romeo</sup> he indicates that even the self-care programs <sup>he</sup> Romeo seeks are needed to reduce his aggressive behavior. See Reply Brief of Respondent at 21–22, 50. And in his offer of proof to the trial court, respondent repeatedly indicated that, if allowed to testify, his experts would show

<sup>21</sup> See, e. g., description of complaint at ———, *supra*.



that additional training programs, including self-care programs, were needed to reduce Romeo's aggressive behavior. Petition for Certiorari 984-1044.<sup>22</sup> If, as seems the case, respondent seeks only training related to safety and freedom from restraints, this case does not present the difficult question whether a mentally retarded person involuntarily committed to a state institution has some general constitutional right to training *per se*, even when no type or amount of training would lead to freedom.

Chief Judge Seitz, in language apparently adopted by respondent, observed:

"I believe that the plaintiff has a constitutional right to minimally adequate care and treatment. The existence of a constitutional right to care and treatment is no longer a novel legal proposition." 644 F. 2d, — (Pet. 544).

Chief Judge Seitz did not identify or otherwise define—beyond the right to reasonable safety and freedom from physical restraint—the "minimally adequate care and treatment" that appropriately may be required for this respondent.<sup>23</sup> In the circumstances presented by this case, and on the basis of the record developed to date, we agree with his view and conclude that respondent's liberty interests require the State to provide minimally adequate or reasonable training to ensure safety and freedom from undue restraint. In view of the kinds of treatment sought by respondent and the evidence of record, we need go no further in this case.<sup>24</sup>

<sup>22</sup> See also Respondent's Brief, as Appellant, to the Court of Appeals for the Third Circuit, at 11-14, 20-21, and 24.

<sup>23</sup> Chief Judge Seitz used the term "treatment" as synonymous with training or habilitation. See 644 F. 2d, at — (petn 65a-67a, end of Seitz's opinion).

<sup>24</sup> It is not feasible, as is evident from the variety of language and formulations in the opinions below and the various briefs here, to define or identify the type of training that may be required in every case. A court



## III

## A

We have established that Romeo retains liberty interests in safety and freedom from bodily restraint. Yet these interests are not absolute; indeed to some extent they are in conflict. In operating an institution such as Pennhurst, there are occasions in which it is necessary for the State to restrain the movement of residents—for example, to protect them as well as others from violence.<sup>25</sup> Similar restraints may also be appropriate in a training program. And an institution cannot protect its residents from all danger of violence if it is to permit them to have any freedom of movement. The question then is not simply whether a liberty interest has been infringed but whether the extent or nature of the restraint or lack of absolute safety is such as to violate due process.

; (semicolon)

In determining whether a substantive right protected by the Due Process Clause has been violated, it is necessary to balance "the liberty of the individual" and "the demands of an organized society." *Poe v. Ullman*, 367 U. S. 497, 522, 542 (1961) (Harlan, J., dissenting). In seeking this balance in other cases, the Court has weighed the individual's interest in liberty against the State's asserted reasons for restraining individual liberty. In *Bell v. Wolfish*, 441 U. S. 520 (1979), for example, we considered a challenge to pre-trial detainees' confinement conditions. We agreed that the detainees, not yet convicted of the crime charged, could not be punished.

properly may start with the generalization that there is a right to minimally adequate training. The basic requirement of adequacy, in terms more familiar to courts, may be stated as that training which is reasonable in light of identifiable liberty interests and the circumstances of the case. A federal court, of course, must identify a constitutional predicate for the imposition of any affirmative duty on a state.

<sup>25</sup> In Romeo's case, there can be no question that physical restraint was necessary at times. See n. 2, *supra*.

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(New ¶ at end of fn 24.)

New ¶ at end of n. 24



But we upheld those restrictions on liberty that were reasonably related to legitimate government objectives and not tantamount to punishment.<sup>26</sup> See *id.*, at 539. We have taken a similar approach in deciding procedural due-process challenges to civil commitment proceedings. In *Parham v. J.R.*, 442 U. S. 584 (1979), for example, we considered a challenge to state procedures for commitment of a minor with parental consent. In determining that *procedural* due process did not mandate an adversarial hearing, we weighed the liberty interest of the individual against the legitimate interests of the State, including the fiscal and administrative burdens additional procedures would entail.<sup>27</sup> *Id.*, at 599-600.

Accordingly, whether respondent's constitutional rights have been violated must be determined by balancing his liberty interests against the relevant state interests. If there is to be any uniformity in protecting these interests, this balancing cannot be left to the unguided discretion of a judge or jury. We therefore turn to consider the proper standard for determining whether a State adequately has protected the rights of the involuntarily-committed mentally retarded.

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<sup>26</sup> See also *Jackson v. Indiana*, 406 U. S. 715, 738 (1972) (holding that an incompetent pre-trial detainee cannot, after a competency hearing, be held indefinitely without either criminal process or civil commitment; due process requires, at a minimum, some rational relation between the nature and duration of commitment and its purpose). This case differs in critical respects from *Jackson*, a procedural due process case involving the validity of an involuntary commitment. Here, petitioner was committed by a court on petition of his mother who averred that in view of Romeo's condition she could neither care for him nor control his violence. *Ante*, at 2. Thus, the purpose of petitioner's commitment was to provide reasonable care and safety, conditions not available to him outside of an institution.

<sup>27</sup> See also *Addington v. Texas*, 441 U. S. 418 (1979). In that case, we held that the state must prove the need for commitment by "clear and convincing" evidence. See *id.*, at 431-432. We reached this decision by weighing the individual's liberty interest against the state's legitimate interests in confinement.



## B

We think the standard articulated by Chief Judge Seitz affords the necessary guidance and reflects the proper balance between the legitimate interests of the State and the rights of the involuntarily committed to reasonable conditions of safety and freedom from unreasonable restraints. He would have held that "the Constitution only requires that the courts make certain that professional judgment in fact was exercised. It is not appropriate for the courts to specify which of several professionally acceptable choices should have been made." 644 F. 2d, at 178. This standard is higher than the deliberate indifference formulation applied in the context of penal institutions. See *Estelle v. Gamble*, 429 U. S. 97 (1976). Persons who have been involuntarily committed are entitled to more considerate treatment and conditions of confinement than criminals whose conditions of confinement are designed to punish. At the same time, this standard is lower than the "compelling" or "substantial" necessity tests the Court of Appeals would require a state to meet to justify use of restraints or conditions of less than absolute safety. We think this requirement would place an undue burden on the administration of institutions such as Pennhurst and also would restrict unnecessarily the exercise of professional judgment as to the needs of residents.

In this case, ~~we agree~~ that the minimally adequate training required is such training as may be reasonable in light of respondent's liberty interests in safety and freedom from unreasonable restraints. In determining what is "reasonable"—in this and in any case presenting a claim for training by a state—we emphasize that courts must show deference to the judgment exercised by a qualified professional. ~~NOT~~

<sup>28</sup> Our holding entitles respondent to a right that also can be characterized as procedural. We hold that the involuntary committed are entitled to an informal, non-adversarial "hearing" by a professional exercising his professional judgment—a "procedure" not unlike that upheld in *Parham v.*

¶ Moreover, we agree that respondent is entitled to minimally adequate training.

by the Constitution

delete call to fn 28

delete fn 28



← By so limiting judicial review of challenges to conditions in state institutions, interference by the federal judiciary with the internal operations of these institutions should be minimized. <sup>28</sup> Moreover, there certainly is no reason to think judges or juries are better qualified than appropriate professionals in making such decisions. See *Parham v. J.R.*, 442 U. S. 584, 607 (1979); *Bell v. Wolfish*, *supra*, 441 U. S., at 544 (Courts should not “second-guess the expert administrators on matters on which they are better informed.”). For these reasons, the decision, if made by a professional, <sup>29</sup> is

~~*J.R.*, 442 U. S. 584 (1979), a procedural due process case discussed in text at —, *supra*, and in note 30, *infra*.~~

<sup>28</sup> See *Parham v. J.R.*, *supra*, 442 U. S., at 608 n. 16 (In limiting judicial review of medical decisions made by professionals, “it is incumbent on courts to design procedures that protect the rights of individuals without unduly burdening the legitimate efforts of the states to deal with difficult social problems.”). See also *Rhodes v. Chapman*, 452 U. S. 337, — (1981) (“[C]ourts cannot assume that state legislatures and prison officials are insensitive to the requirements of the Constitution or to the perplexing sociological problems of how best to achieve the goals of the penal function in the criminal justice system. . . .”); *Bell v. Wolfish*, 441 U. S. 520, 539 (1979) (In context of conditions of confinement of pre-trial detainees, “courts must be mindful that these inquiries spring from constitutional requirements and that judicial answers to them must reflect that fact rather than a court’s idea of how best to operate a detention facility.”); *Wolff v. McDonnell*, 418 U. S. 539, 556 (1974) (In considering procedural due process claim in context of prison, “there must be mutual accommodation between institutional needs and objectives and the provisions of the Constitution that are of general application.”). See also Townsend & Mattson, *The Interaction of Law and Special Education: Observing the Emporer’s New Clothes*, 1 *Analysis and Intervention in Developmental Disabilities* 75 (1981) (judicial resolution of rights of the handicapped can have adverse as well as positive effects on social change).

<sup>29</sup> By ‘professional’ decision-maker, we mean a person competent, whether by education, training or experience, to make the particular decision at issue. Long term treatment decisions normally should be made by persons with degrees in medicine or nursing, or with appropriate training in areas such as psychology, physical therapy, or the care and training of the retarded. Of course, day-to-day decisions regarding care—including



presumptively valid; liability may be imposed only when the decision by the professional is such a substantial departure from accepted professional judgment, practice or standards as to demonstrate that the person responsible actually did not base the decision on such a judgment. <sup>✓</sup>In an action for damages against a professional in his individual capacity, however, the professional will not be liable if he was unable to satisfy his normal professional standards because of budgetary constraints; in such a situation, good-faith immunity would bar liability. See note 10, *supra*.

<sup>✓</sup>121 IV

In deciding this case, we have weighed those post-commitment interests cognizable as liberty interests under the Due Process Clause of the Fourteenth Amendment against legitimate state interests and in light of the constraints under which most state institutions necessarily operate. We repeat that the state concedes a duty to provide adequate food, shelter, clothing and medical care. These are the essentials of the care that the state must provide. The state also has the unquestioned duty to provide reasonable safety for all residents and personnel within the institution. And it may not restrain residents except when and to the extent professional judgment deems this necessary to assure such safety or to provide needed training. In this case, therefore, the state is under a duty to provide respondent with such training as an appropriate professional would consider reasonable to ensure his safety and to facilitate his ability to function free from bodily restraints. It may well be unreasonable not to provide training when training could significantly reduce the need for restraints or the likelihood of violence.

Respondent thus enjoys constitutionally protected interests in conditions of reasonable care and safety, reasonably

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decisions that must be made without delay—necessarily will be made in many instances by employees without formal training but who are subject to the supervision of qualified persons.

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non-restrictive confinement conditions, and such training as may be required by these interests. Such conditions of confinement would comport fully with the purpose of respondent's commitment. Cf. *Jackson v. Indiana*, 406 U. S. 715, 738 (1972); see n. 27, *ante*. In determining whether the state has met its obligations in these respects, decisions made by the appropriate professional are entitled to a presumption of correctness. Such a presumption is necessary to enable institutions of this type—often, unfortunately, overcrowded and understaffed—to continue to function. A single professional may have to make decisions with respect to a number of residents with widely varying needs and problems in the course of a normal day. The administrators, and particularly professional personnel, should not be required to make each decision in the shadow of an action for damages.

In this case, we conclude that the jury was erroneously instructed on the assumption that the proper standard of liability was that of the Eighth Amendment. Accordingly, we vacate the decision of the Court of Appeals and remand for further proceedings consistent with this decision.

*So ordered.*



Accordingly, whether respondent's constitutional rights have been violated must be determined by balancing his liberty interests against various state interests. the rel If there is to be any uniformity in protecting these interests, this balancing cannot be left to the unguided discretion of a judge or jury. We therefore turn to consider the proper standard for determining whether a State adequately has protected the rights of the involuntarily-committed mentally retarded.

## B

We think the standard articulated by Chief Judge Seitz affords the necessary guidance and reflects the proper balance between the legitimate interests of the State and the rights of the involuntarily committed to reasonable conditions of safety and freedom from unreasonable restraints. He would have held that "the Constitution only requires that the courts make certain that professional judgment in fact was exercised. It is not appropriate for the courts to specify which of several professionally acceptable choices should have been made."<sup>29</sup> 644 F. 2d, at 178. This standard is higher than the deliberate indifference formulation applied in the context of penal institutions. See *Estelle v. Gamble*, 429 U. S. 97 (1976). Persons who have been involuntarily committed are entitled to more considerate treatment and conditions of confinement than criminals whose conditions of confinement are designed to punish. At the same time, this standard is lower than the "compelling" or "substantial" necessity test considered necessary by the Court of Appeals to justify use of restraints or conditions of less than absolute safety. We think this requirement that the formula adopted by the Court of Appeals would place

the Court of Appeals would require a state to meet

<sup>29</sup> We do disagree with Chief Judge Seitz's view as to the existence of a right to training *per se*. He finds that such a right does exist, whereas we find no such right cognizable as a liberty interest protected by the Fourteenth Amendment. See 644 F. 2d, at 176 (Chief Judge Seitz uses "treatment" rather than "training.").



Footnotes 19 on renumbered.

- I Stylistic changes only: 2, 4, 7, 17
- II Substantive changes: 8, 9, 10-16

To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Rehnquist  
Justice Stevens  
Justice O'Connor

*File*

From: **Justice Powell**

Circulated: \_\_\_\_\_

Recirculated: \_\_\_\_\_

*As delivered to  
WJB on 6/2. See  
my letter*

4th DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 80-1429

DUANE YOUNGBERG, ETC., ET AL., PETITIONERS, v.  
NICHOLAS ROMEO, AN INCOMPETENT, BY HIS  
MOTHER AND NEXT FRIEND, PAULA ROMEO

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE THIRD CIRCUIT

[May —, 1982]

JUSTICE POWELL delivered the opinion of the Court.

The question presented is whether respondent, involuntarily committed to a state institution for the mentally retarded, has substantive rights under the Due Process Clause of the Fourteenth Amendment to (i) safe conditions of confinement; (ii) freedom from bodily restraints; and (iii) training or "habilitation."<sup>1</sup> Respondent sued under 42 U. S. C. § 1983 three administrators of the institution, claiming damages for the alleged breach of his constitutional rights.

I

Respondent Nicholas Romeo is profoundly retarded. Although 33 years old, he has the mental capacity of an eighteen-month old child. He cannot talk and lacks the most basic self-care skills. Until he was 26, respondent lived with his parents in Philadelphia. But after the death of his father in May 1974, his mother was unable to care for him. Within

<sup>1</sup>The American Psychiatric Association explains that "[t]he word 'habilitation,' . . . is commonly used to refer to programs for the mentally-retarded because mental retardation is . . . a learning disability and training impairment rather than an illness. . . . [T]he principal focus of habilitation is upon training and development of needed skills." Brief of American Psychiatric Association as *Amicus Curiae*, at 4, n. 1.

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WJB's  
letter of  
approval*



two weeks of the father's death, respondent's mother sought his temporary admission to a nearby Pennsylvania hospital.

Shortly thereafter, she asked the Philadelphia County Court of Common Pleas to admit Romeo to a state facility on a permanent basis. Her petition to the court explained that she was unable to care for Romeo or control his violence.<sup>2</sup> As part of the commitment process, Romeo was examined by a physician and a psychologist. They both certified that respondent was severely retarded and unable to care for himself. App. 21-22 and 28-29. On June 11, 1974, the Court of Common Pleas committed respondent to the Pennhurst State School and Hospital, pursuant to the applicable involuntary commitment provision of the Pennsylvania Mental Health and Mental Retardation Act, Pa. Stat. Ann. tit. 50 § 4406.

At Pennhurst, Romeo was injured on numerous occasions, both by his own violence and by the reactions of other residents to him. Respondent's mother became concerned about these injuries. After objecting to respondent's treatment several times, she filed this complaint on November 4, 1976, in the United States District Court for the Eastern District of Pennsylvania as his next friend. The complaint alleged that "[d]uring the period July, 1974 to the present, plaintiff has suffered injuries on at least sixty-three occasions." The complaint originally sought damages and injunctive relief from Pennhurst's director and two supervisors<sup>3</sup>; it alleged

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<sup>2</sup> Mrs. Romeo's petition to the Court of Common Pleas stated: "Since my husband's death I am unable to handle him. He becomes violent—Kicks, punches, breaks glass; He can't speak—wants to express himself but can't. He is [a] constant 24 hr. care. [W]ithout my husband I am unable to care for him." App. 18.

<sup>3</sup> Petitioner Duane Youngberg was the Superintendent of Pennhurst; he had supervisory authority over the entire facility. Respondent Richard Matthews was the Director of Resident Life at Pennhurst. Respondent Marguerite Conley was Unit Director for the unit in which respondent was incarcerated. According to respondent, petitioners are administrators, not medical doctors. See Brief for Respondent 2. Youngberg and Mat-



that these officials knew, or should have known, that Romeo was suffering injuries and that they failed to institute appropriate preventive procedures, thus violating his rights under the Eighth and Fourteenth Amendments.

Thereafter, in late 1976, Romeo was transferred from his ward to the hospital for treatment of a broken arm. While in the infirmary, and by order of a doctor, he was physically restrained during portions of each day.<sup>4</sup> These restraints were ordered by Dr. Gabroy, not a defendant here, to protect Romeo and others in the hospital, some of whom were in traction or were being treated intravenously. 7 Record 40, 49, 76-78. Although respondent normally would have returned to his ward when his arm healed, the parties to this litigation agreed that he should remain in the hospital due to the pending law suit. 5 Record 248, 6 R. 57-58 and 137. Nevertheless, in December 1977, a second amended complaint was filed alleging that the defendants were restraining respondent for prolonged periods on a routine basis. The second amended complaint also added a claim for damages to compensate Romeo for the defendants' failure to provide him with appropriate "treatment or programs for his mental retardation."<sup>5</sup> All claims for injunctive relief were dropped prior to trial because respondent is a member of the class seeking such relief in another action.<sup>6</sup>

An eight-day jury trial was held in April 1978. Petitioners introduced evidence that respondent participated in several programs teaching basic self-care skills.<sup>7</sup> A comprehensive

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thews are no longer at Pennhurst.

<sup>4</sup> Although the Court of Appeals described these restraints as "shackles," "soft" restraints, for the arms only, were generally used. 7 Record 53-55.

<sup>5</sup> Respondent uses "treatment" as synonymous with "habilitation" or "training." See Brief for Respondents 21-23.

<sup>6</sup> *Pennhurst State School and Hospital v. Halderman*, 451 U. S. 1 (1981) (remanded for further proceedings).

<sup>7</sup> Prior to his transfer to Pennhurst's hospital ward, Romeo participated



behavior-modification program was designed by staff members to reduce Romeo's aggressive behavior,<sup>8</sup> but that program was never implemented because of his mother's objections.<sup>9</sup> Respondent introduced evidence of his injuries and of conditions in his unit.<sup>10</sup>

At the close of the trial, the court instructed the jury that "if any or all of the defendants were aware of and failed to take all reasonable steps to prevent repeated attacks upon Nicholas Romeo," such failure deprived him of constitutional rights. App. to Pet. for Cert. 110. The jury also was instructed that if the defendants shackled Romeo or denied him treatment "as a punishment for filing this lawsuit," his constitutional rights were violated under the Eighth Amendment. *Id.*, at 73-75. Finally, the jury was instructed that if they found the defendants "deliberately indifferent to the medical and psychological needs of Nicholas Romeo," they might find that Romeo's Eighth and Fourteenth Amendment rights were violated. *Id.*, at 111. The jury returned a verdict for the defendants, on which judg-

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in programs dealing with feeding, showering, drying, dressing, self control, and toilet training, as well as a program providing interaction with staff members. Defendants' exhibit 10; 3 Record 69-70, 5 Record 44-56, 242-250, 6 Record 162-166; 7 Record 41-48.

Some programs continued while respondent was in the hospital, 5 Record 227, 248, 256; 6 Record 50, 162-166, Record 32,34, 41-48, and they reduced respondent's aggressive behavior to some extent, 7 Record 45.

<sup>8</sup> 2 Record 7, 5 Record 88-90; 6 Record 88, 200-203; Defendants' Exhibit 1, at 9. The program called for short periods of separation from other residents and for use of "muffs" on plaintiff's hands for short periods of time, *i. e.*, 5 minutes, to prevent him from harming himself or others.

<sup>9</sup> 1 Record 53; 4 Record 25; 6 Record 204.

<sup>10</sup> The District Judge refused to allow testimony by two of Romeo's witnesses—trained professionals—indicating that Romeo would have benefited from more or different training programs. The trial judge explained that evidence of the advantages of alternative forms of treatment might be relevant to a malpractice suit, but was not relevant to a constitutional claim under § 1983. App. to Pet. for Cert. 101.



ment was entered.

The Court of Appeals for the Third Circuit, sitting en banc, reversed and remanded for a new trial. 644 F. 2d 147 (1980). The court held that the Eighth Amendment, prohibiting cruel and unusual punishment of those convicted of crimes, was not an appropriate source for determining the rights of the involuntarily committed. Rather, the Fourteenth Amendment and the liberty interest protected by that amendment provided the proper constitutional basis for these rights. In applying the Fourteenth Amendment, the court found that the involuntarily committed retain liberty interests in freedom of movement and in personal security. These were "fundamental liberties" that can be limited only by an "overriding, non-punitive" state interest. 644 F. 2d, at 157-158 (footnote omitted). It further found that the involuntarily committed have a liberty interest in habilitation designed to "treat" their mental retardation. *Id.*, at 164-170.<sup>11</sup>

The en banc court did not, however, agree on the relevant standard to be used in determining whether Romeo's rights had been violated.<sup>12</sup> Because physical restraint "raises a presumption of a punitive sanction," the majority of the Court of Appeals concluded that it can be justified only by "compelling necessity." *Id.*, at 159-160. A somewhat different standard was appropriate for the failure to provide for a resident's safety. The majority considered that such a failure must be justified by a showing of "substantial necessity."

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<sup>11</sup> The Court of Appeals used "habilitation" and "treatment" as synonymous, though it regarded "habilitation" as more accurate in describing treatment needed by the mentally retarded. See 644 F. 2d, at 165 and n. 40.

<sup>12</sup> The existence of a qualified immunity defense was not at issue on appeal. The defendants had received instructions on this defense, App. 76a, and it was not challenged by respondent. 644 F. 2d, at 173, n. 1. After citing *Pierson v. Ray*, 386 U. S. 547 (1967) and *Scheuer v. Rhodes*, 416 U. S. 232 (1974), the majority of the Court of Appeals noted that such instructions should be given again on the remand. 644 F. 2d, at 171-172.



*Id.*, at 164. Finally, the majority held that when treatment has been administered, those responsible are liable only if the treatment is not "acceptable in the light of present medical or other scientific knowledge." *Id.*, at 166-167 and 173.<sup>13</sup>

Chief Judge Seitz, concurring in the judgment, considered the standards articulated by the majority as indistinguishable from those applicable to medical malpractice claims. In Chief Judge Seitz's view, the Constitution "only requires that the courts make certain that professional judgment in fact was exercised." 644 F. 2d, at 178. He concluded that the appropriate standard was whether the defendants' conduct was "such a substantial departure from accepted professional judgment, practice or standards in the care and treatment of this plaintiff as to demonstrate that the defendants did not base their conduct on a professional judgment." 644 F. 2d, at 178.<sup>14</sup>

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<sup>13</sup> Actually, the court divided the right-to-treatment claim into three categories and adopted three standards, but only the standard described in text is at issue before this Court. The Court of Appeals also stated that if a jury finds that *no* treatment has been administered, it may hold the institution's administrators liable unless they can provide a compelling explanation for the lack of treatment, 644 F. 2d at 165, 173, but respondent does not discuss this precise standard in his brief and it does not appear to be relevant to the facts of this case. In addition, the court considered "least intrusive" analysis appropriate to justify severe intrusions on individual dignity, such as permanent physical alteration or surgical intervention, *id.*, at 165-166, and 173, but respondent concedes that this issue is not present in this case.

<sup>14</sup> Judge Aldisert joined Chief Judge Seitz's opinion, but wrote separately to emphasize the nature of the difference between the majority opinion and that of the Chief Judge. On a conceptual level, Judge Aldisert thought that the court erred in abandoning the common-law method of deciding the case at bar rather than articulating broad principles unconnected with the facts of the case and of uncertain meaning. 644 F. 2d, at 182-183. And, on a pragmatic level, Judge Aldisert warned that neither juries nor those administering state institutions would receive guidance from the "amorphous constitutional law tenets" articulated in the majority opinion. *Id.*, at 184. See *id.*, at 183-185.



We granted the petition for certiorari because of the importance of the question presented to the administration of state institutions for the mentally retarded. 451 U. S. 982 (1981).

## II

We consider here for the first time the substantive rights of involuntarily-committed mentally retarded persons under the Fourteenth Amendment to the Constitution.<sup>15</sup> In this case, respondent has been committed under the laws of Pennsylvania, and he does not challenge the commitment. Rather, he argues that he has a constitutionally protected liberty interest in safety, freedom of movement, and training within the institution; and that petitioners infringed these rights by failing to provide constitutionally required conditions of confinement.

The mere fact that Romeo has been committed under proper procedures does not deprive him of all substantive liberty interests under the Fourteenth Amendment. See, e. g., *Vitek v. Jones*, 445 U. S. 480, 491–494 (1980). Indeed, the state concedes that respondent has a right to adequate food, shelter, clothing, and medical care.<sup>16</sup> We must decide whether liberty interests also exist in safety, freedom of movement, and training. If such interests do exist, we must further decide whether they have been infringed in this case.

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Judge Garth also joined Chief Judge Seitz's opinion, and wrote separately to criticize the majority for addressing issues not raised by the facts of this case. 644 F. 2d, at 186.

<sup>15</sup> In pertinent part, that Amendment provides that a State cannot deprive "any person of life, liberty, or property, without due process of law. . . ." U. S. Const., Amend. XIV, § 1.

Respondent no longer relies on the Eighth Amendment as a direct source of constitutional rights. See Brief for Respondent 13 n. 12.

<sup>16</sup> Brief for Petitioners 8, 11, 12 and n. 10; Brief for Respondent 15–16. See also Brief for Connecticut and Twenty Other States as *Amici Curiae* 8. Petitioners argue that they have fully protected these interests.



## A

Respondent's first two claims involve liberty interests recognized by prior decisions of this Court, interests that involuntary commitment proceedings do not extinguish.<sup>17</sup> The first is a claim to safe conditions. In the past, this Court has noted that the right to personal security constitutes an "historic liberty interest" protected substantively by the Due Process Clause. *Ingraham v. Wright*, 430 U. S. 651, 673 (1977). And that right is not extinguished by lawful confinement, even for penal purposes.<sup>18</sup> See *Hutto v. Finney*, 437 U. S. 678 (1978). If it is cruel and unusual punishment to hold convicted criminals in unsafe conditions, it must be unconstitutional to confine the involuntarily committed—who may not be punished at all—in unsafe conditions.

Next, respondent claims a right to freedom from bodily restraint. In other contexts, the existence of such an interest is clear in the prior decisions of this Court. Indeed, "[l]iberty from bodily restraint always has been recognized as the core of the liberty protected by the Due Process Clause from arbitrary governmental action." *Greenholtz v. Nebraska Penal Inmates*, 442 U. S. 1, 18 (1979) (POWELL, J., concurring). This interest survives criminal conviction and incarceration. Similarly, it must also survive involuntary commitment.

## B

Respondent's remaining claim is more troubling. In his words, he asserts a "constitutional right to minimally adequate habilitation." Brief, 8, 23, 45. This is a substantive due process claim that is said to be grounded in the liberty

<sup>17</sup> Petitioners do not appear to argue to the contrary. See Brief for Petitioners 27-31.

<sup>18</sup> It is true that in cases dealing with prisoners, analysis begins with the Eighth Amendment's proscription of cruel and unusual punishment, and the Eighth Amendment has no direct bearing on non-penal institutions. See *Ingraham v. Wright*, 430 U. S. 651, 667-668 (1977).



component of the Due Process Clause of the Fourteenth Amendment.<sup>19</sup> The term “habilitation”, used in psychiatry, is not defined precisely or consistently in the opinions below or in the briefs of the parties or the amici.<sup>20</sup> As noted previously, at n. 1, *supra*, the term refers to “training and development of needed skills.” Respondent emphasizes that the right he asserts is for “minimal” training, see Brief of Respondent at 34, and he would leave the type and extent of training to be determined on a case-by-case basis “in light of present medical or other scientific knowledge,” *id.*, at 45.

In addressing the asserted right to training, we start from established principles. As a general matter, a State is under no constitutional duty to provide substantive services for those within its border. See, *Harris v. McRae*, 448 U. S. 297, 318 (1980) (publicly funded abortions); *Maier v. Roe*, 432

<sup>19</sup> Respondent also argues that he was committed for care and treatment under state law, and that he therefore has a state substantive right to habilitation entitled to substantive, not procedural, protection under the Due Process Clause of the Federal Constitution. But this argument is made for the first time in respondent's brief to this Court. It was not advanced in the courts below, and was not argued to the Court of Appeals as a ground for reversing the trial court. Given the uncertainty of Pennsylvania law and the lack of any guidance on this issue from the lower federal courts, we decline to consider it now. See *Dothard v. Rawlinson*, 433 U. S. 321, 323 n. 1 (1977); *Duignan v. United States*, 274 U. S. 195, 200 (1927); *Old Jordan Milling Co. v. Societe Anonyme des Mines*, 164 U. S. 261, 264-265 (1896).

<sup>20</sup> Professionals in the habilitation of the mentally retarded disagree strongly on the question whether effective training of all severely or profoundly retarded individuals is even possible. See, *e. g.*, Favell, Risley, Wolfe, Riddle, & Rasmussen, *The Limits of Habilitation: How Can We Identify Them and How Can We Change Them?*, 1 *Analysis and Intervention in Developmental Disabilities* 37 (1981); Bailey, *Wanted: A Rational Search for the Limiting Conditions of Habilitation in the Retarded*, 1 *Analysis and Intervention in Developmental Disabilities* 45 (1981); Kauffman & Krouse, *The Cult of Educability: Searching for the Substance of Things Hoped for; The Evidence of Things Not Seen*, 1 *Analysis and Intervention in Developmental Disabilities* 53 (1981).



U. S. 464, 469 (1977) (medical treatment). When a person is institutionalized—and wholly dependent on the State—it is conceded by petitioner that a duty to provide certain services and care does exist, although even then a State necessarily has considerable discretion in determining the nature and scope of its responsibilities. See *Richardson v. Belcher*, 404 U. S. 78, 83–84 (1971); *Dandridge v. Williams*, 397 U. S. 471, 478 (1970). Nor must a State “choose between attacking every aspect of a problem or not attacking the problem at all.” *Id.*, at 486–487.

Respondent, in light of the severe character of his retardation, concedes that no amount of training will make possible his release. And he does not argue that if he were still at home, the State would have an obligation to provide training at its expense. See Tr. of Oral Arg. 33. The record reveals that respondent’s primary needs are bodily safety and a minimum of physical restraint, and respondent clearly claims training related to these needs.<sup>21</sup> As we have recognized that there is a constitutionally protected liberty interest in safety and freedom from restraint, ~~and at~~ <sup>supra</sup> —, training may be necessary to avoid unconstitutional infringement of those rights. On the basis of the record before us, it is quite uncertain whether respondent seeks any “habilitation” or training unrelated to safety and freedom from bodily restraints. In his brief to this Court, Romeo indicates that even the self-care programs he seeks are needed to reduce his aggressive behavior. See Reply Brief of Respondent at 21–22, 50. And in his offer of proof to the trial court, respondent repeatedly indicated that, if allowed to testify, his experts would show that additional training programs, including self-care programs, were needed to reduce Romeo’s aggressive behavior. Petition for Certiorari 98–104.<sup>22</sup> If, as seems the case,

<sup>21</sup> See, e. g., description of complaint at 2-3 <sup>supra</sup>.

<sup>22</sup> See also Respondent’s Brief, as Appellant, to the Court of Appeals for the Third Circuit, at 11–14, 20–21, and 24.



respondent seeks only training related to safety and freedom from restraints, this case does not present the difficult question whether a mentally retarded person, involuntarily committed to a state institution, has some general constitutional right to training *per se*, even when no type or amount of training would lead to freedom.

Chief Judge Seitz, in language apparently adopted by respondent, observed:

"I believe that the plaintiff has a constitutional right to minimally adequate care and treatment. The existence of a constitutional right to care and treatment is no longer a novel legal proposition." 644 F. 2d, — (Pet. 54).

Chief Judge Seitz did not identify or otherwise define—beyond the right to reasonable safety and freedom from physical restraint—the "minimally adequate care and treatment" that appropriately may be required for this respondent.<sup>23</sup> In the circumstances presented by this case, and on the basis of the record developed to date, we agree with his view and conclude that respondent's liberty interests require the State to provide minimally adequate or reasonable training to ensure safety and freedom from undue restraint. In view of the kinds of treatment sought by respondent and the evidence of record, we need go no further in this case.<sup>24</sup>

<sup>23</sup> Chief Judge Seitz used the term "treatment" as synonymous with training or habilitation. See 644 F. 2d, at 181.

<sup>24</sup> It is not feasible, as is evident from the variety of language and formulations in the opinions below and the various briefs here, to define or identify the type of training that may be required in every case. A court properly may start with the generalization that there is a right to minimally adequate training. The basic requirement of adequacy, in terms more familiar to courts, may be stated as that training which is reasonable in light of identifiable liberty interests and the circumstances of the case. A federal court, of course, must identify a constitutional predicate for the imposition of any affirmative duty on a state.

Because the facts in cases of confinement of mentally retarded patients



## III

## A

We have established that Romeo retains liberty interests in safety and freedom from bodily restraint. Yet these interests are not absolute; indeed to some extent they are in conflict. In operating an institution such as Pennhurst, there are occasions in which it is necessary for the State to restrain the movement of residents—for example, to protect them as well as others from violence.<sup>25</sup> Similar restraints may also be appropriate in a training program. And an institution cannot protect its residents from all danger of violence if it is to permit them to have any freedom of movement. The question then is not simply whether a liberty interest has been infringed but whether the extent or nature of the restraint or lack of absolute safety is such as to violate due process.

In determining whether a substantive right protected by the Due Process Clause has been violated, it is necessary to balance “the liberty of the individual” and “the demands of an organized society.” *Poe v. Ullman*, 367 U. S. 497, 522, 542 (1961) (Harlan, J., dissenting). In seeking this balance in other cases, the Court has weighed the individual’s interest in liberty against the State’s asserted reasons for restraining individual liberty. In *Bell v. Wolfish*, 441 U. S. 520 (1979), for example, we considered a challenge to pre-trial detainees’

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vary widely, it is essential to focus on the facts and circumstances of the case before a court. Judge Aldisert, in his dissenting opinion in the court below, was critical of the “majority’s abandonment of incremental decisionmaking in favor of promulgation of broad standards . . . [that] lack[] utility for the groups most affected by this decision.” 644 F. 2d, at 183–184. Judge Garth agreed that reaching issues not presented by the case requires a court to articulate principles and rules of law in “the absence of an appropriate record . . . and without the benefit of analysis, argument or briefing” on such issues. *Id.*, at 186.

<sup>25</sup> In Romeo’s case, there can be no question that physical restraint was necessary at times. See n. 2, *supra*.



confinement conditions. We agreed that the detainees, not yet convicted of the crime charged, could not be punished. But we upheld those restrictions on liberty that were reasonably related to legitimate government objectives and not tantamount to punishment.<sup>26</sup> See *id.*, at 539. We have taken a similar approach in deciding procedural due-process challenges to civil commitment proceedings. In *Parham v. J.R.*, 442 U. S. 584 (1979), for example, we considered a challenge to state procedures for commitment of a minor with parental consent. In determining that *procedural* due process did not mandate an adversarial hearing, we weighed the liberty interest of the individual against the legitimate interests of the State, including the fiscal and administrative burdens additional procedures would entail.<sup>27</sup> *Id.*, at 599–600.

Accordingly, whether respondent's constitutional rights have been violated must be determined by balancing his liberty interests against the relevant state interests. If there is to be any uniformity in protecting these interests, this balancing cannot be left to the unguided discretion of a judge or jury. We therefore turn to consider the proper standard for determining whether a State adequately has protected the

<sup>26</sup> See also *Jackson v. Indiana*, 406 U. S. 715, 738 (1972) (holding that an incompetent pre-trial detainee cannot, after a competency hearing, be held indefinitely without either criminal process or civil commitment; due process requires, at a minimum, some rational relation between the nature and duration of commitment and its purpose). This case differs in critical respects from *Jackson*, a procedural due process case involving the validity of an involuntary commitment. Here, petitioner was committed by a court on petition of his mother who averred that in view of Romeo's condition she could neither care for him nor control his violence. *Ante*, at 2. Thus, the purpose of petitioner's commitment was to provide reasonable care and safety, conditions not available to him outside of an institution.

<sup>27</sup> See also *Addington v. Texas*, 441 U. S. 418 (1979). In that case, we held that the state must prove the need for commitment by "clear and convincing" evidence. See *id.*, at 431–432. We reached this decision by weighing the individual's liberty interest against the state's legitimate interests in confinement.



rights of the involuntarily-committed mentally retarded.

B

We think the standard articulated by Chief Judge Seitz affords the necessary guidance and reflects the proper balance between the legitimate interests of the State and the rights of the involuntarily committed to reasonable conditions of safety and freedom from unreasonable restraints. He would have held that "the Constitution only requires that the courts make certain that professional judgment in fact was exercised. It is not appropriate for the courts to specify which of several professionally acceptable choices should have been made." 644 F. 2d, at 178. This standard is higher than the deliberate indifference formulation applied in the context of penal institutions. See *Estelle v. Gamble*, 429 U. S. 97 (1976). Persons who have been involuntarily committed are entitled to more considerate treatment and conditions of confinement than criminals whose conditions of confinement are designed to punish. At the same time, this standard is lower than the "compelling" or "substantial" necessity tests the Court of Appeals would require a state to meet to justify use of restraints or conditions of less than absolute safety. We think this requirement would place an undue burden on the administration of institutions such as Pennhurst and also would restrict unnecessarily the exercise of professional judgment as to the needs of residents.

Moreover, we agree that respondent is entitled to minimally adequate training. In this case, ~~the~~ the minimally adequate training required by the Constitution is such training as may be reasonable in light of respondent's liberty interests in safety and freedom from unreasonable restraints. In determining what is "reasonable"—in this and in any case presenting a claim for training by a state—we emphasize that courts must show deference to the judgment exercised by a qualified professional. By so limiting judicial review of challenges to conditions in state institutions, interference by the



federal judiciary with the internal operations of these institutions should be minimized.<sup>28</sup> Moreover, there certainly is no reason to think judges or juries are better qualified than appropriate professionals in making such decisions. See *Parham v. J.R.*, 442 U. S. 584, 607 (1979); *Bell v. Wolfish*, *supra*, 441 U. S., at 544 (Courts should not “second-guess the expert administrators on matters on which they are better informed.”). For these reasons, the decision, if made by a professional,<sup>29</sup> is presumptively valid; liability may be im-

<sup>28</sup> See *Parham v. J.R.*, *supra*, 442 U. S., at 608 n. 16 (In limiting judicial review of medical decisions made by professionals, “it is incumbent on courts to design procedures that protect the rights of individuals without unduly burdening the legitimate efforts of the states to deal with difficult social problems.”). See also *Rhodes v. Chapman*, 452 U. S. 337, — (1981) (“[C]ourts cannot assume that state legislatures and prison officials are insensitive to the requirements of the Constitution or to the perplexing sociological problems of how best to achieve the goals of the penal function in the criminal justice system. . . .”); *Bell v. Wolfish*, 441 U. S. 520, 539 (1979) (In context of conditions of confinement of pre-trial detainees, “courts must be mindful that these inquiries spring from constitutional requirements and that judicial answers to them must reflect that fact rather than a court’s idea of how best to operate a detention facility.”); *Wolff v. McDonnell*, 418 U. S. 539, 556 (1974) (In considering procedural due process claim in context of prison, “there must be mutual accommodation between institutional needs and objectives and the provisions of the Constitution that are of general application.”). See also Townsend & Mattson, *The Interaction of Law and Special Education: Observing the Emperor’s New Clothes*, 1 *Analysis and Intervention in Developmental Disabilities* 75 (1981) (judicial resolution of rights of the handicapped can have adverse as well as positive effects on social change).

<sup>29</sup> By ‘professional’ decision-maker, we mean a person competent, whether by education, training or experience, to make the particular decision at issue. Long term treatment decisions normally should be made by persons with degrees in medicine or nursing, or with appropriate training in areas such as psychology, physical therapy, or the care and training of the retarded. Of course, day-to-day decisions regarding care—including decisions that must be made without delay—necessarily will be made in many instances by employees without formal training but who are subject to the supervision of qualified persons.



posed only when the decision by the professional is such a substantial departure from accepted professional judgment, practice or standards as to demonstrate that the person responsible actually did not base the decision on such a judgment.<sup>30</sup> In an action for damages against a professional in his individual capacity, however, the professional will not be liable if he was unable to satisfy his normal professional standards because of budgetary constraints; in such a situation, good-faith immunity would bar liability. See note 12, *supra*. |

## IV

In deciding this case, we have weighed those post-commitment interests cognizable as liberty interests under the Due Process Clause of the Fourteenth Amendment against legitimate state interests and in light of the constraints under which most state institutions necessarily operate. We repeat that the state concedes a duty to provide adequate food, shelter, clothing and medical care. These are the essentials of the care that the state must provide. The state also has the unquestioned duty to provide reasonable safety for all residents and personnel within the institution. And it may not restrain residents except when and to the extent professional judgment deems this necessary to assure such safety or to provide needed training. ¶ In this case, therefore, the state is under a duty to provide respondent with such training as an appropriate professional would consider reasonable to ensure his safety and to facilitate his ability to function free from bodily restraints. It may well be unreasonable not to provide training when training could significantly reduce the need for restraints or the likelihood of violence. ||

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<sup>30</sup>All members of the Court of Appeals agreed that respondent's expert testimony should have been admitted. This issue was not included in the questions presented for certiorari, and we have no reason to disagree with the view that the evidence was admissible. It appears relevant to whether petitioners' decisions were a substantial departure from accepted professional practice.



Respondent thus enjoys constitutionally protected interests in conditions of reasonable care and safety, reasonably non-restrictive confinement conditions, and such training as may be required by these interests. Such conditions of confinement would comport fully with the purpose of respondent's commitment. Cf. *Jackson v. Indiana*, 406 U. S. 715, 738 (1972); see n. 27, *ante*. In determining whether the state has met its obligations in these respects, decisions made by the appropriate professional are entitled to a presumption of correctness. Such a presumption is necessary to enable institutions of this type—often, unfortunately, overcrowded and understaffed—to continue to function. A single professional may have to make decisions with respect to a number of residents with widely varying needs and problems in the course of a normal day. The administrators, and particularly professional personnel, should not be required to make each decision in the shadow of an action for damages.

In this case, we conclude that the jury was erroneously instructed on the assumption that the proper standard of liability was that of the Eighth Amendment. Accordingly, we vacate the decision of the Court of Appeals and remand for further proceedings consistent with this decision.

*So ordered.*



2 SCHMIDT AND POLLARD v. OAKLAND SCHOOL DISTRICT

(1966).

We accordingly vacate the judgment of the Court of Appeals and remand the case for further proceedings consistent with this opinion.

*So ordered.*



Changes: 1, 2, 4, 5, 8, 10, 14.

New footnote 11.

Old footnote 18 deleted.

Footnotes  
in between  
renumbered.

To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Rehnquist  
Justice Stevens  
Justice O'Connor

From: **Justice Powell**

Circulated: \_\_\_\_\_

Recirculated: **JUN 10 1982**

5th DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 80-1429

DUANE YOUNGBERG, ETC., ET AL., PETITIONERS, v.  
NICHOLAS ROMEO, AN INCOMPETENT, BY HIS  
MOTHER AND NEXT FRIEND, PAULA ROMEO

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE THIRD CIRCUIT

[June —, 1982]

JUSTICE POWELL delivered the opinion of the Court.

The question presented is whether respondent, involuntarily committed to a state institution for the mentally retarded, has substantive rights under the Due Process Clause of the Fourteenth Amendment to (i) safe conditions of confinement; (ii) freedom from bodily restraints; and (iii) training or "habilitation."<sup>1</sup> Respondent sued under 42 U. S. C. § 1983 three administrators of the institution, claiming damages for the alleged breach of his constitutional rights.

### I

Respondent Nicholas Romeo is profoundly retarded. Although 33 years old, he has the mental capacity of an eighteen-month old child, with an I.Q. between 8 and 10. He cannot talk and lacks the most basic self-care skills. Until he was 26, respondent lived with his parents in Philadelphia. But after the death of his father in May 1974, his mother was

<sup>1</sup>The American Psychiatric Association explains that "[t]he word 'habilitation,' . . . is commonly used to refer to programs for the mentally-retarded because mental retardation is . . . a learning disability and training impairment rather than an illness. . . . [T]he principal focus of habilitation is upon training and development of needed skills." Brief of American Psychiatric Association as *Amicus Curiae*, at 4, n. 1.



unable to care for him. Within two weeks of the father's death, respondent's mother sought his temporary admission to a nearby Pennsylvania hospital.

Shortly thereafter, she asked the Philadelphia County Court of Common Pleas to admit Romeo to a state facility on a permanent basis. Her petition to the court explained that she was unable to care for Romeo or control his violence.<sup>2</sup> As part of the commitment process, Romeo was examined by a physician and a psychologist. They both certified that respondent was severely retarded and unable to care for himself. App. 21-22 and 28-29. On June 11, 1974, the Court of Common Pleas committed respondent to the Pennhurst State School and Hospital, pursuant to the applicable involuntary commitment provision of the Pennsylvania Mental Health and Mental Retardation Act, Pa. Stat. Ann. tit. 50 § 4406.

At Pennhurst, Romeo was injured on numerous occasions, both by his own violence and by the reactions of other residents to him. Respondent's mother became concerned about these injuries. After objecting to respondent's treatment several times, she filed this complaint on November 4, 1976, in the United States District Court for the Eastern District of Pennsylvania as his next friend. The complaint alleged that "[d]uring the period July, 1974 to the present, plaintiff has suffered injuries on at least sixty-three occasions." The complaint originally sought damages and injunctive relief from Pennhurst's director and two supervisors<sup>3</sup>; it alleged

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<sup>2</sup> Mrs. Romeo's petition to the Court of Common Pleas stated: "Since my husband's death I am unable to handle him. He becomes violent—Kicks, punches, breaks glass; He can't speak—wants to express himself but can't. He is [a] constant 24 hr. care. [W]ithout my husband I am unable to care for him." App. 18.

<sup>3</sup> Petitioner Duane Youngberg was the Superintendent of Pennhurst; he had supervisory authority over the entire facility. Petitioner Richard Matthews was the Director of Resident Life at Pennhurst. Petitioner Marguerite Conley was Unit Director for the unit in which respondent lived. According to respondent, petitioners are administrators, not medi-



that these officials knew, or should have known, that Romeo was suffering injuries and that they failed to institute appropriate preventive procedures, thus violating his rights under the Eighth and Fourteenth Amendments.

Thereafter, in late 1976, Romeo was transferred from his ward to the hospital for treatment of a broken arm. While in the infirmary, and by order of a doctor, he was physically restrained during portions of each day.<sup>4</sup> These restraints were ordered by Dr. Gabroy, not a defendant here, to protect Romeo and others in the hospital, some of whom were in traction or were being treated intravenously. 7 Record 40, 49, 76-78. Although respondent normally would have returned to his ward when his arm healed, the parties to this litigation agreed that he should remain in the hospital due to the pending law suit. 5 Record 248, 6 R. 57-58 and 137. Nevertheless, in December 1977, a second amended complaint was filed alleging that the defendants were restraining respondent for prolonged periods on a routine basis. The second amended complaint also added a claim for damages to compensate Romeo for the defendants' failure to provide him with appropriate "treatment or programs for his mental retardation."<sup>5</sup> All claims for injunctive relief were dropped prior to trial because respondent is a member of the class seeking such relief in another action.<sup>6</sup>

An eight-day jury trial was held in April 1978. Petitioners introduced evidence that respondent participated in several programs teaching basic self-care skills.<sup>7</sup> A comprehensive

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cal doctors. See Brief for Respondent 2. Youngberg and Matthews are no longer at Pennhurst.

<sup>4</sup> Although the Court of Appeals described these restraints as "shackles," "soft" restraints, for the arms only, were generally used. 7 Record 53-55.

<sup>5</sup> Respondent uses "treatment" as synonymous with "habilitation" or "training." See Brief for Respondents 21-23.

<sup>6</sup> *Pennhurst State School and Hospital v. Halderman*, 451 U. S. 1 (1981) (remanded for further proceedings).

<sup>7</sup> Prior to his transfer to Pennhurst's hospital ward, Romeo participated



behavior-modification program was designed by staff members to reduce Romeo's aggressive behavior,<sup>8</sup> but that program was never implemented because of his mother's objections.<sup>9</sup> Respondent introduced evidence of his injuries and of conditions in his unit.<sup>10</sup>

At the close of the trial, the court instructed the jury that "if any or all of the defendants were aware of and failed to take all reasonable steps to prevent repeated attacks upon Nicholas Romeo," such failure deprived him of constitutional rights. App. to Pet. for Cert. 110. The jury also was instructed that if the defendants shackled Romeo or denied him treatment "as a punishment for filing this lawsuit," his constitutional rights were violated under the Eighth Amendment. *Id.*, at 73-75. Finally, the jury was instructed that only if they found the defendants "deliberately indifferent to the serious medical [and psychological] needs" of Romeo could they find that his Eighth and Fourteenth Amendment rights had been violated. *Id.*, at 111-112.<sup>11</sup> The jury re-

in programs dealing with feeding, showering, drying, dressing, self control, and toilet training, as well as a program providing interaction with staff members. Defendants' exhibit 10; 3 Record 69-70, 5 Record 44-56, 242-250, 6 Record 162-166; 7 Record 41-48.

Some programs continued while respondent was in the hospital, 5 Record 227, 248, 256; 6 Record 50, 162-166, Record 32,34, 41-48, and they reduced respondent's aggressive behavior to some extent, 7 Record 45.

<sup>8</sup> 2 Record 7, 5 Record 88-90; 6 Record 88, 200-203; Defendants' Exhibit 1, at 9. The program called for short periods of separation from other residents and for use of "muffs" on plaintiff's hands for short periods of time, *i. e.*, 5 minutes, to prevent him from harming himself or others.

<sup>9</sup> 1 Record 53; 4 Record 25; 6 Record 204.

<sup>10</sup> The District Judge refused to allow testimony by two of Romeo's witnesses—trained professionals—indicating that Romeo would have benefited from more or different training programs. The trial judge explained that evidence of the advantages of alternative forms of treatment might be relevant to a malpractice suit, but was not relevant to a constitutional claim under § 1983. App. to Pet. for Cert. 101.

<sup>11</sup> The "deliberate indifference" standard was adopted by this Court in *Estelle v. Gamble*, 429 U. S. 97, 104 (1976), a case dealing with prisoners'



turned a verdict for the defendants, on which judgment was entered.

The Court of Appeals for the Third Circuit, sitting en banc, reversed and remanded for a new trial. 644 F. 2d 147 (1980). The court held that the Eighth Amendment, prohibiting cruel and unusual punishment of those convicted of crimes, was not an appropriate source for determining the rights of the involuntarily committed. Rather, the Fourteenth Amendment and the liberty interest protected by that amendment provided the proper constitutional basis for these rights. In applying the Fourteenth Amendment, the court found that the involuntarily committed retain liberty interests in freedom of movement and in personal security. These were "fundamental liberties" that can be limited only by an "overriding, non-punitive" state interest. 644 F. 2d, at 157-158 (footnote omitted). It further found that the involuntarily committed have a liberty interest in habilitation designed to "treat" their mental retardation. *Id.*, at 164-170.<sup>12</sup>

The en banc court did not, however, agree on the relevant standard to be used in determining whether Romeo's rights had been violated.<sup>13</sup> Because physical restraint "raises a presumption of a punitive sanction," the majority of the Court of Appeals concluded that it can be justified only by

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rights to punishment that is not "cruel and unusual" under the Eighth Amendment. Although the District Court did not refer to *Estelle v. Gamble* in charging the jury, it erroneously used the deliberate-indifference standard articulated in that case. See App. to Pet. for Cert. 45, 112.

<sup>12</sup>The Court of Appeals used "habilitation" and "treatment" as synonymous, though it regarded "habilitation" as more accurate in describing treatment needed by the mentally retarded. See 644 F. 2d, at 165 and n. 40.

<sup>13</sup>The existence of a qualified immunity defense was not at issue on appeal. The defendants had received instructions on this defense, App. 76a, and it was not challenged by respondent. 644 F. 2d, at 173, n. 1. After citing *Pierson v. Ray*, 386 U. S. 547 (1967) and *Scheuer v. Rhodes*, 416 U. S. 232 (1974), the majority of the Court of Appeals noted that such instructions should be given again on the remand. 644 F. 2d, at 171-172.



"compelling necessity." *Id.*, at 159-160. A somewhat different standard was appropriate for the failure to provide for a resident's safety. The majority considered that such a failure must be justified by a showing of "substantial necessity." *Id.*, at 164. Finally, the majority held that when treatment has been administered, those responsible are liable only if the treatment is not "acceptable in the light of present medical or other scientific knowledge." *Id.*, at 166-167 and 173.<sup>14</sup>

Chief Judge Seitz, concurring in the judgment, considered the standards articulated by the majority as indistinguishable from those applicable to medical malpractice claims. In Chief Judge Seitz's view, the Constitution "only requires that the courts make certain that professional judgment in fact was exercised." 644 F. 2d, at 178. He concluded that the appropriate standard was whether the defendants' conduct was "such a substantial departure from accepted professional judgment, practice or standards in the care and treatment of this plaintiff as to demonstrate that the defendants did not base their conduct on a professional judgment." 644 F. 2d, at 178.<sup>15</sup>

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<sup>14</sup> Actually, the court divided the right-to-treatment claim into three categories and adopted three standards, but only the standard described in text is at issue before this Court. The Court of Appeals also stated that if a jury finds that *no* treatment has been administered, it may hold the institution's administrators liable unless they can provide a compelling explanation for the lack of treatment, 644 F. 2d at 165, 173, but respondent does not discuss this precise standard in his brief and it does not appear to be relevant to the facts of this case. In addition, the court considered "least intrusive" analysis appropriate to justify severe intrusions on individual dignity, such as permanent physical alteration or surgical intervention, *id.*, at 165-166, and 173, but respondent concedes that this issue is not present in this case.

<sup>15</sup> Judge Aldisert joined Chief Judge Seitz's opinion, but wrote separately to emphasize the nature of the difference between the majority opinion and that of the Chief Judge. On a conceptual level, Judge Aldisert thought that the court erred in abandoning the common-law method of deciding the case at bar rather than articulating broad principles unconnected with the



We granted the petition for certiorari because of the importance of the question presented to the administration of state institutions for the mentally retarded. 451 U. S. 982 (1981).

## II

We consider here for the first time the substantive rights of involuntarily-committed mentally retarded persons under the Fourteenth Amendment to the Constitution.<sup>16</sup> In this case, respondent has been committed under the laws of Pennsylvania, and he does not challenge the commitment. Rather, he argues that he has a constitutionally protected liberty interest in safety, freedom of movement, and training within the institution; and that petitioners infringed these rights by failing to provide constitutionally required conditions of confinement.

The mere fact that Romeo has been committed under proper procedures does not deprive him of all substantive liberty interests under the Fourteenth Amendment. See, e. g., *Vitek v. Jones*, 445 U. S. 480, 491-494 (1980). Indeed, the state concedes that respondent has a right to adequate food, shelter, clothing, and medical care.<sup>17</sup> We must decide

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facts of the case and of uncertain meaning. 644 F. 2d, at 182-183. And, on a pragmatic level, Judge Aldisert warned that neither juries nor those administering state institutions would receive guidance from the "amorphous constitutional law tenets" articulated in the majority opinion. *Id.*, at 184. See *id.*, at 183-185.

Judge Garth also joined Chief Judge Seitz's opinion, and wrote separately to criticize the majority for addressing issues not raised by the facts of this case. 644 F. 2d, at 186.

<sup>16</sup> In pertinent part, that Amendment provides that a State cannot deprive "any person of life, liberty, or property, without due process of law. . . ." U. S. Const., Amend. XIV, § 1.

Respondent no longer relies on the Eighth Amendment as a direct source of constitutional rights. See Brief for Respondent 13 n. 12.

<sup>17</sup> Brief for Petitioners 8, 11, 12 and n. 10; Brief for Respondent 15-16. See also Brief for Connecticut and Twenty Other States as *Amici Curiae* 8.



whether liberty interests also exist in safety, freedom of movement, and training. If such interests do exist, we must further decide whether they have been infringed in this case.

## A

Respondent's first two claims involve liberty interests recognized by prior decisions of this Court, interests that involuntary commitment proceedings do not extinguish.<sup>18</sup> The first is a claim to safe conditions. In the past, this Court has noted that the right to personal security constitutes an "historic liberty interest" protected substantively by the Due Process Clause. *Ingraham v. Wright*, 430 U. S. 651, 673 (1977). And that right is not extinguished by lawful confinement, even for penal purposes. See *Hutto v. Finney*, 437 U. S. 678 (1978). If it is cruel and unusual punishment to hold convicted criminals in unsafe conditions, it must be unconstitutional to confine the involuntarily committed—who may not be punished at all—in unsafe conditions.

Next, respondent claims a right to freedom from bodily restraint. In other contexts, the existence of such an interest is clear in the prior decisions of this Court. Indeed, "[l]iberty from bodily restraint always has been recognized as the core of the liberty protected by the Due Process Clause from arbitrary governmental action." *Greenholtz v. Nebraska Penal Inmates*, 442 U. S. 1, 18 (1979) (POWELL, J., concurring). This interest survives criminal conviction and incarceration. Similarly, it must also survive involuntary commitment.

## B

Respondent's remaining claim is more troubling. In his words, he asserts a "constitutional right to minimally adequate habilitation." Brief, 8, 23, 45. This is a substantive

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Petitioners argue that they have fully protected these interests.

<sup>18</sup> Petitioners do not appear to argue to the contrary. See Brief for Petitioners 27-31.



due process claim that is said to be grounded in the liberty component of the Due Process Clause of the Fourteenth Amendment.<sup>19</sup> The term “habilitation,” used in psychiatry, is not defined precisely or consistently in the opinions below or in the briefs of the parties or the amici.<sup>20</sup> As noted previously, at n. 1, *supra*, the term refers to “training and development of needed skills.” Respondent emphasizes that the right he asserts is for “minimal” training, see Brief of Respondent at 34, and he would leave the type and extent of training to be determined on a case-by-case basis “in light of present medical or other scientific knowledge,” *id.*, at 45.

In addressing the asserted right to training, we start from established principles. As a general matter, a State is under no constitutional duty to provide substantive services for those within its border. See, *Harris v. McRae*, 448 U. S.

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<sup>19</sup> Respondent also argues that he was committed for care and treatment under state law, and that he therefore has a state substantive right to habilitation entitled to substantive, not procedural, protection under the Due Process Clause of the Federal Constitution. But this argument is made for the first time in respondent’s brief to this Court. It was not advanced in the courts below, and was not argued to the Court of Appeals as a ground for reversing the trial court. Given the uncertainty of Pennsylvania law and the lack of any guidance on this issue from the lower federal courts, we decline to consider it now. See *Dothard v. Rawlinson*, 43 U. S. 321, 323 n. 1 (1977); *Duignan v. United States*, 274 U. S. 195, 200 (1927); *Old Jordan Milling Co. v. Societe Anonyme des Mines*, 164 U. S. 261, 264–265 (1896).

<sup>20</sup> Professionals in the habilitation of the mentally retarded disagree strongly on the question whether effective training of all severely or profoundly retarded individuals is even possible. See, *e. g.*, Favell, Risley, Wolfe, Riddle, & Rasmussen, The Limits of Habilitation: How Can We Identify Them and How Can We Change Them?, 1 Analysis and Intervention in Developmental Disabilities 37 (1981); Bailey, Wanted: A Rational Search for the Limiting Conditions of Habilitation in the Retarded, 1 Analysis and Intervention in Developmental Disabilities 45 (1981); Kauffman & Krouse, The Cult of Educability: Searching for the Substance of Things Hoped for; The Evidence of Things Not Seen, 1 Analysis and Intervention in Developmental Disabilities 53 (1981).



297, 318 (1980) (publicly funded abortions); *Maier v. Roe*, 432 U. S. 464, 469 (1977) (medical treatment). When a person is institutionalized—and wholly dependent on the State—it is conceded by petitioner that a duty to provide certain services and care does exist, although even then a State necessarily has considerable discretion in determining the nature and scope of its responsibilities. See *Richardson v. Belcher*, 404 U. S. 78, 83–84 (1971); *Dandridge v. Williams*, 397 U. S. 471, 478 (1970). Nor must a State “choose between attacking every aspect of a problem or not attacking the problem at all.” *Id.*, at 486–487.

Respondent, in light of the severe character of his retardation, concedes that no amount of training will make possible his release. And he does not argue that if he were still at home, the State would have an obligation to provide training at its expense. See Tr. of Oral Arg. 33. The record reveals that respondent’s primary needs are bodily safety and a minimum of physical restraint, and respondent clearly claims training related to these needs.<sup>21</sup> As we have recognized that there is a constitutionally protected liberty interest in safety and freedom from restraint, *supra*, at —, training may be necessary to avoid unconstitutional infringement of those rights. On the basis of the record before us, it is quite uncertain whether respondent seeks any “habilitation” or training unrelated to safety and freedom from bodily restraints. In his brief to this Court, Romeo indicates that even the self-care programs he seeks are needed to reduce his aggressive behavior. See Reply Brief of Respondent at 21–22, 50. And in his offer of proof to the trial court, respondent repeatedly indicated that, if allowed to testify, his experts would show that additional training programs, including self-care programs, were needed to reduce Romeo’s aggressive behavior. Petition for Certiorari 98–104.<sup>22</sup> If, as

<sup>21</sup> See, e. g., description of complaint at 2–3, *supra*.

<sup>22</sup> See also Respondent’s Brief, as Appellant, to the Court of Appeals for



seems the case, respondent seeks only training related to safety and freedom from restraints, this case does not present the difficult question whether a mentally retarded person, involuntarily committed to a state institution, has some general constitutional right to training *per se*, even when no type or amount of training would lead to freedom.

Chief Judge Seitz, in language apparently adopted by respondent, observed:

“I believe that the plaintiff has a constitutional right to minimally adequate care and treatment. The existence of a constitutional right to care and treatment is no longer a novel legal proposition.” 644 F. 2d, — (Pet. 54).

Chief Judge Seitz did not identify or otherwise define—beyond the right to reasonable safety and freedom from physical restraint—the “minimally adequate care and treatment” that appropriately may be required for this respondent.<sup>23</sup> In the circumstances presented by this case, and on the basis of the record developed to date, we agree with his view and conclude that respondent’s liberty interests require the State to provide minimally adequate or reasonable training to ensure safety and freedom from undue restraint. In view of the kinds of treatment sought by respondent and the evidence of record, we need go no further in this case.<sup>24</sup>

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the Third Circuit, at 11-14, 20-21, and 24.

<sup>23</sup> Chief Judge Seitz used the term “treatment” as synonymous with training or habilitation. See 644 F. 2d, at 181.

<sup>24</sup> It is not feasible, as is evident from the variety of language and formulations in the opinions below and the various briefs here, to define or identify the type of training that may be required in every case. A court properly may start with the generalization that there is a right to minimally adequate training. The basic requirement of adequacy, in terms more familiar to courts, may be stated as that training which is reasonable in light of identifiable liberty interests and the circumstances of the case. A federal court, of course, must identify a constitutional predicate for the imposition of any affirmative duty on a state.



## III

## A

We have established that Romeo retains liberty interests in safety and freedom from bodily restraint. Yet these interests are not absolute; indeed to some extent they are in conflict. In operating an institution such as Pennhurst, there are occasions in which it is necessary for the State to restrain the movement of residents—for example, to protect them as well as others from violence.<sup>25</sup> Similar restraints may also be appropriate in a training program. And an institution cannot protect its residents from all danger of violence if it is to permit them to have any freedom of movement. The question then is not simply whether a liberty interest has been infringed but whether the extent or nature of the restraint or lack of absolute safety is such as to violate due process.

In determining whether a substantive right protected by the Due Process Clause has been violated, it is necessary to balance “the liberty of the individual” and “the demands of an organized society.” *Poe v. Ullman*, 367 U. S. 497, 522, 542 (1961) (Harlan, J., dissenting). In seeking this balance in other cases, the Court has weighed the individual’s interest in liberty against the State’s asserted reasons for restraining individual liberty. In *Bell v. Wolfish*, 441 U. S. 520 (1979),

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Because the facts in cases of confinement of mentally retarded patients vary widely, it is essential to focus on the facts and circumstances of the case before a court. Judge Aldisert, in his dissenting opinion in the court below, was critical of the “majority’s abandonment of incremental decisionmaking in favor of promulgation of broad standards . . . [that] lack[] utility for the groups most affected by this decision.” 644 F. 2d, at 183–184. Judge Garth agreed that reaching issues not presented by the case requires a court to articulate principles and rules of law in “the absence of an appropriate record . . . and without the benefit of analysis, argument or briefing” on such issues. *Id.*, at 186.

<sup>25</sup> In Romeo’s case, there can be no question that physical restraint was necessary at times. See n. 2, *supra*.



for example, we considered a challenge to pre-trial detainees' confinement conditions. We agreed that the detainees, not yet convicted of the crime charged, could not be punished. But we upheld those restrictions on liberty that were reasonably related to legitimate government objectives and not tantamount to punishment.<sup>26</sup> See *id.*, at 539. We have taken a similar approach in deciding procedural due-process challenges to civil commitment proceedings. In *Parham v. J.R.*, 442 U. S. 584 (1979), for example, we considered a challenge to state procedures for commitment of a minor with parental consent. In determining that *procedural* due process did not mandate an adversarial hearing, we weighed the liberty interest of the individual against the legitimate interests of the State, including the fiscal and administrative burdens additional procedures would entail.<sup>27</sup> *Id.*, at 599-600.

Accordingly, whether respondent's constitutional rights have been violated must be determined by balancing his liberty interests against the relevant state interests. If there is to be any uniformity in protecting these interests, this balancing cannot be left to the unguided discretion of a judge or jury. We therefore turn to consider the proper standard for

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<sup>26</sup> See also *Jackson v. Indiana*, 406 U. S. 715, 738 (1972) (holding that an incompetent pre-trial detainee cannot, after a competency hearing, be held indefinitely without either criminal process or civil commitment; due process requires, at a minimum, some rational relation between the nature and duration of commitment and its purpose). This case differs in critical respects from *Jackson*, a procedural due process case involving the validity of an involuntary commitment. Here, petitioner was committed by a court on petition of his mother who averred that in view of Romeo's condition she could neither care for him nor control his violence. *Ante*, at 2. Thus, the purpose of petitioner's commitment was to provide reasonable care and safety, conditions not available to him outside of an institution.

<sup>27</sup> See also *Addington v. Texas*, 441 U. S. 418 (1979). In that case, we held that the state must prove the need for commitment by "clear and convincing" evidence. See *id.*, at 431-432. We reached this decision by weighing the individual's liberty interest against the state's legitimate interests in confinement.



determining whether a State adequately has protected the rights of the involuntarily-committed mentally retarded.

## B

We think the standard articulated by Chief Judge Seitz affords the necessary guidance and reflects the proper balance between the legitimate interests of the State and the rights of the involuntarily committed to reasonable conditions of safety and freedom from unreasonable restraints. He would have held that "the Constitution only requires that the courts make certain that professional judgment in fact was exercised. It is not appropriate for the courts to specify which of several professionally acceptable choices should have been made." 644 F. 2d, at 178. Persons who have been involuntarily committed are entitled to more considerate treatment and conditions of confinement than criminals whose conditions of confinement are designed to punish. Cf. *Estelle v. Gamble*, 429 U. S. 97, 104 (1976). At the same time, this standard is lower than the "compelling" or "substantial" necessity tests the Court of Appeals would require a state to meet to justify use of restraints or conditions of less than absolute safety. We think this requirement would place an undue burden on the administration of institutions such as Pennhurst and also would restrict unnecessarily the exercise of professional judgment as to the needs of residents.

Moreover, we agree that respondent is entitled to minimally adequate training. In this case, the minimally adequate training required by the Constitution is such training as may be reasonable in light of respondent's liberty interests in safety and freedom from unreasonable restraints. In determining what is "reasonable"—in this and in any case presenting a claim for training by a state—we emphasize that courts must show deference to the judgment exercised by a qualified professional. By so limiting judicial review of challenges to conditions in state institutions, interference by the federal judiciary with the internal operations of these institu-



tions should be minimized.<sup>28</sup> Moreover, there certainly is no reason to think judges or juries are better qualified than appropriate professionals in making such decisions. See *Parham v. J.R.*, 442 U. S. 584, 607 (1979); *Bell v. Wolfish*, *supra*, 441 U. S., at 544 (Courts should not “second-guess the expert administrators on matters on which they are better informed.”). For these reasons, the decision, if made by a professional,<sup>29</sup> is presumptively valid; liability may be imposed only when the decision by the professional is such a

<sup>28</sup> See *Parham v. J.R.*, *supra*, 442 U. S., at 608 n. 16 (In limiting judicial review of medical decisions made by professionals, “it is incumbent on courts to design procedures that protect the rights of individuals without unduly burdening the legitimate efforts of the states to deal with difficult social problems.”). See also *Rhodes v. Chapman*, 452 U. S. 337, — (1981) (“[C]ourts cannot assume that state legislatures and prison officials are insensitive to the requirements of the Constitution or to the perplexing sociological problems of how best to achieve the goals of the penal function in the criminal justice system. . . .”); *Bell v. Wolfish*, 441 U. S. 520, 539 (1979) (In context of conditions of confinement of pre-trial detainees, “courts must be mindful that these inquiries spring from constitutional requirements and that judicial answers to them must reflect that fact rather than a court’s idea of how best to operate a detention facility.”); *Wolff v. McDonnell*, 418 U. S. 539, 556 (1974) (In considering procedural due process claim in context of prison, “there must be mutual accommodation between institutional needs and objectives and the provisions of the Constitution that are of general application.”). See also Townsend & Mattson, *The Interaction of Law and Special Education: Observing the Emperor’s New Clothes*, 1 *Analysis and Intervention in Developmental Disabilities* 75 (1981) (judicial resolution of rights of the handicapped can have adverse as well as positive effects on social change).

<sup>29</sup> By ‘professional’ decision-maker, we mean a person competent, whether by education, training or experience, to make the particular decision at issue. Long term treatment decisions normally should be made by persons with degrees in medicine or nursing, or with appropriate training in areas such as psychology, physical therapy, or the care and training of the retarded. Of course, day-to-day decisions regarding care—including decisions that must be made without delay—necessarily will be made in many instances by employees without formal training but who are subject to the supervision of qualified persons.



substantial departure from accepted professional judgment, practice or standards as to demonstrate that the person responsible actually did not base the decision on such a judgment.<sup>30</sup> In an action for damages against a professional in his individual capacity, however, the professional will not be liable if he was unable to satisfy his normal professional standards because of budgetary constraints; in such a situation, good-faith immunity would bar liability. See note 12, *supra*.

#### IV

In deciding this case, we have weighed those post-commitment interests cognizable as liberty interests under the Due Process Clause of the Fourteenth Amendment against legitimate state interests and in light of the constraints under which most state institutions necessarily operate. We repeat that the state concedes a duty to provide adequate food, shelter, clothing and medical care. These are the essentials of the care that the state must provide. The state also has the unquestioned duty to provide reasonable safety for all residents and personnel within the institution. And it may not restrain residents except when and to the extent professional judgment deems this necessary to assure such safety or to provide needed training. In this case, therefore, the state is under a duty to provide respondent with such training as an appropriate professional would consider reasonable to ensure his safety and to facilitate his ability to function free from bodily restraints. It may well be unreasonable not to provide training when training could significantly reduce the need for restraints or the likelihood of violence.

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<sup>30</sup> All members of the Court of Appeals agreed that respondent's expert testimony should have been admitted. This issue was not included in the questions presented for certiorari, and we have no reason to disagree with the view that the evidence was admissible. It appears relevant to whether petitioners' decisions were a substantial departure from accepted professional practice.



Respondent thus enjoys constitutionally protected interests in conditions of reasonable care and safety, reasonably non-restrictive confinement conditions, and such training as may be required by these interests. Such conditions of confinement would comport fully with the purpose of respondent's commitment. Cf. *Jackson v. Indiana*, 406 U. S. 715, 738 (1972); see n. 27, *ante*. In determining whether the state has met its obligations in these respects, decisions made by the appropriate professional are entitled to a presumption of correctness. Such a presumption is necessary to enable institutions of this type—often, unfortunately, overcrowded and understaffed—to continue to function. A single professional may have to make decisions with respect to a number of residents with widely varying needs and problems in the course of a normal day. The administrators, and particularly professional personnel, should not be required to make each decision in the shadow of an action for damages.

In this case, we conclude that the jury was erroneously instructed on the assumption that the proper standard of liability was that of the Eighth Amendment. Accordingly, we vacate the decision of the Court of Appeals and remand for further proceedings consistent with this decision.

*So ordered.*



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## SUPREME COURT OF THE UNITED STATES

No. 80-1429

DUANE YOUNGBERG, ETC., ET AL., PETITIONERS, v.  
NICHOLAS ROMEO, AN INCOMPETENT, BY HIS  
MOTHER AND NEXT FRIEND, PAULA ROMEO

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE THIRD CIRCUIT

[June —, 1982]

JUSTICE POWELL delivered the opinion of the Court.

The question presented is whether respondent, involuntarily committed to a state institution for the mentally retarded, has substantive rights under the Due Process Clause of the Fourteenth Amendment to (i) safe conditions of confinement; (ii) freedom from bodily restraints; and (iii) training or "habilitation."<sup>1</sup> Respondent sued under 42 U. S. C. § 1983 three administrators of the institution, claiming damages for the alleged breach of his constitutional rights.

### I

Respondent Nicholas Romeo is profoundly retarded. Although 33 years old, he has the mental capacity of an eighteen-month old child, with an I.Q. between 8 and 10. He cannot talk and lacks the most basic self-care skills. Until he was 26, respondent lived with his parents in Philadelphia. But after the death of his father in May 1974, his mother was

<sup>1</sup> The American Psychiatric Association explains that "[t]he word 'habilitation,' . . . is commonly used to refer to programs for the mentally retarded because mental retardation is . . . a learning disability and training impairment rather than an illness. . . . [T]he principal focus of habilitation is upon training and development of needed skills." Brief of American Psychiatric Association as *Amicus Curiae*, at 4, n. 1.



unable to care for him. Within two weeks of the father's death, respondent's mother sought his temporary admission to a nearby Pennsylvania hospital.

Shortly thereafter, she asked the Philadelphia County Court of Common Pleas to admit Romeo to a state facility on a permanent basis. Her petition to the court explained that she was unable to care for Romeo or control his violence.<sup>2</sup> As part of the commitment process, Romeo was examined by a physician and a psychologist. They both certified that respondent was severely retarded and unable to care for himself. App. 21-22 and 28-29. On June 11, 1974, the Court of Common Pleas committed respondent to the Pennhurst State School and Hospital, pursuant to the applicable involuntary commitment provision of the Pennsylvania Mental Health and Mental Retardation Act, Pa. Stat. Ann. tit. 50 § 4406.

At Pennhurst, Romeo was injured on numerous occasions, both by his own violence and by the reactions of other residents to him. Respondent's mother became concerned about these injuries. After objecting to respondent's treatment several times, she filed this complaint on November 4, 1976, in the United States District Court for the Eastern District of Pennsylvania as his next friend. The complaint alleged that "[d]uring the period July, 1974 to the present, plaintiff has suffered injuries on at least sixty-three occasions." The complaint originally sought damages and injunctive relief from Pennhurst's director and two supervisors<sup>3</sup>; it alleged

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<sup>2</sup> Mrs. Romeo's petition to the Court of Common Pleas stated: "Since my husband's death I am unable to handle him. He becomes violent—Kicks, punches, breaks glass; He can't speak—wants to express himself but can't. He is [a] constant 24 hr. care. [W]ithout my husband I am unable to care for him." App. 18.

<sup>3</sup> Petitioner Duane Youngberg was the Superintendent of Pennhurst; he had supervisory authority over the entire facility. Petitioner Richard Matthews was the Director of Resident Life at Pennhurst. Petitioner Marguerite Conley was Unit Director for the unit in which respondent lived. According to respondent, petitioners are administrators, not medi-



that these officials knew, or should have known, that Romeo was suffering injuries and that they failed to institute appropriate preventive procedures, thus violating his rights under the Eighth and Fourteenth Amendments.

Thereafter, in late 1976, Romeo was transferred from his ward to the hospital for treatment of a broken arm. While in the infirmary, and by order of a doctor, he was physically restrained during portions of each day.<sup>4</sup> These restraints were ordered by Dr. Gabroy, not a defendant here, to protect Romeo and others in the hospital, some of whom were in traction or were being treated intravenously. 7 Record 40, 49, 76-78. Although respondent normally would have returned to his ward when his arm healed, the parties to this litigation agreed that he should remain in the hospital due to the pending law suit. 5 Record 248, 6 R. 57-58 and 137. Nevertheless, in December 1977, a second amended complaint was filed alleging that the defendants were restraining respondent for prolonged periods on a routine basis. The second amended complaint also added a claim for damages to compensate Romeo for the defendants' failure to provide him with appropriate "treatment or programs for his mental retardation."<sup>5</sup> All claims for injunctive relief were dropped prior to trial because respondent is a member of the class seeking such relief in another action.<sup>6</sup>

An eight-day jury trial was held in April 1978. Petitioners introduced evidence that respondent participated in several programs teaching basic self-care skills.<sup>7</sup> A comprehensive

cal doctors. See Brief for Respondent 2. Youngberg and Matthews are no longer at Pennhurst.

<sup>4</sup>Although the Court of Appeals described these restraints as "shackles," "soft" restraints, for the arms only, were generally used. 7 Record 53-55.

<sup>5</sup>Respondent uses "treatment" as synonymous with "habilitation" or "training." See Brief for Respondents 21-23.

<sup>6</sup>*Pennhurst State School and Hospital v. Halderman*, 451 U. S. 1 (1981) (remanded for further proceedings).

<sup>7</sup>Prior to his transfer to Pennhurst's hospital ward, Romeo participated

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behavior-modification program was designed by staff members to reduce Romeo's aggressive behavior,<sup>8</sup> but that program was never implemented because of his mother's objections.<sup>9</sup> Respondent introduced evidence of his injuries and of conditions in his unit.<sup>10</sup>

At the close of the trial, the court instructed the jury that "if any or all of the defendants were aware of and failed to take all reasonable steps to prevent repeated attacks upon Nicholas Romeo," such failure deprived him of constitutional rights. App. to Pet. for Cert. 110. The jury also was instructed that if the defendants shackled Romeo or denied him treatment "as a punishment for filing this lawsuit," his constitutional rights were violated under the Eighth Amendment. *Id.*, at 73-75. Finally, the jury was instructed that only if they found the defendants "deliberately indifferent to the serious medical [and psychological] needs" of Romeo could they find that his Eighth and Fourteenth Amendment rights had been violated. *Id.*, at 111-112.<sup>11</sup> The jury re-

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in programs dealing with feeding, showering, drying, dressing, self control, and toilet training, as well as a program providing interaction with staff members. Defendants' exhibit 10; 3 Record 69-70, 5 Record 44-56, 242-250, 6 Record 162-166; 7 Record 41-48.

Some programs continued while respondent was in the hospital, 5 Record 227, 248, 256; 6 Record 50, 162-166, Record 32,34, 41-48, and they reduced respondent's aggressive behavior to some extent, 7 Record 45.

<sup>8</sup> 2 Record 7, 5 Record 88-90; 6 Record 88, 200-203; Defendants' Exhibit 1, at 9. The program called for short periods of separation from other residents and for use of "muffs" on plaintiff's hands for short periods of time, *i. e.*, 5 minutes, to prevent him from harming himself or others.

<sup>9</sup> 1 Record 53; 4 Record 25; 6 Record 204.

<sup>10</sup> The District Judge refused to allow testimony by two of Romeo's witnesses—trained professionals—indicating that Romeo would have benefited from more or different training programs. The trial judge explained that evidence of the advantages of alternative forms of treatment might be relevant to a malpractice suit, but was not relevant to a constitutional claim under § 1983. App. to Pet. for Cert. 101.

<sup>11</sup> The "deliberate indifference" standard was adopted by this Court in *Estelle v. Gamble*, 429 U. S. 97, 104 (1976), a case dealing with prisoners'



turned a verdict for the defendants, on which judgment was entered.

The Court of Appeals for the Third Circuit, sitting en banc, reversed and remanded for a new trial. 644 F. 2d 147 (1980). The court held that the Eighth Amendment, prohibiting cruel and unusual punishment of those convicted of crimes, was not an appropriate source for determining the rights of the involuntarily committed. Rather, the Fourteenth Amendment and the liberty interest protected by that amendment provided the proper constitutional basis for these rights. In applying the Fourteenth Amendment, the court found that the involuntarily committed retain liberty interests in freedom of movement and in personal security. These were "fundamental liberties" that can be limited only by an "overriding, non-punitive" state interest. 644 F. 2d, at 157-158 (footnote omitted). It further found that the involuntarily committed have a liberty interest in habilitation designed to "treat" their mental retardation. *Id.*, at 164-170.<sup>12</sup>

The en banc court did not, however, agree on the relevant standard to be used in determining whether Romeo's rights had been violated.<sup>13</sup> Because physical restraint "raises a presumption of a punitive sanction," the majority of the Court of Appeals concluded that it can be justified only by

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rights to punishment that is not "cruel and unusual" under the Eighth Amendment. Although the District Court did not refer to *Estelle v. Gamble* in charging the jury, it erroneously used the deliberate-indifference standard articulated in that case. See App. to Pet. for Cert. 45, 112.

<sup>12</sup> The Court of Appeals used "habilitation" and "treatment" as synonymous, though it regarded "habilitation" as more accurate in describing treatment needed by the mentally retarded. See 644 F. 2d, at 165 and n. 40.

<sup>13</sup> The existence of a qualified immunity defense was not at issue on appeal. The defendants had received instructions on this defense, App. 76a, and it was not challenged by respondent. 644 F. 2d, at 173, n. 1. After citing *Pierson v. Ray*, 386 U. S. 547 (1967) and *Scheuer v. Rhodes*, 416 U. S. 232 (1974), the majority of the Court of Appeals noted that such instructions should be given again on the remand. 644 F. 2d, at 171-172.]

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"compelling necessity." *Id.*, at 159-160. A somewhat different standard was appropriate for the failure to provide for a resident's safety. The majority considered that such a failure must be justified by a showing of "substantial necessity." *Id.*, at 164. Finally, the majority held that when treatment has been administered, those responsible are liable only if the treatment is not "acceptable in the light of present medical or other scientific knowledge." *Id.*, at 166-167 and 173.<sup>14</sup>

less # Chief Judge Seitz, concurring in the judgment, considered the standards articulated by the majority as indistinguishable from those applicable to <sup>1</sup> medical malpractice claims. In Chief Judge Seitz's view, the Constitution "only requires that the courts make certain that professional judgment in fact was exercised." 644 F. 2d, at 178. He concluded that the appropriate standard was whether the defendants' conduct was "such a substantial departure from accepted professional judgment, practice or standards in the care and treatment of this plaintiff as to demonstrate that the defendants did not base their conduct on a professional judgment." 644 F. 2d, at 178.<sup>15</sup>

<sup>14</sup> Actually, the court divided the right-to-treatment claim into three categories and adopted three standards, but only the standard described in text is at issue before this Court. The Court of Appeals also stated that if a jury finds that *no* treatment has been administered, it may hold the institution's administrators liable unless they can provide a compelling explanation for the lack of treatment, 644 F. 2d at 165, 173, but respondent does not discuss this precise standard in his brief and it does not appear to be relevant to the facts of this case. In addition, the court considered "least intrusive" analysis appropriate to justify severe intrusions on individual dignity, such as permanent physical alteration or surgical intervention, *id.*, at 165-166, and 173, but respondent concedes that this issue is not present in this case.

<sup>15</sup> Judge Aldisert joined Chief Judge Seitz's opinion, but wrote separately to emphasize the nature of the difference between the majority opinion and that of the Chief Judge. On a conceptual level, Judge Aldisert thought that the court erred in abandoning the common-law method of deciding the case at bar rather than articulating broad principles unconnected with the



We granted the petition for certiorari because of the importance of the question presented to the administration of state institutions for the mentally retarded. 451 U. S. 982 (1981).

## II

We consider here for the first time the substantive rights of involuntarily-committed mentally retarded persons under the Fourteenth Amendment to the Constitution.<sup>16</sup> In this case, respondent has been committed under the laws of Pennsylvania, and he does not challenge the commitment. Rather, he argues that he has a constitutionally protected liberty interest in safety, freedom of movement, and training within the institution; and that petitioners infringed these rights by failing to provide constitutionally required conditions of confinement.

The mere fact that Romeo has been committed under proper procedures does not deprive him of all substantive liberty interests under the Fourteenth Amendment. See, *e. g.*, *Vitek v. Jones*, 445 U. S. 480, 491-494 (1980). Indeed, the state concedes that respondent has a right to adequate food, shelter, clothing, and medical care.<sup>17</sup> We must decide

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facts of the case and of uncertain meaning. 644 F. 2d, at 182-183. And, on a pragmatic level, Judge Aldisert warned that neither juries nor those administering state institutions would receive guidance from the "amorphous constitutional law tenets" articulated in the majority opinion. *Id.*, at 184. See *id.*, at 183-185.

Judge Garth also joined Chief Judge Seitz's opinion, and wrote separately to criticize the majority for addressing issues not raised by the facts of this case. 644 F. 2d, at 186.

<sup>16</sup> In pertinent part, that Amendment provides that a State cannot deprive "any person of life, liberty, or property, without due process of law. . . ." U. S. Const., Amend. XIV, § 1.

Respondent no longer relies on the Eighth Amendment as a direct source of constitutional rights. See Brief for Respondent 13 n. 12.

<sup>17</sup> Brief for Petitioners 8, 11, 12 and n. 10; Brief for Respondent 15-16. See also Brief for Connecticut and Twenty Other States as *Amici Curiae* 8.



whether liberty interests also exist in safety, freedom of movement, and training. If such interests do exist, we must further decide whether they have been infringed in this case.]

## A

Respondent's first two claims involve liberty interests recognized by prior decisions of this Court, interests that involuntary commitment proceedings do not extinguish.<sup>18</sup> The first is a claim to safe conditions. In the past, this Court has noted that the right to personal security constitutes an "historic liberty interest" protected substantively by the Due Process Clause. *Ingraham v. Wright*, 430 U. S. 651, 673 (1977). And that right is not extinguished by lawful confinement, even for penal purposes. See *Hutto v. Finney*, 437 U. S. 678 (1978). If it is cruel and unusual punishment to hold convicted criminals in unsafe conditions, it must be unconstitutional to confine the involuntarily committed—who may not be punished at all—in unsafe conditions.

Next, respondent claims a right to freedom from bodily restraint. In other contexts, the existence of such an interest is clear in the prior decisions of this Court. Indeed, "[l]iberty from bodily restraint always has been recognized as the core of the liberty protected by the Due Process Clause from arbitrary governmental action." *Greenholtz v. Nebraska Penal Inmates*, 442 U. S. 1, 18 (1979) (POWELL, J., concurring). This interest survives criminal conviction and incarceration. Similarly, it must also survive involuntary commitment.

## B

Respondent's remaining claim is more troubling. In his words, he asserts a "constitutional right to minimally adequate habilitation." Brief, 8, 23, 45. This is a substantive

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Petitioners argue that they have fully protected these interests.

<sup>18</sup> Petitioners do not appear to argue to the contrary. See Brief for Petitioners 27-31.



due process claim that is said to be grounded in the liberty component of the Due Process Clause of the Fourteenth Amendment.<sup>19</sup> The term "habilitation," used in psychiatry, is not defined precisely or consistently in the opinions below or in the briefs of the parties or the amici.<sup>20</sup> As noted previously, at n. 1, *supra*, the term refers to "training and development of needed skills." Respondent emphasizes that the right he asserts is for "minimal" training, see Brief of Respondent at 34, and he would leave the type and extent of training to be determined on a case-by-case basis "in light of present medical or other scientific knowledge," *id.*, at 45.

In addressing the asserted right to training, we start from established principles. As a general matter, a State is under no constitutional duty to provide substantive services for those within its border. See, *Harris v. McRae*, 448 U. S.

<sup>19</sup> Respondent also argues that he was committed for care and treatment under state law, and that he therefore has a state substantive right to habilitation entitled to substantive, not procedural, protection under the Due Process Clause of the Federal Constitution. But this argument is made for the first time in respondent's brief to this Court. It was not advanced in the courts below, and was not argued to the Court of Appeals as a ground for reversing the trial court. Given the uncertainty of Pennsylvania law and the lack of any guidance on this issue from the lower federal courts, we decline to consider it now. See *Dothard v. Rawlinson*, 433 U. S. 321, 323 n. 1 (1977); *Duignan v. United States*, 274 U. S. 195, 200 (1927); *Old Jordan Milling Co. v. Societe Anonyme des Mines*, 164 U. S. 261, 264-265 (1896).

<sup>20</sup> Professionals in the habilitation of the mentally retarded disagree strongly on the question whether effective training of all severely or profoundly retarded individuals is even possible. See, e. g., Favell, Risley, Wolfe, Riddle, & Rasmussen, *The Limits of Habilitation: How Can We Identify Them and How Can We Change Them?*, 1 *Analysis and Intervention in Developmental Disabilities* 37 (1981); Bailey, *Wanted: A Rational Search for the Limiting Conditions of Habilitation in the Retarded*, 1 *Analysis and Intervention in Developmental Disabilities* 45 (1981); Kauffman & Krouse, *The Cult of Educability: Searching for the Substance of Things Hoped for; The Evidence of Things Not Seen*, 1 *Analysis and Intervention in Developmental Disabilities* 53 (1981).

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297, 318 (1980) (publicly funded abortions); *Maier v. Roe*, 432 U. S. 464, 469 (1977) (medical treatment). When a person is institutionalized—and wholly dependent on the State—it is conceded by petitioner that a duty to provide certain services and care does exist, although even then a State necessarily has considerable discretion in determining the nature and scope of its responsibilities. See *Richardson v. Belcher*, 404 U. S. 78, 83–84 (1971); *Dandridge v. Williams*, 397 U. S. 471, 478 (1970). Nor must a State “choose between attacking every aspect of a problem or not attacking the problem at all.” *Id.*, at 486–487.

Respondent, in light of the severe character of his retardation, concedes that no amount of training will make possible his release. And he does not argue that if he were still at home, the State would have an obligation to provide training at its expense. See Tr. of Oral Arg. 33. The record reveals that respondent’s primary needs are bodily safety and a minimum of physical restraint, and respondent clearly claims training related to these needs.<sup>21</sup> As we have recognized that there is a constitutionally protected liberty interest in safety and freedom from restraint, *supra*, at —, training may be necessary to avoid unconstitutional infringement of those rights. On the basis of the record before us, it is quite uncertain whether respondent seeks any “habilitation” or training unrelated to safety and freedom from bodily restraints. In his brief to this Court, Romeo indicates that even the self-care programs he seeks are needed to reduce his aggressive behavior. See Reply Brief of Respondent at 21–22, 50. And in his offer of proof to the trial court, respondent repeatedly indicated that, if allowed to testify, his experts would show that additional training programs, including self-care programs, were needed to reduce Romeo’s aggressive behavior. Petition for Certiorari 98–104.<sup>22</sup> If, as

<sup>21</sup> See, *e. g.*, description of complaint at 2–3, *supra*.

<sup>22</sup> See also Respondent’s Brief, as Appellant, to the Court of Appeals for



seems the case, respondent seeks only training related to safety and freedom from restraints, this case does not present the difficult question whether a mentally retarded person, involuntarily committed to a state institution, has some general constitutional right to training *per se*, even when no type or amount of training would lead to freedom. <sup>23</sup> ✓

Chief Judge Seitz, in language apparently adopted by respondent, observed:

"I believe that the plaintiff has a constitutional right to minimally adequate care and treatment. The existence of a constitutional right to care and treatment is no longer a novel legal proposition." 644 F. 2d, — (Pet. 54).

Chief Judge Seitz did not identify or otherwise define—beyond the right to reasonable safety and freedom from physical restraint—the "minimally adequate care and treatment" that appropriately may be required for this respondent. <sup>24</sup> ✓ In the circumstances presented by this case, and on the basis of the record developed to date, we agree with his view and conclude that respondent's liberty interests require the State to provide minimally adequate or reasonable training to ensure safety and freedom from undue restraint. <sup>25</sup> ✓ In view of the kinds of treatment sought by respondent and the evidence of record, we need go no further in this case. <sup>25</sup> ✓

the Third Circuit, at 11-14, 20-21, and 24. <sup>29</sup> ✓

<sup>29</sup> ✓ Chief Judge Seitz used the term "treatment" as synonymous with training or habilitation. See 644 F. 2d, at 181.

<sup>29</sup> ✓ It is not feasible, as is evident from the variety of language and formulations in the opinions below and the various briefs here, to define or identify the type of training that may be required in every case. A court properly may start with the generalization that there is a right to minimally adequate training. The basic requirement of adequacy, in terms more familiar to courts, may be stated as that training which is reasonable in light of identifiable liberty interests and the circumstances of the case. A federal court, of course, must identify a constitutional predicate for the imposition of any affirmative duty on a state.

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## III

## A

We have established that Romeo retains liberty interests in safety and freedom from bodily restraint. Yet these interests are not absolute; indeed to some extent they are in conflict. In operating an institution such as Pennhurst, there are occasions in which it is necessary for the State to restrain the movement of residents—for example, to protect them as well as others from violence.<sup>26</sup> Similar restraints may also be appropriate in a training program. And an institution cannot protect its residents from all danger of violence if it is to permit them to have any freedom of movement. The question then is not simply whether a liberty interest has been infringed but whether the extent or nature of the restraint or lack of absolute safety is such as to violate due process.

In determining whether a substantive right protected by the Due Process Clause has been violated, it is necessary to balance “the liberty of the individual” and “the demands of an organized society.” *Poe v. Ullman*, 367 U. S. 497, 522, 542 (1961) (Harlan, J., dissenting). In seeking this balance in other cases, the Court has weighed the individual’s interest in liberty against the State’s asserted reasons for restraining individual liberty. In *Bell v. Wolfish*, 441 U. S. 520 (1979),

Because the facts in cases of confinement of mentally retarded patients vary widely, it is essential to focus on the facts and circumstances of the case before a court. Judge Aldisert, in his dissenting opinion in the court below, was critical of the “majority’s abandonment of incremental decisionmaking in favor of promulgation of broad standards . . . [that] lack[] utility for the groups most affected by this decision.” 644 F. 2d, at 183–184. Judge Garth agreed that reaching issues not presented by the case requires a court to articulate principles and rules of law in “the absence of an appropriate record . . . and without the benefit of analysis, argument or briefing” on such issues. *Id.*, at 186.

<sup>26</sup> In Romeo’s case, there can be no question that physical restraint was necessary at times. See n. 2, *supra*.

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for example, we considered a challenge to pre-trial detainees' confinement conditions. We agreed that the detainees, not yet convicted of the crime charged, could not be punished. But we upheld those restrictions on liberty that were reasonably related to legitimate government objectives and not tantamount to punishment. <sup>27</sup> See *id.*, at 539. We have taken a similar approach in deciding procedural due-process challenges to civil commitment proceedings. In *Parham v. J.R.*, 442 U. S. 584 (1979), for example, we considered a challenge to state procedures for commitment of a minor with parental consent. In determining that *procedural* due process did not mandate an adversarial hearing, we weighed the liberty interest of the individual against the legitimate interests of the State, including the fiscal and administrative burdens additional procedures would entail. <sup>28</sup> *Id.*, at 599-600. ✓

Accordingly, whether respondent's constitutional rights have been violated must be determined by balancing his liberty interests against the relevant state interests. If there is to be any uniformity in protecting these interests, this balancing cannot be left to the unguided discretion of a judge or jury. We therefore turn to consider the proper standard for

<sup>27</sup> See also *Jackson v. Indiana*, 406 U. S. 715, 738 (1972) (holding that an incompetent pre-trial detainee cannot, after a competency hearing, be held indefinitely without either criminal process or civil commitment; due process requires, at a minimum, some rational relation between the nature and duration of commitment and its purpose). This case differs in critical respects from *Jackson*, a procedural due process case involving the validity of an involuntary commitment. Here, petitioner was committed by a court on petition of his mother who averred that in view of Romeo's condition she could neither care for him nor control his violence. *Ante*, at 2. Thus, the purpose of petitioner's commitment was to provide reasonable care and safety, conditions not available to him outside of an institution. ✓

<sup>28</sup> See also *Addington v. Texas*, 441 U. S. 418 (1979). In that case, we held that the state must prove the need for commitment by "clear and convincing" evidence. See *id.*, at 431-432. We reached this decision by weighing the individual's liberty interest against the state's legitimate interests in confinement. ✓



determining whether a State adequately has protected the rights of the involuntarily-committed mentally retarded.

## B

We think the standard articulated by Chief Judge Seitz affords the necessary guidance and reflects the proper balance between the legitimate interests of the State and the rights of the involuntarily committed to reasonable conditions of safety and freedom from unreasonable restraints. He would have held that "the Constitution only requires that the courts make certain that professional judgment in fact was exercised. It is not appropriate for the courts to specify which of several professionally acceptable choices should have been made." 644 F. 2d, at 178. Persons who have been involuntarily committed are entitled to more considerate treatment and conditions of confinement than criminals whose conditions of confinement are designed to punish. Cf. *Estelle v. Gamble*, 429 U. S. 97, 104 (1976). At the same time, this standard is lower than the "compelling" or "substantial" necessity tests the Court of Appeals would require a state to meet to justify use of restraints or conditions of less than absolute safety. We think this requirement would place an undue burden on the administration of institutions such as Pennhurst and also would restrict unnecessarily the exercise of professional judgment as to the needs of residents.

Moreover, we agree that respondent is entitled to minimally adequate training. In this case, the minimally adequate training required by the Constitution is such training as may be reasonable in light of respondent's liberty interests in safety and freedom from unreasonable restraints. In determining what is "reasonable"—in this and in any case presenting a claim for training by a state—we emphasize that courts must show deference to the judgment exercised by a qualified professional. By so limiting judicial review of challenges to conditions in state institutions, interference by the federal judiciary with the internal operations of these institu-



tions should be minimized. <sup>29</sup> Moreover, there certainly is no reason to think judges or juries are better qualified than appropriate professionals in making such decisions. See *Parham v. J.R.*, 442 U. S. 584, 607 (1979); *Bell v. Wolfish*, *supra*, 441 U. S., at 544 (Courts should not “second-guess the expert administrators on matters on which they are better informed.”). For these reasons, the decision, if made by a professional, <sup>30</sup> is presumptively valid; liability may be imposed only when the decision by the professional is such a

<sup>29</sup> See *Parham v. J.R.*, *supra*, 442 U. S., at 608 n. 16 (In limiting judicial review of medical decisions made by professionals, “it is incumbent on courts to design procedures that protect the rights of individuals without unduly burdening the legitimate efforts of the states to deal with difficult social problems.”). See also *Rhodes v. Chapman*, 452 U. S. 337, — (1981) (“[C]ourts cannot assume that state legislatures and prison officials are insensitive to the requirements of the Constitution or to the perplexing sociological problems of how best to achieve the goals of the penal function in the criminal justice system. . . .”); *Bell v. Wolfish*, 441 U. S. 520, 539 (1979) (In context of conditions of confinement of pre-trial detainees, “courts must be mindful that these inquiries spring from constitutional requirements and that judicial answers to them must reflect that fact rather than a court’s idea of how best to operate a detention facility.”); *Wolff v. McDonnell*, 418 U. S. 539, 556 (1974) (In considering procedural due process claim in context of prison, “there must be mutual accommodation between institutional needs and objectives and the provisions of the Constitution that are of general application.”). See also Townsend & Mattson, *The Interaction of Law and Special Education: Observing the Emperor’s New Clothes*, 1 *Analysis and Intervention in Developmental Disabilities* 75 (1981) (judicial resolution of rights of the handicapped can have adverse as well as positive effects on social change).

<sup>30</sup> By ‘professional’ decision-maker, we mean a person competent, whether by education, training or experience, to make the particular decision at issue. Long term treatment decisions normally should be made by persons with degrees in medicine or nursing, or with appropriate training in areas such as psychology, physical therapy, or the care and training of the retarded. Of course, day-to-day decisions regarding care—including decisions that must be made without delay—necessarily will be made in many instances by employees without formal training but who are subject to the supervision of qualified persons.

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substantial departure from accepted professional judgment, practice or standards as to demonstrate that the person responsible actually did not base the decision on such a judgment. <sup>31</sup> In an action for damages against a professional in his individual capacity, however, the professional will not be liable if he was unable to satisfy his normal professional standards because of budgetary constraints; in such a situation, good-faith immunity would bar liability. See note 12, *supra*. 31 ✓

## IV

In deciding this case, we have weighed those post-commitment interests cognizable as liberty interests under the Due Process Clause of the Fourteenth Amendment against legitimate state interests and in light of the constraints under which most state institutions necessarily operate. We repeat that the state concedes a duty to provide adequate food, shelter, clothing and medical care. These are the essentials of the care that the state must provide. The state also has the unquestioned duty to provide reasonable safety for all residents and personnel within the institution. And it may not restrain residents except when and to the extent professional judgment deems this necessary to assure such safety or to provide needed training. In this case, therefore, the state is under a duty to provide respondent with such training as an appropriate professional would consider reasonable to ensure his safety and to facilitate his ability to function free from bodily restraints. It may well be unreasonable not to provide training when training could significantly reduce the need for restraints or the likelihood of violence.

<sup>31</sup> ✓ All members of the Court of Appeals agreed that respondent's expert testimony should have been admitted. This issue was not included in the questions presented for certiorari, and we have no reason to disagree with the view that the evidence was admissible. It appears relevant to whether petitioners' decisions were a substantial departure from ~~accepted professional practice~~. 31 ✓

may be

the requisite  
professional judgment.  
See Part III B,  
*supra* ① ✓



1/ Respondent thus enjoys constitutionally protected interests in conditions of reasonable care and safety, reasonably non-restrictive confinement conditions, and such training as may be required by these interests. Such conditions of confinement would comport fully with the purpose of respondent's commitment. Cf. *Jackson v. Indiana*, 406 U. S. 715, 738 (1972); see n. 27, *ante*. In determining whether the state has met its obligations in these respects, decisions made by the appropriate professional are entitled to a presumption of correctness. Such a presumption is necessary to enable institutions of this type—often, unfortunately, overcrowded and understaffed—to continue to function. A single professional may have to make decisions with respect to a number of residents with widely varying needs and problems in the course of a normal day. The administrators, and particularly professional personnel, should not be required to make each decision in the shadow of an action for damages.

# In this case, we conclude that the jury was erroneously instructed on the assumption that the proper standard of liability was that of the Eighth Amendment. Accordingly, we vacate the decision of the Court of Appeals and remand for further proceedings consistent with this decision.

*So ordered.*



Changes: 11, 16.

new n. 23.

notes 23 on renumbered.

Announced  
6/18

To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Rehnquist  
Justice Stevens  
Justice O'Connor

From: **Justice Powell**

Circulated: \_\_\_\_\_

Recirculated: \_\_\_\_\_

6th DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 80-1429

DUANE YOUNGBERG, ETC., ET AL., PETITIONERS, v.  
NICHOLAS ROMEO, AN INCOMPETENT, BY HIS  
MOTHER AND NEXT FRIEND, PAULA ROMEO

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE THIRD CIRCUIT

[June —, 1982]

JUSTICE POWELL delivered the opinion of the Court.

The question presented is whether respondent, involuntarily committed to a state institution for the mentally retarded, has substantive rights under the Due Process Clause of the Fourteenth Amendment to (i) safe conditions of confinement; (ii) freedom from bodily restraints; and (iii) training or "habilitation."<sup>1</sup> Respondent sued under 42 U. S. C. § 1983 three administrators of the institution, claiming damages for the alleged breach of his constitutional rights.

### I

Respondent Nicholas Romeo is profoundly retarded. Although 33 years old, he has the mental capacity of an eighteen-month old child, with an I.Q. between 8 and 10. He cannot talk and lacks the most basic self-care skills. Until he was 26, respondent lived with his parents in Philadelphia. But after the death of his father in May 1974, his mother was

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<sup>1</sup>The American Psychiatric Association explains that "[t]he word 'habilitation,' . . . is commonly used to refer to programs for the mentally-retarded because mental retardation is . . . a learning disability and training impairment rather than an illness. . . . [T]he principal focus of habilitation is upon training and development of needed skills." Brief of American Psychiatric Association as *Amicus Curiae*, at 4, n. 1.



unable to care for him. Within two weeks of the father's death, respondent's mother sought his temporary admission to a nearby Pennsylvania hospital.

Shortly thereafter, she asked the Philadelphia County Court of Common Pleas to admit Romeo to a state facility on a permanent basis. Her petition to the court explained that she was unable to care for Romeo or control his violence.<sup>2</sup> As part of the commitment process, Romeo was examined by a physician and a psychologist. They both certified that respondent was severely retarded and unable to care for himself. App. 21-22 and 28-29. On June 11, 1974, the Court of Common Pleas committed respondent to the Pennhurst State School and Hospital, pursuant to the applicable involuntary commitment provision of the Pennsylvania Mental Health and Mental Retardation Act, Pa. Stat. Ann. tit. 50 § 4406.

At Pennhurst, Romeo was injured on numerous occasions, both by his own violence and by the reactions of other residents to him. Respondent's mother became concerned about these injuries. After objecting to respondent's treatment several times, she filed this complaint on November 4, 1976, in the United States District Court for the Eastern District of Pennsylvania as his next friend. The complaint alleged that "[d]uring the period July, 1974 to the present, plaintiff has suffered injuries on at least sixty-three occasions." The complaint originally sought damages and injunctive relief from Pennhurst's director and two supervisors<sup>3</sup>; it alleged

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<sup>2</sup> Mrs. Romeo's petition to the Court of Common Pleas stated: "Since my husband's death I am unable to handle him. He becomes violent—Kicks, punches, breaks glass; He can't speak—wants to express himself but can't. He is [a] constant 24 hr. care. [W]ithout my husband I am unable to care for him." App. 18.

<sup>3</sup> Petitioner Duane Youngberg was the Superintendent of Pennhurst; he had supervisory authority over the entire facility. Petitioner Richard Matthews was the Director of Resident Life at Pennhurst. Petitioner Marguerite Conley was Unit Director for the unit in which respondent lived. According to respondent, petitioners are administrators, not medi-



that these officials knew, or should have known, that Romeo was suffering injuries and that they failed to institute appropriate preventive procedures, thus violating his rights under the Eighth and Fourteenth Amendments.

Thereafter, in late 1976, Romeo was transferred from his ward to the hospital for treatment of a broken arm. While in the infirmary, and by order of a doctor, he was physically restrained during portions of each day.<sup>4</sup> These restraints were ordered by Dr. Gabroy, not a defendant here, to protect Romeo and others in the hospital, some of whom were in traction or were being treated intravenously. 7 Record 40, 49, 76-78. Although respondent normally would have returned to his ward when his arm healed, the parties to this litigation agreed that he should remain in the hospital due to the pending law suit. 5 Record 248, 6 R. 57-58 and 137. Nevertheless, in December 1977, a second amended complaint was filed alleging that the defendants were restraining respondent for prolonged periods on a routine basis. The second amended complaint also added a claim for damages to compensate Romeo for the defendants' failure to provide him with appropriate "treatment or programs for his mental retardation."<sup>5</sup> All claims for injunctive relief were dropped prior to trial because respondent is a member of the class seeking such relief in another action.<sup>6</sup>

An eight-day jury trial was held in April 1978. Petitioners introduced evidence that respondent participated in several programs teaching basic self-care skills.<sup>7</sup> A comprehensive

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cal doctors. See Brief for Respondent 2. Youngberg and Matthews are no longer at Pennhurst.

<sup>4</sup> Although the Court of Appeals described these restraints as "shackles," "soft" restraints, for the arms only, were generally used. 7 Record 53-55.

<sup>5</sup> Respondent uses "treatment" as synonymous with "habilitation" or "training." See Brief for Respondents 21-23.

<sup>6</sup> *Pennhurst State School and Hospital v. Halderman*, 451 U. S. 1 (1981) (remanded for further proceedings).

<sup>7</sup> Prior to his transfer to Pennhurst's hospital ward, Romeo participated



behavior-modification program was designed by staff members to reduce Romeo's aggressive behavior,<sup>8</sup> but that program was never implemented because of his mother's objections.<sup>9</sup> Respondent introduced evidence of his injuries and of conditions in his unit.<sup>10</sup>

At the close of the trial, the court instructed the jury that "if any or all of the defendants were aware of and failed to take all reasonable steps to prevent repeated attacks upon Nicholas Romeo," such failure deprived him of constitutional rights. App. to Pet. for Cert. 110. The jury also was instructed that if the defendants shackled Romeo or denied him treatment "as a punishment for filing this lawsuit," his constitutional rights were violated under the Eighth Amendment. *Id.*, at 73-75. Finally, the jury was instructed that only if they found the defendants "deliberately indifferent to the serious medical [and psychological] needs" of Romeo could they find that his Eighth and Fourteenth Amendment rights had been violated. *Id.*, at 111-112.<sup>11</sup> The jury re-

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in programs dealing with feeding, showering, drying, dressing, self control, and toilet training, as well as a program providing interaction with staff members. Defendants' exhibit 10; 3 Record 69-70, 5 Record 44-56, 242-250, 6 Record 162-166; 7 Record 41-48.

Some programs continued while respondent was in the hospital, 5 Record 227, 248, 256; 6 Record 50, 162-166, Record 32,34, 41-48, and they reduced respondent's aggressive behavior to some extent, 7 Record 45.

<sup>8</sup> 2 Record 7, 5 Record 88-90; 6 Record 88, 200-203; Defendants' Exhibit 1, at 9. The program called for short periods of separation from other residents and for use of "muffs" on plaintiff's hands for short periods of time, *i. e.*, 5 minutes, to prevent him from harming himself or others.

<sup>9</sup> 1 Record 53; 4 Record 25; 6 Record 204.

<sup>10</sup> The District Judge refused to allow testimony by two of Romeo's witnesses—trained professionals—indicating that Romeo would have benefited from more or different training programs. The trial judge explained that evidence of the advantages of alternative forms of treatment might be relevant to a malpractice suit, but was not relevant to a constitutional claim under § 1983. App. to Pet. for Cert. 101.

<sup>11</sup> The "deliberate indifference" standard was adopted by this Court in *Estelle v. Gamble*, 429 U. S. 97, 104 (1976), a case dealing with prisoners'



turned a verdict for the defendants, on which judgment was entered.

The Court of Appeals for the Third Circuit, sitting en banc, reversed and remanded for a new trial. 644 F. 2d 147 (1980). The court held that the Eighth Amendment, prohibiting cruel and unusual punishment of those convicted of crimes, was not an appropriate source for determining the rights of the involuntarily committed. Rather, the Fourteenth Amendment and the liberty interest protected by that amendment provided the proper constitutional basis for these rights. In applying the Fourteenth Amendment, the court found that the involuntarily committed retain liberty interests in freedom of movement and in personal security. These were "fundamental liberties" that can be limited only by an "overriding, non-punitive" state interest. 644 F. 2d, at 157-158 (footnote omitted). It further found that the involuntarily committed have a liberty interest in habilitation designed to "treat" their mental retardation. *Id.*, at 164-170.<sup>12</sup>

The en banc court did not, however, agree on the relevant standard to be used in determining whether Romeo's rights had been violated.<sup>13</sup> Because physical restraint "raises a presumption of a punitive sanction," the majority of the Court of Appeals concluded that it can be justified only by

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rights to punishment that is not "cruel and unusual" under the Eighth Amendment. Although the District Court did not refer to *Estelle v. Gamble* in charging the jury, it erroneously used the deliberate-indifference standard articulated in that case. See App. to Pet. for Cert. 45, 112.

<sup>12</sup> The Court of Appeals used "habilitation" and "treatment" as synonymous, though it regarded "habilitation" as more accurate in describing treatment needed by the mentally retarded. See 644 F. 2d, at 165 and n. 40.

<sup>13</sup> The existence of a qualified immunity defense was not at issue on appeal. The defendants had received instructions on this defense, App. 76a, and it was not challenged by respondent. 644 F. 2d, at 173, n. 1. After citing *Pierson v. Ray*, 386 U. S. 547 (1967) and *Scheuer v. Rhodes*, 416 U. S. 232 (1974), the majority of the Court of Appeals noted that such instructions should be given again on the remand. 644 F. 2d, at 171-172.



"compelling necessity." *Id.*, at 159-160. A somewhat different standard was appropriate for the failure to provide for a resident's safety. The majority considered that such a failure must be justified by a showing of "substantial necessity." *Id.*, at 164. Finally, the majority held that when treatment has been administered, those responsible are liable only if the treatment is not "acceptable in the light of present medical or other scientific knowledge." *Id.*, at 166-167 and 173.<sup>14</sup>

Chief Judge Seitz, concurring in the judgment, considered the standards articulated by the majority as indistinguishable from those applicable to medical malpractice claims. In Chief Judge Seitz's view, the Constitution "only requires that the courts make certain that professional judgment in fact was exercised." 644 F. 2d, at 178. He concluded that the appropriate standard was whether the defendants' conduct was "such a substantial departure from accepted professional judgment, practice or standards in the care and treatment of this plaintiff as to demonstrate that the defendants did not base their conduct on a professional judgment." 644 F. 2d, at 178.<sup>15</sup>

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<sup>14</sup> Actually, the court divided the right-to-treatment claim into three categories and adopted three standards, but only the standard described in text is at issue before this Court. The Court of Appeals also stated that if a jury finds that *no* treatment has been administered, it may hold the institution's administrators liable unless they can provide a compelling explanation for the lack of treatment, 644 F. 2d at 165, 173, but respondent does not discuss this precise standard in his brief and it does not appear to be relevant to the facts of this case. In addition, the court considered "least intrusive" analysis appropriate to justify severe intrusions on individual dignity, such as permanent physical alteration or surgical intervention, *id.*, at 165-166, and 173, but respondent concedes that this issue is not present in this case.

<sup>15</sup> Judge Aldisert joined Chief Judge Seitz's opinion, but wrote separately to emphasize the nature of the difference between the majority opinion and that of the Chief Judge. On a conceptual level, Judge Aldisert thought that the court erred in abandoning the common-law method of deciding the case at bar rather than articulating broad principles unconnected with the



We granted the petition for certiorari because of the importance of the question presented to the administration of state institutions for the mentally retarded. 451 U. S. 982 (1981).

## II

We consider here for the first time the substantive rights of involuntarily-committed mentally retarded persons under the Fourteenth Amendment to the Constitution.<sup>16</sup> In this case, respondent has been committed under the laws of Pennsylvania, and he does not challenge the commitment. Rather, he argues that he has a constitutionally protected liberty interest in safety, freedom of movement, and training within the institution; and that petitioners infringed these rights by failing to provide constitutionally required conditions of confinement.

The mere fact that Romeo has been committed under proper procedures does not deprive him of all substantive liberty interests under the Fourteenth Amendment. See, e. g., *Vitek v. Jones*, 445 U. S. 480, 491–494 (1980). Indeed, the state concedes that respondent has a right to adequate food, shelter, clothing, and medical care.<sup>17</sup> We must decide

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facts of the case and of uncertain meaning. 644 F. 2d, at 182–183. And, on a pragmatic level, Judge Aldisert warned that neither juries nor those administering state institutions would receive guidance from the “amorphous constitutional law tenets” articulated in the majority opinion. *Id.*, at 184. See *id.*, at 183–185.

Judge Garth also joined Chief Judge Seitz’s opinion, and wrote separately to criticize the majority for addressing issues not raised by the facts of this case. 644 F. 2d, at 186.

<sup>16</sup> In pertinent part, that Amendment provides that a State cannot deprive “any person of life, liberty, or property, without due process of law. . . .” U. S. Const., Amend. XIV, § 1.

Respondent no longer relies on the Eighth Amendment as a direct source of constitutional rights. See Brief for Respondent 13 n. 12.

<sup>17</sup> Brief for Petitioners 8, 11, 12 and n. 10; Brief for Respondent 15–16. See also Brief for Connecticut and Twenty Other States as *Amici Curiae* 8.



whether liberty interests also exist in safety, freedom of movement, and training. If such interests do exist, we must further decide whether they have been infringed in this case.

## A

Respondent's first two claims involve liberty interests recognized by prior decisions of this Court, interests that involuntary commitment proceedings do not extinguish.<sup>18</sup> The first is a claim to safe conditions. In the past, this Court has noted that the right to personal security constitutes an "historic liberty interest" protected substantively by the Due Process Clause. *Ingraham v. Wright*, 430 U. S. 651, 673 (1977). And that right is not extinguished by lawful confinement, even for penal purposes. See *Hutto v. Finney*, 437 U. S. 678 (1978). If it is cruel and unusual punishment to hold convicted criminals in unsafe conditions, it must be unconstitutional to confine the involuntarily committed—who may not be punished at all—in unsafe conditions.

Next, respondent claims a right to freedom from bodily restraint. In other contexts, the existence of such an interest is clear in the prior decisions of this Court. Indeed, "[l]iberty from bodily restraint always has been recognized as the core of the liberty protected by the Due Process Clause from arbitrary governmental action." *Greenholtz v. Nebraska Penal Inmates*, 442 U. S. 1, 18 (1979) (POWELL, J., concurring). This interest survives criminal conviction and incarceration. Similarly, it must also survive involuntary commitment.

## B

Respondent's remaining claim is more troubling. In his words, he asserts a "constitutional right to minimally adequate habilitation." Brief, 8, 23, 45. This is a substantive

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Petitioners argue that they have fully protected these interests.

<sup>18</sup> Petitioners do not appear to argue to the contrary. See Brief for Petitioners 27-31.



due process claim that is said to be grounded in the liberty component of the Due Process Clause of the Fourteenth Amendment.<sup>19</sup> The term “habilitation,” used in psychiatry, is not defined precisely or consistently in the opinions below or in the briefs of the parties or the amici.<sup>20</sup> As noted previously, at n. 1, *supra*, the term refers to “training and development of needed skills.” Respondent emphasizes that the right he asserts is for “minimal” training, see Brief of Respondent at 34, and he would leave the type and extent of training to be determined on a case-by-case basis “in light of present medical or other scientific knowledge,” *id.*, at 45.

In addressing the asserted right to training, we start from established principles. As a general matter, a State is under no constitutional duty to provide substantive services for those within its border. See, *Harris v. McRae*, 448 U. S.

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<sup>19</sup> Respondent also argues that he was committed for care and treatment under state law, and that he therefore has a state substantive right to habilitation entitled to substantive, not procedural, protection under the Due Process Clause of the Federal Constitution. But this argument is made for the first time in respondent’s brief to this Court. It was not advanced in the courts below, and was not argued to the Court of Appeals as a ground for reversing the trial court. Given the uncertainty of Pennsylvania law and the lack of any guidance on this issue from the lower federal courts, we decline to consider it now. See *Dothard v. Rawlinson*, 433 U. S. 321, 323 n. 1 (1977); *Duignan v. United States*, 274 U. S. 195, 200 (1927); *Old Jordan Milling Co. v. Societe Anonyme des Mines*, 164 U. S. 261, 264–265 (1896).

<sup>20</sup> Professionals in the habilitation of the mentally retarded disagree strongly on the question whether effective training of all severely or profoundly retarded individuals is even possible. See, *e. g.*, Favell, Risley, Wolfe, Riddle, & Rasmussen, *The Limits of Habilitation: How Can We Identify Them and How Can We Change Them?*, 1 *Analysis and Intervention in Developmental Disabilities* 37 (1981); Bailey, *Wanted: A Rational Search for the Limiting Conditions of Habilitation in the Retarded*, 1 *Analysis and Intervention in Developmental Disabilities* 45 (1981); Kauffman & Krouse, *The Cult of Educability: Searching for the Substance of Things Hoped for; The Evidence of Things Not Seen*, 1 *Analysis and Intervention in Developmental Disabilities* 53 (1981).



297, 318 (1980) (publicly funded abortions); *Maier v. Roe*, 432 U. S. 464, 469 (1977) (medical treatment). When a person is institutionalized—and wholly dependent on the State—it is conceded by petitioner that a duty to provide certain services and care does exist, although even then a State necessarily has considerable discretion in determining the nature and scope of its responsibilities. See *Richardson v. Belcher*, 404 U. S. 78, 83–84 (1971); *Dandridge v. Williams*, 397 U. S. 471, 478 (1970). Nor must a State “choose between attacking every aspect of a problem or not attacking the problem at all.” *Id.*, at 486–487.

Respondent, in light of the severe character of his retardation, concedes that no amount of training will make possible his release. And he does not argue that if he were still at home, the State would have an obligation to provide training at its expense. See Tr. of Oral Arg. 33. The record reveals that respondent’s primary needs are bodily safety and a minimum of physical restraint, and respondent clearly claims training related to these needs.<sup>21</sup> As we have recognized that there is a constitutionally protected liberty interest in safety and freedom from restraint, *supra*, at —, training may be necessary to avoid unconstitutional infringement of those rights. On the basis of the record before us, it is quite uncertain whether respondent seeks any “habilitation” or training unrelated to safety and freedom from bodily restraints. In his brief to this Court, Romeo indicates that even the self-care programs he seeks are needed to reduce his aggressive behavior. See Reply Brief of Respondent at 21–22, 50. And in his offer of proof to the trial court, respondent repeatedly indicated that, if allowed to testify, his experts would show that additional training programs, including self-care programs, were needed to reduce Romeo’s aggressive behavior. Petition for Certiorari 98–104.<sup>22</sup> If, as

<sup>21</sup> See, e. g., description of complaint at 2–3, *supra*.

<sup>22</sup> See also Respondent’s Brief, as Appellant, to the Court of Appeals for the Third Circuit, at 11–14, 20–21, and 24.



seems the case, respondent seeks only training related to safety and freedom from restraints, this case does not present the difficult question whether a mentally retarded person, involuntarily committed to a state institution, has some general constitutional right to training *per se*, even when no type or amount of training would lead to freedom.<sup>23</sup>

Chief Judge Seitz, in language apparently adopted by respondent, observed:

"I believe that the plaintiff has a constitutional right to minimally adequate care and treatment. The existence of a constitutional right to care and treatment is no longer a novel legal proposition." 644 F. 2d, — (Pet. 54).

Chief Judge Seitz did not identify or otherwise define—beyond the right to reasonable safety and freedom from physical restraint—the "minimally adequate care and treatment" that appropriately may be required for this respondent.<sup>24</sup> In the circumstances presented by this case, and on the basis of the record developed to date, we agree with his view and conclude that respondent's liberty interests require the State to provide minimally adequate or reasonable training to ensure safety and freedom from undue restraint. In view of the kinds of treatment sought by respondent and the evidence of record, we need go no further in this case.<sup>25</sup>

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<sup>23</sup> In the trial court, respondent asserted that "state officials at a state mental hospital have a duty to provide residents . . . with such treatment as will afford them a reasonable opportunity to acquire and maintain those life skills necessary to cope as effectively as their capacities permit." App. to Pet. for Cert. 94-95. But this claim to a sweeping *per se* right was dropped thereafter. In his brief to this Court, respondent does not repeat it and, at oral argument, respondent's counsel explicitly disavowed any claim that respondent is constitutionally entitled to such treatment as would enable him "to achieve his maximum potential." Tr. of Oral Arg. 46-48.

<sup>24</sup> Chief Judge Seitz used the term "treatment" as synonymous with training or habilitation. See 644 F. 2d, at 181.

<sup>25</sup> It is not feasible, as is evident from the variety of language and for-



## III

## A

We have established that Romeo retains liberty interests in safety and freedom from bodily restraint. Yet these interests are not absolute; indeed to some extent they are in conflict. In operating an institution such as Pennhurst, there are occasions in which it is necessary for the State to restrain the movement of residents—for example, to protect them as well as others from violence.<sup>26</sup> Similar restraints may also be appropriate in a training program. And an institution cannot protect its residents from all danger of violence if it is to permit them to have any freedom of movement. The question then is not simply whether a liberty interest has been infringed but whether the extent or nature of the restraint or lack of absolute safety is such as to violate due process.

In determining whether a substantive right protected by

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mulations in the opinions below and the various briefs here, to define or identify the type of training that may be required in every case. A court properly may start with the generalization that there is a right to minimally adequate training. The basic requirement of adequacy, in terms more familiar to courts, may be stated as that training which is reasonable in light of identifiable liberty interests and the circumstances of the case. A federal court, of course, must identify a constitutional predicate for the imposition of any affirmative duty on a state.

Because the facts in cases of confinement of mentally retarded patients vary widely, it is essential to focus on the facts and circumstances of the case before a court. Judge Aldisert, in his dissenting opinion in the court below, was critical of the "majority's abandonment of incremental decision-making in favor of promulgation of broad standards . . . [that] lack[] utility for the groups most affected by this decision." 644 F. 2d, at 183-184. Judge Garth agreed that reaching issues not presented by the case requires a court to articulate principles and rules of law in "the absence of an appropriate record . . . and without the benefit of analysis, argument or briefing" on such issues. *Id.*, at 186.

<sup>26</sup> In Romeo's case, there can be no question that physical restraint was necessary at times. See n. 2, *supra*.



the Due Process Clause has been violated, it is necessary to balance “the liberty of the individual” and “the demands of an organized society.” *Poe v. Ullman*, 367 U. S. 497, 522, 542 (1961) (Harlan, J., dissenting). In seeking this balance in other cases, the Court has weighed the individual’s interest in liberty against the State’s asserted reasons for restraining individual liberty. In *Bell v. Wolfish*, 441 U. S. 520 (1979), for example, we considered a challenge to pre-trial detainees’ confinement conditions. We agreed that the detainees, not yet convicted of the crime charged, could not be punished. But we upheld those restrictions on liberty that were reasonably related to legitimate government objectives and not tantamount to punishment.<sup>27</sup> See *id.*, at 539. We have taken a similar approach in deciding procedural due-process challenges to civil commitment proceedings. In *Parham v. J.R.*, 442 U. S. 584 (1979), for example, we considered a challenge to state procedures for commitment of a minor with parental consent. In determining that *procedural* due process did not mandate an adversarial hearing, we weighed the liberty interest of the individual against the legitimate interests of the State, including the fiscal and administrative burdens additional procedures would entail.<sup>28</sup> *Id.*, at 599–600.

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<sup>27</sup> See also *Jackson v. Indiana*, 406 U. S. 715, 738 (1972) (holding that an incompetent pre-trial detainee cannot, after a competency hearing, be held indefinitely without either criminal process or civil commitment; due process requires, at a minimum, some rational relation between the nature and duration of commitment and its purpose). This case differs in critical respects from *Jackson*, a procedural due process case involving the validity of an involuntary commitment. Here, petitioner was committed by a court on petition of his mother who averred that in view of Romeo’s condition she could neither care for him nor control his violence. *Ante*, at 2. Thus, the purpose of petitioner’s commitment was to provide reasonable care and safety, conditions not available to him outside of an institution.

<sup>28</sup> See also *Addington v. Texas*, 441 U. S. 418 (1979). In that case, we held that the state must prove the need for commitment by “clear and convincing” evidence. See *id.*, at 431–432. We reached this decision by weighing the individual’s liberty interest against the state’s legitimate in-



Accordingly, whether respondent's constitutional rights have been violated must be determined by balancing his liberty interests against the relevant state interests. If there is to be any uniformity in protecting these interests, this balancing cannot be left to the unguided discretion of a judge or jury. We therefore turn to consider the proper standard for determining whether a State adequately has protected the rights of the involuntarily-committed mentally retarded.

B

We think the standard articulated by Chief Judge Seitz affords the necessary guidance and reflects the proper balance between the legitimate interests of the State and the rights of the involuntarily committed to reasonable conditions of safety and freedom from unreasonable restraints. He would have held that "the Constitution only requires that the courts make certain that professional judgment in fact was exercised. It is not appropriate for the courts to specify which of several professionally acceptable choices should have been made." 644 F. 2d, at 178. Persons who have been involuntarily committed are entitled to more considerate treatment and conditions of confinement than criminals whose conditions of confinement are designed to punish. Cf. *Estelle v. Gamble*, 429 U. S. 97, 104 (1976). At the same time, this standard is lower than the "compelling" or "substantial" necessity tests the Court of Appeals would require a state to meet to justify use of restraints or conditions of less than absolute safety. We think this requirement would place an undue burden on the administration of institutions such as Pennhurst and also would restrict unnecessarily the exercise of professional judgment as to the needs of residents.

Moreover, we agree that respondent is entitled to minimally adequate training. In this case, the minimally adequate training required by the Constitution is such training

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terests in confinement.



as may be reasonable in light of respondent's liberty interests in safety and freedom from unreasonable restraints. In determining what is "reasonable"—in this and in any case presenting a claim for training by a state—we emphasize that courts must show deference to the judgment exercised by a qualified professional. By so limiting judicial review of challenges to conditions in state institutions, interference by the federal judiciary with the internal operations of these institutions should be minimized.<sup>29</sup> Moreover, there certainly is no reason to think judges or juries are better qualified than appropriate professionals in making such decisions. See *Parham v. J.R.*, 442 U. S. 584, 607 (1979); *Bell v. Wolfish*, *supra*, 441 U. S., at 544 (Courts should not "second-guess the expert administrators on matters on which they are better informed.'). For these reasons, the decision, if made by a professional,<sup>30</sup> is presumptively valid; liability may be im-

<sup>29</sup> See *Parham v. J.R.*, *supra*, 442 U. S., at 608 n. 16 (In limiting judicial review of medical decisions made by professionals, "it is incumbent on courts to design procedures that protect the rights of individuals without unduly burdening the legitimate efforts of the states to deal with difficult social problems.'). See also *Rhodes v. Chapman*, 452 U. S. 337, — (1981) ("[C]ourts cannot assume that state legislatures and prison officials are insensitive to the requirements of the Constitution or to the perplexing sociological problems of how best to achieve the goals of the penal function in the criminal justice system. . . ."); *Bell v. Wolfish*, 441 U. S. 520, 539 (1979) (In context of conditions of confinement of pre-trial detainees, "courts must be mindful that these inquiries spring from constitutional requirements and that judicial answers to them must reflect that fact rather than a court's idea of how best to operate a detention facility.').; *Wolff v. McDonnell*, 418 U. S. 539, 556 (1974) (In considering procedural due process claim in context of prison, "there must be mutual accommodation between institutional needs and objectives and the provisions of the Constitution that are of general application.'). See also Townsend & Mattson, *The Interaction of Law and Special Education: Observing the Emperor's New Clothes*, 1 *Analysis and Intervention in Developmental Disabilities* 75 (1981) (judicial resolution of rights of the handicapped can have adverse as well as positive effects on social change).

<sup>30</sup> By 'professional' decision-maker, we mean a person competent,



posed only when the decision by the professional is such a substantial departure from accepted professional judgment, practice or standards as to demonstrate that the person responsible actually did not base the decision on such a judgment.<sup>31</sup> In an action for damages against a professional in his individual capacity, however, the professional will not be liable if he was unable to satisfy his normal professional standards because of budgetary constraints; in such a situation, good-faith immunity would bar liability. See note 12, *supra*.

#### IV

In deciding this case, we have weighed those post-commitment interests cognizable as liberty interests under the Due Process Clause of the Fourteenth Amendment against legitimate state interests and in light of the constraints under which most state institutions necessarily operate. We repeat that the state concedes a duty to provide adequate food, shelter, clothing and medical care. These are the essentials of the care that the state must provide. The state also has the unquestioned duty to provide reasonable safety for all residents and personnel within the institution. And it may not restrain residents except when and to the extent professional judgment deems this necessary to assure such safety

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whether by education, training or experience, to make the particular decision at issue. Long term treatment decisions normally should be made by persons with degrees in medicine or nursing, or with appropriate training in areas such as psychology, physical therapy, or the care and training of the retarded. Of course, day-to-day decisions regarding care—including decisions that must be made without delay—necessarily will be made in many instances by employees without formal training but who are subject to the supervision of qualified persons.

<sup>31</sup> All members of the Court of Appeals agreed that respondent's expert testimony should have been admitted. This issue was not included in the questions presented for certiorari, and we have no reason to disagree with the view that the evidence was admissible. It may be relevant to whether petitioners' decisions were a substantial departure from the requisite professional judgment. See Part III B, *supra*.



or to provide needed training. In this case, therefore, the state is under a duty to provide respondent with such training as an appropriate professional would consider reasonable to ensure his safety and to facilitate his ability to function free from bodily restraints. It may well be unreasonable not to provide training when training could significantly reduce the need for restraints or the likelihood of violence.

Respondent thus enjoys constitutionally protected interests in conditions of reasonable care and safety, reasonably non-restrictive confinement conditions, and such training as may be required by these interests. Such conditions of confinement would comport fully with the purpose of respondent's commitment. Cf. *Jackson v. Indiana*, 406 U. S. 715, 738 (1972); see n. 27, *ante*. In determining whether the state has met its obligations in these respects, decisions made by the appropriate professional are entitled to a presumption of correctness. Such a presumption is necessary to enable institutions of this type—often, unfortunately, overcrowded and understaffed—to continue to function. A single professional may have to make decisions with respect to a number of residents with widely varying needs and problems in the course of a normal day. The administrators, and particularly professional personnel, should not be required to make each decision in the shadow of an action for damages.

In this case, we conclude that the jury was erroneously instructed on the assumption that the proper standard of liability was that of the Eighth Amendment. Accordingly, we vacate the decision of the Court of Appeals and remand for further proceedings consistent with this decision.

*So ordered.*



L 70  
Renewed  
(see my memo)

meb 02/19/82

Draft No. 80-1429, Youngberg v. Romeo

The question presented is whether respondent, a retarded adult involuntarily committed to a state institution, has a claim for damages against petitioners, the director and two supervisors of the institution. Respondent brings suit under 42 U.S.C. §1983, claiming that the conditions of his confinement violate his rights *English and* under the Fourteenth Amendment to the Constitution.  
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I

Respondent Nicholas Romeo is profoundly retarded. Although 33 years old, he has the mental capacity of an eighteen-month old child. He cannot talk and lacks the most basic self-care skills. Until he was 26, respondent lived with his parents in Philadelphia. But after the death of his father in May of 1974, his mother was unable



to control his violence. Within two weeks of the father's death, respondent's mother sought his temporary admission to a nearby Pennsylvania hospital.

Shortly thereafter, she asked the Philadelphia Court of Common Pleas to admit Romeo to a state facility on a permanent basis. Her petition to the Court explained that she was unable to care for Romeo or control his violence.<sup>1</sup> As part of the commitment process, Romeo was examined by a physician and a psychologist. They both certified that respondent was severely retarded and unable to care for himself. Joint Appendix (J.A.) 21a-22a & 28a-29a. The <sup>physician</sup> ~~doctor~~ also described Romeo's self-destructive behavior.<sup>2</sup> On July 11, 1974, the Court of Common Pleas committed respondent to the Pennhurst State

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<sup>1</sup>Mrs. Romeo's petition to the Court of Common Pleas stated: "Since my husband's death I am unable to handle him. He becomes violent--Kicks, punches, breaks glass; He can't speak--wants to express himself but can't. He is constant 24 hr. care. without my husband I am unable to care for him." Joint Appendix (J.A. 18a).

<sup>2</sup>J. A. at 22A:

"Physican and mental findings at time of examination: Pt. [patient] is nonverbal-restrained in bed. Recognizes examiner by rolling his eyes and banging his head against bedrail."



School and Hospital, pursuant to the applicable involuntary commitment provision of the Pennsylvania Mental Health and Mental Retardation Act, Pa. Stat. Ann. tit. 50 §4406.

At Pennhurst, Romeo was injured on numerous occasions, both by his own violence and by the reactions of other inmates to him. Mrs. Romeo became concerned about these injuries; when she visited him in July of 1976, for example, she observed that his eyes were black and his lip had been lacerated. After objecting about respondent's treatment several times, she filed this complaint, as his best friend, alleging that "[d]uring the period July, 1974 to the present, plaintiff has suffered injuries on at least sixty-three occasions." The complaint originally sought damages and injunctive relief from Pennhurst's director and two supervisors<sup>3</sup>; it alleged that these officials knew, or should have known, that

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<sup>3</sup>Petitioner Duane Youngberg was the Superintendent of Pennhurst; he has supervisory authority over the entire facility. Respondent Richard Matthews was the Director of Resident Life at Pennhurst. Respondent Marguerite Conley was Unit Director for the unit in which respondent was incarcerated. Petitioners are administrators, not medical doctors or psychologists. Youngberg and Matthews are no longer at Pennhurst.



Romeo was suffering injuries and failed to institute appropriate preventive procedures, thus violating his rights under the Eighth and Fourteenth Amendments.

Thereafter, in late 1976, Romeo was transferred from his ward to the hospital for treatment for a broken arm. While in the infirmary, and by order of a doctor, he was physically restrained<sup>4</sup> during portions of each day.

These restraints were ordered by a Dr. Gabroy, not a defendant here, to protect Romeo and others in the hospital, some of whom were in traction or were being

treated with intervenious tubes. 7 R. 40, 49, 76-78.

*Although respondent*  
~~When respondent's arm was healed, he~~ normally would have  
~~(when his arm healed)~~ returned to his ward, the parties, ~~by their counsel,~~

agreed that he should remain in the hospital due to the

pending litigation. 5 R. 248, 6 R. 57-58 & 137.<sup>5</sup>

Nevertheless, in December of 1977, a second amended complaint was filed alleging that the defendants were restraining respondent for prolonged periods on a routine

<sup>4</sup>"Soft" restraints, for the arms only, were generally used. 7 Record (R.) 53-55, 59.

<sup>5</sup>Three of petitioners' witnesses so testified at trial; respondent offered no evidence to the contrary.

*Although described as "schakles", these were*

*Mary, is this right?  
 CA3 talks a lot about "schakles".*



basis.<sup>6</sup> The second amended complaint added a claim for damages to compensate Romeo for the defendants' failure to provide him with appropriate treatment throughout his stay at Pennhurst. The claims for injunctive relief were dropped prior to trial because respondent is a member of the class seeking such relief in another action.<sup>7</sup>

An eight-day jury trial was held in April of 1978. Petitioners introduced evidence of the training programs provided respondent both before and after his transfer to the hospital ward; he participated in several programs teaching basic self-care skills.<sup>8</sup> A comprehensive

<sup>6</sup> Although the first amended complaint <sup>was</sup> filed <sup>in January 1977,</sup> after respondent's hospitalization, it did not add any restraint-related allegations. Paragraph 16 of this original complaint had stated that defendants "did not have the staff, resources, training, or compassion to implement such policies and procedures as are required to assure plaintiff a reasonable degree of physical safety." Paragraph 16 of the first amended complaint, ~~filed in January of 1977~~ stated that "[d]efendants have failed to institute such policies and procedures as are required to assure plaintiff a reasonable degree of safety."

<sup>7</sup> Pennhurst State School and Hospital v. Halderman, \_\_\_\_ U.S. \_\_\_\_ (1981) (remanded for further proceedings).

<sup>8</sup> Prior to hospitalization, Romeo participated in programs dealing with feeding, showering, drying, dressing, attention, self control and toilet training. Defendants' exhibit 10; 3 R. 69-70, 5 R. 44-56, 242-250, 6 R. 162-166; 7 R. 41-48.

Programming continued while respondent was in the hospital, 5 R. 227, 248, 256; 6 R. 50, 162, R. 32, 34, 41-48, and this programming reduced respondent's aggressive behavior, 7 R. 45.



behavior-modification program, was designed by staff members to reduce his aggressive behavior<sup>9</sup>, but that program was never implemented because of his mother's objections.<sup>10</sup>

Respondent introduced evidence of his injuries and of the conditions in his "unit." But the judge refused to allow testimony of experts proffered by Romeo. They would have testified that Romeo could have been more effectively treated under other programs and that the lack of programming in Romeo's ward was the cause of aggressive behavior. These experts would also have stated that psychologists are ethically bound to choose methods that do not use restraints and that there is no dispute in the literature on this point. The trial judge disallowed this

<sup>9</sup> 2 R. 7, 5 R. 88-90; 6 R. 88, 200-203; Defendants' Exhibit 1, at 9 (the program called for short periods of separation from other residents and for periodic use of a "muff" on plaintiff's hands for short periods of time (i.e., 15 minutes), to prevent him from attacking himself and others).

<sup>10</sup> 1 R. 53; 4 R. 25; 6 R. 204. Yet, at oral argument, when asked to explain "the difference between the parties in this litigation, "counsel for respondent stated that "[t]he difference is that our feeling is that Petitioners are obligated to use behavioral programming to prevent violent people -- to reduce violence and prevent aggression." Transcript at 47. See also *id.* at 41 ("We concede that psychologists can use restraints as part of behavior modification programs. We want programming for our clients.")

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testimony. He explained that it might be relevant to a malpractice suit, but was not relevant to a constitutional claim under §1983. ~~Appendix to Petition for Certiorari~~ (Petr. App.) 94a-95a.

At the close of the trial, the judge instructed the jury that "if any or all of the defendants were aware of and failed to take all reasonable steps to prevent repeated attacks upon Nicholas Romeo," such failure deprived him of his constitutional rights. Petr. App. 73a. The jury <sup>also</sup> was instructed that if the defendants shackled Romeo other than in a good faith effort to treat him, <sup>then</sup> his rights had been violated. Ibid. Finally, the jury was instructed that if Romeo was denied treatment "as a punishment for filing this lawsuit," or if defendants were "deliberately indifferent to the medical and psychological needs of Nicholas Romeo," his constitutional rights were violated under the Eighth Amendment. Id., at 73a-75a.<sup>11</sup>

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<sup>11</sup>The trial judge denied certain jury instructions proposed by respondent. The judge refused to instruct the jury that Romeo had a right to "such treatment as will afford [him] a reasonable opportunity to acquire and maintain those life skills necessary to cope as

Footnote continued on next page.



The jury returned a verdict for the defendants,

*on which judgment was entered.*

On appeal, the Court of Appeals for the Third Circuit, sitting en banc, vacated the ~~return of the jury~~ <sup>judgment</sup> and remanded for a new trial. 644 F. 2d 147 (1980). All of the judges agreed that respondent's expert testimony should have been admitted. Id., at 164 & 173. They also agreed that the Eighth Amendment, prohibiting cruel and unusual punishment of those convicted of crimes, was not an appropriate reference for determining the constitutional rights of the involuntarily committed. Rather, respondent's Fourteenth Amendment liberty right was implicated by the conditions under which he was confined. Id., at 156-59, & 173. The en banc Court of Appeals did not, however, agree on the relevant standard to be used in determining whether Romeo's constitutional rights had been violated.<sup>12</sup>

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effectively as [his] capacities permit." Appendix to Petition for Certiorari 94a-95a. The judge also refused to instruct the jury that Romeo had a right to treatment "under the least restrictive conditions consistent with the purpose of the commitment." Id., at 95a.

<sup>12</sup>The existence of a qualified immunity defense was not at issue on appeal. The defendants had received an instruction on this defense, J.A. 76a, and it was not challenged by respondent. 644 F. 2d, at 173 n.1. After citing Pierson v. Rhodes, 386 U.S. 547 (1967) and Scheuer

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The court's majority opinion began its analysis of this issue by stating that involuntary civil commitment entails a "massive curtailment of liberty." Id., at 157 (quoting Humphrey v. Cady, 405 U.S. 504, 509 (1972)). As a consequence, noted the court, involuntary commitment is circumscribed with due process protection. Ibid. The Court then held that commitment does not extinguish all aspects of an individual's liberty interest; the power of locomotion without restraint and the right to personal security and freedom from punishment are fundamental liberties that can be limited only by an overriding, non-punitive state interest. 644 F. 2d, at 157-159.<sup>13</sup>

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v. Rhodes, 416 U.S. 232 (1974), the majority of the Court of Appeals noted that:

"when this matter is remanded for a new trial, the trial judge should instruct the jury regarding the possibility of immunity with the caveat that the defendants' reasonable belief is to be judged at the time their actions were taken. The jury should further be charged that the defendants are not responsible for unforeseeable developments in the law." 644 F. 2d, at 171-172.

<sup>13</sup>The court identified three legitimate state justifications for confinement of the mentally ill and mentally retarded: (1) the protection of society pursuant to the state's police power; (2) the protection and care of the individuals themselves pursuant both to the state's parens patriae and police power; and (3) rehabilitation or treatment. Id., at 158.

Despite the uncontroverted evidence in this record of Romeo's dangerous behavior, see text and notes at \_\_\_\_\_, supra, the court rejected dangerousness to others as a

Footnote continued on next page.

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ii  
iii



In light of <sup>these views,</sup> ~~this principle~~, the court considered Romeo's three claims: (1) the right to be free of physical restraints; (2) the right to safety and protection; and (3) the right to treatment. Id., at 159. Because physical restraint "raises a presumption of a punitive sanction," it can be justified only by compelling necessity. Id., at 159-160. And the failure to provide for a patient's safety ~~can~~ must be justified by a showing of substantial necessity. Id., at 160.

The court divided the treatment claim into three categories. If a jury finds that no treatment has been administered, it may hold the institution's administrators liable unless they can provide a compelling explanation for the lack of treatment. 644 F. 2d at 165, 173. If some treatment has been administered, those responsible are liable only if the treatment is not

legitimate reason for Romeo's commitment, relying on findings in another case. Id., n. 18 (citing Halderman v. Pennhurst State School & Hospital, 613 F. 2d, \_\_\_, 91 (19\_\_\_), subsequently reversed and remanded, \_\_\_ U.S. \_\_\_ (19\_\_\_). The court ~~then~~ stated that "[t]he absence of any dangerousness to others only strengthens the state's obligation to provide treatment to such non-threatening individuals once the state undertakes to confine them." Ibid.



"acceptable in light of present medical or other scientific knowledge." Id., at 166-167 & 173. The court considered a third treatment standard appropriate to justify severe intrusions on individual dignity, such as permanent physical alteration or surgical intervention.

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The court noted that "least restrictive analysis" would be appropriate here for the reasons <sup>that</sup> ~~which~~ demand such justification of shackling. Id., at 165-166, & 173.

<sup>Christ</sup>  
1 Judge Seitz, writing for a minority of four, considered the standards articulated by the majority as indistinguishable from medical malpractice in many respects. In Judge Seitz' view, the Constitution "only requires that the courts make certain that professional judgment in fact was exercised." He concluded that the appropriate standard was whether the defendants' conduct was "such a substantial departure from accepted professional judgment, practice or standards in the care and treatment of this plaintiff as to demonstrate that the defendants did not base their conduct on a professional judgment."

We granted the petition for certiorari because of



the importance of the question presented to the  
 administration of state institutions for the involuntarily  
 committed. We now reverse.

## II

We consider here for the first time the substantive

rights of the involuntarily committed under the Fourteenth

Amendment<sup>14</sup> to the Constitution.<sup>15</sup> In the case at bar,

respondent has been committed pursuant to the laws of

Pennsylvania, and he does not challenge the <sup>commitment.</sup>

~~constitutionality of these procedures. Nor does he argue~~

~~that Pennsylvania erred in finding his commitment~~

necessary. The <sup>broad</sup> ~~sole~~ question <sup>ed</sup> ~~respondent~~ presents is

whether, under the Due Process Clause, petitioners have

<sup>14</sup>Under that Amendment, a state cannot deprive "any person of life, liberty, or property, without due process of law ...." U.S. Const., Amend. XIV, §1.

<sup>15</sup>Although, in his complaints and arguments to the District Court, respondent maintained that his Eighth Amendment rights had been violated, see e.g., Petn. App. 94a (plaintiff's proposed jury instruction), respondent no longer relies on the Eighth Amendment as a direct source of constitutional rights, Brief of Respondent 13 n.12 ("the Eighth Amendment applies only in cases concerning punishment of persons convicted of crimes"). <sup>The</sup>

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infringed a post-commitment liberty interest by failing to provide constitutionally adequate conditions of confinement.

## A

Respondent's commitment proceeding did not ~~have~~ <sup>2</sup> deprived him of all liberty interest. See, e.g., Vitek v. Jones, 445 U.S. 480, 491-494 (1980). And the conditions under which respondent is confined in a state institution implicate the entirety of his remaining liberty interest. The question therefore becomes, <sup>2</sup> by what standard do we determine whether conditions at Pennhurst impermissibly infringe that residuum of liberty of which respondent should <sup>not</sup> ~~never~~ <sup>1</sup> be deprived.

Due process represents the balance <sup>that</sup> ~~which~~ we, as a nation, have struck between "the liberty of the individual" and "the demands of an organized society." Poe v. Ullman, 367 U.S. 497, 522, 542 (1961) (Harlan, J., dissenting). In seeking this balance in somewhat similar cases, the Court has weighed the individual's interest in liberty



against the restraints on state action. In Bell v. Wolfish, 441 U.S. 520, 539 (1979), for example, we considered a challenge to pre-trial detainees' confinement conditions. We agreed that the detainees, ~~who~~ <sup>the charged,</sup> ~~had~~ not yet ~~been~~ convicted of ~~any~~ crime, could not be punished. But we upheld those restrictions on liberty ~~which~~ <sup>that</sup> were reasonably related to legitimate government objectives and not tantamount to punishment. And in Jackson v. Indiana, 406 U.S. 713, 738 (1972), we held that an incompetent pre-trial detainee could not, after a competency hearing, be held ~~forever~~ <sup>indefinitely</sup> without either criminal process or civil commitment, ~~because~~ <sup>Due</sup> process requires, at a minimum, some rational relation between the nature and duration of commitment and ~~the~~ <sup>its</sup> purpose ~~of~~ commitment. See also Addington v. Texas, 441 U.S. 418 (1979) (in determining burden of proof in civil commitment, individual's liberty interest weighed against legitimate state interests in confinement).

Parham v. J.R., 442 U.S. 584 (1979), provides more specific guidance. There we considered a challenge to state procedures for commitment of a minor with parental



consent. In determining that procedural due process does not mandate an adversarial hearing,<sup>16</sup> <sup>that</sup> we ~~noted~~ <sup>considered</sup> the Court has ~~balanced a number of factors~~ in determining whether state procedures are adequate <sup>to protect a</sup> ~~once a protectable~~ liberty interest <sup>has</sup> ~~been identified~~:

"First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards, and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." Mathews v. Eldridge, 424 U.S. 319, 335 (1976), quoted in Smith v. Organization of Foster Families, 431 U.S. 816, 848-849 (1977). Id., at 599-600.

These factors are determinative in cases identifying the scope of procedural protection to be afforded a liberty or property interest under the Due Process Clause of the Fourteenth Amendment.<sup>17</sup> In the case at bar, the question

<sup>16</sup>Under the Georgia statute, the proceeding began with an application for admission signed by the parent. The superintendent of a hospital was then authorized to admit a minor for "observation and diagnosis." If, after observation, the superintendent found "evidence of mental illness" and that the child was "suitable for treatment" in the hospital, the child could be admitted "for such period and under such conditions as may be authorized by law." 442 U.S., at 588 n. 5. In Parham, the Court sustained the statute.

<sup>17</sup>See also Dixon v. Love, 431 U.S. 105 (1977); Memphis Light, Gas & Water Division v. Craft, 436 U.S. 1 (1978); Barry v. Varcjo, 443 U.S. 55 (1979); Mackay v. Footnote continued on next page.

again identified the factors that this

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in whether the respondent's substantive liberty interests are adequately protected in Penhurst State School and Hospital.

16.

is the precise extent of substantive protection to be accorded in the context of a state institution. But we conclude that the balance to be achieved in these two situations is not dissimilar.

The Parham factors were initially applied in Mathews v. Eldridge, 424 U.S. 319, 335 (1976), <sup>a procedural due process</sup> to ~~case~~,  
to ~~case~~,

determine whether procedural due process had been violated by the failure to provide an adjudicatory hearing prior to the cessation of certain social security payments under a program administered by both state and federal agencies. The Court began by noting that, as in the case at bar, all agreed that the plaintiff had asserted an interest protected by due process. The dispute was over the degree of procedural due process protection appropriate. In the case at bar, Romeo also has asserted a protected interest, though the dispute is over the degree of substantive due process protection appropriate.

We ~~believe~~ <sup>believe</sup>, however, that the factors considered in ~~The factors relevant to~~ determining whether a

state's procedures properly balance the liberty interest

Montrym, 443 U.S. 1 (1979).

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of the constitutional adequacy<sup>17.</sup>  
of the state's substantive protection  
of liberty interests.

of the individual against the legitimate interests of the  
state, ~~are~~ <sup>relevant</sup> also present when the question is the degree of  
substantive protection to be accorded an individual's  
liberty interest in an institutional setting. In both

instances, the state's fiscal and administrative  
constraints must be balanced against the interests of the  
individual. The imposition of additional burdens on the  
state, whether substantive or procedural, should be  
justified by the incremental benefit to the individual.

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interest.

In determining the degree of protection to be  
accorded respondent's liberty interest, ~~in an action under~~

~~§1983~~, we therefore consider the following <sup>importance</sup> factors: the  
individual's interest in decent, adequate food, shelter,  
and medical care, which the state agrees it should  
provide, the incremental <sup>importance</sup> value of additional comforts,  
programs, training, or activities, and the government's  
legitimate fiscal and administrative concerns.

In considering these factors, it must be remembered

that the Due Process Clause of the Fourteenth Amendment  
does not extend a federal constitutional right to be free  
from injury whenever the tortfeasor is a state. Paul v.



Mary - Paul & Davis is a bit remote to this case, as in Parratt.

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Davis, 424 U.S. 693, 701 (1976). See also Parratt v.

Taylor, \_\_\_ U.S. \_\_\_ (1981). Nor does the fact that a

person is in a state institution turn medical malpractice into a constitutional violation. See Estelle v. Gamble,

429 U.S. 97, 106 (1976). <sup>that</sup> The need to reserve the

Constitution for appropriate issues is especially

compelling in the context of a challenge to conditions at

a facility such as Pennhurst. Constitutional principles

cannot direct day-to-day administration of a large

institution operating within <sup>the inevitable constraints of limited</sup> a fixed budget.<sup>18</sup> finite human and fiscal resources.<sup>18</sup>

<sup>18</sup>See, e.g., Parham v. J.R., 442 U.S. 584, 608 n. 16 (1979) (In limiting judicial review of medical decisions made by professionals: "it is incumbent on courts to design procedures that protect the rights of individuals without unduly burdening the legitimate efforts to the states to deal with difficult social problems"); Bell v. Wolfish, 441 U.S. 520, 539 (1979) (In context of conditions of confinement of pre-trial detainees: "Courts must be mindful that these inquiries spring from constitutional requirements and that judicial answers to them must reflect that fact rather than a court's idea of how best to operate a detention facility"); Wolf v. McDonnell, 418 U.S. 539, 556 (1974) (in considering procedural due process claim in context of prison: "there must be mutual accommodation between institutional needs and objectives and the provisions of the Constitution of general application"); Procunier v. Martinez, 416 U.S. 396, 404-405, 406 (1974) ("[T]he problems of prisons in America are complex and intractable, and, more to the point, they are not readily susceptible to resolution by degree. Most require expertise, comprehensive planning, and the commitment of resources, all of which are peculiarly within the province of the legislative and executive branches of the government.")

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constraints in order to safety &  
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Respondent has a strong interest in conditions at Pennhurst. He is totally dependent on the institution, and its treatment of him will determine the quality of his life. Respondent would, of course, prefer optimal conditions, including, not only decent housing, food, and medical care -- all of which the state agrees should be provided -- but also training, and interesting and rewarding recreational activities. His interest in adequate food, shelter, and medical care and treatment decisions made by professionals is certainly strong. His interests in additional activities or training, though strong, is less compelling.

The state has limited resources which it must allocate among competing, worthwhile, programs and institutions. Respondent does not argue that the state is obligated to accept responsibility for Romeo's life; respondent concedes that the state need not provide for him at all.<sup>19</sup> The state has a strong fiscal interest in

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Footnote(s) 19 will appear on following pages.



being able to afford individuals such as Romeo a place where they can survive in humane conditions without promising them optimal care and treatment, such as they would receive at private institutions. If too-high a standard is imposed on the state whenever it assumes responsibility for someone unable to survive on his own, many states will be unwilling or unable to provide for all those needing such care.<sup>20</sup>

also contract?  
 If respondent were in a private institution, he would be entitled to recover from respondents in a medical malpractice action if ~~they failed~~ <sup>there were a failure</sup> to exercise reasonable care in accordance with sound hospital practice to protect the health and safety of their patients. Respondent would be entitled to treatment and conditions at the standard generally considered appropriate by other administrators of institutions for the retarded. See, e.g., Darling v.

<sup>19</sup> Transcript of Oral Argument, at 33.

<sup>20</sup> In the context of equal-protection challenges to welfare classifications, we have recognized that that the Equal Protection Clause "does not require that a State must choose between attacking every aspect of a problem or not attacking the problem at all.... It is enough that the State's action be rationally based and free from individual discrimination." Dandridge v. Williams, 397 U.S. 471, 486-487 (1970). See also Richardson v. Belcher, 404 U.S. 78, 83-84 (1971).



Charleston Community Memorial Hospital, 33 Ill. 2d 326 (1965), cert. denied 383 U.S. 246 (1966). This standard, which would use the Constitution to protect patients in state institutions from ordinary torts, we reject as too high: it would interfere with both the administration of state institutions and with the allocation of scarce resources by states. Although respondent would naturally prefer this standard, his preference cannot easily be distinguished from the interests of others in a wide variety of state services and subsidies, not all of which can be provided.

We also reject the standard used by the District Court, i.e. the standard applicable to prisoners, as too low. In Estelle v. Gamble, 429 U. S. (1976), we held that the Eighth Amendment rights of prisoners are not infringed unless there is deliberate indifference to serious medical needness. Prisoners are, of course, punished by being confined under conditions which deprive them of much that makes life worth while. Provided that it is not "cruel and unusual punishment," such confinement is not, however, unconstitutional. The deliberate-indifference standard



identifies "cruel and unusual punishment" in the context of a medical-treatment decision.<sup>21</sup> In the past, confinement conditions varied with the extent to which cures were regarded as possible.<sup>22</sup> Today, at a minimum, the incompetent should be treated humanely -- the state, after committing these individuals without their consent, cannot be indifferent to their need beyond bare subsistence.

We think that the standard adopted by Judge Seitz in his concurring opinion reflects a sensitive balance of

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<sup>21</sup>In a footnote, 429 U.S., at 96 n. 10, the Court cited four lower court decisions illustrating cruel and unusual punishment. in the context of medical care:

"Williams v. Vincent, 508 F. ed 541 (CA2 1974) (doctor's choosing the 'easier and less efficacious treatment' of throwing away the prisoner's ear and stitching the stump may be attributable to 'deliberate indifference ... rather than an exercise of professional judgment'); Thomas v. Pate, 493 F. 2d 151, 158 (CA7), cert. denied sub. nom. Thomas v. Cannon, 419 U.S. 879 (1974) (injection of penicillin with knowledge that prisoner was allergic, and refusal of a doctor of treat allergic reaction); Jones v. Lockhart, 484 F. 2d 1192 (CA8 1973) (refusal of paramedic to provide treatment); Martinex v. Mancusi, 443 F. 2d 921 (CA2 1970) (prison physician refuses to administer the prescribed pain killer and renders leg surgery unsuccessful by requiring prisoner to stand despite contrary instructions of surgeon)."

<sup>22</sup>See relevant history, comparing 18th, 19th, 20th centuries. To be filled in next week.



the interests of the involuntarily committed and the interests of Pennhurst and of the state of Pennsylvania. Judge Seitz held that, to accord those it has involuntarily committed substantive due process, the state must place the involuntarily committed under the care of professionals. An individual's constitutional rights are violated only if professional judgment is not, in fact, exercised in making a decision about his treatment or his living conditions, including the need for constraints. But the fact that a decision departs from accepted professional conduct--the malpractice standard--will not ~~usually~~ <sup>necessarily</sup> indicate a denial of constitutional rights. Only if the departure is so substantial that it demonstrates that the challenged conduct was not actually based on a professional judgment, will there be a constitutional violation. Although ~~much higher~~ <sup>lower</sup> than the standard of malpractice, this standard is no more than that demanded by our concept of "humane" in the context of an institution for the incompetent.<sup>23</sup>

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<sup>23</sup>Brief note on how "living tradition" as limit on substantive due process, quoting Harlan; citing Moore v. Footnote continued on next page.



This standard should not be unduly burdensome on institutions. Professional judgments will not be second-guessed by either courts or juries and institutions need not provide all the treatment and activities a private institution would offer. As a general matter, Pennhurst appears to commit its treatment and care decisions to professionals,<sup>24</sup> as do most, if not all, modern institutions for the incompetent.

### III

#### A

The state argues that, when a person is committed to a state institution for care, by which it means decent food, shelter, clothing, reasonable safety, and medical attention, "it is sufficient that [such] care be provided." Brief of Petitioners at 12 & n. 10. The state maintains that there is no additional obligation to provide "both care and treatment or forego commitment.

City of Eastlake, and discussing current standards and attitudes.

<sup>24</sup>Footnote on expert testimony, discretion, Rhodes v. Chapman, etc.



In this perplexing <sup>area</sup> of  
"medicine and ~~physiology~~ psychiatry,  
professionals ~~are not in agreement~~  
~~treatments~~ are not in agreement

25.

entirely, leaving the mentally disabled to their own  
devices." Id., at 12.

Although professionals in this field do not agree  
that effective treatment of ~~the~~ all severely or profoundly  
retarded persons is possible,<sup>25</sup> we <sup>certainly</sup> cannot hold that due  
process is satisfied when individuals involuntarily  
committed to state institutions are <sup>simply</sup> ~~only~~ kept alive.  
~~There also must be medical care and treatment~~  
~~sometimes in conditions that are less than humane.~~ We do  
not, however, suggest <sup>a</sup> that the state has any obligation to  
provide optimal treatment and conditions, <sup>normally,</sup> it is sufficient  
if a professional makes a judgment <sup>as to the</sup> whether a certain  
<sup>care and</sup> treatment ~~or activity~~ <sup>that</sup> should be provided, the  
constitutional standard will be satisfied <sup>d</sup> provided the  
decision is not actually the exercise of professional  
judgment.

When there is a reasonable  
possibility that there would  
ameliorate <sup>B</sup> suffering or  
improve the patient's condition.

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For the most part, respondent urges the adoption of

<sup>25</sup>Brief illustration of variety of approaches in  
literature.

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the Court of Appeals' standard. That court held that restraints can be justified only by "compelling necessity" and if the "least restrictive" method of dealing with a patient. 644 F. 2d, at 160-161. Respondent prefers a standard proscribing "unnecessary custodial shackling." See Brief of Respondent 18-21. But, <sup>at</sup> oral argument respondent indicated that there is little difference between these formulations; restraints would be unnecessary if a less restrictive alternative were available. Transcript of Oral Argument 55-56.

This standard appears to be even higher than the standard that would obtain in a malpractice action. "Least restrictive means" and "compelling necessity" are concepts developed in reviewing legislative classifications infringing express First Amendment freedoms. We see no reason to assume that they are appropriate standards for judging decisions regarding the proper care and treatment of the profoundly retarded in a state institution.

The Court of Appeals also held that for severe intrusions on personal liberty, such as permanent physical



alterations by surgical intervention, the "least restrictive means" and "compelling necessity" standards would be appropriate. In their brief, respondents note that this standard is not presented by the case at bar and need not be addressed. Brief of Respondent at 10-11. We agree.

Respondent does support, however, the general treatment standard adopted by the Court of Appeals: the involuntarily committed are entitled to treatment that is "acceptable ... in light of present medical or other scientific knowledge."<sup>26</sup> 644 F. 2d, at 173. This is precisely the standard of medical malpractice; under it, malpractice would become a constitutional violation whenever the patient was is in a state institution for the involuntarily committed. For the reasons given earlier, we consider such a standard too high.

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<sup>26</sup>The court also held that a failure to provide any treatment requires a "compelling explanation." 644 F. 2d, at 173. Respondents do not appear to have addressed this precise standard in their brief. (Add additional information about their arguing that he received no treatment and clarify this footnote - respondents assert no separate standard for non-treatment situation.)



## C

Finally, respondent argues that, as a matter of state law, he was committed for "care and treatment."<sup>27</sup> From this, he maintains that he has a state substantive right entitled to substantive, not procedural, due process protection under the Fourteenth Amendment to the Federal Constitution. To support the proposition that his state-created liberty interest is entitled to substantive due process protection, respondent cites Vitek v. Jones, 445 U.S. 480, 488-89 (1980) and Wolf v. McDonnell, 418 U.S. 539, 557-58 (1974), but these cases afford procedural due process protection to state-created liberty interests.

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<sup>27</sup> Respondent did not raise state law as relevant to this proceeding in any way prior to his brief to this Court. In his appellate brief, for example, he cited neither any state statute nor any state case, even as relevant to his federal rights under the Due Process Clause. See Respondent's Brief to the Court of Appeals for the Third Circuit. Moreover, state law is by no means as clear as respondent suggests. The statute itself is ambiguous. It provides that a judge may order commitment "for care and treatment" after finding that the person is "in need of care." Pa. Stat. Annot. tit. 50, §4406(b). But such an order is apparently appropriate for any individual in need of "care or treatment." Pa. Stat. Annot. tit. 50, §4406(a). The addition of "treatment" to "care" in the description of the commitment order itself may simply indicate that no additional procedure is necessary prior to the provision of treatment as well as care.



Respondent has received federal procedural due process. When a person is involuntarily committed, due process requires a hearing to determine whether the facts, as shown by clear and convincing evidence, warrant the deprivation of liberty. Addington v. Texas, 441 U.S. 418 (1979). Under Addington, a state can constitutionally commit to provide necessary care or to protect others.<sup>28</sup>

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<sup>28</sup>In Addington v. Texas, 441 U.S. 418 (1979), the Court considered the question of the appropriate standard of proof and adopted the clear-and-convincing standard; it did not expressly hold that only care or protection (not treatment) would justify commitment. But in reaching just the need for conclusion on the burden of proof, the Court considered discussed the legitimate, conflicting interests of the state and the individual whose commitment is sought.

The commitment statute provided for commitment for an individual's own "welfare and protection or the protection of others." Id., at 420 (quoting Tex. Rev. Civ. Stat. Ann., Art. 5547-51 (Vernon 1958)). The state's psychiatrists, testifying as experts, stated that Addington needed hospitalization in order to obtain treatment for his mental illness because he would otherwise refuse treatment. Addington contested neither his mental illness nor his need for hospitalization to secure treatment. Instead, he attempted to show that there was no substantial basis for concluding that he was dangerous to himself or others. Id., at 421.

In considering the interests relevant to determining the appropriate burden of proof, the Court recognized only two state interests as legitimate: as parens patriae, the state has a legitimate interest "in providing care to its citizens who are unable ... to care for themselves;" and, in the exercise of police power, the state can "protect the community from the dangerous tendencies of some who are mentally ill." Although the Court did not explicitly reject treatment as a justification for involuntary commitment, its remand for further proceedings when Addington had conceded his illness and his need for treatment in the state hospital suggests that the need for treatment alone cannot justify involuntary commitment in the absence of a finding that the individual is either unable to care for himself or is dangerous to others.



As a matter of federal procedural due process, Romeo's commitment itself did not deprive him unconstitutionally of liberty because his commitment was justified, as respondent himself concedes, by his own need for care and to protect others.<sup>29</sup>

Whether or not respondent has a post-commitment substantive right under the Due Process Clause of the Fourteenth Amendment is a matter of federal constitutional law and entirely distinct from and independent of the reasons that may have motivated Pennsylvania during the earlier commitment proceedings.<sup>30</sup> In arguing otherwise, respondent relies on Jackson v. Indiana, 406 U.S. 715 (1972). There the Court stated that due process requires, at a minimum, terms and conditions of confinement that bear a rational relation to the purposes of confinement.

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<sup>29</sup>Add footnote on CA's crazy finding of no danger based on record in another case.

<sup>30</sup>In the past, this Court has indicated that whether there is a federal substantive due process right at all is an entirely different question from whether there is a liberty interest for procedural due process purposes. See Smith v. Organization of Foster Families, 431 U.S. 816, 842 n. 48 (1977) (recognition of a liberty interest in foster families for purposes of procedural due process would not necessarily require that such families be treated as biological families for purposes of substantive due process under cases such as Moore v. City of East Cleveland, 431 U.S. 493 (1977)).



In Jackson, however, the Court was only considering the need for a relationship between the one and only reason that justified confinement as a matter of federal procedural due process (temporary confinement pending competency to stand trial) and the "terms and conditions" of confinement. Romeo could, as a matter of federal procedural due process, be confined solely to protect those in his community. See n. 1, supra. Respondent was, of course, confined for care, and possibly treatment,<sup>31</sup> under the relevant Pennsylvania statute. But respondent is not asking for another procedure, in which Pennsylvania would commit him solely because he is dangerous to others.

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<sup>31</sup>State law is not entirely clear. Respondent's argument is that the commitment provision, §4406, authorizes commitment only for both care and treatment. And under Jackson, continues respondent, he is therefore entitled to treatment as well as care (conditions of confinement must be reasonably related to purposes). It is true that in In re Schmidt, 429 A. 2d 631 (Pa. 1980), the court found a right to treatment under the Mental Health and Retardation Act of 1966, tit. 50. §4101, et seq. But §4406, the involuntary commitment provision, was not the source of this right. Instead, the court relied on other, more specific, statutory provisions and even more detailed regulations implementing them. Id., at 632-637 (section 4406 is mentioned only in the opening paragraph in reporting an argument made by one of the parties). Of the other two cases cited by respondent, neither addresses the meaning of §4406. The first, In re Joyce Z., 4 Pa. D&C. 3rd 596. (Pa. Com. Pl. Ct. Allegheny County 1969), deals with the rights of a child in a foster home and the other, In re Guzman, 405 A. 2d 1036, 1038 (Commonwealth ct. 1979) appears to have reached its result as a matter of federal constitutional law without construing §4406.



And if he were given such a procedure, respondent would not then argue that due process requires no more than that he be kept behind high walls, since he was confined only to protect those outside Pennhurst. Yet, had Pennsylvania, as a matter of state law, committed petr solely to protect others, respondent's reading of Jackson v. Indiana would require that result. As a matter of federal substantive due process, there is no reason someone involuntarily committed to protect others should receive less treatment and inferior conditions than a person committed only for his own care.

## IV

~~CONCLUSION~~ *P*

In *voluntary* commitment neither *extinguishes* all constitutionally-protected liberty nor entitles the committed to the optimal care and conditions they would receive in private institutions. Instead, the Due Process Clause balances the interests of the involuntarily committed against legitimate state interests and the restraints within which states must operate *their* institutions. We conclude that the involuntarily



committed are entitled, at a minimum, to humane treatment:

adequate food, decent living conditions, and medical and  
Other  
treatment decisions made by professionals.



✓  
lfp/ss 03/27/82     Rider A, p. 18 (Romeo)

ROME018 SALLY-POW

Note to Mary: I suggest moving the definition of professionals (now n. 24, p. 22) to be keyed to the word "professionals" in the "holding" sentence on page 18.

Also, what do you think of revising your draft of the note to read along the following lines:

"By 'professional' decision-maker, we mean a person competent, whether by education, training or experience, to make the particular decision at issue. Long term treatment decisions normally should be made by persons with degrees in medicine or nursing, or with appropriate training in areas such as psychology, physical therapy, or the care and training of the retarded. Of course, the day-to-day care - including immediate decisions - necessarily will be made in many instances by employees without formal training but who are subject to the supervision of qualified persons."



Z.F.P.  
3/21

Draft 2

meb 03/19/82

Draft No. 80-1429, Youngberg v. Romeo

The question presented is whether respondent, a retarded adult involuntarily committed to a state institution, has a claim for damages against petitioners, the director and two supervisors of the institution. Respondent brings suit under 42 U.S.C. §1983, claiming that the conditions of his confinement violate his rights under the Fourteenth Amendment to the Constitution.

I

Respondent Nicholas Romeo is profoundly retarded. Although 33 years old, he has the mental capacity of an eighteen-month old child. He cannot talk and lacks the most basic self-care skills. Until he was 26, respondent lived with his parents in Philadelphia. But after the death of his father in May of 1974, his mother was unable



to control his violence. Within two weeks of the father's death, respondent's mother sought his temporary admission to a nearby Pennsylvania hospital.

Shortly thereafter, she asked the Philadelphia Court of Common Pleas to admit Romeo to a state facility on a permanent basis. Her petition to the Court explained that she was unable to care for Romeo or control his violence.<sup>1</sup> As part of the commitment process, Romeo was examined by a physician and a psychologist. They both certified that respondent was severely retarded and unable to care for himself. Joint Appendix (J.A.) 21a-22a & 28a-29a. The physician also described Romeo's self-destructive behavior.<sup>2</sup> On July 11, 1974, the Court of Common Pleas committed respondent to the Pennhurst State

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<sup>1</sup>Mrs. Romeo's petition to the Court of Common Pleas stated: "Since my husband's death I am unable to handle him. He becomes violent--Kicks, punches, breaks glass; He can't speak--wants to express himself but can't. He is constant 24 hr. care. without my husband I am unable to care for him." Joint Appendix (J.A. 18a).

<sup>2</sup>J. A. at 22A:

"Physican and mental findings at time of examination: Pt. [patient] is nonverbal-restrained in bed. Recognizes examiner by rolling his eyes and banging his head against bedrail."



*in the U.S. District  
Court for the  
District of Pennsylvania.*

School and Hospital, pursuant to the applicable involuntary commitment provision of the Pennsylvania Mental Health and Mental Retardation Act, Pa. Stat. Ann. tit. 50 §4406.

At Pennhurst, Romeo was injured on numerous occasions, both by his own violence and by the reactions of other inmates to him. Mrs. Romeo became concerned about these injuries. After objecting about respondent's treatment several times, she filed this complaint as his  
 ? next *The Complaint alleged* best friend, alleging that "[d]uring the period July, 1974

to the present, plaintiff has suffered injuries on at least sixty-three occasions." The complaint originally sought damages and injunctive relief from Pennhurst's director and two supervisors<sup>3</sup>; it alleged that these officials knew, or should have known, that Romeo was suffering injuries and failed to institute appropriate preventive procedures, thus violating his rights under the

<sup>3</sup>Petitioner Duane Youngberg was the Superintendent of Pennhurst; he had supervisory authority over the entire facility. Respondent Richard Matthews was the Director of Resident Life at Pennhurst. Respondent Marguerite Conley was Unit Director for the unit in which respondent was incarcerated. Petitioners are administrators, not medical doctors or psychologists. Youngberg and Matthews are no longer at Pennhurst.



## Eighth and Fourteenth Amendments.

Thereafter, in late 1976, Romeo was transferred from his ward to the hospital for treatment of a broken arm. While in the infirmary, and by order of a doctor, he was physically restrained<sup>4</sup> during portions of each day. These restraints were ordered by a Dr. Gabroy, not a defendant here, to protect Romeo and others in the hospital, some of whom were in traction or were being treated intravenously. 7 R. 40, 49, 76-78. Although respondent normally would have returned to his ward when his arm healed, the parties <sup>to this litigation</sup> agreed that he should remain<sup>1</sup> in the hospital due to the pending litigation. 5 R. 248, 6 R. 57-58 & 137.

*no H* Nevertheless, in December of 1977, a second amended complaint was filed alleging that the defendants were restraining respondent for prolonged periods on a routine basis.<sup>5</sup> The second amended complaint added a claim for

<sup>4</sup>Although the Court of Appeals described these restraints as "shackles," "soft" restraints, for the arms only, were generally used. 7 Record (R.) 53-55, 59.

<sup>5</sup>~~Although~~ The first amended complaint was filed in January 1977, after respondent's hospitalization, <sup>but</sup> it ~~did~~ <sup>not</sup> added any <sup>no</sup> restraint-related allegations. Compare Original Complaint ¶16 and First Amended Complaint ¶16  
Footnote continued on next page.



damages to compensate Romeo for the defendants' failure to provide him with appropriate treatment throughout his stay at Pennhurst. The claims for injunctive relief were dropped prior to trial because respondent is a member of the class seeking such relief in another action.<sup>6</sup>

An eight-day jury trial was held in April of 1978. Petitioners introduced evidence that respondent participated in several programs teaching basic self-care skills.<sup>7</sup> A comprehensive behavior-modification program was designed by staff members to reduce his aggressive behavior<sup>8</sup>, but that program was never implemented because of his mother's objections.<sup>9</sup>

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(change related to safety claim, not use of restraints).

<sup>6</sup> Pennhurst State School and Hospital v. Halderman, U.S. \_\_\_\_ (1981) (remanded for further proceedings).

<sup>7</sup> Prior to his transfer to Pennhurst's hospital ward, Romeo participated in programs dealing with feeding, showering, drying, dressing, attention, self control and toilet training. Defendants' exhibit 10; 3 R. 69-70, 5 R. 44-56, 242-250, 6 R. 162-166; 7 R. 41-48.

Programming continued while respondent was in the hospital, 5 R. 227, 248, 256; 6 R. 50, 162, R. 32, 34, 41-48, and this programming reduced respondent's aggressive behavior, 7 R. 45.

<sup>8</sup> 2 R. 7, 5 R. 88-90; 6 R. 88, 200-203; Defendants' Exhibit 1, at 9. The program called for short periods of separation from other residents and for use of "muffs" on plaintiff's hands for short periods of time (i.e., 15 minutes), to prevent him from attacking himself and others).

Footnote(s) 9 will appear on following pages.

*Mary -  
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to very long

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← Respondent introduced evidence of his injuries  
and of conditions in his "unit," though the ~~judge~~ <sup>District Court</sup> refused  
to allow testimony of two experts he proffered.<sup>10</sup> The  
trial judge explained that evidence of the advantages of  
alternative forms of treatment might be relevant to a  
malpractice suit, but was not relevant to a constitutional  
claim under §1983. Petn. App. 94a-95a.

At the close of the trial, the ~~judge~~ <sup>court</sup> instructed  
the jury that "if any or all of the defendants were aware  
of and failed to take all reasonable steps to prevent  
repeated attacks upon Nicholas Romeo," such failure  
deprived him of his constitutional rights. Petn. App.  
73a. The jury also was instructed that if the defendants  
shackled Romeo other than in a good faith effort to treat  
him, his rights had been violated. Ibid. Finally, the

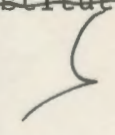
<sup>9</sup>1 R. 53; 4 R. 25; 6 R. 204.

<sup>10</sup>The first of these experts was a psychologist, with  
~~a specialty in~~ <sup>specializing</sup> in treating the mentally retarded. He  
would have testified that Romeo could have been more  
effectively treated under other programs and that the lack  
of programming in Romeo's ward was the cause of aggressive  
behavior. Respondent's other expert was a physician with  
a specialty in neurological pediatrics and the director of  
a private institution for the mentally retarded. He would  
have testified that residents at his private institution  
as severely retarded as Romeo did not have similar  
problems of aggression or injury.



jury was instructed that if Romeo was denied treatment "as a punishment for filing this lawsuit," or if defendants were "deliberately indifferent to the medical and psychological needs of Nicholas Romeo," his constitutional rights were violated under the Eighth Amendment. Id., at 73a-75a.

The jury returned a verdict for the defendants, on which judgment was entered. On appeal, the Court of Appeals for the Third Circuit, sitting en banc, vacated the judgment and remanded for a new trial. 644 F. 2d 147 (1980). All of the judges agreed that respondent's expert testimony should have been admitted. Id., at 164 & 173. They also agreed that the Eighth Amendment, prohibiting cruel and unusual punishment of those convicted of crimes, was not an appropriate <sup>source</sup> ~~reference~~ for determining the constitutional rights of the involuntarily committed. Rather, respondent's Fourteenth Amendment liberty right was implicated by the conditions under which he was confined. Id., at 156-59, & 173. The en banc court did not, however, agree on the relevant standard to be used in determining whether Romeo's ~~constitutional~~ rights had been





violated.<sup>11</sup>

The court's majority opinion began its analysis of this issue by stating that involuntary civil commitment entails a "massive curtailment of liberty." Id., at 157 (quoting Humphrey v. Cady, 405 U.S. 504, 509 (1972)). As a consequence, ~~noted the court~~, involuntary commitment ~~is~~ *may be ordered only in pursuant to* ~~circumscribed with~~ due process protection. Ibid. The *court* ~~then~~ *further* held that commitment does not extinguish all aspects of an individual's liberty interest; the power of locomotion without restraint and the right to personal security and freedom from punishment are fundamental liberties that can be limited only by an overriding, non-punitive state interest. 644 F. 2d, at 157-159.

In light of these views, the court considered Romeo's three claims: (i) the right to be free of physical restraints; (ii) the right to safety and protection; and (iii) the right to treatment. Id., at 159. Because

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<sup>11</sup>The existence of a qualified immunity defense was not at issue on appeal. The defendants had received instructions on this defense, J.A. 76a, and it was not challenged by respondent. 644 F. 2d, at 173 n.1. After citing Pierson v. Rhodes, 386 U.S. 547 (1967) and Scheuer v. Rhodes, 416 U.S. 232 (1974), the majority of the Court of Appeals noted that such instructions should be given again on the remand. 644 F. 2d, at 171-172.



physical restraint "raises a presumption of a punitive sanction," it can be justified only by compelling necessity. Id., at 159-160. And the failure to provide for a patient's safety must be justified by a showing of substantial necessity. Id., at 160.

The court divided the treatment claim into three categories. If a jury finds that no treatment has been administered, it may hold the institution's administrators liable unless they can provide a compelling explanation for the lack of treatment. 644 F. 2d at 165, 173. If some treatment has been administered, those responsible are <sup>also may be</sup> liable ~~only~~ if the treatment is not "acceptable in light of present medical or other scientific knowledge." Id., at 166-167 & 173. The court considered a third treatment standard appropriate to justify severe intrusions on individual dignity, such as permanent physical alteration or surgical intervention, noting that "least restrictive analysis" would be appropriate. Id., at 165-166, & 173.

Chief Judge Seitz, writing for a minority of four, considered the standards articulated by the majority as

*Mary -  
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relevant  
here?*



indistinguishable from <sup>More applicable to claims.</sup> medical malpractice <sup>claims</sup> in many

<sup>1</sup> respects. In Judge Seitz' view, the Constitution "only requires that the courts make certain that professional judgment in fact was exercised." 644 F. 2d, at \_\_\_\_\_. He concluded that the appropriate standard was whether the defendants' conduct was "such a substantial departure from accepted professional judgment, practice or standards in the care and treatment of this plaintiff as to demonstrate that the defendants did not base their conduct on a professional judgment." 644 F. 2d, at 178. \*

We granted the petition for certiorari because of the importance of the question presented to the administration of state institutions for the involuntarily committed. \_\_\_\_ U.S. \_\_\_\_ (198\_\_). We now reverse.

## II

We consider here for the first time the substantive rights of the involuntarily committed under the Fourteenth Amendment<sup>12</sup> to the Constitution.<sup>13</sup> In the case at bar,

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Footnote(s) 12,13 will appear on following pages.

\* Mary, add a note referring briefly to the other opinions. For example, Judge Alderman (as I recall) agreed substantially with Seitz.



respondent has been committed pursuant to the laws of Pennsylvania, and he does not challenge the commitment. The broad question presented is whether, under the Due Process Clause, petitioners have infringed a post-commitment liberty interest by failing to provide constitutionally adequate conditions of confinement.

*Many -  
well  
stated*

Respondent's commitment proceeding did not deprive him of all substantive liberty interest under the Fourteenth Amendment. See, e.g., Vitek v. Jones, 445 U.S. 480, 491-494 (1980). And the conditions under which respondent is confined implicate the entirety of his remaining liberty interest. The <sup>initial</sup> ~~question~~ <sup>question</sup> therefore becomes by what standard do we determine whether conditions at Pennhurst impermissibly infringe that residuum of liberty of which respondent <sup>cannot</sup> ~~should not~~ be deprived.

? *without due process.*

*The pertinent part that  
provides that*

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*Under that* <sup>12</sup> Under that Amendment, a state cannot deprive "any person of life, liberty, or property, without due process of law ...." U.S. Const., Amend. XIV, §1.

<sup>13</sup> The respondent no longer relies on the Eighth Amendment as a direct source of constitutional rights, Brief of Respondent 13 n.12 ("the Eighth Amendment applies only in cases concerning punishment of persons convicted of crimes").



Due process represents the balance ~~which we, as a~~ <sup>that</sup> nation, ~~have~~ struck between "the liberty of the individual" and "the demands of an organized society." Poe v. Ullman, 367 U.S. 497, 522, 542 (1961) (Harlan, J., dissenting). In seeking this balance in other cases, the Court has weighed the individual's interest in liberty against the restraints on state action. In Bell v. Wolfish, 441 U.S. 520, 539 (1979), for example, we considered a challenge to pre-trial detainees' confinement conditions. We agreed that the detainees, not yet convicted of the crime charged, could not be punished. But we upheld those restrictions on liberty that were reasonably related to legitimate government objectives and not tantamount to punishment. And in Jackson v. Indiana, 406 U.S. 713, 738 (1972), we held that an incompetent pre-trial detainee could not, after a competency hearing, be held indefinitely without either criminal process or civil commitment; due process requires, at a minimum, some rational relation between the nature and duration of commitment and its purpose. See also Addington v. Texas, 441 U.S. 418 (1979) (in determining burden of proof in



civil commitment, individual's liberty interest weighed against legitimate state interests in confinement).

Parham v. J.R., 442 U.S. 584 (1979), provides more specific guidance *as to the appropriate standard.* There we considered a challenge to

state procedures for commitment of a minor with parental consent.<sup>14</sup> In determining that procedural due process

does not mandate an adversarial hearing, we again identified the factors<sup>15</sup> that this Court has considered in determining whether state procedures are adequate to protect a liberty interest:

"First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards, and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." Id., at 599-600 (quoting Mathews v. Eldridge, 424 U.S. 319, 335 (1976) (additional citation omitted)).

<sup>14</sup>Under the Georgia statute, the proceeding began with an application for admission signed by the parent. The superintendent of a hospital was then authorized to admit a minor for "observation and diagnosis." If, after observation, the superintendent found "evidence of mental illness" and that the child was "suitable for treatment" in the hospital, the child could be admitted "for such period and under such conditions as may be authorized by law." 442 U.S., at 588 n. 5. In Parham, the Court sustained the statute.

<sup>15</sup>These factors were initially articulated in Mathews v. Eldridge, 424 U.S. 319, 335 (1976), a procedural due process case.



In this case, the question is whether respondent's substantive liberty interests are adequately protected in

Pennhurst State School and Hospital. We <sup>think</sup> believe, however,

that the factors considered in determining <sup>the adequacy of a</sup> whether a

state's procedures <sup>weigh</sup> properly ~~balance~~ the liberty interest

~~of the individual against the legitimate interests of the~~

state also are relevant in determining, as a matter of

federal law, the constitutional adequacy of the state's

substantive protection of federal liberty interests.<sup>16</sup>

<sup>under state law,</sup>  
<sup>under</sup>  
<sup>16</sup> Respondent also argues that the Pennsylvania commitment statute provides a state-law basis for his federal substantive right. He maintains that ~~as a matter of state law, he was committed for care and treatment, and he therefore has a state substantive right entitled to substantive, not just procedural, protection under the Due Process Clause of the Federal Constitution. Initially, we note that this argument is made for the first time in respondent's brief to this Court; he did not raise state law as relevant in any way in arguing to the courts below.~~

Respondent relies primarily on Jackson v. Indiana, 406 U.S. 715 (1972). There, the Court stated that due process requires, at a minimum, terms and conditions of confinement that bear some rational relation to the purposes of confinement. In Jackson, however, the Court was considering only the need for a relationship between the single reason justifying confinement as a matter of federal law--temporary confinement pending competency to stand trial--and the "terms and conditions" of confinement. Romeo could, as a matter of federal law, be confined to protect others. See text and notes at n. 1 & n. 2, supra; Addington v. Texas, 441 U.S. 418, \_\_\_ (1979); O'Connor v. Donaldson, 422 U.S. 563, 573 (1975). Although respondent may have been confined for care and treatment under the relevant Pennsylvania statute, he is not seeking another state procedure, one which would commit him solely because he is violent. <sup>himself and</sup>

As a matter of federal substantive due process, there is no reason a mentally retarded person involuntarily committed to protect others should receive less treatment or inferior conditions than one involuntarily committed for care and treatment. Cf. Smith v. Organization of

Footnote continued on next page.

It was not advanced in the courts below

(many do we know this)

only

Mary -  
Do you  
think  
this is  
relevant to  
this case?

Also the H's in note  
in next page do  
not seem to follow



In determining the degree of substantive protection to be accorded respondent's liberty interest, we therefore consider the following: the individual's interest in decent, adequate food, shelter, and medical care, which <sup>that</sup> the state agrees it should provide, and the incremental importance of additional training, <sup>we further consider</sup> <sup>respondent's</sup> <sup>interest</sup> <sup>in</sup> <sup>restraints.</sup> <sup>without physical restraints.</sup> restraints, and a safe environment, <sup>as well as the</sup> <sup>example</sup> <sup>the state's</sup> <sup>government's</sup> legitimate administrative and fiscal concerns.

In considering these factors, <sup>we are mindful of</sup> <sup>it must be remembered</sup> that the <sup>special</sup> need to reserve the Constitution for appropriate issues ~~is especially compelling~~ in the context of a challenge to conditions at a facility such as Pennhurst. Constitutional principles cannot direct day-to-day administration of a large institution operating within the inevitable constraints of finite human and fiscal

Foster Families, 431 U.S. 816, 842 n. 48 (1977) (whether there is federal substantive due process right is distinct question from whether there is federal procedural due process right).

If respondent were arguing that his state-law substantive rights entitled him to certain procedural protections, state law would then be relevant. See, e.g., Vitek v. Jones, 445 U.S. 480 (1980); Wolf v. McDonnell, 418 U.S. 539, 557-558 (1974). This argument is not, however, presented by respondent.



lfp/ss 03/20/82

Rider, Romeo

ROMEO3 SALLY-POW

III.

The parties agree that the state must provide adequate food, shelter and medical care.<sup>19</sup> The remaining questions concern respondent's claims to entitlement to additional training for his disability, less restrictive treatment, and safer conditions. In a sense, each of these claims relates to an element of the care that a state must exercise with respect to persons involuntarily committed to a mental institution. We think the standard articulated by Chief Judge Seitz reflects a proper balance of the Matthews factors. He would have held that "the Constitution only requires that the courts make certain that professional judgment in fact was exercised. It is



not appropriate for the courts to specify which of several professionally acceptable choices should have been made."

644 F.2d, at 178.

This standard avoids both of the extremes for which the parties have contended. It is higher than the standard applied when prison conditions are challenged, and may be viewed as lower than the standard applicable under state law in a tort suit for medical malpractice.



lfp/ss 03/20/82

Rider A, p. 16 (Romeo)

ROME016 SALLY-POW

We reject, of course, standards at inappropriate extremes. The standard of medical malpractice, imposing liability for any unjustified departure from established norms of medical practice,<sup>18</sup> is not applicable in this institutional setting. See Estelle v. Gamble, 429 U.S. 97, 106 (1976). Nor is the standard applicable to prison conditions appropriate, as in penal institutions punitive conditions are permissible unless cruel and unusual. Persons detained involuntarily in a state institution because of mental retardation are not committed for any crime or fault on their part and cannot be punished at all.



lfp/ss 03/20/82

Rider A, p. 22 (Romeo)

ROMEO22 SALLY-POW

Mary, we use the term "professional" in the standard without qualification or definition. This leaves quite a wide range of persons authorized to make judgments: from nurses (practical and graduate), physical therapists (like E. J. Shegonee downstairs), interns, resident physicians, psychologists and the entire spectrum of medical specialists. I appreciate the hazard of getting into definitions, but what do you think of something along the following lines as a footnote on page 22:

"We undertake no definition of the term 'professional', and recognize that it may encompass a



range of persons who by their training and experience fairly may be viewed as possessing the requisite professional skill for the decisions they make for the welfare of patients and the treatment prescribed.

Normally, a state determines the qualifications of and licenses various categories of professionals. In view of the spectrum of specialization in medicine and in the care of patients, we do not suggest that a state institution must be staffed with every category of specialists as few if any state institutions could afford this level of staffing. It is reasonable to expect, however, that where a state undertakes the care and involuntarily commits a mentally retarded person, its duty includes the reasonable staffing of the institution."



Mary: It is evident that all sorts of problems arise from the foregoing type of definition. I have not looked at the briefs. Do we get any help at all from them or the opinions below?



lfp/ss 03/20/82

Rider A, p. 24 (Romeo)

ROMEO24 SALLY-POW

In view of the facts of this case, the need for physical restraint of respondent cannot be denied. Mrs. Romeo's petition for commitment described respondent's propensity for violence (J.A. 18a), and his complaint alleged during a specified period that respondent had suffered injuries on at least 63 occasions. It therefore is clear that the state, in discharging its duty to respondent himself as well as to other patients and staff personnel, that he be appropriately restrained at times when violence was evident or reasonably could be expected. We do not think that either a "least restrictive"\* or a "compelling necessity" type of analysis is appropriate to the types of decisions that must be made in an institution



like Pennhurst - frequently and often with little or no warning - to restraint violence that may endanger the patient or others. All that the Constitution requires is that these decisions be made by a professional reasonably competent to make them.

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\* There is professional judgment to the effect that "least restrictive treatment is not always preferable from a medical standpoint. See Amicus Curiae brief of the American Psychiatric Association, 20.



lfp/ss 03/20/82

Rider A, p. 26 (Romeo)

ROMEO26 SALLY-POW

IV

Involuntary commitment neither extinguishes all constitutionally protected liberty interests nor entitled those committed to optimal care and conditions. The substantial interests of the involuntarily committed must be weighed against legitimate state interests and the constraints under which most state institutions necessarily operate. The state concedes a duty to provide adequate food, shelter, clothing and medical care. Nor does the state dispute that it has a duty to provide reasonable safety for all patients and personnel within the institution. As indicated above, we hold that the state also has the duty to provide reasonable training for



a patient such as respondent. The decisions made by the appropriate professional, whether on the staff or retained, are entitled to a strong presumption of correctness. Without such a presumption, it is difficult to see how institutions of this kind - unfortunately often overcrowded and understaffed - can function. Multiple decisions with respect to patients with widely varying needs and problems may be made in the course of a normal day. The administrators, and particularly the physicians and specialists should not be required to make these decisions in the shadow of damage suit liability. This is not to say, of course, that the liberty interests identified above are not to be protected or that judicial review is not to be available in appropriate cases.



In this case, we conclude that the jury was improperly instructed on the assumption that the proper standard of liability was that of the Eighth Amendment. Accordingly, we remand for further proceedings consistent with this decision.



lfp/ss 03/20/82

Rider A, p. 24 (Romeo)

ROMEO24 SALLY-POW

OK

In view of the facts of this case, the need for physical restraint of respondent cannot be denied. Mrs. Romeo's petition for commitment described respondent's propensity for violence (J.A. 18a), and his complaint <sup>that</sup> alleged <sup>1</sup> during a specified period ~~that~~ <sup>6</sup> respondent had suffered injuries on at least 63 occasions. It therefore is clear that the state, in discharging its duty to respondent himself as well as to other patients and staff personnel, ~~that he be appropriately restrained~~ <sup>must restrain respondent</sup> at times when violence <sup>is</sup> ~~was~~ evident or reasonably <sup>can</sup> ~~could~~ be expected.

We do not think that either a "least restrictive"\* or a "compelling necessity" type of analysis is appropriate <sup>in reviewing</sup> ~~to~~ the types of decisions that must be made in an institution



like Pennhurst - frequently and often with little or no warning - to restraint violence that may endanger the patient or others. All that the Constitution requires is that these decisions be made by a professional reasonably competent to make them.

---

\* There is professional judgment to the effect that "least restrictive treatment" is not always preferable from a medical standpoint. See Amicus Curiae brief of the American Psychiatric Association, 20.



*Respect A*

We reject respondent's argument for "least restrictive" analysis in the context of a treatment decision such as this one. Such analysis would be too great an interference with professional decisionmaking. Indeed, the "least restrictive" treatment might not even be preferable from a medical standpoint. See Amicus Curiae Brief of the American Psychiatric Association 20.

*and its staff*

It is clear that the State owes other patients<sub>1</sub> protection from respondent's violence, and ~~the State~~<sup>it also</sup> owes respondent himself protection from his own self-destructive behavior. When a professional makes a reasonable decision that restraints are <sup>necessary or</sup> appropriate for these reasons, there is no constitutional violation. We therefore accept the State's argument that restraints may be a reasonable and permissible way of dealing with a patient, though we require that the decision be made by a professional.

C

Finally, respondent and the Court of Appeals would



impose liability for any injury to respondent in the absence of "substantial necessity" or "sustantial explanations" based on the State's interest in providing care and treatment as well as ensuring the institutional order needed to provide that care and treatment. 644 F. 2d, at 163-164 & 173. ~~Brief of Respondent at 36-37.~~

Petitioner argues that the proper standard was articulated in the jury instructions: there is no constitutional violation in the absence of "deliberate indifference" to respondent's safety. ~~See Brief of Petitioners 29-30.~~ J.A.

73a (jury instruction cited by petitioner).<sup>26</sup> Thus, the State would <sup>apply</sup> ~~adopt~~ the "deliberate indifference" standard of Estelle v. Gamble, 427 U.S. 97 (1976) (standard of liability for prison doctors in treating prisoners), for determining whether the failure to ensure respondent's

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<sup>26</sup>Specifically, petitioner cites the instruction on accidental injury. The trial judge, referring to the Eighth Amendment's prohibition of cruel and unusual punishment, instructed the jury that "if any or all of the defendants were aware of and failed to take all reasonable steps to prevent repeated attacks upon Nicholas Romeo," such failure deprived him of constitutional rights. J.A. 73a. Although this instruction was requested by respondent himself, see Petn. App. 93a, the trial judge also emphasized that there could be no liability in the absence of "deliberate indifference" to Romeo's needs under the standard of Estelle v. Gamble, 429 U.S. 97 (1976), regardless of whether alternative methods of treatment could have prevented injury.



lfp/ss 03/20/82

Rider A, p. 26 (Romeo)

ROMEO26 SALLY-POW

IV

Involuntary commitment neither extinguishes all constitutionally protected liberty interests nor entitled those committed to optimal care and conditions. The substantial interests of the involuntarily committed must be weighed against legitimate state interests and the constraints under which most state institutions necessarily operate. The state concedes a duty to provide adequate food, shelter, clothing and medical care. Nor does the state dispute that it has a duty to provide reasonable safety for all patients and personnel within the institution. As indicated above, we hold that the state also has the duty to provide reasonable training for



a patient such as respondent. The decisions made by the appropriate professional, whether on the staff or retained, are entitled to a strong presumption of correctness. Without such a presumption, it is difficult to see how institutions of this kind - unfortunately often overcrowded and understaffed - can function. Multiple decisions with respect to patients with widely varying needs and problems may be made in the course of a normal day. The administrators, and particularly the physicians and specialists, should not be required to make <sup>every</sup> ~~these~~ ~~in which they may be held to standards~~ decisions in the shadow of damage suit liability. <sup>2</sup> This is not to say, of course, that the liberty interests identified above are not to be protected or that judicial review is not to be available in appropriate cases.

~~are unrealistic~~  
~~of performance and~~  
~~judgment. That are~~  
~~unrealistic in~~  
~~circumstances that~~



In this case, we conclude that the jury was  
~~improperly~~<sup>erroneously</sup> instructed on the assumption that the proper  
standard of liability was that of the Eighth Amendment.

Accordingly, we remand for further proceedings consistent  
with this decision.



safety violated the Constitution.

*It hardly need be said that*

The State owes respondent a duty to take reasonable

*But we find no basis for holding that the Court requires adoption of*

steps to ensure his physical safety. But the standard

urged by respondent <sup>liability</sup> in the absence of

"substantial necessity" or a "substantial explanation".

~~is even higher than the medical malpractice standard.~~

*no 4*

We also reject petitioners' <sup>view that</sup> ~~standard as too low;~~

the State ~~cannot~~ <sup>s</sup> fulfill its constitutional obligations by

treating the involuntarily committed as though they were

prisoners, i.e., ~~keeping them alive without~~ <sup>no liability in the absence of</sup> "deliberate

indifference" to their needs, see Estelle v. Gamble, 427

U.S. 97 (1976). *Again we think that*

~~Like other decisions in~~ an institution such as

*discharge its duty when decisions*  
Pennhurst, a professional should decide whether conditions

~~are made by~~ <sup>are made by</sup> the appropriate professionals, ~~adequately protect the safety of inmates~~ <sup>with respect to assuring</sup>

#### IV

*Ruler A*

Involuntary commitment neither extinguishes all  
constitutionally-protected liberty nor entitles those  
committed to the optimal care and conditions they <sup>might</sup> ~~would~~



receive in private institutions. Instead, due process balances the interests of the involuntarily committed against legitimate state interests and the <sup>constraints</sup> restraints <sup>under</sup> within which state institutions operate.

The State concedes that the involuntarily committed are entitled to adequate food, shelter, clothing, and medical care. In addition, we hold that these patients are entitled to have their other needs considered by a professional. Although the State need not provide the training, treatment, or safety conditions which would be the legal minimum in a private institution, it must afford those it has involuntarily committed the care considered appropriate by a professional. Because the jury was instructed that the proper standard was that of the Eighth Amendment, we remand for further proceedings not inconsistent with this decision.



lfp/ss 03/22/82

Rider 17a (Romeo)

Alternative for the riders previously dictated on p. 16  
and 17, et seq.

lfp/ss 03/22/82

Rider A, p. 16 (Romeo)

ROM17A SALLY-POW

With the foregoing considerations in mind, we  
reject standards at the extremes. The standard of medical  
malpractice, imposing liability for any unjustified  
departure from established norms of medical practice,<sup>18</sup> is  
not applicable in this institutional setting. See Estelle  
v. Gamble, 429 U.S. 97, 106 (1976). Nor is the standard  
applicable to prison conditions appropriate, as punitive  
conditions are permissible in penal institutions unless  
they are cruel and unusual. Persons detained



involuntarily in a state institution because of mental retardation are not committed for any crime or fault on their part and certainly cannot be punished at all.

### III.

We think the standard articulated by Chief Judge Seitz reflects a proper balance of the Matthews factors. He would have held that "the Constitution only requires that the courts make certain that professional judgment in fact was exercised. It is not appropriate for the courts to specify which of several professionally acceptable choices should have been made." 644 F.2d, at 178.

This standard avoids both of the extremes for which the parties have contended. It is higher than the standard applied when prison conditions are challenged,



and may be viewed as less demanding than the standard applicable under state law in a tort suit for medical malpractice. Moreover, this standard strikes the proper balance between the relevant interests. Persons involuntarily committed must depend entirely upon the state.<sup>20</sup> In effect such persons, for no fault of their own, have become incarcerated. They therefore are entitled to considerate treatment and to conditions of confinement more reflective of their status and needs than those imprisoned for a criminal offense. We therefore hold that the state cannot commit involuntarily and detain the mentally retarded without providing the treatment, training, physical constraints, and safety considered appropriate by professionals exercising their judgment. We recognize that this holding may impose some additional



burdens on states. We make clear, however, that judicial review by courts is limited primarily to insuring that decisions with respect to these matters are presumptively valid when duly made by a qualified profesional.<sup>21</sup>

Liability may be imposed only when these decisions are not delegated to professionals within or retained by the institution, or if the decision is such a substantial departure from accepted professional judgment, practice or standards as to demonstrate that the responsible persons did not base their decisions on such a judgment.<sup>22</sup>



resources.<sup>17</sup>

Finally, ~~our balance of these factors is guided by~~

*We reject, of course, at*  
 the need to avoid the standards of two inappropriate

extremes. The fact that a person is in a state

institution ~~does not~~ cannot turn medical malpractice into a

constitutional violation. See Estelle v. Gamble, 429 U.S.

97, 106 (1976). The standard of medical malpractice, imposing

liability for ~~any~~ <sup>any</sup> unjustified departure from established

~~standards~~ <sup>norms</sup> of medical practice, <sup>is not applicable in this institution</sup> ~~should therefore be~~

<sup>17</sup>See, e.g., Parham v. J.R., 442 U.S. 584, 608 n. 16 (1979) (In limiting judicial review of medical decisions made by professionals: "it is incumbent on courts to design procedures that protect the rights of individuals without unduly burdening the legitimate efforts to the states to deal with difficult social problems"); Bell v. Wolfish, 441 U.S. 520, 539 (1979) (In context of conditions of confinement of pre-trial detainees: "Courts must be mindful that these inquiries spring from constitutional requirements and that judicial answers to them must reflect that fact rather than a court's idea of how best to operate a detention facility"); Wolf v. McDonnell, 418 U.S. 539, 556 (1974) (in considering procedural due process claim in context of prison: "there must be mutual accommodation between institutional needs and objectives and the provisions of the Constitution of general application"); Procunier v. Martinez, 416 U.S. 396, 404-405, 406 (1974) ("[T]he problems of prisons in America are complex and intractable, and, more to the point, they are not readily susceptible to resolution by degree. Most require expertise, comprehensive planning, and the commitment of resources, all of which are peculiarly within the province of the legislative and executive branches of the government."). See also Townsend & Mattson, The Interaction of Law and Special Education, I Analysis and intervention in Developmental disabilities 75 (1981) (judicial resolution of rights of the handicapped can have adverse as well as positive effects on social change).

<sup>18</sup>See, e.g., Incollingo v. Ewing, 444 Pa. 263 (1971).

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Rider A  
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Estelle  
v. Gamble



~~appropriate, what is in such~~ <sup>penal</sup>

<sup>now is</sup>  
~~avoided as too high. At the other extreme,~~ the standard  
 applicable to prison <sup>5</sup> ~~conditions~~ <sup>unusual</sup> punitive conditions are  
 permissible, <sup>unless</sup> provided the punishment is not <sup>1</sup> cruel and  
 unusual--is equally inappropriate. Those committed  
 involuntarily because of mental retardation are not  
 committed for any crime or fault on their part and cannot  
 be punished at all.

### III

<sup>The parties</sup>  
~~Respondent and the State~~ agree that the State must  
 provide adequate food, shelter, and medical care<sup>19</sup>; the  
 remaining question <sup>5</sup> ~~is~~ <sup>are</sup> whether respondent is entitled to  
 additional training for his disability, less restrictive  
 treatment, <sup>and</sup> or safer conditions. <sup>We consider these</sup> The proper holding will  
 balance respondent's interests in these additional  
 benefits against the other Mathews factor, the State's  
 legitimate administrative and fiscal constraints, and will

<sup>38</sup>  
<sup>19</sup>Brief of Petitioners 8, 11, 12 & n. 10; Brief of  
 Respondent 15-16. See also Amici Curiae Brief of  
 Connecticut and Twenty Other States 8.



*Case back to court*

avoid the extremes of medical-malpractice and Eighth Amendment standards.

We find that the standard articulated by Chief Judge Seitz reflects a sensitive and proper balance of these factors. He held that "the Constitution only requires that the courts make certain that professional judgment in fact was exercised. It is not appropriate for the courts to specify which of several professionally acceptable choices should have been made." 644 F. 2d, at 178. We hold that the state cannot commit involuntarily the mentally retarded without providing the education and training, restraints or other conditions of treatment, and safety considered appropriate by a professional exercising his judgment.

This standard avoids both inappropriate extremes-- it is somewhat higher than the standard applied in considering the constitutionality of prison conditions but lower than the standard applicable in a tort suit for medical malpractice. Moreover, this standard strikes the proper balance between the relevant interests. It is inherent in the nature of involuntary commitment that



those committed must depend entirely upon the state.<sup>20</sup> If the state incarcerates the retarded without delegating decisions regarding their treatment and the conditions of their confinement to the judgment of professionals, it has deprived a group of persons known to have special needs of their freedom without criminal process, for no fault of their own, and with apparent indifference to whether their needs will be met. Such action offends the balance between the rights of the individual and the needs of organized society represented by due process.

Too long  
Although any holding that the involuntarily committed have constitutional rights to confinement conditions superior to those given prisoners will increase the drain on state resources and limit state administrative decisions to some extent, our holding limits the role of the courts to ensuring that the state commits the decision regarding training, treatment conditions or restraints, and safety, to the discretion of a professional, interference with administration of state

41  
<sup>20</sup> See Estelle v. Gamble, 429 U.S. 97, 103-104 (1976).



lfp/ss 03/22/82

Rider A, p. 20 (Romeo)

ROM20 SALLY-POW

The parties agree that the state must provide  
adequate food, shelter and medical care.<sup>(38)</sup> The remaining  
questions concern respondent's claims to entitlement to  
additional training for his disability, less restrictive  
treatment, and safer conditions. In a sense, each of  
these claims relates to an element of the care that a  
state must exercise with respect to persons involuntarily  
committed to a mental institution.

✓ 38 now after 42



institutions should be minimized.<sup>21</sup> As a matter of federal constitutional law, liability will exist only when these decisions are not delegated to professionals within the institution or if the decision is, in the words of Chief Judge Seitz, such a substantial departure from accepted professional judgment, practice, or standards ... as to demonstrate that the defendands did not base their conduct on a professional judgment."<sup>22</sup> 644 F.2, at \_\_\_\_.

We turn now to consider ~~briefly~~ respondent's specific claims in light of this standard.

Rider  
A

A

<sup>63</sup>  
<sup>21</sup>Indeed, although respondent has claimed substantive, not procedural, rights, our holding entitles respondent to something that can as easily be characterized as a procedural, rather than a substantive, right. We hold that the involuntary committed are entitled to an informal, non-adversarial "hearing" by a professional exercising his professional judgment--a "procedure" not unlike that upheld in Parham v. J.R., 442 U.S. 584 (1979), a procedural due process case discussed in text and notes at n. \_\_\_\_ & n. \_\_\_\_, supra.

<sup>42</sup>  
<sup>22</sup>All members of the Court of Appeals agreed that respondent's expert testimony should have been admitted. This issue was not included in the questions presented in the petition for certiorari, and we have no reason to disagree with the view that the evidence was admissible. It appears relevant to whether petitioners' decisions were such a substantial departure from accepted professional practice as to implicate respondent's constitutional rights.



Respondent claims the right to training and education to improve his ability to function given his handicap, and argues that such treatment should be provided under the general standard adopted by the Court of Appeals<sup>23</sup>: treatment "acceptable ... in light of present scientific knowledge." 644 F. 2d, at 173. The State maintains that when it commits an individual such as Romeo for care, it need not "assume a constitutional duty to provide him with additional services such as treatment [in the form of] training and education necessary to maximize his developmental potential." ~~Brief of Petitioners 8~~

*are not persuaded by*  
~~We cannot agree with either argument. As noted by~~

~~petitioners,~~ the standard urged by respondent and adopted by the Third Circuit *appears to be identical with* ~~is no different from~~ Pennsylvania's

medical malpractice standard. ~~Brief of Petitioners 8.~~

<sup>23</sup>Of the three treatment standards adopted by the Court of Appeals, respondent supports only this one. The Court of Appeals court also held that a failure to provide any treatment requires a "compelling explanation," 644 F. 2d, at 173, but respondent does not address this precise standard in his brief.

In addition, the Court of Appeals held that severe intrusions on individual dignity, i.e., permanent physical alteration or surgical intervention, would be reviewed under the least-restrictive standard. 644 F. 2d, at 265-266, & 173. Respondent merely notes that this standard is not presented by the facts of this case. See Brief of Respondent 10-11.

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 Let's  
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And, although professionals are far from agreeing that effective training ~~or education~~ of all severely or profoundly retarded persons is even possible,<sup>24</sup> we certainly ~~cannot~~ <sup>would not</sup> hold that due process is satisfied when individuals involuntarily committed to state institutions are simply kept alive. When treatment or training might ameliorate a patient's suffering or improve his condition, such care should be considered by a professional exercising his professional judgment in making the treatment decision. We do not suggest that the State has an obligation to provide optimal ~~care or~~ treatment. Normally, it is sufficient if ~~a professional makes a~~ <sup>who meets state standards</sup>

~~Judgment as to the care and treatment that should be~~ <sup>the</sup> provided, ~~in an effort to improve his condition~~ <sup>in an effort to improve his condition</sup> ~~the patient, or that prescribed by~~ <sup>the responsible professional.</sup>

B

<sup>24</sup>See, e.g., Favell, Risley, Wolfe, Riddle, & Rasmussen, The Limits of Habilitation, 1 Analysis and Intervention in Developmental Disabilities, 37 (1981); Bailey, Wanted: A Rational Search for the Limiting Conditions of Habilitation in the Retarded, 1 Analysis and Intervention in Developmental Disabilities, 37 (1981); Kauffman & Krause, The Cult of Educability: Searching for the Substance of Things Hoped for; The Evidence of Things Not Seen, 1 Analysis and Intervention in Developmental Disabilities, 37 (1981).

Debate  
Note →

~~We undertake no definition of the quo~~



Next, Respondent and the State <sup>also as to</sup> disagree regarding the use of restraints. Respondent maintains, and the Court of Appeals ~~for the Third Circuit~~ held, that restraints can be justified only by "compelling necessity" and as the "least restrictive" method of dealing with a patient. 644 F. 2d, at 160-161.<sup>25</sup> The basis for this holding was the ~~Court of Appeals~~ perception that restraints are "not normally within the conditions of confinement contemplated in habilitative institutions."

644 F. 2d, at 160 (footnote omitted). The State <sup>argues</sup> maintains

that there is no ~~factual~~ <sup>no</sup> basis for this conclusion, <sup>no fact that</sup> the profoundly retarded <sup>patients</sup> are often violent and restraints <sup>are</sup> necessary. ~~Brief of Petitioner 27-28.~~ And The State

~~argues that it is entitled to take reasonable steps, including use of restraints, to protect~~ <sup>emphasizes</sup> its legitimate interest in the welfare and safety of all <sup>protecting</sup> the residents in its institutions. ~~Brief of Petitioner 28.~~ <sup>or</sup> ~~of the necessary reasonable restraints~~

<sup>32</sup> <sup>advanced by the parties. Respondent does insist on use of the least</sup>  
<sup>agreed</sup> <sup>counsel</sup>  
<sup>25</sup> In his brief, respondent urges adoption of a standard proscribing "unnecessary custodial shackling." See Brief of Respondent 18-21. But, at oral argument respondent indicated that there is little difference between these formulations, ~~in respondent's view, restraints would be unnecessary if a less restrictive alternative were available.~~ Transcript of Oral Argument 55-56.

Mary - it is unnecessary to cite to pages in Briefs ~~the~~.



lfp/ss 03/22/82

Rider 17a (Romeo)

Alternative for the riders previously dictated on p. 16  
and 17, et seq.

lfp/ss 03/22/82

Rider A, p. 16 (Romeo)

ROM17A SALLY-POW

With the foregoing considerations in mind, we  
reject standards at the extremes. The standard of medical  
malpractice, imposing liability for any unjustified  
departure from established norms of medical practice,<sup>18</sup> is  
not applicable in this institutional setting. See Estelle  
v. Gamble, 429 U.S. 97, 106 (1976). Nor is the standard  
applicable to prison conditions appropriate, as punitive  
conditions are permissible in penal institutions unless  
they are cruel and unusual. Persons detained



involuntarily in a state institution because of mental retardation are not committed for any crime or fault on their part and certainly cannot be punished at all.

### III.

We think the standard articulated by Chief Judge Seitz reflects a proper balance of the Matthews factors. He would have held that "the Constitution only requires that the courts make certain that professional judgment in fact was exercised. It is not appropriate for the courts to specify which of several professionally acceptable choices should have been made." 644 F.2d, at 178.

This standard avoids both of the extremes for which the parties have contended. It is higher than the standard applied when prison conditions are challenged,



and may be viewed as less demanding than the standard applicable under state law in a tort suit for medical malpractice. Moreover, this standard strikes the proper balance between the relevant interests. Persons involuntarily committed must depend entirely upon the state.<sup>20</sup> In effect such persons, for no fault of their own, have become incarcerated. They therefore are entitled to considerate treatment and to conditions of confinement more reflective of their status and needs than those imprisoned for a criminal offense. We therefore hold that the state cannot commit involuntarily and detain the mentally retarded without providing the treatment, training, physical constraints, and safety considered appropriate by professionals exercising their judgment. We recognize that this holding may impose some additional



burdens on states. We make clear, however, that judicial review by courts is limited primarily to insuring that decisions with respect to these matters are presumptively valid when duly made by a qualified profesional.<sup>21</sup>

Liability may be imposed only when these decisions are not delegated to professionals within or retained by the institution, or if the decision is such a substantial departure from accepted professional judgment, practice or standards as to demonstrate that the responsible persons did not base their decisions on such a judgment.<sup>22</sup>



lfp/ss 03/22/82

RiderA, p. 17, Romeo

ROMEO3 SALLY-POW

III.

The parties agree that the state must provide adequate food, shelter and medical care.<sup>19</sup> The remaining questions concern respondent's claims to entitlement to additional training for his disability, less restrictive treatment, and safer conditions. In a sense, each of these claims relates to an element of the care that a state must exercise with respect to persons involuntarily committed to a mental institution. We think the standard articulated by Chief Judge Seitz reflects a proper balance of the Matthews factors. He would have held that "the Constitution only requires that the courts make certain that professional judgment in fact was exercised. It is



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violation of the law. We therefore hold that the state cannot commit involuntarily and detain the mentally retarded without providing the education and training, constraints or other conditions of treatment, and safety considered appropriate by professional exercising their judgment.

We recognize that our holding that persons involuntarily committed to mental institutions have constitutional rights to confinement conditions superior to those given persons imprisoned for criminal offenses may impose some additional financial burdens on states, we make clear that judicial review by courts is limited primarily to insuring that the decisions with respect to the training, treatment, and conditions of detention of persons involuntarily committed are presumptively valid



when duly made by a qualified profesional.<sup>21</sup> As a matter of federal constitutional law, liability will exist only when these decisions are not delegated to professionals within the institutions or if the decision is, in the words of Chief Judge Seitz, such a substantial departure from accepted professional judgment, practice or standards as to demonstrate that the responsible presons did not base their decisions on an accepted professional judgment.<sup>22</sup>



lfp/ss 03/22/82

Rider A, p. 20 (Romeo)

ROM20 SALLY-POW

The parties agree that the state must provide adequate food, shelter and medical care.<sup>19</sup> The remaining questions concern respondent's claims to entitlement to additional training for his disability, less restrictive treatment, and safer conditions. In a sense, each of these claims relates to an element of the care that a state must exercise with respect to persons involuntarily committed to a mental institution.



lfp/ss 03/26/82

Rider A, p. 13 (Romeo)

YOUNG13 SALLY-POW

Although the foregoing cases have involved procedural due process, essentially the same type of analysis is appropriate in considering whether respondent's substantive liberty interests are protected adequately in the Pennhurst State School and Hospital: it is necessary to strike a balance - as Justice Harlan said in Poe v. Ullman - between the liberty interests at issue and the practicalities of operating an institution such as Pennhurst. We also must be mindful of a need to reserve the Constitution for appropriate issues, as there are limitations upon the extent to which constitutional principles may be relied upon in considering the adequacy of the care provided at a large institution operating



within the inevitable constraints of finite human and  
physical resources.<sup>19</sup>



lfp/ss 03/22/82

Rider 17a (Romeo)

Full

Alternative for the riders previously dictated on p. 16  
and 17, et seq.

lfp/ss 03/22/82

Rider A, p. 16 (Romeo)

ROM17A SALLY-POW

With the foregoing considerations in mind, we  
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malpractice, imposing liability for any unjustified  
departure from established norms of medical practice,<sup>18</sup> is  
not applicable in this institutional setting. See Estelle  
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applicable to prison conditions appropriate, as punitive  
conditions are permissible in penal institutions unless  
they are cruel and unusual. Persons detained



involuntarily in a state institution because of mental retardation are not committed for any crime or fault on their part and certainly cannot be punished at all.

### III.

The parties agree that the state must provide adequate food, shelter and medical care.<sup>19</sup> The remaining questions concern respondent's claims to entitlement to additional training for his disability, less restrictive treatment, and safer conditions. In a sense, each of these claims relates to an element of the care that a state must exercise with respect to persons involuntarily committed to a mental institution. We think the standard articulated by Chief Judge Seitz reflects a proper balance of the Matthews factors. He would have held that "the Constitution only requires that the courts make certain



that professional judgment in fact was exercised. It is not appropriate for the courts to specify which of several professionally acceptable choices should have been made." 644 F.2d, at 178.

This standard avoids both of the extremes for which the parties have contended. It is higher than the standard applied when prison conditions are challenged, and may be viewed as less demanding than the standard applicable under state law in a tort suit for medical malpractice. Moreover, this standard strikes the proper balance between the relevant interests. Persons involuntarily committed must depend entirely upon the state.<sup>20</sup> In effect such persons, for no fault of their own, have become incarcerated. They therefore are entitled to considerate treatment and to conditions of



confinement more reflective of their status and needs than those imprisoned for a criminal offense. We therefore hold that the state cannot commit involuntarily and detain the mentally retarded without providing the treatment, training, physical constraints, and safety considered appropriate by professionals exercising their judgment.

We recognize that this holding may impose some additional burdens on states. We make clear, however, that judicial review by courts is limited primarily to insuring that decisions with respect to these matters are presumptively valid when duly made by a qualified profesional.<sup>21</sup>

Liability may be imposed only when these decisions are not delegated to professionals within the institution or if the decision is such a substantial departure from accepted professional judgment, practice or standards as to



demonstrate that the responsible persons did not base  
their decisions on such a judgment.<sup>22</sup>



L.F.P.  
Renewed 3/25  
An excellent draft

Wording Change  
Wording + Reorganization

New

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Draft 3

Draft No. 80-1429, Youngberg v. Romeo

The question presented is whether respondent, a retarded adult involuntarily committed to a state institution, has a claim for damages against petitioners, the director and two supervisors of the institution. Respondent brings suit under 42 U.S.C. §1983, claiming that the conditions of his confinement violate his rights under the Fourteenth Amendment to the Constitution.

I

Respondent Nicholas Romeo is profoundly retarded. Although 33 years old, he has the mental capacity of an eighteen-month old child. He cannot talk and lacks the most basic self-care skills. Until he was 26, respondent lived with his parents in Philadelphia. But after the death of his father in May of 1974, his mother was unable



to control his violence. Within two weeks of the father's death, respondent's mother sought his temporary admission to a nearby Pennsylvania hospital.

Shortly thereafter, she asked the Philadelphia Court of Common Pleas to admit Romeo to a state facility on a permanent basis. Her petition to the court explained that she was unable to care for Romeo or control his violence.<sup>1</sup> As part of the commitment process, Romeo was examined by a physician and a psychologist. They both certified that respondent was severely retarded and unable to care for himself. Joint Appendix (J.A.) 21a-22a & 28a-29a. The physician also described Romeo's self-destructive behavior.<sup>2</sup> On July 11, 1974, the Court of Common Pleas committed respondent to the Pennhurst State

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<sup>1</sup>Mrs. Romeo's petition to the Court of Common Pleas stated: "Since my husband's death I am unable to handle him. He becomes violent--Kicks, punches, breaks glass; He can't speak--wants to express himself but can't. He is constant 24 hr. care. without my husband I am unable to care for him." Joint Appendix (J.A. 18a).

<sup>2</sup>J. A. at 22A:

"Physican and mental findings at time of examination: Pt. [patient] is nonverbal-restrained in bed. Recognizes examiner by rolling his eyes and banging his head against bedrail."



School and Hospital, pursuant to the applicable involuntary commitment provision of the Pennsylvania Mental Health and Mental Retardation Act, Pa. Stat. Ann. tit. 50 §4406.

At Pennhurst, Romeo was injured on numerous occasions, both by his own violence and by the reactions of other inmates to him. Mrs. Romeo became concerned about these injuries. After objecting <sup>to</sup> ~~about~~ respondent's treatment several times, she filed this complaint in the United States District Court for the Eastern District of Pennsylvania as his next friend. The complaint alleged that "[d]uring the period July, 1974 to the present, plaintiff has suffered injuries on at least sixty-three occasions." The complaint originally sought damages and injunctive relief from Pennhurst's director and two supervisors<sup>3</sup>; it alleged that these officials knew, or should have known, that Romeo was suffering injuries and

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<sup>3</sup>Petitioner Duane Youngberg was the Superintendent of Pennhurst; he had supervisory authority over the entire facility. Respondent Richard Matthews was the Director of Resident Life at Pennhurst. Respondent Marguerite Conley was Unit Director for the unit in which respondent was incarcerated. Petitioners are administrators, not medical doctors or psychologists. Youngberg and Matthews are no longer at Pennhurst.



failed to institute appropriate preventive procedures, thus violating his rights under the Eighth and Fourteenth Amendments.

Thereafter, in late 1976, Romeo was transferred from his ward to the hospital for treatment of a broken arm. While in the infirmary, and by order of a doctor, he was physically restrained<sup>4</sup> during portions of each day. These restraints were ordered by ~~a~~ Dr. Gabroy, not a defendant here, to protect Romeo and others in the hospital, some of whom were in traction or were being treated intravenously. 7 R. 40, 49, 76-78. Although respondent normally would have returned to his ward when his arm healed, the parties to this litigation agreed that he should remain in the hospital due to the pending *law suit*. ~~litigation~~. 5 R. 248, 6 R. 57-58 & 137. Nevertheless, in December of 1977, a second amended complaint was filed alleging that the defendants were restraining respondent for prolonged periods on a routine basis.<sup>5</sup> The second

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<sup>4</sup>Although the Court of Appeals described these restraints as "shackles," "soft" restraints, for the arms only, were generally used. 7 Record (R.) 53-55, 59.

Footnote(s) 5 will appear on following pages.



amended complaint also added a claim for damages to compensate Romeo for the defendants' failure to provide him with appropriate treatment throughout his stay at Pennhurst. All claims for injunctive relief were dropped prior to trial because respondent is a member of the class seeking such relief in another action.<sup>6</sup>

An eight-day jury trial was held in April of 1978. Petitioners introduced evidence that respondent participated in several programs teaching basic self-care skills.<sup>7</sup> A comprehensive behavior-modification program was designed by staff members to reduce his aggressive behavior,<sup>8</sup> but that program was never implemented because

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<sup>5</sup>The first amended complaint was filed in January 1977, after respondent's hospitalization, but it added no restraint-related allegations. Compare original complaint ¶16 and first amended complaint ¶16 (change related to safety claim, not use of restraints).

<sup>6</sup>Pennhurst State School and Hospital v. Halderman, U.S. \_\_\_\_ (1981) (remanded for further proceedings).

<sup>7</sup>Prior to his transfer to Pennhurst's hospital ward, Romeo participated in programs dealing with feeding, showering, drying, dressing, self control, and toilet training, as well as a program providing interaction with staff members. Defendants' exhibit 10; 3 R. 69-70, 5 R. 44-56, 242-250, 6 R. 162-166; 7 R. 41-48.

Programming continued while respondent was in the hospital, 5 R. 227, 248, 256; 6 R. 50, 162, R. 32, 34, 41-48, and this programming reduced respondent's aggressive behavior to some extent, 7 R. 45.

<sup>8</sup>2 R. 7, 5 R. 88-90; 6 R. 88, 200-203; Defendants' Exhibit 1, at 9. The program called for short periods of separation from other residents and for use of "muffs" on

Footnote continued on next page.



of his mother's objections.<sup>9</sup> Respondent introduced evidence of his injuries and of conditions in his "unit," though the District Court refused to allow testimony of two experts he proffered.<sup>10</sup> The trial judge explained that evidence of the advantages of alternative forms of treatment might be relevant to a malpractice suit, but was not relevant to a constitutional claim under §1983. Petn. App. 94a-95a.

At the close of the trial, the court instructed the jury that "if any or all of the defendants were aware of and failed to take all reasonable steps to prevent repeated attacks upon Nicholas Romeo," such failure deprived him of his constitutional rights. Petn. App. 73a. The jury also was instructed that if the defendants

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plaintiff's hands for short periods of time, i.e., 15 minutes, to prevent him from harming himself or others.

<sup>9</sup>1 R. 53; 4 R. 25; 6 R. 204.

<sup>10</sup>The first of these experts was a psychologist, specializing in treating the mentally retarded. He would have testified that Romeo could have been more effectively treated under other programs and that the lack of programming in Romeo's ward was the cause of aggressive behavior. Respondent's other expert was a physician with a specialty in neurological pediatrics and the director of a private institution for the mentally retarded. He would have testified that residents at his private institution as severely retarded as Romeo did not have similar problems of aggression or injury.



shackled Romeo other than in a good faith effort to treat him, his rights had been violated. Ibid. Finally, the jury was instructed that if Romeo was denied treatment "as a punishment for filing this lawsuit," or if defendants were "deliberately indifferent to the medical and psychological needs of Nicholas Romeo," his constitutional rights were violated under the Eighth Amendment. Id., at 73a-75a.

The jury returned a verdict for the defendants, on which judgment was entered. On appeal, the Court of Appeals for the Third Circuit, sitting en banc, vacated the judgment and remanded for a new trial. 644 F. 2d 147 (1980). All of the judges agreed that respondent's expert testimony should have been admitted. Id., at 164 & 173. They also agreed that the Eighth Amendment, prohibiting cruel and unusual punishment of those convicted of crimes, was not an appropriate source for determining the rights of the involuntarily committed. Rather, respondent's Fourteenth Amendment liberty right was implicated by the conditions under which he was confined. Id., at 156-59, & 173. The en banc court did not, however, agree on the



relevant standard to be used in determining whether Romeo's rights had been violated.<sup>11</sup>

The court's majority opinion began its analysis of this issue by stating that involuntary civil commitment entails a "massive curtailment of liberty." Id., at 157 (quoting Humphrey v. Cady, 405 U.S. 504, 509 (1972)). As a consequence involuntary commitment may be ordered only pursuant to due process. Ibid. The court further held that commitment does not extinguish all aspects of an individual's liberty interest; the power of locomotion without restraint and the right to personal security and freedom from punishment are fundamental liberties that can be limited only by an overriding, non-punitive state interest. 644 F. 2d, at 157-159.

In light of these views, the court considered Romeo's three claims: (i) the right to be free of physical restraints; (ii) the right to safety and protection; and

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<sup>11</sup>The existence of a qualified immunity defense was not at issue on appeal. The defendants had received instructions on this defense, J.A. 76a, and it was not challenged by respondent. 644 F. 2d, at 173 n.1. After citing Pierson v. Rhodes, 386 U.S. 547 (1967) and Scheuer v. Rhodes, 416 U.S. 232 (1974), the majority of the Court of Appeals noted that such instructions should be given again on the remand. 644 F. 2d, at 171-172.



(iii) the right to treatment. Id., at 159. Because physical restraint "raises a presumption of a punitive sanction," it can be justified only by compelling necessity. Id., at 159-160. And the failure to provide for a patient's safety must be justified by a showing of substantial necessity. Id., at 160. Finally, the court held that when treatment has been administered, those responsible are liable only if the treatment is not "acceptable in light of present medical or other scientific knowledge." Id., at 166-167 & 173.<sup>12</sup>

Chief Judge Seitz, writing for a minority of four, considered the standards articulated by the majority as indistinguishable from those applicable to medical malpractice claims. In Judge Seitz's view, the

<sup>12</sup>Actually, the court divided the right-to-treatment claim into three categories and adopted three standards, but only the standard described in text is at issue before this Court. The Court of Appeals also stated that if a jury finds that no treatment has been administered, it may hold the institution's administrators liable unless they can provide a compelling explanation for the lack of treatment, 644 F. 2d at 165, 173, but respondent does not discuss this precise standard in his brief and it does not appear to be relevant to the facts of this case. In addition, the court considered "least restrictive analysis" appropriate to justify severe intrusions on individual dignity, such as permanent physical alteration or surgical intervention, id., at 165-166, & 173, but respondent concedes that this issue is not present in this case.



Constitution "only requires that the courts make certain that professional judgment in fact was exercised." 644 F. 2d, at \_\_\_\_\_. He concluded that the appropriate standard was whether the defendants' conduct was "such a substantial departure from accepted professional judgment, practice or standards in the care and treatment of this plaintiff as to demonstrate that the defendants did not base their conduct on a professional judgment." 644 F. 2d, at 178.<sup>13</sup>

We granted the petition for certiorari because of the importance of the question presented to the administration of state institutions for the involuntarily committed. \_\_\_\_ U.S. \_\_\_\_ (198\_\_). We now reverse.

<sup>13</sup>Judge Aldisert joined Chief Judge Seitz's opinion, but wrote separately to emphasize the nature of the difference between the majority opinion and that of the Chief Judge. On a conceptual level, Judge Aldisert criticized the majority for abandoning the common-law method of deciding the case at bar rather than articulating broad principles unconnected with the facts of this case and of uncertain meaning. 644 F. 2d, at \_\_\_\_\_. And, on a pragmatic level, Judge Aldisert warned that neither juries nor those administering state institutions would receive ~~any meaningful~~ guidance from the "amorphous constitutional law tenets" articulated by the majority. *Id.*, at \_\_\_\_\_. helpful

Judge Garth also joined Chief Judge Seitz's opinion, ~~but also~~ wrote separately to criticize the majority for addressing issues not raised by the facts of this case. 644 F. 2d, at \_\_\_\_\_. and

Mary - "meaningful" is too fashionable for me now.



## II

We consider here for the first time the substantive rights of the involuntarily committed under the Fourteenth Amendment<sup>14</sup> to the Constitution.<sup>15</sup> In <sup>this</sup> ~~the~~ case, ~~at bar,~~ respondent has been committed pursuant to the laws of Pennsylvania, and he does not challenge the commitment. The broad question presented is whether, under the Due Process Clause, petitioners have infringed a post-commitment liberty interest by failing to provide constitutionally adequate conditions of confinement. 35 ✓

Respondent's commitment proceeding did not deprive him of all substantive liberty interest under the Fourteenth Amendment. See, e.g., Vitek v. Jones, 445 U.S. 480, 491-494 (1980). And the conditions under which respondent is confined implicate the entirety of his

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<sup>14</sup>In pertinent part, that Amendment provides that a state cannot deprive "any person of life, liberty, or property, without due process of law ...." U.S. Const., Amend. XIV, §1.

<sup>15</sup>The respondent no longer relies on the Eighth Amendment as a direct source of constitutional rights, Brief of Respondent 13 n.12 ("the Eighth Amendment applies only in cases concerning punishment of persons convicted of crimes").



remaining liberty interest. The initial question therefore becomes by what standard do we determine whether ~~the case~~ <sup>the case</sup> ~~conditions~~ at Pennhurst impermissibly infringe that residuum of liberty of which respondent should not be deprived.

Due process is a balance between "the liberty of the individual" and "the demands of an organized society." Poe v. Ullman, 367 U.S. 497, 522, 542 (1961) (Harlan, J., dissenting). In seeking this balance in other cases, the Court has weighed the individual's interest in liberty against the <sup>states asserted needs to impose</sup> ~~restraints on state action~~. In Bell v. Wolfish, 441 U.S. 520, 539 (1979), for example, we considered a challenge to pre-trial detainees' confinement conditions. We agreed that the detainees, not yet convicted of the crime charged, could not be punished. But we upheld those restrictions on liberty that were reasonably related to legitimate government objectives and not tantamount to punishment. And in Jackson v. Indiana, 406 U.S. 713, 738 (1972), we held that an incompetent pre-trial detainee could not, after a competency hearing, be held indefinitely without either criminal process or civil



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Rider A, p. 13 (Romeo)

YOUNG13 SALLY-POW

Although <sup>some of</sup> the foregoing cases have involved procedural due process, (Mary: is this accurate?) essentially the same type of analysis is appropriate in considering whether respondent's substantive liberty interests are protected adequately in the Pennhurst State School and Hospital: it is necessary to strike a balance - as Justice Harlan said in Poe v. Ullman - between the liberty interests at issue and the practicalities of operating an institution such as Pennhurst. We also must be mindful of a need to reserve the Constitution for appropriate issues, as there are limitations upon the extent to which constitutional principles may be relied upon in considering the adequacy of the day-to-day care



provided in a large institution operating within the inevitable constraints of finite human and physical resources.<sup>19</sup>



commitment; due process requires, at a minimum, some rational relation between the nature and duration of commitment and its purpose. See also Addington v. Texas, 441 U.S. 418 (1979) (in determining burden of proof in civil commitment, <sup>the</sup> individual's liberty interest <sup>was</sup> weighed against legitimate state interests in confinement).

*Reid 17* Parham v. J.R., 442 U.S. 584 (1979), provides more specific guidance as to the appropriate standard. There we considered a challenge to state procedures for commitment of a minor with parental consent.<sup>16</sup> In determining that procedural due process does not mandate (34) an adversarial hearing, we again identified the factors<sup>17</sup> that this Court has considered in determining whether state procedures are adequate to protect a liberty interest:

<sup>16</sup>Under the Georgia statute, the proceeding began with an application for admission signed by the parent. The superintendent of a hospital was then authorized to admit a minor for "observation and diagnosis." If, after observation, the superintendent found "evidence of mental illness" and that the child was "suitable for treatment" in the hospital, the child could be admitted "for such period and under such conditions as may be authorized by law." 442 U.S., at 588 n. 5. In Parham, the Court sustained the statute.

<sup>17</sup>These factors were initially articulated in Mathews v. Eldridge, 424 U.S. 319, 335 (1976), a procedural due process case.

SA 2-MARY B

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"First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards, and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." Id., at 599-600 (quoting Mathews v. Eldridge, 424 U.S. 319, 335 (1976) (additional citation omitted)).

In this case, the question is whether respondent's substantive liberty interests are protected adequately in Pennhurst State School and Hospital. But we find the factors relevant in determining the adequacy of a state's procedures also relevant in determining the constitutional adequacy of the state's substantive protection of federal liberty interests.<sup>18</sup> (35)

<sup>18</sup> Respondent also argues that the Pennsylvania commitment statute provides a state-law basis for his federal substantive right. He maintains that he was committed for care and treatment under state law, and he therefore has a state substantive right entitled to substantive, not just procedural, protection under the Due Process Clause of the Federal Constitution. Initially, we note that this argument is made for the first time in respondent's brief to this Court; it was not advanced in the courts below.

Respondent relies primarily on Jackson v. Indiana, 406 U.S. 715 (1972). There, the Court stated that due process requires, at a minimum, terms and conditions of confinement that bear some rational relation to the purposes of confinement. Thus, respondent argues that the wording of the relevant Pennsylvania commitment statute and the purposes for which he was committed--care and treatment--create a state-created right to treatment entitled to federal protection under Jackson because due process requires some relationship between the conditions of confinement and its purposes. In Jackson, however, the Footnote continued on next page.

As re n. 18: I have expanded this footnote to make its relevance clearer. I hesitate to put it in text because it would unbalance the opinion. On the other hand, I think the point made is important.

Nk w



In considering these factors, we are mindful of the special need to reserve the Constitution for appropriate issues in the context of a challenge to conditions at a facility such as Pennhurst. Constitutional principles cannot direct day-to-day administration of a large institution operating within the inevitable constraints of finite human and fiscal resources.<sup>19</sup> (18)

Court was considering only the need for a relationship between the single reason justifying confinement as a matter of federal law--temporary confinement pending competency to stand trial--and the "terms and conditions" of confinement. Romeo could, as a matter of federal law, be confined to protect others. See text and notes at n. 1 & n. 2, *supra*; *Addington v. Texas*, 441 U.S. 418, (1979); *O'Connor v. Donaldson*, 422 U.S. 563, 573 (1975). Although respondent may have been confined for care and treatment under the relevant Pennsylvania statute, he is not seeking another state procedure, one which would commit him solely because he is violent. *that*

Moreover, we see no reason why a federal substantive right to treatment should vary with the wording of the relevant state commitment statute or with the precise reason given for commitment. For example, as a matter of federal law, why should a mentally retarded person involuntarily committed to protect himself and others receive less treatment or inferior conditions than one involuntarily committed only because he is unable to care for himself? It is true that state substantive rights implicate federal procedural due process. And it is also true that we have never explicitly held that state substantive rights cannot be the basis for federal substantive rights under the Due Process Clause. *But, in Smith v. Organization of Foster Families*, 431 U.S. 816, 842 n. 48 (1977), we indicated that even when a federal procedural right exists, the existence of a related federal substantive right is not automatic, but is an entirely distinct question.

If respondent were arguing that his state-law substantive right entitled him to certain procedural protections, Pennsylvania law would be relevant. See, e.g., *Vitek v. Jones*, 445 U.S. 480 (1980); *Wolf v. McDonnell*, 418 U.S. 539, 557-558 (1974). This argument is not, however, presented by respondent.

Footnote(s) 19 will appear on following pages.



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"malpractice standard" 16.  
is the same in every state

With the foregoing considerations in mind, we reject standards at the extremes. The <sup>Pennsylvania</sup> standard of medical malpractice, imposing liability for any unjustified departure from established norms of medical practice,<sup>20</sup> is not applicable in this institutional setting. See Estelle v. Gamble, 429 U.S. 97, 106 (1976). Nor is the standard

<sup>19</sup>See, e.g., Rhodes v. Chapman, \_\_\_ U.S. \_\_\_, \_\_\_ n. 14 (1981) ("[A] prison's internal security is peculiarly a matter normally left to the discretion of prison administrators."); id., at \_\_\_ ("[C]ourts cannot assume that state legislatures and prison officials are insensitive to the requirements of the Constitution or to the perplexing sociological problems of how best to achieve the goals of the penal function in the criminal justice system ...."); Parham v. J.R., 442 U.S. 584, 608 n. 16 (1979) (In limiting judicial review of medical decisions made by professionals: "[I]t is incumbent on courts to design procedures that protect the rights of individuals without unduly burdening the legitimate efforts of the states to deal with difficult social problems."); Bell v. Wolfish, 441 U.S. 520, 539 (1979) (In context of conditions of confinement of pre-trial detainees: "[C]ourts must be mindful that these inquiries spring from constitutional requirements and that judicial answers to them must reflect that fact rather than a court's idea of how best to operate a detention facility."); Wolf v. McDonnell, 418 U.S. 539, 556 (1974) (In considering procedural due process claim in context of prison: "[T]here must be mutual accommodation between institutional needs and objectives and the provisions of the Constitution of general application."); Procunier v. Martinez, 416 U.S. 396, 404-405, 406 (1974) ("[T]he problems of prisons in America are complex and intractable, and, more to the point, they are not readily susceptible to resolution by degree. Most require expertise, comprehensive planning, and the commitment of resources, all of which are peculiarly within the province of the legislative and executive branches of the government."). See also Townsend & Mattson, The Interaction of Law and Special Education, I Analysis and intervention in Developmental disabilities 75 (1981) (judicial resolution of rights of the handicapped can have adverse as well as positive effects on social change).

<sup>20</sup>See, e.g., Incollingo v. Ewing, 444 Pa. 263 (1971).

Should we include both Rhodes quotes?  
I think I would drop the 1st  
and keep the 2nd.

yes



applicable to prison conditions appropriate. Although punitive conditions are permissible in penal institutions unless cruel and unusual, persons committed involuntarily to a state institution because of mental retardation are not detained for any crime or fault on their part and certainly cannot be punished at all.

### III.

We think the standard articulated by Chief Judge Seitz reflects a proper balance of the Mathews factors. He would have held that "the Constitution only requires that the courts make certain that professional judgment in fact was exercised. It is not appropriate for the courts to specify which of several professionally acceptable choices should have been made." 644 F.2d, at 178.

This standard avoids both of the extremes for which the parties have contended. It is higher than the standard applied when prison conditions are challenged, and may be viewed as less demanding than the standard applicable under state law in a tort suit for medical



malpractice. Moreover, this standard strikes the proper balance between the relevant interests. Whether prisoners or patients, the involuntarily committed must depend entirely upon the state<sup>21</sup>; yet those committed involuntarily in civil proceedings are ~~kept in this~~ <sup>detained as</sup> ~~dependents~~ <sup>of the</sup> state through no fault of their own. They are therefore entitled to more considerate treatment and conditions of confinement more responsive to their status and needs than are prisoners. We hold that when the rights of the involuntarily committed mentally retarded are balanced against the legitimate restraints on state action, due process requires that the state provide these individuals with the treatment, training, physical constraints, and other safety conditions considered appropriate by professionals exercising their judgment. We recognize that this holding may impose some additional burdens on states. We make clear, however, that judicial review is limited to ensuring that decisions with respect to these matters are duly made by a qualified

<sup>21</sup>See Estelle v. Gamble, 429 U.S. 97, 103-104 (1976).



professional.<sup>22</sup> The decision, if made by a professional, is presumptively valid; liability may be imposed only when the decision has not been delegated to professionals within or retained by the institution, or when the decision is such a substantial departure from accepted professional judgment, practice or standards as to demonstrate that the person responsible actually did not base the decision on such a judgment.<sup>23</sup>

We turn now to consider briefly respondent's specific claims in light of this standard. The parties agree that the state must provide adequate food, shelter and medical care.<sup>24</sup> The remaining questions concern

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<sup>22</sup>Indeed, although respondent has claimed substantive, not procedural, rights, our holding entitles respondent to a right that can be characterized as procedural. We hold that the involuntary committed are entitled to an informal, non-adversarial "hearing" by a professional exercising his professional judgment--a "procedure" not unlike that upheld in Parham v. J.R., 442 U.S. 584 (1979), a procedural due process case discussed in text and notes at n. \_\_\_\_ & n. \_\_\_\_, supra.

<sup>23</sup>All members of the Court of Appeals agreed that respondent's expert testimony should have been admitted. This issue was not included in the questions presented in the petition for certiorari, and we have no reason to disagree with the view that the evidence was admissible. It appears relevant to whether petitioners' decisions were a substantial departure from accepted professional practice.

<sup>24</sup>Brief of Petitioners 8, 11, 12 & n. 10; Brief of Respondent 15-16. See also Amici Curiae Brief of Connecticut and Twenty Other States 8.



respondent's claims to entitlement to additional training for his disability, less restrictive treatment, and safer conditions. In a sense, each of these claims relates to an element of the care that a state must exercise with respect to persons involuntarily committed to mental institutions.

## A

Respondent claims the right to training and education to improve his ability to function given his handicap, and argues that such treatment should be provided under the general standard adopted by the Court of Appeals: treatment "acceptable ... in light of present scientific knowledge." 644 F. 2d, at 173. The State maintains that when it commits an individual such as Romeo for care, it need not "assume a constitutional duty to provide him with additional services such as treatment [in the form of] training and education necessary to maximize his developmental potential." Brief of Petitioners 8.

We are not persuaded by either argument. As noted  
by both Chief Judge Seitz and Judge Aldersert in their

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good



separate opinions, the standard urged by respondent and adopted by the Third Circuit is no different from the medical malpractice standard. 644 F. 2d, at \_\_\_\_ & \_\_\_\_.

And, although professionals are far from agreeing that effective training of all severely or profoundly retarded persons is even possible,<sup>25</sup> we certainly would not hold that due process is satisfied when innocent individuals involuntarily committed to state institutions are simply kept alive. When treatment or training might ameliorate a patient's suffering or improve his condition, such care should be considered by a professional exercising his professional judgment in making the treatment decision. We do not suggest that the State has an obligation to provide optimal treatment. Normally, it is sufficient if the treatment chosen to improve the patient's condition is that prescribed by the responsible professional. (fn on who

<sup>25</sup>See, e.g., Favell, Risley, Wolfe, Riddle, & Rasmussen, The Limits of Habilitation, 1 Analysis and Intervention in Developmental Disabilities, 37 (1981); Bailey, Wanted: A Rational Search for the Limiting Conditions of Habilitation in the Retarded, 1 Analysis and Intervention in Developmental Disabilities, 37 (1981); Kauffman & Krause, The Cult of Educability: Searching for the Substance of Things Hoped for; The Evidence of Things Not Seen, 1 Analysis and Intervention in Developmental Disabilities, 37 (1981).

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B

Respondent and the State also disagree as to the use of restraints. Respondent maintains, and the Court of Appeals held, that restraints can be justified only by "compelling necessity" and as the "least restrictive" method of dealing with a patient. 644 F. 2d, at 160-161.<sup>26</sup> The basis for this holding was the perception that restraints are "not normally within the conditions of confinement contemplated in habilitative institutions." 644 F. 2d, at 160 (footnote omitted). The State asserts that there is no basis for this conclusion, noting that profoundly retarded patients often are violent and restraints are necessary. The State emphasizes its legitimate interest in protecting the welfare and safety

<sup>26</sup>In <sup>then</sup> his brief, respondent urges adoption of a standard proscribing "unnecessary custodial shackling" rather than the "least restrictive means" standard adopted by the Court of Appeals. But at oral argument respondent's counsel conceded that there is little practical difference between these formulations: respondent would consider restraints unnecessary if a less restrictive alternative were available. Transcript of Oral Argument 55-56.



of all of the residents in its institutions.

In view of the facts of this case, the need for physical restraint of respondent cannot be denied.<sup>27</sup> Mrs. Romeo's petition for commitment described respondent's propensity for violence, J.A. 18a, and his complaint alleged that during a specified period respondent had suffered injuries on at least 63 occasions. It is clear that the state, in discharging its duty to respondent himself as well as to other patients and staff personnel, must restrain respondent at times when violence is evident or reasonably expected. We do not think that either "least restrictive" or "compelling necessity" analysis<sup>28</sup>

<sup>27</sup>It is true that the majority of the Court of Appeals adopted a finding that there was an "absence of any dangerousness to others" among residents at Pennhurst. 644 F. 2d, at \_\_\_ n. 18. This finding was not, however, based on the record in this case, but on the finding in another case, Halderman v. Pennhurst State School & Hospital, 612 F. 2d \_\_\_, 92 (19\_\_\_), reversed and remanded, Pennhurst State School & Hospital v. Halderman, \_\_\_ U.S. \_\_\_ (1981). See 644 F. 2d, at \_\_\_ n. 18. Moreover, the finding is inconsistent with the Court of Appeals' own description of the facts of this case: "It is not contested that, while confined at Pennhurst, Romeo was injured on over seventy occasions. These injuries were both self-inflicted and the result of attacks by other residents, some in retaliation against Romeo's aggressive behavior." 644 F. 2d, at \_\_\_.

<sup>28</sup>In the judgment of at least one professional group, the least restrictive standard "is not always best from a clinical standpoint," and, "as a practical matter, it may not be possible to identify the least restrictive alternative at all." Brief of the American Psychiatric Association, at 20.



is appropriate in reviewing decisions that must be made in an institution like Pennhurst; frequently such decisions must be made quickly, with little or no warning, in order to restraint violence that would endanger the patient or others. The Constitution requires only that these decisions be made by a professional reasonably competent to make them.

C

Finally, respondent and the Court of Appeals would impose liability for any injury to respondent in the absence of "substantial necessity" or "sustantial explanations" based on the State's interest in providing care and treatment as well as ensuring the institutional order needed to provide that care and treatment. 644 F. 2d, at 163-164 & 173. Petitioner argues that the proper standard was articulated in the jury instructions: there is no constitutional violation in the absence of "deliberate indifference" to respondent's safety. See J.A. 73a (jury instruction cited by petitioner).<sup>29</sup> Thus,

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Footnote(s) 29 will appear on following pages.



the State <sup>again</sup> would apply the "deliberate indifference" standard of Estelle v. Gamble, 427 U.S. 97 (1976) (standard of liability for prison doctors in treating prisoners), in determining whether the failure to ensure respondent's safety violated the Constitution.

It hardly need be said that the State owes respondent a duty to take reasonable steps to ensure his physical safety. But we find no basis for holding that the Constitution requires adoption of the standard urged by respondent: liability in the absence of "substantial necessity" or a "substantial explanation." We also reject petitioners' view that the State fulfills its constitutional obligation by treating the involuntarily committed as though they were prisoners, i.e., no constitutional violation in the absence of "deliberate

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<sup>29</sup>Specifically, petitioner cites the instruction on accidental injury. The trial judge, referring to the Eighth Amendment's prohibition of cruel and unusual punishment, instructed the jury that "if any or all of the defendants were aware of and failed to take all reasonable steps to prevent repeated attacks upon Nicholas Romeo," such failure deprived him of constitutional rights. J.A. 73a. Although this instruction was requested by respondent himself, see Petn. App. 93a, the trial judge also emphasized that there could be no liability in the absence of "deliberate indifference" to Romeo's needs under the standard of Estelle v. Gamble, 429 U.S. 97 (1976), regardless of whether alternative methods of treatment could have prevented injury.



indifference" to patients' needs, see Estelle v. Gamble, 427 U.S. 97 (1976). Again, we think that an institution such as Pennhurst discharges its duty when decisions with respect to assuring the the safety of inmates are made by the appropriate professionals.

#### IV

Involuntary commitment neither extinguishes all constitutionally protected liberty interests nor entitles those committed to optimal care and conditions. The substantial interests of the involuntarily committed must be weighed against legitimate state interests and the constraints under which most state institutions necessarily operate. The state concedes a duty to provide adequate food, shelter, clothing and medical care. And the state does not dispute that it has a duty to provide reasonable safety for all patients and personnel within the institution. As indicated above, we hold that the state also has the duty to provide ~~reasonable~~ training for a patient such as respondent. <sup>But</sup> ~~Decisions~~ made by the



~~the physicians, nurses  
and technicians)~~

~~trained technicians)~~

appropriate professional, whether on the staff or retained, are entitled to a strong presumption of correctness, however. Such a presumption is necessary to enable institutions of this type--often, unfortunately, overcrowded and understaffed--to continue to function. A single professional may make many decisions with respect to many patients with widely varying needs and problems in the course of a normal day. The administrators, and particularly the ~~professionals (the)~~ physicians and specialists, should not be required to make each decision in the shadow of an action for damages. We do not, of course, imply that the liberty interests identified above are not <sup>ultimately</sup> protected by the Constitution or that judicial review is not available in appropriate cases.

the professional personnel

In this case, we conclude that the jury was erroneously instructed on the assumption that the proper standard of liability was that of the Eighth Amendment. Accordingly, we remand for further proceedings consistent with this decision.



14-15

L.F.P.  
3/26

decision below  
644 F. 2d 147  
(1980)  
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Draft No. 80-1429, Youngberg v. Romeo

The question presented is whether respondent, a retarded adult involuntarily committed to a state institution, has a claim for damages against petitioners, the director and two supervisors of the institution. Respondent brings suit under 42 U.S.C. §1983, claiming that the conditions of his confinement violate his rights under the Fourteenth Amendment to the Constitution.

I

Respondent Nicholas Romeo is profoundly retarded. Although 33 years old, he has the mental capacity of an eighteen-month old child. He cannot talk and lacks the most basic self-care skills. Until he was 26, respondent lived with his parents in Philadelphia. But after the death of his father in May of 1974, his mother was unable



to control his violence. Within two weeks of the father's death, respondent's mother sought his temporary admission to a nearby Pennsylvania hospital.

Shortly thereafter, she asked the Philadelphia Court of Common Pleas to admit Romeo to a state facility on a permanent basis. Her petition to the court explained that she was unable to care for Romeo or control his violence.<sup>1</sup> As part of the commitment process, Romeo was examined by a physician and a psychologist. They both certified that respondent was severely retarded and unable to care for himself. Joint Appendix (J.A.) 21a-22a & 28a-29a. The physician also described Romeo's self-destructive behavior.<sup>2</sup> On July 11, 1974, the Court of Common Pleas committed respondent to the Pennhurst State

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<sup>1</sup>Mrs. Romeo's petition to the Court of Common Pleas stated: "Since my husband's death I am unable to handle him. He becomes violent--Kicks, punches, breaks glass; He can't speak--wants to express himself but can't. He is constant 24 hr. care. without my husband I am unable to care for him." Joint Appendix (J.A. 18a).

<sup>2</sup>J. A. at 22A:

"Physican and mental findings at time of examination: Pt. [patient] is nonverbal-restrained in bed. Recognizes examiner by rolling his eyes and banging his head against bedrail."



School and Hospital, pursuant to the applicable involuntary commitment provision of the Pennsylvania Mental Health and Mental Retardation Act, Pa. Stat. Ann. tit. 50 §4406.

At Pennhurst, Romeo was injured on numerous occasions, both by his own violence and by the reactions of other inmates to him. Mrs. Romeo became concerned about these injuries. After objecting to respondent's treatment several times, she filed this complaint in the United States District Court for the Eastern District of Pennsylvania as his next friend. The complaint alleged that "[d]uring the period July, 1974 to the present, plaintiff has suffered injuries on at least sixty-three occasions." The complaint originally sought damages and injunctive relief from Pennhurst's director and two supervisors<sup>3</sup>; it alleged that these officials knew, or should have known, that Romeo was suffering injuries and

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<sup>3</sup>Petitioner Duane Youngberg was the Superintendent of Pennhurst; he had supervisory authority over the entire facility. Respondent Richard Matthews was the Director of Resident Life at Pennhurst. Respondent Marguerite Conley was Unit Director for the unit in which respondent was incarcerated. Petitioners are administrators, not medical doctors or psychologists. Youngberg and Matthews are no longer at Pennhurst.



failed to institute appropriate preventive procedures, thus violating his rights under the Eighth and Fourteenth Amendments.

Thereafter, in late 1976, Romeo was transferred from his ward to the hospital for treatment of a broken arm. While in the infirmary, and by order of a doctor, he was physically restrained<sup>4</sup> during portions of each day. These restraints were ordered by Dr. Gabroy, not a defendant here, to protect Romeo and others in the hospital, some of whom were in traction or were being treated intravenously. 7 R. 40, 49, 76-78. Although respondent normally would have returned to his ward when his arm healed, the parties to this litigation agreed that he should remain in the hospital due to the pending law suit. 5 R. 248, 6 R. 57-58 & 137. Nevertheless, in December of 1977, a second amended complaint was filed alleging that the defendants were restraining respondent for prolonged periods on a routine basis.<sup>5</sup> The second

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<sup>4</sup>Although the Court of Appeals described these restraints as "shackles," "soft" restraints, for the arms only, were generally used. 7 Record (R.) 53-55, 59.

Footnote(s) 5 will appear on following pages.



amended complaint also added a claim for damages to compensate Romeo for the defendants' failure to provide him with appropriate treatment throughout his stay at Pennhurst. All claims for injunctive relief were dropped prior to trial because respondent is a member of the class seeking such relief in another action.<sup>6</sup>

An eight-day jury trial was held in April of 1978. Petitioners introduced evidence that respondent participated in several programs teaching basic self-care skills.<sup>7</sup> A comprehensive behavior-modification program was designed by staff members to reduce his aggressive behavior,<sup>8</sup> but that program was never implemented because

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<sup>5</sup>The first amended complaint was filed in January 1977, after respondent's hospitalization, but it added no restraint-related allegations. Compare original complaint ¶16 and first amended complaint ¶16 (change related to safety claim, not use of restraints).

<sup>6</sup>Pennhurst State School and Hospital v. Halderman, 451 U.S. 1 (1981) (remanded for further proceedings).

<sup>7</sup>Prior to his transfer to Pennhurst's hospital ward, Romeo participated in programs dealing with feeding, showering, drying, dressing, self control, and toilet training, as well as a program providing interaction with staff members. Defendants' exhibit 10; 3 R. 69-70, 5 R. 44-56, 242-250, 6 R. 162-166; 7 R. 41-48.

Programming continued while respondent was in the hospital, 5 R. 227, 248, 256; 6 R. 50, 162, R. 32, 34, 41-48, and this programming reduced respondent's aggressive behavior to some extent, 7 R. 45.

<sup>8</sup>2 R. 7, 5 R. 88-90; 6 R. 88, 200-203; Defendants' Exhibit 1, at 9. The program called for short periods of separation from other residents and for use of "muffs" on

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of his mother's objections.<sup>9</sup> Respondent introduced evidence of his injuries and of conditions in his "unit," though the District Court refused to allow testimony of two experts he proffered.<sup>10</sup> The trial judge explained that evidence of the advantages of alternative forms of treatment might be relevant to a malpractice suit, but was not relevant to a constitutional claim under §1983. Petn. App. 94a-95a.

At the close of the trial, the court instructed the jury that "if any or all of the defendants were aware of and failed to take all reasonable steps to prevent repeated attacks upon Nicholas Romeo," such failure deprived him of his constitutional rights. Petn. App. 73a. The jury also was instructed that if the defendants

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plaintiff's hands for short periods of time, i.e., 15 minutes, to prevent him from harming himself or others.

<sup>9</sup>1 R. 53; 4 R. 25; 6 R. 204.

<sup>10</sup>The first of these experts was a psychologist, specializing in treating the mentally retarded. He would have testified that Romeo could have been more effectively treated under other programs and that the lack of programming in Romeo's ward was the cause of aggressive behavior. Respondent's other expert was a physician with a specialty in neurological pediatrics and the director of a private institution for the mentally retarded. He would have testified that residents at his private institution as severely retarded as Romeo did not have similar problems of aggression or injury.



shackled Romeo other than in a good faith effort to treat him, his rights had been violated. Ibid. Finally, the jury was instructed that if Romeo was denied treatment "as a punishment for filing this lawsuit," or if defendants were "deliberately indifferent to the medical and psychological needs of Nicholas Romeo," his constitutional rights were violated under the Eighth Amendment. Id., at 73a-75a.

The jury returned a verdict for the defendants, on which judgment was entered. On appeal, the Court of Appeals for the Third Circuit, sitting en banc, vacated the judgment and remanded for a new trial. 644 F. 2d 147 (1980). All of the judges agreed that respondent's expert testimony should have been admitted. Id., at 164 & 173. They also agreed that the Eighth Amendment, prohibiting cruel and unusual punishment of those convicted of crimes, was not an appropriate source for determining the rights of the involuntarily committed. Rather, respondent's Fourteenth Amendment liberty right was implicated by the conditions under which he was confined. Id., at 156-59, & 173. The en banc court did not, however, agree on the



relevant standard to be used in determining whether Romeo's rights had been violated.<sup>11</sup>

The court's majority opinion began its analysis of this issue by stating that involuntary civil commitment entails a "massive curtailment of liberty." Id., at 157 (quoting Humphrey v. Cady, 405 U.S. 504, 509 (1972)). As a consequence involuntary commitment may be ordered only pursuant to due process. Ibid. The court further held that commitment does not extinguish all aspects of an individual's liberty interest; the power of locomotion without restraint and the right to personal security and freedom from punishment are fundamental liberties that can be limited only by an overriding, non-punitive state interest. 644 F. 2d, at 157-159.

In light of these views, the court considered Romeo's three claims: (i) the right to be free of physical restraints; (ii) the right to safety and protection; and

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<sup>11</sup>The existence of a qualified immunity defense was not at issue on appeal. The defendants had received instructions on this defense, J.A. 76a, and it was not challenged by respondent. 644 F. 2d, at 173 n.1. After citing Pierson v. Rhodes, 386 U.S. 547 (1967) and Scheuer v. Rhodes, 416 U.S. 232 (1974), the majority of the Court of Appeals noted that such instructions should be given again on the remand. 644 F. 2d, at 171-172.



(iii) the right to treatment. Id., at 159. Because physical restraint "raises a presumption of a punitive sanction," it can be justified only by compelling necessity. Id., at 159-160. And the failure to provide for a patient's safety must be justified by a showing of substantial necessity. Id., at 160. Finally, the court held that when treatment has been administered, those responsible are liable only if the treatment is not "acceptable in light of present medical or other scientific knowledge." Id., at 166-167 & 173.<sup>12</sup>

Chief Judge Seitz, writing for a minority of four, considered the standards articulated by the majority as indistinguishable from those applicable to medical malpractice claims. In Judge Seitz's view, the

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<sup>12</sup>Actually, the court divided the right-to-treatment claim into three categories and adopted three standards, but only the standard described in text is at issue before this Court. The Court of Appeals also stated that if a jury finds that no treatment has been administered, it may hold the institution's administrators liable unless they can provide a compelling explanation for the lack of treatment, 644 F. 2d at 165, 173, but respondent does not discuss this precise standard in his brief and it does not appear to be relevant to the facts of this case. In addition, the court considered "least restrictive analysis" appropriate to justify severe intrusions on individual dignity, such as permanent physical alteration or surgical intervention, id., at 165-166, & 173, but respondent concedes that this issue is not present in this case.



Constitution "only requires that the courts make certain that professional judgment in fact was exercised." 644 F. 2d, at 178. He concluded that the appropriate standard was whether the defendants' conduct was "such a substantial departure from accepted professional judgment, practice or standards in the care and treatment of this plaintiff as to demonstrate that the defendants did not base their conduct on a professional judgment." 644 F. 2d, at 178.<sup>13</sup>

We granted the petition for certiorari because of the importance of the question presented to the administration of state institutions for the involuntarily committed. 451 U.S. 982 (1981). We now reverse.

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<sup>13</sup>Judge Aldisert joined Chief Judge Seitz's opinion, but wrote separately to emphasize the nature of the difference between the majority opinion and that of the Chief Judge. On a conceptual level, Judge Aldisert criticized the majority for abandoning the common-law method of deciding the case at bar rather than articulating broad principles unconnected with the facts of the case and of uncertain meaning. 644 F. 2d, at 182-183. And, on a pragmatic level, Judge Aldisert warned that neither juries nor those administering state institutions would receive guidance from the "amorphous constitutional law tenets" articulated by the majority. Id., at 183-185.

Judge Garth also joined Chief Judge Seitz's opinion, and wrote separately to criticize the majority for addressing issues not raised by the facts of this case. 644 F. 2d, at 186.



## II

We consider here for the first time the substantive rights of the involuntarily committed under the Fourteenth Amendment<sup>14</sup> to the Constitution.<sup>15</sup> In this case, respondent has been committed pursuant to the laws of Pennsylvania, and he does not challenge the commitment. The broad question presented is whether, under the Due Process Clause, petitioners have infringed a post-commitment liberty interest by failing to provide constitutionally adequate conditions of confinement.<sup>16</sup>

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<sup>14</sup>In pertinent part, that Amendment provides that a state cannot deprive "any person of life, liberty, or property, without due process of law ...." U.S. Const., Amend. XIV, §1.

<sup>15</sup>The respondent no longer relies on the Eighth Amendment as a direct source of constitutional rights, Brief of Respondent 13 n.12 ("the Eighth Amendment applies only in cases concerning punishment of persons convicted of crimes").

<sup>16</sup>Respondent also argues that the Pennsylvania commitment statute provides a state-law basis for his federal substantive right. He maintains that he was committed for care and treatment under state law, and he therefore has a state substantive right entitled to substantive, not just procedural, protection under the Due Process Clause of the Federal Constitution. Initially, we note that this argument is made for the first time in respondent's brief to this Court; it was not advanced in the courts below.

Respondent relies primarily on Jackson v. Indiana, 406 U.S. 715 (1972). There, the Court stated that due process requires, at a minimum, terms and conditions of confinement that bear some rational relation to the purposes of confinement. Thus, respondent argues that the

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Respondent's commitment proceeding did not deprive him of all substantive liberty interest under the Fourteenth Amendment. See, e.g., Vitek v. Jones, 445 U.S. 480, 491-494 (1980). And the conditions under which respondent is confined implicate the entirety of his

wording of the relevant Pennsylvania commitment statute and the purposes for which he was committed--care and treatment--create a state-created right to treatment entitled to federal protection under Jackson because due process requires some relationship between the conditions of confinement and its purposes. In Jackson, however, the Court was considering only the need for a relationship between the single reason justifying confinement as a matter of federal law--temporary confinement pending competency to stand trial--and the "terms and conditions" of confinement. Romeo could, as a matter of federal law, be confined to protect others. See text and notes at n. 1 & n. 2, supra; Addington v. Texas, 441 U.S. 418, 426 (1979); O'Connor v. Donaldson, 422 U.S. 563, 573 (1975). Although respondent may have been confined for care and treatment under the relevant Pennsylvania statute, he is not seeking another state procedure, one that would commit him solely because he is violent.

Moreover, we see no reason why a federal substantive right to treatment should vary with the wording of the relevant state commitment statute or with the precise reason given for commitment. For example, as a matter of federal law, why should a mentally retarded person involuntarily committed to protect himself and others receive less treatment or inferior conditions than one involuntarily committed only because he is unable to care for himself? It is true that state substantive rights implicate federal procedural due process. And it is also true that we have never held explicitly that state substantive rights cannot be the basis for federal substantive rights under the Due Process Clause. In Smith v. Organization of Foster Families, 431 U.S. 816, 842 n. 48 (1977), we indicated that even when a federal procedural right exists, the existence of a related federal substantive right is not automatic, but is an entirely distinct question.

If respondent were arguing that his state-law substantive right entitled him to certain procedural protections, Pennsylvania law would be relevant. See, e.g., Vitek v. Jones, 445 U.S. 480 (1980); Wolf v. McDonnell, 418 U.S. 539, 557-558 (1974). This argument is not, however, presented by respondent.

*In another case, ...*



remaining liberty interest. The initial question therefore becomes by what standard do we determine whether the care at Pennhurst impermissibly infringe<sup>s</sup> that residuum<sup>u</sup> of liberty of which respondent should not be deprived.

Due process is a balance between "the liberty of the individual" and "the demands of an organized society." Poe v. Ullman, 367 U.S. 497, 522, 542 (1961) (Harlan, J., dissenting). In seeking this balance in other cases, the Court has weighed the individual's interest in liberty against the state's asserted reasons for restraining individual liberty. In Bell v. Wolfish, 441 U.S. 520, 539 (1979), for example, we considered a challenge to pre-trial detainees' confinement conditions. We agreed that the detainees, not yet convicted of the crime charged, could not be punished. But we upheld those restrictions on liberty that were reasonably related to legitimate government objectives and not tantamount to punishment. And in Jackson v. Indiana, 406 U.S. 713, 738 (1972), we held that an incompetent pre-trial detainee could not, after a competency hearing, be held indefinitely without either criminal process or civil commitment; due process



requires, at a minimum, some rational relation between the nature and duration of commitment and its purpose.

We have taken a similar approach in deciding procedural due-process challenges to civil commitment proceedings. In Addington v. Texas, 441 U.S. 418 (1979), for example, we held that the state must prove the need for commitment by "clear and convincing evidence." We reached this decision by weighing the individual's liberty interest against the state's legitimate interests in confinement. And in Parham v. J.R., 442 U.S. 584 (1979), we considered a challenge to state procedures for commitment of a minor with parental consent. In determining that procedural due process did not mandate an adversarial hearing, we balanced the liberty interest of the individual against the legitimate interests of the state, including the fiscal and administrative burdens additional procedures would entail. Id., at 599-600.

Although the foregoing discussion includes cases addressing procedural, as well as substantive, due process, the same basic analysis has been <sup>followed in both</sup> ~~used in either~~ instance. In considering whether respondent's substantive



liberty interests are protected adequately in the Pennhurst State School and Hospital, it is again necessary to strike the balance referred to by Justice Harlan in Poe v. Ullman, weighing the individual's liberty interests against the legitimate interests of the state and the restraints within which the state must operate, including the practical problems of operating an institution such as Pennhurst. In seeking this balance, we must be mindful of the need to reserve the Constitution for appropriate issues; there are limitations upon the extent to which constitutional principles may be relied upon in considering the adequacy of the day-to-day care provided in a large institution operating within the inevitable constraints of finite human and physical resources.<sup>17</sup>

<sup>17</sup>See, e.g., Rhodes v. Chapman, 452 U.S. 337, (1981) ("[C]ourts cannot assume that state legislatures and prison officials are insensitive to the requirements of the Constitution or to the perplexing sociological problems of how best to achieve the goals of the penal function in the criminal justice system ...."); Parham v. J.R., 442 U.S. 584, 608 n. 16 (1979) (In limiting judicial review of medical decisions made by professionals: "[I]t is incumbent on courts to design procedures that protect the rights of individuals without unduly burdening the legitimate efforts of the states to deal with difficult social problems.") Bell v. Wolfish, 441 U.S. 520, 539 (1979) (In context of conditions of confinement of pre-trial detainees: "[C]ourts must be mindful that these inquiries spring from constitutional requirements and that judicial answers to them must reflect that fact rather than a court's idea of how best to operate a detention

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See Paul v. Davis 424 U.S. 693, 16.  
712 (1976) (harm to injury or interest  
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not a constitutional violation redressed  
by § 1983/merely because the wrong doer is an officer of  
the state).  
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With the foregoing considerations in mind, we

reject standards at the extremes. The Pennsylvania  
standard of medical malpractice, imposing liability for  
any unjustified departure from established norms of  
medical practice,<sup>18</sup> is not applicable in this

institutional setting. See Estelle v. Gamble, 429 U.S.

97, 106 (1976). Nor is the standard applicable to prison

conditions appropriate. Although punitive conditions are

permissible in penal institutions unless cruel and

unusual, persons committed involuntarily to a state

institution because of mental retardation are not detained

for any crime or fault on their part and certainly cannot

be punished at all.

facility."); Wolf v. McDonnell, 418 U.S. 539, 556 (1974)  
(In considering procedural due process claim in context of  
prison: "[T]here must be mutual accommodation between  
institutional needs and objectives and the provisions of  
the Constitution of general application."); Procunier v.  
Martinez, 416 U.S. 396, 404-405, 406 (1974) ("[T]he  
problems of prisons in America are complex and  
intractable, and, more to the point, they are not readily  
susceptible to resolution by degree. Most require  
expertise, comprehensive planning, and the commitment of  
resources, all of which are peculiarly within the province  
of the legislative and executive branches of the  
government."). See also Townsend & Mattson, The  
Interaction of Law and Special Education, 1 Analysis and  
intervention in Developmental disabilities 75 (1981)  
(judicial resolution of rights of the handicapped can have  
adverse as well as positive effects on social change).

<sup>18</sup>See, e.g., Incollingo v. Ewing, 444 Pa. 263 (1971).

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## III.

We think the standard articulated by Chief Judge Seitz reflects a proper balance, ~~of the Mathews factors.~~ He would have held that "the Constitution only requires that the courts make certain that professional judgment in fact was exercised. It is not appropriate for the courts to specify which of several professionally acceptable choices should have been made." 644 F.2d, at 178.

This standard avoids both of the extremes for which the parties have contended. It is higher than the standard applied when prison conditions are challenged, and may be viewed as less demanding than the standard applicable under state law in a tort suit for medical malpractice. Moreover, this standard strikes the proper balance between the relevant interests. Whether prisoners or patients, the involuntarily committed must depend entirely upon the state<sup>19</sup>; yet those committed involuntarily in civil proceedings are detained as

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<sup>19</sup>See Estelle v. Gamble, 429 U.S. 97, 103-104 (1976).



dependents of the state, through no fault of their own.

They are therefore entitled to more considerate treatment

and conditions of confinement more responsive to their

status and needs than are prisoners. We hold that when

the rights of the involuntarily committed mentally

interests of the state, including fiscal and  
retarded are balanced against the legitimate ~~restraints on~~

administrative constraints,  
state action, due process requires that the state provide

these individuals with the treatment, training, physical

constraints, and other safety conditions considered

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appropriate by professionals exercising their judgment.

We recognize that this holding may impose some additional

burdens on states. We make clear, however, that judicial

review is limited to ensuring that decisions with respect

to these matters are duly made by a qualified

professional.<sup>20</sup> The decision, if made by a professional,

is presumptively valid; liability may be imposed only when

<sup>20</sup> Indeed, although respondent has claimed substantive, not procedural, rights, our holding entitles respondent to a right that can be characterized as procedural. We hold that the involuntarily committed are entitled to an informal, non-adversarial "hearing" by a professional exercising his professional judgment--a "procedure" not unlike that upheld in Parham v. J.R., 442 U.S. 584 (1979), a procedural due process case discussed in text and notes at n. \_\_\_ & n. \_\_\_, supra.

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~~decision~~ is such a substantial departure from accepted professional judgment, practice or standards as to demonstrate that the person responsible actually did not base the decision on such a judgment.<sup>21</sup>

We turn now to consider briefly respondent's specific claims in light of this standard. The parties agree that the state must provide adequate food, shelter and medical care.<sup>22</sup> The remaining questions concern respondent's claims to entitlement to additional training for his disability, less restrictive treatment, and safer conditions. In a sense, each of these claims relates to an element of the care that a state must exercise with respect to persons involuntarily committed to mental

<sup>21</sup>All members of the Court of Appeals agreed that respondent's expert testimony should have been admitted. This issue was not included in the questions presented in the petition for certiorari, and we have no reason to disagree with the view that the evidence was admissible. It appears relevant to whether petitioners' decisions were a substantial departure from accepted professional practice.

<sup>22</sup>Brief of Petitioners 8, 11, 12 & n. 10; Brief of Respondent 15-16. See also Amici Curiae Brief of Connecticut and Twenty Other States 8.



institutions.

A

Respondent claims the right to training and education to improve his ability to function given his handicap, and argues that such treatment should be provided under the general standard adopted by the Court of Appeals: treatment "acceptable ... in light of present scientific knowledge." 644 F. 2d, at 173. As a general matter, the State supports the District Court's instructions to the jury, instructions based on the Estelle v. Gamble, 429 U.S. 97 (1976) (medical treatment of prisoners) standard of care: only deliberate indifference to medical needs breaches care required by the Constitution. More particularly, the State maintains that when it commits an individual such as Romeo for care, it need not "assume a constitutional duty to provide him with additional services such as treatment [in the form of] training and education necessary to maximize his developmental potential." Brief of Petitioners 8.

We are not persuaded by either argument. As noted



by both Chief Judge Seitz and Judge Aldersert in their separate opinions, the standard urged by respondent and adopted by the Third Circuit is no different from the medical malpractice standard. 644 F. 2d, at 181 & 183. And, although professionals are far from agreeing that effective training of all severely or profoundly retarded persons is even possible,<sup>23</sup> we certainly would not hold that due process is satisfied when innocent individuals involuntarily committed to state institutions are simply kept alive. When treatment or training might ameliorate a patient's suffering or improve his condition, such care should be considered by a professional exercising his professional judgment in making the treatment decision. We do not suggest that the State has an obligation to provide optimal treatment. Normally, it is sufficient if the treatment chosen to improve the patient's condition is

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<sup>23</sup>See, e.g., Favell, Risley, Wolfe, Riddle, & Rasmussen, *The Limits of Habilitation*, 1 *Analysis and Intervention in Developmental Disabilities*, 37 (1981); Bailey, *Wanted: A Rational Search for the Limiting Conditions of Habilitation in the Retarded*, 1 *Analysis and Intervention in Developmental Disabilities*, 37 (1981); Kauffman & Krause, *The Cult of Educability: Searching for the Substance of Things Hoped for; The Evidence of Things Not Seen*, 1 *Analysis and Intervention in Developmental Disabilities*, 37 (1981).



that prescribed by the responsible professional.<sup>24</sup>

B

Respondent and the State also disagree as to the use of restraints. Respondent maintains, and the Court of Appeals held, that restraints can be justified only by "compelling necessity" and as the "least restrictive" method of dealing with a patient. 644 F. 2d, at 160-161.<sup>25</sup> The basis for this holding was the perception that restraints are "not normally within the conditions of confinement contemplated in habilitative institutions."

644 F. 2d, at 160 (footnote omitted). The State asserts

<sup>24</sup>By "professional decisionmaker", we mean a person reasonably competent, whether by training or experience, to make the particular decision at issue. Although we would expect long-term treatment decisions to be made by persons with medical degrees or advanced training in areas such as psychology, physical therapy, or the training and education of the retarded, other important decisions will often be made by nurses or by employees without any formal training.

<sup>25</sup>In his brief, respondent urges adoption of a standard proscribing "unnecessary custodial shackling" rather than the "least restrictive means" standard adopted by the Court of Appeals. But at oral argument respondent's counsel conceded that there is little practical difference between these formulations: respondent would consider restraints unnecessary if a less restrictive alternative were available. Transcript of Oral Argument 55-56.

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that there is no basis for this conclusion, noting that profoundly retarded patients often are violent and restraints are necessary. The State emphasizes its legitimate interest in protecting the welfare and safety of all of the residents in its institutions.

In view of the facts of this case, the need for physical restraint of respondent cannot be denied.<sup>26</sup> Mrs. Romeo's petition for commitment described respondent's propensity for violence, J.A. 18a, and his complaint alleged that during a specified period respondent had suffered injuries on at least 63 occasions. It is clear that the state, in discharging its duty to respondent himself as well as to other patients and staff personnel, must restrain respondent at times when violence is evident

<sup>26</sup>It is true that the majority of the Court of Appeals adopted a finding that there was an "absence of any dangerousness to others" among residents at Pennhurst. 644 F. 2d, at \_\_\_ n. 18. This finding was not, however, based on the record in this case, but on a finding in another case, Halderman v. Pennhurst State School & Hospital, 612 F. 2d 85, 92 (1979), reversed and remanded, Pennhurst State School & Hospital v. Halderman, 451 U.S. 22 (1981). See 644 F. 2d, at 158 n. 18. Moreover, the finding is inconsistent with the Court of Appeals' own description of the facts of this case: "It is not contested that, while confined at Pennhurst, Romeo was injured on over seventy occasions. These injuries were both self-inflicted and the result of attacks by other residents, some in retaliation against Romeo's aggressive behavior." 644 F. 2d, at 155.



or reasonably expected. We do not think that either "least restrictive" or "compelling necessity" analysis<sup>27</sup> is appropriate in reviewing decisions that must be made in an institution like Pennhurst. Frequently such decisions must be made quickly, with little or no warning, in order to restraint violence that would endanger the patient or others. The Constitution requires only that these decisions be made by a professional reasonably competent to make them.

## C

Finally, respondent and the Court of Appeals would impose liability for any injury to respondent in the absence of "substantial necessity" or "sustantial explanations" based on the State's interest in providing care and treatment as well as ensuring the institutional

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<sup>27</sup>In the judgment of at least one professional group, the least restrictive standard "is not always best from a clinical standpoint," and, "as a practical matter, it may not be possible to identify the least restrictive alternative at all." Brief of the American Psychiatric Association, at 20.



order needed to provide that care and treatment. 644 F. 2d, at 163-164 & 173. Petitioner argues that the proper standard was articulated in the jury instructions: there is no constitutional violation in the absence of "deliberate indifference" to respondent's safety. See J.A. 73a (jury instruction cited by petitioner).<sup>28</sup> Thus, the State would again apply the "deliberate indifference" standard of Estelle v. Gamble, 427 U.S. 97 (1976) (standard of liability for prison doctors in treating prisoners), in determining whether the failure to ensure respondent's safety violated the Constitution.

It hardly need be said that the State owes respondent a duty to take reasonable steps to ensure his physical safety. But we find no basis for holding that the Constitution requires adoption of the standard urged

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<sup>28</sup>Specifically, petitioner cites the instruction on accidental injury. The trial judge, referring to the Eighth Amendment's prohibition of cruel and unusual punishment, instructed the jury that "if any or all of the defendants were aware of and failed to take all reasonable steps to prevent repeated attacks upon Nicholas Romeo," such failure deprived him of constitutional rights. J.A. 73a. Although this instruction was requested by respondent himself, see Petn. App. 93a, the trial judge also emphasized that there could be no liability in the absence of "deliberate indifference" to Romeo's needs under the standard of Estelle v. Gamble, 429 U.S. 97 (1976), regardless of whether alternative methods of treatment could have prevented injury.



by respondent: liability in the absence of "substantial necessity" or a "substantial explanation." We also reject petitioners' view that the State fulfills its constitutional obligation by treating the involuntarily committed as though they were prisoners, i.e., no constitutional violation in the absence of "deliberate indifference" to patients' needs, see Estelle v. Gamble, 427 U.S. 97 (1976). Again, we think that an institution such as Pennhurst discharges its duty when decisions with respect to assuring the the safety of inmates are made by the appropriate professionals.

#### IV

Involuntary commitment neither extinguishes all constitutionally protected liberty interests nor entitles those committed to optimal care and conditions. The substantial interests of the involuntarily committed must be weighed against legitimate state interests and the constraints under which most state institutions necessarily operate. The state concedes a duty to provide



adequate food, shelter, clothing and medical care. And the state does not dispute that it has a duty to provide reasonable safety for all patients and personnel within the institution. As indicated above, we hold that the state also has the duty to provide reasonable training for a patient such as respondent. But decisions made by the appropriate professional, whether on the staff or retained, are entitled to a strong presumption of correctness. Such a presumption is necessary to enable institutions of this type--often, unfortunately, overcrowded and understaffed--to continue to function. A single professional may make ~~many~~ <sup>a number of</sup> decisions with respect to ~~many~~ <sup>1</sup> patients with widely varying needs and problems in the course of a normal day. The administrators, and particularly professional personnel, should not be required to make each decision in the shadow of an action for damages. We do not, of course, imply that the liberty interests identified above are not ultimately protected by the Constitution or that judicial review is not available in appropriate cases.

In this case, we conclude that the jury was



erroneously instructed on the assumption that the proper standard of liability was that of the Eighth Amendment. Accordingly, we remand for further proceedings consistent with this decision.



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Draft No. 80-1429, Youngberg v. Romeo

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The question presented is whether respondent,  
involuntarily committed to a state institution for the  
mentally retarded, has substantive rights under the Due  
Process Clause of the Fourteenth Amendment <sup>and (iii)</sup> ~~to~~ (i)  
training or "habilitation,"<sup>1</sup> (i) safe conditions of  
confinement, and (ii) freedom from bodily restraints,  
Respondent ~~brings suit~~ <sup>sues</sup> under 42 U.S.C. §1983 against three  
administrators of the institution, <sup>claiming</sup> ~~he seeks~~ damages for  
the alleged breach of his constitutional rights.

I

<sup>1</sup>The American Psychiatric Association explains that  
"[t]he word 'habilitation,' is used to refer to programs  
for the mentally retarded because mental retardation is  
... a learning disability and training impairment rather  
than an illness....[T]he principal focus of habilitation  
is upon training and development of needed skills." Brief  
of American Psychiatric Association as Amicus Curiae, at 4  
n. 1.



Respondent Nicholas Romeo is profoundly retarded. Although 33 years old, he has the mental capacity of an eighteen-month old child. He cannot talk and lacks the most basic self-care skills. Until he was 26, respondent lived with his parents in Philadelphia. But after the death of his father in May 1974, his mother was unable to control his violence. Within two weeks of the father's death, respondent's mother sought his temporary admission to a nearby Pennsylvania hospital.

Shortly thereafter, she asked the Philadelphia County Court of Common Pleas to admit Romeo to a state facility on a permanent basis. Her petition to the court explained that she was unable to care for Romeo or control his violence.<sup>2</sup> As part of the commitment process, Romeo was examined by a physician and a psychologist. They both certified that respondent was severely retarded and unable to care for himself. App. 21a-22a & 28a-29a. On June 11,

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<sup>2</sup>Mrs. Romeo's petition to the Court of Common Pleas stated: "Since my husband's death I am unable to handle him. He becomes violent--Kicks, punches, breaks glass; He can't speak--wants to express himself but can't. He is a constant 24 hr. care. without my husband I am unable to care for him." App. 18a.



1974, the Court of Common Pleas committed respondent to the Pennhurst State School and Hospital, pursuant to the applicable involuntary commitment provision of the Pennsylvania Mental Health and Mental Retardation Act, Pa. Stat. Ann. tit. 50 §4406.

At Pennhurst, Romeo was injured on numerous occasions, both by his own violence and by the reactions of other inmates to him. Mrs. Romeo became concerned about these injuries. After objecting to respondent's treatment several times, she filed this complaint<sup>1</sup> on —, 1976, in the United States District Court for the Eastern District of Pennsylvania as his next friend. The complaint alleged that "[d]uring the period July, 1974 to the present, plaintiff has suffered injuries on at least sixty-three occasions." The complaint originally sought damages and injunctive relief from Pennhurst's director and two supervisors<sup>3</sup>; it alleged that these officials knew, or

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<sup>3</sup>Petitioner Duane Youngberg was the Superintendent of Pennhurst; he had supervisory authority over the entire facility. Respondent Richard Matthews was the Director of Resident Life at Pennhurst. Respondent Marguerite Conley was Unit Director for the unit in which respondent was incarcerated. According to respondent, petitioners are administrators, not medical doctors. See Brief of Respondent 2. Youngberg and Matthews are no

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should have known, that Romeo was suffering injuries and failed to institute appropriate preventive procedures, thus violating his rights under the Eighth and Fourteenth Amendments.

Thereafter, in late 1976, Romeo was transferred from his ward to the hospital for treatment of a broken arm. While in the infirmary, and by order of a doctor, he was physically restrained during portions of each day.<sup>4</sup> These restraints were ordered by Dr. Gabroy, not a defendant here, to protect Romeo and others in the hospital, some of whom were in traction or were being treated intravenously. 7 Record 40, 49, 76-78. Although respondent normally would have returned to his ward when his arm healed, the parties to this litigation agreed that he should remain in the hospital due to the pending law suit. 5 Record 248, 6 R. 57-58 & 137. Nevertheless, in December 1977, a second amended complaint was filed alleging that the defendants were restraining respondent

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longer at Pennhurst.

<sup>4</sup>Although the Court of Appeals described these restraints as "shackles," "soft" restraints, for the arms only, were generally used. 7 Record 53-55.



for prolonged periods on a routine basis. The second amended complaint also added a claim for damages to compensate Romeo for the defendants' failure to provide him with appropriate treatment throughout his stay at Pennhurst. All claims for injunctive relief were dropped prior to trial because respondent is a member of the class seeking such relief in another action.<sup>5</sup>

An eight-day jury trial was held in April 1978.

Petitioners introduced evidence that respondent participated in several programs teaching basic self-care skills.<sup>6</sup> A comprehensive behavior-modification program was designed by staff members to reduce Romeo's aggressive behavior,<sup>7</sup> but that program was never implemented because

<sup>5</sup>Pennhurst State School and Hospital v. Halderman, 451 U.S. 1 (1981) (remanded for further proceedings).

<sup>6</sup>Prior to his transfer to Pennhurst's hospital ward, Romeo participated in programs dealing with feeding, showering, drying, dressing, self control, and toilet training, as well as a program providing interaction with staff members. Defendants' exhibit 10; 3 Record 69-70, 5 Record 44-56, 242-250, 6 Record 162-166; 7 Record 41-48.   
 ✓ <sup>7</sup>The programming continued while respondent was in the hospital, 5 Record 227, 248, 256; 6 Record 50, 162-166, Record 32,34, 41-48, and this programming reduced respondent's aggressive behavior to some extent, 7 Record 45.

<sup>7</sup>2 Record 7, 5 Record 88-90; 6 Record 88, 200-203; Defendants' Exhibit 1, at 9. The program called for short periods of separation from other residents and for use of "muffs" on plaintiff's hands for short periods of time, i.e., 5 minutes, to prevent him from harming himself or

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of his mother's objections.<sup>8</sup> Respondent introduced evidence of his injuries and of conditions in his unit.<sup>9</sup>

At the close of the trial, the court instructed the jury that "if any or all of the defendants were aware of and failed to take all reasonable steps to prevent repeated attacks upon Nicholas Romeo," such failure deprived him of his constitutional rights. App to Pet. for Cert. 110a. The jury also was instructed that if the defendants shackled Romeo or denied him treatment "as a punishment for filing this lawsuit," his constitutional rights were violated under the Eighth Amendment. Id., at 73a-75a. Finally, the jury was instructed that if they found the defendants "deliberately indifferent to the medical and psychological needs of Nicholas Romeo," they might find that Romeo's Eighth and Fourteenth Amendment

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others.

<sup>8</sup>1 Record 53; 4 Record 25; 6 Record 204.

<sup>9</sup>The District Judge refused to allow testimony by two of Romeo's witnesses--trained professionals--indicating that Romeo would have benefitted from more or different training programs. The trial judge explained that evidence of the advantages of alternative forms of treatment might be relevant to a malpractice suit, but was not relevant to a constitutional claim under §1983. App. to Pet. for Cert. 101a.



rights were violated. Id., at 111a. The jury returned a verdict for the defendants, on which judgment was entered.

The Court of Appeals for the Third Circuit, sitting en banc, reversed and remanded for a new trial. 644 F. 2d 147 (1980). The court held that the Eighth Amendment, prohibiting cruel and unusual punishment of those convicted of crimes, was not an appropriate source for determining the rights of the involuntarily committed. Rather, the Fourteenth Amendment and the liberty interest protected by that amendment was the proper constitutional basis for these rights. In applying the Fourteenth Amendment, the court found that the involuntarily committed retain liberty interests in freedom of movement and in personal security. These were "fundamental liberties" that could be limited only by an "overriding, non-punitive state interest. 644 F. 2d, at 157-159. It further found that the involuntarily committed have a liberty interest in training--a right to treatment--under the Fourteenth Amendment.

The en banc court did not, however, agree on the relevant standard to be used in determining whether



Romeo's rights had been violated.<sup>10</sup> Because physical restraint "raises a presumption of a punitive sanction," the majority of the Court of Appeals concluded that it can be justified only by "compelling necessity." Id., at 159-160. A somewhat different standard was appropriate for the failure to provide for a patient's safety. The majority considered that such a failure must be justified by a showing of "substantial necessity." Id., at 164. Finally, the majority held that when treatment has been administered, those responsible are liable only if the treatment is not "acceptable in the light of present medical or other scientific knowledge." Id., at 166-167 & 173.<sup>11</sup>

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<sup>10</sup>The existence of a qualified immunity defense was not at issue on appeal. The defendants had received instructions on this defense, App. 76a, and it was not challenged by respondent. 644 F. 2d, at 173 n.1. After citing Pierson v. Ray, 386 U.S. 547 (1967) and Scheuer v. Rhodes, 416 U.S. 232 (1974), the majority of the Court of Appeals noted that such instructions should be given again on the remand. 644 F. 2d, at 171-172.

<sup>11</sup>Actually, the court divided the right-to-treatment claim into three categories and adopted three standards, but only the standard described in text is at issue before this Court. The Court of Appeals also stated that if a jury finds that no treatment has been administered, it may hold the institution's administrators liable unless they can provide a compelling explanation for the lack of treatment, 644 F. 2d at 165, 173, but respondent does not discuss this precise standard in his brief and it does not appear to be relevant to the facts of this case. In addition, the court considered "least restrictive

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Chief Judge Seitz, writing for the minority, considered the standards articulated by the majority as indistinguishable from those applicable to medical malpractice claims. In <sup>Chief</sup><sub>1</sub> Judge Seitz's view, the Constitution "only requires that the courts make certain that professional judgment in fact was exercised." 644 F. 2d, at 178. He concluded that the appropriate standard was whether the defendants' conduct was "such a substantial departure from accepted professional judgment, practice or standards in the care and treatment of this plaintiff as to demonstrate that the defendants did not base their conduct on a professional judgment." 644 F. 2d, at 178.<sup>12</sup>

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analysis" appropriate to justify severe intrusions on individual dignity, such as permanent physical alteration or surgical intervention, id., at 165-166, & 173, but respondent concedes that this issue is not present in this case.

<sup>12</sup>Judges Aldisert and Garth joined Chief Judge Seitz's opinion, but wrote separately to emphasize the nature of the difference between the majority opinion and that of the Chief Judge. On a conceptual level, Judge Aldisert criticized the majority for abandoning the common-law method of deciding the case at bar rather than articulating broad principles unconnected with the facts of the case and of uncertain meaning. 644 F. 2d, at 182-183. And, on a pragmatic level, Judge Aldisert warned that neither juries nor those administering state institutions would receive guidance from the "amorphous constitutional law tenets" articulated by the majority. Id., at 184. See id., at 183-185

Judge Garth also joined Chief Judge Seitz's opinion,  
Footnote continued on next page.



We granted the petition for certiorari because of the importance of the question presented to the administration of state institutions for the mentally retarded. 451 U.S. 982 (1981). We now reverse.

## II

We consider here for the first time the substantive rights of the involuntarily committed under the Fourteenth Amendment to the Constitution.<sup>13</sup> In this case, respondent has been committed under the laws of Pennsylvania, and he does not challenge the commitment. Rather, he argues that

he has a constitutionally protected liberty interest in safety, freedom of movement, and training within the institution; and that petitioners infringed on these rights by failing to provide ~~adequate~~ <sup>constitutionally required</sup> conditions of

and wrote separately to criticize the majority for addressing issues not raised by the facts of this case. 644 F. 2d, at 186.

<sup>13</sup>In pertinent part, that Amendment provides that a state cannot deprive "any person of life, liberty, or property, without due process of law ...." U.S. Const., Amend. XIV, §1.

Respondent no longer relies on the Eighth Amendment as a direct source of constitutional rights, Brief of Respondent 13 n.12.

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confinement.

The mere fact that Romeo has been committed under proper procedures does not deprive him of all substantive liberty interest under the Fourteenth Amendment. See, e.g., Vitek v. Jones, 445 U.S. 480, 491-494 (1980).

Indeed, the state concedes that respondent has a right to adequate food, shelter, <sup>clothing</sup> and medical care.<sup>14</sup> We must decide whether liberty interests also exist in safety, freedom of movement or training, and, if so, under what circumstances these interests are infringed in violation of due process.

A

Respondent's first two claims involve liberty interests recognized by prior decisions of this Court, interests that involuntary commitment proceedings do not extinguish--indeed, petitioners do not argue <sup>on principle</sup> to the contrary.<sup>15</sup> The first is a claim to safe conditions. In

<sup>14</sup>Brief of Petitioners 8, 11, 12 & n. 10; Brief of Respondent 15-16. See also Amici Curiae Brief of Connecticut and Twenty Other States 8.

<sup>15</sup>See Brief of Petitioner 27-31.

*Petitioners concede the duty to protect these interests but argue they have complied fully with it*



the past, this Court has noted that the right to personal security constitutes a<sup>n</sup> "historic liberty interest" protected substantively by the Due Process Clause. Ingraham v. Wright, 430 U.S. 651, 673 (1977). And that right is not extinguished by lawful confinement, even for penal purposes.<sup>16</sup> See Hutto v. Finney, 437 U.S. 678 (1978). If it is cruel and unusual punishment to hold convicted criminals in unsafe conditions, it must be unconstitutional to confine the involuntarily committed--who may not be punished at all--in unsafe conditions.

Next, respondent claims a right to freedom from *bodily restraint. See n 4, supra* shackling. In other contexts, the existence of such an interest is clear in the prior decisions of this Court. Indeed, "[l]iberty from bodily restraint always has been recognized as the core of the liberty protected by the Due

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<sup>16</sup>It is true that in cases dealing with prisoners, analysis begins with the Eighth Amendment's proscription of cruel and unusual punishment, and that amendment has no direct bearing on non-penal institutions. See Ingraham v. Wright, 430 U.S. 651, \_\_\_\_ (1977). But the Eighth Amendment has been applied to the states through the Due Process Clause of the Fourteenth Amendment. If prisoners in state institutions have a federal right to some degree of safety, it is because their safety implicates a liberty interest protected by the Fourteenth Amendment's Due Process Clause. See, e.g., Adamson v. California, 332 U.S. 46 (1947); Palko v. Connecticut, 302 U.S. 319 (1937).



Process Clause from arbitrary governmental action."

Greenholtz v. Nebraska Penal Inmates, 442 U.S. 1, 18-19

(1979) (Powell, J., concurring). This interest survives criminal conviction and incarceration. Similarly, it must also survive involuntary commitment proceedings.

## B

Respondent's remaining claim is more troubling: a constitutional right to "habilitation," i.e., training and

~~education~~ to improve his ability to function within

Pennhurst. Respondent concedes that no amount of training

will make possible his release. Moreover, respondent does

not argue that if he were still at home, he would have a

right to training at the expense of the state. See Tr.

Oral Arg. 33. And, since we have already found

constitutionally protected liberty interests in freedom

from restraints and safety, some amount of training ~~habilitation~~

may be necessary to avoid unconstitutional infringement of

those rights regardless of whether respondent also enjoys

a constitutional right to training per se. We therefore

17 as synonymous with  
We use the term "training" ~~in the~~  
~~broad sense of~~ "habilitation" with its  
"principal focus" - certainly in a  
case like Romeo's - on "training +  
development of needed skills". See n 1, supra



decide only the narrow question of whether ~~someone~~ who has  
 been involuntarily committed has a right to <sup>additional</sup> training--  
 other than <sup>that</sup> ~~training~~ related to safety or the ability to  
 function free of restraints--when such training might <sup>improve?</sup> help  
 him <sup>capacity to</sup> function more independently within the institution,  
 but cannot make possible his release.

Respondent argues that, once a person has been  
 confined, he has "no one but the state to turn to for help  
 in gaining additional skills or, at least, preserving  
 whatever skills and abilities" he has. Brief of  
 Respondent 23. Respondent concludes that the state  
 therefore has a constitutional duty to provide reasonable  
<sup>training,</sup>  
~~habilitation,~~ both to preserve existing skills and develop  
 new ones. In making this argument, respondent compares  
 mental retardation to an infectious disease, for which the  
 state has quarantined the individual, and cannot then deny  
 appropriate treatment. Mental retardation is not,  
 however, a disease. Rather, it is a description of a  
 certain level of intellectual ability,<sup>18</sup> and the

<sup>18</sup> <sup>17</sup>See A. Baumeister, American Residential  
 Institutions, at 21-22, as printed in Residential  
 Footnote continued on next page.

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many, is it clear that Romeo's retardation  
 is entirely or basically "mental"? That is,  
 we are talking about I.Q. & not physical  
 retardation?



"habilitation" respondent seeks, such as training to teach him for the first time ~~basic self-care~~ skills, <sup>he does not possess,</sup> correlates more closely to education than to medical treatment.<sup>18 19</sup>

And we have never found a right to education under the Constitution.<sup>19 20</sup>

As a general matter, states are under no constitutional duty to provide services for <sup>persons</sup> residents. <sup>citizens?</sup>

See, e.g., Harris v. McCrae, 448 U.S. 297 (1980) (publicly funded abortions); Maher v. Roe, 432 U.S. 464 (1977) (medical treatment). When states do choose to provide services, they are generally given a wide latitude in doing so. See Richardson v. Belcher, 404 U.S. 78, 83-84

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Facilities for the Mentally Retarded (Baumeister, ed. 1970); H. Best, Public Provision for the Mentally Retarded in the United States, at 1 (1965). See also Brief American Psychiatric Association as Amicus Curiae, at 4 n. 1 (quoted in n. 1, supra)

<sup>18</sup> There may be cases in which it is difficult to distinguish between claims to medical treatment and claims to training in the development of skills. This is not, however, such a case. Indeed, Romeo does not raise any issues related to medical care--for example, he does not complain that he received inadequate medical treatment in the infirmary ward. And his claims to training are either related to safety and freedom from restraints or purely educational, i.e., training to make him less violent (related to safety and freedom from restraints) and training in self-care skills (educational).

<sup>20</sup> <sup>19</sup> See San Antonio Ind. School Dist. v. Rodriguez, 411 U.S. 1 (1973). Respondent does not argue that he is denied training or habilitation available to others in Pennsylvania institutions.



(1971); Dandridge v. Williams, 397 U.S. 471, 478 (1970).

Specifically, states need not "choose between attacking every aspect of a problem or not attacking the problem at all." Id., at 486-487. Here, the state has committed <sup>respondent</sup> ~~someone~~ <sup>It</sup> who concedely cannot survive on the outside, and the state is willing to provide ~~reasonable~~ <sup>as well as to provide safety and</sup> food, shelter, clothing and medical care. The narrow question presented

is whether it must also afford him training to develop <sup>marginal</sup> ~~skills~~, <sup>even though it is not claimed that any level of</sup> though such training cannot possibly lead to his <sup>of</sup> ~~release.~~ <sup>training could enable him to live outside of an institution.</sup>

We hesitate to find a new liberty interest cognizable under the Fourteenth Amendment in this instance. As we noted in determining that there is no general right to education in San Antonio School District v. Rodriguez, 411 U.S. 1 (1973):

"It is not the province of this Court to create substantive constitutional rights in the name of guaranteeing equal protection of the laws.... Rather, the answer lies in assessing whether there is a right to education explicitly or implicitly guaranteed by the Constitution." Id., at 33-34.

A similar <sup>restraint</sup> reluctance is seen in cases considering new "liberties" under the due process. In Paul v. Davis, 424 U.S. 693 (1976), we noted that the liberties protected by



the Fourteenth Amendment have their origins either in state law--for puposes of procedural due process--or in the guarantees of the Bill of rights, <sup>that</sup> which have been "incorporated" to apply to the states. Id., at 710-711.

In addition, as noted earlier, some liberty interests are implicit in our historic notion of the meaning of that word itself, i.e., freedom from bodily restraint by the state. But <sup>a</sup> ~~the~~ right to training fits none of these categories. Respondent is not seeking procedural due process.<sup>20 21</sup> Nor does he claim a right historically regarded as within the meaning of the concept of "liberty." And respondent points to no right to training either implicit or explicit in the guarantees of the Bill of Rights.

2) <sup>20</sup> Respondent does argue that the Pennsylvania commitment statute provides a state-law basis for a federal substantive, not procedural, right. He maintains that he was committed for care and treatment under state law, and he therefore has a state substantive right entitled to substantive, not just procedural, protection under the Due Process Clause of the Federal Constitution. But this argument is made for the first time in respondent's brief to this Court. It was not advanced in the courts below, and was not argued to the Court of Appeals as a ground for reversing the trial court. Given the uncertainty of Pennsylvannia law and the lack of any guidance on this issue from the lower federal courts, we decline to consider it now. See Dothard v. Rawlinson, 433 U.S. 321, 3273 n. 1 (1977); Duigman v. United States, 274 U.S. 196, 200 (1927); Jordan Mining Co. v. Societe des Mines, 164 U.S. 261, 264-265 (1921).



The right respondent claims is a substantive due process right. Only when an action of a state against an individual is sharply at odds with our common sense of "liberty and justice," will the Due Process Clause of the Fourteenth Amendment bar the action. Palko v. Connecticut, 302 U.S. 319, \_\_\_\_ (1937).<sup>21</sup> In deciding whether to provide individuals such as Romeo with habilitative <sup>training</sup> ~~treatment~~, the state must make a difficult decision regarding the allocation of its resources. We cannot say that due process requires that such individuals must be given training in the development of skills that cannot lead to freedom. The decision whether to <sup>commit</sup> ~~spend~~ scarce resources on programs to attempt to <sup>train a</sup> ~~habilitate~~ Romeo,<sup>22</sup> or, <sup>on other social and welfare programs</sup> ~~for example, on a special program to educate~~ of manifest merit,

<sup>21</sup> See also Adamson v. California, 332 U.S. 46, \_\_\_\_ (1947) (Frankfurter, J., concurring) (In order to determine whether the defendant was accorded due process under the Fourteenth Amendment, it is necessary "to ascertain whether [the proceedings] offend those canons of decency and fairness which express the notions of justice of English-speaking peoples."); Palko v. Connecticut, 302 U.S., at, at \_\_\_\_ (Under the Due Process Clause of the Fourteenth Amendment, the standard is whether a state has "subjected [an individual] to a hardship so acute and shocking that our polity will not endure it.").

<sup>22</sup> Professionals in the habilitation of the mentally retarded disagree strongly on the question whether effective training of all severely or profoundly retarded individuals is even possible. See, e.g., Favell, Risley, Wolfe, Riddle, & Rasmussen, The Limits of Habilitation, 1 Footnote continued on next page.



~~inner-city children~~, is a difficult one that state and

federal governments must face. The Constitution does not

dictate an answer,

*this is not a  
and certainly ~~not~~ a  
decision that courts ~~have~~  
competently to decide.*

We therefore conclude that ~~the~~ involuntarily-

committed mentally retarded do not have a constitutionally

protected liberty interest in training, ~~or habilitation,~~

*additional ~~to~~ brought here,*

*As noted above, +* ~~however,~~ *per se,* although they do have constitutionally protected

interests in freedom from bodily restraints, ~~and safety,~~

*safety and*

and those interests ~~may~~ *do* require some ~~amount~~ *kind* of training.

We turn next to consider the whether Pennsylvania ~~might~~ *may*

have violated these two rights.'

### III

#### A

We have established that Romeo retains liberty

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Analysis and Intervention in Developmental Disabilities, 37 (1981); Bailey, Wanted: A Rational Search for the Limiting Conditions of Habilitation in the Retarded, 1 Analysis and Intervention in Developmental Disabilities, 37 (1981); Kauffman & Krause, The Cult of Educability: Searching for the Substance of Things Hoped for; The Evidence of Things Not Seen, 1 Analysis and Intervention in Developmental Disabilities, 37 (1981).



Many - Does Respondent's 20.

Brief refers to Romeo  
as a "patient" or as  
an "inmate". If so, we  
should conform.

interests in safety and freedom from bodily restraint that

survive his commitment. Yet these interests are not

absolute, indeed to some extent they are in conflict. In

<sup>operating</sup> ~~running~~ an institution such as Pennhurst, there <sup>are</sup> ~~will be~~

occasions in which it is <sup>necessary</sup> ~~appropriate~~ for the state to

restrain the movement of patients--for example, to protect <sup>them or</sup>

<sup>well as</sup> others from violence, <sup>or as part of a training program.</sup> ~~or as part of a training program.~~ <sup>Then also may be appropriate in</sup>

Similarly, the <sup>the</sup> institution can not protect its inmates

<sup>the danger</sup> from ~~all~~ threats of violence, if it is to permit them to

move about with any degree of freedom. The question then

is not simply whether a liberty interest has been

infringed but whether the <sup>the extent or nature of the</sup> ~~infringement~~ is such as to

violate due process. <sup>restraint</sup>

In determining whether a substantive right

protected by the Due Process Clause has been violated, it

is necessary to balance "the liberty of the individual"

and "the demands of an organized society." Poe v. Ullman,

367 U.S. 497, 522, 542 (1961) (Harlan, J., dissenting).

In seeking this balance in other cases, the Court has

weighed the individual's interest in liberty against the

state's asserted reasons for restraining individual

<sup>obvious</sup> <sup>24</sup> In Romeo's case there can be no question  
that physical restraint was necessary  
at times. See n 2, supra.



liberty. In Bell v. Wolfish, 441 U.S. 520, 539 (1979), for example, we considered a challenge to pre-trial detainees' confinement conditions. We agreed that the detainees, not yet convicted of the crime charged, could not be punished. But we upheld those restrictions on liberty that were reasonably related to legitimate government objectives and not tantamount to punishment.<sup>23</sup>

And we have taken a similar approach in deciding procedural due-process challenges to civil commitment proceedings. In Parham v. J.R., 442 U.S. 584 (1979), for example, we considered a challenge to state procedures for commitment of a minor with parental consent. In determining that procedural due process did not mandate an adversarial hearing, we ~~balanced~~<sup>weighed</sup> the liberty interest of the individual against the legitimate interests of the state, including the fiscal and administrative burdens additional procedures would entail.<sup>24</sup> Id., at 599-600.

<sup>23</sup>See also Jackson v. Indiana, 406 U.S. 713, 738 (1972) (holding that an incompetent pre-trial detainee cannot, after a competency hearing, be held indefinitely without either criminal process or civil commitment; due process requires, at a minimum, some rational relation between the nature and duration of commitment and its purpose).

Footnote(s) 24 will appear on following pages.



Mary - as written this is about  
nothing to precede page & half  
We need a transition to the  
"standard". My notes are at  
rough edit for this purpose. You  
can improve it.

22.

In considering whether respondent's substantive

Accordingly, <sup>in</sup> this case  
it is necessary ~~to~~ for the  
trial of facts to strike.

freedom of movement are

first State School and

to find the balance

referred to in Ullman, 367 U.S.

497, 522, 542 (1961) (Harlan, J., dissenting). We must

interests against the

and the restraints

operate, including the

institution such as

There should not be left to  
the unguided discretion of  
a judge or jury.

<sup>24</sup>See also Addington v. Texas, 441 U.S. 418 (1979).  
In that case, we held that the state must prove the need  
for commitment by "clear and convincing evidence." We  
reached this decision by weighing the individual's liberty  
interest against the state's legitimate interests in  
confinement.

<sup>25</sup>See Parham v. J.R., 442 U.S. 584, 608 n. 16 (1979)  
(In limiting judicial review of medical decisions made by  
professionals: "[I]t is incumbent on courts to design  
procedures that protect the rights of individuals without  
unduly burdening the legitimate efforts of the states to  
deal with difficult social problems."). See also Rhodes  
v. Chapman, 452 U.S. 337, \_\_\_\_ (1981) ("[C]ourts cannot  
assume that state legislatures and prison officials are  
insensitive to the requirements of the Constitution or to  
the perplexing sociological problems of how best to  
achieve the goals of the penal function in the criminal  
justice system ....");

Bell v. Wolfish, 441 U.S. 520, 539 (1979) (In context of  
conditions of confinement of pre-trial detainees:  
"[C]ourts must be mindful that these inquiries spring from  
constitutional requirements and that judicial answers to  
them must reflect that fact rather than a court's idea of  
how best to operate a detention facility."); Wolf v.  
McDonnell, 418 U.S. 539, 556 (1974) (In considering

Footnote continued on next page.



## B

We think the standard articulated by Chief Judge Seitz, *affords this guidance. It* reflects the proper balance between the legitimate interests of the state and the rights of the involuntarily committed to reasonable conditions of safety and freedom from unreasonable restraints. He would have held that "the Constitution only requires that the courts make certain that professional judgment in fact was exercised. It is not appropriate for the courts to specify which of several professionally acceptable choices should have been made."<sup>26</sup> 644 F.2d, at 178.

procedural due process claim in context of prison: "[T]here must be mutual accommodation between institutional needs and objectives and the provisions of the Constitution of general application."); Procunier v. Martinez, 416 U.S. 396, 404-405, 406 (1974) ("[T]he problems of prisons in America are complex and intractable, and, more to the point, they are not readily susceptible to resolution by degree. Most require expertise, comprehensive planning, and the commitment of resources, all of which are peculiarly within the province of the legislative and executive branches of the government."). See also Townsend & Mattson, The Interaction of Law and Special Education, I Analysis and intervention in Developmental disabilities 75 (1981) (judicial resolution of rights of the handicapped can have adverse as well as positive effects on social change).

<sup>26</sup> Our only disagreement with Chief Judge Seitz' holding is with regard to the existence of a right to treatment per se. He finds that such a right does exist, whereas we find no such right cognizable as a liberty interest protected by the Fourteenth Amendment. See 644 F. 2d, at \_\_\_\_.



*would place an undue burden on the administration of institutions such as Pennhurst, and also would restrict unnecessarily the exercise of*

*no 4*

~~This standard strikes the proper balance between~~

*0*  
*2*

~~the relevant interests. It is higher than the standard~~

*professional judgment as to the needs of inmates*

~~of deliberate indifference, applied in the context of penal~~

~~institutions. Persons who have been involuntarily~~

~~committed are entitled to more considerate treatment and~~

~~conditions of confinement than criminals whose conditions~~

~~of confinement are designed to punish. And it is lower~~

~~than the standard of "compelling" or "substantial"~~

~~necessity established by the Court of Appeals. We think~~

*considered necessary*

~~that such a standard places too great a restriction on the~~

~~discretion of professionals who must administer~~

~~institutions such as Pennhurst.~~

We hold that when the rights of the involuntarily

committed mentally retarded are *weighed* ~~balanced~~ against the

legitimate interests of the state, including

administrative and fiscal constraints, due process

requires that (i) the state subject these individuals only

to reasonable physical constraints; (ii) it provide them

reasonable safety conditions, and (iii) it afford them

such training as is reasonably necessary to achieve these

ends.<sup>27</sup> We recognize that this holding may impose some

Footnote(s) 27 will appear on following pages.



additional burdens on states. In determining what is "reasonable," however, we emphasize that courts must show deference to the judgment exercised by a qualified professional.<sup>28</sup> *99*

By so limiting judicial review of challenges to conditions in state institutions, interference by the federal judiciary with the internal operations of these institutions will be minimized. *old 25 → 30* *certainly* Moreover, there is no reason to think judges or juries are better qualified than the appropriate professional in making such decisions.<sup>29</sup> *31*

*206*  
*27* We have expressed the constitutional right enjoyed by respondent somewhat differently than did Chief Judge Seitz. Rather than stating that the involuntarily committed *enjoy* the right to have certain decisions made by professionals, see 644 F. 2d, at \_\_\_, we have held that they are entitled to conditions of reasonable safety and reasonable freedom from bodily restraints, but we go on to hold that once such a decision is made by a professional in the exercise of his judgment, courts will defer to it. There is, therefore, no substantive difference between the holdings. *language from that used by*

*2928* Our holding entitles respondent to a right that can be characterized as procedural. We hold that the involuntary committed are entitled to an informal, non-adversarial "hearing" by a professional exercising his professional judgment--a "procedure" not unlike that upheld in Parham v. J.R., 442 U.S. 584 (1979), a procedural due process case discussed in text at \_\_\_, supra. *also* *We do not view this as substantially different in operation from that stated by C9 Seitz*

*30* *old 25* *31* *29* It may not be immediately apparent that decisions regarding safety conditions, the use of restraints, and related training programs involve the exercise of professional judgment by the institution's staff. But, for example, professional judgment is exercised in determining whether a certain training program can reasonably be expected to facilitate a patient's interaction with staff and other patients without violence.

Footnote continued on next page.



See Parham v. J.R., 442 U.S. 584, 607 (1979); Bell v. Wolfish, 441 U.S. 520, 544 (1979) (Courts should not "second-guess administrators on matters on which they are better informed."). For these reasons, the decision, if made by a professional,<sup>30</sup> is presumptively valid; liability may be imposed only when the decision by the professional is such a substantial departure from accepted professional judgment, practice or standards as to demonstrate that the person responsible actually did not base the decision on such a judgment. In an action for damages against a professional in his individual capacity, however, the professional will not be liable if he was unable to exercise his professional judgment because of

---

Similarly, professional judgment is exercised in determining whether a patient, whose violent tendencies have not been entirely curbed, should be allowed to interact with others or whether the risks of injury to self and others justify isolation or even the use of restraints.

<sup>32</sup> <sup>36</sup> By 'professional' decision-maker, we mean a person competent, whether by education, training or experience, to make the particular decision at issue. Long term treatment decisions normally should be made by persons with degrees in medicine or nursing, or with appropriate training in areas such as psychology, physical therapy, or the care and training of the retarded. Of course, day-to-day decisions regarding care--including decisions that must be made without delay--necessarily will be made in many instances by employees without formal training but who are subject to the supervision of qualified persons."



budgetary constraints; in such a situation, good-faith immunity would bar liability.

#### IV

In deciding this case, we have weighed those post-commitment interests cognizable as liberty interests under the Due Process Clause of the Fourteenth Amendment against legitimate state interests and the constraints under which most state institutions necessarily operate. *We repeat that* The state concedes a duty to provide adequate food, shelter, clothing and medical care. The state also has *the unquestioned* a duty to provide reasonable safety for all patients and personnel within the institution and may not restrain patients in the absence of a legitimate state interest. We hold, however, that there is no constitutional right to habilitation *we* or training *sh* per se. Yet we would not be understood to hold that the state is under no obligation to provide *some training* habilitation. The state is *under a duty* bound to provide *respondent* Romeo with *such* treatment *as* the appropriate professional considers reasonable to ensure his safety *and* or to facilitate his ability to function free from bodily restraints. It may well be unreasonable not to provide training when



training could significantly reduce the need for restraints or the likelihood of violence.

Respondent <sup>then</sup> enjoys constitutionally protected interests in conditions of reasonable safety, reasonably non-restrictive confinement conditions, and such training as may be required by these interests. In determining whether these rights have been violated, decisions made by the appropriate professional are entitled to a strong presumption of correctness. Such a presumption is necessary to enable institutions of this type--often, unfortunately, overcrowded and understaffed--to continue to function. A single professional may <sup>have to</sup> make decisions with respect to a number of patients with widely varying needs and problems in the course of a normal day. The administrators, and particularly professional personnel, should not be required to make each decision in the shadow of an action for damages. We do not, of course, imply that the liberty interests identified above are not ultimately protected by the Constitution or that judicial review is not available in appropriate cases.

Unnecessary

In this case, we conclude that the jury was



erroneously instructed on the assumption that the proper standard of liability was that of the Eighth Amendment. Accordingly, we remand for further proceedings consistent with this decision.



lfp/ss 05/23/82

Rider A, p. 18 (Romeo)

ROME018 SALLY-POW

These are the essential<sup>s</sup><sub>1</sub> of the care that the state must  
provide.



lfp/ss 05/23/82

Rider <sup>B</sup>A, p. 18 (Romeo)

ROME018B SALLY-POW

These conditions of confinement comport fully with the purpose of respondent's commitment. Cf. Jackson v. Indiana, 406 U.S. 715, 738 (1972). See n. 27, ante, in determining whether the state has met its obligations in these respects,



lfp/ss 05/23/82

Rider A, p. 14 (Romeo)

ROME014 SALLY-POW

← This case differs in critical respects from  
Jackson, a procedural due process case involving <sup>the validity of an</sup> ~~an~~ <sup>^</sup>  
involuntary commitment. Here, petitioner was committed by  
a court on petition of his mother who averred that in view  
of Romeo's condition she could neither care for him nor  
control his violence. Ante, at 2. Thus, the purpose of  
petitioner's commitment basically was to provide  
reasonable care and safety, conditions not available to  
him outside of an institution.



File

*First draft of  
this substantial change.*

lfp/ss 05/25/82

Rider A, p. 8 (Romeo)

ROME08 SALLY-POW

*See second draft of 5/27*

B

Respondent's remaining claim is more troubling.

In his words, he asserts a "constitutional right to minimally adequate habilitation". Brief, 8, 23, 45. This is a substantive due process claim that is said to be grounded in the liberty component of the Due Process Clause of the Fourteenth Amendment. The term "habilitation", used in psychiatry, is not defined precisely or consistently in the opinions below or in the briefs of the parties or the amici. As noted previously, at 4 n. 1, supra, the term refers to "training and development of needed skills". Respondent emphasizes that the right he asserts is for "minimal" training, and he would leave the type and extent of training to be determined on a case-by-case basis "in light of present medical or other scientific knowledge".

In addressing the asserted right <sup>to</sup> ~~for~~ training, we start from established principles. As a general matter, a State is under no constitutional duty to provide



substantive services for those within its border. See, Harris v. McRae, 448 U.S. 297, 318 (1980) (publicly funded abortions); Maher v. Roe, 432 U.S. 464, 469 (1977) (medical treatment). When a person is institutionalized - and wholly dependent on the State - it is conceded by petitioner that certain duties to provide services do exist, although even then a State necessarily has considerable discretion in determining the nature and scope of its responsibilities. See Richardson v. Belcher, 404 U.S. 78, 83-84 (1971); Dandridge v. Williams, 397 U.S. 471, 478 (1970). Nor must a State "choose between attacking every aspect of a problem or not attacking the problem at all." Id., at 486-487.

Respondent, in light of the severe character of his retardation, concedes that no amount of training will make possible his release. Nor does respondent argue that if he were still at home, the State would have an obligation to provide training at its expense. See Tr. Arg. 33. It became necessary for the County Court of Common Pleas to commit Romeo, at his mother's request, because of his violence that resulted in injuries to



himself, threatened injuries to others and damaged property. See 2 and n. 2, supra. It is clear from the record that respondent's primary needs are bodily safety and a minimum of physical restraint. As we have ~~recognized~~ that there is a constitutionally protected liberty interest in safety and freedom from restraint, these established constitutional rights require at least minimally adequate training to assure that they are safeguarded. Ante, at \_\_\_\_.

We think it unnecessary in this case to decide specifically what additional training, unrelated to safety and physical restraint, may be required in this or similar cases involving claims of institutionalized profoundly retarded persons. Chief Judge Seitz, in language apparently adopted by respondent, would hold:

"I believe that the plaintiff has a constitutional right to minimally adequate care and treatment. The existence of a constitutional right to care and treatment is no longer a novel legal proposition." Pet. 54a.

But Chief Judge Seitz did not undertake to identify specifically or otherwise define - beyond the right to reasonable safety and freedom from physical restraint - the "minimally adequate ~~care~~ care and treatment" that may



appropriately be required for this respondent. Rather, he would leave this to "professional judgment", observing that "the Constitution only requires that the courts make certain that professional judgment is in fact exercised".\* Pet. 58a, 59a.

We agree with these views, and conclude that respondent's liberty interests, in the circumstances of his case, require the State to provide such minimally adequate training as a professional judgment deems appropriate to *assure the reasonable* ~~provide the~~ safety and freedom from undue restraint that were the purpose of his commitment. In view of respondent's condition and the state of the record. We need go no further *than* ~~with~~ Chief Judge Seitz's formulation.

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\* It is clear that Chief Judge Seitz used the term "treatment" as synonymous with training or habilitation.



## II

## A

The liberty interests in safety and freedom from bodily restraint are not absolute and to some extent they may be in conflict.



Mam - this  
looks good to  
me.

lfp/ss 05/27/82

Rider A, p. 8 (Romeo)

RR MARYB-POW

B

Respondent's remaining claim is more troubling.

In his words, he asserts a "constitutional right to minimally adequate habilitation." Brief, 8, 23, 45. This

is a substantive due process claim that is said to be

grounded in the liberty component of the Due Process Clause of the Fourteenth Amendment. <sup>old 23</sup> The term

"habilitation", used in psychiatry, is not defined ✓

precisely or consistently in the opinions below or in the briefs of the parties or the amici. <sup>25</sup> ~~call for old footnote~~ <sup>old 23</sup> ✓

25) As noted previously, at n. 1, supra, the term refers

to "training and development of needed skills."

Respondent emphasizes that the right he asserts is for

"minimal" training, see Brief of Respondent at 34, and he

would leave the type and extent of training to be

determined on a case-by-case basis "in light of present

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OB 142965 text  
OB 142966 notes



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Respondent, in light of the severe character of his retardation, concedes that no amount of training will make possible his release. Nor does he argue that if he were still at home, the State would have an obligation to provide training at its expense. See Tr. of Oral Arg. 33. The record reveals that respondent's primary needs are bodily safety and a minimum of physical restraint, and



respondent clearly claims <sup>training</sup> ~~habilitation~~ related to these needs. <sup>21</sup> ~~(new footnote)~~ <sup>a/</sup> ~~But~~ <sup>as</sup> we have recognized that there is

a constitutionally protected liberty interest in safety and freedom from restraint, ante at \_\_\_\_; ~~some~~ <sup>6</sup> training may be necessary to avoid unconstitutional infringement of those rights, ~~regardless of whether respondent also enjoys~~

~~a constitutional right to training per se.~~ On the basis

of the record before us, it is quite uncertain whether respondent seeks any "habilitation" or training unrelated to safety and freedom from bodily restraints. In his brief to this Court, he indicates that even the self-care programs Romeo seeks are needed to reduce his aggressive behavior. See Reply Brief of Respondent at 21-22, 50.

And in his offer of proof to the trial court, respondent repeatedly indicated that, if allowed to testify, his experts would show that additional training programs, including self-care programs, were needed to reduce

Romeo's aggressive behavior. Petition for Certiorari 98a-

104a. <sup>b/</sup> <sup>22</sup> If, as seems the case, respondent seeks only training related to safety and freedom from restraints, this case does not present the difficult question whether

<sup>21</sup> <sup>a/</sup> See, e.g., description of complaint at \_\_\_\_ - \_\_\_\_, supra.

<sup>22</sup> <sup>b/</sup> See also Respondent's Brief, as Appellant, to the Court of Appeals for the Third Circuit, at 11-14,

08/4/96

20-21, 24.



a mentally retarded person involuntarily committed to a state institution has <sup>some general</sup> a constitutional right to training <sup>no type or amount of</sup> ~~per se~~, even when training cannot <sup>would</sup> lead to freedom.

Chief Judge Seitz, in language apparently adopted by respondent, <sup>observed:</sup> ~~expressed the belief:~~ would have held:

"I believe that the plaintiff has a constitutional right to minimally adequate care and treatment. The existence of a constitutional right to care and treatment is no longer a novel legal proposition." 644 F.2d, \_\_\_ (Pet. 54a).

Chief Judge Seitz did not identify or otherwise define-- beyond the right to reasonable safety and freedom from physical restraint--the "minimally adequate care and treatment" that may appropriately be required for this respondent. <sup>23</sup> ✓ In the circumstances presented by this case, and on the basis of the record developed to date, we agree with his view and conclude that respondent's liberty interests require the State to provide ~~some~~ <sup>or reasonable</sup> minimally adequate <sup>ensure</sup> training to ~~provide~~ safety and freedom from undue restraint. In view of the kinds of treatment sought by respondent and the evidence <sup>of</sup> ~~in the~~ record, we need go no <sup>than</sup> ~~further~~ with Chief Judge Seitz's formulation. <sup>24</sup> ✓

Presumably  
add "X"  
Rider  
or a note  
here

Many  
see  
Note I  
want you  
& David to  
consider  
with due  
tolerance.



lfp/ss 05/28/82

Rider X (Romeo)

ROMEOX SALLY-POW

Note to Mary: Our problem is to afford some general guidance, while deciding this case narrowly on its facts. A possibility that we might consider is indicated below.

First, add a footnote - keyed to the last sentence on page 4 of the long rider A:

24 ~~25~~ ✓ It is not feasible, as is evident from the variety of language and formulations in the opinions below and the various briefs here, to define or identify the type of training that may be required in every case. A court properly may start with the generalization that there is a right to minimally adequate training. The basic requirement of adequacy, in terms more familiar to courts, may be stated as that training which is reasonable in light of identifiable liberty interests and the circumstances of the case. A federal court, of course, must identify a constitutional predicate for the imposition of any affirmative duty on a state."

part of 08142966



(OB 142966)

23 ✓

\* Chief Judge Seitz used the term "treatment" as synonymous with training or habilitation. See 644 F. 2d, at \_\_\_\_ (petn 65a-67a, end of Seitz's opinion).

III  
A

The liberty interests in safety and freedom from bodily restraint are not absolute and to some extent they may be in conflict.



lfp/ss 06/01/82

Rider A, p. (Romeo)

ROMEOb SALLY-POW

Add as a footnote:

Because the facts in cases of confinement of mentally retarded patients vary widely, it is essential to focus on the facts and circumstances of the case before a court. Judge Aldisert, in his dissenting opinion in the court below, was critical of the "majority's abandonment of incremental decision-making in favor of promulgation of broad standards . . . . [that] lack[] utility for the groups most affected by this decision". 644 F.2d, at 182-184 (~~footnote omitted~~). Judge Garth agreed that reaching issues not presented by the case requires a court to articulate principles and rules of law in "the absence of

5.

(OB 142966)

Seitz used the term "treatment" as  
habilitation. See 644 F. 2d,  
opinion).



(OB 142966)

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an appropriate record . . . <sup>"</sup>and without benefit of  
~~analysis, argument or briefing~~" on such issues. Id., at  
186.



8 In the trial court, respondent asserted that "state officials at a state mental hospital have a duty to provide residents ... with such treatment as will afford them a reasonable opportunity to acquire and maintain those life skills necessary to cope as effectively as their capacities permit." App. to Petn. for Cert. 94-95. But this claim to a sweeping per se right was dropped thereafter. In his brief to this Court, respondent does not repeat it and, at oral argument, respondent's counsel explicitly disavowed any claim that respondent is constitutionally entitled to such treatment as would enable him "to achieve his maximum potential." Tr. of Oral Arg. 46-48.

SP/P.



Because the facts in cases of confinement of mentally retarded patients vary widely, sweeping generalizations as to training should be avoided. As Judge Aldisert said in this case:

"In the common law tradition, courts resolve disputes by examining the rules laid down by prior decisions. These are rules of law in the narrow sense, 'precepts attaching a definite detailed legal consequence to a definite, detailed state of facts,' or 'fairly concrete guides for decision geared to narrow categories of behavior and prescribing narrow patterns of conduct. ....

....  
"The majority's abandonment of incremental decisionmaking in favor of promulgation of broad standards is not only methodologically offensive, but lacks utility for the groups most affected by this decision." 644 F. 2d, at 182-184 (footnote omitted).

Judge Garth agreed:

"The problem with including this discussion and this [jury] charge [deciding questions not presented by the facts of this case] is apparent. It is crystal clear that the Plaintiff here had neither alleged nor suffered from non-reversible surgery. Nor did he allege or suffer from being medicated with a powerful anti-psychotic drug. Thus, the entire discussion in the majority opinion which refers to those two conditions is gratuitous and constitutes no more than dictum." Id., at 186.

Judge Garth went on to note that reaching issues not presented by the case required the court to articulate principles and rules of law in "the absence of an appropriate record ... and without the benefit of analysis, argument or briefing" of such issues. Ibid.



Because the facts in cases of confinement of mentally retarded patients vary widely, it is essential to focus on the facts and circumstances of the case before a court. Judge Aldisert, in his dissenting opinion in the court below, was critical of the "majority's abandonment of incremental decisionmaking in favor of promulgation of broad standards . . . . [that] lack[] utility for the groups most affected by this decision". 644 F.2d, at 183-184. Judge Garth agreed that reaching issues not presented by the case requires a court to articulate principles and rules of law in "the absence of an appropriate record . . . and without the benefit of analysis, argument or briefing" on such issues. Id., at 186.



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All members of the Court of Appeals agreed that respondent's expert testimony should have been admitted. This issue was not included in the questions presented for certioari, and we have no reason to disagree with the view that the evidence was admissible. It appears relevant to whether petitioners' decisions were a substantial departure from accepted professional practice.